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CITY OF SEATTLE
OFFICE OF THE HEARING EXAMINER

In the Matter of the Application of:
UNIVERSITY OF WASHINGTON
for approval of a Major Institution Master Plan

Hearing Examiner File No. CF-314346
Department Reference: 3023261

APPLICANT'S PREHEARING BRIEF

I. INTRODUCTION

The University of Washington requests that the Hearing Examiner recommend approval of its 2018 Seattle Campus Master Plan. This Plan is the latest in a century of comprehensive planning for the University, dating to the Olmsted Brothers' plan for the 1909 Alaska-Yukon-Pacific Exposition on what is now the Seattle campus. This new Plan proposes a net increase of six million gross square feet of new developed space over the next decade, and it is based on three central objectives. First, it will respond to the dire need for more space to accommodate increased enrollment, the need to close an existing facilities gap, and the need to facilitate more of the innovation, collaboration, and research that has maintained the University as a top-tier public institution of higher education. Second, it will provide flexibility to develop in a manner that fits the campus context and will phase development as resources become available. Third, the Plan adheres to principles important to the University, including access, sustainability, public realm connectivity, and responsible stewardship of historic and cultural resources.

1 This Plan is the culmination of a multi-year inclusive public process involving the City of
2 Seattle, the City-University Community Advisory Committee (“CUCAC”), and community
3 stakeholders both on and off campus. The University actively engaged with the public, listened to
4 input, and revised the Plan consistent with the principles noted above. The resulting Plan balances
5 the need for growth with concerns about the effect of that growth on the surrounding community.

6 The Seattle Department of Construction and Inspections (“SDCI”) recommends approval
7 subject to certain conditions. CUCAC also proposed conditions. The University accepts many of
8 their conditions, but there are a few disagreements. First, some conditions go beyond the City’s
9 authority to impose them. Second, some conditions are overbroad, vague, or appear to be based
10 on arbitrary assumptions. The Hearing Examiner should reject the improper conditions—and
11 recommend that the City Council approve the 2018 Campus Master Plan subject to conditions as
12 set out in the table attached as Appendix A to this brief.

13 II. FACTUAL BACKGROUND

14 The University will present the following factual background at the public hearing:

15 A. **Washington’s public institutions of higher education need additional enrollment 16 capacity to close the state’s higher education attainment gap.**

17 Washington has a significant higher education attainment gap that must be closed.
18 Undergraduate and graduate degree production here ranks in the bottom third of states on a *per*
19 *capita* basis—below states like Arkansas, Florida, and Kentucky. The inability of state residents
20 to access higher education here results in fewer adults with post-secondary degrees relative to the
21 needs of area employers. The demand for employees with more than a high school diploma is
22 increasing. It is expected to be about 70 percent of jobs by 2020. Only 51 percent of the current
23 adult population in Washington has more than a high school diploma. This gap must close if
24 Washington residents are to be competitive in their own state’s job market. The Legislature has
25 set an educational attainment goal to close the gap: at least 70 percent of Washingtonians aged 25
26 to 44 must have a postsecondary credential by 2023. The latest report on this goal suggests that

1 the state is almost 500,000 adults behind the pace. If we want to meet the goal, our public
2 institutions of higher education must increase enrollment capacity.

3 **B. The University of Washington provides significant public benefits to Seattle, the**
4 **State of Washington, and the region.**

5 The University also provides significant public benefits beyond the classroom. It has a
6 longstanding and proud tradition of public service, particularly serving under-privileged and
7 under-served populations. A central feature of this commitment is the Husky Promise—a pledge
8 to Washingtonians that their financial circumstances will not stand in the way of a degree from
9 the University of Washington. The Husky Promise guarantees assistance with tuition and standard
10 fees to every Washington resident admitted to the University. The commitment manifests as well
11 through UW Medicine’s provision of comprehensive and often uncompensated care to thousands
12 of Seattle residents. In fiscal year 2016, it provided more than \$360 million in uncompensated
13 care. The University also has a positive economic impact. In 2014, a University-based study
14 found that it generated \$12.5 billion in economic activity in the state, roughly half in Seattle. This
15 activity generated about \$273 million in revenue for the City.

