

ORDINANCE NO. 5666

AN ORDINANCE VACATING A PORTION OF 29TH AVENUE SW (EAST OF PACIFIC BOULEVARD SW) AND ADOPTING FINDINGS, AND DECLARING AN EMERGENCY (FILE VC-02-06).

WHEREAS, on December 27, 2006, the City of Albany received an application from Fred Vetter (Oregon Freeze Dry) and Rick Smith (WSS Properties LLC) to vacate a portion of 29th Avenue SW; and

WHEREAS, notices of public hearings were mailed, posted, and published; and

WHEREAS, the Albany Hearings Board held a public hearing on March 29, 2007, and recommended that the City Council approve the proposed vacation of 29th Avenue SW; and

WHEREAS, the Albany City Council held a public hearing on April 11, 2007; and

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

Section 1: Subject Property. A portion of 29th Avenue SW, east of Pacific Boulevard (see legal description on attached Ordinance Exhibit A) is hereby vacated.

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

Section 3: Easements Retained. The City retains a public utility easement over the entire area being vacated. A shared reciprocal access and maintenance easement is also retained over the vacated area that allows legal ingress and egress for the benefit of the parcels abutting the area described in the attached legal description (Ordinance Exhibit A). An access easement is also retained over the vacated area for the benefit of all emergency services vehicles.

Section 4: Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance will be in full force and effect immediately upon passage by the Council and approval by the Mayor.

Passed by Council: April 11, 2007

Approved by Mayor: April 11, 2007

Effective Date: April 11, 2007

ATTEST:



