

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

In the Matter of the Appeal of

THE DOWNTOWN NEIGHBORHOOD ALLIANCE

FILE NO. W-81-001

from an environmental determination of  
the Department of Construction and Land Use

Introduction

The Downtown Neighborhood Alliance, appellant, challenges the adequacy of an environmental impact statement prepared by the Department of Construction and Land Use for the proposed Waterfront Center project.

The appellant exercised its right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties to the proceeding were: Appellant represented by Peter J. Eglick, attorney at law; the Department of Construction and Land Use, represented by James E. Fearn, Jr., Assistant City Attorney; Cornerstone Development Company, the project sponsor, represented by Jerome L. Hillis and Glenn J. Amster, Hillis, Phillips, Cairncross, Clark and Martin, P.S.

This matter was heard before the Hearing Examiner on February 24, 25, 26, March 2 and 3, 1981.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. A draft environmental impact statement (DEIS) was prepared by the Department of Construction and Land Use (DCLU) and circulated July 30, 1980, for a proposed Waterfront Center.

2. The Waterfront Center project described in the DEIS included the rehabilitation of seven structures on First Avenue, demolition of one structure, construction of three new buildings with heights of 140 ft., 140 ft. and 116 ft. The project was to have 300-325 dwellings units, some of which would be rental housing, 100-135,000 sq. ft. of retail space, 275-325,000 sq. ft. of office space and 550-600 parking spaces. Spring Street was to be closed.

3. The DEIS was circulated for comment and a public hearing held.

4. The final environmental impact statement (FEIS) was issued December 24, 1980.

5. The Waterfront Center project had been modified, due in part to the denial of UDAG funding, between the time of the issuance of the DEIS and FEIS. The modifications include one additional story on each of two buildings adding 50,000 sq. ft. of office space and changing the building heights from 140 to 150 ft.; 44 condominium units and a 45-55 room hotel instead of 106 middle income rental units; a new 210 ft. building instead of 116 ft., or 20 instead of 12 stories; and leaving Spring Street open.

6. The Downtown Neighborhood Alliance filed an appeal challenging the adequacy of the EIS on various grounds, including the failure to circulate a supplemental EIS for the changed proposal.

7. The environmental specialist for DCLU assigned to supervise the Waterfront Center EIS evaluated the aggregate environmental impacts of the changes to the proposal in relation to the impacts disclosed in the DEIS and concluded that circulation of a supplemental EIS was not necessary under WAC 197-10-10 because the changes are "minor" as opposed to substantial and the new information was not significantly different from that in the DEIS.

8. The changed proposal would increase the parking deficit by 111 spaces from 192 to 303.

9. Parking is difficult in the waterfront district and surrounding area.

10. Hotel and commercial activity are more energy intensive than the residential and retail uses they replace in the project. The aggregate increase in energy consumption is stated to be 10 percent.

11. A hotel can be expected to be auto oriented and generate more vehicle trips per day than a residential use and has different peak periods.

12. A 17 story tower on Block A is mentioned in the discussion of alternatives in the DEIS at p. 238. The proposed tower would be 20 stories.

13. The modifications to the original proposal represent substantial change.

14. The DEIS discloses, at p. 63, 70, that approximately 25 ft. of Blocks D and E are within the 200 ft. shoreline district. The sponsor proposes a dedication of a 25 ft. wide strip across both blocks to the City for public use. No building would be constructed on the 25 ft. but access and other improvements would occur in the strip.

15. The EIS does not discuss implications to the City of such a dedication or how it would affect the possible bulk of building under floor to lot ration (FAR) limitations.

16. The 25 ft. wide strip is a part of the Urban Stable-Central Waterfront (US/CW) Environment. In the US/CW multi-unit residential use is prohibited, lot coverage is limited to 50 percent and height is limited to 50 ft.

17. The DEIS includes a description at p. 234 of an alternative where the regulations of the Shoreline Master Program (SMP) are applied to the whole site.