16 **C. The proposed growth allowance is necessary to the University’s central objectives in**
17 **fulfilling its academic mission.**

18 This Plan will allow the University to fulfill its academic mission and continue providing
19 significant public benefits to Seattle and the region. The University seeks a net increase of six
20 million gross square feet to increase enrollment capacity, address existing space deficits, and
21 provide infrastructure for the innovation, research, and academic partnership that has fostered
22 economic growth. This figure is based on an analysis of the University’s anticipated space needs
23 in 2028. In addition to expanding enrollment capacity, the University must close an existing space
24 deficit. It ranks on the low end of the spectrum for space per full-time equivalent student when
25 compared to peer institutions. The Plan will allow the University to address this deficit and meet a
26 projected 15 percent increase in student enrollment (5,180 new students) on the Seattle campus by
2028. The University’s projected population in 2028 will need approximately five million gross

1 square feet of additional space—not including current facilities gaps and new space for innovation
2 and academic partnerships. The University also needs approximately one million gross square feet
3 of new space to deliver education through innovation and academic partnerships. Thus, the total
4 proposed growth allowance is six million gross square feet.

5 **D. Development on campus has historically occurred incrementally over the life of a**
6 **campus master plan.**

7 Though the University’s campus master plans have historically reflected long-term growth
8 needs on the Seattle campus, actual development depends on legislative appropriations as well as
9 philanthropy and grants. Because these funding sources are not within the University’s control,
10 development occurs incrementally as resources become available. The allowance contemplated by
11 the Plan reflects the anticipated need over a ten-year planning horizon, but in reality it could take
12 more than ten years to construct the additional space. The 2003 Campus Master Plan illustrates
13 this point. The 2003 plan authorized three million net new square feet, reflecting the University’s
14 then-anticipated need over a ten-year horizon. It has taken almost 15 years to develop that amount
15 of new space, and development has occurred in steps as funding became available. Given this
16 context, the conclusions in the Final Environmental Impact Statement (“FEIS”) are conservative
17 because they examine a fully-built scenario, though in reality development would be incremental.

18 **E. The FEIS concluded that the Plan will not have significant adverse impacts on**
19 **housing or transportation.**

20 Among the many conclusions in the FEIS, two are particularly relevant here. The first is
21 that the Plan will have no significant adverse impact on housing. After an exhaustive economic
22 analysis, the FEIS recognized two key points regarding housing: (1) populations associated with
23 the University are widely dispersed throughout the region; and (2) the University District re-zone,
24 Seattle’s Mandatory Housing Affordability program, and improvements in regional transportation
25 will allow Seattle and the region to absorb University-related population growth without
26 significant adverse impacts. (FEIS pg. 4-7; Sec. 3.8 Housing, Sec. 4.1 Key Topic Areas:

1 Housing.) The FEIS also notes that the Plan includes 1,000 new beds to accommodate increases
2 in on-campus student-housing demand.

3 The second relevant conclusion involves transportation. The FEIS unsurprisingly finds
4 that growth will likely result in increased trips in all travel modes and greater pedestrian conflicts.
5 However, due to the University's successful Transportation Management Plan, already-planned
6 transportation improvements (including a new light rail station and increased transit capacity),
7 and already-planned affordable and multi-family housing nearby, the percentage of single-
8 occupancy-vehicle trips is expected to decline. (FEIS pgs. 3.16-89-90.) Also, the Plan ensures that
9 the percentage of single-occupancy-vehicle trips stays below aggressively low thresholds.

10 III. CAMPUS MASTER PLAN OVERVIEW

11 The University will present the following overview at the public hearing:

12 A. The University developed the Plan through a multi-year public involvement process.

13 This Plan represents the culmination of a robust multi-year public process consistent with
14 the City-University Agreement. In October 2015, the University issued a Determination of
15 Significance, which initiated the preparation of an Environmental Impact Statement ("EIS") under
16 the State Environmental Policy Act, ch. 43.21C RCW ("SEPA"). As the lead agency for the EIS,
17 the University held a series of public open-house meetings on the Plan and EIS. Based on those
18 meetings, it defined the Plan's components and refined EIS alternatives. The University published
19 a draft Plan and EIS and, on October 26, 2016, held a public hearing on both. *See* CUA § II.B.2.¹
20 The University received nearly 200 written and oral comments, and it responded to all of them in
21 Chapter 5 of the FEIS. The University also took input from CUCAC in more than a dozen public
22 meetings over the last three years plus specific feedback on the draft and final Plan. In addition,
23 CUCAC opened each of its meetings with a public comment period in which members of the
24 community shared comments on the EIS and Plan.

25
26

¹ This brief cites to the current City-University Agreement, adopted by Ordinance 121688, as the "CUA."

1 **B. The Plan is organized around five guiding principles.**

2 The Plan organizes the University’s development around five guiding principles:

3 Sustainability: The Plan will implement the University’s “commitment to sustainable land
4 use through the preservation and utilization of its existing property and the balance of
5 development, open space, and public use.” (Plan at 90.)

