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No. 75204-9-I

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

UNIVERSITY OF WASHINGTON,

Respondent,

vs.

CITY OF SEATTLE, DOCOMOMO US-WEWA,
HISTORIC SEATTLE, and THE WASHINGTON TRUST
FOR HISTORIC PRESERVATION,

Appellants.

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CR

CITY'S REPLY BRIEF

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I. ARGUMENT

This case turns on clear legislative text. The Regents' authority to control UW's property extends only as far "as otherwise provided by law." Among that law is the GMA's balanced rule that commands UW (a "state agency") to comply with the City's LPO (a "development regulation" that was "adopted pursuant to" the GMA and applies to UW as a "corporation") except where the LPO would preclude the siting of a particular "state education facility." UW's reasons for dodging that clear text are meritless.¹

A. UW's claims of the LPO obstructing the Regents are baseless and irrelevant.

UW's claims about the LPO enabling the City to "govern" the campus by "usurping," "vetoing," or "overruling" the Regents cannot be squared with the record or City law.² The LPO could apply at every step to UW without undercutting the Regents' goals.

¹ UW abandons its argument that the Campus Master Plan authorizes development notwithstanding the LPO. *Compare* Opening at 29 – 32 *with* Response at 47 – 48.

² *Cf.* Response at 1, 15 – 16, 25, 27 – 28, 40, 44, 45.

First, not every qualifying structure nominated under the LPO is designated a City landmark.³ UW knows this; in 2010 it nominated Husky Stadium, which the City ultimately did not designate.⁴

Second, because City staff “work with the owner of each designated landmark to craft sensible [controls] tailored to the specific landmark,” the controls imposed on a designated landmark may be consistent with the property owner’s goals.⁵ UW knows this too; in 2011 it consented to designating its property in a landmark district that “replicates existing restrictions and processes” already in place.⁶

Third, the City will not impose controls that deny an owner reasonable economic use of the property, based on market value and net return on investments.⁷ UW insists it cannot use that protection because UW’s property’s value is “educational rather than financial.”⁸ Statutes disprove that claim. For example, UW may sell or exchange property,

³ See Seattle Municipal Code (“SMC”) 25.12.380 – .440 (the designation process); CP 504 – 05 (City staff experience with failed nominations). The public may browse and search the SMC at https://www.municode.com/library/wa/seattle/codes/municipal_code.

⁴ CP 176 (UW nomination letter).

⁵ CP 505.

⁶ CP 178.

⁷ SMC 25.12.580 – .590.

⁸ Response at 10 (citing CP 224).

lease it to others, and finance purchases by pledging its real estate income,⁹ and UW's downtown Metro Tract exists to generate a financial return for UW.¹⁰

Fourth, where an owner must obtain a certificate to alter the designated features of a landmark, City historic preservation staff engage the owner in a "collaborative and cooperative" process to generate design alternatives "that work[] both for the owner and for the City's goal of preserving designated historic features."¹¹ This process "has resulted in permission for a range of preservation solutions including the removal of secondary facades in some instances and the addition of buildings to the landmark property."¹² UW poses a false choice between the Regents' will and historic preservation.¹³ That choice cannot be squared with a track record of collaboration and cooperation advancing multiple goals.

Finally, if the collaborative design process generated only alternatives precluding UW's effort to expand one of its education

⁹ RCW 28B.10.300(3) and (6); RCW 28B.20.130(7). *Accord* CP 72 – 89 (ordinance approving the 2004 amendment to the City-UW agreement and discussing UW's on- and off-campus real estate purchasing and leasing activity); CP 168 (Campus Master Plan discussing UW leasing and acquisition).

¹⁰ RCW 28B.20.381 – .398 (allowing the Regents to lease, sell, and secure bonds there).

¹¹ CP 505 (declaration of the City's long-serving Historic Preservation Officer).

¹² *Id.*

¹³ *E.g.*, Response at 1, 47, and 49.

facilities, the LPO would yield under the GMA's balanced protection of state education facilities.¹⁴

This facial challenge does not hinge on whether the LPO might occasionally obstruct the Regents.¹⁵ It turns on how the Legislature has structured the working relationship between state universities and local jurisdictions over the use of land. If UW believes the statutes strike the wrong balance, its remedy lies with the Legislature.

B. The GMA's balanced rule applies to UW.

1. UW is a "state agency."

UW claims it is not a "state agency" within the meaning of the GMA because, absent a definition, "state agency" cannot include a state institution of higher education.¹⁶ UW is incorrect.