18. The DEIS, pp. 23, 234 states that even without dedication of the 25 ft. wide strip, "there is some precedent" for the proposition that no shoreline permit would be required for upland development.

19. The FEIS, p. 120, cites Weyerhaeuser v. King County, 91 Wn.2d 721 (1979) to support the statement in the DEIS regarding precedent for no shorelines permit for upland development.

20. Appellants contend that there is precedent to the contrary and by adding the case citation in the FEIS public comment as to contrary precedent is foreclosed.

21. The discussion of consistency with the SMP does not include the goals of the SMP for planning of adjacent lands or a statement that the shoreline is one of state-wide significance.

22. The DEIS states, at p. 125, that the possibility of using Blocks D and E for water-related activities would be foreclosed by the project.

23. No mitigating measure for the loss of or denial of access to the shoreline is set out.

24. Blocks D and E were zoned CM under a contract rezone in 1974. Amendments to the property use and development agreement (agreement) which restricts the property to certain uses and bulk would be required to allow the height and lot coverage proposed on those blocks.

25. The scope considered for alternatives was the subject and other sponsor-owned sites.

26. Appellant urges that a rezone action would result from the amendment to the property use and development agreement. The scope of alternatives, therefore, it contends, should have included other sites that could meet the City's objectives in a rezone and there should have been consideration of additional measures that could be imposed as contract provisions such as the requirement of below market rate (BMR) housing.

27. On December 3, 1980, six buildings in the project site, in addition to the Grand Pacific Hotel, were nominated for Seattle Landmark designation. The project sponsor initiated the nomination. This action is not disclosed in the EIS.

28. Appellant contends that discussion of alternatives which involves demolition of any of the buildings nominated for land designation is not proper since the nomination makes demolition possible only on a certificate of approval after showing of necessity. Also, the compatibility of a 20 story building with low scale landmark buildings should have been discussed.

29. The proposed project would not directly impact housing in that there currently are no dwelling units on the site. Potential indirect impacts on housing by the project's contribution toward the development trend is acknowledged in the DEIS at p. 140.

30. Six of the seven buildings to be rehabilitated in the proposal provided SRO housing at some time in the past and are included by the Office of Housing Development in their count of 51 vacant SRO buildings.

31. The fact that several of the buildings are "laid out in an SRO configuration" is mentioned in the FEIS at p. 262, in response to a comment that SRO housing should be considered as an alternative. The irretrievable commitment of the buildings to new uses is implied by statements in the DEIS at p. 218.

32. The DEIS, at p. 136, reproduced a portion of Table 3, Downtown Population and Housing Data, Exhibit 5, showing Puget Sound Council of Governments Estimates of Households by Income Levels, but left off a section giving estimates of Single Persons Households Living Below Poverty Levels. That omission is cited as error in that the EIS fails to show that 47 percent of the households are below poverty level.

33. The 1980 Housing Assistance Plan (HAP) is referred to in the FEIS at p. 185 in response to a comment regarding conflict with City policies addressing displacement. The response acknowledges that the proposed project does not preserve or increase housing opportunities for low or moderate income people but does not directly discuss how this conflicts with the HAP. Appellant contends the HAP should have been more fully discussed.

34. The 1981 HAP is part of the record on review but not the 1980. The 1981 HAP provides surveys of existing-housing conditions, assessments of housing assistance needs, statement of production goals and the policies and strategies for meeting those goals.

35. The Mayor directed the Office of Policy Planning to prepare Guidelines for the Central Waterfront District (Guidelines) to be used by City Departments in evaluating contract rezone requests in the central waterfront district. The Guidelines have not been adopted by the City Council. The EIS describes the Guidelines or discusses the project's consistency and inconsistency with these at pp. 117, 212-216, and 66, 68 of the DEIS and pp. 58-62 of the FEIS.

