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NORM MALENG
PROSECUTING ATTORNEY
DNR-CIVIL DIVISION

BEFORE THE CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD

CASCADE BICYCLE CLUB, a Washington
Corporation, et al,

NO. 07-3-0010c

Petitioner,

CITY'S RESPONSE BRIEF

v.

CITY OF LAKE FOREST PARK, a
municipal corporation,

Respondent.

The City of Lake Forest Park ("City") submits this Response to (1) King County's Prehearing Brief and (2) Hearing Memorandum by Cascade Bicycle Club.

I. INTRODUCTION

In this matter, King County and Cascade Bicycle Club (collectively, "Petitioners") challenge the City's enactment of Ordinance No. 951, which amends the City's multi-use trail conditional use regulations. Petitioners allege that Ordinance No. 951 precludes an essential public facility in violation of RCW 36.70A.200(5), violates several Growth Management Act goals, and is not consistent with certain City Comprehensive Plan policies.

Ordinance No. 951 does not violate RCW 36.70A.200(5). Multi-use trails are not an essential public facility under the GMA. But more importantly, Ordinance No. 951 does not preclude multi-use trails from siting or expanding in the City. The Ordinance does not

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1 outright deny such trails the right to locate or expand, nor does the Ordinance render the
2 location or expansion of such trails "impracticable." Rather, the Ordinance provides an
3 appropriate method for the City to require reasonable mitigation of the impacts of multi-use
4 trails. Petitioners' position ignores the fact that Board and judicial decisions establish that
5 local jurisdictions have authority to require that proponents of essential public facilities,
6 including regional essential public facilities, mitigate the impacts of those facilities.
7 Moreover, Ordinance No. 951 did not enact the language that Petitioners allege "precludes"
8 multi-use trails. That language was enacted by a prior Ordinance, and is not subject to
9 challenge at this time.

10 Ordinance No. 951 does not violate any GMA goals, and the Ordinance is consistent
11 with the City's Comprehensive Plan. An Ordinance does not violate the goals to encourage
12 multi-modal transportation systems, enhance recreational opportunities, or ensure that public
13 facilities are adequate, by requiring that impacts of transportation or recreation facilities be
14 mitigated. Likewise, Ordinance No. 951 does not create an unfair permit processing system.

15 To the extent that Petitioners allege that the City failed to comply with procedural
16 requirements of the State Environmental Policy Act and to provide notice to the state
17 Department of Community, Trade and Economic Development, the City has met those
18 requirements, rendering those claims moot.

19 Therefore, the Board should deny Petitioners' Petitions for Review, and affirm the
20 City's enactment of Ordinance No. 951.

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23 **II. ISSUES PRESENTED**

24 The Issues presented for review are stated in the Board's Prehearing Order and the
Board's Order on Motions, and are set forth in Appendix F to this Brief.

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III. STATEMENT OF FACTS

A. Description of the City of Lake Forest Park.

The City is a code city operating under Title 35A RCW. The City is located in northern King County, on the northern tip of Lake Washington. The City is bordered by the cities of Mountlake Terrace and Brier in Snohomish County to the north, by the city of Kenmore to the east, by the city of Seattle and Lake Washington to the south, and the city of Shoreline to the west. *App. A (Lake Forest Park Comprehensive Plan), p. 23.*¹ The City is approximately 3.4 square miles in size. *Id.*

The City is primarily a single-family residential community. *Id.* Approximately 80% of the land in the City is developed with residential uses, the vast majority of which are single-family residences. *Id.* at p. 24. Commercial development accounts for less than two percent of the City's area. *Id.* Two state highways run through the City. Bothell Way NE (SR 522) runs from the City's south boundary with Seattle, northeast to Kenmore. *Id.* at 23. Ballinger Way NE (SR 104) runs north-south, from the City's northern boundary to its intersection with Bothell Way. *Id.* The majority of the City's commercial development is located on these state highways, with the City's Town Center at their intersection. *Id.*

B. King County's Burke Gilman Trail Is Located Within the City.

King County owns and operates the Burke Gilman Trail, a segment of which traverses the City. The Burke Gilman Trail is a multi-purpose trail that provides opportunity for a variety of recreational activities, such as walking, jogging, roller-skating, and biking. The Trail covers 2.1 miles within the City, and is approximately 26 miles long in total length. *Ex. 532, p. 3.* The Trail runs along the City's southeastern boundary, generally between Lake Washington and Bothell Way NE. Within the City, most of the property abutting the Trail is developed with single-family residences. *Ex. 532, p. 17; Ex. 595, p. 5.*

¹ The Board can take official notice of provisions in the City's Comprehensive Plan. *WAC 242-02-660.*

1 King County originally acquired the Trail right-of-way pursuant to Resolution No.
2 34571. In that 1967 Resolution, the County authorized expenditure of funds for acquisition
3 and development of "walking paths and trails," for recreational purposes. *Ex. 562, p. 15.*
4 In the City, the Trail right-of-way is generally fifty feet wide, and has a 100 foot wide
5 segment in the southern area. *Ex. 532, p. 3.*