6 Connectivity: The Plan will expand the University’s “commitment to better connect the
7 University internally and with its broader context.” (*Id.* at 91.)

8 Learning-Based Partnerships: The Plan will “support and catalyze academic and teaching
9 research partnerships with allied industries, contribute to a highly livable innovation district, and
10 stimulate job growth and economic development.” (*Id.* at 89.)

11 Flexibility: The Plan will “create a lasting and flexible planning framework to guide
12 development of University projects.” (*Id.* at 88.)

13 Stewardship of Resources: The Plan will “continue responsible and proactive stewardship
14 of [the University’s] campus assets through preservation of its historic, cultural, and ecological
15 resources and managed strategy of property development.” (*Id.* at 92.)

16 **C. This Plan establishes guidelines and standards for four sectors of campus.**

17 As required by the City-University Agreement, the Plan expresses the University’s long-
18 term vision and a ten-year conceptual strategy. CUA § II.A.1. The long-term vision involves a
19 potential net increase of 12 million gross square feet, but this Plan caps development at half of
20 that amount based on the University’s anticipated growth need over the next decade. The Plan
21 will remain in effect until all allowed growth is built or a new master plan is developed. As it did
22 in the 2003 Campus Master Plan, the University allocated proposed growth among four sectors:

23	Central Campus	15%	900,000 GSF
24	West Campus	50%	3,000,000 GSF
25	South Campus	23%	1,350,000 GSF
26	East Campus	12%	750,000 GSF

The Plan identifies 86 potential development sites across these four sectors. It does not commit

1 specific sites to specific projects due to uncertainty in funding and in the precise nature of future
2 needs. Instead, the Plan includes a process for selecting specific sites for funded projects. (*See*
3 Plan, Ch. 6.) This flexible, site-based approach is the same as the 2003 Campus Master Plan.

4 The City-University Agreement requires the University to provide institutional zone and
5 development standards. CUA § II.A.1.d. These are in Chapter 7. For each site, they include height
6 limits, maximum gross square feet, and allowed uses. (*See id.*, Tables 14-17.) The Plan also sets
7 out general development standards imposing a range of other development controls. (*See id.* at
8 238-257.)² In addition, the Plan includes design guidelines addressing the University’s design
9 intention for specific areas of campus. (Plan, Ch. 6).

10 **D. The Plan identifies and reserves space for new open spaces.**

11 The Plan also addresses proposed new open spaces as required by the City-University
12 Agreement. CUA § II.A.1.c. The University will develop some spaces during this Plan as funding
13 becomes available, while others are part of the long-term vision. (Plan at 98-104.) SDCI has
14 recommended shortening the timelines for open-space development. (Recommendation, Cond. 3-
15 9). With a modification to Condition 6, *see* App. A, the University accepts SDCI’s conditions.

16 **IV. STANDARD OF REVIEW**

17 The University is a state agency that must generally comply with local development
18 regulations, except that no local comprehensive plan or development regulation may preclude the
19 siting of its essential facilities. *See Univ. of Wash. v. City of Seattle* (the “LPO Case”), 188 Wn.2d
20 823, 838, 399 P.3d 519 (2017). For the Seattle campus, the University and the City have entered
21 into a series of agreements that constitute the governing development regulations.³ *See also* SMC
22 23.69.006.B. The City-University Agreement adopted by Ordinance 121688 is the current version
23 of the agreement and governs this master planning process.

24 _____
25 ² The Plan also includes a Shoreline Public Access Plan, which becomes effective upon adoption by the City Council.
SMC 23.60A.164.d. The Hearing Examiner is not required to make a recommendation on it.

26 ³ The parties have historically reserved their positions regarding SEPA and the City’s zoning regulations. *See* Ords.
111113, 118982, 121193, 121688. As it has done in the past, the University again reserves its position.

1 Under the City-University Agreement, SDCI first reviews a proposed master plan and
2 submits a recommendation based on standards set out in the agreement itself, in neighborhood
3 plans and policies adopted by ordinance, in SEPA, in other applicable land use policies and
4 regulations, and based on the need for development to allow the University to fulfill its mission.
5 CUA § II.B.8.d. The Hearing Examiner then conducts a public hearing on the plan and SDCI's
6 recommendations. CUA § II.B.9. Within 30 days after the hearing closes, the Hearing Examiner
7 submits to the City Council a recommendation based on the same standards. *Id.*

8 V. AREAS OF DISAGREEMENT

9 The 2018 Campus Master Plan satisfies all applicable standards. SDCI found that “the
10 Master Plan meets Section II.A of the City-University Agreement” and recommends approval
11 with conditions. (*See* Recommendation at 16.) CUCAC separately recommended conditions on
12 the City Council’s approval. The University accepts many of their conditions, *see* App. A, but it
13 does not accept all of them. There are three basic areas of disagreement.