36. The EIS states that Guidelines prefer residential uses as new uses for the area.

37. The Guidelines state that the purpose of the area is to support the Central Business District and one means of satisfying that function is "Allowing for retention of the area's manufacturing uses. Some of the area uses (e.g., printing) are vital to the CBD and should be retained in close proximity to their market."

38. The DEIS, at p. 213, quotes this provision but the FEIS at p. 59 states that the Guidelines "suggest that some of the area's manufacturing uses be retained." (emphasis supplied).

39. The DEIS at p. 216, states that the project is inconsistent with the retention of manufacturing uses in the National Building, FEIS at p. 59, that 10 percent of the National Building tenants are manufacturing uses which will be displaced, DEIS, at p. 124, and that two printing businesses are located in the National Building.

40. The building height limit proposed by the Guidelines is eight stories. Permission for an additional four stories can be gained under the Guidelines if development is to occur on vacant land and the developer agrees to preserve an existing building. That provision is described at pp. 20, 105, FEIS and 66, DEIS.

41. The EIS at points, e.g., p. 105 FEIS, refers to conformance with a 12 story height limit without reference to a basic height plus bonus.

42. The Guidelines recommend a 20 ft. setback on east-west streets above the level of the Alaskan Way viaduct. The EIS does not acknowledge that the proposal does not provide for this setback on Madison or Seneca, thereby not conforming with the Guidelines recommendation.

43. The Guidelines recognize the need to retain parking in the area for shoreline use patrons. The discussion in the FEIS at p. 60, includes a statement as to the recommended amendment to zoning code parking requirements to provide more parking but does not offer the reason provided by the Guidelines.

44. A section entitled "Sponsor's Opinion Regarding the Proposal's Consistency/Inconsistency with the Waterfront Guidelines" is included beginning at p. 61, FEIS.

45. Property Use and Development Agreement (Agreement) regulating the development of the property rezoned to CM, including a part of the subject site, is described briefly at pp. 63 and 66, DEIS. The EIS states that a FAR of six times lot area is permitted but may be increased by bonuses for residential use, plazas, arcades, roof gardens, marquees and other features.

46. While floor areas are given, the reader cannot determine what bonus provisions are utilized and, therefore, whether or not the proposal conforms with the bulk controls or what changes are required.

47. The Agreement allows base structures with high rise towers and, according to the FEIS at p. 55, would have to be amended to permit "mid-rise configuration" built to the property line, for a 14 story, 150 ft. building. The specific changes to the agreement necessary are not otherwise discussed.

48. Fourteen stories for residential use is generally considered "high rise" in Seattle.

49. For Blocks D and E the property at 36,000 sq. ft. would allow floor area of 216,000 sq. ft. with a FAR of 6. With the dedication of the 25 ft. wide strip to the City the FAR would permit only 119,000-120,000 sq. ft., according to appellant's witness Nyberg, where 36,000 in excess of that is proposed. That effect of a dedication on possible bulk is not stated in the EIS.

50. The Agreement's requirement that a setback of 20 ft. for tower structures abutting east-west streets is not stated in the EIS nor is the proposal's necessity of an amendment to that provision to permit the proposed development.

51. Shadow diagrams are provided for the proposed development but not for alternative configurations. The shadow impact for the alternatives as related to the proposal's impact is mentioned in the discussion of alternatives.

52. The accuracy of the illustration of view impacts was questioned. The possible discrepancy was as to the height depicted of new buildings. If inaccurate, the additional view loss would be of the sky.

53. The energy consumption rate estimated for the project is higher than should be expected according to the energy forecasters testifying at hearing for appellant and City Light's comment letter in the EIS.

54. The modified proposal will increase the estimated use 10 percent, according to the EIS, where the increase in floor area is approximately 17 percent and the hotel and additional residential uses are more energy intensive than the uses proposed under the original proposal. The modifications include increasing the proportion of new construction to rehabilitated floor space.

