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

CASCADE BICYCLE CLUB and)	
KING COUNTY,)	
)	No. 07-3-0010c
)	
Petitioners,)	
)	
vs.)	KING COUNTY'S PREHEARING
)	BRIEF
CITY OF LAKE FOREST PARK,)	
)	
)	
Respondent.)	
)	
)	

I. INTRODUCTION

This dispute goes to the heart of the Growth Management Act (GMA). City of Lake Forest Park Ordinance 951 (the Ordinance) contains fundamental flaws that undermine core GMA goals and objectives. The Ordinance gives the City of Lake Forest Park (the City) the discretion to deny needed permits for certain essential public facilities (EPFs)—namely, trails that function as important non-motorized transportation corridors. The Ordinance gives the City the discretion to impose impracticable permit conditions that could so heavily burden a trail project as to kill it even if the City does not veto it outright. The Ordinance's permit process is not fair or predictable. The Ordinance does not support the City's own comprehensive plan goals. And certain of the Ordinance's substantive requirements conflict with state, federal, and other regulatory standards. These flaws cause the Ordinance to violate the GMA, and threaten to produce "balkanized decision-making and unmet regional needs" contrary to the purpose of the

1 GMA.¹ King County's Burke-Gilman Trail (the Trail), which runs through the City, provides a
2 useful example or practical test case to demonstrate how the Ordinance contravenes the GMA.

3 In addition, the City committed several significant procedural errors when it adopted the
4 Ordinance. These procedural errors also violated important GMA goals and objectives, as well
5 as the State Environmental Policy Act (SEPA), and provide additional reasons for the Board to
6 invalidate the Ordinance and to set it aside.

7 II. STANDARD OF REVIEW

8 The Board must decide whether the Ordinance, a City development regulation, violates
9 the GMA. RCW 36.70A.280(1)(a). The Ordinance is presumed valid and the burden is on King
10 County (the County) to demonstrate that the Ordinance is not in compliance with the GMA.
11 RCW 36.70A.320(1), (2). The GMA instructs the Board to apply a "clearly erroneous" standard
12 of review, under which the Board must find compliance unless it determines that City's actions
13 were clearly erroneous in view of the entire record before the Board and in light of the goals and
14 requirements of the GMA. RCW 36.70A.320(3); WAC 242-02-634. To sustain a finding of
15 clear error, the Board "must be left with the firm and definite conviction that a mistake has been
16 made" by the City. Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). The
17 same standard of review applies to the Board's review of SEPA compliance. 36.70A.280(1)(1);
Cougar Mt. Assocs. v. King County, 111 Wn.2d 742, 747, 765 P.2d 264 (1988); Sound Transit v.
City of Tukwila, CPSGMHB No. 99-3-0003 (1999), FDO at p.3.

18 The Board thus gives a modicum of deference to the City, but the Board's discretion "is
19 bounded . . . by the goals and requirements of the GMA." King County v. CPSGMHB, 142
20 Wn.2d 543, 561, 14 P.3d 133 (2000). "The Board acts properly when it foregoes deference to a
21 plan that is not consistent with the requirements and goals of the GMA." Cooper Point Ass'n v.
Thurston County, 108 Wn. App. 429, 444, 31 P.3d 28 (2001) (punctuation omitted), affirmed,

22
23 ¹ Port of Seattle v. City of Des Moines, CPSGMHB No. 97-3-0014, FDO at p.12 (1997) (Board Member J. Tovar,
concurring).

1 148 Wn. 2d 1, 57 P.3d 1156 (2002). When reviewing Board decisions, the courts examine
2 questions of law de novo but give substantial weight to the Board's interpretation of the GMA.
3 Cooper Point Ass'n, 148 Wn. 2d at 14-15.

4 III. BACKGROUND/STATEMENT OF FACTS²

5 Section III of the County's Petition, incorporated herein by this reference, contains a full
6 recital of the facts and background leading up to this dispute. A much abridged version follows.

7 In brief, the County owns and operates the Trail within a 50-foot wide former railroad
8 right-of-way. Ex. 532 at p.3. A roughly two-mile stretch of the County's Trail lies within the
9 City. Id. The Trail is used daily by a large and growing number of pedestrians and cyclists to
10 commute to work or to shop, and for various recreational pursuits such as bicycling, jogging,
11 walking, bird-watching, in-line skating, skateboarding, and dog walking. Id. Indeed, in the City
12 the Trail has substantially more traffic volume—nearly three times higher, in some locations—
13 than the driveways or neighborhood streets that cross it. Id. at p.18. The trail surface is falling
14 apart, and at typically 10 feet wide, this 1970s-era section of the Trail does not meet modern trail
15 design criteria and is insufficient to support current use levels, let alone the needs of a growing
16 regional population. Compare Id. at pp.7, 9 (describing current trail conditions) with id. at p.24
17 (describing minimum width that would meet current standards) and Id. at Appendix 7A p.21
18 ("[c]urrent conditions along the . . . Trail do not meet best engineering safety practices."). The
19 County plans to realign the Trail within the existing corridor, to repave it and widen it an
20 additional 2 feet, and to add continuous gravel shoulders on each side. Ex. 508 at p.2.

21 However, existing easements and sensitive features (slopes, wetlands, drainage facilities,
22 etc.) reduce the available right-of-way from 50 feet to 35 feet in some locations, and just 30 feet

23 ² For the reasons set forth in section 2.1 of King County's Petition for Review, which paragraph is incorporated
herein by this reference, the Board has personal jurisdiction over the parties, has subject jurisdiction over this matter,
and is the proper venue in which to resolve this dispute. For the reasons set forth in Section 14 of King County's
Petition for Review, which section is incorporated herein by this reference, King County has standing to bring the
Petition and to make the arguments set forth herein. Respondent did not challenge jurisdiction, venue, or standing
prior to the Prehearing Order's deadline for dispositive motions (February 22, 2007). Those matters are therefore
established and not subject to further dispute.

1 in others; and, in many other places, substantial encroachments (landscaping, fencing, and even
2 portions of buildings such as garages and residences) protrude into the County's right of way.
3 Ex. 532 at pp.10 (encroachments), p.12 (stormwater), pp.13-14 (wetlands). These physical
4 impediments necessarily constrain the County's design options in some places within the City.
5 There is also a certain amount of local resistance to the County's plan to improve the Trail. Ex.
6 424. This fact is consistent with the County's past experience as the owner and manager of more
7 than 175 miles of trails, and consistent with public trail siting and improvement projects in
8 general.³

9 The City created another hurdle to such projects when, in November of 2006, the City
10 adopted Ordinance 951 (the Ordinance) and added new conditional use permit (CUP)
11 requirements for "multi-use and multipurpose trail facilities." Ex. 418.⁴ At present there is only
12 one multi-use or multipurpose trail in the City—the Burke-Gilman Trail. See Attachment KC-A
13 at p.105 (Excerpt of City Comprehensive Plan, adopted 12/1/2005 by and through City of Lake
14 Forest Park Ordinance 932; inventorying existing park and recreation facilities). The Ordinance
15 is aimed squarely at the Trail, and the record proves it: the City's bare index to its own record
16 expressly names or references the Burke-Gilman at least **441** times. See City's Index, pp. 1-49.

17 Under the Ordinance, a multi-use or multipurpose trail "may" be allowed, added to or altered
18 as a conditional use. Ex. 418 at p.2 para. C. The Ordinance requires trail development plans to
19 be "compatible with the character and appearance of development in the vicinity and preserves

20 ³ See, e.g., King County v. Rasmussen, 299 F.3d 1077, (9th Cir. Wa. 2002), cert. denied, 538 U.S. 1057, 123 S.Ct.
21 2220, 155 L.Ed.2d 1106 (2003); Friends of the East Lake Sammamish Trail v. City of Sammamish, 361 F.Supp.2d
22 1260 (W.D. WA. 2005); Lawson v. State, 107 Wn.2d 444, 730 P.2d 1308 (1986); Ray v. King County, 120 Wn.
23 App. 564, 86 P.3d 183 (2004); King County v. Squire Investment Co., 59 Wn. App. 888, 801 P.2d 1022 (1990); see
also In re Petition of City of Long Beach, 119 Wn. App. 628, 82 P.3d 259 (2004); Harris v. Pierce County, 84. Wn.
App. 222, 928 P.2d 1111 (1996).

