## Susie McCann

**From:** Cindy Baker
**Sent:** Friday, April 27, 2007 11:13 AM
**To:** Susie McCann
**Subject:** FW: Rebuttal Memorandum
**Attachments:** Rebuttal Memo.pdf

FYI

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**From:** Rich Hill [mailto:Rich@mhseattle.com]
**Sent:** Thursday, April 26, 2007 2:02 PM
**To:** Zach Lell- City Attorney; Rick Aramburu; Cindy Baker
**Cc:** Loree Quade; Bob Vick
**Subject:** Rebuttal Memorandum

Zach, Rick and Cindy –

Here is a copy of the Applicant's rebuttal memorandum.

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-- Rich

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BEFORE THE HEARING EXAMINER
CITY OF WOODINVILLE

| | |
|---|---|
| In the Matter of:<br><br>**WOOD TRAILS REZONE**<br>**ZMA 2004-053**<br><br>**WOOD TRAILS PRELIMINARY PLAT APPLICATION**<br>**PPA 2004-054**<br><br>In the Matter of:<br><br>**MONTEVALLOREZONE**<br>**ZMA 2004-094**<br><br>**MONTEVALLO PRELIMINARY PLAT APPLICATION**<br>**PPA 2004-093** | **APPLICANT PHOENIX DEVELOPMENT'S REBUTTAL MEMORANDUM** |

## 1. INTRODUCTION

The Wood Trails and Montevallo proposals are undoubtedly the most exhaustively analyzed 66-lot subdivisions in the history of the State of Washington. They are the subject of a Final EIS that is over 400 pages in length plus hundreds of pages of technical appendices. Hundreds of comment letters have been submitted. Thorough staff reports have been prepared. Three nights of public hearings have been held. Concurrently, the City has sponsored a Sustainability Study to evaluate development issues in the R-1 zones that include Wood Trails and Montevallo.



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What is the ultimate conclusion the City has reached to date in all of these analyses? Simply put, the proposals as mitigated will have no significant adverse impacts, are fully consistent with the City's land use plans and policies, and are compatible with neighboring land uses.

**A. The Final EIS Concluded the Wood Trails and Montevallo Proposals' Environmental Impacts Are Nonsignificant.**

As for earth (soil stability and erosion issues), the Final EIS concluded that Wood Trails will have no significant adverse impacts so long as the pond is replaced by a vault, no dispersion trenches are placed within 50 feet of the top of slope, and no utility trenches are dug in steep slopes. FEIS 3.1-22. The Final EIS concluded that the Montevallo proposal would have negligible adverse earth impacts. FEIS 2.1-18.

As for water, the Final EIS concluded that the changes to the hydro-geologic regime for both proposals will be "minor," and that impacts to water quantity and water quality issues will be "minimal." FEIS 3.2-37.

As to plants and animals, the Final EIS concluded that impacts would "not be significant," as to Wood Trails, and would be "minimal," as to Montevallo. FEIS 3.3-20 - 3.3-21.

As to land use, the Final EIS concluded that the Wood Trails and Montevallo proposals are compatible with existing adjacent residential land uses. FEIS 3.4-17 – 3.4-18. The Final EIS found the proposals to be consistent with applicable comprehensive plan land use policies. FEIS 3.4-22 – 3.4-28. The Final EIS also found the proposals to be consistent with the zoning code purpose statements for R-4 zones. FEIS 3.4-30.

As to traffic and parks, the Final EIS found no significant adverse impacts from either proposal. FEIS 3.5-94 and 3.6-8.

**B. The Sustainability Study Found No Environmental Impacts Justifying Retention of R-1 Zoning.**



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The City's Sustainability Study placed the Wood Trails and Montevallo sites in the "Hillside Drainages" area. As to that area, the consultants concluded that "geologically hazardous areas in and adjacent to the R-1 zone depend primarily on proper development practices and stormwater management, not maintenance of R-1 zoning." Ex. 139 at p. 26. It also found that transportation issues were not a basis for maintenance of R-1 zoning, and that capital facilities were available to support R-4 zoning. Ex. 139 at p. 23.

