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UNIVERSITY OF WASHINGTON,

*Respondent,*

v.

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

*Appellants.*

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**CITY'S SUPPLEMENTAL BRIEF**

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## I. INTRODUCTION AND SUMMARY

The University of Washington (“UW”) and the City of Seattle (“City”) agree on at least one point: the Court must resolve the conflict between UW’s authorizing statute (which grants its Regents “full control” over UW’s property “except as otherwise provided by law”) and Section 103 of the Growth Management Act (“GMA,” which commands state agencies to comply with local development regulations “adopted pursuant to” the GMA).<sup>1</sup> Only if the Court resolves that primary issue in favor of the GMA should the Court address the secondary issues specific to the City’s Landmark Preservation Ordinance (“LPO”). The City can correct any secondary shortcoming of its LPO; only the Court can resolve the primary statutory question.

This brief answers the Court’s call to supplement one of the secondary issues: whether two City ordinances were sufficient to “adopt” the LPO “pursuant to” the GMA in 1994. Because this issue depends on claims over which the Growth Management Hearings Board (“Board”) has jurisdiction, this Court should direct UW to bring those claims before the Board.

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<sup>1</sup> Compare RCW 28B.20.130 with RCW 36.70A.103. See UW Response at 2 (asking the Court “to resolve the issue of the Legislature’s intent with regard to the Regent’s authority over the University campus”).

But if this Court assumes jurisdiction, it should rule the ordinances served to “adopt” the LPO “pursuant to” the GMA. Ordinance 117221 complied with the GMA’s command to adopt a comprehensive plan with an historic preservation goal. Through Ord. 117430, the City met the GMA’s mandate to “adopt” development regulations to implement that plan: consistent with the text of the GMA and state agency guidance, the City reviewed its existing development regulations, amended those needed to assure consistency with the plan, and found the remaining development regulations—which by definition included the LPO—were already consistent with and implemented the City’s plan. UW cannot sustain its complaints about the ordinance, and UW’s mechanistic division between pre- and post-GMA development regulations would sow chaos in Washington land use law.

## **II. ARGUMENT**

### **A. The Court should direct UW to bring its claims regarding the sufficiency of Ord. 117430 before the Growth Board.**

Arguing the LPO was not “adopted pursuant to” the GMA, UW relies on two claims against Ord. 117430, through which the City adopted development regulations to implement its then-new comprehensive plan. First, UW claims the City adopted the ordinance without complying with

the GMA’s public participation requirements.<sup>2</sup> Next, UW asserts a failure-to-act claim: the ordinance failed to “adopt” the LPO and every other then-existing development regulation the ordinance did not specifically amend.<sup>3</sup>

Because the Board has jurisdiction over those claims, the Court should direct UW to the Board.<sup>4</sup> The judiciary should not resolve these claims through cross motions for summary judgment in a declaratory judgment action. Declaratory relief is not appropriate where a party has an adequate remedy at law.<sup>5</sup> The Board has the authority to decide whether these claims are timely;<sup>6</sup> admit evidence;<sup>7</sup> determine whether an appellant has met its burden of overcoming the presumption of legislative validity;

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<sup>2</sup> UW Response at 32-34.

<sup>3</sup> UW Response at 31-32, 35-36.

<sup>4</sup> RCW 36.70A.280(1)(a) (“the board shall hear and determine . . . petitions alleging . . . [a city] is not in compliance with this chapter . . .”).

<sup>5</sup> *Stafne v. Snohomish County*, 174 Wn.2d 24, 39-40, 271 P.3d 868 (2012).

<sup>6</sup> Although the City below asserted UW’s claims would be time-barred, further research leads the City to conclude the limitations issue is one for the Board to resolve. *See Kitsap Citizens for Rural Preservation v. Kitsap County*, No. 94-3-0005, 1994 WL 907903 at \*14 (CPSGMHB Order on Kitsap County’s Dispositive Motion, July 27, 1994) (“[U]ntil a jurisdiction complies with the Act’s procedural requirements, a failure to act challenge can be brought at any time. Once the Act’s procedural requirements are met, substantive challenges to an enactment must be brought within the sixty day statute of limitations.”). *Cf.* CP 451 (City trial court brief); City Reply at 8.

