

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

MARGARET COUGHLIN, et al.

FILE NO. W-79-022

from an environmental determination  
of the Department of Parks and  
Recreation

#### Introduction

Margaret Coughlin and the Magnolia Community Club filed appeals challenging the adequacy of the Environmental Impact Statement (EIS) prepared by the Department of Parks and Recreation (Parks) with regard to the revised interim and long range plans for Discovery Park. The United Indians of All Tribes Foundation (United Indians) and the League of Women Voters were permitted to intervene.

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

Parties to the proceeding were: Margaret Coughlin representing herself but also assisted by J. Richard Aramburu, attorney; the Magnolia Community Club represented by Joel Haggard, attorney; Parks represented by Ellen Peterson, attorney; the United Indians represented by Edmund Wood, attorney; and the League of Women Voters represented by Sue Fleming.

This matter was heard before the Hearing Examiner on August 21 and 22, 1979.

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. The proposed action is the revision of interim and long range plans for Discovery Park. The original Master Plan for Discovery Park was prepared in 1972 and revised in 1974. The proposed modifications to the 1974 Revised Master Plan are set forth in pages S-4 through S-7 of the Final EIS. Any proposed revisions to the 1974 Discovery Park Revised Master Plan are subject to approval by the Mayor and City Council. Proposed capital improvements are set forth in pages S-7 through S-11 of the Final EIS.

2. The Master Plan serves as a framework and guideline for policy and program decisions involving Discovery Park. Since a Master Plan is general in nature the EIS, with the exception of currently funded projects, is programmatic as opposed to project specific in nature. The EIS acknowledges that additional environmental assessments will be required for specific development proposals. Parks has identified in the EIS whether the environmental assessment is programmatic or project specific in nature.

3. Discovery Park is located in the Magnolia area of the City. The Park presently consists of 396 acres and an additional 127 acres has recently been added. The EIS assesses Park use of up to 650 acres which may potentially be transferred to the City for park use.

4. The Final EIS was filed with the SEPA Public Information Center on June 11, 1979.

5. Margaret Coughlin, a nearby resident, filed a timely appeal on June 25, 1979. The appeal letter contains 32 pages and details numerous objections to the adequacy of the EIS.

6. The Magnolia Community Club filed a timely appeal on June 26, 1979, which contains five general allegations. First, that the Final EIS contains numerous references to a Master Plan for the Indian Cultural Center and that any attempt to validate the Plan legally as to SEPA compliance is error. Second, that the Final EIS discusses Historic District proposals and a traffic revision proposal that would direct traffic onto 36th West. Neither proposal was discussed in the Draft EIS and the requirement to provide agency and public comment is therefore short-circuited. Third, that the proposal to divert traffic onto 36th Street West is contrary to an agreement between the Army and neighbors. Fourth, that the City decided to rewrite the EIS but failed to respond to the comments or provide a summary of critical comments with which it does not agree as required by WAC 197-10-580(3). Fifth, that Parks clarify that with regard to the Historic District that no action will be taken, including adoption of the Historic District Ordinance, until a Supplemental EIS is prepared.

7. The League of Women Voters were permitted to intervene. In a statement of appeal filed on August 2, 1979, the only allegation is that the evaluation of the effects of the proposed Historic District Ordinance is inadequate. The requested relief is that no Historic District Ordinance be acted upon until a Supplemental EIS is prepared.

8. The United Indians were permitted to intervene. In a motion to intervene, filed on July 30, 1979, United Indians stated that its main purpose would be to defend the Final EIS as it relates to the Indian Cultural Center and Master Plan for the Cultural Center.

9. On February 7, 1979, Parks entered a Declaration of Non-Significance (DNS) with regard to the proposed adoption of an ordinance creating a Fort Lawton Landmark District in a portion of Discovery Park. Appeals challenging the DNS were filed by the Magnolia Community Club, the League of Women Voters and Margaret Coughlin. Examiner Klockars in an order entered on July 25, 1979, found that the proposed ordinance is part of the total Discovery Park proposal and therefore reversed the decision to enter a DNS. Impacts relating to the proposed Fort Lawton Landmark District ordinance must be adequately addressed in the subject EIS and the appellants in this matter have had an opportunity to raise issues as to adequacy.

