

December 1, 2006

Ms. Jana Hanson, Director  
City of Mount Vernon  
Community & Economic Development Department  
Post Office Box 809  
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**RE: City of Mount Vernon Draft Critical Areas Ordinance**

A.C. Kindig & Co., Cedarock Consultants, Inc., and Mentor Law Group, PLLC, are pleased to provide comments on behalf of the Skagit County Association of REALTORS® (“REALTORS®”), Skagit and Island County Builders Association (“SICBA”), and their affiliated state organizations the Washington REALTORS® and Building Industry Association of Washington, on the City of Mount Vernon’s proposed amendments to its Critical Areas Ordinance (“CAO”). We look forward to presenting key points from these comments to the Mount Vernon Planning Commission at the public hearing on December 5, 2006.

This comment letter has three parts. First, we provide a summary of CAO requirements under the Growth Management Act (“GMA”). Second, we provide comments on the general structure and function of the draft CAO. Finally, we provide detailed comments on specific draft CAO provisions, and suggested amending language, where necessary.

**I. CAO REQUIREMENTS, GENERALLY**

**A. Protection of Existing Functions and Values of Critical Areas**

The GMA requires protection of the existing functions and values of critical areas, not protection of the physical area of a critical area. *Pilchuck Audubon Society v. Snohomish County*, CPSGMHB No. 95-3-0047(c), Final Decision and Order (1995). Further, the protection of the existing functions and values of critical areas applies not to each specific critical area, but within the larger context of a local government’s jurisdiction, watershed, or ecosystem:

“While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of,

some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the value and functions of such ecosystem within a watershed or other functional catchment area.” *Tulalip Tribes v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Modified Final Decision and Order (1997)

The Court of Appeals has recently stated that critical area regulations must “reasonably ameliorate potential harm to the environment and fish and wildlife.” *Clallam County v. WWGMHB*, 130 Wn.App. 127, 140 (2005).

While protecting the functions and values of critical areas is the core GMA requirement, restoration of critical area functions and values may also be a consideration. However, the GMA does not authorize local governments to require restoration of critical areas. *Skagit County v. WWGMHB*, Thurston County Superior Court No. 01-2-01720-6. (2002).

Incentives to encourage restoration, and consideration of incentive programs and projects should be included in the CAO adoption process. For example, a project restoring certain critical area functions and values, when combined with a critical area provision allowing some critical area impacts to enable housing or economic development, has potential to protect or even increasing net critical area functions and values.

## **B. Importance of Local Considerations, and Local Government Deference**

In the CAO process, Best Available Science must be included in the record, and considered substantively in the development of critical areas policies and regulations. *HEAL v. CPSGMHB*, 96 Wn.App 522, 532 (1999). Unique local conditions and considerations should also be part of the critical area review process, and must also be considered in the record and analyzed with other factors. *WEAN v. Island County*, 122 Wn.2d 156, 172 (2004).

A product of a CAO process that adequately “shows its work” and complies with the BAS requirement is deference to the local government decision. “The Legislature left the cities and counties with the authority and obligation to take scientific evidence and to balance that evidence among the many goals and factors to fashion locally appropriate regulations based on the evidence . . .” *HEAL*, 96 Wn. App. at 531.

## **C. Relation of CAOs to Other GMA Planning and Regulatory Requirements**

Designating and protecting critical areas is but one of many goals and requirements under the GMA. The GMA has 13 Planning Goals, which include ensuring urban growth, providing affordable housing, and economic development. The GMA’s goals stand on equal footing, and must be balanced: “The [local government] is correct when it asserts that under the GMA, it is required to balance the various goals of the GMA set forth in RCW 36.70A.020.” *Whidbey Environmental Action Network v. Island County*, 122 Wn.App. 156 (2004).

Thus, in adopting a CAO, the local government must seek to prevent negative impacts on housing affordability, but also to act affirmatively to encourage the development of a variety of housing types that are affordable to all economic segments of the population. GMA includes specific housing mandates applicable to local governments that must be considered in the CAO adoption process. See RCW 36.70A.070(2); .115; .215. Similarly, GMA requirements for economic development must also be considered.

## II. GENERAL COMMENTS ON THE DRAFT CAO & DEIS

The draft CAO has two distinct parts. The first part of the draft CAO provides relatively standard critical area designations and protections. The buffer widths in the draft are within the range of critical area buffers supported by BAS, and are either similar, or in some cases, identical to, buffer widths upheld by the Growth Management Hearings Boards as within the range of BAS.

