

Department of Planning and Building
Staff Report
To City of Lake Forest Park Hearing Examiner
King County Shoreline Substantial Development Permit
Burke-Gilman Trail Redevelopment

The following review is based on information contained in the November 20, 2007 application, September 23, 2008 supplemental correspondence and applicable shoreline code.

SUMMARY INFORMATION

File No.: SSD07-04

Hearing Date: January 15, 2009

Requested Action: Burke Gilman Trail - Request for Shoreline Substantial Development Permit

Applicant: King County Parks and Recreation Division ; Attn: Gina Auld;
201 S. Jackson Street, Suite 700 Seattle, WA 98104

Site Location: The section of Burke Gilman Trail through the City of Lake Forest Park is approximately 2.3 miles long. Approximately 1.33 miles of the trail lies within 200 feet of the Lake Washington Shoreline: 0.98 miles of the trail beginning at the southern limits of the City and extending north approximately to NE 165th Street and 0.35 miles of the trail north of Ballinger Way NE. (See applicant letter from Watershed Company dated September 23, 2008 with attached exhibit.) (Exhibit 28)

Comprehensive Plan Designation: The land use designation for the trail is Recreation/Open Space; land uses adjacent to the proposed trail are single family residential, and recreation/open space.

Zoning Classification: RS-7200 Single Family Residential; uses not specifically identified as permitted, including multi-use trails, are regulated as conditional uses

Shoreline Designation: Urban

Attachments: The Watershed Company Letter, dated September 23, 2008 containing review of BGT Redevelopment proposal's compliance with Shoreline policies

Summary of Suggested Conditions of Approval: Staff recommends approval of a shoreline substantial development permit subject to:

1. Obtaining a Land Clearing, Grading and Excavation

Permit including drainage review. (See KCC KCC25.16.030.C.)

2. Obtaining a Conditional Use Permit for the proposal (See KCC 25.16.030.H and KCC 25.16.200.A.)
3. Obtaining a sensitive areas work permit for the proposal (See KCC 25.16.190.E) including Public Agency and Utility Exception where required.
4. Obtaining a permit from the US Army Corps of Engineers for Wetland Fill

APPLICABLE CODES AND REGULATIONS FOR THE SUBSTANTIAL SHORELINE DEVELOPMENT PERMIT REQUEST:

1. The City of Lake Forest Park uses the 1978 King County Shoreline Master Program (SMP) to regulate development and management of the City's shoreline. Under the 1978 version of Title 25 King County Code - Regulations and procedures for King County's Shoreline Master Program, Lake Washington is defined as a "shoreline of state-wide significance." (RCW 90.58.030). Under the Shoreline Management Act, all development occurring within the 200-foot shoreline jurisdiction area adjacent to the lake must be consistent with policies and regulations of the local shoreline master program (SMP), as well as with the policies of the Shoreline Management Act.
2. LFPMC 16.26.060.(A).4 and LFPMC 16.26.110(D) - Establishes the decision of the Hearing Examiner on Shoreline Permits as "Type I" final decision of the City.
3. LFPMC 16.26.040(D), .050, .090, and .110(C) - Establishes the public notification requirements associated with Type I applications.

BACKGROUND INFORMATION:

A shoreline permit was approved for construction of the current trail by King County on June 23, 1975.

The site of the project has been given an environmental designation of "Urban." KCC 25.16.200 Recreation (I), states that Public Pedestrian and bicycle pathways shall be permitted adjacent to water bodies" (in reference to the Urban environment designation). A shoreline substantial development permit is required under 25.32.010 Substantial development states, "(B.) No substantial development shall be undertaken by any person on the shorelines of the sate without first obtaining a substantial development permit ..."

Description of the proposal: King County Parks filed application for a Substantial Shoreline Development Permit for proposed improvements to the Burke Gilman Trail On November 20, 2007 (Exhibit 14), that includes:

- Widen existing trail from 10 feet to 12 feet;
- Install a 1 foot shoulder on the west side of the trail and a 3 foot shoulder on the east side of the trail;
- Resurface the trail throughout the City of Lake Forest Park;
- Construct new bridge (to replace existing Lyon Creek pedestrian bridge);
- Replace existing retaining walls that are considered to be in poor condition and/or inadequate to support drainage loads;
- Construct new retaining walls in locations as needed to support the cuts and fills associated with the new trail reconfiguration;
- Implement trail protection and/or stabilization measures in areas of recent slope instability;
- Install re-designed traffic controls and signage at trail intersection points with public roadways and driveways; and
- Install signage improvements, site furnishings, new landscaping, and fencing.

