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CITY OF SEATTLE  
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BEFORE THE CITY COUNCIL  
OF THE CITY OF SEATTLE

In the Matter of an Application of Swedish  
Medical Center for Approval of a Major  
Institution Master Plan

CF 311936  
DPD Project No. 3012953

And the Appeal of Cherry Hill Community  
Council, et. al., of a Recommendation by the  
Hearing Examiner for the City of Seattle

RESPONSE BRIEF OF SWEDISH  
MEDICAL CENTER, CHERRY HILL

CITY OF SEATTLE  
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RESPONSE BRIEF OF SWEDISH MEDICAL  
CENTER, CHERRY HILL

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1                                   **I.       INTRODUCTION & REQUESTED RELIEF**

2           Applicant Swedish Medical Center (“Swedish”)<sup>1</sup> presents for the Seattle City Council’s  
3 (“Council’s”) review and approval a new Major Institution Master Plan (“MIMP”), a document  
4 intended to guide physical development at the Swedish Cherry Hill Campus (“Swedish Cherry  
5 Hill”) for the next 20 years and beyond. The mission of Swedish Cherry Hill is to provide the  
6 safest, highest quality medical care in the fields of neuroscience, heart and vascular disorders,  
7 emergency medicine, and rehabilitative services. Swedish Cherry Hill continues to be a leader in  
8 research and innovation, delivering patients and their families in the northwest the latest  
9 alternatives in cutting edge medical care. At the same time, Swedish Cherry Hill is a leader in  
10 medical education, training physicians, nurses and allied healthcare professionals from across the  
11 country and around the world in the latest and most advanced applications within the patient  
12 service lines housed at the Cherry Hill campus.<sup>2</sup>

13           The drivers surrounding the forecast of future need are multiple. Swedish and its  
14 consultants advanced substantial evidence and expert testimony supporting the institution’s need  
15 for additional space. The Hearing Examiner concurred, finding Swedish’s “assessment of its  
16 need for growth is credible,” and that an expert peer review provided by the institution was  
17 “comprehensive, detailed and well supported. It shows that overall, the space needs are  
18 accurate.” Hearing Examiner Findings and Recommendations, Conclusion (“COL”) ¶5.

19           Consistent with the intent of the Major Institutions Code (SMC 23.69.025), the MIMP  
20 balances the needs of the institution with the need to minimize the impact of major institution  
21 development on surrounding neighborhoods. The MIMP accomplishes this in several ways.  
22 Responding to neighborhood requests that it not expand its campus, the MIMP accommodates

23 \_\_\_\_\_  
24 <sup>1</sup> Sabey Corporation (“Sabey”) owns real property and buildings within the existing Swedish Major Institution  
25 Overlay and that comprise Swedish Medical Center, Cherry Hill. Sabey was granted status as a party in these  
proceedings.

26 <sup>2</sup> Testimony of Andy Cosentino, Vice President of the Swedish Neuroscience Institute, Day 1, Tape 5 of 5,  
00.33:06-1:03.00.

1 Swedish's future space needs within its existing Major Institution Overlay ("MIO")—where the  
2 hospital has operated for over a century—without expanding into the neighborhood. The MIMP's  
3 Development Plan concentrates the tallest building heights at the center of campus and downhill,  
4 toward the neighboring Seattle University MIO, and away from residentially-zoned areas. Swedish  
5 agreed to a Development Plan that falls short of its projected space needs, and, as a result, was able  
6 to agree to maintain, and in some instances, even lower zoned height limits on all campus edges  
7 across from residentially-zoned areas. The MIMP also memorializes Swedish's agreement to  
8 comply with all building setbacks requested by the majority of the Swedish Cherry Hill Citizens'  
9 Advisory Committee ("CAC"). Even as it increases density in the center of the MIO, the MIMP  
10 increases open space within the MIO.

11 The proposed MIMP also includes an aggressive and innovative Transportation  
12 Management Program ("TMP"), designed in consultation with Commute Seattle and transportation  
13 planners at the Seattle Department of Planning and Development ("DPD") that promises to bring  
14 the hospital's historically high single-occupancy vehicle ("SOV") rate into alignment with Code  
15 requirements, then pushes the hospital to do even better in the future. The product of years of work  
16 and study, the MIMP allows Swedish Cherry Hill to continue to deliver cutting edge medical care in  
17 an integrated campus setting, while minimizing the environmental impacts of development on the  
18 neighborhood.

19 Over the course of 36 open meetings, the CAC thoroughly vetted MIMP proposals,  
20 receiving voluminous public comments and engaging in vigorous debate. Swedish changed the  
21 proposal a dozen times in response to neighborhood and CAC comments, until the CAC was able to  
22 reach consensus with Swedish on the majority of the issues, with the exception of certain height  
23 limits and the TMP SOV goal. The MIMP presented to the Hearing Examiner—the twelfth in a  
24 series of alternatives Swedish explored—differed substantially from the early versions presented to  
25 the CAC. Indeed, the proposal continued to evolve during the hearing as Swedish agreed to accept  
26

1 the CAC majority's recommended setbacks. Having participated in the full process, the DPD  
2 Director recommended adoption of the MIMP, subject to conditions.

3 The City's Hearing Examiner conducted a public hearing on the proposed MIMP and  
4 presided over a multi-day Type IV quasi-judicial hearing on the MIMP and its associated Final  
5 Environmental Impact Statement ("MIMP EIS"). Parties of record were afforded the opportunity to  
6 present evidence and testimony concerning the MIMP. The Examiner permitted appellants to cross-  
7 examine Swedish and Sabey witnesses during the pre-decisional hearing, and several of them did.  
8 Nevertheless, in light of the full record developed at the hearing, a disinterested Examiner, like the  
9 Director of DPD before her, simply did not find their arguments persuasive and instead  
10 recommended that the Council approve the MIMP with minor additional conditioning.

11 The Examiner issued a thoughtful analysis of the MIMP and recommended that the Council  
12 adopt the MIMP subject to conditions. In her Findings and Recommendations, the Hearing  
13 Examiner concluded, "[t]he MIMP components comply with the Code and should be approved  
14 subject to the recommended conditions." "With the recommended conditions, the proposed MIMP  
15 is consistent with the purposes and intent of the Major Institutions Code and provides a reasonable  
16 balance of Swedish Cherry Hill's need for additional development, and the public benefit derived  
17 from the development, with the need to protect the livability and vitality of the surrounding  
18 neighborhood." COL ¶¶22; 23.

19 Seven appellants appealed the Examiner's Recommendation. These appeals raise no points  
20 not already considered by the CAC, DPD, and the Examiner, as the appellants and others voiced  
21 their concerns at several, if not most, of the 36 public meetings of the CAC. Impassioned though  
22 these appellants may be, they offer no legal or factual argument which should cause the Council to  
23 doubt the recommendation of its Hearing Examiner. Although the Examiner did not agree with the  
24 Swedish on every point, Swedish now asks the Council to adopt the Examiner's Recommendation,  
25 as conditioned, and reject the appeals.  
26

1 Below, Swedish summarizes the facts in the record and responds to the important points  
2 raised by the various appeals. Because many of the appeals raise the same issues, Swedish responds  
3 to all of them in one brief. It would not be practical, nor is it necessary, to respond to each and  
4 every point raised in all seven appeals. Nevertheless, the Council should not read Swedish's silence  
5 on any given point as acquiescence. Swedish welcomes questions from the Committee and is happy  
6 to provide additional briefing or oral argument on any topic that would assist the Committee in its  
7 deliberations.

## 8 II. STATEMENT OF FACTS

9 The following findings of fact and substantial evidence were relied upon by the  
10 City's Hearing Examiner in support of her Recommendation to the City Council to approve the  
11 Swedish Cherry Hill MIMP and MIO rezones, subject to conditions.

### 12 A. Mission of Swedish Medical Center, Cherry Hill

13 Swedish Medical Center is a non-profit healthcare provider. *Hearing Examiner Findings*  
14 *and Recommendations, Findings of Fact* ("FF") ¶1. Hospital uses commenced at the Swedish  
15 Cherry Hill campus in 1910 with the establishment of Providence Hospital, and have continued  
16 uninterrupted ever since. Final MIMP at 2. Over a decade ago, Swedish determined that the  
17 Cherry Hill campus would be the Swedish/Providence center for two highly specialized  
18 facilities—the Swedish Heart and Vascular Institute and the Swedish Neuroscience Institute,  
19 which provide tertiary and quaternary treatment of cardiac disease, as well as neurological  
20 trauma, spine, cancers, and related disorders. FF ¶2; COL ¶4.

21 The following is a brief summary of testimony provided by Swedish outlining patient  
22 services delivered by the institution at its Cherry Hill Campus:

- 23 • *Neuroscience*

24 The Swedish Neuroscience Institute ("SNI") is one of the most advanced and  
25 comprehensive clinical programs in the country. It delivers the full spectrum of neurosurgical  
26 and neurological care, in a manner that is highly integrated with primary care and the other

1 specialties involved in the treatment of patients. Swedish has 19 surgeons in the department of  
2 neurosurgery and 50 providers in the department of neurology, many of whom represent the best  
3 in their respective fields. Swedish Cherry Hill is also home to the largest and most advanced  
4 Multiple Sclerosis Center in the nation, with over 2000 enrolled patients at any given time.  
5 Cosentino Testimony, Day 1, Tape 5 of 5, 00:36:00 - 01:03:00.

6 The SNI is one of only six centers in North America that offer both Gamma Knife and  
7 CyberKnife technologies in its radiosurgical department. This broad spectrum of technology  
8 allows Swedish to treat the complete spectrum of cancers within the brain and spine, and to do so  
9 with the technology most appropriate for any particular tumor. *Id.*

10 The Cerebrovascular Center is treating the most complex vascular disorders of the brain,  
11 such as aneurysms and arterio-venous malformations, often times with interventional  
12 endovascular procedures that allow correction of these defects without taking the patient to  
13 surgery. *Id.*

14 The Pituitary Center has successfully treated more pituitary tumors than any other center  
15 in the Pacific Northwest. *Id.*

16 The IVY Brain Tumor Center is treating the most complex brain tumors and is actively  
17 engaged in national, NIH trials attempting to find a cure for such devastating cancers as  
18 glioblastoma. *Id.*

19 The Swedish Neuro-otology Department is one of the very busiest on the west coast,  
20 treating the most complex acoustic neuromas, and delivering cochlear implants to patients who  
21 would otherwise not have the potential for hearing. *Id.*

22 Swedish's comprehensive stroke program is the busiest stroke center in the Pacific  
23 Northwest, successfully restoring blood flow to the brain and reversing the deleterious effects of  
24 stroke in many of our patients. Swedish's tele-stroke program now reaches out to 17  
25 communities in the greater Washington area. Swedish neurologists are on call 24 hours a day,  
26 365 days a year working with rural emergency medicine doctors to fully evaluate stroke patients,



1 retaining them in their local communities when possible, and transferring them to Cherry Hill  
2 when appropriate. *Id.*

3 The Movement Disorders Program is home to some of this country's finest neurologists  
4 and neurosurgeons working to restore normal motion to persons suffering from such debilitating  
5 diseases as Parkinson's and Essential Tremor. The SNI Epilepsy Center is home to both  
6 pediatric and adult neurologists committed to treating patients of all ages with seizure disorders.  
7 And, when conservative therapies have been insufficient, Swedish Cherry Hill is home to  
8 functional neurosurgeons, expert in the field of surgical management for the control of seizures.  
9 *Id.*

10 The SNI is also home to one of the nation's first MR Guided, Focused Ultrasound units.  
11 Under FDA approved clinical trials, Swedish Cherry Hill has treated patients with essential  
12 tremor, Parkinson's Disease, and metastatic brain tumors. Cherry Hill was the first hospital in  
13 the world to treat a metastatic brain tumor with focused ultrasound energy. *Id.*

14 The Seattle Science Foundation ("SSF"), located at Cherry Hill, is committed to training  
15 medical specialists in the most advanced and novel treatments currently available. Last year, the  
16 SSF delivered over 50 symposiums, training over 1,200 physicians from all over the United  
17 States, and the world. Swedish hosted physicians from Europe, Africa, South America, and the  
18 Pacific Rim who wanted to learn from Swedish faculty. *Id.*

19 • *Heart and Vascular*

20 The Swedish Heart and Vascular Institute ("SHVI") is one of the region's' busiest cardi-  
21 vascular centers. It provides comprehensive emergency and elective services both in cardiology  
22 and cardiothoracic surgery. Swedish is also a top performer in the nation for its "door-to-  
23 balloon" time, which measure the speed in which a heart attack patient receives treatment and a  
24 predictor of heart attack survival. In the most recent COAP report, Swedish Cherry Hill was the  
25 top performing hospital in Washington, with the lowest D-T-B time of 42 minutes. *Id.*

1 SHVI currently has over 90 open clinical trials with over 1,000 patients on trial. From  
2 minimally invasive methods, to repair of the mitral valve, to stem cell therapy, heart and vascular  
3 research brings new technologies and therapies to daily clinical practice. *Id.*

4 • *Spine*

5 Swedish Cherry Hill orthopedic and neurosurgeons are treating some of the most  
6 complex spinal disorders in the country. When cancers have metastasized to the spine Swedish  
7 doctors are often called upon to provide surgical interventions. They also care for patients who  
8 have collapsed vertebrae from trauma or from advanced osteoporosis. Caring for patients with  
9 trauma to the spine is also a core competency, and will be an area of greater emphasis in the  
10 future. *Id.*

11 • *Family Medicine*

12 Swedish Medical Group Family Care Clinic is providing more than 32,000 visits per year  
13 of comprehensive family medicine. The Family Medicine Residency program delivers care to  
14 more than 20,000 patients last year. The Country Doctor after hours Community Health Center,  
15 located next to the Cherry Hill Emergency Medicine Department, provides low cost after hours  
16 medical care to patients in the Central District. *Id.*

17 • *Co-location of Tertiary/Quaternary Services*

18 As a tertiary/quaternary hub for the neurosciences and for heart and vascular, the Cherry  
19 Hill campus needs to support a broad array of parallel services that tie into an integrated model  
20 of care. There are a myriad of services that must coordinate for the optimal level of care. They  
21 include: Pre-operative imaging, diagnostic laboratory support, pathology, neurosurgery, neuro-  
22 intensivists services, neuro-hospitalists, oncology, neuro-oncology, radiation oncology,  
23 rehabilitative services, potentially post – acute rehabilitation, and post – surgical follow up care,  
24 including imaging, and others. The patient may also require social services support, post –  
25 operative speech therapy, occupational or physical therapy. Spiritual services may be called  
26 upon, and neuropsychology may be called in for support. All the while, the patient may be

1 eligible for experimental protocols (such as the FDA approved protocol for MR Guided Focused  
2 Ultrasound). This mandates that translational research, and all of the associated resources  
3 (equipment / laboratories / research scientists / physicians / support staff / and associated office  
4 space) be co-located on a single campus. *Id.*

5 **B. Site and Vicinity**

6 Swedish Cherry Hill is addressed as 500 17th Avenue and is located east of downtown on  
7 an approximately 13.33-acre site in the Squire Park neighborhood. The campus is bounded on  
8 the north by East Cherry Street, on the south by East Jefferson Street, on the west by 15th  
9 Avenue, and on the east by single-family residential development that fronts on 19th Avenue.  
10 FF ¶2.

11 The Swedish Cherry Hill property slopes down significantly from east to west and  
12 slightly from north to south. The underlying zoning is a mix of Single-Family 5000 (“SF 5000”)  
13 and Lowrise (“LR”) 3. FF ¶3. Property to the northeast, east and south of the campus is zoned  
14 SF 5000 and developed primarily with single-family residences, with some multifamily  
15 residential and small commercial uses. Property to the north is zoned LR3 and LR1, and contains  
16 a mix of multi-family and office uses along East Cherry Street, and a mix of multi-family and  
17 single-family uses north of East Cherry Street. To the west across 15th Avenue is the eastern  
18 boundary of the Seattle University campus MIO and the eastern boundary of the 12th Avenue  
19 Urban Center Village. West of Seattle University is the Swedish First Hill MIO. The  
20 UW/Harborview MIO is within one-half mile to the southwest, and Garfield High School and the  
21 King County Youth Services Center are nearby. FF ¶4.

22 The Sabey Corporation is a development and property management company that owns  
23 approximately 40% of the property within the Cherry Hill Major Institution Overlay (MIO).  
24 Sabey leases back 75% of its holdings within the MIO to Swedish. Most of the remainder is  
25 occupied by other uses that provide related outpatient and medical support services. FF ¶6.  
26

1 Primary access to the Cherry Hill campus is via Jefferson Street and Cherry Street. King  
2 County Metro bus stops are located adjacent to the campus. The main vehicular entrance  
3 (pickup and drop-off) to the hospital is on Jefferson Street at the site of vacated 17th Avenue.  
4 Access to the main parking structure is from 16th Avenue. The garage is connected to the  
5 campus via an existing skybridge. The Cherry Hill campus includes a total of 1,510 off-street  
6 parking stalls, with 1,293 garage spaces and 217 surface spaces. FF ¶8; 9.

7 **C. Existing Master Plan and Major Institution Overlay**

8 The Cherry Hill campus is located within an existing Major Institution Overlay (“MIO”)  
9 under a MIMP approved in 1994. Existing facilities include a hospital with 200 beds, clinical  
10 space, and research, office, hotel and laboratory space. Kidney Centers Northwest operates a  
11 dialysis center, and LabCorp operates testing facilities within the campus. All told, total building  
12 area within the existing MIO is approximately 1.2 million square feet. FF ¶7.

13 The existing MIO includes three height districts: MIO-37’ on the east campus, which  
14 consists of a half-block strip of property along the east side of 18th Avenue, MIO-105’ on the  
15 central campus between 18th Avenue and 16th Avenues, and MIO-65’ between 16th Avenue and  
16 15th Avenues. FF ¶5.

17 **D. MIMP: Procedural Background**

18 On November 11, 2011, Swedish submitted its Notice of Intent to prepare a MIMP for  
19 Cherry Hill. FF ¶10. A Citizens’ Advisory Committee (“CAC”) was formed and first met in  
20 December of 2012. FF ¶10. Public review included public meetings of the CAC, which  
21 included time for public comment; a public scoping meeting; two public comment periods; and a  
22 public hearing. FF ¶11.

23 The Final MIMP and Final Environmental Impact Statement (“FEIS”) were issued on  
24 December 11, 2014. FF ¶11. The FEIS analyzed the no-build alternative and three build  
25 alternatives that involved variations in gross square footage and MIO heights. Swedish  
26 designated Alternative 12, which was added following comments on the DEIS, as the preferred

1 alternative. FF ¶12. The Department of Planning and Development's ("DPDs") Director's  
2 Report and Recommendation was issued on March 19, 2015. FF ¶13.

3 The CAC, staffed by the Department of Neighborhoods, held 36 public meetings over a  
4 period of 16 months. They received numerous public comments and reviewed and commented  
5 on Draft MIMP and SEPA documents. The CAC was instrumental in achieving many changes  
6 to the MIMP that would reduce the proposed MIMP's impact on the surrounding neighborhood.  
7 Many of the CAC majority's recommendations are included within the DPD Director's proposed  
8 conditions. FF ¶15. Others have been incorporated into the Hearing Examiner's recommended  
9 conditions. FF ¶15.

10 **E. Proposed MIMP**

11 A MIMP is a conceptual plan for a major institution that consists of a development  
12 program component; a development standards component; and a transportation management  
13 program. SMC 23.69.030(A). FF ¶19. Swedish's MIMP includes all required components. FF  
14 ¶19. Details of Swedish's proposed development program are found at pages 49-69 of the  
15 MIMP.

16 The MIMP establishes development potential for the next 20 to 30 years. It would  
17 remain valid until Swedish Cherry Hill constructs the allowed square footage, or seeks to amend  
18 the MIMP. The planned uses include new hospital beds and clinic space, research, education, a  
19 hotel serving patients and their families, long-term care, parking, and other related uses. FF ¶20.

20 Under the new MIMP, the net increase in building area would be 1.55 million square feet.  
21 TableC-2 on page 54 of the MIMP shows the allocation of the square footage to each function.  
22 Hospital beds would increase by 189, for a total of 385 in 2040, the number for which Swedish  
23 Cherry Hill is currently licensed by Washington State. FF ¶21.

24 The new MIMP would increase the hotel space to 40,000 square feet to provide  
25 additional accommodations or families of patients who are awaiting care at Swedish Cherry Hill.  
26 FF ¶23.

1 As the MIMP was developed, Swedish considered no less than 12 alternatives in concert  
2 with the CAC. In response to neighborhood opposition to MIO boundary expansion and street  
3 vacation alternatives, Swedish proposed alternatives that, by necessity, increased heights in  
4 certain locations on the campus to accommodate its need for a total of 3.1 million square feet.  
5 Responding to additional opposition to some of the increased heights, Swedish then developed  
6 Alternative 12, which provides for a total of 2.75 million square feet at build-out, less than  
7 Swedish's stated need of 3.1 million square feet. FF ¶24. At the hearing, Swedish amended  
8 Alternative 12 by adopting all but one of the building setbacks recommended by the CAC  
9 majority.

10 The proposed MIMP's Development Program is found at pages 49-72 of the MIMP. The  
11 following MIO height districts were proposed:

- 12 • On the west campus block, between 15th and 16th Avenues, the north and south  
13 portions of the block would remain at MI0-65', and the center portion would be  
14 increased from MI0-65' to MI0-160', conditioned down to 150'.
- 15 • On the central campus block, the existing MI0-105' would be maintained on the north  
16 and most of the east sides and on the southwest corner; MI0-105' would increase to  
17 MI0-160' along the west side at 16th Avenue, internal to the campus, and toward the  
18 center; MI0-105' would remain at the entry plaza, but be conditioned down to 37';  
19 and MI0-105' at the southeast corner would be reduced to MI0-65', and conditioned  
20 down to 40'.
- 21 • On the east campus block, the Examiner recommended retaining the existing MI0-37,  
22 a position that Swedish accepts. COL ¶14.

23 Development will occur as the need for replacement, renovation and expansion of  
24 facilities arises. FF ¶27; MIMP at 62-63.

1           **F.     Institution Need**

2           *Swedish Cherry Hill's assessment of its need for growth is credible*  
3           *in light of the age of its existing facilities; regional growth; the*  
4           *increasing health care needs, including specialty health care*  
5           *needs, of an aging population; changes in technology and the*  
6           *physical space demands associated with current health care*  
7           *delivery; and the impact of the Affordable Care Act. The peer*  
8           *review of Swedish Cherry Hill's space needs assessment is*  
9           *comprehensive, detailed and well supported. It shows that overall,*  
10           *the space needs are accurate.*

11           **Hearing Examiner Conclusion of Law ¶5.**

12           SMC 23.69.002 states that the purpose and intent of the Major Institution Code is to:

13           A. Permit appropriate institutional growth within boundaries while  
14           minimizing the adverse impacts associated with development and  
15           geographic expansion;

16           B. Balance the Major Institution's ability to change and the public benefit  
17           derived from change with the need to protect the livability and vitality of  
18           adjacent neighborhoods;

19           C. Encourage the concentration of Major Institution development on  
20           existing campuses, or alternatively, the decentralization of such uses to  
21           locations more than two thousand five hundred (2500) feet from campus  
22           boundaries;

23           \*\*\*

24           E. Discourage the expansion of established major institution boundaries;

25           \*\*\*

26           H. Accommodate the changing needs of major institutions, provide  
flexibility for development and encourage a high quality environment  
through modifications of use restrictions and parking requirements of the  
underlying zoning;

I. Make the need for appropriate transition primary considerations in  
determining setbacks. Also setbacks may be appropriate to achieve proper  
scale, building modulation, or view corridor;

1           • *Key Drivers of Institution Need*

2           Andrew Cosentino, Vice President of the Swedish Neuroscience Institute at Cherry Hill,  
3 testified regarding the drivers of campus need. The drivers surrounding the forecast of future  
4 need are multiple. Demand in the region is escalating. The greater Seattle market and the  
5 Pacific Northwest as a whole has seen significant growth over the last 20 years. Swedish does  
6 not see the tempering of such growth. To the contrary, the institution sees continued expansion.  
7 Reflective of this growth trend is the fact that Seattle was the fastest growing market in the  
8 United States in 2013. Cosentino Testimony, Day 1, Tape 5 of 5, 00:36:00 – 01:03:00.