City Clerk



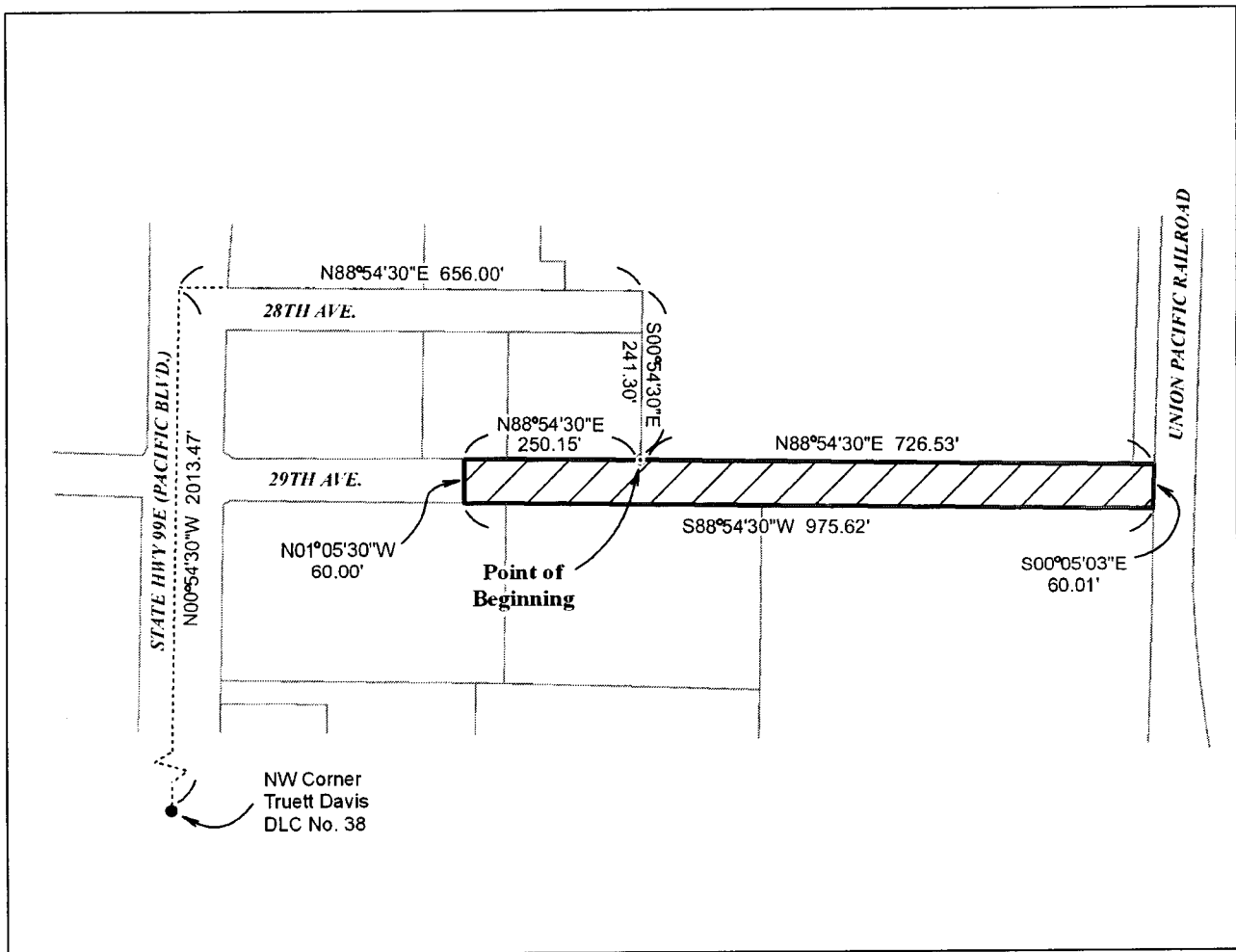
Mayor

**LEGAL DESCRIPTION FOR VACATION OF A PORTION OF 29TH AVENUE SW
(VC-02-06)**

An area of land in the Northeast 1/4 of Section 13, Township 11 South, Range 4 West, Willamette Meridian, Linn County, Oregon, more particularly described as follows:

Beginning at a 5/8" iron rod marking the North right-of-way of 29th Avenue, bearing North 00°54'30" West 2013.47 feet, North 88°54'30" East 656.00 feet and South 00°54'30" East 241.30 feet from the Northwest corner of the Truett Davis DLC No. 38, in the Northeast 1/4 of Section 13, Township 11 South, Range 4 West, Willamette Meridian, Linn County, Oregon; thence North 88°54'30" East 726.53 feet along the said North right-of-way to the West right-of-way of the Union Pacific Railroad; thence South 00°05'03" East 60.01 feet along said Railroad right-of-way to a point marking the South right-of-way of 29th Avenue; thence South 88°54'30" West 975.62 feet along the South right-of-way of 29th Avenue to a point; thence North 01°05'30" West 60.00 feet to a point on the North right-of-way of 29th Avenue; thence North 88°54'30" East 250.15 feet along said North right-of-way to the point of beginning.

All bearings and distances are based on County Survey No. 23733.





Community Development Department

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

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STAFF REPORT (Ordinance Exhibit B) Vacation (Public Right-of-Way)

<u>HEARING BODIES</u>	HEARINGS BOARD	CITY COUNCIL
<u>HEARING DATES</u>	Thursday, March 29, 2007	Wednesday, April 11, 2007
<u>HEARING TIMES</u>	4:00 p.m.	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

GENERAL INFORMATION

DATE OF REPORT:	April 4, 2007
FILE:	VC-02-06
TYPE OF APPLICATION:	Vacation of a portion of 29th Avenue SW
REVIEW BODIES:	Hearings Board and City Council
APPLICANTS:	Fred Vetter; Oregon Freeze Dry; 525 25th Avenue SW; Albany, OR 97322; Rick Smith; 201 1st Avenue NW, Suite B; Albany, OR 97321; Alton and Dixie Sullivan; 3015 Salem Avenue SE; Albany, OR 97321; and Southern Pacific Transportation Co.; 1400 Douglas Street, Stop 1690; Omaha, NE 68179-1690
ADDRESS/LOCATION:	29th Avenue SW, east of Pacific Boulevard SW (see Staff Report Attachment A)
MAP/TAX LOT:	Street right-of-way and adjacent properties are shown on Linn County Assessor's Map No. 11S-04W-13AD
ZONING:	Adjacent zoning is Light Industrial (LI) and Heavy Industrial (HI); the zoning of the vacated area would become LI and HI (see Staff Report Attachment B)
TOTAL LAND AREA:	58,640 square feet
PURPOSE OF REQUEST:	Oregon Freeze Dry is considering purchasing property on the north side of 29th Avenue SW to expand their operation. The applicants have indicated they wish to vacate the public right-of-way in order to allow for vehicle and employee access/connection between the south plant and (future) north improvements without conflicting with public vehicle traffic.
EXISTING LAND USE:	Public right-of-way; improved street (curb and gutter; no sidewalks); adjacent light and heavy industrial uses
NEIGHBORHOOD:	West Albany