⁴ In section 1.B, the Ordinance defines the term "multi-use trail" and "multi-purpose trail" to mean:
[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 motorized and non-motorized) and pedestrians, including walkers,
runners, people with baby strollers, and people walking dogs.
Ex. 418 at p.2 para. B.

1 the privacy of adjacent uses by the use of setbacks, screening, landscaping, and fencing or grade
2 changes to buffer adjacent properties." Id. at p.4 para. D.4.b.i. The Ordinance instructs the City's
3 hearing examiner to attach "appropriate" conditions including, but not limited to, limits on trail
4 size, trail location on property, setbacks from adjoining property, and fencing and screening (i.e.
5 landscaping) requirements. Id. at p.2 para. C.

6 The Ordinance authorizes the City's hearing examiner to reduce the width of a proposed trail;
7 to change the trail's location within its corridor; to require the trail to remain at least 12 feet away
8 from adjoining property, or to reduce required setbacks in exchange for increased landscaping
9 and fencing to protect the privacy of adjoining landowners. Id. at p.4 para. D.4.b.iv, -.vi.
10 Further, the Ordinance requires that stop signs must be placed (facing the trail) at any
11 intersection serving more than 50 homes, and requires that yield signs must be placed (also
12 facing the trail) at any intersection serving 50 or less homes. Id. at pp. 2-3. para. D.1.a, -.b.
13 Finally, the Ordinance requires "adequate" lighting for safety, Id. at p.4 para. D.4.b.v.

14 In the months before the City adopted the Ordinance, the County warned the City that it
15 had specific, GMA-based concerns about these requirements, as well as others. See, e.g, Ex. 535
16 p.1; Ex. 613; Supp. Ex. 3; Supp. Ex. 4; Supp. Ex. 7. The County's concerns remain, and they
17 form the basis for the County's petition and for the arguments set forth below.

18 IV. ARGUMENT

19 Three preliminary matters must be addressed before proceeding to the legal issues framed
20 by the Board in its Prehearing Order. The first preliminary matter is the classification of trails
21 (and especially regional trails like the Burke-Gilman) as essential public facilities. The second
22 preliminary matter is the preclusive nature of the Ordinance. The third preliminary matter is the
23 relationship between the Ordinance, the Board's evaluation of the Ordinance under the GMA,
and the Board's consideration of the Ordinance's effect on the County's Trail.

Preliminary Matter One. In RCW 36.70A.200(5), the GMA mandates that "[n]o ...
development regulation may preclude the siting of essential public facilities." The GMA defines

1 the term "essential public facilities" (EPFs) to include "those facilities that are typically difficult
2 to site." RCW 36.70A.200(1) (listing examples). In addition to EPF "siting," the mandate in
3 RCW 36.70A.200(5) applies to the expansion or improvement of EPFs. See City of Des Moines
4 v. Puget Sound Regional Council, 98 Wn. App. 23, 988 P.2d 27 (1999), review denied, 140
5 Wn.2d 1022, 10 P.3d 403 (2000); Port of Seattle v. City of Des Moines, No. 97-3-0014, FDO at
6 p.5.⁵ Under the State's GMA regulations, "the broadest view should be taken of what constitutes
7 a public facility, involving the full range of services to the public provided by government,
8 substantially funded by government, contracted for by government, or provided by private
9 entities subject to public service obligations." WAC 365-195-340(a)(i). This inclusive approach
10 is consistent with the legislative intent behind the GMA, which was "to discard the traditional
11 land use system in which each jurisdiction functioned as an isolated entity in favor of a scheme
12 which stresses coordination, cooperation, and integration." City of Des Moines v. Puget Sound
13 Regional Council, 97 Wn. App. 920, 929, 988 P.2d 993 (1999); review denied, 140 Wn.2d 1022,
14 10 P.3d 403 (2000).

14 Under these authorities, multi-purpose or multi-user trails as defined in the Ordinance are
15 properly classified as EPFs. Such trails are a service provided to the public by government and
16 substantially funded by government. WAC 365-195-340(a)(i). Such trails and trail
17 improvements are notoriously difficult to site and improve. See generally Footnote 3 and the
18 cases cited therein. And, like many of the other examples given in RCW 36.70A.200(1), such
19 trails can and frequently do serve a significant transportation function.

19 According to the Puget Sound Regional Council (PSRC), bicycle and pedestrian
20 transportation facilities play a key role in achieving the goals of creating more travel choices
21 while preserving environmental quality and open space:

22 Biking and walking are efficient, low-impact modes of travel that don't contribute to air
23 pollution or traffic congestion. They provide mobility to all sectors of society, including

⁵ "It is no less difficult to site the expansion of an existing EPF than it is to site a new EPF." Port of Seattle v. City of Des Moines, FDO at p.5.

1 the young, old, disabled, poor and other who may not drive. Well-designed, strategically
2 located non-motorized facilities can also increase public transit ridership—such as
3 ferries, rail and bus—by providing better access to transit for more people. In addition,
bicycle and pedestrian facilities can provide for economic development in downtowns,
urban centers, and other mixed-use areas.⁶

4 The Burke-Gilman is a prime example. The Trail is owned by the County, funded by the
5 County, and operated for the public by the County. The Trail is more than a valuable
6 recreational asset; as a designated "regional" non-motorized transportation corridor, it is also a
7 critical element of the central Puget Sound Metropolitan Transportation System.⁷ See, e.g.,
8 Supp. Ex. 12 at p.31; Supp. Ex. 13 at 13 at p.A4:15. As such, the Trail connects communities
9 across jurisdictional boundaries, and provides citizens with safe access to work and play across
10 the region—without requiring them to use a motor vehicle. See Supp. Ex. 11 at p.4 ("these trails
11 are intended to carry the bulk of the [non-motorized trail] users between major destinations, or as
recreational attractions in and of themselves.") (bracketed material added).

12 For all of these reasons, EPF designation is clearly appropriate for trails like the Burke-
13 Gilman Trail, which are identified in regional plans as core assets and which serve important
14 cross-jurisdictional transportation functions. Cf WAC 365-195-340(a)(i). Yet, one can also
15 conceive of purely local trails that may serve important transportation functions, or may
16 otherwise fit within the liberal parameters established for EPFs under RCW 36.70A.200(1). See,
17 e.g, Supp. Ex. 13 at p.A4:7 (distinguishing between "regional" and "local" facilities, and noting
18 that "[a]t the local level, facilities are important links in the non-motorized transportation
19

20 ⁶ <http://www.psrc.org/projects/nonmotorized/index.htm> (visited April 16, 2007). The Board may take notice of facts
21 capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority,
including facts stated in any publication authorized to be made by any federal or state officer, department or agency.
22 WAC 242-02-670. The PSRC is designated as the Regional Transportation Planning Organization for Puget Sound
under RCW Ch. 47.80; and it is also designated as a Metropolitan Planning Organization under 23 U.S.C. §134.
The cited website is an official PSRC publication. Therefore the Board may take official notice of the site.

23 ⁷ For GMA purposes, a "regional" EPF is one that is sponsored by a state or regional entity rather than a local entity.
See, e.g, King County v. Snohomish County, CPSGMHB No. 03-3-0011, FDO at p.11 (2003) ("King County I")
(ruling that local governments may not purport to revisit or "second-guess" EPF siting decisions made by regional or
state entities). The Burke-Gilman is a regional trail because it is so designated by the County and the PSRC.