10. The United Indians moved for a summary judgment and arguments were heard on August 21, 1979. The basis of its motion was previous litigation on this matter in which Margaret Coughlin was the plaintiff. See King County Cause No. 786873 and Court of Appeals No. 786873. The litigation involved the Master Plan for Discovery Park and the Indian Cultural Center. Ms. Coughlin lost in Superior Court. The Court of Appeals on November 4, 1977, remanded the matter to Superior Court "for such further proceedings as that court may deem appropriate or required in connection with the City of Seattle's preparation of an environmental impact statement regarding future developments and projects at Discovery Park." The Examiner granted the motion in part and held that the EIS that is the subject of this appeal does not

include the amendments to the 1974 Revised Master Plan for Discovery Park nor the Indian Cultural Center elements that are part of it. The legality of the environmental review of the 1974 Revised Master Plan has been determined as a matter of law by the courts. Subsequent to the relief granted by the Examiner, the United Indians no longer took part in the hearing.

11. It was also determined in granting the United Indians motion that a contrariness of views on the validity of the statements contained in the Final EIS relating to the approval of the Indian Cultural Center Master Plan should be included in the Final EIS and treated as critical comments within the context of WAC 197-10-580. Parks may also include its responses to the critical comments.

12. The Final EIS was rewritten. However, pursuant to WAC 197-10-580(3), no affirmative response to critical comments was provided or in the alternative a summary of critical comments with which Parks does not agree. The Examiner required Parks to submit a summary of critical comments with which it does not agree or be deemed to have agreed with the critical comments. Parks submitted a summary of critical comments with which it does not agree. The summary will be circulated pursuant to WAC 197-10-600.

13. On August 21, 1979, a written stipulation was entered into between the City and the Magnolia Community Club in which the City agrees to prepare a Supplemental EIS to cover actions relating to the Indian Cultural Center site, historic structures in Zone 7 and diversion of traffic to 36th West. A copy of the stipulation is attached and marked as Appendix A.

14. The Draft EIS at pages 5-31, 7-29 and 11-32 contains a general description of the historic structures located in the Park. In the Final EIS at page 1-8, a draft ordinance is described that would create a landmark district at Discovery Park similar to other districts that have been established in the City. The ordinance has been forwarded to the City Council. The Magnolia Community Club alleges that the ordinance cannot be adopted without further environmental analysis since the City did not provide information sufficient in scope to allow the public and agencies to comment on as required by RCW 43.21C.030(2)(d) and further that the City cannot phase the historic district proposals pursuant to WAC 197-10-060(4,5).

15. Magnolia Community Club presented testimony at the hearing relating to the North Beach access trail even though this issue was not raised in the original appeal letter. The appellant claims that it was not aware of any inadequacies until it read the City's response of August 17, 1979. The appellant alleges that the discussion is inadequate since it does not address the number of users of the trail which is critical in evaluating impacts on the environment. No alternates are discussed.

16. Ms. Coughlin's letter of appeal extends to 32 pages and contains numerous allegations. Due to the number and complexity of Ms. Coughlin's allegations, Parks was requested to respond in writing to each allegation, which was done prior to the hearing.

### Conclusions

1. The Discovery Park EIS appeals reflect the concerns and interests of a wide range of groups and individuals and

attempts by Parks to provide revisions to the 1974 Revised Master Plan that will have long term effects on the park itself and the surrounding community. It is little wonder that given the competing interests of the United Indians, historic preservationists, Parks and the surrounding community that the proposed changes are subject to controversy and debate.

2. Due to the partial grant of the summary judgment motion of the United Indians and the stipulation between the City and the Magnolia Community Club, many of the issues raised in the appeals have been dealt with at least for the present.

3. The dismissal of the United Indians places the issue of the amendments to the 1974 Master Plan with specific reference to the Indian Cultural Center back in the courts if the parties are so inclined.

4. Probably the two remaining most controversial and important developments in terms of impact on the Park and surrounding community are the historic properties in Zone 7 and potential developments in the Indian Cultural Center. The City has stipulated to prepare a Supplemental EIS on each of these proposals. This is clearly a reasonable course of action given the magnitude of the proposals and the need for detailed environmental review and public comment. As a result of the stipulation, the public and appellants are assured that there will be an adequate opportunity for review.

