

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

FRIENDS OF THE REGRADE AND  
CONTINENTAL PLACE HOMEOWNERS  
ASSOCIATION

FILES NO. W-84-004 and  
W-84-005

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

#### Introduction

Appellants, Friends of the Regrade and Continental Place Homeowners Association, challenge the adequacy of the environmental impact statement issued by the Department of Construction and Land Use for the Westside Uplands: A Rezone.

The appellants exercised their right to appeal pursuant to Section 25.04.200, Seattle Municipal Code.

Parties to the proceedings were: appellant Friends of the Regrade represented by Nelleke Langhout and Joan Paulson, co-chairs; appellant Continental Place Homeowners Association, represented by Reece Halpern, attorney at law, Martin Kaplan and Carol Newlin; the Department of Construction and Land Use represented by Ed Somers, land use specialist; and the project sponsor, CHG International, Inc., represented by Thomas M. Walsh and J. Tayloe Washburn, attorneys at law.

This matter was heard before the Hearing Examiner on June 11, 12, 13, and 15, 1984.

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. Draft and final environmental impact statements (DEIS and FEIS) were issued by the Department of Construction and Land Use (DCLU) for a rezone of a site bounded by Western and Elliott Avenues and Battery and Wall Streets. CHG International, Inc., (CHG) is the proponent of the action to rezone the property from Manufacturing (M) zoning to Multiple Residence Mixed Density (RM-MD) zoning subject to a property use and development agreement.

2. The covers of both the DEIS and FEIS are entitled Westside Uplands: A Rezone.

3. The EIS clearly states that only 2.2 acres of the 3.86 acre site are owned by CHG. The DEIS description of the proposed development explains what would be on owned land and what would not and a table (Table 1) shows a breakdown as to CHG ownership by block. Figure 1 (DEIS) also maps CHG ownership as does Figure 3 (FEIS). There is no description of any agreements between the proponent and owners of other property. Testimony at hearing revealed that negotiations for purchase of some properties are on-going. Other negotiations have terminated.

4. The Denny Regrade Development Plan, the "Greenbook," was prepared in 1974 by a consultant to the City. That document was never adopted by the City but some of its proposals were incorporated into the amendment to the zoning ordinance creating the RM-MD zoning classification and regulations. The code provided for uses permitted outright and conditional uses, fixed bulk regulations and conditional bulk regulations. The latter apply only if approved by the Director of the Department of Community Development (DCD). Guidelines were provided in the ordinance for the Director's use in making those decisions.

5. A director's rule was referred to in testimony which appears to have been promulgated by DCLU to implement RM-MD code provisions. According to City staff witnesses, those rules apply to the geographic area of the RM-MD and have no application to the subject site which is outside that area.

6. A publication, Background Report of the Downtown Land Use and Transportation Project, documents historical and existing conditions.

7. The Guidelines for Downtown Alternative Plan was adopted by resolution by the City Council in 1981. A Denny Regrade Firm Alternative Plan was incorporated into the Draft Land Use and Transportation Plan of the Land Use and Transportation Project. That plan has now been superseded by the Draft Downtown Plan and the Mayor has issued his proposed Downtown Plan.

8. The DEIS describes the Draft Land Use and Transportation Plan, Land Use and Transportation Project, June, 1983. In the discussion it states that the proposed use changes and F.A.R. would be consistent with the land use policies in that plan, generally consistent with transportation, housing, pedestrian and street environment policies and inconsistent with building height policies. The Denny Regrade Firm Alternative Plan is also discussed in the DEIS. The FEIS acknowledges that the discussion should have been omitted. The DEIS also describes the objectives of the 1974 Denny Regrade Development Plan and compares the proposal to it.

9. The regulations and guidelines of the RM-MD classification are set out in the DEIS and the proposal is compared, including the heights proposed.

10. A summary of the key portions of Guidelines for Downtown Alternative Plans, Resolution 26598, is provided in the FEIS and the proposed action is compared with those guidelines.

11. The role of the Director of DCD in approving conditional bulk in the RM-MD zone is not discussed in the EIS. Disclosure would be more complete if that role was discussed.

