

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

In the Matter of the Appeal of

**CEDAR PARK NEIGHBORHOOD
COALITION**

H.E. FILE NO. MUP-90-107(P,W)
DCLU NO. 9001459

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

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Introduction

Cedar Park Neighborhood Coalition appeals the decision of the Director of the Department of Construction and Land Use (DCLU) to issue a Mitigated Determination of Nonsignificance (MDNS) and to approve with conditions a short plat application (one parcel into seven) for property partially located in an environmentally sensitive area and addressed at 13030 39th Avenue N.E.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on February 19 and 20, 1991. The record was left open for the submittal of a copy of a video tape which had been viewed during the hearing and a transcript of the tape of a public hearing held by DCLU. The record was closed on February 22, 1991.

Present at the hearing were: appellant Cedar Park Neighborhood Coalition, represented by attorney Jeffrey Eustis; the DCLU Director, represented by Assistant City Attorney Margaret Klockars, and the applicant Douglas Hanson (Norbrook Construction, Inc.), pro se.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence of record and personal inspection of the property and the 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 applicant Norbrook Construction, Inc. proposes to divide the 79,623 square

foot parcel (200 ft. wide along the street frontage, by 398 ft. deep) into seven parcels (Parcels A and B, each 9600 sq. ft., 100 ft. wide along the street frontage and 96 ft. deep; and east of Parcels A and B, five parcels, C through G, each 40 ft. wide and between 302 and 309 ft. deep, ranging from 12,111 sq. ft. to 12,342 sq. ft. in area). The application for short plat was submitted March 12, 1990.

2. Applications for building permits to demolish the existing house and construct seven new houses on the proposed parcels were submitted to DCLU in July, 1990. Separate applications for building permits to construct single dwellings on each of the five parcels on the eastern portion of the subject property (parcels C through G), were submitted by the applicant, Evergreen Construction, Inc. The plans indicate the same design for each house. Building plans for the house on proposed parcel B (dated 5/18/89) and on proposed parcel A (different sheets with different dates: 1/12/88, 9/22/86 and 3/20/90) were included in the hearing record by DCLU. The plans for the house proposed for parcel A is labeled "Dolphin Norbrook Homes - Riviera Plan" and plans for B have the notation "Proposed Residence for Dolphin Homes". The relationship between Dolphin Homes and the applicant Norbrook Homes, Inc. was not explained.

3. In August 1990, applicant's attorney wrote to the Director of DCLU regarding the length of time this short plat application and another in the vicinity had been under review and objecting to DCLU's intention to issue a determination of significance (DS) requiring the preparation of an environmental impact statement (EIS). Exhibit 5. On August 22, 1990, the Director responded stating, "We strongly believe that the sites proposed for short platting may likely have significant adverse environmental impacts" and indicating a DS would be issued on August 23rd.

4. The particular conditions and impacts anticipated to be addressed in the EIS included: "an expanded analysis of earth, drainage, and traffic impacts..." The "standard soils report" submitted with the application was indicated as inadequate in this circumstance. No additional soils report has been submitted to date.

5. The DS was issued on August 23, 1990, with a public comment period until September 13th and a scoping meeting scheduled for September 6th. The preliminary scope for the EIS identified elements of concern including air, construction impacts, land use, earth, transportation, public services and utilities, water, and plants and animals.

6. On September 5, 1990, the applicant's attorney wrote again to the Director suggesting that the DCLU "grant the short plat application now" and conduct whatever further environmental review it deemed appropriate in conjunction with the building permit application. Included with this correspondence was a summons and complaint, initiating the applicant's law suit against the City and DCLU regarding DCLU's having not issued approval of the short plat application.

