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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 POST-HEARING BRIEF

I. INTRODUCTION

The University of Washington requests that the Hearing Examiner recommend approval of its proposed 2018 Campus Master Plan. The Seattle Department of Construction and Inspections (“SDCI”) also recommends approval with certain conditions. The City-University Community Advisory Committee (“CUCAC”) generally supports the Master Plan with 33 recommendations. The University has agreed to many of CUCAC’s recommendations, as detailed in Appendix A to its Pre-Hearing Brief, and has accepted almost all of SDCI’s recommended conditions.

While the parties are largely in agreement, there are still a few areas of disagreement. Their differences center on: (a) the relationship of the Master Plan to the regulatory framework in which it is prepared; (b) the City’s authority to impose housing and transportation conditions on the Master Plan; and (c) the necessity, reasonableness, and proportionality of certain proposed transportation conditions. Neither the law nor the record support SDCI’s position in these areas.

1 **II. APPENDICES TO BRIEF**

2 There are three appendices attached to this brief.

3 Appendix A identifies which of SDCI's conditions the University has accepted. In some
4 instances, the agreement includes revised language, as set out in Appendix A, and the reasoning
5 behind the agreement.

6 Appendix B contains non-substantive line edits to the Master Plan. They are intended to
7 clarify the Plan, thereby improving the usability of the document. SDCI has agreed that these line
8 edits are appropriate.

9 Appendix C contains the University's proposed findings of fact and conclusions of law on
10 particular topic areas.

11 **III. SUMMARY OF EVIDENCE**

12 **A. The University of Washington is a state agency whose funding depends on**
13 **taxpayers, students and their families, and private philanthropy.**

14 The University of Washington is a state institution of higher education. Because it is a
15 public agency, the University's growth differs from private-sector growth. Unlike private
16 industry, the University does not control its revenue sources. Its funding depends on the public.
17 President Ana Mari Cauce testified that the University's main funding sources are legislative
18 appropriations, tuition and fees, and grants and private gifts.

19 Sally Clark explained that most funding comes with strings attached. Almost all gifts and
20 grants are restricted to specific programs. Legislative appropriations for specific statewide
21 initiatives do not always include the University. As an example, Ms. Clark described a State
22 program providing transit passes to employees in a few state agencies. The Legislature excluded
23 the University's employees from that program. While the University would like the program to
24 include its employees, that decision is in the hands of the Legislature—not the University. What is
25 more, that funding would be tied to the transit passes themselves. It could not be used to pay for
26 other transportation pilot programs or mitigation that might be imposed on the Master Plan.

1 In the context of physical development (and related mitigation), the University must use
2 central University funds to pay for building-project expenses unless other sources, such as grants,
3 gifts, or dedicated state appropriations, provide funds to cover the expense. Theresa Doherty
4 testified that most of the University's operating funds (approximately 65 cents of every dollar)
5 come from tuition and fees, not legislative appropriations. Unless the expense of mitigation
6 imposed on the Master Plan is funded by the Legislature or by a grant or gift, the University's
7 students and families must pay the bill. This is important to remember when assessing SDCI's
8 proposed conditions.

9 **B. The University provides significant public benefits.**

10 President Cauce explained that the University's fundamental mission is to serve the public
11 through higher education, research, and patient care. She testified that access to higher education
12 creates economic opportunity, especially for low and middle income students. Bachelor's degree
13 holders earn an average of \$1 million more over their life. Beyond improving the graduate's life,
14 the transformative power of higher education also affects their families and community. (Exhibit
15 A28). The University is focused on increasing access for low- and middle-income students. The
16 Husky Promise, a program providing tuition assistance for every income-qualifying Washington
17 resident who gains admission, has helped some 39,000 students attend the University in the last
18 ten years. (Exhibit A31). The University is also committed to increasing enrollment for first-
19 generation students. A record-breaking 37 percent of its 2017 freshman class is composed of
20 students who are the first person in their family to attend college. (*Id.*).

21 Other witnesses described how research and innovation on campus serves the public.
22 Professor Ed Lazowska testified to several life-saving break-throughs, including the creation of
23 Medic One, the discovery of fetal alcohol syndrome, the development of the Hepatitis B vaccine,
24 and the invention of portable kidney dialysis machines. In the technology realm, he said that
25 University student and faculty researchers created the OneBusAway transit application, solved an
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1 AIDS-related protein structure problem with a video game, and developed facial age-progression
2 software now used to search for missing children.

3 The University's research and innovation goes beyond science and technology. It includes
4 solving big social challenges, including housing affordability and homelessness. Professor Thaisa
5 Way and Ms. Clark described the Doorway Project, a new partnership with YouthCare aimed at
6 reaching homeless young people in the University District. The Doorway Project will host
7 quarterly pop-up events to connect with young people struggling to find shelter, get a job, or go
8 back to school. (Exhibit A35). The University has also launched a partnership with Seattle
9 Housing Authority to construct 150 units of affordable housing on University-owned property off
10 campus in the University District. (Exhibit D14). Other programs provide access to affordable
11 housing for faculty and staff—including the Bridges @11th development and the Hometown
12 Home Loan Program. These initiatives outside of the Master Plan demonstrate the University's
13 commitment to helping address Seattle's affordable housing challenges.

14 Finally, President Cauce noted that the University is a major economic driver and provider
15 of charity care. The University provided \$360 million in uncompensated care in 2016, and is the
16 largest provider of charity care in the state. (Exhibit A27). A 2014 study found that the University
17 also generates \$12.5 billion in annual economic activity in the state, resulting in an estimated
18 \$273 million in tax revenue for the City of Seattle. (Exhibit A26).

19 As President Cauce observed, the University of Washington should really be called the
20 University *for* Washington.

21 **C. The development proposed in the Campus Master Plan is necessary to allow the**
22 **University of Washington to fulfill its academic mission.**

23 The growth allowed under the Master Plan will help maintain and expand the myriad
24 benefits the University provides the citizens of Seattle and the state. President Cauce, Professor
25 Way, and Professor Lazowska testified to significant gaps between in-state demand for post-
26 secondary education and the state's ability to provide it. Washington ranks in the bottom third of

1 states in degree production. (Exhibit A28). In science, technology, engineering, and mathematics,
2 our state ranks first in employment opportunities but 34th in production of relevant bachelor's
3 degrees, 40th in master's degrees, and 30th in doctoral degrees. To close the gaps, the Legislature
4 has established a goal of ensuring that at least 70 percent of Washington's adults aged 25 to 44
5 will have a post-secondary credential. (Exhibits A29, A30). Enrollments at the University must
6 (and are expected to) increase as part of the effort to close the gap. The University must expand
7 its facilities to accommodate this growth.

