

## JOINT COMMUNITY FACILITIES AGREEMENT

This Joint Community Facilities Agreement (the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and among the CITY OF DANA POINT, a municipal corporation organized and existing pursuant to the laws of the State of California (“City”); the COUNTY OF ORANGE (“County”) and HEADLANDS RESERVE LLC, a Delaware limited liability company (“Company”), and relates to the proposed formation of the COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT (the “CFD”) for the purpose of financing certain public facilities, including water quality facilities, storm drainage and beach access improvements to be owned, operated and maintained either by the CFD or County on County property (all references to herein as the “CFD Facilities on County Property”).

### *RECITALS*

A. The Company is developing the property depicted in Exhibit A hereto (the “Property”) which is located in the City.

B. Pursuant to the request of Company, the City Council of the City has initiated proceedings to form the CFD pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the “Act”).

C. The Company and County have entered into that certain “Project Cooperation Agreement for Baby Beach– Storm Drain to Sanitary Sewer Diversion, Media Filtration and Cove Road Storm Drains (the “Baby Beach Agreement”). The Baby Beach Agreement contemplates the City’s establishment of the CFD and the financing of CFD Facilities on County Property through the CFD.

D. The Company has requested and proposed that the CFD be formed for the purpose of providing the means of financing various public facilities, including the CFD Facilities on County Property described in further detail in Exhibit B, together with appurtenances and appurtenant work and “Discrete Components.” as described in Exhibit B. The CFD will also be authorized to levy annual special taxes (the “Maintenance Special Taxes”) for the purpose of financing the operation, maintenance and repair of those CFD Facilities on County Property described in further detail in Exhibit B-1. The CFD Facilities on County Property, including the Maintenance Facilities (the “Maintenance Facilities”) are shown in Exhibit B-2.

E. Upon the construction of the CFD Facilities on County Property by or on behalf of the Company and the inspection and approval of completion thereof by the County, the CFD Facilities on County Property will become County facilities.

F. The Act provides that the CFD may finance the CFD Facilities on County Property only pursuant to a joint community facilities agreement adopted pursuant to Government Code Section 53316.2. The parties acknowledge that this Agreement is for the purpose of meeting the requirements of the Act.

G. The City and County have determined that entering into a joint community facilities agreement to enable the CFD to finance some or all of the CFD Facilities on County Property will be beneficial to the residents of each entity and, therefore, desire to enter into this joint community facilities agreement pursuant to Government Code Section 53316.2.

H. Nothing contained herein shall be construed as requiring the City to form the CFD and issue bonds secured by special taxes of the CFD (the "Bonds") or as altering, amending or eliminating any provision of the Baby Beach Agreement.

I. The City and Company have or will, in connection with the formation of the CFD, enter into an Acquisition Agreement with respect to the CFD (the "Acquisition Agreement").

### ***A G R E E M E N T***

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.

2. Proceedings for the Formation of CFD; Costs of Formation. The City Council of City shall have the jurisdiction to and shall be solely responsible for undertaking the proceedings to consider the formation of the CFD and the authorization for the CFD to levy special taxes within the CFD and to incur a bonded indebtedness pursuant to the Act.

The County is not directly or indirectly approving or responsible in any way whatsoever for the levy of special taxes within the CFD nor is the County directly or indirectly approving or responsible in any way whatsoever for the issuance of Bonds by the CFD. The County shall not be responsible in any way whatsoever for the costs of formation of the CFD. The County shall have no liability with respect to any act or omission by the City of the Company with respect to the CFD.

Upon formation of the CFD and issuance of Bonds, a portion of the proceeds of the Bonds shall be deposited in an improvement fund (the "Improvement Fund") and shall be available to finance the design and construction of the CFD Facilities on County Property as well as other public improvements. The proceeds of the Bonds deposited in the Improvement Fund, the special taxes levied to pay directly for eligible facilities, other than the Maintenance Special Taxes, and investment earnings on such funds shall be referred to herein as "CFD Proceeds."

