

STAFF REPORT



ITEM NO. 26
CITY OF OCEANSIDE

DATE: June 24, 2015
TO: Honorable Mayor and City Councilmembers
FROM: Development Services Department
SUBJECT: **APPROVAL OF A REIMBURSEMENT AGREEMENT AND PURCHASE ORDER IN THE AMOUNT OF \$134,283 TO 700 SOUTH STRAND LLC**

SYNOPSIS

Staff recommends that the City Council approve a Reimbursement Agreement and a purchase order in the amount of \$134,283 to 700 South Strand LLC, for construction of street and revetment improvements from the end of the project frontage at 620-712 South The Strand to Wisconsin Street, and authorize the City Engineer and the Financial Services Director, or Designee to execute the agreement and the purchase order.

BACKGROUND

On March 5, 2014, the Community Development Commission approved Tentative Map and Development Plan RD13-0003 for a 17-unit residential condominium project located at 620-712 South The Strand. On today's agenda, the Community Development Commission is also considering approval of Regular Coastal Permit (RRP15-00001) for improvements to the public right-of-way and the revetment associated with the project.

Tentative Map Condition #36 and Regular Coastal Permit Condition #7 requires the Developer enter into a cost-sharing agreement with the City of Oceanside to improve 135 lineal feet of South The Strand beyond the frontage of the condominium project to Wisconsin Street.

ANALYSIS

Most of The Strand has a paved width of 27.5 feet. This provides enough width for one vehicle travel lane and a wide paved shoulder for bicyclists and pedestrians. However, The Strand narrows by several feet beginning at the frontage of the condominium project and continuing 400 feet to Wisconsin Street. This condition dates from 1980 when a storm washed away part of The Strand and a new rock revetment was constructed at the seaward edge of The Strand.

The proposed improvements will move the rock revetment back to its pre-1980 location, and reconstruct The Strand back to its original width. Fifty-five percent of the work is along the frontage of the condominium project; and is therefore the responsibility of the developer. The City is funding the remaining forty-five percent of the work necessary to widen The Strand to Wisconsin Street.

Regardless of the City Council's action on this item, the reimbursement agreement and purchase order will not be executed and sent to the developer unless the Community Development Commission also approves the Regular Coastal Permit for the project's frontage improvements.

FISCAL IMPACT

The Street Restoration and Overlay project account (902754200212.5703.10600) has an approximate available balance of \$1,858,000. The purchase order with 700 South Strand LLC will be \$134,282.90. The funding source is ½ cent sales tax TransNet Fund 212. Therefore, sufficient funds are available.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

On March 4, 2015, the Downtown Advisory Committee (DAC) reviewed the project and recommended its approval.

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 Reimbursement Agreement and a purchase order in the amount of \$134,283 to 700 South Strand LLC, for construction of street and revetment improvements from the end of the project frontage at 620-712 South The Strand to Wisconsin Street, and authorize the City Engineer and the Financial Services Director, or Designee to execute the agreement and the purchase order.

PREPARED BY:

Gary Kellison
Gary Kellison
Senior Civil Engineer

SUBMITTED BY:

Michelle Skaggs Lawrence
Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Peter A. Weiss, Assistant City Manager
Rick Brown, Interim Development Services Director
Scott O. Smith, City Engineer
Jane M. McPherson, Interim Financial Services Director

W
RB
SOS
JMM

Attachment:

Reimbursement Agreement
Site Map

**CITY OF OCEANSIDE
REIMBURSEMENT AGREEMENT**

THIS REIMBURSEMENT AGREEMENT, dated as of June 3, 2015, for identification purposes, is made and entered into by and between the City of Oceanside, a municipal corporation, hereinafter designated as "City" and 700 South Strand LLC, a California limited liability company, hereinafter designated as "Developer".

