

AN ORDINANCE VACATING A PORTION OF JACKSON STREET NE, NORTH OF WATER AVENUE, IN ALBANY, OREGON; AND ADOPTING FINDINGS.

WHEREAS, on February 13, 2008, the City of Albany City Council directed staff to initiate the vacation of this portion of right-of-way (File VC-01-08); and

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

WHEREAS, the Albany Planning Commission held a public hearing on May 5, 2008; and

WHEREAS, the Albany Planning Commission recommended that the City Council conduct a first reading only until the condition of approval is met (joint access and maintenance agreement); and

WHEREAS, the Albany City Council held a public hearing on May 14, 2008, and took a first reading on the vacation ordinance, and;

WHEREAS, the applicant has satisfied all conditions of approval that needed to be met before this ordinance is adopted.

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

Section 1: Subject Property. The portion of Jackson Street NE north of the Water Avenue right-of-way (see legal description on attached Exhibit A and map labeled Exhibit B) is hereby vacated.

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

Section 3: Public Utility Easement Retained. The City retains a public utility easement over the entire vacated area. The easement will benefit the City, their successors, assigns, authorized agents, and/or contractors.

Section 4: Public Access Easement Retained. The City retains a public access easement over the entire area being vacated. This access easement is for public pedestrian and bicycle access to the Dave Clark Riverfront Path, and to maintain a "view corridor" to the river from the south. The easement also provides legal access rights over the vacated area for emergency response vehicles.

Passed by Council: July 23, 2008

Approved by Mayor: July 23, 2008

Effective Date: August 22, 2008

Waw Bidor
Mayor

ATTEST:

City Clerk:

Debbie Fouquell

EXHIBIT A
Legal Description
Right-of-Way Vacation
VC-01-08

A tract of land located in the southwest one-quarter of Section 6, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, that consists of:

ALL of that right-of-way of Jackson Street immediately north of Water Avenue located between Blocks 107 and 108 of Hackleman's Addition to Albany, said right-of-way being 66-feet in width and extending to the Willamette River.

