


Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: October 3, 2023
To: Honorable Mayor and City Councilmembers
From: Mario Landeros, Interim City Engineer
Subject: Stormwater Best Management Practices (BMP) Facilities Maintenance/Monitoring Agreement
Recommendation: Authorize City Manager to Execute a Stormwater BMP Facilities Maintenance/Monitoring Agreement with Sebastopol Pacific Associates for Woodmark Apartment Project, 7716 and 7760 Bodega Avenue, Sebastopol
Funding: Currently Budgeted: Yes No Not Applicable

Account Code: [Fill in Account Number]

Costs authorized in City Approved Budget: Yes (Finance Initialed _____) No (Finance Exempt)

INTRODUCTION/PURPOSE:

The item is to request the Council to authorize the City Manager to execute a Stormwater BMP Facilities Maintenance/Monitoring Agreement between the City of Sebastopol and Sebastopol Pacific Associates, owner of Woodmark Apartment Project located at 7716 and 7760 Bodega Avenue in Sebastopol.

BACKGROUND:

Pursuant to City Ordinance 1071 adopted by the City Council in 2014 and as codified under Sebastopol Municipal Code Chapter 15.78, "Storm Water Low Impact Development Technical Design Manual (LID Manual), the requirements of the LID Manual are applicable to all projects within the City that trigger LID requirements.

DISCUSSION:

Sebastopol Pacific Associates is the owner of record (Owner) of real property located at 7716 and 7760 Bodega Avenue (Property). Owner has submitted an application and development plan for the Woodmark Apartment (Project) on the Property. The City reviewed the application and development plan and, as one of the conditions of approval, has required that Owner comply with the LID Manual, which includes the design, construction and maintenance of permanent storm water Best Management Practices (BMPs). In compliance with this requirement Owner submitted a Storm Water Low Impact Development Submittal (SWLIDS), which included storm water calculations for design and sizing all BMPs, and a Stormwater BMP Facilities Maintenance/Monitoring Agreement to be recorded with the Sonoma County Recorder's Office so as to be legally binding in assigning all maintenance and funding responsibilities to the Owner and Owner's successors and assigns.

ENVIRONMENTAL REVIEW:

The proposed action is exempt Yes No from the requirements of the California Environmental Quality Act (CEQA) as the action taken will not result in a project as defined under the CEQA guidelines.

GOALS:

This action supports the following City Council Goals and General Plan Actions:

Goal 2: Maintain, Improve and Invest in the City infrastructure (Water, Sewer, Streets, Circulation, Parks, Storm Drains and Public Facilities)

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, if staff receives any public comments from interested parties following the publication and distribution of this staff report, such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the consent calendar.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to the scheduled meeting date.

FISCAL IMPACT:

There is no anticipated financial impact to the City as the obligation to maintain stormwater BMP facilities is the responsibility of the development.

RECOMMENDATION:

Staff recommends the Sebastopol City Council:

1. Authorize the City Manager to execute the Stormwater BMP Facilities Maintenance/Monitoring Agreement between the City of Sebastopol and Sebastopol Pacific Associates; and
2. Direct staff to record Agreement with the Sonoma County Recorder's Office.

Attachments:

1. Stormwater BMP Facilities Maintenance/Monitoring Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**City of Sebastopol
P.O. Box 1776
Sebastopol, CA 95473**

Attn: City Clerk

APN: 004-211-007 & 060-230-067

**STANDARD MAINTENANCE AND MONITORING AGREEMENT
STORMWATER BMP FACILITIES MAINTENANCE/MONITORING AGREEMENT**

THIS AGREEMENT is made and entered into this day of 20 , by and between Sebastopol Pacific Associates (Landowner), and City of Sebastopol (City)

RECITALS

WHEREAS, Landowner is the owner of certain real property described in Exhibit A, attached hereto and incorporated as though fully set forth herein (Property); and

WHEREAS, Landowner has submitted an application and development plan (Plan) for the Property within the City of Sebastopol, for which Landowner has received final approval from the City, which Plan is incorporated as though fully set for the herein; and

WHEREAS, The North Coast Regional Water Quality Control Board NPDES Permit, Order #R1-2015-0030, requires City to implement and enforce specific requirements for construction and maintenance of onsite stormwater management/Best Management Practices (BMP) for public and private construction; and

WHEREAS, City requires that on-site stormwater management/BMP facilities shall be constructed and maintained by Landowner in accordance with Plan specifications.