9           A second driver is the aging population. The cohort of those persons who are 65 years of  
10 age and older is anticipated to grow by 127% through 2040. Those persons age 65 and over are  
11 known to consume health services at a rate that is 3.5 time higher than those who are under 65.  
12 *Id.*

13           The third driver is healthcare reform. The Patient Protection and Affordable Care Act  
14 has resulted, and will continue to result in increased demand on the Swedish Cherry Hill campus  
15 as more and more patients become eligible through the expansion of Medicaid, and as more  
16 persons enroll in insurance products offered on the State Exchange. *Id.*

17           The fourth driver is the escalation of disease prevalence in the two primary service lines  
18 at Swedish Cherry Hill. Neurology, Neurosurgery, and Cardiovascular diseases become  
19 disproportionately more prevalent as we age into the 6<sup>th</sup> decade and beyond, when compared to  
20 many other service lines. The presence of coronary artery disease, stroke, dementia, Parkinson's,  
21 and brain tumors are all examples of disease states that progress as we age. *Id.*

22           Another driver is the impact of technological advancements on the use of space within a  
23 hospital. The technologies used today require larger imaging suites, substantially larger  
24 operating rooms, wider corridors, larger ICU's, and larger patient rooms. *Id.*

25           Norms within the industry have also changed, and some such as the conversion from  
26 semi-private rooms to private room formats are not only driven by the demands of the consumer,



1 but from stricter infection control efforts within the industry. In the 1960s, when the Central  
2 Tower was constructed, it was common practice to have 4 – 6 beds in an ICU “Bay”, and only  
3 semi-private rooms for step down medical patients. Today, the standard of care is more often  
4 single, private rooms in the ICU and private rooms in medical –surgical floors. *Id.*

5 Other upgrades to the facility are also needed. Seismic upgrades are required to meet  
6 current City codes. And, capacity of the Cherry Hill campus Central Utility Plant is now at its  
7 limits. Expansion and an updating of the Utility Plant is a need that must be addressed in the  
8 coming years. *Id.*

9 Also, programmatic needs will be expanding at Cherry Hill by virtue of growth within  
10 the Swedish Neuroscience Institute. To continue attracting world class neurologists,  
11 neurosurgeons, and orthopedic surgeons, the Institute must deliver the full gamut of  
12 technologies, diagnostic services, and therapies and must compete for top medical talent. To do  
13 so, technology, support staff, robust educational programs, and translational research are critical.

14 *Id.*

15 • *Projected Institution Need*

16 Swedish engaged two expert consultants to formulate and testify to the institution’s need.  
17 Swedish first retained Teri Martin to study its space needs, and her analysis and conclusions are  
18 presented at Appendix G of the MIMP. At the hearing, Swedish presented the testimony of Jeff  
19 Hoffman to conduct a peer review of Ms. Martin’s work. A Senior Partner at Kurt Salmon, a  
20 global consulting firm that has planned over \$33 billion in new hospital capital investments since  
21 2005, Mr. Hoffman assists hospitals and medical centers all over the United States to assess their  
22 space needs. Mr. Hoffman has worked with 50-75 client hospitals/health systems on over 200+  
23 engagements. Hoffman Testimony, Day 1, Tape 5 of 5, 01:09:00 – Day 2, Tape 2 of 5, 00:00:08  
24 - 00.30.00.30.

25 Mr. Hoffman testified regarding trends in healthcare as they relate to specific service  
26 lines located at Cherry Hill. *Id.* He testified that the incidence of cardiac and neurological

1 disease is increasing along with an increase and aging of our population. Mr. Hoffman explained  
2 that this results in significantly more people with more disease that need treatment. *Id.* He  
3 concluded, “the MIMP is accurate and reasonable in its focus on these disease elements, the  
4 growth and aging of the population and their impact on our future healthcare needs.” *Id.*

5 With regard to the MIMP’s forecasted needs and assumptions, Mr. Hoffman testified that  
6 the MIMP includes a reasonable forecast of what will be required in terms of the number of  
7 inpatient beds, ambulatory diagnosis/treatment space, physician space, education space, research,  
8 and other supported space necessary to continue to build the integrated Swedish  
9 Neuroscience/Cardiac Institutes. Mr. Hoffman opined at the hearing that Ms. Martin’s estimates  
10 were conservative—that is, may have understated the true need for expansion at the Cherry Hill  
11 campus. “Because several components of forecasted needs and space needs were, in my opinion,  
12 conservative, it is my opinion that the institution’s need is closer to that stated in Alternative 8,  
13 which is 3.1 million square feet total.” *Id.*

14 Mr. Hoffman also testified regarding the need for co-location of services for the patient  
15 service lines located at Swedish Cherry Hill. “In regards to co-location of these services, I say it  
16 is incredibly important and highly reasonable to co-locate this highly complex  
17 diagnostic/treatment/research/training on a single campus.” “In my opinion, given patient needs,  
18 cost issues, and scientific needs, it really is the only patient focused and sustainable way to  
19 develop this capability.” *Id.*

20 During public comment on the MIMP, Jack Hanson, a healthcare policy analyst who  
21 lives in the Cherry Hill neighborhood, opined that Ms. Martin’s needs assessment actually  
22 overstated the need for expansion. However, Mr. Hanson did not provide an independent  
23 analysis of space needs; rather, he asserted that Swedish had not met its burden of establishing its  
24 own need. During his testimony, Mr. Hoffman responded to Mr. Hanson’s allegations. He  
25 spoke to the difference between the bed needs analysis advanced by Mr. Hanson, which is  
26 governed by the state “Certificate of Need” process, and the facility planning exercise reflected

1 in the MIMP. He testified that Cherry Hill is currently licensed for 385 beds and is using 200,  
2 and because Swedish is not seeking additional beds at this time, the bed need analysis provided  
3 by Mr. Hanson is irrelevant even assuming its accuracy. He disputed Mr. Hanson's premise that  
4 Swedish Cherry Hill is a general services hospital, asserting instead that it is a highly specialized  
5 tertiary and quaternary care facility with space needs similar to a children's hospital or other  
6 specialty facilities listed as peer institutions. Given that premise, Mr. Hoffman testified that  
7 because of the highly specialized nature of the work performed at the Cherry Hill campus, it was  
8 appropriate to plan for a lower bed occupancy rate to ensure bed availability, as well as larger  
9 BGSF, than would be expected at a general services hospital. Finally, Mr. Hoffman testified that  
10 the information necessary to understand Ms. Martin's needs assessment was presented in  
11 Appendix G of the MIMP. Hoffman Testimony, Day 1, Tape 5 of 5, 01:09:00 – Day 2, Tape 2  
12 of 5, 00:00:08 - 00.30.00; *See also, Swedish Letter to Hearing Examiner, Response to Public*  
13 *Comment, July 21, 2015.*

14 Other public comment questioned Swedish's need to concentrate its growth at the Cherry  
15 Hill campus. Mr. Hoffman and Mr. Cosentino responded to these questions by asserting that  
16 highly specialized services require co-location of several functions. They testified that  
17 decentralized facilities could not achieve the positive gains in patient outcomes that Swedish has  
18 achieved and plans to achieve through the facilities described in the MIMP. Cosentino  
19 Testimony, Day 1, Tape 5 of 5, 00:36:00- 01:03:00; Hoffman Testimony, Day 1, Tape 5 of 5,  
20 01:09:00 – Day 2, Tape 2 of 5, 00:00:08 - 00.30.00; *See also, Swedish Letter to Hearing*  
21 *Examiner, Response to Public Comment, July 21, 2015.*

22 A number of Swedish physicians provided public comment or testified regarding the type  
23 of facility that Swedish currently operates at Cherry Hill, and the type of facility they hope to  
24 expand under the proposed MIMP. Much of this comment centered on patient need and the  
25 continued goal of growing the world's finest facilities in the world to meet the demand for  
26 treatment of complex neurological and cardiovascular diseases. *See, Testimony of Dr. Jens*

1 Chapman; Testimony of Dr. Johnny Delashaw; Testimony of Dr. Rod Oskuian; and Testimony  
2 of Dr. Sandra Vermulion.

3 Some members of the public commented that these services were already provided by the  
4 University of Washington hospital system, but Mr. Hoffman explained the differences between  
5 public research institutions and non-profit healthcare providers, concluding that the region is best  
6 served by having both types of hospitals that provide these services. Hoffman Testimony, Day 1,  
7 Tape 5 of 5, 01:09:00 – Day 2, Tape 2 of 5, 00:00:08 - 00.30.00.

8 Some neighbors objected to Sabey’s involvement, but Mr. Hoffman testified that  
9 partnerships like the one between Swedish and Sabey Corporation are common. He explained  
10 that the arrangement allows the healthcare provider to dedicate its capital dollars to equipment,  
11 rather than facilities. Mr. Hoffman testified that several hospitals in the region surrounding  
12 Seattle, including, for example, Overlake Hospital, employed this approach. Mr. Cosentino  
13 testified that, in fact, some of the most prominent names in healthcare, such as Johns Hopkins,  
14 Cedars Sinai, Los Angeles, and the Stanford University Medical System, lease space and/or are  
15 partnering with private developers and Real Estate Investment Trusts as part of the operation.  
16 Cosentino Testimony, Day 1, Tape 5 of 5, 00:36:00- 01:03:00; Hoffman Testimony, Day 1, Tape  
17 5 of 5, 01:09:00 – Day 2, Tape 2 of 5, 00:00:08 - 00.30.00; *See also, Swedish Letter to Hearing*  
18 *Examiner, Response to Public Comment, July 21, 2015.*

19 **The Hearing Examiner concluded that the “assessment of its need for growth is**  
20 **credible” and that Hoffman’s peer review was “comprehensive, detailed and well**  
21 **supported. It shows that overall, the space needs are accurate.” COL¶5.**

22 The Examiner held that “[a] decentralization alternative for the MIMP is not a viable  
23 option, as the type and level of care provided at Swedish Cherry Hill by the Swedish Heart and  
24 Vascular Institute and the Swedish Neuroscience Institute requires the co-location of an  
25 extensive system of support services.” COL ¶6.

1 The Hearing Examiner also addressed Sabey's role: "The Major Institutions Code does  
2 not limit development under a MIMP to a non-profit entity. SMC 23.69.008.A, under 'Permitted  
3 uses' states that "[a]ll uses that are functionally integrated with, or substantially related to, the  
4 central mission of a Major Institution, or that primarily and directly serve the users of an  
5 institution shall be defined as Major Institution uses and shall be permitted in the Major  
6 Institution Overlay (MIO) District ... Permitted Major Institution uses shall not be limited to  
7 those uses which are owned or operated by the Major Institution." COL ¶7.

8 **G. Public Benefits of Swedish Cherry Hill**

9 Swedish offered detailed testimony outlining how the institution provides extensive  
10 public benefit and how it plans to continue providing such benefits. Sherry Williams Testimony,  
11 Day 2, Tape 4 of 5, 00:45:00-01:05:00. Swedish Cherry Hill cites as a primary public benefit the  
12 public's continued access to specialized care in the most complex heart, vascular and  
13 neurological diseases, together with the employment opportunities it offers. FF ¶45.

14 Ms. Williams testified to the Swedish charity care process and explained specific  
15 programs in the community supported by Swedish and the Cherry Hill facility, in particular.  
16 Williams Testimony, Day 2, Tape 4 of 5, 00:45:00-01:05:00. The MIMP lists public benefits  
17 provided by Swedish and Cherry Hill. MIMP at 3. Swedish provides \$130M in charity care  
18 annually, including at the Cherry Hill campus. See MIMP pp. 69-72 (listing the numerous  
19 programs and charitable services supported by Swedish and specifically, Swedish Cherry Hill).

20 Swedish doctors submitted public comment regarding charity care that Swedish currently  
21 provides and would like to provide. For example, Dr. Amy Winston testified that Swedish  
22 operates a low-income dental clinic at First Hill and would like to construct a dental clinic to  
23 serve low-income patients at the Cherry Hill campus, but currently lacks the space to do so. *See*,  
24 Testimony of Dr. Amy Winston.

25 In addition, the MIMP recites the benefits of Swedish Cherry Hill's uncompensated care,  
26 public education programs, community outreach services, and sponsorship of and funding

1 donations to numerous neighborhood and city-wide organizations. Other community benefits  
2 expressly included in the MIMP are also listed, including open space, view corridors, a  
3 neighborhood health walk, on-site daycare also offered to neighbors, and a new neighborhood  
4 gym. FF ¶45.

5 Some public testimony and comments criticized the level of charity care offered by  
6 Swedish Cherry Hill and pointed out that the amount spent on charity care declined between  
7 2013 and 2014. However, other testimony noted that many hospitals saw similar reductions in  
8 charity care expenditures as previously uninsured patients, who would have otherwise turned to  
9 hospital emergency rooms, received coverage under the Affordable Care Act. FF ¶46.

10 The Hearing Examiner concluded. “[t]hrough its operation, Swedish Cherry Hill provides  
11 benefits to the public, and the development proposed under the MIMP will enhance its delivery  
12 of those benefits consistent with its mission. In addition, Swedish Cherry Hill will continue to  
13 provide to the community the specific public benefits outlined in the MIMP.” COL ¶8.

#### 14 **H. MIMP Development Standards**

15 Swedish hired John Jex, an architect with 35 years’ experience designing medical centers,  
16 to design the Development Program and draft the MIMP. Mr. Jex testified that the proposal’s  
17 density was necessitated by Swedish’s assent to the community’s request that Swedish not seek  
18 MIO expansion or street vacation. With additional land area, Mr. Jex testified, Swedish could  
19 have designed a facility that met its institutional needs while limiting heights, decreasing lot  
20 coverage, and increasing setbacks. Without that additional area to work with, Swedish was  
21 constrained. He pointed out that Children’s Hospital, by contrast, started off proposing more  
22 intense development and no MIO expansion, then in response to neighborhood concerns,  
23 proposed MIO expansion that allowed lower heights and greater setbacks. Jex Testimony, Day  
24 1, Tape 1 of 5, 00:07:07 - 00:30:48.

1           • *Height*

2           The proposed MIMP requests rezones to increase height limits at three locations within  
3 the MIO interior, and *reduce* height limits at two. The height limits requested by Swedish are  
4 summarized at Table B-3 at MIMP p. 35, and discussed below.

5           (i)     Central/West Campus Blocks

6           The tallest requested height is 160', on the center block at the center of campus, to  
7 accommodate a future bed tower. The MIMP also proposes a 150' height limit at the lowest part  
8 of the campus, along 15th Avenue on the western block (adjacent to Seattle University's MIO).

9           The MIMP establishes, and the testimony of Mr. Jex clarified, that the 150' height limit  
10 at the western edge of the campus would cap development on that block with a horizontal plane  
11 measured 150' above the grade of 15<sup>th</sup> Ave. Due to site topography, this would actually result in  
12 a façade approximately 125' above grade at 16<sup>th</sup> Ave. Swedish did not propose to alter the  
13 height measurement technique of Chapter 23.86 SMC; rather, it proposes a condition limiting  
14 heights on the block to that horizontal plane. *See* MIMP Hearing Exhibit 1 at 52 n.1. The  
15 Hearing Examiner recommended approval of the proposed rezones for MIO height districts on  
16 both the central and western blocks of the campus. COL ¶16.

17           (ii)    Eastern Campus Half Block

18           For the eastern half-block, Swedish sought an increase from MIO-37' to MIO 50' at two  
19 locations, with conditions limiting the height to 45' at each. The Hearing Examiner found that  
20 the increased height could not be sufficiently mitigated, and recommended denial of the  
21 proposed MIO-50' rezone, maintaining the existing MIO-37' height. COL ¶16.

22           Significantly, the MIMP maintains 1994 Master Plan MIO height limits at most of the  
23 MIO boundaries, with the following exceptions. In addition to the 150' limit along the boundary  
24 with Seattle University, Swedish proposes to *reduce* allowable height from the existing MIO-  
25 105' to 40' at the northwest corner of 18th Ave and Jefferson, and from 105' to 37' in the area  
26

1 surrounding the hospital's main pedestrian entrance. Jex Testimony, Day 1, Tape 1 of 5,  
2 00:07:07 - 00:30:48.

3 • *Setbacks*

4 The proposed MIMP includes setbacks that vary with location on campus and height.  
5 Proposed setbacks were illustrated in the MIMP, Ex. 1 at pp. 25-34 and summarized in Table B-  
6 2 on p. 34. The CAC majority recommended additional setbacks. At the hearing, John Jex  
7 confirmed that Swedish would accept, the ground-level setbacks recommended by the CAC  
8 majority, with one limited exception (concerning demolition of the parking garage on the  
9 western block). See also, MIMP Exhibit 14.

10 • *Campus Transition to Surrounding Neighborhoods*

11 The Hearing Examiner concluded that “[g]iven Swedish Cherry Hill’s established need,  
12 the development to meet the need requires either a boundary expansion or increased heights,  
13 bulk and scale. The Code discourages the expansion of major institution boundaries but does  
14 allow for rezones to expand boundaries in appropriate circumstances. SMC 23.69.028.C.  
15 However, in light of neighborhood opposition to boundary expansion, Swedish Cherry Hill has  
16 chosen to meet its need within established boundaries.” COL ¶11.

17 Transitions in height, bulk and scale are proposed to be addressed through the pattern of  
18 MIO district heights, setbacks, upper-level setbacks, landscaping, and design elements. Jex  
19 Testimony, Day 1, Tape 1 of 5, 00:07:07 - 00:30:48. The Hearing Examiner concurred, finding,  
20 “[l]ower and upper level setbacks, façade modulation requirements, landscaping and open space,  
21 and various proposed design elements will mitigate these height, bulk and scale impacts.” COL  
22 ¶12.

23 The Hearing Examiner summarized her findings on height/bulk/scale and adequate  
24 transitions as follows:

25 The MIMP’s placement of the greatest height and bulk at the  
26 center of the campus, and at a lower elevation, while retaining  
MIO heights at the campus boundaries, together with the amended



1 setbacks, landscaping, and intervening rights-of way, will provide  
2 an appropriate transition between development within the MIO  
3 district and the surrounding neighborhood.

4 COL ¶13.

5 Swedish engaged a professional polling company in Spring of 2015 to sample 600  
6 residents in the greater Seattle area, 200 of whom live in the immediate neighborhood. The  
7 results were presented during the public testimony phase of the hearing. Testimony of EMC  
8 Research. Over 63% of those polled in the near neighborhood supported Swedish Cherry Hill's  
9 plans and only 13% strongly opposed. Citywide, 75% of those polled supported Swedish's  
10 plans. Cosentino Testimony (summarizing results of EMC Research Poll).

#### 11 **I. MIMP Transportation Management Plan & Transportation Impacts**

12 The FEIS analyzes the MIMP's transportation impacts in Section 3.7 and Appendix C. It  
13 evaluates existing conditions, as well as future traffic conditions in 2023 and 2040, for the no  
14 build alternative and three build alternatives, including Preferred Alternative 12. FF ¶81.

15 Travel along James and East Cherry Streets is already congested and would remain that  
16 way in the no build alternative. FEIS at 3.7-23 to -24. With the build alternatives, corridor  
17 operations would degrade slightly in 2023 and somewhat more significantly in 2040 along both  
18 James Street in the westbound direction during the AM peak hour, and East Cherry Street in the  
19 westbound direction during the PM peak hour. FEIS at 3.7-44 to -45. FF ¶82.

20 Mitigation measures for transportation impacts are addressed in the FEIS at 3.7-47 to -57.  
21 A primary mitigation measure is the Transportation Management Plan ("TMP"), which is  
22 addressed at length in the FEIS and discussed at MIMP pages 78-84. The Cherry Hill TMP  
23 describes existing and planned parking, loading and service facilities, and bicycle, pedestrian and  
24 traffic circulation systems within and adjacent to the campus. It also identifies specific elements  
25 and programs to reduce traffic impacts and to encourage the use of public transit, carpools and  
26 other alternatives to single occupancy vehicles. FF ¶83.

1 Key elements of the TMP include providing transit incentives; promoting alternative  
2 modes of travel; promoting HOV programs and incentives for carpools, vanpools, preferred  
3 parking, providing parking management programs; expanding the existing shuttle service to  
4 include additional locations; and providing new parking policies, including enforcement. FF  
5 ¶83. The TMP will govern all property owners, tenants and employees located on the Swedish  
6 Cherry Hill campus.

7 Under the existing TMP, the single occupancy vehicle commute goal is 50%, which the  
8 campus has yet to meet. The MIMP proposed a 44% SOV rate at full build-out in 2040.  
9 However, the DPD Director recommended a condition that would require Swedish Cherry Hill to  
10 achieve a 50 percent SOV rate prior to approval of the first building/demolition permit allowed  
11 under the MIMP, and a further reduction of 1 percent every two years, to a maximum of 38  
12 percent in 25 years. Swedish Cherry Hill agreed to the proposed condition. Further, the DPD  
13 Director recommended, and Swedish Cherry Hill and Sabey have accepted, a condition that  
14 requires all tenants on campus to be provided access to a 100 percent transit pass subsidy. FF  
15 ¶84.

16 Commute Seattle, a non-profit transportation management association that helps large  
17 property owners design and implement their TMPs assisted with drafting the MIMP TMP. FF  
18 ¶85. Commute Seattle will help oversee TMP Performance. *Id.*

19 A notable aspect of the TMP is a pilot program for an Integrated Transportation Board  
20 (“ITB”) for the campus that includes representatives of Swedish and on-campus employers such  
21 as LabCorp, Northwest Kidney Center and Sabey; service providers; transportation  
22 representatives from DPD, SDOT and METRO; and neighborhood stakeholders. The ITB is  
23 unique to Swedish Cherry Hill, and its purpose is to develop a unified approach among  
24 stakeholders to mitigate the adverse impacts of parking and transportation congestion on the  
25 neighborhood. It is presently operational and has established a list of specific goals, addressed a  
26 new contractual issue with the parking vendor on campus, and is working on a policy on

1 employee parking in the neighborhood that includes enforcement. Commute Seattle Executive  
2 Director Jessica Szelag, testified on behalf of Swedish that her organization has not seen this  
3 level of coordination elsewhere. FF ¶85.

4 The CAC majority recommended that that the TMP SOV goal be reduced to 32% over 25  
5 years. Both Ms. Szelag and John Shaw, lead Transportation Planner at DPD, concluded that the  
6 ultimate goal of a 38 percent SOV rate can be achieved, and analogized Swedish Cherry Hill's  
7 transportation challenges to those of Children's Hospital, which had achieved a 38 percent SOV  
8 rate at the time its present MIMP was approved. The Children's MIMP requires a 25% reduction  
9 in that SOV rate over the life of the Children's MIMP, which led the Director to recommend a  
10 similar rate of reduction for Swedish Cherry Hill. FF ¶88.

11 Ms. Szelag testified that Swedish Cherry Hill's location and the level of commitment and  
12 coordination on the campus as two bases for her belief that the 38 percent goal is realistic for this  
13 TMP. She also stated that the TMP includes the three factors that Commute Seattle has found  
14 indicative of a strong likelihood of success: 1) flexibility, in that it allows for changes as  
15 employee needs and available options and technology change; 2) strong leadership and staff  
16 commitment, noting that over the last several years, Swedish Cherry Hill and Sabey have hired  
17 five full-time and several part-time staff members with some responsibility for implementing the  
18 TMP; and 3) parties who recognize the important role of technology in a TMP. FF. ¶89.

19 Although the CAC majority recommended a condition that would require Swedish  
20 Cherry Hill to demonstrate continued compliance with its SOV goal prior to issuance of any  
21 building permit, Ms. Szelag testified that she had never seen a similar condition imposed on an  
22 institution. And Mr. Shaw cited the DPD's existing authority under SMC 23.54.016.C.6.c to  
23 deny a permit for development included in a MIMP if previous efforts have not resulted in  
24 sufficient progress toward meeting the major institution's SOV goals. He testified that like any  
25 other major institution, Swedish Cherry Hill will be required, as part of a project application, to  
26 demonstrate that it has made substantial progress toward meeting the TMP goal in effect at the

1 time of the application. FF ¶92. The Hearing Examiner rejected the CAC's recommendation  
2 concluding it "would duplicate the Department's existing authority under the Code to enforce the  
3 SOV rate, and therefore is not necessary." COL ¶19.

4 The Hearing Examiner found that the TMP includes the elements required by the Code.  
5 In addition, she concluded it includes some innovative elements, such as the ITB, and campus-  
6 wide access to a 100 percent transit pass subsidy. COL ¶17. The Examiner also found that  
7 "[b]oth Swedish Cherry Hill and Sabey have demonstrated commitment to meeting the existing  
8 SOV goal and have accepted the more rigorous goal recommended by the Director. On this  
9 record, it appears that the Director's a 38 percent SOV rate within 25 years is reasonable and can  
10 be achieved." COL ¶17.

11 Because the availability of transit is important to the achievement of the SOV goal, the  
12 Examiner recommended a condition should be added to assure that the biennial survey of TMP  
13 effectiveness includes a directional capacity analysis of Swedish employees, as recommended by  
14 Washington Community Action Network's traffic consultant. COL ¶17.

