ITEM NO. 11

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 14, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **DEFERRED IMPROVEMENT AGREEMENT – BARNWELL STREET**

SYNOPSIS

Staff recommends that the City Council approve the Deferred Improvement Agreement related to the Barnwell Street subdivision located at 303 South Barnwell Street; authorize the Acting City Engineer to execute the document; and authorize the City Clerk to record the document with the San Diego County Recorder.

BACKGROUND

Barnwell Street Subdivision is a 4-lot, 3-unit single-family residential subdivision project located on 1.06 acres at 303 South Barnwell Street. At the time of Planning Commission hearing in 2003, this project was owned by Phil Hyta. At the Planning Commission hearing Mr. Hyta requested relief from the roadway widening condition. Mr. Hyta's request was denied and on June 9, 2003, the Planning Commission adopted Resolution No. 2003-P32 approving the project and the Tentative Map that included the original condition that Barnwell Street be widened. Exhibit A is a vicinity map showing the aforementioned property. The present owners of the property are Loren and Nancy Ritter.

ANALYSIS

At some point after the initial entitlements, neighborhood residents began complaining to City staff that traffic-calming measures in that area were necessary. After several discussions and meetings with neighborhood residents in the Barnwell area, staff determined that the majority of the neighborhood supported a traffic-calming effort and not the proposed street widening improvements. Therefore, on April 1, 2005, City staff from traffic, engineering, planning and fire management approved a deferral of the widening of Barnwell Street through a substantial conformity process. This process did not eliminate the street widening condition, but rather allowed for the street widening to take place at a later date. The Deferred Improvement Agreement is the mechanism which will allow the City to require the street widening at a future date determined by City staff.

In March, 2006 the City placed a stop work notice on the project due to the possible presence of contaminated soils at the property that may have been imported as fill from the Oceanside Transit Center. In September, 2006, the property owners filed a civil action in Superior Court against the City alleging that the City improperly allowed this contaminated soil to be placed on the property. In December, 2006 the stop work notice was lifted after the San Diego County of Environmental Health stated that the cleanup goals for the property had been met, and that the contamination does not pose a human health risk to future occupants of the site. The civil action is continuing against the City.

All pertinent documents have been properly executed by the applicant. All grading and drainage comply with City ordinances.

The parcel map met timely filing and is consistent with applicable general and specific plans. The site is physically suitable for the type of development. Conditions and restrictions have been imposed to ensure its compatibility with adjacent areas and the entire City.

The Deferred Improvement Agreement is in conformance with the Subdivision Map Act and the City of Oceanside Subdivision Ordinance.

FISCAL IMPACT

The development fees will be imposed.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

Pursuant to Section 902 of Article VIII of the Subdivision Ordinance of the City of Oceanside, the referenced Deferred Improvement Agreement must be approved by the City Council by a majority vote. The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve the Deferred Improvement Agreement at 303 South Barnwell Street; authorize the Acting City Engineer to execute the document; and authorize the City Clerk to record the document with the San Diego County Recorder.

PREPARED BY:

Linda J. Evans
Principal Engineering Staff Assistant

SUBMITTED BY:

