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3  
4 BEFORE THE CENTRAL PUGET SOUND GROWTH MANAGEMENT  
5 HEARINGS BOARD  
6 STATE OF WASHINGTON

6 CASCADE BICYCLE CLUB and )  
7 KING COUNTY, )

8 Petitioners, )

No. 07-3-0010c

9 vs. )

KING COUNTY'S REPLY BRIEF

10 CITY OF LAKE FOREST PARK, )

11 Respondent. )  
12

13 I. INTRODUCTION

14 [T]he GMA requires local governments both to manage change and change to manage.  
15 While the GMA recognizes that a community's values and preferences form the core of  
16 its comprehensive plan, there are limitations on the exercise of local discretion. The Act  
17 prohibits local prerogatives, whether expressed in policy documents or development  
18 regulations, from thwarting legitimate regional and state interests. Therefore, when  
19 compared to the past, the "change" that the GMA will sometimes require in local plans  
20 and development regulations is nothing less than transformational. Children's Alliance  
21 and Low Income Housing Inst. v. City of Bellevue, CPSGMHB No. 95-3-0011, FDO at  
22 p.3 (1995) (citations omitted) ("Children's Alliance").

23 This concise statement of the GMA's purpose, goal, and effect from Children's Alliance,  
together with the Board's decision in that and subsequent cases, establish the framework for  
resolving this dispute. Here, the City of Lake Forest Park ("the City") adopted an ordinance in  
an attempt to regulate the construction or improvement of an essential public facility—in this  
case, interurban multiuse or multi-purpose trails, including King County's Burke-Gilman trail  
("the Trail"). However, Ordinance 951 ("the Ordinance") exceeds the permissible scope of

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KING COUNTY'S REPLY BRIEF

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1 regulation, because it enables the City to deny or preclude such facilities. Consequently, the  
2 Ordinance violates the letter as well as the spirit of the GMA.

3 King County's Prehearing Brief, incorporated here by this reference, provides a sufficient  
4 rejoinder to most of the arguments in the City's Response. This Reply makes just four points:

- 5 (A) Under the Board's precedents and the plain text of the Ordinance, the County's  
6 petition properly and timely challenges all elements of LFPMP 18.54.047, including  
7 those originally enacted in 2005, and the Board may review those elements for GMA  
8 compliance;
- 9 (B) The record demonstrates that multi-purpose trails like the Burke-Gilman constitute  
10 essential public facilities under RCW 36.70A.200(5) because they are public  
11 facilities that are typically difficult to site;
- 12 (C) The Ordinance suffers from flaws comparable to those that the Board identified in  
13 the development regulations which it struck down in Children's Alliance, above; Port  
14 of Seattle v. City of Des Moines, CPSGMHB No. 97-3-0014; King County v.  
15 Snohomish County, CPSGMHB No. 03-3-0011; and DOC/DSHS v. City of Tacoma,  
16 CPSGMHB No. 00-3-0007;
- 17 (D) The City's later SEPA analysis and its GMA notice to CTED do not pertain to  
18 Ordinance 951, because they were completed in connection with a later-adopted  
19 ordinance not at issue here; as such they do not cure the City's failure to comply with  
20 SEPA and CTED regulations when it adopted Ordinance 951.

21 Taken individually or together, and viewed against the Board's precedents, these points  
22 demonstrate clear error and provide a sufficient basis for the Board to rule the Ordinance out of  
23 compliance with the GMA. Furthermore, the Board should invalidate Ordinance 951 because  
the continued validity of the Ordinance would substantially interfere with the goals of the GMA.

## 24 II. ARGUMENT

### 25 A. The Board May Review All Elements of LFPMP 18.54.047

26 This discussion relates to all Legal Issues that the Board identified in the Prehearing  
27 Order, except Legal Issues 2, 7, 9, and 10. The City argues that the Board cannot review certain  
28 elements of LFPMP 18.54.47 because those elements of that section were adopted in 2005, and  
29 the 60-day window for challenging them has closed. City's Response Brief, at pp. 17-18. The

1 City's argument falls short. There are at least three reasons. First, the Board's prior decisions  
2 teach that the Board can and will review a previously-enacted development regulation where the  
3 Board is considering a timely challenge to a new regulation that incorporates the older one. See,  
4 e.g., Combined Order in King County v. Snohomish County, CPSGMHB Nos. 03-3-0011, 03-3-  
5 0025, and 03-3-0012 (May 26, 2004) ("King County I-III, Combined Order"), at p.12 (reviewing  
6 SCC section 30.42.C.100 and finding it noncompliant even though it was merely incorporated by  
7 the ordinance at issue in that case, and not amended by it).

8 Ordinance 951 weaves together several code provisions in a manner virtually identical to  
9 Snohomish County's Ordinance 04-019, which the Board ultimately found noncompliant and  
10 invalidated in King County I-III. See *id* at 16 (invalidating Snohomish County ordinance 04-  
11 019). The City adopted Ordinance 909, which added to the City's code a conditional use permit  
12 ("CUP") requirement for multi-use or multi-purpose trails. Ex. 422 at p.2. However, Ordinance  
13 909 did not define the term "multi-use or multi-purpose trails." See generally Ex. 422. Nor did  
14 any other portion of the City's code. See generally LFPMC Chapters 1, 16, 18. So, while the  
15 City may have intended to regulate the Trail through Ordinance 909, nothing in that ordinance or  
16 the code expressly did so. Then the City adopted Ordinance 951 to amend LFPMC 18.54.047  
17 and to define "multi-use or multi-purpose trails" to include paved paths that connect with or  
18 continue with paths in other cities. Ex 418 at p.2.

19 There is only one such path in the City—the County's Burke-Gilman Trail. It and other  
20 County-owned trails are regional facilities. See, e.g., RCW 36.70A.210(1) ("The legislature  
21 recognizes that counties are regional governments within their boundaries."); see also City of  
22 Des Moines v. PSRC, CPSGMHB No. 97-3-0014, FDO at p.11 n.11 (J. Tovar, concurring)  
23 (citing same) ("City of Des Moines"). Like Snohomish County ordinance 04-019, Ordinance  
951 thus created a GMA compliance issue where there was none before: "[B]y its explicit terms,  
[LFPMC 18.54.047] requires regional, state or federal EPFs to a [sic] get a CUP and therefore

1 subjects them to the criteria at [LFPMC 18.54]." King County I-III, Combined Order at p.12  
2 (bracketed material added).

3 Second, a separate provision in Ordinance 951 independently reenacts and incorporates  
4 the CUP requirement in LFPMC Ch. 18.54. See Ex. 418 at p.3, section 1.D.4 ("Any conditional  
5 use for a multi-use trail or multi-purpose trail . . . [s]hall comply with all applicable requirements  
6 of this Chapter."); accord, In re LaBelle, 107 Wn.2d 196, 223-24, 728 P.2d 138 (1986)  
7 (compulsory waiver statute regarding 14-day involuntary commitments is applicable to 90-day  
8 and 180-day commitments because those statutes each incorporate by reference the requirements  
9 of RCW 71.05.310); Cf LFPMC 1.01.050 (reference to code or portion thereof includes not only  
10 code section, but also all amendments, corrections and additions thereof). Section 1.D.4's  
11 separate and independently reenacted CUP requirement would be effective even if the  
12 preexisting language in section 1.C. were struck down or deleted. Ex. 418 at p.6, §2 (severability  
13 provision; remaining portions of the Ordinance are valid even if other portions are invalidated).  
14 As such, the plain text of Ordinance 951 puts the City's CUP requirements squarely before the  
15 Board.