15 The Hearing Examiner addressed the fact that the City's SEPA policy on transportation  
16 provides that for projects outside downtown that result in adverse impacts, the decision-maker  
17 may reduce the size and/or scale of the project only if it is determined that other traffic  
18 improvement mitigation measures would be inadequate to effectively mitigate the adverse  
19 impacts of the project. SMC 25.05.675.R. COL ¶21. However, she noted that the MIMP is a  
20 long-term conceptual plan covering at least 25 years and one of the purposes of a master plan is  
21 to "allow the city to anticipate and plan for public capital or programmatic actions that will be  
22 needed to accommodate development". SMC 23.69.002.L. COL ¶21. Population, roadway  
23 conditions, traffic conditions and transportation options can change greatly over a span of  
24 25years, as can the circumstances of a major institution. COL ¶21. The Examiner noted that  
25 with each project application under the MIMP, a new analysis of traffic conditions and impacts  
26

1 will be prepared. "If it is shown that a reduction in size or scale is necessary, that is the point at  
2 which it should be required." COL ¶21.

### 3 III. LEGAL AUTHORITY AND ARGUMENT

4 Section III (A) begins with a discussion of the Council Committee's authority to act on a  
5 Type IV quasi-judicial land use appeal, including the full Council's authority to impose  
6 substantive conditions under the State Environmental Policy Act ("SEPA"), and explains, in light  
7 of these principles, why several of the arguments Appellants raise are not appropriate to this  
8 forum and should be rejected by the Council.

9 Section III(B) explains how the record demonstrates that the MIMP satisfies the Major  
10 Institutions Code, particularly with regard to establishing the institution's need and how the MIMP  
11 balances the needs of the institution with the need to minimize the impact of major institution  
12 development on surrounding neighborhoods. Several of the Appellants' specific appeal issues are  
13 then addressed, including the adequacy of the TMP; MIMP compliance with the City's  
14 Comprehensive Plan, the role of Swedish's development partner, Sabey Corporation, permitted uses  
15 within the Swedish Cherry Hill MIO, the possibility of a neighborhood greenway on 18<sup>th</sup> Ave , and  
16 an existing drainage concern.

#### 17 A. The Council's Authority is Limited to Applying Existing Law to The Facts in 18 The Record.

##### 19 1. The Council Acts In A Quasi-judicial Capacity.

20 Although the City Council itself is the City's legislative body, when presiding over an  
21 appeal of a Type IV recommendation by the City's Hearing Examiner, both the Committee and the  
22 full Council may not exercise legislative powers. The Type IV Land Use Decision process is quasi-  
23 judicial, and in reviewing these appeals, the PLUZ Committee acts like a judge presiding over a  
24 court case. The Committee is a quasi-judicial body that must apply the existing law to the facts in  
25 the record—those developed at the hearing presided over by the Hearing Examiner. SMC  
26 23.76.056.A ("The Council's decision to approve, approve with conditions, remand, or deny the

1 application for a Type IV Council land use decision shall be based on applicable law and supported  
2 by substantial evidence in the record” (emphasis added)). In sum, neither the Committee nor the  
3 full Council may consider evidence outside the record or adopt new laws or policies to assist its  
4 evaluation of the MIMP and the MIMP EIS. The PLUZ Committee makes its recommendation to  
5 the full Council guided by these principles. *See* Res. 31602 § VI.C.3.

6 **2. The Council Jurisdiction is Limited to Evaluating Whether a Proposal**  
7 **Meets Code.**

8 The Type IV process allows the Council to “approve, approve with conditions, remand, or  
9 deny the application for a Type IV Council land use decision, but only “based on applicable law and  
10 supported by substantial evidence in the record established pursuant to Section 23.76.054.” SMC  
11 23.76.056.A. The applicable Code sections do not allow the Council to base its quasi-judicial  
12 decision on concerns about process. *Id.*

13 In addition to being constrained to applying existing law, the Council’s jurisdiction to decide  
14 matters related to a Type IV Land Use Decision is limited to evaluating the application’s  
15 compliance with City Code. The Council does not have jurisdiction to decide, for example,  
16 questions of constitutional due process rights or procedural questions such as whether the CAC was  
17 properly constituted. Such questions are solely within the jurisdiction of the superior court, and  
18 appellants must initiate a lawsuit to have such allegations heard.

19 For example, Appellant 19th Avenue Block Watch argues that the CAC membership was  
20 inappropriate and that DON and DPD treated 19th Avenue inequitably during this MIMP process  
21 (and during the review of the prior MIMP in the early 1990s). Appellant WashCAN argues that its  
22 due process rights were not respected at the hearing. Appellant Dean Paton argues that MIMP  
23 approval would shatter the public’s faith in representative democracy. WashCAN complains that  
24 the Examiner excluded the written analysis of its transportation expert, Ross Tilghman, but he  
25 had submitted substantially the same analysis into the record months earlier, during the CAC  
26 process. *See* CAC Report at 263 (Meeting Notes from CAC Meeting #27 (Feb. 12, 2015) noting

1 comments of “Ross Tillman” [sic]); Letter from Ross Tilghman to Katie Porter, CAC Chair,  
2 dated February 20, 2015. Not only are these appellants incorrect on the merits of their arguments,  
3 each of these issues, and many others like them, are outside of the Council’s jurisdiction on a Type  
4 IV Land Use Decision.

5 The Council’s decision on a MIMP application must be “supported by substantial evidence  
6 in the record established pursuant to Section 23.76.054.” SMC 23.76.056.A. The Council may not  
7 speculate on what conditions may arise in the future that, had they existed at the time of the hearing,  
8 might have affected the Council’s decision. For example, several appellants argue that the MIMP  
9 should be rejected or modified to accommodate a greenway on 18<sup>th</sup> Avenue. But the facts in the  
10 record demonstrate that the greenway is not a reality yet. As of the hearing, the greenway was still  
11 in the planning stages: the final route has not been selected, and funding has not been secured. To  
12 modify the MIMP based on planning decisions the Council may make in the future that may or may  
13 not conflict with the MIMP that is currently before Council would exceed the Council’s authority.

14 The Hearing Examiner squarely addressed this issue in her Conclusions. COL ¶20.  
15 “Because the potential neighborhood greenway on 18<sup>th</sup> Avenue will not be planned until 2016, and  
16 there are other appropriate locations for a greenway in the neighborhood, it is neither desirable nor  
17 practical to address the greenway in conjunction with the MIMP.” COL ¶20.

18 Nevertheless, and in an abundance of caution, the FEIS analyzes traffic impacts in relation  
19 to a possible 18<sup>th</sup> Avenue greenway alignment. FEIS, pp. 3.7-18, 3.7-28 – 30, 3.7-40. The FEIS  
20 also identifies potential mitigation incorporated into the project design, including a reduction in  
21 the number of driveways that currently exist along this segment of 18<sup>th</sup> Avenue. FEIS, p. 3.7-29.  
22 *See also, Swenson Testimony*, Day 4, Tape 2 of 4 at 10:45 – 12:14. Council need not now, at the  
23 non-project stage, try to address conditions that can be better handled when Swedish comes in  
24 for project-level permits, when the location of the greenway—if it becomes a reality—will  
25 presumably be known and the details of the specific buildings are clearer.

1 Other arguments raised by the Appellants depend on facts not found in the record. For  
2 example, the appeal statement of Appellant Dean Paton recounts statements allegedly made by  
3 Steve Shepard, the longtime and recently retired City staff person who handled Major  
4 Institutions for the Department of Neighborhoods. These purported “quotations” happen to  
5 coincide perfectly with Mr. Paton’s narrative, as well as the position he has held since day one of  
6 this process. Not only are the statements hearsay, but they are offered for the first time in this  
7 appeal; they are nowhere to be found in the record. Mr. Paton attended the hearing, but did not  
8 offer them. The Council cannot consider them on appeal.

9 Similarly, the implication by 19th Ave Block Watch that it might have supported MIO  
10 expansion if Swedish had simply offered more money, 19th Ave Br. at 3, finds no support in the  
11 record and should be disregarded. The Council’s findings of fact must be supported by  
12 substantial evidence in the record, SMC 23.76.056.A, and any appeal issues lacking such  
13 evidence must be disregarded.

14 A homeowner who is a member of 19<sup>th</sup> Ave Block Watch/Squire Park Neighbors also  
15 submitted testimony and a pending Motion to Supplement the Record concerning drainage issues  
16 at her home on 19<sup>th</sup> Avenue. *See Record Supplement Request*, February 8, 2016. Swedish is  
17 sympathetic to this potential drainage problem, and agreed at the hearing to include Condition  
18 64, which requires an investigation of groundwater impacts for each future site-specific building  
19 as part of future MUP applications under the MIMP. *See Hearing Examiner Condition 64*. As a  
20 result, no additional conditioning is necessary as part of this MIMP.

21 **3. The Council May Not Regulate Swedish’s Business Practices Through**  
22 **its Quasi-judicial Land Use Decision.**

23 Nothing in the Major Institutions Code suggests that the Council has the authority to  
24 condition a land use decision to address impacts unrelated to land use, and doing so would run  
25 counter to established Washington Law. *See, e.g., RCW 82.02.020; San Telmo Associates v.*  
26 *City of Seattle*, 108 Wn.2d 20, 25, 735 P.2d 673 (1987). The Major Institutions Code is not a



1 vehicle for the City to govern the business practices of major institutions. The Council and its  
2 Hearing Examiner regulate land use, not hospital functions. The Council in this quasi-judicial  
3 proceeding does not have jurisdiction over, and cannot condition a land use entitlement to  
4 address, collective bargaining, staffing ratios, methods of delivery of charity care, or any number  
5 of other issues that Appellants, particularly WashCAN and 19th Avenue Block Watch, ask the  
6 Council to address.

7 At the hearing, WashCAN members spoke of the effect of healthcare debt on the  
8 indigent, and their stories implicate areas of significant public concern and appropriate debate  
9 regarding society's allocation of healthcare resources. Swedish agrees that charity care should  
10 be readily accessed by those who qualify, but compelling though these stories may be, nothing in  
11 City Code gives the Council jurisdiction to condition approval of the MIMP based on providing  
12 *certain levels* of charity care. Even if the Council could so condition the MIMP, the facts in the  
13 record do not support WashCAN's conclusion. WashCAN, as appellant, bears the burden of  
14 establishing a baseline against which Swedish's delivery of charity care could be measured. The  
15 anecdotes offered by WashCAN members did not create a record that demonstrates that  
16 Swedish's practices differ from its peers or even compare negatively to some standard. Without  
17 such a record, the Council has no factual or legal basis to impose such conditions, which would  
18 be without precedent.

19 **B. The Council has Limited Authority to Impose SEPA Conditions on a Non-**  
20 **project Action Such as MIMP Approval.**

21 The City Council may use its substantive authority under SEPA to condition MIMP  
22 approval, but its authority to do so is limited. First, it may only impose a condition to mitigate a  
23 particular environmental impact if the City has already adopted a substantive SEPA policy  
24 authorizing such conditioning. SMC 25.05.660.<sup>3</sup> Second, it may only impose conditions to the

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25 <sup>3</sup> Accord WAC 197-11-660; see also *Nagatani Brothers v. Skagit County*, 108 Wn.2d 477, 739 P.2d 696 (1987);  
26 *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 801 P.2d 985 (1990).

1 extent the relevant SEPA policy authorizes it to. *Id.* Through their appeals, the appellants ask  
2 the Council to impose conditions to mitigate impacts not addressed by any substantive SEPA  
3 policy, and ask Council to impose conditions that exceed relevant adopted SEPA policies. The  
4 Council should decline to do either.

5 **1. The Council Cannot Impose SEPA Conditions to Address Impacts**  
6 **Not Identified in a Substantive SEPA Policy (SMC 25.05.675).**

7 Several appellants argue that the project should be *conditioned* to ensure compatibility with  
8 the Comprehensive Plan. *See, e.g.,* Squire Park Community Council Br. at 3; WashCAN Br. at 8-  
9 11. There is simply no substantive SEPA policy on point, and the Council accordingly lacks  
10 substantive SEPA authority to impose such conditioning. As noted below by the Hearing  
11 Examiner, nothing in SEPA requires a proposal to be consistent with every aspect of every  
12 adopted land use plan, including the Seattle Comprehensive Plan.

13 The thrust of Appellants' arguments on land use impacts appears to be that alleged  
14 inconsistency with select Comprehensive Plan elements alone creates a significant impact to the  
15 environment that must be mitigated, but neither SEPA nor the Major Institutions Code require  
16 that a MIMP be "consistent" with all elements of every adopted land use plan, including the  
17 Comprehensive Plan. Indeed, the City's substantive SEPA policies limit the Comprehensive  
18 Plan goals and policies that may serve as the basis for the exercise of substantive SEPA authority  
19 to those set forth in Section B of the Land Use Element, which broadly address Land Use  
20 Categories. *See* SMC 25.05.675.J.2. The FEIS must analyze and discuss the proposal's  
21 "relationship to" adopted policies. SMC 25.05.444.B.2.a; *accord* SMC 25.05.440.E.4.a  
22 (discussion of affected environment "shall incorporate, when appropriate" a summary of existing  
23 plans and how the proposal is consistent and inconsistent with them). The FEIS includes an  
24 extensive discussion of the relationship of the proposal to adopted land use plans in section 3.3  
25 Findings and Decision of The Hearing Examiner For The City of Seattle, SEPA Determination  
26 by the DPD Director, Ref. No. 3012953, FF ¶21. The FEIS contains a thorough discussion of

1 the proposal's relationship to adopted Comprehensive Plan Policies, including Urban Village and  
2 Land Use goals and policies. FF ¶21. The FEIS concludes that the MIMP is consistent with  
3 many Plan goals and policies (e.g., UV-35, UV-39, LU 77, and -78, and the applicable major  
4 institution goals and policies), yet inconsistent with others (e.g., UVG-36, UV-38). FF ¶21. A  
5 number of the Appellants simply misunderstand the law in this regard. The City's SEPA policies  
6 *do not* allow conditioning of a project to address "inconsistency with adopted land use policies."  
7 There is simply no substantive SEPA policy on point.<sup>4</sup>

8 The Hearing Examiner addressed this legal issue succinctly in her Conclusions. COL ¶10.  
9 "The FEIS establishes that the MIMP is generally consistent with the Comprehensive Plan and  
10 other relevant parts. The Major Institutions Code does not require more." COL ¶10.

11 **2. The Council Should Reject Appellants' Request for SEPA Conditions**  
12 **Beyond Those Authorized by the City's Substantive SEPA policies.**

13 The City does have substantive SEPA policies addressing the traffic, land use, and height,  
14 bulk, and scale elements of the environment. However, neither these policies, nor any others,  
15 authorize the Council to reduce the development capacity of the MIMP to address such impacts  
16 because the MIMP is not a "project."

17 SEPA divides the universe of government actions into two categories: project and non-  
18 project. SMC 25.05.704.B. Project actions authorize "activity that will directly modify the  
19 environment." SMC 25.05.704.B.1.a. For example, a MUP authorizing construction of an office  
20 tower is a project action. Non-project actions, by contrast, include "[t]he adoption of any policy,  
21 plan, or program that will govern the development of a series of connected actions." SMC  
22 25.05.704.B.2.c. Because each project developed under the MIMP will require its own MUP  
23 (which will be subject to its own project-level SEPA review), the MIMP is a plan that will govern

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25 <sup>4</sup> As discussed below, the City's SEPA policies allow the City to condition a "project" to ensure consistency with  
26 Section B of the Comprehensive Plan's Land Use Element, *see* SMC 25.05.675.G.2.a; J.1.a-J.2.b. However, the  
SEPA policies do not permit conditioning to ensure compatibility with any other (non-shoreline) portion of the  
Comprehensive Plan, including (without limitation) the rest of the Land Use element, the Urban Village element, or  
the Transportation element. There is no SEPA policy regarding "consistency with adopted land use plans."

1 the development of the campus under a series of project actions and is therefore a non-project  
2 action.

3 SEPA encourages phased review where it “assists agencies and the public to focus on issues  
4 that are ready for decision and exclude from consideration issues already decided or not yet ready.”  
5 SMC 25.05.060.E.2. Such phased review is particularly appropriate where, as here, review begins  
6 at the non-project stage, where the MIMP establishes only the maximum building potential, and  
7 proceeds to the project permitting, where actual buildings will be permitted through the MUP  
8 process after project-level SEPA review. *See* SMC 25.05.060.E.3.a. As reflected in the City’s  
9 substantive SEPA policies discussed below, the project level is where the City considers imposing  
10 mitigating conditions under SEPA.

11 The City’s relevant substantive SEPA policies apply only to project actions.

12 For example, the substantive SEPA policy addressing traffic impacts reads:

13 i. Mitigating measures which may be applied to projects outside of downtown may  
14 include, but are not limited to:

15 [listing available mitigation measures]

16 ii. For projects outside downtown which result in adverse impacts, the  
17 decisionmaker may reduce the size and/or scale of the project only if the  
18 decisionmaker determines that the traffic improvements outlined under  
19 subparagraph R2fi above would not be adequate to effectively mitigate the adverse  
20 impacts of the project.

21 SMC 25.05.675.R.2.f (emphasis added). Similarly, the substantive SEPA policy addressing height,  
22 bulk, and scale impacts reads:

23 Subject to the overview policy set forth in SMC Section 25.05.665, the decision-  
24 maker may condition or deny a project to mitigate the adverse impacts of  
25 substantially incompatible height, bulk and scale.

26 SMC 25.05.675.G.2.b (emphasis added). The substantive SEPA policy addressing land use  
impacts reads:

[T]he decisionmaker may condition or deny any project to mitigate adverse land  
use impacts resulting from a proposed project or to achieve consistency with the  
applicable City land use regulations

1 SMC 25.05.675.J.2.b (emphasis added). None of these policies has a similar provision authorizing  
2 substantive SEPA conditioning of non-project actions.

3 Appellants, by contrast, ask the Council to restrict the development capacity in the MIMP  
4 as an exercise of its substantive SEPA authority, as though every project identified in the MIMP  
5 would be built simultaneously and immediately. But that is not the plan. The Development  
6 Program includes decades' worth of development, and the environmental impacts of each must  
7 be measured against the background conditions that will exist at the time of project approval.  
8 MIMP approval alone creates no transportation, or any other, impacts. The City's SEPA policies  
9 do not allow SEPA conditioning of a non-project action to address speculative impacts that may  
10 arise from project actions taken in the future.

11 **C. The Proposed MIMP is Consistent With the Need and Public Benefit**  
12 **Requirements of the Major Institutions Code.**

13 The Major Institutions Code seeks to secure the public benefits associated with major  
14 institutional development by providing for the needs of the major institution, while mitigating the  
15 impacts of development on the neighborhood. *See* SMC 23.69.002.B. This requires the City to  
16 ascertain the institution's need. As discussed in Section II of this brief and below, Swedish  
17 established its need through expert testimony and substantial evidence in the record. The record is  
18 devoid of any competent evidence that calls this substantial evidence into doubt.

19 The Major Institutions Code also requires the City to understand the public benefits  
20 associated with the institution, and the public benefits included in the proposed MIMP are not only  
21 substantial, but in accord with the public benefits identified in prior MIMPs approved by the City  
22 Council.

23 **1. Substantial Evidence in The Record Supports Swedish's Stated Need.**

24 The Major Institutions Code provides limited authority for the City to consider the  
25 institution's need for expansion, solely for the purpose of ensuring that the MIMP "balance[s] the  
26 needs of the Major Institutions to develop facilities for the provision of health care or educational

1 services with the need to minimize the impact of Major Institution development on surrounding  
2 neighborhoods.” SMC 23.69.035. Contrary to the intimations of some appellants, the Major  
3 Institutions Code does *not* give the City authority to determine the appropriate amount of  
4 development capacity an institution requires. Rather, the Code allows the City to examine the  
5 institution’s need so that the City can better understand the impacts, then select mitigation measures  
6 appropriate to those impacts.

7 As noted above in Section II of this brief, Swedish established its need through analyses  
8 provided by two independent consultants. Ms. Terry Martin’s analysis is presented in the MIMP  
9 and the EIS, and she explained her analysis to the CAC in a meeting well-attended by, the public.  
10 See CAC Majority Report at 128-29 (meeting notes for CAC meeting #11, on 1/16/2014). In  
11 preparation for the pre-decisional hearing, Swedish retained Jeff Hoffman of Kurt Salmon, a  
12 consultant with a nationwide practice in the field, to peer-review Ms. Martin’s needs analysis.

13 No qualified expert presented a competent criticism of Ms. Martin’s needs analysis, and  
14 none effectively contradicted Mr. Hoffman’s peer-review of that analysis or the substantive  
15 testimony offered by Mr. Hoffman.<sup>5</sup> One member of the public, Jack Hanson, held himself out as  
16 an expert in hospital planning, but he is a policy analyst, not an expert on hospital facilities  
17 planning beyond “bed need.” Swedish’s needs assessment was far broader than just bed count,  
18 and included lab and research, clinic, education, hotel, and long-term care. The record shows  
19 that Mr. Hanson has no professional experience in these distinct areas, and no master planning  
20 experience whatsoever. The Hearing Examiner found that Swedish’s assessment of its need for  
21 growth was “credible.” Hearing Examiner COL ¶4. This credibility determination is solely for  
22 the Examiner and may not be reviewed by Council. See, e.g., *State v. Gibson*, 152 Wn. App.  
23 945, 951, 219 P.3d 964 (2009) (“We do not review credibility determinations on appeal, leaving  
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25 <sup>5</sup> Squire Park incorrectly asserts that “there was no opportunity for questioning the Swedish and Sabey witnesses,”  
26 Squire Park at 2. The Hearing Examiner allowed cross-examination of Swedish witnesses, including Mr. Hoffman.  
See Day 2 at 10:36 AM-11:23:05 AM (cross of Hoffman by WashCAN and Concerned Neighbors). Although it  
cross-examined other Swedish witnesses, see Day 2 at 11:59:49 AM, Squire Park elected not to cross Mr. Hoffman.

1 them to the fact finder.”). Under this finding, the Examiner implicitly found that Mr. Hanson’s  
2 testimony was *not* credible, and the Council therefore cannot rely on it.

3 Mr. Hanson provided public comment and submitted extensive written comment on the  
4 question of need. However, as Mr. Hoffman testified, Mr. Hanson’s analysis was incorrect on a  
5 number of points. First, and most fundamentally, Mr. Hanson’s analysis relied on bed need  
6 methodology, but hospital bed need is not regulated through the City of Seattle’s land use code.  
7 Rather, the state Department of Health regulates bed need through the Certificate of Need program.  
8 Swedish is currently licensed for 385 beds (with 200 currently in use), and it does not require more  
9 at this time. If it is to construct a modern specialty hospital to accommodate all of the beds for  
10 which it is already licensed, Swedish requires the development capacity proposed in the MIMP.  
11 Perhaps more importantly, the MIMP is a plan for campus-wide growth with no expiration date,  
12 with a planning horizon of 20-30 years. It anticipates growth in areas that do not require new  
13 beds, such as the low-income dental clinic Dr. Winston testified Swedish intends to construct at  
14 Cherry Hill, as well as many other areas.

15 In addition to the fundamental error of relying on bed need methodologies, much of Mr.  
16 Hanson’s testimony depends on the equally flawed premise that Swedish Cherry Hill is a general  
17 acute care hospital, comparable (indeed, interchangeable) with Swedish First Hill or Virginia  
18 Mason. As the MIMP and testimony established, Swedish Cherry Hill is actually a highly  
19 specialized tertiary and quaternary care facility more similar to children’s hospitals, heart  
20 hospitals, and obstetrics hospitals.

21 These two fundamental errors explain most of Mr. Hanson’s incorrect assertions.  
22 Specialty hospitals require more building gross square footage per bed, more space for long-term  
23 care services, and more available beds (in the form of lower planning occupancy rates), among  
24 others. Planning for future space implicates far more than simple bed counts.

25 Nevertheless, laboring under the erroneous premise that the Major Institutions Code  
26 provides a vehicle for the City to regulate the business practices of its hospitals, Appellants assert

1 that Swedish must do more to establish its space needs. Appellants would hold Swedish to a  
2 standard of proof never before applied to another medical major institution. They cite the  
3 Examiner's recommendation in the Children's Hospital MIMP as precedent, ignoring the fact that  
4 this Council did not adopt the Examiner's conclusion in Children's that the hospital had not  
5 sufficiently established its need. *See* Ord. No. 123263 (2010),<sup>6</sup> Attachment A, Findings,  
6 Conclusion, and Decision of the City Council at Findings 34-50, Conclusions 1-6. In the  
7 Children's case, the neighborhood retained an actual needs consultant that the Examiner accepted  
8 as an expert, but even that was insufficient to convince the Council to question Children's stated  
9 need. *Id.* Conclusion 3 (accepting opposing expert report despite his unavailability for cross-  
10 examination, yet rejecting analysis).