8 Caitlin Clauson described how the University projected these space needs when setting the
9 growth allowance in the Master Plan. The University's faculty also explained how the Master
10 Plan will allow it to close a qualitative gap in facilities. They testified that modern teaching
11 methods require space for hands-on learning, interdepartmental collaboration, experimentation,
12 and community engagement. Professor Way testified that community engagement is a central
13 feature of modern teaching. The spaces envisioned in the "Innovation District" will support this
14 kind of teaching. The Master Plan will also allow the University to modernize its laboratory and
15 research spaces. Professor Lazowska pointed out that the aeronautical engineering department
16 uses a wind tunnel constructed in the 1930s, before there were jets. He also noted that emerging
17 fields of study, like nanotechnology, did not exist ten years ago and now need space on campus.

18 The City-University Agreement requires SDCI to consider "the need for University
19 development to allow the University to fulfill its mission of public instruction, research, and
20 services...." CUA § II.B.8.d.¹ SDCI did not rebut the University's evidence on this point. The
21 Hearing Examiner must therefore find the Master Plan will allow the University to develop the
22 space required to fulfill its mission of public instruction, research, and service.

23 **D. The University engaged all stakeholders throughout the Master Plan process.**

24 The Master Plan and the environmental impact statement ("EIS") behind it are the
25 culmination of a robust multi-year public-involvement process that reached thousands of
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¹ This brief cites the City-University Agreement as the "CUA."

1 stakeholders. Julie Blakeslee and Ms. Doherty testified that the University worked with CUCAC
2 to develop a Public Participation Plan to guide the University’s public engagement efforts.
3 (See Exhibit D2 at 280-86). Those efforts included mailings, newspaper notices, a website, email,
4 open houses, and other outreach to ensure broad dissemination of information and ample input.
5 Ms. Doherty testified that the University received many comments as a result of the process and
6 considered all of them as it revised and finalized the Master Plan.

7 **1. The University actively pursued full engagement from CUCAC.**

8 Ms. Clark, an ex-officio member of CUCAC, described the University’s special efforts to
9 engage that group. University representatives met with every member organization to emphasize
10 the importance of their involvement. They also made numerous presentations to the group to
11 describe the process and the contents of the draft and final Master Plan. The University also paid
12 for a facilitator to guide CUCAC’s discussions to gain clear feedback and ensure full and equal
13 participation by all members. CUCAC feedback was informed and meaningful.

14 **2. The University provided all environmental review notices required by SEPA**
15 **and its Public Participation Plan.**

16 For the environmental review process, Ms. Blakeslee testified that the University followed
17 the Public Participation Plan and requirements in the State Environmental Policy Act, ch. 43.21C
18 RCW (“SEPA”). There was a 21-day public scoping period in October 2015 for which the
19 University provided notice through mailings, newspaper notices, and emails. (Exhibit A15). It
20 provided a 45-day comment period after issuing the draft EIS (“DEIS”). (Exhibit A16). During
21 this time, the University also engaged stakeholders at three open houses, two online open houses,
22 three drop-in office hour sessions, community meetings, and a formal public hearing. When the
23 University issued the final EIS (“FEIS”)² in July 2017, it again provided notice through mailings,
24 newspaper notices, and emails. (Exhibit A17). The scoping and publication notices were also
25 published in the Department of Ecology’s SEPA Register. (Exhibits A12-A14).

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² The DEIS and FEIS together comprise the EIS.

1 **E. The FEIS provides detailed analysis of potential environmental impacts and**
2 **responses to every comment to the DEIS.**

3 Rich Schipanski, the primary author of the EIS, discussed the alternatives analyzed in the
4 document, the elements of the environment studied, and the approach to comments on the DEIS.
5 The EIS contains a “no action” alternative and five “action” alternatives based on the objectives
6 of the Master Plan and comments received during the scoping process. All action alternatives
7 would meet the objectives of the Master Plan and reflect a growth allowance of six million net
8 new gross square feet within the University’s Major Institution Overlay (“MIO”) boundaries.
9 Alternative 1, the preferred alternative, reflects the Master Plan. Alternative 2 studies the same
10 development distribution with no height increases. Alternative 3 maintains the height increases in
11 the Master Plan but shifts development capacity to West Campus and up to 20 percent in South
12 Campus. Alternative 4 studies the same height increases with the same capacity in West Campus
13 and capacity shifted to Central and East Campus. Alternative 5 assumes the potential street
14 vacation of a portion of Northlake Place does not occur.

15 The EIS studied 17 elements of the environment. For each, the EIS identified potential
16 significant adverse impacts and, if applicable, proposed mitigation measures. It also includes
17 sensitivity maps showing the likelihood that development in certain areas would cause impacts. A
18 summary of the EIS’s conclusions regarding impacts and mitigation is on pages 1-10 to 1-39 of
19 the FEIS. (Exhibit A19). Mr. Schipanski noted that additional SEPA review, including utility
20 review, would be conducted with the development of individual sites in the Master Plan.

21 The FEIS also responded to each of the approximately 1,100 individual comments on the
22 DEIS. The responses took four forms. First, as Ms. Doherty testified, the University made several
23 changes to the Master Plan based on comments. Second, the University added supplemental
24 information and analysis in the FEIS.³ Third, the University prepared 15 “Key Topics” to address
25 themes that emerged from the comments. (*See id.*, Ch. 4). Fourth, the University wrote individual
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³ For ease of reference, all of the information added was highlighted in gray in the FEIS.

1 responses to each comment. (*See id.*, Ch. 5). Two areas of analysis are particularly relevant here:
2 (1) housing; and (2) transportation.

3 **1. The EIS concluded that the Plan will not have a significant unavoidable**
4 **adverse impact on housing in the primary and secondary impact zones.**

5 With respect to housing, the EIS concludes that the Plan will not have significant adverse
6 impacts in the primary and secondary impact zones. The EIS is the only analysis in the record.
7 Cheryl Waldman testified that SDCI conducted no independent analysis. The EIS and testimony
8 from Morgan Shook explain that increases in development capacity in the primary and secondary
9 impact zones, improvements in regional transportation, and the effect of city-wide affordable
10 housing programs will create more than enough appropriately priced supply to cover the increase
11 in demand expected to result from development under the Master Plan.