1 system.") Thus, while regional designation may be a sufficient condition for a trail project to
2 qualify as an EPF, it is not a necessary condition for such status.⁸

3 As such, any multi-purpose or multiuser trail siting or improvement project that
4 meets the criteria in RCW 36.70A.200(1) and WAC 365-195-340(a)(i) should be classified
5 and treated as an EPF. This inclusive approach "comports with the fundamental reasoning
6 behind identifying EPFs and giving them special significance under the GMA—the fact that
7 cities are just as likely to oppose the siting of necessary improvements to public facilities as
8 they are the siting of new EPFs." City of Des Moines v. PSRC, 98 Wn. App. at 33.

9 Preliminary Matter Two. The Board will find preclusion where a comprehensive plan or
10 development regulation would necessarily preclude an essential public facility for which a
11 regional siting decision has been made. See, e.g., King County I, FDO at p.11; compare Sound
12 Transit v. City of Tukwila, CPSGMHB No. 99-3-0003 (1999).⁹ Here, the County's Trail
13 improvement project is confined to a fixed alignment: it will necessarily be located within the
14 existing former rail corridor owned by the County, as limited by easements, sensitive features,
15 and certain encroachments. See, e.g., Ex. 532 at Appendix I (Trail survey maps). The existing
16 corridor is specified in all of the regional plans that identify the Trail as a core non-motorized
17 transportation asset. See generally Supp. Exhibits 11-13. The City's Ordinance must yield to the
18 regional plans. City of Des Moines v. Puget Sound Regional Council, 98 Wn. App. at 32.¹⁰

19 ⁸ Cf. Goodman v. Boeing Co., 75 Wn. App. 60, 86, 877 P.2d 703 (1994) (applying "sufficient but not necessary
20 condition" in context of employment discrimination lawsuit; upholding trial court jury instruction that superior may
21 be charged with agent's knowledge where agent was authorized to receive information and to act on it on behalf of
22 superior); affirmed, 127 Wn.2d 401, 899 P.2d 1265 (1995).

23 ⁹ In King County I, FDO at p.11, the Board found that a Snohomish County ordinance violated RCW
36.70A.200(5) because it "not only authorize[d], but obligate[d] [the] County to deny regionally sited EPFs."
In contrast, in Sound Transit the Board concluded that the City's comprehensive plan amendments did not
violate the GMA because (1) no regional decision had been made selecting the alignment of light rail through
Tukwila; and (2) the City's amended plans and zoning regulations did not expressly require the City to preclude
any alignments that Sound Transit was considering. Sound Transit, No. 99-3-0003, FDO at p.4.

¹⁰ "[I]f a conflict between a city plan and an R[egional] T[ransportation P[lan] exists after the planning process is
completed, the city must revise its plan to comply with the regional plan." City of Des Moines v. Puget Sound
Regional Council, 98 Wn. App. at 32.

1 Similarly, the Ordinance at issue here effectively requires the City's hearing examiner to
2 deny a CUP application where one or more of the mandated application elements are missing or
3 are not fulfilled to the hearing examiner's satisfaction. See, e.g. Ex. 418 p.2 para. D (specifying
4 elements that a multi-use or multipurpose CUP application "shall" contain). This, the City may
5 not do. King County I, FDO at p.12. These features bring this matter squarely within the
6 precedent established in King County I, and differentiate it from Sound Transit.

7 Preliminary Matter Three. While the record leaves no doubt that the City adopted the
8 Ordinance to regulate the County's Trail, the text of the Ordinance is addressed to multi-use or
9 multipurpose trails as a class, and so the Board must evaluate it on that basis.¹¹ That is not to
10 say, however, that the Board should blindly ignore the City's plain intent to regulate the Trail
11 through the Ordinance. Rather, the Board should evaluate the Ordinance against the GMA in
12 general terms, consistent with a "facial challenge" approach, using the County's Trail as an
13 example or test case to evaluate or demonstrate how the Ordinance would function (or not) in
14 practice.¹² The Board has used this approach in other cases. See King County I, FDO at p.9; see
15 also Pilchuck-Newberg Organization v. Snohomish County et al., CPSGMHB No. 94-3-0018
16 (1995) at p.10 ("the Board also cannot ignore that, although [petitioner] has focused its appeal on
17 [an area known as] the Bosworth Block, the County's [amended land use designation] applied to
18 more than just [respondent's] property and even more than the Bosworth Block."). (Bracketed
19 material added.)

20 The Board's consideration of the Ordinance's effect on the Trail is thus primarily
21 illustrative rather than determinative of the issues in question. Still, where the record
22 demonstrates that the Ordinance would impermissibly interfere with the County's ability to
23

¹¹ King County I, FDO at p.9 ("While hypothetical scenarios may help illuminate the merits of alternative
constructions of the law . . . the only relevant facts before the Board are the words contained in [the] Ordinance[.]")
(Bracketed material added.)

¹² See Peste v. Mason County 133 Wn. App. 456, 471, 136 P.3d 140 (2006) (Facial challenges address the
application of a given land use regulation to any property; "as applied" challenges address the application of a land
use regulation to a specific parcel of property).

1 improve the Trail, the Board should not hesitate to rule the Ordinance invalid for failure to
2 comply with the GMA, because (as discussed above) the Trail is a sited EPF, and the City may
3 not preclude the siting or improvement of any EPF without violating RCW 36.70A.200(5).

4 **LEGAL ISSUE NO. 1**

5 *Does Ordinance 951 violate RCW 36.70A.200(5) by:*

- 6 (a) *Precluding the siting of regional trails, such as the Burke-Gilman Trail;*
7 (b) *Making it impracticable, if not impossible, to site or improve such trails; or*
8 (c) *Both (a) and (b)?*

9 As outlined in its Petition, the County takes position (c)—that the Ordinance both (a)
10 precludes the siting of EPFs, and (b) renders it impracticable (if not impossible) to site or
11 improve multi-use or multipurpose trails in the City.

12 1.(a).—The Ordinance Impermissibly Precludes the Siting of Regional Multi-Use or
13 Multipurpose Trails. The GMA specifies that local jurisdictions may not preclude the siting of
14 EPFs. RCW 36.70A.200(5). The Board's precedents teach that "preclusion" can take many
15 forms, including: outright denial of necessary permits, see, e.g., King County I, FDO at p.12
16 ("local governments lack authority to deny a development permit for EPF's that are sponsored by
17 state or regional entities."); an endless cycle of review and revision, see, e.g., Id. at p.11 (open-
18 ended CUP process "cannot be appropriate" for EPFs); and the imposition of permit
19 requirements so burdensome as to render an EPF project impracticable, see, e.g., City of Des
20 Moines v. PSRC, 108 Wn. App. at 847.

21 The plain text of the Ordinance is inconsistent with those precedents. The Ordinance
22 reserves to the City the discretion to deny CUPs for multi-use or multipurpose trails. See, e.g.,
23 Ex. 418, p.2 para. 1.C. ("A multi-use or multi-purpose trail facility may be allowed . . .")
(underlining added). The Ordinance also employs undefined, discretionary terms that effectively
allow the City to deny a permit for multi-use or multipurpose trail projects. The Ordinance
requires that an applicant proposing a multiuse or multipurpose trail "shall provide to the
satisfaction of the hearing examiner . . . [a] Trail Development Plan that ... [i]s compatible with

1 the character and appearance of development in the vicinity." Id. at p.4 para. D.4.b.i
2 (underlining, bracketed material added). A trail development plan must also provide "a design of
3 adequate trail lighting for safety at drives and intersections while minimizing light shining into
4 residences to the extent reasonably possible with safety." Id., at para. D.4.b.v (underlining
5 added).

