

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

In the Matter of the Appeals of

FORT LAWTON PRESERVATION COALITION,
MARGARET COUGHLIN,
L. JANE HASTINGS et al., and
LANDMARKS PRESERVATION BOARD

FILE NO. W-83-002
FILE NO. W-83-003
FILE NO. W-83-004
FILE NO. W-83-005

from an environmental determination
of the Department of Parks and Recreation

and

In the Matter of the Appeals of

FORT LAWTON PRESERVATION COALITION and
MARGARET COUGHLIN

FILE NO. W-83-006
FILE NO. W-83-007

from an environmental determination
of the Department of Parks and Recreation

Introduction

Appellants challenge the adequacy of the environmental impact statements prepared by the Department of Parks and Recreation for the Historic District and the Maintenance Facility in Discovery Park.

Parties to the proceedings were appellants and the Department of Parks and Recreation. The Fort Lawton Preservation Coalition was represented variously by Peggy Corley, Roberta Deering, and Art Skolnik. The Landmarks Preservation Board and L. Jane Hastings, Larry J. Mortimer, Gary M. Swenson and Shirley L. Courtois were represented by John Chaney. Margaret Coughlin appeared for herself and spoke, on occasion, on behalf of the Fort Lawton Preservation Coalition. The Department of Parks and Recreation was represented by Fritz Hedges and Rae Tufts.

This matter was heard before the Hearing Examiner on October 24, 25, 26, 27 and November 1, 1983.

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. In 1972 the City of Seattle acquired some 369 acres of surplus land of the United States Army base at Fort Lawton under the Federal Legacy of Parks Program. Prior to the transfer Seattle agreed to lease some 17 acres to the United Indians of All Tribes Foundation. An additional 127 acres were later transferred without submission of a program of utilization prior to the transfer but the transfer was subject to the adoption of a process for determining utilization.

2. A proposed master plan, the 1972 Fort Lawton Park Plan, was prepared by Dan Kiley. The plan was subsequently revised in 1974 and the Revised Master Plan for Discovery Park (RMP) with some modifications was adopted by City Council Resolution 24674.

3. In April, 1973, the Department of Parks and Recreation, hereafter DOPAR, contracted for the preparation of a complete assessment and analysis of the environmental effects, if any, resulting from the conversion of the U.S. Army base into an open space park as proposed in the master plan. In 1974, DOPAR concluded that an environmental impact statement (EIS) was not needed and converted the draft EIS into a declaration of non-significance (DNS) which was issued in April, 1974.

4. After trial of a lawsuit initiated by appellant Coughlin, but prior to oral argument on the appeal, DOPAR contracted to have an EIS prepared so the Court of Appeals remanded the matter to Superior Court. The court held, in a later appeal, DOPAR erred when it prepared a DNS. The Discovery Park final EIS (FEIS) was issued June 11, 1979, reserving for future dates environmental assessment of Indian Cultural Center projects and building retention/reuse proposals for the Historic District. The Court of Appeals held that DOPAR did not err in segmenting the two proposals for later review. A Discovery Park FEIS addendum was issued in November, 1979, to correct deficiencies in the FEIS found by the hearing examiner. The Court of Appeals did not address specifically the status of the RMP which had been approved by the Council without the EIS that the Court determined was required.

5. In 1977, the Landmarks Preservation Board voted to designate certain Fort Lawton structures and the parade ground as a City landmark district pursuant to Ordinance 106348. The proposed Fort Lawton Landmark District ordinance provides the district boundary, the buildings and a process for review of actions proposed within the district. The ordinance was intended to partially fulfill the requirement for a process in the memorandum of agreement.

6. In 1978, a part of Fort Lawton was nominated to the National Register of Historic Places for recognition as the Fort Lawton Historic District. Specific buildings were listed for inclusion. The Secretary of the Interior placed the district with 25 of its buildings on the National Register.

7. The memorandum of agreement (MOA) entered into by the City, Department of the Interior, the State Historic Preservation Officer and others accompanying the transfer of the additional 127 acres, including a portion of the Historic District, provided, inter alia, for a proposal on alternatives to adaptively reuse all designated buildings within the Historic District to be prepared by the City in consultation with the State Preservation Officer.

