

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE CENTRAL PUGET SOUND GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

KING COUNTY,

Petitioner,

vs.

CITY OF LAKE FOREST PARK,

Respondent.

)
)
) No. _____
)

) PETITION FOR REVIEW AND
) REQUEST FOR ORDER OF
) INVALIDITY ON LAKE FOREST
) PARK ORDINANCE NO. 951
)
)
)

I. INTRODUCTION

Petitioner KING COUNTY respectfully requests that the Board declare that City of Lake Forest Park Ordinance 951 violates portions of the Growth Management Act (GMA), including provisions related to the siting of essential public facilities (EPFs); and requests that the Board declare that Ordinance 951 is not in compliance with the GMA, all pursuant to RCW 36.70A.300. King County further requests that the Board issue an Invalidation Order pursuant to RCW 36.70A.302 because Ordinance 951 fails to comply with RCW 36.70A.020, 36.70A.120, 36.70A.130, and 36.70A.200; and because Ordinance 951 substantially interferes with the goals set forth in RCW 36.70A.020(3), (7), and (9). King County also petitions the Board to declare that when the City adopted Ordinance 951, the City failed to comply with RCW 36.70A.106, and with the State Environmental Policy Act, RCW Ch. 43.21C (SEPA); and to order or declare that under established SEPA law, Ordinance 951 shall have no force or effect unless and until the City of Lake Forest Park complies with SEPA.

KING COUNTY'S PETITION FOR REVIEW OF
LAKE FOREST PARK ORDINANCE 951

-1-
COPY

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

1
2
3
4
5
6
7
8
9
10
11
12

II. JURISDICTION AND VENUE

2.1 The Board has jurisdiction over this petition and is the proper venue for it under RCW 36.70A.250(1)(b) and WAC 242-02-030(1)(b) because King County and the City of Lake Forest Park are located in King County, Washington, which is within the jurisdiction of the Central Puget Sound Growth Management Hearings Board. The Board has subject matter jurisdiction over this petition pursuant to RCW 36.70A.280(1)(a) and WAC 242-02-030(2) because King County alleges that Ordinance 951 is a development regulation not in compliance with the GMA, RCW Ch. 36.70A; and because the County alleges that the City of Lake Forest Park failed to comply with SEPA, RCW 43.21C, when the City adopted Ordinance 951. This appeal is timely because King County filed it within 60 days of November 24, 2006, which is the date that the City of Lake Forest Park published Ordinance 951. See RCW 36.70A.290(2) and WAC 242-02-220; see also Exhibit A (copy of Ordinance 951) and Exhibit B (Affidavit of Publication), attached to this Petition.

13
14
15
16
17
18
19
20

III. BACKGROUND/STATEMENT OF FACTS¹

3.1 The Burke-Gilman trail ("the Trail") is a 17-mile long, paved, multipurpose, nonmotorized trail that extends from the City of Kenmore at the north end of Lake Washington, along the Lake Washington shoreline roughly south to the University of Washington campus, and then west along the Lake Washington Ship Canal to the Ballard neighborhood in Seattle. The Trail connects to the County's Sammamish River Trail, which extends from Kenmore to Marymoor Park in Redmond. The Trail is built on a former railroad right-of-way that the City of Seattle and the County acquired from the Burlington Northern Railroad with funding from the region's 1968 Forward Thrust bond issue, community development block grants, and federal gas

21
22
23

¹ This Background section recites facts that are so generally and widely known as not to be subject to reasonable dispute, as well as specific facts which are capable of immediate and accurate demonstration via accessible sources of generally accepted authority, and thus are facts that the Board may officially notice pursuant to WAC 242-02-670(2). In the alternative, the County requests that the Board take official notice of the facts recited in the Background section pursuant to WAC 242-02-670(4).

1 tax revenues. The County owns the former railroad right-of-way in fee simple from the Seattle
2 city limits at NE 145th St, through the cities of Lake Forest Park, Kenmore, and Bothell, all the
3 way to Redmond. The County owns, operates, and maintains the Trail on the right-of-way
4 outside of Seattle.

5 3.2 The Burke Gilman Trail, like other regional multipurpose nonmotorized trails in
6 the area, is a critical element of the Puget Sound transportation infrastructure. It is identified as a
7 core component of the County's Regional Trails Plan (issued in October of 1992), which
8 established a network of multi-purpose trails connecting communities inside and outside the
9 County; and it is also a core component of the County's Nonmotorized Transportation Plan
10 (issued in May of 1993), which outlines a system of facilities for non-motorized transportation
11 within and without road rights of way. Finally, the Trail is designated as an important regional
12 nonmotorized transportation corridor in "Destination 2030," a regional transportation plan
13 mandated by state and federal law and adopted by the Puget Sound Regional Council ("PSRC")
14 in May of 2003.² The Trail's designation as an important regional transportation asset is well-
15 deserved: a large and growing number of pedestrians and cyclists use the Trail to commute to
16 work or to shop, and in addition, the public uses the Trail for many other purposes, including
17 recreational bicycling, jogging, walking, bird-watching, in-line skating, skateboarding, and dog
18 walking. In the City of Lake Forest Park ("the City"), the Trail has substantially more traffic
19 volume than the driveways or neighborhood streets that cross it.

20 3.3 A roughly two-mile long section of the Trail passes through the City. This
21 section is the oldest portion of the Trail belonging to the County. The 10-foot wide Trail was

22 ² The PSRC is the designated Regional Transportation Planning Organization for Puget Sound
23 under RCW 47.80. The PSRC is also designated as a Metropolitan Planning Organization under
24 23 U.S.C. §134. "Destination 2030" is the plan that the PSRC developed in response to the
25 mandates set forth in those statutes. The PSRC's regional transportation plan (including its
26 designation of the Trail as a critical nonmotorized transportation corridor) thus carries the force
27 of state and federal law, and prevails over local plans. See City of Des Moines v. Puget Sound
28 Regional Council, 97 Wn. App. 920, 988 P.2d 993 (1999), rev. den., 140 Wn. 2d 1022, 10 P.3d
29 403 (2000).

1 considered innovative and forward-looking when the County built it in the mid-1970s; but since
2 then regional population growth has resulted in substantially increased trail use, especially by
3 cyclists, for both commuting and recreation. Looking forward, the City's 2005 Comprehensive
4 Plan specifies that the City must provide an additional 523 new housing units between 2005 and
5 2020 to meet the City's housing targets under the GMA. This growth, coupled with additional
6 population growth in neighboring jurisdictions, will result in additional pressure on the Trail and
7 other regional recreational and transportation facilities. The Trail's existing size and alignment in
8 the City do not meet modern trail design criteria and are insufficient to support current use
9 levels, let alone the needs of a growing regional population. To that end, the County intends to
10 upgrade the Trail in the City consistent with state and federal requirements, as well as nationally-
11 recognized trail design standards.

