



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

March 8, 2007

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Lake Oswego Plan Amendment
DLCD File Number 006-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

This adoption was adopted by the City on February 7, 2007, and passed the 21-day appeal period from the date of the adoption.

Appeal Procedures*

DLCD DEADLINE TO APPEAL: Acknowledged under ORS 197.625 and ORS 197.830 (9)

Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Amanda Punton, DLCD Natural Resource Specialist
Paul Espe, City of Lake Oswego

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NOTICE OF ADOPTION
Must be filed within 5 Working Days
See OAR 660-18-040

DEPT OF

FEB 09 2007

LAND CONSERVATION
 AND DEVELOPMENT

Jurisdiction City of Lake Oswego **Local File No.** LU 06-0058 (Ord. 2475)
Date Mailed 02/08/07 **Date of Approval** 02/06/07
Date Proposal was Provided to DLCD 07/31/06

Type of Adopted Action (Check all that apply)

Comprehensive Plan Amendment **Land Use Regulation Amendment** **New Land Use Regulation**

Please complete (A) for text amendments and (B) for map amendments

A. Summary of Adopted Action (A brief description is adequate. Please avoid highly technical terms and zone code abbreviations. Please do not write "see attached"):

The City Council approved a recommendation from the Planning Commission for an amendment to the Sensitive Lands Overlay District on the Comprehensive Plan Map and Zoning Map to designate a Resource Conservation (RC) overlay on one parcel (605 Country Club Road).

Describe how the Adopted Amendment Differs from the Proposal (If it is the same, write "Same". If it was not proposed, write "N/A".):

Same

B. If the Action Amends the Plan or Zone Map, Provide the Following Information for Each Area Which was Changed (Provide a separate sheet for each area. Multiple sheets can be submitted as a single adoption action. Please include street address whenever possible. Do not use tax lot number alone.):

Previous Plan Designation: <u>None</u>	New Plan Designation: <u>Resource Conservation Designation (RC)</u>
Previous Zone: <u>No Designation</u>	New Zone: <u>Resource Conservation Designation (RC)</u>
Location: <u>605 Country Club Road, Lake Oswego, OR 97034 (21E03CB01400)</u>	

Acreage involved: 0.69

Does this change include a Goal exception? Yes No

For Residential Changes, Please Indicate the Change in Allowed Density in Units Per Net Acre

Previous Density <u>N/A</u>	New Density <u>N/A</u>
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DLCD # 006-06 (15623)

If Notice of Proposal was not sent to DLCD 45 Days Prior to the Final Hearing Please Indicate Why:

Statewide Planning Goals are Inapplicable
 Emergency Circumstances Required Expedited Review

List Statewide Goals Which May Apply:

Goal 5

List any State or Federal Agencies, Local Government or Local Special Service Districts Which May be Interested in or Impacted by the Adoption:

N/A

Direct Questions and Comments to:

Paul Espe, Associate Planner
City of Lake Oswego
P. O. Box 369
Lake Oswego, OR 97034
(Phone) (503) 503-697-6577

Send To: Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

Attach one (1) copy of the Adopted Action to this form and/or three (3) copies of Bound Materials and Maps larger than 8-1/2 by 11 inches.

Note: If more copies of this form are needed, please contact the DLCD office at 503-373-0050, or this form may be duplicated on green paper. Failure to provide notice of an adopted plan or land use regulation amendment results in an extension of the appeal period. Appeals may be filed within 21 days of the date the proposal is mailed to DLCD. Statutes require mailing within 5 days of the action becoming final (See OAR 660-18-040).

*****FOR DLCD OFFICE USE*****

DLCD File Number _____

30 days = March 8, 2007

ORDINANCE No. 2475

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY LAKE OSWEGO AMENDING THE NATURAL RESOURCES INVENTORY OF THE LAKE OSWEGO COMPREHENSIVE PLAN, THE SENSITIVE LANDS ATLAS AND THE SENSITIVE LANDS OVERLAY DISTRICT MAP TO DESIGNATE A RESOURCE CONSERVATION OVERLAY DISTRICT CONSISTING OF APPROXIMATELY 0.26 ACRES ON PROPERTY LOCATED AT 605 COUNTRY CLUB ROAD (TAX MAP 21E03CB TAX LOT 1400), AND ADOPTING FINDINGS (LU 06-0058-1634).

