

Reviewed By:	
DH	X
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CITY OF DANA POINT

AGENDA REPORT

DATE: MARCH 20, 2007

TO: CITY MANAGER/CITY COUNCIL

**FROM: OCEAN WATER QUALITY SUBCOMMITTEE &
BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING
SERVICES**

**SUBJECT: HOA INLET FILTER INSTALLATION PILOT PROGRAM MOU
IMPLEMENTATION AND AUTHORIZATION OF FUNDS**

RECOMMENDED ACTION:

That the City Council (1) approve the proposed HOA Inlet Filter Installation Pilot Program Memorandum of Understanding (MOU) and authorize the City Manager to execute the MOU with the Monarch Bay HOA; and (2) authorize funds in the amount not to exceed \$6,000 to fund the purchase and installation of inlet filters at Monarch Bay HOA.

ISSUE:

Whether to approve the subject pilot program and provide the necessary funds.

DISCUSSION:

The City of Dana Point has established an Ocean Water Quality Subcommittee that reviews water quality issues within the City. One issue discussed was the fact that although the City of Dana Point has inlet filters in all the public street storm drain inlets (catch basins), a large portion of the City is owned by Home Owner's Associations (HOAs) which do not necessarily have inlet filters on the storm drains draining their private roads.

The Ocean Water Quality (OWQ) Subcommittee requested that the City develop a program to assist HOAs in installing inlet filters and recommended this pilot project. This will be the second HOA to express interest in this program

City staff has prepared a pilot project in which the City will fund the materials and installation of the first inlet filter(s) for the HOA, at the discounted rate of our current contractor. The HOA must agree and execute the Memorandum of Understanding

(MOU), Action Document A, developed with the City Attorney’s office, which obligates the HOA to operate and maintain the inlet filters to the current City schedule, and keep the street free of debris (street sweeping). The Monarch Bay Board has approved the MOU and program for their five catch basins. The number of inlet filters required per catch basin is determined based on the size of the inlet and we are assuming each of the five inlets in Monarch Bay will required two filters for a total of 10 inlet filters.

NOTIFICATION/FOLLOW-UP:

Monarch Bay and City Contractor

STRATEGIC PLAN IMPLEMENTATION:

This action is in compliance with the Strategic Plan Initiative to restore and maintain the integrity of our ocean waters and beaches.

FISCAL IMPACT:

Funding for this proposed program would require a one-time cost, per HOA, to the City based on number of inlet filters required for each HOA. For the Monarch Bay HOA, it will cost the City approximately \$6,000 to purchase and install the inlet filters within the HOA. Funds are available from 52-251. Designed as a pilot project, other interested HOAs, can be evaluated upon request on a case-by-case basis, should the terms of the MOU be approved by the HOA and City funds are available for the initial installation.

ALTERNATIVE ACTIONS:

- 1. Other actions as determined by City Council.

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ACTION DOCUMENTS:

A. [Memorandum of Understanding](#) 3

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF DANA POINT AND THE MONARCH BAY ASSOCIATION
REGARDING THE INSTALLATION, OPERATION AND MAINTENANCE
OF STORM DRAIN CATCH BASIN FILTER INSERTS**

The City of Dana Point ("City") and The Monarch Bay Association ("Association") enter into this Memorandum of Understanding Regarding the Operation and Maintenance of Storm Drain Catch Basin Filter Inserts (the "MOU") on _____, 200_. City and Association are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Association is the owner of certain private streets and other areas located in Monarch Bay, a private community within the City (the "Development");

WHEREAS, Association has decided installation of catch basin filter inserts (the "Catch Basin Filters") in the storm drains ("Storm Drains") that drain such streets and the surrounding areas is beneficial to ocean water quality;

WHEREAS, the City supports and encourages improvements to water quality and recognizes it is in the public interest to support efforts that attempt to improve water quality;

WHEREAS, Association desires to have City install the Catch Basin Filters;

WHEREAS, the Association will perform the necessary routine maintenance, inspection, repairs, replacement and testing of the Catch Basin Filters;

WHEREAS, the City is willing to install the Catch Basin Filters if Association maintains them and holds the City harmless from liability;

NOW, THEREFORE, the Parties enter into this MOU with respect to the issues addressed herein.

1. Installation of Catch Basin Filters. City shall be responsible for installing the Catch Basin Filters within the Development.

2. Operation, Maintenance and Replacement of Catch Basin Filters. Association shall perform all necessary routine inspection and maintenance of the Catch Basin Filters. City will make its maintenance contractor available on a reimbursable basis if desired by Association. Catch Basin Filter maintenance will occur at least quarterly (once every three months), and may occur up to six times per year, depending upon the amount of rainfall. Association will test the Catch Basin Filters to determine whether Catch Basin Filters are functioning properly approximately once per year. Association shall be responsible for replacing and/or repairing Catch Basin Filters as necessary. Association shall obtain City's approval of the Catch Basin Filter manufacturer and the type of Catch Basin Filter before replacing all Catch Basin Filters. Association is solely responsible for any costs incurred for the operation, maintenance, repair or replacement of the Catch Basin Filters.