12 On the demand side, the EIS concluded that the number of faculty, staff, and students
13 seeking housing will increase by 2,517 in the primary impact zone and 641 in the secondary
14 impact zone. (*Id.* at 3.8-27 (Table 3.8-12)). This is so even though enrollment is estimated to
15 increase by 8,675 students and the number of faculty and staff is estimated to increase by 4,649.
16 (*Id.*). Demand in the primary and secondary impact zones is lower than overall growth because
17 most of the University's population does not live in those zones. Almost half do not live in Seattle
18 at all. Student registration data shows that 43 percent of the off-campus student population lives
19 outside city limits, and the remainder is widely dispersed throughout Seattle. (*Id.* at 3.8-11 (Table
20 3.8-4)). Employment data shows that the same percentage of faculty and staff live outside of
21 Seattle, and only 5 percent live in the University District. (*Id.* at 3.8-13 (Table 3.8-5)). The EIS
22 also notes that transportation improvements—including light rail—will allow more students,
23 faculty, and staff to live outside the primary and secondary impact zones and still have easy
24 access to campus. (*Id.* at 3.8-31 to -34). The EIS's demand assumptions are thus conservative.

25 On the supply side, the EIS concluded that the expected demand falls well within the
26 City's existing expectations for housing unit supply and zoned capacity in the University District

1 alone. In the U-District Urban Design Final EIS, the City assumed that 5,000 new housing units
2 would be constructed under then-existing zoning. (*See* Exhibit A19 at 3.8-19 (Table 3.8-8)). That
3 projection was based on a zoned development capacity of 6,600 units. (*Id.*). The upzone increased
4 capacity to an estimated 9,802 units, so it is reasonable to assume the housing unit supply will
5 increase by more than 5,000 units. (*Id.*). Even with no increase, the City’s current assumption of
6 5,000 units means the percentage housing stock in the University District used by the University’s
7 population will decrease despite the growth assumed in the Master Plan. (*See id.* at 3.8-29). The
8 EIS also analyzed the effect expanded transit will have on the range of housing choices available
9 to the University’s population. (*Id.* at 3.8-30 to 3.8-33). It concluded that a higher percentage of
10 the University’s population is likely live outside the primary and secondary impact zones as a
11 result of expanded transit options. (*Id.*). The EIS also recognized that city-wide initiatives, such as
12 the Mandatory Housing Affordability (“MHA”) program and Multi-Family Tax Exemption, will
13 mitigate the effect of increased demand on housing costs. (*Id.* at 3.8-35 and 3.8-36). Given ample
14 expected housing stock in the University District alone, additional zoned capacity, wider housing
15 choices due to expanded transit, and city-wide housing initiatives, the EIS conservatively
16 concluded there will be sufficient housing supply to cover the Master Plan’s expected growth.

17 In rebuttal, SDCI argued only that city-wide housing initiatives are not a panacea. Ms.
18 Waldman pointed to the final environmental impact statement for the MHA program and the draft
19 environmental impact statement for the 2035 Comprehensive Plan to support this argument. (*See*
20 Exhibit D25 at 3.98; Exhibit D27 at 3.6-34). She later conceded that those two environmental
21 impact statements do not supersede the housing projections in the U-District Urban Design EIS,
22 and she admitted the City did not independently study the Master Plan’s impacts on housing.

23 **2. The EIS thoroughly analyzed and identified potential transportation impacts.**

24 The EIS also analyzes the Master Plan’s potential impacts on transportation in the primary
25 and secondary impact zones. John Shaw testified that the EIS is the only environmental analysis
26 of transportation impacts. The EIS includes a 300-page Transportation Discipline Report (“TDR”)

1 containing the data and analysis supporting the discussion and conclusions in the FEIS. (Exhibit
2 A19, App. D). The TDR includes an 800-page appendix with level of service worksheets and
3 analysis methods and assumptions. The EIS synthesized the TDR’s findings and summarized
4 potential impacts to all relevant transportation modes in the primary and secondary impact zones,
5 including vehicles, transit, pedestrian, bicycle, and parking. (*See id.* at 3.16-1 to 3.16-90). To
6 determine impacts, it applied various performance measures for each transportation mode. (*Id.* at
7 3.16-28 (Table 3.16-17) to 3.16-33). These measures included total vehicle trips, intersection
8 levels of service, vehicle and transit speeds, transit stop capacity, and transit coach capacity. The
9 EIS includes four findings and assumptions relevant here.

10 **a. The conclusions in the EIS are based on conservative assumptions.**

11 First, the analysis in the EIS is conservative. It assumes the University has developed the
12 entire six million square feet authorized in the Master Plan, even though that growth will occur
13 incrementally over a decade or more just as it has under the 2003 Campus Master Plan. The EIS is
14 also conservative in its mode-split assumption. The Master Plan requires the University to achieve
15 a 15 percent single-occupancy vehicle (“SOV”) mode-split with real consequences for failing to
16 meet the mark. (Exhibit D2 at 261). The University will also continue to cap its SOV trips. With
17 these commitments, the University has improved on its longstanding commitment to maintain
18 University trips at 1990 levels even though the campus population has grown 35 percent since
19 then. (Exhibit A19 at 3.16-22). Despite the 15-percent requirement, the EIS assumes a 20-percent
20 SOV mode split. (*Id.* at 3.16-26). Notably, a 20-percent mode split already compares favorably to
21 other large universities in urban settings, and it would be far below the level set for other major
22 institutions in Seattle. (*See id.* at 3.16-3 to 3.16-6).⁴ Recognizing the conservative nature of the
23 assumptions is vital to determining reasonableness and proportionality in SDCI’s conditions.

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26 ⁴ 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 **b. Reduced vehicle and transit speeds are a way to measure the impact of**
2 **congestion, not a way to measure the cause of congestion.**

3 Second, the EIS references transit and vehicle speeds only as a measure of effectiveness
4 for analyzing the Master Plan's impact on traffic congestion. (*See* Exhibit A19 at 3.16-50 (Table
5 3.16-18) and at 3.16-60 (Table 3.16-26)). Nothing in the EIS suggests this is a valid basis for *pro*
6 *rata* contributions to improvements intended to reduce congestion. Mike Swenson explained in
7 rebuttal testimony that reduced speeds are a symptom of increased congestion caused by increases
8 in the number of vehicle trips at the signalized intersections. A project's contribution to mitigation
9 should be based on the cause, not the effect. Mr. Shaw agreed that the common way to assess
10 mitigation contributions is to base it on the project's proportionate share of traffic counts. He
11 could recall no other instance in which the City had used speed reduction as a basis for mitigation.
12 These facts are crucial to determining an appropriate percentage for the University's contributions
13 to transportation mitigation projects.

14 **c. Transit delays are almost entirely due to reduced vehicle speeds.**

15 Third, the conclusions in the EIS do not justify distinguishing transit delays from reduced
16 vehicle speeds in general. The EIS identified reduced vehicle speeds as an impact. (*Id.* at 3.16-60
17 (Table 3.16-26)). It also identified reduced transit speeds as an impact. (*Id.* at 3.16-50 (Table
18 3.16-18)). King County Metro explained that "nearly 90% of that delay is due to congestion with
19 the other 10% due to increased dwell time." (Exhibit D17). SDOT's mobility director, Andrew
20 Glass-Hastings, agreed traffic congestion is 90 percent of the reason for transit delays. Mitigation
21 aimed at traffic congestion will resolve 90 percent of the cause for transit delays.

