

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

LAURELHURST, ET. AL.,	)	
	)	<b>Case No. 03-3-0008</b>
Petitioners,	)	
	)	<i>(Laurelhurst)</i>
v.	)	
	)	
CITY OF SEATTLE	)	
	)	<b>ORDER ON MOTIONS</b>
Respondent,	)	
	)	
and	)	
	)	
UNIVERSITY OF WASHINGTON,	)	
	)	
Intervenor.	)	
	)	

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**I. Background**

On March 5, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Laurelhurst Community Club, Friends of Brooklyn, University District Community Council, Northeast District Council and University Park Community Club (collectively, **Laurelhurst** or **Petitioners**). Petitioners challenge the adoption by the City of Seattle’s (the **City** or **Seattle**) adoption of Ordinance No. 121041 adopting the Campus Master Plan, rezoning land within the University of Washington (the **University** or **UW**) Major Institution Overlay Boundary (**MIO**), and amending the City’s Official Land Use Map, and Ordinance No. 12020, amending the Seattle Comprehensive Plan to incorporate amendments proposed as part of the 2002 Comprehensive Plan annual amendment process. PFR, at 1-2.

On March 17, 2003, the Board issued a “Notice of Hearing” (the **Notice**) in this matter, which set April 17, 2003 as the date for the prehearing conference. Included in the Notice was a Tentative Schedule. Notice, at 3.

On March 26, 2003, the Board issued a “Notice of Revised Date for Prehearing Conference and Amended Tentative Schedule” (the **Notice of Revised Date**) which stated that “. . . the University of Washington is not a respondent in this matter” and invited the University to submit a motion to

intervene. Notice of Revised Date, at 2.

On April 15, 2003, the Board received from the University a “Motion for Leave to Intervene” together with the “Declaration of Theresa Doherty in Support of Motion for Leave to Intervene.”

On May 1, 2003, the Board issued an “Order on Motion to Intervene” which granted the University’s Motion to Intervene.

The Board conducted a prehearing conference in this matter on May 5, 2003 in the Board’s office in Suite 2470, 900 Fourth Avenue in Seattle. Later this same date, the Board received a request from Petitioners requesting that the deadline for responses to motions be moved by one day in view of the Memorial Day holiday.

On May 7, 2003, the Board received “Petitioner’s Memorandum Respecting Status of University of Washington” and “Brief on the Party Status of the University of Washington.

On May 9, 2003, the Board received “Clarified Issues Statement Pursuant to Schedule set by Board at Prehearing Conference.”

On May 13, 2003, the Board received “Response to Petitioner’s Clarified Issues Statement.” Later on this same date, the Board received “Reply of Laurelhurst Community Club, *et al.*, to Joint Response of City of Seattle and University of Washington to Petitioner’s Clarified Issues Statement.”

On May 15, 2003, the Board issued the “Prehearing Order” (the **PHO**), which clarified the party status of the University, adopted a Final Schedule and set forth the legal issues in this case.

On May 19, 2003, the Board received from Laurelhurst a “Motion for Reconsideration in Light of Material Factual Error in Prehearing Order.”

On May 20, 2003, the Board received “Response of City of Seattle and the University of Washington to Petitioner’s Motion for Reconsideration.”

On May 21, 2003, the Board issued “Amended Prehearing Order and Order Denying Motion for Reconsideration” (the **First APHO**) which included an Amended Final Schedule.

On May 27, 2003, the Board received “Respondent’s and Intervenor’s Motion to Dismiss Petition for Review” (the **Joint Motion**) together with the “University of Washington Master Plan Seattle Campus, Final Plan” dated September 2001, and copy of Seattle Council Bill No. 114424.<sup>[1]</sup> On this same date, the Board received “Petitioners’ Motion to Complete the Record Index, or in the

Alternative, to Supplement the Record, and memorandum in Support” (the **Petitioners’ Motion to Supplement**). Attached to the Petitioners’ Motion to Supplement were proposed Supplement Exhibits 8.1 through 8.11.