14 A. The Washington Supreme Court’s decision in the LPO Case does not require all of 15 the changes recommended by SDCI.

16 The first disagreement involves the application of the LPO Case, which arose out of a plan
17 to replace an unused building on campus with a new Computer Science and Engineering building.
18 *LPO Case*, 188 Wn.2d at 828. The University argued that Seattle’s Landmarks Preservation
19 Ordinance (“LPO”) cannot apply to its property under applicable provisions of state law. *Id.* at
20 832-33. The Supreme Court held that “the LPO can, at least in some circumstances, be applied to
21 UW property in Seattle.” *Id.* at 830. In reaching this conclusion, the Supreme Court reasoned that
22 the University is a state agency subject to the Growth Management Act, which generally requires
23 state agencies to comply with regulations adopted pursuant to it. ⁴ *Id.* at 837-38. The Court also
24 emphasized certain limits to the Growth Management Act’s applicability:

25 _____
26 ⁴ The University submitted a petition to the Growth Management Hearings Board for a determination of whether the
LPO was in fact adopted “pursuant to” the Growth Management Act. The Board dismissed the University’s petition on
October 30, 2017. The University is still considering whether to seek judicial review of that dismissal.

1 [O]ne limitation on the GMA’s requirement that state agencies must comply
2 with local development regulations is that ‘no local comprehensive plan or
3 development may preclude the siting of essential public facilities.’
4 ‘Essential public facilities include ... state education facilities.’

5 *Id.* at 838 (quoting RCW 36.70A.200(5) and .200(1)). In light of this statutory limit, the Supreme
6 Court’s held that local development regulations may guide—but may not be used to prohibit—the
7 University’s development of public facilities deemed essential to its academic mission. Some of
8 SDCI’s recommendations are consistent with this holding, but others go well beyond it.

9 **1. The University will comply with the Landmarks Preservation Ordinance to the
10 extent it applies.**

11 As an initial matter, the University will voluntarily revise key parts of the Plan to reflect
12 the holding in the LPO Case. First, it will add this text on page 155:

13 The review of historic resources on the campus utilizes the process states
14 above. The University of Washington’s Seattle campus is also potentially
15 subject to the City of Seattle’s Landmarks Preservation Ordinance unless
16 application conflicts with the Board of Regents’ specific authority, is
17 superseded by a specific, directly conflicting statute, or the University is
18 otherwise exempted by law. See *University of Washington v. City of Seattle*,
19 *188 Wn.2d 823, 399 P.3d 519 (July 20, 2017).*

20 Second, on page 238, the University will add this bullet point to the list of potentially applicable
21 Seattle Municipal Code provisions:

- 22
- 23 • Chapter 25.12 – Landmarks Preservation (unless application conflicts
24 with the Board of Regents’ specific authority, is superseded by a
25 specific, directly conflicting statute, or the University is otherwise
26 exempted by law.)

27 In addition to these voluntary revisions, the University accepts these changes proposed in
28 Conditions 31 and 32 of the SDCI Recommendation:

29 Condition 31: Page 151: Amend the paragraph under “Demolition” to delete
30 the last sentence.

31 Condition 32: Page 155: Amend the paragraph preceding “the Historic
32 Resource Addendum (HRA)” to delete information related to the
33 University’s position with respect to the LPO.

34 These changes accurately navigate the line established in the LPO Case between compliance with
35 local development regulations and siting facilities essential to the University’s academic mission.

1 **2. Condition 27, Condition 28, and certain changes proposed in Condition 31 are**
2 **unwarranted by the LPO Case.**

3 The remaining changes—in Conditions 27, 28, and the balance of Condition 31—go too
4 far. In the first two, SDCI recommends deleting statements articulating the University’s intention
5 to balance development and historic preservation. These statements are mere expressions of intent
6 and not development standards. They do not conflict with the LPO Case and need not be revised.
7 In Condition 31, SDCI recommends deleting the statement on page 151 that demolition is
8 permitted prior to future development. This provision simply clarifies that building demolition
9 may occur before a new development proposal is approved. This language is the same as the 2003
10 Campus Master Plan. (*See* 2003 Campus Master Plan at 128.) It does not preempt the University’s
11 specific commitments to obtain required permits and comply with SEPA. (*See* Plan at 151, 238.)

