

MEMORANDUM OF UNDERSTANDING ON THE  
LONG-TERM RESTORATION PLANNING  
FOR BAYLANDS IN  
ALAMEDA, SANTA CLARA AND SAN MATEO COUNTIES, CALIFORNIA

This Memorandum of Understanding (MOU) is entered into as of May 27, 2003, by and among the U. S. Fish and Wildlife Service (FWS); the California Department of Fish and Game (DFG); and the State Coastal Conservancy (SCC) with regard to the long-term restoration planning for approximately 15,100 acres of salt ponds and other properties which the State of California (State) and the United States of America (United States) acquired from Cargill, Inc. in Alameda, Santa Clara and San Mateo Counties.

**A. Purpose**

This MOU is an agreement between the FWS, DFG, and SCC to acknowledge the intentions of the parties and provide for cooperative action regarding:

1. The roles and responsibilities of the parties in the long-term restoration planning, including the sources of funds and in-kind technical assistance for restoration planning.
2. The structure that will be used to involve other agencies, organizations, and the public, and to provide for technical review for the long-term restoration planning.
3. The general work program that will be followed to achieve completion of restoration planning, environmental review, permitting, cost estimates and identification of implementation responsibilities and funding sources within five years.

**B. Background**

The parties are entering into this MOU with regard to the following facts and circumstances and with the following goals:

1. On March 6, 2003, the United States and the State acquired from Cargill, Inc., approximately 15,100 acres of salt ponds in Alameda, Santa Clara, and San Mateo Counties, and the State acquired the approximately 1,400 acre Napa Plant Site along the Napa River in Napa County. DFG holds title to and will be responsible for management of approximately 5,450 acres in Alameda County (the Baumberg property). The FWS holds title to and will be responsible for management of approximately 9,650 acres in Alameda, Santa Clara and San Mateo Counties (the West Bay and Alviso properties).
2. Acquisition of the 15,100 acres of South Bay salt ponds provides an opportunity to conduct a large-scale wetlands restoration project and achieve many of the goals and objectives of the *Baylands Ecosystem Habitat Goals*, a report of the San Francisco Bay Area Wetlands Ecosystem Goals Project. The goals of the long-term restoration planning are to restore and enhance wetland habitats for migratory birds and threat-

ened and endangered species, provide for flood management, and provide wildlife-oriented public access and recreation opportunities in the South San Francisco Bay.

3. It is expected that long-term restoration planning will take approximately five years from the date on which the properties were acquired and will cost approximately \$10 million. In order to ensure the development of a widely-supported restoration plan, the SCC, FWS, and DFG will engage trustee and regulatory agencies, local governments, nongovernmental organizations, the scientific community, and the public in the restoration planning process.
4. The SCC, DFG, and FWS agree to include in the planning process other adjoining parcels owned by DFG and FWS in the South Bay that are critical to the success of the South Bay Salt Pond restoration planning effort. The agencies also agree to coordinate restoration planning efforts with other current and potential restoration projects in the South Bay, including projects being undertaken by other public agencies, nongovernmental organizations, and private entities.
5. With regard to the Napa Plant Site ponds, the SCC and DFG agree to develop and enter into a separate MOU by December 31, 2003 which, in a manner similar to this MOU, defines respective agency roles, responsibilities, funding sources, a project management structure, and a work program for development of a long-term restoration plan for the ponds. These ponds will be handled through a separate process due to the geographic distance between the Napa Plant Site ponds and South Bay Salt Ponds, the unique environmental characteristics of the Napa Plant Site, and the need for additional funds not contemplated in cost estimates for South Bay Salt Pond restoration planning. It is DFG's objective to have completed a plan by July 2006 to allow restoration of Ponds 9 and 10 at the Napa Plant Site.

### **C. Agency Roles and Responsibilities in Planning.**

The SCC, DFG, and FWS agree to the following description of the roles and responsibilities of the parties:

1. The SCC, in close cooperation with the FWS and DFG, will lead the development of plans for the long-term restoration and management of the property. The SCC, DFG and FWS will cooperatively develop and manage the planning structure, workplan, budget, and schedule, and will cooperatively oversee the development of project objectives and alternatives and the technical and environmental review of alternatives, as provided in Section E., Project Management Structure, below.
2. The SCC agrees to manage funds made available to or by SCC for restoration planning, hire and manage contractors, and ensure availability of its project management staff to oversee day-to-day project management, the San Francisco Bay Program Manager for oversight, and the Executive Officer to serve on the Executive Leadership Group and Executive Council.
3. The DFG and the FWS agree to identify and ensure availability of management, biology, and public use staff to actively participate in the Project Management Team, and

ensure availability of appropriate decision-makers to serve on the Executive Leadership Group and Executive Council.

