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# CITY OF West Linn

## STAFF REPORT FOR THE CITY COUNCIL

**FILE NUMBER:** VAC-23-02

**HEARING DATE:** February 12, 2024

**REQUEST:** City initiated request to vacate a portion of the Upper Midhill Drive right-of-way

**STAFF REPORT  
PREPARED BY:** Darren Wyss, Planning Manager

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## GENERAL INFORMATION

- APPLICANT:** City of West Linn  
22500 Salamo Road  
West Linn, OR 91068
- SITE LOCATION:** 3,564 square feet of unimproved Upper Midhill Drive right-of-way adjacent to tax lot 21E14CA00200 (18000 Upper Midhill Drive/Upper Midhill Estates Subdivision).
- DESCRIPTION:** Proposed vacation of a portion of Upper Midhill Drive right-of-way and establishment of a public utility easement and public access easement over its entirety.
- SITE SIZE:** 3,564 square feet will be vacated.
- ZONING:** R-4.5 (Residential)
- PLAN DESIGNATION:** Medium Density Residential
- APPROVAL CRITERIA:** Oregon Revised Statute (ORS) 271. Hearing conducted per the procedures of Community Development Code (CDC) Chapter 99.
- PUBLIC NOTICE:** Notice was completed per CDC 99.080 and ORS 271.110

## **EXECUTIVE SUMMARY**

The City of West Linn has initiated a right-of-way vacation for a portion of unimproved Upper Midhill Drive right-of-way adjacent to tax lot 21E14CA00200 (18000 Upper Midhill Drive/Upper Midhill Estates Subdivision). The proposed action will vacate 3,564 sq. ft. of the right-of-way. The proposal will eliminate the creation of an orphan piece of right-of-way that would result from recording the Upper Midhill Estates Subdivision Plat. Oregon Revised Statute (ORS) 92.185 does not permit vacating public right-of-way through a replat. The process found in ORS 271 must be followed, which is the public hearing process conducted by City Council.

The right-of-way subject to this action (see Exhibit CC-1, Map 1) is part of the approved Upper Midhill Estates Subdivision. The subdivision infrastructure has been installed (curbs, streets, sewer, stormwater, water, etc.) and now it is in the plat review process. The approved preliminary plat did not need the piece of right-of-way for street improvements/connectivity and would create the orphan piece (see Exhibit CC-1, Map 2). The City does not need the orphan piece for future street connections, nor does the City wish to maintain ownership as three of the subdivision lots will take access from a private shared drive located within the right-of-way piece.

The proposed vacated piece of right-of-way will be recorded on the final plat as a tract (see Exhibit CC-1, Map 3) with a public utility easement and public access easement across its entirety. The tract will provide access to three of the subdivision lots, as well as contain a sanitary sewer line and stormwater line/catch basin (see Exhibit CC-1, Map 4).

Notice of the public hearing was posted for two consecutive weeks in the West Linn Tidings and posted at both ends of the proposed vacation (see Exhibit CC-4). The proposal will have no impacts to the adopted West Linn Transportation System Plan or surrounding properties.

## **RECOMMENDATION**

Staff recommends the City Council approve the right-of-way vacation proposal.

## **PUBLIC COMMENTS:**

No comments have been received as of the publication of this Staff Report.

## **ADDENDUM APPROVAL CRITERIA AND FINDINGS**

*ORS 271.130 Vacation on city governing body's own motion.*

*(1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners.*

**Staff Finding 1: The City of West Linn initiated vacation proceedings for a street right-of-way as authorized by ORS.271.080. Neither a petition nor consent of affected property owners is required. The criteria are met.**

*Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.*

**Staff Finding 2: The notice provisions of ORS 271.110 have been met (see Staff Findings 5 to 7). The notice set the date for the public hearing as February 12, 2024. No decision on the proposal was made before the noticed public hearing. The City has not received a written objection to the proposal by a majority of property owners in the affected area. The vacation will not substantially affect the market value of abutting properties as the vacated portion of Upper Midhill Drive is internal to one property and part of the approved Upper Midhill Estates subdivision. The proposed vacation will not impede access to an improved street for future platted lots.**

*(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.*

**Staff Finding 3: The proposal is to vacate a portion of Upper Midhill Drive right-of-way. Only one street is proposed for vacation. The criteria are met.**

*(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.*

*(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases.*

**Staff Finding 4: The proposal does not include the vacation of all or part of a plat. The City of West Linn understands the right to an appeal and the process to file. The criteria are met.**

*271.110 Notice of hearing.*

*(1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.*

**Staff Finding 5: Public notice was published in the West Linn Tidings newspaper once each week for two consecutive weeks prior to the hearing (publish dates: January 24, 2024 and January 31, 2024). The notice included the ground covered by the vacation proposal, the date it was filed by the City of West Linn, the process to submit written or oral comment, and the date and time of the hearing. The criteria are met.**