<sup>7</sup> RCW 36.70A.290(4).

and issue determinations of invalidity.<sup>8</sup> Courts review the Board’s decision under the Administrative Procedures Act.<sup>9</sup> Absent the parties’ agreement,<sup>10</sup> courts may not make the decision in lieu of the Board.

Although the City continues to urge the judiciary not to resolve these issues,<sup>11</sup> the remainder of this brief explains why the Court should resolve them in the City’s favor should the Court assume jurisdiction.

**B. The City adopted the LPO as a development regulation pursuant to the GMA.**

**1. Ordinance 117221 adopted the City’s Comprehensive Plan’s historic preservation goal.**

The City adopted its initial GMA Comprehensive Plan (“Plan”) through Ord. 117221. Although UW has yet to cite that legislation, let alone question its sufficiency, the Plan was legally sufficient to enact an historic preservation goal: to “[p]reserve developments of historic, architectural or social significance that contribute to the identity of an

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<sup>8</sup> RCW 36.70A.320 (burden of proof, presumption of validity, and invalidity). *Accord* RCW 36.70A.3201 (Board deference to counties and cities).

<sup>9</sup> RCW 36.70A.300(5).

<sup>10</sup> *See* RCW 36.70A.295.

<sup>11</sup> City Reply at 8; CP 451 (City trial court brief).

area.”<sup>12</sup> The Plan was appealed to the Board and upheld, but no party challenged the Plan’s historic preservation goal.<sup>13</sup> It remains valid.<sup>14</sup>

**2. Ordinance 117430 adopted the LPO—and all then-existing development regulations not amended by that ordinance—pursuant to the GMA.**

**a) The GMA required a city to adopt implementing development regulations “before” a deadline; it did not require adoption after the GMA’s enactment.**

The GMA required cities to “take certain actions *under this chapter*.”<sup>15</sup> Among those actions was to “adopt” development regulations consistent with and implementing a new comprehensive plan “on or before” a deadline.<sup>16</sup> Any city that adopted development regulations that proved to be consistent with and implemented its plan before the deadline “adopted” those regulations “under” the GMA.

The GMA did not require these development regulations to be adopted *after* the passage of the GMA *and* before the deadline. The GMA

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<sup>12</sup> Ord. 117221, Att. 1 at 6. City ordinances are available at: <http://clerk.ci.seattle.wa.us/~public/CBOR1.htm>.

<sup>13</sup> See *West Seattle Defense Fund (“WSDF”) v. City of Seattle*, No. 94-3-0016, 1995 WL 911770 (CPSGMHB Final Dec. and Order, April 5, 1995); *WSDF v. City of Seattle*, No. 95-3-0073, 1996 WL 688825 (CPSGMHB Finding of Compliance, Oct. 10, 1996).

<sup>14</sup> See RCW 36.70A.320(1) (presumption of validity).

<sup>15</sup> Laws of 1993, 1st Spec. Sess., ch. 6, § 1 (emphasis added; amending RCW 36.70A.040(3)).

<sup>16</sup> *Id.*

required only that consistent implementing regulations be adopted “before” the deadline.

Although the GMA required cities to adopt a new plan or update an existing one, the GMA imposed no requirement to adopt all-new development regulations or update every existing development regulation individually.<sup>17</sup> Each jurisdiction needed only to ensure its development regulations—whenever initially adopted—were consistent with and implemented its new plan.

**b) DCD counseled cities to rely on then-existing development regulations to meet the GMA’s deadline to “adopt” implementing development regulations.**

Consistent with the GMA, the Washington State Department of Community Development (“DCD”) directed local jurisdictions to implement a common-sense strategy.<sup>18</sup> In a rule establishing procedural criteria to assist counties and cities in adopting development regulations pursuant to the GMA, DCD counseled local jurisdictions to rely in part on existing regulations that proved consistent with their new plan: “*Some of*

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<sup>17</sup> Laws of 1993, 1st Spec. Sess., ch. 6, § 1 (amending RCW 36.70A.040(3) to mandate plan adoption). “‘Adopt a comprehensive land use plan’ means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.” RCW 36.70A.030(1). The GMA does not define “adopt development regulations.”

