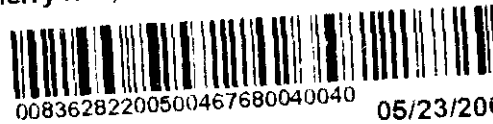


AFTER RECORDING RETURN TO:

City Recorder (Leilani Bronson-Crelly)  
P.O. Box 3040  
Oregon City, Oregon 97045-0304



\$46.00

00836282200500467680040040 05/23/2005 01:30:13 PM  
D-OD Cnt=2 SIn=3 ELIZABETH  
\$20.00 \$5.00 \$11.00 \$10.00

Map: 2-2E-29CC

Tax Lot: south 1/2 of 7100

Engineering File: RW05-012 (see WR05-02 & SP05-01)

Property Owner: Abernethy Center LLC

## MAINTENANCE COVENANT AND REVOCABLE RIGHT-OF-WAY PERMIT

THIS MAINTENANCE COVENANT AND REVOCABLE RIGHT-OF-WAY PERMIT ("Agreement") is made this 7<sup>th</sup> day of April, 2005, between Abernethy Center LLC, hereinafter referred to as "OWNERS", and the CITY OF OREGON CITY (CITY), a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457.

### RECITALS

A. The OWNERS are the owners and developers of certain real property located in the City of Oregon City, Clackamas County, Oregon, described as Lot 5 of Block 119 of "Oregon City" subdivision plat (a duly recorded plat), Oregon City, Clackamas County, Oregon, hereafter called PROPERTY.

B. The OWNERS desire to remove existing asphalt paving, add pedestrian pathways/pavers/etc., add landscaping, add irrigation system(s) and modify/remove existing vegetation/ground covers, hereafter called IMPROVEMENTS, within the Right-Of-Way of unimproved 14th Street (between John Adams Street & unimproved Jefferson Street) & unimproved Jefferson Street (along the frontage of said Lot 5), hereinafter called ROW. The ROW at said PROPERTY is 60-foot in width(s) as shown on Exhibit "A" (area map) attached hereto.

C. The CITY Planning Division has approved said OWNERS construction plans for said IMPROVEMENTS per Planning File No. WR05-02 & SP05-01.

D. The CITY Engineering Division is required to issue a Revocable Right-of-Way Permit for said IMPROVEMENTS as a condition of said WR05-02 & SP05-01.

E. The OWNERS may, in the future, perform minor modifications and/or additions to the IMPROVEMENTS (as accepted by the CITY) after the IMPROVEMENTS have been accepted by the CITY per this PERMIT (and WR05-02 & SP05-01).

### AGREEMENT

1. **Covenant to Maintain and Repair.** OWNERS shall, at their sole expense, themselves or through qualified independent contractors, at all times maintain said IMPROVEMENTS in ROW in safe condition and good repair (for the general public), clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the CITY and including the CITY's Design Standards). The OWNERS, their representatives, or assigns shall obtain proper permits and approvals from the CITY and shall notify the CITY 24 hours prior to any construction or repair activities for the IMPROVEMENTS in ROW. Furthermore, in the event the OWNERS fail to comply with this Covenant and Agreement, the OWNERS hereby agree that the CITY may maintain said IMPROVEMENTS in ROW and the OWNERS agree to reimburse the CITY for the costs incurred by the CITY for complying with this agreement as described in Section 3 below. This Covenant and Agreement is binding on the OWNERS, their successors and assigns with respect to the matters described in this Agreement.

**2. Failure to Perform Covenant.** Except in the case of an emergency, if the CITY determines that OWNERS are not in compliance with the Covenant described in Section 1, the CITY or its designee shall give the OWNERS written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the CITY's satisfaction within thirty (30) days after the date of such notice, the OWNERS hereby grant to the CITY, their employees, independent contractors and designees the right to perform any and all work required to bring said IMPROVEMENTS in ROW into compliance with Section 1 and the OWNERS hereby agree to reimburse the CITY for performing this work, as described in Section 3 below. The OWNERS agree that the CITY or its designee may perform any emergency repair work, as determined by the CITY, without prior notice to the OWNERS and that the OWNERS will reimburse the CITY for emergency work as described in Section 3 below.