**C. The Staff Reports Confirm that the Wood Trails and Montevallo Proposals Comply with the Comprehensive Plan, with the Woodinville Municipal Code, and are Compatible with the Adjacent Residential Neighborhoods.**

The City's Planning Director conducted her own independent review of the project applications, the Final EIS, the Sustainability Study, applicable City policies and codes, and found that the Wood Trails and Montevallo proposals, as mitigated pursuant to her recommended conditions, complied with all applicable City requirements. See Wood Trails Staff Report, pp. 13-28, Montevallo Staff Report, pp.10-20.

**D. The Evidence Presented to the Hearing Examiner Reinforces the Conclusions Reached in the City's Final EIS, Sustainability Study, and Staff Reports.**

The opponents presented arguments to the Hearing Examiner to seek to question the exhaustive research that had already gone into the analysis of Wood Trails and Montevallo. However, as the City's and Applicant's responses demonstrate, these arguments have no merit.

The testimony offered by and the evidence submitted by Joel Birchman, P.E., of Perteet Engineering and Mike Swenson, P.E., of The Transpo Group, added to that already in the Final EIS, demonstrate that there is adequate capacity for the additional traffic the proposals will generate, and that traffic can be handled safely. The City will require appropriate mitigation to address any increased risk on the streets that access the project to ensure no decrease in level of safety occurs. See Wood Trails Exhibits 86, 129; letter report from Mike Swenson, P.E., submitted on April 26,



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2007; testimony of Joel Birtschman, P.E.

The evidence testified to and submitted by Ray Coglas, P.E., of Earth Solutions NW, in addition to the thorough analyses contained in the Final EIS, show that development of both proposals can proceed without incurring risk due to geologic hazards, so long as appropriate best management practices are followed. See Wood Trails Exhibit 131; letter report from Ray Coglas, P.E., submitted on April 26, 2007.

Mark Keller, P.E., of Triad Associates submitted evidence that confirmed the conclusions in the Final EIS that stormwater drainage will be safely retained and released in accordance with applicable drainage codes. The level of analysis completed at this stage of the process is appropriate and typical. Triad's preliminary analysis has identified that there may be some sections of the system downstream that may need to be upgraded (increased pipe size or increased pipe slope) and that there is adequate space to make these changes. Yosh Monzaki, the City Public Works staff person responsible for this issue, confirmed Mr. Keller's analysis. See Wood Trails Exhibit 134; Memorandum from Mark Keller, P.E., submitted on April 26, 2007; testimony of Yosh Monzaki.

Ed Sewall of Sewall Wetland Consulting testified and submitted evidence confirming that the project impacts on plants and animals will be nonsignificant, that impacts on wetlands will be mitigated, and that the current hydrogeology of the Montevallo wetland will be protected. See Wood Trails Exhibit 133; letter report from Ed Sewall, Senior Biologist, submitted on April 26, 2007; testimony of Ed Sewall.

With respect to land use planning and zoning need issues, Matthew Gardner, Bob Vick, and Mike McCormack testified and submitted evidence. There is a clear land use need for more dense zoning than R-1 can provide. R-1 zoning is a grossly inefficient use of land in an age of land



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scarcity. All sound planning principles require a minimum urban density within urban growth areas. R-4 is considered by most to be the minimum urban density. See Exhibits 88 (Matthew Gardner memorandum attached as Exhibit A; Mike McCormack, AICP, memorandum attached as Exhibit B), 128, 136, 138; testimony of Bob Vick, Matthew Gardner; letter report from Bob Vick submitted on April 26, 2007.