We note that in some cases, the buffer widths in the Draft CAO are even larger than some buffers that have been deemed GMA-compliant, or greater than recommended by the City's critical areas ordinance and best available science review consultant Jones & Stokes. Where larger than necessary buffer widths are proposed, the City should ensure that the larger buffers do not prevent the City from meeting other equally weighted GMA requirements, such as ensuring adequate affordable housing supply.

The second part of the draft CAO provides a mechanism for basin-specific restoration of critical areas, referred to as the "ecosystem alternative." This ecosystem alternative is unique, compared to other existing CAOs adopted by local governments in Washington State. The ecosystem alternative appears to be an innovative strategy to address two of the biggest problems with CAO protections in Washington State: First, merely establishing large critical areas buffers where conditions are degraded is less effective than actively restoring critical area functions; and Second, protecting critical areas with low remaining habitat and other functions potential is less effective than protecting and/or restoring areas of higher quality habitat and other functions potential.

The ecosystem alternative, when implemented, would result in a number of actions that typically do not occur under the standard approach of designating and protecting critical areas by use of no-touch buffers and the creation of non-conforming use areas that inevitably result in cities. The ecosystem alternative would take developers out of the role of implementing habitat restoration, in favor of a system where the City takes responsibility for implementing restoration funded by the development projects. We believe that allocation of expertise is appropriate - the City is better informed and staffed to implement pre-identified restoration actions over the long term than is a landowner who may sell land after it is developed. This also allows the City to approach critical area protection and restoration from a broader landscape perspective, rather than limited to an individual site or project.

Through the ecosystem alternative, the City can plan ahead for restoration efforts, prioritize areas within the City, and use critical area-derived funding with other available funds to achieve improved critical area functions. By taking responsibility for restoration efforts, the City can also integrate critical area protection and restoration with other related programs, such as stormwater management.

Our detailed comments on the ecosystem alternative provided below are from the perspective of ensuring the practicality and function of that alternative process. For the ecosystem alternative to function, it should have clear functions and procedures that could change over time. This evolving process does not undermine critical area protections, because the standard buffer approach in the Draft CAO provides an underlying level of protection that would exist unless an applicant chose to undertake the more detailed but ultimately more fruitful ecosystem alternative approach.

The DEIS appears adequate to support the basic components of the Draft CAO regarding buffer widths and other typical CAO provisions. The Final EIS should include more detailed environmental analysis of specific subbasins for the ecosystem alternative. As currently proposed, and with the detailed comments we have provided below, the basic CAO components could be adopted in early 2007.

A more detailed environmental document, such as a supplement or addendum, could provide a vehicle for developing the subbasins plans that would act as a roadmap for the alternative approach. This analysis would include determining where restoration should be directed, where critical areas should be protected, and where the buy down of buffers is appropriate, both in order to direct housing and economic development into more appropriate areas, but also to raise funds for restoration of functions and values in other critical area locations.

### III. DETAILED COMMENTS ON DRAFT CAO

**Page 16, 15.40.090(A) Description and Purpose.** The intent of the CAO is clearly to protect resident fish (e.g. trout) as well as anadromous fish. We suggest the Draft CAO text be amended as follows: “The intent of these regulations is to avoid impacts to streams, riparian habitat, *resident and* anadromous fish, and wildlife conservation areas where such avoidance is feasible and reasonable.”

**Page 17, 15.40.090(B) - Classifications.** While most of this taken from state regulations, much of it is irrelevant to the City. (e.g. Sitka spruce zone, old growth forest, campgrounds) and needlessly complicated. The City’s land base is small enough that the stream definitions could be overlaid prior to adoption of the CAO such that a map can be produced and included with the CAO showing where

Type S, F, Np, and Ns waters are located. This has been done by other jurisdictions such as Renton and Seattle. Much of this can be done from existing maps (PHS, DNR, Limiting Factors Analysis). The map can be conservative where little information is currently available and subject to change based on data provided by applicants should they choose to differ with the City default designation. We suggest the Draft CAO be amended to read as follows:

**B. Classification and Designation of Fish And Wildlife Habitat Conservation Areas:**

Classification and designation of fish and wildlife habitat conservation areas is an ongoing process; while not all of the following critical habitat conservation areas are known to exist in the City, their designation here allows for future categorization for protection. The following categories shall be used for relevant development standards of Section C below.