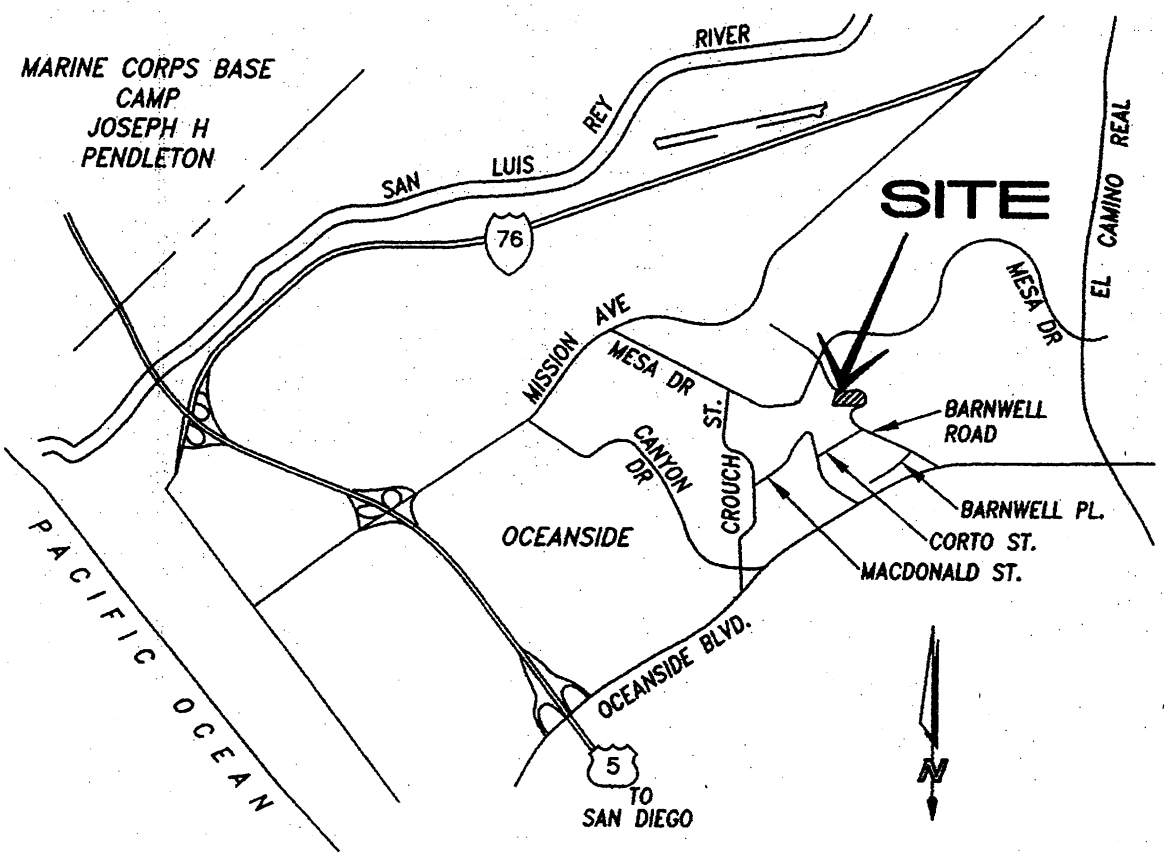
Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arrañaga, Acting Deputy Public Works Director

Scott O. Smith, Acting City Engineer



VICINITY MAP

D-4-01(1)	Public Works Department, Engineering Division	EXHIBIT A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

CITY OF OCEANSIDE
CITY CLERK'S OFFICE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

DEFERRED IMPROVEMENT AGREEMENT
BARNWELL STREET (D-4-01)

THIS AGREEMENT is made and entered into this _____day of _____, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY," and Loren Ritter and Nancy Ritter, husband and wife as joint tenants, hereinafter designated as "PROPERTY OWNER."

RECITALS

A. The CITY OF OCEANSIDE has conditionally approved a Tentative Parcel Map, hereinafter referred as 'THE MAP," for the development project described by Planning Commission Resolution No. 2003-P32, pursuant to Application Nos. P-1-01, D-4-01, and C-9-01, for the property at 303 South Barnwell Street, Oceanside, California, 92054 and such parcel map was filed as Parcel Map Number _____ in the Office of the County Recorder of San Diego County on _____, 2007 as File No. _____.

B. In conjunction with the approval of the aforementioned Tentative Parcel Map, PROPERTY OWNER is required and has agreed to complete the improvements required by the conditions of approval and designated on THE MAP.

C. Pursuant to Government Code Section 66411.1, the PROPERTY OWNER has requested that construction of certain improvements be deferred.