12. The EIS discloses and discusses the inconsistencies of the proposed project, especially its height, with adopted and proposed plans.

13. An experienced consulting engineer with education and experience in soils mechanics and hydraulics engineering testified credibly that the project can be designed with safe foundations and that excavation work will have no effect on structures farther than 20 ft. away. Other buildings are 40-50 ft. away. In offering these opinions he considered the 20 ft. deep, 100 ft. wide filled gully running parallel to Bell Street. The gully is probably the site of what has been called the Bell River which was filled during the regrading.

14. The DEIS concludes that "(s)ome wind turbulence may occur in the area immediately surrounding the building." p.59. The discussion describes deflection of winds down to the street but states that strong eddies are not expected because no "canyon" effect would be created.

15. Residents of the area report that incidence of strong winds at street level has increased since the construction of the Continental Place tower. They describe elderly persons struggling to cross streets. Mark Sullo was injured in his photography studio at First and Blanchard, across from Continental Place, when studio windows were blown out by strong gusts of wind.

16. Melody McCutcheon, senior environmental analyst for DCLU, testified that extensive background information from other projects gave no indication that the project would have any serious impact on wind patterns. She believes, therefore, that the level of discussion in the EIS is appropriate.

17. The DEIS describes the existing combined sewer system and explains that, because little storage is available, during periods of heavy rain the excess is discharged directly into Elliott Bay.

18. The subject site is now largely covered with impervious surfaces so new development will not increase that coverage substantially. The EIS concluded that the volume or rate of runoff will not be increased.

19. The FEIS states that drainage control facilities will be required.

20. Judson Talbot, manager of the sewer and drainage planning section of the City's Engineering Department, reviewed the proposal and found that the increased production of sanitary sewage would be offset by the reduced stormwater flow rate because of control facilities so there will be no significant increase, and a likely decrease, of overflow into Elliott Bay.

21. Talbot opined that the project will have no effect on the amount of lead going into Elliott Bay in wastewater.

22. METRO requested that an estimation of the existing and projected sanitary wastewater flows be given in the FEIS. The response that capacity of the system is adequate did not give the information desired by METRO.

23. The DEIS describes the shadow impacts and provides six figures depicting the shadow effects in June and December at different times of day. Topography was not taken into account so that afternoon shadows are somewhat overstated.

24. There was no evidence showing that any information in the EIS regarding shadows is in error. Witnesses testified as to the effects these shadows would have. Unheated artist studios depend on sunlight for heat most of the year and artists rely on natural light for color accuracy. Shadowing of older residential properties could affect the marketability of the units. The shadow of the proposed project could require greater expenditure for heat and light which could be more than a low cost operation like the Strand Hotel can bear.

25. The EIS found no expected hazardous emissions. Asbestos panels and other sources of asbestos will be removed prior to any demolition.

26. The transportation of hazardous materials by rail or truck by the site is not proposed to be changed.

27. The subject site is not within the Shoreline District and is slightly upland of the boundary.

28. The FEIS, in response to Seattle Shoreline Coalition's comment letter, acknowledges "that back-up land, zoned for manufacturing uses, can be a valuable asset for water-dependent uses." p.66. The response continues by summarizing the findings of the Seattle Harborfront Development Workshop Final Report regarding future uses for the central waterfront. The tenor of that summary is that water-dependent use of the central waterfront is no longer economically feasible and non-water dependent uses are desirable.

29. Virginia Richmond, president of Seattle Shorelines Coalition, objects to the use of the findings of the Harborfront Development Workshop as shewed by the make-up of the participants and the narrow focus. Only two days prior to the session did Seattle Shorelines Coalition get the workshop opened to the public.

30. The FEIS also provides findings from the Industrial Area Background Report which show the status of and trends in Seattle's industrial areas.

31. The list of unavoidable adverse environmental impacts on land use, DEIS p.11, does not expressly include withdrawal of land close to the Shoreline District from manufacturing use.

32. The DEIS states, p.29, that a rezone is required because the M zone does not permit the residential uses or bulk contemplated. In response to Ms. Langhout's comment, the FEIS sets forth Section 24.54.180 which creates a special exception to the prohibition on residential uses for artist's studio/dwellings.

