

**ORDINANCE NO. 2589**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE OSWEGO AMENDING LOC SECTIONS 50.07.004 AND 50.10.003 TO ELIMINATE ISOLATED TREE GROVES ON PRIVATE LOTS FROM THE APPLICABILITY OF RESOURCE CONSERVATION (RC) OVERLAY DISTRICTS, AND AMENDING THE LAKE OSWEGO COMPREHENSIVE PLAN MAP AND ZONING MAP TO REMOVE RC OVERLAY DISTRICT DESIGNATIONS FROM 45 PROPERTIES. (LU 12-0012-1785)**

WHEREAS, the City has initiated a request to amend LOC 50.07.004 and 50.10.003, which, together with LOC 50.05.010, implement the City's Sensitive Lands Protection Program (Goal 5); and

WHEREAS, the proposed amendment removes "Isolated Tree Groves" on private lots as a resource eligible for RC District designation; and

WHEREAS, notice of the public hearings relating to consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, public hearings were held before the Lake Oswego Planning Commission on April 23<sup>rd</sup>, May 14<sup>th</sup>, and May 30<sup>th</sup>, 2012 at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, a public hearing was held before the City Council of the City of Lake Oswego on July 10<sup>th</sup>, 2012, at which the staff report, testimony, and evidence were received and considered;

The City of Lake Oswego ordains as follows:

**Section 1.** The City Council hereby adopts the Findings and Conclusions attached as Attachment "C."

**Section 2.** LOC 50.07.004.8.a is hereby amended as follows (new text shown in **bold, double-underlined type**; deleted text shown in ~~strikethrough type~~):

**50.07.004.8.a Criteria for Designating Property within an Overlay District**

\* \* \*

**vi. Applicability of RC Overlay District**

The Resource Conservation (RC) Overlay District shall protect significant tree groves. A tree grove may be placed within an RC District if ~~the tree grove has it~~:

**(1) Type of Tree Grove:**

**(a) Is an Associated Tree Grove; or**

(b) Is an Isolated Tree Grove located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after July 10, 2012; and

(2) Quality of Tree Grove:

(a) ~~A~~ Has a HAS ranking of at least 35; or

(b) ~~A~~ Has a "high" ranking for scenic values in the study; or

(c) Is associated with a stream corridor or wetland that has an RP ranking.

**Section 3.** LOC 50.07.004.8.b is hereby amended as follows (new text shown in **bold, double-underlined type**; deleted text shown in ~~striketrough type~~):

**50.07.004.8.b Removing an Overlay District Designation**

i. In order to remove an overlay District designation the review body shall find that one of the following criteria is met:

(1) As a result of natural occurrences or evolution the resource has been degraded to the extent that the subject property no longer meets the criteria for designation found in LOC 50.07.004.8.a.iv and (v), above, and a re-application of the ESEE analysis demonstrates that the designation is no longer justified; or

(2) There was a mistake in the analysis of quality or quantity in the original designation of the resource and a re-application of the ESEE analysis demonstrates that the designation no longer meets the criteria; or

(3) There was a mistake in the location of the original designation of the resource, such that no portion of the resource was on the subject property; or

(4) The Tree Grove is an Isolated Tree Grove not located on public open space, on a private designated open space tract, or on property brought into the Urban Growth Boundary after July 10, 2012, and removing the RC District complies with Metro Code Section 3.07.1330 (A) (2).

ii. An overlay district designation shall not be removed as a result of damage caused by the property owner, another party, or other than natural causes.

- iii. A removal application pursuant to subsection b.i(1), ~~or b.i(2)~~, or b.i(4), above, shall be processed in the same ~~manner~~ manner as a designation application pursuant to LOC 50.07.008.a.
- iv. An Overlay District Designation may be removed pursuant to b.i(3), above, by a delineation on the subject site in accordance with LOC 50.07.004.8.d and a finding that there is not now nor was there any resource located upon the site at the time of designation.

**Section 4.** LOC 50.10.003.2 is hereby amended as follows (new text shown in **bold, double-underlined type**; deleted text shown in ~~strikethrough type~~):

**50.10.003.2 Definition of Terms**

The following terms shall mean:

\* \* \*

**Tree Grove**

A stand of three or more trees (of the same species or a mixture) which form a visual and biological unit, including the area between the forest floor and the canopy, including skyline trees, and including any understory vegetation existing within the canopied area. A stand of trees must be at least 15 feet in height and must have a contiguous crown width of at least 120 feet to qualify as a tree grove.

- (i) ~~Associated Tree Grove. A tree grove that is contiguous with the boundaries of a designated stream corridor or wetland and~~ **An associated tree grove is one that** contributes to the resource value of ~~the a~~ riparian area by extending and operating in conjunction with the habitat of the riparian area and providing flood control and water quality enhancement. **A tree grove is associated if any portion of its subsite is contiguous with an RP District (stream corridor or wetland), or is contiguous with a tree grove that itself is contiguous with an RP District. A tree grove subsite is a unit of analysis in the Natural Resource Inventory, as existing or as updated.** ~~Such tree groves are located within the Protected Riparian Areas of a wetland or stream corridor but may extend beyond the Protected Riparian Area.~~
- (ii) ~~Isolated Tree Grove. A grove of trees that is not~~ **an Associated Tree Grove.** ~~associated with a stream corridor or wetland as described in subsection (a) of this definition.~~

\* \* \*

**Section 5.** The Lake Oswego Comprehensive Plan Map and Zoning Map are hereby amended to remove the Resource Conservation (RC) District designation from the properties identified in Attachment A, as shown on the maps in Attachment B.

Read by title and enacted at the regular meeting of the City Council of the City of Lake Oswego held on the 31<sup>st</sup> day of July, 2012.

