

OCTOBER 14, 2019 STAFF DRAFT
Proposed Amendment to the
Santa Monica Bay Restoration Commission
Memorandum of Understanding
As Amended [*adoption date of the MOU*] by
Governing Board Resolution *19-XX*

I. INTRODUCTION

The Santa Monica Bay Restoration Commission (Commission) was established by an act of the California Legislature (Senate Bill 1381, Kuehl) in 2002 to monitor, assess, coordinate, and advise the activities of state programs and oversee funding that affects the beneficial uses, restoration and enhancement of Santa Monica Bay and its watersheds. The Commission is a non-regulatory, locally based state entity whose functions, governance and membership are set forth in this Memorandum of Understanding (MOU). It is the intent of the Legislature that the Commission shall independently execute its duties and that the Commission's membership shall include federal, state, and local public agency officials, and employees and representatives of other stakeholder interests.

The purpose of this MOU is to set forth the agreement among the Secretary for the California Environmental Protection Agency (CalEPA), the Secretary of the California Natural Resources Agency, and the Chairperson of the Commission, pursuant to the provisions of California Public Resources Code section 30988.2(b)(1), to establish and implement an effective and efficient governance structure to ensure the success of the Santa Monica Bay National Estuary Program (NEP). Since the formation of the Santa Monica Bay NEP in 1988, the Santa Monica Bay Restoration Project, followed by the Commission, have used an iterative process to establish and meet the goals and objectives of the Santa Monica Bay NEP. A clear, efficient, and effective governance structure is a key element of a successful NEP. Pursuant to the requirement of California Public Resources Code (sections 30988-30988.3), the original MOU was adopted and signed in 2003 by the Secretary for Environmental Protection, the Secretary for Natural Resources, and the Santa Monica Bay Watershed Council Chair. This MOU outlines the Commission's: mission and goal statements, authorities, functions, organizational structure and governance, reporting, and conflict of interest and disclosure policy; how the Santa Monica Bay governance structure is aligned with the NEP governance structure; and the agreement among the Secretary for Environmental Protection, the Secretary for Natural Resources, and the Chairperson of the Commission.

II. MISSION, GOAL, OBJECTIVES, AUTHORITIES, AND FUNCTIONS

Mission Statement

The Commission's mission is to restore and enhance the Santa Monica Bay through actions and partnerships that improve water quality, conserve and rehabilitate natural resources, mitigate the effects of climate change and sea level rise, and protect Santa Monica Bay's benefits and values.

Goal

The goal of the Commission is to accelerate the pace, extent, and effectiveness of Santa Monica Bay restoration through implementation and financing of actions that improve water quality, conserve and rehabilitate natural resources, mitigate impacts of climate change and sea level rise, and protect the health of Santa Monica Bay's recreational users and wildlife.

Objectives

The Commission will achieve its goal by prioritizing in its educational, monitoring, and bond proceeds expenditure decisions, proposals, or projects designed to achieve Bay restoration objectives that include, but are not limited to, the following:

1. The reduction or elimination of pollution from stormwater (including urban runoff) and point and nonpoint (including on-site wastewater disposal) sources.
2. The reduction or prevention of the threat of oil and sewage spills and leaks.
3. The reduction and prevention of beach erosion.
4. The reduction and prevention of threats to public health from pollution.
5. The prevention of and protection against loss of wetlands, coastal and riparian habitats, and Santa Monica Bay's natural and living resources, and restoration of these resources where they have already been degraded.
6. Effective enforcement of applicable environmental laws.
7. Public education and warnings of any dangers related to consuming contaminated seafood.
8. Increased public education concerning the Santa Monica Bay in collaboration with universities and grades K-12 schools.
9. Assuring that ocean resources are accessible to all Californians regardless of socioeconomic status and are preserved and enhanced for future generations.

The Commission may establish additional goals and objectives and priorities for expenditures, proposals, or projects through an amendment to this MOU. These goals and objectives shall be consistent with the objective statement in statute and the Santa Monica Bay NEP's Conservation and Management Plan (CCMP). **[Comment added by Michael Tripp: "I thought CCMP stood for Comprehensive**

Conservation and Management Plan.”]

Authorities of the Commission

Public Resources Code sections 30988 through 30988.3 pertain to the Santa Monica Bay Restoration Commission. Pursuant to Public Resources Code section 30988.2, subdivision (c), the Commission may do all of the following:

1. Request and receive federal, state, local, and private funds from any source and expend those moneys for the restoration and enhancement of Santa Monica Bay and its watershed.
2. Award and administer grants for the benefit and enhancement of Santa Monica Bay and its watershed.
3. Enter into contracts and joint powers authority agreements, as necessary, to carry out the purposes of the Commission.
4. Monitor, assess, and coordinate activities among federal, state, and local agencies, and where appropriate, private firms, to restore and enhance Santa Monica Bay and its watershed.