On June 3, 2003, the Board received “Petitioners’ Response to Respondents’ Motion to Dismiss and Petitioners’ Motion to Further Supplement the Record in Light of Allegations Made by City and University” (the **Petitioners’ Response**). Attached to the Petitioners’ Responses were Appendices A, B, and C. Appendix A is a table of population figures for Washington State cities and counties, dated 2001. Appendix B consists of fifteen documents from the City’s Record, each identified with the Record Number. Appendix C is the “Declaration of Peter J. Eglick in Opposition to Motion to Dismiss and in Support of Motion to Supplement the Record” (the **Eglick Declaration**). Also on this date, the Board received “Respondent’s and Intervenor’s Response to Petitioners’ Motion to Complete the Index, or Alternative, to Supplement the Record” (the **Joint Response**).

On June 9, 2003, the Board received “Respondent’s and Intervenor’s Rebuttal to Petitioners’ Reply to Motion to Dismiss Petition for Review” (the **Joint Rebuttal**). On this date, the Board also received “Petitioners’ Reply on their Motion to Complete the Record Index, or in the Alternative, to Supplement the Record” (the **Petitioners’ Reply**).

On June 13, 2003, the Board issued the Second Amended Prehearing Order (the **Second APHO**) which revised the briefing schedule and the date for the hearing on the merits. Later this same date, the Board received a letter (the **Kiker letter**) from counsel for Petitioners objecting to the revised schedule and requesting that the Board convene a telephone conference call with the parties “to discuss further necessary revisions to the case schedule.” Kiker letter, at 2.

On June 17, 2003, presiding officer Joseph Tovar convened a telephone conference call with the parties to discuss the case schedule. Participating for Laurelhurst were Peter Eglick and Jane Kiker; participating for the City was Bob Tobin; participating for the University were Terese Richmond, Ryan Durkhan and Steve Roos. After hearing the concerns and suggestions of the parties regarding the case schedule, the presiding officer indicated that the Board would clarify the final schedule by subsequent order.

## **II. FINDINGS OF FACT**

1. The City of Seattle adopted its GMA comprehensive plan in 1994 in Ordinance No. 117221. *Legislative History of Comprehensive Plan, Seattle Comprehensive Plan, Toward a Sustainable Seattle*, at v.
2. On the Seattle Future Land Use Map, the University of Washington Campus is partially located in the University Community Urban Center (UCUC) neighborhood, which was

adopted by the City in Ordinance No. 119235. *Montlake Community Club, et al., v. City of Seattle*, CPSGMHB Case No. 99-3-0002c, Order on Dispositive Motions, Apr. 23, 1999, at 15.

3. Policy UC-P32 of the UCUC states, “in pursuit of Comprehensive Plan Policy L130, ensure that the University Community plays an active role in the UW’s Campus Master Plan on subjects of mutual interest.” *Seattle’s Comprehensive Plan: Toward a Sustainable Seattle*, University Community Urban Center, at NP-180.

4. The City of Seattle’s land use and zoning code (Seattle Municipal Code – **SMC**) is a GMA document, adopted pursuant to the GMA. “WHEREAS, the Council has determined that (various land use policies of the City) should be integrated with the Comprehensive Plan and development regulations to avoid multiple policy documents, and to implement the Growth Management Act as interpreted by the Growth Management Hearings Board; and . . .” *See* Ordinance No. 120691, adopted December 17, 2001.

5. The City of Seattle’s Major Institutional Ordinance (**MIO**), including the major institutional overlay provisions (chapter 23.69 SMC), is a GMA development and implementing regulation. *See* Ordinance No. 120691.

6. The 1998 Agreement (the **1998 Agreement**) between the City of Seattle and the University of Washington took effect on October 1, 1998. The 1998 Agreement contains applicable policies and implementation guidelines for the University. Appendices to Petitioners’ Response, B-5.24.

7. The 1998 Agreement between the City and the University of Washington was adopted as an amendment to the City’s MIO. *See* Ordinance No. 120691, Section 22, amending 23.69.006.

8. The 1998 Agreement sets forth the “Procedures for Consideration, City Approval and University Adoption of the University Master Plan.” Section II B 1-13, 1998 Agreement, at 5-7.

