

STAFF REPORT



ITEM NO. 10 CITY OF OCEANSIDE

DATE: November 20, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **APPROVAL OF A DEFERRED IMPROVEMENT AGREEMENT AND PARCEL MAP FOR 1869 AVOCADO ROAD SUBDIVISION (TENTATIVE PARCEL MAP NO. P-11-08)**

SYNOPSIS

Staff recommends that the City Council approve a deferred improvement agreement and parcel map for 1869 Avocado Road Subdivision, a 3-lot subdivision located at 1869 Avocado Road, and authorize the City Clerk to record the deferred improvement agreement and parcel map with the San Diego County Recorder.

BACKGROUND

1869 Avocado Road Subdivision is a 3-lot subdivision located at 1869 Avocado Road. Exhibit "A" is a vicinity map showing the location of the aforementioned property. The owners of the property are Danny J. McDonough and Patty J. Anderson, husband and wife as Community Property with Right of Survivorship.

On May 24, 2010, the Planning Commission passed and adopted Resolution No. 2010-P-17 approving the tentative parcel map with an expiration date of May 24, 2012. The tentative parcel map then received a 2-year extension per new language added to the Subdivision Map Act (Section 66452.23), which changed its expiration date to May 24, 2014.

ANALYSIS

Section 902 of the Subdivision Ordinance of the City of Oceanside authorizes the deferment of frontage area improvements along existing frontage streets for a subdivision of 4 or fewer lots when deemed necessary by the City Engineer. When improvements are deferred, the owner of the real property shall enter into an agreement with the City in a form acceptable to the City Engineer and City Attorney, for the installation of all frontage improvements at a time in the future as specified by the City.

1869 Avocado Road Subdivision is a 3-lot subdivision and the City Engineer has deemed the deferment of Avocado Road frontage area improvements necessary.

Construction of the improvements are deferred until such time that a permit or other development approval for any of the 3 lots is issued by the City or until such a time that the City, in its sole discretion, determines that fulfillment of the construction requirements is necessary for either of the following reasons:

- 1) The public health and safety; or
- 2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

All financial arrangements relating to the parcel map have been satisfactorily completed. All pertinent documents related to the parcel map have been properly executed by the owner. All grading and drainage comply with City ordinances.

The parcel map is consistent with applicable general and specific plans and 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.

FISCAL IMPACT

All fees and securities required to have been paid and secured prior to parcel map approval, by the conditions of approval of Tentative Parcel Map No. P-11-08, have been collected.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

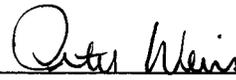
Staff recommends that the City Council approve a deferred improvement agreement and parcel map for 1869 Avocado Road Subdivision, a 3-lot subdivision located at 1869 Avocado Road, and authorize the City Clerk to record the deferred improvement agreement and parcel map with the San Diego County Recorder.

PREPARED BY:

SUBMITTED BY:



Paul J. Pham
Assistant Engineer



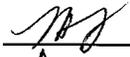
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Scott O. Smith, City Engineer