16 Third (and assuming for the sake of argument that Ordinance 909 applied to regional  
17 trails in its original form), the GMA permits the Board to consider earlier-enacted development  
18 regulations under the circumstances present here. In RCW 36.70A.302(4), the GMA specifies:

19 If the ordinance that adopts a plan or development regulation under this chapter includes  
20 a savings clause intended to revive prior policies or regulations in the event the new plan  
21 or regulations are determined to be invalid, the board shall determine under subsection  
22 (1) of this section whether the prior policies or regulations are valid during the period of  
23 remand.

24 Under the conditions enumerated in RCW 36.70A.302(4), the Board may even consider and  
25 invalidate development regulations that were enacted prior to the GMA. Skagit Surveyors and  
26 Engineers, LLC, v. Friends of Skagit County, 135 Wn.2d 542, 560, 958 P.2d 962 (1998). Where  
27 the statutory conditions exist, the Board's ability to review pre-GMA development regulations

1 that "spring back" surely permits the Board to review a revived post-GMA regulation that was  
2 first adopted only two years ago.

3 In this case, if Ordinance 951 were invalidated, the City's code specifies that Ordinance  
4 909 would spring back in its original form. LFPMC section 1.01.100 (if any section, subsection,  
5 sentence, clause or phrase of the City's code is for any reason held to be invalid or  
6 unconstitutional, such decision shall not affect the validity of the remaining portions of the code,  
7 and the original ordinance or ordinances shall be in full force and effect.). The County's petition  
8 regarding Ordinance 951 was timely, so under RCW 36.70A.302(4) and Skagit Surveyors and  
9 Engineers, and for the other reasons set forth above, the Board may consider the preclusive effect  
10 of all elements of LFPMC 18.54.047 as amended by Ordinance 951, including those that may  
11 have been originally enacted through Ordinance 909 and reenacted through Ordinance 951.

#### 11 B. Trails Constitute Essential Public Facilities

12 This discussion relates to Legal Issues 1 and 6 as identified in the Board's Prehearing Order.  
13 The City questions whether trails constitute essential public facilities (EPFs). City's Response  
14 Brief, pp.12-16. It does so to no avail. The City first argues that trails are not listed in the GMA  
15 definition at RCW 36.70A.200(1). City's Response Brief, at p.13. But the plain text of that  
16 definition is illustrative, not exclusive:

17 The definition of "essential public facilities" is contained in [RCW 36.70A.200], rather  
18 than in RCW 36.70A.030. By the terms of subsection (1), "essential public facilities"  
19 include those facilities that are typically difficult to site, such as airports, state education  
20 facilities and state or regional transportation facilities, state and local correctional  
21 facilities, solid waste handling facilities, and in-patient facilities including substance  
22 abuse facilities, mental health facilities, and group homes."

23 The word "include" implies that there are other unnamed facilities that are difficult to  
site that may qualify as "essential public facilities."

Significantly, essential public facilities may be large or small, many or few, and may be  
either capital projects (e.g., airports and prisons) or uses of land and existing structures  
(e.g., mental health facilities and group homes). The characteristic they share is that they  
are essential to the common good, but their local siting has traditionally been thwarted

1 by exclusionary land use policies, regulations, or practices. For this reason, RCW  
2 36.70A.200 has, in effect, pre-empted such behavior.

3 Children's Alliance, FDO at pp. 5-6 (bracketed material, italics, underlining added). The City's  
4 first argument fails.

5 The City next resorts to dictionary definitions in an attempt to differentiate trails from  
6 "truly" essential facilities. City's Response Brief at p.13. But the City's approach is destructive  
7 rather than edifying: Other than correctional facilities and perhaps a few select mental health  
8 facilities, virtually all of the facilities expressly designated as EPFs in RCW 36.70A.200(1)—  
9 airports, education facilities, waste handling facilities, substance abuse facilities, and even secure  
10 community transition facilities—would be stripped from that category under the City's  
11 straitjacketed dictionary approach. The GMA properly acknowledges that these facilities are all  
12 discretionary government activities that contribute to the well-being of the community as a  
13 whole, and are difficult to site because they are "precisely the type of land uses which provoke  
14 'NIMBY' (Not in My Backyard) responses." Children's Alliance, FDO at p.13; see also Okeson  
15 v. City of Seattle, 150 Wn.2d 540, 550, 78 P.3d 1279 (2005) ("[t]he principal test in  
16 distinguishing governmental functions from proprietary functions is whether the act performed is  
17 for the common good of all, or whether it is for the special benefit or profit of the corporate  
18 entity.").

19 At bottom, the City's reductionist, definitional approach would effectively slash all public  
20 facilities from the GMA's textual definition of EPFs, save only those that serve the "core but  
21 limited government function to protect lives and property." Weden v. San Juan County, 135  
22 Wn.2d 678, 725, 958 P.2d 273 (1998) (citing and quoting Wash. Const. Art I. §1 for the  
23 proposition that "[g]overnments . . . are established to protect and maintain individual rights.").  
In Children's Alliance, above, and its later decisions, the Board has correctly interpreted the plain  
text of the GMA, and rightly discerned that the Legislature had an open-ended and much broader  
category of facilities in mind. The City's dictionary argument is incurably flawed.

1 The City's arguments are further diminished by the fact that the text of the GMA is  
2 replete with goals, references and requirements for recreational facilities, all of which serve to  
3 demonstrate that the Legislature plainly recognized that parks, trails, sports fields, and similar  
4 public amenities are of significant concern—indeed, are mandatory—for a growing and  
5 increasingly densely housed population.<sup>1</sup> Given that the Legislature has richly embroidered the  
6 GMA tapestry with robust public recreation mandates, it seems positively natural that such  
7 facilities should constitute EPFs—subject, of course, to the caveat in RCW 36.70A.200(1) that a  
8 given class of recreation facilities must also be typically difficult to site.

9 The City makes much of the fact that the County's Parks and Recreation Division is the  
10 custodial agency for the Burke-Gilman trail and others like it, rather than the County's  
11 Department of Transportation. City's Response Brief, at p.14. The City argues that because the  
12 trail is recreational, it is not a transportation facility. See *Id.* The City's arguments falsely and  
13 unnecessarily cleave the two functions apart. As an initial example, the City omits the fact that  
14 County's Department of Transportation prints and updates the County's bicycle trails map, which  
15 integrates bicycle and other paths (including the Trail) with on-road bike lanes and routes.<sup>2</sup>

16 More broadly, the GMA itself mandates that the transportation element of a  
17 comprehensive plan must include (among other required sub-elements) a "pedestrian and bicycle  
18 component to include collaborative efforts to identify and designate planned improvements for  
19 pedestrian and bicycle facilities and corridors that address and encourage enhanced community

19 <sup>1</sup> See, e.g., RCW 36.70A.020(9) (stating GMA goal to retain open space, enhance recreational opportunities,  
20 conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and  
21 recreation facilities); RCW 36.70A.030(12) (defining "public facilities" to include recreational facilities); RCW  
22 36.70A.030(14) (defining "recreational lands"); RCW 36.70A.070(1) (mandatory land use element of  
23 comprehensive plan must include recreation, open space, and other public facilities); RCW 36.70A.070(3)  
(mandatory capital facilities element of comprehensive plan must include park and recreational facilities); RCW  
36.70A.070(8) (comprehensive plan must include a park and recreation element that implements and is consistent  
with the capital facilities plan element as it relates to park and recreation facilities); RCW 36.70A.150  
(comprehensive plans must identify lands useful for public purposes, including recreation); RCW 36.70A.171  
(identifying certain playing fields as compliant with the GMA).