D. The CITY has determined it to be in the public interest to agree to postpone the construction of said improvements.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. PROPERTY OWNER agrees to construct, at their own cost and expense, the following improvements.

a. The curb as depicted in Condition #12 of Planning Commission Resolution No. 2003-P32. Said Condition #12 provided as follows: "The Subdivider shall dedicate right-of-way along the subdivision's frontage on Barnwell Street, according to the following criteria. Along the tangent portions of the alignment, the right-of-way shall be widened to a 30-foot half-street right-of-way width, measured from the existing right-of-way centerline. Along the curved portion of the alignment, the right-of-way shall be widened to a 30-foot half width street right-of-way width, measured from the modified centerline alignment, where the centerline shall be transitioned to have a radius of 112 feet at the half-point of the curve. The alignment on the face of the new curb

shall be at an 18-foot offset from the realigned centerline. The exact geometry of the alignment shall be approved by the City Engineer at the time of the final engineering design.

b. The road width, as depicted in Condition #20 of said Resolution. Said Condition #20 provided as follows: "Barnwell Street along the project frontage shall be designed to local street standards: 60-foot right-of-way improved with a 36-foot wide curb-to-curb section and a minimum traffic index of 5.0. The improvements are to be half-width plus 12 feet.

in a good and workmanlike manner and to the CITY's satisfaction in accordance with the plans and specifications prepared at the Property Owner's expense by a civil engineer registered in the State of California. Said plans and specifications shall be reviewed and approved by the City Engineer prior to the commencement of construction (the "Improvements"). The Improvements shall be constructed in compliance with CITY ordinances and standards and under the inspection and to the satisfaction of the City Engineer. The estimated cost of the Improvements is $46,105.00. An estimated cost expense statement is hereinafter attached as Exhibit "A", Page 1, and is incorporated herein by this reference. A conceptual plan summarizing the Improvements is attached as Exhibit "A", Page 2 and is incorporated herein by this reference.

2. Construction of the Improvements may be deferred. However, construction of the Improvements shall commence within sixty (60) days of the mailing by the CITY of a notice to proceed to the PROPERTY OWNER.

3. Construction of the Improvements shall be completed within 12 months of the date of the mailing of the notice to proceed. The Improvements shall not be deemed complete until they are approved and accepted as complete by the City Engineer. The failure to commence construction of the Improvements shall not relieve the PROPERTY OWNER from the obligation of completing the Improvements. Failure to complete the Improvements shall constitute grounds for revocation of the permit or development approval.

4. PROPERTY OWNER further agrees to maintain the Improvements for a period of one (1) year after their acceptance by the CITY and to repair or replace, to the satisfaction of the City Engineer, any defective work or labor done or defective materials furnished.

5. PROPERTY OWNER shall submit all requests for extensions of time for performance in writing to the City Engineer prior to the date on which performance is due. The City Engineer may grant reasonable time extensions for unforeseeable delays, which are beyond the PROPERTY OWNER's Control. The City Engineer may also unilaterally extend the time performance.

6. All costs associated with the construction and inspection of the Improvements shall be borne by PROPERTY OWNER. PROPERTY OWNER further agrees that if any suit, action or proceeding is brought upon this Agreement or any bond guaranteeing completion of the Improvements, all costs and reasonable expenses and fees incurred by the CITY in successfully enforcing such obligations shall be paid by the PROPERTY OWNER, including reasonable attorney fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

7. PROPERT OWNER grants to the CITY, or any agent or employee of the CITY, the irrevocable permission to enter upon the Property for the purpose of inspecting, monitoring or completing the Improvements. This permission shall terminate in the event that the PROPERTY OWNER has completed the Improvements within the time specified or any extension thereof granted by the CITY.

8. In the event of a breach or default by the PROPERTY OWNER, the CITY is authorized to cause construction of the Improvements and charge the costs to the PROPERTY OWNER. Additionally, any costs incurred by the CITY as a result of PROPERTY OWNER's breach or default shall constitute a lien against the Property. This remedy is non-exclusive and the costs constructing the improvements or enforcing this Agreement may be collected through any means authorized by law.