33. Figure 16, DEIS, shows the building at 66 Bell Street to be vacant. The FEIS, in response to Ms. Langhout's comment, explains that while it was at the time the DEIS was written, it is now in temporary use and the tenants will be displaced.

34. The proposal provides for 700 dwelling units. The DEIS, p.38, indicated that the condominium complex would be inhabited predominantly by middle and high-income households. At p. 100 the DEIS states that the proposal would not directly cause loss of any housing units but that "(a) possible indirect and cumulative impact of the proposed action could be increased development pressure to convert existing low and moderate income residential units to higher income residential units or alternative (sic) uses." No mitigating measures are proposed.

35. There are reports of surveys, studies and trends analyses available to EIS preparers that show vacancy rates, relationships of new development to rent increases, vulnerability of low income housing to demolition or change in use, rate of abandonment, ownership turnover, etc.

36. John Fox, with professional experience in housing issues, testified that an analysis of available data will demonstrate that the proposal will have a significant impact on low income housing. He offered several measures to mitigate that impact not discussed in the EIS, i.e., inclusion of some below market rate units or contribution to a housing trust fund.

37. Artists, depending on their art form, may have need for large spaces at low cost which are not available in many areas of the City.

38. If higher property values follow the development, higher rents may cause the displacement of small businesses in the area.

39. The EIS discloses that the proposal includes 800 parking spaces on site. The 250 spaces that exist on the subject site would be eliminated.

40. The representative of the Police Department feels that the project would create more demand for parking than projected.

41. The analysis of parking demand generated by the project considers the different uses and projects total demand at 766 spaces concluding that all parking demand from the proposed project would be accommodated on-site. The "surplus", or difference between demand and supply, is available for guests along with 29 short term spaces. The EIS, states that guest parking typically occurs in the evening when retail businesses are closed. DEIS, p.121.

42. The traffic consultant conducted surveys of the existing parking supply and occupancy on different days and times.

43. The assumption made by the traffic consultant that the majority of guests would come in the evening was based on common sense, experience with condominiums and a study by other experts.

44. Retired persons and others who live in the Denny Regrade and do not work 8-5 have guests in the daytime as well as evening.

45. The DEIS lists reserving six spaces for carpools as a mitigating measure. These are expected to be used by groups of downtown employees, at least one of which would be employed within the project site.

46. The King County Commuter Pool has had an effective program of converting commuters to carpooling.

47. Most customers of Egbert's home furnishing and interior accessories shop come by car. Traffic congestion and lack of parking could affect this business.

48. Figure 20, DEIS, is intended to provide a general description of the existing street system, i.e., direction, number of lanes, and signals, according to the traffic consultant. As pointed out by the Engineering Department in its comment letter at p.30, FEIS, it should not show Battery, Bell and Blanchard Streets connecting between Elliott Avenue and Alaskan Way. This is acknowledged in the FEIS and alluded to in the DEIS. Uncorrected by comment or text are directional arrows showing two-way between 1st and 2nd on Wall which is one-way west, showing one-way west on Battery where it is one-way east, showing two-way on Bell between 1st and 2nd where it is one way west, and showing two-way on Blanchard between 1st and 2nd and between Western and Elliott where it is one-way east.

49. The text describes Western and Elliott as both having three one-way traffic lanes with occasional left or right turn lanes. On Figure 20 Western is shown with one lane east of the south block of the site at the viaduct. It would be properly shown with two lanes but with a barrier separating them for a half block under the viaduct. Also west of the middle block on Elliott where three lanes are shown one is exclusively access to the viaduct.

50. The sentence in the textual description at p.101, "East of First Avenue, Wall and Battery Streets form a one-way couplet (Wall-westbound Battery-Eastbound) ..." is incorrect in that the streets go the opposite ways. The sentence following that Bell is a two-way street is only correct near Elliott.

51. Current (1982) traffic volumes in the EIS are estimates based chiefly on upgrading of 1980 actual counts with assistance from some counts from 1981 and 1982. The expert found the volume since 1977 to be relatively stable. Projected 1987 volumes, without the proposed rezone, reflect a growth of 1.5% from projects now planned or underway.

