



DATE: February 23, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A CONSENT TO COMMON USE AGREEMENT WITH CALTRANS FOR SEWER FACILITIES WITHIN STATE ROUTE 76 RIGHT-OF-WAY AT JONES ROAD**

SYNOPSIS

Staff recommends that the City Council approve a Consent to Common Use Agreement with Caltrans for City-owned sewer facilities within the State Highway 76 Bypass right-of-way at Jones Road; and authorize the Mayor to execute the document.

BACKGROUND

The construction of State Route 76 Bypass from Interstate 5 to Airport Road affected various City-owned water and sewer facilities. The sewer facilities at Jones Road remained within the State right-of-way in existing utility easements.

Typically the City's interests and rights in easements and rights-of-way are superseded by the State's acquisition of the highway right-of-way. However, in those instances where the City's utility facilities remain within the highway right-of-way and were installed in local agency streets or recorded easements prior to inclusion in the highway system, the practice is to enter into Joint Use Agreements ("JUA") or Consent to Common Use Agreements ("CCUA"), as appropriate..

JUAs and CCUAs are documents that perpetuate the City's rights-of-way for utility facilities that are within the State's highway right-of-way. Both documents place limiting restrictions on the City's use to ensure the City's utility use is compatible with highway traffic safety. The City otherwise retains all its original easement use rights.

A JUA is used when the City's facility will remain on lands used for highway purposes but will be relocated to a position outside, or partially outside, the City's existing right-of-way where the City had prior rights. It is also used where the City right-of-way is not occupied by any existing utility facilities but the City will not quitclaim the easement because of an unknown future use.

A CCUA is used when all of the City's facilities, whether rearranged or not, will remain within the highway area covered by the City's existing easement or right-of-way.

ANALYSIS

The use of a CCUA is appropriate for sewer facilities located north of Jones Road that remained in existing easements held by the City prior to inclusion in the highway system that require the use of CCUA.

Accompanying is a copy of CCUA to provide the terms and conditions of the subject document.

The Water Utilities Department coordinated with Caltrans in the drafting and preparation of the subject CCUA to ensure the City's interests are protected in the former easements supporting the affected utility facilities.

FISCAL IMPACT

The action requested of the City Council will not adversely affect the City's budget. Ongoing maintenance and operation of the utility facilities will be covered under the annual Water Utilities operations budgets.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

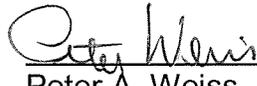
Staff recommends that the City Council approve a Consent to Common Use Agreement with Caltrans for City-owned sewer facilities within the State Highway 76 Bypass right-of-way at Jones Road; and authorize the Mayor to execute the document.

PREPARED BY:

SUBMITTED BY:



William F. Marquis
Senior Property Agent



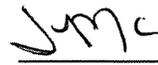
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Jane McVey, Economic and Community Development Director



Douglas E. Eddow, Real Property Manager



Cari Dale, Water Utilities Director



Recording Requested by:

California Department of Transportation
District 11, Right of Way
Utility Relocation Branch Chief
4050 Taylor Street, MS-310
San Diego, CA 92110

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

Space above this line for Recorder's Use

CONSENT TO COMMON USE AGREEMENT

DISTRICT	COUNTY	ROUTE	POST MILE	DOCUMENT NO.
11	San Diego	SR-76	0.0 / 2.9	29049-1

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between
City of Oceanside

, hereinafter called "Owner," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "State."

WITNESSETH

WHEREAS, Owner is in possession of certain rights of way and easements, hereinafter referred to as "Owner's easement," and described as follows:

Owner's prior and superior rights are per Grant of Easements for Public Utilities REC: April 25, 1966 F/P 68940 and REC: May 26, 1966 F/P 88013 of Official Records, San Diego County, California.

and

WHEREAS, State has acquired certain lands for highway purposes in the vicinity of
the City of Oceanside

 , County of San Diego on State Road SR-76 , hereinafter referred to as "highway right of
way," which said highway right of way is subject to Owner's easement; and

WHEREAS, the highway right of way occupies a portion of Owner's easement and is subject to said easement which
said portion is hereinafter referred to as "area of common use," and is described as follows:

The area of common use is shown on Consent to Common Use Agreement Map No. 29049-1, Sheets 1 and 2 , copies of which
are attached to and made a part of this agreement.

