

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

In the Matter of the Appeals of

SEATTLE SHORELINES COALITION,
Appellant,
and

FILE NO. MUP-82-086(W)
APPLICATION NO. 81170-0133

LONE STAR INDUSTRIES, INC.,
Intervenor,

from a decision of the Director of
the Department of Construction and
Land Use

Introduction

Seattle Shorelines Coalition, appellant, appeals the decisions by the Director of the Department of Construction and Land Use (Director) on a master use permit for the H.C. Henry Pier at 809 Fairview Place North that the environmental impact statement is adequate and that the permit should be issued with certain mitigating conditions. A motion for intervention by Lone Star Industries, Inc., was granted.

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

Parties to the proceedings were: appellant represented by R. Patrick McGreevy, Stafne, McGreevy and Taylor, P.S., and Janet E. Quimby, Evans, Quimby, Hall, Holman and Noble, Inc., P.S.; intervenor by Charles R. Blumenfeld, Bogle and Gates; the Director by Elizabeth Edmonds, Assistant City Attorney; respondent proponent by Richard R. Wilson, Hillis, Phillips, Cairncross, Clark and Martin, P.S.

This matter was heard before the Hearing Examiner on December 17, and 22, 1982.

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

Findings of Fact

1. Respondent proposes to demolish existing structures at 819 Fairview Place North and develop the site with mixed uses including retail shops, restaurant, and pleasure boat marina and guest boat dock. Accessory offices and parking with 92 spaces are planned on-site and additional parking for 76 vehicles on a leased site within 800 ft.
2. The Director issued the final environmental impact statement (EIS) for the proposal and his Findings and Decision on respondent's master use permit application and shoreline substantial development permit application. The master use permit was conditionally granted.
3. The EIS consists of two volumes, draft (DEIS) and final (FEIS). Jim Barnes, environmental specialist, Department of Construction and Land Use (DCLU) supervised the preparation of the EIS and wrote portions of it. Respondent's consultant, Urban Regional Research, prepared drafts for submittal to DCLU.
4. The proponent of the project or, "action sponsor", according to the DEIS is Hester-Alhadeff-Going/Henry Trust. The FEIS shows the sponsor to be Hester/JSA Corporation/Henry Trust.

5. Respondent's objectives for the project are set forth in the EIS and consist of the following:

1. To develop a mixed use project which would conform to the purposes of the Urban-Stable/Lake Union (US/LU) Environment....
2. To develop a high quality project which will enhance public amenities at the south end of Lake Union including improved visual access to the water and provision of public access.
3. To encourage marine oriented retail uses....

6. The site of the project includes portions of Lots 2 through 10 of Block 73, Lake Union Shorelands and Lots 1, 2 and 3 of Block 105 Denny's First Addition. A legal description is provided in the EIS. Figure 11-2, p. 16, DEIS, erroneously shows portions of Lots 4 and 5, Block 73, as excluded from the parcel. The parcel includes all of 5 and most of 4.

7. The site is located on the shoreline at the south end of Lake Union.

8. Existing development on and use of the site includes three buildings, a 6,500 sq. ft. concrete covered deck and a 24 by 430 ft. concrete decked pier occupied by Associated Marine Industries which has several boats which it repairs and repairs other boats and provides moorage; a photographer; Blue Water Marine/Seabird Company which has research vessels it moors and works on and does contract work on other vessels; Surefreeze Refrigeration which assembles heavy duty refrigeration equipment for fishing vessels and sells parts to ships moored at the pier; Glen Anderson Carpentry which uses space for storage; Seal Tite Insulation which does marine insulation work; Allen Plumbing which does marine plumbing, electrical and hydraulics work. The moorage is used by vessels owned by these occupants and fishing boats, tugs and other vessels for maintenance, repairs, refurbishing and for off-season lay-overs.

9. Views of the water from the end of the pier are available however access to the pier is possible but is somewhat hazardous and restricted. The view of the water across the site from the street is minimal because of existing development on the site.

10. Two structures are proposed in the project, a 32,980 sq. ft. two story structure for the shops and offices and a two story parking structure.

11. Regulated public access in the new project would be available at a 6,500 sq. ft dock, a large and small pier and a guest dock.

12. A condition on the shoreline permit was imposed by the Director to designate and assure public access.

13. According to the EIS, no existing views of the water would be blocked by the new development from Fairview Avenue North. Some additional view would be opened up through the view corridor to be provided.

14. Most of the existing uses are classified as water-dependent commercial moorage and ship repair and water-related marine services in the EIS.

15. The EIS lists the uses at the south end of the Lake at pp. 56,57. The listing shows a diversity of uses, water dependent and not, commercial, retail, and recreational.