52. There is a perception that there has been a greater increase in traffic volume in the area in the last two years than has actually occurred.

53. Figure 26 shows a net increase of 5% from the site in projected volumes for 1987 with the proposed rezone.

54. A trip generation rate of 7.2 trip ends per residential unit was used by the traffic consultant to reflect a reasonable worst case situation. The most current rates for condominiums suggested are 5.1 and 5.2 per dwelling unit. There was no discount factor applied for trips within the site.

55. Both the summary at p.5 and text at p.115 make a statement about net traffic increase. The latter says, "(i)n the PM peak hour, the net traffic increase would be about 12% of the total daily traffic, or 615 new one-way vehicle trips in the peak hour." The summary statement is "(t)he net traffic increase would therefore be 4,334 total daily traffic in the PM peak with 615 one-way vehicle trips generated, which is a 12% increase." Mr. Markley explains that the 12% represents net volume added to the street system. For the site itself, the increase in trips is around 500%.

56. Because traffic disperses rapidly and because of other modes of transportation used, traffic associated with new development in the Pike Place Market area would represent an extremely small proportion of the volume in the area of the subject site.

57. Peak hour volumes were omitted from Figure 26 for 1987 with rezone projections but shown in Figure 24. The traffic consultant explained that attempting too high a level of precision in projecting peak hours may result in distortion and erroneous conclusions. The projections are used in the calculation of levels of service (LOS).

58. The DEIS states that site-generated traffic will have the most noticeable impact on Wall Street and that the LOS at intersections is expected to decrease one-half step. None will be worse than LOS D.

59. Western and Elliott Avenues are not close to reaching their capacity according to the traffic consultant's observations and calculations. No solutions have been offered because a problem has not been identified.

60. Captain Elster, commander of the traffic division of the Seattle Police Department, feels that Western and Elliott are at capacity at certain times of day and that the projections, though right as to numbers, are not realistic in terms of what that volume will do to level of service. He also feels the impact of more pedestrians on the situation has been underestimated.

61. Vehicles leaving the Alaskan Way viaduct at speeds of 40-45 m.p.h. pose considerable threat to pedestrian safety. Safety issues are not adequately addressed in the EIS in Captain Elster's opinion.

62. Substantial mitigating conditions for the vehicle-pedestrian conflicts along Western were not offered because the consultant found no solution that would have a net beneficial effect.

63. The mitigating measures proposed of calling the police department for construction impacts are not practical and do not occur.

64. Because of the one way streets, the majority of traffic attempting to go north or south on the viaduct would circle the site on Western, Wall and Elliott. Traffic going to the east may make a series of turns or travel farther to the north than otherwise expected.

65. The percentage figures shown for trip distribution on Figure 25 represent general direction out of the area and do not reflect the actual use of streets, i.e., the 15% going south may have to go north first to get to a southbound street but that is not included in the northbound figure.

66. There is no consensus as to the easiest route to I-5 from the subject site. No route is direct.

67. The state Department of Transportation comments at p.7, FEIS, that there will be a definite impact on ramps to and from the Alaskan Way viaduct which may necessitate improvements. The response at p.8 states "(t)he resulting 'with project' volumes of 15,100 ADT westbound off ramp and 14,800 ADT eastbound off-ramp appear to be well within the capacity of the existing ramp." The ramps are actually south-bound and north-bound and the figures for ADT, 15,100 and 14,800, have been misapplied having been taken at the same ramp, according to the traffic consultant.

68. The next sentence in the response states "(t)hese ramps have adequate capacity because they have been designed with add and drop lanes and, as such, do not require cars to merge with through traffic when getting on the viaduct or slow down as they turn off the viaduct." This is true for the southbound on-ramp from Elliott and the off-ramp onto Western. There are four ramps, however. There are no add or drop lanes on the northbound on-ramp at Bell and southbound off-ramp at Battery. The drivers using the Bell Street on-ramp cannot see the traffic they are merging with until they are three quarters of the way up the ramp. There is a total of four ramps and only two have been addressed and incorrectly described.

