

CITY OF GRANITE FALLS

ORDINANCE NO. 775-09

**AN ORDINANCE OF THE CITY OF GRANITE FALLS, WASHINGTON,
RENEWING A MORATORIUM ON THE INITIATION OF DEVELOPMENT
PROJECTS AND FILING OR ACCEPTANCE OF APPLICATIONS FOR
BUILDING PERMITS, AND APPROVALS FOR OR RELATED TO THE PLAT OF
GRANITE PARK (DIVISION 1 AND DIVISION 2).**

WHEREAS, the Plat of Granite Park (Division 1 and Division 2) are within the city limits of Granite Falls; and

WHEREAS, the Plat of Granite Park (Division 1 and Division 2) are located adjoining the Pilchuck River; and

WHEREAS, the Plat of Granite Park (Division 1 and Division 2) have experienced substantial flooding; and

WHEREAS, Snohomish County and the City participate in the National Flood Insurance Program (NFIP) administered by the federal government through the Federal Emergency Management Agency (FEMA); and

WHEREAS, the land use regulations currently in effect in the City may not provide sufficient regulations to address potential flooding in the Plat of Granite Park (Division 1 and Division 2); and

WHEREAS, on June 13, 2007, FEMA advised the City that the preliminary flood insurance rate maps issued to Granite Falls on September 29, 2006, may contain significant inaccuracies associated with the floodplain boundaries; and

WHEREAS, the FEMA floodplain map currently underestimates the extent of the flooding, and an official floodplain map amendment is necessary to enlarge the floodplain area; and

WHEREAS, the Granite Falls City Council is in the process of preparing and developing revised regulations and a floodplain map amendment that responds to the concern and address the flooding of the Plat of Granite Park (Division 1 and Division 2); and

WHEREAS, Washington State's permissive Vested Rights Doctrine allows many land use applications to vest early in the application process to the existing land use regulations; and

WHEREAS, applications for building permits, if allowed, would vest in inadequate regulations, undermining effective City planning; and

WHEREAS, additional documentation has been or is currently being prepared by City consultant engineers Gray & Osborne which shall be executed by both Snohomish County and the City of Granite Falls and submitted to FEMA for inclusion in the floodplain maps; and

WHEREAS, Gray & Osborne have completed and/or are in the process of completing the necessary paperwork on behalf of the City to revise the floodplain maps, and have provided information for the City Council to establish a minimum floor elevation; and

WHEREAS, during the City's process of revising and amending its floodplain ordinance to strengthen its regulation and to provide for minimum floor elevation for the Plat of Granite Park (Division 1 and Division 2), the City received a letter dated October 21, 2008, advising the City of the outcome of litigation brought against FEMA by the National Wildlife Federation for FEMA's alleged failure to consult with National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA) with respect to its administration of the National Flood Insurance Program (NFIP); and

WHEREAS, in September 2008, National Marine Fisheries Service (NMFS) provided a Biological Opinion concluding that the development consistent with NFIP jeopardizes threatened or endangered Chinook salmon, chum, salmon, steelhead, and killer whales, and adversely modifies critical habitat; and

WHEREAS, pursuant to the ESA, municipalities and officials have a responsibility to ensure their actions do not cause a take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or an attempt to engage in any such conduct) on the listed species; and

WHEREAS, under Section 9 of the ESA, actions or decisions enacted by municipalities and their officials—regardless of federal involvement—that are deemed to be a take may result in criminal or civil penalties; and

WHEREAS, NMFS considers the issuance of a floodplain development permit when the impacts on listed species or their critical habitats have not been addressed as a take under the ESA; and

WHEREAS, if the City of Granite Falls issues floodplain development permits without addressing and/or providing mitigation for a take on listed species or their critical habitat, the municipality and/or its officials may be subject to enforcement action; and

WHEREAS, FEMA is working on, but has not yet completed, a "model ordinance" that will provide the necessary regulatory steps for jurisdictions to utilize in order to mitigate the impacts of floodplain development on threatened and endangered species and

will detail the necessary steps to document the decisions made during the permit issuance process; and

WHEREAS, adherence to the model ordinance process or an equal process will be necessary to avoid potential liability under the ESA; and

WHEREAS, FEMA anticipates that a model ordinance will be completed sometime mid-year 2009; and

WHEREAS, the City has insufficient staff and resources and no established process to evaluate, address, or mitigate the impacts of development on threatened and endangered species; and

WHEREAS, the City needs additional time to complete the necessary documents and submit the floodplain map amendment to FEMA; and to revise and strengthen the City's floodplain ordinance, including the establishment of a minimum floor elevation for the Plat of Granite Park (Division 1 and Division 2); and

WHEREAS, on September 3, 2008, the City Council adopted Findings of Fact and renewed the moratorium on the initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2), which is in effect through March 17, 2009; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GRANITE FALLS, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals and Findings of Fact Incorporated. The Recitals set forth in this Ordinance, and the Recitals and Findings of Fact dated March 11, 2009, adopted simultaneously herewith and attached hereto are incorporated as if fully set forth herein and are hereby adopted as additional Findings of Fact.