6 The Ordinance includes no criteria to determine what constitutes "satisfaction," what
7 would be "compatible, or what would be "adequate," and so leaves the City's hearing
8 examiner with unfettered discretion whether to approve or deny the trail development plan
9 and lighting design. Even assuming the City would apply the Ordinance in a lawful manner,
10 see, e.g., Sound Transit at p.5, these provisions give the City carte blanche to deny a CUP
11 application. The Ordinance thus violates RCW 36.70A.200(5). See King County I, FDO at
12 p.12 ("when a permit process . . . purports to reserve to a local government the discretion to
13 deny that which it may not lawfully deny, it will be found to violate RCW 36.70A.200").
14 The Ordinance violates RCW 36.70A.200(5) because it lets the City preclude the siting or
15 improvement of EPFs by denying permits for them.

16 1.(b)—The Ordinance Makes It Impracticable, If Not Impossible, to Site or Improve
17 Multi-Use or MultiPurpose Trails. As outlined above, RCW 36.70A.200(5) also forbids
18 local jurisdictions from precluding EPFs through "impracticable" permit requirements. See,
19 e.g., Port of Seattle v. City of Des Moines, FDO at p.5. "Impracticable" to mean "not
20 practicable: incapable of being performed or accomplished by the means employed or at
21 command." Id. Here, at least four parts of the Ordinance makes it impracticable to site or
22 improve trail EPFs in the City. First, the Ordinance authorizes the hearing examiner to
23 unilaterally decide to realign a multi-use or multipurpose trail, or to reduce its width. Ex.
418 at p.4 para. D.4.b.vi.1. A local jurisdiction may not second-guess the siting process for

1 regional EPFs; nor may a local jurisdiction preclude the expansion of an EPF. King County
2 I, FDO at pp.11, 12.¹³

3 The plain language of the Ordinance violates these precepts. By way of example, the
4 entire purpose of the County's proposed Trail project is to widen and realign the Trail. Ex.
5 508 at p.2 (widen), p.4 (realign); Ex. 532 p.22-24 (widening options), pp.27-31 (realignment
6 proposals). Allowing the City to revise the County's chosen realignment or to reduce the
7 Trail's intended width would result in the City second-guessing the County and would defeat
8 the purpose of the Trail project altogether. King County I, FDO at p.11, 12. The Ordinance
9 would make it impracticable to site or improve multipurpose trails in general and the
10 County's Trail project in particular.

11 Second, the Ordinance requires that trail development plans be "compatible" with
12 adjacent land uses. Ex. 418 at p.4 para. D.4.b.i. This requirement violates the GMA because
13 many EPFs are inherently incompatible with neighboring uses. See, e.g., Combined Order in
14 King County v. Snohomish County, CPSGMHB No. 03-3-0011, 03-3-0025, and No. 04-3-0012,
15 at p.12 ("King County I-III") (May 24, 2004).¹⁴ The Ordinance violates RCW 36.70A.200(5)
16 because its requirement that multipurpose trails be "compatible" with surrounding development
17 is impossible to satisfy, and thereby makes it impracticable to site or improve such EPFs in the
18 City. Id. ("If there is a lack of compatibility between a local plan and a regional EPF, the former
19 must yield to the latter.").

20 Third, the Ordinance precludes EPF trail projects in violation of RCW 36.70A.200(5)
21 because it imposes impracticable requirements for setback, landscaping, and fencing. As recited
22 above, the Ordinance requires a screening/landscaping area 12 feet wide in single family
23

21 ¹³ "It is not appropriate for a local government . . . to revise or 'second guess' a siting decision that has been made by
22 a regional or state entity." King County I, FDO at p.11. "No local government regulation . . . may preclude the . . .
23 expansion . . . of an [EPF]." King County I, FDO at p.12 (ellipses, bracketed material added).

¹⁴ "The absolute regulatory requirement . . . that a regional EPF not be materially detrimental to its surroundings does
not comply with RCW 36.70A.200(5) . . . [M]any regional EPFs, due [to] their scale and very nature, will inevitably
be detrimental to some degree to surrounding uses." King County I-III, Combined Order at p.12 (bracketed material
added).

1 residential zones, plus a 10- to 12-foot setback from the property line of the trail right of way to
2 the edge of the trail shoulder, depending on the surrounding zoning; but if such landscaping and
3 setbacks cannot be achieved, then the hearing examiner "may" realign the trail; or reduce the
4 width of the trail, or the landscaping or the required setback, or all of them, in exchange for
5 enhanced screening or additional fencing. Ex. 418 at p.4 para D.4.b.iv, -.vi.

6 These provisions violate RCW 36.70A.200(5) because the City can discretionarily
7 require enhanced screening or fencing without consideration of cost or safety—concerns that lie
8 at the heart of practicability for multipurpose trail EPFs. By way of example, in some places the
9 County's right of way for the Trail is as narrow as 30 feet, and the Trail's location within that
10 right of way is substantially constrained by privately owned residential garages, houses, and
11 other structures on or abutting the County's right of way. Ex. 532 at p.10; *id.* at Appendix I pp.1-
12 3, 7 (Trail survey maps listing easements and other title exceptions). There are no cost or
13 practicality limits on the City's ability to impose enhanced screening requirements in these
14 narrow areas. Similarly, the Ordinance allows the City to require fencing in areas where safety
15 considerations dictate there be no fencing. Compare Ex 418 p.5. para D.4.b.vi (hearing examiner
16 "may" require fencing that "shall" provide effective visual barrier) with Ex. 532 at p.27
17 ("[r]emoving fences and overgrown vegetation . . . at trail crossings will improve sight distance
18 and make the trail safer[.]").¹⁵ The City apparently declined to incorporate text that would have
19 addressed this conflict. See Ex. 596 (suggesting changes to move fences outside sight triangles).

20 Finally, the Ordinance violates RCW 36.70A.200(5) because its signage requirements
21 conflict with state, federal, and other nationally-recognized signage standards and requirements.
22 See discussion of Legal Issue No. 4, below. This conflict makes it impracticable to design or
23 construct trail EPFs because a trail proponent cannot simultaneously satisfy the Ordinance's
signage requirements and state, federal, and nationally-recognized signage requirements.¹⁶ The

¹⁵ See also Ex. 532 at Appendix 8 sheets 1-7 (recommended crossing designs for Trail, showing "sight triangles" in plan view).

¹⁶ See Port of Seattle v. City of Des Moines, FDO at p.6 ("a local government plan may not, through policies or

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 Ordinance violates RCW 36.70A.200(5) because it allows the City to preclude trail EPFs by
2 impose impracticable requirements. See King County I, FDO at p.12.

3 **LEGAL ISSUE NO. 3¹⁷**

4 *Does Ordinance 951 violate RCW 36.70A.020(3) because it fails to encourage multimodal*
5 *transportation based on regional priorities and coordinated with county and city comprehensive*
6 *plans?*

7 In RCW 36.70A.020(3), the GMA requires local jurisdictions planning under the GMA
8 to "[e]ncourage multimodal transportation based on regional priorities and coordinated with
9 county and city comprehensive plans." The Ordinance fails to support this important GMA goal.

10 It reserves to the City the discretion to deny a CUP for the Trail or other multipurpose trails.

11 See discussion of Legal Issue No. 1, above. Denying a CUP for a trail EPF is a means of
12 blocking a multimodal transportation project. The Ordinance would also allow the City to

13 unilaterally realign or reduce the width of proposed trail EPFs. In so doing, the City would

14 effectively prevent trail EPFs from being sited or widened to accommodate trail users. By way

15 of example, the entire purpose of the County's Trail project is to realign and widen the Trail to
16 accommodate existing and future users (see discussion of Legal Issue No. 1, above), but the

17 Ordinance instructs the hearing examiner to prioritize landscaping and screening over trail size
18 and alignment, and authorizes the hearing examiner to realign the Trail or reduce its width. Ex.

19 418 at pp.4-5 para D.4.b.iv, -.vi. As such, the Ordinance fails to "encourage" multimodal

20 transportation as required under RCW 36.70A.020(3), and instead favors parochial interests over
21 that regional goal.