EXHIBIT B
Legal Description Map
VC-01-08

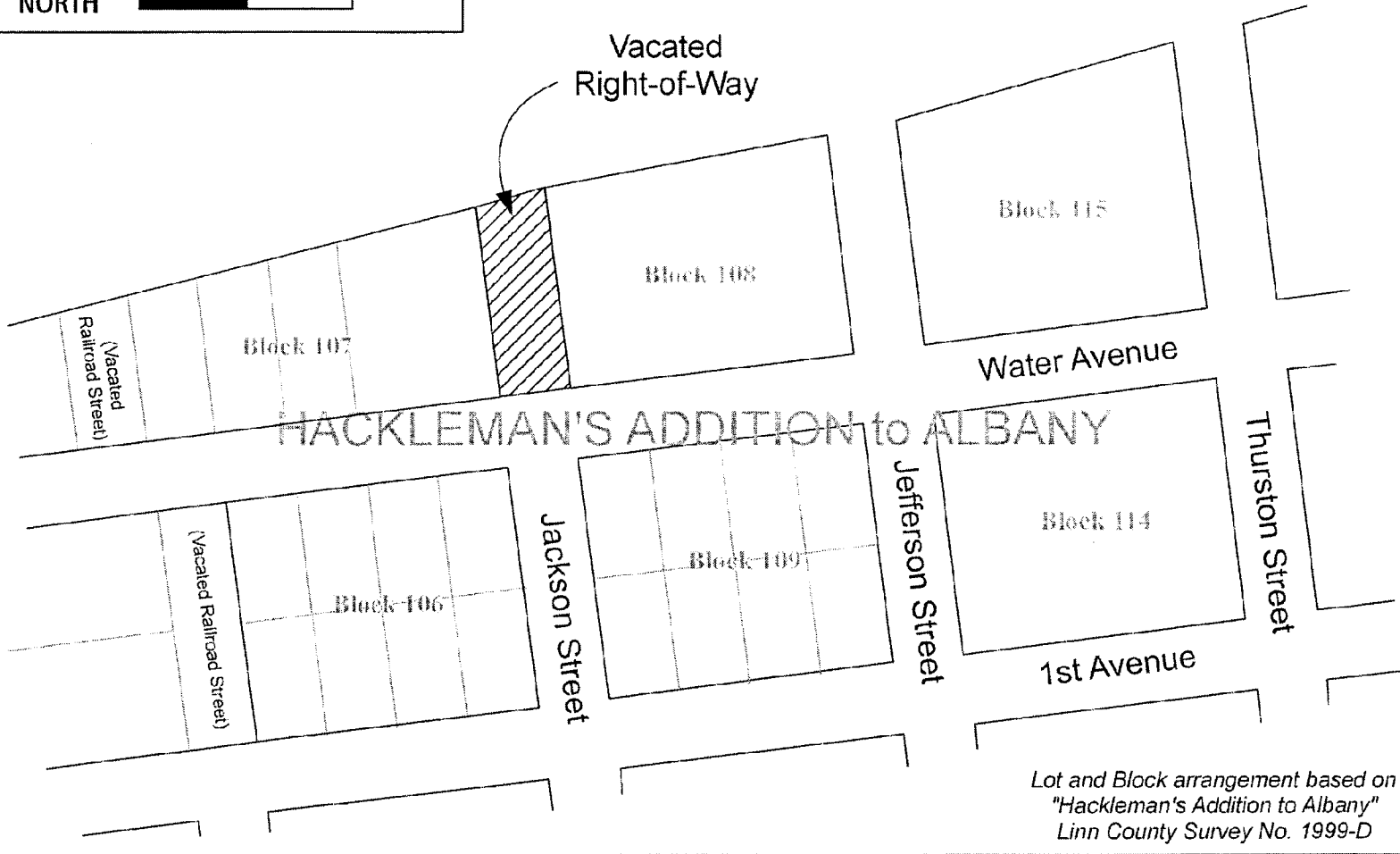


0 50 100 200 Feet



Willamette River

Vacated
Right-of-Way



Lot and Block arrangement based on
"Hackleman's Addition to Albany"
Linn County Survey No. 1999-D



Community Development Department

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

Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT

Vacation (Public Street Rights-of-Way)

<u>HEARING BODY</u>	CITY COUNCIL
<u>HEARING DATE</u>	Wednesday, May 14, 2008
<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:	May 7, 2008
FILE:	VC-01-08
TYPE OF APPLICATION:	Vacation of those portions of the Jackson Street NE and Jefferson Street NE rights-of-way north of Water Avenue NE.
REVIEW BODIES:	Planning Commission and City Council (The Planning Commission held a public hearing on May 5, 2008)
APPLICANTS:	Ohanamula LLC; 7885 NE Todd Drive; Corvallis, OR 97330 Glorietta Bay LLC; 100 Ferry Street NE; Albany, OR 97321 John Boock Jr.; 422 1st Avenue SW; Albany OR 97321
APPLICANTS' REP:	Candace Ribera; 545 Vista Avenue SE; Salem, OR 97302
ADDRESS/LOCATION:	Rights-of-way adjacent to 521 Water Avenue NE. (See Staff Report Attachment A.)
MAPS/TAX LOT:	Street rights-of-way and adjacent properties are shown on Linn County Assessor's Map Nos. 11S-03W-06CD and 11S-03W-06DC
TOTAL LAND AREA:	Approximately 25,200 square feet (0.58 acres)
PURPOSE OF REQUEST:	Vacation of public rights-of-way to allow for new development on adjacent properties.
EXISTING LAND USE:	Unimproved public rights-of-way; currently used as access to parcels adjacent to the rights-of-way.
NEIGHBORHOOD:	Central Albany
SURROUNDING ZONING:	North: Willamette River (no zoning designation) East: WF (Waterfront) West: CB (Central Business) South: WF and CB (See Staff Report Attachment B.)

SURROUNDING USES: North: Willamette River
 South: Light industrial use
 Southwest: Lumber/home supply store
 Southeast: Multiple family residential
 West: Vacant restaurant
 East: Warehouse/Storage

NOTICE INFORMATION

A notice of public hearing was mailed to surrounding property owners on April 23, 2008. The site was posted on April 24, 2008, in accordance with Section 1.410 of the Albany Development Code. Two legal notices have been or will be published in the *Albany Democrat-Herald* on April 21, and 28, 2008, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was prepared (May 7, 2008), the Albany Planning Department had received no written comments.

PLANNING COMMISSION RECOMMENDATION

The Albany Planning Commission recommended APPROVAL WITH CONDITIONS of this Vacation application for portions of the Jackson Street NE and Jefferson Street NE rights-of-way, north of Water Avenue NE (File VC-01-08). The proposed conditions are found in this staff report.

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 WITH CONDITIONS the application that would result in the vacation of portions of the Jackson Street NE and Jefferson Street NE rights-of-way, north of Water Avenue NE (File VC-01-08). 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 portions of the Jackson Street NE and Jefferson Street NE rights-of-way, north of Water Avenue NE (File VC-01-08).

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STAFF ANALYSIS
Vacation File VC-01-08

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.

OVERVIEW

The areas in question include approximately 200-foot-long sections of unimproved public rights-of-way (Jackson Street NE and Jefferson Street NE) north of Water Avenue NE. The Jackson Street NE right-of-way has historically been used for access to what was once the Buzz Saw Restaurant to the west, and also included some of the parking spaces for the restaurant. The Dave Clark Riverfront path runs through this right-of-way. This section of Jackson Street right-of-way is 66 feet wide. The Jefferson Street NE right-of-way has been used for access to parcels on both sides of the right-of-way (the former Willamette Seed property and the former Borden Building site). This right-of-way is also 66 feet wide.