Functions of the Commission

The Commission shall carry out any or all of the following functions within its authority in order to achieve its mission, goal, and objectives:

1. Serve as Management Conference of the Santa Monica Bay National Estuary Program defined under Section 320 of the Clean Water Act (Attachment A).
2. Oversee effective implementation of the Santa Monica Bay CCMP.
3. Promote participation by local governments, special districts, community groups, and members of the public who are essential to implementation of Santa Monica Bay watershed protection efforts.
4. Promote collaboration and partnerships among stakeholders.
5. Provide technical and financial support for the implementation of Santa Monica Bay restoration projects.
6. Provide an open and neutral forum for inter-agency and inter-organizational discussion and consensus building.
7. Promote sound science that advances the implementation of the Santa Monica Bay CCMP.
8. Serve as an information clearinghouse for Santa Monica Bay issues that affect the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed.
9. Negotiate and oversee agreements, grants, and contracts. This includes identifying a host entity, entering into an agreement with a host entity, and providing oversight and direction to the host entity to ensure effective implementation of the Santa Monica Bay CCMP.
10. Consult with and advise state programs, policies, or funding that affect the beneficial uses, restoration, and enhancement of the Santa Monica Bay and its watershed.

11. Facilitate inter-agency and inter-organizational efforts to improve the Santa Monica Bay's water quality, mitigation of the impacts of climate change and sea level rise, and restoration of its natural and living resources, including opportunities to leverage funding.
12. Provide information to policymakers and the general public on issues involving Santa Monica Bay through public outreach and involvement programs.
13. Assist member organizations individually and collectively by providing coordination, advice, public education, and leadership in the management and protection of the Santa Monica Bay and its resources.
14. Use and promote an integrated, multi-disciplinary approach to Santa Monica Bay management.
15. Coordinate and host periodic conferences, workshops, or seminars related to the state and management of Santa Monica Bay and its resources.

III. ORGANIZATION AND STRUCTURE

The Commission is a non-regulatory, locally-based state organization whose functions and governance are prescribed in this MOU. The structure of the Commission is composed of the Governing Board, Executive Committee, Technical Advisory Committee, and Santa Monica Bay Stakeholders. The administrative functions of the Commission are supported by State Water Board staff.

The Commission's structure is consistent with guidance from the US EPA on typical NEP Management Conference organizational structure, which may include: (1) elected and appointed policymaking officials from all governmental levels; (2) environmental managers from federal, state, regional, and local agencies; (3) local scientific and academic communities; (4) private citizens; and (5) representatives from public and user interest groups—business, industry, community, and environmental. The Commission's membership meets the EPA guidance, and the organizational structure of the Commission provide integrated opportunities for the Santa Monica Bay Stakeholders to engage in the activities of the Santa Monica Bay NEP in a manner that promotes collaborative decision-making and reflects citizen concerns. The Commission's Governing Board also selects a NEP Host Entity to receive the annual federal CWA Section 320 NEP grant to implement the CCMP. The components of the Management Conference for the Santa Monica Bay NEP, including the NEP parallel, members, member terms, roles and function, meetings and quorum, are described in detail below.

A. Governing Board

The Governing Board is comprised of federal, state, and local public agency officials, staff, and representatives of other stakeholder interests that collectively

make up a non-regulatory board that is the key decision-making authority of the Commission. The Governing Board serves as the Policy Committee within the Management Conference for the Santa Monica Bay NEP.

Governing Board NEP Parallel: Policy Committee.

Governing Board Members. The Governing Board consists of thirty-six (36) members- twenty-seven (27) voting members and nine (9) non-voting members. Governing Board Members are ex-officio, appointed, or elected as indicated in Attachment B. Each Governing Board member may designate up to two (2) alternates to serve in his or her absence.

For appointed Governing Board Members, the appropriate governing bodies or appointment authorities of Boards, Commissions, and municipalities in the watershed shall appoint representatives in accordance with their rules and standard procedures. The Governing Board shall nominate and elect seven (7) additional entities from the following categories to serve on the Governing Board:

- Two (2) representatives of environmental/public interest organizations that operate entirely or partially within the Santa Monica Bay watershed that are in good standing pursuant to Internal Revenue Code section 501 (c)(3);
- Two representatives of the business community/economic interests in the watershed, one of which participates in the coastal tourism industry, that operate entirely or partially within the Santa Monica Bay watershed; and
- Three (3) at-large representatives who meet one of the following criteria:
 - A federal, state, or local agency active in the Santa Monica Bay watershed;
 - An incorporated city entirely or partially within the Santa Monica Bay watershed;
 - A county entirely or partially within the Santa Monica Bay watershed;
 - A for-profit business that operates entirely or partially within the Santa Monica Bay watershed that is in good standing pursuant to Internal Revenue Code section 501(c)(3). [**Comment added by Michael Tripp:** “Isn’t 502(c)(3) specifically for non-profit entities?”]

No person or entity may serve in more than one position. Membership on the Governing Board will not diminish the regulatory responsibilities or authority of any participating agency or organization.

The voting Governing Board members shall elect a Chairperson from among the

voting Governing Board members, who will preside over all Commission Board meetings and work closely with the staff of the Commission to convene Board meetings and prepare Board agendas and reports. The voting Governing Board members shall also elect no more than eight Vice-chairpersons and other officers, as necessary, from among the voting Governing Board members. The Vice-chairs may act as chair in his or her absence.

Governing Board Member Terms. The term for elected Governing Board members shall be two (2) years. Elected Governing Board members may serve consecutive terms upon re-election. Governing Board members can nominate entities for election to the Governing Board during a nomination period that will be established prior to the date of election. The election of the Governing Board members shall be held during a regular Governing Board meeting by roll-call vote of voting members and the member term shall be effective immediately after election. In the event of a mid-term vacancy, the Governing Board shall elect a replacement to serve the remainder of the term.