If GMA Section 103's command that "state agencies" comply with local develop regulations did not include state institutions of higher education, there would be no need for Section 200 to include "state education facilities" among the essential public facilities development

¹⁴ See *City of Des Moines v. Puget Sound Regional Council*, 98 Wn. App. 23, 108 Wn. App. 836, 843 – 47, 988 P.2d 27 (1999).

¹⁵ See *City of Redmond v. Moore*, 151 Wn.2d 664, 679 – 80, 91 P.3d 875 (2004) (a facial claim fails if the challenged provision could be applied lawfully in any one circumstance).

¹⁶ See Response at 40 – 45.

regulations may not preclude.¹⁷ This Court must decline UW's invitation to render "state education facilities" superfluous.¹⁸

Statutes beyond the GMA are irrelevant. To the extent they offer any insights, statutes defining "state agency," including the Administrative Procedures Act, embrace institutions of higher education.¹⁹ UW finds no statutory definition of "state agency" excluding them. Although UW notes a few statutes referring to "state agencies" and "institutions of higher education" separately, dozens of statutes speak of "state agencies, *including/excluding* institutions of higher education" or "institutions of higher education and/or *other* state agencies."²⁰ Those make sense only if "institutions of higher education" are "state agencies."

If UW's claim that "state agencies" excludes state institutions of higher education were true for the GMA, it would be true for all statutes regulating "state agencies" without a definition. That would absolve state

¹⁷ RCW 36.70A.103, .200(1), and .200(5).

¹⁸ *See State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001) (courts must give effect to all statutory language).

¹⁹ RCW 34.05.010(2) (APA). *Accord* RCW 19.360.060; RCW 41.07.010(1); RCW 44.28.005(12).

²⁰ For provisions using "including," see, e.g., RCW 1.20.017(3); RCW 28B.77.020(7); RCW 39.26.125(8); RCW 43.19A.050; RCW 43.325.110(2)(a); RCW 44.48.150(2); RCW 70.175.070(2); RCW 70.185.070(2); RCW 70.94.547; RCW 70.94.551(3). For "excluding," see, e.g., RCW 41.06.133(1)(k)(iii); RCW 41.06.500(3)(c); RCW 43.03.030(3)(c) and .040(3). For "other state agency," see, e.g., RCW 42.30.020(1)(a); RCW 43.331.050(1).

universities from the Public Records Act and the Washington Law Against Discrimination, among others.²¹ It would also mean UW could not use the Interlocal Cooperation Act, which applies to “public agencies,” a term defined to include “state agencies” without mentioning state institutions of higher education.²²

This Court should discount UW’s claim that it is not a “state agency” because it reverses UW’s long-held a position. UW wields its state agency status—not through a definition, but as a matter of fact—to its advantage in court.²³ The captions of reported decisions identify UW and other state universities as state agencies.²⁴ And until this suit, UW

²¹ See RCW 42.56.010(1) (PRA); RCW 49.60.040(19) (WLAD).

²² RCW 39.34.020(1). See *Public Hosp. Dist. No. 1 of King County v. University of Wash.*, 182 Wn. App. 34, 36, 327 P.3d 1281 (2014) (UW is a “public agency”).

²³ *Hontz v. State*, 105 Wn.2d 302, 310, 714 P.2d 1176 (1986); *State v. City of Seattle*, 94 Wn.2d 162, 166 – 67, 615 P.2d 461 (1980); *Hyde v. University of Wash. Med. Cntr.*, 186 Wn. App. 926, 927, 930, 347 P.3d 918 (2015); *Oda v. State*, 111 Wn. App. 79, 85, 44 P.3d 8 (2002); *Orwick v. Fox*, 65 Wn. App. 71, 90 n.10, 828 P.2d 12 (1992). See also *State v. Hewitt Land Co.*, 74 Wn. 573, 580, 134 P. 474 (1913) (describing the Board of Regents as “an agent of the state”).

