



**Legislative Department
Seattle City Council
Memorandum**

Date: November 13, 2012

To: Richard Conlin, Chair
Tim Burgess, Vice Chair
Mike O'Brien, Member
Planning, Land Use and Sustainability Committee (PLUS)

From: Michael Jenkins, Council Central Staff

Subject: Clerk's File 309092, Application of Seattle University to prepare a new major institution master plan (MIMP) for the Seattle University Campus, located at 901 12th Avenue (Project No. 3008328, Type IV).

This memorandum sets forth options for PLUS to consider in its evaluation of Seattle University's (SU) proposed Major Institution Master Plan (MIMP) and the appeals of the Hearing Examiner's recommendations. On September 12, 2012, you received a briefing on the scope of the proposed MIMP and a summary of the extensive record supporting the Hearing Examiner's recommendations. You also received a copy of appeal documents filed by William Zosel and Ellen Sollod, (appellants) with responses by SU and a reply by the appellants.

On October 26, 2012, you heard oral argument from three parties – the appellants, Steve Gillespie for SU (respondent) and John Savo (Citizen's Advisory Committee – or CAC). Following oral argument, PLUS indicated they would accept supplemental written briefings from the parties, limited to 5 pages with no attachments. The supplemental briefings are intended to reiterate the points raised by each party in their oral arguments. SU and appellants supplemental briefs are included as Attachments A and B.

The next step in this process is for PLUS members to determine which of the appeal issues should be approved or rejected. This step is important as it frames the extent to which the MIMP will be modified as a result of your decisions. The three options you have are:

- 1) support the appeal issue,
- 2) deny the appeal issue, or
- 3) request additional information or briefings on a selected issue before voting.

If you support any of the appeal issues raised by the appellants, there are several options available:

- 1) Request additional briefings on the impact of a vote to support any of the appeal items,
- 2) Vote to approve the MIMP but reject the elements of the MIMP that were raised in the appeal item you support, or
- 3) Remand the entire MIMP to the Department of Planning and Development (DPD), the CAC, and the Hearing Examiner for additional review and proposals based on your decision.

A remand would delay Council's review and decision on the MIMP, as it would require additional review by DPD, the CAC and the public, prior to a second Hearing Examiner hearing.

To guide your review, I have summarized the appeal issues raised by the appellants and the CAC, SU's response, and have summarized the Hearing Examiner's record; supporting documents are included.

1. Denial of the Major Institution Overlay (MIO) expansion and rezones at the Photocenter Northwest site

The proposed MIMP includes an expansion of SU's MIO boundary between 12th and 13th Avenues along East Marion Street. Attachment C shows the existing MIO boundary and zoning. Attachment D shows the proposed MIO boundaries with the underlying zoning.

This MIO expansion area is along the north side of East Marion between 12th and 13th Avenue. The site includes 4 parcels that are developed with a three story building that houses the Photocenter Northwest gallery, and accessory parking. The site is not owned by SU. If approved, the MIO boundary would be expanded to the north property line of this site. The existing zoning for the site is Neighborhood Commercial 2 with a 40 foot height limit (NC2-40) and Lowrise 3 (LR3). The MIO expansion would apply a MIO 65 and MIO 37 overlay zone on the underlying zoning.

The Hearing Examiner's record includes documents and testimony both in support and in opposition to the MIO expansion. The record shows that SU's original MIMP proposal included an MIO expansion along 12th Avenue from East Marion to East Spring Street, and extending a ½ block to the east. As a result of public concern and SU's own analysis, SU reduced the proposed expansion to the Photocenter Northwest site only. The MIMP includes conditions on the site that require street level uses compatible to those required in the underlying zoning, adherence to design guidelines in the MIMP, and designs that are compatible with previous community planning efforts along 12th Avenue.

As part of the Hearing Examiner's record, reiterated in their appeal documents, the appellants maintain that the site is not needed by SU for their expansion plans, and that incorporating it into the MIO prevents the property from being developed by other parties. The appellants also maintain that the MIO expansion undermines planning efforts along 12th Avenue developed and supported by both the community and by the City in various planning documents. Attachment E shows schematic designs for 12th Avenue that are included in the MIMP.

In support of this MIO expansion area, SU maintains that the MIO expansion crossing East Marion to the Photocenter Northwest site building is needed to reinforce SU’s entrance along 12th Avenue. The MIO currently extends to three of the four corners of this intersection. SU acknowledges that they have no future plans for the site. SU notes that the site is a “*logical location for eventual institutional expansion*“, a position SU reiterated in its oral argument.

It should be noted that MIO designation does not alter the underlying zoning. If a property has an MIO designation and is developed for a purpose outside the scope of the MIMP, the underlying zoning applies. There are properties within SU’s existing MIO that have been redeveloped since 1997, the date that the existing MIMP and MIO became effective.

Committee Direction:

- Support the MIO expansion at the Photocenter Northwest Site _____
- Oppose the MIO expansion at the Photocenter Northwest site _____
- More information is needed _____

2. Denial of the MIO expansion and rezones between 12th and 14th Avenue near East Marion

As reflected in Attachment D, this is the second proposed MIO expansion area east of 12th Avenue. This area is across the street from the proposed MIO expansion at the Photocenter Northwest site and would extend the existing MIO from its current location along 12th Avenue east to 13th Avenue, and along the south side of the East Marion right of way. The underlying zoning in this MIO expansion area is Lowrise 3, which allows single family and multifamily structures up to 40 feet in height; an MIO 37 zone would be applied to these properties.

Attachment F shows information on parcel ownership in this MIO expansion area. In this area, there are 7 residential structures that contain a total of 14 dwelling units. SU owns 5 of 6 units in a 6 unit, two building townhouse development. The remaining units in this MIO expansion area appear to be privately owned. As with Photocenter Northwest, SU has no specific development plans for this MIO expansion area.

Many of the same arguments for and against the MIO expansion for Photocenter Northwest apply to this MIO expansion area.

Committee Direction:

- Support the MIO expansion along 13th Avenue up to East Marion Street _____
- Oppose the MIO expansion along 13th Avenue up to East Marion Street _____
- More information is needed _____

3. Deny the rezone and development standards for the 1300 and 1313 East Columbia sites or remand for further analysis by DPD

SU has proposed rezones and new development standards for 1300 and 1313 East Columbia Street, both of which are located within the existing MIO (Attachment C). 1300 East Columbia is currently developed as the Hospital Laundry site; it is not owned by SU. 1313 East Columbia is the former Coca-Cola bottling plant and is owned by SU; it currently houses offices for SU. At the 1300 East Columbia Street site, the MIMP evaluated development potential on the east ½ portion of the site that is currently developed with accessory parking; this area fronts along 14th Avenue and shares its property line with three residential structures to the north.

The MIMP also evaluated development potential on the west ½ block of the 1313 East Columbia Street site, developed with accessory parking, loading and outdoor storage facilities. This area is surrounded on three sides by rights of way; the fourth side is the west façade of the building.

The current MIMP limits height to 37 feet for both sites. The proposed MIMP increases height limits at both sites; 1300 East Columbia would be rezoned to MIO-55¹ while 1313 East Columbia would be rezoned to MIO-65. For both sites, Attachment G documents 1) the extent of development potential in the underlying zoning, 2) the proposed MIO height for each site², 3) the extent of proposed ground floor and upper level setbacks and 4) how the proposed development potential relates to adjacent residential uses.

No specific proposals have been developed for either site. At 1313 East Columbia, three potential projects have been identified; none have been prioritized for development. No concept designs have been developed for 1300 East Columbia.

The Hearing Examiner's record on development potential that should be allowed at these sites is extensive. In their appeal, the appellants provide two options for the Council – deny the rezone (increase in height limits) and the proposed development standards *or* return the MIMP for additional analysis. Of the 2.145 million square feet of development potential authorized under this MIMP, 1313 East Columbia could accommodate up to 280,000 square feet in development potential, or 13% of the development authorized under the MIMP. It is unclear what development potential could be attained at the 1300 East Columbia site; no concept plans were developed. However, given the size of the developable area and the impact of the development standards on development potential, 1300 East Columbia can accommodate a significant amount of building area.