AYES: Gudman, Jordan, Kehoe, Olson, Tierney

NOES: Mayor Hoffman

ABSTAIN: None

EXCUSED: Moncrieff



Jack D. Hoffman, Mayor

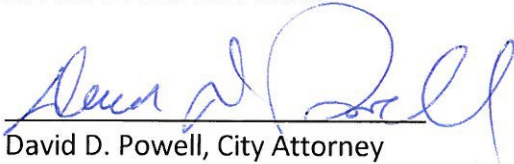
Dated: July 31, 2012

ATTEST:



Cate Schneider, City Recorder

APPROVED AS TO FORM:

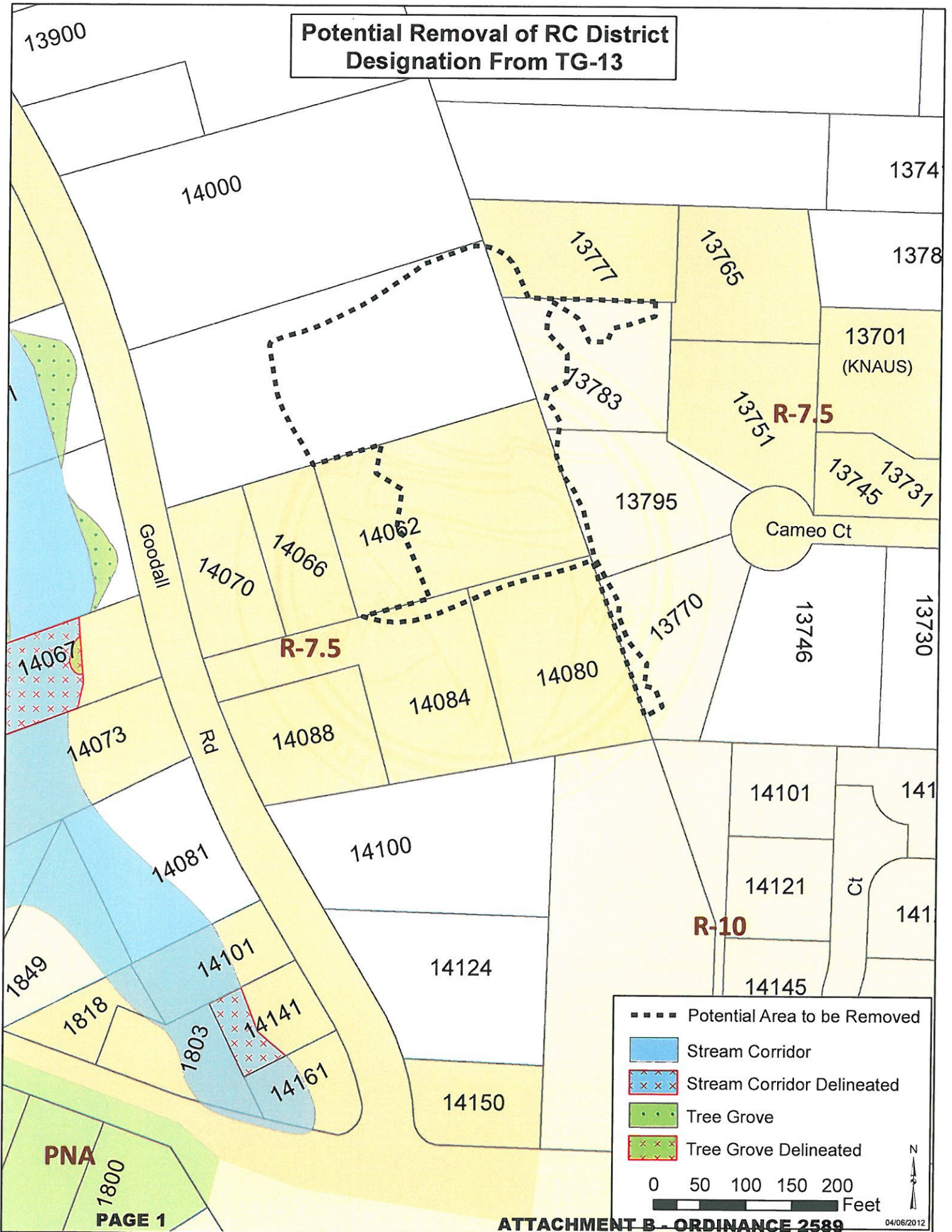


David D. Powell, City Attorney

Tree Grove Number	Tax Lot ID	Owner	Property Address	City	ZIP Code	Area (sf)	Area (acres)
TG-13	21E04CA00404	SCHONHOFT DELTA RAE & BRADLEY	13777 CAMEO CT	LAKE OSWEGO	97034-2128	21,783	0.50
TG-13	21E04CA00500	BULLARD SCOTT	13783 CAMEO CT	LAKE OSWEGO	97034-2128	22,111	0.51
TG-13	21E04CA00501	DEBRUYNE ANDREW & STACEY	13795 CAMEO CT	LAKE OSWEGO	97034-2128	22,091	0.51
TG-13	21E04CA00502	TRUAX STACIA C	13770 CAMEO CT	LAKE OSWEGO	97034-2128	22,278	0.51
TG-13	21E04CA02200	TAYLOR RICHARD G	14080 GOODALL RD	LAKE OSWEGO	97034-2046	29,443	0.68
TG-13	21E04CA02201	POND JASON TODD	14084 GOODALL RD	LAKE OSWEGO	97034-2046	33,539	0.77
TG-13	21E04CA02302	SANTANA CHOMO & RENEE	14062 SW GOODALL RD	LAKE OSWEGO	97034-2046	45,079	1.03
TG-13	21E04CA02400	C ROBINSON INVESTMENT CO LLC	NO SITUS	LAKE OSWEGO	97034	72,763	1.67
TG-23	21E18AB00400	BERG DORIS C	16858 BOONES FERRY RD	LAKE OSWEGO	97035-5253	24,672	0.57
TG-23	21E18AB00500	TENBERGE RONALD J & LEIGH A	5384 WASHINGTON CT	LAKE OSWEGO	97035-5211	13,074	0.30
TG-23	21E18AB00503	DORIGAN JAMES T JR TRUSTEE	5352 WASHINGTON CT	LAKE OSWEGO	97035-5211	16,304	0.37
TG-23	21E18AB00504	NAIR MANOJ & SMITA MENON	5310 WASHINGTON CT	LAKE OSWEGO	97035-5211	22,411	0.51
TG-23	21E18AB00600	KEUSINK CHRIS ATTY	5410 WASHINGTON CT	LAKE OSWEGO	97035-5241	42,296	0.97
TG-23	21E18AB00800	5424 SW WASHINGTON COURT LLC	5424 WASHINGTON CT	LAKE OSWEGO	97035	20,512	0.47
TG-23	21E18AB01000	FREY JEANINE	16808 INVERURIE RD	LAKE OSWEGO	97035-5231	10,350	0.24
TG-23	21E18AB01100	RISCH RUTH MARION	16814 INVERURIE RD	LAKE OSWEGO	97035-5231	10,203	0.23
TG-23	21E18AB01200	FREEMAN KENNETH D & VICTORIA L	16820 INVERURIE RD	LAKE OSWEGO	97035-5231	11,487	0.26
TG-23	21E18AB01300	LITTLEFIELD RUSSELL S	16824 INVERURIE RD	LAKE OSWEGO	97035-5231	14,421	0.33
TG-23	21E18 00300	UNION PACIFIC CORP	NO SITUS	LAKE OSWEGO	97035	1,050,791	24.12
TG-24	21E07DC03501	GALLUCCI BETTY J	5211 SW MADRONA ST	LAKE OSWEGO	97035-4241	12,823	0.29
TG-24	21E07DC03502	OMALLEY RICHARD D & JEANNE E	5215 SW MADRONA ST	LAKE OSWEGO	97035-4241	12,824	0.29
TG-24	21E07DC03600	NORRIS TODD & JANEENE CAMPBELL	5133 SW MADRONA ST	LAKE OSWEGO	97035-4239	37,619	0.86
TG-24	21E07DC03700	SHIN JUNG DOO	5103 SW MADRONA ST	LAKE OSWEGO	97035-4239	21,139	0.49
TG-24	21E07DB07500	QUINTANA SHANE P & DONNA D	5244 SW FIRWOOD RD	LAKE OSWEGO	97035-4228	25,791	0.59
TG-24	21E07DB07600	SHIELDS GREGORY M & CLAUDIA S	5220 SW FIRWOOD RD	LAKE OSWEGO	97035-4228	23,654	0.54
TG-24	21E07DB07700	WORTHINGTON RICHARD L & GLENDA	5160 SW FIRWOOD RD	LAKE OSWEGO	97035-4226	23,531	0.54
TG-24	21E07DB07800	WORTHINGTON R L & G	5128 SW FIRWOOD RD	LAKE OSWEGO	97035	37,618	0.86
TG-24	21E07DB07900	WORTHINGTON RICHARD L & GLENDA	5090 SW FIRWOOD RD	LAKE OSWEGO	97035-4224	20,579	0.47
TG-24	21E07DB07902	WORTHINGTON RICHARD & GLENDA	5100 SW FIRWOOD RD	LAKE OSWEGO	97035-4226	8,519	0.20
TG-24	21E07DC03900	DOVE JEFFREY C & MI SUKUYI	5031 SW MADRONA ST	LAKE OSWEGO	97035-4237	37,619	0.86
TG-30	21E06 00500	PROPERTY RESERVE INC	3 CENTERPOINTE DR	LAKE OSWEGO	97035-8609	179,315	4.12