69. The viaduct ramps do not conform to current highway design standards.

70. The errors in the textual material and graphics in the EIS do not alter the traffic consultant's conclusions about traffic impacts.

71. The EIS shows the average number of accidents per year at various points around the subject site in Figure 22. The consultant found no patterns in the accident occurrences that are correctable.

72. The installation of signs at crosswalks costs approximately \$150 per sign. A traffic light with pedestrian crossing would cost around \$80,000

73. The figures in the EIS for existing AWDT and PM peak hour traffic are not inconsistent with those obtained in actual counts by Ms. Langhout.

74. The DEIS, Figure 23, shows the location of bus stops to be on 1st Avenue which is not easily accessible from some parts of the site.

75. The traffic consultant judged the probable impacts on the existing street system since he was unaware of any planned street improvements.

76. The energy requirements for construction and eventual operation are estimated and set forth in the DEIS. The estimated electrical demand per unit for the residential units is given. City Light commented criticizing the DEIS for not discussing retail energy demands, asking for clarity in the discussion of residential demand and listing additional possible mitigating measures, among others. The response in the FEIS addressed energy consumption by retail uses and attempted to clarify the discussion in the DEIS.

77. One of the possible measures listed to conserve energy is "low hot water settings."

78. The energy impacts described are too general to allow judgments about additional power supply needed.

79. The chief of the Seattle Fire Department is included on the distribution lists in the DEIS and FEIS. Lt. Donald Patterson, who is the officer who conducts review of EISs sent to the Fire Department, did not see the DEIS but did receive the FEIS. The DEIS reports, based on a phone conversation with Frankie Fox, "there appears to be sufficient manpower and equipment to serve this project, although impacts on the Seattle Fire Department are not assessed at the rezone stage of planning." Lt. Patterson testified that he believes Ms. Fox to be a receptionist. The EIS project manager, Jane Preuss, called the Fire Department, was transferred to Ms. Fox and was told that she is responsible for public information.

80. Any time there is an increase in population there will be an increase in demand for emergency services.

81. The DEIS, p.125, states that the development would result in an increase in demand for fire department services.

82. The impacts of the proposed project on views in the area are addressed in the DEIS by a short discussion and a series of photographs with the outline of structures superimposed. A second series compares the 85 ft. alternative to the 125 ft. proposal. In response to a comment letter from the Land Use and Transportation Project that the depiction of the 85 ft. and 125 ft. alternatives does not appear to be accurate, new drawings were provided in the FEIS.

83. The lines on Figures 4-7 depicting the outlines of structures at 85 ft. and 125 ft. were prepared by an employee of an architectural firm who has a degree in architecture received in 1980 but is not licensed. The calculation of the appropriate location of the lines was based on the drawer's estimation of the floor distance and parapet height of existing buildings in the photographs.

84. Martin H. Kaplan, a licensed architect with 12 years of architectural experience, prepared graphic depictions of possible building envelopes at 85 ft. and 125 ft. based on his survey of the actual height of one building in the photographs from grade at one point on Western. (Exhibts 3-9) These depictions show envelopes substantially higher than the buildings shown in Figures 4-7.



85. The proposed action is a rezone with development controlled by a property use and development agreement. "The contract rezone would include an approved site plan embodying (sic) the variable height concept illustrated in Figure 2" (sic), DEIS, p.31. Figure 1 in the FEIS has been substituted for Figure 3 in the DEIS. "Figure 2, p.3 of the FEIS is a plan view of the proposed action illustrating landscaping and building massing on the property which is owned by the proponent." p.1. For the non-owned properties the maximum bulk permitted by the proposed contract limitations (presumably percentage of the area at different heights) is depicted.

86. The heights shown in Figures 4-7 are 125 ft. and 85 ft. above average grade. According to Rolf Preuss, a licensed architect and planner with 14 years of architectural experience, 85 ft. above average grade is equivalent to approximately 75 ft. above Western. The heights proposed for the contract rezone are above average grade. He opines that Figures 4-7 accurately depict proposed structures.