11 3.4 However, the County's redevelopment options are constrained in some locations,
12 because existing easements reduce the available right-of-way to 35 or even just 30 feet; and in
13 many other places, substantial encroachments (landscaping, fencing, and even portions of
14 buildings such as garages and residences) protrude into the County's right of way. Moreover,
15 physical constraints are not the only challenges that the County must overcome. As the owner of
16 more than 175 miles of trail, the County has learned from experience that it can be very difficult
17 to site or to improve multipurpose trails, and especially regional trails like the Burke-Gilman.
18 Neighboring property owners often fear they will experience impacts such as increased noise;
19 loss of privacy; additional crime; difficulty in access to and from their homes; and reduced
20 property values. These fears and concerns can lead to local resistance in the face of planned
21 regional trail improvements. With these concerns in mind, the County and the City jointly
22 invited members of the public to participate on a Citizen's Advisory Group ("CAG") to guide the
23 County in refining its plans to upgrade the Trail. The 13-member CAG included a Lake Forest
Park City Council member (ex officio), a City parks and recreation commissioner, trailside
homeowners, cyclists, and other trail users. In all, 12 of the 13 CAG members were City

1 residents. The CAG was tasked to provide the County with thoughtful and informed
2 recommendations on Trail redevelopment issues such as design, safety, liability, maintenance,
3 enforcement, and environmental concerns. All CAG meetings were open to the public. The
4 CAG process ultimately resulted in two reports to the County, ensuring that representative
5 community input was considered during Trail redevelopment planning.

6 3.5 The County is now preparing an environmental impact statement (EIS) to analyze
7 the potential impacts of Trail redevelopment. The existing trail has an asphalt surface
8 approximately 10-feet wide with about 2 feet of dirt shoulders and discontinuous grass and
9 gravel shoulders on both sides of the trail. The proposed redevelopment project would widen the
10 asphalt portion of the trail to a width of 12 feet; provide a continuous 1-foot wide gravel shoulder
11 on the west and north sides; and provide a continuous gravel shoulder 3 feet wide on the east and
12 south sides, plus an additional foot on either side to stabilize the trail shoulders. The EIS will
13 evaluate three alternatives: the proposed trail design, alternative alignments within the existing
14 right-of-way corridor, and no action.

15 3.6 Meanwhile, in November of 2006, the City adopted Ordinance 951 ("the
16 Ordinance") to enact a new conditional use permit ("CUP") requirement for "multi-use and
17 multipurpose trail facilities." Ex. A. at p.1. There is only one multi-use or multipurpose trail in
18 the City; it is the Burke-Gilman Trail. The Ordinance is aimed squarely at the Trail and the
19 County's plan to redevelop it. However, the City did not conduct any SEPA analysis of the
20 Ordinance's impacts on the Trail, on the County's plans for it, on trail users, or on neighboring
21 properties; nor did the City affirmatively determine that adoption of the Ordinance was exempt
22 from SEPA under RCW 43.21C.110(1)(a) or WAC 197-11-800. It appears that the City made no
23 attempt to comply with SEPA at all.

3.7 The Ordinance provides that a multi-use or multipurpose trail "may" be allowed,
added to or altered as a conditional use in any land use zone in the City, subject to the criteria
outlined in the Ordinance. Ex. A at p.2 para. C (LFPMC 18.54.47.C). It instructs the hearing

1 examiner to attach appropriate conditions "such as, but not limited to, the following: limitation
2 of size, location on property and screening[;] and to only issue [CUPs] conditioned with any
3 requirements under Chapter 18.54, unless otherwise provided herein." Id. (bracketed material
4 added.) In addition, the Ordinance also requires:

- 5 • Stop signs requiring trail users to stop for cross-trail traffic at any driveway or "minor
6 roadway" providing access to 50 or more homes; and yield signs requiring trail users to
7 stop for cross-trail traffic at any driveway or "minor roadway" providing access to less
8 than 50 homes;
- 9 • A trail development plan that is "compatible with the character and appearance of
10 development in the vicinity and preserves the privacy of adjacent uses by the use of
11 setbacks, screening, landscaping, and fencing or grade changes to buffer adjacent
12 properties";
- 13 • A design of non-paved areas and shoulders including a screening plan that complies with
14 the screening and landscaping requirements in LFPMC Chapter 18.62, and requiring
15 screening/landscaping 12 feet wide whenever a trail is adjacent to single family
16 residential zones, except where the hearing examiner determines that 12 feet of
17 landscaping would not be practicable;
- 18 • A design of adequate trail lighting for safety at drives and intersections while minimizing
19 light shining into residences to the extent reasonably possible consistent with safety;
- 20 • Depending on adjacent property zoning, 10- to 12-foot setback from the property line of
the trail right of way to the edge of the trail shoulder; but if setback or landscaping
requirements cannot be met by realigning a proposed or expanded trail, due to existing
structures or topography, available right of way, or applicable environmental laws and
regulations, then the hearing examiner may reduce the width of the proposed trail, or
reduce the width of the required setback or landscaping, or a combination of both. If the
hearing examiner reduces the width of the required setback or landscaping, then the
hearing examiner shall include as a condition of the permit enhanced landscaping to
provide screening that meets or exceeds screening provided by the combination of the
require setback and landscaping; but if the remaining setback is inadequate to allow for
enhanced landscaping, the hearing examiner may require installation of fencing that shall
provide an effective visual barrier to the proposed trail.

21 See Ex. A at pp.2-3 (LFPMC §18.54.47.D.1.a-b; §18.54.47.D.4.b.i, iv-vi).

22 3.8 Months before the City adopted the Ordinance, the County identified problems in
23 the draft Ordinance and put the City on notice that the Ordinance would adversely affect the

1 County's plans to improve the Trail. By way of example, on August 24, 2006, King County
2 Executive Ron Sims wrote to City Councilmember Ed Sterner (the Ordinance's sponsor),
3 outlining in detail how the Ordinance would affect the Trail; on September 14, 2006, King
4 County Department of Natural Resources and Parks Director Pam Bissonnette and King County
5 Parks and Recreation Division Director Kevin Brown sent a joint letter to Councilmember
6 Sterner, restating the County's concerns; and on November 8, 2006, Kevin Brown sent and faxed
7 yet another letter outlining specific problems with the Ordinance. City Council meeting minutes
8 also show that County representatives appeared at Council meetings and testified about the flaws
9 in the Ordinance and the Ordinance's effect on the County's plans to improve the Trail.

10 3.9 Many of the flaws that the County identified in the Ordinance still remain.
11 Portions of the Ordinance violate the GMA and are contrary to elements of the City's own
12 comprehensive plan. Moreover, the City employed a flawed process when it adopted the
13 Ordinance: the City failed to follow SEPA, and the City also failed to notify the Department of
14 Community, Transportation, and Economic Development ("CTED") that it was adopting a
15 development regulation. Each of these issues is alleged more fully below.

16 **IV THE ORDINANCE VIOLATES RCW 36.70A.200(5).**

17 4.1 Section III is re-alleged in full and incorporated herein by reference.

18 4.2 The Ordinance violates RCW 36.70A.200(5)'s mandate that "[n]o ... development
19 regulation may preclude the siting of essential public facilities." The GMA defines the term
20 "essential public facilities" ("EPFs") to include "those facilities that are typically difficult to site."
21 RCW 36.70A.200(1) (listing examples). Under state GMA regulations, "the broadest view
22 should be taken of what constitutes a public facility." WAC 365-195-340(a)(i). The expansion
23 or improvement of essential public facilities is covered by RCW 36.70A.200(5). See City of Des
Moines v. Puget Sound Regional Council, 108 Wn. App. 836, 988 P.2d 27 (1999); Port of Seattle
v. City of Des Moines, CPSGMHB No. 97-3-0014 (1997).