<sup>18</sup> See Laws of 1991 1st Spec. Sess., ch. 32, § 3(4) (authorizing the DCD to adopt guidance).

*these regulations may already be in existence and consistent with the plan.*

Others may be in existence, but require amendment. Still others will need to be written.”<sup>19</sup>

DCD suggested no limit on how old existing development regulations could be. To the contrary, DCD said regulations or amendments could be adopted at different times; what mattered was that all be adopted before the deadline.<sup>20</sup>

DCD assured local jurisdictions that implementing this common-sense strategy would constitute “adoption” of development regulations pursuant to the GMA: it “will be construed by [DCD] as completion of the task of adopting development regulations for the purposes of deadlines under the [GMA].”<sup>21</sup>

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<sup>19</sup> Former WAC 365-195-805(2) (emphasis added) (copy at CP 467-68).

<sup>20</sup> Former WAC 365-195-805(3): “Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.”

<sup>21</sup> Former WAC 365-195-805(4).

- c) **Consistent with the GMA’s text and DCD’s guidance, Ord. 117430 relied on then-existing development regulations—including the LPO—to meet the deadline to “adopt” development regulations pursuant to the GMA.**

The City followed the GMA and DCD’s counsel. As memorialized in Ord. 117430, the City first reviewed its then-existing development regulations. That review enabled the City Council to find and declare that those regulations, supplemented by the regulations amended by the ordinance, brought the City into compliance with the GMA’s command to “adopt” development regulations consistent with and implementing the City’s new Plan “before” a deadline:

**WHEREAS, RCW 36.70A.040 requires the City of Seattle to adopt** development regulations that are consistent with and implement the City’s Comprehensive Plan; and

**WHEREAS, The City of Seattle has reviewed its development regulations pursuant to the requirement of RCW 36.70A.040; NOW, THEREFORE,**

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

Section 1. The Seattle City Council finds and declares as follows:

- (a) The new and amendatory regulations adopted by this ordinance are appropriate and reasonable exercises of the police power that **bring the City’s development**

**regulations into compliance with RCW 36.70A.040 and RCW 36.70A.065;**<sup>[22]</sup>

**(b) The City’s development regulations, as amended and supplemented by this ordinance, are consistent with and implement the City’s Comprehensive Plan.**<sup>23</sup>

The Board necessarily concluded Ord. 117430 “adopted” then-existing development regulations pursuant to the GMA’s command. A group appealed the ordinance to the Board, alleging an inconsistency between existing regulations and the ones Ord. 117430 amended.<sup>24</sup> The Board held all development regulations—existing ones and those amended by the ordinance—had to be consistent with one another.<sup>25</sup> Then, as now, the Board had jurisdiction only over claims relating to development regulations “adopted under RCW 36.70A.040.”<sup>26</sup> The Board could not

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<sup>22</sup> Former RCW 36.70A.065 required development regulations dealing with permit processing. Laws of 1994, ch. 257, § 3. The Legislature recodified it into a different chapter as RCW 36.70B.080. Laws of 1995, ch. 347, § 432.

<sup>23</sup> Ord. 117430 at 1 (emphasis added). *See* Appendix (the first page of the ordinance). City ordinances are available at: <http://clerk.ci.seattle.wa.us/~public/CBOR1.htm>.

<sup>24</sup> *WSDF v. City of Seattle*, No. 95-3-0040, 1995 WL 903140 at \*4 (CPSGMHB Final Dec. and Order, Sept. 11, 1995).

<sup>25</sup> *Id.*, 1995 WL 903140 at \*4 - \*6.

<sup>26</sup> Laws of 1991 1st Spec. Sess., ch. 32, § 9 (adopting language still found in RCW 36.70A.280(1)(a)).

have considered the existing regulations if the ordinance had not “adopted” them as the GMA required.