The term for appointed or *ex-officio* Governing Board Members is ongoing. No person shall continue as a member of the board if he or she ceases to hold the office or ceases to be employed by the organization that qualifies that person to be appointed as a member of the board. Any vacancy should be filled expeditiously by the appointing body.

Governing Board members can nominate Chairs and Vice-chairs from existing Governing Board members during a nomination period that will be established prior to the date of election. The election of the Chair and Vice-chairs shall be held during a regular Governing Board meeting by roll-call vote of voting members and the member term shall be effective immediately after election. In the event of a mid-term vacancy of the chair or Vice-chair, the Governing Board shall elect a replacement to serve the remainder of the term.

Governing Board Roles and Functions. The Governing Board is one of the key decision-making authorities of the Commission that is responsible for creating a long-term vision, setting program priorities, and providing oversight and direction to the Executive Committee, Commission staff, and the Host Entity to assist in implementing these objectives. The Governing Board is also responsible for soliciting input and considering recommendations from the Executive Committee, Commission staff, Host Entity, Technical Advisory Committee, and Santa Monica Bay Stakeholders.

To support the successful implementation of the mission, goals, and objectives in this MOU and the CCMP, the Governing Board can perform the following roles and functions including, but not limited to:

1. Guide, review, and evaluate the program;
2. Oversee development of and approve the CCMP, CCMP revisions or

- updates, Santa Monica Bay NEP annual work plans, and any other plans, products, or resolutions of the Commission;
3. Approve program and funding priorities, resource and funding allocations, budgets, expenditures, and the use of funds appropriated to, or received directly by the Commission for activities or projects;
 4. Authorize Commission staff to enter into legal agreements on behalf of the Commission, as necessary;
 5. Monitor, assess, coordinate, and advise all state programs that affect the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed;
 6. Select and enter into an agreement with a host entity and provide oversight and direction to the host entity;
 7. Encourage a cooperative approach in addressing issues of regional and watershed significance;
 8. Inform the Santa Monica Bay Stakeholders about Commission activities and provide opportunities for public involvement;
 9. Encourage participation as a Santa Monica Bay Stakeholder;
 10. Amend the MOU by a majority of a quorum of voting members as necessary; and
 11. Adopt a Conflict of Interest Code.

Governing Board Meetings. The Governing Board shall endeavor to meet at least four times a year. The meetings will be held in accordance with the Bagley-Keene Open Meetings Act (commencing with Government Code Section 11120).

Governing Board Quorum. A quorum shall consist of a majority of the voting members of the Governing Board. An action is taken by the Governing Board if it is taken by a majority of a quorum of voting members.

B. Executive Committee

The Executive Committee consists of nine members and is a subset of members of the Governing Board. The Executive Committee is charged with overseeing the work activities of the Commission such as regular communication with staff of the Commission and developing agendas for the Commission's regular Governing Board meetings.

Executive Committee NEP Parallel: Management Committee

Executive Committee Members. Membership of the Executive Committee shall consist of the Chair and Vice-chairs of the Governing Board. The Executive Committee shall represent the signatory agencies of this MOU and reflect the diverse stakeholder interests represented on the Governing Board. The Chair of the Governing Board shall be the Chair of the Executive Committee.

Executive Committee Member Terms. The term of Executive Committee members shall be two (2) years. Executive Committee members may serve consecutive terms. The terms of the Chair and Vice-chairs of the Executive Committee shall take effect immediately upon their election by the Governing Board.

Executive Committee Roles and Functions. The Executive Committee is one of the key decision-making authorities of the Commission that is responsible for the planning and implementation of the Commission's vision, mission, goal, objectives, and program priorities as well as providing direction to Commission staff and the Host Entity to assist in implementing these objectives. The Executive Committee is also responsible for soliciting input and considering recommendations from the Commission staff, Host Entity, Technical Advisory Committee, and Santa Monica Bay Stakeholders.

To support the successful implementation of the mission, goals, and objectives in this MOU and the CCMP, the Executive Committee will solicit and consider input from the Chief Administrative Director, Commission staff, the Host Entity, and Santa Monica Bay Stakeholders when performing its roles and functions. The Executive Committee is responsible for the following roles and functions including, but not limited to:

1. Act as a liaison to the Governing Board and facilitate clear communication with the other components of the Management Conference (e.g., Governing Board, Chief Administrative Director, Commission staff, and the Host Entity) to convey the Governing Board's direction;
2. Prepare agendas for the Commission's Governing Board meetings;
3. Provide oversight and direction to the Chief Administrative Director, Commission staff, and Host Entity as needed to develop and make recommendations to the Governing Board regarding:
 - a. The development of the CCMP, CCMP revisions or updates, Santa Monica Bay NEP annual work plans, and any other plans, products, or resolutions of the Commission;
 - b. Program and funding priorities, resource and funding allocations, budgets, expenditures, and the use of funds appropriated to, or received directly by the Commission for activities or projects;
 - c. Monitoring, assessing, coordinating with, and advising state programs that affect the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed;
 - d. Development of legal agreements on behalf of the Commission;
 - e. Development of an agreement with a host entity
4. Identify the need for special committees, establishing special committees, and appointing members to these committees to address issues that may include, but are not limited to fundraising, habitat-specific restoration planning, and outreach; and

5. Inform the Santa Monica Bay stakeholders about Commission activities and provide opportunities for public involvement.