9. Should the CITY deem the amount of security insufficient, or deem the security or surety inadequate, PROPERTY OWNER shall within fifteen (15) days of the date of mailing of notice of the insufficiency or inadequacy by the CITY, provide the requested sufficient and adequate security.

10. PROPERTY OWNER shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of conduct of the PROPERTY OWNER or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except only for those claims arising from the willful conduct of the of the CITY, its officers, agents, or employees. PROPERTY OWNER's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, it's officers, agents, or employees in defending against such claims whether the same proceed to judgment or not. Further, PROPERTY OWNER at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees. In the event of litigation occasioned by any default of the PROPERTY OWNER, the PROPERTY OWNER shall agree to pay all costs involved, including reasonable attorney's fees.

11. The term "PROPERTY OWNER" shall include, respectively, not only the present owner of the real property but also heirs, successors, executors, administrators and assigns thereof, it being the intent of the parties that the obligations undertaken shall run with the real property.

12. This Agreement shall not relieve the PROPERTY OWNER from any other specific requirements of the Subdivision Map Act, the Subdivision Ordinance, or any federal, state, or local laws. The construction of deferred Improvements shall conform to all applicable laws, rules, and regulations in effect at the time of construction.

13. CITY and PROPERTY OWNER expressly intend and agree that this Agreement is for the deferral of improvements only, and shall in no manner be construed to constitute development approval.

14. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

15. This Agreement comprises the entire integrated understanding between CITY and PROPERTY OWNER concerning the deferral of improvement work to be performed and supersedes all prior negotiations, representations, or agreements.

16. DISPUTE RESOLUTIONS

a. Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be borne equally by the parties.

b. No suit shall be brought on this agreement unless all statutory claims filing requirements have been met.

17. NOTICES. All noticed, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:
City Engineer
City of Oceanside
300 N. Coast Highway
Oceanside, CA 92054

TO PROPERTY OWNER:
Loren and Nancy Ritter
212 South The Strand
Oceanside, CA 92054

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

18. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PROPERTY OWNER and the CITY.

19. If any part, term or provision of this agreement is held by the courts to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

IN WITNESS WHEREOF, the parties hereto for themselves, their heir, executors, administrators, successor, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this agreement to be executed by setting hereunto their signatures this ____day of _____, 2007.

PROPERTY OWNER

Loren Ritter and Nancy Ritter
husband and wife as joint tenants

By:_____
Loren Ritter

By:_____
Nancy Ritter

CITY

CITY OF OCEANSIDE

By:_____
Scott O. Smith, Acting City Engineer

Approved as to Form:

By:_____
Leslie M. Gallagher, Deputy City Attorney

NOTARY ACKNOWLEDGEMENTS OF PROPERTY OWNER MUST BE ATTACHED.

WELLS FARGO

Acknowledgment by Individual

State of Arizona County of Pima

On this 16 day of February, 2007 before me, Renee Trippe
Name of Notary Public

the undersigned Notary Public, personally appeared
Loren L. Ritter and Nancy L. Ritter
Name of Signer(s)

○ Proved to me on the oath of _____

○ Personally known to me

☒ Proved to me on the basis of satisfactory evidence CADL B7907961 EX 02/11 CADL B8374970 EX06/
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.

Renee Trippe
NOTARY PUBLIC -- ARIZONA
PIMA COUNTY
My Commission Expires
May 9, 2010

Notary Seal

Renee Trippe
(Signature of Notary Public)

My commission expires May 9, 2010

Optional

Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

Description of Attached Document

Type or Title of Document
Deferred Improvement Agreement Bartell Street

Document Date
2-16-2007

Number of Pages
4

Signer(s) Other Than Named Above

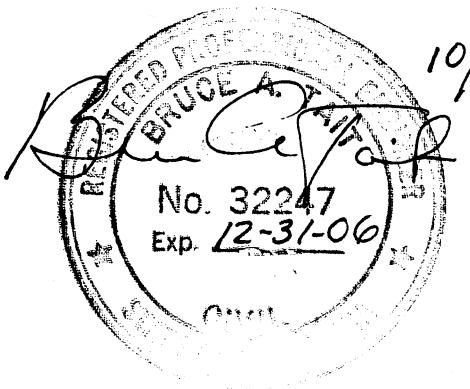
Right Thumbprint of Signer
Top of thumb here

