BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Application of **UNIVERSITY OF WASHINGTON** for approval of a Major Institution Master Plan for property located at 4000 15th Ave. E.	Hearing Examiner File: **CF-314346** Department Reference: 3023261 SDCI'S PREHEARING BRIEF

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I. INTRODUCTION

The Seattle Department of Construction and Inspections (SDCI) issued a 110-page Analysis and Recommendation (Report)[1] assessing the University of Washington's (UW's) proposed Campus Master Plan (CMP)[2] and recommending conditions for the Examiner and City Council to consider. In its Pre-Hearing Brief and Appendix, UW identifies the conditions it accepts and rejects, and explores areas where UW and SDCI disagree over legal authority.

This brief provides SDCI's perspective on the disputed authority. SDCI will further discuss its proposed conditions through hearing testimony and post-hearing briefing.

II. ARGUMENT

A. The CMP may not supersede all City development regulations.

1. The Code authorizes the CMP to modify only development standards of the "underlying zoning."

The City-University Agreement (Agreement)[3] and CMP are creatures of the Code and must remain within its bounds. The Code authorizes the Agreement and CMP to modify only development standards of the "underlying zoning":

> Within the Major Institution Overlay (MIO) Boundaries for the University of Washington **development standards of the underlying zoning may be modified by** an adopted **master plan**, **or** by an amendment or replacement of the 1998 **agreement** between the City of Seattle and University of Washington.[4]

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[1] The Examiner ordered the Report to be Exhibit 1 of the record.

[2] UW's proposed CMP is Exhibit 2. As the context should make clear, this brief uses "CMP" to refer both to the document proposed by UW and the future final document.

[3] UW and SDCI agree the text of the current version of the Agreement was adopted by the Council in 2004. *See* Ord. 121688. *Accord* UW Pre-Hearing Brief at 7.

[4] SMC 23.69.006.B (emphasis added).

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"Development standards of the underlying zoning" are the limitations on physical development applied within each zone, such as height, floor-to-area ratios, setback, and side yard requirements. They ensure the compatibility of development patterns within each zone. Pages 290-91 of the CMP depict the zoning underlying UW's MIO. The development standards of that zoning are in the provisions relevant to those zones in SMC Chapters 23.43 through 23.51B, SMC 23.54.016.B, and SMC 23.54.030. The Code does not allow the Agreement or CMP to modify other development regulations.

Contrary to the Code, the CMP attempts to control all development regulations—modifying some and sweeping others aside—even ones not tailored to any zone. The cornerstone of this attempt is on page 238, under the heading "Applicable City Code," which is attached as Appendix 1. That page declares a default rule: the CMP alone—not the Code—"contains the development standards for University development within the MIO boundary." To remove any doubt the CMP intends to supplant all City development regulations—even those unrelated to underlying zoning—the CMP declares any Code provision the CMP fails to mention cannot apply to UW: "Lack of specificity in the Campus Master Plan development standards shall not result in application of provisions of underlying zoning **or other provisions in the City's code**." To soften the impact of that approach, the CMP voluntarily "recognizes" a smattering of Code provisions that "may apply."[5] Then again, they may not.

SDCI proposes conditions to better align the CMP with the Code. Most significantly, Condition 35 would redraft page 238, borrowing language from the Code and UW's draft. As

[5] In the wake of its failed attempts to secure a judicial declaration that UW is immune from the City's Landmarks Preservation Ordinance (LPO), UW offers to add the LPO to the list of development regulations that "may apply." UW Pre-Hearing Brief at 9.

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redrafted, the text would: (1) identify the development standards of the underlying zoning; (2) declare the CMP supplants those standards; and (3) explain UW remains subject to all other City development regulations that do not preclude the siting of an essential public facility within the meaning of the Growth Management Act (GMA):

> Subject to a Major Institution Overlay (MIO), as shown on page 26, a variety of zoning designations make up the underlying zoning of the Campus. As of the date of this Master Plan, the development standards of the underlying zoning are found in the provisions of SMC Chapters 23.43 through 23.51B, SMC 23.54.016.B, and 23.54.030 relevant to those zones.
>
> This Chapter contains the development standards that supplant the development standards of the underlying zoning within the MIO boundary as allowed by SMC 23.69.006.B and the City-University Agreement. The development standards in this Chapter are tailored to the University and its local setting, and are intended to allow development flexibility and improve compatibility with surrounding uses.
>
> Development standards of the underlying zoning not addressed in the Master Plan may be developed in the future by the University, provided they are consistent with and guided by the goals and policies of the City-University Agreement, the goals and policies of this Master Plan, and the process for any amendments to the Plan required by the City-University Agreement. Lack of specificity in the Master Plan development standards shall not result in application of provisions of underlying zoning.
>
> University development remains subject to all other City development regulations that do not constitute development standards of the underlying zoning and do not preclude the siting of an essential public facility within the meaning of RCW 36.70A.200.[6]

To further align the CMP with the Code, other SDCI conditions insert "underlying zoning" in discussions of CMP-based development standards and rein in passages claiming or suggesting the CMP excuses UW's compliance with other development regulations.[7]

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[6] Report at 62 – 63.

[7] *See, e.g.*, Conditions 17, 23, 29, 30, 31, and 34 (Report at 34 – 62).

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2. UW misreads the Code and Agreement as allowing the CMP to sweep aside all City development regulations.

UW believes the CMP may sweep aside all City development regulations with "no constraint."[8] UW misreads the Code and Agreement.

a. The Code empowers the Agreement or CMP to govern "zoning" and certain other types of development regulations, not all development regulations.

The key Code provision, SMC 23.69.006.B, comprises two sentences. The second sentence, discussed above, authorizes the Agreement or CMP to modify "development standards of the underlying zoning." The first sentence authorizes the Agreement to govern other aspects of UW's relationship with the City. Inserting spacing and emphasis to the dense text, the provision reads:

> For the University of Washington, notwithstanding subsection A of this section above,
>
> the 1998 **agreement** between The City of Seattle and the University of Washington, or its successor, shall govern
>
> relations between the City and the University of Washington,
>
> the master plan process (formulation, approval and amendment),
>
> **uses** on campus,
>
> **uses** outside the campus boundaries,
>
> off-campus land acquisition and leasing,
>
> membership responsibilities of CUCAC,
>
> transportation policies,
>
> coordinated traffic planning for special events,
>
> **permit acquisition and conditioning**,

[8] UW Pre-Hearing Brief at 10 – 11.

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relationship of current and future master plans to the agreement,

zoning and environmental review **authority**,

resolution of disputes,

and amendment or termination of the agreement itself.

> Within the Major Institution Overlay (MIO) Boundaries for the University of Washington **development standards of the underlying zoning may be modified by** an adopted **master plan, or** by an amendment or replacement of the 1998 **agreement** between the City of Seattle and University of Washington.[9]

UW misreads the first sentence as authorizing the Agreement to modify all development regulations. UW accords too much weight to "zoning authority." Zoning is a mapping exercise—the division of land into discrete zones.[10] The City's zoning provisions are SMC Chapters 23.30 – 23.34, which establish zone designations, adopt a map depicting underlying zoning, and govern map amendments. By saying the Agreement may govern "zoning authority," the Code allows the Agreement to dictate how institutional zones will supplant the underlying zoning designations. The Agreement conveys that authority to the CMP,[11] which is why it includes an institutional zone to supplant the underlying zoning designations.[12]

"Zoning" is not a reference to all development regulations. "Zoning," standing alone, does not embrace such other development regulations as: the uses allowed within a zone; development standards for such attributes as height, bulk, and scale; subdivision regulations; critical areas regulations; shoreline master plans; historic preservation ordinances; sign codes;

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[9] SMC 23.69.006.B (spacing and emphasis added).

[10] "Zoning, by definition, involves a division of the community into 'zones' or districts." Patricia E. Salkin, AMERICAN LAW OF ZONING § 9:2 at 9 – 7 (5th ed., 2015).

[11] Agreement § II.A.1.d.

[12] *Compare* CMP at 20 and 26 (establishing the institutional zone) *with* 290 – 91 (depicting the underlying zoning).

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and tree protection ordinances. The GMA recognizes "zoning ordinances" as distinct from "official controls" and a host of other types of development regulations.[13] The Agreement's invitation to govern "zoning" is not an invitation to govern other development regulations.