OWNERS, FOR THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, AGREE THAT NONE OF THE CITY, THEIR EMPLOYEES, INDEPENDENT CONTRACTORS, ASSIGNS AND/OR DESIGNEES SHALL HAVE ANY OBLIGATION TO EXERCISE THEIR RIGHTS UNDER THIS SECTION 2 OR TO PERFORM ANY MAINTENANCE OR REPAIR OF THE IMPROVEMENTS IN ROW, AND THAT NONE OF THEM SHALL HAVE ANY LIABILITY TO OWNER'S OR ANY OF THE OWNERS SUCCESSORS OR ASSIGNS IN CONNECTION WITH THE EXERCISE OR NONEXERCISE OF SUCH RIGHTS, THE MAINTENANCE OR REPAIR OF THE IMPROVEMENTS IN ROW, OR THE FAILURE TO PERFORM THE SAME.

**3. Reimbursement.** The OWNERS shall reimburse the CITY for all costs incurred to provide this Agreement and if the CITY exercises its right to maintain or repair said IMPROVEMENTS in ROW pursuant to Section 1 and Section 2, the OWNERS shall reimburse the CITY for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If the OWNERS fail to pay the invoiced amount within such period, such amount shall thereafter accrue interest at a per annum rate equal to the prime rate of U.S. Bank (or its successor) plus five percent (5%). Such amount, together with any interest that has accrued, shall be a lien on the Development (as determined by the CITY) which may be foreclosed in accordance with ORS Chapter 88. If more than one person owns the PROPERTY then each such OWNER shall be jointly and severally liable for payment of the amounts provided for in Section 2 and this Section 3.

**4. Indemnification.** OWNERS agree to indemnify, defend (with legal counsel reasonably acceptable to the CITY), and hold harmless the CITY, their employees, independent contractors, assigns, designees and successors from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from any damages or losses to any persons (and their equipment &/or possessions) and/or animals (owned property) resulting from any use of or maintenance thereof said IMPROVEMENTS in ROW or from the OWNERS failure to perform its obligations under this Agreement or the exercise of the CITY, or their employees, independent contractors, assigns or designees of their rights under Section 2. This includes liability for any condition or activity whether known or unknown, anticipated or unanticipated at the time of this Agreement (The OWNERS shall maintain appropriate insurance liability coverage, or bond, as deemed appropriated by the City).

**5. Run with the Land.** This agreement is to be recorded as a property interest (to said Lot 5). The parties' rights and obligations contained herein shall run with the land (the PROPERTY) and inure to the benefit of, and shall be binding upon, the CITY and the OWNERS and their respective successors and assigns (including, without limitation, subsequent owners of the PROPERTY).

**6. Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

**7. Revocable Right-of-Way Permit.** The CITY may revoke the Right-of-Way Permit for said IMPROVEMENTS in ROW in the event that a CITY approved public street section replaces all or part of said IMPROVEMENTS in ROW section therefore nullifying the need for this Covenant and Agreement (see also Section 10).

**8. Additions.** The CITY hereby is granted the right to amend this Covenant and Agreement for the purpose of including new/additional OWNERS, as determined by the CITY.

**9. Authority.** If the OWNER is an entity, the individual executing this Agreement on behalf of the OWNER represents and warrants to the CITY that he or she has the full power and authority to do so and that the OWNER has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

**10. Agreement Termination.** The CITY may terminate this Agreement at any time & in the event that the OWNERS remove said IMPROVEMENTS and restore &/or redevelop the ROW area to the satisfaction of the CITY.

2

IN WITNESS WHEREOF the OWNERS and the CITY have executed this instrument on the date first written above.

**OWNERS (NOTARY REQUIRED):**

Abernethy Center, LLC by  
Mark E. Foley member/manager  
(Signature)  
Mark E. Foley  
(printed name)

(Signature)

(printed name)

**CITY OF OREGON CITY:**

By:

Printed Name:

Title:

Attest:

David L. Wimmer  
City Recorder David L. Wimmer, Finance Director

STATE OF OREGON )

County of Clackamas ) ss.