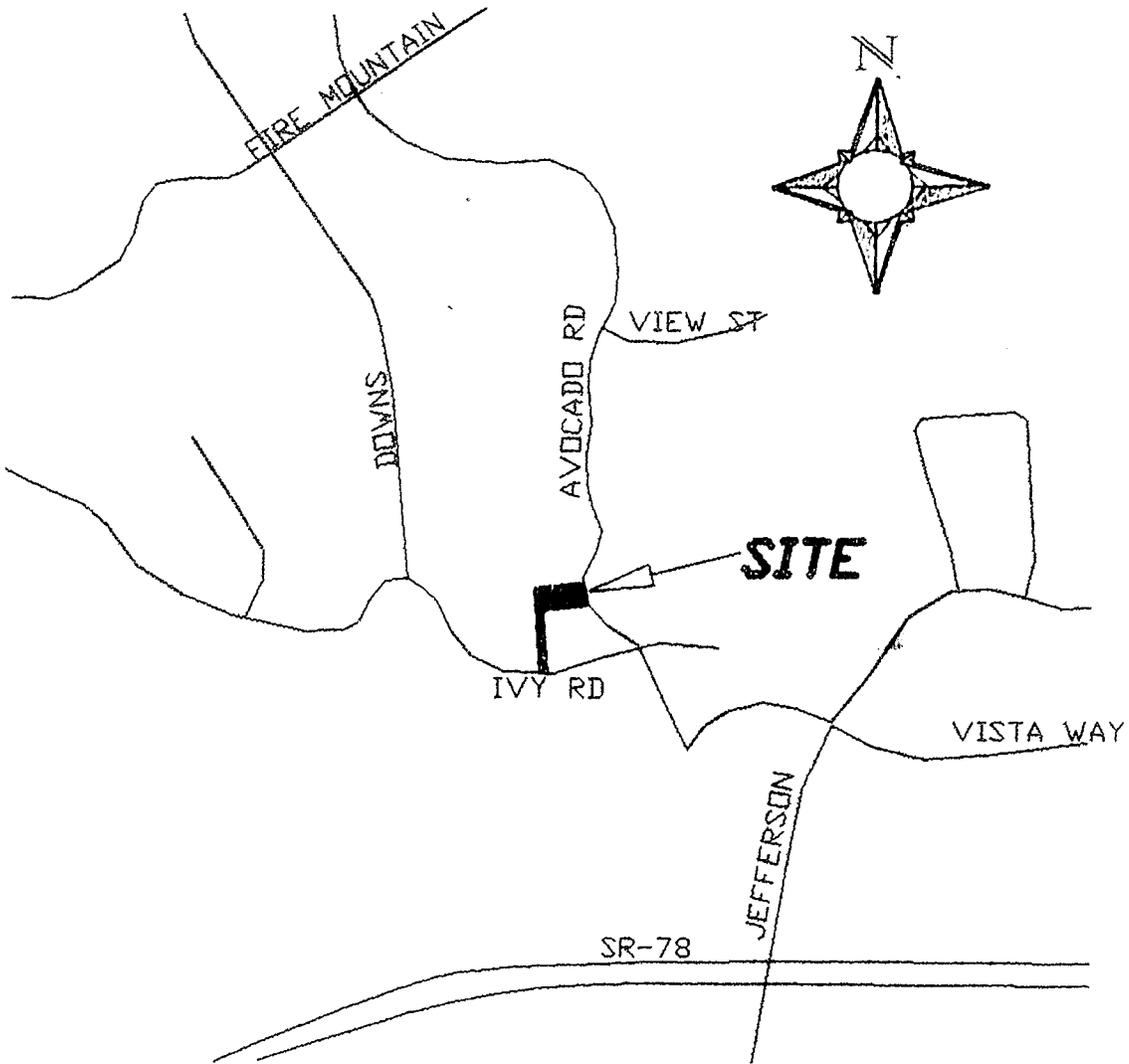






Attachments:
Exhibit "A"

EXHIBIT - A



VICINITY MAP

NO SCALE

RECORDING REQUESTED BY

City of Oceanside

WHEN RECORDED MAIL TO:

City Clerk
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

APN: 154-220-06

SPACE ABOVE FOR RECORDER'S USE ONLY
City Document No.

**CITY OF OCEANSIDE
DEFERRED IMPROVEMENT AGREEMENT**

(Project File No: P-11-08)

THIS AGREEMENT is made and entered into this _____ day of _____, 20_____, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Danny J. Mcdonough and Patty J. Anderson, Husband and Wife as Community Property with Right of Survivorship, hereinafter designated as "PROPERTY OWNER".

RECITALS

A. The CITY OF OCEANSIDE has conditionally approved a Parcel Map, hereinafter referred to as "THE MAP", for the development project described as 1869 Avocado Road (The Cove, Canyon Bluff), and such map was filed as Parcel Map Number _____ in the Office of the County Recorder of San Diego County on _____ as File No. _____.

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

C. Pursuant to Government Code Section 66411.1, the PROPERTY OWNER has requested that construction of certain improvements be deferred until such time that a permit or other development approval for the parcel is issued by the CITY.

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. Construction of the following improvements, in accordance with Planning Commission Resolution No. 2010-P17 and the tentative map for Application No. P-11-08, may be deferred:

- a. Construct half width street improvements on Avocado Road (Curb line to be

located 7' east of the right-of-way line) along the property frontage with adequate taper transitions to the satisfaction of the City Engineer. Construct half width street improvements on Ivy Road along the proposed frontage with adequate taper transitions (20 feet centerline to face of curb) in accordance with City standards. Improvements shall include, but not be limited to street pavement, PCC curbs and gutters, driveways, sidewalks, drainage improvements, and adequate pavement transitions. Prior to construction, a pavement evaluation report prepared by a geotechnical engineering firm, in accordance with condition 27 of said resolution, shall be reviewed and approved by the City Engineer to address the condition of the existing pavement along the project frontage.