Executive Committee Meetings. The Executive Committee shall endeavor to meet at least four times a year in accordance with the Bagley-Keene Open Meetings Act (commencing with Government Code Section 11120), alternating those months with the meetings of the Governing Board. The Executive Committee shall also meet more often as directed by the Governing Board, and as requested by the Chief Administrative Director or two or more members of the Executive Committee.

Executive Committee Quorum. A quorum of the Executive Committee shall consist of a majority of its members. Any action of the Executive Committee shall be taken by a majority vote of the Executive Committee members.

C. Technical Advisory Committee (TAC)

The Technical Advisory Committee serves as the scientific expertise to provide scientific information to and advise the Commission and Host Entity. The TAC is comprised of scientific experts who are knowledgeable about the state of the science in a variety of technical areas related to the Commission's mission, goals, and objectives in Santa Monica Bay and its watershed.

TAC NEP Parallel. Scientific and Technical Advisory Committee.

TAC Members. The TAC consists of experts in coastal and watershed science who provide scientific information and recommendations on a broad range of subject areas to inform the Governing Board and the Host Entity on scientific issues related to the Santa Monica Bay. TAC members contribute the latest technical input on issues, i.e. they have a working knowledge of the current scientific literature in their field and preferably are actively publishing. TAC members represent a range of scientific specialties, for example intertidal ecology, fisheries, physical oceanography, plankton, sea birds, sediments, wetlands, sandy shores, rocky reefs, pelagic ecology, freshwater and riparian systems, etc. They are drawn from a variety of sectors, e.g. academia, nonprofits, municipalities, or government agencies, but they function as non-biased, non-partisan scientific experts, not as representatives of their sectors.

The members of the TAC will appoint a Chair, for a two-year term, who has a broad understanding of scientific issues in Santa Monica Bay and can provide strong leadership and direction to the group. The members of the TAC will also appoint a Vice-chair to serve in the Chair's absence.

TAC Member Terms. TAC membership is for a two-year term. Members may serve consecutive terms upon reappointment. TAC members will work with the Chief Administrative Director to nominate existing members for reappointment, and

to identify new TAC members, or to fill vacancies. The nominations for reappointment and new TAC members must be approved by a majority vote of the Governing Board.

TAC Roles and Responsibilities. The role of the TAC is to function as an unbiased, non-partisan scientific panel that provides technical expertise to support the mission, goals, and objectives of the Commission. The TAC members must work collaboratively to provide scientific information and recommendations on technical issues to present to the Governing Board. In the event the TAC members are not in consensus on an issue or recommendation, the TAC may provide the Governing Board a brief report with all of the TAC members' recommendations and justifications for the recommendations for the Governing Board to consider.

The responsibilities of the TAC are to:

1. Develop and adopt a State of the Bay report every five years and guide State Water Board and the Host Entity staff in coordinating the State of the Bay conference;
2. Identify the highest priority research and projects to achieve the Commission's goals and mission and make project recommendations to the Governing Board for funding as opportunities arise;
3. Report to the Governing Board or Host Entity on technical issues as requested by Governing Board members and develop white papers where appropriate;
4. Convene *ad hoc* committees, with members drawn from both within and outside the TAC, to provide guidance on specific issues;
5. Review select project proposals that are technical in nature or have a strong technical component and provide recommendations to the Governing Board;
6. Review technical components of policies or policy issues identified by the Governing Board or Chief Administrative Director and make scientific recommendations to the Governing Board based on their assessment of the technical issues; and
7. Solicit input from and inform the Santa Monica Bay stakeholders about Commission activities and provide opportunities for public involvement.

TAC Meetings. The TAC shall meet at least once each year and more often as directed by the Governing Board, Executive Committee, or Chief Administrative Director. TAC Meetings shall be held in accordance with the Bagley-Keene Open Meetings Act (Government Code Section 11120, et seq.).

No TAC Quorum. A quorum does not apply to the TAC as it is not a decision-making body, but rather a governance component that provides scientific information and recommendations.

D. Santa Monica Bay Stakeholders: Public Outreach and Involvement

The Santa Monica Bay Stakeholders is the broad stakeholder body of the Commission that functions as a mechanism for interested parties to provide information, recommendations, and input to the Commission. Santa Monica Bay Stakeholders is open to any member or entity interested in the Commission's activities and shall provide the Commission with broad and diverse stakeholder perspectives throughout the watershed. Santa Monica Bay Stakeholders are encouraged to engage and provide recommendations at all stages of the Commission's decision-making process, including the implementation of the goal and objectives in this MOU and the CCMP.

Santa Monica Bay Stakeholders NEP Parallel. Citizens Advisory Committee.

Santa Monica Bay Stakeholders Membership. Santa Monica Bay Stakeholders group is inclusive and open to any members of the general public, entity, municipality, or organization who is interested in the Commission's activities in the Santa Monica Bay watershed. The Santa Monica Bay Stakeholders should include representation from a broad spectrum of stakeholders in the watershed including but not limited to; fishing interests, recreational users, environmental organizations, citizen councils, business and industry, or other interest groups that operate at least partially within the Santa Monica Bay watershed, as well as the general public. Attachment C includes some of the current Santa Monica Bay Stakeholders.

Santa Monica Bay Stakeholders Member Terms. There is no term limit for participating stakeholders and stakeholders are encouraged to participate on an ongoing basis.