4. The SCC, DFG, and FWS agree to achieve consensus among the three agencies prior to taking actions that may significantly impact the long-term restoration planning. The SCC, DFG, and FWS agree to resolve any disagreements in a collaborative way, first in the Project Management Team and, if needed, by involving the Executive Leadership Group. The parties reserve to their respective decision-making bodies the right and discretion to approve or adopt a final restoration plan and any necessary CEQA/ NEPA findings, but agree to work together and with other interested organizations, agencies, and the public to carry out the restoration planning in a way that addresses the needs and legal obligations of those decision makers. Each party, through its Executive Leadership Group and/or Project Management Team member(s) commits to keeping its decision-making body informed of restoration planning progress, and to informing the Project Management Team of issues or concerns that should be addressed in the planning.

#### **D. Funds for Planning**

The parties agree to work together to secure the approximately \$10 million in restoration planning costs over the period of five years, as follows:

1. The SCC has committed funding in the amount of \$2,500,000 to the restoration planning effort.
2. It is anticipated that the William and Flora Hewlett Foundation, the Gordon E. and Betty I. Moore Foundation, and the David and Lucile Packard Foundation (the Foundations) will provide \$5 million towards the restoration planning effort.
3. The FWS and DFG agree to seek funds to supplement the funding being provided by SCC and by the Foundations. In addition to its own funding mechanisms, the FWS will actively support efforts to obtain planning and research support funds from other Federal agencies, including the U.S. Army Corps of Engineers, the National Oceanic and Atmospheric Administration, U.S. Geological Survey, and the National Aeronautics and Space Administration, among others.

### **E. Project Management Structure**

The SCC, DFG, and FWS agree to establish a structure for stakeholder involvement in order to effectively manage the large number of organizations, agencies, and individuals who will be involved in the long-term restoration planning and to actively involve the public and scientific community in order to produce a scientifically-sound, widely-supported plan for implementation. A stakeholder assessment will be undertaken at the beginning of the project to define the structure for stakeholder involvement and input. The structure is expected to include the following general categories of stakeholders:

*An Executive Leadership Group*, made up of the Executive Officers of DFG and SCC and the California/Nevada Operations Manager of the FWS, will oversee the long-term restoration planning and resolve critical issues that may arise during planning.

*A Project Management Team*, made up of SCC, FWS, and DFG staff, and consultants as needed, will conduct the day-to-day project management, following a workplan, schedule and budget, and ensure that there is adequate coordination with other project participants and other interest groups.

*A Flood Management Team*, made up of South Bay flood control districts and the U.S. Army Corps of Engineers, in close cooperation with the Project Management Team, will ensure that the overall restoration plan addresses flood management issues and is coordinated with ongoing flood control planning.

*An Executive Council*, made up of high-level trustee and regulatory agency representatives, will provide guidance on regulatory requirements, address agency conflicts regarding restoration goals, support restoration planning through their respective agencies by ensuring their staff is available to provide needed input to the planning and permitting process, and support funding for planning and implementation of the restoration project. Regulatory agency staff will handle permitting issues and work toward resolution of agency conflicts regarding restoration goals.

*A Public Committee*, made up of interested organizations, agencies, and individuals, will meet at least quarterly to obtain project status updates, to provide input, and to support the restoration, public access, and flood management planning processes.

*A Technical Committee*, made up of engineers, scientists and others with needed expertise will review the progress of restoration planning and provide guidance on technical issues in order to ensure a scientifically-sound restoration plan. Subcommittees of the Technical Committee will be created to provide guidance to the project management team on specific technical tasks and scopes of work and work products associated with those tasks.

*A National Science Panel*, made up of wetland restoration experts, will be assembled at the beginning and at strategic points in the process to review the process and science used in the development of the restoration plan.

### **F. Public Outreach and Participation**

The SCC, DFG, and FWS agree to work with interested organizations and agencies to conduct a public outreach effort. Communication with and input from the community and interested organizations will be achieved using public meetings and workshops, a website, an email and paper newsletter, press releases, and presentations, in order to ensure that the public remains informed about project status and are involved in the planning process.

### **G. Consensus Building**

A consensus building process will be employed to involve technical experts and stakeholders with diverse interests in the gathering of decision-making information and resolution of conflicts.

### **H. Work Program**

The SCC, DFG, and FWS agree to follow a workplan, schedule, and budget for restoration planning that will be developed by the Project Management Team and will include the following major components:

#### *Analysis of Existing Conditions, Opportunities, and Constraints*

A detailed analysis of existing conditions, opportunities, and constraints will be conducted and will include analysis of physical, chemical, and biological factors, flood management issues, cultural resources, existing public access and recreation, and existing infrastructure in the project area.

#### *Development of Restoration Goals and Objectives*

The Project Management Team, in consultation with the agencies, organizations, and individuals participating in the process, will develop a strategy to achieve broad support for restoration goals and objectives for the South Bay Salt Ponds. Regional planning efforts, including, but not limited to, the *Baylands Ecosystem Habitat Goals Report* and the Bay Conservation and Development Commission's *San Francisco Bay Plan*, will be referred to when developing restoration goals.

