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7 BEFORE THE STATE OF WASHINGTON
8 GROWTH MANAGEMENT HEARINGS BOARD
9 FOR CENTRAL PUGET SOUND

10 CASCADE BICYCLE, et al

11 Petitioner,

12 v.

13 LAKE FOREST PARK,

14 Respondent.

CPSGMHB Case No. 07-3-0010c

HEARING MEMORANDUM BY
CASCADE BICYCLE CLUB

15
16 **I. INTRODUCTION**

17 On November 9, 2006 the City of Lake Forest Park ("the City") enacted Ordinance 951,
18 amending its conditional use permit procedures as applicable to multi-use and multi-purpose
19 trails by imposing substantial limitations upon their development and improvement. The City
20 has but one multi-use trail to which this ordinance would apply, the Burke-Gilman Trail.

21 Cascade Bicycle Club ("Cascade Bicycle") and King County seek Board review of
22 Ordinance 951 on several grounds, including its conflict with provisions for essential public
23 facilities under RCW 36.70A.200(5) and its substantial interference with a number of GMA's
24 goals, including those requiring the encouragement of multi-modal transportation, the
25

HEARING MEMORANDUM
BY CASCADE BICYCLE CLUB - 1

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1 predictability in permitting, the enhancement of recreational opportunities, and the adequacy of
2 public facilities and services. RCW 36.70A.020(3), (7), (9) and (12). Cascade Bicycle and the
3 County also seek review of the City's failure to comply with the State Environmental Policy
4 Act in the adoption of Ordinance 951. And Cascade Bicycle seeks review of the City's failure
5 to adopt a process for the siting of essential public facilities, as required under RCW
6 36.70A.200(1).

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8 By of relief, Cascade Bicycle asks the Board to find that Ordinance 951 fails to comply
9 with the GMA and SEPA. Because its continued validity would substantially interfere with the
10 goals of the Act, Cascade Bicycle also asks the Board to invalidate Ordinance 951.

11 II. PARTIES

12 A. The Cascade Bicycle Club

13 Founded in 1970, the Cascade Bicycle Club is a statewide organization formed to
14 promote bicycling, for transportation, recreation and for health. Cascade Bicycle seeks to
15 accomplish this objective through education, such as classes on bicycle safety, through special
16 events, such as ride to work month (the month of May), through involvement in public affairs,
17 such as its work on Ordinance 951 and Seattle's Master Bicycle Plan, and through public
18 information, such as through its newsletter.¹

19
20 Cascade Bicycle is the largest organization in the state that promotes bicycling and
21 bicycle safety. It presently has over 7200 active members. An even larger number participate
22 in its many activities. For example, the organization's signature event, the Seattle to Portland
23 bicycle ride annually attracts its maximum participation of 9,000 riders.
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1 **B. King County**

2 King County of course is one of 39 counties in the state and the operator of a number of
3 regional facilities, such as transit, sewage disposal, stormwater drainage and an extensive
4 network of parks and trails, including the 17-mile long Burke-Gilman Trail that roughly
5 extends from the City of Seattle to the City of Kenmore, through Lake Forest Park. See
6 Supplemental Ex. 11, King County Regional Trails Plan at 18, previously provided to the
7 Board within King County's Motion to Supplement and incorporated by this reference. King
8 County owns this trail in fee and is responsible for its operation and maintenance. *Id.* The
9 Burke-Gilman Trail is the most extensively used trail within King County's Regional Trail
10 system. The County's interests are more fully set forth within its own Petition for Review and
11 Prehearing Memorandum.
12

13 **C. The City of Lake Forest Park**

14 The City of Lake Forest Park is a municipal corporation organized under Title 35
15 RCW. An approximately two mile long segment of the Burke-Gilman Trail passes through the
16 city, extending from the Seattle city limits at NE 145th Street to the Kenmore city limits at 55th
17 Avenue NE near the north end of Lake Washington. See attached Ex. A, a print out of the
18 City's map of transit, trails and bicycle routes, available at the City's website,
19 www.cityoflfp.com.²
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24 ¹ See generally, the website for the Cascade Bicycle Club at www.cascadebicycleclub.org.

25 ² Pursuant to WAC 242-02-670(2) the Board may take official notice of this map, because it is produced by the City, capable of verification and not subject to reasonable dispute.

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III. Lake Forest Park's Multi-Use Trail

While Ordinance 951 applies generically to any multi-use or multi-purpose trail, practically speaking only one trail is subject to its terms, the Burke-Gilman Trail. The City has only one multi-use trail. Ex. A. Further, all testimony, comment, deliberation and other input on Ordinance 951 was presented to relation to concerns regarding, or its impacts upon the Burke-Gilman Trail. See e.g., the City's Index, containing over 400 references to the Burke-Gilman Trail. While this appeal presents a facial challenge to Ordinance 951 as a development regulation, the compliance and validity of that ordinance must be examined within the context of its effect upon the particular multi-use trail at issue here, the Burke-Gilman Trail, because that is the sole multi-use trail within Lake Forest Park and it is the focus of Ordinance 951.