UW's interpretation of the two sentences would render portions of them superfluous. If "zoning" included all development regulations, there would be no reason for the first sentence to separately authorize the Agreement to govern allowed uses and permit acquisition and conditioning—elements governed by City development regulations.[14] Likewise, there would be no reason for the second sentence to authorize the Agreement to modify development standards of the underlying zoning—the first sentence would already have covered it by reference to "zoning authority."

SDCI's reading accords meaning to both sentences. The first authorizes the Agreement to make the call on several specific types of development regulations, including the zoning designation and allowed uses. The second authorizes the Agreement or CMP to modify a different class of development regulations: the development standards of the underlying zoning. Neither sentence empowers the CMP to sweep aside all City development regulations.

b. The Agreement remains within the Code's bounds.

UW relies on one line of the Agreement, which states the CMP will include "[t]he institutional zone and development standards to be used by the University...."[15] That clause does not support UW's declaration of independence from all City development regulations.

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[13] RCW 36.70A.030(7).

[14] *See, e.g.*, SMC Chapters 23.42 – 23.50 (including use regulations) and 23.76 (permit procedures).

[15] UW Pre-Hearing Brief at 10 (quoting Agreement § II.A.1.d).

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Again, the Agreement is a creature of the Code and must be read as consistent with it. The Code authorizes the Agreement or CMP to control specific types of development regulations, not all of them. UW sets the Agreement in conflict with the Code by reading "institutional zone and development standards" as "institutional zone and all development *regulations without regard to the underlying zoning or Code*." That would substitute the broader term "development regulations"—sweeping in such regulations as use limitations and protections for critical areas and historic resources—for the narrower terms "development standards" or, as used in the Code, "development standards of the underlying zoning." The Agreement's phrase must be harmonized with the Code. Consistent with the Code's language, the phrase must be read to mean: "institutional zone and *any modified* development standards *of the underlying zoning*...."

UW's reading would also create conflict within the Agreement, which directs SDCI and the Examiner to assess the CMP in relation to "other applicable land use...regulations."[16] If UW were correct—if a different clause meant the CMP, not the Code, defines all development regulations applicable to UW—no "other" land use regulations could "apply" and there would be nothing for SDCI and the Examiner to assess. The only way to avoid this conflict is to read the Agreement's command for the CMP to include the "institutional zone and development standards to be used by the University" as a command to include what the Code allows: zoning and modified development standards of the underlying zoning.

[16] Agreement §§ II.B.8.d and II.B.9.

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B. The CMP should accurately reflect case law regarding the Landmarks Preservation Ordinance.

The CMP must be consistent with recent case law about the applicability of the City's Landmarks Preservation Ordinance (LPO) to UW. SDCI proposes conditions to fairly acknowledge that case law.[17]

UW twice failed to obtain a ruling that the LPO cannot apply to UW property. First, the Washington Supreme Court rejected UW's request for a declaration that the LPO could never apply. The Court concluded:

> [I]t is up to the legislature, not UW, to grant, expand, restrict, or rescind the Regents' authority. The plain language of the current statutes provide that the Regents' authority is subject to limitation by applicable state statutes, including the GMA's provision that state agencies must comply with local development regulations adopted pursuant to the GMA. UW property that is located in Seattle is thus potentially subject to the LPO absent a specific, directly conflicting statute.[18]

The Court found no specific, directly conflicting statute, although it agreed with the City that the GMA bars local development regulations from precluding the siting of a state education facility.[19] If UW believes another statute offers protection, UW must raise it in an as-applied challenge to a future City LPO decision.

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[17] *See, e.g.*, Conditions 27, 28, 29, 32, and 33 (Report at 60 – 62).

[18] *University of Washington v. City of Seattle*, 188 Wn.2d 823, 845, 399 P.3d 519 (2017). A copy of the decision is attached as Appendix 3.

[19] *Id.*, 188 Wn.2d at 837 – 38 (citing RCW 36.70A.200(5)).

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The Court refused to rule on UW's claim that the LPO was not "adopted pursuant to the GMA,"[20] which prompted UW's second challenge: a petition to the Growth Management Hearings Board. The Board dismissed that challenge.[21] UW did not appeal.[22]

The Examiner should decline UW's offer to needlessly characterize the Court's decision through additional text on page 155 of the CMP.[23] UW cuts "potentially" out of the context of the Court's ruling that UW must comply with development regulations adopted pursuant to the GMA[24] and paraphrases *dicta* as if it were a separate holding.[25] The CMP need not discuss the Supreme Court decision on page 155, which merely concludes a discussion of UW's internal process to review campus historic resources. Where the CMP discusses only what UW does voluntarily—and does not discuss any larger legal context or impose requirements on UW—there is no need to mention the Court's decision.

The Examiner should also discount UW's concern with Conditions 27 and 28, which would delete claims that the CMP or a UW review process "balances preservation of historic

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[20] *Id.* at 839.

[21] *University of Washington v. City of Seattle*, CPSGMHB Case No. 17-3-0008, Order on City of Seattle's Motion to Dismiss (Oct. 31, 2017).

[22] UW did not appeal by the deadline of November 30, 2017. *See* RCW 36.70A.300(5). *Cf.* UW Pre-Hearing Brief at 8 n.4 (suggesting UW might appeal the Board's order).

[23] *Cf.* UW Pre-Hearing Brief at 9. UW proposes adding this and a cite to the Court's decision: "The University of Washington's Seattle campus is also potentially subject to the [LPO] unless application conflicts with the Board of Regents' specific authority, is superseded by a specific, directly conflicting statute, or the University is otherwise exempted by law."

[24] *See University of Wash.*, 188 Wn.2d at 845 (quoted above).

[25] After rejecting UW's claim that a specific statute shielded the Regents from the LPO, the Court conceded through *dicta* that UW might find a statutory shield in a future as-applied challenge: "There are certainly factual scenarios where the LPO might conflict with the Regents' specific authority and thus be inapplicable, but again, those scenarios must be considered in their specific factual contexts." *Id.* at 834. The CMP should not leave the mistaken impression that this was an additional holding separate from the Court's conclusion that "UW property that is located in Seattle is thus potentially subject to the LPO absent a specific, directly conflicting statute." *Id.* at 845. *Cf.* UW Pre-Hearing Brief at 9.

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campus assets" with the increased investment and density the CMP authorizes.[26] Neither the CMP nor UW strikes that balance. The LPO does.

C. The City has authority to impose SDCI's recommended affordable housing conditions.

The City has authority to impose Conditions 1 and 2, which would require UW to construct 150 affordable housing units for faculty and staff earning less than 60% AMI. The City's Comprehensive Plan Policy H 5.19 speaks directly to requiring affordable housing in major institution master plans that lead to employment growth:

> Consider requiring provisions for housing, including rent/income-restricted housing, as part of major institution master plans and development agreements when such plans would lead to housing demolition or employment growth.[27]

The CMP is a major institution master plan that will lead to employment growth. The City may require affordable housing under Policy H 5.19.

The Agreement also says SDCI shall assess and mitigate the direct, indirect, and cumulative impacts of development authorized by a CMP.[28] By increasing faculty and staff, the CMP would affect housing affordability. The City may require affordable housing consistent with the Agreement.

UW's three attempts to duck Policy H 5.19 miss the mark.[29] First, UW may not cast the CMP as a "specific development proposal" beyond the reach of comprehensive plan policies.

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[26] *See* UW Pre-Hearing Brief at 10. *See also* Report at 60 (Conditions 27 and 28). UW also challenges Condition 31 on the mistaken assumption it was motivated by the Supreme Court decision. Condition 31, which deals with the permissible timing of demolition, stems from the CMP's limited authority to alter Code provisions, not the Supreme Court decision. *See* Report at 61.

[27] Policy H 5.19. Comprehensive Plan at 105.

[28] Agreement § II.B.8.d.

[29] *See* UW Pre-Hearing Brief at 12 – 14.