22 **d. There is already sufficient transit capacity to accommodate transit passenger**
23 **growth resulting from a full build-out of the Master Plan.**

24 Fourth and finally, the EIS concluded that transit demand increases caused by growth
25 under the Master Plan can be accommodated without additional mitigation. (Exhibit A19 at 3.16-
26 51). The EIS analyzed transit demand-to-capacity ratios on twelve transit lines and at two light
rail stations in the primary and secondary impact zones. (*See id.*) The analysis looked at

1 screenline data in the aggregate, factoring in background growth,⁵ to ensure the total demand
2 resulting from the Master Plan could be accommodated. (*See id.*) Jeanne Acutanza, the
3 University's transit consultant, explained in direct testimony that the analysis was intended to test
4 aggregate capacity, not capacity on particular routes. She testified, without dispute from SDCI or
5 SDOT, that this approach (and all of the other transportation methods and assumptions) was
6 vetted with both agencies prior to completion of the EIS.

7 Further, this approach reflects a conservative estimate of transit demand based on its
8 underlying assumptions. The analysis was based on seated bus and train capacity identified in
9 industry manuals. (*Id.*, App. D at 4-30). The analysis also took a conservative approach regarding
10 assigning trips to light rail. Only 20 percent of total bus trips on the Campus Parkway / Brooklyn
11 screenline were reassigned to light rail. (*Id.*, App. D at App. B, 8-12.) This is far less than the
12 approximately 60 percent of faculty and staff expected to live within a half mile of light rail
13 facilities by 2024. (*Id.*, App. D at 2-7 to 2-9).

14 Without the Master Plan, total demand for transit would be 61 percent of capacity in the
15 afternoon peak hour. With the Master Plan fully built out, demand is projected to be 67 percent of
16 capacity. (*Id.* at 3.16-52 to 3.16-53 (Tables 3.16-20 and -21)). All but one of the studied transit
17 screenlines would operate at no more than 80 percent of capacity even at full-build out. (*Id.* at
18 3.16-53 (Table 3.16-21)). The one exception is the screenline eastbound on Campus Parkway at
19 Brooklyn Avenue, where Metro is expected to reduce transit capacity in favor of light rail service
20 as part of its Metro Connects plan. (*See id.*).

21 These factors are important to recognize in deciding whether the Master Plan will affect
22 transit capacity and whether there is a significant adverse impact at all.

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⁵ The background growth estimates were also conservative. They are set at 12 percent in most cases, which is 6 percent higher than the growth assumptions in the City's 2035 Comprehensive Plan travel-demand model. (Exhibit A19, App. D at App. B, 8-10).

1 IV. LEGAL ANALYSIS

2 SDCI recommends approval of the Master Plan subject to certain conditions. The parties
3 agree on almost all of them, but a handful remain in dispute. The analysis below explains why
4 SDCI's position in the areas of disagreement is unreasonable and inconsistent with the law.

5 **A. The City appears to have misunderstood the three-tiered regulatory framework that
6 governs the land use decision here.**

7 As a preliminary matter, SDCI appears to misunderstand the Master Plan's role in the
8 governing regulatory framework. This mistake is apparent in efforts to restrict the authority to set
9 development standards in the Master Plan and in proposed affordable-housing conditions. The
10 governing framework begins with the Growth Management Act, ch. 36.70A RCW ("GMA"),
11 which establishes a multi-tiered land use planning hierarchy with different requirements at each
12 level. *See Laurelhurst Cmty. Club v. City of Seattle*, Central Puget Sound Growth Mgmt. Hearings
13 Bd., Case No. 03-3-0008, 2003 WL 22896421, at *8 (June 18, 2003) ("Laurelhurst I"). Three
14 tiers are relevant here. The first tier is the "comprehensive plan" level, where the local jurisdiction
15 sets out general area-wide policy objectives. *See* RCW 36.70A.040 *et seq.* The second tier is the
16 "development regulations" level, where local jurisdictions enact land use regulations, which are
17 development controls aimed at achieving the policy objectives in the comprehensive plan. RCW
18 36.70A.040(3); *see also Laurelhurst I*, 2003 WL at *8. The third tier is where the local
19 jurisdiction makes individual land use decisions on specific proposals. *See* RCW 36.70B.020; *see*
20 *also Laurelhurst I*, 2003 WL at *8.

21 The relevant first-tier regulation is the Seattle 2035 Comprehensive Plan ("Comp. Plan").
22 Consistent with the GMA framework, the Comprehensive Plan acknowledges that it is not an
23 independent basis for individual land use decisions:

24 The City will use the [Comprehensive] Plan to help make decisions about
25 proposed ordinances, capital budgets, policies, and programs. Although the
26 City will use the [Comprehensive] Plan to direct the development of
regulations that govern land use and development, it will not use the
[Comprehensive] Plan to review applications for specific development

1 projects, except when an applicable development regulation expressly
2 requires reference to this Comprehensive Plan....

3 *See* Comp. Plan at 17 (last amended by Ord. 125428). Instead, the Comprehensive Plan says it
4 should guide the enactment of “second-tier” land use regulations used to review specific projects.

5 In this instance, those second-tier regulations are in chapter 23.69 of the Seattle Municipal
6 Code, (“MIO Chapter”) and in the City-University Agreement. The Central Puget Sound Growth
7 Management Hearings Board has held that the City-University Agreement is the development
8 regulation governing the University’s land use activities on campus:

9 [The City-University] Agreement, codified at SMC 23.69.006(B), clearly
10 has the effect of being a local land use regulation, subject to the goals and
11 requirements of the GMA. The fact that the City has codified all aspects of
12 the [City-University] Agreement in SMC 23.69.006(B) means that it intends
13 for the Agreement to control land use activities involving the University.

14 *Laurelhurst Cmty. Club v. City of Seattle*, Central Puget Sound Growth Mgmt. Hearings Bd., Case
15 No. 03-3-0016, 2004 WL 3275206, at *11 (March 3, 2004) (“Laurelhurst II”). The Board also
16 observed that the Master Plan “is governed by GMA development regulations, namely, the MIO
17 [Chapter] and the 1998 City-University Agreement.” *Laurelhurst I*, 2003 WL at *8.