If the Council does not support the increase in height limits for each site, the proposed development standards, designed to mitigate the bulk and scale of structures of either 55 or 65 feet in height, would no longer be relevant. This would be the basis for remanding this issue to DPD and the CAC to determine appropriate development standards.

¹ MIO 55 is not a recognized zone for a MIO. If Council agrees that the height at this site should be increased to reflect the Hearing Examiner recommendation, the site would have to be rezoned to MIO 65 and conditions imposed limiting the height to 55 feet.

² Subject to additional conditions as to how height is calculated

Committee Direction:

Support the appeal by denying the rezone _____

Oppose the appeal and approve the rezone and development standards _____

More information is needed _____

4. Require additional conditions related to replacement housing requirements in the MIO expansion areas

Rezone criteria in SMC 23.34.124.B.7 authorizes MIO boundary expansions but prohibits expansions when the expansion “ *...would result in the demolition of structures with residential uses or change of use or those structures to non-residential major institution uses unless comparable replacement is proposed to maintain the housing stock of the city.*”.

Attachment D shows SU’s three proposed boundary expansions. The record shows that there are 20 dwelling units in the expansion areas – 6 units are located in the MIO expansion areas along Broadway, while 14 dwelling units are located around the 13th Avenue/Photocenter Northwest expansion areas. The 6 units in the Broadway expansion areas are located in mixed use structures fronting along Broadway south of East Cherry Street. The structures in the 13th Avenue/Photocenter Northwest expansion area include a variety of single family and multifamily structures; SU owns 5 dwelling units in this area.

SU has indicated it has no plans to demolish or convert any of the dwelling units in these MIO expansion areas. Regardless, DPD’s recommendation includes a recommended condition for replacement housing (MIMP Condition 47) requiring SU to provide replacement housing in any of the MIO expansion areas if any residential structure is either demolished or converted to a non-residential major institution use. If SU proceeds with demolition or change of use, prior to the issuance of a permit to demolish or change a use, SU must provide replacement housing that:

- 1) Provides a minimum number of units to those being demolished or changed;
- 2) Provides the same number of two and three bedroom units to those being demolished or changed;
- 3) Contains at least the same gross square feet of the units demolished or changed;
- 4) Develops the units to an equal or greater quality of those demolished or change; and
- 5) Locates the replacement housing within the Capitol Hill/First Hill Urban Center, extended to Martin Luther King Jr Way.

Both the appellants and the CAC maintain that this MIMP condition is insufficient. Both the appellants and the CAC support a broader interpretation of SMC 23.34.124.B.7.

The CAC requests that Council not allow student housing to qualify as replacement housing under SMC 23.34.124.B.7. The CAC made this recommendation in their support of the proposed MIMP and related MIO expansion areas in their report to the Hearing Examiner. The Hearing Examiner's recommendation did not support the CAC's desire to exclude student housing as qualified replacement housing, noting that DPD's condition is supported by SMC 23.34.124.B.7 that specifies that the requirement is triggered when a residential use is demolished or changed to a non-residential institutional use, *not all institution uses*.

The appellants request that Council adopt the following requirement, resulting in a change to MIMP Condition 47:

“before SU may develop or occupy, for any use, any structure within the boundary of the 12th Avenue Urban Village on a site that contains a residential use or a site that is zoned for residential uses, SU must construct housing for the non-university use to replace the housing to be displaced or the housing development potential to be displaced”

SU argues that this is inconsistent with the code, as it would *“require SU to expand, rather than simply preserve, the City's housing stock”*. If Council agrees with this modified condition, it would expand SU's replacement housing responsibility to include both 1) the housing that may be lost as a result of changing or demolishing a residential use, as well as 2) requiring SU to replace the loss of *potential housing* on any site it seeks to occupy. In addition, the appellants seek to expand SU's replacement housing responsibility to any residential property it may occupy within the 12th Avenue Urban Village, a planning area defined and adopted under the City's Comprehensive Plan. While SU's campus lies within the northern ½ of the urban village, SU's MIO boundary is a subset of this larger planning area.

If this condition is adopted, it would require SU to replace any *housing potential* lost by any development that SU seeks within its MIO and the larger 12th Avenue Urban Village, whether or not the underlying parcels were intended to be developed with housing. It should be noted that the underlying Lowrise 3 sites within the 13th Avenue/Photocenter Northwest sites allows for non-residential uses such as schools, churches or other minor institutions. In addition, the commercial zoning at the Photocenter Northwest site and the Broadway expansion sites allow a range of commercial uses in addition to residential uses.

The record also shows that SU's MIO designation has not prevented housing development on property not occupied or used by SU. As detailed in the Final Environmental Impact Statement (FEIS), there are at least 206 privately owned dwelling units located within the existing MIO boundary; 181 were constructed or rehabilitated since SU's 1997 MIMP was approved. It is unknown to what extent this private housing production has contributed to meeting the 12th Avenue urban village's housing target requirements in the City's Comprehensive Plan.

Broadening of the reach of the replacement housing requirement in SMC 23.34.0124B.7 is problematic from a policy and legal perspective. If Council is interested in evaluating the reach of the replacement housing requirement, it should be done as legislative act, and not within the confines of one quasi-judicial action.

Committee Direction:

Support the appellants request to broaden the replacement housing requirement _____

Support the CAC’s request to prohibit student housing as replacement housing _____

Oppose the appellants request to broaden the replacement housing requirement _____

Oppose the CAC’s request to prohibit student housing as replacement housing _____

More information is needed _____

5. Require that advance notice on any development plans be provided to the community, in a time and manner that serves the goals and purposes of the MIO provisions of the zoning code

The appellants have requested that this condition be imposed to enhance public notice of MIMP projects. The request is somewhat vague as it does not state a specific condition when this would be imposed (the size of the project, its location within the MIO, etc.) or any other parameters. The CAC makes a similar request (supported by SU) that a MIMP condition be imposed to require that SU hold a public meeting every five years to review the year reports it develops to the City on compliance with MIMP conditions and plan implementation.

The Hearing Examiner included a condition (MIMP Condition 40) that a Standing CAC be created and maintained to review and comment on all proposed and potential projects prior to submitting of a Master Use Permit. In addition, this review requirement extends to any project over 4,000 square feet. The Standing CAC is also expected to review and comment on projects using the MIMP’s design guidelines. Finally, any project involving an exterior alteration or addition to the 1313 East Columbia site is required to be evaluated and approved by the City’s Landmark Board, which also involves prior public notice. These requirements are in addition to individual project notice at the time a Master Use Permit application is submitted and its decision issued.

MIMP Condition 1 also requires advance review by the Standing CAC of any of the three potential projects at the 1313 East Columbia Street site, including an analysis of alternative sites, if an event center is proposed, prior to submitting a Master Use Permit.

The Hearing Examiner concluded that, with these conditions, the level of public process was sufficient, also noting that the alternative analysis in MIMP Condition 1 exceeded the City’s code requirements for any other project subject to a land use permit; the City does not generally require such an analysis on projects that do not receive City funding.

SMC 23.69.034.F requires that a CAC continue to advise the Institution and the City regarding implementation of an adopted MIMP. In addition SMC 23.69.034.I requires that the institution provide a yearly update to the City and the CAC on its progress in achieving the goals and objectives of the MIMP as well as implementation of specific projects. The expanded conditions have been agreed on by SU, the CAC and DPD. However, it is not clear

why the existing code is inadequate in requiring SU to provide regular updates on MIMP implementation or allow the CAC to review and comment on projects at any point in their development. In addition, the code requirement also provides the opportunity for SU to present a 5-year summary report. If Council sees the need to supersede the code requirement, based on the Hearing Examiner's record or on this appeal item, Council should note that this action should not be viewed as precedent in the development or implementation of other MIMP's.