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The FEIS characterizes approval of the CMP as a nonproject action, not a decision on a specific development proposal.[30] Because the Agreement is a development regulation,[31] the CMP—which establishes permitted uses and modifies development standards of the underlying zoning—is likely also a development regulation, not a decision on a specific development proposal. And UW's argument would prove too much even if it were correct—if the CMP were a specific development proposal beyond the reach of the Comprehensive Plan, SDCI and the Examiner could not respect the Agreement's command to consider even the "land use policies" UW concedes apply.[32]

Second, UW gains nothing from the Comprehensive Plan's reminder that it does not "necessarily establish a legal duty."[33] SDCI does not claim the Comprehensive Plan imposes a duty; just that it shapes the City's exercise of its police powers. Any duty stems from the GMA, which commands: "Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan."[34] The CMP modifies use regulations and development standards that would otherwise apply to the campus. The CMP should be consistent with and implement the Comprehensive Plan.

Finally, UW may not use the Agreement to beat back Policy H 5.19. UW misreads the Agreement to allow SDCI and the Examiner to consider only policies codified in the Land Use Element of the Comprehensive Plan, and to bar consideration of Policy H 5.19 because it is

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[30] FEIS at 2-7.

[31] UW Pre-Hearing Brief at 10.

[32] *See* Agreement §§ II.B.8.d and II.B.9; UW Pre-Hearing Brief at 13.

[33] *Id.* at 13 – 14 (quoting the Comprehensive Plan at 17).

[34] RCW 36.70A.130(1)(d).

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codified in the Housing Element. The Agreement does not say SDCI's and the Examiner's recommendations are to be based exclusively on certain items; it says only that those items must be part of the recommendation.[35] The Agreement does not waive the GMA's command that revisions to development regulations be consistent with and implement the Comprehensive Plan. In any event, the list in the Agreement includes "land use policies," not, as UW casts it, "the Land Use element of the Comprehensive Plan." Whether codified in the Land Use, Housing, Transportation, or some other element of the Comprehensive Plan, a policy may fairly be deemed a "land use policy" where it speaks of mitigating the impact of land use and development.[36]

D. The City has authority to impose SDCI's recommended transportation conditions.

UW elevates form over substance when asking the Examiner to reject many of SDCI's transportation conditions as a matter of law.[37] Although SDCI's report consistently cites SMC 25.05.675.R,[38] UW complains the report cites no specific SEPA transportation policy in subsection R.1, and faults the report for not expressly applying text from subsection R.2.

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[35] *See, e.g.*, Agreement § II.B.8.d: "[SDCI's] review and recommendation shall be based on the provisions of this Agreement, neighborhood plans and policies adopted by ordinance, SEPA, other applicable land use policies and regulations of the City." *Accord id.* § II.B.9.

[36] Upon reflection, SDCI's report misplaced the discussion of Policy H 5.19. It was placed in § II.B.1, which discusses neighborhood plan provisions. *See* Report at 21 – 24. The Policy is not part of a neighborhood plan. It should have been placed in § II.B.2, under "Citywide Land Use Policies: Major Institutions." *See id.* 34 – 38. Compounding the confusion, SDCI failed to assign auto-numbered headings to §§ II.B.1 and .2. That meant the Table of Contents incorrectly displays their respective subsections as subsections of § II.B, repeating such headings as "Transportation" and "Housing." SDCI will clarify this in its proposed findings and conclusions.

[37] *See* UW Pre-Hearing Brief at 14 – 15.

[38] Report at 82 – 95.

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UW does not contend SMC 25.05.675.R fails to support the contested transportation conditions; only that SDCI's report fails to connect the dots. Those dots are easily linked. The policy background for the transportation SEPA policy marks the University District for special attention: "The University District is an area of the City which is subject to particularly severe traffic congestion problems, as highlighted in the 1983 City-University Agreement, and therefore deserves special attention in the environmental review of project proposals."[39] Other components of that subsection apply to a proposal that will exacerbate University District traffic. For example, one notes "[e]xcessive traffic can adversely affect the stability, safety and character of Seattle's communities" and another warns "[s]ubstantial traffic volumes associated with major projects may adversely impact surrounding areas."[40]

Section III of the Agreement, "Traffic and Transportation, and Related Impacts," is consistent with that SEPA policy background and contains provisions relevant to SDCI's proposed conditions:

> The City, which is responsible for the regulation and control of City streets, has determined that the university area is substantially impacted by automobiles during peak periods....
>
> The University will support the City and adjacent communities in improving traffic flow on street networks surrounding and leading to the University....
>
> The City and the University will continue to act in partnership with King County Metro and Community Transit to provide a high level of transit service to the campus, the university area, and nearby neighborhood business districts.[41]

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[39] SMC 35.05.675.R.1.f. This policy and others mentioning projects are relevant to the CMP even though it is not a project action. The City may condition the CMP at this nonproject stage to shape and mitigate future projects.

[40] SMC 35.05.675.R.1.a and .b.

[41] Agreement §§ III.B.1, III.C.5, and III.C.6.

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UW cannot support its contention that the dozen pages of the report detailing transportation impacts and conditions fail to consider the factors in SMC 25.05.675.R.2. SDCI's witnesses will further explain how those factors support the disputed conditions.

Even if SDCI's report had failed to connect the dots as UW would like, the remedy would not be for the Examiner to reject the transportation conditions. SEPA conditions are ultimately imposed by the Council, not SDCI. The Examiner or Council may connect the dots just as readily, based on the report and forthcoming testimony.

III. CONCLUSION

UW and SDCI share much of the same vision for the next phase of UW's growth. Where UW and SDCI disagree about the authority shaping that growth, SDCI respectfully asks the Examiner to find: (1) the CMP may not supersede all City development regulations; (2) the CMP should accurately reflect case law regarding the LPO; and (3) the City has the authority to impose SDCI's recommended housing and transportation conditions.

Respectfully submitted December 4, 2017.

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APPLICABLE CITY CODE

The applicable zoning of the Campus is Major Institution Overlay (MIO), as shown in on page 26. Pursuant to the City-University Agreement and Seattle Municipal Code Chapter 23.69, University development within the University's MIO boundary is governed by this Campus Master Plan. Therefore, this Campus Master Plan contains the development standards for University development within the MIO boundary. The development standards in this chapter are tailored to the University and its local setting, and are intended to allow development flexibility and improve compatibility with surrounding uses.

Development standards not addressed in the Campus Master Plan may be developed in the future by the University, provided they are consistent with and guided by the goals and policies of the City-University Agreement, the goals and policies of this Campus Master Plan, and the process for any amendments to the Plan required by the City-University Agreement. Lack of specificity in the Campus Master Plan development standards shall not result in application of provisions of underlying zoning or other provisions in the City's code.

State and federally mandated regulations are acknowledged and will be followed.

In addition to the standards in this CMP chapter, the University of Washington recognizes the following titles, chapters and sections of the Seattle Municipal Code may apply to University development:

- Title 15 – Street and Sidewalk Use (for University activities in City-owned right-of-ways only)
- Title 22 – Building and Construction Codes
- Chapter 23.57 – Communications Regulations (communications utilities and devices within the MIO are allowed as described in this CMP pursuant to subsection 23.57.002.D)
- Chapter 23.60A – Shoreline Master Program (except the University may comply with its own shoreline public access plan if adopted pursuant to subsection 23.60A.164.K.)
- Subsection 23.69.006.B – related to the University's Major Institution Overlay District designation
- Chapter 23.76 – Procedures for Master Use Permits and Council Land Use Decisions (except the City-University Agreement and state law control in the event of any conflict with the requirements of the Chapter)
- Chapter 23.88 – Rules; Interpretation (except the City-University Agreement and state law control in the event of any conflict with the requirements of the Chapter)
- Chapter 25.06 -Floodplain Development
- Chapter 25.08 – Noise Control
- Chapter 25.09 – Critical Areas Regulations
- Chapter 25.11 – Tree Protection (as further addressed below in the Tree section of this Development Standards chapter)

As acknowledged in the City-University Agreement, by creating and adopting the CMP, neither the City nor the University waive or concede their legal position regarding zoning and SEPA jurisdiction on campus.

Excerpts of the
1998 AGREEMENT BETWEEN THE CITY OF SEATTLE
AND THE UNIVERSITY OF WASHINGTON
(as amended in 2003 and 2004)

[Text from the online version of Ord. 121688, with tracked changes accepted.]

....