<sup>2</sup> See <http://www.metrokc.gov/kcdot/roads/bike/map.cfm> (visited May 18, 2007). The County will bring an  
illustrative copy of the KCDOT Bicycling Guidemap to the hearing on the merits on June 1, 2007.

1 access and promote healthy lifestyles.” RCW 36.70A.070(6)(a)(vii). Mixed-use paths such as  
2 the Trail fit within that category.

3 The County has taken that GMA mandate to heart. It has designated the Trail and others  
4 as nonmotorized transportation facilities in the County’s transportation plan, see County’s  
5 Prehearing Brief at p.7, and integrated that trail system as a critical subelement of the  
6 transportation element of the County’s comprehensive plan. See generally King County 2004  
7 Comprehensive Plan Ch. 6 and Technical Appendix C (both attached hereto as Attachment KC-  
8 D). The County’s transportation plan element, like the GMA itself, is shot through with bicycle  
9 trail-related policies and mandates. Here is just a sampling from Attachment KC-D: pp.6-7,  
10 policy T-204 (“[t]he transportation system should include . . . facilities and programs for  
11 pedestrians, bicycles, and equestrians); id at p. 6-11, policy T-305 (listing roadway safety  
12 improvements as including “pathways”); id at p. 6-13, item C (“[t]rail networks, sidewalks, bike  
13 lanes, and other nonmotorized improvements encourage walking and cycling.”); id at policy T-  
14 321 (“[u]nused rights-of-way should be considered for development as pedestrian, bicycle,  
15 equestrian or accessible connectors”); id at Technical Appendix C, pp. C-16, C.17 (describing  
16 “RoadShare,” the county’s nonmotorized transportation program, as including the County’s  
17 regional trails network).<sup>3</sup> Furthermore, as the County demonstrated earlier in these proceedings,  
18 the Puget Sound Regional Council has also designated the Trail and other trails as core elements  
19 of the Metropolitan Transportation System, which is determinative for purposes of state and  
20 federal transportation funding and planning statutes. See County’s Prehearing Brief at p.7, and  
21 sources cited therein.

22 Taken together, these authorities illustrate the obvious point that construction, operation,  
23 and management of trails (and especially the County’s interurban trails like the Burke-Gilman)

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<sup>3</sup> The Board may take official notice of the County’s comprehensive plan, which was adopted by ordinance. WAC 242-02-660(4). See <http://www.metrokc.gov/ddes/compplan/2004/index.htm> (visited May 18, 2007) (listing King County ordinances 15605 through 15607 and 15242 through 15245 as among those adopting the 2004 King County Comprehensive Plan and its 2006 updates). The full text of the County’s comprehensive plan and its appendices are available at that website.

1 are core public services that legitimately serve both “transportation” and “recreation” functions.<sup>4</sup>  
2 As such a trail can be an EPF, subject—as always—to the caveat in RCW 36.70A.200(1) that a  
3 given type of trail must also be typically difficult to site.

4 The City’s last two arguments are that trails are not essential because streets and bicycle  
5 lanes can serve the same transportation purpose as stand-alone trails, see City’s Response Brief  
6 at pp.15-16; and that the regional nature of the Burke-Gilman and similar trails does not equate  
7 to “essential” public facility status. *Id.* Disregarding the patently spurious thesis that streets and  
8 bicycle lanes are equivalent to dedicated trails or paths for pedestrians and cyclists—see Ex. 443  
9 (AASHTO Guide, 1999) at pp.5-9, attached hereto—these arguments may be disposed of  
10 summarily. The existence of alternative sites or facilities (if any) simply is not relevant to the  
11 question whether a given facility constitutes an essential public facility. Nor is the existence of  
12 alternative sites or facilities relevant when determining whether a given development regulation  
13 is preclusive. See, e.g., State v. City of Lakewood, CPSGMHB No. 05-3-0043c, FDO at p.13  
14 (2006) (disregarding city’s suggestion that State pursue work release facility in alternative areas;  
15 emphasizing that EPF proponent has the authority to determine EPF location; observing that  
16 requiring proponent to site an alternative facility somewhere other than existing location would  
17 cause delays related to finding and acquiring a site and physically establishing a facility.) The  
18 City’s argument amounts to a non sequitur.

19 Likewise, the question whether a facility is “regional” or “local” is not relevant to the  
20 question whether it is an essential public facility; local facilities may well be EPFs depending on

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21 <sup>4</sup> The City argues that trails are not among the limited state or regional transportation facilities defined in RCW  
22 47.06.140 and referenced in RCW 36.70A.200(1). City’s Response Brief, pp.13-14. But RCW Ch. 47.06 merely  
23 describes transportation facilities and services of statewide significance. RCW 47.06.140. The County does not  
argue that its trails have statewide significance (though it reserves the right to make such an argument in another  
context). Most of the examples of EPFs in RCW 36.70A.200(1) do not have statewide significance, and many of  
them (group homes, in-patient facilities, certain mental health facilities) may not even have regional significance.  
The City’s reliance on RCW 47.06.140 to disprove the “essential” character of regional trails is misplaced. Cf  
Children’s Alliance, FDO at p.13 (rejecting city’s argument that group homes could not be EPFs because they were  
not on state Office of Financial Management’s list of “essential state public facilities”; holding that designated  
essential state public facilities were not a determinative list of EPFs, but rather were a subset of EPFs in the then-  
existing version of RCW 36.70A.200(2)).

1 their function and purpose, and the level of difficulty in siting them. See County's Prehearing  
2 Brief at pp.7-8; see generally RCW 36.70A.200(5). Rather, the inquiry whether a facility is  
3 "local" or "regional" is relevant to the question whether a development regulation like Ordinance  
4 951 (or Ordinance 909 before it) may legitimately preclude or prohibit that facility. See King  
5 County v. Snohomish County, No. 03-3-0011, FDO at p. 11 (2003) ("King County I")("EPFs . . .  
6 sited by a regional or state entity are distinct from those that are 'sited by' a local jurisdiction or  
7 a private organization or a individual."); see also King County I-III, Combined Order at pp.11-12  
8 (analyzing CUP criteria and finding them GMA-compliant as to local EPFs, but GMA-  
9 noncompliant as to regional EPFs). As with alternative sites or facilities, above, the City's  
discussion of "regional" and "local" trails in the EPF designation context is also a non sequitur.