8. An adaptive reuse study was conducted by Mann, Millegan, Morse and Ramsey and was published as the draft 1980 draft supplemental EIS (DSEIS) for the Historic District. A further reuse study was prepared by Richard Locke Associates, as directed by a joint Board of Park Commissioners and Landmarks Preservation Board steering or review committee composed of two members of the Board of Park Commissioners and two members of the Landmarks Preservation Board. The study, the Fort Lawton Historic District Adaptive Reuse Study, published February, 1983, addressed one use for each of the buildings. A summary of the study was presented in the DSEIS addendum for the Historic District issued in April, 1983.

9. The final supplemental EIS (FSEIS) for the Historic District was issued August, 1983. The EIS for the Historic District comprises the 1979 FEIS, 1980 FEIS addendum, 1980 DSEIS, 1983 DSEIS addendum and 1983 FSEIS.

10. Appeals of the adequacy of the environmental documents for the Historic District were filed by the Fort Lawton Preservation Coalition, an association of organizations and individuals dedicated to historic preservation with some members residing in the vicinity,

L. Jane Hastings, Larry J. Mortimer, Gary M. Swenson and Shirley L. Courtois, individual residents of Seattle supporting City landmarks policy, Margaret Coughlin, nearby resident and former litigant in Discovery Park issues lawsuits, and the Landmarks Preservation Board of the City of Seattle.

11. A DSEIS for the West Central District Maintenance Headquarters was issued in October, 1982, after DOPAR changed its proposal from that in the 1980 DSEIS for the Historic District, to use buildings 915 and 916 for maintenance headquarters, instead to develop the headquarters in the southeastern portion of Discovery Park. The FSEIS for the maintenance facility was issued in August, 1983, changing the proposal to a park-only facility.

12. Appeals of the adequacy of the environmental documents for the maintenance facility were filed by the Fort Lawton Preservation Coalition and Margaret Coughlin, whose interests are described above.

Historic District EIS

13. DOPAR's proposal for the Historic District has changed from document to document. From the 1974 RMP with an historic museum and retention of eight historic buildings plus mounted patrol and maintenance facility which was the proposal of the 1979 FEIS, the proposal evolved to that in the DSEIS of rehabilitating and remodeling twelve designated buildings for specific uses and the removal of thirteen other buildings and two others not on the National Register but proposed for designation locally plus removal of the nondesignated buildings already proposed in the FEIS. The 1983 addendum to the DSEIS presented a revised proposal retaining up to nine buildings, seven of which are not under the City's jurisdiction and two of which would be retained only for as long as the mounted patrol required their use. The use of any Historic District building for the maintenance facility or visitor center is dropped from the proposal in this document. DOPAR's proposal appears to be unchanged from the addendum to the 1983 FSEIS.

14. The overall objective of DOPAR's 1979 proposal was to carry out the philosophy of Discovery Park stated in the 1972 Kiley report and quoted at p. S-1.

15. The objectives stated in the 1980 DSEIS for the Historic District were:

... to arrive at a plan that was compatible with the park philosophy. Discovery Park is to be an open park dedicated to achieving a place of relative quiet and tranquility within the City. This philosophy means that the Department at Discovery Park will to the extent possible seek to maximize open space, maximize view potential (uncluttered or unobstructed by human developments), and minimize the intrusion of automobiles into the interior of the Park...

and

... to pursue the historical preservation of selected designated buildings within the District....

16. In the 1979 FEIS the then 25 designated buildings were recognized as an existing condition of the environment. p. 2-63. The analysis of the impact of the proposal at that time was reserved until after the adaptive reuse study was completed. The FEIS stated DOPAR's intent to complete the adaptive reuse study for Historic District buildings and then prepare a supplemental EIS for the district.

17. In the earlier draft EIS, which the 1979 FEIS superseded, the approach had been to reevaluate all proposals and associated impacts in terms of the Parks "guiding philosophy." In a comment printed in the FEIS the Department of Community Development urged that the impacts should be evaluated for their effect on the existing environment. In the 1980 addendum to the 1979 FEIS, DOPAR stated that "(t)he subjective evaluation of proposals and associated impacts in terms of the parks (sic) guiding philosophy has been deleted or minimized in the FEIS," p.3-5, and "(t)he criticism (by the Landmarks Preservation Board) directed at the assessment of impacts on the future environment rather than the existing environment is valid criticism and such comments have been deleted in the FEIS and will not appear in the Supplemental EIS. The comparison of impacts with the guiding philosophy of the Park has also be omitted...." p.3-6. Despite these statements, in the 1980 DSEIS for the Historic District the impacts of the proposal were assessed on the existing environment and on the "desired" environment, i.e., for consistency with the stated park philosophy. p.3-1. In the 1983 FSEIS, DOPAR has treated the open space philosophy as an existing condition of the environment and assessed impacts of the proposal on that "condition" pp.1-3, 2-11.

