

**MEMORANDUM OF UNDERSTANDING ON  
IMPLEMENTATION OF THE  
SOUTH BAY SALT POND RESTORATION PROJECT**

This Memorandum of Understanding (MOU) is entered into as of \_\_\_\_\_, 2009, by and among the U. S. Fish and Wildlife Service (FWS); the California Department of Fish and Game (DFG); the State Coastal Conservancy (SCC); the U. S. Geological Survey (USGS); the Santa Clara Valley Water District (SCVWD); and the Alameda County Flood Control and Water Conservation District (ACFCD) (collectively, the Parties) with regard to the long-term restoration of approximately 15,100 acres of former 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 known as the South Bay Salt Pond Restoration Project.

The overarching goal of the South Bay Salt Pond Restoration Project (the Project) is to restore and enhance wetlands in the Project Area in South San Francisco Bay, while providing for flood management and wildlife-oriented public access and recreation. This MOU supersedes the MOU among FWS, DFG, SCC, SCVWD and ACFCD entered into on January 11, 2005, with regard to the planning phase of the Project.

**A. Purpose**

This MOU is an agreement among the Parties to acknowledge the intentions of the Parties and to provide for cooperative action regarding implementation of Phase 1 of the Project and planning for future Project actions:

1. The roles and responsibilities of the Parties.
2. The distribution and allocation of funds, and in-kind technical assistance.
3. The framework that will be used to exchange information with other agencies, organizations, and the public, and that will guide technical review.
4. The general work program that will be followed during the first ten years of Project implementation, including any necessary environmental review, permitting, cost estimates, contracting and identification of funding sources.
5. The process by which the Parties will make decisions based on the Adaptive Management Plan.

## **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. DFG holds title to and is responsible for management of approximately 5,450 acres in Alameda County (the Eden Landing complex). The FWS holds title to and is responsible for management of approximately 9,650 acres in Alameda, Santa Clara and San Mateo Counties (the Ravenswood and Alviso complexes).
2. Acquisition of the 15,100 acres of South Bay salt ponds has provided 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 Project are to restore and enhance wetland habitats for migratory birds and threatened and endangered species, provide for improved flood management, and provide wildlife-oriented public access and recreation opportunities in the Project Area in South San Francisco Bay.
3. On July 24, 2002, the U.S. Army Corps of Engineers was requested by the U. S. House of Representatives Committee on Transportation and Infrastructure to review the San Francisco Bay Shoreline Study, dated July 1992, with regard to tidal and fluvial flood damage reduction, environmental restoration and protection, and related purposes along the South San Francisco Bay shoreline for San Mateo, Santa Clara and Alameda counties (known as the South San Francisco Bay Shoreline Study). This feasibility study will be undertaken in phases. The first phase, currently underway, focuses on Santa Clara County and is known as the South San Francisco Bay Shoreline Study: Alviso Ponds and Santa Clara County Interim Feasibility Study (“the Shoreline Study”). The Shoreline Study and the Project are complementary efforts and the Parties agree that close coordination of these efforts is essential to making the Project successful. The Parties anticipate that future phases of the South San Francisco Bay Shoreline Study will focus on Alameda County and San Mateo County.
4. In order to comply with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), FWS and DGS, as the federal and state lead agencies for the Project, jointly prepared the South Bay Salt Pond Restoration Project Final Environmental Impact Statement/Report (the Final EIS/R). On December 28, 2007, the Notice of Availability of the Final EIS/R for the Project was published in the Federal Register. It was also sent to the State Clearinghouse and widely distributed in December 2007.
5. On January 27, 2009, FWS filed a Record of Decision for the Final EIS/R for the Project pursuant to NEPA.

6. On March 11, 2008, DFG certified the Final EIS/R for the South Bay Salt Pond Restoration Project pursuant to the CEQA guidelines.
7. In order to ensure satisfactory implementation of the Project, the Parties will continue to engage trustee and regulatory agencies, local governments, nongovernmental organizations, the scientific community, and the public in the implementation of the Project at each pond complex.
8. The Parties agree to coordinate the Project with other current and potential restoration, invasive species control and flood management projects in the South Bay, including projects being undertaken by other public agencies, nongovernmental organizations, and private entities.