10 Ultimately, the question whether a given public facility is an EPF turns on two simple  
11 factors: (a) whether it falls within "the full range of services to the public provided by  
12 government, substantially funded by government, contracted for by government, or provided by  
13 private entities subject to public service obligations," WAC 365-195-340(a)(i); and (b) whether it  
14 is one of "those facilities that are typically difficult to site." RCW 36.70A.200(1). This Reply  
15 Brief has already established that the GMA deems parks, trails, and other recreation facilities to  
16 be critical elements of public infrastructure. See discussion, above. The GMA recognizes that  
17 trails serve dual recreation and transportation functions. Id. The County's Prehearing Brief  
18 demonstrated that trails are difficult to site—and none more so than regional trails like the  
19 Burke-Gilman or the East Lake Sammamish Trail. County's Prehearing Brief at p.4 n.3 (citing  
20 reported appellate opinions arising from County trail projects and trail projects in other  
21 Washington jurisdictions). By way of further example, controversy over the East Lake  
22 Sammamish Trail led to a 10-year delay between the date the County purchased it and the date  
23 that an interim soft-surface trail was opened for public use. See Attachment KC-E, attached  
hereto.<sup>5</sup> A permanent, paved trail is still years away.<sup>6</sup> Further to the west of the City, Seattle

<sup>5</sup> Attachment KC-E is a newspaper article reporting the opening of the interim East Lake Sammamish Trail. The  
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1 recently completed a highly contentious trail siting and improvement project—the effort to  
2 extend the Burke-Gilman trail through the Seattle neighborhoods of Ballard to Shilshole Bay.  
3 See Attachments KC-F through KC-H, attached hereto.<sup>7</sup>

4 At the risk of piling on cumulative evidence, and at the further risk of spiraling into  
5 potentially tautological reasoning, the City’s own record demonstrates the challenges and  
6 difficulties that the County has encountered in siting trail improvements in the City. Ex. 424;  
7 Ex. 448 at p.1; Ex. 511. Local controversy is the prime reason it has taken the County nearly 7  
8 years just to develop a plan to upgrade the Trail there. See, e.g., Ex. 424; Ex. 511. The fact that  
9 the City has, in recent years, adopted no less than four separate ordinances (ordinance 907,  
10 ordinance 909, ordinance 951, and ordinance 958) dealing with trails would, in and of itself,  
11 seem to suggest that such facilities are going to be difficult to site in the City, if not elsewhere.

12 In sum, the GMA recognizes that the County’s Trail (and trails in general) are  
13 important public facilities. The evidence proves that trails are typically difficult to site or  
14 improve. The City’s own record demonstrates that the County has encountered substantial  
15 difficulty attempting to plan needed improvements to the Trail. That is all that is required to  
16 bring multi-purpose or multi-use trails in general, and the Trail in particular, into the  
17 category of essential public facilities.

18 **C. The Ordinance Impermissibly Precludes Regional Trail EPFs**

19 This discussion relates to Legal Issues 1, 3, 4, 5, 6, 8, and 9 as identified in the Board’s  
20 Prehearing Order. The City argues that its Ordinance does not preclude trail EPFs. City’s  
21 Response Brief, at pp. 16-28. But the Ordinance suffers from the same defects as other  
22 development regulations or plans which the Board struck down in four prior cases. And the

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23 Board may take official notice of the information in Attachment KC-E. WAC 272-02-670(2) (notorious facts).  
<sup>6</sup> See, e.g., <http://www.metrokc.gov/parks/trails/elst.html> (visited May 18, 2007) (outlining current stage in trail  
planning process).  
<sup>7</sup> Attachments KC-F through KC-H are newspaper articles reporting the City of Seattle's consideration of and  
adoption of a plan to extend the Burke-Gilman trail through the neighborhood of Ballard. The Board may take  
official notice of the facts reported in KC-F through KC-H. WAC 272-02-670(2) (notorious facts).

1 Ordinance has little in common with development regulations that the Board has upheld. As a  
2 brief review of these prior decisions will show, Ordinance 951 impermissibly precludes trail  
3 EPFs in the City.

4 In its seminal Children's Alliance decision, the Board ruled that a City of Bellevue  
5 ordinance impermissibly precluded the siting of group homes. The Board found that the  
6 ordinance (a) adversely affected the financial viability of certain group homes, such that they  
7 were financially infeasible in the city; (b) effectively thwarted the purpose of group care by  
8 forcing group homes into nonresidential areas; and (c) was inconsistent with the City's  
9 comprehensive plan because portions of the ordinance were "directly inconsistent" with the  
10 plan's direction to integrate special needs housing into the city's neighborhoods. Children's  
Alliance, FDO at pp.13, 18.

11 In City of Des Moines, No. 97-3-0014, the Board determined that Des Moines'  
12 comprehensive plan provisions were noncompliant with the GMA and invalidated them. The  
13 offending elements of the city's comprehensive plan included (a) policies requiring plans,  
14 regulations, and review procedures to preserve or protect residential communities from  
15 inconsistent and incompatible land uses that threatened their stability and their residential  
16 character; (b) findings and strategies that worked in concert to prevent, rather than mitigate,  
17 expansion of Seatac International Airport by restricting necessary support activities, such as fill  
18 dirt hauling; and (c) strategies directing the City to oppose land use changes and transportation  
19 facilities or infrastructure improvements that would increase environmental noise beyond that  
20 which existed on a date certain. City of Des Moines, FDO at pp. 6, 8, 9. Reasoning from  
21 Children's Alliance, the Board explained that "[i]f the City's Plan has the effect of making the  
[airport] expansion incapable of being accomplished by the means at the Port's command, then  
the Plan is in violation of the GMA." City of Des Moines, FDO at p.5.

22 In DOC/DSHS v. City of Tacoma, CPSGMHB No. 00-3-0007 (2000) ("City of  
23 Tacoma"), the Board ruled that a city ordinance failed to comply with the GMA where the

1 ordinance (a) regulated the internal workings of a state EPF; (b) effectively precluded the siting  
2 of work release facilities by prohibiting their expansion (and the siting of new facilities) by  
3 limiting such facilities to zones where the availability of sites was problematic; (c) imposed  
4 preclusive buffers based on nothing more than "unsubstantiated community fears and  
5 generalized community displeasure;" and (d) subjected the state's work-release EPFs to an  
6 "unguided and subjective assessment whether the proposed location furthers an equitable  
7 distribution of EPFs in the region and in the state."<sup>8</sup> *Id.* at pp. 5, 7-9. The Board relied on  
8 Children's Alliance, City of Des Moines, and an intermediary case, Hapsmith v. City of Auburn,  
CPSGMHB No. 95-3-0075c (1996), in reaching its conclusions.

9 In King County I, the Board ruled that a county ordinance failed to comply with the  
10 GMA and the Board invalidated the ordinance. Relying on Children's Alliance, City of Des  
11 Moines, and the Hapsmith decision, the Board identified the following flaws in the county's  
12 ordinance: (a) the ordinance not only authorized, but obligated the county to deny regionally  
13 sited EPFs when they did not meet the ordinance's decision siting criteria; (b) the county's  
14 separate CUP process lacked any definite end to an iterative loop of EPF hearings, appeal  
15 hearings and remands; and (c) the county reserved to itself the authority to outright deny CUPs  
16 for EPFs. King County I, FDO at pp.11-13. The Board identified this last flaw as facially  
precluding EPFs contrary to RCW 36.70A.200. *Id.* at p. 12.

17 The Board revisited the King County-Snohomish County EPF siting dispute again when  
18 it issued its May 24, 2004, Combined Order in King County I-III, discussed earlier in this Reply  
19 Brief. In the Combined Order, the Board ruled that a subsequent county ordinance was not  
20 compliant with the GMA, and the Board invalidated that ordinance. The Board ruled that two of  
21 the ordinance's twelve EPF siting criteria did not comply with RCW 36.70A.200(5) as applied to  
22 regional EPFs: one of them because it authorized the county's hearing examiner to determine

23 <sup>8</sup> The Board also determined that the city failed to comply with the GMA's notice and public participation requirements. *Id.* at p.10.