9. The Agreement provides that the University will formulate a ten year conceptual Master Plan and EIS that include the specific elements such as boundaries outlined by SMC, zone designations, site-plan, traffic, transportation, and development phases, outlined in Section II of the Agreement, “Master Plan and Cumulative Impacts.” Appendices to Petitioners’ Response, B-5.24.

10. In Section II-B of the Agreement, “Procedures for adoption of the University Master

Plan,” there are several instances of required public participation. For instance, following the receipt of the draft Master Plan by the City-University-Community Advisory Committee (CUCAC) and submission of an application for a Major Institution Master Plan to the City Department of Construction and Land Use (DCLU), the CUCAC then holds public meetings that facilitate revision of the Master Plan. Once the CUCAC receives the final version of the Master Plan, CUCAC reports its findings and public comments to the director of the DCLU. Finally, the DCLU will submit to the City Hearing Examiner the final Master Plan, the CUCAC report, a report of consistency with the MIO and SEPA, *etc.* The Hearing Examiner then conducts a public hearing on the final Master Plan prior to making his recommendation to the City Council. Finally, the Council will hold a public hearing to receive comments on the final Master Plan from University representatives, CUCAC, and all persons who file a written petition for further consideration, before making its final decision. *Id.*

11. City of Seattle Ordinance No. 121041, was adopted on December 16, 2002. PFR, Attachment 1. The Title Caption of Ordinance 121041 reads: “AN ORDINANCE relating to land use and environmental protection, granting conditional approval of a Campus Master Plan for the development of the University of Washington, rezoning land within the University of Washington Major Institution Overlay boundary, and amending the Official Land Use Map.” *Id.*

12. City of Seattle Ordinance No. 12120 was adopted on December 20, 2002. PFR, Attachment 2. The Title Caption of Ordinance 12120 reads: “AN ORDINANCE amending the Seattle Comprehensive Plan to incorporate amendments proposed as part of the 2002 Comprehensive Plan annual amendment process.” *Id.*

### **iii. MOTION TO DISMISS**

In the Motion to Dismiss, the City and University make two assertions: first, that the Board lacks subject matter jurisdiction to review the UW Campus Master Plan (UWCMP) (adopted by challenged Ordinance No. 121041); second, that the Petitioners lack standing to challenge aspects of the City’s action. The Board first addresses the jurisdictional question.

#### **A. Subject Matter Jurisdiction**

In essence, the City/UW acknowledge that the Board has jurisdiction to review comprehensive plans, including subarea plans, and development regulations for compliance with the GMA; but contend that the UWCMP is not a GMA subarea plan, as characterized by Petitioners. Instead, the City/UW contend that the UWCMP is a “development approval [for the UW campus] that is prepared in response to the requirements of a development regulation.” Joint Motion, at 9.

##### **1. Applicable Law**

RCW 36.70A.280 provides in relevant part:

(1) A growth management hearings board shall hear and determine *only* those petitions alleging either: a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to *plans, development regulations or amendments*, adopted under RCW 36.70A.040 or chapter 90.58 RCW. (Emphasis added.)

## 2. Discussion and Analysis

### a. **Positions of the Parties**

Laurelhurst contends that the UWCMP is a subarea plan that is subject to Board review for compliance with the GMA. Petitioners cite this Board’s holding in *City of Seattle v. Northgate Mall Partnership*, for the nature and function of a subarea plan. Petitioners’ Response, at 11. That is, “...a subarea plan is analogous to that of a jurisdiction-wide comprehensive plan.” *Id.* Petitioners suggest that the UWCMP constitutes comprehensive planning since it contains goals, objectives, and general policies. These criteria, according to Petitioners, distinguish the UWCMP from a permit application or approval and instead, describe a land use planning process. Petitioners’ Response, at 12. Specifically, the UWCMP is a subarea plan because it, “...will set forth guidelines for future building decisions.” Petitioners’ Response, at 17. Laurelhurst further argues:

[The UWCMP] contains substantive development regulations that augment, modify and supplant the major institution development standards found in the Seattle Land Use Code [and] . . . goes on to establish specific minimum setback requirements . . . allowable ground floor uses and specific requirements for landscaping and open space, light and glare, modulation, parking quantity . . . and development review.

Petitioners’ Response, at 18.