The owner of the property to the west of Jackson Street NE (Ohanamula LLC) is proposing to construct a development of primarily offices with a small restaurant on the first floor. The property between Jackson Street and Jefferson Street NE is intended to be developed by Glorietta Bay LLC as a residential development; either condominiums or apartments. (See Staff Report Attachment C.) There is no development proposal currently on file for the property east of Jefferson Street NE.

At the +February 13, 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, and were given an opportunity to comment.

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.

GOAL 15: Willamette River Greenway

- a. Protect, conserve, enhance and maintain the natural, scenic, historic, economic, and recreational qualities of the Willamette River, its banks, and adjacent land.
- 1.2 **Sanitary Sewer.** Sanitary sewer utility maps indicate that a deep 30-inch public sanitary sewer main runs along the south boundaries of the Ohanamula LLC and Glorietta Bay LLC properties, parallel to Water Avenue NE, and approximately 10 feet north of the north boundary of the Water Avenue NE right-of-way. This sewer main then changes direction and runs northeasterly from the southwest corner of the Jefferson Street NE right-of-way toward the northeast corner of the Jefferson Street NE right-of-way, where it once again runs parallel to Water Avenue NE through the Boock property. Public utility easements exist over the portion of this main that run through the Glorietta Bay LLC and Boock properties. This public sewer main is an important interceptor main that carries wastewater to the treatment plant from all of North Albany and much of west Albany.

- 1.3 Water. Water utility maps indicate that there are no public water facilities within the rights-of-way proposed for vacation. The public water main that serves the properties north of Water Avenue NE in this area is a 12-inch main on the south side of Water Avenue NE.
- 1.4 Storm Drainage. Storm drainage utility maps indicate that the only public storm drainage facility that exists within either of these rights-of-way is a catch basin and associated outfall pipe (to the river) at the north end of Jackson Street. It appears that this catch basin only collects a portion of the runoff from this section of Jackson Street. If the right-of-way is vacated, then this facility would no longer need to be public and would likely be removed or replaced in conjunction with future development on the adjacent parcels.
- 1.5 Other Utilities. City staff has contacted the various franchise utility providers about the proposed rights-of-way vacation. The only utility company to respond to our notification was Northwest Natural Gas, which stated that they have no facilities within these rights-of-way. Based on the lack of response from other franchise utilities, it is assumed that the location of franchise utilities in this area is limited to the Water Avenue NE right-of-way.
- 1.6 Transportation. The rights-of-way proposed for vacation are dead-end sections of Jackson Street NE and Jefferson Street NE located north of Water Avenue NE. The lengths of these sections of rights-of-way are about 200 feet. The streets are classified as local streets and are not improved to City standards. The streets currently provide vehicle access only to the adjacent parcels. A portion of the Jackson Street NE right-of-way has historically been incorporated into the off-street parking area used by the former restaurant west of the right-of-way. The Jefferson Street NE right-of-way had been used by the former Willamette Seed plant for a loading dock and access to the dock, as well as for access to the parcel to the east. The rights-of-way also provide pedestrian and bicycle access to the riverfront path. In fact, a portion of the path currently runs along the east side of the Jackson Street NE right-of-way. The owner of the property west of Jackson Street NE is proposing to relocate this portion of the path to the north boundary of the parcel when development occurs on the property.
- 1.7 Transportation. Albany's Transportation System Plan TSP does not identify these portions of Jackson Street NE and Jefferson Street NE as being a part of the City's arterial/collector street system, nor does it anticipate linking or connecting these streets with other streets.
- 1.8 Transportation. On March 26, 2008, the City Council adopted a streetscape plan for Water Avenue NE that includes the Water Avenue/Jackson Street and Water Avenue/Jefferson Street intersections. That plan envisions that Jackson Street NE would remain open in the future to provide access to adjoining parcels and the Dave Clark Riverfront Path, and that Jefferson Street NE would be closed to traffic north of Water Avenue NE.
- 1.9 The City's Comprehensive Plan (Goal 15) discusses issues relating to the Willamette River Greenway. The Goal presented in the Comprehensive Plan is to "[p]rotect, conserve, enhance and maintain the natural, scenic, historic, economic, and recreational qualities of the Willamette River, its banks, and adjacent land." One of the policies listed under Goal 15 states: "Protect and preserve the natural and scenic qualities of the publicly-owned properties along both banks of the Willamette to provide for future recreation opportunities and other uses compatible with Greenway values."
- 1.10 Part of the Goal for the Willamette Greenway is to preserve and protect the scenic/visual connection to the river. Maintaining a "view corridor" to the river from Water Avenue is one way to preserve this visual connection. A public access easement over the areas to be vacated will prohibit the construction of any permanent structures within those areas and will maintain a separation between buildings so that the view to the river is open to the public at various locations.