The LPO was among the existing development regulations Ord. 117430 “adopted” pursuant to the GMA’s command. The LPO is a development regulation. The GMA requires local jurisdictions to adopt development regulations that “[i]dentify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.”<sup>27</sup> “Development regulations’ means *any* controls placed on development or land use activities” by a city.<sup>28</sup> The LPO is a development regulation because it controls development and land use activities.

UW cannot maintain its assertion that the LPO contains no controls.<sup>29</sup> From the moment a landmark is designated—even before the City imposes site-specific controls and incentives on the structure—the LPO requires an owner to obtain a certificate of approval before altering a

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<sup>27</sup> RCW 36.70A.020(13). *Accord* WAC 365-196-450(2)(b)(ii) (describing “adoption of a local preservation ordinance” as a step to implement the GMA).

<sup>28</sup> RCW 36.70A.030(7) (emphasis added). *Accord Tracy v. City of Mercer Island*, No. 92-3-0001, 1993 WL 839717 at \*10 (CPSGMHB Final Dec. and Order, Jan. 5, 1993) (“development regulations,” standing alone, refers to “all types” of development regulations).

<sup>29</sup> Response at 34 n.14.

designated feature.<sup>30</sup> If the LPO did not control development—if it were not a “development regulation” within the meaning of the GMA—UW would have no reason or standing to bring this suit.

UW gains nothing from citing *Fuhriman* as an example of a city amending its landmark preservation regulations in the body of a post-GMA ordinance.<sup>31</sup> *Fuhriman* arose under a different section of the GMA, RCW 36.70A.130, which requires local jurisdictions to periodically “take legislative action to review and, if needed, revise its . . . development regulations to ensure [they] comply” with the GMA’s requirements.<sup>32</sup> The city in *Fuhriman* decided it needed to amend its landmark preservation regulations, and included those amendments in an ordinance.<sup>33</sup> But Seattle in 1994 decided it did *not* need to amend its LPO to comply with the GMA, so did not need to individually mention the LPO in Ord. 117430.

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<sup>30</sup> Seattle Mun. Code (“SMC”) 25.12.670. The SMC is available at: [https://www.municode.com/library/wa/seattle/codes/municipal\\_code](https://www.municode.com/library/wa/seattle/codes/municipal_code)

<sup>31</sup> See UW Resp. at 32 (citing *Fuhriman v. City of Bothell*, Case No. 04-3-0027, 2005 WL 2227909 at \*1-\*2 (CPSGMHB Order Finding Compliance, July 25, 2005)).

<sup>32</sup> Laws of 2002, ch. 320, § 1 (adopting language still found in RCW 36.70A.130(1)(a)).

<sup>33</sup> *Fuhriman*, 2005 WL 2227909 at \*2.

**d) UW's complaints about Ord. 117430 cannot be squared with the record.**

UW airs a list of complaints about Ord. 117430's adoption of the then-existing LPO as required by the GMA. None withstands scrutiny.

**(1) The City provided notice of its intent to retain then-existing regulations under the GMA, and opportunities for public participation.**

Asserting the City violated the GMA's public participation requirements, UW complains it "had no way of knowing" Ord. 117430 would have the effect of adopting the LPO pursuant to the GMA.<sup>34</sup> UW overlooks the notice the City provided of its intent to adopt existing development regulations under the GMA, and the opportunities for the public to comment on that approach.

In March 1994, the City issued a Final Environmental Impact Statement ("FEIS") for the Plan. The FEIS responded to a comment letter from the City Landmarks Preservation Board, which criticized the draft EIS for not discussing the LPO.<sup>35</sup> The FEIS explained it omitted the LPO

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<sup>34</sup> UW Response at 33-34. With this supplemental brief, the City has filed a motion ("Motion") asking the Court to take additional evidence regarding these claims, raised for the first time on appeal, or to strike the portions of UW's briefing making those claims. This part of the City's supplemental brief presumes the Court will take the additional evidence, which the City attaches to the Motion using numbering with the prefix "AE."