²⁴ E.g., *Allan v. University of Wash.*, 140 Wn.2d 323, 997 P.2d 360 (2000); *Progressive Animal Welfare Soc. v. University of Wash.*, 125 Wn.2d 243, 884 P.2d 592 (1994); *Blair v. Washington State Univ.*, 108 Wn.2d 558, 740 P.2d 1379 (1987); *Fred Hutchinson Cancer Research Cntr. v. Holman*, 107 Wn.2d 693, 732 P.2d 974 (1987); *State v. City of Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980); *State ex rel. Wash. Federation of State Employees, AFL-CIO v. Board of Trustees of Central Wash. Univ.*, 93 Wn.2d 60, 605 P.2d 1252 (1980); *Board of Regents of Univ. of Wash. v. Frederick & Nelson*, 90 Wn.2d 82, 579 P.2d 346 (1978); *Hunter v. University of Wash.*, 101 Wn. App. 283, 2 P.3d 1022 (2000); *Branom v. State*, 94 Wn. App. 964, 974 P.2d 335 (1999); *Jones v. Halvorson-Berg*, 69 Wn. App. 117, 847 P.2d 945 (1993); *Houck v. University of Wash.*, 60 Wn. App.

claimed immunity from the City's LPO solely because UW is a state agency.²⁵

UW inserts a rule about the meaning of "state agencies" into the 1954 decision of *Lemon v. Langlie*.²⁶ In the passage UW invokes, *Lemon* merely described a complaint as seeking to compel action from "thirteen state agencies (each agency being a part of the executive department of the state). . . ." ²⁷ Despite UW's mischaracterization, *Lemon* neither addressed the meaning of "state agencies" nor limited it to executive departments.

2. The LPO is a "development regulation."

The LPO is a development regulation the GMA expressly encourages.²⁸ But UW mistakenly asserts the LPO is not a "development regulation" because it contains no "controls" on development or land use

189, 803 P.2d 47 (1991); *Allemeier v. University of Wash.*, 42 Wn. App. 465, 712 P.2d 306 (1985).

²⁵ E.g., CP 99 (UW's 2000 Draft Campus Master Plan); CP 138 ¶ 74 (UW's 2002 proposed findings); CP 176 (UW's 2010 nomination of Husky Stadium as a landmark); CP 178 (UW's 2011 letter consenting to the Sand Point Landmark District).

²⁶ Response at 42 – 43 (citing *State ex rel. Lemon v. Langlie*, 45 Wn.2d 82, 273 P.2d 464 (1954)).

²⁷ *Lemon*, 45 Wn.2d at 83 – 84.

²⁸ See RCW 36.70A.020(13) (development regulations should "[i]dentify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance"); WAC 365-196-450(2)(b)(ii) (describing "adoption of a local preservation ordinance" as a step to implement the GMA and local historic preservation goals and policies).

activities.²⁹ If the LPO did not control development, UW would have no reason to bring this suit. The LPO, in fact, controls development by requiring a certificate of approval for any alteration from the moment a landmark is designated.³⁰

3. The LPO was “adopted pursuant to” the GMA.

The City did what the GMA required to ensure the City timely adopted development regulations, including the LPO, pursuant to the GMA.³¹ The GMA directed larger cities to adopt a comprehensive plan, and development regulations implementing the plan, by 1994.³² The GMA forced no local jurisdiction to repeal or readopt every preexisting development regulation. Each jurisdiction needed only to ensure its regulations—whenever initially adopted—implemented its new plan.

Consistent with the GMA, the Washington State Department of Community Development (“DCD”) directed local jurisdictions to implement a common-sense strategy relying on existing regulations that proved consistent with their new plan: “Some of these regulations may

²⁹ Response at 34 n.14. *Cf.* RCW 36.70A.030(7) (“development regulations” mean “controls placed on development or land use activities by a . . . city”).

³⁰ SMC 25.12.670.

³¹ *Cf.* Response at 31 – 36.

³² Laws of 1993, 1st Spec. Sess., ch. 6, § 1 (amending RCW 36.70A.040(4)).

already be in existence and consistent with the plan. Others may be in existence, but require amendment. Still others will need to be written.”³³

DCD assured local jurisdictions that implementing the strategy “will be construed by [DCD] as completion of the task of adopting development regulations for the purposes of deadlines under the [GMA].”³⁴

The City followed that direction. In a 1994 ordinance, the City Council explained its review of existing development regulations and declared they, as amended and supplemented by the ordinance, brought the City in line with its new plan and the GMA.³⁵ The ordinance necessarily rendered all City development regulations, including the LPO, “adopted pursuant to” the GMA. UW claims the City should have “retroactively blessed” every title, chapter, and section comprising development regulations not specifically amended by the 1994 ordinance.³⁶ That would have been an onerous, wasteful exercise not required by the GMA or DCD.