SECTION II Master Plan and Cumulative Impacts

A. Formulation of Master Plan

1. The University will formulate a ten (10) year conceptual Master Plan and Environmental Impact Statement (EIS) which will include all of the following elements:

a. Boundaries of the University of Washington as marked on the official Land Use Maps, Chapter 23.32 of the Seattle Municipal Code, and any proposed changes.

b. Proposed non-institutional zone designations for all areas within the boundaries.

c. A site plan which will provide:

(1) the height and location of existing facilities;

(2) the location of existing and proposed open space, landscaping, and screening; and

(3) the general use and location of any proposed development and proposed alternatives.

d. The institutional zone and development standards to be used by the University.

e. A general description of existing and proposed parking facilities and bicycle, pedestrian, and traffic circulation systems within the University boundaries and their relationship to the external street system.

f. A transportation plan which will include specific University programs to reduce traffic impacts and to encourage the use of public transit, carpools, vanpools, and other alternatives to single- occupancy vehicles. The traffic and transportation programs included herein will be

incorporated into the Master Plan unless program revisions have been made in accordance with the provisions of this Agreement.

g. A general description of future energy and utility needs, potential energy system and capacity improvements, and proposed means of increasing energy efficiency.

h. A description of alternative proposals for physical development including explanation of the reasons for considering each alternative.

i. Proposed development phases, including development priorities, estimated timetable for proposed developments, and proposed interim uses of property awaiting development.

j. A description of any proposed street or alley vacation.

k. Information required by Section II.E.2.

....

B. Procedures for Consideration, City Approval, and University Adoption of the University Master Plan

Notwithstanding the provisions of any applicable City ordinances, the following procedures will be followed for consideration, approval, and adoption of the University's Master Plan:

....

8. Within one hundred and twenty (120) days of the University's submittal of the proposed final Master Plan and Final EIS under Section II.B.4., unless the one hundred and twenty day deadline is jointly waived in writing by the University and the Director, the Director of DPD will submit to the City Hearing Examiner the following items:

....

d. DPD's review and recommendation shall be based on the provisions of this Agreement, neighborhood plans and policies adopted by ordinance, SEPA, other applicable land use policies and regulations of the City. This review shall also consider the need for University development to allow the University to fulfill its mission of public instruction, research, and services while assessing and mitigating the direct, indirect and cumulative impacts of such development on the physical and human environment and on city services, and whether the proposed development and changes represent a reasonable balance of the public benefits of development and

change with the need to maintain livability and vitality of adjacent neighborhoods.

9. The Hearing Examiner will conduct a public hearing on the University's proposed final Master Plan. Except as otherwise provided by this Agreement, detailed procedures pertaining to notice of the hearing and the Hearing Examiner's consideration of the Master Plan will be in accordance with City procedures for public hearings before the Hearing Examiner on land use matters requiring City Council action. Within thirty (30) days after the hearing is closed, the Hearing Examiner will submit recommendations to the City Council based on the provisions of this Agreement, neighborhood plans and policies adopted by ordinance, SEPA, other applicable land use policies and regulations of the City, and will include written findings and conclusions regarding physical development and environmental impacts.

....

SECTION III Traffic and Transportation, and Related Impacts

....

B. Issues Statement

1. Traffic. The City, which is responsible for the regulation and control of City streets, has determined that the university area is substantially impacted by automobiles during peak periods. As traffic on major arterials in the university area approaches capacity, commuters extend the peak periods in an effort to avoid congestion or seek alternate routes through neighborhoods by traveling on residential streets which are not designed for through traffic.

a. Sources of Traffic. There are three sources of traffic in the university area. The first source is through trips, or trips that originate outside the area and pass through it to reach the regional freeway system or other destinations. The second source of traffic volumes is non-University related trips which are associated with employment, shopping and entertainment where the trips could originate within or outside the university area or are internal to the area. The third source of trips is related to the University and these University-related trips originate both within and outside the university area and have a University facility as their origin or destination.

b. Continued Traffic Growth. Since the early 1970's, the University has been committed to having a TMP that minimizes traffic and parking congestion on campus and in the surrounding neighborhoods. The University's TMP has been successful in shifting commuters to alternatives other than single occupant vehicles (SOV's). However, non-

University related trips and through trips on the streets serving the university area have continued to grow.

c. Future University Development. The University has been mandated by the State of Washington to accommodate a significant increase in students by 2010. The new master planning process will analyze and plan for any development necessary to accommodate additional students, staff and faculty and identify measures to mitigate associated traffic impacts.

....

C. General Transportation Policies

1. As set forth in the Issues Statement, growth is anticipated to occur in the university area. The University, the City and the community groups recognize that they need to work together if this growth is to be accomplished in a manner that achieves and maintains acceptable traffic levels.

2. The University will continue its practice of providing a strong TMP that promotes walking, bicycling, carpooling/vanpooling and transit at the lowest price possible to the user. The use of the single occupant private automobile for traveling to, from and on the campus will be discouraged through the provision of facilities and services favoring alternative modes. The pedestrian character of the campus will be maintained and enhanced. The University will coordinate its efforts in this regard with the neighborhood planning processes.

3. The University will cooperate with the City in providing a network of bicycle paths to, from and on the campus. Adequate bicycle parking, including secure racks and lockers will be provided in safe, convenient locations on campus, but not in a manner which would promote unnecessary intra-campus bicycle travel.

4. The University will continue to improve campus accessibility for the disabled through provisions of graded pathways, ramps, curb cuts, elevators and disabled persons' campus transportation.

5. The University will support the City and adjacent communities in improving traffic flow on street networks surrounding and leading to the University including decreasing the impact of street parking. The University and the City recognize that streets in neighborhoods in the university area at a distance from the University may also be impacted by street parking by University-related commuters who continue their commute trip by other means such as walking, rollerblading, bicycle, carpool, and transit.

6. The City and the University will continue to act in partnership with King County Metro and Community Transit to provide a high level of transit service to the campus, the university area, and nearby neighborhood business districts.

7. Although details of the RTA's light-rail route through the University District, and its associated benefits and impacts, are not yet known, the University and the City support the plans of the RTA to provide light rail service to the university area and the construction of two stations in the university area, with preference placed on underground alternatives for both the service and stations. This support will include the University and the City each designating a representative to participate in meetings and actively seeking to resolve conflicts. The new Master Plan will incorporate assumptions based on the RTA plans existing at the time of the adoption of the Master Plan.

8. The City and the University recognize that they play an important role in non-University processes designed to study and address transportation issues that ultimately affect the university area and will continue to work to address transportation problems with other major employers in and around the university area, community councils, the neighborhood planning organizations, King County Metro, Community Transit, the Regional Transit Authority, Washington Department of Transportation (WSDOT), the Puget Sound Regional Council (PSRC), and the Elevated Transportation Company (Monorail) Public Development Authority. The City and the University recognize the importance of their active participation in the WSDOT Trans-Lake Washington Study.

9. The traffic and transportation goals in the General Physical Development Plan for 1991 to 2001 respond to the above policies and will be used to guide transportation development on the University Campus. The City and the University recognize the need for specificity in goals and objectives must be balanced with the need to allow changes to be made in the new Master Plan to address new or newly identified impacts.

188 Wash.2d 823, 399 P.3d 519
Supreme Court of Washington.

UNIVERSITY OF WASHINGTON,
Respondent,
v.
CITY OF SEATTLE; DOCOMOMO US—WEWA; Historic Seattle; and the Washington Trust for Historic Preservation, Appellants.

No. 94232-3

Argued June 6, 2017

Filed: July 20, 2017

Synopsis

Background: Public university brought action against city challenging applicability of city's landmarks preservation ordinance that restricted property owners' ability to make changes to property designated as landmarked property. The Superior Court, King County, No. 15-2-30603-1, 2016 WL 2941519 , Suzanne R. Parisien, J., granted summary judgment in favor of university. City and nonprofit group dedicated to preservation of modern architecture appealed. The Court of Appeals certified case for Supreme Court's direct review.

Holdings: The Supreme Court, Yu, J., held that:

[1] property owned by university could be subject to ordinance pursuant to statute governing powers and duties of university and its regents;

[2] university was state agency that was required to comply with local development regulations adopted pursuant to Growth Management Act (GMA); and

[3] university was a property owner within meaning of ordinance.

Reversed and remanded.

****520** Appeal from King County Superior Court, No. 15-2-30603-1, Honorable Suzanne R. Parisien.

Attorneys and Law Firms

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Opinion

YU, J.

