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BEFORE THE SEATTLE CITY COUNCIL

In the Matter of the Application of ) **CF 314346**  
UNIVERSITY OF WASHINGTON ) SDCI'S RESPONSE TO THE  
for approval of a Major Institution ) UNIVERSITY OF WASHINGTON'S  
Master Plan for property located at ) PETITION FOR FURTHER  
4000 15th Ave. E. ) CONSIDERATION

The Seattle Department of Construction and Inspections (SDCI) takes this opportunity to respond to portions of the Petition for Further Consideration filed by the University of Washington (UW). In sum: (1) contrary to UW's arguments, the Hearing Examiner's recommended affordable housing conditions rest on sound legal authority; and (2) many of UW's contentions regarding transit-related conditions merit correction or clarification.

**A. The affordable housing conditions (Nos. 1 and 2) are grounded in law.**

Although UW's Administration says it will recommend the Regents agree to Conditions 1 and 2 regarding affordable housing, UW suggests those conditions are unlawful. That suggestion is incorrect.

Conditions 1 and 2 would require UW to construct 150 affordable housing units for faculty and staff earning less than 60% of the area median income. 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:

1 Consider requiring provisions for housing, including rent/income-restricted  
2 housing, as part of major institution master plans and development agreements  
when such plans would lead to housing demolition or employment growth.<sup>1</sup>

3 The UW Campus Master Plan (CMP) is a major institution master plan that, by authorizing UW  
4 to expand its facilities, will lead to employment growth. The City may require affordable housing  
5 under Policy H 5.19.

6 Although UW tries to undercut Policy H 5.19 by noting it was adopted after the City-  
7 University Agreement,<sup>2</sup> the Policy's timing is irrelevant. It does not amend the Agreement,  
8 which already says SDCI shall assess and mitigate the direct, indirect, and cumulative impacts of  
9 development authorized by a CMP.<sup>3</sup> The City may require affordable housing consistent with the  
10 Agreement because the CMP would increase faculty and staff and affect housing affordability.  
11 And the Agreement may not supersede the Growth Management Act, which commands: "Any  
12 amendment of or revision to development regulations shall be consistent with and implement the  
13 comprehensive plan."<sup>4</sup> Because the CMP modifies many development regulations that would  
14 otherwise apply to the campus, the CMP should be consistent with and implement the  
15 Comprehensive Plan, including Policy H 5.19.

16 UW also questions the predicate for the affordable housing conditions, claiming the final  
17 environmental impact statement (FEIS) for the CMP "concludes there will be adequate housing  
18 opportunities to offset increases in demand resulting from projected employment growth."<sup>5</sup> SDCI

19 \_\_\_\_\_  
20 <sup>1</sup> Policy H 5.19. Comprehensive Plan at 105.

21 <sup>2</sup> UW Petition at 5-6 ("To use an after-the-fact policy as a basis for conditioning the Plan does not follow the process  
for amendments to the City-University Agreement that is established in Section VIII of that Agreement.").

22 <sup>3</sup> Agreement § II.B.8.d.

23 <sup>4</sup> RCW 36.70A.130(1)(d).

<sup>5</sup> Petition at 5.

1 does not propose the City impose Conditions 1 and 2 through SEPA authority, but through the  
2 City's power to craft development regulations consistent with the Comprehensive Plan. UW  
3 mischaracterizes the FEIS in any event. The FEIS chapter on housing does not use "adequate" to  
4 describe housing opportunities to mitigate UW's employment growth. Instead, the FEIS relies on  
5 City and regional planning to mitigate affordable housing impacts: "any positive new demand for  
6 housing generated by anticipated population growth has already been planned for at the regional,  
7 city and neighborhood level through a prescribed long-range planning process."<sup>6</sup> But the key  
8 documents in that planning process note that current and anticipated City regulations, although  
9 helping to mitigate the affordable housing impacts caused by anticipated growth, will not fully  
10 mitigate those impacts. For example, the Mandatory Housing Affordability (MHA) program's  
11 FEIS describes a range of strategies for mitigating affordable housing impacts and preventing  
12 displacement, many of which are among the strategies mentioned in the UW CMP FEIS.<sup>7</sup> Yet  
13 the MHA FEIS also concedes that "housing affordability and displacement would continue to be  
14 significant concerns."<sup>8</sup> The MHA FEIS then refers to the Comprehensive Plan to explain why  
15 affordable housing impacts will remain unavoidable:

16           Implementing MHA cannot meet the entire need for affordable housing.  
17           Seattle will continue to face housing affordability challenges. The Seattle 2035  
18           Comprehensive Plan Final EIS found a significant unavoidable adverse impact in  
19           the area of housing, stating that Seattle would continue to face a housing  
20           affordability challenge under all alternatives studied . . . Housing costs will  
21           continue to be a burden for a segment of the [*sic*] Seattle's population due to high  
22           demand and competition for housing generated by a strong job market and  
23           attractive natural and cultural amenities. Therefore, even with implementation of

<sup>6</sup> FEIS at 3.8-42. *Accord id.* at 3.8-34 – 36 (detailing housing impacts).

<sup>7</sup> Ex. D-25 at 3.92 – 3.97.

<sup>8</sup> *Id.* at 3.92.

1 MHA in the study area, Seattle will continue to face a significant challenge in the  
2 area of housing affordability.<sup>9</sup>

3 The FEIS and draft environmental impact statement (DEIS) for the Comprehensive Plan  
4 also concede the City has not fully mitigated affordable housing impacts. The Comprehensive  
5 Plan FEIS essentially adopts the findings of the DEIS on this topic.<sup>10</sup> The DEIS discusses  
6 mitigation strategies beyond those mentioned in the MHA FEIS.<sup>11</sup> Yet the DEIS also concludes  
7 that housing impacts will remain an unmitigated impact of Seattle's growth:

8 Seattle will face housing affordability challenges due to increasing demand (both  
9 as a result of growth in the number of households and in the economic profile of  
10 households, which are becoming more economically stratified). Seattle's fixed  
11 land supply and the premium in terms of housing cost and commercial space that  
12 are placed on higher density development close to transit and other amenities  
13 would likely exacerbate this issue in those locations.<sup>12</sup>

14 Because growth in Seattle—including UW's growth—will cause affordable housing  
15 impacts that other strategies cannot fully mitigate, Comprehensive Plan Policy H 5.19 is an  
16 important tool to mitigate the impact of growth from major institutions, including UW. Under its  
17 police power, the City has the authority to follow that Policy when conditioning the CMP.

18 **B. Many of UW's contentions regarding certain transit-related conditions (Nos.  
19 51, 52, and 55) merit correction or clarification.**

20 The Hearing Examiner recommends several transit-related conditions. For example,  
21 Condition 51 reads:

22 The University shall pay King County-Metro the operating costs for two  
23 additional bus transit coaches in both the AM and PM peak hours to provide  
additional capacity on routes serving Campus Pkwy near Brooklyn Ave NE.

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21 <sup>9</sup> *Id.* at 3.98.

22 <sup>10</sup> *See* Ex. D-26 at 3.1-20.

23 <sup>11</sup> Ex. D-27 at 3.6-32 – 3.6-34.

<sup>12</sup> *Id.* at 3.6-34.

1 Condition 52 provides:

2 The University shall fund SDOT capital improvements to facilitate transit  
3 performance within the primary and secondary impact zones at the time of  
4 implementation of the respective RapidRide project as follows:

- 5 • 11th Avenue NE/Roosevelt Avenue NE: 11% of the cost of the  
6 RapidRide project within the primary impact zone; 5.5% within the  
7 secondary impact zone.
- 8 • NE 45th Street/15th Avenue NE/Pacific Avenue NE: 30% of the cost of  
9 the RapidRide project and other planned transit improvements, including  
10 bus only and BAT lanes, within the primary impact zone; 15% within the  
11 secondary impact zone.
- 12 • Montlake Blvd NE: 25% of the cost of the RapidRide project and other  
13 planned transit improvements, including bus only lanes, within the  
14 primary impact zone; 12.5% within the secondary impact zone.

15 And Condition 55 states:

16 The University shall expand, or pay SDOT for transit stop expansion, at these  
17 locations as part of the NE 45th St/15th Ave NE/NE Pacific St RapidRide  
18 implementation.

19 UW raises concerns with these three conditions. SDCI addresses many of those concerns  
20 by reproducing them in *italics* followed by SDCI's responses:

21 **1. Condition 51**

22 *The Hearing Examiner's conclusions recognize that the costs associated with this  
23 condition are uncertain.*

The Hearing Examiner stated that "costs will be made certain in advance  
at the time payment is required."<sup>13</sup>

*The record contains no estimates, projections, or even definitions of what  
constitutes an "operating cost."*

The Hearing Examiner stated that "costs will be made certain in advance  
at the time payment is required."<sup>14</sup>

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<sup>13</sup> Examiner's Corrected Findings and Recommendation ("Examiner Rec.") at 23 ¶ 23.

<sup>14</sup> *Id.*

1 *Condition 51 as drafted contains no objective trigger tied to actual development*  
2 *under the Plan. Under SEPA, mitigation must be tied to impacts.*

3 The condition is tied to impacts. As noted in the SDCI Recommendation,  
4 “the most heavily used set of transit routes will occur on Campus Pkwy.  
5 east of Brooklyn Ave. NE, with an increase from 82% to 96%, as a result  
6 of 164 additional riders, or the equivalent of roughly three transit coaches.  
7 As this overall estimate of transit loads is only slightly under the  
8 theoretical maximum capacity of 100%, reflecting both seated and  
9 standing transit passengers, it is reasonable to assume that capacity on  
10 some individual routes crossing this screenline will be exceeded by this  
11 increase in transit demand.”<sup>15</sup>

12 UW is correct that Condition 51 contains no trigger. A reasonable trigger  
13 would be the earlier of exhaustion of the 6 million square foot growth  
14 allowance or the life of the CMP.

15 *The demand-to-capacity ratio will increase to 64 percent of capacity after full*  
16 *build-out projected under the Plan.*

17 As stated in the UW’s FEIS, the demand-to-capacity ratio on routes  
18 serving Campus Pkwy. near Brooklyn Ave. NE will be 96% after full-  
19 build out.<sup>16</sup>

20 *The EIS concludes that the demand-to-capacity ratio could approach 96 percent*  
21 *only if King County Metro reduces service in connection with the opening in 2021*  
22 *of the University District light rail station.*

23 This reduction in service was an assumed background condition in the  
FEIS, and was not represented as a conditional or potential action by  
Metro.<sup>17</sup> SDCI has no reason to believe the FEIS has not accurately  
represented future Metro transit service capacity at this location.