SURROUNDING ZONING: North and South: LI (Light Industrial) and HI (Heavy Industrial)
West: LI (Light Industrial)
East: HI (Heavy Industrial)

SURROUNDING USES: North: Industrial storage and vacant industrial buildings
South: Industrial manufacturing and processing
East: Railroad tracks; Oregon Freeze Dry property
West: Industrial and light retail; Pacific Boulevard SW

NOTICE INFORMATION

A Notice of Public Hearing was mailed to surrounding property owners on March 19, 2007. The site was posted on March 20, 2007, in accordance with Section 1.410 of the Albany Development Code. Two legal notices have been published in the *Albany Democrat-Herald* on March 16, and March 22, in accordance with ORS 271.110. At the time this staff report was prepared (April 4, 2007), the Albany Planning Department had received no written comments.

HEARINGS BOARD RECOMMENDATION

The Albany Hearings Board recommended APPROVAL WITH CONDITIONS of this Vacation application for a portion of 29th Avenue SW, east of Pacific Boulevard SW (File VC-02-06). The proposed conditions are found in this staff report.

SUGGESTED COUNCIL ACTION

Adoption of attached ordinance that would APPROVE WITH CONDITIONS the application that would result in the vacation of a portion of 29th Avenue SW, east of Pacific Boulevard SW (File VC-02-06).

STAFF ANALYSIS

Vacation File VC-02-06

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 an 8-inch public sanitary sewer main exists in 29th Avenue SW within the western half of the area to be vacated.

1.3 **Water.** Water utility maps indicate that an 8-inch public water main runs along the entire length of the area proposed for vacation. In addition to the water main, a variety of other appurtenances (such as

hydrants, water meters, service lines, etc.) exist within the area to be vacated. Public water mains and appurtenances must be protected by public utility easements. These easements allow for access to public utilities for maintenance and/or replacement.

- 1.4 Storm Drainage. Storm drainage utility maps indicate that no piped public storm drainage facilities exist within 29th Avenue SW. Twenty-Ninth Avenue SW slopes down from east to west. Storm water runoff from the street and portions of the adjacent properties flows along the gutters to existing catch basins at the intersection of 29th & Pacific.
- 1.5 Other Utilities. City staff has contacted the various other utility providers about this proposed right-of-way vacation. Based on information gathered from these private utilities, applicant submittals, and other as-built drawings, it has been determined that a variety of other utilities (such as natural gas, phone, etc.) exist within the area to be vacated.

CONCLUSION

- 1.1 There are a number of public and private utilities that exist within the area proposed for vacation. All of these utilities require easements to allow access for maintenance purposes. Due to the location and number of utilities within this area, staff recommends that a public utility easement be maintained over the entire area proposed for vacation (see Staff Report Attachment C). Such an easement would preclude the construction of any permanent structures within this easement area.

CONDITION

- 1.1 The City will retain a public utility easement over the entire area proposed for vacation. This easement will allow legal access to the area for maintenance of the utilities, and would prohibit the construction of any permanent structures within this easement.