1. Streams and Shorelines: All streams and shorelines which meet the criteria for Type S, F, Np or Ns waters as set forth in WAC 222-16-030 of the Department of Natural Resources Water Typing System and/or mapped on Figure \_\_, Mount Vernon Water Class Map, as Type S, F, Np or Ns.

a. Type S water means all waters to the line of ordinary high water as inventoried as "shorelines of the state" under Chapter 90.58 RCW. The Skagit River and \_\_ are currently the only Type S waters in the City.

b. Type F water means perennial or intermittent salmonid bearing waters which meet one or more of the following criteria:

(a) Historically and/or currently known to support salmonids, including resident trout, at any stage in the species lifecycle; and/or

(b) is a water body (e.g. pond, lake) between 0.5 acre and 20 acres in size.

c. Type Np water means streams that are perennial and do not contain fish. Perennial streams are waters that do not go dry any time during a year of normal rainfall.

d. Type Ns water means non-salmonid-bearing intermittent waters during years of normal rainfall.

2. Maps and Inventory:

i. Mapped Streams and Lakes: The approximate location and extent of Streams and Shorelines within the City limits are indicated on Figure \_\_, Mount Vernon Water Class Map, provided in Subsection \_\_ of this Section. The map is to be used as a guide to the general location and extent of streams. Specific locations and extents will be

determined by the City based upon field review and applicant-funded studies prepared pursuant to Subsection \_\_.

ii. Map Conflict: Where there is a conflict between the Mount Vernon Water Class Map in Subsection \_\_ and the criteria in Subsection B.1, the criteria in Subsection B.1 shall govern.

iii. Unmapped Streams and Lakes: Streams and lakes which are defined in Subsection B.1 of this Section, but not shown on the Mount Vernon Water Class Map in Subsection \_\_, are presumed to exist in the City and are regulated by all the provisions of this Section. If the water body is unmapped according to the City of Mount Vernon's Water Class Map, data provided by the applicant and/or others will be reviewed by the City to determine appropriate classification under B.1 above.

iv. Reclassification: If a channel type dispute occurs or an unmapped stream or lake is discovered, stream classification will be determined using the following process.

a. The City Reviewing Official will review information provided by City staff, outside agencies or tribes, and/or the public and may require a sensitive area study be completed to aid in determining stream classification.

b. The City Reviewing Official shall determine stream type in accordance with Best Available Science by considering known and potential salmonid use. The City Reviewing Official shall take into consideration current, historic, and potential fish use and factors such as species life cycle requirements, habitat suitability, channel gradient, presence or lack of barriers, and type of barrier (manmade or natural) to make a reasoned evaluation. This may include consultation with federal, state and tribal biologists and/or other qualified professionals.

c. Classification of an unmapped stream or lake is effective upon expiration of the 14-day appeal period following the City Reviewing Official determination, and the map in Subsection \_\_ shall be amended consistent with City Reviewing Official determinations at the next appropriate amendment cycle.

**Page 19 - 15.40.090(C) Development Standards.** The City should not be attempting to regulate species listed as sensitive by the state and/or federal government. This is redundant, and can create conflicts when sensitive species lists change. We suggest that all of (C)(1) be deleted or replaced with: "Activities

proposed near sensitive species habitat shall follow all applicable state and federal guidelines.” For the same reasons, (C)(5) should be rewritten to remove reference to specific state bald eagle requirements. (C)(2), which provides anadromous fish development standards, should be deleted. It is redundant for the City to list other agency requirements that must be followed. It is the applicant’s responsibility to work with outside agencies to ensure their requirements are met, not the City’s. As an example, the wording in (C)(7) (Stream Crossings) and (C)(8) (Stream Relocations) is more appropriate in that it requires coordination with WDFW rather than specifying detailed requirements.

**Page 20 – 15.40.090(C)(4) Ordinary High Water Mark.** Ordinary High Water Mark is normally abbreviated OHW or OHWM, not OHM.