WHEREAS, an application for annexation to the City of Lake Oswego of the territory shown on attached Exhibit "A" and described below was received; and

WHEREAS, the City initiated amendments to the Natural Resources Inventory of the Lake Oswego Comprehensive Plan, the Sensitive Lands Atlas, and the Sensitive Lands Overlay District Map to designate a Resource Conservation District (RC) overlay zone consisting of approximately 0.26 acres on said property upon annexation into the City; and

WHEREAS, notice of the public hearings for consideration of this ordinance was duly provided in the manner required by law, including notice to affected property owners pursuant to Measure 56; and

WHEREAS, the City has followed the requirements of LOC 50.16.020 and Statewide Planning Goal 5 in completing an ESEE Analysis to determine whether a Resource Conservation (RC) overlay should be imposed; and

WHEREAS, a public hearing was held before the Lake Oswego Planning Commission on November 27, 2006 at which the staff report, public testimony and other evidence were received and considered; and

WHEREAS, a public hearing on the Planning Commission recommendation was held by the City Council on January 22, 2007 at which the staff report, public testimony and the record of the proceedings before the Planning Commission were received and considered;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 06-0058-1634) attached as Exhibit "B".

Section 2. The Natural Resources Inventory of the Lake Oswego Comprehensive Plan, the Sensitive Lands Atlas and the Sensitive Lands District Overlay Map are hereby amended to designate a Resource Conservation Overlay District on property located at 605 Country Club Road as shown in Exhibit "C".

Property ID	Property Owner	Resource No.	Overlay Zone	RC Designation in acres
21E03CB 01400	Anne Pernichele and Elliott Mantell	W 73	RC	0.26

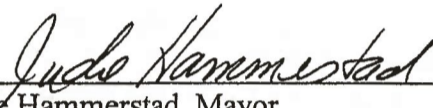
Enacted at the regular meeting of the City Council of the city of Lake Oswego held on the 6th day of February, 2007.

AYES: Mayor Hammerstad, McPeak, Turchi, Hennagin,
Jordan, Johnson

NOES: none

ABSTAIN: none

EXCUSED: Groznik



Judie Hammerstad, Mayor

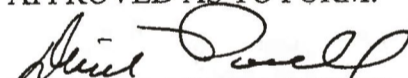
Dated: 02/07/2007

ATTEST:



Robyn Christie, City Recorder

APPROVED AS TO FORM:



David Powell, City Attorney

EXHIBIT "A"