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

The Parties agree to the following description of their respective roles and responsibilities:

1. The SCC, in close cooperation with the FWS, DFG, SCVWD and ACFCO, will coordinate the implementation of the Project for the long-term restoration and management of the property. The Parties will cooperatively develop and manage the organizational structure (see Figure 1 in Section E, Project Management Structure), workplan, budget, and schedule, and will cooperatively oversee the implementation of the Project actions at all pond complexes.
2. As long as funding is available, the SCC agrees to manage funds made available to or by SCC for restoration or public access improvements, hire and manage contractors, and to ensure availability of: its project management staff to oversee day-to-day project management; the San Francisco Bay Program Manager for oversight of its project management staff; and the Executive Officer to serve on the Executive Leadership Group (see below). The SCC agrees to coordinate, in cooperation with the other Agencies, the Project implementation budget, securing and disbursement of funding, decision making in regards to implementation phasing, applied studies, and adaptive management, decision making in regards to which agencies and organizations will be leading construction of various elements, and the consultants needed to maintain an organized management and stakeholder structure.
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 (in accord with each agency's authorities and organizational structure) to serve on the Executive Leadership Group.

4. As long as funding is available, the USGS agrees to provide the Project's Lead Scientist who will be responsible for managing the Project's Science Program (see Section E, Project Management Structure).
5. The SCVWD and ACFCD agree to identify and ensure availability of management and technical staff to actively participate in the Project Management Team (see below) and in preparation and review of technical documents pertaining to the Project.
6. The Parties agree to seek consensus among themselves prior to taking actions that may significantly impact the Project. The Parties 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 and provide funding for any restoration actions, public access improvements or flood management improvements on property they own, but agree to work together and with other interested organizations, agencies, and the public to carry out the Project in a way that meets the needs and legal obligations of those decision-makers. Each Party commits to keeping its decision-making body informed of project progress, and to informing the Project Management Team of issues or concerns regarding the restoration project as they arise.
7. The Parties agree to implement the Project in accordance with the scientific principles and framework laid out in the Project's Adaptive Management Plan. Adaptive management of the Project is based on restoration targets, monitoring, applied studies, and modeling that will be used to generate the science-based information Agency managers will need for decision-making. The Project Management Team will make decisions on what monitoring, applied studies, and modeling to fund; actions needed to modify current phases; and the design of future phases.
8. The Parties agree to incorporate into any Project activity for restoration, public access improvement or flood management improvement, all Project conditions and all applicable mitigation and monitoring measures that are identified in the Final EIS/R as required to avoid, reduce, or mitigate all of the possible significant environmental effects of the Project.

#### **D. Funds for Implementation**

1. The Parties agree that funding is critical to successful implementation of the Project, including the Adaptive Management Plan. Furthermore, the Parties appreciate the complexities of obtaining ongoing funding from multiple sources over the long term. To that end, the Parties will continue to work together closely to identify, advocate for and secure all possible funding sources for Phase 1 and future phases. In particular, the Parties will focus their efforts on identifying and maintaining sources of funding for ongoing operations and maintenance of the project. In some cases, this

effort may include the participation of other local and regional agencies. Should another local or regional agency agree to provide funding for this Project, that agency will be invited to join the Project Management Team.

2. The Project Management Team and Executive Leadership Group, with partner agencies and organizations, will develop a funding strategy for implementing the Project. The Parties agree to actively seek funds to implement the Project from all possible Federal and State sources, interested Foundation sources, and any other appropriate private or governmental source of funding. For Federal appropriations, the non-Federal Parties agree to coordinate lobbying efforts. For State appropriations, the non-State Parties agree to coordinate lobbying efforts.<sup>1</sup>
3. The Parties agree that funds for implementation of this Project may be transferred from one Party to another Party subject to their mutual agreement and with the appropriate approval of their respective decision-making bodies. Any funds transferred between Parties to this MOU shall be restricted to use on this Project as described in Section B. The parties agree to streamline and simplify fund transfer to the extent possible to facilitate the implementation of this Project.

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

The Parties agree to support and utilize the structure shown in Figure 1 for stakeholder involvement in order to effectively manage the large number of organizations, agencies, and individuals who will be involved in exchanging information during Project implementation and to actively contribute to the public's and the scientific community's understanding of the Project. The structure includes the following general categories of stakeholders:

*An Executive Leadership Group*, made up of the Executive Officer of the SCC, the Director of DFG, the Regional Director of the FWS, the Chief Executive Officer of the SCVWD and the Director of the ACFCD to oversee the long-term restoration implementation and resolve critical issues that may arise during implementation. With regard to this MOU, the Executive Leadership Group has final authority.