<sup>35</sup> AE 5-8.

because “[n]othing in the Plan would change the current status afforded the City’s landmark structures.”<sup>36</sup>

That same month, the City initiated the public process for considering amendments to bring the City’s development regulations into compliance with the new Plan.<sup>37</sup> A document detailing initial amendments explained: “*Most of Seattle’s existing development regulations essential to achieving the Plan are already consistent with the proposals in the Plan.*” However, a limited number of changes are proposed.”<sup>38</sup>

The City repeated that message when issuing a revised proposal in October 1994: “*Most of Seattle’s existing development regulations are already consistent with the Plan;* however, some amendments to the Land Use Code are needed. These amendments must be adopted by the end of 1994, as mandated by the GMA.”<sup>39</sup>

The City kept citizens informed of the many opportunities to participate in finalizing the City’s strategy to comply with the GMA’s

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<sup>36</sup> AE 7.

<sup>37</sup> See AE 9-13.

<sup>38</sup> AE 13 (emphasis added).

<sup>39</sup> AE 19 (emphasis added).

mandate.<sup>40</sup> Given the content and extent of the public outreach surrounding the adoption of Ord. 117430, UW cannot maintain it had no way to know of the City's intent to adopt existing development regulations, including the LPO, to meet the GMA's mandate.

**(2) UW cannot suggest it would have successfully appealed the adoption of the LPO pursuant to the GMA.**

UW suggests that it would have successfully appealed the LPO under the GMA if only Ord. 117430 had included the LPO.<sup>41</sup> That suggestion is false. First, UW had no motive to appeal the LPO in 1994; UW has consistently maintained it is unencumbered by the LPO.<sup>42</sup>

Second, UW cannot substantiate its assertion that its appeal of the LPO would have been thwarted because it pre-dated the GMA.<sup>43</sup> Again, as demonstrated by others' appeal of Ord. 117430, the Board had jurisdiction over pre-existing, unamended development regulations the City used to meet the GMA's command to "adopt" regulations "before" a deadline.<sup>44</sup>

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<sup>40</sup> *See, e.g.*, AE 17-18.

<sup>41</sup> UW Response at 33 n.13.

<sup>42</sup> *See, e.g.*, CP 99 (UW asserting independent control in 2000); UW Response at 28, 40, and 49-50 (relying on *State v. Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980)).

<sup>43</sup> *Cf.* Response at 35-36.

<sup>44</sup> *WSDF*, 1995 WL 903140 at \*4 - \*6.

*Skagit Surveyors*, cited by UW, is distinguishable.<sup>45</sup> Skagit County initially adopted an ordinance to comply with a GMA requirement under Section 110 (not Section 040, at issue here) to adopt development regulations designating interim urban growth areas.<sup>46</sup> After opponents successfully challenged the ordinance before the Board, the County rescinded the ordinance, leaving it with only pre-GMA development regulations that the County never reviewed or declared sufficient to meet its GMA obligations under Section 110.<sup>47</sup> This prompted the opponents to file a motion with the Board challenging the old development regulations.<sup>48</sup> *Skagit Surveyors* ruled the Board lacked authority to review the old regulations—the Board could consider only a claim the County had failed to comply with the GMA by doing nothing to timely adopt the development regulations required by Section 110.<sup>49</sup> That ruling holds no lesson for what the City did in 1994 when it relied on existing development regulations pursuant to Section 040.

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<sup>45</sup> *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 958 P.2d 962 (1998). See UW Response at 35-36.

<sup>46</sup> *Skagit Surveyors*, 135 Wn.2d at 548-50. See Laws of 1993, ch. 6, § 2 (version of RCW 36.70A.110 then in effect).

<sup>47</sup> *Id.* at 550-51.

<sup>48</sup> *Id.* at 551-52.

<sup>49</sup> *Id.* at 558-67.

Finally, UW cannot suggest an appeal would have prevailed.<sup>50</sup>

Again, the GMA requires local jurisdictions to adopt development regulations to “[i]dentify and encourage the preservation of lands, sites, and structures, that have historical...significance.”<sup>51</sup> The LPO is a standard landmark ordinance.<sup>52</sup> UW offers no authority suggesting the LPO violates the GMA. None exists.