11 One goal of the Major Institutions Code is to "permit appropriate institutional growth within  
12 boundaries while minimizing the adverse impacts associated with development." SMC  
13 23.69.002.A. Misreading this passage, Appellants presume that the phrase "appropriate institutional  
14 growth" means development that minimizes adverse impacts. *See, e.g.*, Squire Park at 1-2. If that  
15 were the case, however, the sentence would end at the word "boundaries." Giving effect to every  
16 word of the ordinance, the Council must reject the appellants' reading. Properly read, whether  
17 growth is "appropriate" or not must depend on whether it will meet the needs of the institution,  
18 while adverse impacts of this needed growth are addressed in the second clause of the sentence.

19 Appellants assert that the CAC should have moderated a debate regarding need. *See,*  
20 *e.g.*, Squire Park Br. at 2. In fact, the Code specifically prohibits the CAC from debating need,  
21 as well as several other elements:

22 The Advisory Committee may review and comment on the mission of the  
23 institution, the need for the expansion, public benefits resulting from the proposed  
24 new development and the way in which the proposed development will serve the  
25 public purpose mission of the Major Institution, **but these elements are not subject**

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26 <sup>6</sup> The Children's ordinance is attached for the Council's convenience to this brief as Attachment A



1 to negotiation nor shall such review delay consideration of the master plan or the  
2 final recommendation to Council.

3 SMC 23.69.032.D.1 (emphasis added); accord SMC 23.69.030.E.13.b. Appellants imply that  
4 DON failed to extend the same courtesy to Squire Park and Cherry Hill that it did to  
5 Laurelhurst,<sup>7</sup> but DON's actions comported with the Code's plain language. As mentioned  
6 above, Swedish presented its needs analysis to the CAC. The Code requires no more, and indeed,  
7 prohibits CAC negotiation regarding need.

8 Several appellants assert, without citation to authority, that the space owned by Sabey  
9 should not be considered within the institution's need unless uses within that space directly serve  
10 the hospital's specialty functions. See, e.g., Cherry Hill Community Council Br. at 2. Yet, as  
11 discussed in Sabey's companion brief, the Major Institutions Code regulates uses and  
12 development standards, not property owners. Not only does nothing in the Major Institutions  
13 Code restrict institutional uses to those associated with a specialty of the hospital, but nothing  
14 restricts uses based on the identity of the property owner. The Hearing Examiner concurred in  
15 this respect. COL ¶7.

16 **2. The MIMP Provides Substantial Public Benefits.**

17 Major institutions must provide public benefit to support the additional development  
18 capacity of an MIO, and in every MIMP the Council has approved heretofore, the main element  
19 of the public benefit derived from the change of a major institution is the continuing vitality (and  
20 very existence) of the institution itself. See, e.g., Ord. No. 123263 (2010), Attachment A,  
21 Findings, Conclusion, and Decision of the City Council at Conclusion 1. This MIMP is no  
22 different. COL ¶8. Apart from the tens of thousands of jobs Seattle's major institutions provide,  
23 the health and education opportunities associated with Seattle's major institutions are crucial to  
24 the City's quality of life. Swedish Cherry Hill, in particular, provides specialized treatment of

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25 <sup>7</sup> There is no competent evidence in the record that establishes how DON handled the need question with Children's  
26 Hospital.

1 brain, spine, and cardiac and vascular disease that is the envy of hospitals and communities the  
2 world over. In addition, Swedish Cherry Hill, in common with its fellow medical major  
3 institutions, provides millions of dollars' worth of uncompensated care every year.<sup>8</sup>

4 Health care in the community is a public benefit, regardless of whether the hospital  
5 charges for the service. This is particularly true with the type of specialty care lines found at  
6 Swedish Cherry Hill, which cannot be found at most hospitals, and for which people will travel  
7 great distances.

8 Even if the Council must consider charity care in its public benefits analysis, the record  
9 shows that Swedish has a robust charity and community care program. Beyond the substantial  
10 public benefit associated with the continuing operation of a non-profit specialty hospital, Sherry  
11 Williams testified to other public benefits associated with Swedish Cherry Hill operations. Many  
12 of these benefits are listed at pages 69-72 of the MIMP. They include several not directly related  
13 to healthcare: food donations, employee drives, sponsorship of community charities, and support  
14 of athletic programs, among others. They also include healthcare-related benefits, such as:  
15 community heart screenings, mobile mammography services, stroke support group meetings, and  
16 other services. Ms. Williams testified these benefits will continue under the new MIMP.

17 WashCAN's raison d'etre is to increase access to quality health care, and the way to get  
18 that in Seattle is to support our medical major institutions. Access to the world's best medical  
19 care provides community benefits far beyond those found in other employment centers.

20 In total, the public benefits identified in the proposed MIMP are very similar in kind and  
21 scope to the benefits the Council has previously approved for Virginia Mason, Seattle Children's,  
22 and a number of other medical major institutions. Although recent MIMPs include discussions  
23 of charity care, in addition to continued operation of the relevant medical center, as public  
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25 <sup>8</sup> Some public comment suggested that because hospitals are required to provide uncompensated care, they should  
26 not be permitted to count it as public benefit. But the requirement diminishes neither the benefit to the public nor  
the cost to the institution. Hospitals are required to provide care, but they are not required to exist, and without the  
additional development capacity allowed by the Major Institutions Code, many of them would not.

1 benefits of their MIMPs, no other medical major institution was subjected to the type of  
2 flyspecking that WashCAN urges. WashCAN seeks to hold the Swedish Cherry Hill MIMP to a  
3 higher standard—a *standard not set forth in Code* and never before applied to another major  
4 institution. The Council must decline.

5 **D. The MIMP Meets Major Institution Code Requirements Related to The**  
6 **City's Comprehensive Plan**

7 Appellants appear to believe that the City's Comprehensive Plan imposes independent  
8 *regulatory* requirements, which it does not. Rather, the Major Institutions Code and SEPA govern  
9 the Council's evaluation of this MIMP. In Washington, a comprehensive plan is only a general  
10 guide and not a document designed for making specific land use decisions. The zoning code  
11 controls and trumps inconsistent provisions of the comprehensive plan. *See, e.g., Citizens for*  
12 *Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997).<sup>9</sup>  
13 Development must comply with the specific provisions of a comprehensive plan only if the  
14 zoning code expressly incorporates the comprehensive plan into the decisional criteria for a  
15 proposal. Here, the Seattle Municipal Code does not do so, *see* SMC 23.69.024 -.032, and SEPA  
16 does not require more.

17 As discussed in more detail below, and as the Council acknowledged in its decision on the  
18 Children's MIMP, under existing regulations, the urban village strategy, which was adopted against  
19 the backdrop of major institution overlays that had already been in place for years, plays no part in  
20 major institution master planning. Second, appellants make much of the MIMP's alleged  
21 inconsistency with the Health and Human Development element of the Comprehensive Plan. As  
22 discussed below, the MIMP meets the sparse Code requirements regarding that element.

23 \_\_\_\_\_  
24 <sup>9</sup> *See also, e.g., Tugwell v. Kittitas County*, 90 Wn. App. 1, 8, 951 P.2d 272 (1997); *Hansen v. Chelan County*, 81  
25 Wn. App. 133, 138, 913 P.2d 409 (1996); *Weyerhaeuser v. Pierce County*, 124 Wn. 2d 26, 43, 873 P.2d 498 (1994);  
26 *Bassani v. Board of County Commissioners for Yakima County*, 70 Wn. App. 389, 396, 853 P.2d 945 (1993);  
*Lakeside Industries v. Thurston County*, 119 Wn. App. 886 (2004); *Pinecrest Homeowners Association v. Cloninger*  
*& Associates*, 151 Wn. 2d 279 (2004); *Cingular Wireless v Thurston County*, 131 Wn. App. 756, 129 P.3d 300  
(2006).

1           **1.     Applicable Law and Council Precedent Establish That The Council**  
2           **Lacks Authority to Consider Urban Village Policies as a Basis For its**  
3           **Decision on a MIMP.**

4           The applicable law on a MIMP application—the Major Institutions Code and the City’s  
5           SEPA rules—direct the Council to consider two, and only two, Comprehensive Plan provisions:  
6           Section B of the Land Use Element and, to a lesser extent, the Education and Employability and  
7           Health section of the Human Development Element.<sup>10</sup> See SMC 25.05.675.G (Section B of the  
8           Land Use Element); SMC 23.69.030.D.1 (Human Development Element). Nothing in the  
9           applicable Code directs, or permits, the Council to base any part of its decision on the  
10          Comprehensive Plan’s Urban Village element. The Council previously recognized the implications  
11          of this dearth of Code reliance on the Urban Village strategy in major institution master planning:

12           The City’s Land Use Code (SMC Title 23) and substantive SEPA policies (SMC  
13           25.05) authorize reference to the City’s Comprehensive Plan as a basis for review  
14           of a proposed MIMP only with respect to specific Comprehensive Plan policies  
15           identified in those ordinances, **neither of which include policies related to the**  
16           **“urban village” strategy** described in that Plan. Therefore the **Council lacks**  
17           **authority to consider those policies as a basis for its decision whether to**  
18           **approve the proposed MIMP.**

19          Ordinance No. 123263 (2010), Attachment A, Findings, Conclusion, and Decision of the  
20          City Council at Conclusion 28 (emphasis added). The Council wrote this language in its quasi-  
21          judicial capacity, as it rejected the Hearing Examiner’s suggestion, in her recommendation  
22          regarding the Children’s MIMP, that the Urban Village Strategy was relevant to MIMP  
23          adoption.<sup>11</sup> As the Council acknowledged in that case, neither the Major Institutions Code nor  
24          the substantive SEPA policies reference the Urban Village element, so that element cannot  
25          inform the Council’s decision on the merits of a MIMP. The Hearing Examiner in this case  
26

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24          <sup>10</sup> As discussed below, the Human Development Element of the Comprehensive Plan bears only slightly on the  
25          MIMP process.

26          <sup>11</sup> Children’s Hospital is approximately 1/2 mile away from its nearest urban village. Ord. 123263 at Finding 4. By  
contrast, the nearest urban village to Swedish Cherry Hill is adjacent to the Swedish Cherry Hill campus. The 12th  
Avenue Urban Village borders the western boundary of the Swedish Cherry Hill MIO on 15th Avenue.

1 correctly followed this Council precedent, and the appellants offer no reason why the Council  
2 should depart from its prior reasoning.

3 Nevertheless, as stated above, in her Findings and decision concerning the MIMP FEIS,  
4 the Hearing Examiner notes that FEIS, in fact, fully discussed the proposals consistency with  
5 land use plans, including the Comprehensive Plan's Urban Village Policies. FF ¶21. That is all  
6 that is required. "The FEIS establishes that the MIMP is generally consistent with the  
7 Comprehensive Plan and other relevant parts. The Major Institutions Code does not require  
8 more. FF ¶¶50; 51; COL ¶10.

9 Policy LU65 recognizes that some major institutions are located in single family  
10 neighborhoods, and provides that their impacts shall be mitigated through the master planning  
11 process—precisely what is occurring here. The Urban Village strategy was drafted against the  
12 backdrop of major institution overlays that had already been in place for nearly 15 years, and  
13 acknowledges that some major institutions are within mapped urban villages and others are not.

14 Swedish Cherry Hill began operating at its current location in 1910, 85 years prior to the  
15 creation of the urban village strategy and delineation of urban villages. Indeed, the hospital  
16 stood for decades before the City designated the underlying zoning as "lowrise" and "single  
17 family." Any inconsistency was created solely by City regulatory action, and the MIO  
18 recognizes and legitimizes the hospital's continued existence.

19 **2. The MIMP Meets Code Requirements Regarding the Comprehensive**  
20 **Plan's Health and Human Development Element.**

21 Compliance with the Comprehensive Plan's Health and Human Development Element is  
22 not a regulatory requirement, and WashCAN's argument places far more import on the Human  
23 Development Element than it does the Major Institutions Code. Contrary to WashCAN's  
24 assumption, nothing in the Major Institutions Code requires the MIMP to meet the goals of the  
25 Human Development Element, and neither does SEPA. Rather, the element forms a minor, non-  
26 regulatory part of the MIMP process. Like the primarily informational purpose of SEPA, the

1 purpose of MIMP analysis of the Human Development Element is to inform the decision-maker.  
2 Unlike SEPA, the Code provides no substantive authority to allow the Council to condition MIMP  
3 approval to ensure compatibility with the Human Development Element.

4 The Major Institutions Code requires a MIMP to provide, “for informational purposes only,”  
5 a discussion of certain goals of the Human Development Element. SMC 23.69.030.E.13. However,  
6 as with the question of hospital need discussed above, the CAC is not allowed to dictate the ways  
7 in which the applicant addresses Human Development goals, and any discussion cannot delay  
8 consideration of the MIMP:

9 A description of the following shall be provided [in the MIMP] **for informational**  
10 **purposes only**. The Advisory Committee, pursuant to Section 23.69.032.D.1, may  
11 comment on the following **but may not subject these elements to negotiation** nor  
shall such review delay consideration of the master plan or the final recommendation  
to Council:

12 a. A description of the ways in which the institution will address goals and  
13 applicable policies under Education and Employability and Health in the Human  
Development Element of the Comprehensive Plan, and

14 \* \* \*

15 SMC 23.69.030.E.13 (emphasis added); *accord* SMC 23.69.032.D.1. The Major Institutions Code  
16 also requires the Director to assess the extent to which the institution’s development will “address  
17 the goals and applicable policies under Education and Employability and Health in the Human  
18 Development Element of the Comprehensive Plan.” SMC 23.69.032.E.3. These are the only Major  
19 Institution Code references to the Human Development Element in either the Major Institutions  
20 Code, and the City’s SEPA policies do not address the element at all.

21 Despite this void of Code authority, WashCAN asks the Council to condition the MIMP  
22 to ensure compatibility with the Human Development Element. As a quasi-judicial body  
23 constrained to apply existing law to the application, the Council has no authority to condition  
24 MIMP approval as WashCAN requests. The MIMP complies with the Code requirements  
25 regarding disclosure of the MIMP’s consistency with the Human Development Element of the  
26 Comprehensive Plan, and that is as far as the Code allows the Council to go. The Hearing

1 Examiner concluded, "As the Director concluded, the MIMP meets the intent of the Education  
2 and Employability and Health sections of the Human Development Element of the Plan.  
3 Washington Community Action Network's suggestions on how Swedish Cherry Hill could do  
4 more for its staff and the local community address the medical center's business practices rather  
5 than the requirements for the MIMP." COL ¶9.

6 **E. The Development Plan Appropriately Balances Swedish's Needs While**  
7 **Minimizing Impacts on the Surrounding Neighborhood.**

8 The Major Institutions Code seeks to minimize the impacts of necessary institutional  
9 development on the adjacent neighborhood, chiefly at the MIO boundaries. In keeping with this  
10 direction, the proposed MIMP (1) responds to the neighborhood comment that the MIO not be  
11 expanded by constraining future development to the existing MIO, with no street vacations; (2)  
12 provides transitions in height and bulk at campus edges; (3) provides reasonable mitigation of  
13 height, bulk, and scale through campus setbacks proposed by the CAC majority.<sup>12</sup> The tallest  
14 height limits are in the center of campus—not visible from the sidewalk of Cherry Street, thanks  
15 to generous upper-level setbacks—and on the western (i.e., downhill) parts of campus. Expert  
16 testimony established that, but for minor change on 18th and the center of 15th Avenue, the  
17 proposed MIMP includes no height limits along the campus edges that exceed existing MIO  
18 height limits. In fact, there is a proposed downzone on East Jefferson, directly adjacent to the  
19 existing single-family neighborhood.

20 Appellants argue that the development proposed in the MIMP is simply too big, but that  
21 argument finds no factual support in the record, and no legal support in the Code. Appellants  
22 offered their lay opinions to the Hearing Examiner during the hearing, and the Examiner  
23 disagreed with them. See COL ¶¶12, 13. One appellant offered the expert testimony of a

---

24  
25 <sup>12</sup> The setbacks in the MIMP pre-dated the recommendations of the full CAC. At the hearing on the MIMP,  
26 Swedish agreed to the ground-level setbacks proposed by the CAC and asked the Examiner to recommend that  
Council so condition the final MIMP. The Examiner's recommended conditions implement this request.

1 University of Washington professor of architecture, but did not ask her to provide an expert  
2 opinion on what height limits would be appropriate or proper. Given the factual void, any  
3 decision to grant the relief sought by appellants would be unsupported by substantial evidence  
4 and violate the requirements of SMC 23.76.056.A.

5 **1. The MIMP Complies With the Major Institutions Code's Direction to**  
6 **Concentrate Institutional Growth Within the Existing MIO.**

7 The Major Institutions Code represents a compromise between the City and the major  
8 institutions. To encourage its institutions not to expand outward and consume ever more residential  
9 land, the City decided to allow them to grow in place, taller and denser than the zoning code would  
10 otherwise allow. In exchange, the institutions agreed to minimize their geographic expansion absent  
11 a strong showing of need for expansion. The result has been decades of limited geographic  
12 expansion of MIOs, coupled with higher densities of institutional development.

13 Of course, with many master plans, allowing geographic expansion actually reduces impacts  
14 to the neighborhood, by allowing the institution to meet its needs with lower height limits or more  
15 campus open space than could be provided without expansion. In this case, Swedish initially  
16 proposed MIO expansion, which met with swift and vehement neighborhood opposition. FF ¶24.  
17 In response to this opposition, the institution instead eliminated any MIO expansion and proposed to  
18 increase its density within its existing footprint. The development potential in the proposed MIMP  
19 meets the institution's needs for the next 20-30 years within the institutional boundaries established  
20 years ago. FF ¶20.

21 Appellants misapprehend the purpose of the Major Institutions Code when they assert that it  
22 limits institutional growth within an MIO. *See* Cherry Hill Community Council Br. at 5. Nothing  
23 in the Major Institutions Code limits growth within an MIO. Rather, the Code limits major  
24 institutional growth *outside* of MIOs, and it discourages expansion of MIOs, all while  
25 encouraging development standards that mitigate impacts to the neighborhood. The  
26



1 development proposed in the MIMP meets these limits, with no growth institutional outside of  
2 the MIO and no MIO expansion.

3 **2. The MIMP Provides Adequate Transition to The Surrounding**  
4 **Neighborhood by Concentrating the Most Intense Development at**  
5 **The Center and Downhill Portions of The Campus.**

6 In keeping with the directives of the Major Institutions Code, the development standards  
7 proposed in the MIMP result in development that is as sensitive as possible to the neighborhood  
8 while still allowing the institution to meet its needs. While an MIO expansion (similar to the  
9 solution reached by Children's) would have allowed Swedish to meet its institutional needs with  
10 lower intensity than the no-expansion alternative before the Council, the proposal minimizes  
11 impacts by imposing height limits that step down toward the edges of the campus, concentrating  
12 the tallest structures at the center of the campus and downhill, toward the neighboring major  
13 institution of Seattle University (which is on the record in support of the proposed MIMP) and  
14 away from the single-family residential neighborhoods.<sup>13</sup> FF ¶53: COL ¶13. These also include  
15 setbacks that match those recommended by the CAC, with one lone exception. COL ¶13.

16 Without any factual justification for their requested reductions in height other than  
17 "shorter is better," appellants ask the Council to reject the Examiner's reasoned recommendation  
18 and reduce the development yield of the MIMP by some amount not supported by the record.  
19 Squire Park argues that the Hearing Examiner rejected the CAC recommendation, Squire Park  
20 appeal at 4, ¶4, which is only partly true. By the time the Examiner reviewed the CAC's  
21 recommendations, Swedish had already incorporated the vast majority of them into the MIMP.  
22 The only real difference between the CAC recommendation and the proposal before the Council  
23 is maximum heights. Relying on the full record established at the hearing, the Examiner

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24  
25 <sup>13</sup> The MIO-150 district proposed for the western edge of the campus on 15th Avenue, adjacent to the MIO for  
26 Seattle University, does not impose a typical zoning height limit, which would allow 150' measured from average  
grade. Rather, the MIMP proposes to limit heights in the district to a flat plane 150' above 15th Avenue for the  
entire district, which, due to the slope, results in something more like a 120' height limit on 16th Avenue.

1 concluded that neither the CAC nor any other appellant had offered facts that would support a  
2 reduction in allowable height from 160' to 140'. No appellant, and no public commenter,  
3 offered facts or expert testimony that would support the conclusion that a 140' tower would  
4 produce meaningfully lower impacts than a 160' tower, and indeed, nothing in the record  
5 suggests that a resident or passer-by would even perceive the difference between the two.  
6 WashCAN called an expert in the field of architecture to assess "aesthetic impact" of the MIMP,  
7 but she did not offer an opinion as to what height limits would be appropriate for the campus.  
8 Day 1, Tape 2, starting at 0:00:25. Without facts or expert opinion to support it, any decision to  
9 reduce height would be unsupported by substantial evidence in the record and violate the  
10 requirements of SMC 23.76.056.A.

11 Even if the Council had substantive SEPA authority to restrict height, bulk, and scale of  
12 the development authorized in the non-project MIMP, as though the MIMP were a project action,  
13 the preferred alternative already includes the mitigation measures suggested in the SEPA  
14 policy.<sup>14</sup> By definition, alternatives studied in an EIS are actions that "feasibly attain or  
15 approximate a proposal's objectives, but at a lower environmental cost." SMC 25.05.786. In  
16 other words, the alternatives represent different ways to reach the applicant's goal while avoiding  
17 environmental impacts before they happen—essentially mitigation before the fact. Mr. Jex  
18 testified that the Preferred Alternative 12 was amended at the hearing to adopt the CAC's  
19 recommended setbacks, included each of the relevant mitigation measures listed at SMC  
20 25.05.675.G.2 (the section cited by Washington CAN at page 9 of its brief):

- 21 • "Limiting the height of the development": Alternative 8, similar to the alternatives  
22 that preceded it, included 240-foot height limits, while the proposed alternative  
23 ratchets that down to 160', and allows such height only in the center of campus.<sup>15</sup>

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24  
25 <sup>14</sup> SMC 25.05.675.G.2. However, as discussed above, the SEPA policy, in common with several others, applies to  
"a project," not to a non-project action like MIMP approval.

26 <sup>15</sup> See Jex Testimony, Day 4, Tape 4 of 4 at 31:08-31:21.

- 1 • “Modifying the bulk of the development”: Alternative 12 proposes façade  
2 modulation not to exceed the existing condition of 125’. The Preferred Alternative  
3 imposes setbacks, modulations, and design guidelines.<sup>16</sup>
- 4 • “Modifying the development’s façade including but not limited to color and finish  
5 materials”: Design guidelines specifically these considerations as the intent for  
6 project design.<sup>17</sup>
- 7 • “Repositioning the development on the site”: The Preferred Alternative pushes the  
8 tallest and bulkiest buildings toward the center of the campus and downhill, toward  
9 the border with Seattle University and the 12th Avenue Urban Village. This allowed  
10 the height limits at the campus edges to remain largely unchanged from the current  
11 limits (that have existed since the 1994 plan).<sup>18</sup>
- 12 • “Modifying or requiring setbacks, screening, landscaping, or other techniques to  
13 offset the appearance of incompatible height, bulk, and scale”: While the Major  
14 Institutions Code sets no minimum setback requirement,<sup>19</sup> the applicant proposes to  
15 adopt the CAC-recommended setbacks.<sup>20</sup> An example of a landscaped buffer in  
16 Alternative 12 appears along the MIO boundary to the east, a 25’-wide, generously  
17 landscaped buffer to the neighbors across the property line.<sup>21</sup>

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18  
19 <sup>16</sup> *Id.* at 31:22-31:30.

20 <sup>17</sup> *Id.* at 30:31-31:45; accord MIMP App’x H, Design Guidelines at 159-162 (including § B2.2.2, “Color and  
21 Material Guidelines”).

22 <sup>18</sup> Jex Testimony, Day 4, Tape 4 of 4 at 31:46-32:05.

23 <sup>19</sup> This was not always the case. Prior to 2001, the Major Institutions Code required MIO setbacks to at least match  
24 the setbacks of the underlying zone. See former SMC 23.12.120 (“In no case shall a setback from the boundary be  
25 less than required by the greater of the underlying zoning, or the zoning for property adjacent to or across a public  
26 right-of-way from the institution.”) (eliminated by Ord. 120691 § 2 (2001)).

<sup>20</sup> While Swedish agreed to the setbacks after the FEIS was published, the subsequent agreement does not render the  
FEIS inadequate. Greater setbacks lessen the environmental impacts, meaning the resultant impacts remain within  
the scope of those analyzed in the FEIS.

<sup>21</sup> Jex Testimony, Day 4, Tape 4 of 4 at 32:06-32:33.

1 *See generally* Jex Testimony, Day 4, Tape 4 of 4 at 30:03-32:33.