55. The EIS discloses that while the electrical distribution systems currently have adequate capacity to satisfy the demand created by this project, an energy deficit is projected by the mid-1980's.

56. The EIS does not disclose the difference mitigating measures would make on demand, what demand can be expected from comparable, energy efficient projects, the public cost of new electrical connections and who bears those cost, what incremental effect this demand will have on the potential deficit and the cost and environmental impacts of additional generating facilities or conservation measures required, or the percentage of demand from new downtown projects the projected demand from the proposal would represent.

57. A difference between the projected consumption per square foot between new and rehabilitated buildings described in the draft was corrected or clarified in the final in response to a City Light comment.

58. The DEIS, p. 203, states that the cumulative demand from the subject proposal and other development in the area will result in additions to public service systems in the future, the cost of which may not be covered by increased tax revenues. It specifically refers to the greater cost to City Light of purchases to satisfy increased demand.

59. The EIS projects that level of service (LOS) of traffic operations at the intersections in the area would remain at "A" even with the additional traffic generated by the proposal. Queuing of ferry traffic was excepted from the LOS determination.

60. A traffic study, Alaskan Way Sea Wall and Promenade, August, 1979, found LOS "C" at some intersections.

61. The Institute of Transportation Engineers (ITE) trip generation table projects a rate of 10 trips per room per day for hotels based on a survey of hotels with suburban locations and meeting and conventions facilities.
62. The rate used for the projections for the hotel in the EIS is substantially lower.
63. The traffic consultant for the EIS used a figure based on a survey of users of the Washington Plaza Hotel adjusted for his understanding of what facilities would not be provided at the proposed hotel, namely meeting rooms or convention facilities.
64. The EIS states that a 45-55 room hotel is proposed but gives no further description.
65. The amount of traffic generated by a hotel depends on its characteristics.
66. The EIS provides the frequency of accidents at relevant intersections in terms of accidents per year but does not provide a rate per volume figure or any means to allow comparison to determine whether the rate is within reasonable limits.
67. The area of influence chosen for the EIS was done with the aid of the Engineering Department. Appellant's traffic engineer believes it to be "somewhat circumscribed" in that the parking deficit for the project will cause overflow further north than considered and the effect of demand from projects outside the chosen area should have been considered.
68. Appellant's traffic expert predicts an increase in trips of 463 rather than the 110 predicted for the modified proposal over the original. He uses a lower trip generation rate for the residential units based on local studies and the 10-10.5 trip per unit rate for the hotel from the ITE table.
69. The effect of the increased deficit was not analyzed in the EIS.
70. The EIS does not discuss any increased demands on signalization from the increase in pedestrian use.
71. Reservation of spaces for car pooling is suggested as a measure to offset the increased deficit in parking space.
72. The FEIS uses an occupancy rate of 3.4 persons for employee car pooling.
73. Appellant's traffic expert asserted that 3.4 is a very high occupancy rate unless a circumstance is present such as a single employer with a commitment to a carpooling program.
74. The FEIS utilizes an average occupancy rate of 1.5 per car for employee cars where the DEIS used 1.25. Appellant's expert predicts occupancy of 1.1-1.2. No explanation was offered in the FEIS for the change.
75. The Commuter Pool provided the same occupancy rate figures to be used in the analysis of the Seattle-First project.
76. Specific recommendations for mitigating measures that could be applied that appellant's traffic expert would expect with regard to sidewalks, curb returns, driveway locations, changes to signalization are not present in the FEIS. Those suggested lacked specificity, have been ineffective in other locations or the need for them was not established.
77. The Engineering Department required the traffic consultant to do field studies to refine the LOS judgments and predictions and was satisfied with the final report.

78. The EIS states that the proposed use of the site will change the character of First Avenue in the project area and that 65 existing businesses will be displaced, DEIS pp. 18, 25 and 125. New business tenants can be expected to serve the new residents of the area.