*Metro’s potential decision to reduce service is not a proper SEPA basis for*  
*imposing mitigation conditions on the University’s Plan.*

A reduction in service is consistent with the approach taken by UW’s  
consultants, who, in preparing the FEIS, made a reasonable estimate of

<sup>15</sup> Ex. D-1, Analysis and Recommendation of the Director of SDCI (“SDCI Rec.”) at 86.

<sup>16</sup> Ex. A-19a, UW 2018 Seattle Campus Master Plan FEIS, Vol. 1 (“FEIS”) at 3.16-53 (July 2017).

<sup>17</sup> FEIS at 3.16-47 and 3.16-51.

1 future bus transit availability based on the 2016 METRO CONNECTS  
2 Long-Range Plan.<sup>18</sup>

3 *The record contains no evidence explaining why 96 percent is too high a demand-*  
4 *to-capacity ratio.*

5 As noted in the SDCI Recommendation, “the most heavily used set of  
6 transit routes will occur on Campus Pkwy. east of Brooklyn Ave.NE, with  
7 an increase from 82% to 96%, as a result of 164 additional riders, or the  
8 equivalent of roughly three transit coaches. As this overall estimate of  
9 transit loads is only slightly under the theoretical maximum capacity of  
10 100%, reflecting both seated and standing transit passengers, it is  
11 reasonable to assume that capacity on some individual routes crossing this  
12 screenline will be exceeded by this increase in transit demand.”<sup>19</sup>

13 *Presumably, for efficiency and cost-effectiveness, Metro wants routes to operate*  
14 *at high ratios and allocate capacity accordingly.*

15 This is an assumption with no supporting statements from Metro or other  
16 transit service providers. It is possible that near- and over-capacity  
17 conditions might dissuade potential transit riders, and therefore would be  
18 seen as undesirable by transit agencies.

19 *Any decision by Metro to reduce bus service when the University District station*  
20 *opens would only make sense if Metro assumed that demand for buses will be*  
21 *reduced because a significant number of riders will shift to light rail.*

22 No information has been presented regarding Metro’s rationale for  
23 reducing bus service. However, the FEIS forecasts that many new transit  
trips from the CMP will use bus transit, thereby increasing ridership on  
some routes to near- or over-capacity conditions.<sup>20</sup>

*A mitigation condition should, at a minimum, define at the outset what cost items*  
*constitute “operating costs” so the University can plan and estimate for the*  
*future.*

The Hearing Examiner stated that “costs will be made certain in advance  
at the time payment is required.”<sup>21</sup>

<sup>18</sup> FEIS at 3.16-47 and 3.16-51.

<sup>19</sup> SDCI Rec. at 86.

<sup>20</sup> FEIS at 3.16-53, Table 3.16-21.

<sup>21</sup> Examiner Rec. at 23 ¶ 23.

1                   **2.       Conditions 52 and 55.**

2                   As a threshold matter, SDCI agrees with UW that Condition 55 should be  
3                   clarified.<sup>22</sup> As written, it refers to “these locations” without identifying them. The  
4                   locations are identified in the portion of SDCI’s Analysis and Recommendation  
5                   proposing Condition 55—they are 15th Avenue NE/NE 42nd Street and NE  
6                   Pacific Street/15th Avenue NE.<sup>23</sup> Condition 55 should therefore be amended:

7                   The University shall expand, or pay SDOT for transit stop  
8                   expansion, at ~~these locations~~ 15th Avenue NE/NE 42nd Street and  
9                   NE Pacific Street/15th Avenue NE as part of the NE 45th St/15th  
10                  Ave NE/NE Pacific St RapidRide implementation.

11                  *As justification for these conditions, the Hearing Examiner assumed in*  
12                  *Conclusions 19 and 21 that they will help the University meet its Transportation*  
13                  *Management Plan (“TMP”) goals. However, the University must meet its TMP*  
14                  *goals with or without these conditions, and the Plan outlines a range of steps the*  
15                  *University has already identified for meeting its TMP goals along with*  
16                  *consequences for failing to do so. Accordingly, Conditions 52 and 55 are not*  
17                  *necessary to fulfill the Hearing Examiner’s assumed purpose.*

18                  Master Use Permit decisions and recommendations sometimes specify  
19                  particular elements to be included in TMPs to ensure that goals are  
20                  achieved. Although these two conditions also will help mitigate other  
21                  impacts, they are important components of assuring the future success of  
22                  the CMP’s TMP.

23                  *Also, as with Condition 51, the Hearing Examiner’s conclusions recognize the*  
                    *uncertainty of costs associated with Condition 52.*

                    The Hearing Examiner stated that “costs will be made certain in advance  
                    at the time payment is required.”<sup>24</sup>

*The Council should, at a minimum, define the impact to be mitigated.*

                    The impact is the reduction in transit travel speeds, as identified in the  
                    FEIS and in SDCI’s and the Hearing Examiner’s recommendations.<sup>25</sup>

24                  <sup>22</sup> See UW Petition at 4.

25                  <sup>23</sup> SDCI Rec. at 90.

<sup>24</sup> Examiner Rec. at 23 ¶ 23.

<sup>25</sup> FEIS at 3.16-50, Table 3.16-18; SDCI Rec. at 87-88; Examiner Rec. at 17-18 and 21-22.



1 *Condition 52 is purportedly intended to mitigate the reductions in transit speeds*  
2 *identified in the EIS. Condition 50, which requires intersection signal*  
3 *improvements, will mitigate exactly the same impact.*

4 This is an assertion not based on information in the FEIS or presented at  
5 the public hearing. It is very unlikely that these two requirements would  
6 mitigate exactly the same impact.

7 *The funding amounts in Condition 52 should be adjusted to account for the fact*  
8 *that transit speed reductions will already be mitigated.*

9 No analysis has been provided in the FEIS or at the public hearing to  
10 indicate whether or how much implementation of ITS improvements  
11 (Condition 50) would affect transit speeds.

12 *The second and third RapidRide lines (identified before the Hearing Examiner as*  
13 *the 'Market line' and the '23<sup>rd</sup> Avenue line') run the same route and use the same*  
14 *infrastructure through the University District. Condition 52 does not clarify how*  
15 *funding for this infrastructure is segregated between the lines.*

16 To the extent UW's obligations for funding a portion of a RapidRide line  
17 in the primary or secondary impact zones have been satisfied through  
18 implementation of another RapidRide line, these cost obligations should  
19 be considered satisfied.

20 *Similarly, with respect to Condition 55, the transit stops identified for*  
21 *improvement appear to be on the same routes as the RapidRide lines identified in*  
22 *Condition 52. Condition 55 does not clarify how its improvement-requirements*  
23 *are separate from the improvements already contemplated in Condition 52.*

If UW cost obligations for the transit stops in Condition 55 are satisfied  
prior to payments related to Condition 52, these costs should be removed  
from the total pro-rata cost calculations for Condition 52.

*The cause of reductions in transit speed is increased traffic congestion. Any*  
*mitigation imposed on the University should be based on the Plan's contribution*  
*to the cause of an impact – in other words, the actual traffic generated by the*  
*Plan.*

Although it is generally correct that additional traffic leads to greater  
congestion, which in turn results in lower speeds (including transit  
speeds), the marginal effect of an increase in traffic varies by the level of  
congestion on the roadway. In congested corridors, a small increase in  
traffic volumes may lead to a substantial decrease in speeds. Therefore,  
the forecast change in transit speeds due to UW's growth is a reasonable  
metric for determining UW's share of transit mitigation.

1                    *SEPA mitigation must be tied to actual impacts.*

2                    The impacts for which Conditions 52 and 55 provide mitigation are  
3                    identified in the FEIS and the SDCI and Hearing Examiner's  
4                    recommendations.<sup>26</sup>

5                    *The record contains no evidence of project budgets or other funding commitments*  
6                    *for the Market line or the 23<sup>rd</sup> Avenue line.*

7                    The Hearing Examiner stated that "costs will be made certain in advance  
8                    at the time payment is required."<sup>27</sup>

9                    **C. Conclusion.**

10                    SDCI respectfully asks the Council to consider SDCI's perspective on these aspects of  
11                    UW's petition when making the City's decision on the proposed CMP.

12                    Respectfully submitted February 23, 2018.

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24                    <sup>26</sup> Regarding Condition 52, see: FEIS at 3.16-50, Table 3.16-18; SDCI Rec. at 87-88; Examiner Rec. at 17-18 and  
25                    21-22. Regarding Condition 55, see: FEIS at 3.16-42, Table 3.6-15; SDCI at 90; Examiner Rec. at 18 and 22.

26                    <sup>27</sup> Examiner Rec. at 23 ¶ 23.

***Response to the University of Washington AG's Letter to City Council re Hearing Examiner Findings and Recommendations, Clerk File 314346***

The filing by Assistant Attorney General Quentin Yerxa for the University of Washington states opposition to Campus Master Plan (CMP) Conditions 1 and 2 on affordable housing recommended by the Seattle Hearing Examiner. The AG's letter asserts that there is no SEPA authority or basis in the City-University Agreement (CUA) to require the UW to provide affordable housing for its low-wage employees.

We disagree. We believe the SEPA argument is irrelevant to the City Council's authority, under the plain language of the CUA and the City's regulatory powers clarified last summer by the State Supreme Court, to insist on affordable housing conditions for the UW's CMP.

The CUA states that the review and recommendation of the project shall be based on, among other things, "neighborhood plans and policies adopted by ordinance" and "other applicable land use policies and regulations of the City."<sup>1</sup> In other words, as a matter of law, the City is required to base the decision on adopted comprehensive plan policies.

Both the SDCI and the Hearing Examiner concluded that the CMP was not consistent with Seattle Comprehensive Plan Policy H5.19 because it would lead to an increase of an estimated 4,649 faculty and staff over its 10-year life without providing for adequate housing, including rent- or income-restricted housing, to accommodate that employment growth.

The Alliance presented evidence to the Hearing Examiner that an estimated 560 new UW employees earning less than 50 percent of Area Median Income (AMI) and 160 new employees earning between 50 and 80 percent of AMI, not counting similarly-situated non-tenured faculty, would be highly impacted by a failure to provide affordable housing. Contrary to the UW's assertions to the Hearing Examiner, the SDCI made it clear that the City is not able to provide sufficient affordable workforce housing with its current programs.

In addition to new UW employees, we estimate that about half (13,387) of the 26,318 current UW classified and professional (non-academic) employees earned less than 80 percent of Area Median Income (AMI), and about one-sixth (4,574) earn less than 50 percent of the AMI.<sup>2</sup> These employees are already facing a housing affordability crisis.