6 Within the City, the Trail is characterized by its proximity to single-family residential
7 properties. At eight locations, the Trail crosses private driveways or streets, each of which
8 provides access to residential properties, ranging in number from a few to thirty-nine. *Ex.*
9 *532, App. 7A.* Access to these residences requires crossing the Trail. *Ex. 595 p. 5.* The
10 Trail also crosses at least three public streets in the City: (1) Bothell Way NE/NE 170th
11 Street; (2) NE 165th Street/Beach Drive NE; and (3) Bothell Way NE/Ballinger Way NE-
12 Beach Dr. NE. The NE 165th Street intersection provides access to the Sheridan Beach
13 Club, and it is necessary to cross the Trail to access the Beach Club. *Ex. 595, p. 5.* In
14 addition, the Trail crosses two salmonid-bearing streams, McAleer Creek and Lyon Creek,
15 which provide important wildlife habitat corridors. *LFP Comp. Plan, at 26.*

16 The Trail is a popular amenity, and is used by persons of all ages for walking,
17 jogging, biking, skateboarding, roller skating, and other forms of non-motorized activity.
18 The increasing level of use of the Trail has created a number of problems. First, as the Trail
19 does not have separate lanes or areas for different types of uses, conflicts exist between
20 persons using the Trail for different activities. Second, conflicts exist between Trail users
21 and the land uses on which the Trail abuts. For instance, owners of residences who must
22 cross the Trail to enter or leave their property have had an increasingly difficult time
23 crossing the Trail to access or leave their homes. *Ex. 532 p. 1.* As a result, stop signs
24 facing the Trail were installed at the intersections providing access to the residences. *Ex.*
532, App. 7A p. 2-6. In addition, the Trail's intersection with NE 165th Street is controlled
by a four-way stop sign, and the Trail's intersections with Bothell Way NE/NE 170th Street

1 and Bothell Way NE/Ballinger Way NE-Beach Dr. NE are controlled by four way traffic
2 signals. *Ex. 532, App. 7A p. 6-7.*

3 **C. King County Proposes to Improve and Expand the Burke Gilman Trail.**

4 Over the years, the County has allowed the Trail, at least in the City, to deteriorate
5 into a state of disrepair. *Ex. 532, p. 1.* In approximately 2000, the County began to
6 develop plans to repair and expand or redevelop the Trail. At that time, the City began to
7 meet with County staff to discuss improvements to the Trail. *Ex. 532, p. 1.* In May of
8 2000, the City held a public meeting to identify stakeholders (who included local residents,
9 businesses, trail neighbors, and trail users), solicit community input, and establish a process
10 for implementing potential improvements to the Trail. *Id.*

11 Two years later, in May 2002, the County met with the City and stakeholder groups
12 to formalize and discuss a program for trail improvements. *Ex. 532, p. 1.* The County
13 contracted with Atelier PS, landscape architects, to prepare a report regarding a program for
14 trail repairs and improvements. *Id.* A draft report was presented to County staff, but was
15 rejected as inadequate because proposed recommendations failed to meet the County's long
16 term vision for regional trails. *Id.*

17 After additional work, the final Atelier PS "Burke-Gilman Trail Redevelopment
18 Study," was issued in October 2005. *Ex. 532.* The Study was prepared for the King County
19 Facilities Management Division of the Department of Executive Services, and the King
20 County Department of Parks and Recreation. *Ex. 532, cover.* The Study contains eight
21 Appendices, which include a Trail Right-of-way Survey, geotechnical, drainage, wetland and
22 streams, wildlife and arborist reports, and a Trail Crossing Plan. *Ex. 532, Appendices.*

23 **D. In October 2005, the City Enacted Ordinance No. 909, Establishing Conditional
24 Use Permit Criteria for Multi-Use Trails.**

Throughout the County's process for the improvements to its Trail in the City,
citizens consistently voiced concerns to City staff and the City Council regarding issues

1 related to the County's operation and maintenance of the Trail, enforcement of Trail
2 regulations, and other issues related to the multiple uses of the Trail and its impact on
3 adjacent land uses, which are predominantly single-family residences. The City is also
4 interested in developing one or more new multi-purpose trails itself in the future. For
5 example, the City is interested in establishing a multi-purpose trail to link trails such as the
6 Interurban Trail to the north of the City with the Burke-Gilman Trail. See *App. A, p. 110*.