On this 7 day of April, 2005, before me, L Hamann, the undersigned

Notary Public, personally appeared Mark Foley.

☐

Personally known to me.

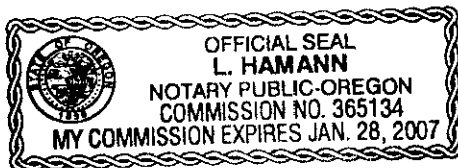
☒

Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that they executed it.

**NOTICE: No stamp is allowed over any typed information.**

Stamp seal below

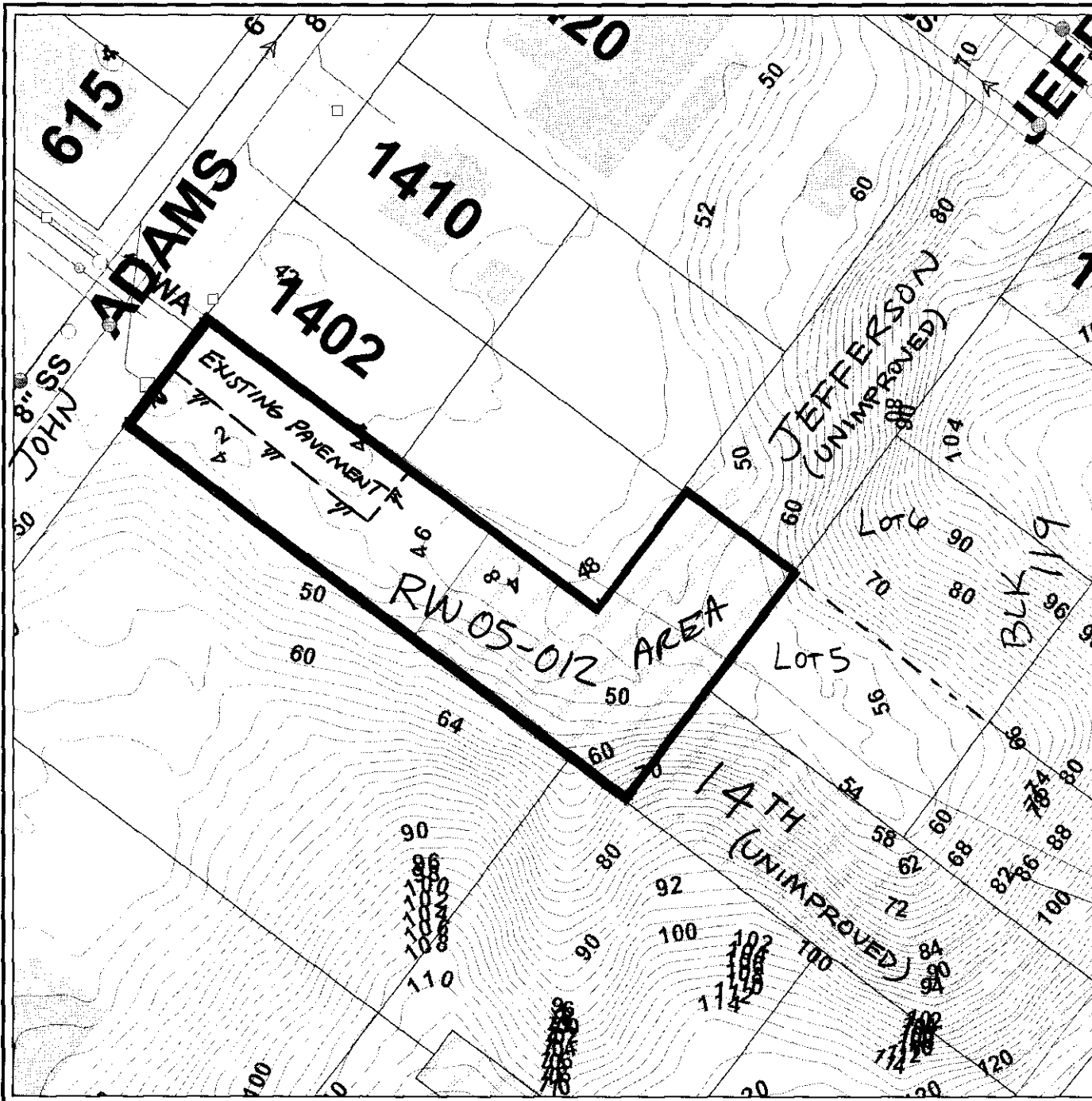
WITNESS my hand and official seal.