18. DOPAR states its rationale for the proposal or its opinion or judgment regarding the proposal in the following places: the objectives and alternatives portion of the Summary section of the DSEIS (p.2), in its description of methodology (p.1-8), in the Major Physical and Engineering aspects (p.1-16), Relationships to Other Plans and Policies (p.1-22), Impacts (pp.3-8, 3-10), Relationship between Local Short Term Uses, (p.5-1), Alternatives (pp.6-2,3,9,17,45) in Appendix 6, the Open Space Philosophy of Discovery Park (p.A6-1-6) in the 1983 addendum to the DSEIS in the summary pp.1-4,3-10,3-18,3-19,4-1,4-3,4-8, and DOPAR's response to the State Historic Officers comments; in the FSEIS at pp.2,3,1-1,1-3, 1-25, DOPAR's response to State Historic Preservation Officer's comments (p.1,2,3) and at pp.2-4,2-6,2-8,2-9,2-11,2-12,2-18,2-26,3-2, 3-10, and 3-14, among others.

19. DOPAR states in the DSEIS that the document represents a programmatic assessment for the part of the master plan designated as the Fort Lawton Historic District but acknowledges, in the next paragraph, the assessment of the project proposal -- the removal or demolition of the (13) designated buildings, among others. p.1. Reuse proposals are to have further environmental review.

20. The description of the existing historical element of the environment consists of two paragraphs in the 1979 FEIS, Exhibit 6, p.2-68, an abbreviated version of the two paragraphs, a statement and pictures of the structural condition of the buildings and three paragraphs about the history of Fort Lawton under the heading "Historic District Issues" in the 1980 DSEIS; a paragraph telling of the loss of Building 730 in the 1983 DSEIS addendum and David Streatfield's letter which mentions Stanford White's association with the design of the buildings and DOPAR's acknowledgement. In addition references are made to Fort Lawton Buildings, Mann, Millegan, Morse and Ramsey for an inventory and description of significant buildings, the Fort Lawton Feasibility Study by the U.S. Army, HQ 365th Civil Affairs Area B (1974), and Fort Lawton: A Record, National Park Service (1981).

21. Besides those paragraphs and references, the FSEIS reprints, as an attachment to a comment letter, a memorandum from the Keeper of the National Register with an enclosure which presents his service's analysis of the nominated buildings' and district's significance. The memorandum and enclosure have been reduced in size for inclusion and are referred to in DOPAR's response at p.4-17. In addition to explaining that the memo presents information concerning the reason for being placed on the National Register, the response states "(t)he Department acknowledges the comments concerning the significance or lack of

significance of Fort Lawton in the Puget Sound Harbor defense system."

22. Testimony at the hearing showed other factors adding to the historical value of the Historic District and buildings. Professor Streatfield, an architectural historian, finds the district to be a "distinguished example" of conscious military planning with its emphasis on physical placement on a unique site. He also finds historical value in its dual nature -- fort and park-- and showed how the fort historically was conceptually and literally a part of the City's park system with trolley lines taking the citizenry out to the fort to observe military activity and enjoy the park-like setting. Streatfield emphasized the architectural value of the Stanford White designs for the buildings which, though may have been modified, exhibit a sophisticated understanding of the "colonial revival".

23. Florence Lentz, an architectural historian who authored Fort Lawton: A Record, has been an historian with the Washington State Office of Archeology and Historic Preservation and serves as a consultant on EIS's, criticized the treatment of the historical significance of the district in the EIS. She sketched a summary of the history of the fort not included in the EIS.

24. Arnold Swanberg, an urban planner and military historian, testified that historical events and people have been left out of the historical description of the district and told of the reasons for creation of the fort, economics and fear of invasion from Canada, and the relationship of the military to the City. One aspect not mentioned in the EIS was the introduction of Black music and culture to Seattle from 1909 - 1913 when one of four Black regiments in the army, the 25th Regiment of the United States Infantry, had its headquarters and regimental band located at Fort Lawton. Racial incidents received play in the press and nearby property owners believed values were declining because of the presence of Black troops. Mr. Swanberg attributes the route of the 1898 ship canal and commercial development in Ballard in part to the existence of Fort Lawton where Hiram Chittenden was an officer.