*(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.*

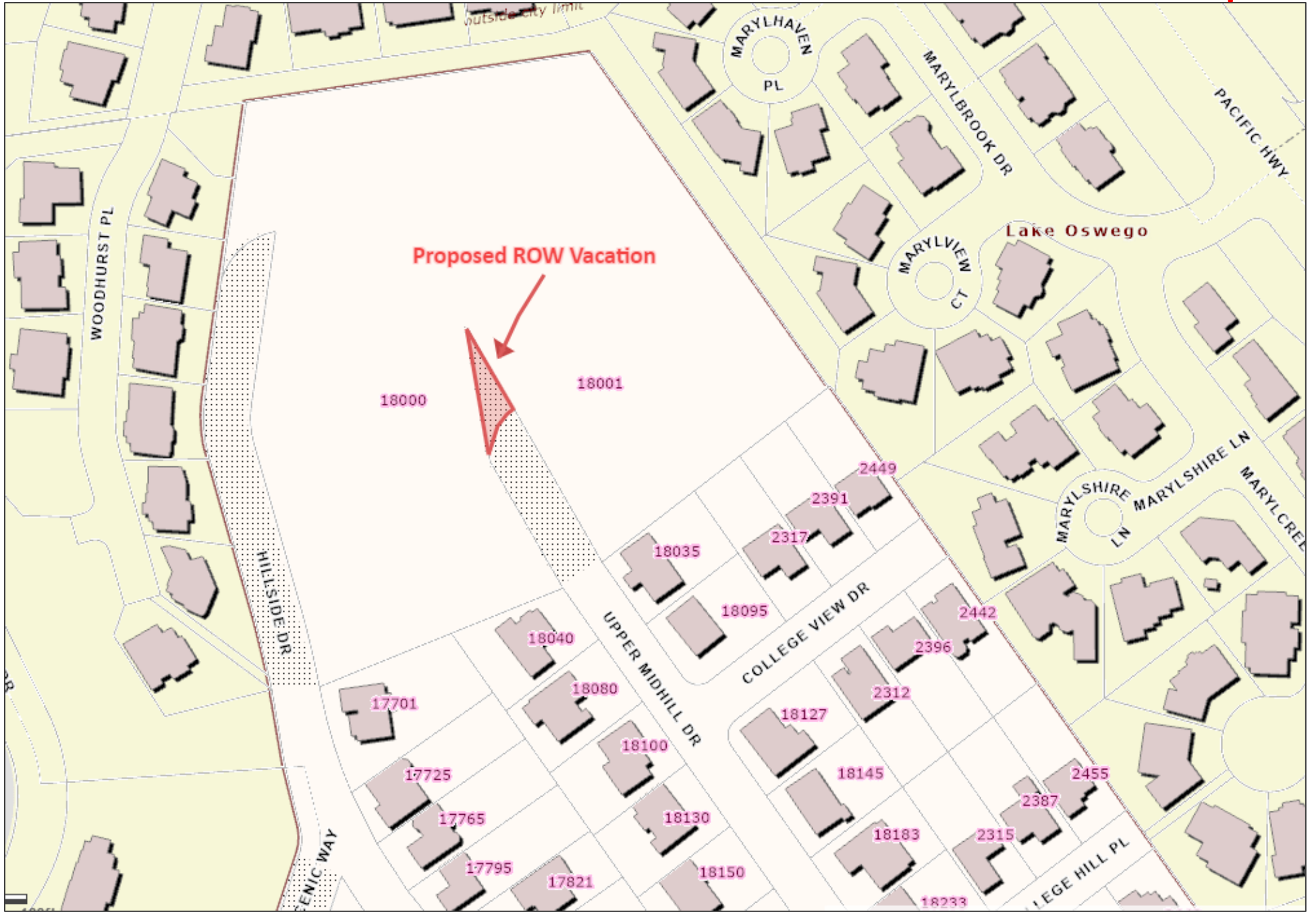
**Staff Finding 6: The first day of publication of the notice was January 24, 2024. Staff posted a "Notice of Street Vacation" at each end of the unimproved ROW in the proposal on January 25, 2024. Both the sign posting and first day of publication in the newspaper were at least 14 days prior to the hearing date. The criteria are met.**