2 In short, the Preferred Alternative 12 already has this mitigation “baked in,” limiting both  
3 the actual bulk and the appearance of the bulk to the maximum extent possible, while still  
4 providing development capacity adequate to meet Swedish’s institutional needs.

5 This approach is consistent with SEPA’s direction, which allows the SEPA responsible  
6 official to “[m]odify alternatives including the proposed action” or “[d]evelop and evaluate  
7 alternatives not previously given detailed consideration by the agency” in response to comments  
8 on the project. SMC 25.05.560.A.1-2. Here, in response to comments, Swedish proposed and  
9 DPD studied new alternatives that continued to serve Swedish’s needs while reducing height,  
10 bulk, and scale impacts by lowering allowable height limits, increasing setbacks, and all the  
11 other measures addressed above. SEPA does not encourage the agency to simply stand pat and  
12 await conditioning—essentially the approach WashCAN suggests Swedish should have taken  
13 here.

14 Additional mitigation, beyond that already “baked in” the proposed MIMP, would further  
15 cut into the institutional development capacity and would therefore not be reasonable, in  
16 contravention of SEPA’s requirement that “[m]itigation measures shall be reasonable and  
17 capable of being accomplished.” SMC 25.05.660.A.3. As discussed above, Swedish established  
18 its need for expansion through consultation with a respected healthcare consultant in the field,  
19 then had another, highly experienced and respected expert in the field peer review that  
20 analysis—and that expert, Jeff Hoffman, testified at the hearing that the needs analysis was  
21 actually conservative in several respects.

22 Over the course of CAC evaluation of the MIMP, Swedish’s design team refined its  
23 understanding of how to design for the space necessary to serve the established need, resulting in  
24 a series of alternatives that “feasibly attain or approximate a proposal’s objectives” through ever-  
25 decreasing height, bulk, and scale. These alternatives, including Alternative 12, already provide  
26 less floor area than necessary to serve Swedish’s established need, but still approximate

1 Swedish's objectives. Yet, without reference to any standard, Appellants ask the Council to  
2 further lower height limits and increase setbacks, which would further reduce development  
3 capacity by some unknown amount.<sup>22</sup> And, although they bear the burden on appeal, no  
4 Appellant directs the Council's attention to competent evidence offered at the hearing to  
5 establish what effect the requested mitigation would have on project yield. WashCAN called an  
6 expert witness, Dr. Sharron Sutton, a UW professor of architecture, during the pre-decisional  
7 hearing, yet she offered no expert testimony regarding the appropriate height limits. No other  
8 appellant called expert witnesses during the pre-decisional hearing. In other words, no appellant  
9 even attempts to establish that its allegedly necessary mitigation would satisfy SEPA's  
10 "reasonableness" requirement. Instead, appellants ask the Council to act in a vacuum—to limit  
11 the MIMP's development capacity without regard to reasonableness—a request that lacks any  
12 legal justification.

13 **3. The MIMP Appropriately Plans For Physical Space Sufficient to**  
14 **Accommodate "Major Institution uses" on The Cherry Hill Campus.**

15 Several appellants argue, without any support in the Major Institutions Code, that the  
16 uses at Swedish Cherry Hill should be restricted to the specialized service lines currently offered  
17 at the campus, plus those functions that directly serve those lines. The record establishes that  
18 Swedish Cherry Hill is a medical major institution that includes tertiary and quaternary care  
19 facilities for neuro and cardio. That does not imply the facility is exclusively a neuro and cardio  
20 facility, and nothing in City Code says it should be so limited. The Major Institutions Code does  
21 not function the way some Appellants appear to presume: requiring a medical major institution to  
22 select a certain medical service line and limit the use of any building built to MIMP design  
23 standards to that line, leaving all other medical major institution uses to the design standards of  
24 the underlying zoning.

---

25  
26 <sup>22</sup> The Director estimated the loss to be 98,400 square feet. FF ¶55.

1           Rather, the Major Institution Code permits all “Major Institution uses” within MIOs. The  
2 Major Institutions Code does not attempt to define for the institutions which uses should be  
3 allowed and which should not. Rather, the definition is broad specifically to allow the  
4 institutions the flexibility to accommodate all the various functions that support a successful  
5 institution. The relevant Code provision reads:

6           All uses that are functionally integrated with, or substantively related to, the  
7 central mission of a Major Institution or that primarily and directly serve the users  
8 of an institution shall be defined as Major Institution uses and shall be permitted  
9 in the Major Institution Overlay (MIO) District.

10 SMC 23.69.008.A. Under this definition, medical major institutions have the flexibility not only  
11 to locate any medical service it feels will serve its users, but also a wide variety of other uses not  
12 typically thought of as medical services such as flower shops, coffee shops, daycare facilities,  
13 hotels, and restaurants. Although each of these would fit another use category of the zoning code  
14 (such as retail sales, restaurant, or lodging), they become “Major Institution uses” when they are  
15 located in an MIO and otherwise fit the definition. Similarly, although “medical services” are  
16 commercial uses when outside of an MIO, SMC 23.84A.006, they become Major Institution uses  
17 when they are within an MIO and serve MI users.

18           Swedish Vice President Andy Cosentino testified at the MIMP hearing regarding the  
19 integrated services provided by Sabey tenants and how they directly tie to the institution’s  
20 mission. Cosentino Testimony, Day 1, Tape 5 of 5, 00:36:00 - 01:03:00.

21           The Code makes the identity of the user irrelevant to whether a use is a “Major Institution  
22 Use” or not: “Permitted Major Institution uses shall not be limited to those uses which are  
23 owned or operated by the Major Institution.” SMC 23.69.008.A. Appellants argue that Sabey’s  
24 tenants should not be allowed to develop to MIMP standards, but their arguments apply with just  
25 as much force to every clinic at every Major Institution, regardless of who runs the clinic. If  
26 there is a reason to collocate a kidney clinic with a hospital, that clinic is a Major Institution use  
regardless of who owns the underlying real estate or who runs the clinic.

1 The Hearing Examiner correctly concluded, “[t]he Major Institutions Code does not limit  
2 development under a MIMP to a non-profit entity.” “SMC 23.69.008.A, under “Permitted uses”  
3 states that “[a]ll uses that are functionally integrated with, or substantially related to, the central  
4 mission of a Major Institution, or that primarily and directly serve the users of an institution shall  
5 be defined as Major Institution uses and shall be permitted in the Major Institution Overlay  
6 (MIO) District ... Permitted Major Institution uses shall not be limited to those uses which are  
7 owned or operated by the Major Institution.” (internal quotation mark omitted) COL ¶7.

8 **F. The MIMP And Its Aggressive And Flexible TMP Adequately Address**  
9 **Transportation Impacts.**

10 Appellants claims regarding transportation fall into four distinct categories: concerns  
11 regarding the Single Occupancy Vehicle (“SOV”) rate established in the Transportation  
12 Management Program (“TMP”); objections to project-specific mitigation that will be determined  
13 after a future traffic analysis for a specific proposed project; SEPA issues that are not properly  
14 before the City Council; and issues that are being improperly raised on appeal for the first time.  
15 None of these claims have merit.

16 **1. The TMP is appropriate and compliant with the Seattle Municipal**  
17 **Code**

18 **a. The Transportation Management Plan**

19 To accompany the MIMP application, Swedish proposes changes to the existing TMP,  
20 including increasing transit subsidies for employees, free vanpool parking for tenants, new  
21 bicycle amenities, and subsidizing the cost of Residential Parking Zones<sup>23</sup> in the surrounding  
22 neighborhoods.<sup>24</sup> To ensure that Swedish develops a TMP that will reduce SOV trips to and

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23 Appellant Cherry Hill Community Council recommends that the City Council require that Swedish continue the  
24 current 100% subsidy for RPZ permits and expand the subsidized RPZ. The TMP recommends continuing the  
25 subsidy for RPZ permits. However, it is unclear what the Appellant is suggesting in terms of an expanded  
26 subsidized RPZ and there is nothing in the record that supports this undefined expansion.

<sup>24</sup> The full list of changes is summarized in the MIMP at Table D-3 (Ex. 1, pp. 80-84)

1 from the campus and help mitigate the impacts related to future traffic increases associated with  
2 build-out of the hospital, Swedish engaged Commute Seattle to assist with drafting and future  
3 implementation of the TMP.

4 Both the applicant's and the City's experts testified that the proposed TMP has a high  
5 likelihood of success—it is aggressive, dynamic, and provides the flexibility to adapt to changing  
6 circumstances in the future. See Szelag Testimony; Testimony of John Shaw (“Shaw  
7 Testimony”).

8 **b. The record demonstrates that the SOV rate in the TMP is**  
9 **appropriate for the Campus and compliant with the Seattle**  
10 **Municipal Code**

11 Appellants raise three objections related to the SOV rate established in the revised TMP.

12 First, Appellants request that the City Council reinstate the Department and the CAC's  
13 recommendation regarding the achievement of the 50% SOV rate prior to issuance of the *first*  
14 building permit. Appellants misread the Hearing Examiner's recommendation; the Hearing  
15 Examiner continues to impose this condition that is unique to Swedish Cherry Hill. As noted by  
16 Ms. Szelag, no other TMP in the City imposes such a condition.

17 Second, Appellants disagree with the Hearing Examiner's refusal to condition each  
18 building permit thereafter with a requirement that Swedish and Sabey demonstrate compliance  
19 with the established SOV rate at the time. Appellants' suggestion is improper and duplicative.  
20 The Seattle Department of Construction and Inspections (“DCI”) has the authority under  
21 23.54.016.C.6.c to deny a permit for development included in the MIMP if the applicant has not  
22 made sufficient progress in achieving SOV goal. See Shaw Testimony. No additional conditions  
23 beyond the Code requirements are appropriate here.

24 Lastly, Appellant members of the Citizen Advisory Committee object to the 38% SOV  
25 rate; in their view, the SOV goal should be even more aggressive. The Code sets a default SOV  
26 goal of no more than 50% of total commutes, but allows the Council to increase or decrease that



1 goal, as appropriate. SMC 23.54.016.C.4. Although Swedish has not previously achieved the  
2 50% SOV goal, it has never had as comprehensive, or aggressive, a TMP as the one included in  
3 the proposed MIMP. Here, the first building permit will be conditioned on Swedish Cherry Hill  
4 achieving a 50% SOV rate. The SOV rate declines at a rate thereafter of 1% every two years,  
5 further reducing impacts.

6 The Examiner found the testimony of both Ms. Zselag and Mr. Shaw to be credible with  
7 regard to the comprehensive nature of the TMP and the institutions ability to reach the 38% SOV  
8 goal. Mr. Shaw testified that the SOV goal in the Swedish Cherry Hill TMP is similarly  
9 aggressive to the one adopted by Seattle Children's Hospital. Indeed, Mr. Shaw explains that  
10 reducing the SOV rate from its current 57% to 38% represents a 25% reduction over what  
11 Swedish is achieving at the time of the MIMP application. This percentage reduction is the same  
12 as the reduction proposed by Seattle Children's Hospital in its TMP. Shaw Testimony.

13 Commute Seattle has a proven track record of creating and managing successful TMPs,  
14 and both the applicant's and City's experts testified that the proposed TMP has a high likelihood  
15 of success, as well. Mr. Costentino and Ms. Szelag further established that Swedish management  
16 is committed and determined to decrease the SOV commute rate at the Cherry Hill Campus. The  
17 Hearing Examiner agreed, and nothing in the record suggests her conclusion was incorrect.

18 **2. The MIMP contains transportation mitigation appropriate to the non-**  
19 **project level of review**

20 Appellants Washington CAN and Nicholas Richter challenge the Hearing Examiner's  
21 conclusions that the "MIMP is a long-term conceptual plan covering at least 25 years. Citing the  
22 substantive SEPA policies for transportation, Appellants argue that the City Council should  
23 reduce the size of the MIMP proposal or reject the proposal altogether because the FEIS  
24 disclosed unavoidable significant adverse impacts.<sup>25</sup> The Hearing Examiner rightly rejected this

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25  
26 <sup>25</sup> As discussed *supra*, while the Council has substantive SEPA authority, the substantial evidence in the record and  
the Examiner's Findings and Conclusions establish that there is no basis for imposition of additional transportation

1 argument, and found that “[o]ne of the purposes of a master plan is to ‘allow the city to  
2 anticipate and plan for public capital or programmatic actions that will be needed to  
3 accommodate development.’” COL ¶21 (citing SMC 23.69.002.L.). The EIS for the MIMP is a  
4 non-project EIS, which reviewed the cumulative impacts of the proposal. By definition, the level  
5 of analysis in the FEIS is less detailed than the analysis that will occur later, at the project level.  
6 In light of all this uncertainty—and the fact that she had no authority to do otherwise—the  
7 Examiner correctly deferred transportation mitigation until the project level.

8 Appellants further disagree with the Hearing Examiner’s conclusion that it is appropriate  
9 to provide substantive mitigation over the next 25 years that align with project-specific traffic  
10 analyses. Indeed, Appellants suggest that all mitigation to be imposed over the course of 25  
11 years be determined now by the Hearing Examiner and the City Council. Otherwise, as Mr.  
12 Richter argues, the individual traffic analyses for specific future projects would ignore  
13 cumulative impacts. Mr. Richter misunderstand the purpose of the programmatic EIS for the  
14 MIMP, which analyzes cumulative impacts and suggests proposed mitigation for the MIMP that  
15 may be adjusted pending future traffic analyses for specific projects within the MIO. To the  
16 extent he raises a SEPA cumulative impacts claim, it is not properly before the City Council as  
17 part of this MIMP appeal and must be denied. See SMC 23.76.054.A (“No appeals of a DNS or  
18 the determination that an EIS is adequate will be accepted”).

19 Finally, Appellant 19<sup>th</sup> Avenue Blockwatch challenges the Hearing’s Examiner’s  
20 conclusion regarding the walkshed used for the transit analysis. This is a SEPA objection that is  
21 not appropriate for appeal. Accordingly, the City Council should refuse to entertain Appellants’  
22 SEPA arguments in this appeal.

23  
24  
25 mitigation by the Council beyond that recommended by DPD and the Examiner. Hearing Examiner Finding of Fact  
26 ¶ 83; Hearing Examiner Conclusion of Law ¶ 21; Hearing Examiner Findings and Decision on SEPA  
Determination, Conclusions of Law ¶¶ 18-24.

RESPONSE BRIEF OF SWEDISH MEDICAL  
CENTER, CHERRY HILL - 55

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1                   **3. Appellants improperly raise issues for the first time on appeal**

2           Appellants raise a number of facts and objections that were not raised during the MIMP  
3 hearing. Because this is a closed record hearing, such additional information and claims is not  
4 appropriate for the City Council to consider. *See* 23.76.054.E (“Council action shall be based on  
5 the record established by the Hearing Examiner”).

6           Appellant Richter outlines a number of future traffic capital improvements that, in his  
7 view, are nearly impossible to achieve. Without study or support, it appears that Mr. Richter<sup>26</sup> is  
8 attempting to improperly testify before the City Council in a closed record MIMP appeal.<sup>27</sup> Even  
9 if it were appropriate to raise new issues in this appeal, which it is not, Mr. Richter provides no  
10 evidence that such capital improvements are impossible, or even necessary. For example, he  
11 dismisses the possibility of widening Cherry or Jefferson to four lanes because of the conflicts  
12 with the near-term installation of curb bulbs designed to mitigate pedestrian impacts. If future,  
13 project-level transportation impact analyses demonstrate the curb bulbs are unnecessary but a  
14 four-lane road is, nothing would prevent the City from reversing that decision. In addition, as  
15 DPD’s transportation planner John Shaw testified, nothing prevents Metro from adding coaches  
16 to a route should it become overtaxed.

17           Similarly, Appellants Richter and 19<sup>th</sup> Avenue Blockwatch suggest that Swedish and  
18 Sabey be required to construct a greenway on 18<sup>th</sup> Avenue, one of the potential locations that  
19 Seattle Department of Transportation (“SDOT”) is considering for the greenway. There are two  
20 problems with this suggestion. One, Appellants never raised this at the MIMP hearing, and, in  
21 fact, were greatly concerned with a greenway on 18<sup>th</sup> Avenue in the SEPA appeal. Secondly,  
22 SDOT has not determined the appropriate final location for the greenway; it would be  
23 inappropriate for Swedish and Sabey to bypass that process. The City Council should  
24 \_\_\_\_\_

25 <sup>26</sup> Mr. Richter says he is a professional transportation planner. It should be noted that his qualifications as an expert  
witness were rejected in the SEPA hearing for this MIMP proposal.

26 <sup>27</sup> As discussed *supra*, new facts cannot be introduced in a closed record appeal. SMC 23.76.054.E.

1 accordingly refuse to consider the Appellants' objections to the Hearing Examiner's Findings,  
2 Conclusions, and Recommendations on this topic.

3 **IV. CONCLUSION**

4 After a five-day hearing, the Hearing Examiner did an exemplary job of digesting a  
5 tremendous record, considering the evidence, and recommending approval of the MIMP, as  
6 conditioned. Swedish respectfully requests that the Council follow the Examiner's  
7 Recommendations and adopt the MIMP as conditioned therein.

8 DATED this 8th day of February, 2016.

9 FOSTER PEPPER PLLC

10 

11 Joseph A. Brogan, WSBA No. 30664  
12 Steven J. Gillespie, WSBA No. 39538  
13 Attorneys for Applicant  
14 Swedish Medical Center

**ATTACHMENT A**

ORDINANCE 123263

AN ORDINANCE relating to land use and zoning; adopting a new Major Institution Master Plan for Seattle Children's Hospital; and amending Chapter 23.32 of the Seattle Municipal Code at Page 63 of the Official Land Use Map, to modify height limits and rezone property to and within the Major Institution Overlay, all generally located along Sand Point Way Northeast (Project Numbers 3007521 and 3007696, Clerk File 308884).

WHEREAS, Seattle Children's Hospital (Children's) had an existing Major Institution Master Plan (MIMP) which was adopted by the City Council in September 1994 by Ordinance 117319; and

WHEREAS, because the 900,000 total square feet of development authorized under that MIMP has been largely realized, Children's sought a new MIMP to allow additional development over a time period of at least 20 years; and

WHEREAS the preparation and review of the proposed new Children's MIMP included the following principal steps:

1. The application to the Department of Planning and Development (DPD) for a new MIMP in July 2007;
2. Council's approval of a new Citizen's Advisory Committee (CAC) by Resolution 31002 in July 2007;
3. Issuance of a Draft MIMP and Draft Environmental Impact Statement (EIS) on June 9, 2008;
4. Publication of the Final MIMP and Final EIS (FEIS) on November 10, 2008;
5. An appeal of the adequacy of the FEIS by the Laurelhurst Community Club (LCC) on December 15, 2008;
6. The publication of the DPD Director's recommendation to City Council on February 5, 2009;
7. A hearing on the LCC appeal starting March 2, 2009 and ending March 10, 2009;
8. The issuance of a remand by the Hearing Examiner on the adequacy of the FEIS related to the Land Use and Housing impacts analyzed in the FEIS, on April 20, 2009;
9. DPD's publication of a revised FEIS concerning the review of Land Use and Housing impacts on May 28, 2009;
10. An appeal by LCC on the adequacy of the Revised FEIS in June 2009;
11. The Hearing Examiner's hearing on the appeal of the Revised FEIS on July 14-15, 2009;
12. The issuance of a determination that the Revised FEIS was adequate on August 11, 2009;



- 1 13. The publication of a Recommendation by the Hearing Examiner to deny to requested
- 2 MIMP on August 11, 2009, with conditions if the MIMP is approved;
- 3 14. 11 separate appeals filed on August 25, 2009 concerning the Hearing Examiner's
- 4 recommendation;
- 5 15. Review of the proposed MIMP by the City Council's Planning, Land Use and
- 6 Neighborhood Committee on November 18, 2009;
- 7 16. Continued review by the City Council's Committee on the Built Environment
- 8 (COBE) January 13, 2010 and January 20, 2010;
- 9 17. Oral Argument concerning requirements for replacement housing required under
- 10 Seattle Municipal Code (SMC) Section 23.34.124B7, along with the presentation of a
- 11 Settlement Agreement between appellants, on February 3, 2010;
- 12 18. Further review by COBE on February 25, 2010;
- 13 19. Submission of supplemental briefings on March 5, 2010 by certain appellants on the
- 14 issue of replacement housing requirements under SMC 23.34.124B7;
- 15 20. An Executive Session held by the City Council on March 8, 2010 concerning the
- 16 issue of replacement housing requirements under SMC 23.34.124B7; and
- 17 21. Further review by COBE on March 11, 2010, culminating in a recommendation to
- 18 approve the MIMP, with certain conditions, which was then forwarded to full Council for
- 19 a vote: and

20 WHEREAS the City Council has considered the proposed MIMP, the record assembled by the

21 Hearing Examiner, including the reports of the CAC, DPD and the Hearing Examiner,

22 and the arguments of the appellants, **NOW THEREFORE,**

23 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

24 Section 1. Children's Final MIMP, dated November 10, 2008 and filed in Clerk's File

25 (C.F.) 308884, is hereby adopted by the City Council subject to the conditions contained in

26 Council's Findings, Conclusions and Decision in Attachment A. Upon DPD review and approval

27 of a final compiled MIMP, including the conditions adopted by the City Council, pursuant to

28 the provisions of Seattle Municipal Code Section 23.69.032K, DPD shall submit a copy of the

final compiled Children's MIMP to the City Clerk, to be placed in C.F. 308884.

Section 2. This Ordinance affects the legally described properties ("the Property") held

separately by Seattle Children's Hospital, currently known as 4800 Sand Point Way Northeast,



1 and the Laurelon Terrace Condominiums, currently known as 4644 -- 41<sup>st</sup> Street Northeast, as  
2 described in Attachment B.

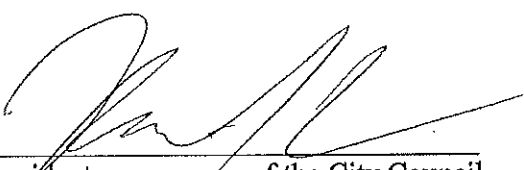
3 Section 3. The Official Land Use Map zone classification, established on page 63 of the  
4 Official Land Use Map, adopted by Ordinance 110381 and last modified by Ordinance 123129,  
5 is amended to rezone the Property through the adoption of a Major Institution Overlay (MIO)  
6 District, and mapped with height limits of 37 feet, 50 feet, 65 feet, 70 feet, 90 feet and 160 feet,  
7 conditioned to 125 feet and 140 feet, as shown in Attachment C. The underlying zoning of  
8 Single Family 5000 and Lowrise 3 is not changed as a result of this Ordinance.  
9

10 Section 4. This Ordinance, effectuating a quasi-judicial decision of the City Council and  
11 not subject to mayoral approval or disapproval, shall take effect and be in force thirty (30) days  
12 from and after its passage and approval by the City Council.  
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1  
2 Passed by the City Council the 5<sup>th</sup> day of April, 2010, and  
3 signed by me in open session in authentication of its passage this  
4 5<sup>th</sup> day of April, 2010.

5  
6   
7 \_\_\_\_\_  
8 President \_\_\_\_\_ of the City Council

9 Filed by me this 5<sup>th</sup> day of April, 2010.

10  
11   
12 \_\_\_\_\_  
13 City Clerk

14  
15 (Seal)

16 Attachment A: Clerk's File 308884 - Findings Conclusion and Decision

17 Attachment B: Legal Description

18 Attachment C: Rezone Map



**SEATTLE CITY COUNCIL**

**FINDINGS, CONCLUSION AND DECISION**

**SEATTLE CHILDREN'S HOSPITAL MAJOR INSTITUTION MASTER PLAN**

**APRIL 5, 2010**

**Introduction**

This matter involves the petition of Seattle Children's Hospital (Children's) to establish a new Major Institution Master Plan ("MIMP") for its main campus located at 4800 Sand Point Way Northeast in Northeast Seattle (Clerk's File 308884). The proposed MIMP includes the approval of a twenty year physical development plan in four phases, a new Transportation Management Plan regulating commuting and parking, development standards governing new construction, an increase in the amount of allowed parking provided at the campus, and a rezone to expand the existing boundaries of the Major Institution Overlay (MIO) District and increase the permitted height of buildings within the MIO. Finally, the MIMP proposes the vacation of two streets – 41<sup>st</sup> Avenue Northeast and Northeast 46<sup>th</sup> Street – that would be considered by the City Council under a different process and potentially approved by the Council by another ordinance.