1 4.3 Regional multipurpose or multiuser trails like the Burke-Gilman constitute
2 EPFs under the GMA. Regional multipurpose trails are public facilities that are difficult to
3 site and improve. See Paragraph 3.4, above. Such trails, and the Burke-Gilman in particular,
4 are also key elements of the County's regional trail network, as well as critical nonmotorized
5 transportation corridors for the region. See Paragraph 3.2, above.

6 4.4 The Ordinance violates RCW 36.70A.200(5) because the Ordinance reserves
7 to the City the discretion to deny CUPs for regional multipurpose trails, and thereby allows
8 the City to preclude the siting or improvement of EPFs contrary to the GMA. See King
9 County v. Snohomish County, CPSGMHB No. 03-1-0011, FDO at p.12 (2003) ("King
10 County I") ("no local government plan or regulations, including permit processes and
11 conditions, may preclude the siting, expansion or operation of an essential public facility.")

12 4.5 The Ordinance also precludes EPFs in violation of RCW 36.70A.200(5) because
13 the Ordinance makes it impracticable to site or improve regional multipurpose trails. The
14 Ordinance requires that an applicant proposing a multiuse or multipurpose trail "shall provide to
15 the satisfaction of the hearing examiner . . . [a] Trail Development Plan that ... [i]s compatible
16 with the character and appearance of development in the vicinity." Ex. A. a p.3 para. D.4.b.i
17 (LFPMC 18.54.47.D.4.b.i) (underlining, bracketed material added). The Plan must also provide
18 "a design of adequate trail lighting for safety at drives and intersections while minimizing light
19 shining into residences to the extent reasonably possible with safety." Id., at para. D.4.b.v.

20 4.6 The underlined terms each violate the GMA. The undefined terms
21 "satisfaction" and "adequate" leave the City's hearing examiner with unfettered discretion
22 whether to approve the trail development plan and lighting design. The Ordinance provides
23 no criteria and no limits as to what is necessary to achieve "satisfaction" or "adequacy."
These terms give the City discretion to deny CUPs and preclude EPFs in violation of RCW
36.70A.200(5). See King County I, CPSGMHB FDO at p.12 ("when a permit process . . .

1 purports to reserve to a local government the discretion to deny that which it may not
2 lawfully deny, it will be found to violate RCW 36.70A.200.")

3 4.7 The Ordinance's requirement that trail development plans be "compatible"
4 violates the GMA because many EPFs are inherently incompatible with neighboring uses. See,
5 e.g., Combined Order in King County v. Snohomish County, CPSGMHB No. 03-3-0011, 03-3-
6 0025, and No. 04-3-0012, at p.12 ("King County I-III") (May 24, 2004) ("The absolute
7 regulatory requirement ... that a regional EPF not be materially detrimental to its surroundings
8 does not comply with RCW 36.70A.200(5)."). "[M]any regional EPFs, due [to] their scale and
9 very nature, will inevitably be detrimental to some degree to surrounding uses." Id. (bracketed
10 material added.) The Ordinance violates RCW 36.70A.200(5) because its requirement that
11 multipurpose trails be "compatible" with surrounding development is impossible to satisfy, and
12 thereby makes it impracticable to site or improve such EPFs in the City. See King County I-III,
13 Combined Order at p.12 ("If there is a lack of compatibility between a local plan and a regional
14 EPF, the former must yield to the latter.").

14 4.8 The Ordinance's setback, landscaping, and fencing provisions violate RCW
15 36.70A.200(5) because they leave the City discretion to deny CUPs for multipurpose trails and
16 impermissibly infringe on the EPF siting process. As recited above, the Ordinance requires a
17 screening/landscaping area 12 feet wide in single family residential zones, plus a 10- to 12-foot
18 setback from the property line of the trail right of way to the edge of the trail shoulder,
19 depending on the surrounding zoning; but if such landscaping and setbacks cannot be achieved
20 by realigning the trail, then the hearing examiner "may" reduce the width of the trail, the
21 landscaping or the required setback, or all of them. Ex. A at p.4 paras.d.4.b.iv, vi.

21 4.9 These provisions violate RCW 36.70A.200(5) because the City can discretionarily
22 require the landscaping and setbacks even where physical realities may make it impossible or
23 impracticable to achieve them. By way of example, in some places the County's right of way is
as narrow as 30 feet, and the Trail's location within that right of way is substantially constrained

1 by ditches and other drainage structures, wetlands, steep slopes, and so forth. In other places,
2 privately owned residential garages, houses, and other structures encroach on the County's right
3 of way, affecting the space and alignment available to improve the Trail. In any of these places,
4 it may be physically impossible for the County to provide any setback or landscaping, or to
5 install a fence, without also compromising user safety, or violating trail design standards or state
6 or federal requirements; but the Ordinance does not require the City to take those factors into
7 account. The City could deny a CUP for failure to comply and thereby preclude a regional trail
8 EPF contrary to the GMA. See King County I, FDO at p.12.

9 4.10 The Ordinance purports to authorize the hearing examiner to realign a proposed
10 trail or reduce its width. Ex A at p.4 para. D.4.b.vi.1. A local jurisdiction may not second-guess
11 the siting process for regional EPFs; nor may a local jurisdiction preclude the expansion of an
12 EPF. King County I, FDO at p.11 ("it is not appropriate for a local government . . . to revise or
13 'second guess' a siting decision that has been made by a regional or state entity.;"); see also Id at
14 p.12 ("no local government regulation . . . may preclude the . . . expansion . . . of an [EPF].").
15 The plain language of the Ordinance violates those precepts. By way of example, **the entire
16 purpose of the County's proposed Trail project is to widen the Trail; allowing the City to
17 realign or narrow the Trail would let the City second-guess the County and would defeat
18 the purpose of the Trail project altogether.** The Ordinance thus violates RCW 36.70A.200(5)
19 as to multipurpose trails in general and the County's Trail in particular.

18 **V. THE ORDINANCE VIOLATES RCW 36.70A.020(7).**

19 5.1 Sections III and IV are re-alleged in full and incorporated herein by reference.

20 5.2 The GMA states that applications for state and local government permits "should
21 be processed in a timely and fair manner to ensure predictability." RCW 36.70A.020(7). As
22 outlined above in Sections III and IV, the Ordinance reserves to the City substantial discretion to
23 deny a CUP to the County or proponents of other multiuse trails; this reserved discretion also

1 violates the "fair" and "predictable" permit processing goals under RCW 36.70A.020(7) because
2 there is no way to judge in advance whether a given trail design will satisfy the Ordinance.

3 5.3 The Ordinance requires that the trail development plan for any multiuse or
4 multipurpose trail must include a yield sign for trail users at each driveway or minor roadway
5 serving less than 50 homes; and include a stop sign for trail users at each driveway or minor
6 roadway serving 50 or more homes. Ex. A at p.2 (LFPMC 18.54.47.D.1.a, b). These signage
7 requirements violate the GMA's "predictability" goal because they conflict with state law,
8 federal regulations, nationally recognized trail standards, or all of them.

9 5.4 Under state law, the Washington State Department of Transportation ("WSDOT")
10 is responsible to provide a uniform system of signing paths and trails, including those of cities,
11 towns, and counties. RCW 47.32.060. WSDOT has adopted an engineering design manual that
12 includes bicycle facility design requirements. WSDOT M 22-01 Ch. 1020 (revised November
13 2006) ("WSDOT Manual").³ The WSDOT Manual specifies that multiuse paths should be
14 signed consistent with the Manual on Uniform Traffic Control Devices (MUTCD). WSDOT
15 Manual at §1020.06(4) ("Determine the need for traffic control devices at all path/ roadway
16 intersections by using MUTCD warrants and engineering judgment."). WSDOT adopted and
17 adapted the MUTCD. WAC 468-95-010.