³³ Former WAC 365-195-805(2) (copy at CP 467 – 68). *See id.* at -820(4) (regarding notice of “all preexisting regulations that are to be included in the implementation strategy without change”).

³⁴ Former WAC 365-195-805(4).

³⁵ CP 470 (Ord. 117430). This followed the City’s adoption of a new GMA-compliant plan that included provisions calling for preserving historically significant developments. Ord. 117221. *See, e.g., id.* Att. 1 at 6.

³⁶ Response at 32, 35.

Anyone, including UW, who felt the City's 1994 ordinance failed to timely adopt development regulations implementing the historic preservation goals of the GMA or the City's plan had 60 days to bring the City before the Growth Management Hearings Board.³⁷ No one did. UW may not resuscitate that claim in the wrong venue two decades later.

4. The GMA's ban on precluding "state education facilities" protects UW.

UW complains of the time required to invoke the GMA's protection against development regulations precluding the siting of a state education facility.³⁸ UW assumes it would always have to litigate preclusion, but the City will honor the GMA's protections on a landmark-specific basis without litigation. Moreover, if time impacts were grounds to violate state law, UW could also jettison such time-consuming laws as the State Environmental Policy Act and Public Records Act. If UW believes the GMA or another statute imposes an undue burden, UW's remedy lies with the Legislature.

³⁷ See RCW 36.70A.280(1)(a); RCW 36.70A.290(2); *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558–59, 958 P.2d 962 (1998) (GMHB may consider an alleged failure to comply with the GMA). *Cf.* Response at 33 – 34.

³⁸ Response at 45 – 47.

C. UW's authorizing statute does not shield UW from the GMA's balanced rule.

UW's statutory authority can and must be harmonized with the GMA's rule.³⁹ But UW insists a provision giving its Regents "full control" over UW property, and appropriations for UW construction projects, trump the GMA.⁴⁰ Careful analysis proves otherwise.

1. UW may not erase "except as otherwise provided by law" from its authorizing statute.

UW tries to erase "except as otherwise provided by law" from UW's "full control" provision, claiming the clause was limited to law regarding the now-defunct Higher Education Coordinating ("HEC") Board.⁴¹ That claim is false. In one 1985 act, the Legislature created the HEC Board and added three limitations to UW's authority, shown in underlined text below.⁴² The limitations added to subsections (3) and (10) were tied to HEC-Board-specific provisions elsewhere in the 1985 act. But

³⁹ See *Arbitration of Mooberry v. Magnum Mfg., Inc.*, 108 Wn. App. 654, 657, 32 P.3d 302 (2001) (rule of construction).

⁴⁰ See Response at 25 – 28. UW abandons arguments it made below premised on RCW 28B.20.100 (vesting "governance" of UW in the Regents), RCW 28B.20.700 (empowering the Regents to "provide for" construction), or Laws of 1999, ch. 346, § 1 ("Nothing in this act may be construed to diminish in any way the powers of the board of regents to control its property..."). UW now mentions each provision in passing without analysis or responding to the City's explanation of how all can be harmonized with the GMA. Compare City Opening at 21 with Response at 12, 26 – 27, 28, and 38.

⁴¹ Response at 29 – 30.

⁴² Laws of 1985, ch. 70 (amending RCW 28B.20.130).

the limitation added to subsection (1), to curb the Regents' "full control" of UW property, mirrored the broad, preexisting limitations on the Regents' employment and contracting powers in subsections (2) and (8), shown in **bold text** below and enacted in 1969:

General powers and duties of the board of regents are as follows:

(1) To have full control of the university and its property of various kinds, except as otherwise provided by law.

(2) To employ the president of the university, his assistants, members of the faculty, and employees of the institution, who **except as otherwise provided by law**, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university which meet or exceed the standards specified under section 6(2) of this 1985 act [dealing with the HEC Board]. . . .

....

(8) **Except as otherwise provided by law**, to enter into such contracts as the regents deem essential to university purposes.

....

(10) Subject to the approval of the higher education coordinating board pursuant to section 5 of this 1985 act, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus

educational programs, and purchase or lease major off-campus facilities.⁴³

Where a section of a bill uses certain language in one instance and different language in another, there is a difference in legislative intent.⁴⁴

The Legislature intended to subordinate UW's "full control" of its property—like its control of employees and contracts—to all other relevant state law, not just HEC Board law.

