



AGENDA

WASHINGTON COUNTY BOARD OF COMMISSIONERS

Agenda Category: Public Hearing – Fourth Reading and Fourth Public Hearing
Land Use & Transportation; County Counsel (All CPOs)

Agenda Title: **CONSIDER PROPOSED A-ENGROSSED LAND USE ORDINANCE NO. 869 – AN ORDINANCE AMENDING THE RURAL/NATURAL RESOURCE PLAN, CERTAIN COMMUNITY PLANS AND THE COMMUNITY DEVELOPMENT CODE RELATING TO DEVELOPMENT IN AREAS DESIGNATED SIGNIFICANT NATURAL RESOURCES AND PLANNED DEVELOPMENTS**

Presented by: Stephen Roberts, Director of Land Use & Transportation
Alan Rappleyea, County Counsel

SUMMARY:

A-Engrossed Ordinance No. 869 proposes to amend the Community Development Code (CDC) related to significant natural resources (SNR) in the development review process to establish clear and objective standards, clarify requirements and allow protected habitat areas to meet open space requirements in planned developments. A-Engrossed Ordinance No. 869 is posted on the County's land use ordinance webpage at the following link:

www.co.washington.or.us/landuseordinances

The Board conducted public hearings Sept. 15 and 29, 2020 for Ordinance No. 869. Following the Sept. 29 hearing, the Board directed engrossment of the ordinance to make several changes. These changes include modifying the references to SNR categories, providing additional clarification and/or removal of potentially subjective language in various sections and minor clarifying changes to the standards for the Habitat Preservation Areas. The Board conducted its first hearing for A-Engrossed Ordinance No. 869 on Oct. 20 and continued the hearing to Oct. 27, 2020.

A staff report will be provided to the Board prior to the Oct. 27 hearing and posted on the above land use ordinance webpage. Copies of the report will be available electronically and at the Clerk's desk prior to the hearing.

(continued)

The Staff Report is hyperlinked here and is available at the Clerk's Desk.

DEPARTMENT'S REQUESTED ACTION:

Read A-Engrossed Ordinance No. 869 by title only and conduct the second public hearing for the engrossed ordinance. At the conclusion of the public testimony, adopt A-Engrossed Ordinance No. 869.

COUNTY ADMINISTRATOR'S RECOMMENDATION:

I concur with the requested action.

ADOPTED

Agenda Item No.	5.b.
Date:	10/27/20

CONSIDER PROPOSED A-ENGROSSED ORDINANCE NO. 869 – AN ORDINANCE AMENDING THE RURAL/NATURAL RESOURCE PLAN, CERTAIN COMMUNITY PLANS AND THE COMMUNITY DEVELOPMENT CODE RELATING TO DEVELOPMENT IN AREAS DESIGNATED SIGNIFICANT NATURAL RESOURCES AND PLANNED DEVELOPMENTS
BOC 10/27/20

Consistent with Board policy, testimony about the ordinance is limited to two minutes for individuals and five minutes for a representative of a group.

ADDITIONAL INFORMATION:

Community Feedback (Known Support/Opposition):

Written testimony has been received from 82 individuals and the Committee for Community Involvement as of Oct. 9, 2020.

Legal History/Prior Board Action:

The primary intent of A-Engrossed Ordinance No. 869 is to address an Enforcement Order issued by the Land Conservation and Development Commission on June 1, 2020 which found the County out of compliance with Statewide Planning Goal 5. The noncompliance findings are based on three CDC natural resource provisions that are not clear and objective, and therefore unenforceable as applied to new residential development.

The Board held its public hearings on Ordinance No. 869 on Sept. 15. and 29 and after the public hearing voted 5-0 to direct the engrossment of the ordinance, as recommended by staff.

The Board conducted its first public hearing on A-Engrossed Ordinance No. 869 on Oct. 20, 2020.

Budget Impacts: None

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR WASHINGTON COUNTY, OREGON

A-ENGROSSED ORDINANCE 869

An Ordinance Amending the Rural/Natural Resource Plan, Certain Community Plans, and the Community Development Code Relating to Development in Areas Designated Significant Natural Resources and Planned Developments

The Board of County Commissioners of Washington County, Oregon ("Board") ordains as follows:

SECTION 1

A. The Board recognizes that the Rural/Natural Resource Plan Element of the Comprehensive Plan (Volume III) was readopted with amendments, by way of Ordinance No. 307, and subsequently amended by Ordinance Nos. 342, 383, 411, 412, 458, 459, 462, 480, 482, 499, 539, 547, 572, 574, 578, 588, 598, 606, 609, 615, 628-631, 637, 643, 648, 649, 653, 662, 671, 686, 733, 740, 753, 764, 772, 776, 785, 796, 809, 813, 814, 822, 824, 828, 840, and 854.

B. The Board recognizes that the Aloha-Reedville-Cooper Mountain Community Plan was adopted by Ordinance Nos. 263 and 265 and subsequently amended by Ordinance Nos. 292, 294, 344, 367, 418, 420, 471, 480, 551, 552, 588, 610, 615, 620, 649, 653, 674, 683, 776, 783, 785, 799, and 857.

C. The Board recognizes that the Bethany Community Plan was adopted by Ordinance Nos. 263 and 265 and subsequently amended by Ordinance Nos. 345, 420, 471, 480, 551, 552, 588, 610, 615, 620, 649, 702, 712, 730, 739, 744, 745, 758, 771, 783, 789, 790, 799, 801, 809, 838, 843, 846, and 866.

1 D. The Board recognizes that the Bull Mountain Community Plan was adopted by
2 Ordinance Nos. 263 and 265 and subsequently amended by Ordinance Nos. 368, 420, 480,
3 487, 547, 551, 552, 588, 610, 615, 659, 666, 783, 785, and 799.

4 E. The Board recognizes that the Cedar Hills-Cedar Mill Community Plan was
5 adopted by Ordinance Nos. 263 and 265 and subsequently amended by Ordinance Nos. 346,
6 369, 396, 418, 420, 450, 471, 480, 484, 526, 551-553, 588, 609, 610, 620, 631, 732, 783, 799,
7 802, and 809.

8 F. The Board recognizes that the East Hillsboro Community Plan was adopted by
9 Ordinance Nos. 278 and 280 and subsequently amended by Ordinance Nos. 349, 420, 480,
10 532, 551, 588, 610, 615, 686, 783, 785, and 799.

11 G. The Board recognizes that the Metzger-Progress Community Plan was adopted
12 by Ordinance No. 236 and subsequently amended by Ordinance Nos. 278, 280, 350, 364, 420,
13 471, 480, 551, 552, 588, 608, 610, 783, and 799.

14 H. The Board recognizes that the Raleigh Hills-Garden Home Community Plan
15 was adopted by Ordinance No. 215 and subsequently amended by Ordinance Nos. 278, 280,
16 292, 347, 365, 408, 420, 471, 480, 551, 552, 588, 608, 610, 683, 758, 783, and 799.

17 I. The Board recognizes that the Sherwood Community Plan was adopted by
18 Ordinance Nos. 263 and 265 and subsequently amended by Ordinance No. 370, 420, 480,
19 551, 588, 610, 615, 649, 783, and 799.

20 J. The Board recognizes that the Sunset West Community Plan was adopted by
21 Ordinance No. 242 and subsequently amended by Ordinance Nos. 278, 280, 292, 294, 348,
22

1 366, 418, 420, 480, 485, 503, 526, 531, 532, 551-553, 588, 610, 620, 717, 760, 780, 783, and
2 799.

3 K. The Board recognizes that the West Tigard Community Plan was adopted by
4 Ordinance Nos. 263 and 265 and subsequently amended by Ordinance Nos. 292, 294, 480,
5 601, and 799.

6 L. The Board recognizes that the West Union Community Plan was adopted by
7 Ordinance Nos. 263 and 265 and subsequently amended by Ordinance Nos. 420, 480, 551,
8 588, 610, 671, 694, 783, and 799.

9 M. The Board recognizes that the Community Development Code Element of the
10 Comprehensive Plan (Volume IV) was readopted with amendments on September 9, 1986, by
11 way of Ordinance No. 308, and subsequently amended by Ordinance Nos. 321, 326, 336-341,
12 356-363, 372-378, 380, 381, 384-386, 392, 393, 397, 399-403, 407, 412, 413, 415, 417,
13 421-423, 428-434, 436, 437, 439, 441-443, 449, 451-454, 456, 457, 462-464, 467-469, 471,
14 478-481, 486-489, 504, 506-512, 517-523, 525, 526, 528, 529, 538, 540, 545, 551-555,
15 558-561, 573, 575-577, 581, 583, 588, 589, 591-595, 603-605, 607-610, 612, 615, 617, 618,
16 623, 624, 628, 631, 634, 635, 638, 642, 644, 645, 648, 649, 654, 659-662, 667, 669, 670, 674,
17 676, 677, 682-686, 692, 694-698, 703, 704, 708, 709, 711, 712, 718-720, 722, 725, 730, 732,
18 735, 739, 742-745, 754-758, 760, 762, 763, 765, 766, 769-776, 782-788, 791, 792, 797-802,
19 804, 809-811, 813-815, 820, 822-824, 826-828, 831-835, 838, 840-842, 845-847, 851, 853,
20 855-859, 864, 866, and 867.

21 N. On June 1, 2020, the Land Conservation and Development Commission issued
22 an enforcement order requiring Washington County to amend its comprehensive plan with

1 regard to specific aspects of its significant natural resource regulations to comply with ORS
2 197.307(4) on or before May 1, 2021. ORS 197.307(4) requires local governments to apply
3 only clear and objective standards, conditions, and procedures to the development of needed
4 housing within the urban area. The Board recognizes that such changes are necessary for the
5 health, safety, and welfare of the residents of Washington County, Oregon.

6 O. Under the provisions of Washington County Charter Chapter X, the
7 Department of Land Use and Transportation has carried out its responsibilities, including
8 preparation of notices, and the County Planning Commission has conducted one or more
9 public hearings on the proposed amendments and has submitted its recommendations to the
10 Board. The Board finds that this Ordinance is based on that recommendation and any
11 modifications made by the Board are a result of the public hearings process.

12 P. The Board finds and takes public notice that it is in receipt of all matters and
13 information necessary to consider this Ordinance in an adequate manner and finds that this
14 Ordinance complies with the Statewide Planning Goals, the standards for legislative plan
15 adoption as set forth in Chapters 197 and 215 of the Oregon Revised Statutes, the Washington
16 County Charter, the Washington County Community Development Code, and the Washington
17 County Comprehensive Plan.

18 SECTION 2

19 The following exhibits, attached hereto and incorporated herein by reference, are
20 adopted as amendments to the designated document as follows:

21 A. Exhibit 1 (1 page) amends the Rural/Natural Resource Plan 'Goal 5
22 Resources' Map.

1 B. Exhibit 2 (1 page) amends the Community Plans ‘Significant Natural and
2 Cultural Resources’ maps.

3 C. Exhibit 3 (13 pages) amends the following provisions of the Community
4 Development Code:

5 1. Section 422 – Significant Natural Resources.

6 D. Exhibit 4 (5 pages) amends the following provisions of the Community
7 Development Code:

8 1. Section 106 – Definitions;

9 2. Section 201 – Development Permit;

10 3. Section 404 – Master Planning;

11 4. Section 407 – Landscape Design; and

12 5. Various Sections.

13 SECTION 3

14 All other Comprehensive Plan provisions that have been adopted by prior ordinance,
15 which are not expressly amended or repealed herein, shall remain in full force and effect.