Tree Grove Number	Tax Lot ID	Owner	Property Address	City	ZIP Code	Area (sf)	Area (acres)
TG-30	21E06 00600	ST PAUL PROPERTIES INC	2 CENTERPOINTE DR	LAKE OSWEGO	97035-8618	241,726	5.55
TG-31	21E06BA05100	RAO VINAY & DEEPTHI	13026 SIERRA VISTA DR	LAKE OSWEGO	97035-6780	6,735	0.15
TG-31	21E06BA05200	WILLET MICHAEL B	13115 SIERRA VISTA DR	LAKE OSWEGO	97035-6799	7,493	0.17
TG-31	21E06BA05300	WEBB LORRAINE P	13057 SIERRA VISTA DR	LAKE OSWEGO	97035-6783	5,082	0.12
TG-31	21E06BB15500	COTTLE THOMAS D	13212 SW 61ST AVE	LAKE OSWEGO	97035	8,098	0.19
TG-31	21E06BB15600	BECKER JON A & RHODA J	13230 SW 61ST AVE	LAKE OSWEGO	97035	8,037	0.18
TG-32	21E06BD00105	JOHNSON PAUL K & DEBORAH W	5637 SOUTHWOOD DR	LAKE OSWEGO	97035-6733	6,676	0.15
TG-32	21E06BD00106	ELOVITZ ANDREA N & MITCHELL S	5655 SOUTHWOOD DR	LAKE OSWEGO	97035-6733	5,495	0.13
TG-32	21E06BD00108	ZAGER EDWARD	5666 GRAND OAKS DR	LAKE OSWEGO	97035-6735	5,831	0.13
TG-32	21E06BD00109	KATON RUTH E	5658 GRAND OAKS DR	LAKE OSWEGO	97035-6735	5,943	0.14
TG-32	21E06BD00110	BHARGAVA VARUN & PAROMITA	5646 GRAND OAKS DR	LAKE OSWEGO	97035-6735	6,375	0.15
TG-32	21E06BD00111	KLITZKE RAMON A II	5632 GRAND OAKS DR	LAKE OSWEGO	97035-6735	7,705	0.18
TG-32	21E06BD00112	PACIONI KENNETH G & LILLIAN LEE	5626 GRAND OAKS DR	LAKE OSWEGO	97035-6735	9,809	0.23
TG-32	21E06BD00200	WOODS BARRY T	5608 GRAND OAKS DR	LAKE OSWEGO	97035-6735	8,728	0.20