79. The EIS acknowledges that the project may have "indirect and cumulative impacts on persons" in the low or moderate income categories "by contributing to the existing trend toward further office and residential construction in the downtown," DEIS, p. 140, by causing an increase in property values of neighboring properties, p. 126.

80. The buildings and use on the site are described in the DEIS.

81. In response to a comment letter the FEIS lists the tenants of the National Building and includes a list of the impacts resulting from displacement of the tenants.

82. There are no occupied residential units on the project sites. Structures on Blocks A and B were hotels and provided SRO housing units until closed because of fire or health hazards.

83. Several groups or populations congregate in and utilize First Avenue. These communities are not described in the EIS nor is First Avenue regarded or treated as a "neighborhood" by the analysis in the EIS. The Public Hearing Testimony section offers some description of the character but does not provide analysis of any potential impact.

84. The Department representative overseeing the preparation of the EIS determined that no description of First Avenue is necessary in the EIS because everyone is aware of its character.

85. Potential impacts seen by appellant's witnesses include loss of historic centers for specialized activities, i.e., loss of certain taverns, pawn shops; conflict between new project tenants and members of the "old" community; disruption of the tenuous network connecting the various parts of First Avenue; increase in cost of rent, food, clothes, etc., and affect on their availability; loss of an educational experience for the rest of Seattle; stress on the displaced tenants; and others.

86. A statement in the EIS, FEIS p. 89, that the sponsor is taking several steps to lessen the impact of displacement including allowing tenants to remain until the time of rehabilitation was intended to be limited to the National Building and is not accurate as to other buildings.

87. The EIS asserts that various alternatives and mitigating measures are economically infeasible or would conflict with the sponsor's objective of achieving a financially feasible project.

88. Data to demonstrate economic infeasibility is not included in the EIS. The statements are based on the sponsor's judgment and not on specific computations.

89. While programs around the country requiring below market rate housing in new development have been surveyed by the City, the study did not look at the financial feasibility aspects of the requirement.

90. The application for an Urban Development Action Grant contains financial feasibility figures for the original proposal.

91. The Department interprets Section 15, Ordinance 105735, as amended, to prohibit the Department from inquiring into the basis of the sponsor's judgements about financial or economic feasibility.

92. The measure of providing relocation expenses to the displaced business tenants is stated as a possible mitigating measure in the EIS. FEIS, p. 226. Appellant asserts that the response which provides the measure is inadequate in that it is not significantly developed.

93. An alternative provided for 50 ft. height limitations consistent with the Shorelines Master Program is offered but appellant contends that it is not developed as a serious alternative.

94. An alternative consistent with the Agreement is provided.

95. No alternative designed specifically to preserve the character of First Avenue is offered in the EIS.

96. The EIS does not describe the cumulative loss of SRO housing in downtown and any incremental effect of this project. It does give the loss from demolition in the census tract for the years 1970-1979. It also acknowledges that there may be indirect and cumulative impacts on low or moderate income residents of the area.

97. The specific magnitude of low income housing lost as a result of the trend this project would contribute to cannot be predicted with accuracy.

98. The EIS does not discuss the cumulative demand for energy from the subject and other proposed projects except to acknowledge that the project with others will contribute to a projected energy deficit.

99. The Waterfront Center project would represent approximately 5 percent of the peak average demand of the major downtown projects listed by the Energy Office of the City.

100. Plans for development of Harbor properties were not known with any reasonable specificity at the time of the publication of the FEIS.

101. Alternatives evaluated in the EIS include "no action", piecemeal repair and maintenance, a project without the federal grant, a project consistent with the Agreement, a project without street use permit, a proposal without the dedication of the strip or under the regulation of the Shoreline Master Program, alternate configurations of new buildings, and demolition and new construction.

102. The environmental analyst determined that the changes made from the original to the modified proposal were minor in the context of the existing environment, their relationship to the original proposal, the potential environmental impacts of the changes and the level of discussion in the DEIS.