7 The City began discussing and considering amendments to the City code that would
8 address issues raised regarding multi-use trails. In 2004, the City adopted Ordinance No.
9 907, which amended certain sensitive areas regulations applicable to multi-use trails. See
10 *Ex. 556*. During the same time frame that the City considered Ordinance No. 907, the City
11 was considering proposed Ordinance No. 909. Ordinance No. 909 amends the City's
12 conditional use regulations by clarifying that multi-purpose trails are subject to the
13 requirement to obtain a conditional use permit. After extensive discussion and public
14 hearings and debate, on October 27, 2005, the City Council adopted Ordinance No. 909,
15 adding a new section to Chapter 18.54 of the City code² as follows:

16 **18.54.047 Multi-use or Multi-purpose trails.**

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

23 *Ex. 422, p. 2.*³

24 Neither King County nor Cascade Bicycle Club, nor any party, appealed the City's
adoption of Ordinance No. 909; Ordinance No. 909 is not the subject of this appeal. Thus,

² Chapter 18.54 LFPMC is the chapter in the City's zoning code that governs conditional uses.

³ Although earlier drafts of Ordinance No. 909 contained more detailed conditional use permit provisions,
Ordinance No. 909 as passed by the Council contained this provision.

1 the multi-use trail conditional use permit requirement enacted in Ordinance No. 909 cannot
2 be challenged at this time, and will remain in effect regardless of the outcome of this appeal.

3 **E. After Further Public Hearings and Debate, the City Council Adopts Ordinance**
4 **No. 951, Amending the Multi-Use Trail Conditional Use Regulations.**

5 During the time that the City Council was considering Ordinances No. 907 and 909,
6 the City and the County had discussions to attempt to reach agreement regarding issues
7 related to the Trail's repair and expansion, and future maintenance and operation. As part of
8 these discussions, in October 2004 the County and the City entered into a Memorandum of
9 Understanding, in which the County and the City agreed to establish a Citizens Advisory
10 Group ("CAG") to provide a forum for discussion of issues related to trail redevelopment,
11 reflecting a variety of community interests. *Ex. 503; 426.* The CAG held meetings,
12 reviewed consultants reports, and ultimately issued recommendations regarding the repair,
13 expansion, and operation of the Trail. *Ex. 509.*

14 The City continued to consider appropriate regulations for multi-purpose trails in the
15 City. The City sought the assistance of qualified professionals to aide in the evaluation of
16 appropriate regulations. *Ex. 419.* The City contracted with a consultant, Huitt-Zollars, to
17 advise the City on issues concerning development or expansion of such trails, and to address
18 the multitude of concerns expressed by citizens over the previous several years. In April
19 2006, Huitt-Zollars issued a report that provided a summary of standards for shared use
20 paths, and suggested provisions for conditional use regulations. *Ex. 595.*

21 The Huitt-Zollars Report recognized that unique circumstances on the Trail in the
22 City impact the application of any trail standards. *Ex. 595, p. 2.* These special and unique
23 circumstances include proximity of residential uses, topography (steep vertical and acute
24 angular vehicle approaches to the path), and multiple and frequent driveway and roadway
crossings. *Id.* The Report notes that the Trail was originally designed as a walking path.
Id. Certain standards from other states recommend against multi-use paths where there are

1 more than eight crossings per mile, and the Trail's south section in the City has eight
2 crossings in one mile. *Id.* The Report states: "Since cross flow by motor vehicle traffic
3 cannot be minimized along this section of the path due to existing conditions and adjacent
4 residential access needs, the applicability of standards for shared use paths along this section
5 of path should require additional consideration." *Id.*

6 Regarding recommendations for conditional use permit conditions, the Report states:

7 The safety of all Lake Forest Park's citizens and visitors using surface streets
8 and the trail is the paramount concern. The Lake Forest Park section of the
9 Burke Gilman Shared Use Path is unique because of the large number of
10 residential street and access crossings along this section of trail and the acute
11 vertical and horizontal angles of approach that limit visibility. This is of
12 particular concern for motor vehicle operators, especially trucks and delivery
13 vehicles with limited visibility past 90 degrees of the passenger side.

14 In a collision between a path user and a motor vehicle, the path user is more
15 likely to experience serious injury or death than the driver of the vehicle. Path
16 users should be warned of potential motor vehicle conflicts at crossings where
17 such potential collisions could occur.

18 *Ex. 595, p. 6.* The Report then recommends that yield signs be used for trail intersections
19 with driveways, and that the existing stop signs and traffic signals remain at the three public
20 streets with those controls. *Ex. 595 p.6-8.* This recommendation is similar to the signage at
21 trail crossings at private driveways along the East Lake Sammamish Trail. *Ex. 392 p. 6.*

22 After receiving the consultant's Report, the City resumed work on Ordinance No.
23 951, to amend LFPMC 18.54.047 (enacted in Ordinance No. 909) to include more specific
24 requirements for the grant of a conditional use permit for multi-purpose trails. Beginning in
July 2006, the City Council considered and debated a number of versions of Ordinance No.
951. See *Ex. 359 - 368; 382 - 392; 401 - 411.* The City received a great number of public
comments on the Ordinance, primarily in the form of emails from citizens. See *Index Nos.*
220.⁴ King County submitted several comment letters. *Ex. 613, Supp Ex. 3, Supp Ex. 4,*

⁴ The City is not providing copies of each email comment to the Board, but simply cites to the Index as
indicating the great number of comments received by the City.