Violating rules of construction, UW's claim would render "except as otherwise provided by law" superfluous.⁴⁵ If that phrase were limited to HEC Board law, it died with the HEC Board in 2011⁴⁶ and is now useless.

2. The GMA manifests an intent to subordinate the Regents' control to the GMA's balanced rule.

UW insists that to overcome state universities' "full control" provisions, the GMA, "at a minimum, would need to reference Title 28B RCW or state institutions of higher education."⁴⁷ State universities are not

⁴³ *Id.* § 92 (bold added; reproduced at CP 464 – 65). See Laws of 1969 Ex. Sess., ch. 223, § 28B.20.130(2) and (8) (including "except as otherwise provided by law").

⁴⁴ See *In re Swanson*, 115 Wn.2d 21, 26, 804 P.2d 1 (1990).

⁴⁵ See *Keller*, 143 Wn.2d at 277 (courts must give effect to all statutory language).

⁴⁶ See Laws of 2011, ch. 11 (replacing HEC Board); Laws amending subsections (3) and (10) of RCW 28B.20.130 to track changes to the authority of the HEC Board and its successor did not amend the "full control" provision in subsection (1). See Laws of 2012, ch. 229, § 804; Laws of 2004, ch. 275, § 52.

⁴⁷ Response at 43.

so special that the Legislature must name them specifically. As the City noted in its opening brief and UW fails to mention, the Washington Constitution provides that educational institutions are “subject to such regulations as may be provided by law.”⁴⁸ UW also fails to respond to *Hewitt*’s conclusion that UW “has no powers that are not conferred by statute, and none that the Legislature cannot take away or ignore.”⁴⁹

A court must begin with the language of the statute; when it is clear, the court looks only to that text.⁵⁰ The GMA’s balanced rule is clear: it applies to all state agencies. Again, UW offers no response to the rule covering “state education facilities”—a phrase including state universities.

If intent matters, the Supreme Court recently explained that “[t]he GMA is a mandate to government at all levels—municipalities, counties, regional authorities, special purpose districts, and state agencies—to engage in coordinated planning and cooperative implementation.”⁵¹ That is consistent with GMA regulations—which the City discussed and UW

⁴⁸ Const. art. XIII, § 1. *See* City Opening at 15.

⁴⁹ *State v. Hewitt Land Co.*, 74 Wn. 573, 580, 134 P. 474 (1913). *See* City Opening at 15.

⁵⁰ *Whatcom County v. Western Wash. Growth Mgmt. Hrgs. Bd.*, ___ Wn.2d ___, 2016 WL 5853289 at ¶ 39 (2016) (analyzing the GMA). *Accord* *City of Olympia v. Drebeck*, 156 Wn.2d 289, 295, 126 P.3d 802 (2006) (no statutory construction for unambiguous laws).

⁵¹ *Whatcom County*, 2016 WL 5853289 at ¶ 64.

does not mention—echoing the GMA’s intent to ensure state agencies respect the product of the GMA’s coordinated process.⁵²

3. Even if rules of construction were appropriate, they favor applying the GMA’s balanced rule to UW.

Even if UW could justify going beyond clear statutory language, the relevant rules of statutory construction favor the GMA. One rule is to view the more recent enactment as best manifesting legislative intent because “legislative policy changes as economic and sociological conditions change.”⁵³ Regarding the control of state university land, the 1991 GMA and 1985 addition of “except at otherwise provided by law” better manifest legislative intent than the 1909 “full control” clause.⁵⁴

Another rule is that a statutory amendment indicates an intent to change existing law.⁵⁵ Here the Legislature added the GMA to usher in a revolutionary, coordinated approach to land use control, and then amended the GMA to require state agencies to comply with local development regulations that do not preclude the siting of essential public facilities. The

⁵² See Opening Brief at 9, 10 (discussing WAC 365-196-530(2) and (4) – (5)).

⁵³ *Connick v. City of Chehalis*, 53 Wn.2d 288, 291, 333 P.2d 647 (1958).

⁵⁴ Compare Laws of 1991, Spec. Sess., ch. 32, §§ 4 – 5 and Laws of 1985, ch. 370, § 92 with Laws of 1909, ch. 127, § 5.

⁵⁵ *Spokane County Health District v. Brockett*, 120 Wn.2d 140, 154, 839 P.2d 324 (1992).

Legislature consciously restruct the balance between state agency projects and local land use controls.