CONCLUSIONS

- 1.1 There is a major 30-inch public sanitary sewer interceptor main along the southern edge of the Jackson Street NE right-of-way, and diagonally along the full length of the Jefferson Street NE right-of-way proposed for vacation. A catch basin and short length of 6-inch storm drainage piping lie within the northern portion of the Jackson Street NE right-of-way. No public water facilities currently exist in either of the rights-of-way proposed for vacation. (See Staff Report Attachment D.) Because of the location of the existing public sanitary sewer facilities, staff recommends that a 40-foot public utility easement (centered on the main) be maintained over the main within the areas proposed for vacation. This easement would provide access rights to the City and would prohibit the construction of any permanent structures within this easement.
- 1.2 In order to preserve a "view corridor" to the river, public access easements will be retained over the entire width of the rights-of-way to be vacated.
- 1.3 The proposed vacation does not conflict with Albany's Transportation System Plan (TSP) or the Water Avenue NE streetscape plan.

CONDITIONS

- 1.1 The City will retain a public utility easement over the existing public sanitary sewer main that runs through the areas to be vacated. This easement will allow legal access to the area for maintenance of the sewer main and will prohibit the construction of any permanent structures within this easement.
- 1.2 The City will retain public access easements over the entire width of the Jackson Street NE and Jefferson Street NE rights-of-way proposed for vacation. These easements will provide legal access for pedestrians and bicyclists to the river, and will maintain "view corridors" to the river at these locations.

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 areas proposed for vacation are sections of Jackson Street NE and Jefferson Street NE rights-of-way north of Water Avenue NE. These portions of public rights-of-way are approximately 200 feet long and lie between Water Avenue NE and the Willamette River. The rights-of-way currently provide access only to adjacent properties, the owners of which are the applicants for this vacation request. These rights-of-way are not improved to City standards. The portions of Jackson Street NE and Jefferson Street NE proposed for vacation do not form connections between any other public streets or rights-of-way, but do provide access to the adjoining parcels and public pedestrian/bicycle access to the Dave Clark Riverfront Path.
- 2.2 The parcels adjacent to these sections of rights-of-way are zoned Central Business (CB) west of Jackson Street NE, and Waterfront (WF) east of Jackson Street NE. The parcel west of Jackson Street NE includes a vacant restaurant. The buildings on the parcel between Jackson Street NE and Jefferson Street NE have recently been removed. The parcel east of Jefferson Street NE is being used mainly for warehousing and storage.
- 2.3 There is a public sanitary sewer main that runs through these portions of rights-of-way. (See Findings under Criterion 1.) In order to maintain access to this main a public utility easement must be retained over the sewer main.
- 2.4 The applicants' findings state that the vacated Jackson Street NE right-of-way will serve as a joint-use accessway and parking area for the future Ohanamula LLC and Glorietta Bay LLC developments. (See Attachment C.) The vacated Jefferson Street NE right-of-way will be utilized by the Glorietta Bay LLC

development for an emergency vehicle accessway only and as access to the Boock property until such time that the railroad crossing is closed. At that time, the joint accessway will be closed to all vehicles except emergency vehicles. The Boock property also has access to Thurston Street SE to the east.

- 2.5 The Dave Clark Riverfront Path currently runs along the south boundary of the Ohanamula LLC property, along the east side of the Jackson Street NE right-of-way, and along the top of the riverbank east of Jackson Street NE. The applicants state that the portion of the riverfront path that runs along the south and east sides of the Ohanamula parcel will be relocated to the Willamette River side (north) of that property as part of the redevelopment of the site, matching the location of the rest of the path along the river. In addition to relocating the path, the applicant is proposing to construct a pedestrian sidewalk (or maintain the existing path) along the east boundary of the vacated Jackson Street NE area to provide continued access to the riverfront path from Water Avenue NE. A similar sidewalk is being proposed within the vacated Jefferson Street NE area with development of the Glorietta Bay LLC property. In order to allow legal use of these sidewalks to the general public, public access easements must be provided/retained over these areas.

CONCLUSIONS

- 2.1 The areas proposed for vacation are not needed for connectivity for vehicular traffic between public rights-of-way.
- 2.2 Public utility easements will be maintained over the existing public sanitary sewer mains to allow legal access to the sewer mains within these areas.
- 2.3 Public access easements will be retained over the entire Jackson Street NE and Jefferson Street NE areas proposed for vacation to provide pedestrian and bicycle access between Water Avenue NE and the riverfront path, as well as for maintaining a "view corridor" to the river for the public.
- 2.4 The applicants must provide private joint-use access and maintenance easements/agreements for the vacated areas for the benefit of the adjacent parcels.