87. Mr. Kaplan's method of projecting outlines on the photographs offers more precision since actual measurements rather than estimates are used but exaggerates the bulk by depicting 85 ft. and 125 ft. envelopes instead of the building masses actually proposed and by using a different starting point, Western Avenue instead of using average grade.

88. The FEIS, p.96, indicates that four units and the common recreation area of Continental Place may experience partial view obscuration. If the structures were as depicted in Mr. Kaplan's overlays, at least 25, as well as the community areas, would lose some or all of the view of Elliott Bay and the Olympics.

89. The EIS does not mention loss of views of Elliott Bay from other buildings which do not look directly across the site but whose views more northerly or southerly would be affected.

90. The FEIS, p.52, points out that development on the non-CHG-owned portion of the site could substantially block views from the Battery Street Overlook which had been proposed in the Draft Downtown Plan but has been dropped in the Mayor's recommended plan. Residents of the area consider it an important part of the streetscape as Elliott Bay is not visible for several blocks to the south.

91. Some view impairment from the Alaskan Way viaduct, a designated scenic route, is acknowledged in the DEIS. Jane Preuss experimented and found that traveling at 45 mph the views that would be blocked are visible for approximately 3½ seconds.

92. Light reflected from the water in Elliott Bay provides heat to some dwellings and fades artwork on walls.

93. Areas which could be used for recreation in the area not mentioned in the EIS are Denny Park, Market Park, roof gardens, streets and parking lots.

94. The FEIS included an additional alternative, D, which is to rezone owned property between Alaskan Way and Elliott and Pine and Lenora Streets.

95. Redevelopment consistent with current zoning could occur without the proposed rezone. Therefore, the no action alternative discussion can be viewed as in error.

96. The DEIS states that the floor area ratio for the proposal would be 6. Parking above grade has been included erroneously in the computation. The correct F.A.R. would be slightly more than 4.

97. The FEIS, p.44, refers to the RM-MD provisions allowing up to 6 F.A.R. when only a 5 F.A.R. is actually permitted.

98. Joan Paulson has had a number of requests for buildings of around 30,000 sq. ft. from people who want to locate their businesses close to downtown. She has told them to look elsewhere because Denny Regrade land is being purchased for future development.

99. Janeen Smith predicts that if the site is developed as proposed property values in the area will go up increasing redevelopment pressure on older buildings now used for housing. Current property values may already reflect the potential for rezoning, however.

100. Howard Anderson, CPM, a real estate developer and broker, believes the project would have a positive effect on properties in the area.

101. If condominiums are built and vacant, there would be a negative psychological effect because of the impression that no one wants to live there, according to Joan Paulson, a property manager in the area active in Regrading planning efforts.

102. Melody McCutcheon, senior land use specialist for DCLU, opines that piecemeal development of the site would cause no significant adverse impact.

### Conclusions

1. The determination of the Director, Department of Construction and Land Use that the EIS is adequate is entitled to substantial weight and the burden of establishing the contrary is upon appellants. Section 25.04.200, Seattle Municipal Code. The "rule of reason" is to be used in judging adequacy, i.e., whether there is "a reasonably thorough discussion of the significant aspects of the probable environmental consequences ...." Cheney v. Mountlake Terrace, 87 Wn. 2d 338, 344, 345, P.2d 184(1976).

2. Appellant Friends of the Regrade showed a few minor errors in the EIS, e.g., misstatements as to the possible FAR and proposed FAR. Most of the evidence presented, however, addressed disagreement with conclusions and opposition to the proposed action based on information contained in the EIS. As long as the conclusions in the document are supported by the evidence, even if different experts would draw different conclusions, there is no error. A few specific issues raised in the Friends' appeal should be mentioned here.

3. Various witnesses testified that they found the title confusing or misleading. The title is not incorrect in that a contract rezone is a rezone. Further, a confused reader need only turn to the introduction to get further definition of the proposed action.

4. A number of topics were not discussed as thoroughly as appellant's witnesses desire, e.g., housing. Appellant must prove that an impact is probable to require remand for further discussion. In none of these areas did that occur.

