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October 5, 2006

David Hiller
Advocacy Director
Cascade Bicycle Club
PO Box 15165
7400 Sand Point Way NE
Seattle WA 98115

Re: Lake Forest Park Proposed Ordinance 951

Dear Mr Hiller:

You have asked for our review of Lake Forest Park proposed Ordinance 951 which, if enacted, would adopt a number of specific development criteria for multi-use trails in Lake Forest Park, and in particular for the expansion of the portion of the Burke Gilman Trail that runs through City. As presently worded, the proposed ordinance conflicts with state law.

The Effect of Proposed Ordinance 951

The proposed ordinance would add a new section 18.54.047 to the chapter of the city's zoning code that allows for conditional uses. Already, the city's zoning code requires that any conditional use permit be conditioned upon compliance with the minimum criteria set forth within that conditional use chapter of the code, Chapter 18.54. This requirement is set forth at section 18.54.048. Thus, if adopted, Ordinance 951 would set minimum criteria for any expansion to the Burke Gilman Trail.

As you already appreciate, the proposed ordinance would significantly shape and limit any upgrading of the Burke Gilman Trail. For example, the proposed ordinance would require a Traffic Control Plan that would invert the passage rights held by users of the trail versus the holders of private driveway easements by requiring that the county cede prior right-of-way to private easements across the trail and further by requiring trail users to yield or stop for traffic using private driveways.

The proposed ordinance would substantially limit improvements to the trail itself by requiring "the use of setbacks, screening, landscaping, fencing or grade

changes to buffer adjacent properties[.]” Later, the proposed ordinance requires that the trail edge be set back a minimum of 15 feet from single family zones and that the trail provide a minimum of 12 feet for screening and landscaping. How these requirements relate to existing, but different setback requirements is unclear. Under Ordinance 909 the City enacted a requirement that “any building or structure” on “community noncommercial facilities” maintain “a distance not less than 25 feet from any abutting RS or RM classified property.” LFPMC 18.54.048.A.1, as amended. Because the proposed new section 18.54.047.C requires that a “multi-purpose trail must comply with all applicable requirements of this chapter [18.54]”, it is unclear whether 25 foot setbacks would apply as well.

The proposed ordinance also requires a Trail Use Plan that would require the “accommodation of different categories of trail users traveling at different speeds and with different space requirements,” presumably requiring a separation between bicyclists and pedestrians. Although such separation could improve trail safety, the setback, screening, landscaping and fencing requirements may not allow sufficient space for use separation.

Under its general provisions the proposed ordinance would again invert the rights-of-way priority between the trail, which is owned in fee by King County and the private access easements which in some cases are terminable by the county. If enacted, these general provisions would substantially increase the cost of trail improvements by requiring such things as “traffic activated signal devices, and physical barriers,” by which the City may intend to require traffic signals and barriers separating different uses.

Whether or not specifically intended, the many limitations within the proposed ordinance would severely limit any improvement to the Burke Gilman Trail, would significantly constrain its operation as a regional thoroughfare for non-motorized vehicle transportation, and effectively would render infeasible any significant improvement to the Burke Gilman Trail within Lake Forest Park.

The Burke-Gilman Trail Is an Essential Public Facility

The Burke Gilman trail is part of a regional trail system that connects East King County with the west side of Lake Washington, serving commuters and recreationalists alike and receiving heavy use both during weekdays and weekends. For reference see the Transpo Group Report at 8 (March 9, 2005). The Burke Gilman Trail is the sole existing facility in the county that provides a dedicated, continuous non-motorized route connecting the cities of Redmond, Woodinville, Bothell, Kirkland, Kenmore and Lake Forest Park and Seattle. It provides non-motorized connectivity for a significant part of the county and is part of a county-wide service system for non-motorized vehicle travel. In this capacity the Burke Gilman Trail meets the definition of “an essential public

facility.”¹

As local governments planning under the Growth Management Act (GMA), King County and Lake Forest Park are required to make provisions for the siting of essential public facilities. RCW 36.70A.200(1). This section of GMA also provides that “no local comprehensive plan or development regulation may preclude the siting of essential public facilities.” RCW 36.70A.200(5). Preclusion of an essential public facility may occur by outright prohibition or by rendering an essential public facility either impossible or impracticable to site. See the Central Puget Sound Growth Management Hearings Board decision in the case of *Children’s Alliance v. City of Bellevue*, Case No. 95-3-0011, Final Decision and Order at 12 (July 25, 1995).

