

CITY OF GRANITE FALLS

ORDINANCE NO. 781-09

**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 IN, AND APPROVALS FOR OR RELATED TO, THE
PLAT OF GRANITE PARK (DIVISIONS 1 AND 2).**

WHEREAS, in November of 2006 the Pilchuck River flooded and significantly inundated portions of the Granite Park plat (Divisions 1 and 2); and

WHEREAS, as a result of that flooding Snohomish County completed an analysis that estimates the elevation of flooding in the Granite Park area due to a 100-year event; and

WHEREAS, the City of Granite Falls desires to protect the general populace from the harmful effects of flood damage on building structures; and

WHEREAS, the Federal Emergency Management Agency (FEMA) encourages jurisdictions to utilize local knowledge to protect the citizens and their property from the harmful effects of flooding; and

WHEREAS, the Legislature of the State of Washington has delegated the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, Snohomish County and the City participate in the National Flood Insurance Program (NFIP) administered by the federal government through 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 (Divisions 1 and 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 prepared by City consultant engineers Gray & Osborne and has been executed by the City of Granite Falls and submitted to FEMA for inclusion in the floodplain maps; and

WHEREAS, Gray & Osborne has completed 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 (Divisions 1 and 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 NFIP; and

WHEREAS, in September 2008, 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 in the fourth quarter of 2009; and

WHEREAS, the City intends to adopt the FEMA Model Floodplain Ordinance, amended as needed for the City, upon its completion by FEMA; 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 County needs additional time to concur with the documents and the floodplain map amendment submitted to FEMA; and

WHEREAS, on March 11, 2009, 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 (Divisions 1 and 2), which is in effect through September 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 September 2, 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 Nos. 770-08 and 775-09, 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 (Divisions 1 and 2).

Section 3. Term of Moratorium. The moratorium established by Ordinance No. 752-07, and renewed by Ordinance Nos. 770-08 and 775-09, shall be renewed and be in effect until and including March 15, 2010, 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 shall be effective September 18, 2009.

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 on the 2nd day of September, 2009, and signed in authentication of its passage this 3rd day of September, 2009.


LYLE ROMACK, MAYOR

Attest:


DARLA REESE, CITY CLERK

Approved as to Form:


CRAIG D. KNUTSON, CITY ATTORNEY

DATE OF FIRST AND FINAL READING:

09-02-09

DATE OF PUBLICATION:

09-06-09

EFFECTIVE DATE:

09-11-09