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 portion of 29th Avenue SW, east of Pacific Boulevard SW and west of the Union Pacific Railroad tracks. This portion of 29th Avenue SW is a 1,300-foot-long public street that dead ends at the railroad tracks. There is no turn-around constructed at the east end of the street. Vehicles needing to turn around must use private property to maneuver in order to return toward the west. Twenty-Ninth Avenue SW is used as the main entrance for the industrial uses adjacent to the street. The intersection of 29th Avenue SW and Pacific Boulevard SW has a traffic signal.
- 2.2 Twenty-Ninth Avenue SW is improved with curb and gutter for most of its length. The street was constructed with the "mountable"-type curb. This type of curbing in effect allows for driveway access all along the length of the street.
- 2.3 The industrial development along the south side of 29th Avenue SW has a series of truck loading bays along the side of the building. The bays are situated in such a manner as to force trucks to back up and block 29th Avenue SW when entering or exiting the bays. That design creates conflicts with through movements on the street and would not be allowed under the current Development Code. Section 9.120(7) of the Development Code prohibits backing movements or other maneuvering within a street. Vacating 29th Avenue SW and converting it to private property would resolve the compliance problem with the Development Code and reduce the City's liability exposure.
- 2.4 The City's Transportation System Plan (TSP) does not show an extension of 29th Avenue SW to the east from this location. Such an extension would require a crossing of the railroad tracks. The property on the east side of the tracks at this location is owned by Oregon Freeze Dry and is accessed via 25th Avenue

SW (off of Ferry Street SW) and Calapooia Street SW (off of 34th Avenue SW). It is very unlikely that a future extension of 29th Avenue SW over the tracks would ever occur.

- 2.5 If a future decision were to be made to extend 29th Avenue SW over the railroad tracks it would require ramps of about 800 feet in length on both sides of the crossing in order to gain the necessary clearance from the rail tracks. The ramps would restrict access to the existing industrial uses both north and south of the street and prevent the truck loading movements and uses that currently occur along the street.
- 2.6 This portion of 29th Avenue SW does not connect with any other public rights-of-way east of Pacific Boulevard SW. The street only serves as an access to the industrial uses along its length.
- 2.7 Staff is proposing that a shared reciprocal easement for access over the vacated portion of 29th Avenue SW for the benefit of all tax lots along the vacated portion of the right-of-way be created over this area. This would assure access rights to the existing lots (and any lots created from them by future land divisions).

CONCLUSIONS

- 2.1 The proposed vacation will not have a negative impact on the traffic circulation in this area. Elimination of this portion of 29th Avenue SW will decrease or eliminate traffic conflicts between the on-site circulation of industrial traffic and other vehicles from the general public. The right-of-way remaining at the west end of 29th Avenue SW at Pacific Boulevard SW will be sufficient to allow for access to those parcels where public traffic is desirable after the proposed vacation.
- 2.2 The area proposed for vacation is not needed for connectivity between public rights-of-way. The area proposed for vacation is currently used only as a means of accessing the industrial properties along 29th Avenue SW. Access for these parcels would be maintained by the creation of a shared reciprocal access easement over the portion of 29th Avenue SW being vacated.

CONDITION

- 2.1 The ordinance vacating this right-of-way will include a clause that creates a shared reciprocal access easement over the vacated portion of 29th Avenue SW to provide legal access to all parcels adjacent to the vacated portion of the right-of-way, as well as emergency vehicles.
- (3) ***The requested vacation will not have a negative effect on traffic circulation or emergency service protection.***

FINDINGS

- 3.1 The portion of 29th Avenue SW being proposed for vacation is used only for access to the industrial uses adjacent to the street. While restricting the use of this portion of the street by public traffic, it is important to continue to provide access to these properties for emergency services vehicles. The provision of an appropriate access easement would ensure that access is available for private use as well as for emergency vehicles. As mentioned in the above section, until the vacation is approved and the applicant takes ownership of the property, the applicant cannot provide an access easement. Staff recommends the City retain a public access easement over a portion of the 29th Avenue SW area to be vacated until an appropriate private access easement is provided by the applicant.
- 3.2 As indicated in the previous section, by restricting use of this portion of 29th Avenue SW would likely create a safer traffic pattern for public traffic by minimizing vehicular conflicts with the industrial uses adjacent to the street.

CONCLUSION

- 3.1 The vacation of this portion of 29th Avenue SW will have no adverse impact on traffic circulation in this area. A shared reciprocal access easement over the portion of 29th Avenue SW to be vacated will allow for continued private and emergency vehicle access to the impacted properties.
- (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

- 4.1 The right-of-way to be vacated will be incorporated into the parcels directly abutting it, or revert back to the owner of the property from which the right-of-way was dedicated. Based on research done by the applicant, title to the area to be vacated would be distributed as shown on Staff Report Attachment D.
- 4.2 The area to be vacated currently functions as a public street that accesses a limited number of parcels, and will remain as a private driveway access.
- 4.3 By providing an appropriate access easement over the area to be vacated, emergency services will retain the ability to access the properties adjacent to the vacated area. Future development adjacent to this area must be designed and sited so that this emergency vehicle access is maintained, or an alternative access is provided that will provide adequate emergency vehicle access.

