

April 16, 2007

EXHIBIT 155  
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*"Citizens, business and local government;  
a community commitment to our future."*

Office of the Hearing Examiner  
City of Spokane  
808 West Spokane Falls Blvd, Room 605  
Spokane, WA 99201

Attn: Greg Smith, Hearing Examiner

RE: WOOD TRAILS / MONTEVALLO

During the City of Woodinville's most recent update of the critical area ordinance in Year 2005, a collection of material regarding best available science was used. For the record, attached please find the following:

1. WAC 365-195-905 through WAC 365-195-925 (pages 35 through 39) (6/13/03)
2. Wetlands BAS Technical Memorandum – excerpt, Attachment D, Pages 9 and 10
3. King County Ordinance 15051 (pages 188, 189, 191, 192, 209)
4. Snohomish County Planning Commission Recommendation 7/5/06 (Pages 23 and 24)
5. City of Bellevue's Final Version Critical Areas Ordinance – 20.25H, June 26, 2006 (pages 30 thru 35)
6. City of Bellevue's Final Version Critical Areas Ordinance – 20.25H, June 26, 2006 (pages 36 thru 42, 46, and 47)
7. City of Redmond's Critical Areas Ordinance, Ordinance No. 2259 – Exhibit 4, 4/25/05, Final Regulations – Pages 23, 24, 29 thru 34)
8. City of Bothell (3 pages)
9. City of Woodinville Planning Commission Special Meeting Packet September 22, 2004

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Cindy Baker

CB:slg

Enclosures

The implementing regulation should call for a specific finding on all three of the above limitations whenever an impact fee is imposed.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities: Public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. These facilities must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(4) The local ordinance by which impact fees are imposed shall strictly conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

[Statutory Authority: RCW 36.70A.190 (4)(b), 93-17-040, § 365-195-850, filed 8/11/93, effective 9/11/93.]

**WAC 365-195-855 Protection of private property.** In the drafting of development regulations, consideration should be given to the attorney general's process of evaluation issued pursuant to RCW 36.70A.370, to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory scheme.

[Statutory Authority: RCW 36.70A.190 (4)(b), 93-17-040, § 365-195-855, filed 8/11/93, effective 9/11/93.]

**WAC 365-195-860 Housing for persons with handicaps.** No county or city planning under the act may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments of 1988 (42 U.S.C. Sec. 3602).

[Statutory Authority: RCW 36.70A.190 (4)(b), 93-17-040, § 365-195-860, filed 8/11/93, effective 9/11/93.]

**WAC 365-195-865 Supplementing, amending and monitoring.** (1) New development regulations may be adopted from time to time as the need for supplementing the initial implementation strategy becomes apparent. However, because development regulations must be consistent with the comprehensive plans, substantive amendments to such regulations will frequently need to be accompanied by a comprehensive plan amendment. Since comprehensive plans can be amended only once a year (except in emergencies), consideration of significant changes in the land use management scheme will, by and large, become an annual affair.

(6/13/03)

(2) Cities and counties should institute an annual review of growth management implementation on a systematic basis. To aid in this process, planning jurisdictions should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan. This program should be integrated with provisions for continuous public involvement. (See WAC 365-195-600 (2)(b).)

[Statutory Authority: RCW 36.70A.190 (4)(b), 93-17-040, § 365-195-865, filed 8/11/93, effective 9/11/93.]

## PART NINE BEST AVAILABLE SCIENCE

**WAC 365-195-900 Background and purpose.** (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of community, trade, and economic development (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW 36.70A.190 (4)(b), 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

**WAC 365-195-905 Criteria for determining which information is the "best available science."** (1) This section provides assessment criteria to assist counties and cities in determining whether information obtained during development of critical areas policies and regulations constitutes the "best available science."

(2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will make available a list of resources that state agencies have identified as meeting the criteria for best avail-

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able science pursuant to this chapter. Such information should be reviewed for local applicability.

(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. However, when feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

(4) Whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

(5) Scientific information can be produced only through a valid scientific process. To ensure that the best available science is being included, a county or city should consider the following:

(a) **Characteristics of a valid scientific process.** In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the public participation process is reliable scientific information, a county or city should determine whether the source of the information displays the characteristics of a valid scientific process. The characteristics generally to be expected in a valid scientific process are as follows:

1. **Peer review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. **Quantitative analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(b) **Common sources of scientific information.** Some sources of information routinely exhibit all or some of the characteristics listed in (a) of this subsection. Information derived from one of the following sources may be considered scientific information if the source possesses the characteristics in Table 1. A county or city may consider information to be scientifically valid if the source possesses the characteristics listed in (a) of this subsection. The information found in Table 1 provides a general indication of the characteristics of a valid scientific process typically associated with common sources of scientific information.