Committee Direction:

Support the appeal item – develop an expanded notice requirement _____

Oppose the appeal item – reject the need for expanded notice _____

More information is needed _____

Next steps

Depending on the outcome of the appeal items, I will prepare a Findings, Conclusion and Decision document for your review at the December 3, 2012 PLUS committee. If Council agrees to expand the MIO, thereby rezoning the properties in question, legislation will also be required.

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CITY OF SEATTLE

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CITY CLERK

BEFORE THE CITY COUNCIL
OF THE CITY OF SEATTLE

In the Matter of an Application of Seattle
University for Approval of a Major Institution
Master Plan

CF 309092
DPD Project No. 3008328
Hearing Examiner File: MUP-12-013(W)

And the Appeal of Ellen Sollod and William
Zosel of a Recommendation by the Hearing
Examiner for the City of Seattle

APPLICANT SEATTLE UNIVERSITY'S
SUPPLEMENTAL BRIEF

The record contains no facts or legal arguments that should compel reversal of the Examiner's recommendation that the City Council approve the SU MIMP subject to conditions.

A. MIO Expansion East of 12th Avenue and North of Marion Street is Appropriate

At the Committee meeting, the Chair asked why the Council should approve the expansion, given the small size of the MIO expansion area east of 12th and north of Marion, and SU's lack of plans to develop the area. From a planning perspective, this area is a logical place for future University growth, just as the 1300 E Columbia site was when the Council approved it in 1997. Expanding the MIO preserves the flexibility necessary to develop the SU campus in a way that responds to market opportunities and program needs. Moreover, this boundary expansion provides advance notice to all that this area is a logical location for future University expansion. It helps assure a smooth transition to future University ownership and use.

Appellants argued that the Code prohibits expansion except where the applicant makes a "compelling case." This is not correct. The Code requires that expansions be limited and targeted; and the proposed expansions are both.

ORIGINAL

APPLICANT SEATTLE UNIVERSITY'S SUPPLEMENTAL BRIEF

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1 This topic was discussed extensively during the years the CAC reviewed the MIMP.
2 Indeed, the CAC's last action on the topic was to reject Mr. Zosel's motion to oppose the
3 expansion, on a 5-2 vote, with Appellants in the minority. See Hearing Examiner's Exhibit 19,
4 CAC Report at 148. At the Committee meeting, Appellants stressed their opposition only to
5 MIO expansion east of 12th and north of Marion—the Photographic Center and adjacent surface
6 parking lot. SU does not identify that site for future development; as campus planning expert
7 Brodie Bain testified to the Hearing Examiner, universities generally do not plan for
8 development on sites they do not own. However, this area presents significant possibilities for
9 future institutional development. With MIO-65 and MIO-37 zoning, the University could
10 construct more than 75,000 square feet in the MIO expansion area north of Marion.

11 This allows SU to develop this critical intersection to create the best "gateway" possible
12 into the campus—providing more of the "lovely architecture" Appellants praised at the
13 Committee meeting in the Admissions and Alumni building across the street, but also including
14 street-activating ground-level uses. SU does not currently have a strong presence on 12th
15 Avenue north of Marion; allowing the possibility of building institutional buildings on all four
16 corners of the intersection would reinforce SU's identity in the neighborhood.

17 Staff notes that the Code expresses a preference for MIO boundaries in the right-of-way.
18 SU originally proposed to expand the MIO for the entire block of 12th from Marion to Spring,
19 placing the new MIO boundary in Spring Street while excluding the parking lot on 13th and
20 Marion. However, in response to neighborhood comment, SU scaled back the proposal to the
21 northern property line of the Photographic Center and expanded to the east to include the parking
22 lot to ensure adequate lot size for institutional development. It would be ironic if the Council
23 disallowed the smaller expansion because the proposed boundary followed property lines (which
24 the Code allows) rather than a street, when the applicant proposed that boundary only to address
25 community concerns. And while Staff writes that the proposal results in an "irregular edge," the
26 proposal is actually more "regular" than the current MIO. As the Examiner wrote:

1 The minor expansion *would remove the irregular edge that currently exists* and
2 would provide opportunities for improvements in edge conditions. The many
3 recommended conditions in the DPD report appropriately balance the University's
need for the minor expansion with protection of the residential edge and
pedestrian environments east of 12th Avenue

4 Conclusion 4 (emphasis added).

5 This expansion is no different from the expansion in 1997 to include 1300 E Columbia
6 (the Hospital Laundry site). Both involve property SU does not own. Neither involved property
7 for which SU had immediate development plans. Both resulted in MIO boundaries that followed
8 property lines, rather than rights of way. And both make sense as part of a long-term, master
9 planning effort. The Committee should deny the appeal on the question of MIO expansion.

10 **B. The MIMP Provides for 12th Avenue's Continued Development as an Active,
11 Pedestrian-Oriented Main Street for the Village and the University**

12 Appellants argue that 12th Avenue, specifically the Photographic Center located at 12th
13 and Marion, will not be developed in a pedestrian-oriented fashion. As evidence, they point to
14 existing SU structures, constructed under prior MIMPs, that either "turn their back" on the street
15 or properly address the street but fail to include pedestrian-oriented ground-floor uses. Finally,
16 they highlight the self-storage building at the corner of 12th and Madison, intimating (without
17 the support of any facts in the record) that SU had some hand in its design and construction.
18 Appellants never actually discuss the MIMP's plan for SU development along 12th Avenue.

19 The MIMP encourages exactly the sort of retail and pedestrian-oriented development that
20 has occurred in the recent history of 12th Avenue. In fact, the MIMP goes beyond the
21 requirements of the underlying zoning, treating all façades facing 12th Avenue as though they
22 were pedestrian designated, though in reality only the east side and one block of the west side of
23 12th is so designated. The MIMP requires ground-level retail or pedestrian-oriented uses in all
24 buildings facing 12th. Although it was developed under the prior MIMP, SU's most recent
25 housing project, the Douglas at 12th and Cherry, includes ground-floor retail and upper-level
26 student housing—on University-owned land developed by a private developer. Under the

1 MIMP, future SU development on 12th will continue this trend. Because the record is devoid of
2 evidence to the contrary, there is no factual or legal reason to grant the appeal on this question.

3 **C. The Recommended Building Envelopes at 1300 and 1313 E Columbia Adequately**
4 **Protect Neighborhood Interests**

5 Appellants assert, again without factual support in the record, that the MIO building
6 envelopes at 1300 and 1313 E Columbia will produce negative impacts to the neighbors. At the
7 Hearing Examiner hearing, Ms. Bain testified that the MIO building envelopes, conditioned as
8 recommended by the Hearing Examiner, would produce little impact when compared to building
9 envelopes allowed under the underlying zoning. Contrary to Appellants' statement at the
10 Council Committee meeting, this analysis applies with equal force to the houses north of 1300 E
11 Columbia—despite the lack of a right-of-way separating the MIO from neighboring lots.¹ Ms.
12 Bain supported her testimony with graphics, some of which SU submitted to the Committee at
13 the Committee meeting. Because this testimony and evidence is un rebutted, the record provides
14 no factual support for Appellants' requested relief.

15 In addition, there is no need, at the master planning stage, to address the project-level
16 impacts Appellants assert will flow from an event center.² At the hearing, as they did before the
17 Hearing Examiner, Appellants argued that an event center could be located elsewhere on campus
18 (but provided no evidence to counter Ms. Bain's testimony that it could not); that it could be
19 buried (despite the fact that the feasibility studies already assumed a below-grade floor); or that it
20 could be moved into the right-of-way in 13th. Such concerns should be analyzed during project
21 level permitting, which the Examiner's recommended Condition 1 would ensure. Appellants
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24 ¹ Ms. Bain testified to this very issue in her rebuttal presentation to the Hearing Examiner.

25 ² Insofar as Appellants are attempting to assert that the EIS failed to adequately disclose these impacts, the Examiner
26 rejected this contention and this Committee has no jurisdiction to consider their concerns. See SMC 23.76.052.1
("The Hearing Examiner's decision on a DNS or EIS adequacy appeal shall not be subject to Council appeal.").

1 have not established that the Committee should reverse the Examiner and remand to address
2 these speculative, project-level impacts in a master planning document.