*A Project Management Team (PMT)*, made up of the Parties' staff, the Lead Scientist, the U.S. Army Corps of Engineers, the Executive Project Manager and advisory consultants as needed, to 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. The Executive Project Manager is responsible for convening the Project Management Team.

*A Regulatory and Trustee Agency Group*, made up of staff from regulatory and trustee agencies to handle permitting issues and work toward achieving consensus.

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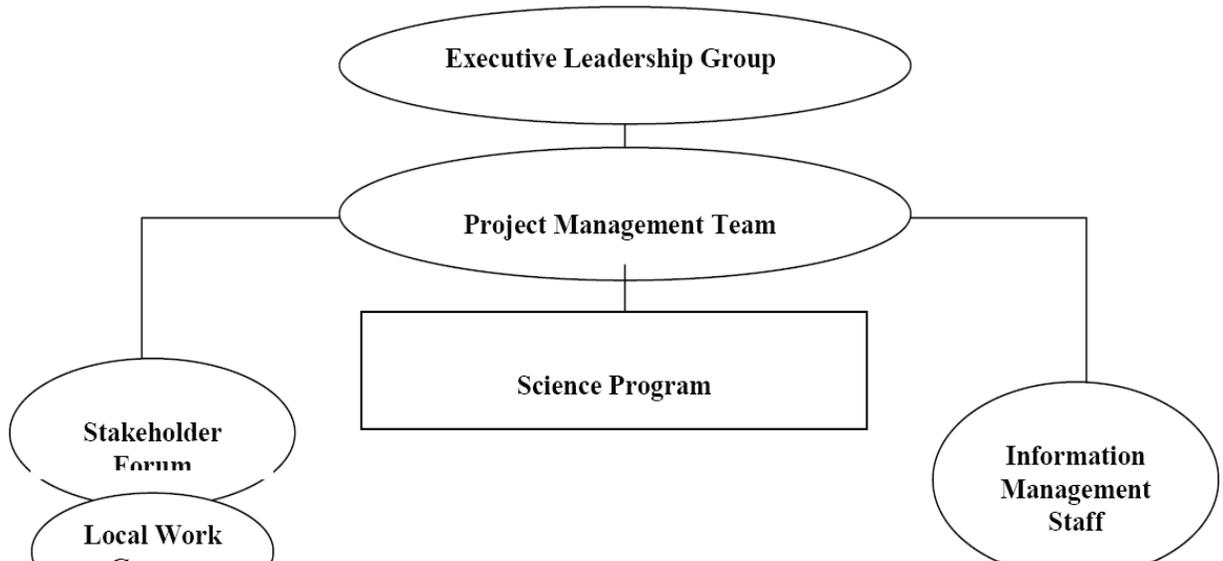
<sup>1</sup> The USFWS and the USGS will not engage in lobbying.

A *Stakeholder Forum*, made up of approximately 30 invited members representing interested organizations, agencies, and individuals, who will meet 2-4 times per year to obtain project status updates, to exchange facts and information, and to provide ongoing feedback on project actions and applied studies.

*Local Geographically-Based Working Groups*, made up of members of the Stakeholder Forum, local government, and other members of the public to provide feedback to the Project Partners and to support the implementation process in each pond complex area.

A *Science Program*, led by a Lead Scientist and made up of scientists, engineers, and others with needed expertise to review the progress of restoration, and provide information regarding technical issues in order to ensure that the Project's Adaptive Management Plan is being implemented effectively.

**FIGURE 1. Organizational Structure for SBSP Project Implementation**



### **F. Adaptive Management Decision-Making**

Implementing the Project's Adaptive Management Plan, the PMT will review and regularly update the restoration targets and management triggers with new scientific information as it becomes available.

As part of their decision-making process, the PMT will be apprised of current results of all studies and monitoring carried out by or related to the Project. The Lead Scientist and the Executive Project Manager will be responsible for making sure that results and their interpretation are presented to the PMT in a timely fashion. The PMT will use the results to make four types of decisions:

- *Day-to-day decisions*: These are operational decisions made primarily by the landowners that will be consistent with the EIS/R, Adaptive Management Plan, other restoration plans, regulatory requirements, and any operations and maintenance plans that are developed.
- *“Emergency Action” decisions*: These are actions, often related to operations and maintenance, requiring quick response, such as an unanticipated levee failure or unexpected violation of a regulatory requirement.
- *Decisions regarding management triggers*: These are decisions based on PMT agreement that a management trigger has been tripped and would be the initiation of the process to evaluate all existing information and subsequent evaluation of potential management actions.
- *Future action decisions*: These are decisions to initiate a future action, either a restoration plan action or a new or modified applied study. These decisions would incorporate review of existing information, consideration of potential modification of the actions consistent with that review, and in the case of restoration actions, would require environmental review tiered off of the programmatic EIS/R.