Section 2. Moratorium Renewed. The moratorium established by Ordinance No. 752-07, and renewed by Ordinance No. 770-08, is hereby renewed and imposed upon the initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2).

Section 3. Term of Moratorium. The moratorium established by Ordinance No. 752-07, and renewed by Ordinance No. 770-08, shall be renewed and be in effect until and including September 17, 2009, unless repealed, extended or modified by the City Council after subsequent public hearing and entry of appropriating findings pursuant to RCW 35.63.220 and 36.70A.390.

Section 4. Penalty for Violation. Any person or entity violating any provision of this Ordinance shall be guilty of having committed a gross misdemeanor, and upon conviction thereof, shall be punished by a fine in an amount not to exceed \$5,000.00 or

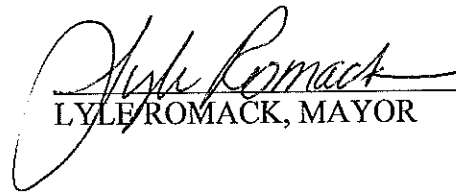
incarceration for a term not to exceed one year or by both such fine and incarceration, and the same is also subject to injunctive and other forms of civil relief which the City may seek.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any section, sentence, clause or phrase of this Ordinance.

Section 6. Effective Date. This Ordinance, passed by a majority plus one of the whole membership of the City Council as a public emergency ordinance necessary for the protection of the public health, public safety, public property or public peace, shall be effective immediately upon its passage.

Section 7. Publication and Summary. This Ordinance, or a summary thereof consisting of the title, shall be published in the official newspaper of the City.

Said Ordinance was passed in open session by the City Council of the City of Granite Falls by a majority plus one of the whole membership of the City Council on the 11th day of March, 2009, and signed in authentication of its passage this 11th day of March, 2009.



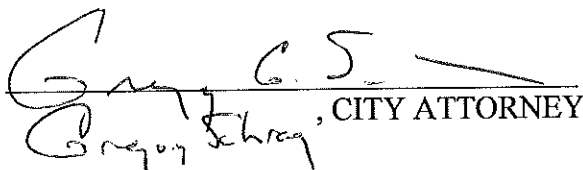
LYLE ROMACK, MAYOR

Attest:



NACELLE HEUSLEIN, INTERIM CITY CLERK

Approved as to Form:



Gregory Schrey, CITY ATTORNEY

DATE OF FIRST AND FINAL READING:

3-11-09

DATE OF PUBLICATION:

3-14-09

EFFECTIVE DATE:

3-11-09

PDF to CPC:

4-13-09

CITY OF GRANITE FALLS

FINDINGS OF FACT — MARCH 11, 2009

Relating to Renewal of a Moratorium on the Initiation of Development Projects and Filing or Acceptance of Applications for Building Permits, and Approvals for or Related to the Plat of Granite Park (Division 1 and Division 2).

WHEREAS, on September 17, 2007, the City Council re-enacted a moratorium on the initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2), and such moratorium was in effect through September 17, 2008; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorizes local governments to renew moratoria for one or more six-month periods if a subsequent public hearing is held and Findings of Fact are made prior to each renewal; and

WHEREAS, on September 3, 2008, the City Council renewed the moratorium on the initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2), and such moratorium is in effect through March 17, 2009; and

WHEREAS, the land use regulations currently in effect in the City may not provide sufficient regulations to address potential flooding in the Plat of Granite Park (Division 1 and Division 2); and

WHEREAS, on August 6, 2008, the City Council approved a proposal from City consultant engineers Gray & Osborne for the completion of the application to revise the Pilchuck Floodplain Area Elevation documents; and

WHEREAS, Gray & Osborne revised the Pilchuck Floodplain Area Elevation documents in October 2008; and

WHEREAS, upon receipt of the revised Pilchuck Floodplain Area Elevation documents, the City commenced the process to amend its model floodplain to provide for minimum floor elevation for the Plat of Granite Park (Division 1 and Division 2) based upon that documentation; and

WHEREAS, Gray & Osborne will submit the floodplain map amendment, after its completion and execution by the Mayor, to FEMA to allow FEMA to change its floodplain maps to include portions of Granite Park; and

WHEREAS, during the City's process of revising and amending its floodplain ordinance to strengthen its regulation and to provide for minimum floor elevation for the Plat of Granite Park (Division 1 and Division 2), the City received a letter dated October 21, 2008, advising the