3 **D. Hearing Examiner's Condition 47 Properly Implements the Code's Housing**
4 **Replacement Requirements**

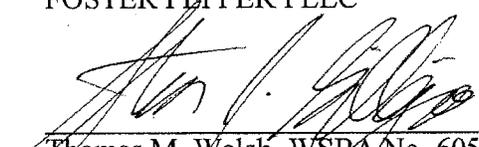
5 Appellants and the CAC hope that the 12th Avenue Urban Village will see additional
6 residential development, a hope SU shares. However, they did not establish that SU
7 development will create a new need for housing in the Village, nor that SU will likely create any
8 impact on the housing stock of the City at all. In this void of factual support, the Council should
9 not go beyond the housing replacement standards articulated in the Council's adoption of the
10 Children's MIMP, as recommended by the Hearing Examiner. Furthermore, neither the
11 Appellants nor the CAC explain how quasi-judicial decisionmakers could legally impose a
12 condition that exceeds Code requirements, as their requested conditions do. Recommended
13 Condition 47 implements SMC 23.34.124.B.7, just as a nearly identical condition did for the
14 Children's MIMP.

15 **II. CONCLUSION**

16 While SU has the utmost respect for the Appellants and appreciates their participation in
17 the process, their appeal lacks support in fact or law. Seattle University respectfully requests that
18 the Committee deny the appeal and send the MIMP to the full Council.

19 DATED this 9th day of November, 2012.

20 FOSTER PEPPER PLLC

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22 _____
23 Thomas M. Walsh, WSBA No. 6053
24 Steven J. Gillespie, WSBA No. 39538
25 Attorneys for Applicant
26 Seattle University

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CERTIFICATE OF SERVICE

I, Helen M. Stubbert, certify that on the 9th day of November, 2012, I caused to be served, by messenger, on each of the following parties, a copy of the foregoing Applicant Seattle University's Response of Appeal:

Lisa Rutzick
City of Seattle, DPD
700 - 5th Ave., Ste. 2000
Seattle WA 98124

William Zosel and Ellen Sollod
910 - 13th Ave.
Seattle WA 98122

DATED this 9th day of November, 2012


Helen M. Stubbert, Legal Assistant

2012 NOV -9 PM 3: 49

In the Matter of Seattle University
Major Institution Master Plan and ~~City Council~~ Rezoning Requests

CF 309092
DPD No. 3008328

Appellants' Brief Summary to the City Council:

Why should the Council modify some of the provisions of the proposed Seattle University MIMP?

With all respect for the current proposal, Council action is necessary because you are the body with the responsibility of ensuring that the Master Plan is consistent with and supports all City law and policies. Ninety-nine per cent of the MIMP is not at issue here. Over the next twenty years SU may grow steadily, with a significant number of new students and, particularly, new resident students. That's good for SU, for Seattle, and for the surrounding neighborhood. However, we ask the Council to include in the MIMP provisions that more completely protect City policy for urban centers and for the 12th Avenue urban village in particular. The capacity of the 12th Avenue urban village to become a vital urban center with a mix of commercial activity and employment along with a range of housing types for diverse populations can be strengthened with several changes to the MIMP. Applicable law and policy require those changes.

The Council should modify the MIMP so that it does more to encourage SU to develop on sites and within the zoning envelope already within its Major Institution Overlay (MIO) area. We ask you to eliminate some proposed MIMP provisions that encourage future SU growth on the east side of 12th Avenue in areas that would displace scarce neighborhood commercial and residential development capacity. Instead, the MIMP should encourage SU to consider building somewhat taller buildings west of 12th Avenue --- using the increased height limits previously requested by and granted to the institution. Those zone height increases were granted, pursuant to Land Use Code MIMP provision, SMC 23.24.124.C.1 in order to mitigate the need for future expansion. Now the City Council should ask SU to take advantage of those greater height limits and should not adopt new MIMP provisions encouraging expansion.

This is not a request that all, or even most, future SU growth east of 12th be discouraged. However, there are sites on four specific blocks that we ask the Council to address. Those four blocks are extremely important to the neighborhood and, on the other hand, SU's growth needs can be met without the adoption of all the provisions for those four blocks requested by the proposed MIMP.

1. The Photographic Center Northwest (PCN) boundary expansion site.

The proposed MIMP regarding this site requests: (1) expansion of the MIO boundary, and (2) a rezoning of the west portion of the site --- the NC40 part of the site. Why is this proposal contrary to City law and policy? The Comprehensive Plan, the Central Area Neighborhood Plan, and the Land Use Code all contain provisions calling for the protection and support of a critical mass of non-institution sites within the core of the urban village. The policy, as expressed in SMC 23.34.076, states that, in order for a NC zone to succeed there must be adequate space with opportunity for commercial activity.

Please see the sketch (EX 28) showing the extent to which NC-zoned sites in the 12th Avenue urban village (12th from Union to Jackson) are controlled by institutions. Not only SU, but Seattle Academy, King County, Pioneer Human Services, the Archdiocese, and King County control a significant majority of

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the street-fronting real estate. The MIO boundary expansion here may appear small, but in the context of an urban village with a limited capacity for non-institutional growth it is important. And, it is in a key location. SU, on the other hand, has described no use for this expansion area. If the Land Use Code provision discouraging the expansion of institutions' boundaries has any meaning, it must apply here. We ask the Council to reaffirm that that Code provision is the commitment that it appears to be.

Please listen to the Hearing testimony of Ellen Sollod for a brief and illuminating description of the impact of existing institutional uses on the street (particularly in the few blocks on either side of the PCN site) and the importance of supporting diversity of ownership and diversity of uses.

Councilmembers are asked to please consider the 12th Avenue Plan, adopted by Ordinance, and in particular to read the Plan cover letter of Mayor Rice which accompanies the Plan in the Hearing record, as well as the goals and objectives section of the adopted Plan. For the last twenty years it has been the policy of the City to support non-institutional development on and near 12th Avenue for the specific purpose of counterbalancing the impact of institutional development. The City sold, at low-market prices (or, in the case of the most recent property transfer, at 12th and Jefferson --- conveyed at no cost to Capitol Hill Housing) property which the City had purchased (through a land exchange) from SU. On 12th Avenue the City has required mixed-use developments as part of a strategy to jump-start a neighborhood business district that has languished over the previous decades. Through this program property that SU had controlled and that was held for possible future use has now been converted into new homes and businesses. The City spent property sale proceeds for street improvements on and near 12th to create an environment and opportunities for an urban village main street. In other words, considerable City and neighborhood effort and money have been employed in pursuit of a program, to which the currently proposed MIO boundary expansion is contrary. See the "development" section of the 12th Avenue Plan which describes the neighborhood as having seen relatively little private investment because "(l)ying among major institutions like Seattle University, Providence Medical Center and King County, private investors have held property in anticipation of institutional purchase.," 12th Avenue Plan page 11.

The PCN site consists of a building in an NC3 zone and an undeveloped portion in an LR3 zone. The record does not quantify the loss of the capacity for future non-institutional residences on the PCN site, either in the NC portion or the LR3 portion. However, the LR3 lot on 13th Avenue is similar in size to that of a site one block to the south sold by the City and recently developed by Homesight with nineteen condominium homes for qualified workforce-income buyers.

The Homesight development, along with a small condo development on 13th and four mixed-use buildings on 12th, including the most recent Capitol Hill Housing project at Jefferson, were all developed pursuant to the 12th Avenue Plan. The development of the neighborhood-serving mixed use "main street" of the urban village is unfinished. It would be contradicted if, now mid-stream, an important piece of real estate is folded into the institution's MIO. The MIMP promise that future SU development on the site would have pleasing architecture and pedestrian uses is not sufficient. A University student counseling office, e.g., would comply with the proposed MIMP provisions. However, a vital urban village depends on adequate capacity for a *range of diverse uses for a range of populations, students and non-students*.