16. The EIS also discloses eleven changes in use of land since 1970. Four of the changes were to recreational boat moorage.

17. Other pending proposals for the south Lake Union area are briefly described and mapped in the EIS. Those are: the Center for Wooden Boats at Waterway 4, near the subject site, Northwest Seaport, Inc., to renovate boats and develop an historical ships museum, Embar Equities for a mixed use development, a restaurant by Lake Union Associates and a invitation to bid by King County for a county-owned site. Since the DEIS a definite proposal involving a marina and restaurant has emerged for the King County site.

18. The EIS discloses that the proposed action on the subject site would change the land use from industrial/commercial to commercial/ recreational or commercial boat moorage to recreational boat moorage and marine service uses to non-water dependent uses. This change is shown as an unavoidable adverse impact at p. 68, DEIS. The discussion covers alteration of the land use mix in the south Lake Union area from the reduction of commercial moorage and ship repair and increase in recreational activities. The land use discussion in the draft covers pp. 52-68.

19. The working lake character of Lake Union is attributed to diversity of uses instead of commerce and industry, in the DEIS. A slight change in the character is anticipated from the loss of the existing use of the site.

20. The property adjacent to the east is occupied by Lone Star Industries, Inc., which has a batch plant operation and a warehousing operation. Access for suppliers, customers and delivery trucks is vital to both operations. Trucks now form queues while awaiting access.

21. Vehicular and pedestrian access to the proposed development would be from Fairview Place North, a dead-end street. The street provides access to Lone Star and the subject site.

22. A transportation study was conducted by TDA for the EIS. Existing traffic levels and routes are shown as well as estimates of vehicular trips to be generated by the project. An 150 percent increase in peak hour vehicles using Fairview Place North is projected. On Valley and Fairview Avenue North the increase is expected to be 1-2 percent. The study evaluated the entrance to the site to determine potential impacts and an alternative access plan was also disclosed and discussed. Use of the frontage road by Lone Star's trucks was mentioned.

23. The decision included a condition to improve access and to mitigate any additional hazards or congestion at the entrance by realigning the intersection, installing a sidewalk on Fairview Place North and signage at Terry to prohibit left turns onto Valley. No sidewalks were required to be installed on the north side of Fairview Avenue and Valley because the only crosswalks are at Fairview and Westlake.

24. No other reasonable alternative for access was shown to exist.

25. The EIS discloses that on-street parking is used to capacity and that on-site parking proposed would provide 18 fewer spaces than the peak demand.

26. The proposal was amended, as disclosed in the FEIS, to provide an additional 76 spaces on a parcel to be leased from the City at 625 Boren Avenue North which is within 800 ft. of the site.

27. The cumulative impacts of traffic and parking demand from all the other pending permits were not considered in the transportation study done for the EIS.

28. The EIS identifies one high accident location at the intersection of Terry Avenue North and Valley Street. Another location between Terry and Boren on Valley having had 5-9 accidents in 1978 was not identified.

29. The EIS discloses that there are no sidewalks adjacent to the site along the northern side of Valley or northwestern side of Fairview Avenue North. At p. 101 it states that access for some

pedestrians could be difficult and suggests a mitigating measure of providing clear pedestrian access to the site. No projection of the number of pedestrian trips generated is made.

30. An evaluation of the economic impact of the proposal was conducted by a maritime economist. Employment levels were obtained from businesses on the site and full time equivalents by general category of employment determined. Estimates of the dollar value of gross output were based on ratios from a model commonly used by other economists as appropriate. After analyzing the current activity, likely losses and proposed activity, the study concluded, and the EIS reports the conclusions, that the net impact would be \$3.3 million additional direct output, 90 additional direct jobs supported, or \$4.1 million additional direct and indirect output, and 119 additional direct and indirect jobs supported.

31. An alternative economic analysis was provided in the FEIS by the North Pacific Fishing Vessel Owner's Association comparing water dependent and related output from the existing and proposed activities and challenging some of the conclusions reached in the DEIS.

32. The EIS does not discuss whether the present uses on site bring revenue new to Seattle while the proposed uses would not, as suggested by appellant's witness, Richmond. The economist made no estimate of the source of the money involved.

33. Projection of the economic impact on south Lake Union was not developed because to be reliable it would require a large amount of specific information from the businesses on the lake and the construction of an input/output model for the area. The cost involved in such an analysis would be extremely high.

34. The relative output of the uses on shore and away from water were not compared. The model's ratios are based on averages which would have used both on and off-shore outputs.