WHEREAS, the Plan provides for Bio-retention and Volume Capture BMP's; and

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

1. The on-site stormwater management/BMP facilities shall be constructed by Landowner in accordance with the Plan specifications.
2. Landowner shall maintain the stormwater management/BMP facilities in good work condition acceptable to the City.

3. Landowner hereby grants permission to City, its authorized agents and employees, to enter upon the property and to inspect the stormwater management/BMP facilities whenever City deems necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, including any berms, inlet and outlet structures, vegetation, infiltration media, pond areas, access roads, et cetera. If deficiencies are noted, City shall notify Landowner and provide the inspection findings and evaluations. (and cure requirements?)
4. Landowner hereby grants permission to City, its authorized agents, employees, and consultants to enter upon the property to install, operate and maintain equipment to monitor the flow characteristics and pollutant content of the influent, effluent and intermediate points in the facilities. Landowner further agrees to design and construct the facility to provide access for monitoring as outlined in Storm Water Mitigation Plan and/or in the manufacturer manual for the BMP.
5. Landowner will perform maintenance and an annual maintenance inspection in accordance with the maintenance schedule for the stormwater management/BMP facilities, including sediment removal, as outlined in the Plan and the following specific requirements:

Maintenance of the following BMP(s)

- Bio-retention beds

Shall conform to the approved Plan's maintenance requirements, all requirements contained in (cite handbooks) and/or specific maintenance requirements established by the manufacturer as approved by (City dept.) prior to the release of the final plans. Specific manufacturer maintenance requirements for the BMP will be submitted to the City.

6. In the event Landowner fails to maintain the stormwater management/BMP facilities in good working condition acceptable to City, City may enter upon the Property and take whatever steps it deems reasonably necessary to maintain the stormwater management/BMP facilities. This provision shall not be construed to allow City to erect any structure of a permanent nature on the Property outside of an easement in favor of City. It is expressly understood and agreed that City is under no obligation to maintain or repair facilities, and in no event shall this Agreement be construed to impose such an obligation on City.
7. In the event that City, pursuant to this Agreement, performs work of any nature, or expends any funds in the performance of such work for labor, use of equipment, supplies, materials, and the like, due to the failure of Landowner to perform such maintenance or work, Landowner shall reimburse City within 30 days of receipt of notice of all costs incurred by the City to undertake such work. If Landowner fails to reimburse City for these costs within 30 days, City shall have a lien against the property in the amount of such costs, plus the legal rate of interest for judgments, and

may enforce the lien in the same manner a lien for real property taxes may be enforced.

8. Landowner shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where same results from or arises out of the construction, presence existence, or maintenance of the stormwater management/BMP facilities or the performance of this Agreement by Landowner, its officers, employees, agents, and sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Landowner or its agents under workers' compensation acts, disability benefits acts or other employees' benefits acts. In the event a claim is asserted against City, its agents or employees', City shall promptly notify landowner. Thereafter, Landowner shall defend at its own expense any suit based upon such claim. If any judgment or claim against the City, its agents or employees', shall be entered, Landowner shall pay all costs and expenses in connection therewith.
9. If any provisions of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provision shall not in anyway be affected or impaired thereby.
10. This Agreement shall be governed according to the laws of the State of California. Because this Agreement is to be performed in the County of Sonoma, the parties hereto agree that the forum for the adjudication of any dispute regarding the Agreement or enforcement shall be brought exclusively and solely in Sonoma County, California.
11. City and Landowner each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other parties with respect to all promises and agreements contained herein.
12. This Agreement shall be recorded, and shall constitute a covenant running with the land, or equitable servitude, and shall be binding upon and insure to the benefit of Landowner's successors and assigns.