Potential Removal of RC District Designation From TG-13



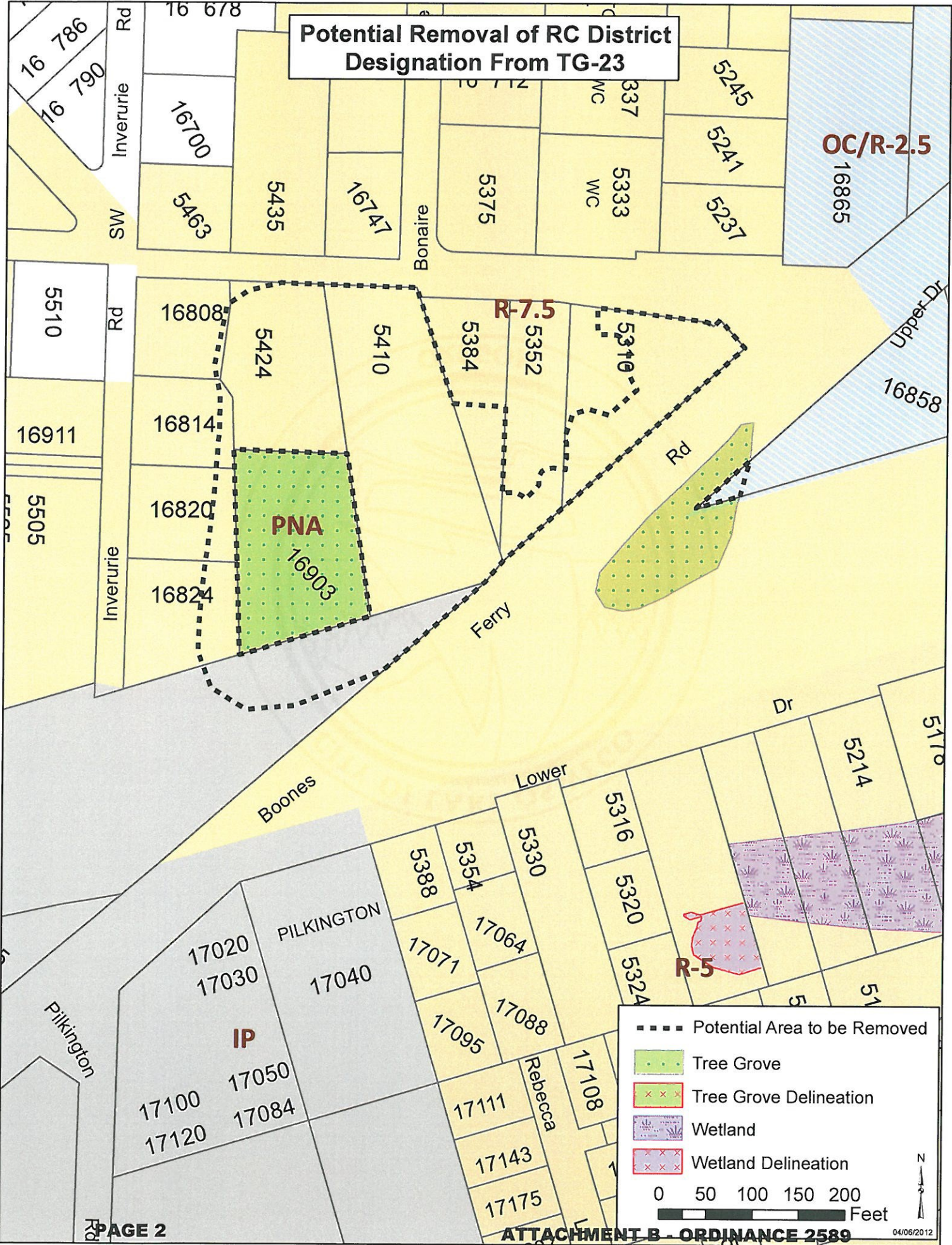
- - - - Potential Area to be Removed  
 Stream Corridor  
 Stream Corridor Delineated  
 Tree Grove  
 Tree Grove Delineated