Existing Site Characteristics: The trail parcel runs north/south along an east-facing slope above the western shore of Lake Washington. The parcel containing the trail was originally established as a railroad. The parcel containing the trail extends 25 feet on either side of the centerline of the original railroad. The southern ¼ mile segment of the trail is located in a 100 foot wide parcel. There is at least one parcel in between the trail parcel and the shoreline throughout the trail length through Lake Forest Park. These parcels are predominately occupied by single family homes with a few private community beach access parcels. Access roads to the waterfront homes occupy private easements, portions of the Burke Gilman Trail parcel and public right of way. Some of the homes have structures and parking located within the trail parcel.

Physical conditions are characterized by a 15 to 20 foot wide graded “bench” (former rail bed) with cut and embankment slopes between 2h:1v (horizontal: vertical) and 3h:1v for most of its length. Side slopes vary in location and extent generally rising to the west and dropping to the lake to the east. A more complete description of conditions may be found in the Final environmental Impact Statement for the project issued in June 25, 2008.

STATE ENVIRONMENTAL POLICY ACT REVIEW

The Final EIS for the Burke Gilman Trail was published June 25, 2008 (Exhibit 22).

SHORELINE CRITERIA REVIEW

The proposal’s compliance with applicable Title 25 requirements is reviewed in the section below: (See Exhibit 28 for applicant provided discussion)

KCC 25.16.030 GENERAL REQUIREMENTS

A. Non-water related development and residential development shall not be permitted waterward of the ordinary high water mark.

The proposed redevelopment activities are non-water related development; the proposed trail improvements will not be located waterward of the ordinary high water mark.

This requirement is met.

B. Except in those cases when the height requirements of the underlying zones are more restrictive, no structure shall exceed a height of thirty-five feet above average grade level. This requirement may be modified if the view of a substantial number of residences will not be obstructed, if permitted by the applicable provisions of the underlying zoning, and if the proposed development is agricultural, water related or water dependent.

No structures proposed on the Burke Gilman trails will exceed a height of 35 feet.

This requirement is met.

C. All development shall be required to provide adequate surface water retention and sedimentation facilities during the construction period.

The applicant's drainage report indicates that the 2005 King County Surface Water Design Manual was adopted by the City of Lake Forest Park, and was used as the drainage manual for design of the BGT redevelopment. The applicant has requested a variance to the 2005 King County Surface Water Design Manual to allow for a threshold discharge area to be over the maximum allowed at McAleer Creek.

The applicant has submitted a Temporary Erosion and Sediment Control Plan (Sheets C2.0 through C2.9); the Temporary Erosion and Sediment Control Plan will be required to be approved by the City of Lake Forest Park's City Engineer as a part of the applicant's land clearing, grading and excavation permit.

Upon approval of the variance from the 2005 King County Surface Water Design Manual for discharge to McAleer Creek, the Land Clearing, Grading, and Excavation Permit and the Temporary Erosion and Sediment Control Plan for the BGT Redevelopment, this requirement will be met. Approval of the SMP should be conditioned on approval of the LFP Land Clearing, Grading, and Excavation Permit.

D. Development shall maintain the first fifty feet of property abutting a natural environment as required open space.

No property within Lake Forest Park has been designated as "Natural Environment."

This requirement is met.

E. Parking facilities except parking facilities associated with detached single-family and agricultural development shall conform to the following minimum conditions:

- 1. Parking areas serving a water related or a nonwater related use must be located beneath or upland of the development which the parking area serves.***
- 2. Any outdoor parking area perimeter, excluding entrances and exits, must be maintained as a planting area with a minimum width of five feet.***
- 3. One live tree with a minimum height of four feet shall be required for each thirty linear feet of planting area.***
- 4. One live shrub of one-gallon container size or larger for each sixty linear inches of planting area shall be required.***
- 5. Additional perimeter and interior landscaping of parking areas may be required, at the discretion of the director, when it is necessary to screen parking areas or when large parking areas are proposed.***

No parking facilities are being proposed or altered that would fall under this requirement.
This requirement is met.

