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SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

AMENDED ORDINANCE NO. 04-051

RELATING TO GROWTH MANAGEMENT, ADOPTING TEXT AMENDMENTS  
RELATED TO OPEN SPACE IN THE GROWTH MANAGEMENT ACT  
COMPREHENSIVE PLAN AND AMENDING AMENDED ORDINANCE NO. 94-125  
AS AMENDED

WHEREAS, on September 10, 2003, the County Council adopted Amended Ordinance Nos. 03-096 and 03-097 as elements of the 2003 docket process established pursuant to Chapter 30.74 SCC to implement a proposal submitted by Dean Essex; and

WHEREAS, Amended Ordinance No. 03-096 adopted text amendments relating to open space in the General Policy Plan (GPP) element of the Growth Management Act comprehensive plan (GMACP), consisting of a new Land Use (LU) Policy 1.C.5 and amendments to text captioned "Parks/Open Space (P/OS)" on page LU-60 of the GPP as published by the County in March, 2003; and

WHEREAS, Amended Ordinance No. 03-097 revised the urban growth area (UGA) boundary for the City of Granite Falls, adopted map amendments to the GMACP, and adopted an area-wide rezone adding 27 acres of property owned by Charles and Judy Essex to the Granite Falls UGA and changing the zoning from Rural Residential-5 to Urban Low Density Residential (4-6DU/Acre); and

WHEREAS, the City of Granite Falls appealed the adoption of Amended Ordinance Nos. 03-096 and 03-097 to the Central Puget Sound Growth Management Hearings Board (Board) in City of Granite Falls v. Snohomish County, Case No. 03-3-0023, in which Charles and Judy Essex appeared as intervenors; and

WHEREAS, on March 8, 2004, the Board issued a Final Decision and Order in Community Trade and Economic Development Department v. Snohomish County, Case No. 03-3-0011 (CTED I), in which the Board ruled that an action to expand a UGA to preserve a land area containing a significant natural feature as open space adjacent to an UGA boundary that adds lands designated for residential development must be supported by a land capacity analysis adopted by the County Council pursuant to RCW 36.70A.110(2) and .210(3), and Countywide Planning Policy UG-14(d)-8; and

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WHEREAS, in Case No. 03-3-0023, the City of Granite Falls has contended in its briefing that no such review or analysis was conducted to support expansion of the Granite Falls UGA as described in Amended Ordinance No. 03-097 prior to its adoption; and

WHEREAS, the GMACP amendments contained in Amended Ordinance No. 03-096 are related to and dependent upon expansion of the Granite Falls UGA as provided for in Amended Ordinance No. 03-097; and

WHEREAS, the Board has scheduled a hearing in Granite Falls v. Snohomish County for April 22, 2004; and

WHEREAS, the County Council intends by this ordinance and its companion ordinance to rescind the actions taken by Amended Ordinance Nos. 03-096 and 03-097 so that there will be no need for a hearing before the Board in Granite Falls v. Snohomish County; and

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council adopts and incorporates the foregoing recitals as findings of fact and conclusions.

Section 2. The County Council makes the following additional findings of fact and conclusions:

A. Amended Ordinance Nos. 03-096 and 03-097 were adopted in the best interests of the citizens of Snohomish County with the intention of preserving 37 acres of open space outside the Granite Falls UGA for use as a park or open space area and adding 27 acres to the Granite Falls UGA.

B. Since the time the County took those actions two things have happened that bear particular relevance to this matter. First, the City of Granite Falls has let it be known clearly that it does not want the additional 27 acres within its UGA. Second, the Board ruled in Department of Community Trade and Economic Development v. Snohomish County, No. 03-3-0019c, Final Decision and Order, March 22, 2004 (CTED II), that no expansion of an UGA boundary to allow new residential development may occur without a land capacity analysis required by CPP UG-14(d)-8, RCW 36.70A.210(3), and 36.70A.110(2).

C. The City of Granite Falls has contended that no land capacity analysis has been performed which justifies expansion of the Granite Falls UGA as provided for in Amended Ordinance No. 03-097.

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D. Amended Ordinance No. 03-096 is dependent upon Amended Ordinance No. 03-097 because both ordinances concern the designation and use of contiguous properties owned by Charles and Judy Essex.

E. In light of the foregoing findings, it is in the best interests of Snohomish County and its residents to rescind the actions taken by Amended Ordinance Nos. 03-096 and 03-097 as provided herein.

F. Exhibit A to Ordinance No. 03-096 inadvertently deleted language from p. LU60 of the GPP which should be restored through this enactment.