0 50 100 150 200 Feet

N

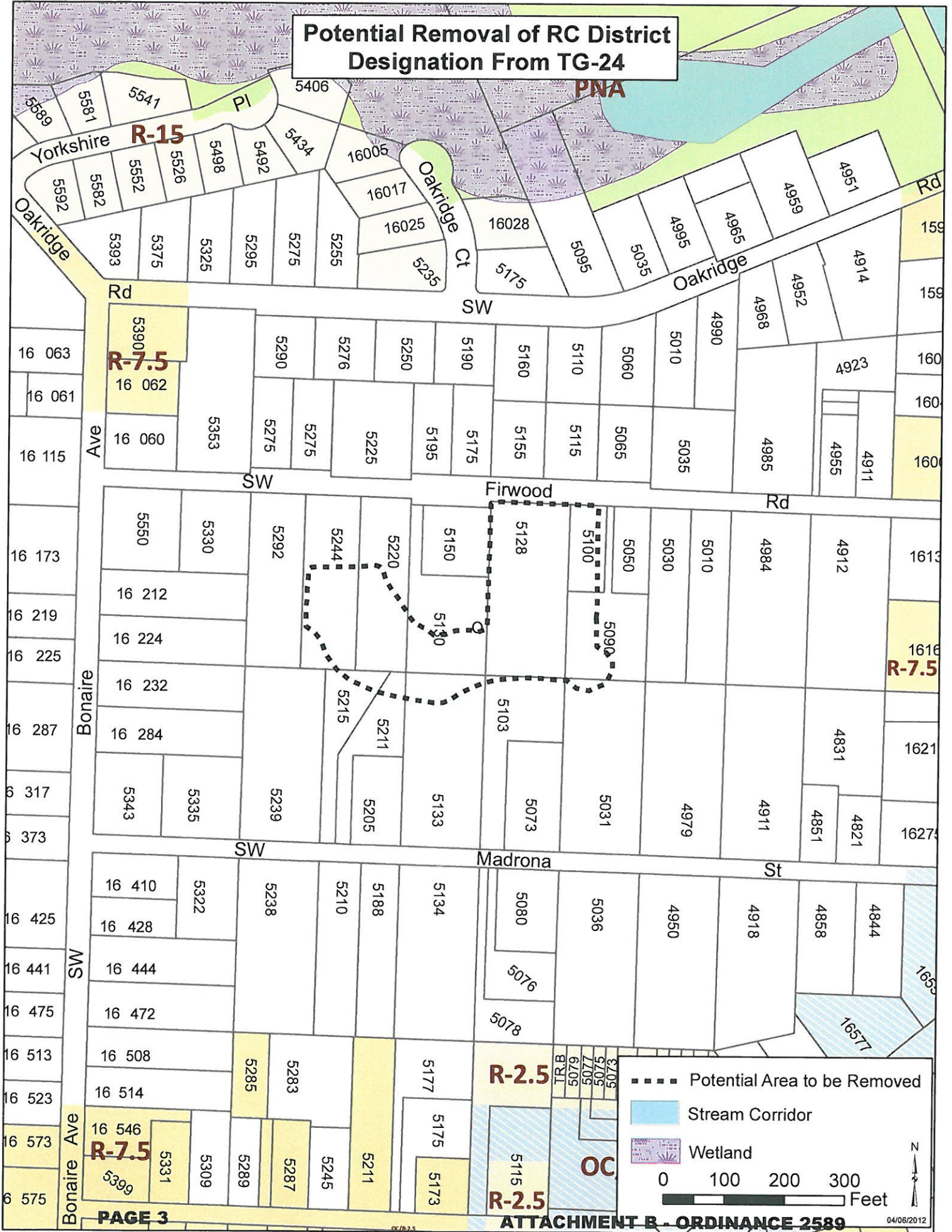
PNA

Potential Removal of RC District Designation From TG-23

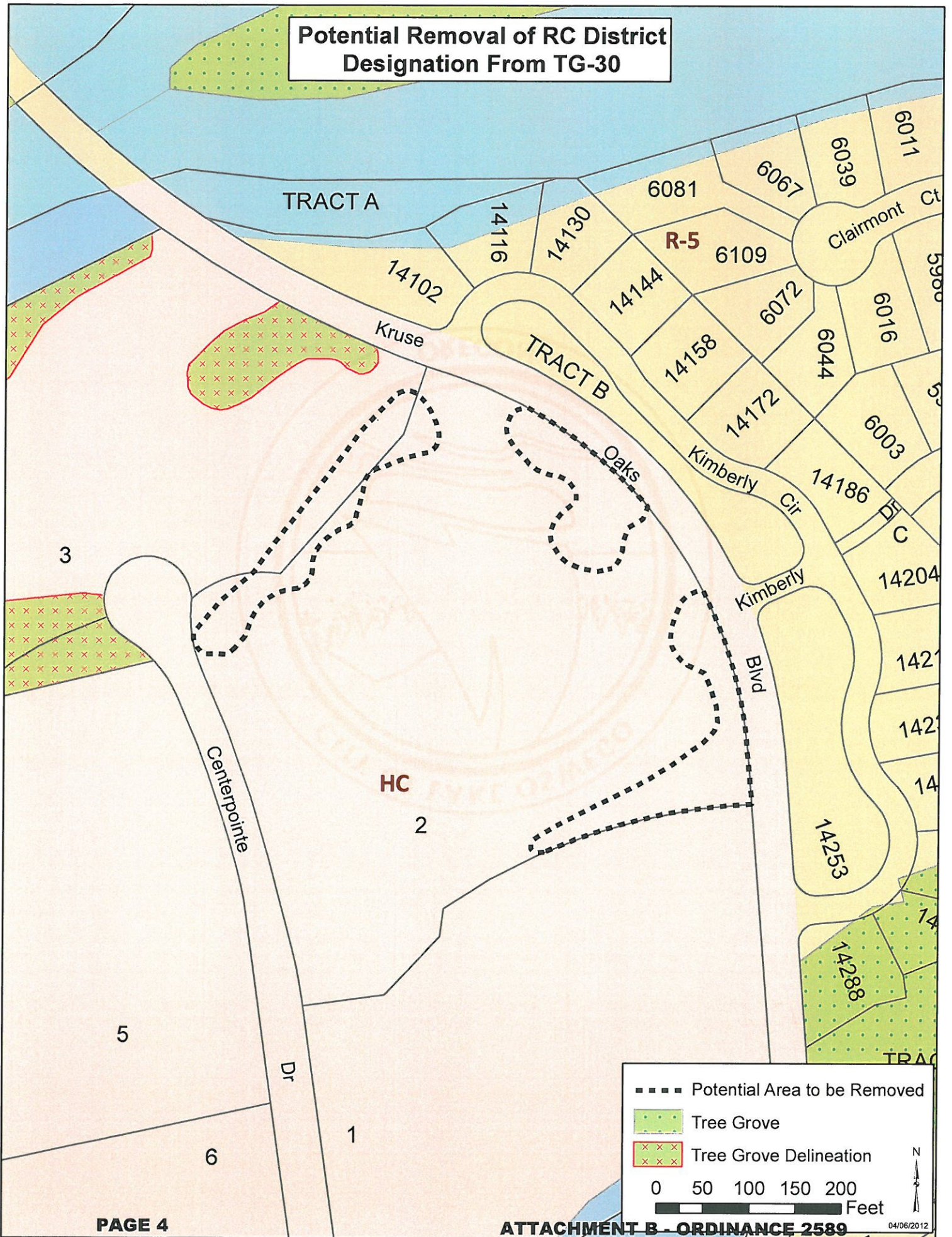




# Potential Removal of RC District Designation From TG-24



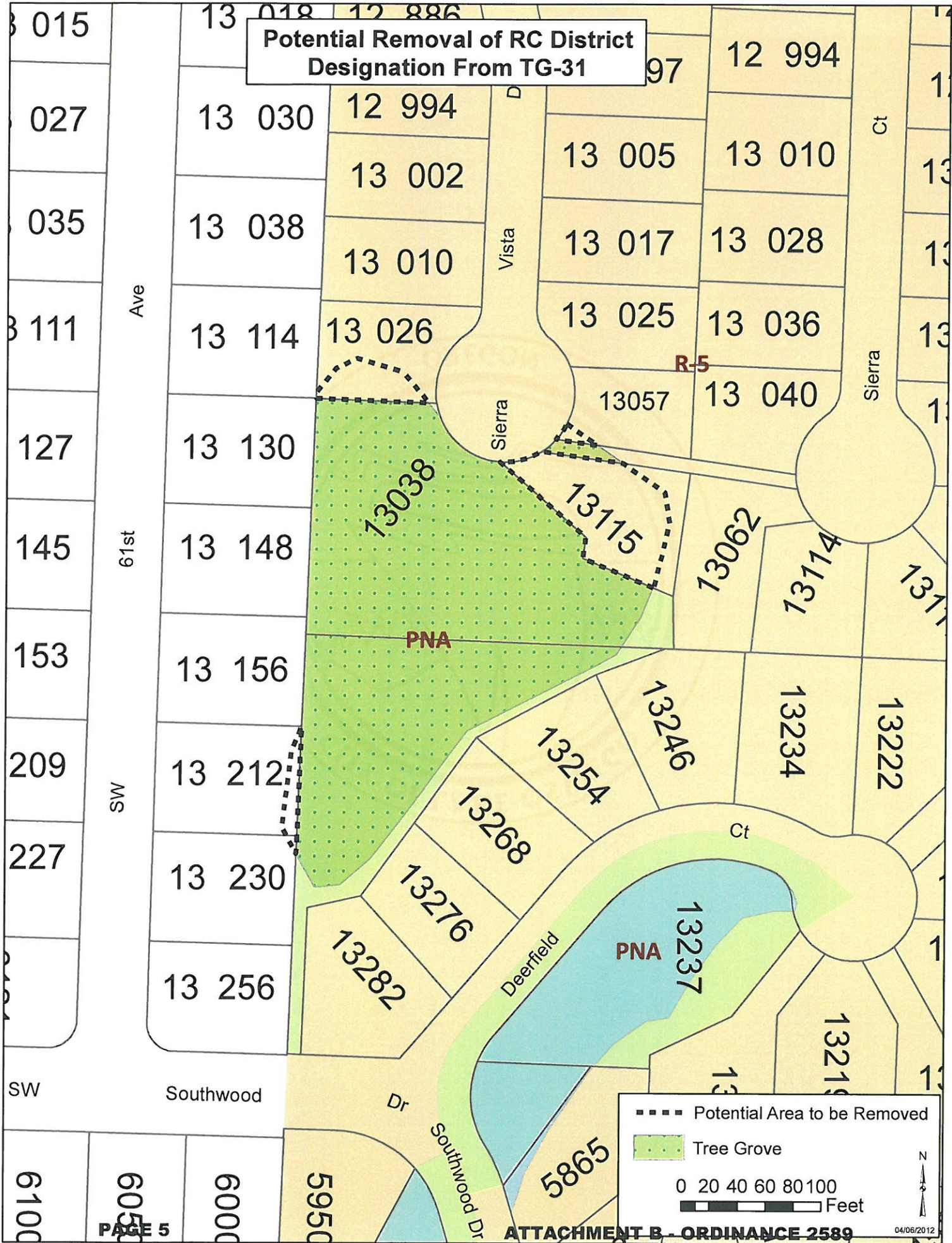
**Potential Removal of RC District Designation From TG-30**