16 SECTION 4

17 All applications received prior to the effective date shall be processed in accordance
18 with ORS 215.427.

19 SECTION 5

20 If any portion of this Ordinance, including the exhibit, shall for any reason be held
21 invalid or unconstitutional by a body of competent jurisdiction, the remainder shall not be
22 affected thereby and shall remain in full force and effect.

1 SECTION 6

2 The Office of County Counsel and Department of Land Use and Transportation are
3 authorized to prepare planning documents to reflect the changes adopted under Section 2 of
4 this Ordinance, including deleting and adding textual material and maps, renumbering pages
5 or sections, and making any technical changes not affecting the substance of these
6 amendments as necessary to conform to the Washington County Comprehensive Plan format.


7 SECTION 7

8 This Ordinance shall take effect December 15, 2020.

9 ENACTED this 27 day of October, 2020, being the 4th reading
10 and 4th public hearing before the Board of County Commissioners of Washington
11 County, Oregon.

12 BOARD OF COUNTY COMMISSIONERS
13 FOR WASHINGTON COUNTY, OREGON

14 ADOPTED

15 
CHAIR KATHRYN HARRINGTON
16 
RECORDING SECRETARY


17 READING

PUBLIC HEARING

18 First 9.15.20
19 Second 9.29.20
20 Third 10.20.20
21 Fourth 10.27.20
22 Fifth _____
Sixth _____

18 First 9.15.20
19 Second 9.29.20
20 Third 10.20.20
21 Fourth 10.27.20
22 Fifth _____
Sixth _____

VOTE: Aye: Harrington, Schouten, Treece, Willeg, Rogers Nay: _____

Recording Secretary:  Date: 10.27.20

The 'Goal 5 Resources' Map of the RURAL/NATURAL RESOURCE PLAN is amended to reflect the following:

- References to 'Water Area & Wetland and Fish & Wildlife Habitat' will be changed to 'Water-Related Fish and Wildlife Habitat'
- References to 'Wildlife Habitat' will be changed to 'Upland/Wildlife Habitat'

The 'Significant Natural and Cultural Resources' maps of the ALOHA – REEDVILLE – COOPER MOUNTAIN, BETHANY, BULL MOUNTAIN, CEDAR HILLS – CEDAR MILL, EAST HILLSBORO, METZGER – PROGRESS, RALEIGH HILLS – GARDEN HOME, SHERWOOD, SUNSET WEST, WEST TIGARD AND WEST UNION COMMUNITY PLANS are amended to reflect the following:

- References to 'Water Area and Wetland and Fish and Wildlife Habitat,' 'Water Area and Wetlands & Fish and Wildlife Habitat,' 'Water Area/Wetland and Fish/Wildlife Habitat' and 'Water Area & Wetland and Fish and Wildlife Habitat' will be changed to 'Water-Related Fish and Wildlife Habitat'
- References to 'Wildlife Habitat' will be changed to 'Upland/Wildlife Habitat'

Sections of the COMMUNITY DEVELOPMENT CODE are amended to reflect the following:

1. SECTION 422 – SIGNIFICANT NATURAL RESOURCES

422-1 Intent and Purpose

The intent and purpose of this Section ~~these standards~~ is to permit limited and safe development in areas with identified significant natural resources, while providing for the identification, protection, enhancement and perpetuation of natural sites, features, objects and organisms within the county, here identified as important for their uniqueness, psychological or scientific value, fish and wildlife habitat, educational opportunities or ecological role.

Development on sites with Significant Natural Resources ~~within riparian areas, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat~~ shall comply with the requirements of this Section and all applicable local, state and federal regulations ~~or guidelines~~.

422-2 Lands Subject to this Section

Those areas generally identified in the applicable community plan or the Rural/Natural Resource Plan Element as one of the Significant Natural Resources described below and verified on-site through the process described in Section 422-3.1. ~~and a~~ Areas identified as Class I and II Riparian Habitat Regionally Significant Fish & Wildlife Habitat on Metro's current Regionally Significant Fish & Wildlife Habitat Inventory Map shall be evaluated using the field verification methodology and process in Section 422-3.1.

Significant Natural Resources have been classified in the cCommunity pPlans or the Rural/Natural Resource Plan Element by the following categories:

422-2.1 **Water Areas and Wetlands.** 100-year flood plain, drainage hazard areas, ponds, except those already developed.

422-2.2 ~~Water-Related Areas and Wetlands and Fish and Wildlife Habitat.~~ Water areas and wetlands related areas that are also fish and wildlife habitat, including the Riparian Corridor.

422-2.3 **Upland/Wildlife Habitat.** Identified s ~~Sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map, and,~~ including forested areas coincidental with water areas and wetlands.

422-2.4 **Significant Natural Areas.** Sites of special importance, in their natural condition, for their ecological, scientific, and educational value.

422-3 Submittal Requirements ~~Criteria for Development~~

422-3.1 An application for development on a site that contains or is within 100 feet of a mapped or otherwise established Significant Natural Resource area as described in

Section 422-2 must submit the following materials in addition to the required master plan and site analysis in Section 404, which includes an identified natural resource shall:

422-3.1 A Significant Natural Resources Field Verification (Field Verification) that identifies the limits of any applicable Significant Natural Resource area located on the site, as described below.

A. Water Areas and Wetlands. Identification of limits of resources based on the following:

(1) Oregon Department of State Lands (DSL) methodology for delineating water areas and wetlands found in the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual (1987 Manual) or its successor and/or Chapter 3 of the most current Clean Water Services (CWS) Design and Construction Standards for the Water Quality Sensitive Area (Sensitive Area). Permit/assessment-related materials submitted to DSL or CWS may be used to satisfy this requirement.

(2) Methodology in Section 421 for flood plain and drainage hazard areas.

B. Water-Related Fish and Wildlife Habitat. Identification of limits of resources based on the following:

(1) Chapter 3 of the most current CWS Design and Construction Standards for the Vegetated Corridor. A CWS Service Provider Letter may be used to satisfy this requirement.

(2) Section 106 definition of Riparian Corridor.

C. Upland/Wildlife Habitat. Identification of limits of resources based on delineation of the outer drip-line boundary of the tree canopy cover identified in Section 422-3.4 (tree inventory) and described in Section 422-3.5 (Habitat Assessment).

A. Identify the location of the natural resource(s), except in areas where a Goal 5 analysis has been completed and a program decision adopted pursuant to OAR 660, Division 23 (effective September 1, 1996);

422-3.2B. Extent of ground disturbance proposed for development, description of the treatment or proposed alteration to the field-verified Significant Natural Resource area, and identification of the proposed area of preservation when required per Section 422-5, if any. Any alteration proposed pursuant to Section 422-3.1 B. shall be consistent with the program decision for the subject natural resource; and

422-3.3C. A description of how the design elements of the applicable Community Plan apply to the urban development site; or how the Rural/Natural Resource Plan Element, Policy 10, Implementing Strategy e. applies to the rural development site. which states:

~~"Implement the recommendations of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County and to mitigate the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations."~~

422-3.4 A tree inventory as required in Sections 404 and 407.

422-3.5 A Habitat Assessment that identifies the size, extent and type of wildlife habitat located in the field-verified Water-Related Fish and Wildlife Habitat and Upland/Wildlife Habitat. The Assessment will evaluate and rate the different habitat values using the methodology outlined in the Habitat Assessment Guidelines.

422-3.6 For development applications outside the UGB that contain mapped Significant Natural Resources, the Review Authority may, at its discretion, waive submittal requirements of Section 422-3 when proposed development is more than 100 feet from significant natural resource areas mapped as Water Areas and Wetlands or Water-Related Fish and Wildlife Habitat and the submittal addresses how Rural/Natural Resource Plan Element Policy 10, Implementing Strategy e. applies to the development site (Section 422-3.3).

~~422-3.2~~ ~~Open Space Inside the UGB:~~ [Section moved to end]

~~A.~~ Shall be identified as provided in Section 404-1, Master Planning Site Analysis;

~~B.~~ When located in a park deficient area as identified on the significant natural resource map, the applicant shall notify the appropriate park provider of the proposed development.

422-3.34 **Allowable Uses and Activities within Significant Natural Resource Areas**

Development within a field-verified Riparian Corridor, Water Areas and Wetlands, and Water-Related Areas and Wetlands and Fish and Wildlife Habitat is subject to the following:

422-4.1A. No new or expanded alteration of the vegetation or terrain of the Riparian Corridor (as defined in Section 106) or a significant water area or wetland (as identified in the applicable Community Plan or the Rural/Natural Resource Plan) shall be allowed except for the following: uses and activities:

~~(1A.)~~ Construction, maintenance and repair of streets, street crossings for streets, roads or other public transportation facilities.

~~(2B.)~~ Construction or reconstruction of streets, roads or other public transportation facilities.

~~(3)~~ Installation, maintenance or construction of the following utilities: sanitary and storm sewer and water lines, electric, communication and signal lines; and gas distribution and transmission lines.

- ~~(C.4)~~ Wildlife viewing areas and recreation or nature trails.
- ~~(D.5)~~ Bank maintenance, restoration or stabilization, including riprapping for erosion control, of a river or other watercourse or body of water provided there is compliance with the requirements of Section 421-4.6. ~~This use is not subject to Section 422-3.5 or Section 422-3.6, and the applicant's CWS Service Provider Letter or associated permit materials submitted to DSL and/or the U.S. Army Corps of Engineers (USACE).~~
- ~~(E.6)~~ Detached dwellings and accessory structures on a lot of record, provided there is insufficient suitable, existing buildable land area to permit construction outside the verified riparian corridor ~~(as defined in Section 406) or a significant Wwater Aarea andor Wwetland or Water-Related Fish and Wildlife Habitat (as identified in the applicable Community Plan or the Rural/Natural Resource Plan)~~ and all required local, state or federal permits are obtained. Sufficient buildable land area is defined as the area required for the proposed structures plus a 10-foot perimeter around the proposed dwelling.
- ~~(F.7)~~ An alteration as required by the applicant's CWS Service Provider Letter or as permitted by DSL or the USACE. ~~Where it can be demonstrated, with concurrence of the Clackamas District biologist or other applicable district biologist of the Oregon Department of Fish and Wildlife, that a riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat has been degraded, an enhancement of these areas which conforms to the definition and criteria listed in Section 422-3.4 may be permitted through a Type II procedure.~~
- ~~Enhancement or alteration of a non-degraded portion of these areas is permitted when it is in conjunction with and it is needed to support the enhancement of the degraded area. Where development is proposed that would have negative impacts on these areas it is the county's policy to follow state and federal regulatory guidelines for mitigation proposals.~~
- ~~(G.8)~~ All activities and uses associated with an expansion or alteration of Barney Reservoir and Henry Hagg Lake/Scoggins Dam; including but not limited to impoundment structures, water diversion and transmission facilities, road construction and related land alterations. Such activities and uses may be permitted through a Type III procedure.
- H. All public use airport related uses and activities allowed pursuant to Section 387-4.
- I. Wetland mitigation, creation, enhancement and restoration within public use airport approach surface areas and airport direct impact boundaries shall be allowed upon demonstration of compliance with the requirements of Section 388-9.
- J. Fencing adjacent to stream buffers or other wildlife habitat areas, if it is split rail or other design that allows for the passage of wildlife by meeting the following design requirements:

(1) The lowest horizontal fence element must be at least 18 inches off the ground for passage of fawns and smaller mammals.

(2) The highest horizontal fence element must be no more than 42 inches in height to allow adult deer or elk passage.