***826** ¶1 The city of Seattle's (City's) municipal code includes a " 'Landmarks Preservation Ordinance' " (LPO), chapter 25.12 Seattle Municipal Code (SMC). SMC 25.12.010. Pursuant to the LPO, property with significant historical or cultural importance may be designated as landmark property. Once property has been nominated for potential landmark designation, the LPO restricts the owner's ability to make changes to that property. The University of Washington (UW) owns property in Seattle but contends that the LPO cannot apply to any property owned by UW (UW property). The City disagrees.

¶2 We must now resolve this disagreement. UW wanted to demolish a building on its Seattle campus, but that building was nominated for potential landmark designation pursuant to the LPO. UW therefore filed a declaratory ***827** judgment action asking for a judicial determination that the LPO cannot ****521** apply to any UW property as a matter of law.

¶3 As discussed below, all of UW's arguments either fail as a matter of law or cannot be decided in the first instance by a state court of general jurisdiction. Therefore, we reverse the trial court and remand for entry of summary judgment in favor of the City and DOCOMOMO US—WEWA (DOCOMOMO).[1]

FACTUAL AND PROCEDURAL BACKGROUND

¶4 The basis for the controversy currently before us dates back nearly 20 years. In 2000, UW prepared a draft campus master plan (CMP) that made UW's position clear: "The City landmarks ordinance is a local ordinance which is inapplicable to University property because it conflicts with the [Board of] Regent[s'] exclusive authority over its buildings." Clerk's Papers (CP) at 99.

¶5 UW ultimately agreed to an amended CMP, which the City approved, that memorialized the parties' disagreement without resolving it: "By adopting and approving the Master Plan, neither the University nor the City of Seattle waives or concedes its legal position concerning the scope of either party's legal authority to control or regulate University property." *Id.* at 277; *see also* UNIVERSITY OF WASHINGTON MASTER PLAN: SEATTLE CAMPUS 125 (Jan. 2003), http://cpd.uw.edu/sites/default/files/master-plan/2003_CMP/uw-2003-campus-master-plan.pdf [https://perma.cc/9T66-LF3W].

¶6 Since UW adopted its CMP in 2003, the applicability of the LPO came up in connection with UW's 2010 renovation ***828** of Husky Stadium and with a 2011 nomination of the Sand Point Naval Air Station for potential landmark designation. In both of those situations, UW chose to voluntarily comply with the LPO process but was careful to note that such voluntary compliance "neither waives nor concedes its legal position with regard to the City's regulatory jurisdiction over the University as an agency of the State of Washington." CP at 176.

¶7 The facts alleged in UW's complaint in this case are uncontroverted. In 2015, UW's Board of Regents (Regents) identified the More Hall Annex (Annex) for possible demolition, to be replaced with a new Computer Science and Engineering Building (CSE II). The Annex had been constructed in 1961 to house UW's nuclear reactor. After the reactor was shut down in 1988 and UW's nuclear engineering program ended four years later, the Annex sat vacant and unused. On December 2, 2015, DOCOMOMO nominated the Annex for potential designation as a landmark pursuant to the LPO. While the process of choosing the site for CSE II continued, UW filed this declaratory action in King County Superior Court, seeking a ruling that the LPO cannot apply to UW property as a matter of law.

¶8 On cross motions for summary judgment, the trial court ruled in favor of UW, determining that the LPO "has no application because the University is not a 'person' or 'owner' as defined in the LPO." *Id.* at 609. The trial court expressly did not consider any of the other issues presented. The City and DOCOMOMO appealed.[2]

¶9 The Court of Appeals, Division One, certified the case for our direct review, and our commissioner accepted certification pursuant to RCW 2.06.030 and RAP 4.4. Ruling Accepting ***829** Certification, *Univ. of Wash. v. City of Seattle,* No. 94232-3, at 2 (Wash. Mar. ****522** 9, 2017). We accepted amici briefings supporting the City from the Washington State Department of Archaeology and Historic Preservation, Futurewise, and the Washington State Association of Municipal Attorneys (WSAMA).

ISSUES[3]

¶10 A. Is the Regents' "full control" over UW property "except as otherwise provided by law," as expressed in RCW 28B.20.130(1), subject to limitation by applicable state statutes?

¶11 B. If so, is UW a "[s]tate agenc[y]" that must comply with local development regulations adopted pursuant to the Growth Management Act (GMA) in accordance with RCW 36.70A.103?

¶12 C. If so, is the LPO a local "development regulation^" that was "adopted pursuant to" the GMA in accordance with RCW 36.70A.103?

¶13 D. Is UW a property " '[o]wner' " as defined by SMC 25.12.200 such that the LPO applies to UW's Seattle property?

STANDARD OF REVIEW

¶14 UW seeks a holding that the LPO can never apply to any UW property as a matter of law. There are no

disputed material facts in this case, and all the questions presented require statutory and regulatory interpretation. Our review is thus de novo. *Burns v. City of Seattle,* 161 Wash.2d 129, 140, 164 P.3d 475 (2007).

¶15 State statutes and local ordinances are subject to the same interpretive rules. ***830** *Faciszewski v. Brown,* 187 Wash.2d 308, 320, 386 P.3d 711 (2016). Where the meaning of a statute or ordinance is plain and unambiguous, we must "give effect to that plain meaning as an expression of legislative intent." *Burns*, 161 Wash.2d at 140, 164 P.3d 475. "Plain meaning is discerned from viewing the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole." *Id.*

ANALYSIS

¶16 UW and the City have been grappling over the LPO's applicability to UW property since the City first adopted the LPO in 1977. *State v. City of Seattle,* 94 Wash.2d 162, 164-65, 615 P.2d 461 (1980). There is no question that UW's Seattle property includes historically and culturally significant resources. The debate has always centered on who has the authority to control those resources.

¶17 The last time we addressed this issue directly was in 1980. The court held that the LPO could not apply to a portion of UW property as a matter of constitutional law. *Id.* at 166, 615 P.2d 461. In the present case, however, the questions presented are based on the interpretation of statutes and regulations that have been substantially amended since *City of Seattle* was decided, so we must reconsider the ultimate question of whether the LPO can apply to UW property in light of the current statutory language.

¶18 We hold that *City of Seattle* has been superseded in part by statute and that the LPO can, at least in some circumstances, be applied to UW property in Seattle. We therefore reverse and remand for the entry of summary judgment in favor of the City and DOCOMOMO.

A. The Regents' control over UW property is subject to limitation by applicable state statutes

¶19 Both UW and its Regents are creatures of statute, with "no powers that are not conferred by statute, ***831** and none that the legislature cannot take away or ignore." *State v. Hewitt Land Co.*, 74 Wash. 573, 580, 134 P. 474 (1913). The first Washington State Legislature established "the University of Washington" and "vest[ed]" its governance in the Regents. LAWS OF 1889, ch. 12, §§ 1, 3, at ****523** 395, 96. Beginning in 1909, the legislature expressly granted the Regents "full control of the university and its property of various kinds." LAWS OF 1909, ch. 97, § 5, at 240.

¶20 That statutory language had not been amended when *City of Seattle* was decided in 1980, and the statute's strong, unequivocal language was a key factor in our decision. *City of Seattle,* 94 Wash.2d at 165, 615 P.2d 461 (citing former RCW 28B.20.130 (1977)). We began with the principle that municipal ordinances such as the LPO cannot apply where they conflict with state statutes pursuant to article XI, section 11 of the Washington Constitution. *Id.* at 166, 615 P.2d 461.

¶21 Two state statutes were at issue in *City of Seattle.* The first was former RCW 28B.20.130(1), which, as noted, gave the Regents " 'full control of the university and its property of various kinds.' " *Id.* at 165, 615 P.2d 461. The court also considered former RCW 28B.20.392(2)(b)(ii) (1969), which specifically gave the Regents the authority to " 'to *raze, reconstruct, alter, remodel* or add to existing buildings,' " *id.* at 166, 615 P.2d 461, in the "Metropolitan Tract," which is "the original 10-acre parcel of land endowed to Washington Territory to establish a university, and now lies in the center of downtown Seattle," *id.* at 164, 615 P.2d 461. We held that applying the LPO to UW property in the Metropolitan Tract would conflict with both of those statutes and therefore that such application would be unconstitutional. *Id.* at 166, 615 P.2d 461.

