

AN ORDINANCE VACATING THAT PORTION OF WILLAMETTE AVENUE NE EAST OF DAVIDSON STREET, IN ALBANY, OREGON; AND ADOPTING FINDINGS AND DECLARING AN EMERGENCY.

WHEREAS, on December 17, 2008, the City of Albany City Council directed staff to initiate the vacation of this portion of right-of-way (File VC-01-09); and

WHEREAS, notices of public hearing were mailed, posted, and published as required by state and local law; and

WHEREAS, the Albany Hearings Board held a public hearing on March 5, 2009; and

WHEREAS, the Albany Hearings Board recommended that the City Council approve the proposed vacation; and

WHEREAS, the Albany City Council held a public hearing on March 25, 2009.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Subject Property. The portion of Willamette Avenue NE right-of-way east of Davidson Street (see legal descriptions on attached Exhibit A and map labeled Exhibit B) is hereby vacated.

Section 2: Findings. The Findings and Conclusions in the Staff Report attached as Exhibit C are hereby adopted in support of this decision.

Section 3: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of this city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Section 4: The City Recorder shall, within 10 days of the effective date of this ordinance, file a certified copy of the ordinance with the County Clerk, County Assessor, and County Surveyor (ORS 271.150). The petitioner for the vacation shall bear the recording costs.

Passed by Council: March 25, 2009

Approved by Mayor: March 25, 2009

Effective Date: March 25, 2009

Ralph B. Baird

~~Mayor~~
Council President

ATTEST:

City Clerk

Dotty Longmire

ORDINANCE EXHIBIT A

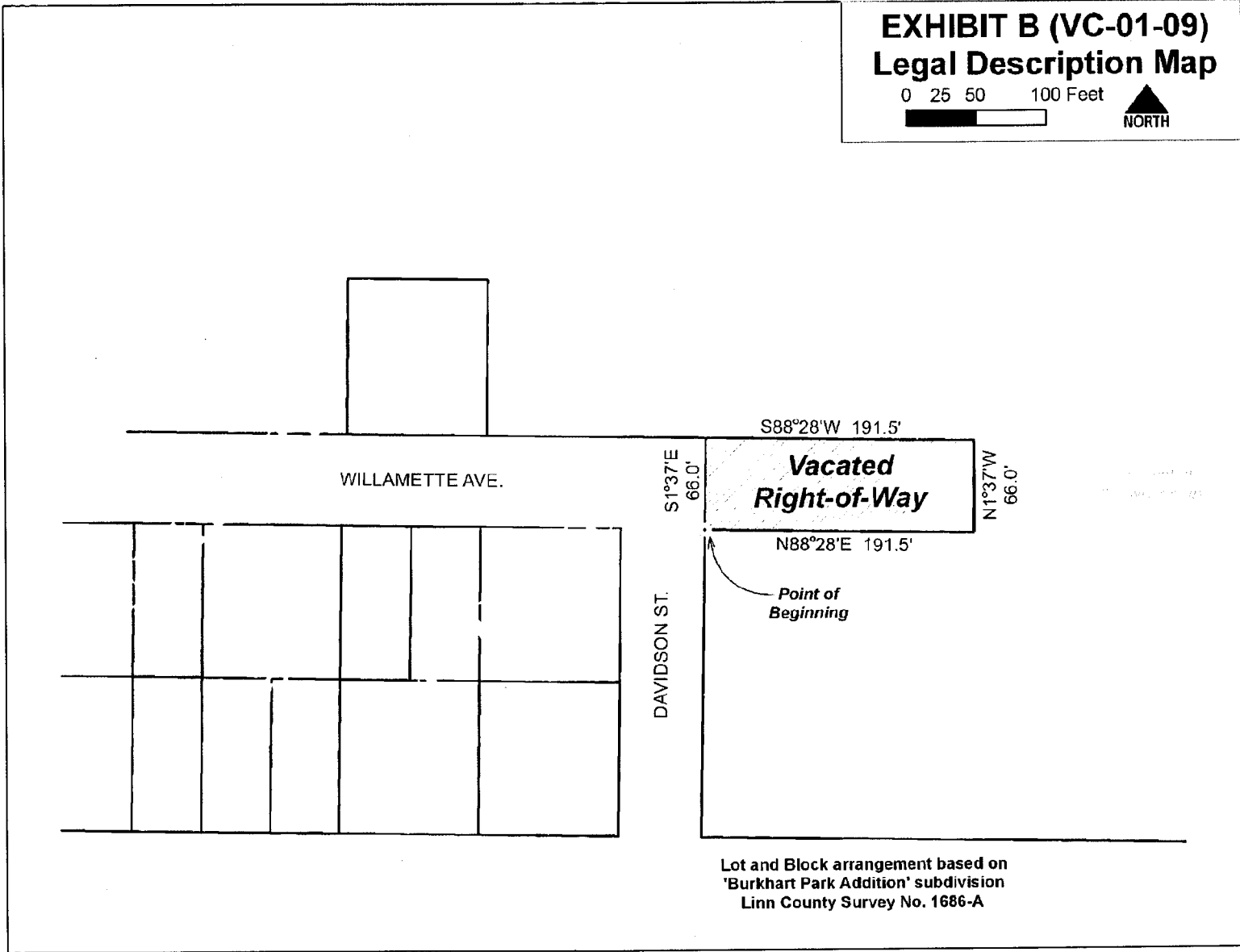
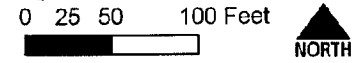
Right-of-Way Vacation VC-01-09