Finally, there will be a clear impact on affordable housing for other low-wage residents as new higher wage UW employees and employees of UW's new corporate partners take advantage of light rail and move into currently affordable housing in southeast and north Seattle, displacing existing immigrant families and communities of color, a trend identified in the Seattle Growth and Equity Analysis.

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<sup>1</sup> (City University Agreement Section II.B.8.c and d.)

<sup>2</sup> Based on 2015 UW salary data.

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The UW continues to argue that the City lacks legal authority to require construction of affordable housing as a condition of this Plan. The City-University Agreement contains the following housing goals:

*The City and the University recognize that the primary housing goals of the University Community Urban Center Plan are to: (1) provide housing for a mix of demographic and income groups; (2) encourage a stable residential population; by using a variety of strategies including development partnerships, zoning modifications, financing subsidies and cost-reduction measures....*

*The University's presence and influence in the economy affords it a unique ability to encourage the development of housing to serve UW faculty and staff and other potential long-term residential stakeholders. The University will continue its efforts, to the extent allowed by law, to provide housing financing opportunities for its faculty and staff. The University will report to the City on its efforts to stimulate new housing production and development of housing options for faculty and staff. (City/University Agreement Section II.H)*

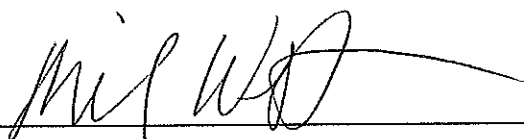
Clearly, the UW has not lived up to the above CUA language, not mention numerous Comp Plan policies, by refusing to provide affordable housing for employees not able to afford market-rate housing, and in fact has made the affordability problem worse through growth.

The Final CMP and EIS released in July 2017 placed the burden for affordable housing on the City of Seattle. As a result of public pressure, just as SDCI began its CMP review in September, the UW offered to partner with SHA to construct 150 units of housing for low-wage employees. We assume this partnership was to take advantage of tax credit financing obtained by SHA. Even as the case was before the Hearing Examiner, the UW refused to commit itself in the CMP to building the 150 units. Now comes the UW offering "to describe this commitment in the Plan if doing so allows the approval process to move forward..."

We ask the City Council to take a hard look at the UW's contribution to the problem as the City's second largest employer, continuing to grow while paying salaries too low to afford thousands of employees housing in the metro area. There is no rationale for 150 units the UW is proposing.

We ask the Council to make this Master Plan for the next 10 years a model for how large employers should partner with the City in making equity an equal priority with growth.

Dated this 23<sup>rd</sup> day of February, 2018

Signed, 

David West  
Representative of the U District Alliance for Equity and Livability

**Response to Attorney General's Letter of 1/29/18 regarding Hearing Examiner's Findings on UW Campus Master Plan, CF - 314346**

The filing by Assistant Attorney General Quentin Yerxa, for the University of Washington, states opposition to three of the Transportation Conditions (51, 52 and 55) recommended by the Seattle Hearing Examiner. The AG's letter asserts that the "record contains no evidence of significant adverse impacts giving rise under SEPA for these conditions." However, the UW's supporting EIS provides specific evidence of significant adverse impacts. The first evidence is from the EIS Transportation Discipline Report (TDR) Table 10.1 Single Occupancy Vehicle (SOV) Sensitivity Analysis at Key Impacted Intersections presented below.

Table 10.1  
SOV SENSITIVITY ANALYSIS AT KEY IMPACTED INTERSECTIONS

Intersection	Existing (2015)		No Action		Alternative 1 at 20% SOV		Alternative 1 at 15% SOV	
	LOS <sup>1</sup>	Delay <sup>2</sup>	LOS <sup>1</sup>	Delay <sup>2</sup>	LOS <sup>1</sup>	Delay <sup>2</sup>	LOS <sup>1</sup>	Delay <sup>2</sup>
16. 9th Ave NE (South)/NE 45th St	E	38	E	41	F	67	F	65
29. Montlake Blvd NE/Mary Gates Memorial Dr NE	D	54	D	50	E	56	D	55
30. Roosevelt Way NE / NE 43rd St (East)**	D	28	F	793	F	978	F	950
31. Roosevelt Way NE / NE 43rd St (West)	E	36	F	74	F	113	F	109
32. 11th Ave NE / NE 43rd St	B	14	E	72	F	110	F	102
47. 12th Ave NE / NE 41st St	E	41	F	52	F	602	F	532
49. University Way NE / NE 41st St	F	*	F	*	F	*	F	>180
51. 7th Ave NE / NE 40th St	E	37	E	44	F	58	F	55
57. 6th Ave NE / NE 40th St	F	60	F	107	F	133	F	102
63. 6th Ave NE / NE Northlake Way	C	25	E	38	F	109	F	67
67. 15th Ave NE / NE Pacific St	D	38	D	37	E	72	E	60
69. 15th Ave NE / NE Boat St	B	15	C	18	F	95	E	76
72. Montlake Blvd NE/ IMA exit	D	34	D	34	E	43	E	41

Source: Transpo Group, 2016  
 \* Volume exceeds capacity and Synchro could not calculate the delay.  
 \*\* Evaluated in HCS because Synchro could not calculate the delay.  
 1. Level of service. 2. Delay in seconds

Presently, 6 out of 13 key U District intersections are at LOS E or F with 420 cumulative seconds of delay. With a reduction to 15% campus wide SOV trips by 2028 (its now

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17%), 11 out of 13 key U District intersections are at LOS E or F with 2,394 seconds of delay.

In the seven transit corridors serving the U District, delay will range from 6% to 63% with an average delay of 21% in six of the seven corridors of service. Table 5.13 from the TDR shows that projected transit speeds and reliability would be degraded with the recommended Alternative 1.

Table 5.13  
COMPARISON OF TRANSIT SPEEDS

Corridor	Existing Transit Speed (mph)	No Action Transit Speed (mph)	Alternative 1 Transit Speed (mph)
NE 45th Street Eastbound	5.2	4.8	4.0
NE 45th Street Westbound	5.2	4.0	3.2
NE Pacific Street Eastbound	14.7	12.3	4.6
NE Pacific Street Westbound	7.3	18.3	13.8
11th Avenue NE Northbound	5.9	5.1	4.3
Roosevelt Way NE Southbound	12.6	4.9	4.6
15th Avenue NE Northbound	7.8	14.1	11.3
15th Avenue NE Southbound	5.8	6.8	4.4
Montlake Boulevard NE Northbound	20.0	15.1	11.3
Stevens Way NE Eastbound	6.8	8.8	8.0
Stevens Way NE Westbound	2.7	3.0	3.0

**The Problem of the Peak**

According to the UW Transportation Committee, 83 percent of UW staff arrive during the morning peak compared to 41% of students. The number and location of trips occurring in the Peak Hour greatly affect intersection levels of service and transit reliability.

Almost half (46 percent) of the growth of population at the UW will be new staff. An estimated 36 percent of current staff drive alone compared to six percent of students who drive alone. A major effort will be required to attract staff to transit. The 15 percent SOV goal is a performance measure over the entire day and doesn't address the peak hour problem as articulated in the accompanying attachments.

Accordingly, we assert that the University must be required to commit to an SOV goal of 12% by 2025 to fully mitigate the 6,195 new SOV trips to the campus. Conditions 50, 51 and 55 will help the UW meet this more aggressive goal.

The letter further asserts "it is critical that Plan conditions are closely tied to the actual construction of development authorized in the Plan in terms of i) mitigation required, and ii) funding obligations." The letter goes on to take issue with the specific costs being shared with the City and Metro through Conditions 51, 52 and 55.

The UW Campus Master Plan has no difficulty to set aside the necessary resources to replace existing parking supply needed for six million square feet of building expansion with structured parking (@ \$100,000 per space) yet depends on the taxpayers of Seattle and King County to provide all of the new transit services and transportation improvements required to handle that planned growth.

The UW's opposition to sharing costs for service and facilities would be a significant break with past UW practice. With the initiation of the UPass program in 1991, the University agreed to support a significant share of new transit service hours as a part of the initial U Pass agreement. Further, the UW's opposition does not exhibit the kind of partnership envisioned in the City/University Agreement.

Filed on behalf of the Sierra Club, Washington State Chapter

By *Jesse Piedfort* 2-23-18

Jesse Piedfort  
Chapter Director, Sierra Club Washington State



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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 RESPONSE TO  
PETITIONS FOR FURTHER  
CONSIDERATION**

**I. INTRODUCTION**

The University of Washington requests the City Council approve the 2018 Campus Master Plan ("Master Plan"). The Seattle Department of Construction and Inspections ("SDCI") and the Hearing Examiner have recommended approval of the Master Plan subject to certain conditions. The City-University Community Advisory Committee ("CUCAC") has also expressed general support for the Master Plan, with recommendations.

For the most part, the Hearing Examiner's recommendation reflects a thorough review of the Master Plan.<sup>1</sup> Despite approval recommendations from every official reviewer of the Master Plan, however, petitions for further consideration have been filed. By and large the petitions raise the same issues. Many raise economic and social justice concerns. While important, these issues

<sup>1</sup> The University has filed its own petition for further consideration challenging a limited number of the Hearing Examiner's recommendations, as described in the University's letter to the City Council dated January 29, 2018. The University will discuss its objections more specifically in its reply briefing.

1 are outside the Master Plan process and the City Council's land use review authority. With  
2 respect to land use issues, the petitioners have not shown that applicable law or substantial  
3 evidence in the record support their requests. In fact, in many instances, the law and record are  
4 contrary to their requests.

5 Accordingly, the City Council should reject the petitioners' requested conditions.

## 6 II. PROCEDURAL HISTORY

7 The proposed Master Plan is the result of a multi-year public engagement and planning  
8 effort. The University began the visioning process for the Master Plan and solicited public  
9 comments on its scope and the environmental review in 2015. (Ex. D2 at 280-285). It published a  
10 draft Master Plan and Environmental Impact Statement ("EIS") in 2016. (HE Rec. at 12). The  
11 University collected comments on the drafts at a public hearing and in two comment periods.  
12 (*Id.*). CUCAC, SDCI, and several petitioners submitted comments on the draft Master Plan and  
13 EIS. (*See* Ex. A19, Ch. 5; Ex. D4). After making many revisions based on comments, the  
14 University published the final Master Plan and EIS in 2017. (HE Rec. at 12).

15 Following publication, SDCI and CUCAC reviewed the final Master Plan and EIS and  
16 issued reports recommending approval with conditions. (Exs. D1 and D3). CUCAC's report  
17 included 33 recommendations. The University responded to each and agreed to implement many  
18 outside the Master Plan. (Ex. A20). SDCI also reviewed CUCAC's report. It adopted some  
19 recommendations but rejected others because they were inconsistent with the City-University  
20 Agreement ("CUA"); inconsistent with the City's policies under the State Environmental Policy  
21 Act, ch. 43.21C RCW ("SEPA"); or outside the land use review process associated with the  
22 Master Plan. (*See* Ex. D1 at 10-17).