25. Earl Layman, former City Historic Preservation Officer and architect, testified the EIS does not document the historical, military and architectural significance of the district buildings, and that the post as a whole is of chief importance.

26. The impact of DOPAR's most recent proposal for the Historic District, the retention of up to nine buildings or, conversely, the demolition or removal of fifteen or more buildings, on the archeological/historical element of the environment is described in the addendum to the DSEIS as a "negative" impact on historical preservation with the significance to be judged in terms of the buildings which are lost, those to remain and subsequent programs. On impacts on the archeological environment the addendum states that there will not be an impact because restoration to open space won't cause a disturbance and sites for burial of debris will be carefully selected. The DSEIS states, in its summary section, that the negative impact of removal of historic buildings is obvious. It goes on to say that "the individual subjective architectural merit of each building to be retained or removed can certainly be debated but part of the historical value is associated with the siting and setting of total remaining fort complex rather than the individual worth of buildings." In the "Impacts" chapter of the DSEIS several sentences are devoted to the negative impacts of demolition, one stating that it would have a negative effect on historic or landmark preservation, one giving the total floor space which would be lost, (p.3-8), and several as to the noise, dust, traffic and debris.

27. The alternatives to the proposal included in the 1980 DSEIS were alternative uses for the buildings, retaining and using all 25 buildings, retaining 20 buildings with many interiors in "non-use", removal of all 25 buildings, circulation and parking alternatives, other locations within and without the Historic District for various park uses and alternative management and financial plans.

28. The alternative uses alternative discusses demand for the use, feasibility and impacts. In most cases the paragraph on impacts states that the particular use would not be in keeping with the park philosophy, here either of "open space" or of allowing only park-related activities. The discussion of impacts of the 25, 20 and 0 building alternatives provide reasonable coverage of traffic and financial effects. In each discussion of impacts the relationship of the alternative to park philosophy is addressed. The impact on the historical element consists of the following: for the 25 building alternative, "(o)f course, from an historic preservation standpoint this alternative is completely successful in retaining the structures, improving their appearance, and all of the buildings are put to productive use." Exhibit 2, p.6-17. For the 20 building alternative the discussion of impacts includes the statement that "(t)hose buildings to remain would represent a positive historic preservation impact...." Exhibit 2, p.6-23. The discussion of the 0 building alternative relating to the historical element consists of the statement "(h)owever, any value associated with the Group I buildings would be lost; there would in a visual sense be no Historic District." Exhibit 2, p.6-25.

29. The addendum offers, as an alternative to the proposal in the DSEIS, developing new facilities in the park for the mounted patrol instead of reusing Historic District buildings. No impact on the historical element of the environment is mentioned.

30. The FSEIS provided further discussion of the non-use outdoor museum alternative presented in 1980 DSEIS as the 20 building alternative. No new discussion of impacts on the historical element occurred.

31. The no action alternative is considered in the 1979 FEIS at pp.6-2,3.

32. Building number 730 was destroyed by fire in February, 1983. The DSEIS addendum states that it burned and that DOPAR has no plans to rebuild the building.

33. The cost of reconstructing the building would be \$60.00 per sq. ft. at a minimum, or \$1,950,000, according to an estimate made by Fred Bassetti, FAIA. Leslie Tonkin, an architect who is familiar with the building because of his work on the Locke adaptive reuse study, estimates that the building could be replicated for \$45.00 per sq. ft., without design or administrative costs. A part of the building could be done, according to Mr. Tonkin, for \$1,125,000 and incorporate one of the park uses such as the interpretive center which the DSEIS indicates would cost \$1,046,630 to put in building number 417, a similar cost.

34. Reconstruction of historic buildings is not unusual.

35. Appellants' witnesses suggested a number of possible sources of funding for reconstruction which they believe DOPAR should have explored before rejecting the effort as too costly.

36. With regard to nonuse outdoor museum alternative, the EIS estimates the capital costs using Mann study figures for the twelve buildings owned by the City would be \$1,948,438. Under that alternative buildings 915, 916, 917, 755, 759, 417 and three officers' quarters would be used and the rest maintained vacant. The sum of \$1,496,630 is for building 417 leaving approximately \$900,000 for the others. Appellants point out that the Locke Adaptive Reuse Study shows the cost of exterior work to be \$299,600 from which should be subtracted \$67,200 for building 730 leaving \$232,400 for the twelve buildings. The additional cost of the alternative is not explained except for ten percent for debt service.