#### Conclusions

1. The standard for determining when an amended or new draft EIS (hereinafter supplemental) is required is found in WAC 197-10-495. One shall be prepared when the lead agency determines:

- (a) That substantial changes have been made in the proposal, or significant new information concerning anticipated environmental impacts has become available subsequent to circulation of the initial draft EIS, and
- (b) That circulation of a new draft EIS is necessary to provide further input and review on the proposal.



2. Although the modifications represent a substantial change from the proposal for which the DEIS was prepared the environmental analyst proceeded properly to examine the impacts of that change and the level of disclosure of these impacts in the draft to determine whether further input and review was necessary.

3. The evidence at the hearing in the instant appeal did not bring to light any potential new impact from the change in building height, more office space, and condominium units instead of rental but showed only greater nonconformance with the Agreement and certain policies, greater traffic generation and parking demand, etc. The substitution of a small hotel for residential units was shown to have potential for greater and different traffic impacts. The lessening of impacts from the change to leave Spring Street open to vehicular traffic was not disputed by appellants.

4. Circulation of the environmental document provides an opportunity for critical comment which can point out objective errors or offset undue bias in the document to assure that the decision-makers have full cognizance of the environmental trade offs. See Appalachian Mountain Club v. Brinegar, 394 F.Supp 105 (D.N.H. 1975).

5. The Hearing Examiner is required to give the determination by the Department of Construction and Land Use that the document complies with the SEPA Ordinance and the SEPA Guidelines substantial weight. Sections 14(a) and Section 20(a), Ordinance 105735, as amended.

6. The environmental analyst's opinion that the increased impacts from the modifications are either disclosed sufficiently in the DEIS or are not of the degree or quality to require further public and agency review must be given that deference. Where appellant has not shown material error or bias in the presentation of those impacts which could be corrected by critical comment resulting from circulation that deference cannot be set aside.

7. Zoning in the City of Seattle clearly contemplates both the regulation of use to which property may be put and the height or bulk of the buildings. Section 2.1, Ordinance 86300, as amended, Seattle Municipal Code 24.06.020.

8. The contract rezone is not a creature of ordinance but has been a device used to mitigate negative impacts of an increase in the intensity of use and volume of bulk permitted when that increased intensity has otherwise been determined to be necessary to promote the public welfare. The Court has held that the use of a concomitant agreement is not proper if it is solely for the benefit of the private sponsor but must be part of action taken under the police power bearing a substantial relationship to the public health, safety, morals and general welfare, State ex. rel. Myhre v. Spokane, 70 Wn.2d 207 (1967).

9. The City has recognized this in the past when it has followed the usual rezone procedure when an amendment to an agreement has been requested by a developer and expressly recognized the legislative function involved in the terms of the Property Use and Development Agreement for the subject property.

10. The Department takes the position that alteration of the agreement should be viewed as a "variance" from the bulk restrictions and not a rezoning action. While appealing, the argument would create an inconsistency if the City were to treat the action as a request for a variance for this review and apply the more general rezone standards, which do not require proof of property conditions creating hardship, when the Council considers the petition for amendment.

11. The court in City of Redmond v. Kezner, 10 Wn.App. 322 (1973), approved the dissent's analysis in Chrobuck v. Snohomish County, 78 Wn.2d 858 (1971), of the Myhre holding in which it discusses the validity of concomitant agreements.

Valid concomitant agreements reflect a dual nexus, first between the performance called for and the fulfillment of an anticipated public need and, second, a causal connection between the particular need or needs to be fulfilled and the proposed usage of the property in question. As such they are based upon factors which are squarely within the ambit of considerations appropriate in the exercise of the zoning power. As thus, limited, the concomitant agreement provides a source of flexibility by allowing an intermediate use permit, between absolute denial and complete approval of the petition. A zoning authority, empowered to permit a given use without restriction, should also be allowed to grant a use which is modified by contract conditions appropriately attached.