The rezone would extend the MIO boundaries from 21.7 acres to 28.4 acres as a result of the acquisition of Laurelton Terrace Condominiums (Laurelton), a 6.7 acre, 136 unit condominiums immediately to the west of the existing MIO. The MIO expansion would also change the zoning within Laurelton from Lowrise 3 (L3) to a combination of height limits that include MIO 37 feet, MIO 50 feet, MIO 90 feet and MIO 160 feet (conditioned to 125 feet and 140 feet, respectively). MIO Heights on the existing campus are 37, 50, 70 feet (with part conditioned to 54.5 feet), and 90 feet (with part conditioned to 74) feet. The MIMP as reflected in the Settlement Agreement<sup>1</sup> proposes heights of 37 feet, 50 feet, 65 feet, 70 feet, 90 feet, and 160 feet (conditioned to 125 feet and 140 feet, respectively).

Children's previous MIMP, adopted in September 1994 by the City Council through Ordinance 117319, authorized development of up to 900,000 square feet for the MIO. The MIMP indicates that the campus currently has approximately 846,000 square feet of development and, as such, a new MIMP is required for additional growth in the MIO.

In March 2007, Children's began the process of establishing a new MIMP. In August 2007 a Citizens Advisory Committee (CAC) began its review of the proposed MIMP. In January 2009, the Department of Planning and Development (DPD) issued its Analysis, Recommendation and Determination of the DPD Director, recommending that the MIMP be approved subject to conditions. In February 2009, the CAC issued its Final Report and Recommendation, recommending that the MIMP be approved subject to conditions.

<sup>1</sup> The "Settlement Agreement" refers to a proposal to revise the MIMP as it was originally proposed, to reflect an agreement between Children's Hospital and the Laurelhurst Community Club.



Report and Recommendation, recommending that the MIMP be approved subject to conditions. Appeals were filed to the Seattle Hearing Examiner of DPD's decision that the final Environmental Impact Statement (FEIS) was adequate.

In March 2009, the Hearing Examiner held a hearing on the appeal of the FEIS. On April 20, 2009, the Hearing Examiner issued a decision that the FEIS was inadequate because it failed to adequately discuss potential environmental impacts of the proposed development on housing and land use. A revised FEIS was published by DPD in May 2009, and the adequacy of the revised FEIS was also appealed to the Hearing Examiner. In July 2009, the Hearing Examiner held a hearing on the adequacy of the Revised FEIS. On August 11, 2009 the Hearing Examiner issued a decision ((decided)) that the Revised FEIS was adequate. On August 11, 2009 the ((The)) Hearing Examiner also published a recommendation ((also recommended)) that the Council deny the proposed MIMP or, if the Council were to approve the MIMP, to attach 43 conditions to its approval. Eleven ((44)) appeals of the Hearing Examiner's recommendation were filed with the Council. The names and addresses of all eleven appellants are listed on the last page of this document.

The City Council's Planning Land Use and Neighborhood Committee ((Urban Development and Planning (UDP) Committee)) began consideration of the proposed MIMP at a meeting on November 18, 2009. The Council's Committee on the Built Environment (COBE), the successor to the UDP, considered the matter on January 13 and 20, 2010. Oral argument by appellants was presented to the COBE on February 10, 2010. On February 10, 2010 a Settlement Agreement was also submitted to the Council. The nine appellants who presented claims on the extent of physical development under the MIMP withdrew their appeals in support of the Settlement Agreement. A remaining appeal by the Seattle Displacement Coalition and Interfaith Taskforce on Homelessness (SDC/ITH) on the application of Seattle Municipal Code (SMC 23.34.124.B.7), the housing replacement ordinance, remained. Oral argument was presented on this issue. ((A)) S((s))ubsequent COBE meetings were ((was)) held on February 24, 2010, ((with the Council holding an executive session on the proposed MIMP on)) March 8, 2010 and then March 11, 2010. ((Supplemental briefings were also accepted by COBE on the housing replacement options. These were submitted by appellants on or before March 5, 2010.))

## Findings of Fact

### Background

1. Children's is an academic medical center that provides highly specialized pediatric and adolescent health care services to children throughout the Northwest through integrated diagnostic and therapeutic services provided by specialists in multiple disciplines.
2. Children's "bed mix" includes separate neonatal, pediatric, and cardiac intensive care units; an inpatient psychiatric unit; a rehabilitation and complex care unit; a Seattle Cancer Care Alliance unit; a surgical unit; and a medical unit.



Appeals were filed to the Seattle Hearing Examiner of DPD's decision that the final Environmental Impact Statement (FEIS) was adequate.

In March 2009, the Hearing Examiner held a hearing on the appeal of the FEIS. On April 20, 2009, the Hearing Examiner issued a decision that the FEIS was inadequate because it failed to adequately discuss potential environmental impacts of the proposed development on housing and land use. A revised FEIS was published by DPD in May 2009, and the adequacy of the revised FEIS was also appealed to the Hearing Examiner. In July 2009, the Hearing Examiner held a hearing on the adequacy of the Revised FEIS. On August 11, 2009 the Hearing Examiner issued a decision that the Revised FEIS was adequate. On August 11, 2009 the Hearing Examiner also published a recommendation that the Council deny the proposed MIMP or, if the Council were to approve the MIMP, to attach 43 conditions to its approval. Eleven appeals of the Hearing Examiner's recommendation were filed with the Council. The names and addresses of all eleven appellants are listed on the last page of this document.

The City Council's Planning Land Use and Neighborhood Committee (PLUNC) began consideration of the proposed MIMP at a meeting on November 18, 2009. The Council's Committee on the Built Environment (COBE), the successor to the UDP, considered the matter on January 13 and 20, 2010. Oral argument by appellants was presented to the COBE on February 10, 2010. On February 10, 2010 a Settlement Agreement was also submitted to the Council. The nine appellants who presented claims on the extent of physical development under the MIMP withdrew their appeals in support of the Settlement Agreement. A remaining appeal by the Seattle Displacement Coalition and Interfaith Taskforce on Homelessness (SDC/ITH) on the application of Seattle Municipal Code (SMC 23.34.124.B.7), the housing replacement ordinance, remained. Oral argument was presented on this issue. Subsequent COBE meetings were held on February 24, 2010, March 8, 2010 and then March 11, 2010.

## **Findings of Fact**

### **Background**

1. Children's is an academic medical center that provides highly specialized pediatric and adolescent health care services to children throughout the Northwest through integrated diagnostic and therapeutic services provided by specialists in multiple disciplines.
2. Children's "bed mix" includes separate neonatal, pediatric, and cardiac intensive care units; an inpatient psychiatric unit; a rehabilitation and complex care unit; a Seattle Cancer Care Alliance unit; a surgical unit; and a medical unit.
3. Children's population includes patients (from premature newborns to 21 years of age); hospital employees; physicians, students and residents; and visitors.

### **Site and Vicinity**



4. Children's Laurelhurst campus within the existing Major Institution Overlay (MIO) is located on approximately 21.7 acres at 4800 Sand Point Way Northeast in northeast Seattle. Neither the Laurelhurst neighborhood nor Children's campus are located in an "urban center" or "urban village", as designated in the City's Comprehensive Plan. The closest urban center or village is the Ravenna portion of the University Community Urban Center located approximately one-half mile away.

5. The existing Children's MIO includes downhill slopes from east to west and from north to south. The MIO is currently bounded on the northwest by Sand Point Way Northeast; on the north by Northeast 50th Street; on the east by 44th Avenue Northeast (from Northeast 50th Street to Northeast 47th Street) and by 45th Avenue Northeast (from Northeast 47th Street to Northeast 45th Street); on the south by Northeast 45th Street; and on the west by a shared property line with Laurelon.

6. The underlying zoning in the existing Children's MIO is Single-family 5000 (SF5000). The neighborhood outside of the existing MIO to the east and south is also zoned SF 5000, with a 30 foot height limit, and is developed with single-family residences. The area to north of the existing MIO is zoned Lowrise Duplex/Triplex, with a 25-foot height limit, and is developed with low density multifamily residences. The area to the northwest of the existing MIO is zoned Lowrise 3 (L3) with a 30-foot height limit and is also developed with low density multifamily residences. The area to the west of the existing MIO is also zoned L3, and is developed with the Laurelon Terrace Condominiums (Laurelon), a 6.7 -acre, two- and three-story garden-style community built in the 1940s. To the west and southwest of Laurelon is L3-zoned property developed with low density multifamily residences, and then a strip of property along Sand Point Way that is zoned Neighborhood Commercial 2 with a 30-foot height limit (NC2-30) and developed with the Springbrook professional buildings and a bank. L3 zoning and development continues to the north of the existing MIO across Sand Point Way and includes the nonconforming one-story medical office use in the Hartmann Building. To the southwest of the Hartmann site is Neighborhood Commercial 2 zoning with a 40 foot height limit (NC2-40) developed with a nonconforming 100-foot-high condominium building. Further to the west from that NC2-40 zone is the Burke-Gilman Trail, and then the Bryant neighborhood with SF5000 zoning and development. See Exhibit 4 (Final Master Plan) at 63, Figure 45<sup>2</sup>.

7. Retail and commercial businesses, including University Village, QFC and Safeway, the Virginia Mason Pediatric Clinic, the Springbrook buildings, and smaller specialty businesses, are located primarily to the southwest of Children's. Several institutions are also located nearby, including Children's 70th and Sand Point Way facility, the Talaris Research and Conference Center at Northeast 41st Street, Laurelhurst Elementary School and Villa Academy to the east, and the University of Washington less than one mile to the southwest.

#### Current Major Institution Overlay

<sup>2</sup> Exhibits refer to exhibits in the Hearing Examiner's record.



8. Children's Laurelhurst campus is located within an existing MIO under a MIMP approved in 1994. Existing facilities include a hospital with 250 beds (230 of which are acute care) in 200 patient rooms, a clinic, and clinical research, office and laboratory space, for a total permitted building area within the MIO of 900,000 square feet. In addition, Children's maintains an existing clinic and office at the Hartmann Building on the west side of Sand Point Way Northeast. Children's owns the 1.7 acre Hartmann site and the 16,228 square foot Hartmann Building. Children's has a partnership interest in the Springbrook buildings at Northeast 45th Street and Sand Point Way Northeast and leases 6,700 square feet in those buildings. Both Hartmann and Springbrook are located outside, but within 2,500 feet of the existing MIO. Children's also owns nine single-family residences located across from its east and south boundaries that it purchased in 2007 and 2008. Exhibit 22, Attachment G.

9. Primary access to Children's is via the Northeast 45<sup>th</sup> Street corridor (Sand Point Way Northeast and Northeast 45th Street to Interstate 5), or via the Montlake Boulevard corridor (Sand Point Way Northeast and Montlake Boulevard Northeast to SR 520). Approximately 50% of Children's employees travel one of these corridors to reach Children's. The campus itself is accessed via Penny Drive from Sand Point Way Northeast. Three King County Metro bus stops are located on or adjacent to the campus.

10. Children's provides a total of 2,182 parking stalls, including 80 surface stalls at the Hartmann Building and 640 off-campus leased stalls.

11. Current MIO height districts are 37 feet north of Penny Drive, and 37, 50, 70 and 90 feet south of Penny Drive. Part of the 90-foot height district is conditioned to 74 feet plus mechanical, and part of the 70-foot height district is conditioned to 64 feet. Setbacks are approximately 20 feet on the north, 40 feet on the west and a portion of the east, and 75 feet on the south and a portion of the east. Many of the existing setbacks are heavily landscaped to screen the campus from the surrounding neighborhood.

12. As documented in the MIMP Children's has completed approximately 846,000 square feet of the development approved in its existing MIMP, with approximately 54,000 square feet remaining.

13. Children's has relocated its research facilities away from the hospital campus and established pediatric specialty care at regional clinics in Alaska, Montana and many cities within Washington. It is also working with community providers to increase the availability of pediatric specialty care services within the area.



### Master Plan Process

14. The MIMP process began in the spring of 2007, when Children's submitted a notice of intent to prepare a new MIMP. The Citizens Advisory Committee (CAC) was formed and first met in July of 2007. The Draft MIMP was submitted and a draft EIS was issued on June 9, 2008. Exhibits 3 and 5. Public review during development of the draft MIMP and draft EIS included public meetings of the CAC, which included time for public comment; a public scoping meeting; two public comment periods; and a public hearing. The Final MIMP and FEIS were issued on November 10, 2008. Exhibits 4 and 6. The Director's Report and Recommendation was issued on January 20, 2009. Exhibit 9.

15. The CAC, staffed by the Department of Neighborhoods, held 26 public meetings over a period of 18 months. They received 248 public comments, and reviewed and commented on draft MIMP and SEPA documents. The CAC was instrumental in achieving many changes to the MIMP that would reduce the proposed MIMP's impact on the surrounding neighborhood. The CAC's Final Report and Recommendation, and six Minority Reports from 13 CAC members, were issued on February 3, 2009. Exhibit 8.

### Public Comment

16. The Director received approximately 600 written comments on the MIMP and EIS, and heard from 66 people at the Director's 2008 public hearing. The Examiner received 153 public comments, and heard testimony from 65 members of the public at the Examiner's two public hearings.

### Hearing Examiner Recommendation

17. On August 11, 2009 the Hearing Examiner recommended that the proposed MIMP be denied. Balancing the potential adverse impacts to the neighborhood against Children's asserted expansion needs, the Examiner concluded that without considering a less expansive development proposal, the potential impacts to the neighborhood outweighed Children's needs. The Examiner also concluded that the proposal was inconsistent with the "urban village strategy" contained in the City's Comprehensive Plan.

18. The Hearing Examiner recognized that the City Council could strike a different balance than that struck by the Examiner, and decide to approve the proposed MIMP. Accordingly she recommended that if the Council decided to approve the MIMP, the Council consider adopting a number of conditions for such approval.

### Appeals and Settlement Agreement

19. Eleven parties appealed the Hearing Examiner's recommendation to the Council. Approximately half supported approval of the MIMP and half opposed approval.



20. On February 10, 2010, Children's and parties supporting approval of the MIMP, and the Laurelhurst Community Club (LCC) and parties opposing approval of the MIMP, with the exception of two housing advocacy appellants, told the Council that they had concluded a Settlement Agreement that would reduce the scope of Children's proposed development under the MIMP. Those parties agreed that the proposed MIMP, as amended and limited by the terms of the Settlement Agreement, achieved a proper balance "between the need for Children's to expand and the livability of the adjacent neighborhoods."

21. In light of the Settlement Agreement, the following descriptions of the proposed MIMP describe the proposed MIMP as revised, in part, by the Settlement Agreement.

Proposed Master Plan

22. Children's has applied for a new MIMP to establish development potential through the year 2030. The MIMP would remain in place until Children's constructs the allowed developable square footage. The objectives of Children's proposed MIMP are stated in the Final MIMP, Exhibit 4 at Pages 12-15, and are summarized in the Director's Report, Exhibit 9 at 9.

23. Children's Final MIMP includes the three required components under SMC 23.69.030: (1) a development program; (2) development standards; and (3) a transportation management program.

24. Details of Children's proposed development program are found at pages 17-73 of the proposed MIMP, Exhibit 4.

25. Children's explored seven alternatives that would have achieved its original objective of obtaining a total of 2,400,000 square feet of development area. The alternatives are described in detail in Exhibit 6 at 2-7 to 2-33, and in Exhibit 4 at 20-23. As a result of the Settlement Agreement, that amount has been reduced to 2,125,000 square feet.

26. Children's selected Alternative 7R as its preferred alternative. It originally sought to expand the MIO boundary to include both Laurelon and the existing Hartmann site across Sand Point Way Northeast. As a result of the Settlement Agreement, Children's has withdrawn its proposal to include Hartmann within the MIO. Children's has purchased 101 of the Laurelon units and holds an option to purchase the entire 136-unit complex.

27. Laurelon, along with portions of certain existing campus buildings would be demolished, and development under the proposed MIMP would occur in four phases. The timing for the phases remains an estimate. Phase 1 is designated "planned development;" Phases 2, 3 and 4 are designated "potential development". See Exhibit 4 at 66-68; Exhibit 6 at 2-22 to 2-30.





28. Phase 1 would expand total building area up to approximately 1,492,000 square feet. Phase 1 is expected to occur between 2010 and 2012, and would include:

- Demolition and removal of Laurelton
- Construction of a new Emergency Department (93,527 square feet)
- Construction of Bed Units 1 and 2 (258,800 square feet)
- Construction of diagnostic and treatment facilities (176,343 square feet)
- Construction of mechanical facilities (49,400 square feet)
- Construction of a mechanical penthouse (14,000 square feet)

29. Phase 2 would expand total building area up to approximately 1,604,000 square feet, (including replacement of 65,000 square feet of existing space to be demolished) and is expected to occur from the fourth quarter of 2013 to the fourth quarter of 2016. It would include:

- Construction of a 1,100 stall, below grade garage for staff at the south end of the Laurelton (Southwest garage)
- Construction of additional diagnostic, treatment, and ancillary, mechanical and general plant facilities
- Demolition at existing portions of the campus at D and F wing

30. Phase 3 is expected to occur in two sub-phases and would expand total building area up to approximately 2,060,000 square feet (including replacement of 136,000 square feet to be demolished): Sub-phase 3A from the second quarter of 2017 to the fourth quarter of 2019; and Sub-phase 3B from the first quarter of 2022 to the fourth quarter of 2024. Phase 3 would include:

- Construction of Bed Units 3 and 4
- Construction of diagnostic, treatment, and ancillary, mechanical and general plant facilities
- Demolition of existing portions of the campus at Train 3B

31. Phase 4 would expand total building area up to approximately 2,125,000 square feet and is expected to occur from the fourth-quarter of 2025 to the fourth-quarter of 2027. It would include:

- Demolition of the Giraffe Garage on the northwest portion of the campus
- Construction of a new North Garage, offices, and ancillary, mechanical and general plant facilities on the north part of the property

32. The net increase in building area over the life of the MIMP would be 1,225,000 square feet, with a total building area for the completed campus of approximately 2,125,000 square feet, 136% larger than Children's existing facilities. The net increase in beds would range from 250 to 350, for a total bed count ranging from 500 to 600 beds.



33. Development under the proposed MIMP would require vacation of streets within Laurelon, specifically 41st Avenue Northeast and Northeast 46th Street between Sand Point Way Northeast and 40th Avenue Northeast. While the MIMP assumes the vacation of these streets, the review of the proposed street vacations requires a separate legislative action.

**Major Areas of Concern**

**Need and Public Benefit**

34. SMC 23.69.002 states that the purpose and intent of the Major Institution Code is to:

A. Permit appropriate institutional growth within boundaries while minimizing the adverse impacts associated with development and geographic expansion;

B. Balance the Major Institution's ability to change and the public benefit derived from change with the need to protect the livability and vitality of adjacent neighborhoods;

C. Encourage the concentration of Major Institution development on existing campuses, or alternatively, the decentralization of such uses to locations more than two thousand five hundred (2,500) feet from campus boundaries;

....

E. Discourage the expansion of established major institution boundaries;

....

H. Accommodate the changing needs of major institutions, provide flexibility for development and encourage a high quality environment through modifications of use restrictions and parking requirements of the underlying zoning;

I. Make the need for appropriate transition primary considerations in determining setbacks. Also setbacks may be appropriate to achieve proper scale, building modulation, or view corridor;

....

35. SMC 23.69.025 states that the intent of a MIMP is to "balance the needs of the Major Institutions to develop facilities for the provision of health care or educational services with the need to minimize the impact of Major Institution development on surrounding neighborhoods."

36. The Director of DPD concluded that Children's has shown a credible need for the requested expansion, and no appellants now dispute that conclusion.



37. Children's states its mission as preventing, treating and eliminating pediatric disease, and providing access to quality pediatric health care regardless of a family's ability to pay. Children's proposed MIMP is intended to allow Children's to fulfill its mission in a manner consistent with its 2006 strategic plan.

38. Children's cites a recent national study of freestanding pediatric hospitals that estimated an annual growth rate of 3.1 percent in inpatient demand for pediatric services through 2010 due to increased severity of pediatric illnesses; increases in prematurity and low birth weight; increased prevalence of chronic conditions; growing prevalence of obesity; more patients surviving childhood diseases and utilizing healthcare services longer; and a need for single bed rooms to control the potential spread of infection.

39. Children's states that a report on its own experience reflects the reported national trends. In 2007 and 2008, it experienced average "midnight occupancy levels" above the targets recommended by the Washington State Department of Health. It has identified a need to improve and expand its facilities to respond to increasingly complex patients who require additional staff, specialists, technology, and equipment and storage space that often varies by patient size, as well as space for additional visitors. *See Exhibit 26, Slide 3.* Children's reports that its current inpatient occupancy rates exceed the national standard of care for pediatric hospitals.

40. Children's has projected the following total unmet bed need, in single-bed rooms, for specialized pediatric care, including psychiatric care, within the State of Washington: 2012 - 336 beds; 2017 - 408 beds; 2019 - 460 beds; 2024 - 600 beds.

41. Children's indicates that it will decide how much of the projected need to accept when it applies for a Certificate of Need.

42. To calculate the total square footage required to accommodate total state need, Children's multiplied the maximum projected bed need by 4,000 square feet, which includes 300 square feet required for bed space plus the amount said to be required to support each pediatric bed (i.e., the "per bed share" of family space, operating rooms, diagnostic and therapeutic spaces, offices, central plant space, etc.). *See Exhibit 26, slide 6.* The total bed need of 600 times 4,000 square feet equals 2,400,000 square feet. These assumptions were not modified under the Settlement Agreement.

43. Children's growth projections show that under Phases 3 and 4 of the proposed MIMP, available space would somewhat exceed total projected need. Exhibit 26, slide 3.

44. Children's most recent Certificate of Need from the state was issued in 2001. The state's planning horizon for a hospital's request for a certificate of need is generally seven years. Thus, Children's anticipates that it would need to submit applications for at least three certificates of need during the lifetime of the proposed MIMP.



45. Public comment uniformly supported the mission of Children's and applauded its work in the region. However some members of the public questioned the need for Children's to nearly triple the square footage of its existing facilities within the MIO.

46. Children's originally did not evaluate any alternatives that included less than 2,400,000 square feet of development area. Instead, the alternatives considered different ways to configure the same amount of development space on the existing campus and Hartmann site, and later, on an expanded campus that included both Laurelon and Hartmann sites. Now, Children's proposes to exclude the Hartmann site from the MIO and to limit the development area to 2,125,000 square feet.

47. The CAC gave considerable attention to the issue of need. Comments to the CAC were provided by individuals and groups both in support and against Children's projections concerning the rationale for a certificate of need. *See* Exhibits 51-63, 65 and 66, and Exhibits 73-78 and 108. *See also*, Exhibit 22 at 2-8.

48. In response to the CAC's continuing concerns about the discrepancies between Children's and LCC's need projections, Children's offered assurance that it had no intention to build beyond its actual needs.

49. Aside from the impacts of a significantly expanded medical center, some neighbors expressed concern that facilities not be constructed for general research or other uses not directly supporting Children's pediatric medical care.

50. The CAC determined to accept Children's projections of need with the understanding that the issue would be thoroughly vetted during the state certificate of need process. However, the CAC recommended "in the strongest terms" that the decision on the MIMP include both conditions on phasing the project in relationship to need and conditions restricting use of the constructed facilities. Exhibit 8 at 17-19.

#### Boundary Expansions

51. Children's originally proposed to meet projected need primarily within existing MIO boundaries. This required raising heights limits up to 240 feet and expanding the boundary to include up to 105-foot heights on the Hartmann site. The community made it clear that such heights were unacceptable.

52. Children's revised its proposed MIMP to include early expansion onto Laurelon (Alternative 7R), thereby enabling it to construct new facilities without disrupting existing hospital operations. The change also allowed Children's to eliminate height increases on the existing campus, reduce the overall height of all new development to less than 160 feet, reduce the overall height of new facilities to an elevation similar to the highest building elevation on the existing campus, place increased height and bulk at a lower elevation where it is removed from most single-family neighborhoods to the east and south and multifamily development to the north, and provide vehicle access via 40th Avenue Northeast (a neighborhood access street), to Sand Point Way Northeast, an



arterial. This eliminated the need for entrances on Northeast 45th Street and Northeast 50th Street (also neighborhood access streets).

53. Both the CAC and the Director recommended that the MIO boundary be expanded to incorporate Laurelon.

#### Intensity

54. Lot coverage on the existing campus is 35%, and would increase to 51% under the proposed MIMP. However, institutions in the underlying Lowrise zone are not regulated by lot coverage but by structure width and depth limits.

55. The proposed MIMP, following the Settlement Agreement, requests 2,125,000 gross square feet. "Gross floor area" is "the number of square feet of total floor area bounded by the inside surface of the exterior wall of the structure as measured at the floorline." SMC 23.84A.014.

56. "Floor area ratio" (FAR) is "a ratio expressing the relationship between the amount of gross floor area or chargeable floor area permitted in one or more structures and the area of the lot on which the structure is, or structures are, located, as depicted in Exhibit 23.84A.012A." SMC 23.84A.012.