5. As to the lack of opportunity for Fire Department review and comment, even if the draft EIS was not sent, there is no requirement under SEPA that the Fire Department receive a copy for review. While WAC-10-460 says that the DEIS is to be sent to each local agency which will be required to review it.

additional services, WAC 179-10-040(23) excludes from the definition of "local agency" departments of a city. Further, evidence at hearing did not show any impact on fire service other than that described in the EIS.

6. Much of the testimony dealt with two issues, the consistency with land use plans and shadow impacts. In both cases the document agrees with appellants, i.e., the proposal is inconsistent with provisions of existing and proposed plans and policies and other properties will be in shadow during certain periods. To require analysis of the use of each property affected in the EIS is not reasonable but those uses and the effects on each can be made known to the City Council when the actual rezone is considered.

7. Evidence presented by appellant Friends of the Regrade did not show that the disclosure and discussion was not reasonably thorough.

8. Appellant Continental Place Homeowners Association concerned itself chiefly with the disclosure of view and traffic impacts in the EIS. Though the method used by appellant's architect witness to project the outline of proposed buildings on photographs would appear to be more accurate, the exhibits did not show the graphics in the FEIS to be in error because different premises were used, i.e., height above average grade and actual building envelopes under the proposal versus maximum possible under RM-MD zoning and above actual grade. With those differences and with the supporting opinion of an experienced architect, the examiner does not have sufficient evidence to find the view blockage depictions are in error. Again, because different premises were used the discussion in the EIS as to number of units in the Continental Place which would have their view affected cannot be found to be in error.

9. The EIS was prepared for a proposed action which includes a contractual limitation to the concept depicted in Figure 1 in the FEIS. Therefore, it is not error to consider those heights and masses as worst case. If the proposal is changed, the Director would have to determine if the document is adequate for the changed proposal.

10. Appellant showed the transportation/circulation section of the EIS to be flawed. The errors in the discussion, alone, are clearly not enough to make the document inadequate. The issue then is whether the document is inadequate because of the erroneous depiction of the existing system in Figure 20 alone or in combination with the other problems. While the existing street system is not an impact which must be discussed, it is the basis for the discussion of one of the most significant impacts of the proposal and the effect on circulation of the increased traffic may be aggravated because of the nature of the system which involves a number of one-way sections. Therefore, in this case especially, it is of importance. WAC 197-10-440(7) requires a general assessment of the existing environment and that the level of detail be proportionate to the impacts. Here the detail is appropriate but is wrong. Further, the text of the discussion does little to clarify, and in fact may mislead further. The consultant did not rely on erroneous data in predicting volumes and LOS but the presentation of the material is such that the reader may not understand what the situation is. Moreover, the EIS is to present the data and reasoning which support its conclusions. Of concern as well is the erroneous response to the Department of Transportation's point about impact on ramps to and from the Alaskan Way Viaduct and improvements needed.

11. The rule of reason allows for errors. That latitude has been exceeded, however, when the description of the impacts on a key element of the environment, transportation, is flawed by misstatements, misidentifications, confusing statements about increased traffic volume, and an inaccurate depiction of the existing system. The decision-makers, and members of the public who wish to use the document to prepare for their testimony on the rezone itself, are likely to be confused, if not misled. Therefore, the document needs correction to be found adequate.

12. The EIS should be remanded for correction of the traffic/circulation section.

#### Decision

The EIS is inadequate as to the discussion of the transportation/circulation element and is hereby remanded for correction consistent with the errors found above. An addendum including a corrected Figure 20 and text clarifying the discussion of the existing system and impacts shall be issued for comment to the State Department of Transportation, Seattle Engineering Department and appellant Continental Place Homeowners Association. The addendum, comments and any responses shall be filed with SEPA Public Information Center and the Office of Hearing Examiner with a copy served on Continental Place Homeowners Association and shall be circulated to all recipients of the FEIS.

The Office of Hearing Examiner hereby retains jurisdiction to consider any further allegation of error by appellant as to that addendum which challenge, if any, must be filed with the Office of Hearing Examiner no later than ten (10) days after receipt of the addendum by appellant.

Entered this 24th day of June, 1984.

M. Margaret Klockars  
M. Margaret Klockars  
Deputy Hearing Examiner