WHEREAS Developer has engaged, and the City has approved Taylor Engineering ("Taylor") for the purpose of designing and producing construction plans for certain road improvements along Developer's frontage at 620-712 South The Strand, and also south of the project boundary to Wisconsin Street pursuant to the condition of approval of Development Plan RD13-00003; ("Design"); and

WHEREAS Taylor has completed the Design and the Oceanside Community Development Commission or the California Coastal Commission has issued a Coastal Development Permit for the Design; and

WHEREAS, the Developer is obligated to complete construction of the Design along its property's frontage at 620-712 South The Strand, and also south of the project boundary to Wisconsin Street pursuant to the conditions of approval of Development Plan No. RD13-00003; and

WHEREAS, the City agrees to fund construction of 135 feet of South The Strand between the Developer's condominium project and Wisconsin Street at an estimated cost per the attached Taylor estimate attached herein as Exhibit A; and

WHEREAS, the Developer-funded and the City-funded portions of the Design both consist of removing and rebuilding the existing rock revetment that currently encroaches into the 27.5 foot width of the rest of The Strand so that its entire length is of uniform width to accommodate vehicles, bicyclists, and pedestrians.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The Developer shall cause to be completed the road improvements on South The Strand that will satisfy the requirements of Development Plan No. RD13-00003.

2. **BIDS.** The Developer shall advertise and solicit bids from licensed contractors to construct road improvements along the 620-712 South The Strand frontage, and the portion of South The Strand extending south to Wisconsin Street as a single construction project. The Developer shall provide all bids received to the City for review. The City and the Developer shall mutually agree on which bid offers the best value in terms of price and qualifications, and neither party shall unreasonably withhold approval of an acceptably-qualified contractor.

**CITY OF OCEANSIDE
REIMBURSEMENT AGREEMENT**

3. **AWARD.** The Developer shall be the party in contract with the selected contractor. Prior to the Developer's execution of a contract with a contractor, the City by written notification to the Developer, shall advise the Developer that the form and content of the contract is acceptable to the City. If acceptable, the City will then instruct to either: 1. Proceed with both the Developer-funded and City-funded portions of the work; – or 2. Proceed without the City's participation and only construct the Developer-funded portion of the work. The City will give said notification to the Developer within 10 calendar days of Developer's submittal to the City of the proposed contract.

4. **REIMBURSEMENT AND COST SHARING.** The City shall reimburse the Developer according to the actual contract prices for the road improvements and design costs which are south of the Developer's condominium project and estimated as per Exhibit A. Neither the City nor the Developer will charge administrative, overhead, management or similar costs to the other party. The City shall not charge the Developer or its contractor permit or inspection fees for the road construction work. The Developer shall remain responsible for paying all City fees related to the condominium project itself, including water and sewer connection and inspection fees.

5. **CHANGE ORDERS.** Any construction change order subject to reimbursement by the City shall be reviewed and approved by the City Engineer in his or her reasonable discretion.

6. **PAYMENT PROCESSING.** Developer shall submit a monthly request to the City for payment of the unit quantities of work completed on the City's portion of the project. Work performed which is not in accordance with the approved construction drawings shall not be reimbursed until the Developer has requested of the contractor and the contractor has replaced, reconstructed, or corrected any deficiencies in the work to the satisfaction of the City. City shall pay the Developer within 21 calendar days from submittal of the contractor's billing for satisfactory work completed by ACH payment to the Developer's bank or check mailed to the Developer's address at 888 Prospect Street, Suite 330, La Jolla, CA 92037.

7. **PREVAILING WAGES.** Both the Developer's portion and the City's portion of the work shall be subject to Prevailing Wages as specified by the current General Prevailing Wage Determination for each job classification made by the California Director of Industrial Relations in effect on the date that the Developer executes the construction contract. The Developer shall provide the City copies of the contractor's certified payroll to demonstrate that the appropriate Prevailing Wages are paid for each worker. Certified Payrolls shall be provided with each monthly contractor billing request. The City will not pay the Developer for work completed without Certified Payroll for the corresponding time period, and this includes work to be paid by the Developer.