(3) Fencing shall not include woven wire, cyclone fencing, or contain barbed wire elements.

422-4.2 ~~(9) In addition, in the Rural/Natural Resource Area~~ within all Significant Natural Resource areas outside the UGB, the following uses and activities are permitted:

A.(a) Propagation or harvesting of timber for personal consumption, provided that the use of a caterpillar tractor, yarder, backhoe, grader or similar heavy mechanized equipment is prohibited;

B.(b) Commercial forestry activities when in compliance with the Oregon Forest Practices Act and Administrative Rules; ~~and~~

C.(c) Farming or raising of livestock not utilizing a structure; ~~and~~.

D.(d) Operations for the exploration for and production of geothermal resources, oil and gas.

422-4.3C. Where development or alteration of the Riparian Corridor is permitted under the above exceptions, the flood plain and drainage hazard area development criteria in Section 421 shall be followed.

~~Fencing adjacent to stream buffers or other wildlife habitat areas shall be designed to allow the passage of wildlife. Designs must incorporate openings appropriately sized and spaced to accommodate passage of wildlife common to urban Washington County (common mammals needing access to streams in urban Washington County include but are not limited to: deer, beaver, coyote, muskrat, rabbit, raccoon and skunk).~~

422-3.4 ~~Enhancement of a degraded riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat permitted by Section 422-3.3 A. (7) shall meet the following:~~

A. ~~For the purposes of Section 422-3.3 A. (7) an enhancement is a modification, as a result of which no later than 5 years after completion of the project, the quality and/or quantity of the natural habitats is measurably improved in terms of animal and plant species numbers, number of habitat types, and/or amount of area devoted to natural habitat.~~

B. ~~Proposal Preparation~~

~~In order to determine whether a proposed modification will result in an enhancement, preparation of the proposal, as well as construction and planning work, shall be guided by a professional wildlife biologist or ecologist with experience and credentials in water areas/wetlands and riparian areas enhancement and who has reviewed the sources and their relevant references listed in Section 422-3.4.~~

C. ~~Submittal Requirements~~

- (1) ~~The proposal shall include detailed information and mapping of the site, including all of the following subjects:~~
- (a) ~~Hydrology, including 100-year flood and 25-year flow events/surface water flow patterns, and groundwater information, if available;~~
 - (b) ~~Substrate(s) and existing rates of sedimentation;~~
 - (c) ~~Existing vegetation, including species list and community types, with approximate percent coverage, and all trees 6 inches in diameter or larger;~~
 - (d) ~~Animal life census (macrofauna species list), preferably based on mid-April to mid-May field observations, but at least conducted during spring, summer and/or early fall.~~
- (2) ~~The proposal shall include a color photographic record (taken sometime between mid-spring and mid-fall) showing the major portion of the site at sufficient detail to compare with the later transformation.~~
- (3) ~~The proposal shall include a map showing the expected outcome of the proposed enhancement, with detailed description of how this is to be accomplished.~~
- (a) ~~To the maximum feasible extent, the overall design of the site shall minimize parking and human activity directly adjacent to the Significant Natural Resource, and where avoidable shall incorporate special design techniques (e.g., thick or thorny vegetation or fencing) to reduce adverse impacts such as littering and harassment of wildlife and damage to vegetation.~~
 - (b) ~~A surrounding vegetation buffer of closely spaced (6 feet to [8 feet]) trees and shrubs shall be included within the outer 25 feet of the Significant Natural Resource area unless there are special circumstances or design measures.~~
 - (c) ~~All plant materials shall be indicated in terms of number and size. Except for the outer perimeter of the buffer area, all plants shall be of a native species unless agreed to by the Clackamas District biologist or other applicable district biologist of the Oregon Department of Fish and Wildlife.~~
 - (d) ~~As many existing trees over 6 inches in diameter as possible shall be preserved.~~
 - (e) ~~Vegetation plantings (e.g., trees and shrubs) which overhang standing water are encouraged. (Native vegetation is preferred.)~~
 - (f) ~~Measures for the prevention of undesirable monotypic plant dominance, especially reed canary grass and blackberries, shall be included, such as periodic removal or application of herbicides agreed to by the Clackamas District biologist or other applicable district biologist of the Oregon Department of Fish and Wildlife.~~

- ~~(g) Ponds shall have varying open water depth up to a least 3 feet, unless required otherwise by the Oregon Department of Fish and Wildlife, Oregon Division of State Lands or the U.S. Corps of Engineers, and where the natural grade permits shall have gently sloped shores on at least two sides.~~
- ~~(h) Islands are encouraged to be two feet above normal water level, flat topped, spaced every one quarter acre of open water, and no smaller than 450 square feet where possible.~~
- ~~(i) Rocks and large tree trunks are encouraged to be placed in water areas.~~
- ~~(4) The proposal shall be submitted by Washington County to the biologist for the Clackamas District or other applicable district biologist of the Oregon Department of Fish and Wildlife for review and comment, as well as to other regulating agencies with jurisdiction to review the proposed enhancement, including the Division of State Lands and the Army Corps of Engineers.~~
- ~~(5) The proposal shall include arrangement to ensure frequent and regular litter or trash clean-up unless dedicated to Tualatin Hills Park and Recreation District or any other jurisdiction.~~
- ~~(6) As an alternative to the submittal requirements identified above, Clean Water Services (CWS) may provide the applicable U.S. Army Corps of Engineers or Oregon Department of State Lands permit and/or a CWS Service Provider Letter which demonstrates compliance.~~

~~D. Follow-up Requirements~~

- ~~(1) The county shall require as a condition of approval that a detailed report by a wildlife biologist or ecologist, with map and color photographs, shall be submitted to the county by the current property owner 2 years after completion of the modification and again after 5 years. The reports shall document the current condition of the resource. These two follow-up reports shall be submitted by the county to the biologist for the Clackamas District or other applicable district for review and comment. If the approved enhancement plan has not been completed in 5 years, the current property owner shall submit plans to the county Department of Land Use & Transportation for rectifying any significant deficiencies. Once approved, the amended plan shall be implemented.~~
- ~~(2) The county may modify or revoke the development permit for the enhancement, or take other necessary enforcement measures to ensure compliance with these standards.~~
- ~~(3) As an alternative to the reporting requirements identified in D.(1) and (2) above, CWS may submit applicable U.S. Army Corps of Engineers or Oregon Department of State Lands monitoring reports 2 years after completion of the modification and again after 5 years.~~

422-5 Tree Preservation in Habitat Area(s)

These standards are intended to encourage the preservation of stands of trees and other vegetation providing habitat value in or near existing habitat, particularly native species, and ensure such preservation occurs prior to development, while allowing development as envisioned in community plans.

422-5.1 Applicability

Inside the UGB, the following tree preservation criteria apply to review of Type II and III development actions. As used in this section, Habitat Area consists of the field-verified Upland/Wildlife Habitat plus any portion of the Riparian Corridor located outside the CWS Vegetated Corridor.

422-5.2 Exceptions

The following are not subject to Section 422-5:

- A. Tree removal permitted under Section 407-3 (Tree Preservation and Removal).
- B. Construction or alteration of a residence or accessory structure when located on an existing lot or parcel created prior to November 27, 2020.
- C. A building permit for a previously approved development project, as long as the lotting pattern has not been modified and the land division was approved prior to November 27, 2020.
- D. Development associated with the regionally significant educational or medical facilities at Portland Community College, Rock Creek Campus, 17865 N.W. Springville Road, Portland as identified on Metro's Regionally Significant Educational or Medical Facilities Map.
- E. Development on a site with a Habitat Area of less than 2,000 square feet.

422-5.3 Required Preservation Area(s)

Preservation of a portion of the total Habitat Area on the development site is required, as follows:

- A. The area required for preservation (Preservation Area) shall be determined based on either (1) or (2), below, but shall in no case be less than 500 square feet:
 - (1) A minimum of 25% of the Habitat Area (Option 1); or
 - (2) A minimum of 15% of the Habitat Area, when located adjacent to an on- or off-site Riparian Corridor or CWS Vegetated Corridor (Option 2).

B. The Preservation Area(s) shall:

- (1) Be configured to result in a linear corridor or a cluster of trees.
- (2) If using 422-5.3 A. (2) (Option 2), contain a minimum number of trees and associated understory shrubs, meeting one of the following:

	<u>A</u>	<u>B</u>
<u>Minimum Amount</u>	<u>5 large trees and at least 10 understory shrubs</u>	<u>10 smaller trees and at least 10 understory shrubs</u>
<u>Description</u>	<u>Deciduous canopy trees, as defined in Section 106, of 12" Diameter at Breast Height (DBH) or greater with overlapping canopy or conifer trees of 24" DBH or greater.</u> <u>Understory shade tolerant perennial woody shrubs with multiple woody stems less than 30' at mature growth.</u>	<u>Deciduous canopy trees, as defined in Section 106, of 6" – 12" DBH or greater with overlapping canopy or conifer trees of 12" DBH or greater.</u> <u>Understory shade tolerant perennial woody shrubs with multiple woody stems less than 30' at mature growth.</u>

C. Additional Standards

Preservation Areas are subject to the following requirements:

- (1) Native trees and understory vegetation shall be retained.
- (2) The Preservation Area shall be enhanced to Good Condition, as defined in the Habitat Assessment Guidelines. Invasive species shall be removed, and native plants shall be installed and maintained in accordance with Section 407-8.
- (3) Trees in a hazardous condition, as determined by a certified arborist, may be felled for safety. The trunk and stump shall be left within the Preservation Area to serve as habitat for wildlife, unless diagnosed by a certified arborist with a disease necessitating removal to protect the remaining trees.
- (4) The propagation or harvesting of timber for personal consumption or commercial sales is prohibited.
- (5) Area shall be preserved in a nonbuildable tract or conservation easement subject to deed restrictions that provide for ownership and maintenance responsibility by a homeowners' association or other property owner(s).

(6) To ensure any planting done to achieve Good Condition is successfully established, by February 15 of the second year following the planting, the applicant or owner shall submit to Current Planning Services a monitoring and maintenance report prepared by a certified forester or landscape architect that includes:

(a) Dates of inspection(s).

(b) Status of plantings.

To ensure plant establishment and retention, if less than 75% of plants have been retained, the report shall provide recommendations for plant care and replacement of any dead or dying plants.

422-5.4 Activities Within the Preservation Area (Encroachments)

Activities that occur within the required Preservation Area(s) (Encroachments) are prohibited unless they meet the following:

A. Allowed encroachments into the required Preservation Area(s):

(1) Fencing adjacent to stream buffers or other wildlife habitat areas, if it is split rail or other design that allows for the passage of wildlife by meeting the following design requirements:

(a) The lowest horizontal fence element must be at least 18 inches off the ground for passage of fawns and smaller mammals.

(b) The highest horizontal fence element must be no more than 42 inches in height to allow adult deer or elk passage.

(c) Fencing shall not include woven wire, cyclone fencing, or contain barbed wire elements.

(2) Bank maintenance, restoration or stabilization, including riprapping for erosion control, of a river or other watercourse or body of water provided there is compliance with the requirements of Section 421-4.6 and current CWS *Design and Construction Standards* (as applicable).

(3) Alteration of the Riparian Corridor, Sensitive Area, or Vegetated Corridor as approved through a CWS Service Provider Letter.

(4) Installation, maintenance or construction of the following utilities: sanitary and storm sewer and water lines, electric, communication and signal lines; and gas distribution and transmission lines.