A tract of land located in the northwest one-quarter of the southeast one-quarter of Section 5, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, as shown on the attached map and more particularly described as:

Beginning at the northwest corner of Lot 1, Block 25 of the Burkhart Park Addition subdivision; thence North $88^{\circ} 28'$ East along the north boundary of said Block 25 191.5 feet to a point that lies 8.5 feet west of the northeast corner of Lot 4, Block 25 of the Burkhart Park Addition subdivision, said point lying on the west line of the previously vacated section of Willamette Avenue; thence North $1^{\circ} 37'$ West, parallel to the east line of said Lot 4 and its northerly extension, 66.0 feet to the south boundary of Block 26 of said Burkhart Park Addition subdivision, said point being 8.5 feet west of the southeast corner of Lot 19, Block 26 of said Burkhart Park Addition subdivision, and lying on the west line of the previously vacated section of Willamette Avenue; thence South $88^{\circ} 28'$ West along the south boundary of said Block 26 191.5 feet to the southwest corner of Lot 22, Block 26 of said Burkhart Park Addition subdivision; thence South $1^{\circ} 37'$ East, parallel to the west boundary of said Lot 22 and its southerly extension, 66.0 feet to the Point of Beginning.

This area being vacated contains 12,639 square feet, more or less.

**EXHIBIT B (VC-01-09)
Legal Description Map**



Lot and Block arrangement based on
'Burkhart Park Addition' subdivision
Linn County Survey No. 1686-A

ORDINANCE EXHIBIT B



Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598
www.cityofalbany.net

STAFF REPORT Vacation

<u>HEARING BODY</u>	CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, March 25, 2009
<u>HEARING TIME</u>	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:	March 18, 2009
FILE:	VC-01-09
TYPE OF APPLICATION:	Vacation of Public Right-of-Way (Willamette Avenue NE east of Davidson Street)
REVIEW BODY:	City Council
STAFF REPORT PREPARED BY:	Mike Leopard, Infrastructure Analyst
PROPERTY OWNER:	Public right-of-way
APPLICANT:	City of Albany – Public Works Department; 333 Broadalbin SW; Albany OR 97321
APPLICANT REP:	Chip Ullstad, Utility Engineer
ADDRESS/LOCATION:	Willamette Avenue east of Davidson Street
MAP/TAX LOT:	Linn County Assessor's Map No. 11S-03W-05DB
ZONING	Public and semi-public
TOTAL LAND AREA:	12,639 square feet (0.29 acres)
EXISTING LAND USE:	Unimproved public right-of-way
NEIGHBORHOOD:	Willamette
SURROUNDING ZONING:	HI (north, east, and south); RS-5 (southwest); LI (northwest)
SURROUNDING USES:	Water Reclamation Facility (north, east, and south); Single Family Residential (southwest)

NOTICE INFORMATION

A notice of public hearing was mailed to affected property owners on February 16, 2009. The site was posted on February 11, 2009, in accordance with Section 1.410 of the Albany Development Code. Two legal notices were published in the *Albany Democrat-Herald* on February 16 and 23, 2009, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was completed (March 18, 2009), the Albany Planning Division had received no written comments.

STAFF RECOMMENDATION

APPROVAL of this Vacation application for Willamette Avenue NE east of Davidson Street.