18 The third-tier action here is the pending decision on the Master Plan. In *Laurelhurst I*, the
19 opponents of the 2003 Campus Master Plan argued it was a subarea plan subject to the Growth
20 Management Hearings Board’s review for compliance with the GMA. *Id.* at *5-7. In opposition,
21 the University and the City jointly argued that the 2003 Campus Master Plan was instead a major
22 institution master plan developed under the MIO Chapter and the City-University Agreement. *Id.*
23 at *5. The Board held that the 2003 Master Plan is not a subarea plan but, rather “part of a permit
24 application process resulting from a development regulation.” *Id.* at *9. The Board described the
25 University’s master plans as the functional equivalent of a site plan approval. *Id.* at *8.

26 In sum, there are three relevant regulatory tiers. The first is the Comprehensive Plan. The
second is the MIO Chapter and the City-University Agreement. The third is the Master Plan
approval itself. SDCI misconstrues this framework in at least two of its arguments.

1 **B. The City-University Agreement regulates land use activities on campus and requires**
2 **the Master Plan to contain all applicable development standards.**

3 SDCI's misconception first manifests in Conditions 29, 30, 34, 35, and 39, which are
4 predicated on the erroneous view that the Master Plan may modify only the development
5 standards tied to the underlying zoning and not standards of general application. SDCI contends
6 the City-University Agreement and the Master Plan are merely "creatures of the Code and must
7 remain within its bounds." (SDCI's Pre-Hearing Br. at 1). The City-University Agreement is not a
8 subordinate creature of the land use code. It is instead "a development regulation since the City
9 has adopted it in its *entirety* into its code." *Laurelhurst II*, 2004 WL at *11 (emphasis in original).
10 This puts it on equal footing with other sections of the Seattle Municipal Code. Indeed, the
11 Agreement was adopted specifically "to control land use activities involving the University." *Id.*

12 Given this context, the City's major-institution master planning process is governed by
13 two parallel regulatory schemes. For the University, the City-University Agreement governs "the
14 master plan process (formulation, approval and amendment)." SMC 23.69.006.B. For all other
15 major institutions, the master plan process is governed by SMC 23.69.025 *et seq.* The approval
16 process for the University's master plan is in section II.B of the City-University Agreement.⁶ The
17 process for all other major-institution master plans is in SMC 23.69.032. The required contents of
18 the University's master plan is in section II.A of the City-University Agreement. The required
19 contents for all other major-institution master plans is in SMC 23.69.030. Unlike the University's
20 master plan, the development standards to be identified and modified are limited to the standards
21 of the underlying zone. *See* SMC 23.69.030. This distinction was a deliberate choice. If the City
22 felt broader authority for the University's master plan was inappropriate, section II.A of the City-
23 University Agreement would have parroted SMC 23.69.030 or the City would not have entered
24 into the City-University Agreement and adopted it into law. *But see* Ord. 121688.

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⁶ CUCAC's involvement in the Master Plan is established in SMC 23.69.032.B.9.

1 SDCI now wants to re-write the clause “institutional zone and development standards to
2 be used by the University,” in section II.A.1.d to say: “institutional zone and any modified
3 development standards of the underlying zoning.” (SDCI Pre-Hearing Br. at 7 (emphasis in
4 original)). The law does not allow this. Land use regulations are “in derogation of the common
5 law right to use property so as to realize its highest utility and should not be extended by
6 implication to cases not clearly within the scope of the purpose and intent manifest in their
7 language.” *Dev. Servs. of Am., Inc. v. City of Seattle*, 138 Wn.2d 107, 117, 979 P.2d 387 (1999).
8 The words SDCI urges are not in the City-University Agreement and their insertion would
9 fundamentally restrict how the Master Plan governs development on campus.

10 SDCI argues that the second sentence in SMC 23.69.006.B compels the re-write. The rules
11 of statutory interpretation do not support SDCI’s position. Statutes “must be construed as a whole,
12 considering all provisions in relation to one another and harmonizing all rather than rendering any
13 superfluous.” *State v. Bunker*, 169 Wn.2d 571, 578, 238 P.3d 487 (2010); *see also Hensley v.*
14 *Snohomish County*, Central Puget Sound Growth Mgmt. Hearings Bd., Case No. 95-3-0043,
15 1995 WL 903186, at *5 (Nov. 3, 1995) (“one provision may not thwart another”). The City-
16 University Agreement and the MIO Chapter must be read together, as a whole, and individual
17 terms must be harmonized to give effect to all of them. The second sentence in SMC 23.69.006.B,
18 on which SDCI relies, must be harmonized with the requirement that the University’s master plan
19 include “the institutional zone and development standards to be used by the University.” CUA §
20 II.A.1.d. The only way to do that is to treat them as cumulative—*i.e.*, the Master Plan must set out
21 all of the institutional zone and development standards to be used by the University and in doing
22 so may include modified standards of the underlying zoning. The broader statutory context
23 supports this interpretation. All other major institutions may modify the development standards of
24 the underlying zoning, *see* SMC 23.69.028.A.1, so it makes sense that the University would have
25 the same ability. It also makes sense that the University’s master plan could set out all other
26 institutional zone and development standards to be used on the campus because of its unique

1 position as a state institution of higher education and the unique planning history on the campus.
2 *See* CUA Recitals § 2.

3 Finally, SDCI's argument is contrary to its own actions. Ms. Blakeslee, testified about a
4 recent experience involving a new sign for Alaska Airlines Arena at Hec Edmundson Pavilion.
5 The 2003 Master Plan includes specific standards for signs on campus, including signs visible
6 from surrounding off-campus areas. (*See* Exhibit A23 at 131). These standards differ from the
7 City's Sign Code, ch. 23.55 SMC, and from general sign standards in SMC 23.69.021, governing
8 signs in major institution overlay districts. After some discussion about which standards governed
9 the new sign, Steve Sampson, Senior Inspector with SDCI, agreed that the standards in the 2003
10 Campus Master Plan governed: "After consulting with some of our land use people here, I have
11 been advised that the [2003 Master Plan] overrides City of Seattle's Land Use Code for signs
12 (23.55)." (Exhibit A32). Consistent with this recent act, SDCI did not object to inclusion of sign
13 standards in the Master Plan. (*See* Exhibit D2 at 245). SDCI agrees in practice that the Master
14 Plan may modify development standards not tied to underlying zoning, which SDCI defined its
15 Pre-Hearing Brief to include only "SMC Chapters 23.43 through 23.51B, SMC 23.54.016.B, and
16 SMC 23.54.060." (SDCI Pre-Hearing Br. at 2).