**(3) Ordinance 117430’s title was lawful.**

Contrary to UW’s claims, Ord. 117430’s title addresses a single subject and accurately describes the ordinance.<sup>53</sup> The title reads:

AN ORDINANCE relating to land use and zoning and the building code; implementing The City of Seattle’s Comprehensive Plan; complying with RCW 36.70A.040; amending Title 23 of the Seattle Municipal Code and Section 303 of the Seattle Building Code.<sup>54</sup>

The title embraces a single subject—compliance with the GMA’s mandate. It accurately states the ordinance amends only Title 23 and a

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<sup>50</sup> UW Response at 33 n.13 (claiming “[t]here are multiple valid grounds to challenge the consistency of the LPO with the GMA,” but offering only one).

<sup>51</sup> RCW 36.70A.020(13). *Accord* WAC 365-196-450(2)(b)(ii).

<sup>52</sup> The Washington Department of Archaeology and Historic Preservation maintains an Historic Preservation Ordinance Template, with features similar to the LPO’s. *See* <http://www.dahp.wa.gov/sample-ordinances-design-review> (last visited May 1, 2017).

<sup>53</sup> *Cf.* UW Response at 31-32.

<sup>54</sup> Ord. 117430 at 1 (see Appendix).

section of the Building Code, and implements the Plan as required by RCW 36.70A.040: the GMA’s mandate to ensure the City had adopted Plan-implementing development regulations (meaning *all* of them, including the LPO) sometime before a deadline. The title did not need to enumerate the existing development regulations the City determined were already consistent with the Plan—the title listed what was being amended.

**e) If UW were correct that local jurisdictions could not “adopt” pre-GMA development regulations pursuant to the GMA, then local jurisdictions would have faced a difficult choice.**

UW contends no pre-GMA development regulation could have been “adopted pursuant to” GMA.<sup>55</sup> In UW’s view, only those regulations enacted after the GMA’s enactment were “adopted pursuant to” the GMA. Under this view, Washington cities would have faced a difficult choice.

An onerous option would have been to repeal and reenact every existing development regulation, even those already consistent with their new comprehensive plan. This would have required a massive ordinance reenacting every word and map of every code, be it the Grading, Stormwater, Land Use, Zoning, Subdivision, Critical Areas, Tree

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<sup>55</sup> UW Response at 31.

Protection, Historic District, or Landmarks Code, or any other provision meeting the GMA’s definition of “development regulation.”

The alternative would have been to endure the chaos wrought by UW’s view. If UW were correct, the only GMA development regulations in Washington are those sections and subsections traceable back to a post-GMA ordinance. Every other pre-GMA section and subsection would remain a zombie, non-GMA regulation—not legally dead, but functionally useless in the context of the GMA. The only way to discern a zombie from the living would be to research the legislative history of every subsection of every development regulation. Consider Section 2 of Ord. 117430, which amended only Subsection A of SMC 23.24.040.<sup>56</sup> If UW were correct, the remaining pre-existing subsections were not “adopted” pursuant to the GMA—a fact only detailed research today would reveal.

The GMA did not force this choice. Again, consistent with the GMA’s text and DCD’s guidance, to “adopt” implementing development regulations as required by RCW 36.70A.040, cities needed to review their existing development regulations, amend those needed to assure consistency with their new comprehensive plan, and find that all remaining developments were already consistent with and implemented

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<sup>56</sup> Ord. 117430 § 2 (see Appendix).

the plan. The City did that through Ord. 117430. Like all other then-existing development regulations not amended by the ordinance, the ordinance “adopted” the LPO within the meaning of RCW 36.70A.040.

