

MEMORANDUM OF UNDERSTANDING ON THE SOUTH BAY SALT POND RESTORATION PROJECT

This Memorandum of Understanding (MOU) is entered into as of Aug. 26, 2004, 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 Santa Clara Valley Water District (SCVWD); and the Alameda County Flood Control and Water Conservation District (ACFCD) (collectively, the Agencies) 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 (known as the South Bay Salt Pond Restoration Project). The overarching goal of the South Bay Salt Pond Restoration Project is to restore and enhance wetlands in the South San Francisco Bay, while providing for flood management and wildlife-oriented public access and recreation. This MOU supersedes the MOU among FWS, DFG, and SCC entered into on May 27, 2003 with regard to the South Bay Salt Pond Restoration Project.

A. Purpose

This MOU is an agreement among the Agencies 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 exchange information with 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. 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).

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

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 threatened and endangered species, provide for flood management, and provide wildlife-oriented public access and recreation opportunities in the South San Francisco Bay.
3. On July 24, 2002, the U.S. Army Corps of Engineers was requested by the House 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). The South San Francisco Bay Shoreline Study and the South Bay Salt Ponds Restoration Project are complementary efforts and the Agencies agree that close coordination of these efforts is essential to developing a successful restoration plan.
4. 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 \$14 million. In order to ensure the development of a publicly supported restoration plan, the Agencies will engage trustee and regulatory agencies, local governments, nongovernmental organizations, the scientific community, and the public in the restoration planning process.
5. The Agencies agree to include in the planning process other adjoining parcels owned by DFG, FWS, SCVWD, and ACFCD 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 the restoration planning efforts with other current and potential restoration 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 in Planning.

The Agencies agree to the following description of the roles and responsibilities of the parties:

1. The SCC, in close cooperation with the FWS, DFG, SCVWD and ACFCD, will lead the development of the plan for the long-term restoration and management of the property. The Agencies 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. It is anticipated at this time that DFG will be the lead agency under CEQA and that FWS will be the lead agency under NEPA.
 4. The SCVWD and ACFCD agree to identify and ensure availability of management and technical staff to actively participate in the Project Management Team and in preparation and review of technical documents.
 5. The Agencies agree to achieve consensus among them prior to taking actions that may significantly impact the long-term restoration planning. The Agencies 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 Agencies agree that each of them will have the opportunity to review and comment on the Project's Draft Environmental Impact Report/Environmental Impact Statement at the administrative draft stage. The Agencies 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 meets the needs and legal obligations of those decision makers. Each party commits to keeping its decision-making body informed of restoration planning progress, and to informing the Project Management Team of issues or concerns regarding the restoration planning as they arise.

D. Funds for Planning

The parties agree to work together to secure the approximately \$14 million in restoration planning costs over the period of five years, as follows:

1. The SCC has committed \$3,050,000 of its own funds and \$3,000,000 of funds that will be reimbursed by the Wildlife Conservation Board 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 \$5,800,000 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.

4. The SCVWD and ACFCF agree to seek funds to supplement the funding being provided by SCC and by the Foundations. In addition to their own funding mechanisms, the SCVWD and ACFCF will actively support efforts to obtain funds for the U.S. Army Corps of Engineers for the South San Francisco Bay Shoreline Study.

E. Project Management Structure

The Agencies 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 the long-term restoration planning and to actively contribute to the public's and the scientific community's understanding of the planning in order to produce a scientifically-sound, publicly supported plan for implementation. 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 and the California/Nevada Operations Manager of the FWS, to oversee the long-term restoration planning and resolve critical issues that may arise during planning.

A Project Management Team, made up of the Agencies' staff, the Lead Scientist, the U.S. Army Corps of Engineers, the Executive Project Manager and 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.

An Executive Council, made up of high-level trustee and regulatory agency representatives, to provide advice 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 project.

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

A Stakeholder Forum, made up of 28 invited members representing interested organizations, agencies, and individuals, who will meet approximately quarterly to obtain project status updates, to exchange facts and information, and to support the planning process.

Work Groups, made up of members of the Stakeholder Forum, the Regulatory and Trustee Agency Group, and other members of the public to provide information and to support the planning process.

A Local Government Forum, made up of elected officials (Federal, State, and local) and their staff from the project area to ensure coordination with other activities in the project area and to provide a communication link with elected officials.

A Science Team, led by a Lead Scientist and made up of scientists, engineers, and others with needed expertise to establish an approach to science as an integral component of the

project, review the progress of restoration planning and provide information regarding technical issues in order to ensure a scientifically-sound restoration plan.

A *National Science Panel*, made up of wetland restoration and other technical experts, to meet at the beginning and at strategic points in the planning process to review the process and science used in the development and implementation of the restoration plan.

F. Public Outreach and Participation

The Agencies 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 is involved in the planning process.

G. Consensus Building

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

H. Work Program

The Agencies 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:

Development of Objectives

The Project Management Team, in consultation with the agencies, organizations, and individuals participating in the process, developed objectives for the South Bay Salt Ponds Project within the context of the overarching goal for the Project. These objectives have been reviewed and confirmed by the Stakeholder Forum as a group.

Develop Science Approach

The approach to science as an integral component of the project will be developed early in the Project. This will include development of appropriate conceptual models, synthesis of available information, and identification of key questions to be answered prior to the Record of Decision and during the implementation phase of the Project. This approach will lead to the development of the adaptive management methodology for the Project.

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 man-

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

agement issues, cultural resources, existing public access and recreation, and existing infrastructure in the project 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 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 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 will be conducted in a phased approach over a fairly lengthy period of time. As the Project is conducted, problems or opportunities will 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.

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

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 Agencies agree to actively seek funds to implement the restoration plan from all possible Federal and State sources (including the U.S. Army Corps of Engineers and CALFED), 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, CA/NV Manager

By: _____
Ryan Broddrick, Director

Date: _____

Date: _____

STATE COASTAL CONSERVANCY

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Sam Schuchat, Executive Officer

By: 
Stan Williams, CEO

Date: _____

Date: 12/30/04

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Donald LaBelle, Public Works Director

Date: _____

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, CA/NV Manager

By: 
L. Ryan Broddrick, Director

Date: _____

Date: Sept 07, 2004

STATE COASTAL CONSERVANCY

SANTA CLARA VALLEY WATER DISTRICT

By: 
Sam Schuchat, Executive Officer

By: _____
Stan Williams, CEO

Date: 9/23/04

Date: _____

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Donald LaBelle, Public Works Director

Date: _____

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, CA/NV Manager

By: _____
Ryan Broddrick, Director

Date: _____

Date: _____

STATE COASTAL CONSERVANCY

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Sam Schuchat, Executive Officer

By: _____
Stan Williams, CEO

Date: _____

Date: _____

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: 
Donald LaBelle, Public Works Director

Date: 21 Dec 2004

Approved as to form:

Richard E. Winnie, County Counsel

By: 
Deputy County Counsel

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: _____
Ryan Broddrick, Director

Date: 1/11/2005

Date: _____

STATE COASTAL CONSERVANCY

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Sam Schuchat, Executive Officer

By: _____
Stan Williams, CEO

Date: _____

Date: _____

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Donald LaBelle, Public Works Director

Date: _____