Laurelhurst points out that the 1998 Agreement between the City and the University that was adopted by reference to the Seattle Land Use Code, 23.69.006, grants an exception to the University of Washington from compliance with Seattle Land Use Code 23.69.024, which governs all other Major Institution Master Plans. Petitioners’ Response, at 6. Thus, Petitioners argue, this distinction additionally supports the contention that the UWCMP is not a Major Institution Master Plan.

Finally, Petitioners complain that for the Board to agree with the City/UW’s position would

elevate form over substance and set a bad precedent. Laurelhurst argues:

If the Board were to agree with the City/University assertion here that a city planning under the GMA can transform an otherwise legislative planning action subject to the Growth Board’s jurisdiction into one immune from the Board’s review, simply by characterizing the public participation process as “quasi-judicial,” it would jeopardize the Board’s jurisdiction for GMA review.

Petitioners’ Response, at 26-27.

The City/UW begin the defense of the City’s action by describing the five “tiers” of the GMA planning hierarchy as described by the Board in earlier cases, beginning with *Aagaard*<sup>[2]</sup> and

*West Seattle III*.<sup>[3]</sup> Joint Motion, at 6-7. They argue that the Board’s jurisdiction applies to only a portion of that hierarchy:

Under this GMA hierarchy . . . the nature and function of a subarea plan is analogous to that of the jurisdiction-wide comprehensive plan: to establish planning policies that provide the basis for the adoption of development regulations that implement the plans. The Board has jurisdiction to review comprehensive plans/subarea plans and development regulations, but not site-specific regulatory approvals. RCW 36.70A.280(1); RCW 36.70A.030(7); and RCW 36.70B.020(4).

Joint Motion, at 7.

The City/UW contend that the UWCMP is a Major Institution Master Plan (**MIMP**), which is the result of Major Institution Ordinance (**MIO**) (a development regulation) and is not a subarea plan. The MIO is codified in Seattle Land Use Code 23.69.024 and requires that the University of Washington prepare a plan for the proposed development of the college campus. Joint Motion, at 1-2. The UWCMP is distinct from other MIMPs because it must also comply with Ordinance No. 23.69.006 or the 1998 Agreement. The City/UW suggest that since the UWCMP is the result of a development regulation, namely the MIO, it is not a neighborhood or community subarea plan under RCW 36.70A.080. Joint Motion, at 5-6 and Joint Rebuttal, at 4.

The City’s definition of subarea plan includes a plan that establishes planning policies that, “provide the basis for the adoption of development regulations that implement plans.” Motion to Dismiss, at 7. The City also provides an example of a subarea plan, the University Community Urban Center Plan (UCUC). The UCUC Plan applies to an entire neighborhood affecting many landowners and parcels, while the UWCMP and MIMPs only apply to one landowner, the institution. Motion to Dismiss, at 9. Additionally, the UWCMP, “. . . establishes development requirements for particular pieces of property,” which is akin to site-specific development plans

over which the Board does not have jurisdiction. Joint Rebuttal, at 11-12. Again, the City/UW suggest that since these development requirements or regulations are not applicable area-wide, but only to the University, the development regulations described by Petitioners are site specific and thus exempt from Board review. *Id.*

Finally, the City/UW argue that the UWCMP is a request for the approval of a development plan and that while it is programmatic in nature, this conclusion does not mean that it therefore is a subarea plan. Joint Rebuttal, at 6.

## **b. Analysis**

Both sides cite prior Board decisions describing the nature of planning under the GMA and the hierarchy of land use decision-making; however, it is clear from the briefing that there is a fundamental disagreement about where in that regime a “master plan” fits. The heart of the Petitioners’ argument is that the UWCMP is the sort of “land use policy” document that “purports to govern land use decision-making” and thus must be legislatively adopted as a subarea plan, consistent with the goals and requirements of the GMA. The City/UW contend that the UWCMP is fundamentally different in nature from a GMA comprehensive plan or subarea plan. Rather, they argue that it is a development permit that is appropriately adopted by a quasi-judicial process rather than a legislative one, and is thus outside the scope of the goals and requirements of the GMA, including the Board’s jurisdiction.