City of the outcome of litigation brought against FEMA by the National Wildlife Federation for FEMA's alleged failure to consult with National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA) with respect to its administration of the National Flood Insurance Program (NFIP); and

WHEREAS, in September 2008, NMFS had provided a Biological Opinion concluding that development consistent with NFIP jeopardizes threatened or endangered Chinook salmon, chum, salmon, steelhead, and killer whales, and adversely modifies critical habitat; and

WHEREAS, pursuant to the ESA, municipalities and officials have a responsibility to ensure their actions do not cause a take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or an attempt to engage in any such conduct) on the listed species; and

WHEREAS, under Section 9 of the ESA, actions or decisions enacted by municipalities and their officials—regardless of federal involvement—that are deemed to be a take may result in criminal or civil penalties; and

WHEREAS, NMFS considers the issuance of a floodplain development permit when the impacts on listed species or their critical habitats have not been addressed as a take under the ESA; and

WHEREAS, if the City of Granite Falls issues floodplain development permits without addressing and/or providing mitigation for a take on listed species or their critical habitat, the municipality and/or its officials may be subject to enforcement action; and

WHEREAS, FEMA is working on, but has not yet completed, a “model ordinance” that will provide the necessary regulatory steps for jurisdictions to utilize in order to mitigate the impacts of floodplain development on threatened and endangered species and will detail the necessary steps to document the decisions made during the permit issuance process; and

WHEREAS, adherence to the model ordinance process or an equal process will be necessary to avoid potential liability under the ESA; and

WHEREAS, FEMA anticipates that a model ordinance will be completed sometime mid-year 2009; and

WHEREAS, the City has insufficient staff and resources and no established process to evaluate, address, or mitigate the impacts of development on threatened and endangered species; and

WHEREAS, the City finds that renewal of the development moratorium in the Plat of Granite Park (Division 1 and Division 2) is prudent and necessary until the City receives guidance and the model ordinance from FEMA; and

WHEREAS, the City Council held a public hearing on March 11, 2009, to receive testimony and evidence regarding the renewal of the existing moratorium relating to the

initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2).

NOW, THEREFORE, the City Council of the City of Granite Falls does find:

1. The Granite Falls City Council finds that additional time is necessary in order to complete the necessary documents and submit the floodplain map amendment to FEMA; and to revise and strengthen the City's floodplain ordinance, including the establishment of a minimum floor elevation for the Plat of Granite Park (Division 1 and Division 2).

2. The Granite Falls City Council finds that a properly filed application for development within the Plat of Granite Park (Division 1 and Division 2) would grant and establish vested rights to develop and build in accordance with inadequate regulations.

3. The Granite Falls City Council finds that permitting development and structures to be sited in the Plat of Granite Park (Division 1 and Division 2) without establishment of minimum floor elevations is not desirable or acceptable.

4. The Granite Falls City Council finds that issuing permits and permitting development and structures to be sited on the Plate of Granite Park (Division 1 and Division 2) without an established process to evaluate, address and/or mitigate the impacts of development on threatened and endangered species may result in civil or criminal sanctions.

5. The Granite Falls City Council finds that additional time is necessary in order to receive guidance from FEMA and to review and implement the model ordinance from FEMA to establish a process for evaluating, addressing and/or mitigating the impacts of development on threatened or endangered species.

6. The Granite Falls City Council finds that protection of the health, safety and welfare supports the establishment of a Moratorium on initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2).

7. The Granite Falls City Council finds and concludes it must renew the Moratorium concerning the initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2) to avoid possible applications establishing vested rights contrary to and inconsistent with any revisions the City may make to its regulations as a result of the City's review and study of this matter.

8. The Granite Falls City Council finds that an emergency does exist to protect the public health, safety and welfare.

NOW THEREFORE, the City Council of the City of Granite Falls does conclude:

1. That the City Council does have authority to and should renew and extend its moratorium on the initiation of development projects and filing or acceptance of applications for building permits, and approvals for or related to the Plat of Granite Park (Division 1 and Division 2).

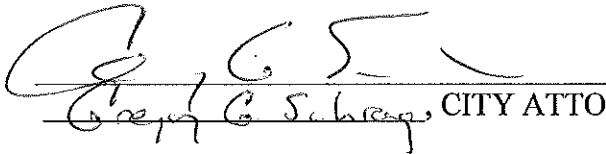
2. That an emergency ordinance should be adopted to protect the public health, safety and welfare.


LYVE ROMACK, MAYOR

Attest:


NACELLE HEUSLEIN, INTERIM CITY CLERK

Approved as to Form:


Greg G. Schrey, CITY ATTORNEY