23 The Hearing Examiner held a public hearing on the Master Plan in December 2017. At the  
24 hearing, she heard testimony from SDCI, CUCAC, and the University. The Hearing Examiner  
25 also accepted written and oral public comment, including comments from several petitioners.  
26 (*See* Ex. P1). She issued her recommendation to approve the Master Plan in January 2018. The

1 Hearing Examiner concluded that, with recommended conditions, the Master Plan addresses the  
2 matters required by the CUA, is consistent with applicable land use policies and regulations, and  
3 appropriately mitigates short- and long-term environmental impacts. (*Id.* at 23).

### 4 III. GENERAL LEGAL PRINCIPALS

#### 5 A. Overview of Applicable Regulatory Framework

6 The Growth Management Act, ch. 36.70A RCW (“GMA”), establishes a multi-tiered land  
7 use planning hierarchy. *See Laurelhurst Cmty. Club v. City of Seattle*, Central Puget Sound  
8 Growth Mgmt. Hearings Bd., Case No. 03-3-0008, 2003 WL 22896421, at \*8 (June 18, 2003)  
9 (“*Laurelhurst I*”). Three tiers are relevant here.

10 The first tier is the “comprehensive plan” level, where a local jurisdiction sets out general  
11 area-wide policy objectives. *See* RCW 36.70A.040 *et seq.* Here, the Seattle 2035 Comprehensive  
12 Plan (“Comp. Plan”) is the first-tier regulation. Its role is to guide decisions on proposed  
13 ordinances, budgets, policies, and programs:

14 The City will use the [Comprehensive] Plan to help make decisions about  
15 proposed ordinances, capital budgets, policies, and programs. Although the  
16 City will use the [Comprehensive] Plan to direct the development of  
17 regulations that govern land use and development, it will not use the  
[Comprehensive] Plan to review applications for specific development  
projects, except when an applicable development regulation expressly  
requires reference to this Comprehensive Plan....

18 *Comp. Plan* at 17 (last amended by Ord. 125428). The Comprehensive Plan expressly says it is not  
19 to be used to review applications for specific projects unless applicable development regulations  
20 require reference to it. *Id.*

21 The second relevant tier involves development regulations, which are controls aimed at  
22 achieving the policy objectives in the comprehensive plan. RCW 36.70A.040(3); *see also*  
23 *Laurelhurst I*, 2003 WL at \*8. In this instance, the applicable development regulations are in the  
24 CUA and in chapter 23.69 of the Seattle Municipal Code (“MIO Chapter”). In *Laurelhurst I*, the  
25 Central Puget Sound Growth Management Hearings Board (“GMA Board”) observed that the  
26 University’s master plans are “governed by GMA development regulations, namely, the MIO

1 [Chapter] and the 1998 City-University Agreement.” *Laurelhurst I*, 2003 WL at \*8. The GMA  
2 Board confirmed this observation a year later, holding that the CUA is the development regulation  
3 governing the University’s land use activities on campus:

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

9 *Laurelhurst Cmty. Club v. City of Seattle*, Central Puget Sound Growth Mgmt. Hearings Bd., Case  
10 No. 03-3-0016, 2004 WL 3275206, at \*11 (March 3, 2004) (“*Laurelhurst II*”).

11 The third tier in the land use approval process is the local jurisdiction’s individual land use  
12 decision on a specific proposal. *See* RCW 36.70B.020; *see also id.*, at \*8. In *Laurelhurst I*, the  
13 GMA Board held that the Master Plan is “part of a permit application process resulting from a  
14 development regulation.” *Id.* at \*9. It described the University’s master plans as the functional  
15 equivalent of a site plan. *Id.* at \*8. Accordingly, approval of a master plan is defined as a quasi-  
16 judicial Type IV permit decision in the City’s code. *See* SMC 23.76.004, Table A. The City  
17 Council’s approval decision of the Master Plan will be a third-tier action.

## 18 **B. Governing Regulations**

### 19 **1. Applicable development regulations - CUA**

20 Major institution master plans are governed by the MIO Chapter, which authorizes the  
21 establishment of major institution overlay districts and regulates uses within those districts. *See*  
22 *Laurelhurst I*, 2003 WL at \*8. With respect to the University, the MIO Chapter incorporates the  
23 CUA as the regulation governing the master plan process and as the fundamental framework  
24 defining its scope. SMC 23.69.006.B; *see also Laurelhurst II*, 2004 WL at \*11. The CUA requires  
25 the University’s master plans to address 11 development issues, including institutional zoning and  
26 development standards, parking and transportation, and energy and utility use. CUA § II.A. The  
CUA also addresses housing and transportation.

1 With respect to housing, it recognizes that the University and City have a shared interest  
2 in “the creation of additional market-rate housing.” CUA § II.H.1. The CUA thus requires the  
3 University to encourage private developers to construct mixed-use projects that include market-  
4 rate rental and for-sale housing. *Id.* It also obliges the University “to provide housing financing  
5 opportunities for its faculty and staff” and “report to the City on its efforts to stimulate new  
6 housing production and development of housing options for faculty and staff.” CUA § II.H.3.

7 With respect to transportation, the CUA requires a Transportation Management Plan  
8 (“TMP”) “that promotes walking, bicycling, carpooling/vanpooling and transit.” CUA § II.A,  
9 III.C.2. The CUA also includes certain requirements regarding bicycle paths and parking,  
10 disability accommodation, and cooperation with local and regional transit authorities.  
11 CUA § III.C.3-C.6.

12 Several petitioners have asked the City Council to impose conditions intended to address  
13 certain alleged socio-economic impacts of the Master Plan. This is not appropriate. The GMA  
14 Board has recognized that the Master Plan is the functional equivalent of a site plan.  
15 *Laurelhurst I*, 2003 WL at \*8. As is true for site plans generally, the CUA requires the Master  
16 Plan to address only matters relevant to development and land use. It does not require the Master  
17 Plan to address aspects of general University-operations, such as labor relations and diversity.  
18 While those issues are important to the University, and are being addressed through a multitude of  
19 other University initiatives, they are beyond the scope of the site plan document at issue here.

20 Further, recognizing the limits of the master plan’s requirements in the CUA, some  
21 petitioners also suggest amending the CUA as part of the master plan review process. The CUA  
22 cannot be amended in this quasi-judicial process. An amendment is a Type V legislative action.  
23 *See* CUA § VIII; *Laurelhurst II*, 2004 WL 3275206, at \*11; *see also* SMC 23.76.004, Table A.  
24 The question of amending the CUA is a different question that the parties could choose to  
25 consider in the future. It is not an appropriate question during this master plan review.  
26

1           **2.     SEPA**

2           In addition to the CUA and the MIO Chapter, the Master Plan must satisfy SEPA and the  
3 City’s SEPA Rules, ch. 25.05 SMC. SEPA focuses on “broad questions of environmental impact,  
4 identification of unavoidable adverse environmental effects, choices between long and short term  
5 environmental uses, and identification of the commitment of environmental resources.” *DeWeese*  
6 *v. Port Townsend*, 39 Wn. App. 369, 375, 693 P.2d 726 (1984). SEPA requires the preparation of  
7 an environmental impact statement identifying and analyzing the probable significant adverse  
8 environmental impacts of a proposed action. RCW 43.21C.031. SEPA further authorizes local  
9 jurisdictions to condition approval on satisfaction of measures intended to mitigate identified  
10 probable significant adverse impacts. RCW 43.21C.060; WAC 197-11-660; *see also* SMC  
11 25.05.660.A.1. This is commonly known as “substantive SEPA authority.” The City’s substantive  
12 SEPA authority is limited in two respects.

13           First, it is limited to formally designated SEPA policies in effect when the University’s  
14 draft EIS was issued. SMC 25.05.660.A.1. Those policies are in SMC 25.05.665, 25.05.670, and  
15 25.05.675. *Id.* The draft EIS was issued on October 5, 2016. (HE Rec. at 12). There were no  
16 socio-economic SEPA policies in effect on that date, nor are there any today. *See* SMC 25.05.675.  
17 This is at least partly because socio-economic interests “are not within the zone of interests  
18 protected by SEPA.” *Snohomish County Prop. Rights All. v. Snohomish County*, 76 Wn. App. 44,  
19 53, 882 P.2d 807 (1994). Because there was no SEPA policy addressing socio-economic impacts  
20 in effect when the University issued the draft EIS, the City has no substantive SEPA authority to  
21 condition approval on mitigation intended to address perceived socio-economic impacts.

22           Second, even where the City has substantive SEPA authority to require mitigation, the  
23 mitigation measures must “be related to specific, adverse environmental impacts clearly identified  
24 in an environmental document on the proposal,” SMC 25.05.660.A.2. Mitigation measures must  
25 also be reasonable, feasible, and limited “to the extent attributable to the identified adverse  
26 impact” of the proposal. SMC 25.05.660.A.3 – A.4.

1 **C. City Council's Role and Standard of Review**

2 As required by Section II.B.9 of the CUA, the Hearing Examiner conducted an open  
3 record hearing on the Master Plan, examined the evidence, made findings and conclusions, and  
4 has recommended that the City Council approve the Master Plan subject to certain conditions.  
5 The City Council's review here is a quasi-judicial proceeding, governed by its Rules for Quasi-  
6 Judicial Proceedings ("Council Rules"). *See* Council Rules § I.B.4. Under the Council Rules, the  
7 City Council's decision must be "based solely on the evidence in the record." *Id.* § VIII.A. In  
8 reviewing the matters raised in petitions for further consideration, the City Council must "apply  
9 applicable law," and its decisions must "be supported by substantial evidence in the record." *Id.*  
10 § VI.C.5.a. The Hearing Examiner's recommendations should be accepted unless a petitioner  
11 shows that the Hearing Examiner applied the law incorrectly or that the recommendation is not  
12 supported by substantial evidence in the record.

13 **IV. ANALYSIS OF INDIVIDUAL ISSUES**

14 **A. Affordable Housing**

15 The Hearing Examiner supported SDCI's recommendation requiring the University to  
16 construct, as part of the Master Plan, 150 units of housing available to faculty and staff earning up  
17 to 60 percent of area median income. Several petitioners ask the Council to increase this mandate  
18 to 720 units, which they contend would provide "sufficient" affordable housing for "all new  
19 housing-cost-burdened employees." Their request has no support in the law or the record.