37. The U.S. Navy announced that it is considering locating its home port for an aircraft carrier battle group in the Puget Sound area prior to the issuance of the FSEIS. The Navy does not intend to build any housing except at Piers 90 and 91. Other Navy uses would be located at the piers, land immediately adjacent and at Sand Point Naval Air Station. The Navy is unlikely to exercise any option to recover lands previously surplussed and deeded to the City.

38. The conclusion of the adaptive reuse study that the buildings in the Historic District are in generally good to excellent condition and findings that most buildings are almost immediately serviceable and adaptable to use were not included in the EIS.

39. Robert M. Weaver, a cultural resource specialist (archeologist, architectural historian) with experience in EIS preparation, testified that anything done at Fort Lawton will involve historical components. In the description of the existing condition the significance of the identified site was not assessed let alone those not identified by the limited survey made. As to the impacts he notes that while an earlier volume notes the potential impacts to unidentified archeological materials, the addendum concludes that none would be disturbed. He stated the potential is that significant resources could be disturbed and appropriate documentation should be done to allow the decision-maker to understand the impacts and costs to mitigate the impact.

40. Art Skolnik, an architect and former State Historic Preservation Officer and Conservator, former City Conservator with experience in reviewing EIS's for adequacy and an appellant, opined that the EIS is not adequate as to description of the historical/archeological element, impacts of the proposal on that element, discussion of alternatives and discussion of mitigating measures.

41. John Chaney, acting City Historic Preservation Officer, with experience reviewing EIS's, found the documents to be conclusory, biased and unclear. Roberta Deering, former acting Historic Preservation Officer with experience reviewing EIS's, found the EIS did not adequately describe the elements of the environment, alternatives and objectives.

42. Glenna Hall, chairman of the Board of Park Commissioners and lawyer who has reviewed EIS's and has been involved in environmental litigation, opined that the EIS presented sufficient information for decision-makers to make decisions.

43. Fritz Hedges, senior park planner who has prepared and reviewed EIS's, is the principal author of the Discovery Park Historic District EIS and testified that the document complies with the requirements of SEPA.

44. Conclusory statements about impacts for which the EIS fails to present objective, supporting facts appear throughout the document.

Maintenance Facility EIS

45. DOPAR's proposal changed from housing the facility in building 915 addressed in the DSEIS for the Historic District to development of a park-only facility in the southeastern portion of Discovery Park and removal of buildings of 940, 942, and 944, addressed in the FSEIS for the maintenance facility.

46. The change in the proposal is explained at pp.1-,2 where the FSEIS states that DOPAR has concluded the Historic District is a "highly inappropriate location," would be difficult to screen and modification could harm the exterior of the buildings.

47. Figure 2 is drawn to scale and shows the proximity of the proposed site to the children's play area. The street names are difficult to read and not all street names are shown on the sketch. The intersection of the maintenance facility access road with West Government Way is shown.

48. The original sketch maps for the 1972 Master Plan and 1974 RMP were supplied by Margaret Coughlin and reprinted in the FSEIS.

49. Potential conflict with the playground and pedestrians, especially children, is described in a comment letter from Nancy Kroening.

50. The FSEIS recognizes an increase in vehicular traffic from the proposal of sixteen private vehicles and ten maintenance vehicles per day and the elimination of traffic to the current facility in the center of the park. Regular vehicular access to the facility would be at 36th Avenue West and West Government Way along Delaware Avenue. The work schedules of the maintenance workers are such that trips will largely avoid conflict with peak periods of park use. Mitigating measures for pedestrian safety are described in a response to a comment at p.7-6.

51. Pedestrians coming off 36th Avenue would have to cross the roadway which is the main access to the maintenance facility.

52. Alternatives to the proposal considered in the FSEIS are no action, comparison of park-only and district headquarters options for alternative sites in the park, alternative site locations within the park including the Historic District and alternative sites outside the park.

