

The Use of ‘Shall’, ‘Should’ and verb choice in GMA policy documents, including comprehensive plans

Excerpt from: *Snoqualmie, et al., v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order, issued 3/1/93.

Moreover, the Board must determine the weight and meaning that are attached to the words 'shall' and 'should' in the CPPs (county-wide planning policies). ^[12] **Is 'shall' directive? Is 'should' simply advisory?** Under the GMA, the very nature of policy documents has changed . Policy statements, in both the CPPs and comprehensive plans, are now substantive and directive. The Board therefore holds that **the use of either auxiliary verb in a GMA policy document must be construed to have specific directive meaning.**

While counties are free to use either, both, or neither of these verbs in the CPPs (just as cities and counties are free to use either, both or neither in comprehensive plans), **the difference in meaning between 'shall' and 'should' is now one of degree rather than kind.** For instance, the King County CPPs use the word 'shall' 290 times and the word 'should' 48 times. While even the 'shoulds' now have directive and substantive meaning, the 'shalls' impart a higher order of substantive direction. If the county means to provide advice rather than substantive direction with a CPP, then it is obliged to explicitly qualify such use of the word 'should' or to clarify the intent of the words selected in a preamble or footnote.

The Board also notes that **great care should be taken in selecting the action verb as well as the auxiliary verb.** For example, consider the variations when coupling the action verbs "adopt" and "study" with the auxiliary verbs 'shall' and 'should'. The effect of the different combinations in ascending order of directiveness would be:

- "Cities should study"
- "Cities shall study ..."
- "Cities should adopt..."
- "Cities shall adopt..."

Snoqualmie, Footnote omitted. Bold emphasis added.

Comprehensive Plans, Subarea Plans, Master Plans, development regulations and development permits under the GMA

Excerpt from *Laurelhurst v. City of Seattle*, CPSGMHB Case No. 03-3-0008, Order on Motions, issued 6/18/03

The Board's inquiry here must begin by examining three distinct but closely related questions: What is a subarea plan? What is a Master Plan? Finally, how do these two concepts fit into the hierarchy of decision-making under the GMA?

What is a subarea plan?

[S]ubarea plans are, in effect, portions of comprehensive plans. Like comprehensive plans, subarea plans are land use policy documents that purport to guide land use decision-making and they must be adopted in compliance with the goals and requirements of the Act. But how do comprehensive plans, including subarea plans, "purport to guide land use decision-making"?

The Board has consistently indicated that **plans, including subarea plans, are not development regulations**. In *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (FDO), Mar. 1, 1993, at 12, the Board explained:

[The GMA] definition of policy refers to "principles," "plans" or "courses of action" pursued by government. Such definitions describe the nature of . . . the comprehensive plans of cities and counties. Policy documents such as . . . *comprehensive plans are not "development regulations"* under the GMA.

(Emphasis supplied).

The Board has also clarified: "*Comprehensive plans do not control the issuance of permits nor directly control the use of land. Rather, comprehensive plans are directive to development regulations and capital budget decisions.*" (Emphasis supplied). GMA comprehensive plans and subarea plans guide land use decision-making by providing policy guidance and direction to development regulations that, in turn, must be consistent with and implement the plan. These development regulations, in turn, directly control the use of land and govern over proposal review and approval and the issuance of permits.

What is a Master Plan?

There is precedent in past and current planning practice to use the term "Master Plan" to describe **either** a general policy document **or** a site-plan. It is in the former context that the Board included the term in *WSDF III* as comparable to neighborhood plan, community plan, *etc.* Although the Board is unaware of any local governments in the state that refer to a neighborhood or subarea plan as a "master plan" there is nothing in

Agenda Item 8.b

the GMA that prohibits them from doing so. However, the mere fact that some jurisdiction might take that option does not appropriate the term “master plan” from its other common usage.

Just as common and valid a use of the term “master plan” is a scale architectural site plan indicating site development details such as building location, mass and setbacks, parking location and dimensions, grading and tree retention or landscaping standards, *etc.* In fact, the only use of the term “master plan” or its derivative “master planned” that the Board has seen employ this “site plan” meaning. Such site plans may have varying degrees of specificity, depending upon how much detail is stipulated “up front” or reserved for later determination. It is not uncommon for a “preliminary” site plan approval, such as Preliminary Planned Unit Development or Preliminary Subdivision, to describe the site development details with some particularity, with subsequent details determined in later phases of review. Only after this “site plan approval” are “construction permits,” such as grading and building permits, subsequently issued.

Master Plans and Subarea Plans within the GMA Planning Hierarchy

The above review of prior Board decisions, and the discussion of the master plan and subarea plan concepts, helps clarify how the concept of a “master plan” fits into the GMA decision-making regime, and therefore answer the jurisdictional question presently before the Board. An updated and clarified statement of the GMA Planning Hierarchy is:

The land use decision-making regime in counties and cities fully planning under GMA is a cascading hierarchy of substantive and directive policy. This policy direction flows first from the planning goals and requirements of the Growth Management Act to county-wide planning policies (CPPs) (RCW 36.70A.210) and from the goals and requirements of the GMA and the SMA [Shoreline Management Act] to the comprehensive plans and development regulations of counties and cities. Policy direction then flows from CPPs to comprehensive plans, and then from comprehensive plans, including subarea plans (if any), to development regulations. Finally, direction flows from development regulations to *land use decisions* and other planning activities of cities and counties. *See* RCW 36.70A.120. Land use decisions, governed by RCW 36.70B, include both site plan approvals, (including but not limited to planned unit developments, conditional use permits, and site master plans), as well as construction approvals, such as grading and building permits.

Laurelhurst, footnotes omitted, bold emphasis added.