20 **1. There is no authority under the CUA for requiring an affordable housing  
21 project in the Master Plan.**

22 The CUA does not authorize the City to require construction of affordable housing as part  
23 of a master plan. It requires only that the University: (a) encourage private developers to construct  
24 market-rate housing, (b) continue to provide housing finance opportunities to its faculty and staff;  
25 and (c) report to the City on its efforts to stimulate new housing production. CUA § II.H.3. The  
26

1 record demonstrates that the Master Plan and the University's reporting practices are consistent  
2 with these policies. (Ex. D2 at 276-77, Ex. A25 at 8-9). The CUA requires nothing more.

3 Because the CUA's housing provisions are limited to market-rate housing, SDCI had to  
4 get creative in finding a basis for an affordable housing condition. It pointed to a single policy in  
5 the Housing Element of the 2035 Comprehensive Plan, which encourages the City to "consider"  
6 requiring provisions for affordable housing in major institution master plans. Comp. Plan Policy  
7 H 5.19. The University pointed out the many legal deficiencies in relying solely on this non-land  
8 use comprehensive plan policy. The Hearing Examiner nevertheless sided with SDCI.

9 The CUA requires the Hearing Examiner's recommendations to be "based on the  
10 provisions of [the CUA], neighborhood plans and policies adopted by ordinance, SEPA, [and]  
11 other applicable land use policies and regulations of the City." CUA § II.B.9. To find a basis for  
12 an affordable housing condition, she interpreted the intent of the CUA's parties regarding "other  
13 applicable land use policies" as allowing her to go beyond the Land Use Element of the  
14 Comprehensive Plan to apparently any policy statement that referred to major institutions.  
15 (HE Rec. at 21). Based on this interpretation, she concluded that Housing Policy 5.19 is a basis  
16 for requiring an affordable housing project in the Master Plan. This is error.

17 There is no evidence the University agreed that Housing Policy 5.19 is an "other  
18 applicable land use policy" within the meaning of Section II.B.9 of the CUA. The CUA is a  
19 contract adopted in 1998. The City adopted the 2035 Comprehensive Plan, including Housing  
20 Policy 5.19, in 2016. *See* Ord. 125173. The record contains no evidence of mutual intent to be  
21 bound by a comprehensive plan policy outside the Land Use and Neighborhood Planning  
22 Elements and adopted years after the CUA was signed.

23 Legislative history demonstrates that the phrase "other applicable land use policies" at  
24 most referred to specific land use policies in effect when the CUA was adopted. Before the CUA,  
25 Seattle's code included a specific set of major institution land use policies. *See* former SMC  
26 23.12.120 (consolidated and established by Ordinance 117929). The City repealed the major



1 institution land use policies in 2001 and incorporated them into the Land Use Element of Seattle’s  
2 then-current Comprehensive Plan and into its development regulations. *See* Ordinance 120691;  
3 Res. 30156 § 1.a. Consistent with this legislative history, the City evaluated the 2003 Campus  
4 Master Plan under Policies 4, 5, and 7 of the former major institution land use policies. *See*  
5 CF 304650 (analyzing under policies in former SMC 23.12.120). In other words, the CUA’s  
6 reference to “other applicable land use policies” is not a reference to every policy statement that  
7 mentions major institutions. It is at most a reference to specific major institution land use policies  
8 that were moved to the Land Use Element of the Comprehensive Plan and applicable  
9 development regulations.

10       There is also no evidence the parties have amended the CUA to include housing policies  
11 outside those in it or the Land Use and Neighborhood Planning Elements of the Comprehensive  
12 Plan. Years of negotiation went into the housing provisions in the CUA, and those provisions are  
13 extremely detailed in what is required of the Master Plan. Those detailed provisions cannot be  
14 amended or supplemented unless both parties—the City and the University—agree.  
15 CUA § VIII.A. The City’s action to amend the CUA must also be adopted by ordinance. *Id.* This  
16 would be a Type V land use decision that requires its own GMA-compliant public process.  
17 *See* SMC 23.76.004, .036.C, and .062. None of the steps required to amend the CUA to include an  
18 affordable housing requirement have happened. Using Housing Policy 5.19 as the basis for  
19 requiring the Master Plan to include an affordable housing project is an end-run around the agreed  
20 regulatory limits and process for amendments in the CUA and an end-run around the process  
21 required for a Type V land use decision.

22       The CUA’s policies regarding housing are limited and the Master Plan is consistent with  
23 them. There is no legal basis under the CUA to impose affordable housing conditions.  
24  
25  
26

1           **2.     There is no authority under SEPA for requiring affordable housing**  
2           **development as SEPA mitigation.**

3           There is also no basis in SEPA for affordable housing conditions. The EIS concluded there  
4           are no probable significant adverse impacts on housing. (Ex. A19 at 3.8-44). SEPA does not allow  
5           the City to impose mitigation absent an identified impact. SMC 25.05.660.A.2. SEPA also  
6           requires the City to base mitigation measures on policies in effect when the draft EIS is issued.  
7           SMC 25.05.660.A.1. There was no such policy in this case. The City's SEPA housing policy does  
8           not apply to major-institution development. SDCI correctly acknowledged this limitation in its  
9           departmental recommendation:

10                   “SMC 25.05.675.I provides policies to minimize impacts on the demolition,  
11                   rehabilitation, or conversion of existing low-rent housing units. SEPA  
12                   policies also authorize conditions to minimize the direct impacts of new  
                    commercial development. There are no SEPA policies specific to new  
                    institutional development. No mitigation is warranted by Seattle's SEPA  
                    Housing Policy.”

13           (Ex. D1 at 76). Finally, SEPA requires mitigation measures to be reasonable and capable of being  
14           accomplished. SMC 25.05.660.A.3. As detailed below, the record contains no evidence that the  
15           petitioners' proposed expansion from 150 units to 720 units meets this standard.

16           **3.     The record does not support the petitioners' request to increase the number of**  
17           **housing units from 150 to 720.**

18           The record does not support the petitioners' request in several respects. There is no  
19           evidence that, as the petitioners allege, 560 new faculty and staff positions will pay less than 50  
20           percent of area median income or that 160 of the new positions will pay between 50 percent and  
21           80 percent of area median income. The record establishes that the Master Plan is expected to  
22           create 3,239 new staff positions and 1,410 new faculty positions. (Ex. A19 at Table 3.8-12). The  
23           push for 720 units is based on speculation.

24           The Hearing Examiner's recommendation calling for 150 units is at least grounded in the  
25           record notwithstanding the lack of authority to impose this condition. The EIS estimates that 120  
26           new staff will live in the primary impact zone as a result of development under the Master Plan.

1 (*Id.*). There is also evidence that increases in area housing supply and the City's other housing  
2 affordability initiatives will have at least some mitigating effect on housing affordability. (*Id.* at  
3 3.8-34 to 3.8-36). Under these factual circumstances, 150 units of affordable housing is more than  
4 reasonably sufficient to cover the expected increase in demand.

5 The record also shows that constructing 150 units is capable of being accomplished, as  
6 required by SEPA. *See* SMC 25.05.660.A.3. The University is pleased to partner with Seattle  
7 Housing Authority on a voluntary project that will add at least 150 units of affordable housing in  
8 the University District. (Ex. D14). Work on this project is already underway. (*Id.*). In the course  
9 of this master planning process, the University has also agreed to refer to this project in the  
10 Master Plan itself.<sup>2</sup> In contrast to this evidence of feasibility, the record indicates that 720 units is  
11 not feasible. The record shows that the University is a state agency, dependent on legislative  
12 appropriations, tuition revenue, and private gifts and grants. It does not have the same flexibility  
13 to raise revenue as private developers. Though it is beyond the City's authority, the Hearing  
14 Examiner's recommended affordable housing condition at least has some basis in the record.

15 The City Council should reject the proposal to expand an already erroneous affordable-  
16 housing recommendation.

## 17 **B. Transportation**

18 The Hearing Examiner recommended several transportation conditions to mitigate the  
19 traffic impacts of the Master Plan, including the impacts of the estimated 6,195<sup>3</sup> vehicle trips  
20 generated by the Plan. The University has accepted all but three conditions and is continuing to  
21 work with SDCI to reach agreement on the remaining three.<sup>4</sup> Several petitioners nevertheless urge  
22 the City Council to impose additional transportation-related mitigation conditions. In response to

---

23 <sup>2</sup> Notwithstanding this agreement, the University reserves its objection to the City's legal authority to require  
24 affordable housing as part of this Master Plan.

25 <sup>3</sup> This is the estimate if the University's SOV rate remains at 20 percent. The number of trips generated will be lower  
under the 15 percent SOV rate goal reflected in the University's TMP.

26 <sup>4</sup> The University has objected to Conditions 51, 52, and 55. The University will provide additional legal analysis on its  
objections to those conditions in separate briefing.

1 one of the proposed conditions, the University will commit to a separation of users on the Burke-  
2 Gillman Trail. There is no basis in the law or the record for the other requested conditions.

3 **1. Reducing the Single-Occupant Vehicle Rate from 15 Percent to 12 Percent**

4 The Hearing Examiner recommended requiring the University to reach a single-occupant  
5 vehicle (“SOV”) rate of 15 percent no more than one year after the Lynwood Link Extension  
6 opens for service. (HE Rec. at 28). This goal is the most aggressive of any major institution by a  
7 significant margin. Even so, several petitioners advocate a further reduction to 12 percent. Neither  
8 the law nor the record supports their requests.

9 **a. There is no authority under the CUA for a further reduction to 12 percent.**

10 The CUA requires no particular SOV rate. The CUA instead sets out a policy that, through  
11 the University’s TMP, “[t]he use of the single occupant private automobile for travelling to, from  
12 and on the campus will be discouraged through the provision of facilities and services favoring  
13 alternative modes.” CUA § III.C.2. The University’s 15-percent SOV rate goal is consistent with  
14 this policy, and the CUA does not require more.

15 **b. There is no authority under SEPA for a further reduction to 12 percent.**

16 SEPA also does not require a lower SOV rate. SEPA mitigation must be tied to an impact,  
17 and it must be reasonable and capable of being accomplished. SMC 25.05.660.A.2 – A.3. There is  
18 no evidence that any significant adverse impact will remain after accounting for the transportation  
19 conditions the University has already accepted and the 15 percent SOV goal in the Master Plan.

20 Given the mitigating effect of the other transportation conditions, the Hearing Examiner  
21 correctly concluded that a 15 percent SOV goal is reasonable and capable of being accomplished.  
22 (HE Rec. at 24). The record shows that the Seattle Department of Transportation supports a 15-  
23 percent SOV goal. (Ex. D18 at ¶ 17). This goal is also consistent with the Comprehensive Plan’s  
24 SOV goal for trips in the University District by 2035. Comp. Plan. at 75; last amended by  
25 Ord. 125428. Further, the record shows that a 15 percent goal is far ahead of goals for other major  
26 institutions. It is 35 percentage points lower than what is required by the land use code.