Chrobuck, supra, at 889.

12. The restrictions on bulk as factors of the rezone decision then are so related to the use approval that their modification constitutes a new decision.

13. The proposed amendment to the agreement should have been treated as a contract rezone action for the purpose of the EIS. The limitation of WAC 197-10-440(12)(e) as to consideration of alternatives to the proposed site or others owned or controlled by the proponent would not be applicable and alternatives that could feasibly meet the objectives of the City in rezoning the property should also have been evaluated.

14. The sponsor urges that no such alternatives would have been discussed since no site for rehabilitation of a building cluster is available within the City. The argument assumes a City objective which neither the EIS nor the record discloses. While Barrie v. Kitsap County, 93 Wn.2d 843 (1980) did require, in that instance, evaluation of alternative sites, the Court assumed that the County's objective was to locate a regional shopping center. The City's objective in the instant case is currently unknown or undisclosed. The range of alternatives that could satisfy that objective is also unknown and it is conceivable that none exist. The lead agency must make that determination, however.

15. The failure to note that the nomination of the buildings on First Avenue had been approved by the Landmarks Preservation Board has little effect on the disclosure and analysis in the EIS. Alternatives involving demolition of those building would be more infeasible than described because of the additional difficulty in obtaining permits for demolition, however, those discussions are not made incorrect or unduly misleading.

16. Since the proposal would not result in any direct impact on existing housing a fuller discussion of the loss of SRO housing and other trends is not required. Acknowledgment of potential indirect impact occurs throughout the document and while not truly discussed, appellant offered no showing that the impact could be more closely identified and analyzed.

17. Appellant argues that the conflicts of the project with the Central Waterfront Guidelines has been soft-pedalled. While the EIS discloses some of the conflicts, others are not specifically noted. The Guidelines do not represent adopted City policy and extensive analysis is not required. Once presented, a

thorough exposition of consistencies and conflicts is desirable, however, failure to do so would not be reversible error.

18. Allowing a labelled sponsor's opinion in the main body of an EIS is unusual, however properly labelled and on the subject of compliance with non-adopted policy it does not appear to vitiate the objectivity of the document or mislead the reader. Adding it to the final does have the effect of forestalling other opinions as to the proposal's satisfaction of the intent of the Guidelines.

19. The discussion as to the specific amendments to the Property Use and Development Agreement is deficient. While the decision-makers will become aware of those through a petition for amendment, the EIS does not specifically analyze impacts flowing from the increased development those changes would allow in comparison with what could occur without those changes.

20. The use of the term "mid-rise" for 14 story building where the actual elevations and number of stories are given at several places does not unduly mislead the reader.

21. Implications of the dedication of the 25 ft. wide strip for the property, i.e., as to the effect on the bulk permitted under the FAR and to the City should have been discussed or acknowledged.

22. The need for additional shadow analysis of alternatives was not established.

23. City Light's comment in the FEIS about the estimate for energy consumption being higher than would be expected serves to alert the decision-maker to a potential need for mitigating measures while the high estimate offers a worst case consideration of the demand impact of the project on the supply. While appellant showed that the percentage increase in consumption was not estimated in the EIS to increase in direct proportion to the increase in floor area, it did not prove that the increase predicted was erroneous given the change in proportion of new to rehabilitated space.

24. Disclosure of the quantitative effect that mitigating measures would have on consumption would have been useful to the decision-maker, as would be the incremental effect the demand from the proposal would have on the projected deficit. Requiring a private proponent to analyze the environmental impacts of additional generating facilities or conservation measures would be unreasonable, however.

25. Appellant did not prove by a preponderance of the evidence that the LOS given or the trip generation predictions for the hotel were inaccurate or that the vehicle occupancy rates used were not acceptable. While the discussion of accident frequency does not give a means of comparison, appellant offered no evidence that the rate was not within reasonable limits and in need of further analysis or discussion.