22 strategy directives, effectively preclude the siting or expansion of an EPF.").

23 ¹⁷ As framed by the Board in its prehearing order, Legal Issue No. 2 concerns petitioner Cascade Bicycle Club's
allegations that the City failed to timely adopt a process for identifying and siting essential public facilities.
Prehearing Order, p. 6 at lines 36-41. The County's petition did not raise that issue and the County does not now
make any argument concerning it.

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LEGAL ISSUE NO. 4

Does Ordinance 951 violate RCW 36.70A.200(7) because it:

(a) Fails to provide multi-use trail proponents with a fair and predictable permit processing system;

(b) Creates conflict between the City's regulations and the regulations of state, federal, and/or other regulator entities; or

(c) Does both (a) and (b)?

As outlined in its Petition, the County takes position (c)—that the Ordinance both (a) fails to provide multi-use trail proponents with a fair and predictable permit processing system; and (b) creates conflict between the City's regulations and the regulations of state, federal, and/or other regulator entities.

Legal Issue 4(a)—The Ordinance fails to provide multi-use trail proponents with a fair and predictable permit processing system. The GMA states that applications for state and local government permits “should be processed in a timely and fair manner to ensure predictability.” RCW 36.70A.020(7). The Board has strictly adhered to this GMA goal. See, e.g, King County I-III, Combined Order at p.12 (EPF permit review process lacking absolute time limits violated the GMA) see also Master Builders Association et al. v. City of Sammamish, CPSGMHB No. 05-3-0041, FDO at pp.24-25 (2006) (city's development application lottery was the "antithesis" of a timely, fair, and predictable permit process).

The Ordinance was not guided by GMA Goal 7 and substantially interferes with it. As outlined above regarding Legal Issue No. 1, the Ordinance reserves to the City the discretion to deny a CUP to the County or proponents of other multiuse trails; this reserved discretion violates the “fair” and “predictable” permit processing goals under RCW 36.70A.020(7) because there is no way to judge in advance whether the City will approve a trail EPF. The Ordinance further interferes with Goal 7 because the City can unilaterally decide to realign a trail, to reduce its width, to impose additional screening and fencing requirements, or all of them. Ex. 418 at pp.4-5 para. D.4.b.iv, -.vi. A trail EPF proponent has no way of knowing in advance whether its Trail Development Plan will satisfy the City, and a trail EPF proponent has know way of knowing

1 whether its project proposal will still serve its intended purpose (or how much it will cost to
2 implement) when the City's review is complete. Each of these Ordinance features independently
3 violates RCW 36.70A.020(7).

4 Legal Issue 4(b)—The Ordinance creates conflict between the City's regulations and the
5 regulations of state, federal, and/or other regulator entities. RCW 36.70A.020(7) requires that a
6 jurisdiction's permit process be fair, timely, and predictable. Here, the Ordinance requires that
7 the trail development plan for any multiuse or multipurpose trail must include a yield sign for
8 trail users at each driveway or minor roadway serving less than 50 homes; and must include a
9 stop sign for trail users at each driveway or minor roadway serving 50 or more homes. Ex. 418
10 at pp.2-3 para. D.1.a, -b. The City apparently adopted these signage requirements at the behest
11 of a few trailside property owners whose driveways cross the trail. See Ex. 424; Ex. 511 p.3.
12 The property owners apparently hoped that by requiring bicyclists to yield or stop at their
13 driveways, the property owners could shift the risk of liability exposure from themselves to the
14 bicyclists in the event of a collision. Ex. 424; Ex. 511 p.3.

14 The Ordinance does not and cannot achieve its intended risk-shifting goal. State law
15 provides that traffic signs are merely presumed to be lawful. RCW 46.61.050(4).¹⁸ This
16 rebuttable presumption may be overcome by competent evidence to the contrary.¹⁹ In the event
17 of a collision, a bicyclist would only need to show that a stop or yield sign for trail users was
18 improper for the intersection in question. For the reasons outlined below, a bicyclist would
19 likely be able to do so, because the Ordinance's signage requirements conflict with state law,
20 federal regulations, and nationally recognized trail standards, or all of them. This signage

21 ¹⁸ "[A]ny official traffic control device placed pursuant to the provision of this chapter and purporting to conform to
22 the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this
chapter unless the contrary shall be established by competent evidence." RCW 46.61.050.

23 ¹⁹ Id.; see also In re Parentage of R.F.R., 122 Wn. App. 324, 93 P.3d 951 (2004) (affirming trial court judgment that
father failed to overcome rebuttable statutory presumption permitting relocation of mother, who was parent with
whom child resided the majority of the time); Sunrise Exp., Inc. v. Dep't. of Licensing, 77 Wn. App. 537, 892 P.2d
1108 (1995) (taxpayer's evidence sufficient to overcome statutory presumption regarding vehicle fuel economy).

1 conflict between the Ordinance and those authorities causes the Ordinance to violate the
2 predictability and fairness goals in RCW 36.70A.020(7).

3 As outlined in detail in the County's Petition, the Federal Highway Administration's
4 (FHWA) Manual on Uniform Traffic Control Devices (MUTCD) is the foundation for and
5 source of state as well as federal traffic signage requirements. See, e.g., 23 C.F.R. 655.601(a)
6 (adopting MUTCD for FHWA purposes); WAC 468-95-010 (adopting and adapting the
7 MUTCD for state traffic control purposes); Washington State Department of Transportation
8 Manual M 22-01 Ch. 1020 (Nov. 2006 ed.) (WSDOT Manual).²⁰ The MUTCD also serves as
9 the foundation for and source of the signage requirements specified in the Guide for
10 Development of New Bicycle Facilities, an influential design manual published by the American
11 Association of State Highway and Transportation Officials (AASHTO) and updated several
12 times, most recently in 1999 (the AASHTO Guide). See Ex. 443 at p.53.²¹

13 Many multi-use or multipurpose trail EPFs (although presently not the County's Trail) are
14 funded by the federal government.²² Federally-funded trails must "be designed in substantial
15 conformity with the latest official design criteria." 23 C.F.R. 652.7(b)(5) (2006). The AASHTO
16 Guide is the standard for the construction and design of federally-funded bicycle routes. 23
17 C.F.R. 652.13(a) (2006).²³ Federal trail grant regulations thus require compliance with the
18 MUTCD by and through the AASHTO standards.

19 The MUTCD specifies that at most intersections, the street carrying the lowest volume of
20 traffic should be signed to stop or, if conditions allow, to yield. See Attachment KC-B (MUTCD

21 ²⁰ The WSDOT Manual specifies that multiuse paths should be signed consistent with the MUTCD. WSDOT
22 Manual at §1020.06(4) ("Determine the need for traffic control devices at all path/ roadway intersections by using
23 MUTCD warrants and engineering judgment."). The WSDOT Manual is available online at
<http://www.wsdot.wa.gov/fasc/EngineeringPublications/manuals/Designmanual.pdf> (visited January 17, 2007). The
Board may take official notice of this publication under WAC 242-02-670. See discussion at note 6.

²¹ "In general, uniform application of traffic control devices, as described in the MUTCD, provides minimum traffic
control measures which should be applied." Ex. 443 at p.53.

²² See generally <http://www.fhwa.dot.gov/environment/bikeped/bp-broch.htm> (visited April 19, 2007). The Board
may take official notice of this publication under WAC 242-02-670. See discussion at note 6.

²³ In addition to the AASHTO Guide, federal regulations also allow the use of "equivalent guides developed in
cooperation with State or local officials and acceptable to the division office of the FHWA." 23 C.F.R. 652.13(a).