1 See SMC 23.54.016.C. It is also less than half of the goal recently set for Seattle University and  
2 Swedish Cherry Hill, with respective goals of 35 percent and 32 percent. (Applicant Post-Hearing  
3 Br. at 10 n. 4). There is no basis in SEPA for a further reduction to 12 percent.

4 **c. The record does not support a further reduction to 12 percent.**

5 The record also shows that the SOV rate goal is only one of the three pillars in the TMP,  
6 all of which collectively mitigate traffic impacts. The other two pillars are the University's cap on  
7 parking spaces on campus (12,300 spaces) and its AM and PM peak hour trip caps. Both caps  
8 were set before 1990, and they have remained unchanged despite a 35 percent University  
9 population increase over the last quarter century. The record also shows that the University is  
10 currently operating under these caps. (Ex. A19, App. D at 1-2 to 1-3, 3-82). It is misleading for  
11 petitioners to ignore the efficacy of these existing caps and focus solely on the SOV rate goal.

12 In addition, the record does not support the petitioners' request to establish separate SOV  
13 rate goals for students and employees. The University's traffic consultant testified that a blended  
14 approach is best because the University's student population is substantially larger than its faculty  
15 and staff population. (Testimony of J. Acutanza). She explained that separate goals is would not  
16 materially change the overall numbers. The data in the University's Transportation Discipline  
17 Report regarding mode split for the overall University population supports this point, and the  
18 record contains no evidence to the contrary. A blended SOV rate goal is also consistent with the  
19 City's approach to regulating SOV trips associated with private development in the University  
20 District. See SMC 23.48.610 (requiring private development that generates 50 or more employee  
21 or student SOV trips in a pm peak hour to prepare a TMP with a blended SOV goal). There is no  
22 reason to treat the University differently.

23 Overall, the record shows that the University's 15 percent blended SOV rate goal goes far  
24 above and beyond what is required by the City's land use code and is reasonable and capable of  
25 being accomplished. The City Council should reject the push for a 12 percent SOV rate that deals  
26 with students and employees separately.

1           **2. Employee Transit Pass Program**

2           Several petitioners also request mandating a free transit pass for all University employees.  
3           The Hearing Examiner and SDCI do not recommend this. The evidence and the law support them.

4           **a. There is no authority in the CUA for imposing a transit-pass program.**

5           The CUA does not require a transit pass for employees. It requires only that “[t]he City  
6           and the University will continue to act in partnership with King County Metro and Community  
7           Transit to provide a high level of transit service to the campus, university area, and nearby  
8           neighborhood business districts.” CUA § III.C.6. The proposed TMP advances this policy by  
9           setting out six strategies to strengthen partnerships with King County Metro and Community  
10          Transit and ensure a high-level of transit service. (Ex. D2 at 264).

11          **b. There is no authority in SEPA for imposing a transit-pass program.**

12          There is also no basis in SEPA for a transit pass condition. Mitigation under SEPA must  
13          be reasonable and feasible. SMC 25.05.660.A.3. The record contains un rebutted testimony that  
14          the University is a state institution of higher education whose funding comes entirely from  
15          legislative appropriations, student tuition and fees, and gifts and grants. (S. Clark Testimony). It is  
16          not a revenue-generating private enterprise. University officials also testified that, while the  
17          Legislature has funded transit passes for other state employees in King County, it did not include  
18          the University in those appropriations. (*Id.*). The University supports such funding and intends to  
19          include it in future appropriations requests. (*Id.*). The record contains no evidence that a private  
20          gift or grant is available for such a program, though the University would welcome it. Absent a  
21          legislative appropriation, a tuition increase, or a gift or grant, a mandatory employee-transit pass  
22          program is not reasonable or capable of being accomplished. The Hearing Examiner correctly  
23          declined to recommend this.

24          **3. Bicycles**

25          Several petitioners claim the Hearing Examiner should have required a 50 percent increase  
26          in the number of covered and secure bicycle parking spaces. One petitioner, Cascade Bicycle

1 Club, goes even further to advocate for an additional new bicycle mode-share target. There is no  
2 basis in the law or record for these requested conditions.

3 **a. There is no authority in the CUA to require more bicycle parking facilities or**  
4 **a bicycle mode-share target.**

5 The CUA requires only “adequate” bicycle parking on campus and that the University’s  
6 TMP promote bicycling. CUA § III.C.2-.3. The record shows there is already adequate bicycle  
7 parking on campus to accommodate increased demand associated with future development and  
8 more will be created through the Master Plan. (Ex. A19, App. D at 2-18; Ex. D2 at 58, 114, 261,  
9 and 267). The record also shows that the Master Plan includes a TMP with a dozen robust  
10 strategies to encourage bicycling as a transportation option. (Ex. D2 at 267). The CUA does not  
11 provide a basis to require more bicycle parking or a specific bicycle mode-share target.

12 **b. There is no authority in SEPA to require additional bicycle parking facilities**  
13 **or a bicycle mode-share target.**

14 SEPA authorizes mitigation only if it is tied to a specific, adverse environmental impact.  
15 SMC 25.05.660.A.2. The record shows there is more than sufficient bicycle parking on campus  
16 and that development under the Master Plan will increase bicycle parking options. (Ex. A19, App.  
17 D at 2-18). The record also shows that the University is committed to decreasing its SOV rate,  
18 which will require its population to rely on alternative travel modes, including bicycles. There is  
19 no SEPA authority to impose these conditions, and the Hearing Examiner’s decision not to do so  
20 is supported by substantial evidence in the record.

21 **4. Pedestrian Facilities**

22 Feet First, a petitioner, requests conditions requiring the University to: (a) fund projects in  
23 Seattle’s 2017 Pedestrian Master Plan, and (b) construct ADA-compliant wheelchair ramps at  
24 substandard sites. Feet First argues these conditions could help reduce the University’s SOV rate.  
25 The record contains no evidence to support this conclusion, nor is there any legal or evidentiary  
26 basis for imposing these conditions.

1           **a.       There is no authority in the CUA to require additional pedestrian facilities.**

2           With regard to pedestrian facilities, the CUA states that “[t]he pedestrian character of the  
3 campus will be maintained and enhanced” and that the University will “coordinate its efforts in  
4 this regard with the neighborhood planning process.” CUA § III.C.2. With regard to accessibility  
5 improvements, the CUA states that the University will “continue to improve campus accessibility  
6 for the disabled” through several methods. *Id.* § C.4. The Master Plan satisfies both policies. It  
7 provides a robust public realm framework and development standards that require improvements  
8 to pedestrian facilities as part of site development. (Ex. D2 at 94-107, 242). The Master Plan also  
9 incorporates neighborhood planning initiatives like the Brooklyn Green Street Concept Plan. (*Id.*  
10 at 300). The Master Plan describes the University’s program to address ADA compliance and  
11 improvements on a campus-wide basis, and it includes improvements to ADA accessible  
12 connections as an identified strategy in the TMP. (Ex. D2 at 268). In sum, the contents of the  
13 Master Plan are consistent with the CUA policies regarding the pedestrian environment and  
14 accessibility. The CUA does not compel any other specific improvements.

15           **b.       There is no authority in SEPA to require additional pedestrian facilities.**

16           SEPA authorizes mitigation only if it is tied to a specific, adverse environmental impact.  
17 SMC 25.05.660.A.2. There is no impact here. The EIS concludes that the quality of the pedestrian  
18 environment will improve under the Master Plan. (Ex. A19, App. D at 5-6). The petitioners’ claim  
19 pedestrian facilities could help reduce the University’s SOV rate. That is neither supported by the  
20 record nor a sufficient basis for SEPA mitigation. SEPA mitigation must be reasonable. SMC  
21 25.05.660.A.3. The University has already committed to a 15 percent SOV rate, and SDCI may  
22 withhold building permits if the University fails to meet that goal. Additional conditions aimed at  
23 reducing the SOV rate are unreasonably cumulative and unnecessary.

24           **5.       Reduction in Parking Cap**

25           Several petitioners also urge reducing the University’s parking cap from 12,300 vehicle  
26 spaces to 9,000. The rationale is that it could help reduce the University’s SOV rate. This



1 mistakenly prioritizes reductions in SOV trips with the need for a baseline number of parking  
2 stalls to accommodate growth without impacting parking in surrounding neighborhoods. Neither  
3 SDCI nor the Hearing Examiner recommended reducing the parking cap.

4 **a. There is no authority in the CUA to reduce the parking space cap.**

5 There is no CUA policy that requires reduction of the University's parking space cap. In  
6 fact, the CUA's policies suggest the opposite—that parking must be maintained on campus to  
7 prevent impacts to off-campus street parking. *See* CUA § III.C.5.

8 **b. There is no authority in SEPA to reduce the parking space cap.**

9 Further, there is no SEPA basis to reduce the parking cap. Conditions imposed under  
10 SEPA must be reasonable and capable of being accomplished. SMC 25.05.660.A.3. A reduction  
11 in the parking cap would be unreasonable and cumulative when combined with the University's  
12 other efforts to mitigate traffic impacts. Again, the record shows that the University has already  
13 committed to meeting an aggressive 15 percent SOV rate and there are specific consequences if it  
14 does not meet the goal. To meet the goal, the University has set out several strategies for parking  
15 management including pricing flexibility to reduce single-occupant vehicles, instituting a pay-per-  
16 use parking model, and continuing to use parking revenue to fund other trip-reduction programs  
17 like the U-Pass. (Ex. D2 at 265-266). The University needs flexibility to adjust these parking  
18 strategies to meet the SOV goal and react to changing campus conditions. Mandating a lower  
19 parking cap would unreasonably undermine these efforts.

20 **c. The record does not support a lower parking space cap.**

21 Last, the record shows that the parking cap is proportional to anticipated demand. The EIS  
22 concludes that the current parking cap will accommodate the estimated addition of 1,660 vehicles.  
23 (*See* Ex. A19, App. D at 5-40). This estimated new demand would exceed capacity if the cap was  
24 reduced to 9,000 spaces. (*Id.*). Capacity must meet demand so surrounding neighborhoods do not  
25 experience adverse parking impacts.

1           Parking available on campus must strike the right balance between accommodating a  
2 baseline number of users and discouraging drive-alone trips. The current parking cap and TMP  
3 strategies provide the University with a flexible framework to strike that balance. There is no  
4 evidentiary support for deviating from the current cap.