Santa Monica Bay Stakeholders Roles and Functions. The role of the Santa Monica Bay Stakeholders is to support and advise the Commission regarding restoration priorities for funding, planning, project implementation, monitoring and further research as well as the update and implementation of the CCMP and program priorities of the Commission. The Santa Monica Bay Stakeholders may carry out their supporting and advisory role by activities including, but not limited to:

1. Providing the Commission written and verbal comments, information, input, and constructive feedback on Commission work products and activities.
 - a. This engagement and communication should be on an ongoing basis, but also during meetings, workshops, conferences, forums, and other events organized by the Commission to promote information dissemination and exchange;
 - b. This includes providing comments on the development and implementation of the CCMP and the Commission's priorities.
2. Raising issues of public concern in the Santa Monica Bay watershed to the Commission and provide recommendations or actions the

- Commission could consider to address the issues;
3. Promoting participation by local governments, special districts, and community groups who are essential to implementation of watershed protection efforts;
 4. Promoting collaboration and partnerships among stakeholders, including potential funding opportunities;
 5. Assisting member organizations individually and collectively by providing coordination, public education, and leadership in the management and protection of the Santa Monica Bay and its resources with the goal of increasing awareness of issues within the Santa Monica Bay watershed; and
 6. Organizing work groups to focus on priority issues of concern.

Meetings and Participation. Santa Monica Bay Stakeholders are encouraged to attend Commission meetings (e.g., Governing Board, Executive Committee, Technical Advisory Committee) and provide comments during public forum. A public workshop meeting shall be held at least once every year to disseminate information to the Santa Monica Bay Stakeholders on the activities of the Commission and the Santa Monica Bay NEP, to respond to public inquiry, and to solicit public input on the annual work plan priorities, the CCMP update and revision, amendment of this MOU, and other functions of the Commission. The Workshop(s) may be held in conjunction with the Governing Board, Executive Committee, and/or Technical Advisory Committee meetings. The Workshop(s) shall be an open and neutral forum for public discussion and consensus building. The Workshop(s) shall be publicly noticed and chaired by the Governing Board Chair or Vice-Chair.

No Santa Monica Bay Stakeholders Quorum. A quorum of Santa Monica Bay Stakeholders does not apply to the public workshops since the Santa Monica Bay Stakeholders are not a decision-making body under the management conference, but rather a critical forum for the Santa Monica Bay Stakeholders to provide information and recommendations to inform the Commission's decision-making process.

E. The Santa Monica Bay NEP Host Entity

The Commission serves as the Management Conference of the Santa Monica Bay NEP and is charged with overseeing the implementation of the CCMP. To ensure effective implementation of the CCMP, the Commission has the authority to select and enter into a memorandum of agreement with a Host Entity to administer the EPA assistance agreement that supports the activities and projects of the Santa Monica Bay NEP. The Santa Monica Bay NEP Host Entity receives the annual federal CWA Section 320 NEP grant on behalf of the Commission after determination by USEPA that the Host Entity meets the general administrative requirements for federal grants pursuant to 2 CFR Parts 200, and 1500, and comply with special provisions for NEPs included in 40 CFR 35.9000 et seq.

Under the direction of the Commission and upon approval of the Commission's Governing Board, the roles and responsibilities of the Host Entity, as entered into the memorandum of agreement shall include, but are not limited to:

1. Develop and implement annual work plan of the Santa Monica Bay NEP;
2. Revise and update the CCMP;
3. Receive and manage the annual federal CWA Section 320 NEP grant;
4. Solicit and receive sources of grant funding for CCMP implementation;
5. Provide support to the Santa Monica Bay NEP Management Conference.

Upon concurrence and approval by the Governing Board, the Host Entity may provide a NEP director who is responsible for EPA grant management and daily operation of the Host Entity, and serves as liaison and representative of the Santa Monica Bay NEP.

The Bay Foundation (TBF), which was initially established by the Santa Monica Bay Restoration Project has served as the Host Entity since 2005. The Governing Board has the ability to assess the performance of the Host Entity to ensure effective implementation of its CCMP on an ongoing basis and can decide at any time to select a new Host Entity for the Santa Monica Bay NEP. For example, the Governing Board could determine that the current Host Entity lacks the capacity to support the Santa Monica Bay NEP's administrative and/or financial needs and initiate a process to identify a new Host Entity. A description of the roles and responsibilities of the Commission and Host Entity are further defined and established in a Memorandum of Agreement.

F. Administration

SB 1381 requires that the State Water Board provide administrative services to the Commission. Administrative Services provided by the State Water Board include a Chief Administrative Director, additional staff, and other administrative support functions.

Chief Administrative Director and SMBRC staff. Commencing with Public Resources Code section 30988.2, subdivision (a), a Chief Administrative Director position was established within the State Water Board to oversee administrative functions of the Commission and implement the directives of the Governing Board. The primary roles and functions of the Chief Administrative Director include but are not limited to:

1. Coordinate and execute the meetings and workshops of the Commission and the Management Conference;
2. Manage memberships of the Governing Board and various committees;
3. Serve as a point of contact and liaison among the various components of the Management Conference;
4. Manage the retention of, and respond to requests for documents and other records;

5. Develop an annual work plan and report to the Governing Board work plan implementation progress in collaboration with the Santa Monica Bay NEP Host Entity; and
6. Interact with USEPA and the Santa Monica Bay NEP Host Entity to ensure NEP program guidance and requirements are met.

The State Water Board is responsible for recruiting and determining the terms of the employment in accordance with the applicable state civil service rules and regulations. The State Water Board may also recruit additional staff, provide counsel service, loan to, or accept the loan of employees from other state agencies.