1 whether an EPF sponsor had provided a meaningful opportunity for public participation in the  
2 siting decision; and the other because it mandated that such EPFs "not be materially detrimental  
3 to uses or property in the immediate vicinity." King County I-III, FDO at p.12. The Board  
4 explained that a jurisdiction may not "second guess" the rationale, justifications, methods or  
5 procedures by which a regional EPF sponsor develops the proposal that it submits for the  
6 County's permit review. Id. The Board also explained that many regional EPFs, due to their  
7 scale and very nature, will inevitably be detrimental to some degree to surrounding uses, such  
8 that under RCW 36.70A.200(5) a jurisdiction may not adopt an absolute regulatory requirement  
9 that a regional EPF not be materially detrimental to its surroundings. Id.

10 Most recently, in DOC v. City of Lakewood, CPSGMHB No. 05-3-0043c (2006) ("City  
11 of Lakewood"), the Board found that a city moratorium on applications for correctional facilities  
12 in certain specified districts was non-compliant with RCW 36.70A.200, as well as RCW  
13 36.70A.020(7) and (11). The Board invalidated the ordinance that enacted the moratorium.  
14 Relying on King County I, the Board determined that the city's existing CUP process was  
15 sufficient to address the city's concerns about the proposed EPF. City of Lakewood, FDO at  
16 p.12. The Board explained that unpredictable delay in the review of an EPF is tantamount to  
17 precluding that EPF. Id. In response to the city's arguments that DOC could site its facilities  
18 elsewhere, the Board ruled that EPF sponsors have the authority to determine the location of  
19 their EPFs; and where an EPF sponsor already owns and operates a facility where it proposes to  
20 locate a new or expanded EPF, then requiring the sponsor to site the EPF in an alternative  
21 location "would cause delays related to finding and acquiring a site and physically establishing a  
22 facility." Id. at p.13.

23 The City's Ordinance is fatally flawed because it replicates most if not all of the errors  
that the Board identified in the plans and regulations at issue in each of the cases summarized  
above. In its Prehearing Brief, pp. 10-19, the County explicated the Ordinance's flaws at length.

1 For purposes of this Reply, the County will simply summarize the Ordinance provisions  
2 defended in the City's Response Brief, and connect them to the relevant Board precedent.

- 3
- 4 1. Authority to deny CUPs for regional EPFs. The Ordinance authorizes the City to  
5 deny CUPs for regional EPFs such as the County's trail. Ex. 418 at p.2 section 1.C.  
6 ("A multi-use or multi-purpose trail may be allowed") (underlining added). Under  
7 the City's code, the Board's precedents, and Washington case law, the auxiliary verb  
8 "may" is permissive rather than mandatory (particularly where the directive auxiliary  
9 verb "shall" is also used in the same enactment) and thus carries with it the inherent  
10 authority to not take the action contemplated. LFMPC 1.04.010.E; Parkland Light &  
11 Water Co. v. Tacoma-Pierce County Bd. of Health, 151 Wn.2d 428, 437, 90 P.3d 37  
12 (2004); Cf City of Snoqualmie v. King County, No. 92-3-0004 (1992), FDO at  
13 pp.10-11; Children's Alliance, FDO at p.18. Under King County I, FDO at p.12, this  
14 provision of the Ordinance is noncompliant with RCW 36.70A.200(5) and provides  
15 grounds to invalidate the Ordinance.
- 16 2. Unguided and subjective assessment criteria. The Ordinance gives the City sole  
17 discretion to determine whether a trail development plan is "acceptable"; whether  
18 that plan is "compatible" with the character and appearance of development in the  
19 vicinity; and whether a trail plan's lighting design is "adequate." Ex. 418 at p.4,  
20 section D.4.b.i, -v. In City of Tacoma, FDO at p.9, the Board ruled that the city  
21 could not rely on an "unguided and subjective assessment whether the proposed  
22 location furthers an equitable distribution of EPFs in the region and in the state." The  
23 Board should reach the same conclusion here because the City is relying on a  
similarly subjective assessment whether to issue a CUP for regional trail EPFs.  
Accord, King County I-III, Combined Order at p.12 ("an [o]rdinance that purports to  
authorize denial of applications for all EPFs, including those proposed by state and  
regional sponsors, facially precludes EPFs in violation of RCW 36.70A.200").  
Under King County I-III, these provisions of the Ordinance provide grounds to  
invalidate it. Id. at p.15.
3. A requirement of "compatibility" with surrounding uses. The Ordinance requires  
that a trail development plan be "compatible" with the character and appearance of  
development in the vicinity. Ex. 418 at p.4, section D.4.b.i. Under City of Des  
Moines, FDO at pp.6-8, and King County I-III, Combined Order at p.12, policies and  
regulations that require regional EPFs not be materially detrimental to their  
surroundings do not comply with RCW 36.70A.200(5), and are grounds to invalidate  
the Ordinance.
4. Second-guessing a regional EPF siting decision. The Ordinance authorizes the City  
to unilaterally realign a trail within its corridor, or to reduce the proposed width of a  
trail. Ex. 418 at p.4 section D.4.b.vi.1. King County I, FDO at p.11, King County I-  
III, Combined Order at p.12, and City of Lakewood, FDO at p.13, a jurisdiction may  
not second-guess an EPF siting or expansion decision made by a state or regional

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1 entity, or interfere with the internal workings of that EPF. To do so is to thwart the  
2 purpose of the EPF (see Children's Alliance at p. 13), and thereby preclude the EPF  
3 in violation of RCW 36.70A.200. Such an outcome substantially interferes with the  
4 goals of that section, requiring that the Ordinance should be invalidated.

- 5 Impracticable permit conditions. The Ordinance requires that trail plans include  
6 fencing and screening without regard to safety considerations set forth in state,  
7 federal, and nationally recognized trail design standards. Ex. 418 at p.5 section  
8 D.4.b.vi. The Ordinance also imposes mandatory, inflexible intersection signage  
9 requirements that directly conflict with the policy direction given in the Manual for  
10 Uniform Traffic Control Devices ("MUTCD") and also remove the flexibility of  
11 engineering judgment or best practice incorporated in the MUTCD. Ex. 418 at pp.2-  
12 3, section D.1.a-c with Ex. 477 §9B.03; see also King County Prehearing Brief, at  
13 p.18.

14 The City actually goes so far as to suggest that the County ought to condemn new or  
15 additional property in order to accommodate the City's screening and fencing.<sup>9</sup> City  
16 of Lakewood bars that approach. City of Lakewood, FDO at p.13. Under Children's  
17 Alliance, FDO at p.13, Hapsmith, FDO at p.31, City of Des Moines, FDO at p.9, City  
18 of Tacoma, FDO at pp.5, 7, and City of Lakewood, p.13, a jurisdiction may not  
19 preclude an EPF by imposing unreasonable requirements that make it infeasible to  
20 perform or accomplish the EPF siting or expansion purpose within available means.  
21 The Ordinance's fencing, screening, and signage requirements violate this precept  
22 because it imposes requirements that make it infeasible to design and build a trail  
23 consistent with state, federal, and nationally recognized safety and signage standards.  
Impracticable permit conditions substantially interfere with the goals of RCW  
36.70A.200 and are grounds to invalidate the Ordinance.