In addition to a boundary expansion, the MIMP proposes a zone height increase --- *for SU alone, and no other developers* --- from 40 to 65 feet in the 12th Avenue-facing NC-zoned portion of the site. By increasing the height, for SU only, the proposed MIMP would create a condition where the property is more valuable to SU than it is to others, and sale to SU is incentivized. This land-banking through preferential rezoning supports the condition that the 12th Avenue Plan is trying to overcome.

On the other hand, the proposed MIMP contains no indication of a need by SU for the PCN site. City policy for 12th Avenue is not served by incentivizing more land-banking by institutions. Other property already within the SU MIO on 12th Avenue being held for possible future development by SU includes the self-storage building at Madison. Not owned by the University, but included in the MIO at a previous request of SU is the gas station site at 12th and Cherry. Neither of those sites contributes to the strength of a NC pedestrian-oriented street. The MIMP should rather encourage SU development there.

The Land Use Code, 23.24.124.C.1 states that increases to height limits may be considered *where it is desirable to limit MIO district boundary by expansion*. Here a height increase would be granted to encourage expansion. Instead, SU should be encouraged to take advantage of the height increases already granted to it, particularly west of 12th Avenue. Development proposed in this MIMP leaves much of the allowed height west of 12th on the table.

Other Land Use Code provisions are violated by the zone height increase for a part of the PCN site. One developer --- SU --- would be given permission to develop up to 65 feet which is 40% greater than adjacent properties. The zone boundary "transitions" to the lower adjacent height without the separation of a street, an alley, or a whisker. The specific Code rezone criteria that would be violated by the granting of this height increase are set forth in Appellants' Closing Statement to the Hearing Examiner. If increasing the height limit for 12th Avenue is to be considered in the future it should be part of a process that includes consideration of all properties and all property owners and developers.

2. The boundary expansion area on 13th between Marion and Columbia

If this proposed boundary expansion occurs, Appellants ask the Council to include provisions in the MIMP to discourage SU from developing student housing here. This can be done through a mandate for replacement housing.

Appellants agree with SU that, for many reasons, more student housing is good. The disagreement is this: SU housing that displaces existing housing, or that displaces the opportunity for new non-institutional housing is not good for the vitality of the neighborhood and does not contribute to urban center growth goals. (See Seattle Comp. Plan Goal LU 11 and see the growth targets for the 12th Avenue Urban Village.) The record in this matter demonstrates that there are ample locations where SU can develop all of the future housing it may need, even if the University grows to the largest extent contemplated. For the sites on 13th north of Columbia, on either side of Marion and including the PCN site *no plans* are described in the proposed MIMP. That being the case, the Council should include in the MIMP a policy that reinforces the professed lack of need by SU for developing in this area. The Hearing record states there are nineteen existing dwelling units in this area. The capacity for the development of new units is much greater than that. Non-institutional housing development in these locations should be preferred by the City and can be encouraged by a MIMP provision requiring housing replacement if housing or housing capacity is displaced by student housing.

The most vital neighborhood will be one that has ample opportunities for new housing for non-institutional residents, similar to the Homesight or Capitol Hill Housing developments, AND new student housing in the locations that already are provided in the existing Seattle University MIO.

It is not a zero sum proposition as SU argues. SU's argument is based on the premise that there's no harm to the overall housing stock of it builds student housing. The housing stock in the city as a whole, SU argues, will not be decreased if SU builds student housing in a MIO expansion area. However, City policy is intended to protect the capacity for new housing opportunities *in the neighborhood*, not in the city as a whole. The neighborhood-serving housing stock would be decreased if SU chose to build dorms that

displace non-institutional housing just as it would be if a medical center were to build a clinic. The vitality of 12th Avenue is not supported if the MIMP encourages dorms to be developed in this MIO expansion instead of other available locations. Appellants are not asking for a provision that will result in the burdening of SU with the responsibility of building many units of new housing. We are asking for a provision that will only require replacement housing if SU chooses to build student housing in this limited 13th Avenue boundary expansion location rather than other locations. Thus, this would be a requirement the University should be able to avoid.

3. The height increases for the landmark Coca Cola Building block and for most of the block bounded by 14th, E. Columbia, 13th, and E. Marion.

The proposed MIMP includes height increases for all of the Coca Cola Building block and part of the block to the north. The City Council should not approve these height increases unless and until there is an unbiased examination of the need for the height increases. The law requires an "impartial discussion of significant environmental impacts... (informing the decision makers and the public of reasonable alternatives ... that would avoid or minimize adverse impacts or enhance environmental quality," SMC 25.05.400. That is the assigned duty of the EIS and in this case it was not done. In regards to development alternatives the EIS consisted of erecting straw men to destroy in lieu of consideration of serious alternatives. Council is asked to read the Appellants' Closing Statement to the Hearing Examiner for a more complete statement of ways in which unbiased information necessary to determine these important issues is lacking and should be requested by the Council before making a decision.

The most important reasonable alternatives to the impacts presented by the proposed development on these two blocks are the alternatives of developing elsewhere, concentrating institutional development as the Land Use Code requires. At the Hearing, SU presented opinions of its consultant intended to support an argument that taller buildings on the present campus or building in several unprogrammed locations on the present campus would be too costly or impractical. Those opinions, introduced at a late stage in the MIMP development process should not substitute for an impartial and complete consideration of alternatives.

Future development uses on the two 14th Avenue sites, according to SU's proposed MIMP, include housing, academic space, or a combination of the two or, on the Coca Cola Building site, an event center. From the record it appears that, if the requested height increases are granted for these two sites, it would be possible to provide, over and above the amount that could be developed within the existing zoned height, approximately 150,000 square feet of additional space. This is less than eight percent of the total amount of space SU predicts it might need for possible future program needs.

Appellants ask the Council not to make the important decision of increasing the height on the 14th Avenue sites without a more complete examination of the alleged difficulties of developing taller buildings that are at least somewhat closer to the height allowed by the zoning on the campus west of 12th Avenue. There also should be an unbiased and complete consideration of building in several unprogrammed locations west of 12th. (Please see EX 26 and hear the Hearing testimony of Scot Carr for a description of several possible alternative locations and please see Appellants' Closing Statement from the Hearing for a summary.) Without the height increases proposed in this MIMP SU would be able to provide the "lost" eight percent by: (1) increasing somewhat the height of other planned buildings and, (2) developing on other sites that are within the MIO and which are not identified as sites for future development. (It's important to say that Appellants are not suggesting development on valuable campus open spaces.)

Another possible use proposed by SU for the Coca Cola Building is event center. One possible solution discussed during the CAC deliberations that would allow an event center to be built on this block with less

impact on the landmark Coca Cola Building and on the adjacent residential neighborhood would be to develop the event center partially below grade, (as, for example, the event center known as Key Arena.) An additional mitigating strategy, discussed but neither adopted nor rejected by the CAC, would be to move the event center development somewhat farther west so that a small portion of the 13th Avenue ROW were used. That street is already truncated a few blocks south and, as the MIMP recognizes, presents an opportunity for narrowing with landscaping and enhanced pedestrian features. This solution would lessen the impact of the event center and could result in a 13th Avenue that better serves community needs than does the broad stretch of asphalt. We ask Council to include in the SU MIMP a request that SU further explore these specific mitigation strategies if development is pursued on this site.

4. The height increase for most of the 14th/Marion/13th/Columbia block.

As stated, the proposed height increase provides only a small increase in space for future development and the "loss" of the space created by denying the height increase could be made up in other locations.

As does the request for the PCN site, this rezone request increases the height for only a portion of the block, leaving a lower height limit for the northern part of the block. That portion of the block is zoned LR3 and currently has a mix of single family and small multi-family residences. There is no street or alley or other feature providing a reasonable transition. The Land Use Code rezone criteria violated by the requested rezone are set forth in Appellants' Closing Statement submitted to the Hearing Examiner.