¶22 However, in 1985, the legislature amended the statute regarding the Regents' control to provide that the Regents have "full control of the university and its property of various kinds, except as otherwise provided by law." LAWS OF 1985, ch. 370, § 92(1). That language remains in the current statute, codified at RCW 28B.20.130(1). In addition, ***832** the statute authorizing UW to raze its Metropolitan Tract buildings was repealed in 1999. LAWS OF 1999, ch. 346, § 8(2). Consequently, "the legal underpinnings of our precedent have changed or disappeared

altogether," and we must consider the issue anew. *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters,* 180 Wash.2d 54, 66, 322 P.3d 1207 (2014).

¶23 The language of the current version of RCW 28B.20.130(1) is unequivocal: the Regents have "full control" over UW property "except as otherwise provided by law." When presented with such clear language, we must " 'assume the Legislature meant exactly what it said and apply the statute as written.' " *Town of Woodway v. Snohomish County,* 180 Wash.2d 165, 174, 322 P.3d 1219 (2014) (quoting *Duke v. Boyd,* 133 Wash.2d 80, 87, 942 P.2d 351 (1997)). There can be little doubt that the plain language of RCW 28B.20.130(1) means that the Regents' control over UW property may be limited, at least, by other applicable state statutes.[4] The GMA is certainly a state statute. Whether it is applicable is discussed below.

¶24 Despite this plain language, UW argues that the legislature never intended to limit the Regents' plenary authority over UW property. As a matter of statutory interpretation, UW argues that the GMA is a "general law" that cannot "implicitly amend" the Regents' full control over UW property. Br. of Resp't at 28 (boldface omitted). Relatedly, UW also argues that a "general law" cannot "alter prior enabling statutes that assign specific authority to individual state agencies." ***833** *Id.* at 36 (boldface omitted) (citing ****524** *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wash.2d 275, 309-10, 197 P.3d 1153 (2008)).

¶25 UW relies heavily on the "general-specific rule," which is a rule of statutory construction that "a specific statute will prevail over a general statute." *Residents Opposed*, 165 Wash.2d at 309, 197 P.3d 1153. The general-specific rule is undoubtedly a sound principle of statutory construction where applicable. The problem is that before applying the general-specific rule, we must identify a conflict between the relevant statutes that cannot be resolved or harmonized by reading the plain statutory language in context. *Id.* at 309-10, 197 P.3d 1153 (holding that RCW 36.70A.103 is a general statute that cannot apply in the face of a state statute that specifically and explicitly exempts alternative energy facilities from local regulation). Where such a conflict is presented, "[a] state agency cannot both preempt local laws and comply with such laws at the same time," and the more specific statute prevails. *Id.* at 309, 197 P.3d 1153.

¶26 Here, there was no implicit amendment of RCW 28B.20.130(1), and there is no conflict between that statute and the GMA. The Regents' authority over UW property was *explicitly* amended in 1985, allowing the Regents to exercise full control over UW property "*except as otherwise provided by law.*" LAWS OF 1985, ch. 370, § 92(1) (emphasis added) (underlining omitted). This language unambiguously reflects a legislative decision that the Regents' authority is subject to limitation by applicable state statutes. Therefore, if the GMA is applicable, then the Regents' authority must yield unless there is a specific statute that conflicts with the GMA's application to a particular portion of UW's property. Any such conflict must be addressed in the context of a particular nomination for potential landmark designation or similarly specific facts.

¶27 UW also points to RCW 28B.20.700, which empowers the Regents "to provide for the construction, completion, ***834** reconstruction, remodeling, rehabilitation and improvement of buildings and facilities authorized by the legislature for the use of the university" as proof that it cannot be subject to the LPO via the GMA. Unfortunately for UW, this statute says nothing about *demolishing* any buildings, and it does not give the Regents any authority over buildings or facilities on UW property that were *not* authorized by the legislature for the use of the university. However, UW is seeking a holding that the LPO cannot *ever* be applied to *any* UW property in *any* way. There are certainly factual scenarios where the LPO might conflict with the Regents' specific authority and thus be inapplicable, but again, those scenarios must be considered in their specific factual contexts.

¶28 Finally, UW points to legislative history, claiming that the legislature added the " 'except as otherwise provided by law' " language in 1985 for the sole purpose of enabling the newly created, now-defunct Higher Education Coordinating Board to carry out its "authority to coordinate educational policy among the state's four-year institutions of higher education." Br. of Resp't at 29. But UW does not explain why we should look to legislative history even though the statute's meaning is unambiguous. We decline to do so. *Tingey v. Haisch,* 159 Wash.2d 652, 657, 152 P.3d 1020 (2007).

¶29 UW also raises a number of policy arguments. We may resist a plain meaning interpretation that would lead to absurd results, *Burns,* 161 Wash.2d at 150, 164 P.3d 475, but UW's policy-based arguments show only that UW views the consequences of RCW 28B.20.130(1)'s plain meaning as undesirable, not that we should view those consequences as absurd. There are competing, reasonable policy arguments that favor the City and DOCOMOMO. We do not attempt to resolve these competing policy arguments, but they do show that the plain meaning of the statute does not necessarily lead to absurd results.

¶30 UW relies on *City of Seattle* to demonstrate the legislature's " 'intent that the decision-making power as to preservation ***835** or destruction of Tract buildings rests with the Board of Regents.' " Br. of Resp't at 12 (quoting *City of Seattle,* 94 Wash.2d at 166, 615 P.2d 461). This argument suffers from two fundamental problems. First, as noted above, former RCW 28B.20.392(2)(b)(ii) was repealed in 1999. UW argues the repeal does ****525** not matter because when it repealed the statute, the legislature provided that "[n]othing in this act may be construed to diminish in any way the powers of the board of regents to control its property including, but not limited to, the powers now or previously set forth in RCW 28B.20.392." LAWS OF 1999, ch. 346, § 1. This would be a forceful argument if not for the second fundamental problem with UW's argument: the Annex building at issue in this case was located on the Seattle campus in the University District, not in the downtown Metropolitan Tract. Thus, the Regents' specific authority to raze Metropolitan Tract buildings pursuant to former RCW 28B.20.392 is inapplicable.

¶31 UW further claims support for its position from the fact that "the Legislature has appropriated funds both to demolish the Annex and to construct CSE II in its place." Br. of Resp't at 27. This assertion is misleading. UW cites as support for its assertion the declaration of UW's senior vice president of planning and management. That declaration actually states that the legislature appropriated funds to deactivate the Annex's nuclear facility in 2006 as required by federal law. Nine years later, in 2015, the legislature approved funding for construction of CSE II. There is no indication these funding grants were in any way related to each other or to the statutory interpretation issue before us now.

¶32 Finally, UW claims that its CMP already protects historical resources, so applying the LPO is unnecessary. This does nothing to advance UW's argument about the plain meaning of RCW 28B.20.130(1) as a matter of law. If UW feels that plain meaning was unintended or ill advised, it must take its concerns to the legislature.

***836** ¶33 Meanwhile, WSAMA's amicus brief lays out in detail the potential ramifications of a decision in UW's favor. WSAMA points to potential effects statewide, given "that the campuses of other colleges and universities are located within cities and towns," and those cities and towns have their own local development regulations that expressly contemplate application to higher education facilities. Br. of Amicus WSAMA at 5. WSAMA further contends that the statutes governing the control of these higher education facilities are "identical to the UW's authorizing legislation," such that "the careful balance established by other cities' codes will be upset, and ... the legal dispute between the City and the UW could recur in another forum as a dispute between a different city and a different college or university." *Id.* at 6-7.

¶34 In addition to these widespread geographical implications, WSAMA notes that accepting UW's position may have widespread legal implications because the GMA's entire statutory scheme "is unworkable if development regulations are not applied equally." *Id.* at 16. According to WSAMA, a holding in UW's favor in this case would not be limited to the context of historic preservation. Rather, the GMA's entire scope would be called into question, potentially affecting such broad, critically important areas as "protection of the environment and critical areas, and providing for housing, transportation[,] water, sewer and stormwater." *Id.* To that end, WSAMA contends that the plain language of RCW 28B.20.130(1) shows that the legislature "acted conclusively to *rein in* the UW and put to rest the UW's blanket immunity claim in [*City of Seattle,* 94 Wn.2d 162, 615 P.2d 461]." *Id.* at 10-11.