6. Regulatory requirements based on unsubstantiated fears and generalized community  
displeasure. The Ordinance's signage requirements are based on the well-intentioned  
but mistaken perception that such signage will reduce trailside homeowners' risk  
exposure. County's Prehearing Brief, p.16. The City's Index is devoid of any  
substantive, empirical, reliable data on collisions or other incidents involving trail  
users and traffic crossing the trail on neighborhood streets in the City. No reports of  
accidents were filed with the police from January 2000 through May 2000. Ex. 532  
p.19. The only accident report on file concerned a vehicle/pedestrian incident on a  
nearby street, not a bicycle-car collision at a trail-driveway intersection. Id.  
Anecdotal hearsay evidence suggests that most incidents actually occur outside the  
City limits, in the neighboring jurisdiction of Kenmore. Id. To paraphrase the Board  
in City of Tacoma, FDO at p.7, perusal of the record reveal no direct evidence on the  
question of why trail users should be made to stop at low-traffic driveway  
intersections, in a manner contrary to nationally recognized trail design criteria. As

<sup>9</sup> City's Response Brief, at p.26 ("nothing in Ordinance 951 prevents the County from acquiring additional right-of-way width or removing private encroachments, so that the County could comply with the provisions of Ordinance 951.").

1 the Board noted there, the evidence that the City cites "seems to be based on  
2 perception, unsubstantiated fear or community displeasure." Like the work release  
3 facility buffer at issue in City of Tacoma, the Ordinance's signage requirements are  
4 clearly erroneous, preclude the siting of essential public facilities in the City, and  
5 therefore do not comply with RCW 36.70A.200.

6 The City argues that the Ordinance merely enacts a CUP requirement that imposes  
7 reasonable mitigation and impact avoidance requirements. See, generally, City's Response Brief,  
8 p.17. That is a model which the Board approved in King County I, FDO at p.13, and cited with  
9 approval in City of Lakewood, FDO at p. 12. However, the Board's precedents teach that in  
10 order for a CUP process to pass muster under RCW 36.70A.200(5) when applied to regional  
11 EPFs, the CUP must do no more than impose "reasonable conditions to mitigate the impact of  
12 the . . . EPF." City of Lakewood, FDO at p.12 (citing King County I, FDO at p.10, 14). The  
13 Board has upheld such regulations where they limited the mitigation requirement to "the  
14 maximum amount feasible," or to that which "is appropriate and feasible," or where the required  
15 offsetting benefits are linked to previously identified and still-unmitigated adverse impacts of the  
16 EPF. See, e.g, Central Puget Sound Regional Transit Authority v. City of Tukwila, CPSGMHB  
17 No. 99-3-0003 (1999), FDO at p.3 (listing zoning regulations applicable to Sound Transit light  
18 rail EPF siting; upholding same).

19 The Ordinance is distinguishable from the regulations upheld in City of Tukwila. The  
20 Ordinance enables the City to deny a permit; the Tukwila regulations did not. Id. at pp.5, 6;  
21 compare Ex. 418. The Ordinance allows the City to realign or reduce the size of a proposed trail  
22 EPF; the Tukwila regulations did not. Id.; compare Ex. 418. The Tukwila regulations imposed  
23 certain conditions only "where appropriate and feasible;" the Ordinance makes no such  
allowance. Id.; compare Ex. 418. The Ordinance's substantive requirements exceed the  
"reasonable CUP mitigation" model approved in King County I and utilized in City of Lakewood  
and City of Tukwila.<sup>10</sup>

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<sup>10</sup> See also City of Tacoma, Finding Of Compliance (May 22, 2001) (ruling that Tacoma's substitute ordinance no longer precluded the State from siting work release facilities in the City, because the substitute ordinance allowed the facilities in a greater number of zoning areas, capped the number of residents at different levels by zoning area,

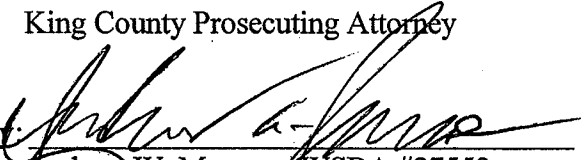


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procedural mandates were insufficient to moot the issue whether the City failed to comply with those mandates. For all of the reasons set forth above, and all of the reasons set forth in the County's Prehearing Brief, the Board should find the Ordinance noncompliant with the GMA, should invalidate it for substantially interfering with the GMA's goals, and should provide the other relief requested in the County's Petition.

Respectfully submitted this 21<sup>st</sup> day of May, 2007.

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CASCADE BICYCLE CLUB v. CITY OF LAKE FOREST PARK  
CPSGMHB No. 07-3-0010c

KING COUNTY'S REPLY BRIEF

TABLE OF EXHIBITS AND ATTACHMENTS

Exhibit Number or Attachment Identifier	Document Name	Location
Ex. 418	City of Lake Forest Park Ordinance 951	Attached to KC's Prehearing Brief
Ex. 424	Jane Hadley, Bicyclists vs. homeowners: Facing off on a trail of fears (Seattle Post-Intelligencer, May 26, 2005)	Attached to KC's Prehearing Brief
Ex. 443	AASHTO Guide for the Development of Bicycle Facilities (1999), Ch. 1 pp.5-7	Attached
Ex. 448	Evaluation of the Burke-Gilman Trail's Effect on Property Values and Crime pp.1-2 (City of Seattle, 1987)	Attached
Ex. 477	Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD, 2003 Ed.) §9B.03	Attached to KC's Prehearing Brief
Ex. 511	King County Burke Gilman Trail Redevelopment Project Property Owner Meeting #2 Report (May 23, 2006)	Attached to KC's Prehearing Brief
Ex. 532	Atelier, ps—Draft Burke-Gilman Trail Redevelopment Study and Appendices p.19 (October 2005)	Attached to KC's Prehearing Brief
Supp. Ex. 10	SEPA DNS for amending Lake Forest Park Conditional Use Ordinance (CLFP, January 19, 2007)	Attached to KC's Prehearing Brief
Supp. Ex. 14	E-mail from Steve Bennett to CTED GMU Review Team (December 16, 2006); Acknowledgement of same from CTED (December 20, 2006)	Attached to KC's Prehearing Brief
Attachment KC-D	King County 2004 Comprehensive Plan with 2006 Update, Ch. 6 (Transportation) and Technical Appendix C (excerpts)	Attached
Attachment KC-E	Sonia Krishnan, East Lake Sammamish Trail finally opening (Seattle Times, March 18, 2006)	Attached

Attachment KC-F	Susan Gilmore, Hot debate over extending bicycle route (Seattle Times, March 25, 2003)	Attached
Attachment KC-G	Bob Young and Susan Gilmore, Trail's 'green line' for cyclists OK'd (Seattle Times, April 15, 2003)	Attached
Attachment KC-H	Jessica Blanchard, Burke-Gilman's history celebrated on 30 <sup>th</sup> anniversary (Seattle Times, September 19, 2004)	Attached
Attachment KC-I	City of Lake Forest Park Ordinance 958	Attached

**EX. 443**

# Chapter 1 Planning

Bicyclists have the same mobility needs as every other user of the transportation system and use the highway system as their primary means of access to jobs, services and recreational activities. Planning for existing and potential bicycle use should be integrated into the overall transportation planning process.

All highway improvements provide an opportunity to enhance the safety and convenience of bicycle travel and most improvements for bicycle travel also benefit other modes of travel. For example, paved shoulders have many safety, operational and maintenance benefits and may also provide a place for bicyclists to ride. Even minor intersection improvements can incorporate the needs of bicyclists through a few simple measures. The opportunity to improve conditions for bicyclists should be considered during the initial planning and design phases of all new highway projects and highway improvements.