12 **3. The University has authority to define all specific standards for campus**
13 **development in addition to modifying standards of the underlying zoning.**

14 The University also objects to Conditions 12, 17, 23, 29, 30, 34, 35, and 39, where they
15 insert references to “underlying zoning.” These conditions appear to be based on a fundamental
16 misconception of the City-University Agreement’s place in the applicable regulatory framework.
17 The City-University Agreement is the primary development regulation governing the University’s
18 development on campus. *See Laurelhurst I*, CPSGMHB Case No. 03-3-008, Ord. on Motions
19 (June 18, 2003); *Laurelhurst II*, CPSGMHB Case No. 03-3-0016, Final Decision and Ord. (March
20 3, 2004) (recognizing City-University Agreement as a development regulation). The Agreement
21 requires the University’s master plan to include the “institutional zone and development standards
22 to be used by the University.” CUA § II.A.1.d. There is no constraint on this requirement. The
23 University may define all of the development standards that will apply to its development on
24 campus, including standards that would otherwise apply without regard to the underlying zoning.

25 SDCI’s proposed changes vitiate most of SMC 23.69.006.B and Section II.A.1.d of the
26 City-University Agreement. Statutes, however, “must be interpreted and construed so that all the
 language used is given effect, with no portion rendered meaningless or superfluous.” *Whatcom*

1 *County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Also, in the growth
2 management context, development regulations must be interpreted consistently with one another.
3 *See, e.g., WSDP v. City of Seattle*, CPSGMHB Case No. 95-3-0040, Final Decision and Ord.
4 (Sept. 11, 1995). This means “one provision may not thwart another.” *Hensley v. Snohomish*
5 *County*, CPSGMHB Case No. 95-3-0043, Finding of Noncompliance (Nov. 3, 1995).

6 SDCI’s interpretation violates both rules. SMC 23.69.006.B states that the City-University
7 Agreement “shall govern... uses on campus, uses outside the campus boundaries,...transportation
8 policies, ... permit acquisition and conditioning, ... [and] zoning and environmental review and
9 authority...” The section then allows modification of development standards for the underlying
10 zoning through a master plan or an amendment to the City-University Agreement. *Id.* SDCI
11 ignores the first part of this section and interprets the second part as a constraint on what kind of
12 development standards the University may set out in its master plan. If SDCI were correct, the
13 first part of SMC 23.69.006.B and Section II.A.1.d of City-University Agreement would be
14 superfluous. SDCI’s interpretation is contrary to settled law. The Hearing Examiner should reject
15 Conditions 12, 17, 23, 29, 30, 34, 35, and 39, where they insert references to “underlying zoning.”

16 **B. The City lacks authority to impose affordable-housing requirements in the Plan.**

17 The University also objects to Conditions 1 and 2, which impose a specific affordable-
18 housing requirement. The University recognizes the benefits of affordable housing, which factor
19 significantly in its recruitment and retention efforts. Accordingly, the University has voluntarily
20 undertaken significant efforts to address affordable housing for faculty and staff. As SDCI’s
21 Recommendation concedes, the University already provides access to an innovative housing-
22 finance program called “HomeTown Home Loan,” and it recently completed “Bridges@11th,” an
23 affordable housing development open to faculty and staff. The University is voluntarily working
24 in partnership with the Seattle Housing Authority to develop 150 units of new affordable housing
25 for faculty and staff earning 60 percent of adjusted median income. The disagreement is not over
26 affordable housing. Rather, it is over SDCI’s attempt to exercise authority the City does not have.

1 **1. The City cannot impose its proposed affordable-housing requirement as**
2 **substantive SEPA mitigation.**

3 The City lacks substantive SEPA authority to impose an affordable housing requirement.
4 Substantive SEPA mitigation must be based on an applicable SEPA policy and related to clearly-
5 identified significant adverse environmental impacts. SMC 25.05.660.A. Here, the FEIS identifies
6 no significant adverse impacts to housing, and SDCI acknowledges that the City's SEPA housing
7 policy does not apply to major-institution development: "There are no SEPA policies specific to
8 new institutional development. No mitigation is warranted by Seattle's SEPA Housing Policy."
9 (Recommendation at 67.) There is no basis for imposing an affordable-housing requirement as an
10 exercise of substantive SEPA authority.