3. Construction. The Company will complete the design of the CFD Facilities on County Property and the plans and specifications for the construction of such CFD Facilities on County Property (the "Plans and Specifications") in a form and substance, which is satisfactory to the County. The Company may proceed with the construction of the CFD Facilities on County Property in accordance with the provisions of Section 4 hereof.

The City agrees with the Company that the cost of all surveying, compaction testing and report costs associated with the CFD Facilities on County Property furnished and constructed by

Company's contractor(s) shall be included among the costs which are eligible to be paid from CFD Proceeds.

The County shall not be responsible for conducting any environmental, archaeological, biological, or cultural studies or any mitigation requirements that may be requested by appropriate Federal, State, and/or local agencies with respect to the CFD Facilities on County Property. Any such work shall be paid for and conducted by Company, and the City agrees with the Company that the costs of such work may be included in the actual costs of the CFD Facilities on County Property.

4. Public Works Requirements. In order to insure that the CFD Facilities on County Property that are completed after adoption of the resolution of formation of the CFD will be constructed as if they had been constructed under the direction and supervision, or under the authority of, the County, so that they may be acquired by the County pursuant to Government Code Section 53313.5, the Company shall comply with all of the following requirements as set forth in (a) through (d) below. Those CFD Facilities on County Property that have been completed as of the date of this Agreement are specifically identified in Exhibit B hereto.

(a) The Company shall obtain a minimum of three bids from firms reasonably determined to be qualified to construct the CFD Facilities on County Property in conformance with the Plans and Specifications. The County of Orange RDMD Director, or his designee (the "Director") shall have the opportunity to review the bid packages prior to the submittal of bids to the qualified firms.

(b) The contract or contracts for the construction of the CFD Facilities on County Property shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the CFD Facilities on County Property. The Director shall have the right to review the bids prior to the award of any contract.

(c) The Company shall require, and the specifications and bid and contract documents shall require all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code to the extent expressly applicable to a non-governmental entity constructing infrastructure to be acquired by a public entity. The Company shall comply with all of the County's standard requirements for the construction of the CFD Facilities on County Property.

(d) All responsibility for compliance with this Section 4 lies with the Company. The Company shall provide the County with certification in a form acceptable to the Director that all requirements of Section 4 have been met. The Company shall fully indemnify, defend and hold harmless the County and the City against any and all claims by any third party that the requirements of Section 4 have not been met.

(e) The Company shall obtain an encroachment permit for construction of the CFD Facilities on County Property.

5. Inspection; Completion of Construction. The County shall be informed regarding the construction schedule for the CFD Facilities on County Property. The County shall have primary responsibility for providing inspection of the work of construction of the CFD Facilities on County Property to insure that the work of construction is accomplished in accordance with the Plans and Specifications. The County's personnel and inspectors shall have access to the site of work at all reasonable times for the purpose of accomplishing such inspection. Upon the completion of the construction of the CFD Facilities on County Property or portions or phases of the Facilities described in Exhibit B ("Discrete Components") to the satisfaction of the County's inspectors, the Company shall notify the County in writing that the construction of the CFD Facilities on County Property or Discrete Components thereof have been completed in accordance with the Plans and Specifications.

Upon receiving such written notification from the Company, and upon receipt of written notification from its inspectors that construction of the CFD Facilities on County Property or Discrete Components thereof have been completed in accordance with the Plans and Specifications and the County's standard requirements, the Director shall within 30 days notify the Company in writing that the construction of the CFD Facilities on County Property or Discrete Components thereof have been satisfactorily completed. Upon receiving such notification with respect to a CFD Facility on County Property, but not a Discrete Component, the Company shall forthwith file with the County Recorder of the County of Orange a Notice of Completion pursuant to the provisions of Section 3093 of the Civil Code. The Company shall furnish to the County a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Recorder. Any actual costs reasonably incurred by the County in inspecting and approving the construction of the CFD Facilities on County Property paid by the Company shall be eligible for reimbursement from CFD Proceeds. The Company shall pay to the County all of its standard fees and costs related to the construction, inspection, and approval of the CFD Facilities on County Property.