Conclusion:

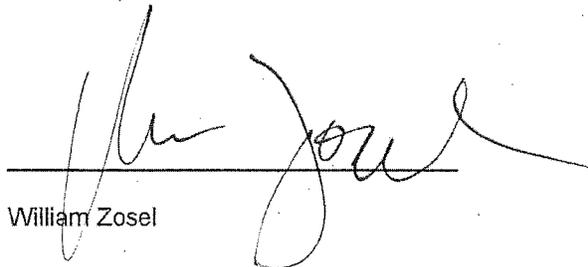
A. The Council should deny the proposed MIMP boundary expansion for the Photographic Center Northwest site, or, alternatively, if the boundary expansion is approved, deny the request to increase the current zone height limit at this time.

B. The Council should discourage SU from developing in the proposed northeast MIO boundary expansion areas including the PCN site and the other sites on 13th Avenue (the boundary expansion area identified as Area A by the Hearing Examiner's Decision). The Council should do this by a MIMP provision that requires the institution to provide replacement housing elsewhere in the 12th Avenue urban village if the institution chooses to develop in this area including choosing to develop on sites that have existing housing and sites that could support future non-institutional residential development.

C. The Council should deny the proposed zone height increases for the two blocks on 14th Avenue between Cherry and line south of Marion unless and until there is an adequate impartial examination of the ability of the institution to meet its needs on alternative sites within existing zoned capacity.

Respectfully submitted by William Zosel and Ellen Sollod, Appellants

November 9, 2012



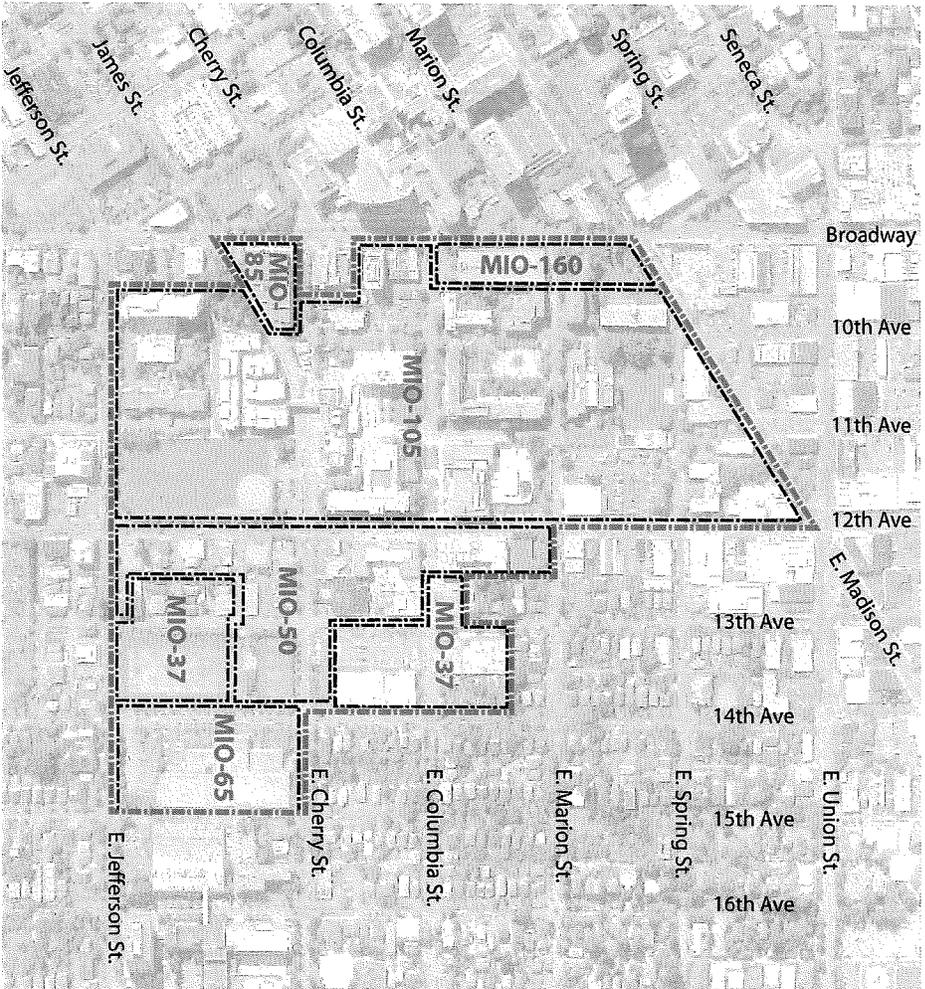
William Zosel

DEVELOPMENT STANDARDS

Existing MIO Boundary and Zoning

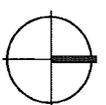
This page shows the existing MIO boundary and zoning as approved in the 1997 Major Institution Master Plan. Height limits for the existing site plan range from 37 feet to 160 feet.

The area included within the existing MIO boundary is approximately 3,090,720 sf (70.95 acres) including all public rights-of-way. The parcel area within the MIO boundary (excluding ROW) is 54.9 acres, including both Seattle University and non-university owned land.



--- Major Institution Overlay (MIO) zones
 - - - Existing MIO boundary

Scale = 1" = 600'

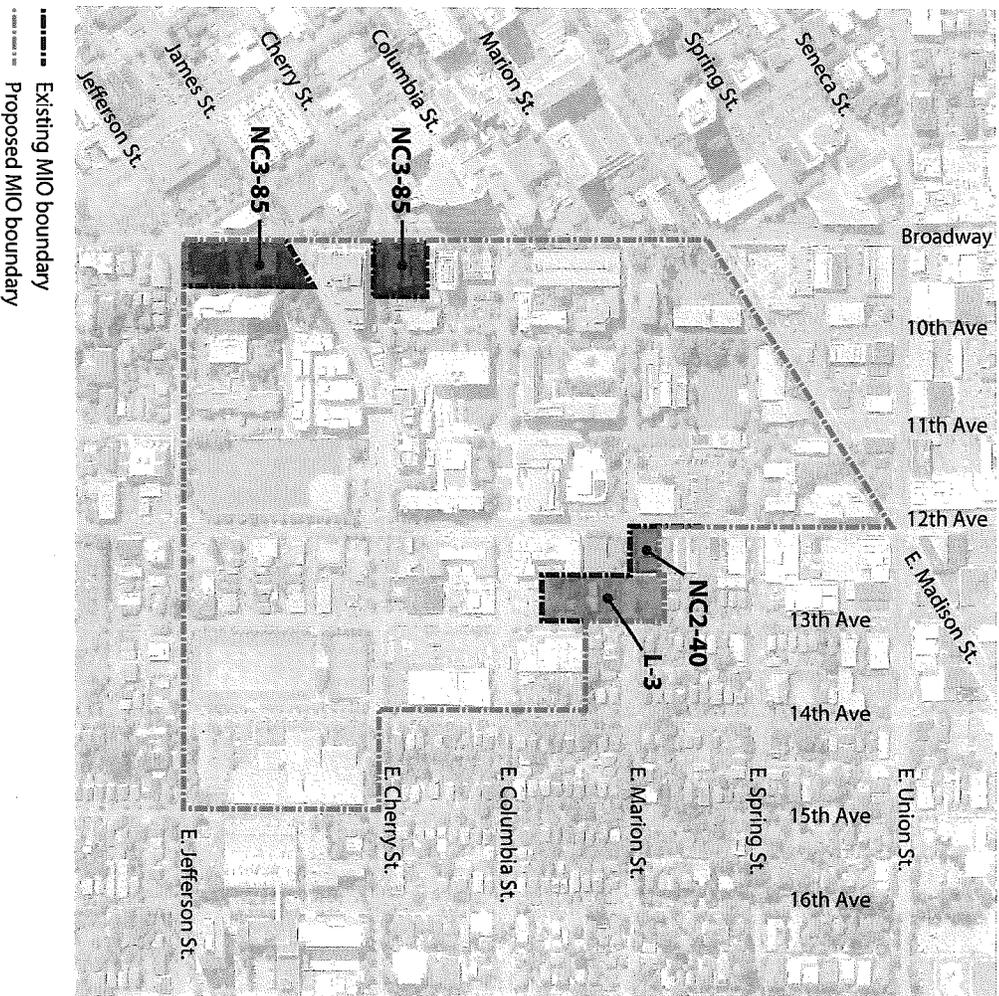


Proposed MIO Boundary Expansion

The plan on this page shows the existing Major Institution Overlay (MIO) zones along with the expanded MIO District boundary. Seattle University proposes this expansion of the MIO boundary to allow flexibility and the opportunity for partnerships for future growth and development. By expanding the MIO boundary, Seattle University will have the opportunity to help the neighborhood create a more vital and engaged urban village.