*(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor.*

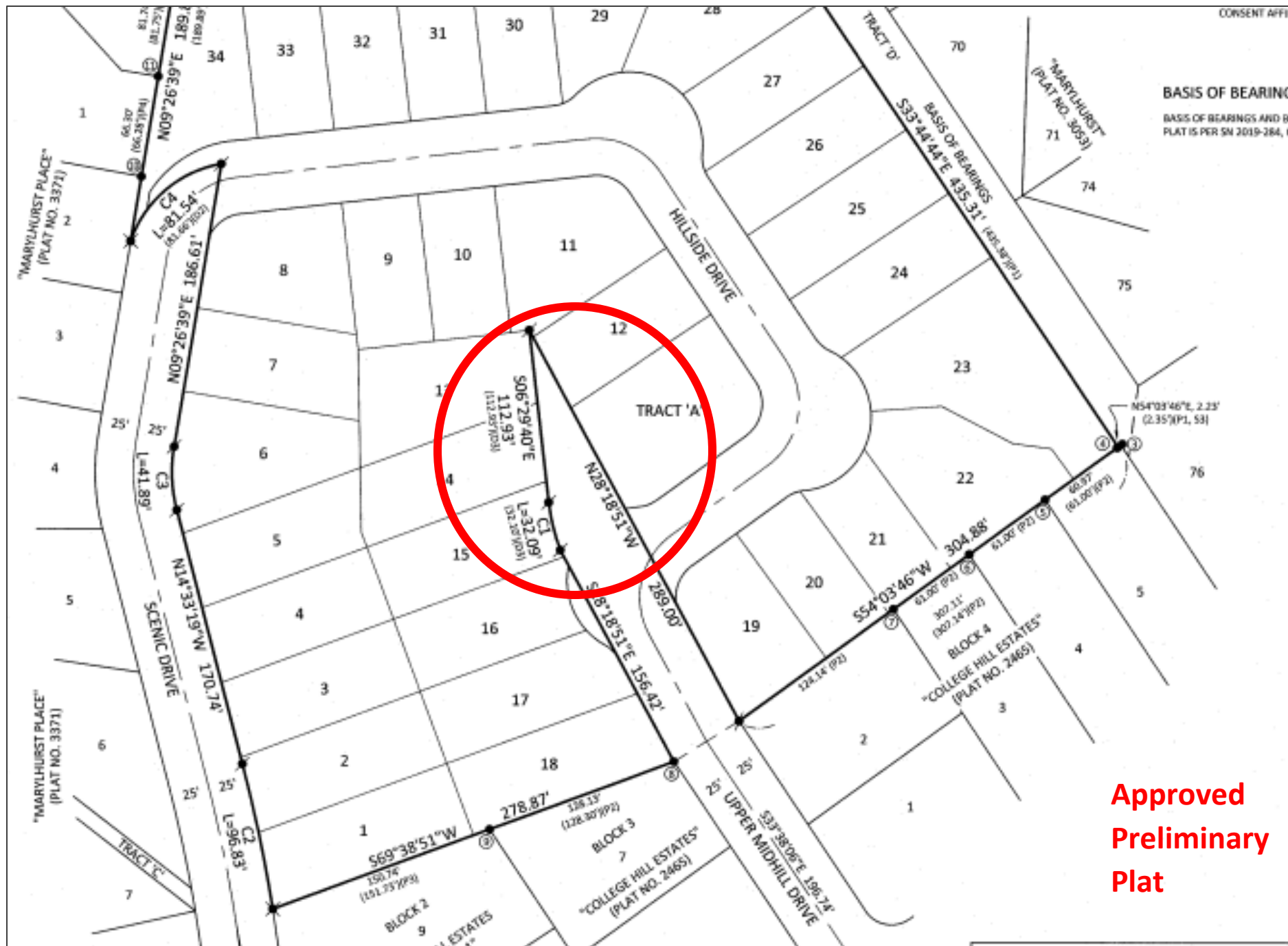
**Staff Finding 7: The proposal is City-initiated and all notices were funded by the City. The criteria are met.**