6. Liens. Upon the expiration of the time for the recording of claim of liens as prescribed by Sections 3115 and 3116 of the Civil Code, the Company shall provide to the County such evidence or proof as the Director shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the CFD Facilities on County Property have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, the County, in its sole discretion, may consent to the Company providing to the County a title insurance policy or other security acceptable to the Director, guaranteeing that no such claims of liens will be recorded or become a lien upon the CFD Facilities on County Property.

7. Acquisition, Acquisition Price; Source of Funds.

(a) Provided the Company has complied with the requirements of this Agreement, the County agrees to accept title to any CFD Facilities on County Property constructed by the Company. Notwithstanding the above, nothing herein shall be construed as requiring Company to construct or deliver any CFD Facilities on County Property. The price to be paid by the CFD for the CFD Facilities on County Property or for any Discrete Components thereof prior to the acceptance by the County of the CFD Facilities on County Property shall be

determined in accordance with the Acquisition Agreement. As a condition to the payment of such acquisition price for the CFD Facilities on County Property, the Company shall transfer ownership of the CFD Facilities on County Property to the County by grant deed, bill of sale or other such documentation as the Director may require. With the exception of the Maintenance Facilities, upon the transfer of ownership of the County Facilities on County Property or any portion thereof from the Company to the County, the County shall be responsible for the maintenance of the CFD Facilities on County Property or the portion transferred.

(b) Upon completion of the construction of the CFD Facilities on County Property or any Discrete Components thereof, the Company shall deliver to the CFD and County copies of the contract(s) with the contractor(s) who have constructed the CFD Facilities on County Property or any Discrete Components thereof or other relevant documentation with regard to the payments made to such contractor(s) and each of them for the construction of the CFD Facilities on County Property or any Discrete Components thereof, and shall also provide to the CFD and the County invoices and purchase orders with respect to all supplies and materials purchased for the construction of the CFD Facilities on County Property or any Discrete Components thereof.

(c) Notwithstanding the preceding provisions of this section, the sole source of funds for the cost of CFD Facilities on County Property or any Discrete Component thereof shall be CFD Proceeds made available by the CFD for such purpose pursuant to Section 2 above and, where applicable, the County Contributions. If for any reason, the proceedings for the formation of the CFD are not completed or CFD Proceeds are not available, the Company may not be fully reimbursed for the costs of the CFD Facilities on County Property. In such event, the Company shall complete the design and construction and offer to the County ownership of such portions of the CFD Facilities on County Property as are required to be constructed by the Company as a condition to recordation of subdivision maps for the Property, but need not construct any portion of the CFD Facilities on County Property which it is not so required to construct.

(d) Nothing contained herein shall prohibit the County from accepting ownership of one or more of the CFD Facilities on County Property at separate times.

8. Easements and/or Fee Title Ownership Deeds. The Company shall, at the time, the County acquires the CFD Facilities on County Property as provided in Section 7 hereof, grant to the County, by appropriate instruments prescribed by the County, all easements across private property and/or fee title ownership deeds which may be necessary for the proper operation and maintenance of the improvements, or any part thereof.

9. Maintenance. The CFD shall be responsible for all operation, maintenance and repair of the Maintenance Facilities. The Company shall be responsible for the maintenance thereof prior to the formation of the CFD. The CFD and the City shall obtain an encroachment permit from the County for the ongoing operation, maintenance and repair of the Maintenance Facilities.

10. Inspection of Records. The County and the City shall have the right to review all books and records of the Company pertaining to costs and expenses incurred by the Company for

the design and construction of the CFD Facilities on County Property during normal business hours by making arrangements with the Company.