7. In his response of September 19, 1990, after the public scoping meeting, the Director reiterated DCLU's concern regarding the potential for significant adverse impacts

"with respect to transportation, earth, land use, air quality, water, drainage, plants and animals; public services and utilities, and construction impacts." The EIS was to focus on: (1) a profile and discussion of the soil and geologic strata of the entire slope; (2) a survey of topography "of the entire area that could be affected by the site's drainage or earth slippage"; (3) a drainage control plan prepared by a licensed civil engineer; (4) plans for installation of underground utilities using the same level of detail as required for the drainage plan; an environmental assessment regarding impacts to vegetation and the provision of an erosion control and revegetation plan; (5) traffic patterns; (6) an impact analysis of the proposal regarding 1 through 5 relative to soils and slope stability, drainage and drainage systems, traffic, and parking; and (8) alternatives and mitigation measures that could reduce impacts identified. The Director's letter indicated that if the requested information and appropriate mitigation were provided, withdrawal of the DS and the issuance of a Mitigated DNS (MDNS) might be possible.

8. In an October 8, 1990 letter, the Director provided a list of the "minimum information that is needed to complete the application materials". The following items were on that list : a survey of topography; a drainage control plan prepared by a licensed civil engineer; plans for installation of utilities; description of amounts and type of vegetation to be affected by construction and an erosion and revegetation plan; and an impact analysis regarding the potential adverse impacts associated with soil and slope stability, drainage and drainage systems, and mitigation measures that could reduce impacts. At that time, none of this information or analysis was included with the short plat application or with the building permit applications.

9. On October 25, 1990, in response to the DCLU letter of October 8th, the items listed below were submitted to DCLU by Evergreen Construction, Inc. (The relationship of Evergreen Construction, Inc. to the applicant Norbrook Construction, Inc. was not explained.)

(1) Revised topographic site plan showing topography through all property lines onto adjoining properties; prepared and stamped by a licensed surveyor; dated "June 23 - October. 3, 1990".

(2) Road and storm drainage plan consisting of preliminary drawing of location and size of easement driveway and drainage collection/detention system prepared by licensed civil engineer based upon topographic information from 6/23/90; dated 10/24/90.

(3) Preliminary grading plan showing existing and proposed contours and location of filter barriers and straw bales proposed for erosion control prepared by licensed civil engineer based upon topographic information from 6/23/90; dated 10/24/90.

(4) Preliminary water and sewer plans showing sizes and locations of proposed utility connections and facilities prepared by licensed civil engineer based upon topographic information from 6/23/90; dated 10/24/90.

(5) Revegetation and erosion control plan showing proposed

landscaping for the seven lots; existing plantings to be retained and species and size of plantings to be added; except for retention of vegetation, no "erosion control" measures are indicated; prepared by The Bradley Company and dated October 23, 1990.

(6) Preliminary design report prepared by licensed civil engineer to accompany plans noted in #2 through #4, includes calculations for sizing drainage facilities.

(7) Narrative to accompany revegetation plan (#5).

(8) Geotechnical report by Cascade Geotechnical, Inc., May 22, 1990.

10. On November 26, 1990, DCLU published a Notice of Revised Project and DCLU Director's Decision" that withdrew the previously issued DS, and issued an MDNS. A 15-day comment period, through December 11, 1990, was announced by this notice. The decision of the Director explained that sufficient information and mitigation had been provided to allow the Director to issue an MDNS and to approve the requested short plat without the preparation of an EIS. The Director's Analysis and Decision incorporated by reference the mitigation measures it described, listed pre-permit issuance "requirements" (landscape plan for screening, engineered sewer and drainage plans, determine methods to preserve slope vegetation) and included routine short plat conditions and a SEPA condition to limit hours of construction to mitigate noise impacts. An appeal period was also announced, extending 15 days beyond the end of the comment period (through December 26, 1990).

11. Notice of a 15-day comment period is to "be issued concurrently with a Mitigated DNS. No further action shall be taken until the expiration of the comment period. Notice shall include information sufficient to inform the public of the mitigation proposed." Section 25.05.350 H.

12. The subject property is zoned Single Family residential, with 9600 sq. ft. minimum lot size. The western one-third of the property extending from the street to about 185 feet to the east, is relatively flat. The remaining two-thirds is steeply sloping. This portion of the property generally has slopes of approximately 35-40% and is designated as environmentally sensitive.