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?

Petitioners point to the Board’s language in *WSDF III*, cited *supra*, to support their argument that a master plan is a subarea plan. However, neither this excerpt from *WSDF III*, nor the statute itself defines what a subarea plan is. Subarea plans are neither defined nor required by the GMA; subarea plans are an optional element that a jurisdiction may include in its GMA Plan. RCW 36.70A.080(2). All that can be inferred from the statute, and prior Board cases, is that subarea plans are, as the pre-fix “sub” implies, subsets of the comprehensive plan of the jurisdiction. Additionally, subarea plans typically augment and amplify policies contained in the jurisdiction-wide comprehensive plan.

Thus subarea 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.*”<sup>[4]</sup> (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?

Part of the disagreement in this dispute, and some of the confusion that surrounds it, stems from the fact that this is a term of planning art, widely used by local governments both before and after adoption of the GMA. It is undefined in the statute, yet has been given passing reference in at least one prior Board decision. Adding to this confusion is the fact that Seattle has structured its “Master Plan” for the University campus in a way that parallels the structure of its city-wide and neighborhood comprehensive planning document, *i.e.*, goals, policies, objectives, text and land use maps, *etc.*

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 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.<sup>[5]</sup> 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. Here, the UWCMP functions as a “site plan approval.” It generally establishes the location, dimension, and function of major structures on the University campus. The fact that it does not constitute a “construction permit” in itself does not mean that it is a policy document (*i.e.*, a subarea plan). Rather, it simply means that it is a “site plan approval” land use decision.

### 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<sup>[6]</sup> 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*<sup>[7]</sup> 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.**

The Board notes that the University campus is partially within the geographic scope of the UCUC. See Finding of Fact 2. The University is shown as a “major institution” on the Seattle Comprehensive Plan Future Land Use Map. See Appendix B.7.1, Appendices to Petitioners’

Response. <sup>[8]</sup> As such, it is a major institution subject to the MIO under SMC 23.69 and as defined in SMC 23.84.025. Joint Motion, at 8. The MIO:

Establishes the required elements and approval process for Major Institution Master Plans (MIMP). A MIMP is a site specific development plan for each individual university or hospital...Major Institutions submit applications for approval of proposed MIMPs to the City in much the same way the landowners are required to submit applications for approval of other site-specific regulatory approvals such as site-specific rezones and Master Use Permit applications. *Id.*

The Board concludes that the MIMP is governed by GMA development regulations, namely, the MIO and the 1998 City-University Agreement. The UWCMP in this situation was adopted in accordance with the MIO that spells out the process for approval of a development permit. Petitioners' argument that the UWCMP is an exception to the rules governing institutions due to the 1998 City-University Agreement does not act as a distinction that changes the UWCMP into a subarea plan. The 1998 City-University Agreement was adopted as part of the MIO that governs all institutions also found in SMC 23.69, specifically, SMC 23.69.006. Petitioners' Response, at 6. Thus, instead of 23.69.006 acting as an exception to 23.69.024 the University must comply with the MIO and the additional requirements of 23.69.006 that reflect the Agreement.

However, these additional requirements for the University's MIMP do not transform the UWCMP from a site development plan into a subarea plan. Subarea plans are the policy predicate for the creation of development regulations rather than the reverse, and development regulations are likewise the predicate for the issuance of development permits. The City approval of Ordinance No. 121041 that adopts the University's UWCMP is part of the process defined by the MIO development regulation found in SMC 23.69.006 and SMC 23.69.024. Consequently, the provisions of Ordinance No. 121041 do not constitute comprehensive or subarea plans nor do they constitute development regulations that implement comprehensive plans.

The Board agrees with the City/UW that the UWCMP is not a subarea plan within the meaning of RCW 36.70A.080. Rather, the UWCMP is part of a permit application process resulting from a development regulation. Therefore, Petitioners' challenge to Ordinance No. 121041 does not fall within the purview of matters subject to board review under RCW 36.70A.280 (1).