18 5.5 Federal Highway Administration (FHWA) regulations establish design and
19 construction criteria for bicycle and pedestrian projects receiving federal funds. See 23 C.F.R.
20 Ch. 652. The County's Trail redevelopment project is such a project. To be eligible, the Trail
21 must "be designed in substantial conformity with the latest official design criteria." 23 C.F.R.
22 652.7(b)(5) (2006). The regulations further specify that the AASHTO Guide for Development of
23 New Bicycle Facilities (1981) or equivalent guides developed in cooperation with State or local

³ The WSDOT Manual is available online at
<http://www.wsdot.wa.gov/fasc/EngineeringPublications/manuals/Designmanual.pdf> (visited
January 17, 2007).

1 officials and acceptable to the division office of the FHWA, shall be used as standards for the
2 construction and design of bicycle routes. 23 C.F.R. 652.13(a) (2006).

3 5.6 AASHTO's 1981 Guide for Development of New Bicycle Facilities has been
4 updated several times, most recently in 1999. The AASHTO Guide specifies that traffic control
5 devices, including signage on roadways and bicycle paths, should be provided in accordance
6 with the MUTCD. See AASHTO Guide p.53 (1999) ("In general, uniform application of traffic
7 control devices, as described in the MUTCD, provides minimum traffic control measures which
8 should be applied.")

9 5.7 The MUTCD is published by the FHWA. 23 C.F.R. 655.601(a). The MUTCD
10 specifies that at most intersections, the street carrying the lowest volume of traffic should be
11 signed to stop or, if conditions allow, to yield. MUTCD 2B.05; 2B.08, -.09.⁴ Part 9 of the
12 MUTCD addresses bicycle facilities. It incorporates best practice traffic engineering standards,
13 which dictate that right of way is assigned to the direction of travel or leg of an intersection with
14 the most traffic volume. See MUTCD at §9B.03 (2003) (when considering placement of stop or
15 yield signs, priority at a shared-use path/roadway intersection should be assigned with
16 consideration of relative speeds of shared-use path and roadway users; relative volumes of
17 shared-use path and roadway traffic; and relative importance of shared-use path and roadway.)
18 In the City, the Trail has more traffic volume than the driveways or neighborhood streets that
19 cross it. The Ordinance's signage requirements conflict with engineering best practices and the
20 MUTCD, and thereby violate the GMA's "predictability" goal because the County and other trail
21 EPF proponents cannot provide signage that will simultaneously satisfy the Ordinance, state
22 requirements, federal regulations, the AASHTO Guide, and the MUTCD.

23 5.7 The Ordinance's setback, landscaping, and fence requirements also violate the
GMA's "predictability" requirement. The Ordinance gives the City discretion to require a fence

⁴ The MUTCD is available online at <http://mutcd.fhwa.dot.gov/HTM/2003r1/html-index.htm>
(last visited January 17, 2007).

1 in lieu of setback and landscaping, and if required, the fence must provide an effective visual
2 barrier to the trail. Ex. A at p.3 (LFPMC §18.54.47.D.4.b.vi). The Ordinance's fence
3 requirement makes no allowance for "sight triangles" (open spaces surrounding intersections)
4 required by state law, federal regulations, and AASHTO standards. See, e.g., WSDOT Manual
5 at 910.10 ("Within the sight triangle . . . remove, lower, or move hedges, trees, signs, utility
6 poles, and anything else large enough to be a sight obstruction.") (underlining added). There is
7 no way for the County or any other trail proponent to know in advance if a fence will or will not
8 be required; and if a fence is required, then it must provide an effective visual barrier, which
9 contravenes other safety requirements. The discretion reserved to the City, and the conflict
10 between the Ordinance and other authorities, each violate the "predictability" requirement under
11 RCW 36.70A.020(7) because the Ordinance puts the County and any other multipurpose trail
12 proponents in a bind between the Ordinance's requirements on the one hand and those imposed
by state, federal, or AASHTO requirements—or all of them—on the other.

13 **VI. THE ORDINANCE VIOLATES RCW 36.70A.020(9).**

14 6.1 Sections III through V are re-alleged in full and incorporated herein by reference.

15 6.2 In RCW 36.70A.020(9), the GMA mandates that counties and cities planning
16 under the GMA should "enhance recreational opportunities" and "develop parks and recreational
17 facilities." The Ordinance fails to support these important GMA goals. It reserves to the City
18 the discretion to deny a CUP for the Trail or other multipurpose trails. Denying a CUP for the
19 Trail would effectively block the project and result in the County not developing the Trail, which
20 is an important regional recreational facility. The Ordinance would also allow the City to
21 unilaterally realign or narrow the Trail. In so doing, the City would effectively block the County
22 from enhancing recreational opportunities by improving the Trail to better accommodate its
many users. The Ordinance violates both recreational prongs of RCW 36.70A.020(9).

23 **VII. THE ORDINANCE VIOLATES RCW 36.70A.020(3).**

7.1 Sections III through VI are re-alleged in full and incorporated herein by reference.

1 7.2 In RCW 36.70A.020(3), the GMA requires local jurisdictions planning under the
2 GMA to "[e]ncourage multimodal transportation based on regional priorities and coordinated
3 with county and city comprehensive plans." The Ordinance fails to support this important GMA
4 goal. It reserves to the City the discretion to deny a CUP for the Trail or other multipurpose
5 trails. Denying a CUP for the Trail would effectively block the project and result in the County
6 not redeveloping the Trail, which is an important regional nonmotorized transportation corridor.
7 The Ordinance would also allow the City to unilaterally realign or narrow the Trail for its own
8 purposes. In so doing, the City would effectively block the County from widening the Trail to
9 better accommodate the many cyclists and pedestrians who use it to commute to work and shop.
10 The Ordinance does not "encourage" multimodal transportation as required under RCW
11 36.70A.020(3); rather, the Ordinance would allow the City to thwart that regional goal in favor
12 of its own local interests.

13 **VIII. THE ORDINANCE VIOLATES THE CITY'S COMPREHENSIVE PLAN.**

14 8.1 Sections III through VII are-alleged in full and incorporated herein by reference.

15 8.2 In RCW 36.70A.130(1)(d), the GMA requires that "[a]ny amendment of or
16 revision to development regulations shall be consistent with and implement the [jurisdiction's]
17 comprehensive plan." (Bracketed materials added.) Under the GMA, no feature of a plan or
18 regulation may be incompatible with any other feature of a plan or regulation; and development
19 regulations that implement a comprehensive plan must "fully carry out the goals, policies,
20 standards and directions" contained in the plan. WAC 365-195-210; WAC 195-365-800(1).

21 8.3 The Ordinance violates RCW 36.70A.130(1) because the Ordinance, as a
22 development regulation, is inconsistent with and fails to fully implement the City's
23 comprehensive plan goals, including but not limited to Land Use Goal 7 ("LU-7"); Capital
Facilities and Siting Essential Public Facilities Goal 1 ("CF-1"); and Recreational and Open
Space Goals 1 and 2 ("RO-1" and "RO-2"). The City's CP states those goals as follows:

1 LU-7 Balance the need to provide for adequate housing with the desire to
2 maintain the City's forested, residential character and unique natural
3 sensitive areas. Coordinate the concurrency of new development with the
4 adequate provision of transportation facilities, utilities, capital facilities,
5 parks and recreation facilities, human services and encourage economic
6 development.