**CITY OF OCEANSIDE
REIMBURSEMENT AGREEMENT**

8. **RETAINAGE.** The City shall retain ten percent (10%) of the total monthly progress payment otherwise owed to the Developer for work completed on the City's portion of the project until either of the following events occur: 1. When the both the Developer's and City's portion of improvements to South The Strand have been completed, accepted by the City, and unconditional releases provided from all material providers, rental equipment providers, and subcontractors. 2. The Developer has filed a Notice of Completion with the County Recorder of the County of San Diego and 35 days have passed.

9. **CONTRACTOR DISPUTES.** The City shall withhold 125% of the amount of any Stop Notice filed by the contractor, any subcontractor, or any material or equipment supplier for any work allegedly completed, but not paid for by the Developer. The City shall have no obligation to resolve any payment disputes between the Developer and its contractor, subcontractors, or suppliers. It shall be the Developer's responsibility to obtain a Release of Stop Notice or a judicial decision to remove the Stop Notice.

10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between City and Developer concerning reimbursement for the road improvement work along South The Strand required as a condition of the City's approval of Development Plan No. RD13-00003, and supersedes all prior negotiations, representations, or agreements regarding said subject.

11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

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

13. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**CITY OF OCEANSIDE
REIMBURSEMENT AGREEMENT**

14. **APPLICABLE LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any lawsuit or other proceeding under this Agreement shall be filed in and prosecuted in San Diego County, California.

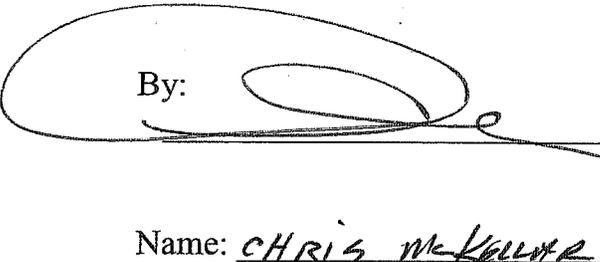
15. **FURTHER DOCUMENTS.** The parties agree to promptly execute, acknowledge, and deliver such other documents and/or accomplish such other acts as may be reasonably necessary in order to accomplish the purposes, objectives, and terms of the Agreement.

16. **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 Developer 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 Reimbursement Agreement to be executed by setting hereunto their signatures on the dates set forth below.

700 SOUTH STRAND, LLC*
By McKellar McGowan, LLC*
Managing Member

CITY OF OCEANSIDE

By: 

By: _____

City Engineer

Name: CHRIS MCKELLAR

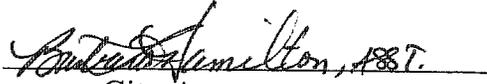
Title: CHAIRMAN OF THE BOARD
AND C.E.O.

By: 

Name: JEFF E. JOHNSON

Title: Executive Vice President
and Secretary

APPROVED AS TO FORM:


City Attorney

NOTARY ACKNOWLEDGMENTS OF DEVELOPER MUST BE ATTACHED.

* a California limited liability company

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

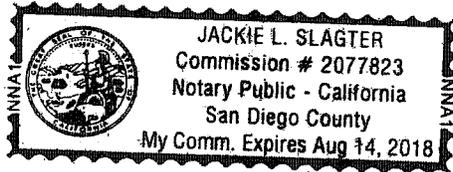
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)
On May 4, 2015 before me, Jackie L. Slagter, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Chris McKellar
Name(s) of Signer(s)

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.



Signature Jackie L. Slagter
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document City of Oceanside
Title or Type of Document: Reimbursement Agreement Document Date: _____
Number of Pages: 4 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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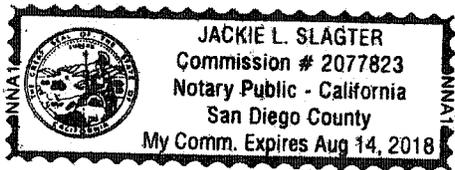
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County of San Diego)
On May 4, 2015 before me, Jackie L. Slagter, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Jeff E. Johnson
Name(s) of Signer(s)

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.