THE CITY OF SEBASTOPOL

LANDOWNER:

By: _____

Sebastopol Pacific Associates
a California Limited Partnership

By:  _____

Name: *Don Stattery* _____

Title: *Authorized Agent* _____

ATTEST: _____

Assistant City Clerk

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

By: _____

City Attorney's Office

Attachments:

Exhibit A – Property Description
Notary Acknowledgment

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.

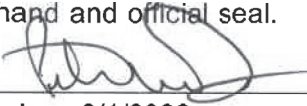
State of Idaho

County of Ada

On August 25, 2023 before me, Peter Van Dorne, Notary Public, personally appeared Don Slattery, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 
Commission Expires: 8/1/2029

(Seal)

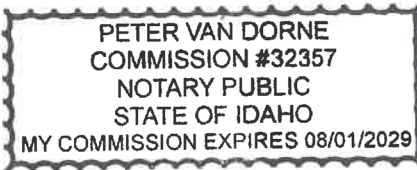


Exhibit A

7716 Bodega Ave., Sebastopol
APN: 004-211-007

LOT 1, CITY OF SEBASTOPOL, PARCEL MAP NO. 82, FILED AUGUST 13, 1980, IN BOOK 310 OF MAPS AT PAGE 33, SONOMA COUNTY RECORDS.

7760 Bodega Ave., Sebastopol
APN: 060-230-067

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A STAKE STANDING ON THE BODEGA ROAD ON THE SOUTHEAST OF JOHN DOUGHERTY'S (SINCE OWNED BY A. CRAWFORD); RUNNING IN A NORTHERLY DIRECTION ABOUT 500 FEET TO A STAKE; THENCE EAST 20 FEET; THENCE IN A SOUTHERLY DIRECTION 436 FEET TO A STAKE ON THE BODEGA ROAD; THENCE WEST ON THE BODEGA ROAD ABOUT 260 FEET TO A STAKE, THE PLACE OF BEGINNING. SAID PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF LOT 7, AS NUMBERED AND DESIGNATED UPON THE MAP ENTITLED, "FRUIT RANCH OF G.W. HUNTLEY", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY, CALIFORNIA, ON NOVEMBER 20, 1902, AND RECORDED IN BOOK 13 OF MAPS, AT PAGE 2; THENCE FROM SAID POINT OF COMMENCEMENT, EASTERLY, AND ALONG THE NORTHERLY LINE OF THE SEBASTOPOL-BODEGA ROAD, A DISTANCE OF 260 FEET, MORE OR LESS, TO THE SOUTHWESTERLY CORNER OF THE TRACT OF LAND CONVEYED BY JOHN M. HENDERSEN, BY DEED DATED DECEMBER 24, 1926, TO HAZEL HEBE HENDERSEN, HIS DAUGHTER, WHICH DEED WAS RECORDED NOVEMBER 23, 1928, IN LIBER 212 OF OFFICIAL RECORDS, PAGE 371, SONOMA COUNTY RECORDS; THENCE NORTHERLY ALONG THE WEST LINE OF SAID HENDERSEN LAND, A DISTANCE OF 436 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THAT TRACT CONVEYED BY LOUISE J. DOWS TO JOSEPHINE DOWS, ET AL, BY DEED DATED FEBRUARY 20, 1919, AND RECORDED DECEMBER 24, 1927, IN LIBER 185 OF OFFICIAL RECORDS, PAGE 364; THENCE WESTERLY, AND ALONG THE SOUTHERLY LINE OF THE SAID DOWS LAND, A DISTANCE OF 20 FEET TO THE EASTERLY LINE OF SAID LOT 7, OF HUNTLEY'S FRUIT RANCH: THENCE SOUTHWESTERLY, ALONG THE EASTERLY LINE OF SAID LOT 7, A DISTANCE OF 500 FEET, MORE OR LESS, TO THE POINT OF COMMENCEMENT.