(5) Wildlife viewing areas and recreation or nature trails.

(6) Maintenance activities, including restoration planting and replacement or upkeep of viewing areas and trails.

B. Required replacement planting for encroachment in Preservation Area(s)
When any area is disturbed by an allowed encroachment, such encroachment shall be identified in the master plan and site analysis, including identification of trees proposed for removal consistent with Section 407-3.3 B. Replacement planting that meets the following standards is required:

(1) Any trees removed from the Preservation Area(s) must be replaced using the methodology listed in (a) or (b) below that results in the greater number of replacement trees and understory shrubs.

(a) Size of trees:

<u>Size of tree to be removed (DBH, in inches)</u>	<u>Number of native trees and understory shrubs to be planted</u>
<u>6-12</u>	<u>2 trees and 3 shrubs</u>
<u>13-18</u>	<u>3 trees and 6 shrubs</u>
<u>19-24</u>	<u>5 trees and 12 shrubs</u>
<u>25-30</u>	<u>7 trees and 18 shrubs</u>
<u>Over 30</u>	<u>10 trees and 30 shrubs</u>

(b) Area of encroachment. One native tree and 5 native understory shrubs for every 100 square feet of encroachment into the Preservation Area(s).

(2) The application narrative shall identify which option will be utilized and address how it results in the greater number of replacement trees and understory shrubs.

(3) Replacement planting must be completed prior to the issuance of any certificate of occupancy. Installation and maintenance shall occur in accordance with Section 407-8.

(4) All replacement planting must occur on the applicant's site, either within or contiguous to the Preservation Area(s); provided, however, that if the planting occurs outside the Preservation Area(s) the applicant shall cause the planted area to be preserved by executing a deed restriction, such as a restrictive covenant.

422-5.5 Unauthorized Removal

Unauthorized removal of trees in the Preservation Area is subject to the compliance standards in Section 215 (Code Compliance). Notwithstanding Section 215, unauthorized removal of trees may be mitigated subject to compliance with the standards of 422-5.3.

422-3.56 Significant Natural Areas

A. Within the UGB, the features of significance for each Significant Natural Area are identified by the applicable community plan. In order to reduce impacts on the identified unique or fragile character or features of the Significant Natural Area, development plans shall provide:

- (1) Screening and buffering landscaping that meets or exceeds that required by Section 411-6.3, located between the identified significant features and the proposed use on the site; and
- (2) A 20-foot setback from features of significance to proposed structures and any formal outdoor gathering spaces.

B. Outside the UGB, any development requiring a permit from Washington County which is proposed in a Significant Natural Area, as identified by the applicable Community Plan or the Rural/Natural Resource Area Plan Element, shall reduce its impact, to the maximum extent feasible, on the unique or fragile character or features of the Significant Natural Area. Appropriate impact reducing measures shall include:

- (1)A. Provision of additional landscaping or open space; and
- (2)B. Relocation of the proposed site of a building, structure or use on the lot.

422-3.67 Water-Related Wildlife Habitat or Upland/Wildlife Habitat outside the UGB

For any proposed use in a Significant Natural Resource Area Water-Related Wildlife Habitat or an Upland/Wildlife Habitat outside a UGB and as identified in the Rural/Natural Resource Plan, there shall be a finding that the proposed use will not seriously interfere with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, or how the interference can be mitigated. This section shall not apply in areas where a Goal 5 analysis has been completed and a program decision has been adopted that allows a "conflicting use" to occur pursuant to OAR 660-023-0040(5)(c) (effective September 1, 1996).

422-8 Open Space Inside the UGB: [moved from former Section 422-3.2]

Open Space identified on a Significant Natural and Cultural Resources map in a community plan:

A. Shall be identified as provided in Section 404-1, Master Planning - Site Analysis.

B. When located in a park deficient area as identified on the map, the applicant shall notify the appropriate park provider of the proposed development.

422-49 Density Transfer

Areas designated as a Significant Natural Resource may be eligible for density transfer as specified in Section 300-3.

422-510 State and Federal Regulatory ~~Guidelines~~ Requirements

Development within a Significant Natural Resource Area field-verified boundary ~~riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat,~~ shall obtain all required local, state and federal permits.

422-11 Goal 5 Mineral and Aggregate Resources

The provisions of Section 422 are superseded by those of Policy 7 of the Rural/Natural Resource Plan and OAR 660-023-180 for the development of new or expanded Goal 5 Mineral and Aggregate Resources.

Sections of the COMMUNITY DEVELOPMENT CODE are amended to reflect the following:

1. SECTION 106 – DEFINITIONS

106-68 Drip-line boundary. The outermost edge of the canopy of an individual tree or the canopy of a group of trees; when delineating the drip line on the ground, it will appear as an irregular shape defining the canopy's perimeter.

2. SECTION 201 – DEVELOPMENT PERMIT

201-2 Exclusions from Permit Requirement

The following activities are permitted in each district but are excluded from the requirement of obtaining a development permit. Exclusion from the permit requirement does not exempt the activity from otherwise complying with all applicable standards, conditions and other provisions of this Code. The activities set forth below are not excluded from the requirement to obtain approval of erosion control measures to the extent the activity is subject to Section 426.

201-2.6 Propagation or cutting of trees ~~except as specified in Section 407-3~~ provided the trees are not designated as a Significant Natural Resource area in an urban Community Plan, designated for preservation through the master planning process for a development, designated for preservation in a prior development action or when inside the UGB, located within a flood plain or drainage hazard area;

3. SECTION 404 – MASTER PLANNING

404-4 Planned Development

The Planned Development review process provides flexibility in standards and the location of permitted uses, compensated through innovative design and the provision of common or private open space and/or the preservation of Significant Natural Resources. The Planned Development review process shall not be utilized in transit oriented districts or in the North Bethany Subarea of the Bethany Community Plan. The Planned Development standards applicable to the North Bethany Subarea are in Section 390-17.

404-4.1 Planned Development Review

Modifications to development standards as detailed in this Section may be approved through a Planned Development review process if the applicant submits written evidence and site and building plans to support the requested modifications and there is a finding by the Review Authority that the following can be achieved by the proposal:

- C. Site design retains to the greatest extent feasible existing natural features, such as drainage swales, slopes, ridgelines, rock outcroppings, vistas, natural plant formations and trees; ~~and~~
- D. Open space and recreational facilities are provided as required in this Section, and are improved and landscaped to reflect the intended character of the development; and
- E. Significant Natural Resource areas are preserved as required in this Section.

404-4.4 Modification of Standards through the Planned Development.

Upon submission of an on- and off-site Site Analysis as described in Section 404-1, and Section 422 as applicable, and when the request conforms to the standards of this Code, the Review Authority may modify the standards below within the prescribed limits.

404-4.5 Standards for Required Open Space

Site design shall comply with the following standards for open space:

- E. Areas used as Planned Development required open space shall be approved by the Review Authority. Open space shall be in addition to that required by Section 405-1 and other Code standards, except as listed below.
 - (1) Commercial or Institutional Planned Development proposals shall be allowed to count the following area(s) on the subject property as Planned Development open space as specified below, provided that the area(s) are not used for parking (see Section 421-13).
 - (a) on the subject pProperty mapped or delineated as Water Areas and Wetlands or flood plain, drainage hazard, wetland, wetland buffer, Water-Related Fish and Wwildlife Hhabitat per Section 422, riparian identified as open space area, or otherwise designated as a Significant Natural Resource in a Community Plan, toward up to 50% of Planned Development open space, ~~provided that the area is not used for parking (see Section 421-13).~~
 - (b) Property delineated under Section 422 as Upland/Wildlife Habitat or Riparian Corridor outside CWS Vegetated Corridor and preserved in a nonbuildable tract or conservation easement, toward up to 100% of Planned Development open space.
 - (2) Planned Developments that include residential dwelling units shall be allowed to count the following area(s) on the subject property as Planned Development open space as specified below, provided that the area(s)

are not used for parking (see Section 421-13). Amenities such as boardwalks, paths, trails and/or viewing areas that are accessible to all residents and/or tenants of the development must be provided in, or adjacent to, these areas.

~~(a) Property mapped or delineated as Water Areas and Wetlands or flood plain, drainage hazard, wetland, wetland buffer, Water Related Fish and Wildlife Habitat per Section 422, riparian identified as open space area, or otherwise designated as a Significant Natural Resource in a Community Plan, toward up to 20% of Planned Development open space, provided that the area is not used for parking (see Section 421-13). Amenities such as boardwalks, paths, trails and/or viewing areas that are accessible to all residents and/or tenants of the development must be provided in, or adjacent to, these areas.~~

(b) Property delineated under Section 422 as Upland/Wildlife Habitat or Riparian Corridor outside CWS Vegetated Corridor and preserved in a nonbuildable tract or conservation easement, toward up to 100% of Planned Development open space.

- (3) Areas of the site that are used to meet requirements of Section 411 (Screening and Buffering) may count toward Planned Development open space requirements, provided they meet the standards listed in 404-4.5 D. (1) and (2).

F. Recreational Facilities Standards for Open Space

Open space required by Section 404-4.5 A. shall meet the following standards for recreational facilities:

- (3) Pedestrian and bicycle facilities required by Section 408 may not be counted as Planned Development recreational facilities. However, pedestrian and bicycle facilities on the development site required by Section 408 may count toward the open space requirement in 404-4.5 A. (1) and (2), provided they meet the standards listed in 404-4.5 D. (1) and (2).

- (4) Recreational facilities used to meet requirements of Section 404-4.5 F.:

~~(a) May be placed within the Planned Development open space or within a building (such as a fitness center).~~

(b) May be placed within the Planned Development open space, except that allowed recreational facilities are limited to viewing platforms, wildlife observation areas, and/or bike and pedestrian trails within any Significant Natural Resource category described in Section 404-4.5 E. (1) or (2).

~~(c)~~ but s Shall not be located within an area utilized for another Code-required use or activity (including parking and loading, private and public street rights-of-way, solid waste and recycling facilities), except as specifically allowed by this Section; and

~~(5)(d)~~ Recreational facilities used to meet requirements of Section 404-4.5F. m May not include for-profit or fee-for-use facilities.

4. SECTION 407 – LANDSCAPE DESIGN

407-3 Tree Preservation and Removal

407-3.1 Applicability

A permit is required for Section 407-3 applies to all tree removal that is not excluded from development permits required by Section 201-2 or is not in conjunction with another Type II or Type III development action. Tree removal in conjunction with a Type II or Type III development action in areas identified in the applicable Community Plan as Significant Natural Resources is subject to the review standards in Section 422-5.

407-3.2 Exemptions from Tree Removal Permit Requirement

The requirements of Section 407-3 do not apply to the following:

- A. Trees identified and approved for removal through a Type II or III procedure in an approved Development Plan; ~~or~~
- B. Removal of trees in conjunction with the development of a “conflicting use” of a Significant Natural Resource as specified in the applicable community plan, which was allowed pursuant to OAR 660-023-0040(5)(c) (effective September 1, 1996), through a Type IV process; ~~or~~
- C. Trees in a hazardous condition which presents an immediate danger to health or property, except within an approved Preservation Area any hazardous tree removal must meet the requirements of Section 422-5; or
- D. Trees that are removed as part of stream enhancement or ecological rehabilitation activities as directed and approved by Clean Water Services.

