

RESOLUTION NO. 2692
INTRODUCED BY MAYOR HENRY A. BALENSIFER III

**RESOLUTION ON THE IMPLEMENTATION OF FLOODPLAIN COMPLIANCE
UNDER THE NATIONAL FLOOD INSURANCE PROGRAM**

WHEREAS, the National Flood Insurance Program (NFIP) was established by the United States Congress to provide Americans with affordable access to flood insurance and protection from financial losses associated with flood events; and

WHEREAS, the Federal Emergency Management Agency (FEMA) was designated by Congress to implement and oversee the NFIP under the National Flood Insurance Act of 1968; and

WHEREAS, in 2009, the Audubon Society of Portland (now Oregon Bird Alliance), National Wildlife Federation, Northwest Environmental Defense Center, and the Association of Northwest Steelheaders filed suit against FEMA, alleging that the FEMA's implementation of NFIP in Oregon violated the Endangered Species Act (ESA) due to its implementation practices; and

WHEREAS, FEMA attempted to defend that it was not obligated to consult with NIMS but failed that argument and entered into a settlement agreement that mandated consultation with the National Marine Fisheries Service (NMFS) to prepare a Biological Opinion on the effects of the NFIP on endangered species in Oregon, Washington, and California; and

WHEREAS, section 11 of the settlement agreement explicitly states, "No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that FEMA take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural"; and

WHEREAS, in 2016, the National Marine Fisheries Service (NMFS) issued a Biological Opinion under the ESA concluding that FEMA's implementation of the NFIP in Oregon causes jeopardy to several fish species and Orca whales and adversely modifies their critical habitat (Oregon NFIP BiOp); and

WHEREAS, FEMA committed to conducting a full impact assessment as mandated by the National Environmental Policy Act (NEPA) prior to implementing changes to the NFIP in response to the Oregon NFIP BiOp. NEPA requires a federal agency to review,

disclose, and evaluate impacts on the natural, physical, and socioeconomic environment before taking any federal action; and

WHEREAS, FEMA promised that the implementation of NFIP changes would not proceed until the NEPA process was completed; and

WHEREAS, NEPA review has yet to be completed or published, and FEMA's assessment of the likely impacts of its proposed changes to the NFIP in response to the Oregon NFIP BiOp on the human environment indicates "potential for significant impacts"; and

WHEREAS, in July 2024, without completing NEPA review, FEMA unexpectedly announced that it would require NFIP-participating communities to select a Pre-Implementation Compliance Measure by December 1, 2024, without providing sufficient guidance or timeframe for local governments to prepare the necessary ordinances; and

WHEREAS, due to this short notice and lack of clear guidelines, most jurisdictions were unable to submit the required notices to Oregon's Department of Land Conservation and Development (DLCD) to initiate changes in development codes; however, the City of Warrenton, having previously filed notices to promote housing development, revised its filing to attempt compliance with the December 1 deadline; and

WHEREAS, to comply with Oregon's land use laws, many jurisdictions may have to declare a development moratorium, a situation exacerbated by FEMA's disregard for the procedural requirements of state and local laws; and

WHEREAS, the City of Warrenton has faced challenges in maintaining consistent planning leadership and policy interpretation within its Planning Department; and

WHEREAS, the City Commission wishes to establish a clear, stable framework for floodplain regulations by adopting the Planning Department's current interpretation of floodplain management policies; and

NOW THEREFORE, BE IT RESOLVED by the Warrenton City Commission, to safeguard the property, infrastructure, and legal rights of the City of Warrenton and its residents, the following policies are hereby adopted:

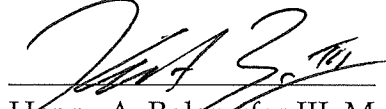
Section 1. The Warrenton Planning Department shall expeditiously process all floodplain development applications under the current code until the floodplain development code is amended.

Section 2. Floodplain development permits accepted on or before the aforementioned deadline shall be considered vested to current floodplain regulations.

BE IT FURTHER RESOLVED that this resolution is effective immediately upon its adoption, and all necessary measures shall be taken to ensure its provisions are implemented in a timely and effective manner.

ADOPTED by the City Commission of the City of Warrenton, Oregon this 12th day of November, 2024.

APPROVED:



Henry A. Balensifer III, Mayor

ATTEST:



Dawne Shaw, CMC, City Recorder