13. Existing development on the property consists of a large single family structure. There is a paved driveway curving in front of the house, connecting to the street near both the northern and southern property lines. The street frontage is lined with mature trees and other vegetation which screen the house from street views. There is lawn surrounding house and landscaping (hedges, etc.) along the north and south property lines. The steeply sloping eastern portion of the site is covered with blackberry and brambles, mature alder, and other native vegetation.

14. The vicinity was originally platted into very large lots, 100 ft. wide at the street and from about 250 ft. to in excess of 400 ft. deep. Large lots are still predominant.

Along the east side of 39th Avenue N.E. about half the lots between 125th and 135th retain the original large lot configuration (the subject property consists of two of the 100 ft. wide parcels). Along the east side of 39th Avenue, between 125th and 135th, the houses are generally set well back from the street and from one another. On the west side of 39th, the lots are smaller and the houses substantially closer to the street and to each other.

15. Most of the parcels in the vicinity are now smaller than those of the original platting pattern, but are still relatively large. Most exceed the zoning minimums (9600 sq. ft. east of 39th and 7200 sq. ft. to the west). Along 125th, 130th, and 135th, between 37th and 42nd, the lots are considerably smaller (in the 5000 and 6000 sq. ft. range). Some do not meet the zone minimums. Some of the original, large parcels have been divided into 2, 3 and in a few instances, 4 lots; keeping the 100 ft. width and "stacking" the lots in from the street as "flag lots" with driveways or easements, to the street.

16. All the master use permit decisions for a project are generally required to be included in the same application, except that a separate application may be filed for certain specified approvals if SEPA review is required only because the proposal is located in an environmentally sensitive area. Short plat approval is among the exceptions specified. Section 23.76.010.

17. SMC 23.24.020 requires that an application for approval of a short subdivision (i.e., nine, or fewer lots) must include the following:

1. A plat of the proposed short subdivision containing standard survey data;
2. A vicinity map on which shall be indicated the property to be subdivided;
3. A plot plan, as appropriate, showing the location and dimensions of existing buildings in relation to the proposed short subdivision;
4. Legal descriptions of the property to be subdivided and of all proposed lots or divisions;
5. Name and address of owner(s) of the tract;
6. Location of existing roadways, sanitary sewer, storm drain and water mains, if any, together with the proposed street improvements.

18. Section 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.

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

Purpose

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...

Area Designation Policy

POLICY INTENT: It is the responsibility of the City to preserve and protect areas which are currently in predominantly single family residential use. These areas should have a minimum size so that the sense of low-density residential environment can be maintained...

USE POLICIES

SINGLE FAMILY RESIDENTIAL USE

POLICY INTENT: The City shall preserve the character of Single Family Residential Areas, discourage the demolition of single family residences and displacement of residents...

BULK AND SITING

POLICY INTENT: Zoning Code bulk and siting regulations shall recognize and preserve the streetscape character of individual clusters of housing units in City neighborhoods. The Citywide pattern of open spaces between single family residential structures in single family residential areas shall be maintained by requiring minimum side and rear yard setbacks... Height regulations shall encourage sloping roofs. The height and front yard setbacks of existing adjacent single family residences shall be used to determine bulk and siting patterns for future construction.

20. Of the 9600 sq. ft. total area included in Parcels A and B, approximately 1750 sq. ft. of each would be part of a "T" shaped 20 ft. wide "all-weather" access road and easement to serve Parcels C through G.

21. Although the total lot area for Parcels C through G ranges from 12,111 sq. ft. to 12,342 sq. ft., the area of each which is not part of the steep slope (beginning at approximately elevation 306) is more like 4- or 5,000 sq. ft. The access road and easement uses about 200 sq. ft. of each of Parcels C and G, and 400 sq. ft. of each of Parcels D through F.