407-3.3 Submission Requirements

Applications for tree removal shall include the following information:

- A. Written narrative containing:

- (1) A description of the size, species and condition (e.g., diseased, healthy) of each tree or group of trees, proposed for removal or replacement;
- (2) An explanation of the purpose of removal;
- (3) A description of any associated flood plain or drainage hazard area alterations;
- (4) Findings addressing the application requirements of Section 422; and
- (5) Findings addressing ~~relevant~~ clear and objective design elements of the applicable community plan.

407-3.5 Removal Standards:

- A. Compliance with Section 4225 and any other applicable Code requirement; and

407-8 Installation and Maintenance

407-8.1 Landscape plant materials will be installed to current nursery industry standards (practices detailed in the most current American National Standards Institute (ANSI) A300 Standards).

5. VARIOUS SECTIONS

- References to 'Water Areas and Wetlands and Fish and Wildlife Habitat' will be changed to 'Water-Related Fish and Wildlife Habitat'
- References to 'Wildlife Habitat' will be changed to 'Upland/Wildlife Habitat'



AGENDA

WASHINGTON COUNTY BOARD OF COMMISSIONERS

Agenda Category: Action – Land Use & Transportation (All CPOs)

Agenda Title: ADOPT FINDINGS FOR A-ENGROSSED ORDINANCE NO. 869

Presented by: Stephen Roberts, Director of Land Use & Transportation

SUMMARY:

A-Engrossed Ordinance No. 869 proposes to amend the Community Development Code (CDC) related to significant natural resources (SNR) in the development review process to establish clear and objective standards, clarify requirements and allow protected habitat areas to meet open space requirements in planned developments. A-Engrossed Ordinance No. 869 is posted on the County's land use ordinance webpage at the following link:

www.co.washington.or.us/landuseordinances

Post-acknowledgment comprehensive plan amendments are amendments made to the County's Comprehensive Plan after it was acknowledged by the State Department of Land Conservation and Development as complying with the Statewide Planning Goals. ORS 197.615 requires that such amendments be accompanied by findings setting forth the facts and analysis showing that the amendments are consistent with the applicable Statewide Planning Goals, Oregon Revised Statutes, State Administrative Rules and the applicable provisions of the County's Comprehensive Plan.

Additionally, as required by Title 8 of Metro's Urban Growth Management Functional Plan (UGMFP), any amendment to a comprehensive plan or implementing ordinance shall be consistent with the requirements of the UGMFP.

Attached is the Resolution and Order to adopt the findings for A-Engrossed Ordinance No. 869. Prior to the Oct. 27, 2020 meeting, the proposed findings will be provided to the Board, posted on the above land use ordinance webpage and available at the Clerk's desk.

(continued)

Attachment: Resolution and Order

The ordinance findings are hyperlinked here and are also available at the Clerk's Desk.

DEPARTMENT'S REQUESTED ACTION:

Adopt the findings for A-Ordinance No. 869 and authorize the Chair to sign the Resolution and Order memorializing the action.

COUNTY ADMINISTRATOR'S RECOMMENDATION:

I concur with the requested action.

RO 20-122

ADOPTED

Agenda Item No.	5.c.
Date:	10/27/20

**ADOPT FINDINGS FOR A-ENGROSSED ORDINANCE NO. 869
BOC 10/27/20**

ADDITIONAL INFORMATION:

Community Feedback (Known Support/Opposition):

Feedback on A-Engrossed Ordinance No. 869 is included in the ordinance agenda. No feedback specific to the findings has been received as of October 13.

Legal History/Prior Board Action:

Legal History/Prior Board Action on A-Engrossed Ordinance No. 869 is included in the ordinance agenda.

Budget Impacts: None

1 IN THE BOARD OF COUNTY COMMISSIONERS

2 FOR WASHINGTON COUNTY, OREGON

3 In the Matter of Adopting) RESOLUTION AND ORDER
4 Legislative Findings in Support)
of A-Engrossed Ordinance No. 869) No. RO 20-122
5)

6 This matter having come before the Washington County Board of Commissioners (Board)
7 at its meeting of October 27, 2020; and

8 It appearing to the Board that the findings contained in Exhibit A summarize relevant facts
9 and rationales with regard to compliance with the Statewide Planning Goals, Oregon Revised
10 Statutes and Administrative Rules, Washington County's Comprehensive Plan, and titles of
11 Metro's Urban Growth Management Functional Plan relating to A-Engrossed Ordinance
12 No. 869; and

13 It appearing to the Board that the findings attached and herein incorporated as Exhibit A
14 constitute appropriate legislative findings with respect to the adopted ordinance; and

15 It appearing to the Board that the Planning Commission, at the conclusion of its public
16 hearing on October 7, 2020, made a recommendation to the Board, which is in the record and
17 has been reviewed by the Board; and


18 It appearing to the Board that, in the course of its deliberations, the Board has considered
19 the record which consists of all notices, testimony, staff reports, and correspondence from
20 interested parties, together with a record of the Planning Commission's proceedings, and other
21 items submitted to the Planning Commission and Board regarding this ordinance; it is therefore,

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RESOLVED AND ORDERED that the attached findings in Exhibit A in support of A-Engrossed Ordinance No. 869 are hereby adopted.

DATED this 27th day of October 2020.

BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON


Chair Kathryn Harrington

APPROVED AS TO FORM:


Senior Assistant County Counsel
For Washington County, Oregon



Recording Secretary

EXHIBIT A

FINDINGS FOR A-ENGROSSED ORDINANCE NO. 869

AN ORDINANCE AMENDING THE RURAL/NATURAL RESOURCE PLAN, CERTAIN COMMUNITY PLANS, AND THE COMMUNITY DEVELOPMENT CODE RELATING TO DEVELOPMENT IN AREAS DESIGNATED SIGNIFICANT NATURAL RESOURCES AND PLANNED DEVELOPMENTS

Oct. 27, 2020

Part 1 – General Findings

Part 2 – Statewide Planning Goal Findings

Part 3 – Metro Urban Growth Management Functional Plan Findings

Part 1:

GENERAL FINDINGS

A-Engrossed Ordinance No. 869 amends the Rural/Natural Resource Plan (RNRP), community plans, and the Community Development Code (CDC) relating to significant natural resources (SNRs) in the development review process to ensure standards are clear and objective. Recent state law changes reflected in Oregon Revised Statutes (ORS) § 197.307 require standards that apply to urban residential development applications be clear and objective.

Other changes with this ordinance clarify current significant natural resource requirements, provide consistency and transparency in development project review, address the County's SNR verification process and encourage preservation of additional *Wildlife Habitat* through use of the planned development process. The proposed changes focus on the urban area and have limited impact for sites with SNRs in the rural area.

A-Engrossed Ordinance No. 869 addresses the determination by the Land Use Board of Appeals (LUBA) and affirmed by the Oregon Court of Appeals, that some of the standards in CDC § 422 (Significant Natural Resources) are not clear and objective. It also addresses the Land Conservation and Development Commission (LCDC) Enforcement Order,¹ which found the County out of compliance with Statewide Planning Goal 5 because three CDC natural resource provisions were not clear and objective, and therefore unenforceable as applied to new urban residential development.

A-Engrossed Ordinance No. 869 does not include a new or updated Goal 5 Inventory, new SNR policies or substantial changes to the Goal 5 Program decisions by adopting new standards or processes. The CDC amendments described below are intended to clarify current requirements

¹ Findings, Conclusions, and Enforcement Order 20-ENF-001916 (June 1, 2020)

and ensure they are clear and objective, within the existing policy framework established through the County's Goal 5 Program adopted in the 1980s and more recently updated in keeping with the Tualatin Basin Fish and Wildlife Habitat Program (Tualatin Basin Program) in 2005.

Key Ordinance Provisions

- Clarify requirements for a Habitat Assessment and field verification to confirm boundaries and condition of SNR areas when development is proposed.
- Add references to Clean Water Services (CWS) *Design and Construction Standards* and federal and state agency requirements within the list of allowed uses in *Water-Related Fish and Wildlife Habitat*.
- Replace the section on enhancement of certain degraded water-related habitat with changes that allow such alteration as long as it meets the requirements of the regulatory agencies responsible for alteration and enhancement activities.
- Require a specified percentage of certain habitat area be preserved when development occurs (Preservation Area) with standards for enhancement and planting.
- Allow the entire preserved *Upland/Wildlife Habitat* area to count toward open space requirements for Planned Developments.
- Provide clarifications and add cross references within other sections of the CDC.

Due to the Enforcement Order, the ordinance must address compliance with Oregon's Statewide Planning Goal 5. The County Board of Commissioners (Board) finds that the Goals apply to amendments covered by these findings only to the extent noted in specific responses to other individual applicable Goals, and that each amendment complies with the Goals. Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and Dunes), and 19 (Ocean Resources) and related Oregon Administrative Rules (OARs) are not addressed because these resources are not located within Washington County.

The County is also required to make findings that the amendments are consistent with the requirements of Metro's Urban Growth Management Functional Plan (UGMFP). These findings are addressed in this document.

Part 2: STATEWIDE PLANNING GOAL FINDINGS

The purpose of the findings in this document is to demonstrate that A-Engrossed Ordinance No. 869 is consistent with Statewide Planning Goals (Goals), ORS, OAR requirements, Metro's UGMFP and Washington County's Comprehensive Plan (Plan). The County's Plan was adopted to implement the aforementioned planning documents and was acknowledged by the State of Oregon. The County follows the post-acknowledgement plan amendment (PAPA) process to

update the Plan with new state and regional regulations as necessary and relies in part upon these prior state review processes to demonstrate compliance with all necessary requirements.

Compliance questions were raised in the hearing proceedings described below with Goal 2, Goal 5 and Goal 10. The following precautionary findings are provided to demonstrate compliance.

Goal 1 – Citizen Involvement

Goal 1 addresses Citizen Involvement by requiring the implementation of a comprehensive program to stimulate citizen participation in the planning process. Washington County has an acknowledged citizen involvement program that provides a range of opportunities for citizens and other interested parties to participate in all phases of the planning process. In addition, Chapter X of the County’s Charter sets forth specific requirements for citizen involvement during review and adoption of land use ordinances. Washington County has followed these requirements for the adoption of A-Engrossed Ordinance No. 869.

Staff presented preliminary information about the ordinance at Community Participation Organization (CPO) meetings prior to hearings on the ordinance. Notice of hearings was provided as required. Three Planning Commission and two Board hearings were held on Ordinance No. 869 as filed. On A-Engrossed Ordinance No. 869, further notice of engrossment hearings was provided, the Planning Commission held one hearing, and two hearings were held by the Board.

Goal 2 – Land Use Planning

Goal 2 addresses Land Use Planning by requiring an adequate factual base to support a decision as well as coordination with affected governmental entities. Washington County has an acknowledged land use planning process that provides for the review and update of the various elements of the Plan, which includes documents such as the RNRP, Comprehensive Framework Plan for the Urban Area (CFP), community plans, CDC and Transportation System Plan (TSP). Washington County utilized this process to adopt A-Engrossed Ordinance No. 869.

Notice was coordinated with affected governmental entities, including the Department of Land Conservation and Development (DLCD), Metro, CWS and the Oregon Department of Fish and Wildlife (ODFW). County staff met with each of these agencies in preparation and review of A-Engrossed Ordinance No. 869. No formal comments from these agencies were received regarding the ordinance.

During the hearings, public testimony expressed concern that ODFW should have been more involved with development of A-Engrossed Ordinance No. 869. Although the changes adopted through this ordinance are limited to clarifying existing SNR standards and not initiating changes to the County’s Goal 5 Inventory or Program decision, as noted staff has met and coordinated with ODFW and other agencies to discuss and explain the changes to § 422.