5           **6.       Bicycle-Pedestrian Separation on Burke-Gillman Trail**

6           Several petitioners request a commitment to separate bicycles and pedestrians on the  
7 Burke Gillman Trail by 2024. The record shows that separation will maintain adequate levels of  
8 bicycle and pedestrian service under the Master Plan. (Ex. A19, App. D at 5-11). In light of this  
9 conclusion, the University will commit to separating users by 2024. The University will also  
10 separately commit to widening the trail as funding becomes available.

11          **C.       Child Care**

12           Several petitioners seek conditions pertaining to child care services. As an initial matter,  
13 the record establishes the University's commitment to improving access to quality affordable  
14 child care for faculty, staff, and students. The University's WorkLife Division has established a  
15 Child Care Advisory Committee—comprised of faculty, staff, and students—that is focused on  
16 improving access and quality. (Ex. A19 at 4-42.) Currently, the University is able to offer 334  
17 subsidized child care slots on campus, which translates to about one slot for every 137 students  
18 and employees. (*Id.*). This ranks in the middle among peer institutions. (*Id.*). In 2015, President  
19 Ana Mari Cauce publicly committed to add between 266 and 366 new slots within the next eight  
20 years. (*Id.*). This will improve the ratio to somewhere between 1:74 and 1:87, which is highly  
21 competitive among peer institutions. (*Id.*). In addition, the University offers priority access and  
22 discounts at several off-campus centers near campus. (*Id.*). This adds another 548 child care slots  
23 in the primary and secondary impact zone. (*Id.*). The University has also publicly committed to  
24 participate in the large employer child care study specified in the U-District Urban Design  
25 Framework. (S. Clark Testimony.) The University is an active leader and community partner  
26 focused on increasing access to quality affordable child care, and it intends to remain so.

1           Nevertheless, several petitioners argue the City Council should: (a) prohibit development  
2 under the Master Plan until the child care study described above is complete, and (b) require the  
3 University to provide regionally portable child care vouchers for all employees earning between  
4 200 percent and 400 percent of the federal poverty level. These proposals have no basis in the law  
5 or the record.

6           **1.       There is no authority in the CUA for imposing child care related conditions.**

7           The CUA does not require the University to address child care in its Master Plan.  
8 *See* CUA § II.A. The petitioners paraphrase Section II.B.8.d of the CUA, which governs SDCI's  
9 Master Plan review, to support their request. This section requires SDCI to balance the  
10 University's needs against the Master Plan's impact on "the physical and human environment and  
11 on city services, and ... vitality of adjacent neighborhoods." In applying this section, SDCI  
12 explained that a child care requirements would be "inconsistent with the requirements of the  
13 [CUA] and does not relate to applicable adopted policies and regulations of the City associated  
14 with the review of the University's Master Plan." (Ex. D1 at 11). The Hearing Examiner  
15 recognized and accepted this interpretation. (HE Rec. at 13 n. 59). Both are correct. While  
16 important, child care issues are outside the CUA's master plan process.

17           **2.       The CUA does not incorporate Comprehensive Plan policy statements  
18           regarding child care and early learning.**

19           The petitioners also cite the Comprehensive Plan as a basis for child care requirements in  
20 the Master Plan. A comprehensive plan policy is not an independent basis for conditioning an  
21 individual land use approval unless applicable development regulations incorporate the policy  
22 statement. *Citizens for Mt. Vernon*, 133 Wn.2d at 873; *see also* Comp. Plan at 17. The applicable  
23 development regulation here is the CUA, which incorporates only "applicable land use policies."  
24 CUA § II.B.8.d. The petitioners cite no policy in the Land Use Element of the Comprehensive  
25 Plan or in the adopted portions of the University Community Urban Center Plan. *See* Comp. Plan  
26 at 38-71, 394-398. This is because there are no such policies. The only policies pertaining directly

1 to child care are in the Downtown Neighborhood Plan. There is a general statement on early  
2 learning in a separate Community Well-Being Element, but there is no evidence in the record that  
3 early learning is the same as child care, nor is there anything in the policy tying it to major  
4 institutions. Comp. Plan at 158, 254-71. Because these policies are outside the CUA, and are not  
5 even relevant to major institutions, they cannot be a basis for imposing child care conditions on  
6 the Master Plan.

7 **3. There is no authority under SEPA for imposing child care related conditions.**

8 There is also no basis in SEPA for the proposed child care conditions. There is no SEPA  
9 policy pertaining to child care services. *See* SMC 25.05.675. There is a SEPA policy on public  
10 services and facilities, but it is limited to physical infrastructure, transit service, solid waste  
11 collection, public health, and police and fire protection. SMC 25.05.675.O.1. Absent a SEPA  
12 policy adopted at the time the draft EIS was issued, there is no SEPA basis for imposing the  
13 proposed child care conditions.

14 **4. The record does not support the assumptions underlying the petitioners' child  
15 care proposals.**

16 The petitioners' proposal also lacks support in the record. The petitioners assert that the  
17 Master Plan is likely to increase demand for child care beyond supply, making it more expensive  
18 for segments of the University's population. The record contradicts this assertion. Growth under  
19 the Master Plan is expected to increase demand by 20 percent. (Ex. A19 at 4-46). The University  
20 must provide 67 additional child care slots to maintain current levels of access following this  
21 growth. (*Id.*). The University's existing initiatives will increase capacity by at least 266 slots  
22 within the life of this Master Plan. (*Id.*). In other words, access to child care will improve over the  
23 life of the Master Plan. Neither the record nor the law justify the proposed child care conditions.

24 **D. Affirmative Action and Priority Hiring**

25 Several petitioners assert that the University lacks basic racial justice programs, and they  
26 seek the establishment of a priority hire program similar to the City's program. The University

1 respectfully disagrees. As President Ana Mari Cauce described in her testimony before the  
2 Hearing Examiner, and as detailed below, the record shows that the University is meaningfully  
3 engaged in racial justice work in both operations and academics. In 2015, President Cauce  
4 launched the Race and Equity Initiative, through which more than 1,100 faculty and staff have  
5 attended diversity, equity, and inclusion trainings. (Ex. A31). This is serious work, and it is  
6 ongoing across all parts of the University. The Master Plan, a land use approval in the nature of a  
7 site plan, is not a proper nor effective vehicle for continuing that work.

8 **1. There is no authority under the CUA for requiring an affirmative action and**  
9 **priority hiring program as part of the Master Plan.**

10 There is no basis in the CUA for conditions intended to address race and diversity issues.  
11 The CUA does not include any applicable policies. Further, there is no applicable neighborhood  
12 plan or policy adopted by ordinance nor any land use policy or regulation pertaining to race and  
13 social justice issues. CUA § II.B.8.d. The City has no authority under the CUA to require a  
14 priority hire program.

15 **2. There is no authority under SEPA for requiring an affirmative action and**  
16 **priority hiring program as SEPA mitigation.**

17 There is also no basis in SEPA for mandating implementation of a priority hire program.  
18 The City has no SEPA policy pertaining to racial justice or priority hiring. *See* SMC 25.05.675.  
19 These are socio-economic issues outside the scope of land use and environmental regulation. *See*  
20 *Snohomish County Prop. Rights All.*, 76 Wn. App. at 53.

21 **3. The record does not support the petitioners' statements about the University's**  
22 **extensive efforts around race and equity issues.**

23 The record also contains no support for the petitioners' arguments. Several allege the  
24 University lacks basic racial justice initiatives and that persons of color and immigrant  
25 populations are highly concentrated in lower paid staff positions at the University. There is no  
26 support in the record for either of these allegations.

1           Instead, the record establishes that the University has taken extraordinary measures to  
2 expand opportunities for immigrant and minority populations. As one example, President Cauce  
3 testified about Husky Promise, a pledge to admitted applicants that their financial circumstances  
4 will not prevent them from attending the University. (A. Cauce Testimony). This program has  
5 helped 39,000 low- and middle-income students attend the University. (*Id.*). Due in part to this  
6 program, first-generation college students comprised a record 37 percent of last year's freshman  
7 class. (Ex. A31). In fact, the Seattle campus has a higher six-year graduation rate for under-  
8 represented minority students than the overall rate of all reported four-year public institutions in  
9 Washington. (*Id.*). Further, the University's Office of Faculty Advancement provides academic  
10 units with tools to conduct effective and inclusive candidate searches aimed at improving  
11 diversity. (*Id.*). The record shows that the University has worked hard (and continues to work  
12 hard) at expanding and improving diversity on its campuses.

13 **E.     Open Space**

14           Several petitioners claim that the Hearing Examiner failed to require additional open  
15 spaces based on alleged impacts of the potential development of the University District Light Rail  
16 Station site. Again, neither the law nor the record support these arguments.

17           **1.     There is no authority under the CUA for requiring certain amounts of open**  
18           **space.**

19           The CUA does not require master plans to include a particular amount of open space. It  
20 requires only that proposed open spaces be identified in the master plan. CUA § II.A.1.c.2. The  
21 Master Plan does that. There is no basis in the CUA to require more.

22           **2.     There is no authority under SEPA for requiring additional open space to**  
23           **mitigate impacts unrelated to the Master Plan.**

24           There is also no basis in SEPA for requiring more open space. The City may impose  
25 mitigation under SEPA only to the extent attributable to the identified adverse impacts of the  
26 proposal. SMC 25.05.660.A.4. There is no such impact here. The EIS concludes that the amount  
of dedicated public open space will increase under the Master Plan and will satisfy the increased

1 demand for recreational spaces associated with the development proposed. (Ex. A19 at 3.11-5 to  
2 3.11-8). The petitioners' open space request relates to potential development of the University  
3 District Light Rail Station, which is not part of the Master Plan. SEPA mitigation is limited to the  
4 extent an impact is attributable to the project. SMC 25.05.660.A.4. The petitioners have not  
5 identified what project-related impact would require setting aside additional open space.

6 **3. The record does not support the petitioners' assumptions about open space.**

7 The record shows that the Master Plan will create significant new and enhanced open  
8 spaces. Under the Master Plan, the University plans to develop four-acre new open spaces in West  
9 Campus and South Campus. (Ex. D2 at 98, 102). The Master Plan also includes construction of a  
10 continuous waterfront trail along the Portage Bay and Lake Washington shoreline. (*Id.* at 104).  
11 Like the rest of campus, these spaces will be open to the general public. The University has  
12 agreed to deliver them on the accelerated timelines proposed by SDCI and supported by the  
13 Hearing Examiner. (*See* HE Rec. at 24-26). The record is clear that there will be no open space  
14 deficit as a result of the Master Plan.