17 In sum, the Hearing Examiner should reject SDCI's attempt to re-write the regulations
18 governing what must and may be included in the Master Plan. The position SDCI has taken here
19 contradicts its own actions in other contexts, and it contradicts the law of statutory interpretation.
20 Rather than the overly restrictive interpretation SDCI urges, the broader statutory context and the
21 requirement to harmonize statutes support a cumulative interpretation—the City-University
22 Agreement and SMC 23.69.006B require the University's master plan to include all of the
23 institutional zone and development standards to be used by the University, and in doing so the
24 master plan may modify standards of the underlying zoning. This reading follows SDCI's past
25 practices and governing law. SDCI's attempt to read non-existent restrictive language into the
26 City-University Agreement should be rejected.

1 **C. The City lacks authority to impose its affordable housing conditions.**

2 SDCI’s misunderstanding of the regulatory framework also manifests in its affordable
3 housing conditions. The issue is not whether building affordable housing is a good idea. The issue
4 is whether the law allows the City to impose an affordable housing condition on the Master Plan.
5 It does not. There are two reasons the Hearing Examiner should not recommend it here.

6 **1. The City lacks authority to condition a site-specific proposal like the Master
7 Plan solely on Seattle’s Comprehensive Plan.**

8 First, allowing SDCI’s affordable housing conditions would skew the long-recognized
9 regulatory framework governing the master plan process. Under the GMA hierarchy, local
10 jurisdictions cannot rely on comprehensive plan policies alone to evaluate site-specific approvals;
11 they must enact and implement development regulations to control and condition site-specific
12 development permits. *See Citizens for Mt. Vernon v. City of Mt. Vernon*, 133 Wn.2d 861, 873,
13 947 P.2d 1208 (1997). Comprehensive plans guide adoption of second-tier development
14 regulations, which prescribe specific standards implementing comprehensive plan objectives.
15 *See RCW 36.70A.040*. Individual land use decisions must “only generally conform, rather than
16 strictly conform, to the comprehensive plan” whereas “local development regulations, including
17 zoning regulations, [are what] directly constrain individual land use decisions.” *Woods v. Kittitas*
18 *County*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007) (citing *Viking Props., Inc. v. Holm*, 155 Wn.2d
19 112, 126, 118 P.3d 322 (2005)).

20 Ms. Waldman testified that SDCI’s affordable housing conditions are based solely on
21 Policy H 5.19 of the Comprehensive Plan. In an effort to fit this recommendation within the GMA
22 framework, SDCI declares that the Master Plan “is likely a development regulation” and must
23 therefore implement the Comprehensive Plan. (SDCI Pre-Hearing Br. at 11). This is exactly the
24 opposite of the position the City took in 2003, when it joined the University in arguing that the
25 2003 Campus Master Plan is an individual land use approval. *Laurelhurst I*, 2003 WL at *4.
26 SDCI cites no authority for the contrary position it has taken here. This is because the Growth

1 Management Hearings Board agreed in 2003 that University’s master plan “is a ‘site plan
2 approval’ land use decision.” *Id.* at *8.

3 Despite its own prior position and controlling authority, SDCI suggests that the Master
4 Plan must be a development regulation because the EIS describes it as a “non-project action.” The
5 phrase “non-project action” is a term of art that refers to the level of analysis required in an
6 environmental document. *See* WAC 197-11-442 (specifying the required contents of an EIS for
7 non-project proposals).⁷ Treating the Master Plan as a “non-project action” for environmental
8 review does not make it a development regulation in the GMA context. Because the Master Plan
9 is an individual land use decision, it need not directly implement the Comprehensive Plan.

10 Further, Policy H 5.19 does not give SDCI the authority it claims. That policy says only
11 that the City should “consider” requiring income-restricted housing. The Comprehensive Plan
12 specifically addresses the meaning of such words:

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

16 Comp. Plan at 17 (emphasis added). The policy does not mandate an affordable-housing condition
17 on major institution master plans. It merely encourages the City to consider implementing
18 development regulations or some other program that would require income-restricted housing with
19 major institution master plans or development agreements. If the City considers the policy outlined
20 in Policy H 5.19 and decides to implement it, the City must first amend its development
21 regulations. For this Master Plan, the City could have sought an amendment to the City-University
22 Agreement, SMC 23.69.006.B, or both before the process began. Cheryl Waldman admitted the
23 City has done none of that.

24
25
26 ⁷ A non-project action means “actions which are different or broader than a single site specific project, such as plans, policies, and programs.” WAC 197-11-774. The Master Plan is consistent with this definition because it contemplates and addresses many site-specific projects on campus.

1 Last, SDCI asserts in its Pre-Hearing Brief that Policy H 5.19 is a land use policy it had to
2 consider in reviewing the Master Plan. (SDCI Pre-Hearing Br. at 12). Again, SDCI misinterprets
3 the City-University Agreement. The Agreement requires SDCI to consider “neighborhood plans
4 and policies adopted by ordinance, SEPA, and other applicable land use policies and regulations
5 of the City.” CUA § II.B.8.d.⁸ SDCI interprets the clause “applicable land use policies” broadly to
6 encompass any policy in the Comprehensive Plan that relates to land use. (SDCI Pre-Hearing Br.
7 at 12). That interpretation goes too far because it renders the clause “neighborhood plans and
8 policies adopted by ordinance” superfluous. *But see Bunker*, 169 Wn.2d at 578. Adopted
9 neighborhood plans *are* sections of the Comprehensive Plan, so the City-University Agreement
10 would not need to refer to such plans specifically if it meant for SDCI to consider every policy
11 that touches on land use. Thus, the phrase “other applicable land use policies and regulations of
12 the City” cannot refer to every section of the Comprehensive Plan; instead, it is limited to land
13 use policies and regulations of the City found elsewhere. As Policy H 5.19 is not part of the
14 adopted University Community neighborhood plan (or any other neighborhood plan), the City
15 cannot consider Policy H 5.19 or use it as the sole basis to condition the Master Plan.

16 **2. The City has no authority under SEPA or the City-University Agreement to**
17 **impose an affordable housing condition on the Master Plan.**

18 Second, there is no basis under SEPA or the City-University Agreement to impose an
19 affordable housing condition. Under SEPA Rules, mitigation must “be related to specific, adverse
20 environmental impacts clearly identified in an environmental document on the proposal....” SMC
21 25.05.660.A.2. Similarly, while City-University Agreement allows SDCI to propose mitigation, it
22 must be tied to an assessment of identified impacts. CUA § II.B.8.d. The University’s EIS is the
23 only assessment of the Master Plan’s housing impacts in the record. The EIS concludes that the
24 Master Plan will not have significant adverse impacts on housing. SDCI’s conclusion that the
25 Master Plan “would affect housing affordability” has no evidentiary support. (*See* SDCI Pre-

26 ⁸ SDCI concedes that Policy H 5.19 is not part of a neighborhood plan. (*See* SDCI Pre-Hearing Br. at 12 n. 36)

1 Hearing Br. at 10). Beyond the absence of an adverse impact, there is no applicable SEPA policy.
2 SDCI concedes the City's SEPA Housing Policy does not apply to major institution development
3 and the City-University Agreement's housing goals involve market-rate housing and do not
4 require affordable housing. (Exhibit D1 at 24, 76). There is no basis in SEPA or the City-
5 University Agreement for SDCI's proposed affordable housing conditions.