Proposed MIO adjustments are shown for an area centered on E Marion Street between 12th Avenue and 13th Avenue as well as two areas along Broadway between E Columbia Street and E Jefferson Street. The underlying zoning for these areas is called out on the plan.

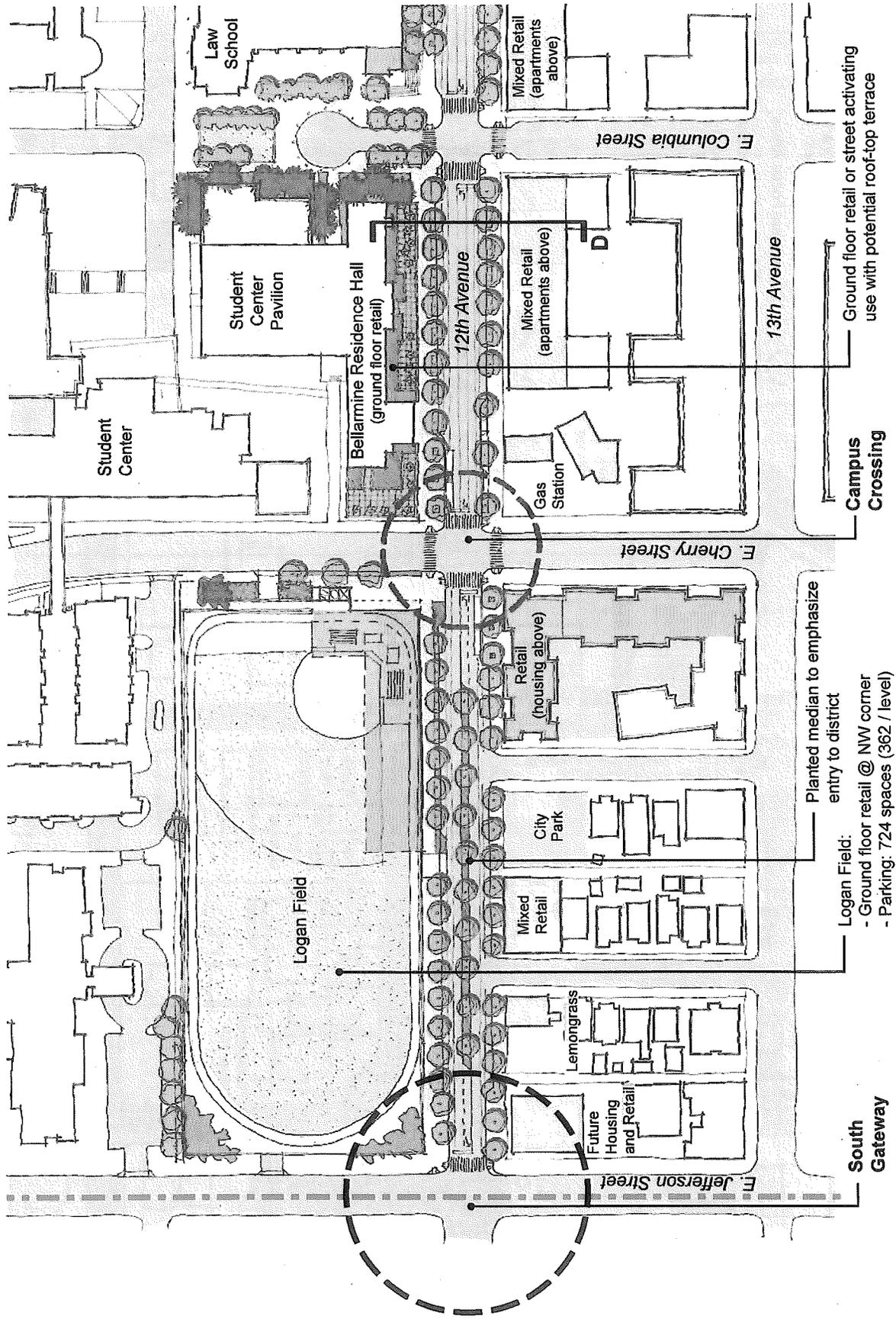
The area included within the proposed MIO boundary is approximately 3,264,943 sf (74.95 acres) including all public rights-of-way. The parcel area within the proposed MIO boundary (excluding ROW) is 56.9 acres, including both Seattle University and non-SU owned land. This is a 2.0 acre increase (3.6%) over the existing parcel area within the MIO boundary.



(D)

CAMPUS AND COMMUNITY CONTEXT

URBAN DESIGN STRATEGIES FOR 12TH AVENUE

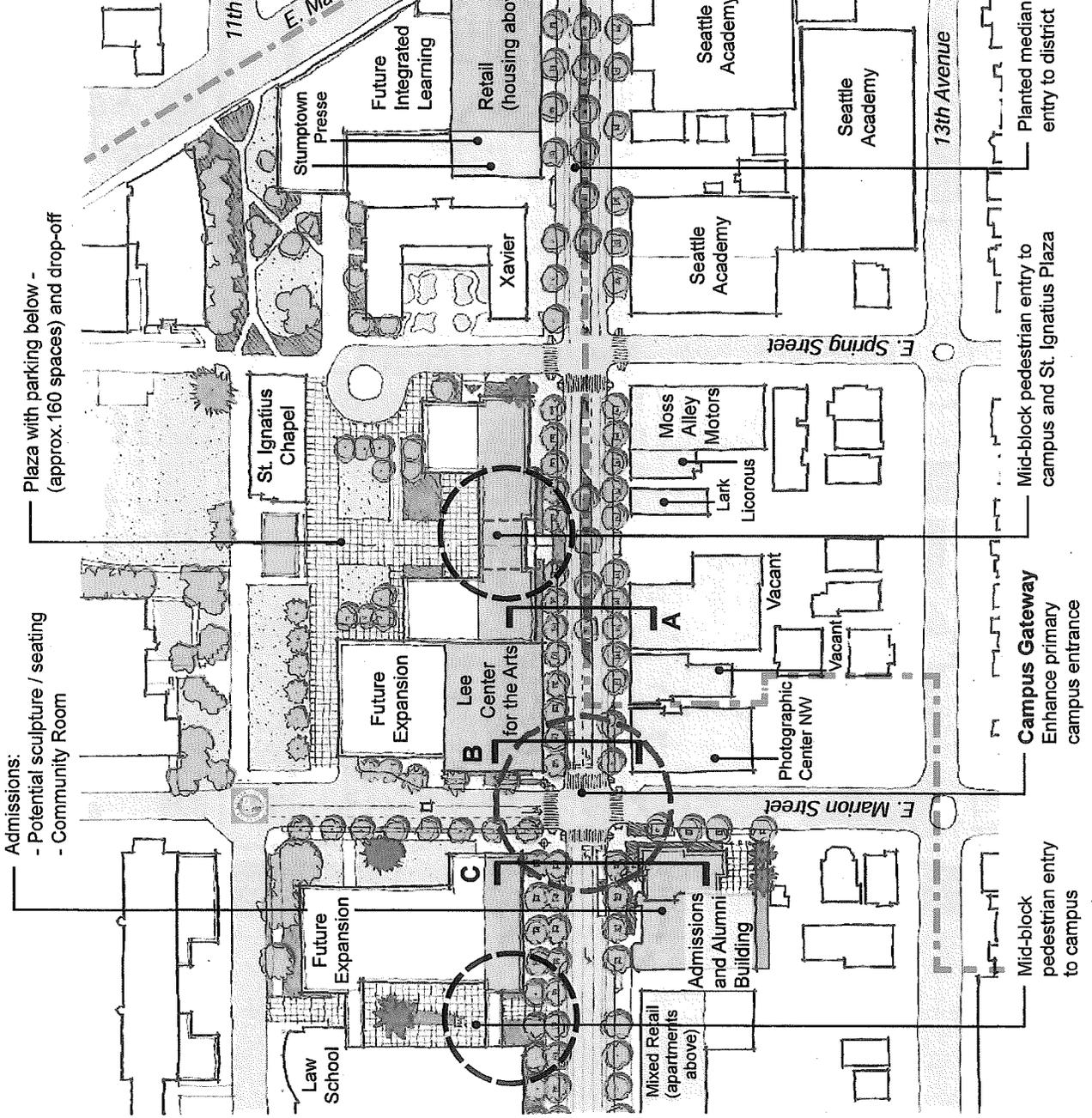


June 2011

CAMPUS AND COMMUNITY CONTEXT

Legend

- University Retail and Street Activating Uses
- Non-University Retail and Street Activating Uses
- 12th Avenue Focus Areas
- Proposed MIO Boundary