IV. OPERATION

Pursuant to Public Resources Code 30988.2, the Commission shall independently execute its duties and authorities as authorized with administrative services provided by the State Water Resources Control Board. Within the State Treasury, a Santa Monica Bay Restoration Account is created and monies in the account may be expended, upon appropriation by the Legislature, to support the activities of the Commission. At such time that funds are deposited in this account, semi-annual financial reports will be presented to the Governing Board at a Governing Board meeting.

V. PROGRESS REPORTS

To ensure accountability and to allow for periodic evaluation of progress, the Commission will prepare Annual Reports that summarize the accomplishments of the Commission and its Governing Board, Executive Committee, and Technical Advisory Committee in meeting its objectives and implementing the CCMP. These reports will be made public and given widespread distribution.

VI. CONFLICT OF INTEREST AND DISCLOSURE POLICY

All members of the Governing Board are obliged to avoid any conflict of interest and must disclose to the Board any real or potential conflict of interest in any transaction or project under consideration by the Commission. In addition, members of the Governing Board are subject to the Political Reform Act (commencing with Government Code section 81000). The Governing Board shall maintain a conflict of interest code consistent with the Political Reform Act and designate appropriate positions that shall be subject to economic interest disclosures. Nothing in this section shall reduce the Commission or its members' obligations under federal or California law.

A conflict of interest may exist whenever a member of the Board (including a spouse, sibling, parent or child of a Board member) has a personal, material financial interest in a transaction or project under consideration by the Board.

If the Governing Board determines that a transaction or project involves a conflict of interest, whether real or apparent, by a member of the Board, the Board shall, at a minimum, require the Board member to abstain from voting on any such issue.

The Governing Board may approve of such a project or transaction if the Board makes specific findings that the transaction or project is (1) fair and benefits the objectives of the Commission; and (2) approved with the full knowledge of the economic benefit to the Board member involved in the conflict of interest.

VII. AGREEMENT

- 1) The signatories to this Memorandum of Understanding will support the goals and objectives of the MOU upon signing of this MOU and the election and appointment of at least a quorum of members of the Governing Board.
- 2) The members of the Governing Board and all other participants of the Commission shall work together in a cooperative and collaborative manner. In cases of disputes over Commission projects, members shall engage in a good faith effort to resolve disagreements. (See Attachment D)
- 3) Amendments to the MOU may be proposed to the Chairperson of the Governing Board at any time and shall become effective upon approval by a majority of the voting members of the Governing Board.

This is a true and correct copy of the Memorandum of Understanding approved by the Governing Board of the Santa Monica Bay Restoration Commission on [*date proposed amendment to the MOU is approved*], pursuant to Resolution 19-XX.

Signed:

Secretary, California Environmental Protection Agency

Date: _____

Secretary, California Natural Resources Agency

Date: _____

Date: _____

Chair, Santa Monica Bay Restoration Commission Governing Board

[Approved by the Bay Watershed Council 5/7/03, including amendments from 7/31/03 and 12/15/05 based on revisions as recommended by review by Office of Chief Counsel 10/12/03, and Governing Board amendments made 12/15/05, 10/18/07, 4/16/09, 10/20/11, 12/15/11, 4/19/12, 2/21/13, 2/20/14, and 6/19/14]

ATTACHMENT A. United States Environmental Protection Agency's National Estuary Program Memo

ATTACHMENT B. Governing Board Members

ATTACHMENT C. Santa Monica Bay Stakeholders

ATTACHMENT D. Dispute Resolution Procedures

ATTACHMENT A
United States Environmental Protection Agency's
National Estuary Program Memo

DRAFT

TO: Chair, Santa Monica Bay Restoration Commission Governing Board

CC: EPA Region 9

DATE: 10/04/2019

RE: EPA Role in the Santa Monica Bay National Estuary Program (SMBNEP)

Introduction

The U.S. Environmental Protection Agency (EPA) is summarizing its role in the SMBNEP. The discussion below is necessarily a summary, although it does highlight the primary functions of EPA in the locally-driven National Estuary Program (NEP) partnership in the Santa Monica Bay.

We believe that EPA's role can best be described as three separate, but related, activities.

I. EPA convened the Management Conference required for the SMBNEP under Clean Water Act Section 320(a)(2) in 1988 and approved the initial Comprehensive Conservation and Management Plan (CCMP) in 1995.

Since its inception in 1988, the structure of the SMBNEP has undergone several organizational changes. Notably, in 2002, the State of California organized the SMBNEP as the state agency Santa Monica Bay Restoration Commission (Commission).^[1] The Commission's membership, committee structure, and decision-making processes are outlined in Santa Monica Bay Restoration Commission Memorandum of Understanding (Commission MOU), which was originally approved in 2003 by the Secretary of the California Resources Agency, the Secretary of the California Environmental Protection Agency, and the President of the Santa Monica Bay Watershed Council, and was most recently amended February 20, 2014.^[2]

EPA's National Estuary Program provides flexibility for individual programs to organize themselves in ways that respond to local conditions: "...[(E)ach NEP is uniquely structured, organized, and governed by its partners.....[EPA guidance documents are] not intended to be prescriptive." ^[3]

After the initial organization of the SMBNEP, EPA's primary roles include grant oversight and technical/advisory assistance. Under the Commission MOU, the EPA's

Regional Administrator or his/her delegate serves as a nonvoting, ex-officio member of the Commission's Governing Board. In addition, EPA reviews and approves revisions or updates of the CCMP as well as annual workplans.^[4]

II. EPA provides federal funding for SMBNEP operations and CCMP project implementation through an annual assistance agreement with the designated host entity.