11 **2. None of the applicable development regulations contain affordable-housing**
12 **requirements.**

13 There is also no basis in applicable development regulations. The City-University
14 Agreement includes housing goals, *see* CUA § II.H, but SDCI admits the goals "refer to market-
15 rate housing, market-rate rentals, and for-sale housing for UW Faculty and Staff, and does (sic)
16 not include rent/income-restricted housing." (Recommendation at 24.) Likewise, the criteria for
17 approving district boundaries or height-limits in major institution overlay districts do not include
18 affordable-housing requirements. *See* SMC 23.34.124.B and SMC 23.34.124.C. There is no
19 substantive regulatory basis for imposing an affordable housing requirement.

20 **3. Seattle's Comprehensive Plan is not a valid independent basis for imposing**
21 **affordable-housing requirements on the Plan.**

22 The sole basis for SDCI's affordable-housing conditions appears to be a generic policy
23 statement plucked from the Housing element of the 2035 Seattle Comprehensive Plan:

24 H 5.19 Consider requiring provision for housing, including rent/income-
25 restricted housing, as part of major institution master plans and development
26 agreements when such plans would lead to housing demolition or
 employment growth.

 (Comp. Plan at 105.) This is an insufficient legal basis for conditioning the Plan. Policy H 5.19 is
 not among the City-University Agreement's standards for Plan approval. That agreement requires

1 the City to consider only “neighborhood plans and policies adopted by ordinance, SEPA, [and]
2 other applicable land use policies and regulations of the City.” CUA § II.B.8.d. SDCI concedes
3 that the applicable adopted neighborhood plan is the University Community Urban Center Plan.
4 Policy H 5.19 is not an adopted part of that plan. (See Comp. Plan at 394-398.) The Housing
5 element is not an “other applicable land use policy” either. SDCI correctly observes that this
6 phrase is a reference to major institution policies in the Land Use element of the Comprehensive
7 Plan. (See Recommendation at 34-38.) Policy H 5.19 is not part of the Land Use element.

8 Applying a generic comprehensive plan policy to a specific development proposal in this
9 way upends this state’s established land use regulatory framework. Courts have long recognized
10 that “a comprehensive plan is a guide and not a document designed for making specific land use
11 decisions.” *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d
12 1208 (1997). Consistent with this, the 2035 Comprehensive Plan expressly states that it has no
13 role in individual land use decisions:

14 Although the City will use the Plan to direct the development of regulations
15 that govern land use and development, it will not use the Plan to review
16 applications for specific development projects, except when an applicable
development regulation expressly requires reference to this Comprehensive
Plan....

17 (Comp. Plan at 17.) Here, the applicable development regulations do not require compliance with
18 the Housing element of the 2035 Comprehensive Plan. It is also not a condition for approval under
19 the City’s rezone regulations, which say instead that compliance with the regulations constitutes
20 compliance with the Comprehensive Plan. SMC 23.34.007.C.

21 The 2035 Comprehensive Plan also states that policies using non-mandatory language
22 should not be construed to impose a specific legal duty to perform a particular act:

23 Some policies use the words shall, should, ensure, encourage, and so forth.
24 In general, such words describe the emphasis that the policy places on the
25 action but do not necessarily establish a specific legal duty to perform a
26 particular act, to undertake a program or project, or to achieve a specific
result.

1 (Comp. Plan at 17.) Policy H 5.19 states that the City should “consider” requiring provisions for
2 housing. This indicates an intent to make the policy’s terms non-binding. There is no basis for
3 SDCI’s affordable-housing conditions. The Hearing Examiner should reject Conditions 1 and 2.

4 **C. The City lacks authority to require the proposed transportation mitigation.**

5 The final significant area of disagreement involves transportation. The University has long
6 understood the need to pay close attention to the traffic impacts of its growth. The 1998 City-
7 University Agreement established an ambitious commitment to maintain University trips at 1990
8 levels until the next master plan. (*See* FEIS at 3.16-23.) When the City and University adopted the
9 next master plan in 2003, the University committed to maintain the 1990 trip caps, and it has
10 maintained compliance every year since 1990—though campus population has grown 35 percent
11 since 1990. (*Id.* at 3.16-22.) This Plan continues the University’s commitment to the 1990 trip
12 caps even though the City-University Agreement allows upward adjustments during a master plan
13 process. It also includes an aggressive new commitment to reduce “drive-alone percentage” (*i.e.*,
14 the percentage of students, staff, and faculty commuting in single-occupancy vehicles) from a
15 goal of 20 percent at the outset to 15 percent. The existing goal of 20 percent already compares
16 favorably with other large universities in urban settings, and it is far below the level set for other
17 major institutions in Seattle.⁵ (*See* FEIS at 3.16-3-3.16-6.)