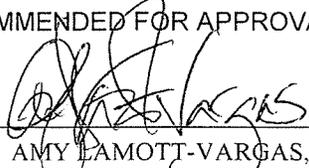
NOW, THEREFORE, Owner and State hereby mutually agree as follows:

1. Owner hereby consents to the construction, reconstruction, maintenance or use by State of a highway over, along and upon Owner's easement in the area of common use upon and subject to the terms and conditions herein contained.
2. State acknowledges Owner's title to Owner's easement in said area of common use and the priority of Owner's title over the title of State therein. Owner has and reserves the right and easement to use, in common with the public's use of said highway, said area of common use for all of the purposes for which Owner's easement was acquired, without need for any further permit or permission from State. Except in emergencies, Owner shall give reasonable notice to State before performing any work on Owner's facilities in said area of common use where such work will be performed in, on or over the traveled way or improved shoulders of said highway or will obstruct traffic. In all cases, Owner shall make adequate provision for the protection of the traveling public.
3. Owner shall not, in the exercise of its rights under its easement, pass through or over the freeway fence(s) constructed by State across Owner's easement right and left of Engineer's Station 122+36 "A" Line except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities.

4. In the event that the future use of said highway shall at any time or times necessitate a rearrangement, relocation, reconstruction or removal of any of Owner's facilities then existing in said area of common use the State shall notify Owner in writing of such necessity and agree to reimburse Owner on demand for its costs incurred in complying with such notice. Owner will provide State with plans of its proposed rearrangement and an estimate of the cost thereof and, upon approval of such plans by State, Owner will promptly proceed to effect such rearrangement, relocation, reconstruction or removal. Owner shall make adequate provisions for the protection of the traveling public. No further permit or permission from State for such rearrangement shall be required and if such rearrangement shall require the relocation of any of Owner's facilities outside of said area of common use, State will (1) enter into the standard form of Joint Use Agreement covering the new location of Owner's easement within the highway right of way, (2) provide executed document(s) granting to Owner good and sufficient easement outside of the highway right of way if necessary to replace Owner's easement or any part thereof, and (3) reimburse Owner for any costs it may be required to expend to acquire such easement, provided it is mutually agreed in writing that Owner shall acquire such easement.
5. Except as expressly set forth herein, this Agreement shall not in any way alter, modify or terminate any provision of Owner's easement. Both State and Owner shall use said new location in such a manner as not to interfere unreasonably with the rights of the other. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which Owner or State may now have or may hereafter acquire resulting from the construction of additional facilities or the alteration of existing facilities by either State or Owner in such a manner as to cause an unreasonable interference with the use of said new location by the other party.
6. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respective officials thereunto duly authorized.

RECOMMENDED FOR APPROVAL:



Name: AMY LAMOTT-VARGAS, Chief
Title: Utility Relocation Branch
Right of Way Division

If Required:

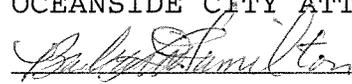
Name:
Title:

OWNER

By _____

Name:
Title:

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

By  _____

Name: BARBARA L. HAMILTON
Title: ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Director of Transportation