22. On October 24, 1990, an interim ordinance (Ordinance 115385) regulating

development and setting forth new minimum requirements for plats in "critical areas" became effective. "Critical areas" include steep slopes with identified slide areas, potential slide areas (a combination of greater than 15% slope with impermeable soils or with springs/groundwater seepage); and areas with over 40% average slope. SMC 25.09.020. Only 50% of designated critical areas can be included in the calculation of minimum lot size for proposed short subdivisions. SMC 25.09.080.

23. The SEPA ordinance (Section 25.05.350) provides that in making a threshold determination if DCLU specifies measures that allow it to issue a Determination of Nonsignificance (DNS), "and the proposal is clarified, changed, or conditioned to include those measures," DCLU "shall issue a DNS..." Environmental documents need not be revised and resubmitted if the changes are "stated in writing in documents that are attached to, or incorporated by reference, the documents previously submitted."

24. On pages 1 and 2 of the Director's decision, seven mitigating measures are referred to as being "incorporated as part of the proposal" based upon the authority of Section 25.05.350. These measures are referred to again on page 3 as included in the "revised proposal." These measures are:

(1) to mitigate erosion impacts, drainage plans showing yard drains for lawn areas will be installed and all storm water from the lawns and impervious surfaces will be collected and discharged to the ditch in 39th Avenue N.E.; (2) hay bales and a filter barrier will be provided atop the slope to prevent erosion during construction; (3) a public sanitary sewer meeting Board of Public Works standards will be installed in the proposed easement to serve all seven houses; (4) the vehicular access to the site will be limited to one 20 ft. wide easement at the center of the lot to maintain the existing landscaping along 39th Avenue N.E.; (5) the existing driveway will be filled in with landscaping for continuous screening from the street; (6) a landscape plan was provided indicating retention of existing landscaping for continuous screening from the street; (7) the five houses to be constructed on the lots which include the steep slope (eastern parcels) will be set back approximately 35 ft. to the west from the top of the slope somewhat in line with other houses on neighboring lots.

25. Section 22.802.020, regarding drainage control, specifies that, "A drainage control plan shall accompany and be part of the application" for a master use permit "where the permit application contemplates the addition of more than 2,000 square feet of developmental coverage within the subject property." The same applies to the addition of 2,000 square feet of coverage after demolition of an existing structure. Where one or more single family dwellings are contemplated, the plan "may consist of a standard design as provided in Section 22.802.030 D." The submission of a drainage control plan "shall be a condition precedent" to processing any of the permits or approvals for which a drainage control plan is required Section 22.802.020 B.

26. The Environmental Checklist included in DCLU's file and presented at hearing as Exhibit 2, is not the Checklist for this short plat. The whereabouts of the Environmental Checklist that was submitted by the applicant with the short plat application and subsequently reviewed and annotated by the DCLU land use specialist, is unknown. The Checklist presented as Exhibit 2, was completed on July 26, 1990, and has not yet been reviewed and annotated by DCLU. The subject of this Checklist is the single family house proposed for parcel C in the proposed short plat and although the short plat application is referred to, the impacts noted as anticipated by the applicant do not include any mention of the other six houses and the demolition of the existing house.

27. It has not been established whether or not an Environmental Checklist has been submitted for each of the houses to be constructed on the other proposed parcels. Single family house construction, is not subject to SEPA review except in a designated environmentally sensitive area.

28. The proposed yard drains are not designed to collect storm water from lawns. These drains are intended to function as an emergency collection system if sprinklers are left on, etc.

29. There no sidewalks along 39th Avenue N.E. in this vicinity. The paved roadway surface of the street is approximately 23-25 ft. wide. The right-of-way has a total width 60 ft. of and the undeveloped portion of the right-of-way appears as front lawn and landscaped area extending from the residences. Rather than use the paved surface, some bikes and pedestrians travel on the unpaved right-of-right alongside the paved surface.

30. No traffic counts have been prepared. If its traffic volumes resemble what is typical for this kind of street, 780 vehicle trips per would be the average. The street may be experiencing a increasing amount of traffic as travelers seek to ass congestion and delay on Lake City Way. Growth of traffic volumes in this vicinity, including the influence of the Northgate area, may lead to increased local traffic volumes.