18 **1. The City cannot impose its proposed transportation-related conditions as**
19 **substantive SEPA mitigation.**

20 Despite these significant commitments, SDCI proposes additional transportation-related
21 conditions in an apparent exercise of substantive SEPA authority. (*See* Recommendation, Conds.
22 49-61.) The University accepts Conditions 54, 56, 59 through 61 with a few minor revisions set
23 out in Appendix A, but it objects to Conditions 49 through 53 and 55. The SEPA analysis behind
24 these six conditions is flawed in at least two respects.

25 _____
26 ⁵ For major institution developments, the Seattle Municipal Code establishes a goal of maximum 50 percent single-
occupancy-vehicles. SMC 23.54.016.C.1. Seattle University’s master plan sets a goal of 35 percent. Ord. 118667
(2013). Swedish Cherry Hill’s master plan sets a goal of 32 percent to be achieved by 2034. Ord. 118655 (2016).

1 First, SDCI must “cite the City’s SEPA policy that is the basis of any condition” it seeks
2 to impose under SEPA. SMC 25.05.660.A.2. The Recommendation contains only an overview of
3 the City’s SEPA authority and is devoid of reference to the specific transportation-related SEPA
4 policies in SMC 25.05.675(R). (See Recommendation at 59-60, 72-83.) This alone requires
5 rejection of the challenged conditions.

6 Second, SDCI did not comply with the City’s SEPA transportation policies. SDCI points
7 to a single impact—the potential for reduced traffic and transit speeds at full build-out—and then
8 requires significant financial contributions for transit improvements that it believes will mitigate
9 that impact. Under SMC 25.05.675(R), the identification of an impact is only the first step in the
10 analysis. To determine whether it warrants SEPA mitigation, SDCI must take at least three more
11 steps. It must first confirm that the impact will “undermine the stability, safety and/or character of
12 a neighborhood or surrounding areas.” SMC 25.05.675(R)(2)(a). Second, SDCI must analyze the
13 factors in SMC 25.05.675(R)(2)(b) to assess the extent of mitigation required. Third, as with all
14 mitigation, SDCI must also comply with the general mandate that any identified mitigation be
15 reasonable in light of the impact. WAC 197-11-600(1)(c); SMC 25.05.660.A.3. SDCI failed to
16 take any of these steps. The Hearing Examiner should reject Conditions 49 through 53 and 55.

17 **2. The City’s proposed conditions are arbitrary, vague, and overbroad.**

18 Perhaps because they are not the result of proper SEPA procedures, these conditions are
19 also substantively improper. As an initial matter, they are based on flawed assumptions. SDCI
20 assumed a 20-percent single-occupancy-vehicle mode split despite clear statements in the Plan
21 that the University will reduce the mode split to 15 percent. SDCI also assumed the University
22 will develop six million square feet at the very outset even though it has taken 15 years to develop
23 the three million square feet allowed by the 2003 Campus Master Plan.

24 Conditions 49 through 53 and 55 also lack sufficient definition in several ways. Critically,
25 SDCI has not quantified the financial cost of any of the improvements it proposes the University
26 fund. The University is a public agency that depends on legislative appropriations, philanthropy

1 and grants, and tuition. It cannot fund operating and capital budgets without predictability. Also,
2 as discussed individually below, SDCI also did not tailor these conditions to ensure that they are
3 proportional to the specific impact they aim to mitigate.

4 **Condition 49 (Traffic Signals):** SDCI does not say what standards Seattle Department of
5 Transportation will apply to determine if a signal is warranted and required at the intersections
6 identified in this condition. Further, SDCI does not provide a range of likely costs for the
7 University's required contribution. Absent this, the University has no reliable budgeting basis.
8 Condition 49 should be rejected.

9 **Condition 50 (ITS Improvements):** SDCI similarly fails to quantify the costs of the ITS
10 improvements contemplated by this condition, and it ignores the availability of other funding
11 sources. SDCI has not limited the mitigation imposed by this condition (contribution to ITS
12 improvements) to the impact it seeks to address (reduced traffic speeds around the University).
13 This means the University could be forced to pay for ITS improvements having no connection to
14 the specific impacts of University development. The contribution in the secondary impact zone is
15 based on the entirely speculative assertion that speed reductions in that zone will be half that in
16 the primary impact zone. This condition is improper and should be rejected.