26. Appellant did not provide that the area of influence used in the parking analysis was incorrect.

27. More measures in mitigation of predicted circulation impacts could have been discussed.

28. WAC 197-10-440 requires that a general assessment of the existing environment be included in an EIS and that the level of detail of the description of the elements of the environment is to be proportionate to the impact on the environment. The EIS mentions the character of First Avenue under the elements of land use, relationship to various goals, population and housing. No special section was added to cover social or cultural issues.

29. While the EIS acknowledges that the character of First Avenue will be changed, no comprehensive definition of that "character" is provided to allow the reader or decision-maker to understand what is being lost or gained from that change. The land use and aesthetic components of "character" can be ascertained from descriptions in the EIS. The various groups of people which make up the neighborhood the site lies in are not described. Appellant's case did not establish, however, that the proposal would have impacts on those groups of people warranting description in any great detail or that potential impacts could be ascertained with any reasonable degree of certainty.

30. The discussion of displacement of area businesses is limited and does not include much detail about the type of business and service provided or the impact in terms of relocation needs. More detail would provide a better understanding of the loss to the neighborhood.

31. The EIS cannot be reasonably required to consider the cumulative effects of the subject proposal with those whose form is not known and is not reasonably available.

32. The addition of a case citation in the discussion of need for a substantial development permit in the FEIS does give greater weight to the statement that precedent has been established than that case actually represents. While some bias therefore accrues, the error is not material since the basis for the decision as to whether a permit will or will not be required is not in any way limited to the discussion in the EIS.

33. The relationship of the proposal to the Shorelines Master Program provisions is sufficient.

34. RCW 90.58.340 requires City action to review its policies in relation to the Shoreline Management Act but no City policy regarding lands adjacent to the Shorelines was brought to the examiner's attention.

35. The implications for the City of accepting the 25 ft. wide strip and the effects on permissible bulk should have been discussed for full evaluation.

36. Appellant objects to the Department's reliance on the information provided by comment letters and public testimony to augment the EIS. While the coherence of the document is not enhanced by the diffused presentation of facts that results, the information provided is clearly to be treated as part of the EIS. See National Helium Corporation v. Morton, 486 F.2d 995 (10th Cir. 1973) cert. denied, 416 U.S. 93 (1974).

37. WAC 197-10-440 requires "objective evaluation of any reasonable alternative action which could feasibly attain the objective of the proposal." The sponsor's judgment about feasibility, although stated in the EIS, did not cause the Department to exclude evaluation of those alternatives. The statements that an alternative is economically infeasible are conclusory where EIS's are required to provide more than "mere assertions". The possibility of conflict between the need for data to support assertions in an EIS and the language in Section 15, Ordinance 105735, as amended, which provides for the consideration of economic factors but does not require disclosure of financial information relating to the private sponsor need not be resolved since the statements were not shown to have had any effect on the analysis of the alternatives.

38. The range of alternatives presented by the EIS, except as to the non-project action of the contract rezone, is reasonable in number, range and level of detail.


39. The examiner, in addition to giving substantial weight to the Department's determination that the document complies with the requirements of SEPA, must judge the document by the rule of reason. Cheney v. City of Mountlake Terrace, 87 Wn.2d 338 (1976). Has there been a "reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposal? Cheney, supra, pp. 344, 345. The errors exposed by the evidence produced by appellant at hearing, with the exception of the failure to consider alternatives relating to City objective, do not amount to more than minor shortcomings.

40. The document is, therefore, adequate in its disclosure and analysis, as presented.

#### Decision

The matter is remanded to the Department of Construction and Land Use for consideration and determination as to whether there are reasonable alternatives which could feasibly attain the City's objective in amending the contract rezone and for evaluation of any such alternatives. With that exception, the determination as to the adequacy of the EIS is AFFIRMED.

Entered this 18th day of March, 1981.

  
M. Margaret Klockars  
Deputy Hearing Examiner

#### Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).