**EXHIBIT CC-1: LOCATION MAPS**

Map 1



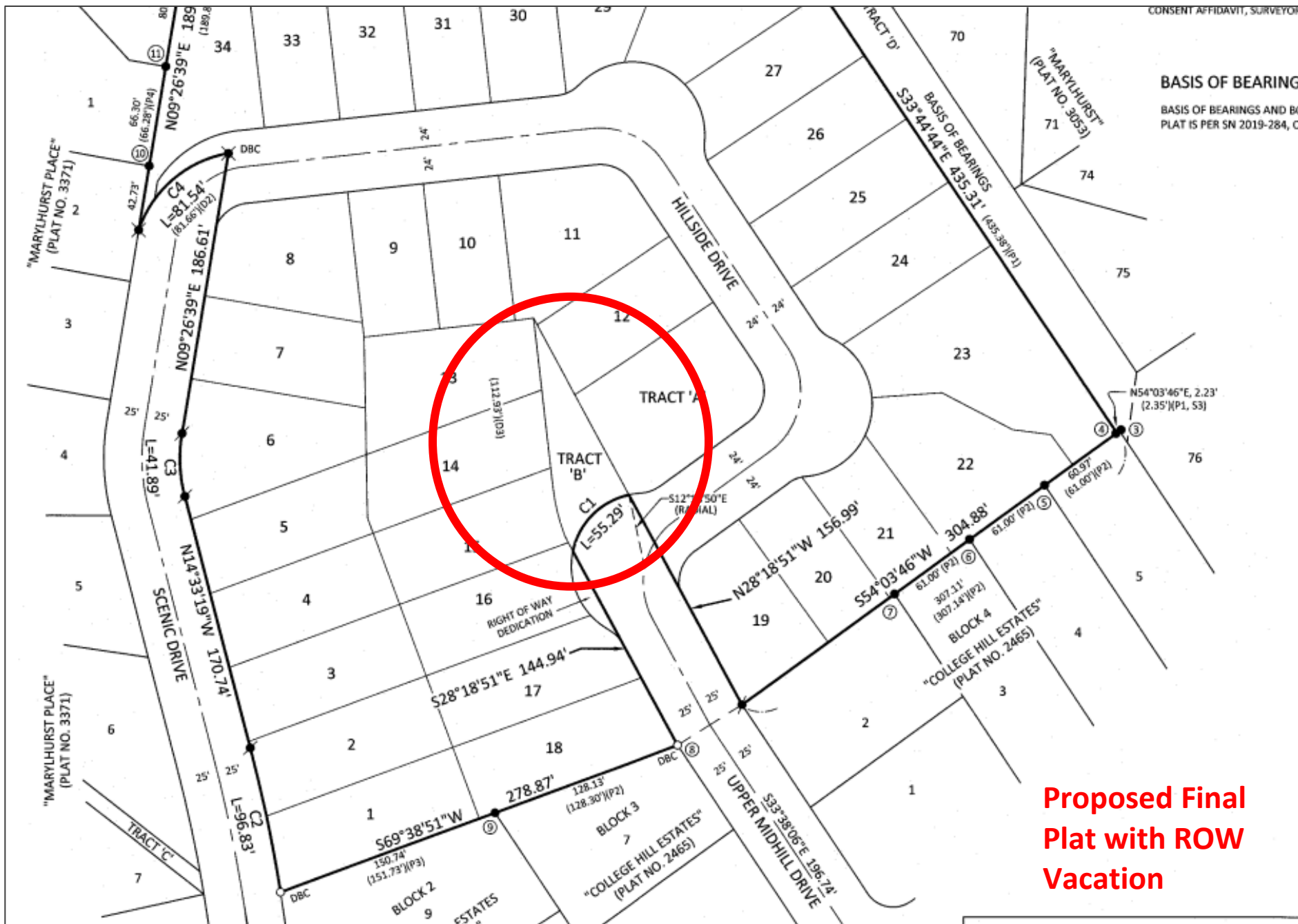
# MAP 2



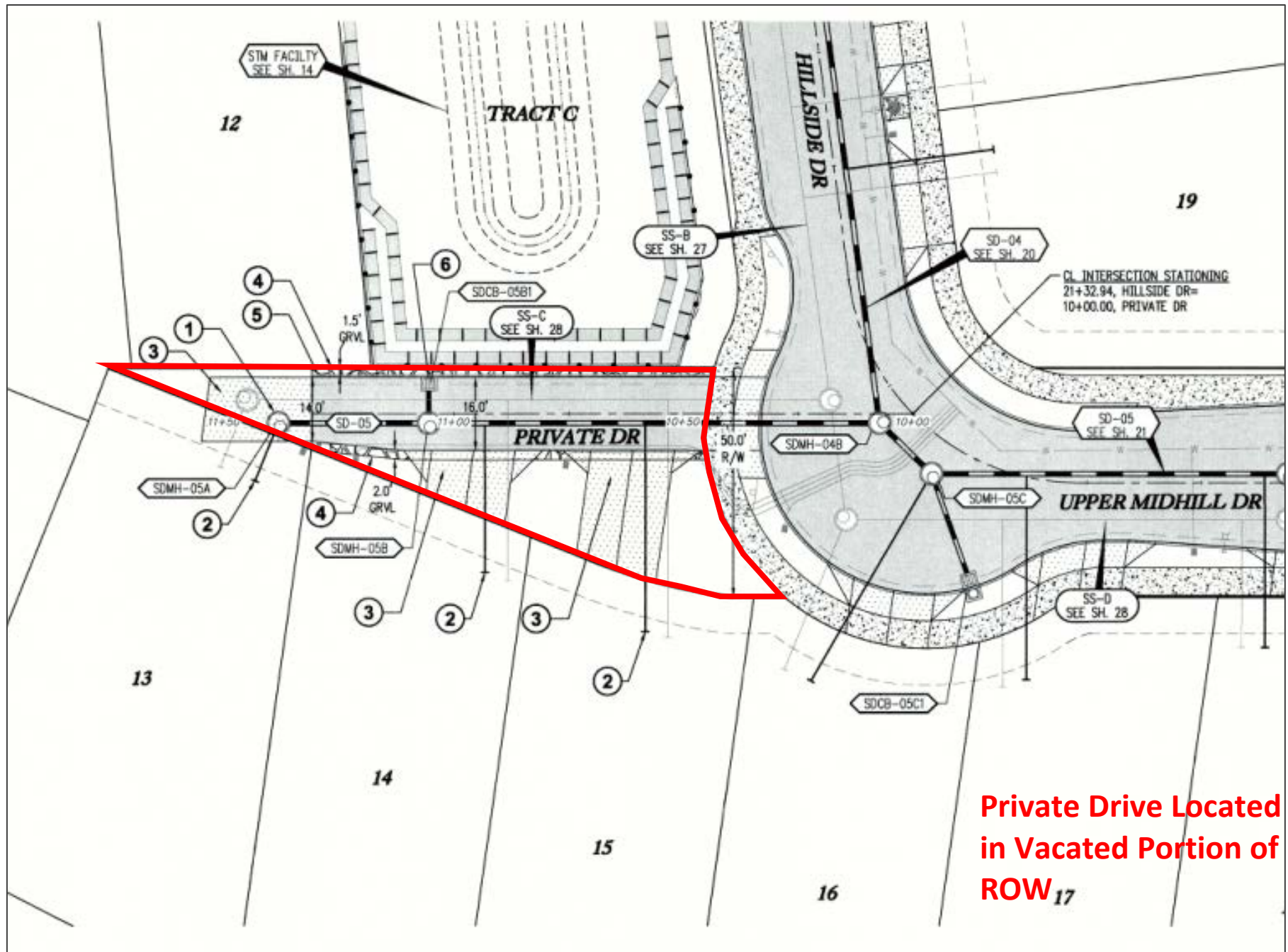
Approved  
Preliminary  
Plat



# MAP 3



# MAP 4



**EXHIBIT CC-2: APPLICANT SUBMITTAL**

## DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>WYSS</i>	PROJECT NO(S). <i>VAC-23-02</i>	PRE-APPLICATION NO. <i>n/a</i>
NON-REFUNDABLE FEE(S) <i>\$0</i>	REFUNDABLE DEPOSIT(S) <i>\$0</i>	TOTAL <i>\$0</i>

**Type of Review** (Please check all that apply):

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Annexation (ANX)<br><input type="checkbox"/> Appeal (AP)<br><input type="checkbox"/> CDC Amendment (CDC)<br><input type="checkbox"/> Code Interpretation (MISC)<br><input type="checkbox"/> Conditional Use (CUP)<br><input type="checkbox"/> Design Review (DR)<br><input type="checkbox"/> Tree Easement Vacation (MISC)<br><input type="checkbox"/> Expediated Land Division (ELD)<br><input type="checkbox"/> Extension of Approval (EXT) | <input type="checkbox"/> Final Plat (FP) Related File # _____<br><input type="checkbox"/> Flood Management Area (FMA)<br><input type="checkbox"/> Historic Review (HDR)<br><input type="checkbox"/> Lot Line Adjustment (LLA)<br><input type="checkbox"/> Minor Partition (MIP)<br><input type="checkbox"/> Modification of Approval (MOD)<br><input type="checkbox"/> Non-Conforming Lots, Uses & Structures<br><input type="checkbox"/> Planned Unit Development (PUD)<br><input checked="" type="checkbox"/> Street Vacation | <input type="checkbox"/> Subdivision (SUB)<br><input type="checkbox"/> Temporary Uses (MISC)<br><input type="checkbox"/> Time Extension (EXT)<br><input type="checkbox"/> Right of Way Vacation (VAC)<br><input type="checkbox"/> Variance (VAR)<br><input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP)<br><input type="checkbox"/> Water Resource Area Protection/Wetland (WAP)<br><input type="checkbox"/> Willamette & Tualatin River Greenway (WRG)<br><input type="checkbox"/> Zone Change (ZC) |
|--|---|---|

Pre-Application, Home Occupation, Sidewalk Use, Addressing, and Sign applications require different forms, available on the website.