DSG5350 (2-06 97904)

EXHIBIT A

BOND ESTIMATE-PUBLIC IMPROVEMENT CONSTRUCTION
BARNWELL DEFERRED STREET IMPROVEMENTS

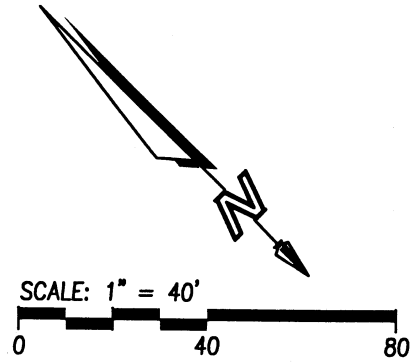
ITEM	QUANTITY	UNIT	UNIT COST	COST OF ITEM
PUBLIC IMPROVEMENTS				
STREET IMPROVEMENTS				
REMOVAL OF CURB AND GUTTER	440	LF	$6.00	$2,640
REMOVAL OF SIDEWALK	1780	SF	$1.30	$2,314
ROADWAY EXCAVATION	2620	SF	$0.11	$288
PAVEMENT SAWCUT	440	LF	$3.00	$1,320
CURB OUTLET DEMOLITION	1	LUMP SUM	$1,000.00	$1,000
A.C. PAVEMENT -3" THICKNESS	2730	SF	$1.17	$3,194
AGGREGATE BASE - 6" THICKNESS	3830	SF	$1.56	$5,975
STRIPING REMOVAL	490	LF	$1.25	$613
CENTERLINE STRIPING	500	LF	$4.50	$2,250
6" CURB AND GUTTER (G-2)	440	LF	$11.40	$5,016
CONCRETE SIDEWALK (G-7)	1780	SF	$5.30	$9,434
6" CONCRETE DRIVEWAY APRON (G-14)	420	SF	$7.50	$3,150
STREET LIGHT RELOCATION	1	EA	$1,400.00	$1,400
CURB OUTLET SDRSD (D-25)	1	EA	$2,200.00	$2,200
SEWER MANHOLE ADJUSTMENT	1	EA	$1,100.00	$1,100
SIGN RELOCATION	3	EA	$300.00	$900
			SUB-TOTAL	**$42,794**
			15% CONTINGENCY	$6,419
			TOTAL	**$49,213**