The segment of the Burke Gilman Trail that passes through Lake Forest Park is the oldest section of the trail. It is also in the poorest repair. See Ex. 532, Atelier Study at 1, 3 and 9, attached to County's exhibits. Within this segment the improved width consists of a 10-foot wide asphalt path bordered by approximately one-foot wide dirt, gravel or grass shoulders for a total width of approximately 11 feet, depending upon the specific location. *Id.* at 7; see also attached Ex. 492, Cross Section of Existing Location, Burke-Gilman Trail Redevelopment Presentation to the Citizens Advisory Group (June 21, 2005).

For the most part, the total width of trail ownership is 50 feet. However, on account of easements and other limitations the County's ownership in some places narrows to 30 feet. See Ex. 532, Atelier Report at 10 and attached Ex.755, Right of Way Survey and Title Analysis, Sheet 2. In some areas the effective width of the trail has been narrowed by encroachments

1 from private properties, such as landscaping, fencing and buildings. See Ex. 532 at 9-10 and
2 attached Ex. 470, Transpo Group, Burke-Gilman Trail Crossing Plan at 2-7 (3/9/05).

3 The segment of the Burke Gilman Trail within Lake Forest Park is substantially
4 degraded and substandard; its shoulders are narrow; its paving is riddled with root heaves, and
5 it is crossed by driveways and minor streets with inadequate visibility. Ex. 532 at 1, 9-10 and
6 attached Ex. 470, Transpo Group Report at 2-7. The width of paving is too narrow to
7 accommodate the present levels of use and site distances at the intersections are inadequate.
8 Compare existing pavement width of 10 feet with minimum pavement width of 12 – 14 for a
9 shared bicycle/pedestrian trail under the Washington Department of Transportation Design
10 Guidelines for Bicycle Facilities (WSDOT Design Guidelines), contained within attached Ex.
11 478 at Figure 1020-13 (within County exhibits).

13 Efforts that culminated in the adoption of Ordinance 951 began with a Memorandum of
14 Understanding (MOU) between King County and Lake Forest Park that was entered into in
15 October 2004, a copy of which is attached at Exhibit 503. Among other things, the MOU
16 recognized that the Burke-Gilman Trail serves a “critical role in the King County Regional
17 Trails System . . . as a regional and local transportation corridor . . .” *Id.* It also established a
18 Citizens Advisory Group (CAG) to provide input to the City and the County on a trail
19 redevelopment study that was being undertaken by King County. *Id.* The CAG’s charter is set
20 forth at attached Ex. 426.

22 Concluding two years of work, the CAG produced final recommendations in two
23 phases, a Phase One Final Report dated February 17, 2006 and a Phase Two Final Report dated
24 October 3, 2006. See attached Exhibits 750 and 751. Among other recommendations, the
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1 majority of the CAG (by a vote of 11 to 2) favored a trail profile that would involve expanding
2 the asphalt surface from 10 to 12 feet and installing gravel shoulders of 3 feet on each side of
3 the trail; the majority also favored the removal from the trail of stop and yield signs. Ex. 751,
4 Phase Two Report at 7-9.

5 Shortly after the CAG’s presentation of its Phase Two Report in October 2006, the
6 Lake Forest Park City Council adopted Ordinance 951, a copy of which is set forth at Ex. 418.

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8 **IV. ORDINANCE 951**

9 Ordinance 951 adopts a new section within the conditional use chapter of the City’s
10 zoning code that would be applicable to multi-use or multi-purpose trails (referred to simply as,
11 “multi-use trails”), of which the City has only one, the Burke Gilman Trail. Codified at
12 18.54.047 this new section establishes numerous conditions applicable to the creation,
13 improvement or alteration of any multi-use trail. As relevant to the issues in this appeal, this
14 ordinance provides as follows:

- 15 • In reviewing conditional use permit applications for multi-use trails the City
16 Hearing Examiner is required to consider several established “principles”
17 including that “trails shall not alter the traffic flows and patterns that are normal
18 and customary to residential uses and areas . . . [and that] Trails and trail users
19 shall not impede the safe and efficient ingress and egress to and from residential
20 uses and areas from local streets and highways, access roads, driveways and
21 crossings;” §18.54.047.A.1.a;
- 22 • The “Hearing Examiner is instructed to only issue permits conditioned upon
23 such things as, “limitation of size, location on property and screening. . .”;
24 §18.54.047.C;
- 25 • For crossings with driveways and minor roadways the trail must “maintain[]
right-of-way to motor vehicle traffic” through either a yield or stop sign;
§18.54.047.D.1.f;
- Trail permits are subject to all other provisions of the conditional use permit
chapter, Ch. 18.54; §18.54.047.D.4;