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 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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 Other: _____
Signer Is Representing: _____

PRELIMINARY COST ESTIMATE
STREET & REVETMENT IMPROVEMENT IN 600-700 BLOCKS OF SOUTH THE STRAND

ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	COST
IMPROVEMENTS ON PROJECT FRONTAGE				
<u>EARTHWORK</u>				
EXCAVATE AND EXPORT	50	CY	\$30.00	\$1,500.00
EXCAVATE AND FILL	20	CY	\$24.00	\$480.00
IMPORT AND FILL (SELECT ROCK FILL WITH FILTER FABRIC)	72	CY	\$35.00	\$2,520.00
<u>STREET IMPROVEMENTS</u>				
AC PAVING (4" SURFACE)	5400	SF	\$2.00	\$10,800.00
CLASS II AGGREGATE BASE PAVING (6" SURFACE)	7425	SF	\$1.25	\$9,281.25
PCC PAVING ON LANDWARD SIDE OF STREET (7.5' WIDE x 5" THICK - SCORED)	2002	SF	\$7.50	\$15,015.00
PAVING SUBGRADE PREPARATION	7425	SF	\$1.00	\$7,425.00
AC PAVEMENT REMOVAL	6550	SF	\$2.25	\$14,737.50
GRIND & OVERLAY	82.5	SF	\$2.50	\$206.25
SAW CUT EXISTING (AC/PCC)	28	LF	\$4.00	\$112.00
STREET STRIPING	270	LF	\$0.75	\$202.50
<u>REVETMENT IMPROVEMENTS</u>				
30" HIGH CAST CONCRETE WALL W/ FOOTING (CASE 1)	0	SF	\$70.00	\$0.00
18" HIGH CAST CONCRETE WALL W/ FOOTING (CASE 2)	0	SF	\$60.00	\$0.00
DEMO UPPER 18" OF EXISTING CONC. SEAWALL (CASE 3)	115	LF	\$9.00	\$1,035.00
TYPE G-2 CURB & GUTTER (CASE 3)	115	LF	\$20.00	\$2,300.00
CURB (TOP OF WALL) REMOVAL (CASE 4 & 5)	120	LF	\$4.00	\$480.00
6" CURB ON EXISTING WALL (CASE 4 & 5)	154	LF	\$7.50	\$1,155.00
RELOCATE RIP RAP (2.0 TON)	240	CY	\$90.00	\$21,600.00
RELOCATE RIP RAP (4.0 TON)	160	CY	\$100.00	\$16,000.00
<u>TRAFFIC CONTROL</u>				
ESTIMATED TRAFFIC CONTROL	10	DAY	\$700.00	\$7,000.00
SUBTOTAL IMPROVEMENTS ON FRONTAGE:				\$111,849.50
Contingencies - 20%:				\$22,369.90
TOTAL COST ESTIMATE FOR IMPROVEMENTS ON 700 SOUTH STRAND FRONTAGE:				\$134,219.40