HEARINGS BOARD RECOMMENDATION

At a public hearing held on March 5, 2009, the Albany Hearings Board voted unanimously to recommend APPROVAL of this Vacation application for that portion of the Willamette Avenue NE right-of-way lying east of Davidson Street (File VC-01-09).

CITY COUNCIL DECISION

MOTION TO APPROVE

If the findings in the staff report adequately address testimony presented at the public hearing, the City Council may approve the application based on the findings and conclusions of the staff report.

I MOVE that the City Council APPROVE the application that would result in the vacation of a portion of the Willamette Avenue NE right-of-way east of Davidson Street (File VC-01-09). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

MOTION TO DENY

If the City Council determines that there is insufficient evidence to demonstrate that the review criteria have been met, the City Council may deny the application.

I MOVE that the City Council DENY the application for the vacation of that portion of the Willamette Avenue NE right-of-way east of Davidson Street (File VC-01-09).

APPEALS

Within five days of final action on this application, the Community Development Director will provide written notice of the decision to the applicant and any other parties entitled to notice.

A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal not later than 21 days after the decision becomes final [Ord. 5446; Ord. 5475].

STAFF ANALYSIS - Vacation File VC-01-09

OVERVIEW

The area in question is a 191.5-foot-long section of unimproved Willamette Avenue right-of-way east of Davidson Street NE. This portion of right-of-way has historically been used for access to the Albany-Millersburg Water Reclamation Facility and what was once a group of single-family homes adjacent to the right-of-way. As part of the Albany-Millersburg Water Reclamation Facility expansion project, the City has purchased all of the lots adjacent to this section of right-of-way, and currently those lots are part of the Albany-Millersburg Water Reclamation Facility project. This section of Willamette Avenue right-of-way is 66 feet wide.

As part of the ongoing Albany-Millersburg Water Reclamation Facility project, a number of storage buildings are being replaced. Plans show some of these new buildings will be placed in the area near this public right-of-way. If the right-of-way remains, then front-yard setback requirements must be met for all new buildings. The right-of-way vacation would eliminate the setback requirement from the Willamette Avenue right-of-way, allowing more area on which to build the proposed structures.

At the December 17, 2008, City Council meeting, the Council agreed to initiate the vacation application. The affected property owners received notice of the proposed vacation and associated public hearings.

The Albany Development Code (ADC) contains the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings, conclusions, and conditions where conditions are necessary to meet the review criteria.

Criterion (1): The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.

FINDINGS OF FACT

1.1 The following Comprehensive Plan policies have been identified as relevant to this review criterion:

GOAL 11: Public Facilities and Services

- a. Prohibit the construction of structures over public water lines and easements.
 - b. Prohibit the construction of structures over drainage improvements and easements.
 - c. Prohibit the construction of structures over public wastewater lines and easements.
- 1.2 Sanitary Sewer. Sanitary sewer utility maps indicate that no public sanitary sewer facilities exist in the area proposed for vacation.
- 1.3 Water. Water utility maps indicate that there is a 2-inch diameter public water line within the western half of the area proposed for vacation. This water line serves only the Albany-Millersburg Water Reclamation Facility site.
- 1.4 Water. Because the area to be vacated would be incorporated entirely into other city-owned property (which currently contains a large amount of existing public utilities), it is not necessary to require a public utility easement over this water line.
- 1.5 Storm Drainage. Storm drainage utility maps indicate that no public storm drainage facilities exist within the area proposed for vacation.
- 1.6 Other Utilities. City staff has contacted the various franchise utility providers about the proposed right-of-way vacation. We received no response to our request for information from any franchise utility. Based on the lack of response from other franchise utilities, it is assumed that no private franchise utilities exist within the area to be vacated.
- 1.7 Transportation. The right-of-way proposed for vacation is a dead-end section of Willamette Avenue NE located east of Davidson Street NE. The length of this section of right-of-way is 191.5 feet. The street is classified as a local street and does not have curb, gutter, and sidewalk, and is not improved to city standards. Pavement width is about 12 feet. All property with frontage on the street is owned by the City of Albany. The street currently provides vehicle access only to the city-owned parcel(s) that contain the Albany-Millersburg Water Reclamation Facility.
- 1.8 Transportation. Albany's Transportation System Plan (TSP) does not identify this portion of Willamette Avenue NE as being a part of the City's arterial/collector street system, nor does it anticipate linking or connecting the street with other streets.