**Page 23 – 15.40.090(C)(8) Stream Relocations.** There are a number of other instances in addition to those cited when streams need to be relocated. These should be specifically accommodated somewhere in this chapter. For example, roadside ditches frequently need to be moved to allow street widening or realignment. It may also be more environmentally protective to move a stream away from a manmade feature to an area where better protection can be provided, and this type of relocation should be encouraged, not discouraged through omission in a list of allowable reasons for relocation. In addition, future buffers need to be considered. For example, it doesn’t make sense, and is impractical, to provide full buffers on roadside ditches just because they are being moved for public safety road or utility improvements. We suggest the following language:

8. Stream Relocation: Stream relocation shall be allowed when the following criteria and conditions are met:

a. Criteria: Stream relocation may only be permitted if associated with:

- i. A public flood hazard reduction approved by appropriate State and/or Federal agencies; or
- ii. Fish restoration/habitat enhancement project approved by appropriate State and/or Federal agencies; or
- iii. Expansion of public road or other public facility improvements where no feasible alternative exists; or
- iv. Where such relocation is proposed to provide protective buffers from existing development or manmade features.

b. Conditions: The following conditions also apply to any stream relocation proposal meeting one or more of the above criteria:

- i. Relocated stream channels shall be designed to meet or exceed instream and riparian habitat functions and values of the stream to be relocated.
- ii. Flood capacity of the channel shall not be diminished;
- iii. Riparian buffer areas should be replanted with native vegetation;
- iv. Buffer widths shall be based upon the new stream location, provided that the buffer widths may be averaged or reduced as described in subsection 4.d and 4.e above. Where minimum required buffer widths are not feasible for stream relocation proposals that are the result of activities pursuant to criteria a.i and a.ii above, other equivalent on- or off-site compensation to achieve no-net-loss of riparian function is provided;
- v. When Type Np or Ns streams are proposed for relocation due to expansions of public roads or other public facility improvements per subsection a.iii above, the buffer area adjacent to the relocated stream shall not be less than the width prior to the relocation. The provided buffer adjacent to the relocated stream shall be enhanced or improved to provide appropriate function given the type and condition of the stream; or if there is no buffer currently, other equivalent on- or off-site compensation to achieve no-net-loss of riparian function is provided.

**Page 32 - 15.40.110(C)(6) Standard Wetland Buffers.** The standard buffers in the Draft CAO for Category I and IV wetlands are greater than recommendations by the city's best available science recommendations by Jones & Stokes<sup>1</sup>. It is not explained why a larger standard buffer is necessary given the consensus of best available science the city employed. We believe this detracts from the City's obligation to provide adequate land for housing and economic development. We recommend the wetland Category I standard buffer be changed to within the range of 75 to 110 feet recommended by Jones & Stokes, and that the Category IV buffer be changed to equal Jones & Stokes 40-foot recommendation.

**Pages 34 - 35, 15.40.110(D) Wetland Mitigation Sequencing.** The Draft CAO states that "mitigation shall be required in the following order of preference:" The use of "shall" dictates that a specific mitigation sequence be followed, which would virtually always require wetland impact avoidance for all categories of

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<sup>1</sup> Jones & Stokes. March 2005. Best Available Science Recommendations for Wetland Buffers.



wetlands except under reasonable use exemptions. To preserve flexibility in determining mitigation actions appropriate to each situation, this phrase should be changed to "mitigation includes the following actions..."

**Page 40, 15.40.120(B)(2) Description of Ecosystem Alternative.** The Draft CAO states "Approach is based on detailed review of basins and critical area habitat and wetland recommendations appropriate to the functions and values..." We agree that this level of review is appropriate and provide the following comments and ideas for the City:

1. The basin-specific review should be part of the Final Environmental Impact Statement (FEIS), and could also include information from other relating processes, such as watershed and habitat restoration efforts, and long term stormwater management plans by the city.
2. The basin-specific review should identify restoration areas and objectives, and demonstration that on a city-wide level functions and values will be protected or increased, to enable the City to meet the GMA's "show your work" requirement.
3. The basin-specific review should be accompanied by an analysis of available funding sources, and projections of critical area-derived funding, to establish a timeline for implementing the ecosystem alternative, and to demonstrate that restoration will keep pace with and fully mitigate impacts allowed under the Ecosystem Alternative approach.

**Page 40, 15.40.120(B)(3) Minimum Standards for Ecosystem Alternative.** The Draft CAO states that the "minimum standards are defined by basin, based upon existing conditions and demand for future development and the pressure that development may impose on the waters/wetlands . . ." We believe it is consistent with GMA to allow higher impacts in certain low-value areas of subbasins or multiple subbasins, in order to protect and restore high value critical areas elsewhere within the greater Skagit River basin. The concept of encouraging growth and economic development where it is appropriate is inherent in the GMA. For this process to function, the City should clearly establish, using BAS, where critical areas are either of high value or low value.