G. A Mitigated Determination of Nonsignificance was issued on June 10, 2003, for the Dean Essex docket proposal culminating in the enactment of Ordinance Nos. 03-096 and 03-097. PDS, as the lead agency, determined that this proposal did not have a probable, significant adverse impact on the environment. This threshold determination was reached on the basis of mitigation offered voluntarily by the applicant. The voluntary offers submitted were evaluated as part of this threshold determination and were considered necessary to reduce the overall level of impact below that which is probable, significant and adverse.

H. The requirements of Chapter 30.61 SCC and the State Environmental Policy Act, Chapter 43.21C RCW, with respect to this proposed action have been satisfied by this document.

I. A public hearing was held before the County Council on May 5, 2004, at 1:30 p.m., which meets state and local public participation requirements for an ordinance adopted under the authority of the GMA.

Section 3. The County Council bases its findings of fact and conclusions on the entire record of the Snohomish County Planning Commission and County Council on this ordinance and Amended Ordinance Nos. 03-096 and 03-097, including testimony and exhibits.

Section 4. Based on the foregoing findings and conclusions, the General Policy Plan element of the Snohomish County GMA Comprehensive Plan adopted as Exhibit A by Section 4 of Amended Ordinance No. 94-125 on June 28, 1995, and last amended by Amended Ordinance No. 04-012 on March 10, 2004, is amended as set out in Exhibit A, captioned GPP Text Amendments, Citizen Initiated Amendments (Dean Essex), which is attached and incorporated by reference as a part of this ordinance.

Section 5. The County will reconsider this proposal as part of its 2004 update to its comprehensive plan pursuant to RCW 36.70A.130(4)(a).

Section 6. Severability. If any provision of this ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remainder of this ordinance. Provided however, that if any provision of this ordinance is held invalid or unconstitutional, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted.

PASSED this 5<sup>th</sup> day of May, 2004.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

John M. Kater  
Council Chair

ATTEST:

Sheila McCallister  
Clerk of the Council, *asst.*

- APPROVED  
 VETOED  
 EMERGENCY

DATE: 5-20-04

[Signature]  
Snohomish County Executive

ATTEST:

Conni Manno

Approved as to form only:

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Deputy Prosecuting Attorney

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**EXHIBIT A**  
**GPP TEXT AMENDMENTS**  
**CITIZEN INITIATED AMENDMENTS**  
**(Dean Essex)**

**Add Delete the following policy under Objective LU 1.C:**

- ~~1.C.5 Encourage the permanent preservation of open space and greenbelts adjacent to the UGA boundary to separate urban and rural uses by allowing UGA expansions consistent with LU 1.A.9 and LU 1.A.11(7), where all of the following conditions are met:~~
- ~~1. The action will result in the creation of new greenbelt areas, open space or public parks prior to or contemporaneous with the expansion of a UGA under Countywide Planning Policy UG-14(d)(8);~~
  - ~~2. The site proposed for expansion contains one or more significant natural or cultural features, or a proposed public park site, as determined by the respective legislative bodies of the county and the city or cities immediately adjacent to the proposed expansion area. Significant natural or cultural features may include, but are not limited to, landforms, rivers, bodies of water, historic properties, archeological resources, unique wildlife habitat, and fish and wildlife conservation areas;~~
  - ~~3. The site meets all of the criteria set forth in the Parks/Open Space (P/OS) Future Land Use Map classification;~~
  - ~~4. To ensure that the proposal does not preclude future expansion of the UGA, the preservation of open space or a public park must be adjacent to the urban growth boundary and shall be located such that it will provide a permanent separation between the urban growth area and adjacent rural lands not appropriate for inclusion within an urban growth area (for example: floodplain, floodways, resource lands), or the open space or park boundary is defined by unique topographical and physical features described in LU Policy 1.C.1;~~
  - ~~5. A conservation easement will be voluntarily recorded, indicating that the portion of the site proposed as open space or a public park may be utilized for all purposes authorized by underlying zoning and applicable federal, state and local permitting laws.~~

**Amend the first paragraph of the first column on page LU-59 to read as follows and move to before the first paragraph of the first column on page LU 60:  
(Additions shown by underline; deletions shown by strikeouts):**

**Arlington UGA Designations:**

AMENDED ORDINANCE NO. 03-096 as amended and adopted by Council 9/10/03  
ADOPTING TEXT AMENDMENTS TO THE GMACP FOR OPEN SPACE PURSUANT TO CHAPTER 30.74 SCC,  
AMENDING AMENDED ORDINANCE 94-125 - 1

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**Parks/Open Space (P/OS).** The Parks/Open Space designation is intended to be applied to publicly or privately owned areas *that are dominated by a natural landscape, have a minimum of manmade structures, and are not appropriate for significant urban development due to the presence of critical areas that contain one or more significant natural or cultural features, or a proposed public park site.* Significant natural or cultural features may include, but are not limited to, landforms, rivers, bodies of water, historic properties, archeological resources, unique wildlife habitat, and fish and wildlife conservation areas. The purpose of the designation is to preserve extensive acres of critical areas natural and culturally significant areas, including wildlife habitat, as well as and scenic and water resource land, and as undeveloped open space that will provide separation between urban and rural areas or to that will eventually provide recreational opportunities important to enhance community life.