<b>Site Location/Address:</b> <p style="text-align: center; margin: 5px 0;"><i>A portion of the Upper Midhill Drive right-of-way</i></p>	Assessor's Map No.: <i>n/a</i>
	Tax Lot(s): <i>n/a</i>
	Total Land Area:

**Brief Description of Proposal:**

**Upper Midhill Drive right-of-way vacation to clean up an orphan piece before final platting of Upper Midhill Estates subdivision**

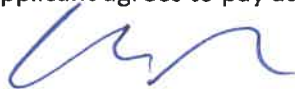
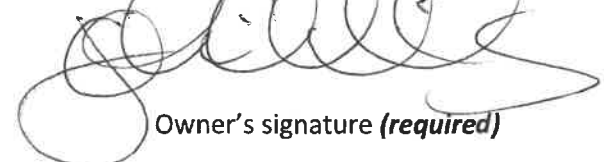
<b>Applicant Name*:</b> <i>Clark Ide</i>	Phone: <i>503-722-3437</i>
Address: <i>22500 Salamo Road</i>	Email: <i>cide@westlinnoregon.gov</i>
City State Zip: <i>West Linn, OR 97068</i>	

<b>Owner Name (required):</b> <i>City of West Linn</i>	Phone:
Address: <i>22500 Salamo Road</i>	Email:
City State Zip: <i>West Linn, OR 97068</i>	

<b>Consultant Name:</b> <i>Emerio Engineering/Surveying/Design</i>	Phone: <i>503-746-8812</i>
Address: <i>6445 SW Fallbrook Place, Suite 100</i>	Email:
City State Zip: <i>Beaverton, OR 97008</i>	

1. Application fees are non-refundable (excluding deposit). Applications with deposits will be billed monthly for time and materials above the initial deposit. **\*The applicant is financially responsible for all permit costs.**
2. The owner/applicant or their representative should attend all public hearings.
3. A decision may be reversed on appeal. The decision will become effective once the appeal period has expired.
4. Submit this form, application narrative, and all supporting documents as a single PDF through the [Submit a Land Use Application web page: https://westlinnoregon.gov/planning/submit-land-use-application](https://westlinnoregon.gov/planning/submit-land-use-application)

The undersigned property owner authorizes the application and grants city staff the **right of entry** onto the property to review the application. Applications with deposits will be billed monthly for time and materials incurred above the initial deposit. The applicant agrees to pay additional billable charges.

 Applicant's signature	<i>12-21-23</i> Date	 Owner's signature (required)	<i>1/2/24</i> Date
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**EXHIBIT A (PAGE 1 OF 2)**

STREET VACATION

PORTION OF UPPER MIDHILL DRIVE (ARBOR DRIVE), PLAT OF "ROBINWOOD"

JOB NO. 0523-001

NOVEMBER 13, 2023

A PORTION OF UPPER MIDHILL DRIVE (ARBOR DRIVE, 50.0 FEET WIDE), PLAT OF "ROBINWOOD", CLACKAMAS COUNTY PLAT RECORDS, SITUATED IN THE S.W. 1/4 OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 7, BLOCK 3, "COLLEGE HILL ESTATES", CLACKAMAS COUNTY PLAT RECORDS, BEING ON THE WESTERLY RIGHT OF WAY LINE OF SAID UPPER MIDHILL DRIVE (50.0 FEET WIDE); THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE, NORTH 28°18'51" WEST, 144.94 FEET TO THE **POINT OF BEGINNING**;

THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE, NORTH 28°18'51" WEST, 11.48 FEET TO THE MOST SOUTHERLY CORNER OF A STREET VACATION OF UPPER MIDHILL DRIVE RECORDED IN DOCUMENT NO. 99-114676, CLACKAMAS COUNTY DEED RECORDS; THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE, ALONG THE SOUTHEASTERLY LINE OF SAID STREET VACATION, 32.09 FEET ON THE ARC OF A NONTANGENT 126.00-FOOT RADIUS CURVE CONCAVE TO THE EAST THROUGH A CENTRAL ANGLE OF 14°35'27" (THE CHORD BEARS NORTH 13°47'24" WEST, 32.00 FEET); THENCE CONTINUING ALONG THE SOUTHEASTERLY LINE OF SAID STREET VACATION, NORTH 06°29'40" WEST, 112.93 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SAID UPPER MIDHILL DRIVE; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE, SOUTH 28°18'51" EAST, 132.01 FEET; THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE, 55.29 FEET ON THE ARC OF A NONTANGENT 48.00-FOOT RADIUS CURVE (THE RADIUS POINT BEARS SOUTH 12°18'50" EAST) THROUGH A CENTRAL ANGLE OF 65°59'55" (THE CHORD BEARS SOUTH 44°41'12" WEST, 52.28 FEET) TO THE **POINT OF BEGINNING**, CONTAINS 3564 SQUARE FEET, MORE OR LESS.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JANUARY 15, 1987  
JON T. FEIGION  
2252