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 2B.05; 2B.08, -.09).²⁴ Part 9 of the MUTCD addresses bicycle facilities. It incorporates best
2 practice traffic engineering standards, which dictate that right of way is assigned to the direction
3 of travel or leg of an intersection with the most traffic volume. Ex. 477 at §9B.03 (when
4 considering placement of stop or yield signs, priority at a shared-use path/roadway intersection
5 should be assigned with consideration of relative speeds of shared-use path and roadway users;
6 relative volumes of shared-use path and roadway traffic; and relative importance of shared-use
7 path and roadway.) In the City, the Trail has substantially more traffic volume than the
8 driveways or neighborhood streets that cross it. Ex. 532 at Appendix 7A pp.8-9.

9 The Ordinance's absolute signage requirements conflict with engineering best practices
10 and the MUTCD, and thereby violate the GMA's predictability and fairness goals because the
11 County and other trail EPF proponents cannot sign the Trail (or any other trail EPF with a similar
12 traffic pattern) in a way that will simultaneously satisfy the Ordinance and the MUTCD or the
13 state, federal, AASHTO Guide and trail grant requirements that rely on and incorporate the
14 MUTCD. For all of these same reasons, this signage conflict also constitutes an impracticable
15 permit condition as discussed in connection with Legal Issue No. 1, above.

16 The Ordinance's setback, landscaping, and fence requirements violate GMA Goal 7's
17 "predictability" requirement as well as the practicability requirements of RCW 36.70A.200(5).
18 The Ordinance gives the City discretion to require a fence in lieu of setback and landscaping, and
19 if required, the fence must provide an effective visual barrier to the trail. Ex. 418, p.5 at para.
20 D.4.b.vi (last clause). The Ordinance's fence requirement makes no allowance for "sight
21 triangles" (open spaces surrounding intersections) required by state law, federal regulations, and
22 AASHTO standards. See, e.g., Attachment KC-C (WSDOT 2006 Design Manual) at §910.10
(p.910-11) ("[w]ithin the sight triangle . . . remove, lower, or move hedges, trees, signs, utility
poles, and anything else large enough to be a sight obstruction.") (bracketed material,

23 ²⁴ The MUTCD is available online at <http://mutcd.fhwa.dot.gov/HTM/2003r1/html-index.htm> (last visited January 17, 2007). The Board may take official notice of the MUTCD under WAC 242-02-670. See discussion at note 6.

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 underlining added); Ex KC-C at §1020.06(4) ("[s]hared-use path and roadway intersections must
2 clearly define who has the right of way and provide adequate sight distance for all users.")
3 (bracketed material, underlining added). There is no way for the County or any other trail
4 proponent to know in advance if a fence will or will not be required; and if a fence is required,
5 then under the Ordinance it must provide an effective visual barrier, which contravenes other
6 safety requirements. This uncertainty makes the permit process unpredictable and unfair. The
7 discretion reserved to the City and the direct conflict engendered by the Ordinance's signage and
8 other requirements each violate RCW 36.70A.020(7)'s requirements of fair and predictable
9 permit processes, as well as the practicability requirements of RCW 36.70A.200(5).

10 LEGAL ISSUE NO. 5

11 *Does Ordinance 951 violate RCW 36.70A.020(9) because it fails to enhance recreational
12 opportunities and fails to provide for the development of parks and recreational facilities?*

13 In RCW 36.70A.020(9), the GMA mandates that counties and cities planning under the
14 GMA should "enhance recreational opportunities" and "develop parks and recreational
15 facilities." The Ordinance fails to support these important GMA goals. It reserves to the City
16 the discretion to deny a CUP for the Trail or other multipurpose trails. For example, denying a
17 CUP for the Trail would effectively block the project and result in the County not redeveloping
18 the Trail to meet current and future needs, despite the important function it serves as a regional
19 recreational facility. The Ordinance would also allow the City to unilaterally realign the Trail or
20 to reduce its width. In so doing, the City would effectively block the County from enhancing
21 recreational opportunities by improving the Trail to better accommodate its many users. The
22 City could do the same regarding any other multi-use or multipurpose trail that qualifies as an
23 EPF. The Ordinance violates both recreational prongs of RCW 36.70A.020(9).

1 **LEGAL ISSUE NO. 7²⁵**

2 *Does Ordinance 951, violate RCW 43.21C (SEPA) because the City failed to comply with*
3 *SEPA's procedural requirements?*

4 The Board is authorized to consider SEPA compliance under RCW 36.70A.280. SEPA
5 ensures that agencies and jurisdictions consider the environmental consequences of their actions.

6 See, e.g., RCW 43.21C.030(c). Unless a categorical exemption applies, an "agency" must
7 include in every recommendation or report on proposals for legislation and other major actions
8 significantly affecting the quality of the environment "a statement describing the environmental
9 impacts of and alternatives to the proposal." *Id.*; see also RCW Ch. 43.21C and WAC 197-11-
10 800 (listing categorical exemptions). The City Council is a "local agency" for SEPA purposes.
11 WAC 197-11-762.²⁶ Unless a categorical exemption applies, SEPA analysis is required each
12 time the City performs an "action," broadly defined to include the adoption of regulations,
13 policies, procedures, and legislative proposals. See WAC 197-11-704. For all nonexempt
14 actions, SEPA requires the City to prepare—at a minimum—an environmental "checklist" and a
15 determination of nonsignificance. WAC 197-11-315; WAC 197-11-960.

16 The City's adoption of the Ordinance was not categorically exempt from SEPA. See
17 WAC 197-11-704 (listing adoption of rules and regulations, policies, procedures, and legislative
18 proposals as types of SEPA "action"). The City thus took "action" under SEPA when it adopted
19 the Ordinance, *id.*, but the record appears to be devoid of any contemporaneous documentation
20 that the City undertook the required SEPA review before it adopted the Ordinance. See
21 generally City's Index. There is evidence that the City performed a SEPA review after it had
22 already adopted the Ordinance. Supp. Ex. 10. As a result, it appears the City did not timely

23 ²⁵ As framed by the Board in its prehearing order, Legal Issue No. 6 concerns petitioner Cascade Bicycle Club's
allegations that the Ordinance violates RCW 36.70A.020(12), the GMA's public facilities and services goal.
Prehearing Order, p.7 at lines 31-36. The County's petition did not raise that issue and the County does not now
make any argument concerning it.

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

1 make an informed decision about the environmental consequences of its action as required by
2 SEPA. The City violated SEPA, RCW Ch. 43.21C.

3 **LEGAL ISSUE NO. 8**

4 *Does Ordinance 951 violate RCW 36.70A.130(1) because it is not consistent with and fails to*
5 *fully implement the City's Comprehensive Plan Goals including LU-7, CF-1, RO-1, and RO-2?*

6 In RCW 36.70A.130(1)(d), the GMA requires that "[a]ny amendment of or revision to
7 development regulations shall be consistent with and implement the [jurisdiction's]
8 comprehensive plan." (Bracketed material added.) Under the GMA, no feature of a plan or
9 regulation may be incompatible with any other feature of a plan or regulation; and development
10 regulations that implement a comprehensive plan must "fully carry out the goals, policies,
11 standards and directions" contained in the plan. WAC 365-195-210; WAC 195-365-800(1)
(underlining added). The term "implement" in this context thus has a more affirmative meaning
12 than merely "consistent." WAC 195-365-800(1).²⁷

13 The Ordinance violates RCW 36.70A.130(1) because the Ordinance, as a development
14 regulation, is inconsistent with and fails to fully implement the City's comprehensive plan goals,
15 including but not limited to Land Use Goal 7 (LU-7); Capital Facilities and Siting Essential
16 Public Facilities Goal 1 (CF-1); and Recreational and Open Space Goals 1 and 2 (RO-1 and RO-

17 LU-7 Balance the need to provide for adequate housing with the desire to maintain the
18 City's forested, residential character and unique natural sensitive areas.
19 Coordinate the concurrency of new development with the adequate provision of
20 transportation facilities, utilities, capital facilities, parks and recreation facilities,
21 human services and encourage economic development.