Finally, although finding for the respondent, the Board agrees with one important caution articulated by the Petitioners. In making the determination of whether a local action is subject to the GMA generally and Board jurisdiction specifically, it is important to focus on the *substance* and *policy context* of that action, rather than the procedure employed or the label attached. Simply characterizing a local action as a "master plan" or employing a quasi-judicial process, rather than a legislative one, is not determinative of whether the action is properly a policy or regulation subject to GMA or a permit action that falls beyond the pale of GMA compliance.

That determination must be made after reviewing many facts and factors. Here, the Board concluded that the facts and factors supported the City's determination.

3. Conclusions re: Subject Matter Jurisdiction

The City of Seattle's adoption of the University of Washington Master Plan for the Seattle Campus, through Ordinance No. 121-041, is not a subarea plan subject to Board review for compliance with the GMA. The UWCMP was adopted pursuant to specific development regulations (the Major Institutional Ordinance and the 1998 Agreement) that govern the land use approvals for major institutions, including the UW. Therefore, **the Board lacks subject matter jurisdiction.**

**B. Standing**

Because the Board has determined that it lacks subject matter jurisdiction in this case, it need not and will not address the matter of Petitioners' standing.

**IV. MOTION TO SUPPLEMENT THE RECORD**

Because the Board has granted the Joint Motion dismissing this case, it need not and will not rule on the Motion to Supplement.

**V. order**

Based upon review of the Petition for Review, the pleadings of the parties, the facts set forth above, and having deliberated on the matter, the Board ORDERS:

The Joint Motion is **granted**. PFR 01-3-0008 is **dismissed with prejudice**. The briefing schedule and the hearing on the merits date set forth in the Second APHO are **stricken**.

So ORDERED this 18<sup>th</sup> day of June 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Lois H. North  
Board Member

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Joseph W. Tovar, AICP  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

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[1] This proposed legislation was subsequently adopted as Ordinance 121041.

[2] In *Aagaard, et al., v. City of Bothell (Aagaard)*, CPSGMHB Case No. 94-3-0011c, Final Decision and Order, Feb. 21, 1995, the Board stated:

...the decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budgets decisions and other activities of cities and counties. See RCW 36.70A.120. *Aagaard* FDO, at 6.

[3] In *West Seattle Defense Fund, Neighborhood Rights Campaign, and Charles Chong v. City of Seattle (WSDF III)*, FDO, Apr. 2, 1996, the Board stated:

By whatever name (*e.g.*, neighborhood plan, community plan, business district plan, specific plan, **master plan**, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan...” *WSDF III* FDO, at 25. Emphasis supplied.

[4] *Vashon-Maury, et al., v. King County [Union Hill Water Association and Quadrant Corporation – Intervenors] [Bear Creek Portion]*, CPSGMHB Case No. 95-3-0008c, Order Finding Partial Compliance and Partial Invalidity, Nov. 3, 2000, at 9.

[5] For example, a derivative of the term appears at RCW 36.70A.360, which concerns “*Master Planned Resorts*” Such master planned resorts are described as “self-contained and fully integrated planned unit development[s]. . .” RCW 36.70A.360(1). In addition, prior Board cases have described King County’s use of *Master Planned Development* permits. *FOTL v. King County*, CPSGMHB Case No. 01-3-0010, Order on Superior Court Remand, June 9, 2003, at 13.

[6] The Board examined the relationship of the GMA and the Shoreline Management Act (**SMA**) in *Everett Shorelines Coalition, et al., v. City of Everett and Washington State Department of Ecology*, FDO, Jan. 9, 2002.

[7] Here, the term “land use decisions” applies narrowly to the permit decisions made by local governments. In an early GMA case, the Supreme Court made clear that, in matters governing permit issuance, a zoning provision controls the outcome, rather than a contrary comprehensive plan provision. “Since a comprehensive plan is a guide and not a document designed for making **land use decisions**, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations.” *Citizens for Mt. Vernon v. Mt. Vernon*, 133 Wn 2d 861, 947 P 2d 1208 (1997). Emphasis supplied.

[8] The Board notes that the University of Washington is a state educational facility – an essential public facility (**EPF**) subject to the provisions of RCW 36.70A.200. As an EPF, it is not unreasonable for the City to have a distinct process, such as the MIO and the 1998 Agreement, to govern the development of the University campus and environs.