- Potential Area to be Removed
- Tree Grove
- ××× Tree Grove Delineation

0 50 100 150 200 Feet

Potential Removal of RC District Designation From TG-31



**Potential Removal of RC District Designation From TG-32**



- Potential Area to be Removed
- Stream Corridor
- Tree Grove
- Wetland

0 50 100 150 200 Feet

BEFORE THE CITY COUNCIL

OF THE CITY OF LAKE OSWEGO

1 A REQUEST FOR AMENDMENTS TO THE )  
 2 COMMUNITY DEVELOPMENT CODE TO ) LU 12-0012-1792  
 3 MAKE ISOLATED TREE GROVES NO LONGER ) (CITY OF LAKE OSWEGO)  
 4 SUBJECT TO RESOURCE CONSERVATION )  
 5 (RC) OVERLAY DISTRICTS, AND TO ) FINDINGS & CONCLUSIONS  
 6 AMEND THE COMPREHENSIVE PLAN MAP )  
 7 AND ZONING MAP TO REMOVE RC OVERLAY )  
 8 DISTRICT DESIGNATIONS FROM CERTAIN )  
 9 ISOLATED TREE GROVES )  
 [ORDINANCE No. 2589] )

**NATURE OF PROCEEDING**

10  
 11 This matter came before the City Council pursuant to a proposal for legislative  
 12 amendments to the text of Lake Oswego Community Development Code Sections 50.07.004  
 13 and 50.10.003 to eliminate isolated tree groves on private lots from the applicability of  
 14 Resource Conservation (RC) Overlay Districts. In addition, Comprehensive Plan Map and Zoning  
 15 Map amendments are proposed to remove the RC Overlay District designation from affected  
 16 properties. The proposed Code and map amendments apply to six tree groves: TG-13, TG-23,  
 17 TG-24, TG-30, TG-31, and TG-32.  
 18  
 19

**HEARINGS**

20  
 21 The Planning Commission held public hearings and considered this application at its  
 22 April 23, 2012, May 14, 2012, and May 30, 2012 meetings. On June 25, 2012, the Commission  
 23 adopted findings and a recommendation that the proposal not be adopted. The City Council  
 24 held a study session on the proposal on June 26, 2012, and conducted a public hearing on July  
 25 10, 2012.  
 26

**CRITERIA AND STANDARDS**

City of Lake Oswego Comprehensive Plan

- A. Goal 1: Citizen Involvement - Policy 1
- Goal 2: Land Use Planning Section 1, Policy 4(a)
- Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources  
Section 1, Policies 1, 2, 3, 4, and 6  
Section 2, Policies 1, 2, 3, and 14  
Section 5, Policies 1, 4, and 5
- Goal 6: Air, Water and Land Resources Quality  
Section 1, Policy 3

B. Metro Urban Growth Management Functional Plan

Title 13: Nature in Neighborhoods

C. Oregon Statewide Planning Goals

- Goal 1 Citizen Involvement
- Goal 2 Land Use Planning
- Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces
- Goal 6 Air, Water and Land Resources Quality

D. City of Lake Oswego Community Development Code

- LOC 50.07.003.16.a Legislative Decision Defined
- LOC 50.07.003.16.b Criteria for a Legislative Decision
- LOC 50.07.003.16.c Required Notice to DLCD
- LOC 50.07.003.16.d.iii Planning Commission Recommendation Required
- LOC 50.07.003.16.e City Council Review and Decision

**FINDINGS AND REASONS**

As support for its decision, the City Council incorporates the July 10, 2012 Council Report, together with the staff reports listed as Exhibits D-1 through D-6 to the Council Report, supplemented by the further findings and conclusions set forth herein. In the event of any inconsistency between the supplementary matter herein and the incorporated staff reports, the matter herein controls.

1 Following are the supplementary findings and conclusions of the City Council:

2 **A. Code Amendments**

3 This proposal originated with Resolution 10-51A, adopted by the City Council in July of  
4 2010, which, included a direction to staff to implement certain regulatory changes and to  
5 “consider removing small, isolated tree groves from the overlay zone on private property, not  
6 including private, dedicated open space.” In January of 2012, the Council directed staff to begin  
7 the process of adopting necessary Code amendments to remove the Resource Conservation  
8 (RC) Overlay District designation from isolated tree groves on private property, excluding  
9 private open space tracts.  
10

11 After a number of adjustments, the currently-proposed Code amendments have three  
12 components:  
13

- 14 • Revising the definitions of “associated tree grove” and “isolated tree grove.”
- 15 • Modifying the criteria establishing which tree groves are eligible for RC Overlay  
16 District Designation; and
- 17 • Adding a Code criterion that allows RC Overlay District designations to be removed  
18 from isolated tree groves that are currently designated.