UW misplaces reliance on the general-specific rule of statutory construction.⁵⁶ This dispute presents two statutes, each of which is specific to its topic. UW's statute describes the Regents "general powers," which include the power to control UW property except as otherwise provided by law. The GMA's balanced rule is a specific command to all levels of government to respond to the unique challenges posed by uncoordinated and unplanned growth.⁵⁷ Neither statute is more specific than the other; each is specific about one topic. Where those topics intersect, as here, the statutes can and must be harmonized.

4. Case law does not elevate UW's authorizing statute above the GMA.

None of the four decisions UW invokes elevates its authorizing statute above the GMA's balanced rule. First, UW suggests the City acquiesced to UW's reading of *State v. Seattle*.⁵⁸ That cannot be squared with the City's consistent stance that UW must comply with the LPO.⁵⁹

⁵⁶ See Response at 36 – 37.

⁵⁷ *Whatcom County*, 2016 WL 5853289 at ¶ 35.

⁵⁸ Response at 13; *State v. City of Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980).

⁵⁹ See CP 42 – 44.

Second, *Edmonds School District* does not convert UW's mission statement into a get-out-of-the-GMA-free card.⁶⁰ Like *State v. Seattle*, *Edmonds School District* is a pre-GMA decision.

Third, UW gains nothing from *Residents Opposed to Kittitas Turbines*, which pitted the GMA against a statute that expressly “preempts the regulation...of the location, construction, and operational conditions” of certain energy facilities.⁶¹ That decision is consistent with GMA regulations that read the GMA to force a state agency to comply with local development regulations “except where specific legislation *explicitly* dictates otherwise.”⁶² UW enjoys no such preemption language; its authorizing legislation subordinates the Regents' control to other state law.

Finally, UW tells this Court its recent *WSDOT v. City of Seattle* decision “necessarily rejected” the City's claims “regarding the alleged effect of Section 103 of the GMA on prior, specific grants of authority.”⁶³ This Court, which expressly declined to address the GMA in *WSDOT*,

⁶⁰ Cf. Response at 26 – 27 (invoking *Edmonds School Dist. No. 15 v. City of Mountlake Terrace*, 77 Wn.2d 609, 611 – 12, 465 P.2d 177 (1970)).

⁶¹ *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 309 – 11, 197 P.3d 1153 (2008); RCW 80.50.110(2) (emphasis added). Cf. Response at 37 – 38.

⁶² WAC 365-196-530(2) (emphasis added).

⁶³ Response at 39 (citing *WSDOT v. City of Seattle*, 192 Wn. App. 824, 368 P.3d 251 (2016)).

must dismiss UW's misrepresentation. WSDOT challenged application of the City's grading code to a state highway project.⁶⁴ The Superior Court ruled for WSDOT because: (1) the City misinterpreted an undefined term in its grading code; and (2) WSDOT's authorizing statute preempted the GMA's balanced rule.⁶⁵ This Court affirmed only on the grading code interpretation issue, looking to other state statutes to define a term the City code did not.⁶⁶ As this Court noted, it did not address the question of GMA preemption because "WSDOT pointed out that if the court agreed the City erroneously interpreted the exemption to obtain grading permits, it need not reach [that] question."⁶⁷

5. UW cannot deny the logical consequence of its "full control" argument.

UW cannot avoid the logical consequence of its "full control" argument. UW claims not to contest local regulations "that protect the public health and safety."⁶⁸ But if no other law diminishes regents' "full control" of state university property, then all state university land is free of

⁶⁴ *WSDOT*, 192 Wn. App. at 828.

⁶⁵ CP 459 – 62.

⁶⁶ *WSDOT*, 192 Wn. App. at 828, 837 – 42.

⁶⁷ *Id.* at 833 n.4. *Accord id.* at 842 n.13 ("we need not address the question of preemption and the Growth Management Act, chapter 36.70A RCW").

⁶⁸ Response at 16.

every statute limiting state agencies' activities, not just the GMA.⁶⁹ UW offers no limiting principle; "full control" means just that.

6. Appropriations cannot amend the GMA.

UW contends legislative appropriations for projects on its campus indicate legislative intent to free UW from the GMA's balanced rule.⁷⁰ Those appropriations did not invite UW to act unlawfully.⁷¹ Because appropriations cannot abolish or amend existing law,⁷² the only way to excuse UW from the GMA is to amend it or pass another law explicitly preempting it.