5. The test for judging the adequacy of an EIS is the rule of reason. Cheney v. Mountlake Terrace, 87 Wn.2d 338 (1976). This test will be applied to the issues raised in the appeals.

6. One of the remaining issues is whether action can be taken on the proposed Landmark District Ordinance which is part of the total proposal for historic structures in zone 7. As a result of the dismissal of the DNS for the Landmark District Ordinance, compliance with SEPA must be based on information contained in the subject EIS.

7. The proposed Landmark District Ordinance was not discussed in the Draft EIS. RCW 43.21C.030(2)(d) and WAC 197-10-455 require an opportunity for public agencies and the public to comment. Since the ordinance was not discussed in the Draft EIS in reasonable detail, there was not an opportunity to comment and the purpose of the statute and WAC Guidelines was not met. In light of the foregoing determination, the allegation of the Magnolia Community Club that the segmentation of the historic area proposal did not comply with WAC 197-10-060(4) need not be resolved.

8. Parks has stipulated that it will prepare a Supplemental EIS when the adaptive reuse study of the historic structures in Discovery Park is completed. Since the proposed Landmark District Ordinance is part of the total proposal, it makes for a more logical and reasonable process to include all elements of the proposal in one EIS.

9. With regard to the North Beach access trail, the EIS is found to be inadequate. Some measure of the number of users of the trail must be made in order to have an adequate evaluation of the impacts of the trail on the marine biota, tidelands, flora and fauna. This is especially important in this case where the trail passes through a designated wildlife release and sanctuary area. The North Beach access trail issue was raised in a timely manner after the filing of the response of Parks to the critical comments.

10. Appellant Coughlin alleges a lack of information on the Lawton Park School and neighborhood. The Final EIS at pages 1-77 through 1-80 and 2-29 through 2-33 contains sufficient information on these topics in relation to the impacts of the Park on the school and neighborhood.

11. Appellant Coughlin claims that it was an error not to include in the EIS the Comprehensive Plan Map. The Comprehensive Plan Map is outdated and is being replaced by new land use policies. The Final EIS explains this relationship at pages 1-72 through 1-73. No deficiency has been shown in light of the discussion in the Final EIS.

12. Appellant Coughlin alleges that the discussion of land use and zoning adjacent to Discovery Park is misleading. Figure 23 in the Final EIS provides full disclosure of the existing zoning.

13. Parks submitted a detailed response to the numerous allegations raised in Ms. Coughlin's 32-page appeal letter. Parks acknowledged several minor errors that were not of a substantive nature and agreed to correct them.

14. After reviewing the remaining issues raised in Ms. Coughlin's appeal and the response of Parks, it is concluded that no substantive testimony or evidence was presented to support the allegations and they must be dismissed as a matter of law. In an administrative proceeding wide latitude is provided a pro se appellant in presenting a case. However, the appellant failed to understand the need for relevancy with regard to the issues and evidence presented. The appellant is obviously well intentioned and concerned about her neighborhood but the majority of the issues she raised are of an historic interest and are not directly related to the proposals in this EIS under any legal standard of relevancy.

#### Decision

For each of the above reasons, the decision is as follows:

- (a) The EIS does not include an environmental analysis of the amendments to the 1974 Revised Master Plan and the legality of the environmental review of the amendments to the 1974 Revised Master Plan has been determined by the courts;
- (b) A contrariness of views on the validity of statements contained in the EIS relating to the approval of the Indian Cultural Center Master Plan are to be included in the EIS and treated as critical comments pursuant to the SEPA Guidelines;
- (c) Parks' summary of critical comments with which it does not agree must be circulated pursuant to the SEPA Guidelines;
- (d) The North Beach access trail element of the EIS is inadequate and a new analysis must be prepared pursuant to the SEPA Guidelines;
- (e) The analysis of the proposed Landmark District did not comply with RCW 43.21C1030(2)(d) or WAC 197-10-455 and must be included in the Supplemental EIS for the historic properties;

(f) All the remaining aspects of the EIS are deemed to be adequate.

Entered this 10th day of December, 1979.

William N. Snell  
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).