The impracticability of the siting of essential public facility may further occur where one jurisdiction imposes upon another jurisdiction procedural requirements or substantive conditions that render the essential public facility impracticable, as occurred in *King County, et al. v. Snohomish County, et al.*, CPSGMHB No. 03-3-0011 Final Decision and Order at 16. In that case, the Growth Management Hearings Board (GMHB) found that the conditional use requirements imposed by Snohomish County effectively rendered impracticable the siting by King County of a sewage treatment plant where the process was both open ended in duration and the ordinance allowed Snohomish County to deny the essential public facility upon its own determination as to whether the proposal would be materially detrimental to other properties in the vicinity and whether it would conflict with its own comprehensive plan. The decision criteria struck down by the GMHB in the *King County* case are very similar to those imposed by Lake Forest Park under its conditional use ordinance at Section 18.54.030.

¹ King County Comprehensive Plan Policy F-222 defines an essential public facility as follows:

A facility shall be determined to be an essential public facility if it has one or more of the following characteristics:

- a. The facility meets the Growth Management Act definition of an essential public facility.
- b. The facility is on a state, county or local community list of essential public facilities.
- c. The facility serves a significant portion of the county or metropolitan region or is part of a countywide service system; or
- d. The facility is the sole existing facility in the county for providing that essential public service.

To qualify as an essential public facility, the Burke Gilman Trail needs to meet only one of the above four criteria. The trail easily satisfies criteria c and d, above.

The Proposed Ordinance 951 Would Conflict with GMA.

For several reasons, proposed Ordinance 951 would conflict with GMA's provisions for the siting of essential public facilities. For reasons that the City of Bellevue limitations upon group homes and Snohomish County's limitations upon the siting of a sewage treatment plant conflicted with GMA, Lake Forest Park's proposed Ordinance 951 also conflicts with GMA. Proposed Ordinance 951 effectively would render the Burke Gilman Trail impracticable to improve.

First, we understand that the many limitations may render the trail incapable of being funded. We understand that the County will be funding the improvement of the trail through federal transportation funds. We further understand that as a requirement of this funding the trail must be constructed pursuant to standards set forth within the *Guide for the Development of Bicycle Facilities* (AASHTO, 1999). These standards establish criteria for such things as approach site triangles and departure site triangles at intersections. For illustration of these concepts see the Transpo Group Memo at 11 and 23 (March 9, 2005). Additionally, the AASHTO standards suggest a design speed of 20 mph for multi-use trails.

Without knowing exactly how Lake Forest Park's proposed ordinance would be implemented, the various screening, landscaping and fencing requirements would appear to conflict with requirements to maintain clear sight triangles at various intersections. In some instances these clear sight triangles would need to provide a distance of 180 feet back from an intersection from which bicycles approaching a non-controlled intersection would be able to see cross-traffic vehicles entering the intersection. See Transpo Group Memo at 11. Moreover, requirements for grade changes, barriers and the narrowing of right-of-way would appear to conflict with the AASHTO design speed standard of 20 mph.

Second, other requirements with Lake Forest Park's proposed ordinance would conflict with the federal *Manual of Uniform Traffic Control Devices* ("MUTCD") adopted by the Federal Highways Administration under Title 23, Code of Federal Regulations, Part 655.603. We understand that compliance with the MUTCD as well as compliance with the AASHTO standards would be a requirement of federal funding. The MUTCD provides standards for the use of traffic control devices, including requirements that the street or road carrying the lowest volume of traffic be the one that is stopped and that stop signs should be installed in a manner that minimizes the number of vehicles having to stop. Because of a much larger number of trail users than driveway users² MUTCD standards would require that the path be the favored way over driveways and

² The Transpo Group Memo at 15 observed path utilization at three times the volume of cross-traffic vehicles at road intersections.

that driveways be required to stop and yield to trail traffic. Lake Forest Park's would invert that priority. To the extent that the proposed ordinance could prevent the County from improving the trail to MUTCD standards, the ordinance would render the trail impossible to fund and therefore impossible to construct.