Snohomish County's treatment of appropriations fails to advance UW's cause.⁷³ *Snohomish County* rehashed *State v. Seattle*—both are pre-GMA decisions holding a local jurisdiction could not impose its development regulations on a state agency to which the Legislature, through general laws, had given control of its property.⁷⁴ Both ruled in

⁶⁹ See City Opening at 16 – 18.

⁷⁰ Response at 27.

⁷¹ See Laws of 2006, ch. 371, § 203; Laws of 2015, ch. 3, § 5040.

⁷² See *Inlandboatmen's Union of the Pacific v. Department of Transp.*, 119 Wn.2d 697, 710, 836 P.2d 823 (1992).

⁷³ Cf. Response at 26 (citing *Snohomish County v. State*, 97 Wn.2d 646, 650, 648 P.2d 430 (1982)).

⁷⁴ *Snohomish County* resolved a dispute over a new prison at Monroe that violated local zoning regulations. The Supreme Court relied on statutes vesting the Department of Corrections with the power to manage and govern that particular prison. *Id.* at 650. The

favor of the state agency because of the language of the statutes.

Snohomish County mentioned appropriations only to reinforce that the Legislature knew of the statutes' implications, not to contradict statutory language.⁷⁵

D. UW is a corporation subject to the LPO.

UW invents this rule: "In Washington State, a 'corporation' is an entity declared in law to be a 'corporation.'"⁷⁶ Even if that were the rule, UW was declared a "body corporate" at birth in 1862.⁷⁷ UW concedes that declaration, at most, applied to the Regents, not UW. That is a flawed reading of the 1862 act. If the Regents alone were the corporation, § 5 of the act, which allowed the Regents to hold property "necessary to accomplish the object of the corporation," would have allowed the Regents to hold property only for themselves, not UW.⁷⁸ But because UW

Court cited *State v. Seattle* for its conclusion: "[T]he zoning regulation in the instant case cannot be harmonized with the legislative enactments. Thus, Const. art. 11, § 11 requires that the local regulation yield to the general laws of the state." *Id.*

⁷⁵ *Id.*

⁷⁶ Response at 17.

⁷⁷ Laws of 1862 at 43 § 1 (copy attached to Opening as Appendix B).

⁷⁸ *Id.* at 44 § 5.

“is operated by and through” the Regents,⁷⁹ UW and the Regents are one. They constitute a corporation.

It does not matter that current statutes no longer invoke a corporate label.⁸⁰ Even decades after statehood yielded UW’s current name and adjusted its governing structure without using “body corporate” or “corporation,”⁸¹ the Washington Supreme Court in *Hewitt* still accepted as a given that UW is a corporation.⁸²

UW misreads *Hewitt* and an earlier decision.⁸³ The issue in *Hewitt* assumed UW is a corporation: whether “the land acquired by the board of regents in 1866 has become public land . . . , or whether the board of regents still have title in virtue of their corporate being.”⁸⁴ Neither the Court nor parties questioned the Regents’ corporate status. The Court held that the provision of UW’s authorizing statute allowing the Regents to hold real estate “necessary to accomplish the object of the corporation” had been impliedly repealed by subsequent statutes giving other agencies

⁷⁹ CP 1 (UW’s complaint).

⁸⁰ *Cf.* Response at 21.

⁸¹ *See* Const. art. XIII, § 1; Laws of 1889–90, ch. 12, at 395 § 1.

⁸² *State v. Hewitt Land Co.*, 74 Wn. 573, 579–84, 134 P. 474 (1913).

⁸³ *See* Response at 21 – 23.

⁸⁴ *Hewitt*, 74 Wn. at 578.

control over public and university lands.⁸⁵ The Court rejected UW's contention that its property, "having come by deed to the corporate body, the board of regents, are not public or university lands within the meaning" of the statutes.⁸⁶ The Court accepted that the Regents received the deeds as a corporate body: "[t]he method of acquiring title is not material."⁸⁷ Notwithstanding their "corporate being," the Regents lost because they are subject to statutory amendments.⁸⁸

Hewitt cited *State v. Seattle* from 1910 to stress that the Legislature can force UW, unlike a private corporation, to sell its property because UW is a state agency.⁸⁹ *State* found the Regents lacked authority to deed property for use as a city street.⁹⁰ As *Hewitt* observed, *State* "was decided against the city because it was state or public land over which the regents had no control, except as they were directed by statute."⁹¹ Neither *State* nor *Hewitt* questioned UW's or the Regents' status as a corporation.