The Wood Trails and Montevallo proposals are low density, yet urban, developments. All environmental impacts have been mitigated to a level of nonsignificance. The proposals are consistent with all applicable land use policies. It is undisputed that the Growth Management Act requires cities to zone land for urban densities in order to avoid inefficient sprawl. It is equally undisputed that R-1 is not an urban density. The City's own Comprehensive Plan acknowledges that R-4 is a minimum urban density. The City's own land use code **mandates** R-4 development when adequate services can be provided.

In this light, the Wood Trails and Montevallo proposals should be approved.

## 2. THE WOOD TRAILS AND MONTEVALLO PROPOSALS COMPLY WITH THE CITY'S REZONE CRITERIA.

WMC 20.04.080(1) provides that "developments with densities less than R-4 are allowed only if adequate services cannot be provided." From the applicant's point of view, this land use code requirement begins and ends the rezone discussion. Because Phoenix will be providing sewer and other utility services, this code provision requires development at R-4 densities (at a minimum). To deny an amendment to R-4 on some other, more general, basis, would render this provision a nullity, which is not allowed under the rules of statutory construction. Case closed. See Phoenix Hearing Memorandum, Exhibit 88, pp. 8-9.

CNW, in the brief of its legal counsel submitted on April 19, reiterates its tired argument that these proposals are not vested. Phoenix has thoroughly addressed these issues in its Reply



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Memoranda (Exhibits 141 and 142), and will not repeat here the analysis set forth there. Suffice it to say, however, that the only case cited by CNW in support of its position that was decided since the adoption of GMA is *Hale v. Island County,* 88 Wn.App. 764, 946 P.2d 1192 (1997), which is in fact a case involving a development application in which the Court of Appeals found that the applicant was vested, despite the fact that a component of his application was a rezone!

City staff suggests that, despite the explicit direction of WMC 20.04.080(1), that the applicant must also meet the criteria of WMC 21.44.070. While the applicant respectfully disagrees, it is clear the proposals meet these criteria as well.

The first criterion requires that the applicant show that "there is a demonstrated need for additional zoning of the type proposed." The applicant has certainly made that demonstration. See the testimony and exhibits of Matthew Gardner, Bob Vick, and Mike McCormack, as well as the discussions of this issue in the prior memoranda submitted by Phoenix (Exhibits 88, 128, 136, 138, 141, and 142). Moreover, as pointed out in the memorandum submitted by Erika Jensen dated April 26, 2007, the available land in the City with low density yet still urban R-4 zoning is less than 3% of the land area of the City, as compared with the 30% of the land area of the City gobbled up by inefficient, sprawling, non-urban, exclusivist R-1 zoning.

The opponents contend that there is no "demonstrated need" because the City has shown that it has adequate supply to meet its growth targets. However, the opponents are wrong. As Ms. Jensen's memorandum demonstrates, the City's capacity analysis is inaccurate and incorrect. It is not based on an updated inventory of vacant or redevelopable land. Land developed between 2002 and 2007 has not been removed from the inventory, and actual observed densities on the lands developed between 2002 and 2007 have not been used to determine capacity on remaining land. Finally, remaining vacant and redevelopable lands have not been adjusted to reflect new critical area



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buffers and stormwater detention requirements adopted after 2002. Failure to make these adjustments results in a significant over-estimation of buildable land. Accordingly, the City's assertion that it has remaining adequate capacity has no basis in fact, but is truly a result of wishful thinking and faulty analysis.

The second criterion is that the zone reclassification is consistent and compatible with uses and zoning of the surrounding properties. In this case, the City's Final EIS and the City's Staff Report both agree that the zone reclassification is consistent with surrounding uses and zoning. FEIS at 3.4-17 – 3.4-18; Wood Trails Staff Report at 14-15; Montevallo Staff Report at 15. R-4, like R-1, is a low density zone under the City's land use code. The City's Comprehensive Plan specifically allows R-4 land uses on the Wood Trails and Montevallo sites. Surrounding uses are all residential, as are the proposals. City staff has proposed perimeter buffering to provide visual screening of the more dense R-4 development from the less dense R-1 development. Accordingly, the second criterion is met.