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

23 ²⁷ WAC 365-195-800 states that "'[i]mplement' connotes not only a lack of conflict but sufficient scope to carry out fully the goals, policies, standards and directions contained in the comprehensive plan."

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

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

7 See Attachment KC-A at p.42 (LU-7), p.100 (CF-1), p.111 (RO-1, RO-2).

8 The Ordinance violates LU-7 because it does not "coordinate the concurrency of new
9 development with the adequate provision of transportation facilities [...] capital facilities [...] and
10 recreation facilities" as required under that goal. For example, the County's Trail is already
11 insufficient to serve the existing regional population and trail users; it will only become more
12 inadequate over time as more people move to the City and other jurisdictions in the region. Ex.
13 532 at p.31.²⁸ The Ordinance allows the City to deny a CUP for the Trail or other multipurpose
14 trails, and to realign such trails or reduce their width in the City's sole discretion. Each of these
15 actions would result in continuing the current state of inadequate capital facilities for regional
16 trail EPFs that serve as non-motorized transportation corridors. The Ordinance thus conflicts
17 with LU-7 and does not fully carry it out.

18 The Ordinance violates CF-1 because it does not ensure that capital trail facilities
19 necessary to support existing and future development will be adequate to serve development
20 without decreasing current service levels below adopted level of service standards. For example,
21 the Trail does not meet current standards. *Id.* The Ordinance would allow the City to deny or
22 condition a CUP for the Trail so as to prevent the County from expanding its capital facilities to
23 provide adequate service to current trail users, let alone future development. The City could do
the same to other trails. The Ordinance thus conflicts with CF-1 and does not fully carry it out.

The Ordinance conflicts with RO-1 and RO-2 because it does not "maintain a high
standard for the development and maintenance" of park facilities for both active and passive use,

²⁸ "Redevelopment is needed to bring the trail to meet current national design standards and to provide the public
with a more pleasurable recreational experience." Ex .532 at p.31.

1 and because it does not" promot[e] the establishment and maintenance of a safe, interconnected
2 system of trails throughout the City" or "recogniz[e] the important recreational and
3 transportation roles played by regional [. . .] bicycle and pedestrian trail systems." (Bracketed
4 material added.) The Ordinance would authorize the City to deny a CUP for the Trail or other
5 multipurpose trails, or to realign such trails or reduce their width, even though the existing Trail
6 is (and others could be) insufficient to support current levels of use, let alone safely
7 accommodate additional users over time. The Ordinance thus conflicts with RO-1 and RO-2, as
8 well as CF-1 and LU-7, and violates RCW 36.70A.130 because it does not fully implement the
9 City's comprehensive plan goals.

10 **LEGAL ISSUE NO 9**

11 *Does Ordinance 951 violate RCW 36.70A.130(1) because it contains generalized criteria that
12 reserve broad discretion to the City to determine whether a proposal is "adequate" or
13 "compatible"?*

14 In RCW 36.70A.130(1)(d), the GMA requires that "[a]ny amendment of or revision to a
15 comprehensive land use plan shall conform to this chapter. Any amendment of or revision to
16 development regulations shall be consistent with and implement the comprehensive plan." To
17 fulfill this mandate, development regulations should contain "specific standards for deciding in
18 advance whether a project does or does not qualify for approval." Citizens for Mt. Vernon v.
19 City of Mt. Vernon, WWGMHB No. 98-2-0006c, FDO at p.7 (1998) (Mt. Vernon ordinances
20 failed to comply with the GMA where they lacked specific standards for deciding in advance
21 whether a project does or does not qualify for approval).

22 The Ordinance lacks such standards. As discussed in regards to Legal Issues Nos. 1 and
23 4, above, the Ordinance contains generalized criteria that leave the City discretion to determine
(among other things) what is "adequate" lighting, and whether a trail development plan is
"compatible" with development in the vicinity; and the Ordinance authorizes the City unilaterally
to impose setbacks and landscaping parameters, to realign a trail or reduce its width, or to instead
require enhanced screening, landscaping, or fencing, without regard to safety or other practical

1 considerations. A trail EPF proponent has no way of knowing whether its Trail Development
2 Plan will satisfy the City, and a trail EPF proponent has know way of knowing what its project
3 proposal will look like (or how much it will cost to implement) when the City's review is
4 complete. The Ordinance violates RCW 36.70A.130(1)(d) because it lacks specific standards for
5 deciding in advance whether a trail project qualifies for approval, and thereby fails to fully
6 implement the City's comprehensive plan.

7 LEGAL ISSUE 10

8 *Does Ordinance 951 violate RCW 36.70A.106 because the City failed to notify CTED at least 60*
9 *days prior to the final adoption of the Ordinance and the City failed to provide a copy of the*
10 *final ordinance to CTED within 10 days of its adoption?*

11 In RCW 36.70A.106(1), the GMA requires that "[e]ach county or city proposing adoption
12 of a comprehensive plan or development regulations shall notify [CTED] of its intent at least
13 sixty days prior to final adoption." CTED's regulations reinforce this statutory requirement. See
14 WAC 365-195-620(1). CTED's regulations specify that a jurisdiction must file five copies of the
15 proposed plan or development regulation(s) with CTED, and provide copies to other agencies
16 listed by CTED. *Id.* Jurisdictions must also submit a complete and accurate copy of
17 comprehensive plans or development regulations within ten days of final adoption. RCW
18 36.70A.106(2); WAC 365-195-620(2). Amendments to comprehensive plans and development
19 regulations are subject to the same requirements. WAC 365-195-620(3).

20 The Ordinance adds a new section to LFPMC Ch. 18.54, which is a development
21 regulation. See Ex. 418 at p.1. As such, the City was required to comply with RCW 36.70A.106
22 and CTED's regulations; but there is no evidence that City timely submitted the draft Ordinance
23 to CTED sixty days prior to final adoption. See generally City's Index. Nor is there any
evidence that the City provided the final Ordinance to CTED within ten days of its final
adoption. *Id.* The City's own e-mail records demonstrate that the City did not submit the
Ordinance to CTED until well after the Ordinance had been adopted. Supp. Ex. 14. The City
explained that the Ordinance had already been adopted, but that the Ordinance would be re-

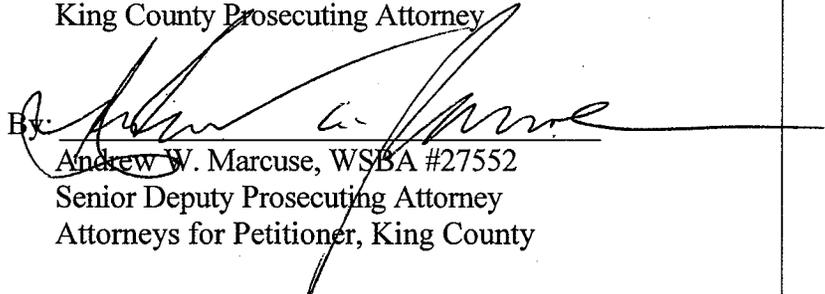
1 adopted after waiting the necessary period of time. Id. The City violated RCW 36.70A.106
2 when it adopted the Ordinance without first providing timely notice to CTED.

3 **V. CONCLUSION**

4 The Ordinance's flaws, enumerated above, give rise to the very kind of "balkanized
5 decision-making" that the GMA was intended to prevent. The City also failed to observe
6 mandatory GMA and SEPA procedural requirements. For all of the reasons set forth above,
7 King County respectfully requests that the Board rule the Ordinance out of compliance with the
8 GMA, invalidate the Ordinance because of its ongoing preclusive effect, and provide the other
9 relief requested in Section 16 of the County's Petition, which section is incorporated by this
10 reference as if fully set forth herein.