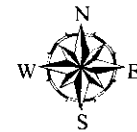
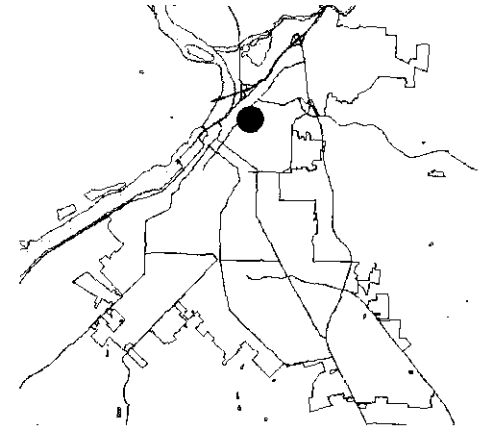
L Hamann

Notary's signature

My commission expires: Jan 28, 2007



WR05-01 &  
SP05-01



City of Oregon City  
P.O. Box 3040  
320 Warner Milne Road  
Oregon City, OR 97045

The data on this map is the best  
information available from the  
records of the City of Oregon City.  
Errors and omissions may exist.

Map created with OCMAP 2004

04/06/2005

EXHIBIT "A"

CITY OF OREGON CITY  
Engineering Division  
www.orcity.org

320 Warner Milne Road  
Oregon City, OR 97045  
Phone: (503) 657-0891  
Fax: (503) 657-7892  
Inspection Line: (503) 496-1554 (Eng)  
Inspector Cell: (503) 969-3812 (Eng)

RIGHT OF WAY PERMIT

PAY

TONY (503) 657-0891

Permit No: RW-05-012

THIS PERMIT EXPIRES 6/5/2005

Permission is hereby requested to encroach into public right of way to perform work as set forth below. It is understood that this application is limited to the work described herein and that all work is to be done in compliance with the provisions shown on the back of this application and with all other applicable rules, regulations and standards of the City; and that the permittee assumes full responsibility for said compliance, for acceptability of the work, and for repair or replacement thereof if defective, and for repair or replacement of any existing improvement damaged by the doing of the work.

Job Site: NEAR 1402 JOHN ADAMS ST OREGON CITY OR 97045

Owner's Name: ABEARNETH CENTER LLC 1420 JOHN ADAMS ST OREGON CITY OR 97045-0021

Contractor's Name: Phone No.: (503) 816-1277

Submitted by: MARK FOLEY GAZEBO

COPY

Permit Description:

14th ROW: John Adams-Jefferson; Jefferson ROW: 14th then northeast fronting site (the southwest 1/2 of tl 7100; Lot 5, Block 119, Oregon City Plat). See WR05-02, SP05-01, attached revocable ROW Permit (SEE PW 04-21 and BP 04-306)

CONDITIONS: - HOLD HARMLESS TO BE RECORDED (REVOCABLE ROW PERMIT)  
- VEG. CORRIDOR EASEMENT (PER WR05-02) TO C.C. THEN RECORDED

Staff Comments:

- PLANNING APPROVED MITIGATION & IMPROVEMENT PLAN (SHT 1 & 2) ATTACHED  
- ROW & FENCE IMPROVEMENTS TO BE APPROVED AND FINAL INSPECTED BY PLANNING (TONY KONKOL) AND RAY WILKMAN (ENGINEERING FOR ROW AREAS)

Related Permits:

- NO WORK UNTIL E.C. MEASURES ARE INSTALLED & APPROVED BY JOHN BURRILL

MAINTENANCE COVENANT &

Fees:

NOTE: REVOCABLE ROW APPLIES AND PROJECT PER WR05-02/SP05-01

Description	Fee Amount	Description	Fee Amount
4316 Right of Way Permit fee	118.00	4616-Parking Meter Fee for ROW	
4338 Record documents at Cnty	214.00		
		Total fees:	\$ 332.00

24 HRS. ADVANCE NOTICE  
MUST BE GIVEN  
FOR INSPECTION

- Exclusive of Saturdays, Sundays and holidays. Forms and subgrade must be inspected and approved before ordering Portland Cement Concrete or Asphaltic Concrete. Failure to obtain approval before proceeding with work may be cause for rejection. Any work to be done on a Saturday or holiday MUST be approved by the City at least 24 hours in advance. (Normal City work hours)

CONSTRUCTION WATER SHALL NOT BE TAKEN FROM A  
FIRE HYDRANT UNTIL A FIRE HYDRANT PERMIT HAS  
BEEN OBTAINED FROM PUBLIC WORKS (503) 657-8241.

ISSUED BY:

For Planning  
WR 05-002  
(CITY ENGINEER OR AUTHORIZED REPRESENTATIVE)

DATE: 4/7/2005

RECEIPT NO.: 06-53745  
06-53747

SEE THE SECOND PAGE OF THIS PERMIT FOR CONDITIONS AND PROVISIONS.



\* SEE PLANNING APPROVED PLANS  
SHT 1 & 2 OF 2 FOR PROPOSED PRIVATE  
MODIFICATIONS/IMPROVEMENTS (AND WRO5-02  
AND SPOS-01 CONDITIONS OF APPROVAL)

14TH ST

JOHN ADAMS ST

EDP

PARKING LOT

PIPE INLET

UNMAINTAINED PAVED SURFACE

FLOW

GRAVEL SUBGRADE PLACED PATH NOT FINISHED

EX. PLE TRANSFORMER

JEFFERSON ST R.O.W. (VACATED)

SUBJECT PROPERTY

TL 7100

PROPERTY LINES

PAVER BLOCK PAD

GAZEBO

PIPE OUTLET

UNNAMED PERENNIAL STREAM

8' WIDE PAVER BLOCK PATH

NOTES:

(1) ETC LOCATED SITE FEATURES WITH A TRIMBLE GEO XT WITH DIFFERENTIAL CORRECTION (ACCURACY <1 METER). SOME FEATURES WERE TIED INTO THE GPS COORDINATE SYSTEM USING A LASER RANGEFINDER, PRISM, AND COMPASS.

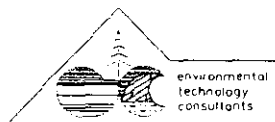
(2) PROPERTY LINES AS SHOWN ARE APPROXIMATE AND BASED ON DIMENSIONS FROM THE PLAT MAP

