

October 26, 2021

Use of the Word “*Shall*”

With respect to future interpretation of the United States Constitution, Thomas Jefferson said, “On every question of construction let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit of the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.”

Apart from the Housing Element, which is not being updated at this time, the current 2000-2020 General Plan contains 121 implementation programs. The first sentence in every program includes the word *shall*. Since the General Plan defines *shall* as an “*unequivocal directive*,” clearly, at the time of plan adoption, program implementation was considered obligatory.

Nonetheless, programs have not been implemented. General Plan Program ED-A.A requires the County to create a staff position to oversee the County’s economic develop strategy. At present, that position does not exist. Program HS-G.B requires the County to “*develop an effective noise control program*,” but that program also does not exist. Although Program LU-C.A requires the County to update the Kings River Regional Plan, the plan has not been updated, and even though Program PF-C.G requires the County to develop a list of water conservation technologies, there is no list.

The same holds true for other programs, such as Programs OS-E.A and OS-H.A, which require the County to inventory ecologically significant resource areas as well as recreation areas and services within the County. The County’s most recent General Plan progress report states that these programs have not been implemented.

The County attributes the lack of implementation to insufficient funds. In a June 6, 2017 staff report to the Board, County planners stated, “*...certain programs have not been implemented due to [no] allocation of funds to implement those programs and some programs are being effectively implemented although they are not implemented as written.*”

Program OS-A.5 requires the Fresno County Water Advisory Committee to advise the Fresno County Board of Supervisors on water resource management issues, but in 2017 the Board dissolved the committee without amending the General Plan, thereby making a portion of the General Plan inoperative. Also in 2017, the Board created an Economic Development Action Team whose membership does not conform to the General Plan.

Program ED-A.E requires the County to establish guidelines for the analysis of economic impacts in staff reports for all discretionary County decisions. Even so, the County’s 2020 annual progress report reads: “*This program is obsolete. Per direction from the CAO’s office, the analysis of economic impacts is no longer required in the staff report for discretionary permits.*”

The examples presented above show that the Board of Supervisors and County staff have modified the General Plan many times — both through action and inaction — outside the public process to amend the plan.

The County may see some flexibility in the word *shall*. After all, the 2017 *General Plan Guidelines* published by the Governor’s Office of Planning and Research state that the basic purpose of a general plan is to “*guide land use planning decisions*.” If the plan is only a guide, then the County may reason that unequivocal directives are, in practice, largely nonprescriptive.

Referring back to the words of Thomas Jefferson, the intent of the current 2000-2020 General Plan is what was probable at the time the document was adopted. In 2000, the Board of Supervisors adopted a gigantic work plan. The first six elements of the General Plan contain 170 directives (deliverables) across 121 programs. With the adoption of the 2016-2023 Housing Element, the work plan increased by an additional nineteen programs with sixty more planning objectives.

If program implementation were not obligatory, the General Plan would have defined the word *shall* as something other than an “*unequivocal directive*.”