11. Ownership of Facilities. Notwithstanding the fact that some or all of the CFD Facilities on County Property may be constructed in dedicated street rights-of-way or on property owned by the County, the CFD Facilities on County Property shall be and remain the property of the Company until acquired by the County as provided in this Agreement. Such ownership by the Company shall likewise not be affected by any agreement which the Company may have entered into or may enter into with the City pursuant to the provisions of the Subdivision Map Act, Section 66410 et seq. of the Government Code, and Company warrants that nothing in this Agreement is contrary to any contractual agreements Company has with the City.

12. Independent Contractor. In performing this Agreement, the Company is an independent contractor and not the agent of the City or County. Neither the City nor County shall have any responsibility for payment to any contractor or supplier of the Company. It is not intended by the parties that this Agreement create a partnership or joint venture among them and this Agreement shall not otherwise be so construed.

13. Indemnification, Insurance. The Company shall assume the defense of, indemnify and save harmless, the County, its officers, employees and agents, and the City, its officers, employees and agents, and each and every one of them from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subject or put, by reason of, or resulting from this Agreement, the issuance of the Bonds, and the design, engineering and construction of the CFD Facilities on County Property. No provision of this Agreement shall in any way limit the extent of Company's responsibility for payment of damages resulting from the operations of the Company and its contractors, or relating to activities of the Company during construction of such CFD Facilities on County Property; provided, however that the Company shall not be required to indemnify any person or entity as to damages resulting from willful misconduct or gross negligence of such person or entity or their agents or employees.

The Company shall furnish to the Director a certificate or certificates of insurance substantiating that it has obtained for the entire period of the construction of the CFD Facilities on County Property a policy of comprehensive general liability insurance with coverage broad enough to include the Company's contractual obligations under this section and having a combined single limit of liability in the amount of \$2,000,000. Said certificate of insurance shall include an endorsement naming the County as an additional named insured.

14. Assignment. The Company may assign its rights pursuant to this Agreement to one or more purchasers of the Property who shall be the owner of all or a portion of the CFD Facilities on County Property and to whom the Company shall assign the right to receive payment of the acquisition price for the CFD Facilities on County Property. Such a purchaser and assignee shall, as a condition to receiving payment of such acquisition price, enter into an assignment agreement with the County and the City, in a form acceptable to the County and the City, whereby such purchaser agrees, except as may be otherwise specifically provided therein, to assume the obligations of the Company pursuant to this Agreement and to be bound thereby.

15. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

City/CFD: Community Facilities District No. 2006-1  
of the City of Dana Point  
c/o City of Dana Point  
33282 Golden Lantern  
Dana Point, California 92629  
Attention: Director of Public Works

County: County of Orange  
  
County Executive Office  
  
10 Civic Center Plaza  
  
Santa Ana, California 92701

Company: Headlands Reserve LLC  
24849 Del Prado  
Dana Point, CA 92629  
Attn: Kevin Darnall

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party hereto.

16. Amendment. This Agreement may be amended at any time but only in writing signed by each party hereto.

17. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

18. Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

19. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

20. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other parties hereto, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to

insist and demand strict compliance by such other parties with the terms of this Agreement thereafter.

21. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the County, the City, the CFD and the Company (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. The purchasers of residential units or the owners of retail space in the CFD shall not be considered successors of the Company hereunder.

22. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.


23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

24. Assignment of Maintenance Obligations. The CFD shall be responsible for the maintenance, operation and repair of the Maintenance Facilities as described in Exhibit B-1 to be funded from, and to the extent of the Maintenance Special Taxes. IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

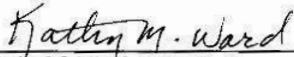
IN WITNESS WHEREOF, the parties have hereto caused this AGREEMENT to be executed on the date first above written.