7 CF-1 To ensure that those capital facilities and services necessary to support
8 existing and future development shall be adequate to serve the
9 development without decreasing current service levels below adopted
10 level of service standards.

11 RO-1 To maintain a high standard for the development and maintenance of the
12 City's parks for both active and passive use.

13 RO-2 To coordinate with the Transportation Committee in promoting the
14 establishment and maintenance of a safe, interconnected system of trails
15 throughout the City, recognizing the important recreational and
16 transportation roles played by regional and local bicycle and pedestrian
17 trail systems.

18 City of Lake Forest Park Comprehensive Plan, pp. 42, 100, and 111 (2005), attached to
19 this Petition as Exhibit C.

20 8.4 The Ordinance violates LU-7 because it does not "coordinate the concurrency of
21 new development with the adequate provision of transportation facilities [...] capital facilities [...] and recreation facilities" as required under that goal. The County's Trail is already insufficient to serve the existing regional population and trail users; it will only become more inadequate over time as more people move to the City and other jurisdictions in the region. The Ordinance allows the City to deny a CUP for the Trail or other multipurpose trails, and to realign or narrow such trails in the City's sole discretion. Each of these actions would result in continuing the current state of inadequate capital facilities for regional trail EPFs that serve as transportation corridors. The Ordinance thus conflicts with LU-7 and does not fully carry it out.

22 8.5 The Ordinance violates CF-1 because it does not ensure that capital trail facilities
23 necessary to support existing and future development will be adequate to serve development without decreasing current service levels below adopted level of service standards. The Trail

1 does not meet current level of service standards. The Ordinance would allow the City to deny or
2 condition a CUP for the Trail so as to prevent the County from improving its capital facilities to
3 provide adequate service to current trail users, let alone future development. The Ordinance thus
4 conflicts with CF-1 and does not fully carry it out.

5 8.6 The Ordinance conflicts with RO-1 and RO-2 because it does not "maintain a
6 high standard for the development and maintenance" of park facilities for both active and passive
7 use, and because it does not "promot[e] the establishment and maintenance of a safe,
8 interconnected system of trails throughout the City" or "recogniz[e] the important recreational
9 and transportation roles played by regional [. . .] bicycle and pedestrian trail systems."

10 (Bracketed material added.) The Ordinance would authorize the City to deny a CUP for the
11 Trail or other multipurpose trails, or to realign or narrow such trails, even though the existing
12 Trail is insufficient to support current levels of use, let alone safely accommodate additional
13 numbers of users over time. The Ordinance thus conflicts with RO-1 and RO-2 and does not
14 fully implement them as required by RCW 36.70A.130.

15 8.7 The Ordinance violates RCW 36.70A.130(1)(d) because it does not contain
16 "specific standards for deciding in advance whether a project does or does not qualify for
17 approval." Citizens for Mount Vernon v. City of Mount Vernon, WWGMHB No. 98-2-0006c,
18 FDO at p.7 (1998). See section IV, above. It contains generalized criteria that leave the City
19 discretion to determine (among other things) what is "adequate" lighting, and whether a trail
20 development plan is "compatible" with development in the vicinity; and the Ordinance
21 authorizes the City to require setbacks and landscaping parameters, to realign or narrow the Trail
22 where the City deems those parameters cannot be met, or to instead reduce landscaping and
23 setbacks and require a fence without regard to safety or other practical considerations. There is
no way for the County or any other applicant to know in advance what would be required to
improve the Trail or to build or upgrade any other multipurpose trail, or whether it would be
possible to satisfy the Ordinance at all. The Ordinance violates RCW 36.70A.130(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IX. THE CITY VIOLATED RCW 36.70A.106.

9.1 Sections III - VIII are re-alleged in full and incorporated herein by reference.

9.2 In RCW 36.70A.106(1), the GMA requires that "[e]ach county or city proposing adoption of a comprehensive plan or development regulations shall notify [CTED] of its intent at least sixty days prior to final adoption." CTED's regulations reinforce this statutory requirement. See WAC 365-195-620(1). CTED's regulations specify that a jurisdiction must file five copies of the proposed plan or development regulation(s) with CTED, and provide copies to other agencies listed by CTED. *Id.* Jurisdictions must also submit a complete and accurate copy of comprehensive plans or development regulations within ten days of final adoption. RCW 36.70A.106(2); WAC 365-195-620(2). Amendments to comprehensive plans and development regulations are subject to the same requirements. WAC 365-195-620(3).

9.3 The Ordinance adds a new section to LFPMC Ch. 18.54, which is a development regulation. See Ex. A at p.1. As such, the City was required to comply with RCW 36.70A.106 and CTED's regulations; but the City did not submit the draft Ordinance to CTED sixty days prior to final adoption. Nor did the City provide the final Ordinance to CTED within ten days of its final adoption. The City violated RCW 36.70A.106 when it adopted the Ordinance.

X. THE CITY VIOLATED SEPA, RCW CH. 43.21C.

10.1 Sections III through IX are re-alleged in full and incorporated herein by reference.

10.2 The Board is authorized to consider SEPA compliance under RCW 36.70A.280. SEPA ensures that agencies and jurisdictions consider the environmental consequences of their actions. See, e.g., RCW 43.21C.030(c). Unless a categorical exemption applies, an "agency" must include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment "a statement describing the environmental impacts of and alternatives to the proposal." *Id.*; see also RCW Ch. 43.21C and WAC 197-11-800 (listing categorical exemptions.) The City Council is a "local agency" for

1 SEPA purposes. WAC 197-11-762.⁵ Unless a categorical exemption applies, SEPA analysis is
2 required each time the City performs an "action," broadly defined to include the adoption of
3 regulations, policies, procedures, and legislative proposals. See WAC 197-11-704. For all
4 nonexempt actions, SEPA requires the City to prepare—at a minimum—an environmental
5 "checklist" and a determination of nonsignificance. WAC 197-11-315; WAC 197-11-960.

6 10.3 The City's adoption of the Ordinance was not categorically exempt from SEPA.
7 See WAC 197-11-704 (listing adoption of rules and regulations, policies, procedures, and
8 legislative proposals as types of SEPA "action"). The City thus took "action" under SEPA when
9 it adopted the Ordinance, see *Id.*, but the record appears to be devoid of any documentation
10 regarding SEPA compliance. The City apparently performed no SEPA review before it adopted
11 the Ordinance. As a result, the City did not make an informed decision about the environmental
12 consequences of its action as required by SEPA. The City violated SEPA, RCW Ch. 43.21C.

12 **XI. IDENTITY AND ADDRESS OF PETITIONER**

13 11.1 Petitioner King County ("the County") is a home rule charter county and political
14 subdivision of the state of Washington. For purposes of this petition, King County's mailing
15 address is:

16 Director's Office
17 Parks and Recreation Division
18 201 S. Jackson Street, Suite 700
19 Seattle, WA 98104
20 Phone: 206-296-8687
21 Fax: 206-296-8686

22 Petitioner King County is represented by the King County Prosecuting Attorney's Office (PAO).

23 The PAO's mailing address is:
Andrew Marcuse
500 4th Avenue, Suite 900

24 ⁵ WAC 197-11-762 defines "local agency" to mean "any political subdivision, regional
25 governmental unit, district, municipal or public corporation, including cities, towns, and counties
26 and their legislative bodies." (Underlining added.)