⁸⁵ *Id.* at 579 – 80.

⁸⁶ *Id.* at 580.

⁸⁷ *Id.* at 580 – 81.

⁸⁸ *Id.*

⁸⁹ *Id.* at 583 – 84 (discussion *State v. City of Seattle*, 57 Wn. 602, 107 P. 827 (1910)).

⁹⁰ *State*, 57 Wn. at 608 – 09.

⁹¹ *Hewitt*, 74 Wn. at 584.

If this Court were to rule UW is not a “corporation,” Washington would become an outlier. The City cites eight examples of decisions from other state supreme courts finding that state universities are “corporations,” plus two scholarly articles discussing other examples.⁹² UW, in contrast, fails to support its claim that other states’ law is “hardly uniform.”⁹³ The only examples UW offers are two lower state court decisions, neither of which needed to decide if their state universities are corporations within the ordinary meaning of the word.⁹⁴ Both concluded only that “corporation” within the meaning of a particular statute did not include a state university because the statute’s language and history excluded all state agencies.⁹⁵

Here the Court must interpret “corporation” as used in the City’s LPO. UW does not question the standard rule of construction allowing

⁹² Opening at 25 – 26.

⁹³ Response at 24.

⁹⁴ *Texas A&M-Kingsville v. Lawson*, 127 S.W.3d 866 (Tx. Ct. App. 2004); *Krasney v. Curators of the Univ. of Missouri*, 765 S.W.2d 646 (Mo. Ct. App. 1989).

⁹⁵ *Texas A&M* at 874; *Krasney* at 651 (“It is the status as a governmental entity which distinguishes a corporation as not subject to the provisions of § 290.140 from a corporation subject to its terms.”). *Accord State v. Bodisch*, 775 S.W.2d 73 (Tx. Ct. App. 1989) (cited by *Texas A&M* and holding the statute inapplicable “[s]ince the State and its agency are not individuals or corporations” under it).

resort to dictionary definitions.⁹⁶ UW offers no response to the City's analysis of how definitions of "corporation" from Black's Law Dictionary, Webster's, and the American Heritage Dictionary embrace UW and the Regents. UW just falls back on its argument that UW is not a corporation under state law and, without authority or explanation, asserts the dictionary definitions are "inapplicable" and "so broad they would include the state and federal government."⁹⁷ That assertion merits no response; if UW disagrees with the editors of three established dictionaries, UW must offer more than offhand dismissals.

UW suggests the absence of even broader terms like "governmental entity" or "other legal entity" from the LPO's definition of "person" demonstrates the City Council's intent to exclude UW.⁹⁸ That suggestion—made without authority—neither erases "corporation" from the LPO nor disproves UW's corporate status.

Beyond the legal considerations is the practical one. UW must function as a corporation in the ordinary sense of the word. How else

⁹⁶ *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005) (quoted in City Opening at 26 n.76).

⁹⁷ Response at 20 – 21.

⁹⁸ Response at 19.

could UW maintain its cherished independence?⁹⁹ UW is governed by an independent board that acts like other corporate governing bodies, raises gifts, manages its own funds, holds extensive real estate, and sues in its own name to protect its institutional interests. It functions like every other public “body corporate” in Washington. Like them, it is a corporation.

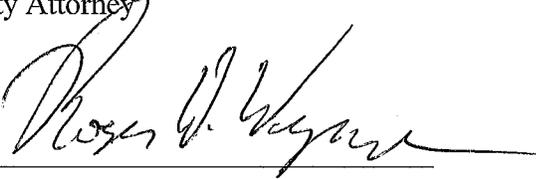
II. CONCLUSION

As a corporation, UW is covered by the LPO. Under the GMA’s balanced rule, UW must comply with the LPO except where applying it to a particular landmark would preclude the siting of a state education facility. Because UW must respect that clear law, the City asks this Court to reverse the trial court.

Respectfully submitted November 2, 2016.

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⁹⁹ See, e.g., Response at 2, 11, 15.

CERTIFICATE OF SERVICE

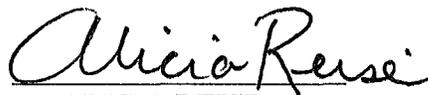
I certify under penalty of perjury under the laws of the State of Washington that, on this day, I sent a copy of the **City's Reply Brief** via e-mail by agreement under CR 5(b)(7) to the following parties:

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