CONCLUSION

- 4.1 An easement that allows adequate access to the area for adjacent properties and emergency services vehicles must be maintained over the vacated area.

CONDITION

- 4.1 The vacation ordinance will include a clause that will create a shared reciprocal access easement over the vacated area to allow for access to all parcels adjacent to this area. This access easement will include the right of access for all emergency services vehicles.
- (5) ***The public interest, present and future, will be best served by approval of the proposed vacation.***

FINDINGS

- 5.1 The area proposed for vacation is an improved street with “mountable” curb and gutter. The street in the area to be vacated currently provides access only to adjacent parcels that are developed as industrial uses. By providing a shared reciprocal access easement over the portion of 29th Avenue SW to be vacated, access to these affected parcels will remain available.
- 5.2 The existing street serves a variety of heavy industrial traffic. The City currently has maintenance responsibility over the public right-of-way.
- 5.3 Oregon Freeze Dry (OFD) is interested in purchasing a portion of the old Stone Forest site north of 29th Avenue SW. Oregon Freeze Dry would like to expand production of the type that is now carried out on its existing site south of 29th Avenue SW. Historically, the OFD Plant 1 site has been landlocked, preventing OFD from expanding significantly at this site. This pending sale provides approximately 4.5 acres of expansion room and approximately doubles the amount of space available for their manufacturing activities. Following development, there will be continuous forklift and truck traffic crossing 29th Avenue SW. This will improve the OFD Plant material flow logistics and provide better plant, employee, and food security. However, it will create a safety hazard to public traffic.

Site development and increased future employment will be driven by customer needs. Current OFD employment is approximately 400 employees. OFD estimates that a proportional number of new jobs will be created as this new site is developed.

CONCLUSIONS

- 5.1 Vacating the proposed area will release the City from maintenance responsibility for this area.
- 5.2 The proposed vacation will make this area safer by eliminating potential conflicts between public traffic and onsite industrial vehicles and employees.
- 5.3 An access easement over the vacated area will provide legal access for all adjacent parcels and for emergency services vehicles.

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Staff Report
Attachment A
VC-02-06



Umatta St

Willetta St

Froaks Dr

State Highway 99E

Walnut St

Union Pacific RR

25th Ave.