CONDITIONS

- 2.1 The City will retain a public utility easement over the existing public sanitary sewer main that runs through the areas to be vacated. The easement will be 20 feet on both sides of the centerline of the sewer main.
- 2.2 The City will retain public access easements over the entire width of the Jackson Street NE and Jefferson Street NE rights-of-way proposed for vacation. These easements will provide legal access for pedestrians and bicyclists to the river, and will maintain "view corridors" to the river at these locations.
- 2.3 The applicants must prepare joint-use access and maintenance agreements for the shared accesses proposed in the vacated Jackson and Jefferson Streets NE. These agreements must be signed by all affected parties before the second reading of the vacation ordinance.
- (3) *The requested vacation will not have a negative effect on traffic circulation or emergency service protection.*

FINDINGS OF FACT

- 3.1 The areas proposed for vacation are unimproved streets terminating in dead-ends at the river. These streets only serve as vehicular accesses to the adjacent parcels and pedestrian/bicycle access to the riverfront path from Water Avenue NE.

- 3.2 Emergency services vehicles must have legal access to all of the adjacent parcels. The required private joint-use access easements must include clauses that allow legal access for emergency service vehicles.
- 3.3 When vacated, private access easements must be provided over both Jackson Street NE and Jefferson Street NE. Both areas will initially remain open to vehicle, pedestrian, and emergency vehicle access. At some point in the future, when Water Avenue NE is improved, Oregon Department of Transportation (ODOT) Rail may require the closure of the rail crossing at Jefferson Street NE. That possibility exists regardless of whether or not the right-of-way is vacated.

CONCLUSIONS

- 3.1 The requested vacation will not have a negative effect on traffic circulation as the streets in question only provide access to the adjacent parcels.
- 3.2 Emergency vehicle access will be maintained through language in private access agreements between the owners of properties adjacent to the vacated rights-of-way.

CONDITION

- 3.1 The required joint-use access agreements that the affected property owners must enter into must include language that provides legal access to the vacated areas for emergency services vehicles.
- (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 rights-of-way to be vacated will be incorporated into the parcels directly abutting it, or revert back to the owners of the properties from which the rights-of-way were dedicated. The areas to be vacated were initially dedicated as public rights-of-way with the Hackleman's Addition subdivision plat. Half (33 feet) of each right-of-way will revert back to the parcels adjacent to those sections along the property frontages. This property distribution is shown on Staff Report Attachment E.
- 4.2 The areas to be vacated are currently being used by adjacent property owners for access to their parcels. The vacated areas will continue to be used for access to the adjacent parcels, and the affected property owners will be required to enter into joint-use access and maintenance agreements. These agreements must assure legal access through the areas for emergency services vehicles. (See Condition 3.1.)
- 4.3 The areas proposed for vacation would not become part of the adjacent properties "front yard" setback, and therefore will not require additional landscaping, etc.
- 4.4 The preliminary site plan drawings for the proposed developments on the parcel west of Jackson Street NE and the parcel between Jackson Street NE and Jefferson Street NE show parking lot improvements, landscaping, and public pedestrian/bicycle paths between Water Avenue NE and the riverfront path. Details of the actual improvements within these areas will be further reviewed in conjunction with the land use applications for each development.

CONCLUSIONS

- 4.1 No additional landscaping will be necessary if the areas are vacated because the property adjacent to the vacated areas will no longer be considered "front yards" for the adjacent parcels.

- 4.2 Preliminary site plan drawings show that proposed improvements within the vacated areas are to include parking lots, landscaping, and public pedestrian/bicycle paths between Water Avenue NE and the riverfront path. These preliminary plans have not yet been approved by the City.

CONDITION

- 4.1 See Conditions 2.3 and 3.1.