Plans for implementing bicycle projects should be consistent with a community's transportation plan and should reflect overall community goals. Some zoning ordinances and subdivision regulations inhibit bicycle use and may need to be amended to support shared use paths and bicycle-compatible roadway design, bicycle parking and land use policies that keep destinations closer to home and work.

## The Bicycle

As Figure 1 shows, bicyclists require at least 1.0 m (40 inches) of essential operating space based solely on their profile. An operating space of 1.2 m (4 feet) is assumed as the minimum width for any facility designed for exclusive or preferential use by bicyclists. Where motor vehicle traffic volumes, motor vehicle or bicyclist speed, and the mix of truck and bus traffic increase, a more comfortable operating space of 1.5 m (5 feet) or more is desirable.

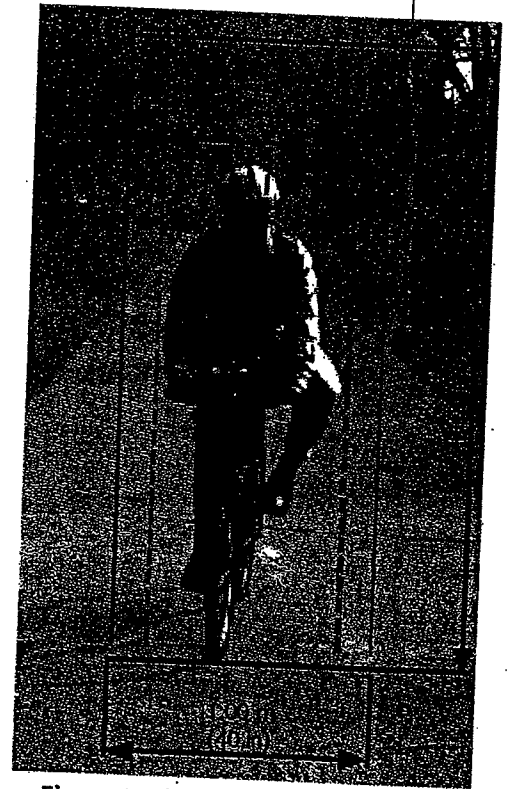


Figure 1. Bicyclist Operating Space

## The Bicycle User

Although their physical dimensions may be relatively consistent, the skills, confidence and preferences of bicyclists vary dramatically. Some riders are confident riding anywhere they are legally allowed to operate and can negotiate busy and high speed roads that have few, if any, special accommodations for bicyclists. Most adult riders are less confident and prefer to use roadways with a more comfortable amount of operating space, perhaps with designated space for bicyclists, or shared use paths that are away from motor vehicle traffic. Children may be confident riders and have excellent bike handling skills, but have yet to develop the traffic sense and experience of an everyday adult rider. All categories of



Planning

riders require smooth riding surfaces with bicycle-compatible highway appurtenances, such as bicycle-safe drainage inlet grates.

A 1994 report by the Federal Highway Administration<sup>11</sup> used the following general categories of bicycle user types (A, B and C) to assist highway designers in determining the impact of different facility types and roadway conditions on bicyclists:

**Advanced or experienced riders** are generally using their bicycles as they would a motor vehicle. They are riding for convenience and speed and want direct access to destinations with a minimum of detour or delay. They are typically comfortable riding with motor vehicle traffic; however, they need sufficient operating space on the traveled way or shoulder to eliminate the need for either themselves or a passing motor vehicle to shift position.

**Basic or less confident adult riders** may also be using their bicycles for transportation purposes, e.g., to get to the store or to visit friends, but prefer to avoid roads with fast and busy motor vehicle traffic unless there is ample roadway width to allow easy overtaking by faster motor vehicles. Thus, basic riders are comfortable riding on neighborhood streets and shared use paths and prefer designated facilities such as bike lanes or wide shoulder lanes on busier streets.

**Children**, riding on their own or with their parents, may not travel as fast as their adult counterparts but still require access to key destinations in their community, such as schools, convenience stores and recreational facilities. Residential streets with low motor vehicle speeds, linked with shared use paths and busier streets with well-defined pavement markings between bicycles and motor vehicles, can accommodate children without encouraging them to ride in the travel lane of major arterials.

### Choosing the Appropriate Facility Type

These three bicycle user types are a helpful guide to the highway designer. However, no one type of bicycle facility or highway design suits every bicyclist and no designated bicycle facility can overcome a lack of bicycle operator skill. Within any given transportation corridor, bicyclists may be provided with more than one option to meet the travel and access needs of all potential users.

Planners and engineers should recognize that the choice of highway design will affect the level of use, the types of user that can be expected to use any given road, and the level of access and mobility that is afforded bicyclists. For example, a four-lane divided highway with 3.6-m (12-foot) travel lanes, no shoulder and an 85 km/hr (55 mph) speed limit will attract only the most confident of riders. The same road with a 1.5-m (5-foot) shoulder or bike lane might provide sufficient "comfortable operating space" for many more adult riders, but would still not be comfortable for children or less confident adults. This latter group might only be accommodated through an alternative route using neighborhood streets linked by short sections of shared use path. If such an alternative route is provided and the four-lane road has a continuous



paved shoulder, most experienced and many casual adult riders will continue to use the shoulder for the sake of speed and convenience.

Facilities for bicyclists should also be planned to provide continuity and consistency for all users. Children using a path to get to school should not have to cross a major arterial without some intersection controls, and shoulders and bike lanes should not end abruptly and unannounced at a difficult intersection or busy stretch of highway.

## Types of Bicycle Facilities

Selection of a bicycle facility type is dependent on many factors, including the ability of the users, specific corridor conditions and facility cost. The descriptions below provide an overview of each facility type and general design.

**Shared Roadway (No Bikeway Designation).** Most bicycle travel in the United States now occurs on streets and highways without bikeway designations. This probably will be true in the future as well. In some instances, a community's existing street system may be fully adequate for efficient bicycle travel, and signing and striping for bicycle use may be unnecessary. In other cases, some streets and highways may be unsuitable for bicycle travel at present, and it would be inappropriate to encourage bicycle travel by designating the routes as bikeways. Finally, some routes may not be considered high bicycle demand corridors, and it would be inappropriate to designate them as bikeways regardless of roadway conditions (e.g., minor residential streets).

Some rural highways are used by touring bicyclists for intercity and recreational travel. In most cases, such routes should only be designated as bikeways where there is a need for enhanced continuity with other bicycle routes. However, the development and maintenance of 1.2-m (4-foot) paved shoulders with a 100-mm (4-inch) edge stripe can significantly improve the safety and convenience of bicyclists and motorists along such routes.

**Signed Shared Roadway.** Signed shared roadways are designated by bike route signs, and serve either to:

- a. Provide continuity to other bicycle facilities (usually Bike Lanes); or
- b. Designate preferred routes through high-demand corridors.

As with bike lanes, signing of shared roadways should indicate to bicyclists that particular advantages exist to using these routes compared with alternative routes. This means that responsible agencies have taken actions to assure that these routes are suitable as shared routes and will be maintained in a manner consistent with the needs of bicyclists. Signing also serves to advise vehicle drivers that bicycles are present.