[Note - the following comments on specific provisions in the Draft CAO Stream Reach Management Programs are based on the Kulshan Creek language, but the comments apply equally to all subbasins]

**Page 41, 15.40.120(D)(1) Stream Reach Management Programs.** The Draft CAO uses the phrase "stream reach" for each of the subbasins, but it is apparent that

both streams and wetlands are included in the ecosystem alternative. We suggest that the phrase "Subbasin Management Program" be used.

**Page 42, 15.40.120(D)(1)(b) Management Zone.** The Draft CAO includes a "management zone" of 200 feet that is much greater than standard stream buffers. This means that land could be outside the buffer but within a "management zone". The "management zone" term implies some ongoing critical area regulatory status that raises questions on pre-existing and nonconforming uses. We suggest eliminating the "management zone" concept and relying on the standard buffers, and any deviation therefrom, as the basis for calculating the management fund contribution. Since the standard buffers are consistent with best available science protection, the wider management zone concept is unnecessary and unexplained for critical area protection purposes.

**Page 41, 15.40.120 Table A Standard Setback Table.** It is unclear whether the word setback is synonymous with buffer or setback means the buffer plus building setback (see page 20, where the setback refers to a building setback area defined as 15 feet beyond the buffer). From this table, it reads that the standard "setback" for NS Streams and Category IV wetlands (50 ft) is the same as the ecosystem alternative buffer of 50 feet, and the landowner would pay for the reduction to a "minimum setback to any impervious surface" of 15 feet." Does this mean 15 feet of setback plus some other buffer?

In addition, the development would need to pay for intrusion within a 200 foot management zone, not just within the standard buffer of 35 feet with a 15-foot setback identified on page 20. It is difficult to discern what the city is suggesting, or how it might be a genuine incentive to fund the restoration program the city wishes to encourage. This should be clarified.

**Page 41, 15.40.120(D)(1)(f) Cost Contribution.** As part of analyzing the ecosystem alternative, we suggest that the City evaluate a series of theoretical developments that would involve the buy down from the standard buffer width, to evaluate the cost to the proponent which is the revenue for the City, and the cost to the city to manage and implement restoration as mitigation for the allowed impacts. This will help the City establish buffer buy down rates that provide a sufficient incentive for the program to be used, allow the city to estimate revenue for the management fund, and confirm those funds are sufficient to administer and implement the restoration programs.

**Page 41, 15.40.120(D) "Starting Point" for Buffer Buy Down.** The Draft CAO establishes a rate for contribution to the management fund based on whether the

buy down is within a management zone non-tree canopy area, a management zone tree canopy area, or within a buffer or setback. As described above, we suggest eliminating the management zone concept in favor of using the standard buffer width as the starting point for buying down the buffer. The role of setbacks should be clarified and terms should be used consistently for clarity, as mentioned above.

**Page 41, 15.40.120(D)(1)(f) Cost Contribution Eligibility.** The Cost Contribution appears to be limited to the management fund contribution rates. We suggest that additional types of contributions could improve the program, most importantly stormwater management retrofits. Stream and wetland restoration projects will be at risk if no flow control or outdated flow control and water quality treatment facilities exist upstream. Stormwater management is a critical aspect of restoration that is missing from the ecosystem alternative.

**Page 49, 15.40.135 Vesting.** The Draft CAO vesting language is very minimal, and does not relate to issues that often arise in the context of vesting. As an alternative approach, we suggest that the City review the vesting language used by Skagit County, at SCC 14.02.050. This vesting ordinance is more comprehensive than that proposed by the City, and would provide more clarity in the development and permit review process.

**Page 51, 15.40.160(B) Artificial Channels.** Artificial Channels are defined in the Draft CAO but are not otherwise dealt with in the draft code. Artificial channels are often encountered as old logging relics, drainage pipe discharges, roadside ditches, wetland draining conveyances, and farm or ranch maintenance ditches. In some cases these channels now contain fish. Code should be developed to define process for filling or culverting artificial channels that are: isolated and non-fish-bearing; linked to natural watercourses but non-fish-bearing; and currently fish-bearing or accessible to fish, as follows:

1. Isolated and non-fish-bearing - this should be relatively straightforward once the lack of a defined surface connection is established and no wetlands are identified. Filling should be allowed outright with no mitigation requirements.
2. Linked and non-fish-bearing - functions and values currently provided by the channel should be identified and mitigated if possible on-site or with mitigation bank credit off-site. This is most likely to include lost riparian functions (e.g. leaf litter) if the channel is filled. If the channel is currently draining wetlands, filling should be highly encouraged as a means of

restoring the wetland. Potential changes to the wetland and an appropriate water surface elevation should be identified and accommodated.