ODFW staff asked clarifying questions about the changes and how they were consistent with current requirements and discussed possible strategies for additional habitat preservation. They acknowledged the County is unique in addressing *Upland/Wildlife Habitat* as an SNR. ODFW was interested in serving on a technical advisory committee if changes to the County inventory or overall program were to be contemplated and in providing guidance on developing the *Habitat Assessment Guidelines*.

The factual basis to support the decision on the ordinance is included in the staff reports, the responses to testimony found in attachments to the staff reports and these findings.

Goal 3 – Agricultural Lands

Goal 3 seeks to preserve and maintain agricultural lands for farm use, consistent with existing and future needs for agricultural products, forest and open space, and with the state's agricultural land use policies. Policy 15, Implementing Strategies (a) and (f), of the RNRP include provisions for the preservation of agricultural lands.

The Exclusive Farm Use (EFU) and Agricultural and Forest (AF-20) land use districts are Washington County's acknowledged exclusive farm use districts. These land use districts incorporate the list of permitted uses in exclusive farm zones in ORS § 215.213 and provide standards for development.

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or land use district standards as they relate to Goal 3 resources. The ordinance retains the limited land uses and exclusions that apply to agricultural land and the applicable Code standards in § 422 for farmland resources. Compliance with Goal 3 is maintained.

Goal 4 – Forest Lands

Goal 4 addresses the conservation of forest lands by maintaining the forest land base and protecting the state's forest economy by making possible economically efficient forest practices. Policy 16, Implementing Strategies (a) and (c) of the RNRP include provisions for the conservation and maintenance of forest lands.

Similar to farmland resources, the County has a forest land use district, Exclusive Forest and Conservation (EFC), that lists permitted uses consistent with statutory allowance identified in OAR Chapter 660, Division 6. A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or land use district standards and retains the applicable CDC standards in § 422 consistent with Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal 5 addresses the protection of natural resources and the conservation of scenic, cultural, and historic areas and open spaces by requiring local programs to protect these resources in order to promote a healthy environment and natural landscape that contributes to Oregon’s livability for present and future generations. In addition, OAR § 660-023-0250 requires application of current Goal 5 provisions to PAPAs when they 1) create or amend a resource list or a portion of an acknowledged plan or land use regulation that protects a significant Goal 5 resource, or 2) allow new uses that could be conflicting uses with a particular Goal 5 site. Policies 10, 11 and 12 of the CFP, Policies 7, 9, 10, 11, 12 and 13 of the RNRP, and various sections of the community plans and the CDC include provisions for the protection of Goal 5 resources.

The County’s SNRs addressed by this ordinance are identified and mapped in community plans for areas within the regional Urban Growth Boundary (UGB) and the RNRP for areas outside of UGBs, subject to state, regional and local requirements.

In the development of A-Engrossed Ordinance No. 869, the County reviewed the comprehensive plan elements related to the County’s Goal 5 Program, the Tualatin Basin Program and supporting documents, relevant legal cases and County development review casefiles, culminating in the preparation of the Significant Natural Resource Program Review and Assessment (May 2020). These materials are incorporated herein by reference.

In the early 1980s, the County completed initial inventories of Goal 5 natural resources, identifying significant fish and wildlife habitat in the County’s urban and rural areas. Policies and standards for identified natural resources were incorporated into the County’s comprehensive planning documents, allowing limited and safe development in areas with inventoried SNRs while identifying, protecting, enhancing and maintaining fish and wildlife habitat areas recognized as important. The County’s Goal 5 Program followed the original Goal 5 process described in OAR Division 16 (660-016-0000 to 0020) and was acknowledged by DLCD in 1983.

CDC § 422 (Significant Natural Resources) outlines the SNR categories, requirements and development review process applicants must follow for development on sites with mapped SNRs. The section outlines specific development standards that will be applied if a development site contains an identified SNR. Currently, regulations for applications on sites with fish and wildlife habitat and/or riparian corridors require identification of the location and extent of the natural resource, and include submittal requirements, a process for enhancing degraded riparian corridors, and certain restrictions on development. One of the criteria, found in § 422-3.6, addresses development impacts by requiring “mitigation” if a development activity “seriously interferes” with the fish and wildlife habitat, a subjective standard.

Changes made to Goal 5 OARs in 1996 gave Metro the authority to plan for fish and wildlife habitat protection in the Portland metropolitan region. As Metro began to develop a regional fish and wildlife habitat protection plan, the County, other local governments and special districts in the Tualatin Basin approached Metro and proposed to develop a program tailored to the Tualatin Basin using Metro’s Regionally Significant Fish and Wildlife Habitat Inventory (Metro Inventory), seeing the opportunity to comprehensively assess natural resource protections for the entire Tualatin Basin.

In 2005, the County coordinated with cities in the County, CWS, Tualatin Hills Park & Recreation District (THPRD) and Metro to adopt a regional comprehensive program for the protection of fish and wildlife habitat in the Tualatin Basin to comply with Metro’s new Goal 5 mandate. This group, the Tualatin Basin Partners, conducted the Goal 5 ESEE² conflicting use analysis of the significant natural resources located near and within the regional UGB to include all waterways that feed the Tualatin River. The Tualatin Basin Partners determined the appropriate level of protection based on the natural resources identified on Metro’s Regionally Significant Fish and Wildlife Habitat Inventory, categorized as Riparian Habitat and Upland Habitat.

The Tualatin Basin Partners worked together to prepare the Tualatin Basin Program, the Goal 5 program for the Tualatin Basin approved by all participating jurisdictions and agencies. It included a regulatory component for riparian habitat resources and a nonregulatory, incentive-based approach to encourage greater habitat protection for new development. This approach was approved by all participating jurisdictions and agencies. The County then adopted the regulatory components of the Tualatin Basin Program through updates to the CDC, the RNRP and policies described in Policy 6 (Water Resources) and 10 (Biological Resources and Natural Areas) of the CFP.

The Metro Council approved the Tualatin Basin Program and incorporated it into the UGMFP under Title 13, Nature in Neighborhoods, discussed further within this document. Metro Council concluded the Tualatin Basin Program had the potential to improve environmental health and habitat conditions, both at the regional and subbasin watershed level.

Since 2005, proposed development on sites with Class I and II Riparian Habitat identified on Metro’s Regionally Significant Fish and Wildlife Habitat Inventory Map (Metro Inventory Map) have been required to adhere to the criteria of § 422. The section also requires projects to comply with other agencies’ permitting processes; for instance, CWS for stormwater management within its service area, and Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Army Corps) for water and wetland permits.

² OAR § 660-023-0040: (1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

Together, Goal 5 processes in 1983 for the entire urban unincorporated area and the Tualatin Basin Program in 2005 for fish and wildlife habitat within the Metro region comprise the County's Goal 5 Program. Both have been acknowledged by DLCD.

LCDC found the County to be out of compliance with Goal 5 because LUBA and the Oregon Court of Appeals determined that three of the provisions in § 422 failed to meet state law requirements mandating development standards be clear and objective. The decisions found that the invalidated portions of § 422 could not be applied to residential development. The changes within this ordinance are intended to modify subjective development standards so that they are clear and objective, consistent with the overall policy direction in the Tualatin Basin Program and the Comprehensive Plan, as well as current practice. The following is a description of the changes to § 422, and other CDC sections related to SNRs and how they maintain and/or ensure consistency and compliance with Goal 5.

Lands Subject to this Section (§ 422-2)

This section includes minor changes to the descriptions of the SNR categories for clarity and to better distinguish between categories. No modifications to the mapped resources are proposed with this ordinance and continue to be found in the Significant Natural and Cultural Resources maps of the community plans and the Goal 5 Resources map of the RNRP.

The ordinance clarifies reference to the Regionally Significant Fish and Wildlife Habitat found on Metro's Inventory Map is to the "Class I and II Riparian Habitat." This is in keeping with Metro Title 13 requirements and the Tualatin Basin Program decision. When Metro conducted the Regional Inventory of Significant Fish and Wildlife Habitat in the early 2000s, the natural resource categories were distinguished by habitat type: Riparian and Upland Habitat. Metro scientists also assessed the quality of the two habitat types through three quality classifications. Using this inventory, the Tualatin Basin Program decision agreed that Class I and II Riparian Habitat should be regulated, and development within those areas should be strictly or moderately limited. The clarification of the specific category of resources intended to be regulated per Metro Title 13 and previously adopted by the County through A-Engrossed Ordinance No. 662 does not add a new resource category subject to § 422.

The ordinance also refines two of the County's SNR categories and descriptions to better distinguish between two of the habitat categories. The SNR categories have sometimes caused confusion because the descriptions refer to maps that are no longer readily available or fail to indicate that they are references to original maps used in the early 1980s to identify potential SNRs. This change is consistent with Goal 5 and the County's SNR policies. Community plan and RNRP maps are also being updated to reflect the name changes.

Submittal Requirements (§ 422-3)

The ordinance clarifies and improves the development review process by standardizing the information necessary to review a development application when a site contains an SNR. This

process was outlined in the existing regulations and in a Director's Interpretation that staff and applicants relied on, and the ordinance codifies and simplifies this process.

Modifications to the SNR identification process provide a more certain and consistent approach for field verification and identification of the SNR boundaries. The general location of the resources is shown on County and Metro maps, and field verification more specifically locates these resources on individual sites. This concept is supported by Metro and is included in the Metro Title 13 Model Ordinance. The boundary of each resource type must be identified on site plans, based on specified criteria which, in part, rely on delineations already required by other regulatory agencies. The intent of these ordinance provisions is to rely on the expertise of the agencies regulating the resource type (e.g., wetlands, flood plain and drainage hazard areas, riparian corridors/Vegetated Corridor) and to avoid duplicate requirements.

CWS' Vegetated Corridor regulations help meet Federal and State Clean Water Act requirements, including the Tualatin Basin Total Maximum Daily Load (TMDL) allowances, water quality standards and National Pollutant Discharge Elimination System (NPDES) permit limits. Development applicants are required through CWS' process to ensure that the Vegetated Corridor meets the agency's standards. Since CWS' *Design and Construction Standards* are specifically applicable to Water Quality Sensitive Areas (Sensitive Areas) and their associated Vegetated Corridors, the County finds they are also particularly relevant for the protection of riparian fish and wildlife habitat and thus provide important Goal 5 protection, aligning with the outcome and requirements of the Tualatin Basin Program and compliance with Metro's Title 13. In order to comply with CWS regulations, potential wetlands, streams and other Sensitive Areas within the vicinity of any proposed development are required to be identified under the parameters defined in the CWS *Design and Construction Standards* on a site-specific basis.

A Habitat Assessment for certain SNR areas is required under existing regulations and the Director's Interpretation. CDC § 422 is further codified and standardized so that the condition of the habitat is assessed, and the Habitat Area can be delineated so that a specific percentage of that area can be determined and preserved. The Assessment must evaluate and rate the different habitat values using the methodology to be contained in Habitat Assessment *Guidelines*, which will form the basis for determining the proposed areas to be preserved. Habitat Assessment *Guidelines* will detail how the Habitat Assessments must be completed to ensure consistency in preparation and development review. The *Guidelines* will be managed in a manner comparable to other technical methodologies used for other disciplines such as traffic engineering and grading. They will provide supplemental guidance about the site conditions in a clear and objective manner and will be adopted by the Board via Resolution and Order (R&O).