¶35 We do not attempt to resolve how these potential ramifications should be balanced against UW's competing policy arguments, but WSAMA's concerns are certainly reasonable enough to demonstrate that applying RCW 28B.20.130(1) as written will not lead to absurd results. Accordingly, we hold that the plain language of ***837** RCW

28B.20.130(1) provides that the Regents' control over UW property is subject to limitation by other applicable state statutes.

B. UW is a state agency that must comply with local development regulations adopted pursuant to the GMA

¶36 UW next contends that even if the Regents' authority is subject to limitation by applicable state statutes, the GMA is not an *applicable* state statute because UW is not a "[s]tate agenc[y]" that "shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to" the GMA. ****526** RCW 36.70A.103. The term "state agency" is not defined by either the GMA or the regulations interpreting it. RCW 36.70A.030; WAC 365-196-200, -210. "When a statutory term is undefined, the words of a statute are given their ordinary meaning." *State v. Gonzalez*, 168 Wash.2d 256, 263, 226 P.3d 131 (2010). We hold that UW is a state agency within the plain and ordinary meaning of that term as it is used in RCW 36.70A.103.

¶37 At the risk of overstating the obvious, the plain and ordinary meaning of a "state agency" is an "agency of the state"—that is, an entity authorized to act on behalf of and under the control of the State of Washington. *See Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 106, 285 P.3d 34 (2012); RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. LAW INST. 2006). UW is an entity that is authorized to act on behalf of the State of Washington "to provide a liberal education in literature, science, art, law, medicine, military science and such other fields as may be established therein from time to time by the board of regents or by law." RCW 28B.20.020. To fulfill its mission, UW has been granted specific authority, *see generally* ch. 28B.20 RCW, which is subject to revision by the legislature, *Hewitt,* 74 Wash, at 580, 134 P. 474. UW is clearly a state agency as that term is ordinarily defined.

¶38 This ordinary meaning of a state agency is in no way undermined by the statutory context at issue. In fact, one ***838** limitation on the GMA's requirement that state agencies must comply with local development regulations is that "[n]o local comprehensive plan or development regulation may preclude the siting of essential public facilities." RCW 36.70A.200(5). "Essential public facilities include ... state education facilities." *Id.* at (1). This limitation would be superfluous if agencies concerned with siting state educational facilities, such as UW, were not required to comply with local development regulations at all.

¶39 Furthermore, the City points out that UW is a state agency for the purposes of many state laws, including "the Public Records Act and the Washington Law Against Discrimination, among others." City's Reply Br. at 6 (citing RCW 42.56.010(1); RCW 49.60.040(19)). Moreover, UW has consistently held itself out as a state agency in this and other cases. *See, e.g., City of Seattle,* 94 Wash.2d at 166-67, 615 P.2d 461 ("*Since the University is a state agency* and no statute expressly provides that the Tract is subject to local laws, the University argues that the Tract is immune from the city's landmarks ordinance." (emphasis added)); CP at 178 ("[T]he University neither waives nor concedes its position with regard to the City's regulatory jurisdiction over the University *as an agency of the State of Washington*." (emphasis added)).

¶40 In response, UW contends that "[t]he Legislature expressly specifies where it intends the broad term 'state agencies' to include institutions of higher education." Br. of Resp't at 40 (boldface omitted). This is not necessarily the case. Certainly, some statutes are written to expressly include state universities when referring to state agencies. *See, e.g.,* RCW 70.175, 070(2) (rural health system project). However, some statutes are written to expressly *exclude* state universities. *See, e.g.,* RCW 41.06.133(1)(k)(iii) (state civil service law). And some statutes are written with the assumption that state universities are state agencies. *See, e.g.,* RCW 42.56.010(1) (Public Records Act); ***839** *Progressive Animal Welfare Soc'y v. Univ. of Wash.,* 125 Wash.2d 243, 884 P.2d 592 (1994) (plurality opinion) (applying the Public Records Act to UW). Thus, UW's argument that the legislature always specifies when it intends to include state universities as state agencies is simply not true.

¶41 UW is a state agency in accordance with the plain and ordinary meaning of that term, which is clearly appropriate given the statutory context of RCW 36.70A.103. Therefore, UW must comply with local development regulations adopted pursuant to the GMA.

C. We do not address the merits of UW's argument that the LPO is not a local development regulation adopted pursuant to the GMA

¶42 UW next argues that even if it is required to comply with local development ****527** regulations adopted pursuant to the GMA, the LPO is not such a regulation because, according to UW, the LPO was not *properly* adopted in *compliance* with the GMA.[5] On this issue, UW's arguments must be addressed in the first instance by the Growth Management Hearings Board (GMHB). RCW 36.70A.280(1)(a); *Stafne v. Snohomish County*, 174 Wash.2d 24, 32, 271 P.3d 868 (2012). Therefore, if UW wants its arguments considered on the merits, it must file a petition with the GMHB. If the result is unfavorable, UW may then appeal to the superior court. *Stafne,* 174 Wash.2d at 38, 271 P.3d 868.

D. UW is a property owner as defined by the LPO

¶43 Finally, we reach the specific issue on which the trial court based its ruling. The trial court agreed with UW that the LPO, by its own terms, cannot apply to UW property because UW is not a property " 'owner' " as defined by the LPO. CP at 610. We reverse this determination because by failing to account for the regulatory context in ***840** which the LPO defines a property owner, the trial court applied an unreasonably technical and narrow definition of that term. We hold that UW is a property owner as defined by the LPO and therefore that the LPO's own language does not preclude its application to UW property.

¶44 Seattle's LPO creates a comprehensive regulatory scheme for historic preservation. There are procedural and substantive rules for every stage of the process: nominating property for potential landmark designation, considering such nominations and seeking input from the property owner and the public at large, approving or disapproving nominations, negotiating with the property owner regarding the controls that apply to landmark property and the incentives the property owner will receive in return, and amending or repealing previous landmark designations. Thus, landmark designation is not automatically given to any nominated property that meets the minimum qualifications, and landmark designations may be reviewed to accommodate changed circumstances.

¶45 UW argues that its own historic preservation procedures are sufficient, if not superior, to the LPO, but whether UW is a property owner as defined by the LPO requires us to answer the very different question of what the city council intended. The LPO defines an " '[o]wner' " as "a person having a fee simple interest, a substantial beneficial interest of record or a substantial beneficial interest known to the [Landmarks Preservation] Board [(Board)] in an object, site or improvement." SMC 25.12.200. In turn, a "person" is defined as "an individual, partnership, corporation, group or association." SMC 25.12.220.

¶46 The City contends that UW is a person, and therefore an owner, because it is a corporation according to the ordinary meaning of that term as "a group of individuals acting collectively as a legal person, distinct from the individuals themselves, to exercise the powers bestowed upon it," City's Opening Br. at 26. UW does not dispute that it falls within the ordinary meaning suggested by the City. ***841** However, UW does argue that it is not a corporation because it is not organized pursuant to Title 23, 23B, or 24 RCW and the state legislation that established UW in its present form does not use the word " 'corporate' " or " 'corporation.' " Br. of Resp't at 18.

¶47 UW casts its interpretation as the only one that accords with the LPO's plain language, but the LPO does not say "corporation organized pursuant to Title 23, 23B, or 24 RCW" or "corporation as established in its charter or enabling legislation." It says only "corporation," a word that, as a general matter, may reasonably be interpreted either ordinarily and broadly, as the City contends, or technically and narrowly, as UW contends. The word alone, without any context, does not tell us which interpretation was intended by the city council. Therefore, before declaring the word's plain meaning, we must consider ****528** the context in which it is used. *Burns,* 161 Wash.2d at 140, 164 P.3d 475; *Tingey,* 159 Wash.2d at 658, 152 P.3d 1020 (if a word has both ordinary and technical meanings, the technical meaning is applied only if the context shows that the word is being "used in its technical field"). It is apparent from the context that " '[o]wner,' " " '[p]erson,' " and "corporation" were intended to be interpreted according to their broad, ordinary meanings. SMC

25.12.200, .220,

¶48 First looking to the definitions themselves, a narrow and technical interpretation simply does not make sense. An " '[o]wner' " is not restricted to a legal owner, but rather includes anyone with "a fee simple interest, a substantial beneficial interest of record or a substantial beneficial interest known to the Board." SMC 25.12.200. Similarly, a " '[p]erson' " includes, among others, a "group or association," words that, to the best of our knowledge, do not have technical legal meanings. SMC 25.12.220.