- b. Install the public water and sewer facilities over Parcel 1 as shown on the tentative map for Application No. P-11-08 and meet the Water Utilities Department requirements related to the public utility construction in said resolution to the satisfaction of the Water Utilities Director.
 - c. Any existing broken pavement, concrete curb, gutter, driveways, and sidewalk in public rights-of-way along the property frontage or within on-site public easements that are damaged during construction shall be repaired or replaced as directed by the City Engineer.
- A) Until such time that a permit or other development approval for such parcel is issued by the CITY; or
 - B) Until such time that the CITY, in its sole discretion, determines that fulfillment of the construction requirements is necessary for either of the following reasons:
 - 1) The public health and safety; or
 - 2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

2. If the requirement to construct the improvements is triggered by option A, then upon the CITY's issuance of a permit or other development approval, the PROPERTY OWNER shall commence and complete construction of the above-listed improvements prior to or in conjunction with any implementation of said permit or development approval. Failure to complete the improvements to the satisfaction of the City Engineer shall constitute grounds for revocation of the permit or development approval, and shall constitute a breach of this agreement.

3. If the requirement to construct the improvements is triggered by option B, then CITY shall notify the PROPERTY OWNER in writing at the address listed in #14 below. Upon receipt of such notice, PROPERTY OWNER agrees to cause construction of said improvements in accordance with a schedule approved by the CITY. Within thirty (30) days of receipt of such notice, the PROPERTY OWNER shall submit a proposed construction schedule for the CITY's review. Failure to submit a construction schedule within thirty (30) days after receipt of notice or failure to complete the improvements in accordance with the approved construction schedule shall constitute a default by the PROPERTY OWNER. 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 PROPERTY OWNER's control.

4. All costs associated with construction of the improvements shall be borne by PROPERTY OWNER.

5. In the event that the PROPERTY OWNER has entered into a secured agreement for completion of the improvements to be deferred, this agreement shall serve to modify only those terms of the agreement, which establish deadlines for the completion of the designated improvements. Unless expressly stated, all other terms and obligations of any such secured agreement shall remain in full force and effect. Any and all securities posted to secure completion of said improvements shall remain in full force and effect for the duration of this agreement.

6. This agreement shall be recorded with the County Recorder of San Diego County at the sole expense of PROPERTY OWNER and shall constitute notice to all successors and assigns of PROPERTY OWNER or title to the real property of the obligations set forth in this agreement.

7. In the event of a default by 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 default shall constitute a lien against the property.

8. 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 the 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 sole negligence or willful misconduct 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, its 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.

9. 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.

10. 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.

11. 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.

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

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

14. NOTICES. All notices, 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 Attorney

City of Oceanside

300 North Coast Highway

Oceanside, CA 92054

TO PROPERTY OWNER:

Danny McDonough and Patty Anderson

1869 Avocado Road

Oceanside, CA 92054

Either party may change its address by giving 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.

15. 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.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, 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 _____, 20__.

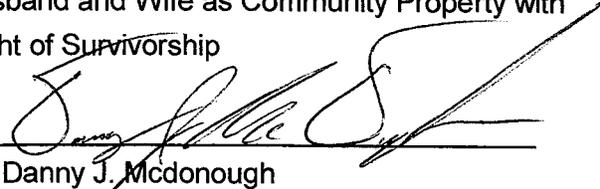
PROPERTY OWNER

CITY OF OCEANSIDE

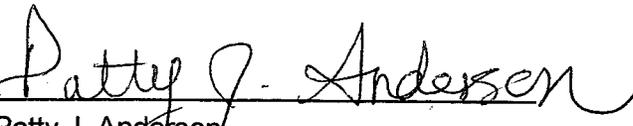
Danny J. McDonough and Patty J. Anderson,
Husband and Wife as Community Property with
Right of Survivorship

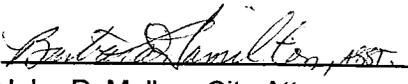
By: _____

Scott O. Smith, City Engineer

By: 
Danny J. McDonough

Approved as to Form:

By: 
Patty J. Anderson

By: 
for John P. Mullen, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of SAN DIEGO

On JULY 12, 2013 before me, JOEY LUDWICZAK NOTARY PUBLIC

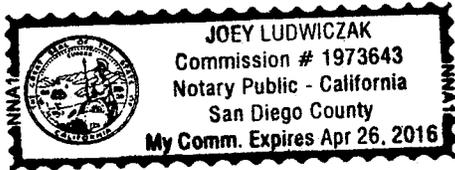
Here Insert Name and Title of the Officer

personally appeared DANNY J. McDONOUGH AND

Name(s) of Signer(s)

PATTY J. ANDERSON

who 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 to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: [Signature]
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____