

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERING) RESOLUTION NO. 12-4344
ENFORCEMENT ACTION TO BRING THE)
CITY OF TROUTDALE INTO COMPLIANCE) Introduced by Councilor Shirley Craddick
WITH TITLE 13 OF THE URBAN GROWTH)
MANAGEMENT FUNCTIONAL PLAN)

WHEREAS, the Metro Council enacted Title 13 (Nature in Neighborhoods) of the Urban Growth Management Functional Plan (UGMFP) to protect wildlife habitat and streamside corridor systems in the region; and

WHEREAS, the Council established January 5, 2009, as the date cities and counties must revise their land use regulations to comply with Title 13; and

WHEREAS, the City Council of Troutdale voted to postpone action on proposed regulations to comply with Title 13 on October 13, 2009; and

WHEREAS, Metro’s Chief Operating Officer granted the city an extension of time to comply with Title 13 to December 31, 2011; and

WHEREAS, the extended deadline for compliance with Title 13 passed and the City Council had not adopted complying regulations; and

WHEREAS, the Metro Council commenced proceedings to ensure compliance with requirements of Title 13; and

WHEREAS, the City Council of Troutdale voted to adopt regulations to comply with Title 13 on June 13, 2012; and

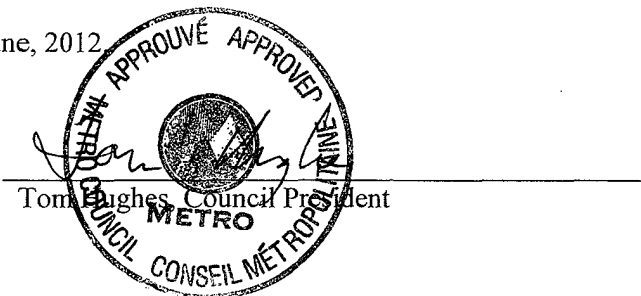
WHEREAS, the Metro staff reviewed the city’s new regulations and advised the Metro Council that they comply with Title 13; and

WHEREAS, the Council held a public hearing on enforcement pursuant to Title 8 on June 21, 2012; now, therefore,

BE IT RESOLVED that the Metro Council:

1. Enters Order No. 12-071, attached to this resolution as Exhibit A, which dismisses the proceeding.
2. Directs the Chief Operating Officer to send copies of Order No. 12-071 to the city of Troutdale, the Metropolitan Policy Advisory Committee and those persons who participated in the June 21, 2012, hearing.

ADOPTED by the Metro Council this 21st day of June, 2012



Approved as to Form:

A handwritten signature in black ink, appearing to read 'Alison Kean Campbell', is written over a horizontal line.

Alison Kean Campbell, Metro Attorney

Exhibit A to Resolution No. 12-4344

Order No. 12-071

**RELATING TO COMPLIANCE BY THE CITY OF TROUDALE
WITH TITLE 13 (NATURE IN NEIGHBORHOODS)**

APPLICABLE LAW

ORS 268.390(5) authorizes Metro to adopt a regional framework plan and implementing ordinances and to require local government comprehensive plans and implementing regulations to comply within two years after acknowledgement of the implementing ordinances. Metro adopted Title 13 (Nature in Neighborhoods) of its Urban Growth Management Functional Plan (UGMFP), a component of and an implementing ordinance of the Regional Framework Plan by Ordinance No. 05-1077C on September 29, 2005. The Metro Council set a date for compliance with Title 13 by cities and counties of the region of January 5, 2009. Pursuant to Title 8 (Compliance Procedures) of the UGMFP, Metro's Chief Operating Officer granted an extension to the city of Troutdale, at its request, to December 31, 2011. The city was required to bring its comprehensive plan and implementing regulations into compliance with Title 13 by that date. The extended deadline passed and the city council had not adopted complying regulations. The Metro Council commenced enforcement proceedings.

Title 8 sets forth a process for enforcement of compliance with its functional plans. The title provides that, if the Council determines that a city or county has complied with the functional plan, the Council shall adopt an order that dismisses the matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Metro Council finds the facts set forth in the Staff Report dated June 21, 2012, attached to this order. Based upon the Staff Report, the Council concludes that regulations adopted by the city of Troutdale on June 13, 2012, comply with Title 13.

IT IS HEREBY ORDERED THAT:

Pursuant to Metro Code 3.07.860D, the matter is dismissed.

ENTERED this 21st day of June, 2012.

Tom Hughes, Council President

Approved as to Form:

Alison Kean Campbell, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 12-4344, FOR THE PURPOSE OF TAKING ENFORCEMENT ACTION TO BRING THE CITY OF TROUTDALE, OREGON, INTO COMPLIANCE WITH TITLE 13 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN.