CONCLUSIONS

- 1.1 The only public utility that lies within the area to be vacated is a 2-inch diameter water line that serves the existing Albany-Millersburg Water Reclamation Facility.

- 1.2 The proposed vacation does not conflict with Albany's TSP.
- 1.3 There are no plans for extending this portion of Willamette Avenue, or to connect it with any other public street.
- 1.4 No public utility easement is needed for any utility within the area to be vacated. The vacated property will be incorporated into the city-owned property containing the Albany-Millersburg Water Reclamation Facility. A vast network of public utilities already exists within this city-owned property.

Criterion (2): The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.

FINDINGS OF FACT

- 2.1 The area proposed for vacation is a 191.5-foot-long section of the Willamette Avenue NE right-of-way, east of Davidson Street NE. The right-of-way currently provides access only to the Albany-Millersburg Water Reclamation Facility site. This right-of-way is not improved to City standards, and is basically a driveway into the site. The portion of right-of-way proposed for vacation does not connect to any other public street or right-of-way east of Davidson Street.
- 2.2 The parcel adjacent to this section of right-of-way is zoned HI (Heavy Industrial). The area west of Davidson Street and north of Willamette Avenue (northwest of the area proposed for vacation) is part of the same city-owned parcel that makes up the Reclamation Facility property and is zoned LI (Light Industrial). The parcel west of Davidson Street and south of Willamette Street is a single-family house on a corner lot and is zoned RS-5 (Single-Family Residential). This lot has frontage on both Davidson Street and Willamette Avenue.
- 2.3 Recently a replat was recorded (County Survey No. 25005) that combined all of the separate parcels that make up the Reclamation Facility into a single parcel.
- 2.4 There is a public water main that exists within this right-of-way, but these facilities only serve the Reclamation Facility and not the public water system as a whole.

CONCLUSIONS

- 2.1 The area proposed for vacation is not needed for connectivity for vehicular traffic between public rights-of-way.
 - 2.2 A public utility easement will not be necessary over the vacated area because the property already contains multiple public utilities and is city-owned (public) property.
- (3) The requested vacation will not have a negative effect on traffic circulation or emergency service protection.***

FINDINGS OF FACT

- 3.1 The area proposed for vacation is an unimproved street terminating in a dead end at the Albany-Millersburg Water Reclamation Facility. This street only serves as vehicular access to the City Facility.
- 3.2 Emergency services vehicles will still have legal access to the Reclamation Facility through the existing driveway off of Davidson Street and Willamette Avenue.

CONCLUSIONS

- 3.1 The requested vacation will not have a negative effect on traffic circulation as the street in question only provides access to the Reclamation Facility.

3.2 Emergency vehicle access will not be affected by the proposed vacation.

(4) *The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.*

FINDINGS OF FACT

4.1 The right-of-way to be vacated will be incorporated into the city-owned Reclamation Facility property. The area to be vacated was initially dedicated as public right-of-way with the Burkhart Park Addition subdivision plat.

4.2 The area to be vacated is currently being used only as access to the City's Reclamation Facility. The vacated area will continue to be used for access to this Facility. No change in access for emergency vehicles will result from the proposed vacation.

4.3 The areas proposed for vacation would not become part of the "front yard" setback, and therefore will not require additional landscaping, etc.

CONCLUSION

4.1 No additional landscaping will be necessary if the area is vacated because the property adjacent to the vacated area will no longer be considered "front yard" for the adjacent property. The vacated area will continue to be used as an access to the Reclamation Facility.

(5) *The public interest, present and future, will be best served by approval of the proposed vacation.*

FINDINGS OF FACT

5.1 The area proposed for vacation is an unimproved right-of-way. The area to be vacated is currently being used only as an access to the Reclamation Facility.

5.2 It will not be necessary to maintain a public utility easement over the vacated area because it will be incorporated into the existing city-owned/public property.

5.3 Vacation of the right-of-way will allow new buildings to be constructed on the Reclamation Facility property without the need for front yard setbacks adjacent to this area. These buildings are part of the upgrade of the City facilities at the Reclamation Facility.

CONCLUSION

5.1 Vacating this portion of the right-of-way will not adversely impact the public interest, and will allow for further planned improvements on the Reclamation Facility.

Attachments: A - Location Map; B - Zoning Map; C - Utility Map

**ATTACHMENT A
Proposed Right-of-Way
Vacation (VC-01-09)
Location Map**

0 75 150 300 Feet



Willamette Ave.