53. The discussion of the Historic District alternative location explains why DOPAR feels those buildings should not be used. The positive impact on the historical element of the environment may be inferred from the statement that "the Historic District alternative presents the Department with the opportunity to adaptively reuse existing structures and provide for historic preservation." The remainder of the statements which could be used to assess the impact on the historical element suggest negative impacts such as "may be incompatible with historic preservation efforts elsewhere in the Fort Lawton Historic District," "may detract from other uses in the Historic District in the long run," "may visually detract from historic preservation efforts elsewhere in the Historic District" and "may form an unattractive or at least incompatible foreground view within the westward vistas that are afforded from higher elevations in the eastern part of the Historic District."

54. Kevin Stoops, associate park planner, prepared the FSEIS for the maintenance facility and testified that it meets SEPA's requirements

Conclusions

1. The determination of adequacy of the document by the lead agency, DOPAR, is to be accorded substantial weight. Section 25.04.200(C). To sustain their burden, appellants must show clear error. See, Norway Hill v. King County Council, 87 Wn.2d 267 (1976).
2. The examiner's task in reviewing an EIS for adequacy is, using the rule of reason, to determine whether appellants have shown that the statement was not compiled in objective good faith and does not transmit sufficient information as to the adverse impacts upon the environment of the proposed action and its alternatives to the public and officials to permit the decision-makers to fully consider and balance environmental factors. See WAC 197-10-405, Cheney v. Mountlake Terrace, 87 Wn. 2d 338, 344 (1976), Concerned Over Trident, 555 F.2d 817 (1977).
3. The determination is difficult in this case in part because of the continuing alteration of the proposal and because of the sheer volume of the document. Those factors, in themselves, detract from the usefulness of the EIS as a means to convey information to the public and decision-maker. A Herculean effort is required to trace the potential impact on the environment of a specific action or of the impact on a specific element of the environment through the series of documents. That difficulty, alone, is not sufficient to make the EIS inadequate as a matter of law.
4. Logic, not the document, would dictate that the most significant impact on the existing environment of the Historic District proposal would be on the historical element of the environment in that most designated buildings would be removed. The level of detail of the description of the existing environment in the EIS should be proportionate to the degree of impact that the proposal would have. WAC 197-10-440(7)(a)(i). Since the impact is the loss of a significant portion of the element, the description of the existing historical environment must be thorough. The text of the EIS, however, provides only the briefest sketch of historical significance or perspective. This is supplemented by reference to other publications. Given the proposed action, however, the decision-maker must have a clear understanding of the historic element of the environment to make an informed decision. A document which requires the decision-maker, and the public who may wish to comment to the decision-maker, to seek information elsewhere to understand the most significant impact does not provide a reasonably thorough description of the environment necessary to understand the degree of impact.
5. A further source, the analysis of the significance of the district by the Keeper of the National Register, is within the document. However, its presentation as an attachment to a comment letter, reduced in size for reproduction and buried in the unnumbered pages of comments in the fifth document of the series detracts from its usefulness and cannot be relied upon as sufficiently supplementing the otherwise deficient description.
6. The impact of the removal of the buildings can be presented or understood only through a presentation or an understanding of the existing condition. Not only is the existing condition not described in sufficient detail but the analysis or, in this case, the acknowledgement of the impact is often qualified. DOPAR has chosen not to use the worst case analysis generally followed in EIS preparation to be sure that partiality does not affect full disclosure and its examination of impacts on historic elements.

7. DOPAR maintains that the document is necessarily "subjective" because it is prepared, in part, for a non-project action, i.e., it is "programmatic". WAC 197-10-442 does give greater flexibility in complying with the requirements as to the contents of the EIS for a non-project action, however, grants no permission for a subjective document.

8. The reason for the subjective nature of the document is the lead agency's attempt to make the document serve a dual role and its definition of the "existing environment" which results from that attempt. The lead agency treats the Historic District document as the justification of its proposal to remove the buildings under its jurisdiction. That justification is the "open space" concept it has concluded is the Council-mandated goal for, or philosophy of, Discovery Park. DOPAR's error is in trying to efficiently combine the analysis of the impacts of its proposed action on the environment and the impacts of the alternatives, with its presentation to the Council in support of the preferred proposed action. The subjectivity of promoting a position has overwhelmed any objective evaluation of the impact. The resulting document is overly long and confusing because of the dual task assigned it and is not adequate as a vehicle for conveying an objective disclosure of environmental impacts.