31. Some vehicles traveling on 39th Avenue N.E. in this vicinity, travel at a rate of speed that exceeds that which neighbors consider safe. A serious, one-car accident recently occurred along this part of 39th.

32. The proposal would be expected to generate an average of 10 trips per day per dwelling, per day. Assuming the same rate for this house, 60 net new trips would be anticipated to occur.

33. There is no room for parking on the paved surface of the street but the unpaved right-of-way on the west side of the pavement is easily wide enough to accommodate parked cars. Only a few cars park in the unpaved right-of-way. Parking in this manner is generally untenable adjacent to the east side of the paved surface because of the drainage ditch running parallel to the street, within a few feet of the paved surface.

34. The open drainage ditch along the east side of the street in the right-of-way, provides public drainage collection/conveyance along 39th Avenue N.E. in this vicinity. This ditch was not shown on the plot plan submitted with the short plat application. The ditch does appear on the revised topographic map, the preliminary road and storm drainage plan, and the other plans submitted as part of the applicant's revisions of October 25, 1990.

35. Storm water has on some occasions, overtopped the drainage ditch and run onto private property. Such occasions may have been caused by clogs, although some neighbors believe that there is insufficient capacity in the ditch. On one site visit in very heavy storm conditions, this Examiner observed no overflow problems and considerable unused capacity in the ditch; there was however, noticeable slowing at the point upstream where the ditch runs under a driveway mid-block between 127th and 130th.

36. Substantial amounts of seepage from at least five year-round springs flows out of the eastern part of the sloping portion of the subject property at about elevations 260-280. In this area of the slope there appears an anomalous bench in the otherwise steep slope. The water runs down off the slope and onto to the downslope neighbor's property in sufficient quantities to require nearly continuous maintenance of catchment and collection facilities (i.e., channels, pipes, and artificial ponds constructed to convey the water across the downslope property).

37. The downslope neighbor is concerned that the seepage situation could be made worse by the construction and occupation of houses on the subject property.

38. The geotechnical report prepared for this application concentrated on the factors relevant to construction of houses on the subject property. The impacts of construction and occupation of the houses on the existing seepage situation as it affects the slope and the downslope adjacent neighbors, received little attention. The subsurface conditions beyond the depth of 13 ft. from the ground surface was not subject to test pit exploration. The report recommends that "all proposed buildings and roadways be built at least twenty-five (25) feet from the top of the east slope break."

39. Slope failures have been reported in the area, including approximately 500 ft. to the south and 100 ft. to the north. The geotechnical report notes that the subject property is located 800 ft. west and 200 ft. above the mapped "hazard zone" in the reference "Zone of Particular Landslide Hazard Map". The site is shown as within the Class 2 area of that map (Class 2 is defined as less stable than Class 1 which is the most stable).

40. The three witnesses who testified regarding geologic impacts, including the experts called by DCLU and the applicant, indicated that the benchlike area on the slope between elevations 260 and 280, could be related to previous slumping or sloughing.

41. DCLU Director's Rule 2-87 (DR 2-87) establishes procedures and guidelines for securing permits in potential slide areas. Whenever a master use permit is required for a

short subdivision or other land use approvals, DR 2-87 procedures require a pre-application conference and submittal of a geotechnical report and other materials.

42. The geotechnical report prepared for this short plat application was not prepared in a manner which meets all the requirements of DR 2-87. The pre-application conference was not held, slide events are not discussed and an acceptable minimal risk statement is not included. The report cautions that fill should be placed under dry conditions, recommends a 25 ft. setback from the edge of the slope, and indicates that the geotechnical recommendations should be "closely followed." DCLU accepted the geotechnical report for the purposes of SEPA review but to comply with DR 2-87, "new soils reports for lots on hill edge" are required for use in reviewing the building permit applications.

43. The DCLU geotechnical engineer did not receive the written confirmation that he had expected from the preparer of the geotechnical report regarding slope strata.