THE CITY OF DANA POINT

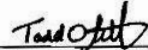
DATE: 6-21-06

By:   
Doug Chotkevys, City Manager

DATE: 6-22-06

By:   
Kathy M. Ward, City Clerk

APPROVED AS TO FORM


BY:   
City of Dana Point Attorney

DATE: 6/21/6

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HEADLANDS RESERVE LLC  
By: MPDSE, Inc., a California corporation,  
Its Managing Member

DATE: 5.23.06

By:   
Sanford Edward, President

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COUNTY OF ORANGE  
a political subdivision of the State of California

DATE: 6-6-06

By: Bill Campbell  
Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS  
BEEN DELIVERED TO THE CHAIR  
OF THE BOARD

DATE: 6-6-06

By: Darlene J. Bloom  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
Orange County, California



APPROVED AS TO FORM  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

BY: [Signature]  
Deputy

DATE: 5/18/2006

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**EXHIBIT A**

**PROPERTY DESCRIPTION**

That certain real property in the City of Dana Point, California, more particularly described as follows:

Lots 1-58 inclusive and Lots 60-150 inclusive, of Tract 16331, as shown on the Map filed in Book 875, Pages 22 to 32, inclusive of Miscellaneous Maps, in the Official Records of the County Recorder of Orange County, California.

**EXHIBIT B****DESCRIPTION OF THE CFD FACILITIES ON COUNTY PROPERTY**

The County Facilities eligible to be financed by the CFD under the Act are as follows:

<u>County Facilities</u>	<u>Discrete Components</u>
1. Harbor parking lot storm water treatment BMPs improvements, including, without limitation, screens, filters, diversions, storm drain, man holes, structures, etc. <sup>1</sup>	a. N/A
2. Selva parking lot storm water treatment BMPs improvements, including, without limitation, screens, filters, diversions, storm drain, man holes, structures, etc.	a. Design, engineering, and other soft costs b. Installation, other than non-essential items <sup>2</sup> c. Completion of non-essential items
3. Cove Road storm drain line from Green Lantern to Dana Point Harbor parking lot.	a. Design, engineering, and other soft costs b. Installation, other than non-essential items c. Completion of non-essential items
4. North Strand Beach access improvements, walkway, stairs, overlooks, restroom, landscaping, irrigation, fencing, signage, precise grading, area drainage, landscape, walls, public utilities, benches, etc.	a. Design, engineering, and other soft costs b. Installation of all improvements, other than non-essential items; provided separate elements shall be considered Discrete Components as well, such as the walkway, stairs, restroom, fencing, overlooks, and benches c. Completion of non-essential items

Footnotes

<sup>1</sup> This County Facility or Discrete Component was completed prior to the date of this Agreement and is eligible for acquisition with CFD Proceeds.

<sup>2</sup> The term “non-essential items” in this Exhibit B shall mean final punch list items of work that are not required for the use and operation of a County Facility for its intended purpose.