Plaza with parking below - (approx. 160 spaces) and drop-off

Admissions:
- Potential sculpture / seating
- Community Room

Planted median to emphasize entry to district

Mid-block pedestrian entry to campus and St. Ignatius Plaza

Campus Gateway
Enhance primary campus entrance

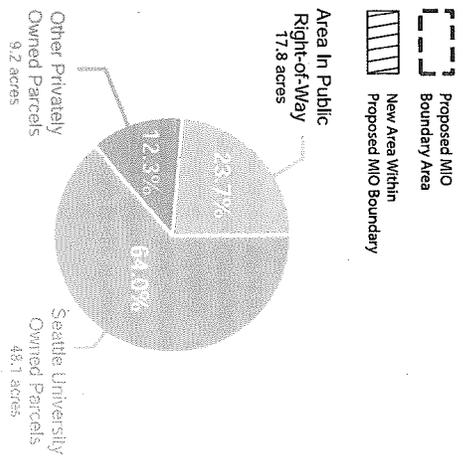
Mid-block pedestrian entry to campus

June 2011

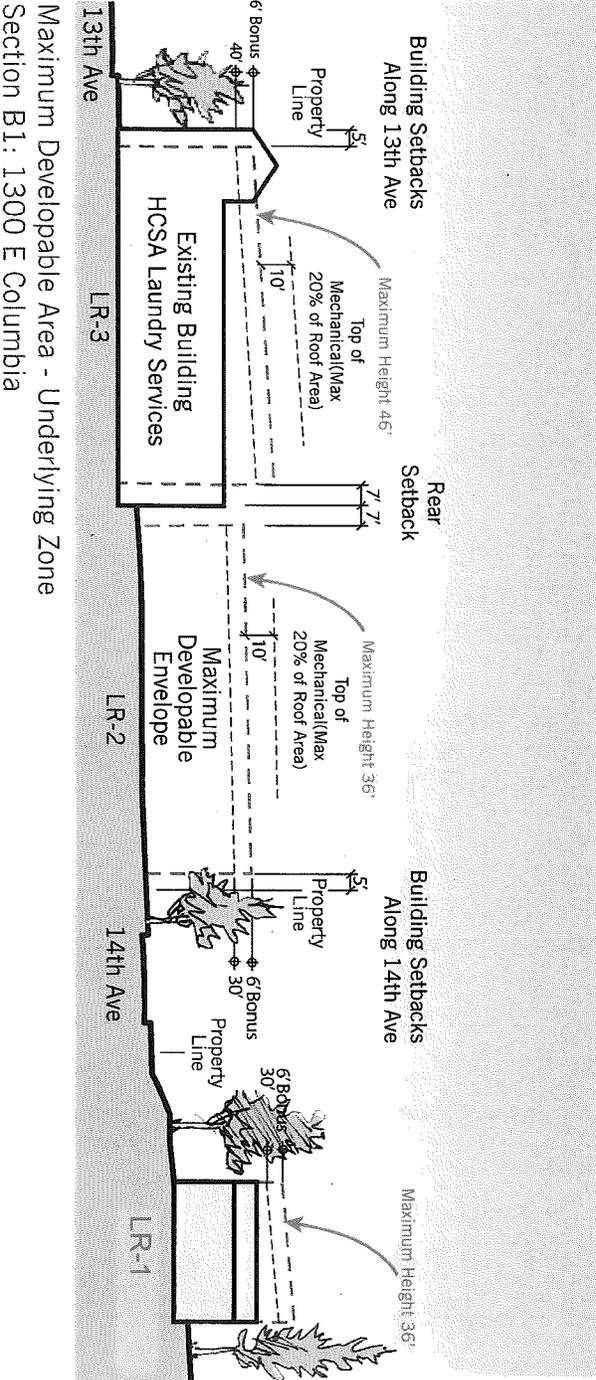
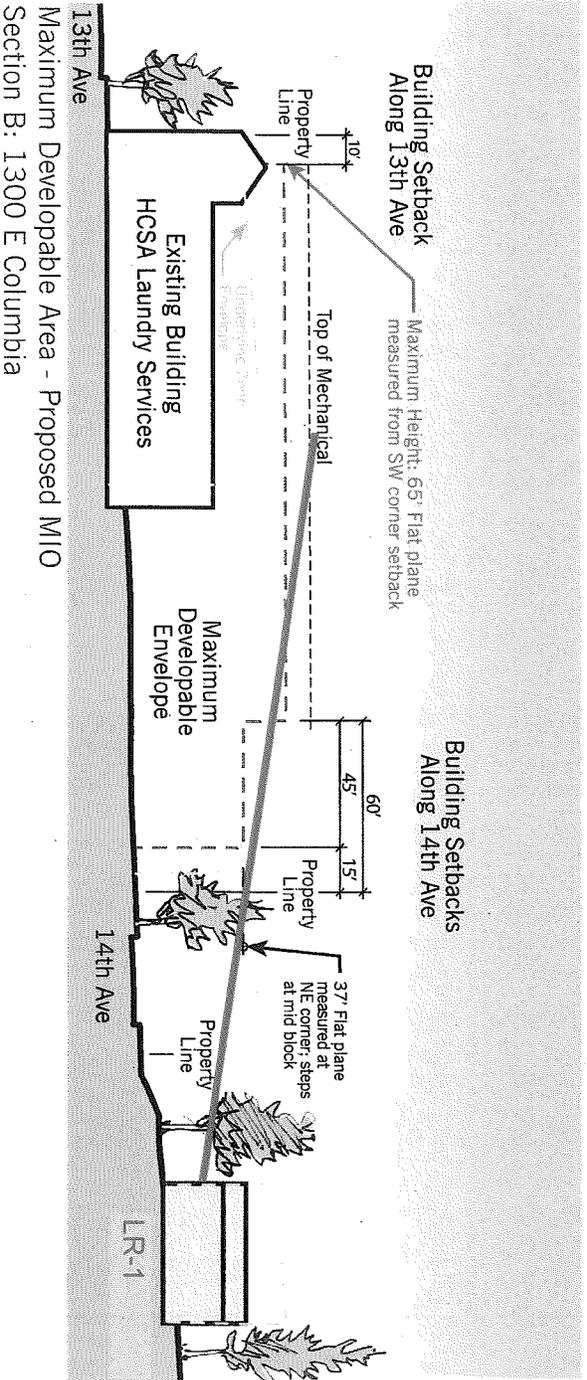
Proposed MIO Boundary

The plan on this page identifies the areas that have been added to the proposed MIO boundary. The total parcel area of the proposed MIO boundary is 57.3 acres. This is an increase of approximately 2.4 acres, or 4.4%. This master plan does not project any specific future acquisitions within MIO, though it is possible that any of these parcels may be added to the university-owned land in the future.

Seattle University owns approximately 64% of the land within the proposed the MIO. Land owned by other private entities represents another 12% of the total. The remaining 24% is land in the public right-of-way.



DEVELOPMENT STANDARDS



6

DEVELOPMENT STANDARDS

