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Ordinance No. 01- 03

**A SPECIAL ORDINANCE VACATING
THE HILLCREST AVENUE RIGHT-OF-WAY
BETWEEN LOMA LINDA DRIVE AND AUBURN STREET**

State of Oregon, County of Klamath
Recorded 01/15/2002 2:23 P
Vol M02, Pg 2578-83
Linda Smith, County Clerk
Fee \$ 46.00 # of Pgs 6

WHEREAS, the owner of the property adjacent to the right-of-way to be vacated requested that the City Council initiate the vacation proceedings, and

WHEREAS, the City Council adopted Resolution 00-65 on November 21, 2000, initiating the vacation proceedings for the Damont Street and Hillcrest Avenue rights-of-way; and

WHEREAS, the owners of the properties adjacent to the right-of-way to be vacated desire to vacate the Hillcrest Avenue right-of-way adjacent to and east of lots 4 through 6, Block 11 and adjacent to and west of lots 5 and 6 of Block 16, of the Terraces Addition to Klamath Falls; and

WHEREAS, a hearing was held on January 8, 2001, pursuant to applicable laws, at which time all objections with reference to said proposed vacation were considered by the Planning Commission; and

WHEREAS, the City Council, hearing notice having been duly given, did hold a public hearing on February 5, 2001, on the recommendation of the Planning Commission concerning the vacation; and

WHEREAS, the City Council has modified the findings of the Planning Commission, attached hereto and incorporated by this reference as Exhibit B; and

WHEREAS, pursuant to such record and hearing, the City Council has determined the vacation to be in compliance with the Community Development Ordinance and the Comprehensive Plan; **NOW THEREFORE**,

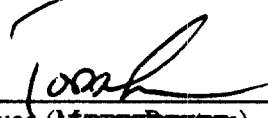
rx **THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:**

The Hillcrest Avenue right-of-way located between Auburn Street and Loma Linda Drive, Klamath County, Oregon, being more particularly described in Exhibit C (and as shown on Exhibit A) is hereby vacated; provided, however, there is reservation of a 20' wide permanent, exclusive easement to the City of Klamath Falls for the purpose of inspecting, repairing, maintaining, altering, operating and replacing the City's existing sewer line, and all necessary appurtenances, in, upon, through, over across and under a strip of land more particularly described in Exhibit D; No buildings or above-ground structures may be erected within the easement area, and no trees, shrubs or other plants shall be planted or maintained in the easement area that will interfere with said sewer line.

It is further provided that all structures and mature trees and shrubs presently existing within any of the above-described easements shall be allowed to remain until such time as removal is necessitated by needed utility work, or ingress and egress by the City of Klamath Falls. The City shall make reasonable efforts to avoid damage to or destruction of such structures, trees and shrubs, but the City shall not be responsible for damages to or destruction of any structure, tree or shrub existing within any of the above described easements incurred as a result of any authorized activity.

Passed by the Council of the City of Klamath Falls, Oregon, the 5th day of March, 2001.

Presented to the Mayor (Mayor ~~Pro tem~~), approved and signed this 6th day of March, 2001.


Mayor (Mayor ~~Pro tem~~)

ATTEST:


City Recorder (Deputy ~~Recorder~~)

STATE OF OREGON }
COUNTY OF KLAMATH } SS
CITY OF KLAMATH FALLS }

I, Shirley Kappas, ~~Recorder~~ (Deputy Recorder) for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the 05 day of March, 2001 and thereafter approved and signed by the Mayor (~~Mayor Pro-tem~~) and attested by the City Recorder (~~Deputy Recorder~~).