The third criterion is that the property is physically and practically suited for the uses allowed in the proposed zone reclassification. The proposed uses are low density residential. There is no question but that the property is physically and practically suited for low density residential uses. No one has proposed industrial or commercial uses for these properties. And, as the Final EIS, the Staff Report, and the Sustainability Study affirm, no environmental constraints preclude R-4 use of the property. See supra, Sections 1(A), (B) and (C).

All of the rezone criteria are met. The proposals should be approved.

### 3. THE WOOD TRAILS AND MONTEVALLO PROPOSALS MEET THE CITY'S SUBDIVISION APPROVAL CRITERIA.

Counsel for the opponents submitted on April 19, 2007 a document entitled "Evidence summary and argument by CNW in opposition to rezone and plats" ("CNW Argument"). In the



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CNW Argument, a number of questions are raised relation to the compliance of the proposals with the City's subdivision approval criteria. None of those questions has merit. Each will be addressed in turn.

**A. The Plat Drawings Are Accurate.**

CNW contends that at the last minute, the applicant proposed changes to plat drawings. See Exhibit 90. This is not the case. As was clearly stated at the hearing by Triad Associates Landscape Architect Jeff Cox and Planning Director Cindy Baker, the proposal before the Hearing Examiner is the surveyed proposal submitted by Phoenix in its initial application. Exhibit 90, they both testified, was a response to the recommended conditions set forth in the Staff Reports relating to perimeter buffering, the Wood Trails drainage pond, and dispersion trenches. To provide the public and the Examiner with a conceptual design that showed one way of responding to those conditions, the applicant prepared a sketch, which was presented at the hearing solely for that purpose. As Ms. Baker made clear in her testimony, in the event the Examiner approves the subdivision, the applicant will be required to submit revised drawings that incorporate the Examiner's recommended conditions. Ms. Baker and her staff will review those drawings to be certain the conditions are complied with.

**B. Stormwater Drainage Analysis is Adequate.**

CNW inaccurately states that there has been no stormwater drainage analysis. To the contrary, the Final EIS summarizes the thorough analysis of drainage issues that was completed by the applicant. See FEIS 3.2-1 – 3.2-37, and Appendices E, F, G, H and M. That analysis includes a modeled downstream analysis. The questions raised by CNW appear to focus on the conditions recommended by City staff to revise the detention facilities at Wood Trails and Montevallo. In the event the Examiner approves those conditions, the applicant will provide final design of facilities to



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comply with those conditions. City staff will assure those facilities comply with the storm drainage code and with the conditions of approval.

**C. Road Improvement Mitigation Is Adequate.**

City staff has imposed, as a condition of approval, that certain improvements, such as traffic calming, of the streets that access the Wood Trails proposal will be required by the City Engineer. The purpose of this requirement is to ensure that any increased risk due to increased traffic will be mitigated. As Mike Swenson's memorandum of April 5, 2007 states (Exhibit 129), several measures can be implemented that will focus on controlling and reducing speeds which would reduce the sight distance needed, along with measures that provide advance notification associated with the deficient zone. Mr. Swenson's letter report submitted April 26, 2007 confirms that these proposed mitigation measures are common and implemented in other areas where sight distance issues exist and reprofiling of roads is not an option. CNW cites to no authority requiring public review and approval of improvements to be made to City streets, nor is there any.

**D. The Site's Critical Areas Have Been Exhaustively Surveyed and Studied.**

As stated above, these two properties have been analyzed more thoroughly than virtually any residential subdivision property in history. The properties have been poked, prodded, measured, surveyed, walked, viewed and re-viewed. See Final EIS Sections 3.1 through 3.5 and related technical appendices. It is somewhat incredulous for CNW to assert that there have been no sensitive area studies. As Mr. Sewall and Mr. Coglas stated in their testimony to the Examiner, the studies they completed for the proposals, which are contained in the EIS appendices, comply with all of the substantive requirements for a critical area study. See also Exhibits 131, 133. Finally, as Mr. Sewall testified, the Montevallo proposal no longer needs a buffer reduction for the wetlands, as it complies with applicable buffering requirements. See also Exhibit 133.