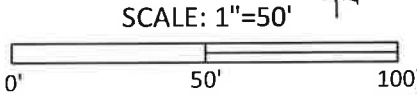
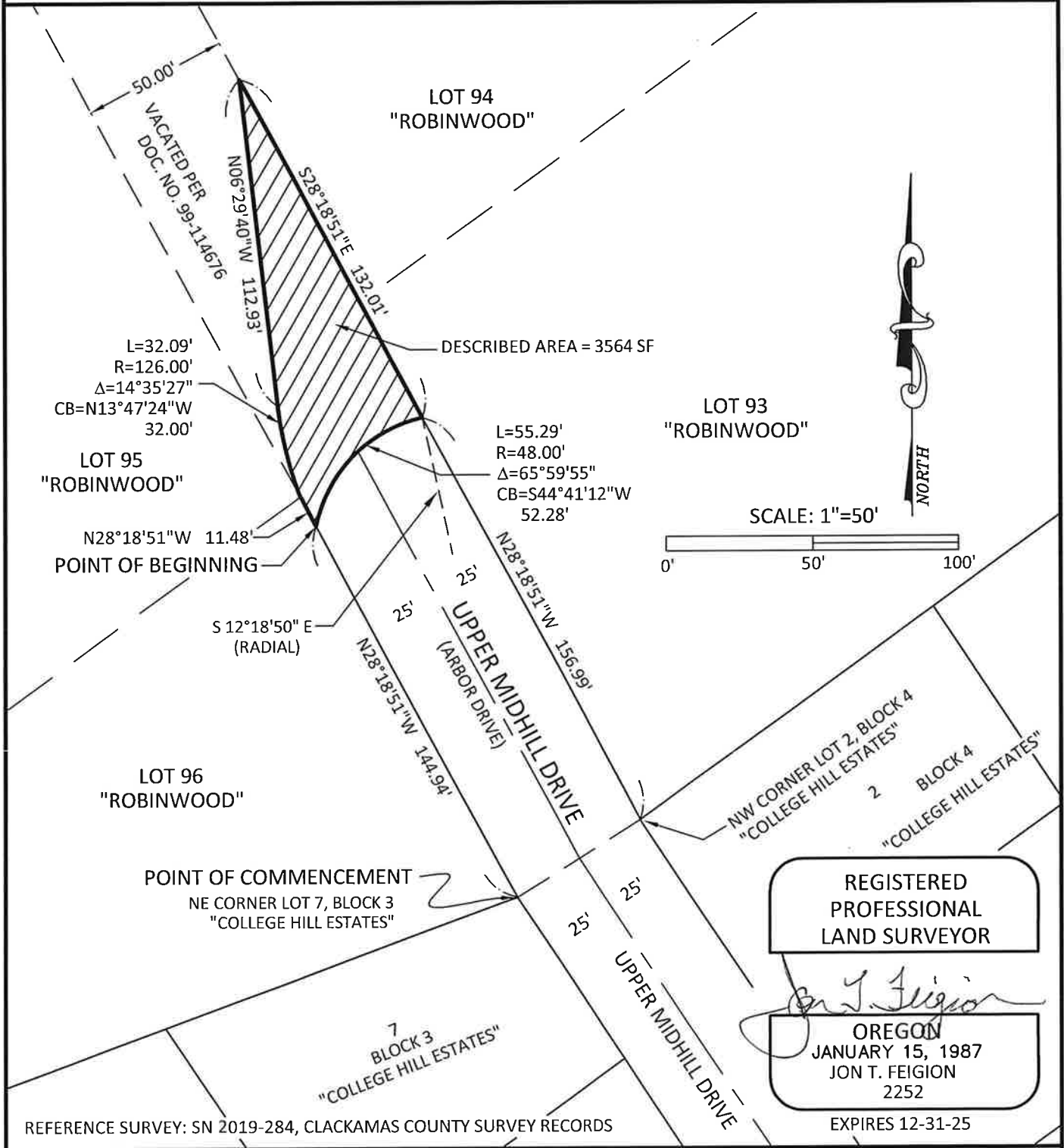
EXPIRES 12-31-25

REFERENCE SURVEY: SN 2019-284, CLACKAMAS COUNTY SURVEY RECORDS

**EXHIBIT A (PAGE 2 OF 2)**

**FOR A STREET VACATION**

**A PORTION OF UPPER MIDHILL DRIVE (ARBOR DRIVE), PLAT OF "ROBINWOOD"  
LOCATED IN THE SW 1/4 OF SEC. 14, T.2S, R.1E., W.M.,  
CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON**



**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

*Jon T. Feigion*  
**OREGON**  
JANUARY 15, 1987  
JON T. FEIGION  
2252

EXPIRES 12-31-25

REFERENCE SURVEY: SN 2019-284, CLACKAMAS COUNTY SURVEY RECORDS

JOB NO.: 0523-001
DATE: 11-13-23
SCALE: 1" = 50'
DRAWN BY: JTF

**STREET VACATION**  
A PORTION OF UPPER MIDHILL DRIVE (ARBOR DRIVE)  
LOCATED IN THE SW 1/4 OF SEC. 14, T.2S, R.1E., W.M.,  
CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON

**EMERIO**  
ENGINEERING • SURVEYING • DESIGN

6445 SW FALLBROOK PLACE, SUITE 100  
BEAVERTON, OREGON 97008  
TEL: (503) 746-8812  
FAX: (503) 639-9592  
www.emeriodesign.com  
EMERIO JOB: 0523-001

**EXHIBIT CC-3: COMPLETENESS LETTER**



CITY OF  
**West Linn**

January 3, 2024

Clark Ide  
City of West Linn  
22500 Salamo Road  
West Linn, OR 97068

SUBJECT: VAC-23-02 Application for Upper Midhill Drive right-of-way vacation

Mr. Ide,

You submitted this application on January 2, 2024. The Planning Department has reviewed the materials and found you have satisfied submittal requirements found in Oregon Revised Statute 271.130. The Planning Department finds that this application is **complete**. This is a legislative action and therefore the 120-day rule does not apply.

Please be aware that a determination of a complete application does not guarantee a recommendation of approval from staff for your proposal as submitted – it signals that staff believes you have provided the necessary information for the West Linn City Council to render a decision on your proposal.

Public notice will be prepared per Oregon Revised Statute 271.110. The tentative public hearing date before the West Linn City Council is scheduled for February 12, 2024.

Please contact me at 503-742-6064, or by email at [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) if you have any questions or comments.

Sincerely,

Darren Wyss  
Planning Manager



**EXHIBIT CC-4: AFFIDAVIT AND NOTICE PACKET**



**AFFIDAVIT OF NOTICE  
STREET VACATION**

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

**PROJECT**

File No.: **VAC-23-02** Applicant's Name: **COWL**  
Development Name: Uppper Midhill Drive Vacation  
City Council Hearing: 2/12/24

**TIDINGS**

Per ORS 271.110, notice was posted in the West Linn Tidings once each week for two consecutive weeks prior to the hearing. The first day of publication of such notice was at least 14 days before the hearing.

<b>1/24/24</b>	<i>Lynn Schroder</i>
<b>1/31/24</b>	<i>Lynn Schroder</i>

**WEBSITE**

Notice was posted on the City's website at least 10 days before the scheduled hearing.

<b>1/29/24</b>	<i>Lynn Schroder</i>
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**SIGN**

Within 5 days after the first day of publication, and at least 14 days before the hearing, two signs were posted at each end of the proposed vacation per ORS 271.110.

<b>1/25/24</b>	<i>Darren S Wyss</i>
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**STAFF REPORT** was posted on the website and available to the public at least 10 days before the scheduled hearing.

<b>2/1/24</b>	<i>Darren S Wyss</i>
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**FINAL DECISION** notice mailed to applicant, parties with standing, and the County surveyor's office.

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# NOTICE OF PROPOSED STREET VACATION

## WEST LINN CITY COUNCIL PUBLIC HEARING NOTICE FILE NO. VAC-23-02

The West Linn City Council will hold a hybrid public hearing on **Monday, February 12, 2024, at 6:00 p.m.** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider a City-initiated request to vacate a portion of the Upper Midhill Drive right-of-way at 18000 Upper Midhill Drive (Clackamas County Assessor Map 2S1ECA Tax Lot 200). The request will clean up an orphan piece of right-of-way. The application was filed on January 2, 2024.

The City Council hearing shall be conducted per Community Development Code Chapter 99 and the decision shall be based upon the approval criteria found in Oregon Revised Statute 271. All written or oral comments must relate specifically to the applicable approval criteria.

The application is posted on the City website <https://westlinnoregon.gov/projects>. The application, all documents or evidence relied upon by the applicant, and applicable criteria are available or for inspection at no cost at City Hall. Copies may be obtained at a reasonable cost. At least ten days prior to the hearing, a copy of the staff report will be available.

Anyone wishing to present written testimony for consideration should submit all materials before 12:00 pm on February 12, 2024 to [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) or mail to City Hall.

The City Council meeting will be conducted in a hybrid format with some Councilors, staff, presenters, and members of the public attending remotely via Webex and others attending in-person at City Hall. Those who wish to participate remotely should complete the speaker form <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> **before 4:00 pm on the meeting day** to receive an invitation to join the meeting. Virtual participants can log in through a computer, mobile device, or call-in.

The City Council will receive a staff presentation and invite both virtual and in-person oral testimony from the public. Previously submitted written testimony is included as part of the record. The City Council may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the review as provided by state law. Failure to raise an issue during the hearing or in writing before the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals based on that issue.

For further information, please contact Darren Wyss, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR 97068, [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov), or 503-742-6064.

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For further information, please contact Darren Wyss, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR 97068, [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov), or 503-742-6064.

Publish: West Linn Tidings, January 24, 2024 and January 31, 2024