This designation will only be applied to private property if for which the owner has requested the designation and voluntarily agrees to donate, sell or provide appropriate open space or conservation easements.

~~There are no specific implementing zones for this designation since zoning will vary from site to site. Generally, implementing zoning will be consistent with surrounding zones. Implementing zoning for the Parks/Open Space designation is the A-10 zone, which will restrict significant development and provide open space areas inside the UGA. A new implementing zone for the Parks/Open Space designation will be studied as part of the detailed Phase 2 planning for the Arlington UGA.~~

~~The following uses shall be prohibited permanently within lands designated Parks/Open Space, unless otherwise expressly allowed elsewhere in this policy:~~

- ~~• extension of new, private residential lot lines into the designated open space area;~~
- ~~• construction of new structures of any kind within the open space area for residential or commercial uses;~~
- ~~• construction of cell towers, advertising, lighting or permanent sound systems within the designated open space area, except where associated with a public park and permitted by law;~~

~~The conservation easement shall not require public access, nor serve as the basis for new setbacks or buffers on adjacent land owned by the landowner at the time he or she grants the easement, nor shall it prohibit the following:~~

- ~~• use for public or private park, public or private recreation, farming or forestry (as permitted by applicable law);~~
- ~~• repair, maintenance, or expansion of existing structures or roadways (as permitted by applicable law);~~
- ~~• installation of utilities underground through the open space area (as permitted by applicable law);~~
- ~~• continued use of existing septic systems or water rights authorized by law.~~

~~A conservation easement shall be required indicating that the portion of the site proposed as open space is permanently restricted from future development other than limited uses consistent with the Parks/Open Space designation, as defined~~

~~above. The conservation easement shall include a map documenting the conservation area which is suitable for recording. The conservation easement shall include each criterion set forth in the Parks/Open Space policies of the GPP. The current landowner or its successor in interest must record the conservation easement with the County Auditor and must file a copy of the easement with the Clerk of the County Council.~~

~~Pending additional review during the County's ten year comprehensive plan update in 2004-2005, this designation may only be applied to the following tax parcels:~~

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30061200400300 30061300100300~~

~~In addition to the conditions set out above, the following conditions apply to any Parks/Open Space areas designated for these four tax parcels:~~

- ~~• the conservation easement must be recorded within eighteen months of the effective date of the ordinance adopting the associated rezone;~~
- ~~• simultaneous with recording the conservation easement, the current landowner or its successor in interest also records a deed conveying without cost the fee for the easement area for use by the public to:
  - ~~○ the City of Granite Falls; or~~
  - ~~○ another public or non profit entity, including any of the following:
    - ~~• Snohomish County;~~
    - ~~• the State of Washington;~~
    - ~~• the United States Government; or~~
    - ~~• a non profit conservation organization approved by the Planning Director~~~~~~
- ~~• the current landowner or its successor in interest shall provide the City of Granite Falls with a written notice offering the first opportunity to accept dedication of the fee in writing, which notice shall include a provision allowing the City thirty days to accept the dedication in writing or to document in writing its intent to accept the dedication.~~
- ~~• if, within thirty days of receiving the written offer, the City does not respond to the written offer, or does not accept the dedication, or does not document its intent to accept the dedication, the current landowner or its successor in interest may dedicate the fee to one of the other public or non profit entities identified above.~~
- ~~• the recording of a deed conveying the fee must be accompanied by the recording of an official document evidencing the receiving entity's acceptance of or an intent to accept the dedication~~

~~In the event any of the above conditions precedent are not satisfied with respect to the Parks/Open Space designation on any of the above four parcels, the potential Parks/Open Space designation, and the accompanying potential urban land use designation and potential urban rezone become automatically null and void without the need for further legislative action. The Planning Director shall certify the end of the eighteen-month period.~~

~~Nothing herein shall preclude the processing and approval of an application for preliminary plat based on the potential Parks/Open Space designation described hereinabove, and the rezoning authorized in Ord. 03-097, provided the application and approval include a precondition that requires recordation of the conservation easement and conveyance of the fee as required by Ord. 03-096, Exhibit A.~~

Note:

Text shown in italics was inadvertently deleted in Ordinance No. 04-096 and is being restored here.