**C. Even if Ord. 117430 failed to “adopt” the entire LPO pursuant to the GMA, post-GMA amendments rendered all relevant sections of the LPO “adopted pursuant to” the GMA.**

Even if UW’s proffered rule about initial adoption of GMA development regulations were valid, it would provide UW no practical relief. The City amended every relevant provision of the LPO—those dealing with landmark nomination, designation, controls, and certificates of approval—after adopting the GMA.<sup>57</sup> Even under UW’s view of the law, those post-GMA amendments rendered each provision “adopted pursuant to” the GMA. UW would be entitled, at most, to a declaration that it is free of only those provisions not amended after the GMA.

UW could have appealed each amended provision.<sup>58</sup> The Board may resolve claims that a city does not comply with the GMA as it relates to a development regulation amendment.<sup>59</sup> If UW believes requiring a

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<sup>57</sup> The legislative history provided at the end SMC 25.12.350 - .660 demonstrate that 38 of those 42 sections were amended after the GMA. The SMC is available at: [https://www.municode.com/library/wa/seattle/codes/municipal\\_code](https://www.municode.com/library/wa/seattle/codes/municipal_code).

<sup>58</sup> *Cf.* UW Response at 34-35.

<sup>59</sup> RCW 36.70A.280(1)(a).

university to obtain permission to alter a landmark structure violates the GMA, UW could have made that case in 1996 after the City amended SMC 25.12.670, which manifests that requirement.<sup>60</sup>

### **III. CONCLUSION**

Through Ord. 117430, the City Council reviewed then-existing development regulations, amended those needing amendment, and found the remainder—including the LPO—already implemented and were consistent with the City’s then-new Plan. That was sufficient to “adopt” the LPO “under” and “pursuant to” the GMA.

Respectfully submitted May 4, 2017.

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<sup>60</sup> See Ord. 118012 § 103 (1996): <http://clerk.ci.seattle.wa.us/~public/CBOR1.htm>

ORDINANCE 117430

AN ORDINANCE relating to land use and zoning and the building code; implementing The City of Seattle's Comprehensive Plan; complying with RCW 36.70A.040; amending Title 23 of the Seattle Municipal Code and Section 303 of the Seattle Building Code.

WHEREAS, in July of 1994 The City of Seattle by Ordinance 117221 adopted its Comprehensive Plan pursuant to the authority of RCW 36.70A (the Growth Management Act) and Article 11, Section 11 of the Washington State Constitution; and

WHEREAS, RCW 36.70A.040 requires The City of Seattle to adopt development regulations that are consistent with and implement the City's Comprehensive Plan; and

WHEREAS, The City of Seattle has reviewed its development regulations pursuant to the requirement of RCW 36.70A.040; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

**Section 1.** The Seattle City Council finds and declares as follows:

(a) The new and amendatory regulations adopted by this ordinance are appropriate and reasonable exercises of the police power that bring the City's development regulations into compliance with RCW 36.70A.040 and RCW 36.70A.065;

(b) The City's development regulations, as amended and supplemented by this ordinance, are consistent with and implement the City's Comprehensive Plan.

(c) The regulations adopted by this ordinance are intended to protect and promote the health, safety, and welfare of the general public and are not intended to recognize or establish any particular person or class or group of persons who will or should be protected or benefitted by them.

**Section 2.** Subsection A of Section 23.24.040 of the Seattle Municipal Code, as last amended by Ordinance 117263, is further amended as follows:

**23.24.040 Criteria for approval.**

A. The Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition or deny a short plat:

1. Conformance to the applicable Land Use Policies and ((Zoning Code or)) Land Use Code provisions;
2. Adequacy of access for vehicles, utilities and fire protection as provided in Section 23.53.005;
3. Adequacy of drainage, water supply and sanitary sewage disposal;
4. Whether the public use and interests are served by permitting the proposed division of land;
5. Conformance to the applicable provisions of SMC Section 25.09.100, Short subdivisions and subdivisions, in environmentally critical areas;
6. Conformance to the provisions of Section 23.24.045, Townhouses, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of townhouses.

## 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 Supplemental Brief and City's Motion to Take Additional Evidence or Strike Two of UW's New Claims** via e-mail by agreement under CR 5(b)(7) to the following parties:

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DATED May 4, 2017, at Seattle, Washington.

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/s/  
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