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

FINDINGS OF FACT

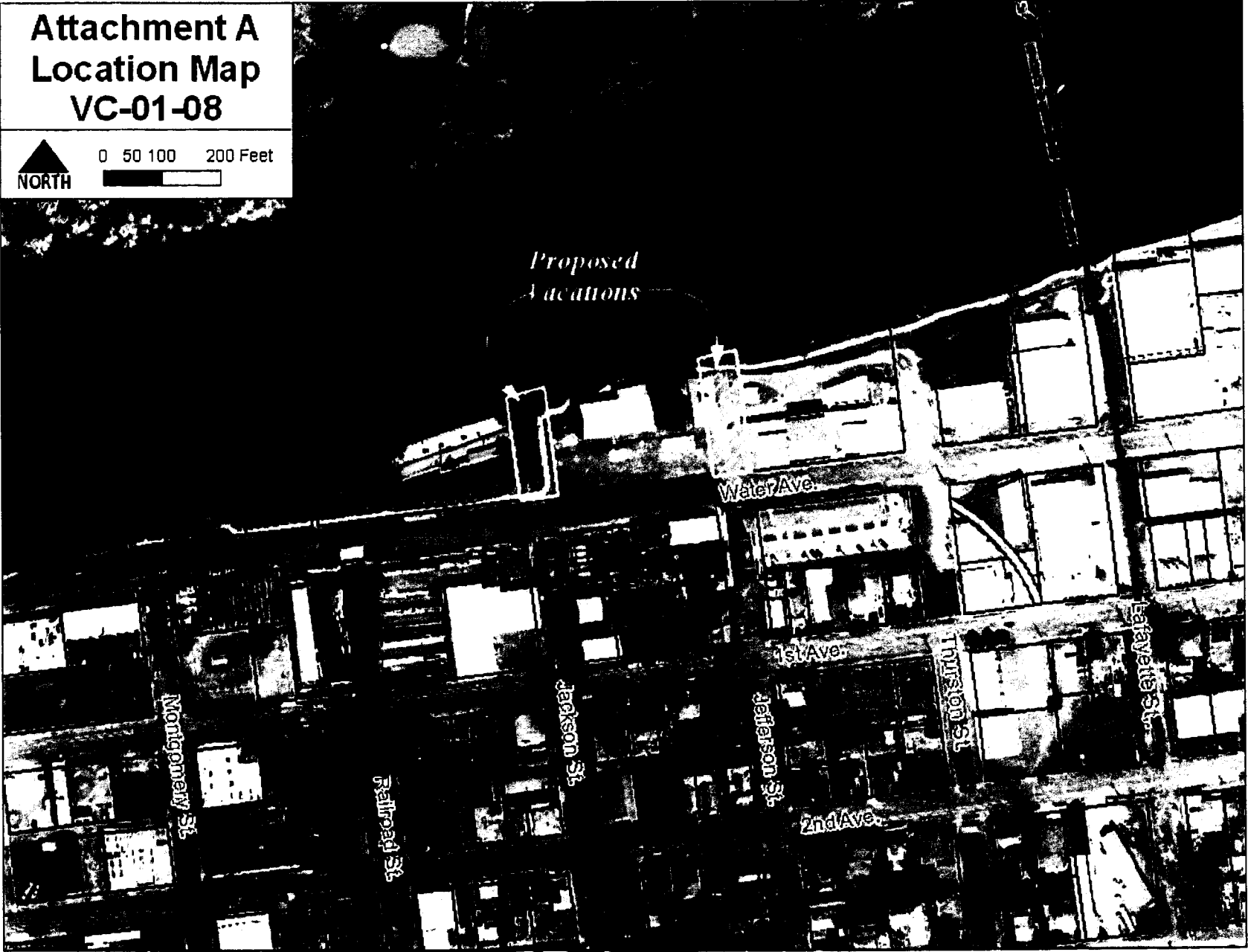
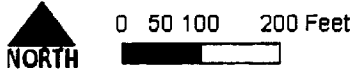
- 5.1 The areas proposed for vacation are unimproved rights-of-way. The areas to be vacated are currently being used by adjacent property owners for access to their properties.
- 5.2 Retaining public utility easements over the existing sewer will provide the City the right to access these utilities within the areas to be vacated.
- 5.3 Upon final approval of the vacation, the City will no longer have any street maintenance responsibility over the vacated areas.
- 5.4 It is in the City's interest to maintain legal access for pedestrians and bicyclists between Water Avenue NE and the riverfront path through the areas proposed for vacation.
- 5.5 It is in the City's interest to maintain a "view corridor" to the river at a variety of locations. Maintaining an easement over the width of the rights-of-way to be vacated, the City assures that no permanent structures will be constructed that may obstruct the view to the river at these locations.

CONCLUSION

- 5.1 Vacating these portions of the Jackson Street and Jefferson Street rights-of-way will not adversely impact the public interest, if the conditions of approval are satisfied.