The Bay Foundation (Foundation) has been the "host entity" for the SMBNEP since 2006. For EPA purposes, the host entity "administers the EPA assistance agreement that supports the activities and projects of the NEP."^[5] The relationship between the Commission and Foundation is established and described in the Memorandum of Agreement Between the Santa Monica Bay Restoration Commission and The Bay Foundation Regarding the Santa Monica Bay National Estuary Program,^[6] first signed in 2012 and most recently amended June 15, 2017.

EPA's role in funding is described in its entirety in the annual assistance agreement between EPA and The Bay Foundation. These annual assistance agreements must meet the general administrative requirements for federal grants pursuant to 2 CFR Parts 200, and 1500, and must also comply with special provisions for NEPs included in 40 CFR 35.9000 *et seq.*

EPA's administration of the assistance agreements is managed by EPA's Region 9.

III. EPA's National Office performs a Program Evaluation of the SMBNEP. This is a comprehensive program evaluation that is carried out by a special review team managed by EPA Headquarters. It occurs on a 5-year cycle, including one being performed in 2019.

"The primary purpose of the Program Evaluation (PE) process is to help the U.S. Environmental Protection Agency (EPA) assess how the implementation of Comprehensive Conservation and Management Plans (CCMPs) by the 28 programs included in the National Estuary Program (NEP) are making adequate progress in achieving programmatic and environmental results. Documented progress enables continued funding under §320 of the Clean Water Act (CWA)."^[7]

The Program Evaluation is a comprehensive process that involves, at a minimum, a 5-year progress report written by NEP staff, a site visit by the PE review team, and the development of an evaluation letter with a corresponding rating, summary of findings, and recommendations by the PE review team. More information about the review process is available at <https://www.epa.gov/nep/progress-evaluation-national-estuary-program>.

[1] Cal.Pub.Resources Code Sections 30988(d), 30988.2.

[2] Available at https://www.smbrc.ca.gov/about_us/docs/mou.pdf.

[3] Frequently Asked Questions on National Estuary Program (NEP) Governance (FAQS), EPA, February 19, 2015, at page 1. Available at https://www.smbrc.ca.gov/about_us/orientation/docs/usepa_nep_governance_faq.pdf.

[4] FY 2017-2019 Clean Water Act Section 320 National Estuary Funding Guidance, EPA, Updated April 7, 2017, at page 13.

[5] FAQS, at page 2.

[6] Available at https://www.smbrc.ca.gov/about_us/docs/moa.pdf.

[7] National Estuary Program - Program Evaluation Guidance, EPA, August 3, 2016, at page 3. Available at <https://www.epa.gov/sites/production/files/2015-09/documents/2011-final-nep-pe-guidance.pdf>.

ATTACHMENT B
Santa Monica Bay Restoration Commission Governing Board Members

Governing Board Seat	Ex-officio, Appointed, or Elected
Voting Members	
Secretary for Environmental Protection	<i>Ex-officio</i>
Secretary of the Resources Agency	<i>Ex-officio</i>
Member, California Regional Water Quality Control Board – Los Angeles	Appointed by the Governor
Member, California Coastal Commission	Appointed by the either by the Governor and California Legislature
Member, California State Coastal Conservancy	Appointed by the Governor and California Legislature
Supervisor, County of Los Angeles (Districts 3 or 4)	Appointed by the Board of Supervisors
Mayor or Councilmember, City of Los Angeles (SM Bay watershed district)	Appointed by the Mayor, with approval of the City Council
Councilmember for District 11, City of Los Angeles	<i>Ex-officio</i>
Mayor or Councilmember, South Bay cities	Appointed by the Appropriate COG from the following eligible members of the Santa Monica Bay Stakeholders: El Segundo, Manhattan Beach, Hermosa Beach, Inglewood, Redondo Beach, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, Rolling Hills, Torrance
Mayor or Councilmember, Malibu Creek watershed cities	Appointed by the Appropriate COG from the following eligible members of the Santa Monica Bay Stakeholders: Agoura Hills, Calabasas, Malibu, Hidden Hills, Westlake Village
Mayor or Councilmember, Ballona Creek watershed cities	Appointed by the Appropriate COG from the following eligible members of the Santa Monica Bay Stakeholders: Beverly Hills, Culver City, Santa Monica, West Hollywood
Public member, environmental/public interest	Elected by the Governing Board from among members of the Santa Monica Bay Stakeholders pursuant to the criteria in Section III. A. representing environmental/public interest organizations