28th Ave

WSS Properties

29th Ave

Oregon Freeze Dry

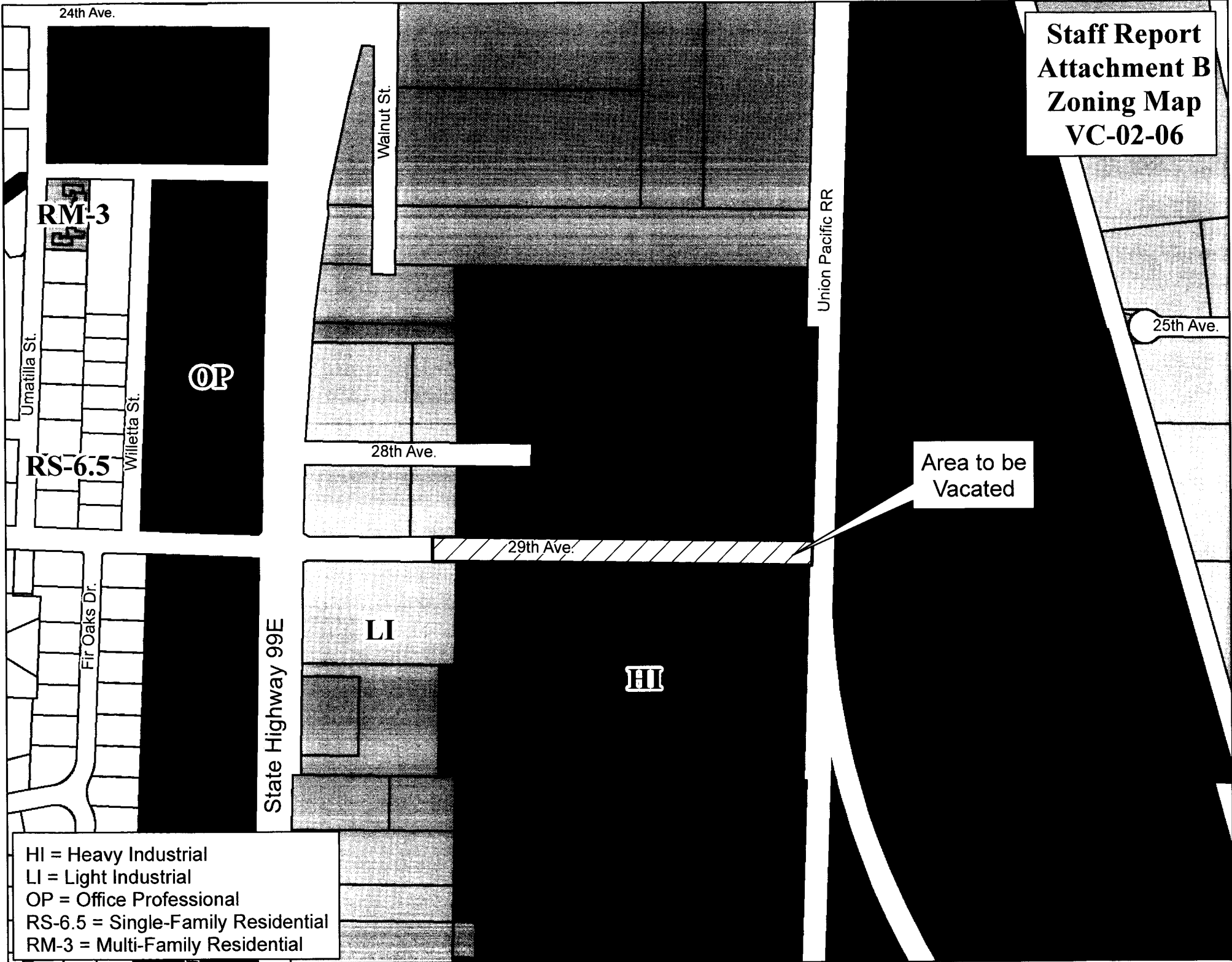
Alton and Dixie Sullivan

National Frozen Foods

Area to be
Vacated

300 150 0

**Staff Report
Attachment B
Zoning Map
VC-02-06**



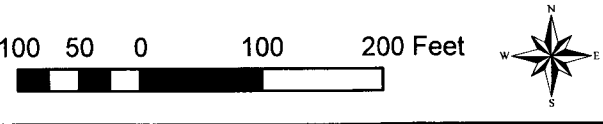
HI = Heavy Industrial
LI = Light Industrial
OP = Office Professional
RS-6.5 = Single-Family Residential
RM-3 = Multi-Family Residential

**Staff Report
Attachment C
Utility Map
VC-02-06**

Area to be
Vacated

Public Sanitary Sewer _____
Public Water _____
Public Storm Drain _____

100 50 0 100 200 Feet



The scale bar shows markings at 100, 50, 0, 100, and 200 feet. To the right of the scale bar is a north arrow with 'N' at the top, 'S' at the bottom, 'W' on the left, and 'E' on the right.