19 Definitions

20 The current definition of “Associated Tree Grove” as stated in LOC 50.10.003.2 includes all  
21 groves that are contiguous with the boundaries of a designated stream corridor or wetland and  
22 that contribute to the resource value of a riparian area in a described manner. By specifying  
23 contiguity, the current definition does not include tree groves that are associated with water  
24 resources through connection with another tree grove, or where some sections of the grove are  
25  
26

1 connected to protected water resources and others are not. The City Council agrees that it is  
2 appropriate to refine the definition of "Associated Tree Grove" in order to include these non-  
3 contiguous or segmented, otherwise-associated groves, so that the exclusion or removal of  
4 Isolated Tree Groves (those that are not Associated Tree Groves) from the RC Overlay District  
5 criteria will apply only to groves that provide few environmental benefits. Groves qualifying as  
6 Isolated Tree Groves under the new definitions will be those that do not provide flood control,  
7 water quality enhancement benefits or wildlife habitat connectivity. Consequently their  
8 exclusion or removal from RC District Overlays (consistent with the additional criteria described  
9 below) will have negligible environmental impacts, avoiding inconsistency with the above-cited  
10 policies of Goal 5 of the Lake Oswego Comprehensive Plan, or with the requirements of Title 13  
11 of the Metro Urban Growth Management Functional Plan ("Metro Title 13"), as set forth in the  
12 incorporated materials.  
13  
14

15 *Criteria for Applicability of RC Overlay Districts*

16 LOC 50.07.004.8.a.vi. currently provides that a tree grove may be placed within an RC  
17 Overlay District if it has a Habitat Assessment Score (HAS) ranking of at least 35, a "high"  
18 ranking for scenic values, or is associated with a stream corridor or wetland that has a Resource  
19 Protection (RP) ranking. The proposed Code amendments retain these three criteria, but  
20 require that the grove must also be an "Associated Tree Grove" as newly defined, or "an  
21 Isolated Tree Grove located on public open space, on a private designated open space tract, or  
22 on property brought into the Urban Growth Boundary after July 10, 2012."

24 The proposed exclusion of most Isolated Tree Groves is appropriate and consistent with the  
25 relevant criteria because of the earlier-described negligible resulting environmental impact.  
26



1 The originally-proposed amendments provided that RC Overlay Districts would apply only to  
2 public property. Metro commented that the public-private distinction was inconsistent with its  
3 interpretation of Metro Title 13 as being based on a “region-wide expressed desire to protect  
4 natural resources through a consistent methodology that is applied to all lands equally.” Exhibit  
5 C-6. In response to this, the proposal was amended to provide that RC protections would apply  
6 to qualifying Isolated Tree Groves on “public open space, [or] on a private designated open  
7 space tract.” Since the currently proposed eligibility distinction now applies to open space  
8 tracts regardless of ownership, Metro has concluded that the language is consistent with Title  
9 13. (July 10, 2012, letter from Miranda Bateschell, Metro Senior Regional Planner, to Andrea  
10 Christenson.)  
11

12  
13 The proposed language also provides that RC Overlay Districts apply to qualifying Isolated  
14 Tree Groves on property brought into the Urban Growth Boundary after July 10, 2012. This  
15 meets the Metro Title 13 requirement that resource protections must apply to upland wildlife  
16 areas, as shown on Metro’s Inventory Map, that are brought within the Metro Urban Growth  
17 Boundary after December 28, 2005. Because there have been no Urban Growth Boundary  
18 amendments since 2005 in or near the Lake Oswego Urban Service Boundary that have  
19 included mapped upland wildlife areas, the proposed Code amendment uses the 2012 date of  
20 the City Council public hearing on this matter.  
21

#### 22 Criteria for Removal of Overlay District Designation

23 It is also proposed that the criteria for removing overlay district designations as listed in LOC  
24 50.07.004.8.b be amended to add additional criteria mirroring the proposed changes in  
25 applicability requirements. These amendments allow removal of an overlay designation for an  
26

1 Isolated Tree Grove not located on public open space, on a private designated open space tract,  
2 or on property brought into the Urban Growth Boundary after July 10, 2012.

3 In addition, the new language requires that the overlay removal must comply with Metro  
4 Code Section 3.07.1330(A)(2). This Title 13 subsection (also known as the “no-rollback  
5 provision”) requires that cities who, before Metro Title 13 was adopted, enacted regulations  
6 applying to areas identified as upland wildlife habitat on Metro’s Inventory Map shall not repeal  
7 those regulations, or amend them in a manner that would allow more than a de minimis  
8 increase in the amount of development that could occur in those areas. Because Lake  
9 Oswego’s upland tree grove protections were adopted before Metro Title 13 came into effect,  
10 it could violate the Title 13 no-rollback provision if the City were to amend the current  
11 protections for those groves that also appear on Metro’s Inventory Map in a way that allows  
12 more than a de minimis increase in development opportunity. The City Council finds that it is  
13 appropriate to add the suggested clause to the proposed Code language in order to ensure  
14 compliance with Title 13.  
15

16  
17 **B. Comprehensive Plan Map and Zoning Map Amendments**

18 It is also proposed that the Comprehensive Plan Map and Zoning Map be amended to  
19 remove the RC Overlay District designation from portions of 45 properties within six tree groves  
20 that meet the amended Code removal criteria. All six groves meet the amended definition of  
21 Isolated Tree Grove because they are not contiguous with a Resource Protection (RP) Overlay  
22 District, or with another tree grove that is contiguous with an RP District. Thus they are each  
23 eligible for removal under proposed LOC 50.07.004.8.b.i(4), so long as the removal does not  
24 violate the Metro Title 13 no-rollback provision.  
25  
26

TG-13

TG-13 is a tree grove between Goodall Road and Cameo Court, located on eight private tax lots. The closest designated RP Overlay District is stream corridor W-35, across Goodall Road. TG-13 is adjacent to wetland W-30, which was determined to be insignificant when inventoried, with a HAS ranking of 17, well below the HAS threshold of 35 required for RP Overlay District Designation. W-30 is mapped in the Sensitive Lands Atlas as an insignificant resource.

As with each subject tree grove, Metro has analyzed the lots within TG-13 individually in providing comments on whether removal of the tree grove would create more than a de minimis increase in the amount of development that could occur within the upland habitat area.

The City Council concurs with Metro’s conclusion that removal of the overlay from the vacant parcel in unincorporated Clackamas County within TG-13 would not cause any additional negative impact to wildlife habitat, because the City’s RC Overlay District designation does not regulate properties outside the City. In other words, since the Overlay District designation does not currently restrict development on that parcel, the removal of that designation does nothing to allow an increase the amount of development that can occur.

Metro also notes that a group of lots at 13777, 13795 and 13770 Cameo Court and 14080 and 14084 Goodall Road are developed with single family homes and cannot be further divided. The tree grove is located on the back edge of the five parcels and consists of only 6,925 square feet. The City Council concurs with Metro that there would be little additional development that could occur there and concludes that any increase would be de minimis.

1        However, Metro nevertheless concluded that removing the RC Overlay District designation  
2 from TG-13 does not meet the de minimis standard of the no-rollback provision because of the  
3 amount of upland wildlife habitat that could be impacted through the development of 14062  
4 Goodall Road and the potential partition of 13783 Cameo Court.