10/12/05

BARNWELL STREET PROJECT - DEFERRED IMPROVEMENTS

THE CITY OF OCEANSIDE, CALIFORNIA



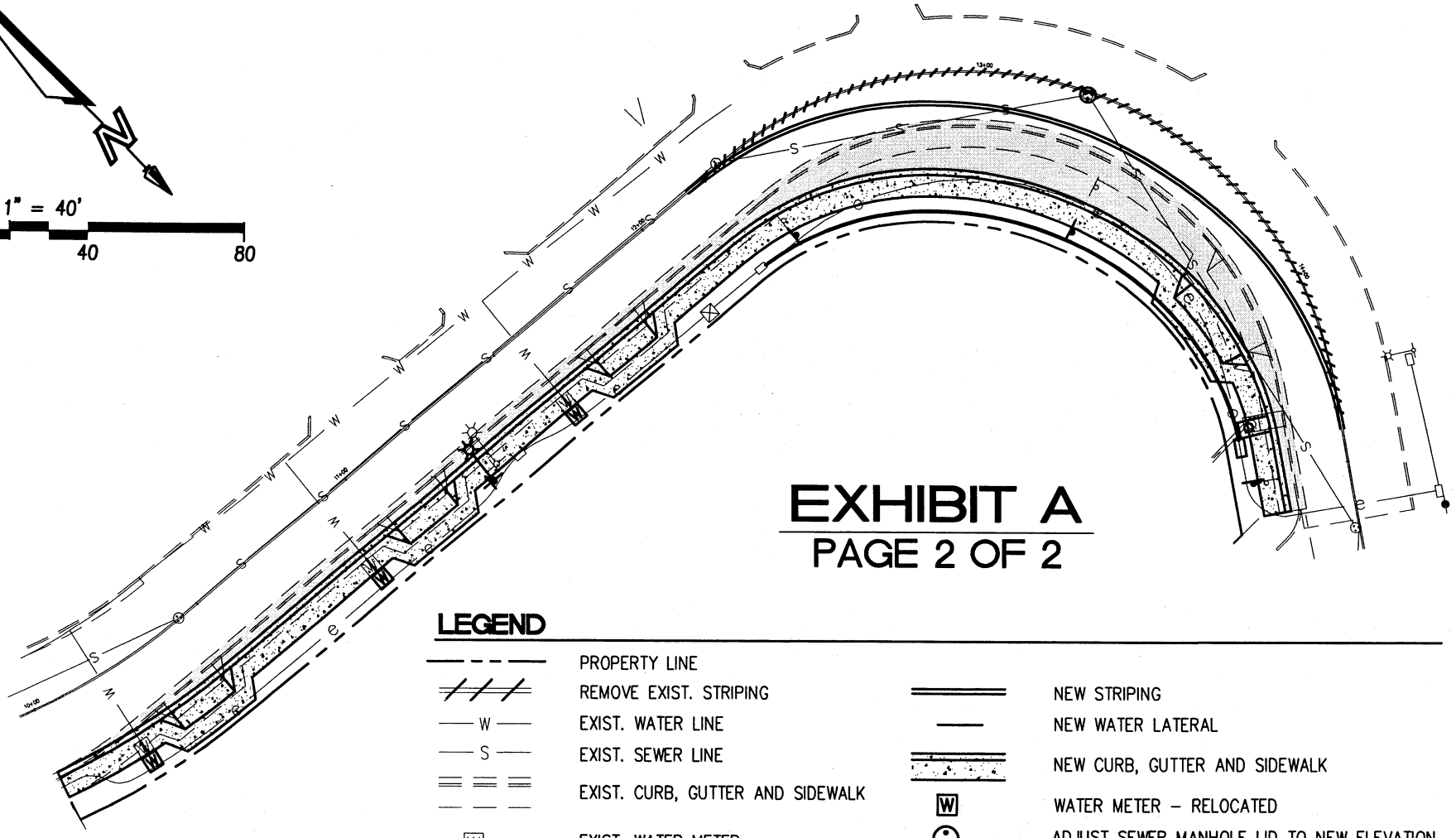


EXHIBIT A

PAGE 2 OF 2

LEGEND

	PROPERTY LINE
	REMOVE EXIST. STRIPING
W	EXIST. WATER LINE
S	EXIST. SEWER LINE
	EXIST. CURB, GUTTER AND SIDEWALK
W	EXIST. WATER METER
	EXIST. SEWER MANHOLE
	EXIST. LIGHT POLE W/SIGN
	EXIST. SIGN
	EXIST. DRIVEWAY APRON (G-14)
	EXIST. PULL BOX
e	EXIST. CONDUIT
	EXIST. CURB OUTLET
	NEW STRIPING
	NEW WATER LATERAL
	NEW CURB, GUTTER AND SIDEWALK
W	WATER METER - RELOCATED
	ADJUST SEWER MANHOLE LID TO NEW ELEVATION
	LIGHT POLEW/SIGN - RELOCATED
	SIGN - RELOCATED
	NEW DRIVEWAY APRON (G-14)
	NEW PULL BOX
	NEW CONDUIT
	NEW A.C. PAVEMENT
	NEW CURB OUTLET (SDRSD D-25)

TAIT
Consulting, Inc.
702 Civic Center Drive
Oceanside, CA 92054
Phone: 760-433-1166