6 Again, the issue here is not whether affordable housing is a good thing. The University is
7 proud to join with Seattle Housing Authority in developing affordable housing in the University
8 District. The issue is whether the City ought to be able to rearrange the regulatory framework
9 governing individual land use decisions. Ms. Waldman testified that the press release announcing
10 this project was the basis of Conditions 1 and 2. This is a voluntary initiative that demonstrates
11 the University's ongoing commitment to housing affordability. SDCI simply decided to "make it
12 a commitment instead of just a press release," she said. This attempt to commandeer a voluntary
13 initiative and impose it as a condition of approval on the Master Plan has no basis in SEPA or the
14 regulatory framework established under the GMA.

15 **D. SDCI's transportation conditions do not comply with SEPA Rules.**

16 SDCI's recommended transportation conditions are similarly unsupported. Despite the
17 University's groundbreaking commitment to reduce the percentage of its SOV trips to 15 percent,
18 SDCI proposed 13 transportation-related conditions. (*Id.*, Conditions 49-61). The parties have
19 resolved nine conditions, but the University objects to Conditions 51, 52, 53, and 55.⁹ When
20 exercising SEPA authority, SDCI must comply with applicable state regulations and the City's
21 SEPA policies. WAC 197-11-660(1)(a); SMC 25.05.660.A.1. It has not done so here.

22 **1. SDCI failed to conduct the required SEPA analysis, including reference to the**
23 **specific SEPA policy on which its proposed mitigation relies.**

24 In pre-hearing briefing, the University noted a lack of citation to specific SEPA policies in
25 SDCI transportation conditions. SDCI dismissed this as "form over substance" and promised to

26 ⁹ The University's agreement to the other conditions should not be construed as a waiver of its underlying objection that SDCI has failed to follow SEPA Rules in its proposed transportation conditions.

1 connect the dots through witnesses at the hearing. (*See* SDCI Pre-Hearing Br. at 12-13). It never
2 did that. Instead, John Shaw confirmed SDCI’s transportation conditions mainly originate from a
3 memorandum prepared by Emily Ehlers, a planner with SDOT. (*See* Exhibit D18). Ms. Ehlers did
4 not testify, so the Hearing Examiner is left to rely on the speculation of others to divine her
5 thoughts. Her memorandum lists measures to “mitigate the impacts” identified in the EIS, with no
6 reference to the City’s SEPA policies and no recognition of the limits SEPA places on mitigation
7 measures. (*See id.*). Unsurprisingly, the conditions fail on both counts.

8 SEPA Rules mandate that decision-makers cite the specific SEPA policy on which a
9 mitigation measure is based. SMC 25.05.660.A.2. SDCI’s Recommendation contains only the
10 most general overview of the City’s SEPA authority; it is devoid of reference to transportation-
11 related SEPA policies in SMC 25.05.675.R.2. (*See* Exhibit D1 at 59-60, 72-83). During the
12 hearing, Mr. Shaw testified that he independently analyzed SDOT’s recommended mitigation
13 under SEPA, but neither he nor anyone else explained how any of the resulting conditions comply
14 with transportation-related SEPA policies. This failure alone merits rejection of the four
15 transportation conditions that remain disputed.

16 SDCI’s failure to tie conditions to SEPA policies is more than a cosmetic error. By failing
17 to engage in the exercise, SDOT and SDCI overlook critical limiting factors. The identification of
18 an adverse impact is only the first step in the analysis. SDCI must then go one step further and
19 determine whether the adverse impact will actually “undermine the stability, safety and/or
20 character of a neighborhood or surrounding areas.” SMC 25.05.675.R.2.a. This is analytical
21 framework is unique in the City’s SEPA policies because every development project has some
22 adverse impact on the transportation system—every new development necessarily adds new
23 people and new traffic. It has never been the City’s policy to require transportation mitigation in
24 every instance. Instead, the City has limited mitigation to circumstances in which the adverse
25 transportation impact will “undermine the stability, safety, and/or character of a neighborhood or
26 surrounding areas.” *Id.* Condition 51 addresses increased transit demand in a particular corridor,

1 and Condition 52 aims to mitigate reductions in transit speed. There is no evidence that reductions
2 in speed or increases in demand for transit undermine the stability, safety, or character of the
3 areas in the primary and secondary impact zones.¹⁰ SDCI never tied Conditions 53 and 55 to any
4 specific impact at all. Absent that evidence, Conditions 51, 52, 53, and 55 must be rejected. SDCI
5 lacks substantive SEPA authority to impose them.

6 **2. SDCI's proposed mitigation is not reasonable or proportional to impacts**
7 **identified in the EIS.**

8 Conditions 51, 52, 53, and 55 also violate SEPA's rules of reasonableness and
9 proportionality. Mitigation measures must be reasonable and capable of implementation. SMC
10 25.05.660.A.3. They must also be proportional to the project's impact. SMC 25.05.660.A.4.

11 **a. Condition 51—Metro Buses**

12 Condition 51 would require the University to fund the undefined "operating costs" of six
13 Metro buses even though the EIS concluded existing transit capacity can accommodate expected
14 growth in demand. (Exhibit A19 at 3.16-51). This condition fly-specks data out of a system-wide,
15 aggregate assessment of the Master Plan's impact on transit in the primary and secondary impact
16 zones. The condition is based on data at a single screenline—NE Campus Parkway and Brooklyn
17 Avenue. Mr. Shaw could not explain why 96 percent of demand to capacity (as opposed to 100
18 percent) at this one screenline is unacceptable, and he could only guess that the projected 164
19 additional riders is the equivalent of three busloads. Moreover, Mr. Shaw could not recall a single
20 project where SDCI has conditioned approval on the applicant purchasing additional bus service.

21 Condition 51 is also disproportional to the University's actual expected impact. The EIS
22 shows that Metro's decision to reduce capacity—not increased ridership resulting from the Master
23 Plan—is the primary cause of the increase to 96 percent of capacity at the Campus Parkway and
24 Brooklyn Avenue screenline. Current capacity there is 1,810 riders and demand is 1,110 riders

25 ¹⁰ If the City had identified an impact that undermined neighborhood stability, safety, or character, it would then be
26 required to consider the factors identified in SMC 25.05.675.R.2.a in fashioning an appropriate mitigation measure. It
is not clear if and how the City analyzed those factors with regard to Conditions 51, 52, 53, and 55.