35. The economic impacts of the proposed development on adjacent property owners was not considered in the EIS.

36. In response to concern regarding effect on suppliers, raised by the League of Women Voters of Seattle, the EIS discusses the indirect impact of the project on current suppliers. The economic analysis concluded that 70 percent of the activity on the site could be successfully relocated so it would continue to generate the direct and indirect output which includes business with suppliers.

37. The most likely sites for relocation of the businesses on the site would be outside of the south Lake Union area. A small amount of vacant land is present on Lake Union and in Ballard.

38. Both appellant's letter and the letter from the League of Women Voters of Seattle addressed the potential effect on other maritime businesses on Lake Union if the volume of ships on the lake falls because fewer services are provided on the lake. That concern is not directly responded to in the EIS.

39. Appellant's witness, Goldsmith, with considerable experience in maritime affairs, expects a very significant domino effect from the loss of the services available on the site. The number of proposals for non-water dependent uses shows pressure to eliminate commercial/industrial activity, he feels, and will encourage other developments of the same nature. His conclusions were reached after reading the DEIS and expressed in his letter in the FEIS, though not responded to by the City.

40. The consultant maritime economist opined that since the activity on the site is a small component of the ship and boat building and repair industry in King County, 49 of 8,200 full time equivalent jobs, it is extremely unlikely that a domino affect would occur.

41. The DEIS, at p. 67, states that the proposed action would "...reduce the commercial moorage/minor ship repair, and marine service uses" in the secondary influence area.

42. Goldsmith represents an industry organization, North Pacific Fishing Vessel Owners' Association, with about 120 ocean-going vessels which harvest crab in the Bering Sea and have their home port in Seattle. Lake Union provides support services to the fleet such as maintenance, repair, building, provisioning and professional services. If these marine-related services leave, the fleet would be forced to change their home port to a location where they are more readily available. These concerns were expressed in his letter in the FEIS.

43. Berthing facilities for the larger processor vessels which are being built are at a premium.

44. Extensive discussion is provided in the FEIS by the letters from the Seattle Shoreline Coalition, League of Women Voters of Seattle, and the North Pacific Fishing Vessel Owner's Association of indirect and cumulative impacts on economics and land use.

45. The subject site was part of a parcel subdivided under Short Subdivision No. 76-34 in 1977. The two parcels may have owners in common. The other "Abagails", nee "Turkey House", parcel is the subject of a long term lease. The EIS does not disclose the prior subdivision or any common ownership. The Abagails's parcel is not under the control of respondent because of the long term lease.

46. Consistency with the Seattle Shoreline Master Program is evaluated in the EIS. That water dependent uses have higher priority than others is recognized. The existing uses' greater water dependency than the proposed uses' is not emphasized in the DEIS but can be determined by the discussion. Appellant's letter in the FEIS clarifies the greater water dependency of the existing uses.

47. The EIS shows that 71.6 percent of the site's area would be devoted to marina, water dependent, use. Appellant's letter in the EIS provides information that only 3.1 percent of the revenue from the proposal would be from the marina, the only water-dependent use in the project.

48. The EIS includes a brief description of each of four alternatives. The no action alternative would retain existing uses but renovate or remove the buildings. The EIS concludes that this alternative does not conform to the project objectives. The industrial alternative would replace the buildings with one concrete building to have water dependent use with the pier. That alternative would not be a mixed use nor enhance public amenities as desired by the proponent. An alternative with an 128 slip marina instead of 46 slips was suggested but would provide more limited public amenities than the proposal. Finally, a 42 slip marina on land owned by the proponent was suggested.

49. A mixed use development including both commercial or industrial marine related uses and retail uses was considered but rejected as infeasible because the less than one acre of upland area is not sufficient to provide the space needed for movement of equipment.

50. A combination of recreational moorage and industrial or commercial use is not a feasible combination because of the amount of area needed for required parking and the potential problem of acquiring liability insurance.

51. The Environmental Impact Statment Preparation Manual, published and followed by DCLU in this case, finds cumulative effects to occur when:

- 1) a development is "the straw that breaks the camel's back" in terms of impacts upon facilities and services, natural systems or the surrounding area when aggregated with the impacts of prior development, or
- 2) when a single development may induce, due to a causal relationship, other developments which ultimately will adversely affect the items mentioned previously. (emphasis added).

52. The Director found no growth inducing effects nor that the proposal would be the "straw that breaks the camel's back".

53. The EIS preparation manual requires inclusion of "additive" traffic impacts from growth in volume, increase in volumes from the project and increase from other planned, nearby projects.

Conclusions

1. Whether an EIS is adequate as a matter of law is to be determined by the "rule of reason". The rule of reason is that a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" is all that is required. Cheney v. City of Mountlake Terrace, 87 Wn.2d 338, 344, 345, 552 P.2d 184 (1976).