By _____

JANET SCHAFFER, DDD - Right of Way Division
Attorney in Fact

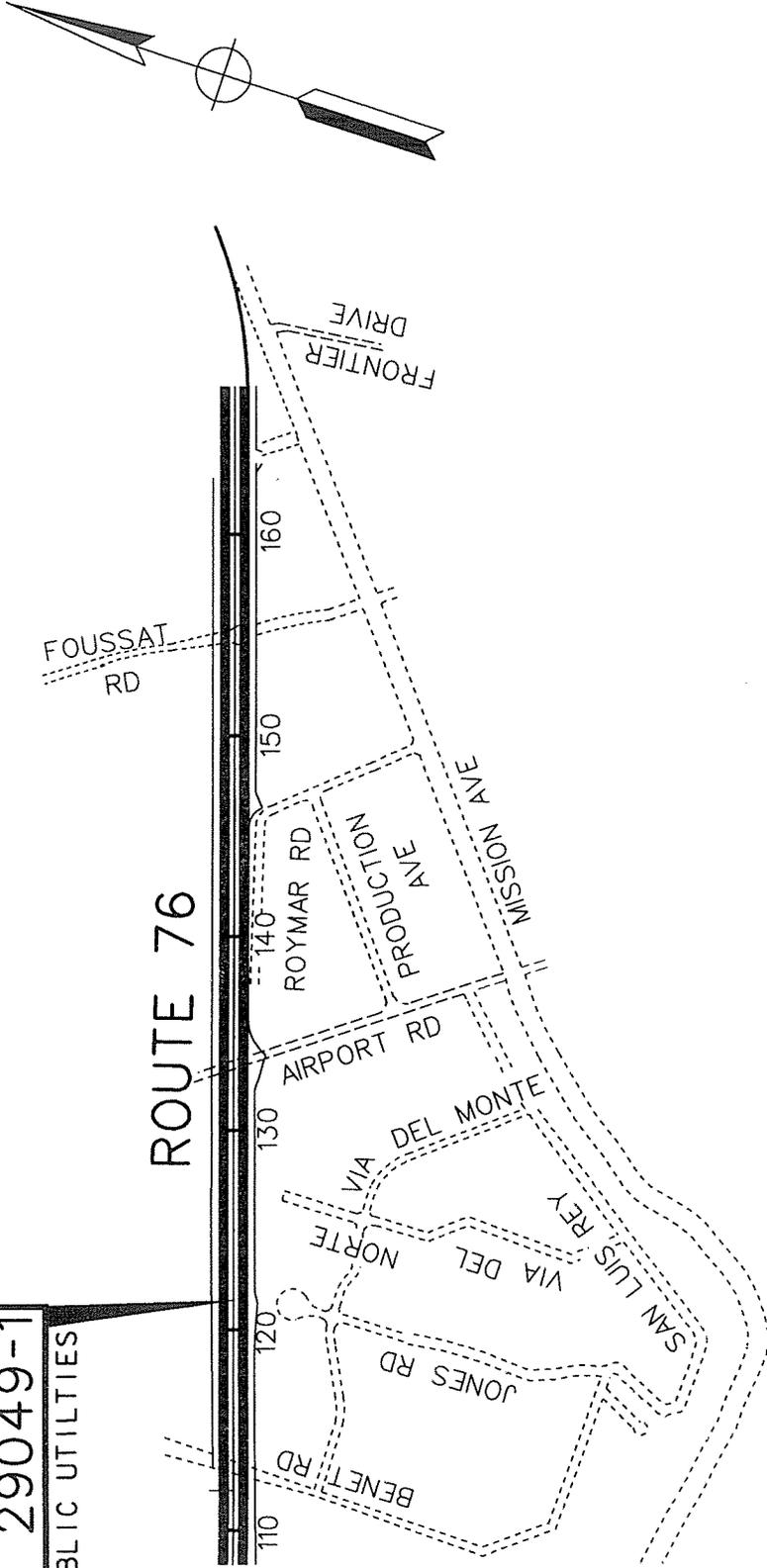
ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CITY OF OCEANSIDE

TO: CITY OF OCEANSIDE

CCUA 29049-1

FOR: PUBLIC UTILITIES



This map has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.



Signature *Peter T. Pfander*

Date *11/17/2010*

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONSENT TO COMMON USE
AGREEMENT NO. 29049-1