When appropriate, the Stakeholder Forum and Local Working Groups will provide input to the PMT before decisions are made (other than day-to-day and “Emergency Action” decisions). They will be invited to participate in an annual review meeting, coinciding with one of the Stakeholder Forum meetings, to review the Project’s progress.

### **G. Consensus Building and Communications**

The Parties will employ a consensus building process to involve technical experts and stakeholders with diverse interests in the gathering of ongoing decision-making information and resolution of conflicts.

The Parties agree to ensure communication among themselves, other agencies, and the public by, convening meetings of the Stakeholder Forum 2-4 times per year, conducting transparent peer-review procedures, and supporting the development and availability of information to all project participants and to the public, through regular reports from the PMT and Science Program, the Project newsletter, periodic media events, and the Project website.

### **H. Work Program**

The Parties agree to follow a workplan, schedule, and budget, to the extent that funding is available, for restoration implementation that will be developed by the Project Management Team and will include the following major components:

*Implementation of Monitoring and Applied Studies*

Monitoring and applied studies will be critical to ensure that the restoration is achieving objectives, meeting the requirements of permits, analyzing future phases of restoration, and allowing adaptive management decisions to be made. The monitoring plan includes analysis of changes in the biological, chemical, and physical features of the site. Prior to undertaking restoration activities, the Parties commit to ensuring that there is adequate funding and staffing resources to carry out the Project's monitoring and applied studies, as described in the Adaptive Management Plan.

*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.

*Development of Future Phases*

Future phases of the Project will integrate habitat restoration and management with flood protection and wildlife-compatible public access. Future actions will be based, in part, on the evaluation of adaptive management information collected in previous phases. Ultimately, future actions will be determined by evaluating adaptive management information in light of a number of decision criteria. These criteria, not in order of priority, will be the same as, but not limited to, those used in developing Phase 1, which were:

1. Availability of funding
2. Likelihood of success
3. Ease of implementation
4. Visibility and accessibility
5. Opportunities for adaptive management
6. Value in building Project support
7. Certainty of investment
8. Flood protection.

For actions after Phase 1, the same criteria will be applicable, but others will be relevant as well, including the following:

1. Readiness to proceed
2. Ability to utilize results from earlier applied studies and other new knowledge
3. Dependency on precedent actions
4. Dependency on adaptive management progress
5. Flood management requirements
6. Public access needs
7. Climate change
8. Sea level rise.

**I. Public Outreach and Participation**

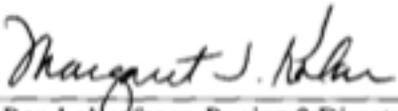
Subject to available funding, the Parties agree to work with interested organizations and agencies to conduct public outreach efforts. Communication with and input from the community and interested organizations will be achieved using public meetings and workshops, the Project's interactive website, an email and paper newsletter, press releases, and presentations in order to ensure that the public remains informed about project status and is involved in the ongoing restoration.

**J. 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, and their decision-making body, when applicable. 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 project implementation, unless the Parties otherwise agree in writing. Any Party may terminate this MOU upon thirty days written notice to all other parties without penalties or liabilities. This MOU may be executed in counterparts, and each party will provide an original signature page to all parties.

U.S. FISH AND WILDLIFE SERVICE

DEPARTMENT OF FISH AND GAME

By:   
Ren Lohofener, Region 8 Director

By:   
Charles Armor, Regional Manager, Bay  
Delta Region

Date: \_\_\_\_\_

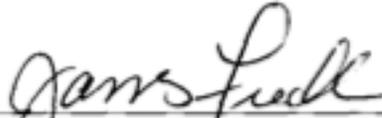
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Memorandum of Understanding on the  
Long-Term Restoration Project of  
Baylands in Alameda, Santa Clara, and San Mateo Counties, California

STATE COASTAL CONSERVANCY

SANTA CLARA VALLEY WATER DISTRICT

By:   
Sam Schuchat, Executive Officer

By:   
for Sharon Judkins, Interim Chief Executive  
Officer

Date: 3/5/09

Date: April 29, 2009

UNITED STATES GEOLOGICAL SURVEY

By: Mary Elle Mullen acting for:  
Steven Schwarzbach, Director, Western Ecological Research Center

Date: 6-9-09