5                Metro's analysis states that the parcel located at 14062 Goodall Road is vacant.  
6  
7 However, at the July 10, 2012 hearing, the City Council received credible evidence that a large  
8 (5,500 square feet) single-family residence is under construction on the front third of the  
9 parcel. That, together with the adjacent development pattern, makes it very unlikely that the  
10 parcel would be subdivided to create three additional lots. Although a two-lot partition is  
11 technically feasible, given the size of the structure being built, together with the characteristics  
12 of adjacent development, it is also unlikely that the parcel will be divided. The City Council  
13 finds that removing the RC Overlay District from 14062 Goodall Road is not likely to result in  
14 additional development within the area identified as upland wildlife habitat.  
15

16                Metro's analysis also states that the vacant parcel at 13783 Cameo Court has the  
17 potential to be partitioned into two lots. Similarly, while a two-lot partition is technically  
18 feasible for 13783 Cameo Court, it is very unlikely given the adjacent development pattern. The  
19 parcel was created thorough a three-lot partition in 2006 and is similar in size to the  
20 neighboring parcels on Cameo Court. Since the tree grove is located to the rear and side of the  
21 existing lot, development of one single-family residence can occur without impacting the  
22 upland habitat area.  
23

24                The City Council concludes that the RC Overlay District designation should be removed  
25 from all of TG-13.  
26

TG-23

1 This tree grove is located along Boones Ferry Road, south of Washington Court and north of  
2 Lower drive. It is located on 11 private lots and 1 public open space lot that is not proposed for  
3 a designation removal. The closest mapped RP Overlay Districts are located on the other side  
4 of Boones Ferry Road. Metro concludes that the no-rollback provision applies only to  
5 regulations that limit development in order to protect fish or wildlife habitat. Exhibit F-1 dated  
6 April 11, 2012 discloses that TG 23 was included on the Sensitive Lands Atlas due to its scenic  
7 value rating and not because of its habitat assessment score. For those reasons Metro  
8 concludes, and the City Council concurs that the no-rollback provision does not apply to this  
9 tree grove.  
10  
11

12 The City Council concludes that the RC Overlay District designation should be removed from  
13 the 11 private lots that include portions of TG-23.  
14

TG-24

15 This tree grove is located south of Firwood Road and north of Madrona Street on 11 private  
16 lots. The closest RP Overlay Districts (wetlands W-15 and W-16) are separated from this grove  
17 by two roads and numerous developed lots. Metro notes, and the City Council concurs, that,  
18 because this grove is entirely in unincorporated Clackamas County and not regulated by the  
19 City's RC restrictions, removal of the RC designation would not increase the amount of  
20 development that could occur there and that therefore the no-rollback provision does not  
21 apply.  
22  
23

24 The City Council concludes that the RC Overlay District designation should be removed from  
25 all of TG-24.  
26

1 TG-30

2

3 TG-30 is located between Centerpoint Drive and Kruse Oaks Boulevard on two private lots.

4 There are stream corridors in the area, but they are separated from the tree grove by

5 development and Kruse Oaks Boulevard. Because this tree grove is not identified as upland

6 habitat on the Metro Inventory Map, the Metro no-rollback provision does not apply.

7

8 The City Council concludes that the RC Overlay District designation should be removed from  
9 the entire tree grove.

10

11 TG-31

12 This tree grove is located at the south end of Sierra Vista Drive, north of Southwood Drive

13 and east of 61<sup>st</sup> Avenue, on five private lots and one public open space lot that is not proposed

14 for a designation removal. The closest mapped RP District is separated from TG-13 by Deerfield

15 Court and developed lots. Most of this tree grove covers a city-owned public open space not

16 proposed for removal. The remainder extends slightly onto three lots with single family homes,

17 that cannot be further divided. Metro agrees that the amount of additional development that

18 could occur on these lots would be de minimis.

19

20

21 The City Council concludes that the RC Overlay District designation should be removed from

22 the five private lots that include portions of TG-31.

23

24 /////

25

26 /////

TG-32

This grove is located east of Rogers Road and north of Southwood Drive on eight private lots and one public open space lot that is not proposed for designation removal. It is separated from the nearest stream corridor and wetland by roads and developed lots. As with TG-31, this grove is primarily on city-owned open space not proposed for removal from the Overlay District. The remainder extends slightly onto eight adjacent parcels with single-family homes, and which cannot be further divided. The City Council concurs with Metro’s conclusion that any future development that could occur on these lots by virtue of the removal of the Overlay Designation would be de minimis.

The City Council concludes that the RC District Overlay designation should be removed from the eight private lots that contain portions of TG-32.

**C. Testimony**

In addition to testimony from individuals supporting removal of overlay designations from specified tree groves, testimony was received that the City’s Sensitive Lands Program (LOC 50.05.010 and 50.07.004.8) as a whole is flawed for a variety of reasons, including that it is arbitrary and capricious, unneeded, encourages density transfers that result in incompatible development, diminishes private property rights, fails to protect wildlife, creates fire safety issues, or that habitat protection is not needed. Some of those expressing this view urged the City Council to deny the proposal because it is seen as a piecemeal or ineffective approach that will do little or nothing to correct the larger program issues. Others expressing similar views of

1 the larger program urged the City Council to approve the proposal, characterizing it as a step in  
2 the right direction. The City Council notes that the issues before the Council in this particular  
3 proceeding are limited to determining the appropriateness of the specific proposed Code  
4 amendments, as well as whether the criteria of LOC 50.07.004.8.b as amended are applicable to  
5 the specified tree groves, not whether the underlying legislative policy choices that resulted in  
6 adoption of the Sensitive Lands Program as a whole were correct. Issues raised about the  
7 overall program may of course be addressed in other forums. The Council finds that providing  
8 the proposed relief to the owners of the subject properties is appropriate and beneficial, while  
9 remaining consistent with the requirements, and the objectives, of Metro Title 13, the  
10 applicable Statewide Planning Goals and the applicable goals and policies of the Lake Oswego  
11 Comprehensive Plan.  
12  
13

#### 14 **CONCLUSION**

15  
16 The City Council concludes that LU 12-0012-1792, as modified to be consistent with the  
17 above findings (including removing the Resource Protection Overlay District designation from  
18 TG-13) complies with all applicable criteria. The City Council also concludes that proposed  
19 Ordinance 2589 (incorporating the modifications) should be enacted.  
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21  
22  
23  
24  
25  
26