2. The Director's decision to issue the EIS, i.e., that the EIS is adequate, must be given substantial weight by the Hearing Examiner. Section 23.76.36.B.(7). To overcome that weight appellant must establish that an error has clearly been made. Proof of clear error requires more than showing differing opinions as to impacts.

3. Minor errors were shown in the EIS but none that showed any attempt to cover up an impact and none which, if corrected, would disclose an impact not otherwise shown.

4. Further, appellant has not shown the probable existence of any direct impact that has not been disclosed in the EIS. While the disclosure would have been more thorough if a projection as to the number of pedestrians to be generated had been made, without evidence that the volume of pedestrian activity would have an impact on some element of the environment, its absence does not constitute clear error.

5. Appellant and intervenor urge that additional alternatives, e.g., one with water-dependent commercial use or differing access configuration, are required. WAC 197-10-447(12) (e) requires consideration only of reasonable alternative means of achieving the objective of the sponsor. Of the alternatives suggested meeting the sponsor's objectives, none is feasible because of space limitations or lack of control. Therefore, the alternatives are not reasonable and need not be discussed. Unless reasonable alternatives are shown that were not considered, the small number of alternatives does not make the consideration inadequate.

6. While the Court in Kleppe v. Sierra Club, 427 U.S. 390, 96 S.Ct. 2718, 49 L.Ed 2d 576 (1976), ruled that a comprehensive EIS is not required unless several simultaneous proposals are shown to be interrelated and have synergistic impacts and be feasible, courts following Kleppe require something more than an acknowledgment of the cumulative effects of other project which can be expected to have similar impacts. The disclosure must be sufficient to alert the decision maker to the qualitative nature of likely cumulative effects, even if the quantitative nature is not feasible to determine. See, North Slope Borough v. Andrus, 486 F.Supp. 332 (D.C. 1979).

7. WAC 197-10-440(8)(c), requiring that significant direct and indirect impacts of the proposal within any element of the environment be discussed, gives the example, presumably of indirect impacts, of cumulative and growth-inducing impacts. Though the definition of cumulative effects used in the EIS preparation manual under land use impacts is overly restrictive, the EIS, while not addressing directly cumulative effects of this nature, does provide sufficient land use information for the decision maker to understand the qualitative nature of the likely cumulative effects.

8. Intervenor cites Akers v. Resor, 443 F.Supp. 1355, 1360 (W.D.Tenn. 1978) wherein the court lists required information for evaluating cumulative impact in the EIS prepared under NEPA, i.e.,

- (1) A list of projects producing related or cumulative impacts;

- (2) A brief but understandable summary of the expected environmental impacts to be produced by those projects...; and
- (3) A reasonable analysis of the combined or cumulative impacts of all projects.

This kind of detail can only be required under SEPA, however, if they are known to be or may be significant. WAC 197-10-440(8), a, b, c.

9. The failure to consider cumulative traffic impacts would be error both under WAC 197-10-440(8)(c) and according to the Director's EIS preparation manual, where they are referred to as "additive" impacts, if the impact from the proposal is shown to be probably significant in light of that additional information. No attempt to adduce that kind of evidence was made. The proposal's accommodation of all parking demand generated by it on-site or at the satellite lot and the minor increase in traffic on the arterial make it unlikely that its cumulative impact would be significant.

10. The Director, as decision maker, is supplied with facts which he can use and is entitled to rely upon expert advice. That two experts' opinions differ about the facts or the conclusions does not show error. A study of the indirect economic effect on south Lake Union is not reasonable and therefore cannot be required.

11. The determination by the Director that the EIS is adequate has not been shown to be in error.

12. As to appellant's and intervenor's contentions that conditions should have been imposed to require that the development be oriented to provide access from the west side to require more or all parking on-site, to require a buffer or screen between the development and Lone Star and to require a change in the proposed uses to include a greater percentage of water dependent use, there is a failure of proof that these would mitigate specific, identified adverse impacts or that they are feasible or reasonable. The substantial weight given to the decision by the Director is, therefore, not overcome. The condition for provision of a separate pedestrian/bicycle access route challenged by intervenor is a SMA condition and, therefore, not considered in this appeal.

Decision

The decision of the Director that the EIS is adequate and that the master use permit be issued with certain conditions is AFFIRMED.

Entered this 5th day of January, 1983.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal Adequacy Decision

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). Should an appeal 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.

Notice of Right to Appeal Master Use Permit Decision

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended, Chapter 25.04.210, Seattle Municipal Code), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st Floor of the Municipal Building. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended, Chapter 25.04.190, Seattle Municipal Code. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.