For projects within the rural area, the proposed language allows submittal requirements to be waived by the Review Authority when proposed development is more than 100 feet from mapped water-related SNRs and the submittal addresses RNR Policy 10, Implementing

Strategy e. Since some rural development projects on larger sites may be able to avoid impacts to SNRs altogether, applicants may not need to provide all the submittal materials that are required for urban and more intensive development projects. This provides an affordable alternative for applicants to avoid unnecessary and costly submittal requirements while still addressing the SNR criteria. This is an existing practice proposed to be codified and is consistent with Goal 5 as it will carry out the Goal 5 program by identifying the SNRs subject to review and the SNR standards in place, providing more consistency in the application of the standards. No other substantive changes are made to the standards for rural land.

Community Plan Design Elements (§ 422-3.3)

The submittal requirements for development on sites with a mapped SNR under A-Engrossed Ordinance No. 869 include a description of how clear and objective design elements of the community plan apply to the urban development site. For rural sites the requirement is to describe how RNR Policy 10, Implementing Strategy e. applies to the site.

Previously, CDC § 422 required applicants to apply all of the design elements. In some cases, design elements are site specific, with an identified restriction, goal or policy direction and others are general and aspirational, describing a desired or preferred outcome for the SNR. Some design elements may also be contrary to other provisions of the Comprehensive Plan. Many of the site-specific design elements have already been considered in past development projects or are no longer applicable because they referred to areas that have since been annexed to cities.

Community plans do not contain regulatory requirements or restrictions, therefore there were limits on the enforceability and applicability of the design elements. Applying them to development applications was subject to inconsistent and subjective interpretation in comparison to the standards found in the CDC. The design elements were intended to be more policy considerations or factors when applying § 422, rather than general standards found in the CDC that apply uniformly to all development review projects.

The section is now clarified, with the requirement that as part of submittal applicants describe how any design elements that are clear and objective apply to the SNR on their site, and is therefore consistent with Goal 5.

Allowable Uses and Activities within Significant Natural Resource Areas (§ 422-4)

As in the existing regulations, the ordinance generally prohibits development in areas with *Water-Related Fish and Wildlife Habitat*, except for a limited list of uses and activities described in this section. The list of activities and uses does not expand the uses currently allowed in the unincorporated urban area, but some descriptions are clarified to reference the appropriate federal, state and local regulatory agency with concurrent responsibility for permitting the specified activities. This includes CWS within the urban unincorporated area and its boundary, DSL, and the Army Corps. No changes are proposed to the allowable uses within the rural area.

Some of the changes are made to ensure the standard is clear and objective, particularly the changes to § 422-4.1 F. regarding the alteration of the Riparian Corridor, Sensitive Area or Vegetated Corridor. This addresses areas both inside and outside CWS' service area and specifies such alterations are allowed if the requirements of CWS, DSL or the Army Corps are met.

CWS is responsible for stormwater management and acts as the principal designated management agency under the Tualatin Basin TMDL within its service boundary, primarily inside the regional UGB. The Board of Commissioners, acting as the CWS Board of Directors, has adopted *Design and Construction Standards* (CWS Standards) through R&Os, most recently R&O 19-5 as amended by R&O 19-22, in 2019. The CWS Standards include water quality standards for Sensitive Areas and require Vegetated Corridors, the buffered vegetated area to protect the Sensitive Area. CWS Standards require all development to obtain a Service Provider Letter identifying Sensitive Areas on or near the site and their associated Vegetated Corridors prior to any development.

CDC § 422-3.4 (Enhancement of a degraded riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat...) was one of the provisions determined by LUBA not to be clear and objective. The submittal process, enhancement criteria and follow-up review process were originally added in 1989 to allow limited enhancements to degraded Riparian Corridors when proposed by a natural resource professional, with review and comment by DSL, the Army Corps, and the Clackamas District biologist of ODFW. Prior to this, riparian zones (corridors) could not be enhanced under any circumstance (§ 422-3.3 A. (7) and 422-3.4).

This standard and its companion, § 422-3.3 A. (7), originated with a specific Riparian Corridor enhancement project proposed in 1989, after the County's Goal 5 Program and § 422 had been acknowledged by DLCD, but before CWS received its NPDES permit for the Municipal Separate Storm Sewer System (MS4) from Oregon Department of Environmental Quality (DEQ) and became responsible for stormwater management. Now, alterations to the Riparian Corridor and *Water-Related Fish and Wildlife Habitat* are reviewed as development activities by CWS as part of its implementation of water quality regulations and are required to obtain a CWS Service Provider Letter. The County finds that enhancement projects to improve the condition of riparian corridors and *Water-Related Fish and Wildlife Habitat* improve overall stream health and contribute to improving the surrounding Vegetated Corridor.

Tree Preservation in Habitat Area(s) (§ 422-5)

This new section is intended to address the concerns raised about current § 422-3.6, which applied to *Water-Related Fish and Wildlife Habitat*³ and *Upland/Wildlife Habitat*⁴ based on the

³ This SNR category was identified in § 422 as *Water Areas and Wetlands and Fish and Wildlife Habitat* before the adoption of A-Engrossed Ord. No. 869.

⁴ This SNR category was identified in § 422 as *Wildlife Habitat* before the adoption of A-Engrossed Ord. No. 869.

Director’s Interpretation. CDC § 422-3.6 required the County to determine either that a proposed development would not “seriously interfere” with the preservation of fish and wildlife habitat or how the interference can be mitigated. This was one of the standards found not to be clear and objective and therefore unenforceable.

Areas identified in community plan maps as *Water-Related Fish and Wildlife Habitat* and *Upland/Wildlife Habitat* were intended to be developed consistent with plan policies that weigh and balance various community values, including both the habitat and aesthetic value of forested areas and provision of housing within the regional UGB. These values are reflected in statewide planning goals related to natural resources, housing and urbanization. Goal 5 never intended that these areas be entirely off-limits to development, but rather provides for a process by which local governments can determine for themselves the level of protection to be given to specific resources and provides that different resources can receive different levels of protection. Local governments are to develop their own programs that weigh and balance the values of the statewide planning goals.

While public testimony has indicated a general interest in preserving as much *Upland/Wildlife Habitat* as possible and limiting development to areas that do not have SNRs, the determination made through the County’s Goal 5 processes both in the 1980s and early 2000s adopted a more balanced approach.

CDC § 422-3.6 was part of the County’s program before the Tualatin Basin program decision. That section required that “...there shall be a finding that the proposed use will not **seriously interfere** with the preservation of fish and wildlife areas and habitat identified in the Washington County Comprehensive Plan, **or how the interference can be mitigated.**” [Emphasis added] What it meant to seriously interfere or to mitigate⁵ were not well defined and these have been interpreted differently over time. This was not a prohibition on development potentially affecting *Upland/Wildlife Habitat*, but rather a nuanced approach that resulted in mitigation that varied from one development to another and preserved anywhere from 9% to 44% of the habitat area.

The 2005 Tualatin Basin Program decision determined the focus of County Goal 5 regulatory protections was to strictly limit development near water-related resources, and that preservation of *Upland/Wildlife Habitat* was to be based on voluntary or incentive-based approaches. The County’s regulatory SNR program, including the subjective § 422-3.6 language, predates OAR Division 23 (Procedures and Requirements for Complying with Goal 5) and the Title 13 Tualatin Basin Program decision. Since § 422-3.6 was adopted under earlier OARs,

⁵ Mitigation is defined in CDC § 106-129 as: Reducing the impacts of a proposed development and/or offsetting the loss of habitat values resulting from development. In fish, wildlife, and big game range areas, mitigation may include, but is not necessarily limited to, requiring: 1) clustering of structures near each other and roads, controlling location of structures on a parcel to avoid habitat conflicts.... 2) replacing unavoidable loss of values by reestablishing resources for those lost... In other areas of significant wildlife value, such as wetlands, riparian vegetation, and special bird nesting sites, maintenance and enhancement of remaining habitat, setbacks and restoration of damage and avoiding damage would be appropriate.

rather than the Division 23 rules, it is not subject to provisions in Metro’s UGMFP limiting repeal or amendments (Title 13, § 3.07.1330 (a) (2) (c)). Under Title 13, the County could rely only on the Tualatin Basin decision and delete the subjective standard without addressing any mitigation criteria for *Upland/Wildlife Habitat* and would be compliant with Title 13, based on Tualatin Basin Program decisions to lightly limit development in impact areas outside of Class I and II Riparian Habitat.

At the time the Tualatin Basin Program decision was adopted, however, the County did not change the subjective provisions of § 422-3.6. In developing a replacement for the subjective standards found in this section, for A-Engrossed Ordinance No. 869 the County considered deleting the standard altogether as it applied to *Upland/Wildlife Habitat* since the determination through the Tualatin Basin Program decision was that development in these areas be “lightly limited,” which meant in this case that voluntary and incentive-based approaches were to be used to encourage preservation. However, since some limited protections in the form of mitigation for fish and wildlife habitat had been in place over time through the subjective provisions of § 422-3.6, changes have been made to require that a specified percentage of field-verified habitat be preserved in perpetuity. This goes beyond the incentive-based approach of the Tualatin Basin Program but provides a similar level of protection to these resources compared to the historical results from past residential development projects.

The County is not embarking on a new Goal 5 process but rather clarifying aspects of the Tualatin Basin Program and existing standards. Under the Tualatin Basin ESEE analysis no areas were expected to receive complete protection. Development in Class I and II Riparian Habitat was to be strictly to moderately limited. For all other resource areas inside the regional UGB prior to 2005, development was to be lightly limited, meaning establishing voluntary and incentive-based measures. Such measures were adopted through A-Engrossed Ordinance No. 662 in 2006, including habitat friendly development practices to incentivize rather than regulate protection for all other wildlife habitat areas. Through these changes, the County is expanding on the minimum requirements of UGMFP Title 13 by quantifying the County’s mitigation standard for *Upland/Wildlife Habitat* with clear and objective standards based on the past practice and policies identified in the CFP.

Significant Natural Areas (§ 422-6)

Significant Natural Areas (SNAs) are sites of special importance in their natural condition, for their ecological, scientific and educational value. These are identified in community plans and the RNRP. Current CDC language requiring additional perimeter landscaping or avoidance of the building footprint in these areas is subjective. The amendments in A-Engrossed Ordinance No. 869 provide clear and objective standards for landscaping and setbacks from the resource for SNAs in the urban area. For the rural area, the current language is proposed to be retained. This does not change the Goal 5 Program decision for these sites and is consistent with Goal 5 and Comprehensive Plan policies to allow development with limited requirements.

Goal 5 Mineral and Aggregate Resources (§ 422-11)

Language has been added to § 422 to clarify the section is not intended to supplant conditions for other Goal 5 resources or add more regulations to a Significant Goal 5 Mineral and Aggregate site than permissible under the governing OARs for such sites, referencing the applicable OAR and Policy 7 of the RNR. This is consistent with Goal 5 and other OARs.

Planned Development (§ 404-4)

A-Engrossed Ordinance No. 869 allows *Upland/Wildlife Habitat* and Riparian Corridors outside CWS Vegetated Corridors to count toward up to 100% of the open space requirement for residential, institutional and commercial Planned Developments. These areas are not currently required to be fully preserved through other mechanisms. Therefore, allowing these areas to count toward up to 100% of the Planned Development open space requirement would provide an additional benefit to the County and the community, encouraging preservation and sensitive planning around these areas and offering further opportunity to provide additional habitat protection. This provision is consistent with and helps to implement Goal 5.