3. Fish-bearing – a process should be established whereby these watercourses can be filled in exchange for mitigation that will provide superior habitat functions and values elsewhere. Forcing a landowner to maintain an artificial watercourse in a possibly degraded condition benefits neither landowner or habitat. As an alternative, on-site or off-site mitigation can be provided in an area more conducive to providing functional benefits by exchanging the gain in usable land on the site for additional buffer near natural waters or mitigation bank credit.

**Page 54, 15.40.160(B) Definition: Salmonid Migration Barrier.** This definition is a good start but contains text that could be misinterpreted and other parts should be expanded. For example, there is no such thing as a “permanent” culvert. The definitions in a. through c. suffice without using this misleading word. The last sentence in the first paragraph doesn’t appear to make sense (...without resulting in conditions in “a” and “c”, or “a” through “c”). Since “a” and “c” is a subset of “a” through “c”, “b” is irrelevant. All of the conditions are important enough to preclude removing a culvert on their own. If these definitions are to be used, the sentence should say: “without resulting in any of the following conditions:”.

There are other types of salmonid barriers in the City besides vertical drops. For example, sloped channels where surface flow of sufficient depth to allow upstream migration occurs only infrequently during periods of heavy rainfall are often considered impassable. Often these conditions occur in roadside ditches which have been armored with large cobble or quarry spall. And gradients may be less than 10 percent. A migration barrier definition should be included which allows professional judgment to be applied.

The significant expense threshold seems very high especially given the potential lack of habitat made available by removing some culverts, such as an expensive culvert replacement that opens up habitat for only a few fish. We suggest the following definition:

**SALMONID MIGRATION BARRIER:** The following shall be considered upstream migration barriers for salmonids:

- a. An in-stream blockage that consists of a natural drop (no human influence) with an uninterrupted slope greater than 100-percent (45 degree angle) and a height in excess of 11 vertical feet within anadromous salmon-bearing waters or a height in excess of 3 vertical feet within resident trout only bearing waters.
- b. A portion of stream channel that by virtue of slope, substrate, water velocity, water depth, infrequent flow, or other individual

or combination of factors precludes upstream fish passage. A detailed and quantitative analysis describing relevant factors may be required by the City Reviewing Official to support this determination.

c. Human-made barriers to salmonid migration (e.g., culverts, weirs, etc.) shall be considered barriers to salmonid migration if they were lawfully installed; present a complete barrier to salmonid passage based on hydraulic drop, water velocity, water depth, or any other feature which would prevent all salmonid from passing upstream; and in the opinion of the City Reviewing Official cannot be modified to provide salmonid passage without resulting in any of the following conditions:

1. Significant impacts to other environmental resources;
2. Significant impacts to major transportation and utility systems, or to the public health and safety;
3. Significant impacts to one or more dwelling units and it is not feasible to remove the barrier without removing the dwelling unit, the dwelling units are in a single-family zoning district, on a lot or lots not subject to subdivision, and the dwelling units are of a size and condition that removal or substantial remodel is not likely;
4. Significant expense. For the purposes of this definition significant expense means a cost equal to or greater than 50% of the combined value of the proposed site buildings, structures, and/or site improvements, and existing buildings, structures, and/or site improvements to be retained. This value may be lowered to 5% of the combined value of the project if the potential benefit to the environment achieved by replacing the culvert is minimal. Scarcity of suitable spawning and rearing habitat for salmonids potentially utilizing the reach upstream of the culvert is grounds for lowering the significant expense threshold.

**Allowance for Density Transfer.** The Draft CAO does not include the density transfer provision in the existing CAO, currently at 15.40.170. The density transfer provision has been a workable tool for developers in the City and this option should be preserved. By having both the density transfer and buffer buy down alternatives, a developer can evaluate the alternative incentives of transferring lost density elsewhere, or buying down the buffer to build to existing density.

#### IV. CONCLUSION

We thank the City of Mount Vernon for the opportunity to provide public comments on its Draft CAO. The basic components of the CAO appear to be workable, and within the range of critical area regulations deemed to satisfy the requirements of the GMA. In addition, we appreciate the City's efforts to develop an innovative approach that does more than simply adopt critical area buffers. A more active approach to managing and restoring critical areas, including making planned decisions about where development and restoration are appropriate, could have benefits both for critical areas and for other GMA objectives such as housing and economic development.

Sincerely,

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