F. Collection facilities to control and separate contaminants shall be required where storm water runoff would degrade or add to the pollution of recipient waters or adjacent properties.

As a paved bicycle pathway, the BGT is not considered a Pollution Generating Impervious Surface (PGIS). Per the King County Surface Water Manual, a PGIS means an impervious surface considered to be a significant source of pollutant in storm water runoff. Such surfaces include those that are subject to vehicular use or storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or the run-on or blow in of rainfall. Metal roofs are also considered to be PGIS unless they are treated to prevent leaching.

In a footnote to the reference to **vehicular use**, the King County Surface Water Manual states, *subject to vehicular use means the surface, whether paved or not, is regularly used by motor vehicles. The following surfaces are considered regularly used by motor vehicles: roads, unvegetated road shoulders, bike lanes within or not separated from the traveled roadway, driveways, parking lots, unfenced fire lanes, diesel equipment storage yards, and airport runways. The following surfaces are not considered regularly used by motor vehicles: road shoulders primarily used for emergency parking, paved bicycled pathways, bicycle lands adjacent to unpaved or paved road shoulders primarily used for emergency parking, fenced fire lanes, and infrequently used maintenance access roads.*

Approximately 5,730 square feet of the Burke Gilman Trail Project includes reconstruction of roadway crossings that are Pollution Generating Impervious Surface however the project will not add Pollution Generating Impervious Surface in these locations.

Staff finds that water quality treatment facilities are not required for the proposed project; this requirement is met.

G. The regulations of this chapter have been categorized in a number of sections; regardless of the categorization of the various regulations, all development must comply with all applicable regulations.

The development must comply with all standards of the Lake Forest Park Shoreline Code.

H. Development proposed in shorelines of the state shall maintain setbacks, provide easements or otherwise develop the site to permit a trail to be constructed or public access to continue where:

- 1. There is a proposed trail in the King County trail system; or***
- 2. Part of the site is presently being used and has historically been used for public access.***

The proposed development is a trail; BGT Redevelopment application is consistent with this portion of the requirement.

KCC 25.16.080 SIGNS

Signs: Signs may be permitted in the urban environment subject to the provisions of the underlying zoning, provided:

The Shoreline Management Program defines a sign in Section 25.08.540: “Sign” means any letters, figures, design, symbol, light, structure, billboard, trademark or device used to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine, merchandise, or thing. Excluded from definition and regulation by this title are official traffic signs or signals, official public notices, signs required by law, warning signs, the flag of a government or noncommercial institution such as schools and temporary signs worn or carried by people.

Signs proposed with the BGT are traffic signs; this requirement is met.

KCC 25.16.190 EXCAVATION DREDGING AND FILLING

Excavation, dredging, and filling may be permitted in the urban environment, only as part of an approved overall development plan not as an independent activity provided:

- A. Any fill or excavation regardless of size shall be subject to the provisions of KCC 16.82.100.***

Subject to approval of the Land Clearing, Grading, and Excavation Permit, this requirement is met.

C. Landfill or excavations shall be permitted only when technical information demonstrates water circulation, littoral drift, aquatic life and water quality will not be substantially impaired;

Not applicable, see applicant response. (Exhibit 24, page 2)

E. Wetlands such as marshes, swamps, and bogs shall not be disturbed or altered through excavation, filling, dredging, or disposal of dredged material unless the manager determines that:

1. The wetland does not serve any of the valuable functions of wetlands identified in KCC 20.12.080 and US Army Corps of Engineers 33 CFR 320.4(b), including but not limited to wildlife habitat and natural drainage functions, or

2. The proposed development would preserve or enhance the wildlife habitat, natural drainage, and/or other valuable functions of wetlands as discussed in KCC 20.12.080 or US Army Corps of Engineers 33 CFR 320.4(b) and would be consistent with the purpose of this Title;

On the Sensitive Area Exhibits Permit Submittal sheets provided to the City to show work in the Wetlands and Streams (Exhibit 32); the applicant has shown:

- (1) 2,169 square feet of wetland fill
- (2) 5,280 square feet of mitigation measures being applied to wetlands onsite and adjacent to the trail.
- (3) 10,215 square feet of wetland mitigating measures at an off site location. The off site wetland mitigation area (as shown on Sensitive Area Exhibits Sheet W4.0 to W4.3) (Exhibit 32) is along Ballinger Way NE; the offsite wetland improvements include:
 - (1) Installation of a split rail fence with a Sensitive Areas sign and;
 - (2) 5,117 square feet of wetland enhancement via invasive vegetation species removal and conifer infill planting;
 - (3) 5,098 square feet of wetland enhancement via invasive vegetation removal and restoration planting;
 - (4) 4,086 square feet of buffer enhancement via invasive vegetation removal and restoration planting.

Once a permit from the US Army Corps of Engineers is issued for this project, compliance with requirement E, 1, above will be met.

KCC 25.16.200 RECREATION

Recreational development may be permitted in the urban environment subject to the general requirements (Section 25.16.030) of this chapter, and provided:

A. The recreational development is permitted in the underlying zone.

The site has a zoning designation of RS 72001. Uses not listed as permitted including multi-use trails are reviewed as conditional uses. Multi-use trail is reviewed as a conditional use in a single-family zone in accordance with LFPMC 18.54.047. The redevelopment of the trail will be in accordance with the underlying zoning if a Conditional Use Permit for the project is granted by the City.

This requirement will be met subject to the City's approval of a Conditional Use Permit.

B. Swimming areas shall be separated from boat launch areas and marinas.

Not applicable.

C. The development of underwater sites for sport diving shall not:

Not applicable.

D. The construction of swimming facilities, piers, moorages, floats, and launching facilities below the ordinary high water mark shall be governed by the regulations relating to pier and moorage construction in the commercial development section of this chapter.

Not applicable.

E. Public boat launching or marinas may be developed, provided:

Not applicable.

F. Upland facilities constructed in conjunction with a recreational development shall be setback and/or sited to avoid contamination of the shorelines of the state.

The proposal is consistent with this requirement.

G. All service facilities within and associated with marinas shall have provisions to prevent and control contaminants from entering the water. Provisions shall be available for cleanup of accidental spills of contaminants.

Not applicable.

¹ The applicant's Shoreline policy analysis indicates the trail has zoning of the "Burke Gilman Trail". The FEIS indicates page 3.5-2 that the zoning on the trail is RS 7200 (page 3.5-2, paragraph 1). RS 7200 is the zoning assumed in this report.

H. Marina facilities shall be prohibited on Class I beaches or where their development would interrupt littoral currents and starve Class I beaches.

Not applicable.

I. Public pedestrian and bicycle pathways shall be permitted adjacent to water bodies.

Shoreline Substantial Development Permit Application SD07-04 is for the redevelopment of a multi-use trail.

This requirement is met.

J. Public contact with unique and fragile areas shall be permitted where it is possible without destroying the natural character of the area.

Compliance with this requirement will be achieved upon determination of compliance with LFPMC Chapter 16.16.

K. Water viewing, nature study, recording and viewing shall be accommodated by space, platforms, benches or shelter, consistent with public safety and security.

The October 5, 2007 BGT Redevelopment Permit sheets (Exhibit 6) demonstrated that the applicant is proposing, in Demolition Sheets D1 through D9, to remove eight seating benches, two trash receptacles, and one water fountain during demolition phase of the redevelopment project.

The October 5, 2007 Permit Set Plan Enlargement Sheets L1 through L15 show the applicant has proposed 10 park benches be added to the site; the two park benches removed in the demolition phase will be relocated with 5 trash receptacles being added. The two trash receptacles removed in the demolition phase will be relocated and the 1 water fountain water fountain removed in the demolition phase will be relocated.

With the Redevelopment proposal, the applicant is meeting the intent of this requirement by providing benches and use areas.

This requirement has been met.

FINDINGS:

Applicant has proposed analysis of Master Program elements which support approval of a Shoreline Substantial Development Permit. Approval of this permit is recommended with conditions noted above.