57. Children's received a DPD Director's interpretation on FAR which stated that since the Code does not prescribe the FAR, or any exclusion from it, for a MIMP, both may be defined by the decision on the MIMP.

58. The proposed MIMP originally requested an increase in intensity of development, expressed as FAR, from .9 on the main campus and .2 at Hartmann, to 1.9 across the entire MIO including Hartmann. While the Settlement Agreement removed Hartmann from the MIO, no adjustment was proposed to modify the 1.9 FAR.

59. The record documents review by DPD, the CAC and the Hearing Examiner concerning the amount of FAR being requested under the MIMP, including the methods by which FAR should be calculated and what features (parking structures, rooftop mechanical equipment, etc) should be included in the calculations.

60. The Settlement Agreement reflects that the FAR for the campus should be 1.9. FAR is defined in the settlement agreement as "the square footage of above-grade gross developable floor area plus the square footage of above-grade parking floor area, divided by the combined square footage of land in the New MIO Boundary (The current MIO campus plus Laurelon):

$$\frac{\text{Above-grade gross developable floor area (gsf)} + \text{Above grade parking floor area (gsf)}}{\text{SF of current MIO campus} + \text{SF of Laurelon}}$$

Rooftop mechanical equipment is not included in floor area ratio calculations".

### Development Standards and Transitions

62. Details of the proposed development standards for the MIMP are found at pages 75-87 of the proposed MIMP, Exhibit 4, and are summarized at pages 88-91. The development standards would modify or supersede most underlying zoning standards.

#### *Height*

63. MIO Heights on the existing campus are 37, 50, 70 (with part conditioned to 64), and 90 (with part conditioned to 74) feet. The MIMP as modified by the Settlement Agreement proposes heights of 37 feet, 50 feet, 65 feet, 70 feet, 90 feet, and 160 feet (conditioned to 125 feet and 140 feet, respectively).

64. DPD, the CAC and the Hearing Examiner heard comments on the original proposed 160 foot height limit within the Laurelon expansion area. Concerns expressed by some individuals included a feeling of towers looming over the streetscapes and the multifamily development across 40th Avenue Northeast, and the opinion that a 160 foot height limit is too high for an area outside an urban village. There was some public comment, including by members of the CAC, calling for reducing the 160 foot MIO height to 105 feet, the current MIO height limit at some major institutions located outside an urban village. However, the record, including comments from the CAC, clearly states that the proposed 160 foot height limit should be conditioned to 140 feet and 125 feet, respectively.

65. The CAC recommended modifications to the heights shown in the proposed MIMP. These included adding a MIO 50 height district along the west side of the main hospital campus along 40th Avenue Northeast, reducing the MIO 160 district to MIO 140 and MIO 125, placing limits on the number of floors above the podiums for the bed towers, limiting and screening rooftop mechanical equipment, and establishing a MIO 65 for the Hartmann site. *See Exhibit 93*<sup>3</sup>.

66. SMC 23.86.006 currently provides that heights are to be measured from existing or finished grade, whichever is lower.

#### *Setbacks*

67. Under the proposed MIMP, setbacks on the western one-third of the north boundary would increase from 20 feet to 40 feet and on the eastern two-thirds of the north boundary, from 20 feet to 75 feet. Setbacks on the south boundary of the existing campus would remain at 75 feet. On the south boundary of Laurelon, the setback would be 40 feet. On the east, the setback along 45th Avenue Northeast would increase from 40 feet to 75 feet; along 44th Avenue Northeast and Northeast 47th Street, they would remain at 75 feet. Setbacks on the west boundary along 40th Avenue Northeast would be 20 feet.

<sup>3</sup> The measurements for the MIO 160/140 and MIO 160/125 districts stated in CAC Recommendation 7, at pages 12 and 25 of Exhibit 8, are incorrect. The correct measurements are stated in the motion that adopted Recommendation 7, which is found at page 212 of Exhibit 8. These measurements are reflected in Exhibit 93.



On the west boundary along Sand Point Way Northeast setbacks would be 10 feet from 40th Avenue Northeast to Penny Drive, and 40 feet from Penny Drive to Northeast 50<sup>th</sup> Street. In their Settlement Agreement, Children's agreed to increase the setback along Northeast 45<sup>th</sup> Street to a minimum 75 foot setback along the entire Northeast 45<sup>th</sup> Street frontage.

#### *Landscaping and Open Space*

68. Children's existing campus includes extensively landscaped edges and open space. Children's proposes similar "garden-edge" landscaping within the proposed north, south and east setbacks. On the west, along 40th Avenue Northeast and Sand Point Way Northeast, Children's proposes to landscape the street frontage edges. Extensive landscaping is currently located within Laurelon.

69. Open space on the main campus is proposed to decrease from 45% to 41% of lot area. Some open spaces will continue to be available for community use, and Children's proposes streetscape and pedestrian amenity improvements around and across the campus, including pathways, lighting and plantings.

70. The CAC was concerned that open space is maintained and accessible. It recommended that designated open space be provided in locations at ground level or other spaces accessible to the general public, and that no more than 20% of the designated open space be provided in rooftop locations. Children's has agreed to the recommended condition.

71. Councilmembers expressed a desire that mature, existing vegetation at Laurelon be maintained and preserved, if feasible, following redevelopment within the Laurelon expansion area.

#### *Design*

72. A design review process would address the design of new buildings. Children's anticipates that building façades would be composed of materials that aesthetically blend with the existing campus buildings, such as a "precast/ceramic wall cladding system or glazed aluminum curtain wall system". FEIS at 3.9-3.

#### *Transitions*

73. Transitions in height, bulk and scale are proposed to be addressed through the pattern of MIO district heights, setbacks, upper-level setbacks, landscaping and design elements.



74. The FEIS stated that the proposed MIMP would have some height, bulk and scale impacts when viewed from Sand Point Way Northeast, and on existing residential areas to the south and west. For the no-build scenario, Alternative 1, and the preferred alternative, Alternative 7R, Viewpoint 13 shows these impacts using a wide angle perspective from a location south of the single-family residences across from the south boundary of Laurelon, and south and west of the multifamily residences across 40<sup>th</sup> Avenue Northeast from Laurelon. FEIS, Appendix C. Viewpoint 8 also shows these impacts from a location west of the multifamily residences on 40th Avenue Northeast.

75. The Director advised, with respect to the original proposed MIMP, that the combination of the approximately 55-foot wide Northeast 45<sup>th</sup> Street right-of-way, 40-foot landscaped setback, and MIO 50 height district in which a 4- to 5-story garage will be constructed would create a sufficient transition between the row of one- and two-story single-family residences south of Laurelon and the proposed 125- and 140-foot towers to be constructed on that site. As part of the Settlement Agreement, Children's has agreed to change the MIO height district along Northeast 45<sup>th</sup> Street to be a MIO 37 foot zone for a continuous 75 foot depth along Northeast 45<sup>th</sup> Street. This corresponds with Children's agreement to establish a 75 foot continuous setback along Northeast 45<sup>th</sup> Street.

76. With respect to transitions on the west, the Director recommended that the MIMP include upper level setbacks along the western edge of campus, requiring that above 50 feet in height, the buildings step back at least 40 feet from the western property line. The Director also recommended that any proposed structure higher than 37 feet and located adjacent to a street edge is reviewed by a standing advisory committee pursuant to design guidelines that will be established.

#### Transportation, Access and Parking

77. Transportation-related impacts are addressed in section 3.10 and Appendix D of the FEIS. They are also examined in the Director's Report at 70-73 and in the Examiner's decision in MUP-08-035(W).

#### *Transportation*

78. Children's has proposed a transportation management program (TMP) that includes the information required by SMC 23.69.030 and SMC 23.54.016. Details of the TMP are found at pages 93-108 of the proposed MIMP, Exhibit 4, as well as in Exhibit 6, the FEIS, at Appendix D, Attachment T-9.

79. Children's existing TMP has reduced single occupant vehicle (SOV) commute trips to 38% of daytime employees. The proposed TMP includes enhancements to reduce that number to 30%, in increments of approximately 2% with each phase of development.





80. Proposed enhancements to Children's TMP include an expanded shuttle service linking the Children's campus to regional transit hubs, an extensive bicycle commute program, financial rewards for employees who commute by means other than SOV, various improvements to encourage alternative transportation, and improvements to Children's off-site parking program.

81. The CAC supported the enhanced TMP and recommended an additional provision restricting vehicle entrances on Northeast 45th and 50th Streets to service and emergency access only for the life of the MIMP. In addition, Children's will work with the standing advisory committee to develop additional pedestrian and bicycle-only perimeter access points and designated pedestrian and bicycle routes through the campus to allow efficient connection to the Burke Gilman Trail.

82. The FEIS projects that the MIMP will result in 8,400 new daily vehicle trips without mitigation measures, and 6,800 daily trips with the TMP. That equates to 850 new AM peak hour trips and 690 new PM peak hour trips without the TMP, and 540 new AM peak hour trips and 440 new PM peak hour trips with the TMP.

83. Level of service (LOS) is a measure of average delay at intersections and ranges from LOS A (free-flowing, minimal delay) to LOS F (extreme congestion, long delays). As a general rule, the City considers LOS D (using a weighted average of delays for all approaches) or better acceptable at the signalized intersections.

84. Most intersections in the vicinity of Children's are operating at LOS D or better and are expected to continue to do so in the "No Build" scenario. Notable exceptions are the "Five Corners" intersection (Northeast 45<sup>th</sup> Street/Union Bay Place Northeast), which presently operates at LOS E and is expected to deteriorate to LOS F with or without Children's expansion (FEIS, Page 3.10-17), and the Montlake Boulevard Northeast/Eastbound SR-520 ramps, which presently operates at LOS E and is expected to continue at that level.

85. Traffic times were calculated across two main corridors – Sand Point Way Northeast to the Montlake Bridge and Northeast 45<sup>th</sup> Street to Interstate 5 (I-5). The changes in travel times from 'no build' to full build out of the MIMP, with an enhanced TMP include:

- Children's to Roanoke Exit via Sand Point Way Northeast/Montlake Northbound – 0 minutes;
- Children's to Roanoke Exit via Sand Point Way Northeast/Montlake Southbound – 1 minute;
- Children's to I-5 via Sand Point Way Northeast/Northeast 45<sup>th</sup> Street Westbound – 1 minute; and
- Children's to I-5 via Sand Point Way Northeast /Northeast 45<sup>th</sup> Street Eastbound – 2 minutes.

Exhibit 6 at 3.10-14 to 3.10-23.



86. Some residents of the area expressed concern about congested traffic conditions in the area and questioned whether the traffic models used to predict intersection LOS at build out of the MIMP accounted for "pipeline projects" in the projection for background traffic. In addition to anticipated development at Children's, master use permit applications have been submitted for expansion of the Talaris Research and Conference Center at Northeast 41<sup>st</sup> Street and expansion of University Village shopping center. Other potential projects, such as redevelopment of the University Village QFC, are anticipated.

87. The FEIS shows that background traffic growth totaling 710 PM peak hour trips is projected at the Five Corners intersection and 450 trips at the intersection of Montlake Boulevard and Northeast 45<sup>th</sup> Street. At the hearing on the FEIS, the Director testified that together, the Talaris and University Village expansions are expected to generate 186 PM peak hour trips at Five Corners, and 193 PM peak trips at Montlake Boulevard/Northeast 45<sup>th</sup> Street of this growth.

88. The Director did not consider the transportation impacts of the state's project to improve SR 520 because funding for the project had not been approved when the FEIS and Director's Report were prepared. It is now known that the state's schedule for construction on the west side of the SR 520 project will coincide with the projected timeline for build out of the first two phases of Children's proposed MIMP. Exhibit R-10.

89. Approximately 10 percent of Children's employees commute by transit, and 12 percent drive or carpool to one of three off-site parking lots and commute via the shuttle service Children's provides between campus and the lots. Children's proposes under the preferred alternative to relocate shuttle and transit stops to Sand Point Way Northeast at 40<sup>th</sup> Avenue Northeast to provide more direct access to Children's.

90. Approximately 11% of Children's employees either walk or bike to work. To encourage increased utilization of non-motorized modes of travel, Children's proposes to construct new sidewalks along portions of Sand Point Way Northeast, develop new pedestrian and bicycle facilities for the MIO, and contribute to funds for improvements to pedestrian and bicycle facilities.

#### *Access*

91. Access to Children's under the preferred alternative will continue from Penny Drive via Sand Point Way Northeast. In addition, Children's proposes to add both an emergency entrance and a general parking entrance from 40<sup>th</sup> Avenue Northeast, a residential access street. 40<sup>th</sup> Avenue Northeast would also serve as a secondary service access. A traffic signal and crosswalk, with emergency vehicle preemption, will be added at the intersection of 40<sup>th</sup> Avenue Northeast and Sand Point Way Northeast.



92. Some Laurelhurst residents have expressed concern about potential congestion at the 40th Avenue Northeast access points. The street provides the major connection between the Laurelhurst community and northbound Sand Point Way Northeast, and emergency vehicles access Laurelhurst via 40th Avenue Northeast to Northeast 45<sup>th</sup> Street.

93. The transportation analysis determined that the two 40th Avenue Northeast access points would operate at LOS C or better at build out.

94. The FEIS recommends that a left turn lane be constructed on eastbound Northeast 45th Street at 40th Avenue Northeast to facilitate access to the proposed southwest garage from Northeast 45th Street.

95. The CAC recommended that Children's limit access from 40th Avenue Northeast to one point for either parking or emergency access, but not both, and instead, construct a second new access from Sand Point Way Northeast. The CAC also recommended that if the 40th Avenue Northeast entrance is used for parking, it should be designed so that vehicles entering and exiting the garage avoid travel on Northeast 45th Street east of Sand Point Way Northeast by traveling only on the portion of 40th Avenue Northeast between the access point and Sand Point Way Northeast.

96. DPD's consulting transportation engineer evaluated the possibility of adding a second access on Sand Point Way between the traffic signals at 40th Avenue Northeast and Penny Drive, but determined that it would degrade traffic operations on that roadway segment. Consequently, Children's did not agree to the CAC's recommendations.

#### *Parking*

97. The FEIS shows that peak parking demand under the MIMP at build out would be approximately 3,400 vehicles, but reduced to 3,190 vehicles with proposed TDM programs and 2,940 with both TDM programs and Transit Shuttles. SMC 23.54.016 requires Children's to supply 2,300 to 3,100 parking spaces, either on site or within off-site parking lots. Under this code section, additional spaces may be provided if the major institution is meeting its TMP goal. Children's originally proposed to supply 3,100 parking spaces on site, including Hartmann, and 500 leased off-site spaces as needed to mitigate future transportation impacts. This would be an increase of 1,418 spaces over existing provided parking. No specific provisions were provided in Children's Settlement Agreement concerning the potential location of the 225 parking spaces that were planned for Hartmann.

#### *Mitigation Strategy and Unmitigated Impacts*

98. Children's proposed transportation mitigation strategy, including phasing, is discussed at pages 3.10-56 to 3.10-67 of the FEIS and in Appendix D, and is summarized by the Director as follows:



(1) Children's design and facilities, including campus design, near-site improvements, and off-site parking. Campus improvements include development of a shuttle hub (perhaps combined with transit), additional bicycle parking and shower and locker facilities, a relocated "front door" for the hospital at 40th Ave Northeast, clear pedestrian flow paths from adjacent neighborhoods and through campus, and a redesign of Penny Drive to provide designed spaces for pedestrians and bicycles, as well as automobiles. Near-site improvements would consist of reconfiguring the Sand Point Way Northeast/40th Avenue Northeast intersection in conjunction with Seattle Department of Transportation (SDOT) to enhance pedestrian crossings, modifying the Sand Point Way Northeast/Penny Drive intersection, and restriping Northeast 45th St to accommodate a left-turn lane for eastbound-to-northbound turns. Wayfinding and design of near-site pedestrian and bicycle facilities would be improved, and connectivity between the hospital and the Burke-Gilman Trail would be enhanced through improved wayfinding and intersection enhancements. Children's also will continue to pursue new off-site and out-of-area remote parking facilities, which Children's would connect to the hospital campus with shuttle service.

(2) Children's Enhanced Transportation Management Program. To achieve a maximum 30% single-occupant vehicle goal, Children's would expand its existing transit shuttle program, to identify effective shuttle connections from downtown, the University District, and future light rail stations; add new trip reduction services and programs; and modify its parking management policies, including raising the cost of both on-campus single-occupant vehicle parking and commuter bonus awards.

(3) Contributions to area transportation facilities. This encompasses three general strategies:

(a) a contribution of \$500,000 to construct Intelligent Transportation System improvements from Montlake Boulevard/Northeast 45th Street and Sand Point Way Northeast/Northeast 50th Street;

(b) a proportional share of Northeast Seattle transportation improvements identified in certain City documents (the University Area Transportation Action Strategy, the Sand Point Way Northeast Pedestrian Study, and the City of Seattle Bicycle Master Plan), amounting to approximately \$1,400,000;

(c) a \$2,000,000 contribution to cover unfunded pedestrian and bicycle improvements in Northeast Seattle, including priority projects from the Bicycle Master Plan, connections from Children's to the broader bicycle/pedestrian network, and possibly bicycle boulevards.

(4) Proportional share of installation of traffic signals at 40th Avenue Northeast/Northeast 55th Street and 40th Avenue Northeast/Northeast 65th Street. These intersections will be monitored by Seattle Department of Transportation over the life of the Master Plan to determine the timing of the mitigation implementation.



99. The FEIS shows that traffic generated by Children’s will contribute to congestion and the deterioration of traffic conditions in the area. The proposed mitigation package would likely reduce impacts to traffic operations across the Montlake Boulevard and Northeast 45<sup>th</sup> Street corridors. The FEIS stated that “it is anticipated that a 40 to 60 percent improvement could be achieved as a result of this mitigation”. Exhibit 6 at 3.10-67 to 3.10-68.

#### Construction

100. The Director has recommended several conditions to mitigate construction impacts of the proposed MIMP. The CAC has recommended an additional condition to mitigate impacts specific to construction on the Hartmann site, and Children’s has agreed to the CAC’s recommended condition. See Exhibit 26. Slide 28. However, potential conditions related to Hartmann are no longer applicable because this MIMP does not regulate development at the Hartmann site because it is outside of the MIO boundary.

#### Housing demolition and replacement

101. Major Institutions may not expand their boundaries if the expansion would result in demolition of housing “unless comparable replacement is proposed to maintain the housing stock of the city.” SMC 23.34.124.B.7.

102. Children’s proposes to expand its existing MIO boundaries into Laurelon and to demolish the 136 condominium housing units on that site.

103. Children’s has agreed to purchase the Laurelon property for 2.55 times its fair market value, approximately \$93,000,000, if Children’s MIMP and boundary expansion are approved.

104. Rather than constructing replacement housing, Children’s proposes to pay the City \$5,000,000 in fulfillment of the housing replacement requirement. The City’s Office of Housing believes that such a payment would satisfy the requirements of SMC 23.34.124 B.7, and entered into a Memorandum of Agreement (MOA) to that effect, subject to approval by the City Council. Exhibit R-6. Children’s agreed that its proposed payment could be used to construct replacement housing that would be subject to City rent controls.

105. Under the terms of the proposed MOA, Children’s payment would be combined with other funding sources to construct replacement housing, and Children’s would receive full credit for fulfillment of the housing replacement requirement even though much of the replacement cost would be paid by other private or public fund sources.

106. The cost to construct 136 replacement housing units comparable to those to be demolished by Children’s is estimated to be \$31,218,136 based upon July, 2009 construction costs. Exhibit R-12.



### Height District Rezone

107. The Director's Report addresses the required rezone in detail relative to the requirements of SMC 23.34.124 on designation of MIO's and SMC 23.34.008, the general rezone criteria. Exhibit 9 at 45-62.

108. Rezones are required for the areas identified in MIMP Figure 1 (Exhibit 4 at 12) as Laurelon, and for increased height districts on portions of the existing campus.

109. Laurelon is presently zoned L3 for low-density residential development. Laurelon was developed as a one-and two-story, garden-style apartment complex in the 1940s. Laurelon was converted to Condominiums in 1979.

110. The most recent Children's master plan and rezones were approved in 1994, and added 262,630 square feet, for a total allowed development area of 900,000 square feet. The FAR was increased from .5 to .9.

111. Children's existing height districts are shown in Exhibit 4, Figure 45 at 63. MIO heights are MIO 37 on the north, increasing to MIO 70 (conditioned to 64) and MIO 90 (conditioned to 74) toward the center of the campus, and decreasing to MIO 50 and MIO 37 on the south. Children's MIMP included proposed height districts, as modified by accepted CAC recommendations, and are shown in Exhibit 93. The proposed MIMP increases heights to MIO 65 on the northeast and MIO 90, MIO 160/140 and MIO 160/125 on approximately the west one-third of the center of the expanded campus, and adds MIO 50 and MIO 37 on the south part of the expanded campus. The extent of the proposed MIO 37 foot and MIO 50 foot height limits were modified in the Settlement Agreement. The MIO 37 foot height limit would be a continuous depth of 75 feet from Northeast 45<sup>th</sup> Avenue, to correspond to the continuous 75 foot setback from Northeast 45<sup>th</sup>. As a result of the proposal in the Settlement Agreement to eliminate Hartmann from the MIO, no change in zoning at Hartmann is required.

112. The Director advises that the MIO rezones as originally proposed are consistent with the zoning principle that requires minimization of the impact of more intensive zones on less intensive zones through use of transitions or buffers, if possible, (SMC 23.34.008.E.1); that with recommended conditioning, the height limits of the district boundaries are compatible with heights in adjacent areas (SMC 23.34.124.C.2); and that transitional height limits have been provided where the maximum permitted height within the MIO is significantly higher than permitted heights in adjoining areas (SMC 23.34.124.C.3).

113. The Director also advises that the rezone is consistent with the zoning principle which provides that, in general, height limits greater than 40 feet should be limited to urban villages, and that height limits greater than 40 feet may be considered outside urban villages if the limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or the existing built character of the area (SMC 23.34.008 E.4).



## Conclusions

### Need and Public Benefit

1. There is no question raised concerning the public benefits that Children's provides and will provide in the future. The record includes a substantial amount of information about Children's exceptional work.
2. Although SEPA allows an applicant broad latitude in defining its own development objective, SMC 25.05.440.D, of the Major Institution Code requires more when it comes to "need". To assure that the Master Plan balances the projected needs of the Major Institution with the need to minimize impacts on surrounding neighborhoods, as required by SMC 23.69.025, it is necessary to know with some degree of accuracy what the Major Institution's needs actually are.
3. Testimony by Children's and LCC's healthcare planning experts was provided during the appeal hearing. However, because of illness, LCC's expert on healthcare planning was not subject to cross examination. There is evidence in the record showing that, in calculating bed need, LCC's expert incorrectly excluded patients ages 15 and over from the first step of the state methodology used for calculating need, and used a "midnight occupancy level" for Children's that assumed any available bed could be used for any patient. In fact, Children's 230 acute-care beds are located in several discrete specialty units and are generally not interchangeable. These errors resulted in a report from LCC's expert that understated total bed need. The report is also inconsistent with Children's current experience.
4. The evidence in the record shows that the Certificate of Need process requires, among other things, that an applicant demonstrate that it has control of a site proposed for expansion; document that the proposed site may be used for the intended project and is properly zoned; provide a project timeline; and begin the project within two years of receiving a Certificate of Need. Consequently, it appears that an approved MIMP is necessary before Children's can successfully apply for a Certificate of Need.
5. Children's has shown a projected statewide need for specialized pediatric care over the next 20 years sufficient to support the development area being requested in the proposed MIMP.
6. The CAC's recommended condition, that approval of Master Use Permits for the various phases of development be contingent on a demonstration of need by Children's, and restricting use of space within the MIO primarily to those providing pediatric medical care or directly related services, is appropriate and should be included as a condition if the MIMP is approved.



### Boundary Expansion

7. The Code strongly discourages expansion of MIO boundaries, and calls for MIOs to include contiguous areas that are as compact as possible within the constraints of existing development and property ownership. However, the Code also stresses the need to protect the livability and vitality of adjacent neighborhoods. As suggested in the Director's Report, the likely intent of Code provisions discouraging boundary expansion is to protect established residential neighborhoods from unrestrained major institution expansion. In this case, nearby residential neighborhoods are better protected by expansion of the MIO boundary to include the Laurelon site than they would be by requiring Children's to accommodate the entire projected need within existing boundaries.

8. Children's enhanced TMP, including connections to the Burke Gilman Trail on the Hartmann site, and transit and shuttle improvements on both sides of Sand Point Way, was developed to provide partial mitigation for the significant adverse transportation impacts associated with each of the alternatives studied, including the non-Hartmann Alternative 8.