Shirley Kappas
~~City Recorder (Deputy Recorder)~~

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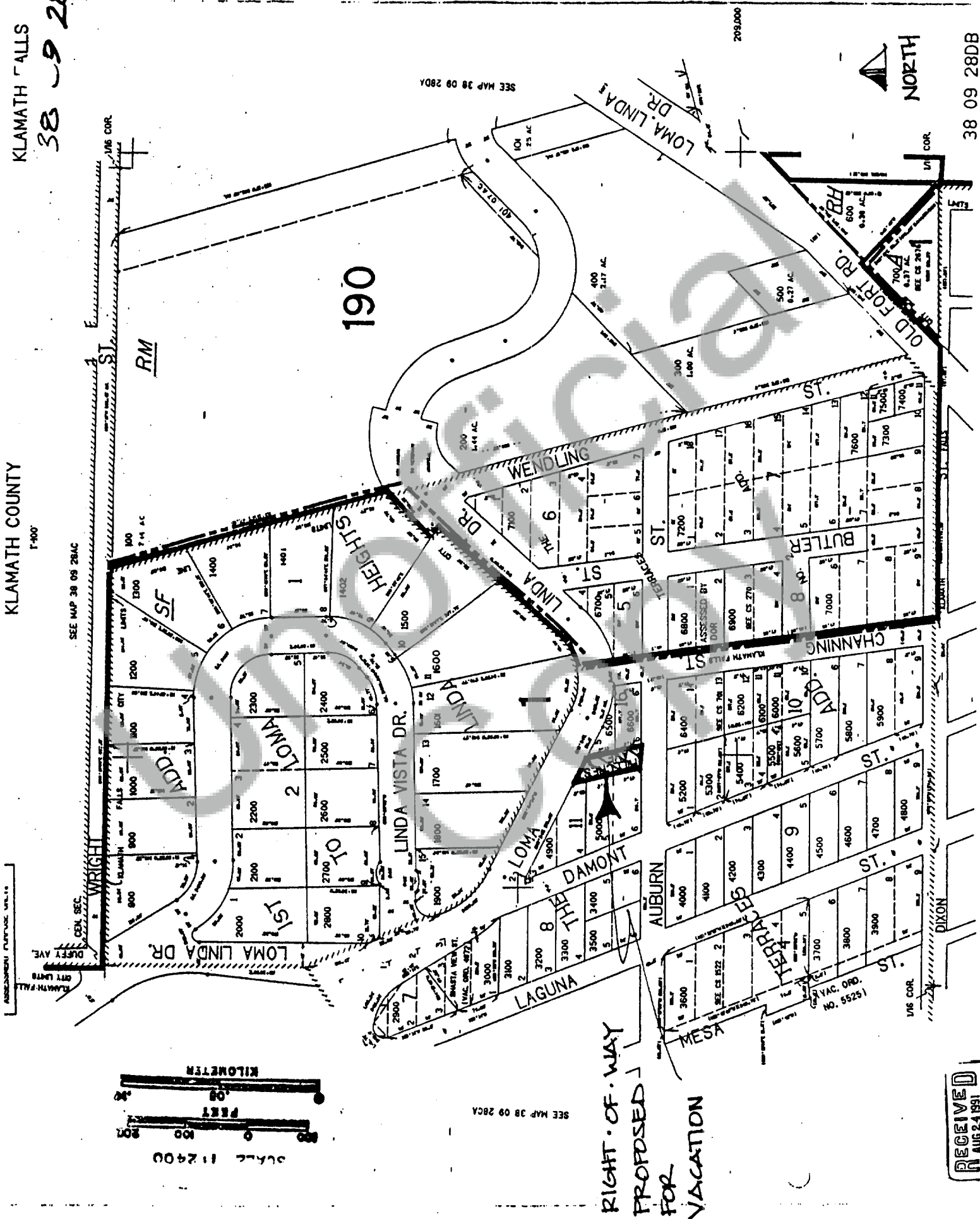
KLAMATH COUNTY

Exhibit B
Modified Findings

The following addresses the criteria specific to section 13.025 of the City's Community Development Ordinance. In applying the facts to the criteria, specific cross references may have been made; however, the facts separately set forth are generally applicable to more than one criterion and therefore, should be treated as cumulative and supplementary.

- A. Criterion. The consent of the owners of the requisite area has been obtained.

Facts and Analysis The applicant was unable to obtain the consent of the owners of the requisite area. However, Council initiated the vacation proceedings per ORS 271.130, which authorizes the City Council to initiate vacation proceedings without obtaining the required consent.

Finding. This criterion is not applicable as the City Council initiated the vacation proceedings.

- B. Criterion. The notice of the proposed vacation has been duly given.

Facts and Analysis Notice of the proposed vacation (for the Planning Commission hearing) was published in the Herald and News on December 15, 2000 and mailed to 31 adjacent property owners on December 11, 2000. Notice of the Council public hearing was published in the Herald and News on January 9, 16, 23 and 30, 2001 and mailed to 4 adjacent property owners.

Finding. This criterion has been met as notice of the Planning Commission hearing on the vacation was mailed to 31 adjacent property owners on December 15, 2000, consistent with the CDO and any applicable state provisions. One person notified responded in opposition of the proposal.

- C. Criterion. The public interest will not be prejudiced by vacation of such plat or part thereof.

Facts and Analysis The Hillcrest Avenue right-of-way is unimproved and a sewer line exists on the eastern edge. The right-of-way is fenced off and currently used as the rear yards for tax lots 6500 and 6600 (under the same ownership) and 501 Damont Street. The garage of 501 Damont street encroaches into the right-of-way 8.19'. No other permanent structures are within the right-of-way.

Finding. With the condition requiring an utility easement for the existing City sewer line within the vacated portion of the Hillcrest Avenue right-of-way and stating no new structures will be permitted within the easements and existing structures are permitted to remain until such time as the removal would be necessitated by any required utility work, this criterion has been met.

- D. Criterion. The proposed vacation conforms to the Comprehensive Plan, all applicable street plans, and all applicable provisions of Chapters 10 to 14.

Facts and Analysis The vacation conforms to the comprehensive plan and applicable provisions of Chapters 10 to 14 of the Community Development Ordinance and any applicable street plans.

