APPENDIX A – LAND USE DENSITIES ALLOWED WITHIN THE CITY

Growth Management Hearings Board decisions have clarified what residential densities should occur in urban growth areas. For clarification purposes, urban growth areas are defined as areas within the City limits in addition to the established urban growth areas where the City and County have joint jurisdiction.

Following is a list of Washington State hearing board cases that have defined urban densities as four (4) or more dwelling units per acre:

In Berschauer v. Tumwater 94-2-0002 (FDO 7-27-94) urban densities of 1 dwelling unit per acre and 2-4 dwelling units per acre did not comply with the GMA. ("We conclude that the low-density designations for the SRLUPO area do not comply with the Countywide Planning Policies (CPPs) for orderly and cost effective development of urban services, affordable housing or environmental quality.")

In the City of Sedro-Woolley, Friends of Skagit County, et al., petitioners, v. Skagit County, Decision No. 03-02-0013c Compliance Hearing Order it was found that:

- UGAs are those areas of a county in which urban levels of development are expected to occur. Urban levels of densities are typically at least four dwelling units per acre. Rural densities are, as all three growth hearings boards have held, densities no greater than one dwelling unit per five acres.

In Bremerton v. Kitsap County October 1995, the Central Puget Sound Hearings Board found that as a general rule, four (4) dwellings units per acre or more constitutes urban densities. A pattern of one (1) and two and one-half (2 ½) acre lots is a sprawl pattern that should only occur in urban areas to avoid excessive development pressures on or near environmentally sensitive areas (however, this circumstance can be expected to be infrequent with the UGA and must not constitute a pattern over large areas). In Lawrence Michael Investments, Chevron USA and Chevron Land and Development Company v. Town of Woodway, January 1999, the Central Puget Sound Hearings board found that, "(the) GMA requires every city to designate all lands within its jurisdiction at appropriate urban densities."

The City finds that, in light of the recent Washington State Supreme Court ruling in Viking Properties Inc. v. Oscar W. Holm, that there is a broad range of discretion that may be exercised by the City and rejects the previous Hearing Board cases cited above to the extent they attempt to create policy or a bright line rule requiring four (4) dwelling units per acre or more to comply with the GMA standard for urban densities.

In Viking Properties Inc. v. Oscar W. Holm, slip opinion 75240-1 Aug. 18, 2005, the specific issue of the whether the four net dwelling units per acre rule as adopted by the Growth Management Hearing Boards is an appropriate standard in determining urban densities has been addressed. The Supreme Court re-iterated and recognized that the GMA, its goals and their accompanying regulatory provisions create a 'framework' that guides local jurisdictions in the development of comprehensive plans and development regulations. Within this framework, the legislature has affirmed that there is a 'broad range of discretion that may be exercised by counties and cities consistent with the requirements . . . and goals of {the GMA}.' RCW 36.70A.3201. In other words, the GMA does not prescribe a single approach to growth management. Instead, the legislature specified that 'the ultimate burden and responsibility for planning, harmonizing the planning goals of {the GMA}, and implementing a county's or city's future rests with that community.' RCW 36.70A.3201. Thus, the GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs.

Based upon the foregoing rationale, the Washington State Supreme Court has specifically rejected the four net dwelling unit per acre rule to the extent it requires Cities to plan in a certain manner and to the extent it creates policy and thus is beyond the authority of the growth management boards as a tribunal:

"…Viking's claim that the GMA imposes a 'bright line' minimum of four dwellings per acre is erroneous. In making this claim, Viking relies upon a 1995 decision of the CPSGMHB. See Bremerton v. Kitsap County, CPSGMHB No. 95-3-0039, 1995 WL 903165 (Oct. 6, 1995). However, the growth management hearings

boards do not have authority to make 'public policy' even within the limited scope of their jurisdictions, let alone to make statewide public policy. The hearings boards are quasi-judicial agencies that serve a limited role under the GMA, with their powers restricted to a review of those matters specifically delegated by statute. See RCW 36.70A.210(6), .280(1); Sedlacek v. Hillis, 145 Wn.2d 379, 385-86, 36 P.3d 1014 (2001) (stating that public policy is set forth in constitutional, statutory, and regulatory provisions, as well as prior judicial decisions). Accord Roberts v. Dudley, 140 Wn.2d 58, 63, 993 P.2d 901 (2000); Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 232, 685 P.2d 1081 (1984). See also Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 565, 958 P.2d 962 (1998) (stating that the GMA is not to be construed to confer upon a hearings board powers not expressly granted in the GMA). Second, Viking's argument fails to account for the fact that the GMA creates a general 'framework' to guide local jurisdictions instead of 'bright line' rules. See RCW 36.70A.3201; Richard L. Settle, Washington's Growth Management Revolution Goes to Court, 23 Seattle U. L. Rev. 5, 9 ('most GMA requirements are conceptual, not definitive, and often ambiguous'). Indeed, the existence of restrictive covenants that predate the enactment of the GMA and limit density within the urban growth areas are the type of 'local circumstances' accommodated by the GMA's grant of a 'broad range of discretion' for local planning. See RCW 36.70A.3201; Cent. Puget Sound Hearings Bd., 142 Wn.2d at 561."