9. DOPAR may legitimately present its views in the EIS regarding potential effect on the "open space" philosophy in several ways. Section 25.04.150(2) adds adopted regional, city and neighborhood goals, objectives and policies to the list of elements of the environment. A discussion of the impact on an adopted policy is appropriate there. Also, WAC 197-10-440(12)(a) requiring an "objective evaluation of any reasonable alternative action which could feasibly obtain the objective of the proposal, allows statements about how the alternative fails in that regard. The discussion of the "recreation" element may, arguably, also allow recognition of impacts on particular recreation values.

10. The rule of reason also applies to selection of alternatives to be analyzed. WAC 197-10-442 alerts the agency that the range of alternatives is broader for a non-project action than project actions. WAC 197-10-440(12)(b) does requires that a "no action alternative" be evaluated. That requirement was met by the inclusion of the no action alternative in the 1979 FEIS.

11. Appellants urge that a full range of recreational values compatible with retention of the building be offered as an alternative. Appellants are affected by the same desire as DOPAR to make broad use of the document. DOPAR, in analyzing the impacts of alternatives involving more retained buildings, may offer its opinion, based on objective evaluation, as to whether the alternative attains the objectives of the proposal. Interested persons may offer written comments disagreeing with the analysis which would be included in the document. Since "values" are not really a part of the existing environment, the appropriate forum to address those or put forth a particular position will be before the decision-making body where the EIS will be but one source of information for consideration.

12. Appellants also urge that DOPAR should explore funding sources for the reconstruction of Building No. 730 as an alternative or treat the loss as a changed condition requiring a supplemental EIS. They have failed to prove existence of such funding sources or the feasibility of the alternative.

13. Appellants also failed in their proof that use of the Historic District by the Navy for their fleet support is a reasonable alternative which must be included.

14. The issue of the status of the Council adoption of the 1974 RMP was raised in some way by all appellants. The law is clear that an action taken without complying with SEPA is ultra vires and void. Noel v. Cole, 98 Wn.2d 375 (1982). When the Council again acts on the master plan this defect can be cured. Appellants' chief concern seems to be with the great weight given the "open space" philosophy in the EIS. This occurred because of DOPAR's approach to the existing environment. The legal status of the Council's RMP adoption should be inconsequential when the correct approach to the EIS, assessing impacts on the existing environment, is used except as to the added element to the environment, "goals, objectives and policies". There, DOPAR should note the defect in the process for full disclosure.

15. Appellants are correct that the EIS must consider any adopted goals, objectives or policies relating to historic preservation, as well as those relating to recreation values. There is no evidence, however, as to any relevant adopted policy which was not included in the EIS discussion of this element.

16. Various allegations made by Mrs. Coughlin and other appellants of procedural errors regarding notice, distribution of documents, status of recommendations by the Board of Park Commissioners and other actions termed "discrimination" by Mrs. Coughlin, for want of a more precise label, are either without foundation, do not constitute error or were not proved.

17. Failure to disclose that NEPA compliance would be required prior to implementing any proposal for military-retained property is harmless error since City acquisition is remote.

18. A great deal of the testimony at hearing related to appellants' dissatisfaction with DOPAR's interpretation of City policy for Discovery Park, which may be less inflexible than as interpreted, and with the preferred alternative (proposal) from the standpoint of its accord with the MOA and deed restrictions and conflict with preservation goals. This dissatisfaction is properly addressed to the Council and does not involve issues which the EIS is required to resolve. Therefore, no attempt has been made to include findings relating to these areas.

19. DOPAR is criticized for piecemealing the maintenance facility EIS. Whether the Council's resolution and the MOA allow that action are issues, again, not relevant to the adequacy of the EIS. The segmentation is legitimate under SEPA.

20. The disclosure as to potential circulation impacts is reasonable.

21. The discussion of the Historic District location alternative was heavy on justification and weak in impact disclosure and had unsupported conclusions. However, it is within reason.

22. On the whole, the maintenance facility EIS provided a reasonable, objective disclosure and discussion of probable impacts and is adequate as a matter of law.

Decision

The EIS for the Historic District is inadequate as a matter of law in the areas of the description of the existing historic environment and impacts of the proposed action on that environment and due to the subjectivity of the discussion of impacts and alternatives. The environmental impact statement is therefore REMANDED to the Department of Parks and Recreation for revision and supplementation. The maintenance facility EIS is adequate as a matter of law.

Entered this 30th day of November, 1983.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.