Finding. With a condition stating no new structures will be permitted within the easement and existing structures are permitted to remain until such time as the removal would be necessitated by any required utility work, this criterion has been met

Exhibit C

Legal Description of Hillcrest Avenue Right-of-Way to be Vacated

OWNERS


DENNIS ENSOR O.L.S., C.W.R.E.
SANDIE ENSOR**TRU SURVEYING, INC. LINE**2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-3691JOHN HEATON L.S.I.T.
CHAD ENSOR L.S.I.T.

JANUARY 19, 2001

AREA OF HILLCREST AVENUE
TO BE VACATED

THAT PORTION OF HILLCREST AVENUE LYING BETWEEN BLOCKS 11 AND 16 OF "THE TERRACES", A DULY RECORDED SUBDIVISION, AND ALSO LYING BETWEEN THE NORTHERLY RIGHT OF WAY LINE OF AUBURN STREET AND SOUTHERLY OF THAT PORTION OF HILLCREST AVENUE VACATED BY THE CITY OF KLAMATH FALLS, ORDINANCE #4781 AND THE SOUTHERLY RIGHT OF WAY LINE OF LOMA LINDA DRIVE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 6 IN SAID BLOCK 11; THENCE N12°09'30"W, ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID HILLCREST AVENUE, 94.80 FEET TO THE SOUTHEAST CORNER OF LOT 4 IN SAID BLOCK 11 AND THE SOUTH LINE OF SAID LAND VACATED BY THE CITY OF KLAMATH FALLS ORDINANCE #4781, THENCE S89°24'30"E, ALONG THE SOUTH LINE OF SAID ORDINANCE #4781, 29.33 FEET TO ITS INTERSECTION WITH SAID SOUTHERLY RIGHT OF WAY LINE OF LOMA LINDA DRIVE; THENCE S62°18'20"E, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 14.84 FEET TO ITS INTERSECTION WITH THE EASTERLY RIGHT OF WAY LINE OF SAID HILLCREST AVENUE; THENCE S12°09'30"E, ALONG SAID EASTERLY RIGHT OF WAY LINE, 87.87 FEET TO ITS INTERSECTION WITH SAID NORTHERLY RIGHT OF WAY LINE OF AUBURN STREET; THENCE N89°24'30"W 41.01 FEET TO THE POINT OF BEGINNING, WITH BEARINGS BASED ON RECORD OF SURVEY 6288 ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.


DENNIS A. ENSOR O.L.S. 2442

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
DENNIS A. ENSOR
2442

EXPIRES 12-31-01

Exhibit D

Legal Description of the Utility Easement within the Hillcrest Avenue right-of-way

OWNERS

DENNIS ENSOR O.L.S., C.W.R.E.
SANDIE ENSOR**TRU SURVEYING, INC. LINE**2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-3691JOHN HEATON L.S.T.
CHAD ENSOR L.S.T.

FEBRUARY 13, 2001

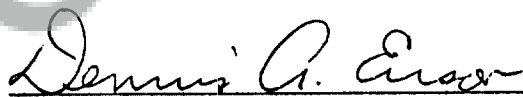
20' WIDE SEWER EASEMENT
IN VACATED HILLCREST AVENUE

THAT PORTION OF HILLCREST AVENUE LYING BETWEEN BLOCKS 11 AND 16 OF "THE TERRACES", A DULY RECORDED SUBDIVISION, AND ALSO LYING BETWEEN THE NORTHERLY RIGHT OF WAY LINE OF AUBURN STREET AND SOUTHERLY OF THAT PORTION OF HILLCREST AVENUE VACATED THE CITY OF KLAMATH FALLS, ORDINANCE #4781 AND THE SOUTHERLY RIGHT OF WAY LINE OF LOMA LINDA DRIVE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 6 IN SAID BLOCK 16; THENCE N89°24'30"W 20.51 FEET TO A POINT ON THE CENTERLINE OF HILLCREST AVENUE; THENCE N12°09'30"W ALONG THE CENTERLINE OF SAID HILLCREST AVENUE, 94.80 FEET TO A POINT ON THE CENTERLINE OF SAID HILL CREST AVENUE, SAID POINT BEING THE INTERSECTION OF THE EXTENSION OF THE SOUTH LOT LINE OF LOT 4 OF SAID BLOCK 11, AND SAID CENTERLINE; THENCE S89°24'30"E 8.83 FEET TO A POINT BEING THE INTERSECTION OF THE SOUTHEASTERLY EXTENSION OF THE SOUTH LOT LINE OF LOT 4 OF SAID BLOCK 11 AND THE SOUTHERLY RIGHT OF WAY LINE OF LOMA LINDA DRIVE; THENCE S62°18'20"E ALONG SAID SOUTHERLY RIGHT OF WAY LINE 14.84 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID HILLCREST AVENUE; THENCE S12°09'30"E ALONG SAID EASTERLY RIGHT OF WAY LINE 87.87 FEET TO THE POINT OF BEGINNING, WITH BEARINGS BASED ON RECORD OF SURVEY 6288 ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Dennis A. Ensor

OREGON
JULY 25, 1990
DENNIS A. ENSOR
2442

DENNIS A. ENSOR O.L.S. 2442

EXPIRES: 12/31/01