Public member, environmental/public interest	Elected by the Governing Board from among members of the Santa Monica Bay Stakeholders pursuant to the criteria in Section III. A. representing environmental/public interest organizations
Public member, business/economic interest	Elected by the Governing Board from among members of the Santa Monica Bay Stakeholders pursuant to the criteria in Section III. A. representing business/economic interests
Public member, coastal tourism industry	Elected by the Governing Board from among members of the Santa Monica Bay Stakeholders representing business/economic interests, pursuant to the criteria in Section III. A. Member must participate in coastal tourism industry.
General Manager, Los Angeles County Sanitation Districts	<i>Ex-officio</i>
Director, Public Works Department, City of LA	<i>Ex-officio</i>
Director, County of Los Angeles, Department of Public Works	<i>Ex-officio</i>
At-large Member	Elected by the Governing Board from among members of Santa Monica Bay Stakeholders pursuant to the criteria in Section III. A.
At-large Member	Elected by the Governing Board from among members of Santa Monica Bay Stakeholders pursuant to the criteria in Section III. A.
At-large Member	Elected by the Governing Board from among members of Santa Monica Bay Stakeholders pursuant to the criteria in Section III. A.
Director, CA Department of Fish and Wildlife	<i>Ex-officio</i>
Director, CA Department of Parks and Recreation	<i>Ex-officio</i>
Director, Santa Monica Mountains Conservancy	<i>Ex-officio</i>
Director, Los Angeles County Dept. of Beaches and Harbors	<i>Ex-officio</i>
Officer, Las Virgenes Municipal Water District	<i>Ex-officio</i>

Chief, Los Angeles County Fire Department, LifeGuard Division	<i>Ex-officio</i>
Non-voting Members	
Regional Administrator, US EPA Region 9	<i>Ex-officio</i>
Director, NOAA-NMFS Southwest Division	<i>Ex-officio</i>
State Senator, 26th District	<i>Ex-officio</i>
State Senator, 27th District	<i>Ex-officio</i>
State Assemblymember, 50th District	<i>Ex-officio</i>
State Assemblymember, 62nd District	<i>Ex-officio</i>
State Assemblymember, 66th District	<i>Ex-officio</i>
Chair, Technical Advisory Committee	<i>Ex-officio</i>
President, Santa Monica Bay Restoration Foundation Board	<i>Ex-officio</i>

ATTACHMENT C
The Santa Monica Bay Stakeholders

The Santa Monica Bay Stakeholders is open to any and all interested parties active in the Santa Monica Bay watershed. Below is a list of some of the Santa Monica Bay Stakeholders (* also Governing Board Member).

Local Municipalities City of Agoura Hills City of Beverly Hills City of Calabasas
City of Culver City
City of El Segundo
City of Hermosa Beach
City of Inglewood City of Los Angeles* City of Malibu*
City of Manhattan Beach
City of Palos Verdes Estates* City of Rancho Palos Verdes City of Redondo Beach
City of Rolling Hills
City of Rolling Hills Estates
City of Santa Monica* City of Thousand Oaks City of Torrance
City of West Hollywood
City of Westlake Village
LA County Supervisor, District 3* LA County Supervisor, District 4

Federal, State and Local Agencies (water quality, resource management, public health) US EPA Region 9*
NOAA-NMFS Southwest Division* US Army Corps of Engineers National Park Service,
State Water Resources Control Board*
CA Regional Water Quality Control Board - Los Angeles Region*
CA Coastal Commission*
CA State Coastal Conservancy* CA Dept. of Fish and Wildlife*
CA Dept. of Parks and Recreation* Santa Monica Mountains Conservancy*
Resource Conservation District of SM Mtns.* LA County Fire Department - Lifeguard Division*
LA County Department of Public Health Services
LA County Dept. of Beaches and Harbors*

Stormwater and Municipal Wastewater Management Agencies

CalTrans, District 7
County Sanitation Districts of LA County* Las Virgenes Municipal Water District*
City of Los Angeles, Bureau of Sanitation* City of Los Angeles, Bureau of Engineering
County of Los Angeles, Dept. of Public Works* West Basin Municipal Water District*

Utilities/Industry/Business

Brash Industries
Chevron Products Company*
City of Los Angeles, Dept. of Water and Power
NRG - El Segundo Operations, Inc.

Environmental Organizations/User Groups

Ballona Lagoon Marine Preserve
Ballona Creek Renaissance
Ballona Ecosystem Education Project
Ballona Wetlands Foundation Ballona Wetlands Land Trust Friends of Ballona
Wetlands Heal the Bay*
League for Coastal Protection Los Angeles Rod and Reel Los Angeles
Waterkeeper* Malibu Surfing Association Marina Del Rey Anglers*
Natural Resources Defense Council
Ocean Conservation Society
Santa Monica Bay Audubon Society
Sierra Club - Angeles Chapter
Surfrider Foundation, South Bay Chapter

Legislative Representatives

Senior US Senator
Junior US Senator
US Representative, 30th District* US Representative, 36th District*
State Senators, 26th & 27th Districts**
State Assemblymembers, 50th, 62nd, 66th Districts***

Other Members

Chair, Technical Advisory Committee*
Chair, Malibu Creek Watershed Advisory
Council

ATTACHMENT D

Dispute Resolution Procedures

In the event that consensus cannot be reached in the normal course of Commission proceedings, the parties agree to use the following dispute resolution process:

1. Commission staff meets with the dissenting party(ies) and attempts to resolve the issue(s). If a resolution is found, it will be brought before the board for review and possible approval. If no resolution is reached, then Level Two discussions are initiated.
2. Commission staff arrange for mediation. If an agreement is reached, it will be brought before the Governing Board for its consideration and possible approval. If agreement is not achieved, then Level Three is initiated.
3. The Governing Board Chairperson meets with the disputing parties and makes a recommendation for resolving the issues. This recommendation is brought before the
 - a. Governing Board for approval/disapproval. If agreement is not achieved, then Level Four is initiated.
4. Commission staff, in consultation with the Governing Board, shall arrange for arbitration.