44. The geotechnical experts for the applicant and DCLU testified that the site is stable and that with the implementation of recommended mitigation measures including construction erosion control, setback from the edge of the slope, retention of slope vegetation, drainage control, etc., there is no risk of the slope sloughing or sliding so as to cause damage to the subject property or downslope property. The geologist testifying for the appellant noted that insufficient information regarding hydrology and subsurface soil conditions was available in the geotechnical report to be certain of the impacts of the proposed drainage control and other measures.

45. The construction of five houses on the parcels proposed for the eastern portion of the subject property will present a row of three story houses on 40 ft. wide lots, set 10 ft. apart. Given the construction of houses on proposed parcels A and B, and retention and enhancement of the mature vegetation along the street-side property line, the row of houses may not be visible to those traveling on the street.

46. No calculations have been prepared that define the carrying capacity of the drainage ditch. When it reviewed the short plat application, the Seattle Engineering Department (SED) required that a design for a drainage control plan with detention and controlled release to the ditch be included prior to recording the final plat. SED has reviewing a revised drainage control plan submitted after DCLU's decision.

47. The Water Department recommended, and DCLU required, that a new main be extended to the proposed parcels. DCLU expects that this will resolve questions regarding water pressure to the new parcels. What effects, if any, this may have on the existing pressure problems in the neighborhood was not disclosed.

48. The Fire Department found no problems regarding access for emergency vehicles.

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 Director is to require an environmental impact statement if the proposal would have a probable significant adverse environmental impact. Section 23.05.360.
4. Regarding an MDNS, Section 25.05.350 allows that mitigation measures specified by the Director "may be based upon any adverse impacts revealed by the environmental checklist, and need not be limited to those permitted by agency SEPA policies."
5. The absence of the annotated Environmental Checklist for the short plat makes it difficult to evaluate what DCLU initially determined would be the probable significant impacts associated with the proposal. There is, however, sufficient evidence regarding the need for additional information, analysis and mitigation in several areas of the environment, to conclude that the initial determination of August 23, 1990, was not in error. Given the size (1.8 acres), sensitive area designation, unusual configuration, and the questions about soil and stability, land use, drainage, etc., an EIS could provide the needed information and analysis.
6. Appellant asserts that the issuance of the MDNS/withdrawal of the DS was procedurally improper because the Director's decision was issued concurrent with it. (I.e., there should have been a separate running of a 15-day comment period, prior to the publication of a decision.) The simultaneous issuance provided a 15-day comment period on the MDNS, followed by a subsequent 15-day appeal period regarding the short plat decision. Having the decision available during the comment period gave a relatively full context for understanding the reasoning for withdrawing the DS. In that aspect, the manner of issuance was helpful and practical. It does not, however, observe the express prohibition of Section 25.05.350 H. regarding taking "no further action" until the end of the comment period. (An "action" under SEPA includes a decision regarding a project. Section 25.05.704 B.) The requisite time for comment was provided so returning this matter to DCLU only to cure this kind of flaw could be an exercise of form over substance as it would not provide any more "process" than had already been provided.
7. Appellant further asserts that there was insufficient information, revision and

mitigation to prompt the withdrawal of the DS and the issuance of the MDNS. The record supports this view. The Director initially found that information necessary to the decision and analysis was lacking or insufficient. An EIS was found necessary to gather and analyze information so that there could be an informed decision. The information needed was listed and discussed. Yet some of the information sought was never provided or was insufficient to address the impacts of concern, and the project was not revised or mitigation required so as to address and resolve all the initial, significant concerns.

8. No information became available, nor were revisions or mitigations attached to the proposal, that addressed the potential for impacts initially of concern regarding land use and transportation. Cumulative impacts in these areas of concern have not been addressed.

9. Sufficient evidence exists in the record to conclude that the collection of storm water on-site should not result in adverse impact on the subject property and may have the beneficial effect of reducing the amount of water which runs to the adjacent downslope property. Despite the questions that remain unanswered regarding the "water budget" of the slope, the deference due the Director in these matters has not been overcome.