Based on the Viking case, the City finds that:

- The four net dwelling unit per acre general rule is invalid to the extent it serves to require a City to plan in a certain manner.
- That this general rule is invalid to the extent it creates a higher burden on the City than what is clearly set forth in the GMA or shifts the burden to the City in which it must now 'prove' to the Board its decisions beyond showing its work.
- That this general rule is invalid to the extent the GMA requires every city to designate all lands within its jurisdiction at appropriate urban densities equates to requiring four net dwelling units per acre and that any residential pattern at a lower density will be subject to increased scrutiny by the Board to determine if the number, locations, configurations and rationale for such lot sizes complies with the goals and requirements of the Act, and the jurisdiction's ability to meet its obligations to accept any allocated share of county-wide population.

Table 6.2 identifies all of the City's residential zoning designations and their associated densities with different development options that the City permits.

The City determines density requirements for developments using net calculations by multiplying the total acreage of a parcel of property excluding existing or planned streets and rights-of-way and the open water area of wetlands or streams by the density allowed per the site zoning.

Given that the GMA requires every city to plan to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development, the minimum net density for all new residential development, except as outlined below, within the City will be at a minimum density of four (4) dwelling units per acre unless documented critical areas, areas of special flood risk designation, resource lands, restriction on access or other physical site constraints are evident on a parcel that would preclude a development that would yield four (4) dwelling units per acre.

The two (2) zoning designations that result in subdivisions that have a net density of less than four (4) dwelling units per acre are the R-1, 3.0 and the Residential-Agricultural (R-A) which result in maximum densities of 3.0 and 1.24 dwelling units per acre, respectively. The R-1, 3.0 has a minimum lot size of 13,500 square feet and the R-A has a minimum lot size of 35,000 square feet.

As of January 1, 2016, within the City limits there are approximately 731 acres of property zoned R-1, 3.0. These areas will be evaluated to ensure that documented critical areas, a special flood risk designation, resource lands, restrictions on access or other physical site constraints are present so that a density less than the four (4) dwelling units per acre can be justified (as supported, in part, by *Berschauer v. Tumwater* 94-2-0002 (CO 12-17-94), where the Board found that 2-4 dwelling unit per acre designation for a residential/sensitive area where

the record demonstrated a complete analysis by the city and the designation was limited to areas of "unique open space character and sensitivity to environmental disturbances" complied with the GMA) when a property owner submits any type of subdivision application to the City. If critical areas, resource lands, restrictions on access, a special flood risk designation or other physical site constraints are not present on the site, and except the existing neighborhood areas discussed below, a property owner will have to complete a rezone of the site, a Planned Unit Development (PUD) will need to be completed, or development rights will need to be purchased through the Transfer of Development Rights (TDR) program when an applicant submits any type of subdivision application to the City, so that a minimum density of four (4) dwelling units per acre can be achieved.

Map LU-5 identifies areas within and abutting existing neighborhoods in the City that are currently zoned Single-Family Residential with a minimum lot size of 9,000 square feet. In addition to identifying the R-1,3.0 zoning, Map LU-5 also shows which parcels have existing structures on them. Consistent with the Washington Supreme Court in Viking Properties Inc. v. Oscar W. Holm, slip opinion 75240-1 Aug. 18, 2005, the City shall use the GMA framework with the requisite flexibility to allow the City as the local planning jurisdiction to accommodate its local needs. Thus, to protect the character of existing neighborhoods, to promote a variety of residential densities and housing types, and to encourage the preservation of existing housing stock (GMA planning goals codified in RCW 36.70A.020 (4)) those areas identified on **Map LU-5** will not be required to meet a minimum 4 du/acre density, and shall have a net density of no more than 3.23 dwelling units per acre. These areas reflect land which contains or is next to pre-existing residential neighborhoods and residential neighborhood communities. These areas contain, but are not limited to, the following features: pre-existing residential development, pre-existing residential structures, pre-existing residential amenities (churches, synagogues, community centers or clubs, granges, etc..), and/or existing covenants that run with the land and disallow subdivision greater than 4 du/acre.

There are 830 parcels of land that combined equal approximately 337 acres that are identified on **Map LU-5** that will have a maximum density of 3.23 du/acre when and if they are developed or re-developed. Of the 830 parcels, 766 have existing buildings; however, only 31 of these parcels are capable of further development due to placement of existing structures or the presence of critical areas. In addition, there are 34 parcels without structures that are capable of further development.

Utilizing the methodology described in the Buildable Lands Analysis (contained in **Appendix LU-B**) the 65 parcels that are capable of being subdivided (parcels with and without structures) were analyzed to see what the difference in the number of total dwelling units would be if a density of four (4) dwelling units per acre versus 3.23 dwelling units per acre was applied to these parcels. At a density of four (4) dwelling units per acre the area identified on **Map LU-5** could produce 98 additional lots for dwelling units; and at a density of 3.23 dwelling units per acre this same area could produce 71 additional lots for dwelling units. With restricting the density to 3.23 dwelling units per acre versus four (4); there is a difference of the creation of only 27 lots for future dwelling units. Please see the spreadsheet incorporated with **Map LU-5** that provides a great amount of detail about all of the parcels identified on **Map LU-5** including all of the parcel numbers, zoning, addresses, whether critical areas are present or not, whether existing structures are present or not, the area of each of the parcels in acres and square feet, and how many additional units could potentially be created on each of the parcels utilizing the Buildable Lands methodology at the two different densities described above.

The Buildable Lands Analysis, contained in **Appendix LU-B,** proves that the City is well able to accommodate its projected growth even with keeping the parcels identified on **Map LU-5** at a maximum density of 3.23 du/acre because the Buildable Lands Analysis calculated potential building lots based on the zoning of a lot and did not consider that certain areas may have to meet a minimum density of four (4) dwelling units per acre.