9. The CAC's recommended conditions to reduce the bulk and scale and other impacts on neighboring properties are appropriate and should be included as a condition of approval. The mitigation of these impacts is achieved through additional property line and upper level structure setbacks and the approval by DPD of site specific design guidelines.

### Intensity

10. The increase in lot coverage from the 35% coverage allowed in the underlying single-family zone to 51%, an amount similar to the 45%-50% coverage allowed in the underlying L3 zone at Laurelon, will increase the intensity of development on the Children's campus but not to an unreasonable extent. No change in lot coverage was included in the Settlement Agreement.

11. The Settlement Agreement proposes a reduction from 2.4 million square feet to 2.125 million gross square feet of development area, or a reduction of 275,000 square feet. The reduced square feet are associated with the exclusion of the 150,000 square feet of development proposed for Hartmann as well as an additional 125,000 square feet deducted from the remaining area of MIO. Rooftop mechanical equipment and all above and below ground parking areas are excluded from the calculation of gross square feet of development.

12. Exclusions from FAR calculations under the Code depend upon the zone in which a proposal is located. Since FAR does not apply to single-family or Lowrise zones, which is the underlying zoning within the MIO, there are currently no prescribed FAR limits or exclusions governing this application, as stated in the Director's interpretation.





13. Children's has agreed that a FAR of 1.9 is sufficient to meet its development needs. No change in FAR was included in the Settlement Agreement. As no provisions were made concerning the method of calculation of FAR, SMC 23.86.007 as now or hereafter amended shall be used when determining FAR.

#### Development Standards and Transitions

14. The Examiner recommended that MIO heights be measured from existing or finished grade, whichever is lower, in accordance with SMC 23.86.006, as now or amended.

15. All property line setbacks proposed in the MIMP meet or exceed the setbacks required in the underlying zones. In addition, the proposed upper level setbacks are designed to mitigate the impacts of additional height bulk and scale resulting from the MIMP. These measures, along with the proposed landscaping, height restrictions and open space plan, provide adequate mitigation of height bulk and scale impacts on surrounding properties.

16. The setback on the east boundaries, together with moving the greatest mass of development to the west side of the campus and stepping it down the hillside, will provide a sufficient buffer for the single-family neighborhood to the east.

#### Transportation, Access and Parking

17. The issue of whether the forecast for PM peak hour background trips included in the traffic model was sufficient to cover traffic generated by known "pipeline projects" is a SEPA issue and was addressed briefly in the decision in MUP-08-035(W). To summarize, the record shows that the background traffic forecast was sufficient to cover known "pipeline projects". Further, Master Use Permit applications and additional environmental review would be required for each project within Children's proposed MIMP. Additional mitigation could be required if it were shown that a shortfall in forecast traffic growth will likely lead to unanticipated transportation impacts.

18. Although approval of the MIMP is expected to result in significant adverse impacts on traffic, the FEIS shows that a 40 percent and 60 percent improvement in travel time could be achieved as a result of the proposed mitigation package, relative to impacts without such mitigation.

19. Although there is significant concern by some neighborhood groups about congestion on 40th Avenue Northeast, the evidence in the record shows that the two access points proposed for this street will operate at LOS C or better, and that moving one of the access points to Sand Point Way Northeast would degrade traffic operations on that arterial. The CAC's suggestion to limit access from 40th Avenue Northeast to one entrance should not be included as a condition of approval.

20. The transportation impacts of the overlap between the state's schedule for construction on the west side of the SR 520 project and build out of the first two phases

of Children's proposed MIMP must be considered and appropriate mitigation imposed. However, the analysis would be more accurate, and the mitigation more effective, if current information available during the Master Use Permit process for each development project were used.

### Housing

21. SMC 23.24.127 (B) (7) contemplates that a major institution may satisfy the housing replacement obligation by financing and constructing the replacement housing itself, and therefore Children's is entitled to do that if it chooses to do so. However as a matter of policy the Council will allow Children's to pay the City to facilitate the provision of replacement housing, as further described in Conclusions 22-24.

22. If Children's elects to pay the City to facilitate the provision of the replacement housing, then Children's shall pay the City 35% of the estimated cost of the replacement housing. Based upon a 2009 estimated replacement cost of \$31.2 million (Exhibit R-12), Children's payment to the City would be \$10,920,000.

23. If Children's prefers to have the 35% figure determined on the basis of the estimated replacement cost at the time it proceeds with development, then it may ask DPD and the Office of Housing to determine that cost at that time. To assist DPD and the Office of Housing to make that determination, Children's must submit at least two development pro formas that describe the estimated replacement cost. The determination by DPD and the Office of Housing of the estimated replacement cost is final and not subject to appeal.

24. If Children's elects to pay the City to facilitate the provision of replacement housing, the City may use Children's payment to construct housing that is affordable. If Children's elects to build the housing itself, it may build affordable housing, but is not required to do so.

### Height District Rezone

25. The Laurelon expansion area is across the street from a well-established single-family zone to the south and a limited area of multifamily residences in an L3 zone across 40<sup>th</sup> Ave Northeast. The impact of rezoning Laurelon to MIO 160, conditioned to heights of 140 feet and 125 feet (MIO 160/140 and MIO 160/125), and the anticipated corresponding development allowed under the MIMP, can be minimized by the use of proposed transitions in height, upper level setbacks, the proposed property line setbacks and the use of design guidelines that have been included in the MIMP and recommended to be further amended by DPD. With these measures, in light of the overall approach in this MIMP and the limited number of properties directly affected by the proposed expansion, the mitigation of the rezone impacts is appropriate. However, the mitigating measures required here are based on a review of the proposed impacts outlined in this MIMP and the related Final EIS. It should not be concluded that this solution is appropriate in any other circumstance where a MIO seeks an expansion and the expansion area is across a right of way from a residential zone.



Balancing

26. SMC 23.69.025 states that 'the intent of the Major Institution Master Plan shall be to balance the needs of the Major Institutions to develop facilities for the provision of health care or educational services with the need to minimize the impact of Major Institution development on surrounding neighborhoods.

27. Council reviewed the proposed MIMP, revised MIMP, Final EIS and revised Final EIS, the Hearing Examiner's record, and considered oral argument and submittals from appellants, including the Settlement Agreement. It is Council's conclusion that the MIMP embodies an appropriate balance between Children's need for long-term growth and the need to lessen the impact of that growth on the surrounding community, and should therefore be approved. Mitigation measures are found in Children's significant commitments that include 1) reducing and managing the transportation impacts by employees and patients while improving the transportation infrastructure at or near its campus; 2) creating a development plan that lessens the impacts of new buildings through significant setbacks, the siting of new buildings and limitations on lot coverage; 3) limiting the massing and location of new buildings to lessen their visual impacts on surrounding properties; 4) providing a comprehensive open space network to provide relief from bulk and scale of development while providing passive recreation opportunities for the campus; and 5) a commitment to landscaping that enhances the campus while shielding it from neighboring properties.

28. The City's Land Use Code (SMC Title 23) and substantive SEPA policies (SMC 25.05) authorize reference to the City's Comprehensive Plan as a basis for review of a proposed MIMP only with respect to specific Comprehensive Plan policies identified in those ordinances, neither of which include policies related to the "urban village" strategy described in that Plan. Therefore the Council lacks authority to consider those policies as a basis for its decision whether to approve the proposed MIMP.

29. The Council has reviewed the record of public participation that includes the role of the Citizen's Advisory Committee and the process that allowed the general public to comment from the plan's initial inception up through and including the Hearing Examiner's hearings on the final MIMP and final EIS. Council concludes that this process was fair, thorough, thoughtful, deliberative and designed to provide a balance between the stated plans detailed by Children's in their MIMP and the concerns expressed by members of the community.

30. The Council takes notice of the February 3, 2010 Settlement Agreement that was provided to the Council as part of the oral argument heard by Council on February 10, 2010. The Council appreciates that Children's and the LCC have concluded an agreement concerning the scope of physical development in keeping with the intent of the balancing section in SMC 23.69.025.



**DECISION**

The Council hereby **approves** the MIMP for Seattle Children’s Hospital, Clerk’s File 308884, subject to the following MIMP and SEPA conditions:

**MIMP CONDITIONS**

As a requirement for approval of the Children’s MIMP, Children’s shall comply with the following conditions:

1. Total development on the existing and expanded campus shall not exceed 2,125,000 gross square feet, excluding above and below grade parking and rooftop mechanical equipment.
2. The Floor Area Ratio (FAR) for the expanded campus shall not exceed 1.9, excluding below grade developable floor area, below-grade parking structures and rooftop mechanical equipment.
3. No more than 20% of the land area within the MIO, approximately 264,338 square feet, may include structures that exceed 90 feet in height. No more than 10% of the land area within the MIO, approximately 142,596 square feet, may include structures that exceed 125 feet in height. No structure in the MIO shall exceed 140 feet in height, excluding rooftop mechanical equipment.
4. MIO heights shall be measured in accordance with SMC 23.86.006 as now or hereafter amended.
5. Children’s shall amend Section IV.D.1 of the Master Plan to add upper level setbacks 80 feet deep, applied to portions of buildings higher than 50 feet, along the western edge of the expanded campus on 40<sup>th</sup> Avenue Northeast from Sand Point Way Northeast south to Northeast 45th Street, and 30 feet deep on Sand Point Way from 40th Avenue Northeast to Penny Drive.
6. Children’s shall amend Section IV.D.1 and Master Plan Figure 50, “Proposed Structure Setbacks,” to increase the south setback to 75 feet along the entire Northeast 45<sup>th</sup> Street boundary.
7. Children’s shall amend Section IV.C.1 of the Master Plan to expressly prohibit above-ground development within the setback areas, as shown on revised Figure 50, except as otherwise allowed in the underlying zone.
8. The Hartmann site as originally proposed in the MIMP is not included within the MIO boundary and is not subject to this MIMP.



9. A minimum of 41% (being 507,000 square feet) of the combined total area of the expanded campus shall be maintained as open space. In addition:

- a. Open Space should be provided in locations at ground level or, where feasible, in other spaces that are accessible to the general public. No more than 20% (being 101,000 square feet) of the designated 41% open space, shall be provided in roof top open spaces;
- b. Open Space areas shall include existing and proposed ground level setback areas identified in the Master Plan, to the extent that they meet the criteria in the proposed Design Guidelines;
- c. The location of open space, landscaping and screening as shown on Figure 42 of the Master Plan may be modified as long as the 41% figure is maintained;
- d. To ensure that the 41% open space standard is implemented with the Master Plan, each planned or potential project should identify an area that qualifies as Open Space as defined in this Master Plan;
- e. Open Space that is specifically designed for uses other than landscaped buffers or building setback areas, such as plazas, patios or other similar functions, should include improvements to ensure that the space contains Usable Open Space as defined under SMC 23.84A.028; and
- f. Open space shall be designed to be barrier-free to the fullest extent possible.

10. For the life of the Master Plan, Children's should maintain open space connections as shown on Figure 56 of the Final Master Plan, or similar connections constituting approximately the number and location of access points as shown in the Master Plan. During the review of all future buildings, Children's should evaluate that building's effect upon maintaining these connections. If Children's proposes to change the open space connections from surrounding streets from that shown on Figure 56, it shall first provide notice to DPD and DON, and formally review the proposed changes with the SAC.

11. The City's tree protection ordinance, SMC 25.11, applies to development authorized by this MIMP. In addition, to the extent feasible, any trees that exceed 6 caliper inches in width measured three feet above the ground and that are located within the Laurelon expansion area shall be used on Children's campus.



12. Children’s shall amend Section V.D, “Parking” on page 104 of the Final Master Plan to add the following at the end of that subsection: “As discussed in the TMP, the forecasted parking supply including the potential leasing of off-site spaces, exceeds the maximum allowed under the Land Use Code. Therefore, if Children’s continues to meet its Transportation Master Plan goals, the Master Plan authorizes parking in excess of the Code maximum to minimize adverse parking impacts in the adjacent neighborhood.”

13. Children’s shall amend Table 3 "Development Standard Comparisons" in the Master Plan to be consistent with all modifications to development standards made by this decision.

14. Prior to the submittal of the first Master Use Permit application for Phase 1, Children’s must draft a more comprehensive set of Design Guidelines for planned and potential structures, to be reviewed by the Seattle Design Commission and approved by DPD. The Design Guidelines are not a part of this approved MIMP, but shall be an appendix to the Master Plan, and shall address issues of architectural concept, pedestrian scale, blank wall treatment, tower sculpting, nighttime lighting, and open space and landscaping, among others.

15. Children’s shall create and maintain a Standing Advisory Committee (SAC) to review and comment on all proposed and potential projects prior to submission of their respective Master Use Permit applications. The SAC shall use the Design Guidelines for their evaluation.

16. Prior to issuance of any MUP for any project under Phases 2, 3 and 4 of the Master Plan, Children’s shall provide documentation to the Director and the SAC clearly demonstrating that the additional construction requested is needed for patient care and directly related supporting uses by Children’s, including administrative support.

17. The TMP will be governed consistent with Director’s Rule 19-2008, or any successor rules. In addition, Children’s shall achieve a 30% SOV goal at full build out of the MIMP. The 30% SOV goal shall be achieved in increments, as Children’s moves from its current 38% SOV mode split to the 30% goal at build out of the MIMP.

18. No portion of any building on Children’s extended campus shall be rented or leased to third parties except those who are providing pediatric medical care, or directly related supporting uses, within the entire rented or leased space. Exceptions may be allowed by the Director for commercial uses that are located at the pedestrian street level along Sand Point Way Northeast, or within campus buildings where commercial/retail services that serve the broader public are warranted.



19. Before Children’s may receive a temporary or permanent Certificate of Occupancy for any structure that is included in any phase of proposed development described on page 66 of the MIMP, DPD must find that Children’s has performed either of the following options:

- a. That Children’s has submitted an application for a MUP for the construction of comparable housing, as defined below, in replacement of the housing demolished at Laurelon Terrace. In the event that Children’s will construct more than one housing project to fulfill the housing replacement requirement, then Children’s must have applied for a MUP for the first housing replacement project, which shall include no fewer than 68 housing units. A MUP application must be submitted for all of the remaining replacement units before a temporary or permanent certificate of occupancy may be issued for any project authorized in Phases 2-4 of the MIMP. The MUP application(s) for the replacement housing project(s) may not include projects that were the subject of a MUP application submitted to DPD before Council approval of the MIMP. Children’s may seek City funds to help finance the replacement housing required by this condition, but may not receive credit in fulfillment of the housing replacement requirement for that portion of the housing replacement cost that is financed by City funds. City funds include housing levy funds, general funds or funds received under any housing bonus provision.
- b. That Children’s has either 1) paid the City of Seattle \$10,920,000 to help fund the construction of comparable replacement housing or 2) paid the City of Seattle 35% of the estimated cost of constructing the comparable replacement housing, as determined by DPD and the Office of Housing. In determining the estimated cost, DPD and the Office of Housing shall consider at least two development pro-forma, prepared by individual(s) with demonstrated expertise in real estate financing or development, and submitted by Children’s. DPD and the Office of Housing’s determination of the estimated cost is final and not subject to appeal. Money paid to the City under this option b shall be used to finance the construction of comparable replacement housing, as defined below, and subject to the provisions of the City’s Consolidated Plan for Housing and Community Development and the City’s Housing Levy Administrative and Financial Plan in existence at the time the City helps finance the replacement housing.



For purposes of this condition 19, the comparable replacement housing must meet the following requirements:

- 1) Provide a minimum of 136 housing units;
- 2) Provide no fewer than the number of 2 and 3 bedroom units as those in the Laurelton Terrace development;
- 3) Contain no less than 106,538 gross square feet;
- 4) The general quality of construction shall be of equal or greater quality than the units in the Laurelton Terrace development; and
- 5) The replacement housing will be located within Northeast Seattle. Northeast Seattle is bounded by Interstate 5 to the west, State Highway 520 to the south, Lake Washington to the east, and the City boundary to the north.

20. Children's shall develop a Construction Management Plan (CMP) for review and comment by the SAC prior to the approval of any planned or potential project discussed in the Master Plan. The CMP must be updated at the time of site-specific SEPA review for each planned or potential project identified in the MIMP. The CMP shall be designed to mitigate impacts of all planned and potential projects and shall include mitigating measures to address the following:

- a. Construction impacts due to noise
- b. Mitigation of traffic, transportation and parking impacts on arterials and surrounding neighborhoods
- c. Mitigation of impacts on the pedestrian network
- d. Mitigation of impacts if more than one of the projects outlined in the Master Plan are under concurrent construction

21. Prior to the issuance of a Certificate of Occupancy for any project associated with development of Phase 1 of the MIMP, the proposed traffic signal at 40<sup>th</sup> Avenue Northeast and Sand Point Way NE shall be installed and functioning.

## SEPA CONDITIONS

### Geology

22. To minimize the possibility of tracking soil from the site, Children's shall ensure that its contractors wash the wheels and undercarriage of trucks and other vehicles leaving the site and control the sediment-laden wash water using erosion control methods prescribed as City of Seattle and King County best management practices for construction projects. Such practices include the use of sediment traps, check dams, stabilized entrances to the construction site, erosion control fabric fences and barriers, and other strategies to control and contain sediment.

23. Children's shall ensure that its contractors cover the soils loaded into the trucks with tarps or other materials to prevent spillage onto the streets and transport by wind.





24. Children's shall ensure that its contractors use tarps to cover temporary on-site storage piles.

#### Air Quality

25. Prior to demolition of the existing housing units at Laurelton Terrace, Children's shall perform an asbestos and lead survey and develop an abatement plan to prevent the releases into the atmosphere and to protect worker safety.

26. During construction, Children's shall ensure that its contractors spray exposed soils and debris with water or other dust suppressants to reduce dust. Children's shall monitor truck loads and routes to minimize impacts.

27. Children's shall stabilize all off-road traffic, parking areas, and haul routes, and it shall direct construction traffic over established haul routes.

28. Children's shall schedule delivery of materials transported by truck to and from the project area to minimize congestion during peak travel times on adjacent City streets. This will minimize secondary air quality impacts otherwise caused by traffic having to travel at reduced speeds.

29. Children's shall ensure that its contractors cover any exposed slopes/dirt with sheets of plastic.

30. Around relevant construction areas, Children's shall install perimeter railings with mesh partitioning to prevent movement of debris during helicopter landings.

#### Noise

31. Construction will occur primarily during non-holiday weekdays between 7:00 am and 6:00 pm, or as modified by a Construction Noise Management Plan, approved by DPD as part of a project-specific environmental review.

32. Children's will inform nearby residents of upcoming construction activities that could be potentially loud. Children's shall schedule particularly noisy construction activities to avoid neighborhood conflicts whenever possible.

33. Impact pile driving shall be avoided. Drilled piles or the use of a sonic vibratory pile driver are quieter alternatives.

34. Buildings on the extended campus are to be designed in such a way that noise received in the surrounding community is no greater than existing noise based on a pre-test of ambient noise levels and subsequent annual noise monitoring to be conducted by Children's.



Transportation

35. Consistent with the Transportation Management Plan (TMP), onsite improvements shall include: a shuttle hub; an enhanced campus pathway to connect to transit along Sand Point Way Northeast and/or 40th Ave Northeast; and bicycle parking.

36. Consistent with the TMP, near-site improvements will include: working with Seattle Department of Transportation and Washington State Department of Transportation (WSDOT) to improve intersections such as Penny Drive/Sand Point Way Northeast and 40th Ave Northeast/Sand Point Way Northeast; improve connectivity between the Burke-Gilman Trail and Children’s; enhance the Sand Point Way Northeast street frontage.

37. Consistent with the TMP, and as necessary to reduce future transportation impacts, Children’s may provide off-site parking that reduces the level of required parking on site and reduces traffic on Northeast 45th St, Sand Point Way Northeast and Montlake Blvd/SR 520 interchange area.

38. Children’s shall enhance its TMP to achieve a 30% single occupancy vehicle (SOV) mode split goal or lower.

39. Prior to the issuance of any construction permits for any project outlined in Phase 1 of the MIMP, Children’s shall pay the City of Seattle its fair share to the future installation of traffic signals at 40th Ave Northeast/Northeast 55th St. Prior to the issuance of any construction permits for any project outlined in Phase 2 of the MIMP, Children’s shall pay the City of Seattle its fair share, based on the to the future installation of traffic signals at 40th Ave Northeast/Northeast 65th St. These intersections shall be monitored by the Seattle Department of Transportation over the life of the Master Plan to determine the timing of the mitigation implementation.

40. Prior to the issuance of any construction permits for any project outlined in Phase 1 of the MIMP, Children’s shall pay the City of Seattle \$500,000 to build Intelligent Transportation System improvements through the corridor from Montlake Blvd/Northeast 45th St to Sand Point Way Northeast/Northeast 50th St. The contribution shall be used to fund all or part of the following projects:

- a. Install a detection system that measures congestion along southbound Montlake Boulevard, linked to smart traffic control devices that adapt to traffic conditions;
- b. Install variable message signs to give real-time traffic information for drivers, including travel time estimates, updates of collisions and other traffic conditions, and to implement variable speed limits throughout the day to keep traffic flowing as smoothly as possible;
- c. Optimize signal coordination and timing to move vehicles most efficiently and optimize signal performance;
- d. Upgrade signal controllers as needed to allow signals to be interconnected, and/or
- e. Install traffic cameras as identified by the City of Seattle



41. Children’s shall pay the Seattle Department of Transportation (SDOT) a pro rata share of the Northeast Seattle Transportation improvement projects identified from the University Area Transportation Action Strategy, the Sand Point Way Northeast Pedestrian Study, and the City of Seattle Bicycle Master Plan. This amount is estimated at approximately \$1,400,000 or approximately \$3,955 per bed, over the life of the MIMP. (adjusted for inflation as beds come online). Each pro-rata share payment shall be made prior to the issuance of any construction permits for the first project constructed under each phase of the MIMP. The total payment of \$1,400,000 shall be completed by the issuance of any construction permit for a project outlined in Phase 4 of the MIMP.

42. Children’s shall pay the Seattle Department of Transportation (SDOT) a total of \$2,000,000 for pedestrian and bicycle improvements in Northeast Seattle over the timeframe of the Master Plan development. A pro-rata share payment shall be made prior to the issuance of any construction permits for the first project constructed under each phase of the MIMP. The total payment of \$2,000,000 shall be completed by the issuance of any construction permit for a project outlined in Phase 4 of the MIMP.

Dated this 5th day of April, 2010.

  
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City Council President



**PARTIES OF RECORD – CHILDREN’S HOSPITAL MIMP APPEALS**

1. **Seattle Displacement Coalition/Interfaith Taskforce on Homelessness.**
  - John V Fox, Seattle Displacement Coalition, 4554 – 12<sup>th</sup> Ave NE, Seattle, WA 98105
  - Bill Kirlin-Hackett, Interfaith Task Force on Homelessness, 3030 Bellevue Way NE, Bellevue, WA 98004
  
2. **Coalition of Major Institutions**
  - Thomas Walsh and Judy Runstad, Foster Pepper Law Firm, 1111 Third Ave, Suite 3400, Seattle, WA 98101
  
3. **Catherine Hennings – Member of Children’s Hospital Citizen Advisory Committee and resident of Laurelhurst Neighborhood**
  - Catherine J Hennings, 3638 – 49<sup>th</sup> Ave NE, Seattle, WA 98105
  
4. **Steve Ross – Chair, Friends of Children’s Hospital and resident of Laurelhurst Neighborhood**
  - Steve Ross, 3625 – 47<sup>th</sup> Ave NE, Seattle, WA 98105
  
5. **Hawthorne Hills Community Council**
  - Bonnie Miller, Chair of Land Use Committee, 6057 Ann Arbor Ave NE, Seattle, WA 98115-7618
  
6. **Seattle Community Council Federation**
  - Rick Barrett, Vice President, 1711 N 122<sup>nd</sup> Street, Seattle, WA 98133
  
7. **Seattle Children’s Hospital**
  - John E. Keegan, Davis Wright Tremaine, 1201 Third Avenue, Suite 2200, Seattle, WA 98101
  
8. **City of Seattle, Department of Planning and Development**
  - Judith Barbour, Assistant City Attorney, Seattle City Attorney’s Office, 600 Fourth Avenue, 4<sup>th</sup> Floor, P.O. Box 94769, Seattle, WA 98124-4769
  
9. **Laurelhurst Community Club**
  - Peter J. Eglick and Jane S. Kiker, Eglick Kiker Whited, 1000 Second Avenue, Suite 3130, Seattle, WA 98104
  
10. **Dixie and Steve Wilson**
  - Peter Buck, The Buck Law Group, 2030 First Avenue, Suite 201, Seattle, WA 98121
  
11. **Laurelon Terrace**
  - Peter Buck, The Buck Law Group, 2030 First Avenue, Suite 201, Seattle, WA 98121