17 **Condition 51 (Operating Costs for Three Metro buses):** This condition is unnecessary,
18 overbroad, and unprecedented. After careful review of potential impacts to transit, the FEIS found
19 that total demand "can be accommodated" without further mitigation. (FEIS at 3.16-51.) Even so,
20 SDCI wants the University to fund additional bus service because buses at a single location,
21 Campus Parkway and Brooklyn Avenue, are projected to carry 14 percent more passengers (from
22 82 percent of capacity to 96 percent) at full build-out. The proposed mitigation also goes well
23 beyond the perceived impact. "Responsibility for implementing mitigation measures may be
24 imposed upon an applicant only to the extent attributable to the identified adverse impacts of its
25 proposal." SMC 25.05.660.A.4 (emphasis added). The impact SDCI seeks to mitigate is almost
26 entirely the result of Metro's decision to reduce service—not projected University development.

1 Current demand at Campus Parkway and Brooklyn Avenue is 61 percent of capacity. If service
2 remained constant, demand at full build-out would be 64 percent of capacity. The University's
3 impact at full build-out is only three percent over a ten-year period. SDCI ignores this critical
4 distinction between the impact of University development and Metro's service reduction.

5 Also, SDCI never defines "operating costs" and ignores additional revenue from assumed
6 additional riders. It also never explains why 96 percent of capacity is unacceptable as opposed to
7 some other threshold (like 90 percent or 100 percent).⁶ The Hearing Examiner should reject this
8 vague, overbroad, and apparently unprecedented condition.

9 **Condition 52, 53, and 55 (RapidRide Project):** This condition is vague and overbroad.
10 SDCI never defines the scope of the "RapidRide Project," nor does it identify the likely range or
11 type of costs the University would be expected to cover. It also goes beyond the impact (reduced
12 transit speeds) it seeks to mitigate. SDCI makes an unjustified leap from observing a small impact
13 to transit speeds to making that impact the percentage basis of the University's contribution to the
14 costs of an entire RapidRide project that has already been planned to address a variety of transit
15 conditions. The overriding purpose of RapidRide is to allow Metro to add new buses to existing
16 transit corridors. Improving the bus speeds through certain corridors is one aspect of the project.
17 Making it the yardstick for the University's contribution to City-identified capital projects with
18 broader purposes is overbroad and arbitrary. Conditions 52, 53, and 55 should be rejected.

19 **D. The University and City agree on allowed building heights in certain campus sectors.**

20 The Plan proposes changes to height limits for parts of campus. (*See* FEIS, Fig. 3.6-5.)
21 SDCI asserts that these changes must be processed as rezones. As it did in connection with the
22 2003 Campus Master Plan, the University again disagrees. The City-University Agreement does
23 not require a rezone to change height limits. Notwithstanding this disagreement, but without
24 waiving its position, the University has submitted a height rezone application. As shown in the
25 FEIS, the University has satisfied all applicable rezone criteria. (FEIS, Vol. 1 at 3.6-49 to 3.6-72.)

26 ⁶ The 96 percent projection assumes Metro will reduce bus capacity by one-third due to expanding light rail service.

1 SDCI agrees, except for changes proposed at a few sites. CUCAC also requests lower height
2 limits for particular sites. The University agrees to reduce to 105 feet the heights at W20 and W19
3 and to reduce to 30 feet the heights at W31 and W32. (See Conditions 21 and 22.) The University
4 does not agree with CUCAC's recommendation to reduce height at W22. At the hearing, the
5 University will provide further information on why the proposed height limits are appropriate.

6 **E. The University disagrees with certain remaining conditions and would accept others
7 with minor revisions as set out in Appendix A.**

8 Finally, the University disagrees with Conditions 12, 17, 18, 23, 36, 39, 46, 54, and 59
9 through 61 for reasons that are specific to each of those conditions. In the interests of brevity,
10 those reasons are set out in Appendix A. The University will accept Conditions 6, 19, 20, 41, 45,
11 and 56 with minor revisions also set out in Appendix A.

12 **VI. CONCLUSION**

13 The 2018 Campus Master Plan is the culmination of an intensive and inclusive public
14 process, and it carefully balances the University's need to grow to fulfill its academic mission
15 with the impacts growth may have on the surrounding community. The University accepts many
16 conditions recommended by SDCI and CUCAC, but it cannot agree to those that exceed the
17 City's authority or are otherwise arbitrary or unreasonable. The City-University Agreement
18 governs the Hearing Examiner's analysis, and this Plan satisfies all of its applicable requirements.

19 The Hearing Examiner should recommend that the City Council approve the Plan.

20 DATED this 27th day of November, 2017.

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