#### *Development of a Strategy for Integrating Flood Management and Habitat Restoration*

The Project Management Team will work with the Santa Clara Valley Water District, Alameda County Flood Control District, San Mateo County Flood Control District, City of San Jose and other affected communities, and the U.S. Army Corps of Engineers to develop an approach for planning for the provision of flood management and to determine how to integrate the restoration planning with the flood management planning.

### *Development of Public Access Goals and Objectives*

The Project Management Team will work with recreational organizations, local public agencies, and individuals to develop overall goals and objectives for public access and plan public access in the restoration area.

### *Development of Alternatives*

Restoration concepts will be defined based upon the overall goals and objectives for restoration, flood management, and public access. Alternatives will include phasing options, with and without use of dredge materials, and different long-term habitat mixes of managed ponds and tidal marsh.

### *Technical Analysis of Alternatives*

Predictive modeling will be conducted and used to assist in designing an effective restoration strategy, evaluate the evolving site conditions over time, analyze the impacts of the alternatives, and ensure flood management capabilities.

Engineering and Design, along with cost estimates of alternatives, will allow the project management team to determine the construction impacts of each alternative, compare the costs and benefits of the alternatives, and determine the feasibility of implementation.

### *Environmental Review of Alternatives*

As required by the California Environmental Quality Act and National Environmental Protection Act, any potential, significant environmental effects of the restoration project will be identified and evaluated and measures will be identified to mitigate significant adverse impacts, where feasible. An Environmental Impact Report and Environmental Impact Statement will be prepared for public review.

The project management team will consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as provided for in Section 7 of the Federal Endangered Species Act, to ensure that short-term project impacts to threatened and endangered species are minimized and long-term project benefits are maximized.

### *Identification and Design of a Preferred Alternative*

Through the technical and environmental analysis, a preferred alternative will be identified for implementation. The alternative will be designed for a phased implementation, with the first phase receiving the most detailed design work. Engineering plans and specifications will be prepared for Phase 1.

### *Development of a Monitoring, Maintenance, and Adaptive Management Plan*

Restoration of the ponds is likely to be conducted in a phased approach over a fairly lengthy period of time. As the project is conducted, problems or opportunities may arise that call for changes in the restoration plan. Adaptive management will allow for each

phase to be conducted based upon the results of previous phases and taking into consideration new understanding of restoration techniques.

A management plan will be prepared that provides for initial stewardship of ponds until they are restored in accordance with the long-term restoration plan and for the long-term maintenance of ponds that are kept as managed ponds. Monitoring and data collection associated with implementation of the initial stewardship program will be coordinated with data collection for the long term planning process.

Monitoring will be critical to ensure that the restoration is achieving its objectives, meeting the requirements of permits, and analyzing future phases of restoration, allowing for adaptive management decisions to be made. A monitoring plan will include analysis of changes in the biological, chemical, and physical features of the site.

#### *Acquisition of all Necessary Federal, State, and Local Permits*

Throughout the project, the Project Management Team will work closely with the applicable regulatory agencies to identify all needed permits and ensure that all requirements to obtain those permits can be met. Permit applications will be submitted once the preferred alternative has been chosen and analyzed.

#### *Development of a Strategy for Implementation*

The Project Management Team and Executive Leadership Group, with partner agencies and organizations, will develop an implementation and funding strategy for restoration of the project area. The SCC, FWS, and DFG agree to actively seek funds to implement restoration plans from all possible Federal and State sources, including the U.S. Army Corps of Engineers, CALFED, from interested Foundation sources, and any other appropriate private or governmental source of funding.

### **I. Interpretation**

This MOU will not be interpreted to modify or limit the legal authority or responsibility of any party, or to require any party to act beyond or inconsistent with its legal authority. Nothing in the MOU is intended to obligate any party to the expenditure of funds in excess of appropriations authorized by law. This MOU is not intended to confer any rights or benefits upon, or be subject to enforcement by, any third party. Any supplement or modification to this MOU must be in writing and signed by all of the parties. This MOU shall be effective for the duration of the long-term restoration planning, unless the parties otherwise agree in writing. This MOU may be executed in counterparts.

Memorandum of Understanding on the  
Long-Term Restoration Planning  
for Baylands in  
Alameda, Santa Clara, and San Mateo Counties, California

U.S. FISH AND WILDLIFE SERVICE

DEPARTMENT OF FISH AND GAME

By: Steve Thompson  
Steve Thompson, CA/NV Manager

By: Robert C. Hight  
Robert C. Hight, Director

Date: 5/27/2003

Date: May 27 - 03

STATE COASTAL CONSERVANCY

By: Sam Schuchat  
Sam Schuchat, Executive Officer

Date: 5/27/03