1 Seattle, WA 98104
2 Phone: (206) 296-0430
3 Fax: (206) 296-0415

4 **XII. IDENTITY OF RESPONDENT**

5 12.1 Respondent City of Lake Forest Park is a noncharter code city with a mayor-
6 council form of government under RCW Ch. 35A.12. See LFPMC §1.06.010.

7 The City's mailing address is:
8 City of Lake Forest Park
9 City Hall
10 17425 Ballinger Way NE
11 Lake Forest Park, WA 98155-5556
12 Phone: 206 368-5440
13 Fax: 206 364-6521

14 **XIII. ISSUES**

15 13.1 This petition presents seven issues for resolution by the Board, which are as
16 follows:

- 17 1. Is the Ordinance invalid under RCW 36.70A.200(5) because it reserves to the City
18 discretion to deny conditional use permits for regional multiuse or multipurpose trails;
19 allows the City to second-guess regional EPF siting decisions; impermissibly requires
20 regional trail EPFs to be "compatible" with development in the vicinity; authorizes the
21 City to impose setback, landscaping, and fencing requirements that could make regional
22 trail EPF siting or improvement impracticable; and imposes signage requirements that
23 are contrary to state and federal requirements and national guidelines, each of which
precludes regional trail EPFs or renders them impracticable contrary to the GMA?
2. Is the Ordinance invalid under RCW 36.70A.020(7) because it imposes traffic control
requirements that are contrary to state law and nationally accepted trail design standards;
and reserves to the City discretion to impose an unlimited range of setback, landscaping
and fencing requirements, including requirements that may contradict state and federal
requirements and national guidelines; all of which results in uncertainty and confusion
rendering regional trail EPF permit decisions unpredictable?
3. Does the Ordinance violate RCW 36.70A.020(9) because it precludes the enhancement of
recreational opportunities as well as the development of recreational facilities?
4. Does the Ordinance violate RCW 36.70A.020(3) because it does not encourage efficient
multimodal transportation systems based on regional priorities?

- 1 5. Does the Ordinance violate RCW 36.70A.130(1)(d) because it is inconsistent with and
2 does not fully implement the City's comprehensive plan goals LU-7, CF-1, RO-1, and
3 RO-2?
4
5 6. Did the City violate SEPA, including RCW 43.21C.030, WAC 197-11-310(1), and WAC
6 197-11-315 by failing to prepare an environmental checklist and failing to make a
7 threshold determination, all without any claim, statement or basis that the City's adoption
8 of Ordinance 951 was exempt from SEPA?
9
10 7. Did the City violate RCW 36.70A.106 when it adopted the Ordinance?

11 **XIV. PETITIONER'S STANDING TO BRING THIS PETITION FOR REVIEW**

12 14.1 Petitioner King County has GMA standing under RCW 36.70A.280(2) because
13 the County is a political subdivision of the State of Washington and therefore constitutes a
14 "person" under RCW 36.70A.280(3); and because the County participated both orally and in
15 writing before the City regarding the adoption of the Ordinance. County representatives
16 appeared and testified at City Council hearings, and the County submitted multiple letters to the
17 City regarding the Ordinance. By way of example, the official City Council meeting minutes
18 show that the County participated in person or by letter during the Council's deliberations on the
19 Ordinance on August 24, September 14, October 5, and November 9, 2006.⁶

20 14.2 The County also has standing to assert SEPA claims because the County is
21 directly aggrieved and adversely affected by the Ordinance in that the County owns and operates
22 the Trail in the City, and the County's plans to improve the Trail will be rendered impracticable
23 by the Ordinance for the reasons outlined in this Petition. The County's interest in improving the
Trail is within the zone of interests protected by SEPA because the City has not considered the
environmental consequences of its action and the resultant impact on the timely improvements of
the Trail EPF. Paragraph 3.6 of this Petition outlines evidentiary facts showing the City's failure
to comply with SEPA has caused the County specific and perceptible harm in that the City did

⁶ The Board may officially notice the City Council meeting minutes, which the City approved by motion. See WAC 242-02-660(4).

1 not fully consider the environmental consequences of delaying, denying, or modifying a CUP to
2 improve the Trail or other multipurpose trails in the City.

3 14.3 Under RCW 36.70A.280(2), a Petition for Review may be filed by a county that
4 is planning under the GMA. King County plans under the GMA, so it may file this Petition for
5 Review.

6 **XV. ESTIMATED LENGTH OF HEARING**

7 15.1 Petitioner King County estimates the length of the hearing to be one (1) day.

8 **XVI. RELIEF SOUGHT**

9 16.1 Petitioner King County prays for the following relief:

- 10 1. A finding that the Ordinance violates RCW 36.70A.200(5) because the Ordinance is a
11 local development regulation that precludes the siting or improvement of trail EPFs.
- 12 2. A finding that the Ordinance violates RCW 36.70A.200(5) because it reserves to the City
13 discretion to deny conditional use permits for trail EPFs.
- 14 3. A finding that the Ordinance violates RCW 36.70A.200(5) because it reserves to the City
15 discretion to second-guess trail EPF siting decisions.
- 16 4. A finding that the Ordinance violates RCW 36.70A.200(5) because it requires trail EPFs
17 to be "compatible" with development in the vicinity.
- 18 5. A finding that the Ordinance violates RCW 36.70A.200(5) because it imposes setback,
19 landscaping, and fencing requirements that would make it impracticable to site or
20 improve trail EPFs.
- 21 6. A finding that the Ordinance violates RCW 36.70A.020(7) because it imposes traffic
22 control requirements that are contrary to state law, federal requirements, or nationally
23 accepted trail design standards, or all of them, each of which results in uncertainty and
confusion that make permit decisions unpredictable when siting or improving trail EPFs
in the City.
7. A finding that the Ordinance violates RCW 36.70A.020(9) because it precludes the
enhancement of recreational opportunities and the development of recreational facilities.

- 1 8. A finding that the City failed to comply with RCW 36.70A.130(1) because the Ordinance
2 is not consistent with and does not fully implement the City's comprehensive plan goals,
including but not limited to goals LU-7, CF-1, and RO-1 and RO-2.
- 3 9. An order or declaration that Ordinance 951 is invalid under the GMA because it fails to
4 comply with the GMA, or substantially interferes with the GMA's goals, or both of them.
- 5 10. A finding that the City failed to comply with SEPA, RCW 43.21C, when the City
6 adopted the Ordinance.
- 7 11. An order or declaration that the Ordinance shall have no force or effect until the City has
8 complied with SEPA when taking action in connection with the Ordinance.
- 9 12. A finding that the City failed to provide notice to CTED and other entities as required
10 under WAC 365-195-620.
- 11 13. An order or declaration that the Ordinance is invalid for failure to comply with RCW
12 36.70A.106.
- 13 14. Such other relief as the Board deems just and equitable.

14 **XVII. VERIFICATION**

15 17.1 Petitioner King County and the undersigned attorneys for King County have read
16 this Petition for Review and believe the contents to be true.