¶49 Second, when read in the complete regulatory context of the LPO, these terms are not defined for the purpose of limiting the LPO's intended reach, as UW contends. Rather, they are defined for the purpose of ensuring that anyone whose property rights may be affected by an action ***842** pursuant to the LPO is given proper notice of his or her substantive and procedural rights and obligations. Effecting this purpose requires that the words be interpreted according to their broad, ordinary meanings.

¶50 The LPO provides that "[a]ny person including the Historic Preservation Officer and any member of the Board may nominate *any* site, improvement or object for designation as a landmark." SMC 25.12.370(A) (emphasis added). Once property has been nominated, the LPO's standards for approving landmark designation are as follows:

An object, site or improvement which is more than twenty-five (25) years old may be designated for preservation as a landmark site or landmark if it has significant character, interest or value as part of the development, heritage or cultural characteristics of the City, state, or nation, if it has integrity or the ability to convey its significance, and if it falls into one (1) of the following categories:

A. It is the location of, or is associated in a significant way with, an historic event with a significant effect upon the community, City, state, or nation; or

B. It is associated in a significant way with the life of a person important in the history of the City, state, or nation; or

C. It is associated in a significant way with a significant aspect of the cultural, political, or economic heritage of the community, City, state or nation; or

D. It embodies the distinctive visible characteristics of an architectural style, or period, or of a method of construction; or

E. It is an outstanding work of a designer or builder; or

F. Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the City and contributes to the distinctive quality or identity of such neighborhood or the City.

SMC 25.12.350. The criteria for nominating and approving property for landmark designation thus do not address what type of entity owns the property. Instead, *any* person is permitted to nominate *any* object, site, or improvement ***843** within the City's geographical jurisdiction for landmark designation, which may be approved if the property meets the criteria of SMC 25.12.350.

¶51 Meanwhile, in literally every instance where the LPO *does* use the word "owner," it is in a provision for giving notice to those whose property rights may be affected or in a provision advising property owners of their substantive and procedural rights and obligations. None of these provisions distinguish between different types of owners; the rights and obligations of an individual are the same as those of a partnership, corporation, group, or association. SMC 25.12.120 (economic incentives and compensation for affected property owners), .210 (property owner is a party of record), .320(E) (Historic Preservation Officer shall "encourage and advise owners"), .320(H) (Historic Preservation Officer shall "grant certificates of approval all without prejudice to the right of the owner at any time to apply directly to the Board"), .380 ****529** (providing for service on the owner of notice of public meetings where the Board considers whether to take further action on a nomination), .400 (providing for service of notice on the owner if the Board approves landmark designation), .440 (providing for service on the owner of the Board's report and the LPO's negotiation procedures for approved landmark designations), .490-.570, .610, .630 (providing procedures for the owner to negotiate with the Board regarding controls and incentives if landmark designation is approved and for review of any controls or incentives by a hearing officer and then by the city council), .580-.600 (providing that owners may not be deprived of

reasonable economic use of their property), .650-.660 (providing for notice to the owner of ordinances designating landmark property and of any intended amendment or repeal of such ordinances), .670-.680, .720-.730, .750-.770 (procedures for obtaining approval for making alterations to property nominated for landmark designation), .835 (conditions under which an owner may demolish landmark property), .840 (general provisions for service of ***844** notice on the owner), .850 (situations where proceedings on a landmark nomination will be terminated), .860 (owner's right to seek revocation or alteration of designation, incentives, and controls), .870 (owner's right to copies of staff reports and studies), .900 (owner's right to request advice from the Board).

¶52 Thus, when the plain language is considered in context, the city council's clear purpose in defining an owner was to ensure that everyone with the right to notice receives it and is made aware of his or her substantive rights and obligations. UW's technical, narrow interpretation does not reflect this purpose.

¶53 UW, however, contends that the broad, ordinary interpretation advanced by the City would lead to absurd results because it is "so broad [it] would include the state and federal government even though neither are corporations as that term is commonly understood." Br. of Resp't at 21. To the extent that UW's concern is that this would allow the LPO to apply to all state and federal property, it is undisputed that the LPO cannot apply where it actually conflicts with state or federal law. And to the extent that the LPO can apply to state and federal property without conflicting with state or federal law, there is no reason to deprive the state or federal government of the same substantive and procedural rights and obligations afforded to other property owners by the LPO.

¶54 Considered in context, it is clear that the LPO's definition of "owner" should be broadly construed in order to ensure that it serves the purposes for which it was intended. UW properly does not dispute that it is a corporation, and thus a person, and thus an owner, under a broad reading. We therefore reverse the trial court's ruling on this issue.

CONCLUSION

¶55 The Regents enjoyed over a century of plenary authority over UW property. It is understandable that UW ***845** is resistant to changing that structure. It is also understandable that UW takes offense at any suggestion that it does not sufficiently value its own historical resources. However, it is up to the legislature, not UW, to grant, expand, restrict, or rescind the Regents' authority. The plain language of the current statutes provide that the Regents' authority is subject to limitation by applicable state statutes, including the GMA's provision that state agencies must comply with local development regulations adopted pursuant to the GMA. UW property that is located in Seattle is thus potentially subject to the LPO absent a specific, directly conflicting statute. Accordingly, we reverse the trial court's grant of summary judgment in favor of UW and remand for entry of summary judgment in favor of the City and DOCOMOMO.

WE CONCUR:

Fairhurst, C.J.

Johnson, J.

Madsen, J.

Owens, J.

Stephens, J.

Wiggins, J.

****530** González, J.

Gordon McCloud, J.

Footnotes

1 DOCOMOMO is a nonprofit group dedicated to the preservation of modern architecture. The name "is an acronym that stands for **Do**cumentation and **Co**nservation of Buildings, Site[s], and Neighborhoods of the **Mo**dern **Mo** vement." Clerk's Papers at 181. The nonprofit groups Historic Seattle and the Washington Trust for Historic Preservation intervened in this action by stipulation. All three nonprofits are represented by the same counsel and have filed joint briefing throughout

the case, so this opinion refers to all three as "DOCOMOMO."

2 The City and DOCOMOMO did not seek a stay of the trial court's ruling pending appeal. Therefore, following the ruling, the City issued a demolition permit and UW demolished the Annex. However, we decide this case on the merits because it raises "a question of continuing and substantial public interest," *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wash.2d 619, 632, 860 P.2d 390, 866 P.2d 1256 (1993) (citing *Sorenson v. City of Bellingham,* 80 Wash.2d 547, 558, 496 P.2d 512 (1972)).

3 The City raises the question of whether UW's CMP supplants the LPO, However, UW invokes the CMP only as evidence that it is unnecessary to apply the LPO to UW property. We therefore discuss the CMP to the extent that it is relevant to the other issues presented, rather than as a stand-alone issue.

4 There may be a question as to whether the Regents' full control over UW property may be limited directly by *local* ordinances. In *City of Seattle,* UW argued "that a blanket rule of immunity applies to exempt state property from municipal regulations unless the legislature specifically provides otherwise." 94 Wash.2d at 166, 615 P.2d 461. This court "decline[d] to apply a rule of immunity, and [found] it unnecessary to express an opinion on the validity of such a rule." *Id.* at 167, 615 P.2d 461. We have since firmly rejected any such blanket immunity, holding instead that we must " 'determine the intent of the Legislature when deciding whether a governmental unit is subject to a municipal zoning ordinance.' " *City of Everett v. Snohomish County,* 112 Wash.2d 433, 440, 772 P.2d 992 (1989) (quoting *Dearden v. Detroit*, 403 Mich. 257, 264, 269 N.W.2d 139 (1978)). However, this case concerns only applicable *state* statutes, not local ordinances.

5 The court requested supplemental briefing from the parties regarding the adoption of the LPO. After the parties filed their supplemental briefs, the City moved to admit additional evidence or to strike portions of UW's supplemental brief. This motion was passed to the merits and is now denied.