Front Ave.

Columbus St.

Water Ave.

Davidson St.

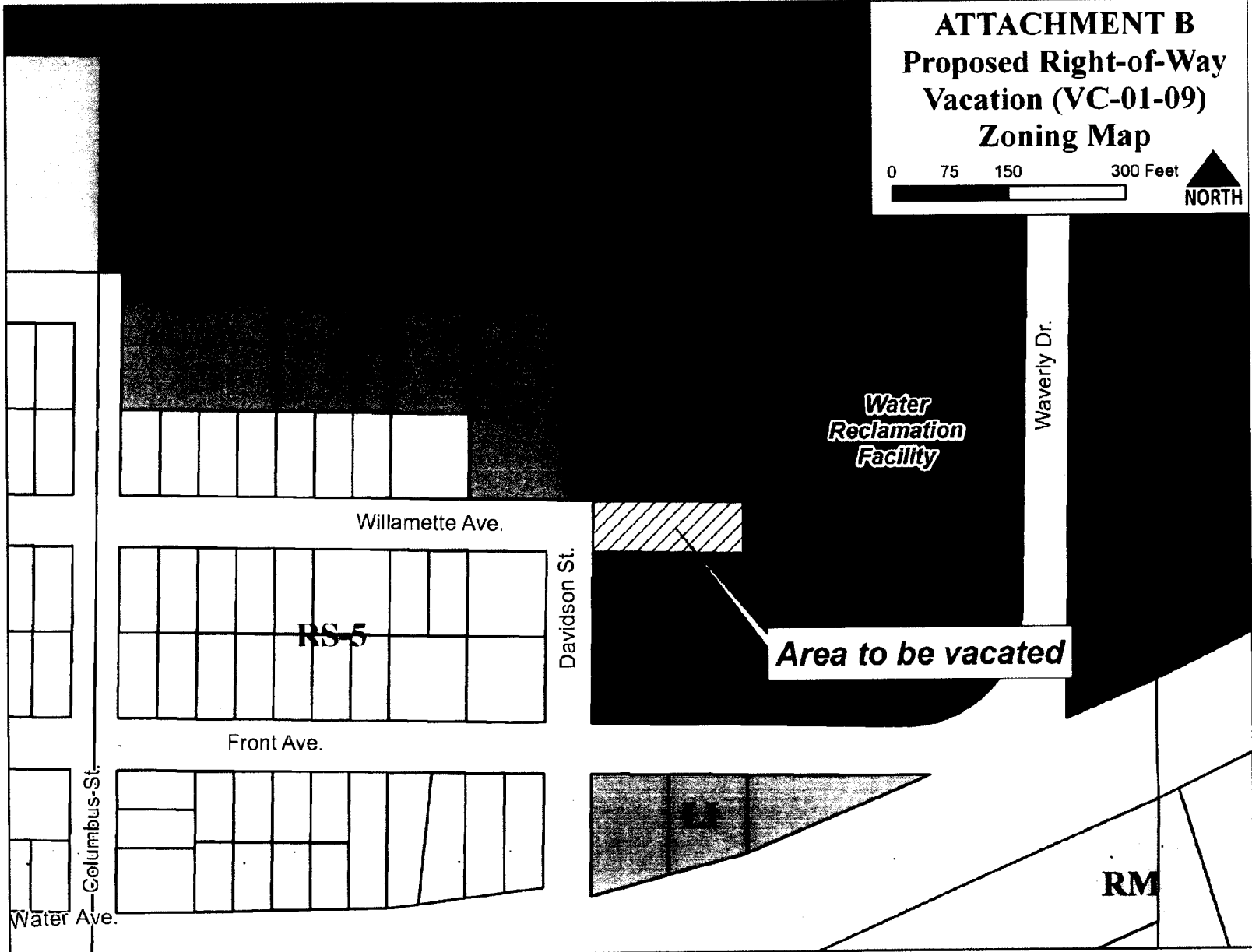
Waverly Dr.

Water
Reclamation
Facility

Area to be vacated

**ATTACHMENT B
Proposed Right-of-Way
Vacation (VC-01-09)
Zoning Map**

0 75 150 300 Feet



ATTACHMENT C
Proposed Right-of-Way
Vacation (VC-01-09)
Utility Map

0 25 50 100 Feet



*Water
Reclamation
Facility*

Area to be vacated

Willamette Ave.

Davidson St.