Date: June 21, 2012

Prepared by: Brian Harper

BACKGROUND

Title 13 of the Urban Growth Management Functional Plan is one part of the Nature in Neighborhoods initiative which is a broad based regional initiative to restore and protect the region's natural assets. Title 13 was meant to achieve its intended purpose through the conservation, protection and appropriate restoration of riparian and upland fish and wildlife habitat using a mix of regulatory and non-regulatory approaches.

Title 13's main purpose is to (1) conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the stream's headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and (2) to control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region. Within the region approximately 80,000 acres or a third of the urban area provides habitat for fish and wildlife.

Throughout 2008 and 2009 City of Troutdale staff worked with their citizen advisory group, planning commission and city council to develop a natural resource protection program that would comply with Title 13. Jurisdictions within the Metro Boundary were required to adopt implementing ordinances to comply with the requirements of Title 13 by January 5, 2009. Troutdale was not granted an initial extension in early 2009, as there was reason to believe that they were close to adopting a new ordinance. Final adoption of a compliant protection program was expected to occur October 13, 2009. However, at the October 13 meeting the city council approved a motion 4-2 to postpone action indefinitely.

After a change in membership on the Troutdale City Council, Troutdale staff held a work session on March 15, 2011 to re-introduce Metro's Title 13 program and the proposed code amendments to the new members of the City Council. City staff also outlined a timeline for adopting the proposed code changes with final adoption scheduled for consideration on October 11, 2011. In the meantime Troutdale requested, and received, a time extension until December 31, 2011 from the Metro COO to adopt the proposed code changes. The Audubon Society of Portland appealed the COO extension to the Metro Council and on September 15, 2011 the Council denied the appeal and upheld the time extension until December 31, 2011.

On November 8, 2011, the Troutdale City Council voted unanimously against adoption of the proposed code amendments. On December 13, 2011 the Troutdale City Council also unanimously passed a resolution indicating that the City's existing standards and provisions for development substantially comply with the performance standards and best management practices identified in Title 13 and the City's mapped natural resource areas substantially overlap with identified Title 13 Habitat Conservation

Areas. Metro staff responded to the City's resolution on December 20, 2011, with a detailed list of where the City was out of compliance with Title 13. At the February 7, 2012 Metro Council Work Session, Metro's Chief Operating Officer indicated to the Council that Troutdale was out-of-compliance with Title 13 of the Urban Growth Management Functional Plan, and had no intention of re-visiting changes to their ordinance to come into compliance. The Metro Council made the determination to proceed with enforcement of the Urban Growth Management Functional Plan at that time, and a hearing was scheduled for April 12, 2012.

Metro Staff have worked with Troutdale staff for the last several years to finalize proposed code amendments that substantially comply with the requirements of Title 13 (see Timeline below). The proposed amendments do not change the coverage or protection level for natural resource land in Troutdale on privately-owned land. The proposed amendments do provide for a more refined mitigation process and a resource verification processes that will help city staff review future development proposals more efficiently and with greater clarity as to what is expected, consistent with regional requirements. The proposed amendments were recommended for approval by city staff, the Troutdale Citizens Advisory Committee and the Planning Commission. At this time, it appears the City Council does not want to follow the recommendation from staff or the advisory committees. Metro staff believes that the proposed code amendments are necessary for Troutdale to be in substantial compliance with Title 13.

Update: On March 1, 2012, Metro and Troutdale staff and elected officials met in an attempt to determine an appropriate course of action to bring Troutdale into compliance with Title 13. On April 3, 2012, the Troutdale City Council agreed to move forward with a new set of amendments to address the issue of compliance with Title 13. The amendments were reviewed and agreed upon by Metro and City of Troutdale staff. The City sent the proposed code amendments to The Department of Land Conservation and Development for the required 35-day review period. A 1st reading of the proposed amendments was held on May 22, 2012 by the Troutdale City Council, and final adoption of those changes occurred on June 12, 2012. Staff has reviewed the adopted code changes and finds that Troutdale is now in substantial compliance with Title 13 of the Urban Growth Management Functional Plan.

TIMELINE

The following represents a timeline of the significant events surrounding Title 13 compliance in Troutdale:

March 4, 2008- Troutdale Council Work session held to discuss compliance with Title 13. Metro staff describes the Nature in Neighborhoods program and requirements in a presentation to Troutdale City Council.

January 5, 2009- All local jurisdictions are required to be in compliance with Title 13 of the Urban Growth Management Functional Plan.

February 25, 2009- Initial staff report from Troutdale to Metro, outlining their analysis of current conditions in the City related to Title 13 and how they would approach new regulatory changes. City also provides a timeline for adoption of new ordinance.