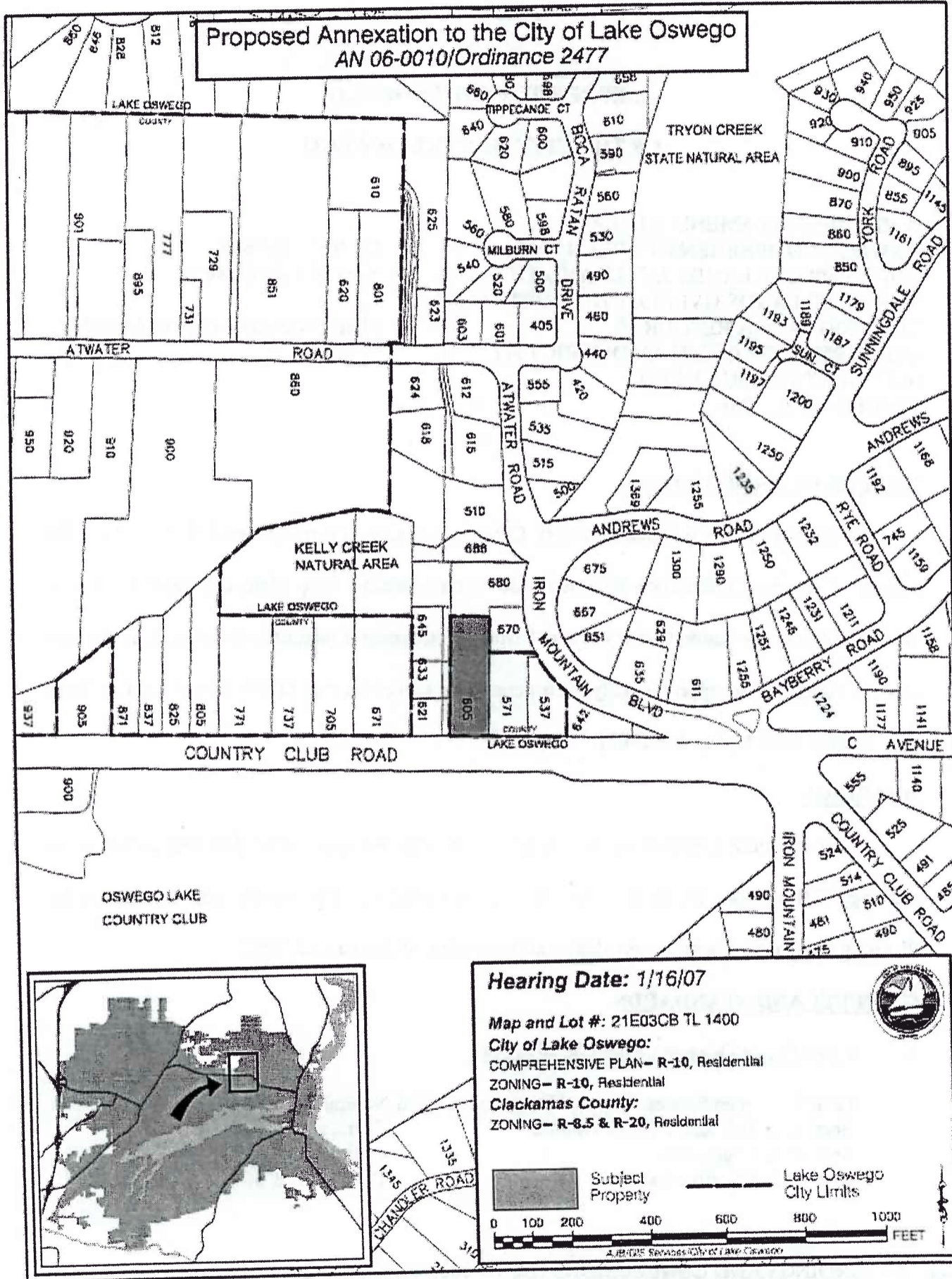


EXHIBIT "B"

BEFORE THE CITY COUNCIL

OF THE CITY OF LAKE OSWEGO

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A REQUEST TO AMEND THE LAKE)
OSWEGO COMPREHENSIVE PLAN MAP,) LU 06-0058-1634
THE SENSITIVE LANDS ATLAS AND THE) (City of Lake Oswego)
SENSITIVE LANDS OVERLAY DISTRICT MAP)
TO DESIGNATE A RESOURCE) FINDINGS AND CONCLUSIONS
CONSERVATION OVERLAY DISTRICT AT)
605 COUNTRY CLUB ROAD)
[ORDINANCE 2475])

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NATURE OF PROCEEDING

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This proceeding is before the City Council pursuant to a recommendation by the Lake Oswego Planning Commission to amend the Comprehensive Plan Map, the Sensitive Lands Atlas and Sensitive Lands Overlay District Map to designate a Resource Conservation Overlay District consisting of approximately 0.26 acres on a parcel located at 605 Country Club Road (Tax Map 21E03CB, Tax Lot 1400).

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HEARINGS

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The Planning Commission held a public hearing and considered this application at its meeting of November 27, 2006. The City Council held a public hearing and considered the Planning Commission's recommendation at its meeting of January 22, 2007.

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CRITERIA AND STANDARDS

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A. City of Lake Oswego Comprehensive Plan
Goal 5: Open Spaces, Scenic, Historic Areas and Natural Resources
Section 1, Fish and Wildlife Habitat Policies 1, 2, 3, 6, 10
Section 2, Vegetation Policies 1, 2, 3, 14
Section 5, Sensitive Lands Policies 1, 2, 3, 4

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B. Lake Oswego Community Development Code Procedural Requirements

LOC 50.79.30	Major Development Classification
LOC 50.79.035	Review Criteria for Major Developments
LOC 50.79.040	Conditions of Approval
LOC 50.82.005-LOC 50.82.020	Review by Hearing Body/Notice of Public Hearing
LOC 50.83.005-50.83.040	Hearings before a Hearings Body
LOC 50.75.015	Required Notice to DLCD

C. Lake Oswego Community Development Code Sections relating to Sensitive Land Overlay Zone Designation upon Annexation

LOC 50.05.020	Zoning of Annexed Areas
LOC 50.05.025	Comprehensive Plan Map Designations Automatically Applied Upon Annexations; Exceptions
LOC 50.16.020	Criteria for Sensitive Lands Overlay Zones Designation

D. Statutory Provisions

Statewide Planning Goal 5	
OAR 660 Division 16	Statewide Planning Goal Procedure

FINDINGS AND REASONS

As support for its decision, the City Council incorporates the staff Council Report dated December 29, 2006 for LU 06-0058 (with all exhibits), the Staff Report of November 17, 2006 (with all exhibits), together with the findings and conclusions of the Planning Commission, the minutes of the Planning Commission meeting of November 27, 2006, and the record of the proceedings before the City Council. To the extent they are consistent with the approval granted herein, the City Council adopts by reference its oral decision.

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

This application proposes the establishment of a Resource Conservation (RC) Overlay District (designating the existence of an environmentally significant tree grove) on a parcel at

1 605 Country Club Road. This parcel has also been proposed for annexation in separate
2 proceedings (AN 06-0010).