17 Respectfully submitted this 12nd day of January, 2007.

18 By: Kevin R. Brown Director

19 NAME

20 TITLE

21 King County Parks and Recreation
22 King County

23 NORM MALENG

King County Prosecuting Attorney

By: Andrew W. Marcuse

Andrew W. Marcuse, WSBA #27552

Senior Deputy Prosecuting Attorney

Attorneys for Petitioner, King County

Exhibit A

ORDINANCE NO. 951

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK; RELATING TO THE CITY'S CONDITIONAL USE ORDINANCE; AMENDING SECTION 18.54.047 OF THE LAKE FOREST PARK MUNICIPAL CODE PROVIDING SPECIFIC DEVELOPMENT CRITERIA UNDER WHICH A MULTI-USE OR MULTI-PURPOSE TRAIL MAY BE AUTHORIZED AS A CONDITIONAL USE

Whereas, congestion, conflicts and variety of users on multi-use and multi-purpose trails has increased to a level that requires special regulation and consideration; and

Whereas, the Lake Forest Park Municipal Code contains regulations governing multi-use and multi-purpose trail facilities under conditional uses in the City; and

Whereas, the City Council has determined that public health, safety and environmental issues raised by the public, including those raised in public hearings and meetings, will be protected and promoted by amendment of such regulations; and

Whereas, the City Council has determined that it is in the best interests of the City to amend the provisions in the Lake Forest Park Municipal Code governing multi-use and multi-purpose trail facilities as set forth in this Ordinance; now, therefore,

THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 18.54.047 of the Lake Forest Park Municipal Code is amended as follows:

18.54.47 Multi-use or Multi-purpose trails.

A. 1. The City Council finds that the location of Multi-use or Multi-purpose trails in the City of Lake Forest Park provide the public with an important opportunity for recreation, outdoor activities and an alternative transportation mode in an urban environment.

2. The City Council finds that establishment, maintenance or improvement of Multi-use or Multi-purpose trails in an urban environment, while providing general benefits to the public, affects the quality of life and poses issues of safety for those living near a trail.

3. The City Council finds that the Multi-use or Multi-purpose nature of trails creates the potential for public safety issues arising from uses by different categories of users.

4. The City Council finds that the interests of the citizens of Lake Forest Park, trail users, and those living near trails are best served by regulating the development, improvement and operation of trails through a conditional use process designed to enhance the public's safety, to accommodate the interests of those living near trails, and to provide for the interests of all trail users; and, to that end, the City Council sets forth the following principles, not as sources of additional authority for regulation, but as guidance for the City's Hearing Examiner, when that official considers applications under this section:

a. Avoid, whenever possible, altering traffic flows and patterns that are normal and customary to neighborhoods through which a trail passes or will pass, or impeding the safe and efficient ingress and egress to and from adjacent or near-by uses and areas, or degrading access for fire and emergency medical equipment and personnel.

b. Consider the neighborhood(s) through which a trail passes or will pass to maintain compatibility with such neighborhoods, and to the extent practicable maintain the privacy of adjacent residential uses or mitigate impacts upon residential uses through setbacks, screening/landscaping, fencing, and/or grade changes.

c. Provide a park-like environment where the trail passes through residential areas with adequate and properly directed lighting and appropriately placed information signs and kiosks.

d. Provide a safe environment for trail users and residents of areas adjacent to trails.

B. "Multi-use trail" and "multi-purpose trail" means a paved recreational path for non-motorized users that connects with or continues with such paths in other cities, including but not limited to paths designed for use by: bicyclists, in-line skaters, roller skaters, wheelchair users (both non-motorized and motorized) and pedestrians, including walkers, runners, people with baby strollers, and people walking dogs.

C. A multi-use or multi-purpose trail facility may be allowed, added to or altered as a conditional use in any land use zone of the City. In granting such conditional use, the hearing examiner is instructed to attach appropriate conditions such as, but not limited to, the following: limitation of size, location on property and screening and to only issue conditional use permits conditioned with any requirements provided under Chapter 18.54, unless otherwise provided herein.

D. Any conditional use for a multi-use trail or multi-purpose trail

1. Shall require for trail crossings with driveways and minor roadways:

a. providing access to less than 50 homes a yield sign for the trail users, maintaining right-of-way to motor vehicular traffic with advance warning signs on the trail and road (unless there are known conflicts that require a stop sign for the trail and/or additional traffic control measures); or

b. providing access to 50 or more homes a stop sign for the trail users, maintaining right-of-way to motor vehicular traffic with advance warning signs on the trail and road (unless there are known conflicts that require additional traffic control measures for the trail).

c. The number of homes provided access by a trail crossing shall be calculated by counting the number of housing units from the trail crossing to the point at which a housing unit is closer to an alternate trail crossing or other exit not requiring crossing the trail.

2. Shall, with respect to trail crossings at signalized or stop sign controlled intersections, align the trail to enter into the controlled intersection (e.g. via a marked cross walk) and abide by vehicular traffic control measures, unless the hearing examiner finds that such alignment is not practicable.

3. Shall specify maximum posted speeds not to exceed 15 MPH, provided that in order to promote safety and use of the trail by multiple users, a lower speed limit (e.g. 10 MPH) shall be posted in areas where there is user congestion, accident history, limited sightlines or other conditions that merit a lower speed limit. In the event that more than two (2) reported accidents, as recorded by the City's Chief of Police, involving more than one party occur within any 0.5 mile portion of any trail in a 12-month period, such portion of trail shall be deemed to be congested and/or to have other conditions meriting a lower speed limit and the posted speed limit in such areas shall, at the request of the City, be reduced (if previously higher) to not more than 10 MPH. If subsequent conditions change and a period of not less than 24 months passes without any reported accidents involving more than one party within the lower speed zone, the owner of the trail may request the City to increase the posted speed limit not to exceed 15 MPH (subject to reduction again as provided above).

4. Shall comply with all applicable requirements of this Chapter; provided that in addition to the site plan required by LFPMC 18.54.021, the applicant shall provide to the satisfaction of the hearing examiner:

a. A Traffic Control Plan that:

i. Includes a description of intersection control that addresses trail user safety and maintenance of reasonable convenience for traffic crossing the trail;

ii. Establishes specific type and location of traffic control and other signs and markings for trail users, such as stop signs, yield signs, speed limit signs, warning signs, crosswalks, and signs or markings that provide primary right-of-way for ingress and egress to uses along the trail;

iii. Establishes the location of radar activated speed indication devices as may be designated, provided and maintained by the City.

iv. Establishes a plan for law enforcement that identifies a scheduling mechanism for enforcement and the resources to be assigned to enforcement, provided that the plan may include a contract arrangement with the City for law enforcement.

b. A Trail Development Plan that:

i. Is compatible with the character and appearance of development in the vicinity and preserves the privacy of adjacent uses by the use of setbacks, screening, landscaping, fencing or grade changes to buffer adjacent properties;

ii. Specifies trail design speed(s), sight distances, trail surfaces, trail widths and speed control measures;

iii. Locates access limiting bollards, if any, and trail furniture, including but not limited to benches, tables, and kiosks;

iv. Provides a design of non-paved areas and shoulders including a screening plan that complies with the screening and landscaping requirements in Chapter 18.62; provided however, whenever a trail is adjacent to single family residential zones, screening/landscaping width shall be no less than 12 feet (provided that landscaping within sight triangles shall not interfere with the sight triangles), unless the hearing examiner determines that 12 feet of landscaping is not practicable;

v. Provides a design of adequate trail lighting for safety at drives and intersections while minimizing light shining into residences to the extent reasonably possible consistent with safety; and

vi. Provides for the following minimum setbacks from the property line of the trail right of way to the edge of the trail shoulder:

<u>Adjacent Property</u>	<u>Minimum Required Setback</u>
<u>Zoning Designation</u>	
<u>RS-RM</u>	<u>12-foot setback to shoulder of trail</u>
<u>BN, CC, TC</u>	<u>10 foot setback to shoulder of trail</u>

Provided however, whenever by reason of a pre-existing structure or topographical feature, width of available right of way or applicable environmental laws and regulations, the setback or landscaping requirements of this ordinance cannot be met by realignment of the proposed or expanded trail, the hearing examiner may condition a conditional use permit

i. by reducing the width of the proposed trail, but only to the extent consistent with trail user safety; or

2. by reducing the width of the required setback or landscaping by only that amount necessary to accommodate the proposed trail; or

3. by a combination of 1 and 2 above.

