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EXHIBIT NO.

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1. Property ownership is a fundamental right.
  - **Article 1, Section 16 of the Washington State Constitution** provides, in part, that “[n]o private property shall be taken or damaged for public or private use without just compensation.”
  - **Article 1, Section 16** also expressly prohibits state and local governments from taking private property for a private use with a few limited exceptions: *private ways of necessity and drainage for agricultural, domestic or sanitary purposes*. This provision goes beyond the U.S. Constitution, which does not have a separate provision expressly prohibiting the taking of private property for private use.
2. The planning and regulatory process must protect property ownership.
  - **RCW 36.70A.370 (Protection of Private Property)** directs that when local governments plan under the Growth Management Act ... they must assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.
  - **RCW 36.70A.020 Planning goals.** Planning under the GMA requires the city to balance, among 11 other goals, Property Rights and Environment:
    - (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
    - (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
3. As the Planning Commission and the City Council seek to review and improve the City's planning regulations, it is important that we understand that although the State has recognized that protecting the environment is a planning goal, that goal is not a fundamental right under our state or federal constitution, however.
4. Best Available Science is a tool/a means/**not one of the goals of the GMA planning (and not a fundamental right)**.
  - **RCW 36.70A.172 Critical areas — Designation and protection — Best available science to be used.** In designating and protecting critical areas under WASHINGTON LAW, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas.
  - BAS is a tool that should be consulted when determining what types of property require regulations. When the best available science is not

definitive or lacking in studies, then any regulations should be very narrowly tailored, in order to ensure that those regulations/restrictions are in fact even required by BAS.

- Asking “Does BAS support an exemption from regulations?” is turning the required inquiry on its head. The first question must always be “Is the regulation necessary to protect the functions and values of critical areas?” BAS may be taken into account in trying to answer that question. Significant evidence should be required as to why regulation of private property is needed. If the evidence is lacking from BAS, then the regulation should not be required.

**In other words, government is not entitled to regulate private property just because there is no BAS to support exempting the property—or NOT regulating the property.**

- Thus the question should be asked: “Do we need to regulate in spite of the LACK of BAS? And, if we do, shouldn’t the lack of BAS militate in favor of far greater (rather than less) flexibility in any resulting regulations?”
- I am concerned that too often in the course of this process, we are skipping the first question, and then proceeding to impose broad regulations even where little or no BAS exists.

The advisory memo made two suggestions that need addressing.