PRELIMINARY COST ESTIMATE
STREET & REVETMENT IMPROVEMENT IN 600-700 BLOCKS OF SOUTH THE STRAND

ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	COST
IMPROVEMENTS ON SOUTH OF PROJECT FRONTAGE				
<u>EARTHWORK</u>				
EXCAVATE AND EXPORT	25	CY	\$30.00	\$750.00
EXCAVATE AND FILL	15	CY	\$24.00	\$360.00
IMPORT AND FILL (SELECT ROCK FILL WITH FILTER FABRIC)	80	CY	\$35.00	\$2,800.00
<u>STREET IMPROVEMENTS</u>				
AC PAVING (4" SURFACE)	2700	SF	\$2.00	\$5,400.00
CLASS II AGGREGATE BASE PAVING (6" SURFACE)	3715	SF	\$1.25	\$4,643.75
PCC PAVING ON LANDWARD SIDE OF STREET (7.5' WIDE x 5"	1125	SF	\$7.50	\$8,437.50
PAVING SUBGRADE PREPARATION	3715	SF	\$1.00	\$3,715.00
AC PAVEMENT REMOVAL	2865	SF	\$2.25	\$6,446.25
GRIND & OVERLAY	180	SF	\$2.50	\$450.00
SAW CUT EXISTING (AC/PCC)	78	LF	\$4.00	\$312.00
STREET STRIPING	150	LF	\$0.75	\$112.50
<u>REVETMENT IMPROVEMENTS</u>				
30" HIGH CAST CONCRETE WALL W/ FOOTING (CASE 1)	125	SF	\$70.00	\$8,750.00
18" HIGH CAST CONCRETE WALL W/ FOOTING (CASE 2)	75	SF	\$60.00	\$4,500.00
DEMO UPPER 18" OF EXISTING CONC. SEAWALL (CASE 3)	35	LF	\$9.00	\$315.00
TYPE G-2 CURB & GUTTER (CASE 3)	35	LF	\$20.00	\$700.00
CURB (TOP OF WALL) REMOVAL (CASE 4 & 5)	0	LF	\$4.00	\$0.00
6" CURB ON EXISTING WALL (CASE 4 & 5)	0	LF	\$7.50	\$0.00
DEMO REVETMENT AREA WITH CONCRETE	50	CY	\$100.00	\$5,000.00
HAULING & DISPOSAL OF DEMO MATERIAL	25	CY	\$50.00	\$1,250.00
RELOCATE RIP RAP (2.0 TON)	180	CY	\$90.00	\$16,200.00
RELOCATE RIP RAP (4.0 TON)	120	CY	\$100.00	\$12,000.00
<u>TRAFFIC CONTROL</u>				
ESTIMATED TRAFFIC CONTROL	10	DAY	\$700.00	\$7,000.00
SUBTOTAL:				\$89,142.00
Contingencies - 20%:				\$17,828.40
TOTAL COST ESTIMATE FOR IMPROVEMENTS NOT ON 700 SOUTH STRAND FRONTAGE:				\$106,970.40

PRELIMINARY COST ESTIMATE
STREET & REVETMENT IMPROVEMENT IN 600-700 BLOCKS OF SOUTH THE STRAND

ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	COST
AGGRGATE OF IMPROVEMENT COST ESTIMATE:				\$241,189.80
PERCENT ON 700 SOUTH STRAND PROJECT FRONTAGE:				55.6%
PERCENT NOT ON 700 SOUTH STRAND PROJECT FRONTAGE:				44.4%

ENGINEERING FEES

ENGINEERING DESIGN FEES - DISRECTIONARY PERMIT	1	EST	\$20,000.00	\$20,000.00
ENGINEERING DESIGN FEES - FINAL DESIGN	1	EST	\$15,000.00	\$15,000.00
CONSTRUCTION PHASE (SURVEY/COMET)	1	EST	\$12,500.00	\$12,500.00

ESTIMATED TOTAL: \$47,500.00

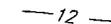
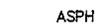
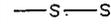
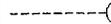
Contingencies - 15%: \$7,125.00

TOTAL ENGINEERING COST ESTIMATE: \$54,625.00

GRAND TOTAL: \$295,814.80

ESTIMATED COST FOR DEVELOPER:	\$161,531.90	54.6%	
ESTIMATED COST FOR CITY:	<u>\$134,282.90</u>	<u>45.4%</u>	
GRAND TOTAL:	\$295,814.80	100.0%	

LEGEND

-  EXIST. TOPOGRAPHIC CONTOURS
-  EXIST. SPOT ELEV.
-  EXIST. ASPHALT CONCRETE SURFACE
-  EXIST. PORTLAND CEMENT CONCRETE SURFACE
-  BARE SOIL SURFACE
-  EXIST. 12" PALM TREE
-  EXIST. STREET LIGHT
-  EXIST. SEWER MANHOLE
-  EXIST. SEWER LINE
-  EXIST. SEWER LATERAL
-  DIRECTION OF SURFACE DRAINAGE
-  STONE REVETMENT