Whenever the hearing examiner conditions a conditional use permit by reducing the width of the required setback or landscaping, the hearing examiner shall include as a condition of the permit enhanced landscaping to provide screening that meets or exceeds screening provided by the combination of the required setback and landscaping; provided that, if the remaining setback or landscaping is inadequate in size to allow for enhanced landscaping, the hearing examiner may require installation of fencing that shall provide an effective visual barrier to the proposed trail.

c. A Trail Use Plan that:

i. Provides for the accommodation of different categories of trail users traveling at different speeds and with different space requirements and minimizes conflicts between them and that analyses how the following contribute to or promote such accommodation;

A. posted speeds;

B. design speed;

C. trail surfaces, trail widths and speed control measures;

D. use areas by different categories of users at peak times; and

E. rules and regulations for trail users;

iii. Includes the location of signs providing notification of trail conditions and use regulations at entry points to the City and at other key points of the trail; and

d. A Trail Maintenance Plan establishing the party responsible for each trail facility feature requiring maintenance and establishing on-going maintenance standards to maintain the safety of users and appearance of the trail, including, but not limited to, the following:

i. Areas designated for maintained landscaping, e.g., site triangles and other areas that require regular maintenance indicating expected levels of maintenance, e.g. annual, monthly, more or less frequent during different seasons and procedures for periodic replacement of dead or dying plants;

ii. Areas proposed for minimal maintenance landscaping (e.g. control of noxious weeds or height of vegetation only);

iii. Areas proposed for no regular maintenance (e.g. natural areas that would have little or no maintenance other than that needed for health and safety or emergency reasons);

iv. Traffic control and information signing maintenance including:

A. Inspection schedule;

B. Replacement schedule; and

C. Enforcement actions for removal and defacement of signs;

- v. Drainage facility maintenance;
- vi. Lighting maintenance;
- vii. Trail furniture maintenance;
- viii. Maintenance of Trail Surface and Related Facilities, including but not limited to:
 - A. Inspection of pavement surface and tree roots;
 - B. Pavement surface repair to maintain smooth surface;
 - C. Sweeping and debris removal;
 - D. Patching of utility connections; and
 - E. Striped and painted areas.
- ix. Response procedures for flood and landslide emergencies.

Section 2. If any section, subsection, sentence, clause, phrase or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

Section 3. This ordinance shall take effect after publication and posting as provided by law.

PASSED BY A MAJORITY VOTE of the members of the City of Lake Forest Park City Council this 9th day of November 2006.

APPROVED:

Dwight A. Thompson, Mayor pro tempore

Attest:

Susan Stine, City Clerk

Exhibit B

RECEIVED
NOV 30 2006
CITY OF
LAKE FOREST PARK

Affidavit of Publication

STATE OF WASHINGTON, }
COUNTY OF SNOHOMISH } S.S.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

City of Lake Forest Park

Ordinance Nos. 949, 951 and 953

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

November 24, 2006

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Shold
Principal Clerk

Subscribed and sworn to before me this 24th day of November, 2006

Amy L. Stamatou
Notary Public in and for the State of Washington, residing at Everett, Snohomish County

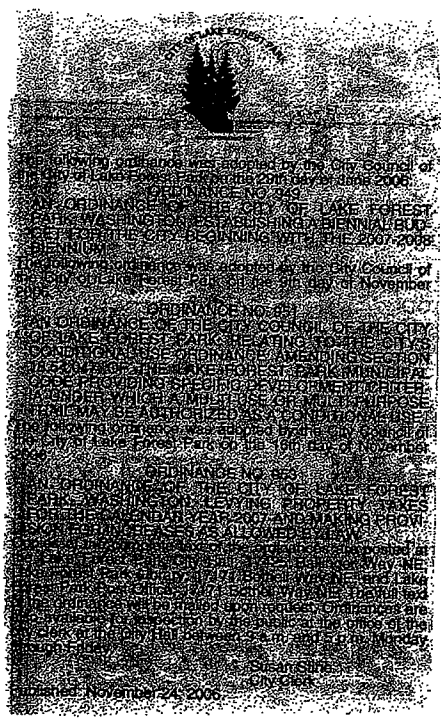
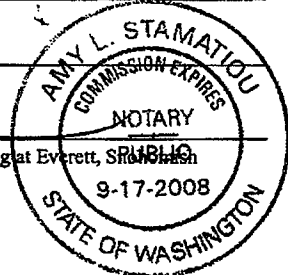
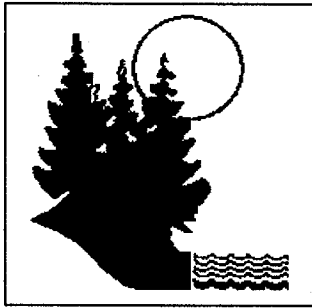


Exhibit C



2005 CITY OF LAKE FOREST PARK COMPREHENSIVE PLAN

Adopted December 1, 2005
Ordinance 932

Original plan adopted:
April 19, 1995

Previously Updated:
December 14, 2000
November 27, 2001

2004 Planning Commission

Lloyd Skinner, Chair
Stephen Plusch, Vice Chair
Sang-Won Cho
Greg Easton
Jeff Foster
Joseph Hauth
Judy Herring
Linda Owens

2005 Planning Commission

Judy Herring, Chair
Jeff Foster, Vice Chair
Sang-Won Cho
Don Fiene
Sandi Koppenol
Tom Lerner
Linda Owens
Don Shaffer
Shary Van

Mayor

David Hutchinson

2004/2005 City Council

Carolyn Armanini
Mary Jane Goss
Nate Herzog
Alan Kiest
Roger Olstad
Ed Sterner
Dwight Thompson

Executive Summary	i
TABLE OF CONTENTS	
Introduction	7
Format of Plan	8
<u>SECTION I</u>	
Planning Process in Lake Forest Park	11
Planning Area	13
Relationship of Plan to King County Countywide Planning Policies	14
The Community of Lake Forest Park	16
A Vision for Lake Forest Park	18
<u>SECTION II</u>	
Land Use	
Background	21
Purpose	21
History	21
Inventory and Analysis	23
Physical Environment	23
Land Use Patterns and Trends	23
Mix by Land Use Type	23
Available Lands	26
Growth Trends and Future Conditions	27
Historical and Projected Population	27
Historical and Projected Housing	28
Historical and Projected Employment	29
Land Capacity	30
Development Options and Opportunities	31
Summary of Issues	33
Goals and Policies	34
Environmental Quality and Shorelines	
Background	45
Environmental Quality Analysis	46
Wetlands	47
Streams	48
Flood Hazard Areas	49