10. However, there is no information or analysis regarding the future adequacy of the drainage ditch given the additional flow it would have to accommodate. This utility had been one of the initial concerns prompting the DS and remains a substantial concern to neighbors.

11. The revision of the proposal to indicate on the plans that the slope is to be left in its undisturbed state, resolves the potential for adverse impacts to plants and animals during construction. This does nothing however to address the potential for disturbing, or removing vegetation in the long-term. While reasonable and informed persons would hope that those who subsequently own the parcels with the steep slope, would never be so foolish as to remove the vegetation, something more than hope is needed. Without a means that would ensure the requirement to leave the vegetation undisturbed is binding in the future, effective long-term mitigation and avoidance of significant impact has not been accomplished.

12. The decision states that a geotechnical report was submitted in compliance with DR-87. But DR 2-87 was not complied with. Some requirements have not been met and the provision and analysis of site particulars has been pushed into the future as part of the review of the building permit applications. It is certainly sensible to require different levels of information and analysis with permit reviews which have different potentials for impact. Varying the requirements would appear warranted and reasonable in reviewing the myriad of applications handled by DCLU. But DR 2-87 doesn't make such distinctions or anticipate the exercise of this discretion. It may be impractical, but the requirements are not propounded as mandatory in some instances and unnecessary in others. The Hearing Examiner does not intend to attempt enforcement of the Director's Rules, however, the Rules are considered indicative of the documentation and process that

should be provided.

13. Many short plat applications don't anticipate construction immediately, or even soon. In such cases, as the DCLU geotechnical engineer indicated, not all the plans are available, making untimely the requirement for geotechnical details that can best be utilized when construction plans are at hand. In such cases, a phased review, if it were available, could be an appropriate process. Here, however, construction is clearly anticipated and the plans available.

14. The action anticipated in this proposal is the subdivision of one parcel into seven and the construction of seven single family dwellings. The code does allow an applicant to file separate applications for short plat approval and the building permits. However, here the building and the short plat applications could have and should have been reviewed together. Given that the building plans information was available, combining environmental review in this case would have been appropriate in light of the SEPA provisions regarding a single course of action (Section 25.05.060 C.2.), and the phased review (25.05.060 E.2.).

15. The Director's decision concludes that the proposed short plat is consistent with applicable land use policies and land use code provisions. There is no discussion in the decision or at hearing as to how the proposal achieves these consistencies beyond indicating the sizes of the parcels compared to the 9600 sq. ft. minimum required. The appellant argues that the result of the subdivision is development that is anomalous and unanticipated in for this SF9600 zone because the topography limits the buildable and useable area to the effective equivalent of the SF5000 zone. Further, the SEPA analysis does not consider this land use issue. There is no evaluation of whether the proposal would have adverse impacts unanticipated by the zoning code that should be mitigated (e.g., limiting to fewer lots) through SEPA consistent with Sections 25.05.665 B. and 25.05.675 J.

16. The appellant's argument that the short plat application was defective and therefore not vested to the pre-Interim Critical Areas Ordinance provisions of the code, is not persuasive.

17. The record does not show sufficient information, clarification, and mitigation to support the MDNS. The short plat decision (and associated SEPA analysis) lacks meaningful discussion regarding the proposal's consistency with land use policies and the intent of zoning code standards. The SEPA review for plat and building should have been combined. There has not been strict compliance with all procedural requirements. In the aggregate, the Hearing Examiner concludes that the Director erred in making this threshold decision.

18. Whether or not the short plat should be approved should be a decision informed by environmental review and thus can not be evaluated in the present context.

Decision

The Director's decision is REVERSED. The matter is remanded to DCLU for further action consistent with this Hearing Examiner decision. In remanding this decision, the Hearing Examiner does not foreclose a properly issued MDNS responsive to the concerns raised above.

Entered this 12th day of March, 1991.


Meredith A. Getches
Hearing Examiner

**Concerning Further Review of
Hearing Examiner Final Decisions on Master Use Permits**

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 calendar days of the date of this decision. Seattle Municipal Code 23.76.22(C)(12)(c).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.