11 Respectfully submitted this 25th day of April, 2007.

12 NORM MALENG
13 King County Prosecuting Attorney

14 By: 
15 Andrew W. Marcuse, WSBA #27552
16 Senior Deputy Prosecuting Attorney
17 Attorneys for Petitioner, King County

CASCADE BICYCLE CLUB v. CITY OF LAKE FOREST PARK

CPSGMHB No. 07-3-0010c

APPENDIX I

FULL TEXT OF LEGAL ISSUE STATEMENTS AS FRAMED BY THE BOARD

See Prehearing Order, dated February 8, 2006; Order on Motions, dated March 19, 2007

LEGAL ISSUE NO. 1

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.200(5) which forbids local jurisdictions from precluding the siting of essential public facilities, by:

- (a) Precluding the siting of regional trails, such as the Burke-Gilman Trail;*
- (b) making it impracticable, if not impossible, to site or improve such trails; or*
- (c) both (a) and (b)?*

LEGAL ISSUE NO. 2

Did the City violate RCW 36.70A.200(1) by failing to adopt a process for identifying and siting essential public facilities, a process that was required by the time of adoption of the City's Comprehensive Plan?

LEGAL ISSUE NO. 3

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(3), the GMA's transportation goal, because it fails to encourage multimodal transportation which is based on regional priorities and coordinated with county and city comprehensive plans?

LEGAL ISSUE NO. 4

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.200(7), the GMA's permit processing goal, because it:

- (a) fails to provide multi-use trail proponents with a fair and predictable permit processing system;*
- (b) creates conflict between the City's regulations and the regulations of state, federal, and/or other regulator entities; or*
- (c) does both (a) and (b)?*

LEGAL ISSUE NO. 5

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(9), the GMA's open space and recreational goal, because it fails to enhance recreational opportunities and fails to provide for the development of parks and recreational facilities?

LEGAL ISSUE NO. 6

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.020(120), the GMA's Public Facilities and Services goal, because it would render impracticable the improvement of the Burke-Gilman Trail, an essential public facility?

LEGAL ISSUE NO. 7

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 43.21C (SEPA), because the City failed to comply with the procedural requirements of SEPA?

LEGAL ISSUE NO. 8

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.130(1), requiring internal consistency, because it is not consistent with and fails to fully implement the City's Comprehensive Plan Goals including LU-7, CF-1, RO-1, and RO-2?

LEGAL ISSUE NO. 9

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, violate RCW 36.70A.130(1), requiring consistency with RCW 36.70A, because it contains generalized criteria that reserves broad discretion to the City to determine whether a proposal is "adequate" or "compatible"?

LEGAL ISSUE 10

Does Ordinance 951, amending the City's Conditional Use Ordinance by providing specific development criteria under which a multi-use or multi-purpose trail may be authorized as a conditional use, and adding new section LFPMC Chapter 18.54, violate RCW 36.70A.106 because the City failed to notify CTED at least 60 days prior to the final adoption of the Ordinance and the City failed to provide a copy of the final ordinance to CTED within 10 days of its adoption?

CASCADE BICYCLE CLUB v. CITY OF LAKE FOREST PARK

CPSGMHB No. 07-3-0010c

TABLE OF EXHIBITS

EXHIBITS ATTACHED TO KING COUNTY'S PREHEARING BRIEF

INDEX/EXHIBIT NUMBER	TITLE OR DESCRIPTION
418	Ordinance 951/Relating to Conditional Use Ordinance; Amending LFPMC 18.54.047 Providing Specific Development Criteria Under Which a Multi-Use or Multi-Purpose trail May be Authorized as a Conditional Use
424	Jane Hadley, Bicyclists vs. homeowners: Facing off on a trail of fears (Seattle Post-Intelligencer, May 26, 2005)
443	American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities (1999 ed.) (excerpts)
477	Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD, 2003 Ed.), Chapters 9A through 9D (excerpts)
508	King County Burke-Gilman Trail Redevelopment Project Fact Sheet
511	King County Burke Gilman Trail Redevelopment Project Property Owner Meeting #2 Report (5/23/2006)
532	Atelier ps—Draft Burke-Gilman Trail Redevelopment Study and Appendices (October 2005) (excerpts)
535	Issues List, Proposal to give analysis framework, ground rules
596	Councilmember Kiest Ordinance 951 Language changes suggested by Steve Plusch and Vivian Peterson (10/26/2006)
613	Letter from Pam Bissonnette, Director, KCDNRP, and Kevin Brown, to Councilmember Ed Sterner (9/14/2006)
Attachment KC-A ¹	City of Lake Forest Park Comprehensive Plan, adopted 12/1/2005 by and through Ordinance 932 (excerpts)
Attachment KC-B ²	Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD, 2003 Ed. with 2004 updates), Sections 2B.05, 2B.08, -.09

¹ The Board may take official notice of local ordinances and their attachments. WAC 242-02-660; see also Prehearing Order at p.3 (citing same).

² The Board may take official notice of state or federal agency publications. WAC 242-02-670; see also King County's Prehearing Brief at Note 6 (discussing same).

Attachment KC-C ³	Washington State Department of Transportation (WSDOT) Bicycle Facilities Design Guidelines Design Manual (November 2006 ed.) (excerpts)
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**CITED EXHIBITS ATTACHED TO CASCADE BICYCLE CLUB'S MOTION TO
SUPPLEMENT THE RECORD**

Supp. Ex. 3	Correspondence from King County Executive Ron Sims to Lake Forest Park City Council re: Concerns pertaining to Ordinance 951, with King County Staff comments (8/24/2006)
Supp. Ex. 4	Correspondence from King County Department of Natural Resources and Parks to Lake Forest Park City Council re: Concerns pertaining to Ordinance 951 with Summary Table (9/28/2006)
Supp. Ex. 7	Correspondence from King County Department of Natural Resources and Parks to Lake Forest Park City Council re: Concerns pertaining to Ordinance 951 (11/8/2006)
Supp. Ex. 10	SEPA DNS for amending Lake Forest Park Condition Use Ordinance (1/19/2007)

**CITED EXHIBITS ATTACHED TO KING COUNTY'S MOTION TO SUPPLEMENT
THE RECORD**

Supp. Ex. 11	King County Council Motion 8817, adopting the King County Regional Trails Plan (10/26/1992) (excerpts)
Supp. Ex. 12	King County Ordinance 10812, adopting the King County Nonmotorized Transportation Plan as an element of the King County Transportation Plan (5/10/1993) (excerpts)
Supp. Ex. 13	Puget Sound Regional Council, Destination 2030: Metropolitan Transportation Plan for the Central Puget Sound Region (5/24/2001) (excerpts)
Supp. Ex. 14	E-mail from Steve Bennett, Planning Director for Lake Forest Park, to CTED GMU Review Team re Intent to Adopt Ordinance 951 (12/16/2006); Acknowledgement by CTED of receipt of Lake Forest Park's proposed development regulations (12/20/2006)

³ See Note 2 regarding official notice of this publication.

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

KING COUNTY,

Petitioner,

vs.

CITY OF LAKE FOREST PARK,

Respondent.

No. 07-3-0010c

CERTIFICATE OF SERVICE

I, Mary A. Livermore, certify that on April 25, 2007, I caused to be served via ABC
Legal Messenger, one copy of King County's Prehearing Brief, and a copy of this Certificate of
Service to:

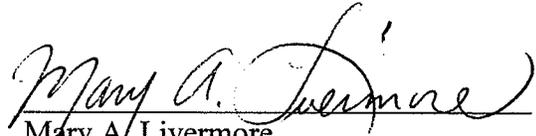
Ms. Rosemary Larson
Inslee, Best, Doezie, & Ryder, P.S.
Symetra Financial Center, Suite 1900
777 108th Avenue N.E.
P.O. Box 90016
Bellevue, WA 98009-9016

Mr. Jeff Eustis
J. Richard Aramburu
Attorneys at Law
505 Madison Street, Suite 209
Seattle, WA 98104

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

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Dated this 25th day of April, 2007.



Mary A. Livermore
Legal Secretary to Andrew Marcuse,
Attorney for Petitioner, King County