PROPERTY OWNERSHIP

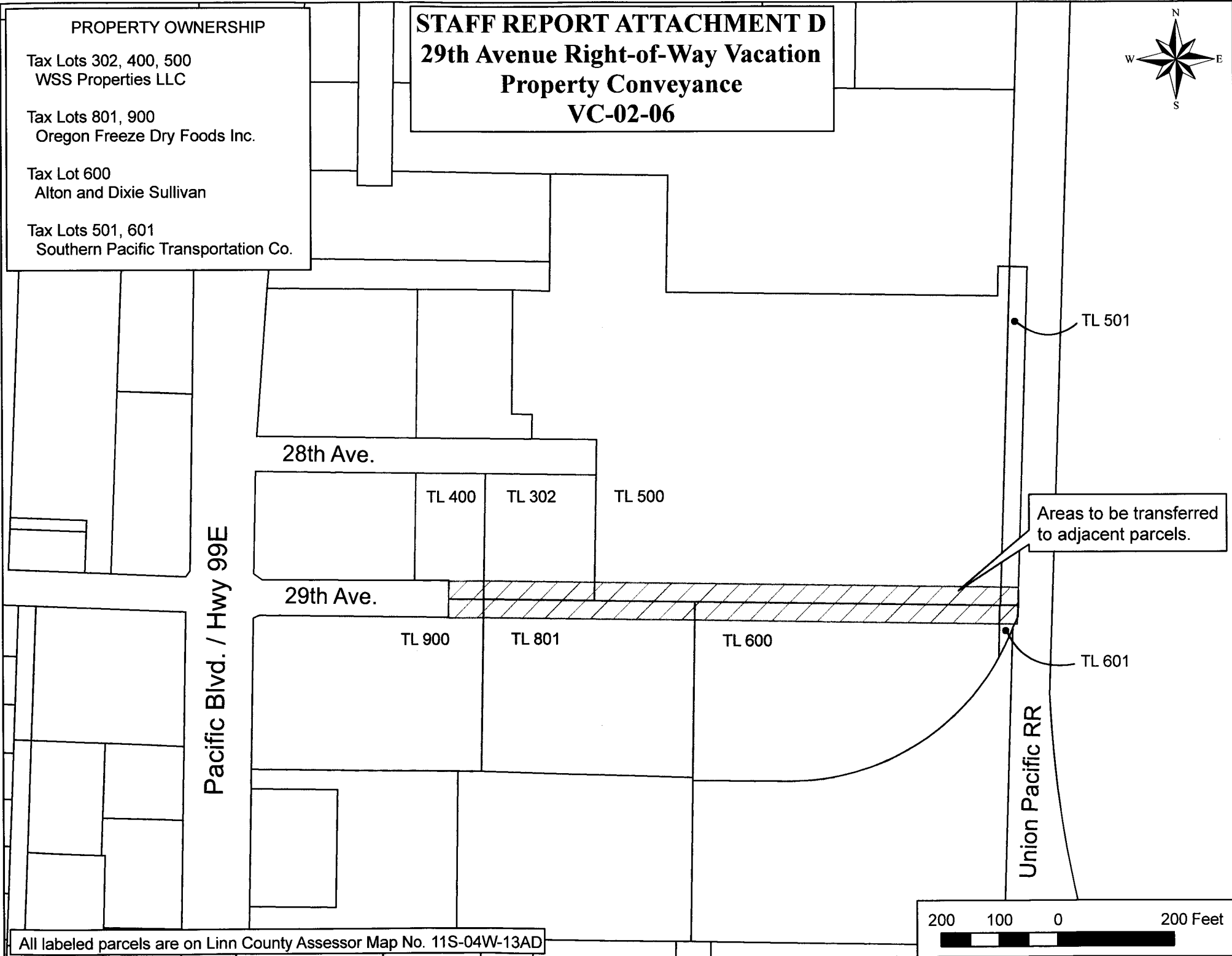
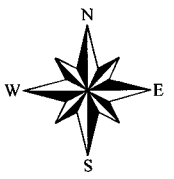
Tax Lots 302, 400, 500
WSS Properties LLC

Tax Lots 801, 900
Oregon Freeze Dry Foods Inc.

Tax Lot 600
Alton and Dixie Sullivan

Tax Lots 501, 601
Southern Pacific Transportation Co.

**STAFF REPORT ATTACHMENT D
29th Avenue Right-of-Way Vacation
Property Conveyance
VC-02-06**



TL 501

28th Ave.

TL 400

TL 302

TL 500

Areas to be transferred to adjacent parcels.

29th Ave.

TL 900

TL 801

TL 600

TL 601

Pacific Blvd. / Hwy 99E

Union Pacific RR

200 100 0 200 Feet

All labeled parcels are on Linn County Assessor Map No. 11S-04W-13AD