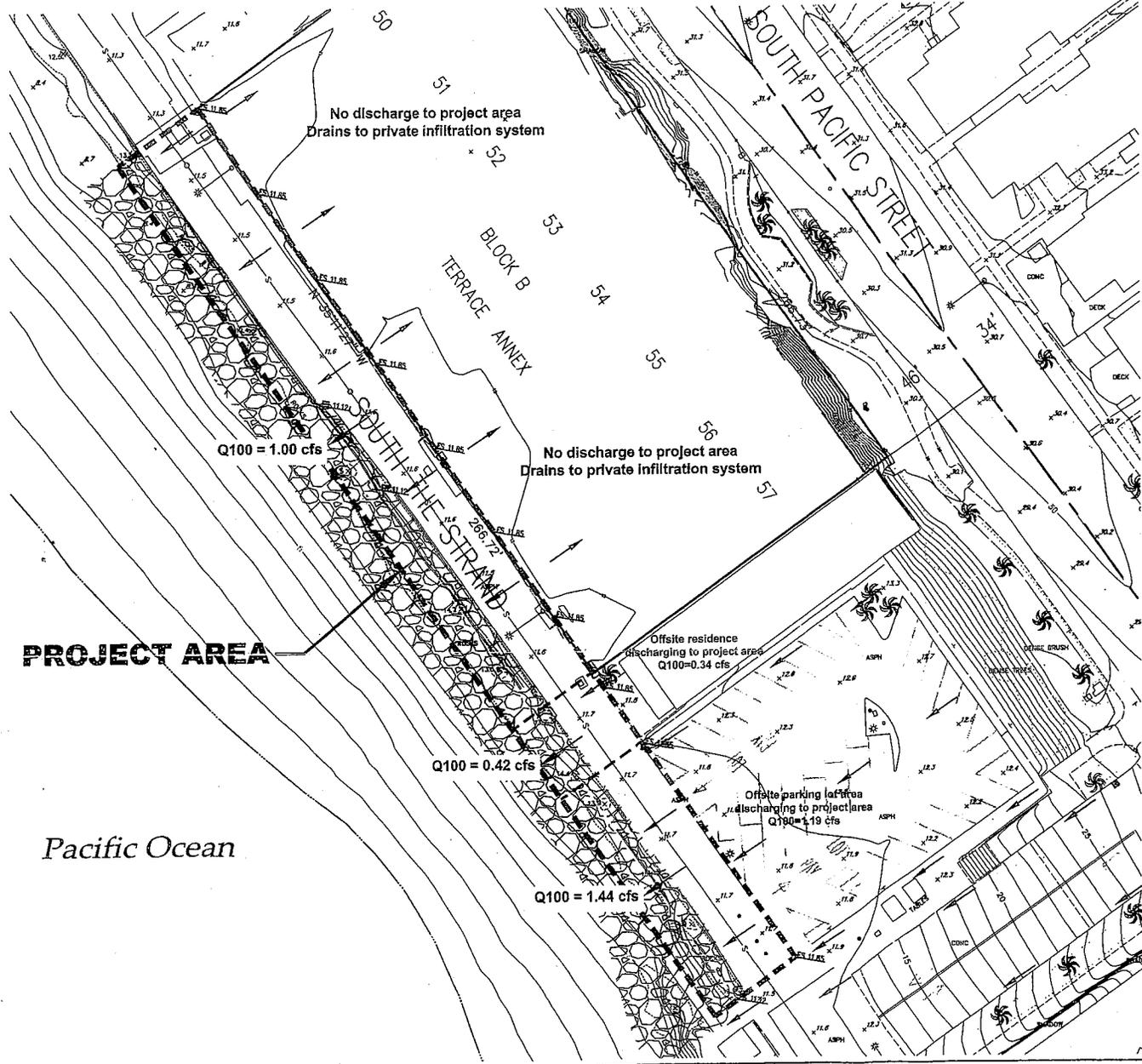


FIGURE 5. EXISTING CONDITIONS SITE PLAN AND DRAINAGE PATTERNS

Project Name:	South The Strand Street Improvements
Project Number:	13 00658
Client Name:	700 South Strand, LLC
Drawn by:	LRT
Checked by:	LRT
Date:	December 2014
Date:	December 2014