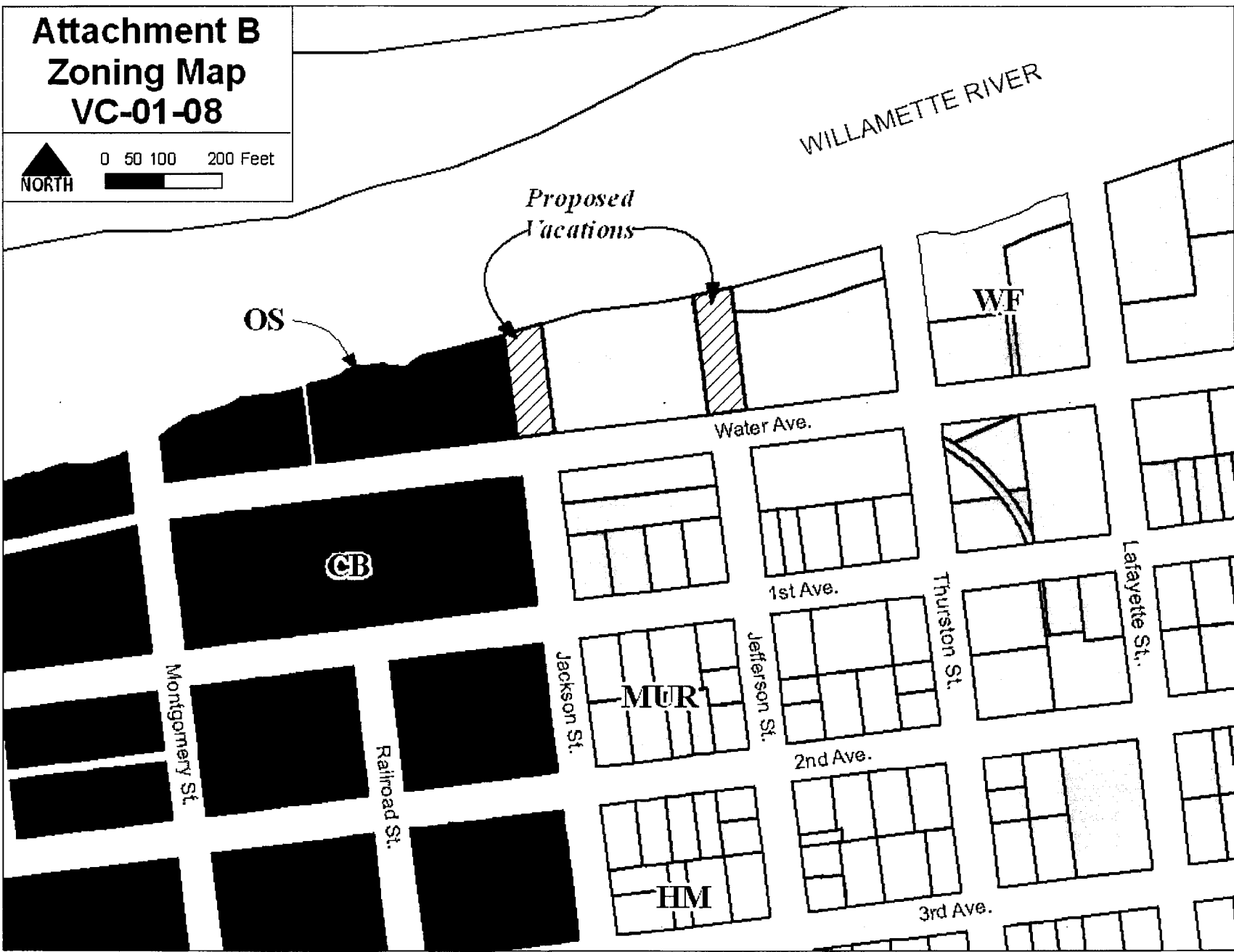
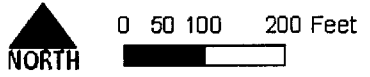
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**Attachment A
Location Map
VC-01-08**



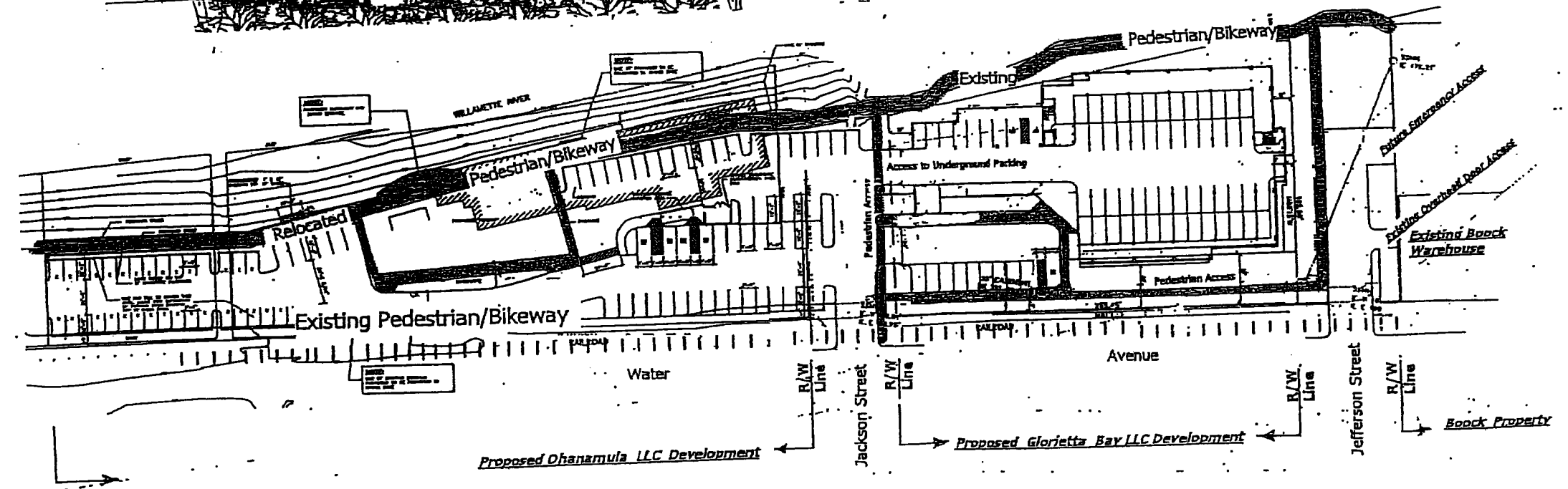
Attachment A – Location Map

Attachment B Zoning Map VC-01-08

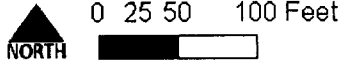


Attachment B - Zoning Map

ATTACHMENT C
Preliminary Site Plan
with Elevation Drawings



**Attachment D
Utility Map
VC-01-08**



Areas of Proposed
Vacations

40' PUE

Water Ave.