15 **F. Union Organizing and Collective Bargaining**

16 Some petitioners also apparently seek to empower SDCI to deny permits under the Master  
17 Plan based on the status of labor relations between the University and its employees. The  
18 University recognizes that its employees have made it possible to attain some of the highest  
19 rankings of any public university for access, quality, and innovation. The University is a better  
20 institution because of the efforts of its represented employees. It has been, and will remain, a top  
21 priority of the University to continue honest and productive communications with its represented  
22 labor force. There are, however, several fundamental problems with trying to interpose these  
23 issues in the Master Plan process.

1           **1. The Washington Constitution does not allow the City to condition permit**  
2           **approvals under the Master Plan on the status of labor relations.**

3           First, interceding in state employee labor relations through the local land use approval  
4 process is unconstitutional. The Washington Constitution prohibits local governments from  
5 adopting ordinances that affect actions outside their jurisdiction or that conflict with state laws.  
6 Wash. Const. art. XI, § 11; *Weden v. San Juan County*, 135 Wn.2d 678, 692-93, 958 P.2d 273  
7 (1998). This proposed condition does both. It seems to allow SDCI to deny a permit based on the  
8 status of labor relations with University employees anywhere in the state. The University has  
9 many employees living and working outside of Seattle, including at its campuses in Tacoma and  
10 Bothell, its research facilities at Friday Harbor, and at myriad other locations throughout the state.

11           This condition also conflicts with the state's collective bargaining and public employee  
12 relations laws. State law guarantees protected employees the right to organize and engage in  
13 collective bargaining. RCW 41.56.040. It prohibits state agencies from interfering with,  
14 restraining, or coercing protected employees from exercising those rights. RCW 41.56.140. These  
15 laws apply to the University's non-classified staff, teaching assistants, research assistants,  
16 instructors and other academic employees, and faculty. RCW 41.56.021 (staff); RCW 41.56.203  
17 (academic employees); RCW 41.76.050 (faculty). A separate state agency—the Public  
18 Employment Relations Commission—is empowered to enforce these laws and fashion remedies  
19 for violations. RCW 41.56.160. Imposing a labor-relations requirement in the Master Plan would  
20 put SDCI and the City in the middle of a regulatory field the State has preempted. Constitutional  
21 principles of state law preemption do not allow this. *See Cannabis Action Coalition v. City of*  
22 *Kent*, 183 Wn.2d 219, 226, 351 P.3d 151 (2015) (conflict exists where an ordinance attempts to  
23 regulate field preempted by state law).

24           **2. There is no authority under the CUA for conditioning development under the**  
25           **Master Plan on the status of labor relations.**

26           Second, the CUA does not require the University to address labor relations in its Master  
Plan. The CUA does not set out any policy regarding labor relations. There is also no applicable



1 neighborhood plan or policy adopted by ordinance nor any land use policy or regulation that  
2 would require the University to do so. Absent these requirements, there is no basis in the CUA for  
3 conditioning development under the Master Plan on the state of labor relations. CUA § II.B.8.d.

4 **3. There is no authority under SEPA for conditioning development under the**  
5 **Master Plan on the status of labor relations as SEPA mitigation.**

6 Third, labor rights are outside the City's substantive SEPA authority. There is no SEPA  
7 policy pertaining to collective bargaining and organizing rights. *See* SMC 25.05.675. Though  
8 important, these issues are socio-economic issues beyond SEPA. *See Snohomish County Prop.*  
9 *Rights All.*, 76 Wn. App. at 53.

10 **4. The record does not support the petitioners' statements regarding labor**  
11 **relations between the University and its employees.**

12 Finally, the record does not support the petitioners' allegations. There is no evidence of  
13 how much the University's classified and non-academic professional staff earn relative to area  
14 median income. There is also no evidence that empowering SDCI to deny building permits will  
15 remedy the perceived problem. Beyond the significant legal problems with this proposed  
16 condition, there is simply no evidence in the record to support it.

17 **G. Small Business**

18 Several petitioners propose requiring the University to set aside space for small businesses  
19 on campus. The University is proud of its involvement in the U-District Partnership and in the  
20 Business Improvement Area, which supports small businesses. (Ex. A19 at 5-37). While it intends  
21 to continue its active partnership with the local small business community, this is another issue on  
22 which there is no legal or evidentiary basis to impose conditions on the Master Plan.

23 **1. There is no authority under the CUA to require the University to set aside**  
24 **space on campus for small businesses.**

25 The CUA does not require the Master Plan to address small businesses. The CUA does not  
26 contain a policy related to small businesses. Further, there is no applicable neighborhood plan or  
policy adopted by ordinance nor any land use policy or regulation that requires the University to

1 set aside space for small businesses in its Master Plan. CUA § II.B.8.d. Absent such requirements,  
2 there is no basis in the CUA for this condition.

3 **2. There is no authority under SEPA for requiring space dedicated to small**  
4 **business as SEPA mitigation.**

5 SEPA also does not provide the City with a legal basis for requiring the Master Plan to set  
6 aside space for small businesses. There are no SEPA policies related to small businesses because  
7 SEPA is not concerned with purely economic impacts. *See* SMC 25.05.675; *see also Snohomish*  
8 *County Prop. Rights Alliance*, 76 Wn. App. at 53. SDCI explained this very point in its response  
9 to a similar proposal by CUCAC. (Ex. D1 at 13). The Hearing Examiner appropriately declined to  
10 impose this condition, and the City Council should do the same.

11 **3. The record does not support the petitioners' assumptions about the Master**  
12 **Plan's effect on small businesses.**

13 Finally, the record does not support the petitioners' assumptions here. They assume  
14 growth will include new on-campus food and drink facilities and speculate this will negatively  
15 affect local small retail businesses. There is no evidence to support these assumptions. In fact, the  
16 EIS recognizes the opposite. Surrounding businesses may experience an increase in demand for  
17 goods and services as a result of the growth under the Master Plan. (Ex. A19 at 3.6-31). The City  
18 Council should decline to require a small business set-aside in the Master Plan.

19 **H. Height, Bulk, and Scale**

20 Finally, the University District Community Council ("UDCC") proposes reducing the  
21 allowed height of development along Montlake Boulevard and on two sites in West Campus. The  
22 sites and heights proposed in the Master Plan were developed over many years with significant  
23 feedback from stakeholders within the University and outside it. The University modified many  
24 development sites and height limits to ensure future development fits its context and balances the  
25 University's needs with significant open spaces. Partly in recognition of the extensive and  
26 inclusive work that has already gone into the delineation and tailoring of development sites,  
neither SDCI nor the Hearing Examiner supported the UDCC's requests.

1           **1.       There is no authority under the CUA to require protection of views.**

2           The CUA does not require the Master Plan to include view-protection measures, and there  
3 is no applicable neighborhood plan or policy adopted by ordinance nor any land use policy or  
4 regulation that requires the University to constrain development envelopes to protect views.  
5 CUA § II.B.8.d. Absent such requirements, there is no basis in the CUA for this condition.

6           **2.       There is no authority under SEPA for requiring protection of views as SEPA  
7           mitigation.**

8           There is also no basis in SEPA to impose the view protection measures requested by the  
9 UDCC. The City's SEPA policy on views applies only to specific public places including  
10 viewpoints, parks, and scenic routes. *See* SMC 25.05.675.P.2. The section of Montlake Boulevard  
11 adjacent to East Campus and the areas around sites W22 and W37 are not enumerated scenic  
12 routes or public places where SEPA view protection applies.

13           **3.       The record does not support the petitioners' concerns about views.**

14           The record also establishes no basis for additional view protection along Montlake  
15 Boulevard or around sites W22 and W37. With respect to Montlake Boulevard, the Master Plan  
16 proposes three mid-block corridors in East Campus that mandate 25-foot separation between new  
17 developments. (Ex. D2 at 257). These corridors will provide views from Montlake Boulevard to  
18 Lake Washington and beyond. Both SDCI and the Hearing Examiner considered the University's  
19 proposed height limit for development sites along Montlake Boulevard in East Campus and  
20 concluded it is appropriate. The record supports this conclusion

21           The height of Site W22 is similarly appropriate. Site W22 is near the edge of campus, but  
22 not on the campus boundary. It is proposed to have a maximum height of 240 feet, and testimony  
23 established that it would have a theoretical maximum tower floor plate of approximately 12,100  
24 square feet based on its size and the applicable development standards. (T. Doherty Testimony).  
25 The adjacent off-campus zoning allows residential buildings with the same maximum height and  
26 a maximum floor plate of between 10,500 and 11,500 square feet. *See* SMC 23.48.645. A future

1 building constructed on site W22 would therefore be of a comparable, height, bulk, and scale with  
2 future adjacent residential development.

3 Further, UDCC's rationale that this site is a "gateway" to the University District does not  
4 compel a lower height. Although the University District Urban Design Framework designates this  
5 general area as a "gateway," it describes such areas as transition points to be "emphasized through  
6 the use of architectural elements, streetscape features, landscaping, and/or signage." (Ex. A34 at  
7 16). The height proposed in the Master Plan does not preclude incorporation of those elements in  
8 a development on Site W22, and nothing in the Framework suggests the area's gateway status  
9 requires a lower height.

10 Last, the record shows the proposed height of site W37 is consistent with adjacent zoning  
11 when grade changes are taken into account. (See Ex. A33). The Master Plan also proposes a view  
12 corridor near this site to protect views of Portage Bay. (See Ex. D2 at 251-252). SDCI  
13 recommended modifying that view corridor to better protect views of Portage Bay from the  
14 University Bridge. (Ex. D1 at 58-59). The University supports that modification, which the  
15 Hearing Examiner incorporated as a recommended condition. (HE Rec. at 30). SDCI and the  
16 Hearing Examiner considered all of this evidence when making their recommendations and did  
17 not recommend reducing the proposed height.

18 The City Council should decline the UDCC's request to adjust bulk, scale, and height in  
19 these three areas.

## 20 V. CONCLUSION

21 The 2018 Campus Master Plan carefully reconciles the University's need to accommodate  
22 enrollment growth and fulfill its academic mission with the impact this growth may have on the  
23 surrounding community. The University has accepted almost every condition recommended by  
24 SDCI and the Hearing Examiner, and it continues to work with SDCI on the few remaining areas  
25 of disagreement. The University looks forward to continuing that conversation.  
26

1 The University cannot, however, agree to conditions that have no basis in applicable law  
2 and no support in the record. The petitioners' proposed conditions fall short in both respects. The  
3 City Council should reject such conditions and approve the Master Plan subject to the conditions  
4 on which the University, SDCI, and the Hearing Examiner agree.

5 DATED this 23rd day of February, 2018.

6 HILLIS CLARK MARTIN & PETERSON P.S.

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8  
9 By  \_\_\_\_\_

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