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**E. The Montevallo Site Plan Will Be Revised As Directed by the Hearing Examiner.**

As stated above, once the Hearing Examiner determines the conditions of approval of the subdivisions, the preliminary plat will be revised to comply with those conditions. City staff will review those plans to ensure that City codes and the conditions of approval are met. That will include, of course, the Montevallo storm drainage facilities.

**F. The Wood Trails Dispersion Trenches Proposal Will Be Revised As Directed by the Hearing Examiner.**

City Staff proposed, as a condition of approval, that the proposed Wood Trails dispersion trenches be eliminated, or placed at least fifty feet from top of slope. The applicant believes that condition can be complied with. As stated in Mark Keller's memorandum submitted on April 26, 2007, three alternatives have been through a preliminary analysis and each of the three (staying fifty feet away from top of slope, tightline to the detention pond, or tightline to below the 40% slope) are viable options. In the event the Hearing Examiner agrees with that condition, a final design will be submitted to City staff for its review in light of applicable codes and the Hearing Examiner's conditions of approval.

**G. No Montevallo Wetland Impacts are Anticipated.**

The City has required that the sewer line be bored beneath the Montevallo wetland. Accordingly, the proposal will not be affecting the Montevallo wetland, and no mitigation plan will be required. See testimony of Ed Sewall.

**H. Tree Retention and NGPA Areas Are Disclosed.**

Contrary to the contentions of CNW, tree retention plans were submitted as part of the preliminary plat application. The City has approved this plan. See Exhibit 163. In addition, the preliminary plat discloses the proposed NGPA tracts. See Wood Trails and Montevallo Exhibits 11.



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No landscape plans are required at the time of preliminary plat application.

**I. Sewer and Water Availability Letters Have Been Submitted.**

Contrary to the contentions of CNW, current sewer and water availability letters have been submitted. See Wood Trails and Montevallo Exhibits 7 and 8.

**J. The Applicant Will Pay Park Impact Mitigation Fees.**

The Final EIS discusses parks at pp. 3.6-1 – 3.6-8. It concludes that after payment of the parks mitigation fees, "no impacts [on parks] would remain" and "there would be no significant impacts to public services." The Final EIS makes clear that under City code, a developer has the option of either paying the City's fees or including within their proposed projects recreation facilities to offset all or a portion of the park impact fees assessed. In this case, the applicant will pay the sum of $403,225 in parks impact fees, according to the current fee schedule.

**K. The Summers Addition Plat Did Not Dedicate a Public Street.**

As the letter from Triad Associates Licensed Land Surveyor Mark Harrison, P.E. (submitted April 26, 2007) states, the Summers Addition Plat did not dedicate a street to the public. Rather, it merely identified a future inchoate public street that must be developed when Lot 1 of the plat is developed. The location of the street is explicitly not defined. The proposed Montevallo plat creates the future street anticipated at the time of the Summers Addition Plat. The street created in the Montevallo plat will be dedicated to the City.

**L. The Phoenix Proposals Comply with the City's Subdivision Criteria.**

As the Staff Reports concluded, Wood Trails and Montevallo comply fully with each of the City's subdivision criteria. Try as it might, CNW can find no fault with the City's analysis. The subdivision should be approved.

**4. CONCLUSION**



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Many questions have been asked of the Wood Trails and Montevallo subdivisions. They have all been answered. All applicable City codes have been met. Phoenix therefore respectfully asks the Hearing Examiner to approve the Wood Trails and Montevallo preliminary subdivisions and to recommend approval of the zoning map amendment of the Wood Trails and Montevallo sites to R-4 density.

DATED: April 26, 2007.

Respectfully submitted,

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