RIGHT OF WAY
MAP NO. **Por. 25501.7**

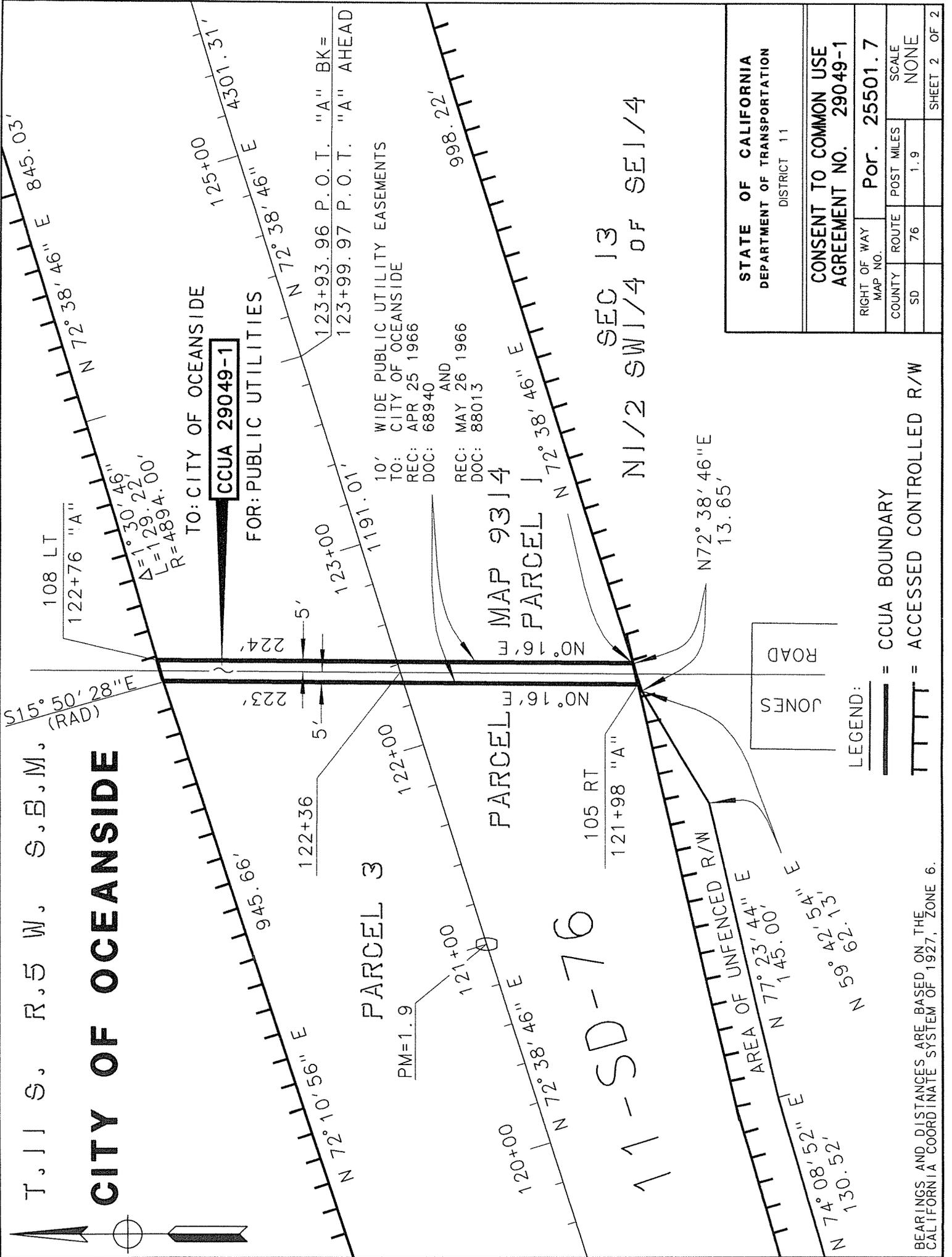
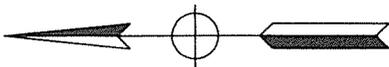
COUNTY	ROUTE	POST MILES	SCALE
SD	76	1.9	NONE

E.A. 159022

SHEET 1 OF 2

T. J. J. S. R. 5 W. S. E. M.

CITY OF OCEANSIDE



CCUA 29049-1

TO: CITY OF OCEANSIDE
FOR: PUBLIC UTILITIES

10' WIDE PUBLIC UTILITY EASEMENTS
TO: CITY OF OCEANSIDE
REC: APR 25 1966
DOC: 68940

AND
REC: MAY 26 1966
DOC: 88013

MAP 9314
PARCEL 1

SEC 13
N1/2 SW1/4 OF SE1/4

JONES ROAD

LEGEND:

———— = CCUA BOUNDARY

||||| = ACCESSED CONTROLLED R/W

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11	
CONSENT TO COMMON USE AGREEMENT NO. 29049-1	
RIGHT OF WAY MAP NO.	Por. 25501.7
COUNTY ROUTE	POST MILES
SD 76	1.9
	SCALE NONE
	SHEET 2 OF 2

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1927, ZONE 6.