County Comprehensive Plan Policies Related to Goal 5

Policy 10 of the CFP, Biological Resources and Natural Areas, states: “It is the policy of Washington County to protect and enhance Significant Natural Areas.” Implementing strategies relevant to A-Engrossed Ordinance No. 869 include:

- a. *Identify Significant Natural Resources and directions for their protection or development in the community plans. Those directions shall assure the unique values of SNRs can be examined and **all reasonable methods** for their preservation **can be pursued** prior to development, without penalty for the possible loss of development density that may result. [Emphasis added]*
- b. *Outside of Significant Natural Resources, provide opportunity for the protection and enhancement of Regionally Significant Fish & Wildlife Habitat, as identified by Metro’s Regionally Significant Fish & Wildlife Habitat Map, without penalty for the potential loss of development density that may result.*

- i. *Coordinate with CWS to adopt and amend local standards, which ensure that fish and wildlife habitats are adequately protected and enhanced in compliance with local, regional, state and federal requirements.*

The County has coordinated with CWS, clarified the references to Metro’s Regionally Significant Fish and Wildlife Inventory, provided consistency in the standards with Title 13 and the Tualatin Basin Program and identified reasonable methods for preservation of the County’s SNRs and therefore finds that A-Engrossed Ordinance No. 869 is consistent with Policy 10 and these strategies.

Goal 6 – Air, Water and Land Resources Quality

Goal 6 requires the maintenance and improvement of the quality of the air, water and land resources of the state through the implementation of local plans that address waste and process discharge. Policies 4, 5, 6 and 7 of the CFP and Policies 4, 5, 6 and 7 of the RNRP provide for the maintenance and improvement of the quality of air, water and land resources.

A-Engrossed Ordinance No. 869 does not amend the Plan policies or CDC standards related to air, water or land resources that impact the County's compliance with Goal 6. Plan compliance with Goal 6 is maintained with the amendments made by A-Engrossed Ordinance No. 869. The amendments are consistent with the County's acknowledged policies and standards for protection of Goal 6 resources.

Goal 7 – Areas Subject to Natural Hazards

Goal 7 requires the implementation of local land use programs that reduce the risk to people and property from natural hazards such as floods, landslides and earthquakes. Policy 8 of the CFP and Policy 8 of the RNRP set out the County's policy to protect life and property from natural disasters and hazards.

The CDC standards relating to natural disasters and hazards are contained in §§ 410 (Grading and Drainage) and 421 (Flood Plain and Drainage Hazard Area Development). A-Engrossed Ordinance No. 869 does not amend the Plan policies or CDC standards related to natural hazards that impact the County's compliance with Goal 7.

Goal 8 – Recreational Needs

Goal 8 requires local jurisdictions to satisfy the recreational needs of citizens and visitors by planning and providing for the siting of necessary recreational facilities. Policies 17, 33, 34, 35 and 39 of the CFP, Policy 24 of the RNRP and the individual community plans address the recreational needs of Washington County's residents and visitors.

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or community plans regarding recreational needs. Amendments do not represent newly identified natural resources, but natural resource areas identified through prior adopted ordinances. A-Engrossed Ordinance No. 869 is consistent with the County's acknowledged policies and standards for satisfying recreational needs as required by Goal 8 and maintains compliance with Goal 8.

Goal 10 – Housing

Goal 10 requires the provision of housing, including adequate numbers of units within a range of prices, types and densities that provide realistic options to meet citizen needs. Policies 21, 22, 23 and 24 of the CFP, and Policies 19, 25 and 26 of the RNRP address the provision of housing in the urban and rural areas of the County. The CDC contributes to the provision of adequate housing by establishing standards that facilitate development in an orderly and efficient fashion.

LCDC rules implementing Statewide Land Use Planning Goal 10 (Housing), found in OAR Chapter 660, Divisions 7 and 8, describe a methodology for cities to maintain sufficient area zoned for residential development to accommodate projected housing demand for 20 years. The methodology includes calculating the amount of available “buildable land.” The rules exclude various categories of constrained lands from this calculation, including areas subject to codes that implement Goals 5, 6, 7, 15, 16 and 17. In the past, the requirement for clear and objective standards for housing applied only to “buildable lands,” as the majority of housing was to be developed in these areas. This structure aligned with the use of subjective standards in local codes, which are either prescribed by Goals 15-17 or serve well to implement Goal 5 and 7 objectives. Senate Bill 1051 has changed this structure by requiring a local government to apply only clear and objective standards in the context of housing development applications to protect resources or mitigate hazards on these lands.

The CDC modifications described in A-Engrossed Ordinance No. 869 were developed in response to state law changes to ORS § 215.416 requiring local jurisdictions to adopt standards that are clear and objective for urban residential land development. The County took corrective action with A-Engrossed Ordinance No. 869 to refine the SNR requirements so that they are clear and objective for urban residential development. The County did not change any other standards that would affect housing development or reduce density requirements as a result.

For changes to the Planned Development section, applicants may now apply all of the preserved *Upland/Wildlife Habitat* to the amount of open space required when using the Planned Development standards. The Planned Development standards require a certain amount of area be set aside for open space. A portion of the area needed to be “usable.” With this change, all of the preserved *Upland/Wildlife Habitat* can be used to meet this requirement, allowing for more flexibility, consistent with Goal 10.

Goal 11 – Public Facilities and Services

Goal 11 requires a plan for the orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Policies 15, 25, 26, 27, 28, 29, 30 and 31 of the CFP, and Policy 22 of the RNRP address the provision of public facilities and services in the urban and rural areas of unincorporated Washington County. The CDC requires that adequate public facilities and services be available for new development.

A-Engrossed Ordinance No. 869 does not change any of the requirements for orderly and efficient public facilities and services provided in the County and therefore is consistent with Goal 11.

Goal 12 – Transportation

Goal 12 requires the provision and encouragement of a safe, convenient, multimodal and economic transportation system. Policy 32 of the CFP, Policy 23 of the RNRP, and the TSP describe the transportation system necessary to accommodate the transportation needs of

Washington County. Implementing measures are contained in the TSP, community plans and the CDC.

A-Engrossed Ordinance No. 869 addresses significant natural resource requirements that development must comply with and are consistent with the County's acknowledged policies and strategies for the provision of transportation facilities and services as required by Goal 12 (the Transportation Planning Rule or TPR, implemented via OAR Chapter 660, Division 12).

A-Engrossed Ordinance No. 869 does not amend the TSP, modify any road classification or standard, or allow new or different types of land development inconsistent with the TSP. A-Engrossed Ordinance No. 869 does not have a significant effect on any existing or planned transportation facility and is consistent with the Transportation Planning Rule as defined in OAR § 660-012-0060. Therefore, plan compliance with Goal 12 is maintained by A-Engrossed Ordinance No. 869.

Goal 13 – Energy Conservation

Goal 13 requires developed land uses to be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles. Policies 35, 36, 37, 38, 39 and 40 of the CFP, and Policy 25 of the RNRP address energy conservation in the urban and rural areas of unincorporated Washington County. The CDC implements the energy conservation policies by establishing standards that promote energy efficient development, especially in Article IV (Development Standards).

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or CDC standards relating to energy conservation. Amendments made by A-Engrossed Ordinance No. 869 do not impact compliance with the County's acknowledged policies and strategies for promoting energy conservation as required by Goal 13. Plan compliance with Goal 13 is maintained.

Goal 14 – Urbanization

Goal 14 requires provisions for the orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. Policies 13, 14, 16, 17, 18, 19, 41 and 42 of the CFP address urbanization within the regional UGB. The CDC implements the urbanization policies by establishing standards to promote appropriate urban development. The community plans implement the urbanization policies by designating sufficient land for appropriate development.

A-Engrossed Ordinance No. 869 does not amend the applicable Plan policies or CDC standards relating to urbanization. Amendments made by A-Engrossed Ordinance No. 869 do not impact compliance with the County's acknowledged policies and strategies for promoting urban development as required by Goal 14. Plan compliance with Goal 14 is maintained.

Part 3:
URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN FINDINGS

Title 8, § 3.07.810 of Metro’s UGMFP requires that county comprehensive plan changes be consistent with the UGMFP. The following A-Engrossed Ordinance No. 869 findings have been prepared to address Titles 3, 8 and 13 of the UGMFP.

Title 3 – Water Quality and Flood Management

Title 3 protects beneficial water uses and functions and values of resources within Water Quality and Flood Management Areas by limiting or mitigating impacts from development activities and protecting life and property from dangers associated with flooding.

RESPONSE

The changes to § 422 are related to natural resource protection and clarifying the limited allowed uses within water-related resources. CDC standards related to water quality and flood plain management are found in § 421 (Flood Plain and Drainage Hazard Area Development) and were not modified with this ordinance. The County finds the changes to § 422 align with the Tualatin Basin Decision for the protection of fish and wildlife habitat, and that its implementation is expected to improve the environmental health of the Tualatin River Basin by strictly limiting development in Class I Riparian Habitat, resulting in improved water quality. Therefore, A-Engrossed Ordinance No. 869 is consistent with Title 3.

Title 8 – Compliance Procedures

Title 8 sets forth Metro’s procedures for determining compliance with the UGMFP. Included in this title are steps local jurisdictions must take to ensure that Metro has the opportunity to review amendments to comprehensive plans. Title 8 requires jurisdictions to submit notice to Metro at least 35 days prior to the first evidentiary hearing for a proposed amendment to a comprehensive plan.

RESPONSE

Consistent with Title 8, a copy of proposed Ordinance No. 869 was sent July 15 to Metro, 35 days prior to the first evidentiary hearing. A copy of A-Engrossed Ordinance No. 869 was sent to Metro on Oct. 9. Metro provided no comments on A-Engrossed Ordinance No. 869.

Title 13 – Nature in Neighborhoods

Title 13 conserves, protects and restores a continuous ecologically viable streamside corridor system integrated with upland wildlife habitat and the urban landscape.

RESPONSE

The County first complied with Title 13 through the Tualatin Basin Program with the adoption of A-Engrossed Ordinance No. 662 in 2006, which included CDC provisions to facilitate and encourage low-impact, habitat friendly development practices with flexible design standards. In addition, the ordinance amended CFP Policy 10, Biological Resources and Natural Areas, adding an implementing strategy relating to the protection and enhancement of Regionally Significant Fish and Wildlife Habitat and referencing the Tualatin Basin Fish and Wildlife Habitat Program document and related materials.

The changes proposed with this ordinance continue to be consistent with Title 13, specifically § 3.07.1330, *Implementation Alternatives for Cities and Counties*, which describes the requirements of the Tualatin Basin Program under subsection (b) (5).

The County implemented the Tualatin Basin Program through A-Engrossed Ordinance No. 662 in 2006. Development in Class I and II Riparian Habitat was to be strictly to moderately limited. For all other resource areas inside the regional UGB prior to 2005, development was to be lightly limited, meaning establishing voluntary and incentive-based measures, including habitat friendly development practices to incentivize rather than regulate protection for all other impacted habitat areas. The changes adopted with A-Engrossed Ordinance No. 662 fulfilled the County's obligation related to the regional Nature in Neighborhoods program under Title 13.

Through the changes adopted with A-Engrossed Ordinance No. 869, the County is expanding on the minimum requirements of Title 13 by quantifying the County's mitigation standard for *Upland/Wildlife Habitat* with clear and objective standards based on the past practice and policies identified in the CFP. Since the County is not changing any of these current protections for Class I and II Riparian Habitat, the areas on the Metro Regionally Significant Fish and Wildlife Habitat Inventory Map, the County finds A-Engrossed Ordinance No. 869 is consistent with Title 13.