April 1, 2009- Initial meeting of the Troutdale Citizen's Advisory Committee. CAC discusses proposed changes to Troutdale Development Code.

May 4, 2009- Metro staff meet with Troutdale staff to discuss proposed code changes.

May 6, 2009- Troutdale Citizen's Advisory Committee recommends approval of changes to Troutdale Development Code (vote total unknown). Amendments are sent to Planning and Zoning Commission for consideration.

May 20, 2009- Troutdale Planning and Zoning Commission discuss proposed changes to development code related to Title 13.

June 17, 2009- Metro staff attend and testify at Troutdale Planning and Zoning Commission meeting on behalf of the proposed changes to the development code that would address Title 13 requirements.

July 15, 2009- Troutdale Planning and Zoning Commission recommends approval of the changes to the Troutdale Development Code by a vote of 4-3. Amendments are sent to the Troutdale City Council for consideration.

October 13, 2009- Troutdale City Council meets to discuss the text amendments to the Troutdale Development Code, related to Title 13. Troutdale City Council votes 4-2 to postpone the action indefinitely. Metro staff attend the meeting, but do not testify.

January 22, 2010- Metro staff begin the process of re-engaging the City of Troutdale on Title 13 through correspondence and meetings.

March 15, 2011- Council work session held to re-introduce Title 13 requirements and code changes to Troutdale City Council. A recent local election has produced new council members that need to be informed of Title 13 requirements and history of the current process.

September 27, 2011- 1st reading of development ordinance changes to comply with Title 13 is held by the Troutdale City Council. Metro staff are present but do not testify at this hearing. Troutdale City Council decides to postpone decision to November 8, 2011, pending an Open House for members of the public to learn more about the proposed changes.

October 26, 2011- Troutdale staff conduct an Open House for members of the public. Metro staff are told that they are not needed at the Open House.

November 8, 2011- Troutdale City Council unanimously votes 7-0 against the proposed development code changes needed to come into compliance with Title 13.

December 13, 2011- Troutdale City Council unanimously votes 7-0 on a resolution that finds their current codes to be compliant with Title 13, and submits that resolution to Metro for review.

January 9, 2012- Metro COO provides a letter to the City of Troutdale, informing them that they are technically out of compliance with Title 13 of the Urban Growth Management Functional Plan.

February 7, 2012- Metro Council sets an enforcement hearing date for April 12, 2012.

March 1, 2012- Metro and City of Troutdale elected officials and staff meet to discuss issues surrounding compliance with Title 13. At this meeting, a tentative agreement is reached on necessary code changes.

April 4, 2012- City of Troutdale submits code amendments related to Title 13 compliance to the Department of Land Conservation and Development for the required 35-day review period.

May 22, 2012- City of Troutdale brings code amendments related to Title 13 compliance to 1st Reading for future adoption.

June 12, 2012- City of Troutdale adopts a package of code amendments that bring it into compliance with Title 13 of the Urban Growth Management Functional Plan.

ENFORCEMENT OPTIONS

1. Direct application of functional plan requirements to City land use decisions
2. Withhold Metro's discretionary funds (e.g., transportation and planning funds) from the City
3. Seek an enforcement action by the state, which has authority to withhold cigarette and gas tax revenues from the City.
4. Dismiss the matter on grounds that the code amendments adopted by the City Council on June 12 bring the city into compliance with Title 13.

ANALYSIS INFORMATION

1. **Known Opposition.** To date, Metro has not received public comments from individuals, interest groups, or government agencies regarding Troutdale being out of compliance with Title 13.
2. **Legal Antecedents.** Policies in Metro's Regional Framework Plan and Title 13 of Metro's Urban Growth Management Functional Plan requires local jurisdictions to meet regional performance standards related to the protection of regionally identified fish and wildlife habitat. The purpose of Title 13 is to conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the stream's headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and to control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region.
3. **Anticipated Effects.** Enforcement of Title 13 requirements will ensure consistent application of Title 13 habitat conservation area requirements to support protection of the region's fish and wildlife habitat. In addition, enforcement will act to discourage other jurisdictions from attempting to circumvent Title 13 requirements. Enforcement of Title 13, in this case particularly, will also serve to protect publicly owned properties acquired through the Metro Open Space Bond Measure program.
4. **Budget Impacts.** There are negligible budget impacts from this order.

RECOMMENDED ACTION

Staff recommends that the Metro Council dismiss the current enforcement action. The City of Troutdale has adopted a package of code changes that have been reviewed by staff and bring the City of Troutdale into compliance with Title 13 of the Metro Urban Growth Management Functional Plan.