1 (61 percent of capacity). (*Id.* at 3.16-51 (Table 3.16-19)). The Master Plan is expected to add 164
2 riders. (*Id.* at 3.16-53 (Table 3.16-21)). If capacity remained constant, demand at this screenline at
3 full build-out would rise by only 3 percent. Ms. Acutanza explained in direct testimony that
4 demand is projected to rise 14 percent because Metro plans to reduce capacity by one-third (from
5 1,810 to 1,210 riders) due to nearby light rail service. (*See also id.* at 3.16-51). Condition 51 also
6 fails to account for fare revenue from new riders and contains no mechanism to assure that Metro
7 would deploy the added capacity in a way that addresses the expected impact.

8 This condition is also incapable of implementation because it does not define the operating
9 costs to be borne by the University. Mr. Shaw conceded that he was unaware of how Metro would
10 calculate operating costs for this purpose.

11 The Hearing Examiner should reject Condition 51.

12 **b. Condition 52—RapidRide Expansion**

13 Condition 52 suffers from all maladies discussed above. In the first instance, it is not
14 proportional to the University's actual impact. SDCI calculates the University's share based on a
15 20 percent SOV mode split, which was the worst case scenario analyzed in the EIS. The Master
16 Plan requires the University to achieve 15 percent. SDCI also ignores that the University will
17 need a decade or more to build out the entire growth allowance.

18 SDCI also uses an unprecedented approach to calculating the University's share of
19 mitigation expenses. SDCI's proposed percentages are based on projected reductions in transit
20 speeds. (*See id.* at 3.16-50). Mr. Swenson explained that contribution to traffic-congestion
21 mitigation should be based on a project's contribution to the cause rather than the measure of its
22 effect. Mr. Shaw agreed that the common way to assess mitigation contribution is to base it on a
23 project's proportionate share to traffic counts.

24 Further, Condition 52 amounts to double dipping. It seeks to address transit delays. Mr.
25 Glass-Hastings agreed that 90 percent of transit delays are attributable to traffic congestion. That
26 is precisely what Conditions 49 and 50, on which SDCI and the University have now reached an

1 agreement, aim to mitigate. Requiring the University to contribute to traffic signal improvements
2 (Condition 49), ITS improvements (Condition 50), and RapidRide expansion (Condition 52) is
3 cumulative and inconsistent with the requirements of SMC 25.05.660.A.

4 This condition is also incapable of being accomplished. Mr. Glass-Hastings admitted that
5 SDOT already has a funding plan in place for the Roosevelt line, including a federal grant
6 proposal. (*See* Exhibit D21). That proposal lays out SDOT's funding plan, and it does not
7 mention SEPA mitigation as a funding source. (*See id.*). The University is a public institution that
8 does not hold its own purse strings. It is not possible for the University to bear substantial
9 undefined costs. Mr. Glass-Hastings could not provide a cost estimate for the other two
10 RapidRide lines in Condition 52, nor could he confirm that SDOT and Metro would properly
11 account for route-overlap in those two lines. (*See* Exhibit D19).

12 Condition 52 should be rejected.

13 **c. Conditions 53 and 55—Transit Stop Expansion and Development**

14 Conditions 53 and 55 are similarly disproportionate and incapable of implementation.
15 Mr. Shaw could not explain what the proposed language in these conditions actually requires the
16 University to do. Condition 55 also appears to be cumulative with Condition 52. The grant
17 proposal for the Roosevelt line includes funding to build and expand transit stops along the line.
18 (Exhibit D21). The Hearing Examiner should reject these conditions.

19 **E. The Hearing Examiner should reject Conditions 12 (Street Widths) and 17 and 18**
20 **(Portability of Development Capacity) because they are inconsistent with the City-**
21 **University Agreement's approval standards.**

22 Finally, the Hearing Examiner should reject Conditions 12, 17, and 18. The City-
23 University Agreement requires SDCI to balance the need to maintain the livability and vitality of
24 surrounding neighborhoods with the need for development to fulfill the University's public
25 mission. CUA § II.B.8.d. With respect to these three conditions, the University's needs outweigh
26 the purported benefit to the surrounding neighborhoods.

1 **1. Condition 12: Street Widths**

2 Condition 12 would insert a reference to the City’s Street Improvement Manual into the
3 development standards chapter of the Master Plan to govern street widths for City-owned rights
4 of way. (*See Exhibit D1 at 30*). This is unnecessary. The University already proposes generous
5 public realm allowances as a development standard in the Master Plan. (*See Exhibit D2 at 242 to*
6 244). The public realm allowances provide space for “rights-of-way, streetscapes, sidewalks,
7 street lighting, street furniture, bio-swales, pedestrian paths, trails, courtyards, plazas, parks,
8 landscapes, skybridges and pedestrian bridges, and publicly accessible open spaces.” (*Id.* at 242).
9 SDCI produced no evidence establishing that the relevant street widths are substandard. Indeed,
10 Ms. Waldman admitted SDCI has not studied this issue closely. Condition 12 should be rejected.

11 **2. Conditions 17 and 18: Portability of Development Capacity**

12 Conditions 17 and 18 would delete language allowing the University to shift development
13 capacity between campus sectors. SDCI contends this language could preclude opportunities for
14 CUCAC review and comment. (*See Exhibit D1 at 34*). The Hearing Examiner should reject these
15 conditions for two reasons. First, the City Council required the language in the second bullet point
16 on page 233 as part of the 2003 Campus Master Plan. The proposed Master Plan simply includes
17 what was required before. Second, prior to the hearing, the University proposed revisions to the
18 other language on page 232 and 233 to ensure CUCAC review. (*See Applicant’s Pre-Hearing Br.,*
19 App. A at 12). When balanced against the University’s need for flexibility in developing space to
20 fulfill its public mission and its proposed revisions to ensure CUCAC’s participation, SDCI’s
21 concern over CUCAC’s involvement cannot justify these conditions. The Hearing Examiner
22 should reject Conditions 17 and 18.

23 **V. CONCLUSION**

24 The University of Washington and SDCI have been working to resolve disagreements
25 over the conditions in SDCI’s recommendation to approve the Master Plan. The parties agree on
26 nearly all conditions, but a few areas of disagreement remain. The University also agrees to

1 voluntarily comply with many CUCAC recommendations, as detailed in Appendix A to its Pre-
2 Hearing Brief.

3 The University of Washington requests that the Hearing Examiner recommend approval
4 subject only to the agreed conditions as set out in Appendix A to this brief.

5 DATED this 2nd day of January, 2018.

6 HILLIS CLARK MARTIN & PETERSON P.S.

7
8
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