Third, the proposed ordinance at section 18.54.047.B requires that to be "allowed, added to or altered" a multi-use trail would require a conditional use permit, thereby making any addition or alteration of the trail subject to the conditional use permit criteria under existing section 18.54.030. These criteria would allow the City of Lake Forest Park to determine whether any proposed trail expansion would be: consistent with its own comprehensive plan; detrimental to other property; compatible with the character of other developments in the vicinity; compatible with the physical characteristics of the right-of-way; in conflict with the health and safety of the community; hazardous to other traffic in the neighborhood; an adverse effect upon other public facilities and services. See conditional use permit criteria at section 18.54.030A through J. These criteria essentially would allow Lake Forest Park the unbridled discretion to reject any improvement of the trail based upon its own judgment under those criteria. Just as Growth Management Hearings Board rejected Snohomish County's efforts to subject King County's proposed sewage treatment plant to such subjective criteria, the above criteria, too, would conflict with GMA's prohibition of regulations that would preclude the development of essential public facilities.

Thus, as presently worded Lake Forest Park's proposed Ordinance 951 would so limit improvement of the Burke Gilman Trail that it would conflict with the requirements of GMA governing the siting of essential public facilities.

The Proposed Ordinance Would Unlawfully Prevent King County from Maintaining its Road System.

Apart from conflicting with GMA's provisions for the siting of essential public facilities, the proposed ordinance would improperly interfere with the County's obligation to maintain its own road way system. Under RCW 36.75.010 the legislature has delegated to the County the authority to maintain its road system and to do so in accordance with adopted standards. The County has adopted road standards under section 14.42.010. King County Code. These road standards include bikeways. Under these standards the Burke Gilman Trail would be classified as follows:

Bike Path (Class 1): A separate paved multipurpose trail for the principal use of bicycles and other nonmotorized modes. Bike paths are 10 feet wide except in high usage areas where they should be 12 feet wide.

King County Road Standards §3.10.A. These road standards provide that "the planning and design of bikeways in any category shall be in accordance with

Section 1020 of the WSDOT Design Manual and the AASHTO Guide for the Development of Bicycle Facilities, current edition. *Id.*, §3.10.D. For the reasons given above, a number of requirements contained within the proposed ordinance would unlawfully preclude the County from adhering to its own road standards. Where the County has been delegated the authority to maintain its road system pursuant to adopted standards, any efforts by Lake Forest Park to frustrate compliance with those road system would conflict with state statute. See *City of Everett v. Snohomish County*, 112 Wn. 2d 433, 443-444, 772 P. 2d 992 (1989) (“...neither may a host subunit of government erect an impenetrable barrier against intrusions by other subunits of government just because it possesses the zoning power.”)

Ordinance 951 Would Conflict with the State Rules of the Road.

The City’s proposed shift of the right of way from public trail users to the private easement holders would also conflict with the state rules of the road contained within Chapter 46.61 RCW. These rules apply to bicycles and to all ways open to public travel, including bicycle routes as the Burke Gilman Trail. See RCW 46.04.197 (defining “highway” as ways open to the public for vehicle travel) and .670 (defining “vehicle” to include bicycles). Under the state rules of the road, those entering a public highway from a private road or driveway must yield to vehicles on the public way, not the other way around, as the City would have it. RCW 46.61.205. These are uniform rules. The City lacks the authority to adopt rules that would conflict with these standards.

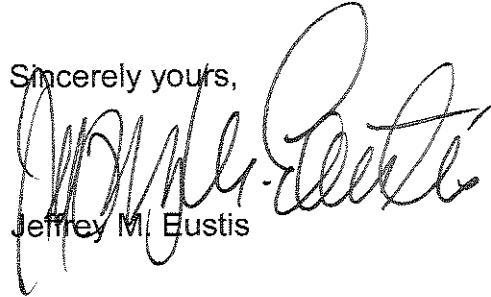
As a final observation, the many additional requirements under the proposed ordinance 951 would apply to the initial siting and to the addition to and the alteration of a multi-use trail. See proposed section 18.54.047. Under existing Section 18.66.100 of the Lake Forest Park zoning code, only the expansion or alteration of the Burke Gilman Trail would require a new conditional use permit. Even though the Burke Gilman Trail presently lacks a conditional use permit it is nonetheless treated as a conforming, permitted conditional use and requires no further action. *Id.* Based upon the allowance for the continuation of existing uses under section 18.66.100 and the applicability of the proposed trail criteria only to the allowance, addition or alteration of a multi-use trail, the County would appear to be able to simply resurface the trail in its existing footprint without triggering the requirements of the proposed ordinance 951. This may be

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an alternative should the County desire to address the deteriorated condition of the trail by simply replacing the asphalt.

If you have any questions about the above, feel free to call.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeffrey M. Eustis". The signature is written in a cursive style with a large, looping initial "J".

Jeffrey M. Eustis

JME/py