(3) PATH ALIGNMENTS ARE APPROXIMATE

(4) UTILITY FEATURES ARE APPROXIMATE; UTILITIES PROVIDED BY APPLICANT, NOT GPS-LOCATED

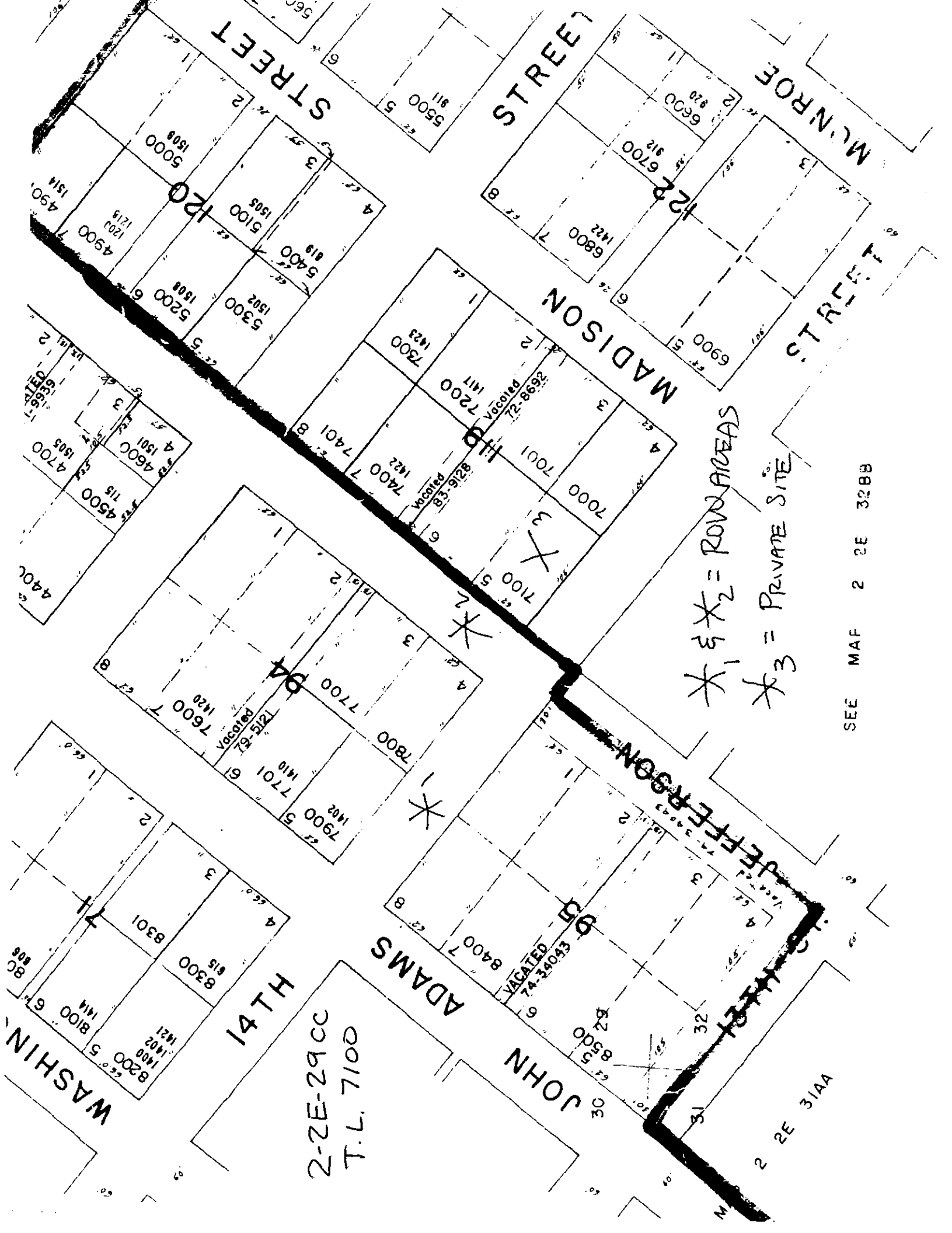
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25      0      25      50      75      100



OREGON CITY OREGON

FIGURE:	1 OF X
SCALE	1"=50'
DRAWN BY	DW
DATE	12/10/04
JOB #	04-004



\*1 & \*2 = ROAD AREAS  
\*3 = PRIVATE SITE

SEE MAP 2 2E 32BB

2-2E-29CC  
T.L. 7100

14TH

ADAMS

JOHN

WASHINGTON

2 2E 31AA



## **CONDITIONS OF APPROVAL**

**SP 050-01 and WR 05-02**

**April 5, 2005**

1. The applicant shall sign an agreement taking responsibility for the maintenance of the vegetation in the right-of-way and safety for those utilizing the pathway in the right-of-way.
2. The applicant shall receive a right-of-way permit from the city prior to any additional work in the public right-of-way other than the placement of the erosion control fence as proposed.
3. The applicant has not submitted a site plan identifying the location of the white two-rail fence. The applicant shall submit a site plan demonstrating the location of the proposed fence for approval by the city prior to the construction of the fence.
4. The applicant shall submit an addendum to the water quality resource report addressing the impacts of the irrigation system on the stream. If the report determines that the long-term impacts of the irrigation system will have a negative impact on the stream that cannot be mitigated, the irrigation system shall be removed after the establishment of the new plants.
5. The additional erosion control fencing along the top of the stream bank shall be in place as proposed prior to any additional work on the site or the issuance of a right-of-way permit.