**EXHIBIT B-1**

**DESCRIPTION OF COUNTY FACILITIES AUTHORIZED TO BE  
MAINTAINED BY COMMUNITY FACILITIES DISTRICT**

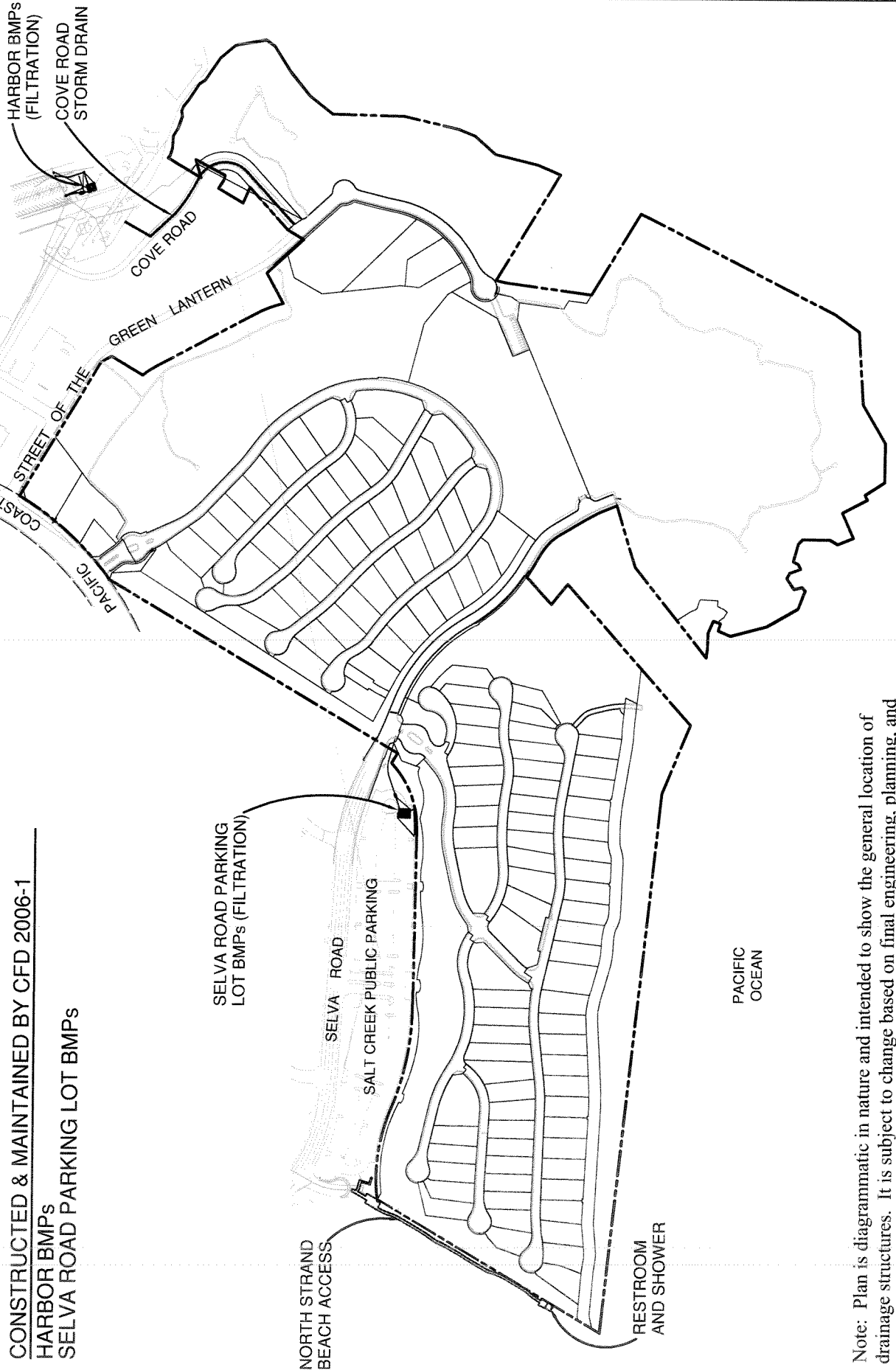
1. Harbor parking lot storm water treatment BMPs improvements.
2. Selva parking lot storm water treatment BMPs improvements.

# EXHIBIT B-2

CFD FACILITIES  
ON COUNTY PROPERTY



- FACILITIES:
- CONSTRUCTED ONLY BY CFD 2006-1
- COVE ROAD STORM DRAIN
- NORTH STRAND ACCESS / RESTROOM & SHOWER
- CONSTRUCTED & MAINTAINED BY CFD 2006-1
- HARBOR BMPs
- SELVA ROAD PARKING LOT BMPs



Note: Plan is diagrammatic in nature and intended to show the general location of drainage structures. It is subject to change based on final engineering, planning, and design.