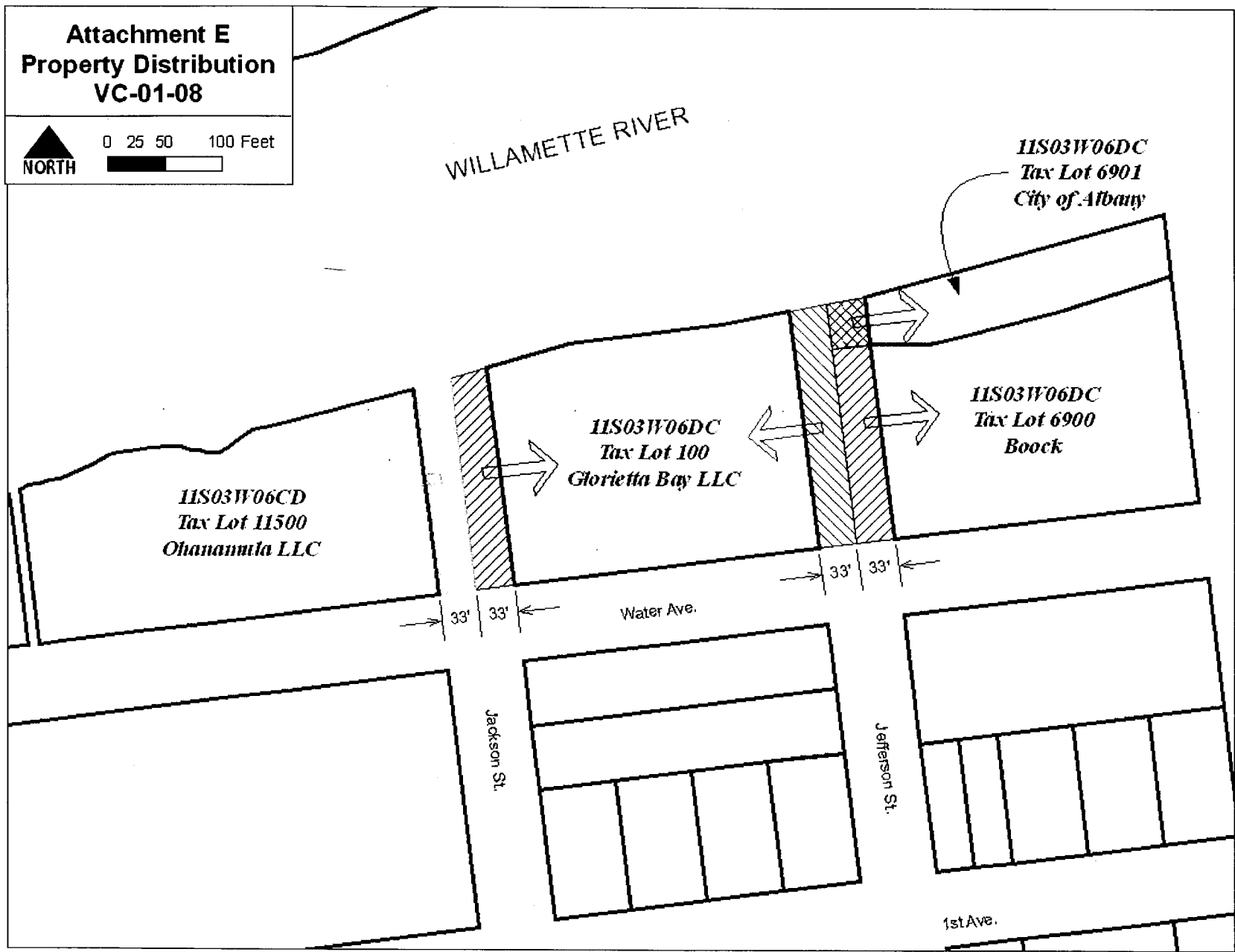
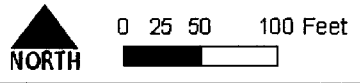
Jackson St.

Jefferson St.

SEWER	—
WATER	—
STORM	- - - -
PUBLIC UTL. EASE.	▨

Attachment D – Utility and Easement Map

**Attachment E
Property Distribution
VC-01-08**



Attachment E – Property Distribution