3. Street Sweeping. Association shall sweep all private streets within the Development at least once per week. Association is solely responsible for any costs incurred for the street sweeping.

4. Access to Development. Association agrees to provide City and City personnel with permission to enter the Development and with means of access to the Development so that City can perform the installation of the Catch Basin Filters outlined in this Agreement.

5. Term. This Agreement shall remain in full effect in perpetuity, unless terminated in writing by either Party per Section 13 of this Agreement.

6. Fees and Costs. If Association chooses to use City's maintenance contractor, Association agrees to reimburse City for City's contract costs. The City will send an invoice(s)

to Association for payment annually for said operation, maintenance and repair services. Association shall pay City the full amount reflected in such invoice(s) within 20 days of City sending such invoice(s).

7. Indemnification and Hold Harmless. Association agrees to indemnify, defend and hold harmless the City and its officials, officers, agents, members, representatives, employees and contractors (“Indemnities”) from any and all costs, expenses, claims, damages, lawsuits, permit or discharge violations, penalties, fines, attorneys fees or any other liability as a result of, or arising out of or in connection with, the City’s activities (including actions or omissions) related to this MOU, including but not limited to: (1) the installation of the Catch Basin Filters; (2) the termination or interruption of flows into or through the Storm Drains; (3) any malfunction of the Storm Drains or the Catch Basin Filters, whether or not caused by City’s actions relating to the Catch Basin Filters; (4) the Indemnities entry into and performance of work in the Development; and/or (5) any matters related to any of the foregoing. Association agrees that it shall pay all costs or expenses of City to the extent that the same arise from activities covered under this indemnity. Association agrees that it shall pay for the defense of the Indemnities and shall be responsible for the satisfaction of any judgment, decree, settlement or court order. This indemnity will survive the termination or expiration of this MOU.

8. Insurance. Association shall maintain occurrence version commercial general liability insurance or equivalent form with a single limit of not less than One Million (\$1,000,000) per occurrence that covers and insures the City's work performed pursuant to this Agreement. City and City personnel shall be named as additional insureds on such insurance.

9. Attorneys Fees. If either Party hereto commences any action to enforce any provision of this MOU, the prevailing Party shall be entitled to receive from the other Party, in addition to damages and equitable or other relief, all reasonable costs and expenses incurred, including reasonable attorneys fees and costs.

10. Assignment. Neither Party may assign its rights or obligations under this MOU without the prior written consent of the other Party.

11. Waiver. The failure of either Party to insist on compliance with any of the terms, covenants or conditions of this MOU by the other Party shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power conferred by this MOU at any other time or times by a Party be deemed a waiver or relinquishment of that right or power for all or any other times.

12. Severability. If any part of this MOU is held to be illegal or unenforceable or void for any reason by a court of competent jurisdiction, and all appeals have been exhausted or the time for filing appeals has expired, the entire MOU shall be deemed invalid, illegal or otherwise unenforceable.

13. Termination. Termination can be requested by either Party, upon three months written notice. Notice of termination shall be provided in accordance with Section 16, "Notice" of this MOU. City may terminate Agreement for cause (including Association non-payment of costs) at any point in time upon 15 days notice to Association per Section 16. If the MOU is terminated, Association's responsibility to pay City its costs incurred and to indemnify, defend and hold harmless City shall continue after termination.

14. Entire Agreement. This MOU supersedes any and all prior oral or written agreements between the parties with respect to the subject matter herein.

15. Amendment. No addition to or modification of any provision contained in this Memorandum of Understanding shall be effective unless fully set forth in a writing signed by both parties.

16. Notice. Any notice required or permitted to be given hereunder shall be deemed to have been validly given or made only if in writing and when received by the Party to whom it is directed by personal service, hand delivery, or United States Mail as follows:

If to City: Director of Public Works and Engineering
City of Dana Point
33282 Street of Golden Lantern
Dana Point, California 92629

If to Association: Monarch Bay Association
c/o Progressive Community Management
27405 Puerta Real, Suite 300
Mission Viejo, CA 92691

Either Party may change its address above at any time by written notice to the other in accordance with this Section 16.

17. California Law; Venue. This MOU shall be governed by and construed in accordance with the laws of California. Venue for any action or proceeding to enforce the terms hereof shall lie in Orange County, California.

18. Corporate Authority. Each individual or entity that executes this Agreement on behalf of a Party represents that it is duly authorized and empowered to enter into this Agreement on behalf of the Party it purports to represent.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first written above.

CITY OF DANA POINT

MONARCH BAY ASSOCIATION

Douglas C. Chotkevys, City Manager

Name: _____

Title: _____

Attest:

Kathy Ward , Acting City Clerk

Name: _____

Title: _____

Name: _____

Title: _____

Approved as to Form:

City Attorney

Association Attorney