**Bike Lane or Bicycle Lane.** Bike lanes are established with appropriate pavement markings and signing along streets in corridors where there is significant bicycle demand and where there are distinct needs that can be served by them. The purpose should be to improve conditions for bi-



cyclists on the streets. Bike lanes are intended to delineate the right of way assigned to bicyclists and motorists and to provide for more predictable movements by each. Bike lanes also help to increase the total capacities of highways carrying mixed bicycle and motor vehicle traffic. Another important reason for constructing bike lanes is to better accommodate bicyclists where insufficient space exists for comfortable bicycling on existing streets. This may be accomplished by reducing the width of vehicular lanes or prohibiting parking in order to delineate bike lanes. In addition to lane striping, other measures should be taken to ensure that bicycle lanes are effective facilities. In particular, bicycle-safe drainage inlet grates should be used, pavement surfaces should be smooth, and traffic signals should be responsive to bicyclists. Regular maintenance of bicycle lanes should be a top priority, since bicyclists are unable to use a lane with potholes, debris or broken glass.

If bicycle travel is to be improved, special efforts should be made to assure that a high quality network is provided with these lanes. However, the needs of both the motorist and the bicyclist must be considered in the decision to provide bike lanes.

**Shared Use Path.** Generally, shared use paths should be used to serve corridors not served by streets and highways or where wide utility or former railroad right-of-way exists, permitting such facilities to be constructed away from the influence of parallel streets. Shared use paths should offer opportunities not provided by the road system. They can provide a recreational opportunity or, in some instances, can serve as direct commute routes if cross flow by motor vehicles and pedestrians is minimized. The most common applications are along rivers, ocean fronts, canals, utility rights-of-way, former or active railroad rights-of-way, within college campuses, or within and between parks. There may also be situations where such facilities can be provided as part of planned developments. Another common application of shared use paths is to close gaps in bicycle travel caused by construction of cul-de-sacs, railroads and freeways or to circumvent natural barriers (rivers, mountains, etc.). While shared use paths should be designed with the bicyclist's safety in mind, other users such as pedestrians, joggers, dog walkers, people pushing baby carriages, persons in wheelchairs, skate boarders, in-line skaters and others are also likely to use such paths.

In selecting the proper facility, an overriding concern is to assure that the proposed facility will not encourage or require bicyclists or motorists to operate in a manner that is inconsistent with the rules of the road. The needs of both motorists and bicyclists must be considered in selecting the appropriate type of facility.

An important consideration in selecting the type of facility is continuity. Alternating segments of shared use paths and bike lanes along a route are generally inappropriate and inconvenient because street crossings by bicyclists may be required when the route changes character. Also, wrong-way bicycle travel with a higher potential for crashes may occur on the street beyond the ends of shared use paths because of the inconvenience of having to cross the street.



Sidewalks generally are not acceptable for bicycling. However, in a few limited situations, such as on long and narrow bridges and where bicyclists are incidental or infrequent users, the sidewalk can serve as an alternate facility, provided any significant difference in height from the roadway is protected by a suitable barrier between the sidewalk and roadway.

## Inventory of Existing Conditions

Planning for bicycle facilities begins with observing and gathering data on the existing conditions for bicycle travel. Problems, deficiencies, safety concerns and bicyclists' needs should be identified. The existing bicycling environment should be observed. Bicycle facilities as well as roads not typically used by bicyclists should be examined for their suitability for bicycling. Motor vehicle traffic volume, the percentage and volume of bus and truck traffic, and the speed of traffic should be considered, since they have a significant impact on bicyclists. In addition, obstructions and impediments to bicycle travel should be noted, such as incompatible grates, debris, shoulder rumble strips, narrow lanes, driveways, rough pavements, curbside auto parking, bridge expansion joints, metal grate bridge decks, railroad tracks, poor sight distance and traffic signals that are not responsive to bicycles. Potential corridors for off-road shared use paths should be explored, such as former and active railroads' rights-of-way, stream and river corridors, canal towpaths and utility corridors. Bicycle parking facilities should be examined for adequacy in both number and theft prevention. Barriers such as rivers, railroads and freeways should also be identified and examined for their effects on bicycle traffic.

Bicycle traffic usually is generated where residential areas are close to accessible destinations. Areas near bicycle traffic generators should be reviewed, and existing and potential bicycle users identified. Examples of bicycle traffic generators include major employment centers, schools, parks, shopping centers, neighborhoods, recreational facilities, colleges and military bases. Convenient access and bicycle parking should be provided at transit stations, ferries and other intermodal transfer points.

Bicycle counts can be used to identify locations of high use. However, caution should be exercised when using bicycle counts as a measure of current demand. These numbers can considerably underestimate potential users. Traffic generators along the prospective route should be evaluated as to the potential bicycle traffic they would generate, given better conditions for bicycling. Bicycle crash studies can also be useful in determining locations needing improvement.

Public participation is essential during the inventory of existing conditions. Observations and surveys of existing bicyclists, as well as the non-bicycling public, can be very useful. Additional sources of information include citizen bicycle advisory committees, citizen groups, and individuals responsible for recreation planning.



**EX. 448**

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EVALUATION OF THE

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BURKE-GILMAN TRAIL'S

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EFFECT ON

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PROPERTY VALUES AND CRIME

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Executive Summary



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SEATTLE ENGINEERING DEPARTMENT

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OFFICE FOR PLANNING

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MAY 1987

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## I. EXECUTIVE SUMMARY

### PURPOSE

The purpose of this study was to determine what effect, if any, the Burke Gilman Trail has had on property values and crime rates of property owners near and adjacent to the trail. The need for the study became apparent when property owners in a different area of the city expressed concern over the development of a new trail project on the basis that it might reduce their property values, increase crime, and generally reduce the quality of life. These concerns are similar to concerns raised by property owners who bought their homes prior to the construction of the Burke-Gilman Trail.

### TRAIL PROFILE

The Burke Gilman Trail is a 12.1 mile (9.85 miles are in Seattle) multi-purpose trail that follows an abandoned railroad right-of-way. Most of the trail passes through residential neighborhoods. In Seattle, there are 152 single-family homes and 607 condominiums immediately adjacent to the trail, and 320 single-family homes within one block of the trail. The trail also passes through an industrial area, several neighborhood commercial areas, the University of Washington, and links six different parks. The trail was constructed in 1978 and has about three quarters of a million users per year.

### METHODOLOGY

Data was collected via telephone by interviewing residents near and adjacent to the trail, real estate agents who buy and sell homes near the trail, and police officers who patrol neighborhoods adjacent to the trail. Residents were asked questions regarding: their decision to buy their home; what effect they thought the trail would have on selling their home; what problems, if any, they have had with break-ins and vandalism by trail users; and how the trail has affected their overall quality of life. Real estate agents were asked similar questions on how the trail affects the selling price of homes along the trail. In addition, police officers were asked questions regarding trail users breaking into and vandalizing homes. A bi-weekly survey of newspaper real estate advertisements and real estate magazines was also conducted to determine whether homes were being advertised as being near or on the Burke-Gilman Trail.

An attempt was made to compare the selling prices and assessed values of homes along the trail with homes in comparable neighborhoods. However, due to the many variables that determine the value of a home, it was impossible to isolate the trail as a determinant of increased or decreased home value using this method.

### CONCLUSIONS/RECOMMENDATIONS:

Property near but not immediately adjacent to the Burke-Gilman Trail is significantly easier to sell and, according to real estate agents, sells for an