3 The criteria and process for establishing sensitive lands overlay districts are contained in
4 Article 50.16 of the Community Development Code. LOC 50.16.020(5) states that a tree grove
5 may be placed within an RC Overlay District if it received a Habitat Assessment score (HAS) of
6 at least 35 in the 1994/1995 Economic, Social, Environmental and Energy (ESEE) Analysis
7 performed by the City as required under Statewide Planning Goal 5.¹ An HAS score is a
8 numerical ranking representing the relative wildlife habitat values of a resource in comparison
9 with other sites in the City.² The purpose of an ESEE analysis is to balance the relative value of
10 an inventoried natural resource against conflicting uses in order to determine an appropriate level
11 of protection. The 1994/1995 study referenced in LOC 50.16.020(5) was used for the April 1,
12 1997 *Lake Oswego Resource Areas Report and ESEE Analysis* (revised July 15, 1997). That
13 report formed the basis for the designation of resources to be protected at the inception of the
14 City's current sensitive lands program.³

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17 Reading LOC 50.16.020(5) outside of its larger context could lead to an erroneous
18 conclusion that a tree grove that was not analyzed and identified in the 1994/1995 study would
19 not be eligible for an RC Overlay District designation, regardless of its HAS score. However
20 LOC 50.05.025(3) provides that:

21 When evidence indicates that a resource that potentially qualifies for an RP or RC
22 District Designation exists on territory to be annexed, the City may conduct an
23 ESEE Analysis and determine whether such a zone [sic] should be imposed

24 ¹ LOC 50.16.020(5) also authorizes an RC Overlay District where the tree grove has a high ranking for scenic values
in the 1994/95 study, or is associated with a stream corridor or wetland that has an Resource Protection ranking.
The proposed RC designation in the subject application is not based upon either of those criteria.

25 ² The features to be evaluated include water, food, cover, disturbance, linkage and "unique features." The maximum
possible score is 124. LOC 50.02.005 -- *HAS (Habitat Assessment Score)*; LOC 50.16.020(3).

26 ³ LOC 50.02.005 -- *ESEE Process Analysis*

1 pursuant to LOC Article 50.16. City staff may request a delay in the effective
2 date of annexation to complete review.

3 The phrase “may conduct an ESEE analysis” clearly authorizes new ESEE analyses,
4 including calculation of HAS scores, for properties proposed for annexation. The City Council
5 finds that the reference in this subsection to Article 50.16 relates to using the process and
6 methodology, and ultimately applying the protections, outlined in that Article. In spite of the
7 language in LOC 50.16.020(5), the reference does not mean that only the HAS ratings
8 established in the 1994/1995 study may be considered for properties proposed to be annexed.

9 The ESEE analysis completed for the subject site (Exhibit F-2) shows that the tree grove
10 warrants an HAS rating of 40. This exceeds the minimum score of 35, resulting in the grove
11 being considered significant in terms of wildlife habitat values.⁴ The analysis also demonstrates
12 that the regulatory protections afforded by the RC Overlay District designation, and ultimately
13 by delineation of the resource and establishment of a Resource Conservation Protection Area,
14 will have small but positive economic, social, environmental and energy impacts. Thus the site
15 meets the criteria for designation of an RC Overlay District.⁵

16 The property owners have suggested that potential future development on adjacent
17 parcels that could result in removal of trees could have the effect of a future reduction of the
18 “linkage” factor that is a part of the HAS analysis supporting designation of the RC Overlay
19 District. However, the determination of whether an RC Overlay District should be designated
20 must be based upon site conditions that currently exist. The Council notes that the designation of
21 the Overlay District is only the first part of a three step process. It will be followed by a more
22 precise delineation of the actual resource, and then by establishment of a Resource Conservation
23 District. However, the determination of whether an RC Overlay District should be designated
24 must be based upon site conditions that currently exist. The Council notes that the designation of
25 the Overlay District is only the first part of a three step process. It will be followed by a more
26 precise delineation of the actual resource, and then by establishment of a Resource Conservation

26 ⁴ LOC 50.02.005 – HAS (*Habitat Assessment Score*)

1 Protection Area (RCPA) consisting of 50% of the delineated resource. Generally, development
2 is not allowed within the RCPA⁶. At each stage of this three step process, the resource is
3 analyzed according to then-current conditions. The timing of the delineation and the
4 establishment of the RCPA is usually within the control of the property owner, as these steps are
5 typically triggered by an application for development.

6
7 After confirming at the City Council hearing that there will be opportunities to address
8 the appropriate location of the resource or the RCPA during each of the two remaining steps, the
9 property owner informed the Council that she did not object to the proposed designation of
10 Resource Conservation Overlay District on her property.

11 **CONCLUSION**

12 The City Council concludes that LU 06-0058-1634 complies with all applicable criteria,
13 and that a Resource Conservation Overlay District should be designated on the subject property
14 as proposed.
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25 ⁵ LOC 50.16.020

26 ⁶ See LOC 50.16.060.

EXHIBIT "C"