- 1 • A required Traffic Control Plan must include “signs that provide primary right-
2 of-way for ingress and egress to uses conforming to zoning code; §
3 18.54.047.C.1.b
- 4 • Any trail permit must contain a Trail Development Plan that “[p]rovides for
5 compatibility with the character and appearance of development in the
6 vicinity...”; §18.54.047.D.4.b
- 7 • The required Trail Development Plan must preserve “the privacy of adjacent
8 uses by the use of setbacks, screening, landscaping, fencing or grade changes to
9 buffer adjacent properties;” §18.54.047.D.4.b;
- 10 • The Trail Development Plan must specify such details “sight distances, trail
11 surfaces, trail widths and speed control measures;” §18.54.047.D.4.b;
- 12 • The Trail Development Plan must provide for “screening/landscaping width
13 [that] shall be no less than 12 feet” adjacent to single family residential zones;
14 §18.54.047.D.4.b.iv;
- 15 • The Trail Development Plan must include lighting that “minimize[es] light
16 shining into residences to the extent reasonably possible consistent with safety;”
17 §18.54.047.D.4.b.v;
- 18 • The required Trail Development Plan shall provide for minimum setback from
19 private property lines to the edge of the trail shoulder of 12 feet adjacent to
20 residential zones; §18.54.047.D.4.b.vi;
- 21 • If available right of way, topography or pre-existing structures prevent
22 minimum setback and right of way requirements, the trail may be further
23 conditioned to reduce its width; §18.54.047.D.4.b.vi.1; the Examiner may also
24 reduce setback or landscaping, but only if enhanced landscaping or fencing is
25 required. *Id.*;
- And under §§18.54.047.D.4 and 18.54.030, a conditional use permit for a multi-
use trail may only be issued upon a determination by the Hearing Examiner that
the proposed use:
 - A. ...is consistent with policies and goals of the comprehensive
plan;
 - B. ...is not be materially detrimental to other property in the
neighborhood;

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- C. ...will supply goods or services that will satisfy a need of the community;
- D. ...is compatible with the character and appearance with existing and proposed development in the vicinity of the subject property;
- E. ...is compatible with the physical characteristics of the subject property;
- F. Any requested modifications to the standards of the underlying zoning shall require a variance . . . ;
- G. ...is not in conflict with the health and safety of the community;
- H. ...pedestrian and vehicular traffic associated with the use will not ... conflict with existing and anticipated traffic in the neighborhood;
- I. ... will not adversely affect public services in the surrounding area; and
- J. The applicant's past performance regarding permit compliance . . . shall be considered . . .

A copy of Chapter 18.54 relating to conditional uses is attached at Exhibit C.

The Examiner's decision on a conditional use permit is a final, Type I action and is only appealable to court. Lake Forest Park Municipal Code, §16.26.030.A.1 and 16.26.110.D.

The City adopted Ordinance 951 over the strenuous objections by the County that it would render improvement of the trail impracticable, see attached Supplemental Ex. 3, 4 and 7. letters by King County of August 24, September 28, and November 8, 2006, respectively, and over objections by Cascade Bicycle that the ordinance was contrary to law. Supp. Ex. 5, letter of October 5, 2006. The City adopted the Ordinance 951 anyway.

1 On January 3, 2007 the Cascade Bicycle Club filed this petition for review. King
2 County filed its separate Petition for review on January 22, 2007. The two cases were
3 consolidated on January 26, 2007.

4 **V. ISSUES PRESENTED**

5 Cascade Bicycle addresses the issues as presented within the Board's Prehearing Order
6 at IX. Those issues are re-stated within the arguments below.

7 **VI. THE STANDARD OF REVIEW**

8 Comprehensive plans and development regulations (and amendments thereto)
9 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
10 adoption. RCW 36.70A.320. Cascade Bicycle accepts that it has the burden of demonstrating
11 that any challenged actions do not comply with the Act. In general, the Hearings Board grants
12 deference to how counties and cities choose to plan under the Act. RCW 36.70A.320. But of
13 course, that deference is limited. As the court has observed, "local discretion is bounded,
14 however, by the goals and requirements of the GMA." *King County v. Central Puget Sound*
15 *Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000). Further,
16 "[c]onsistent with *King County*, and notwithstanding the 'deference' language of RCW
17 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not
18 'consistent with the requirements and goals of the GMA.'" *Thurston County v. Cooper Point*
19 *Association*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001). Accordingly, under RCW
20 36.70A.320(3) the Board shall find compliance unless [it] determines that the action by the
21 county is clearly erroneous in view of the entire record before the Board and the goals and
22 requirements of the Act. *Id.* In order to find the county's action clearly erroneous, the Board
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