

**Revised June 3, 2020 Draft Staff Report for the  
PROPOSED AMENDMENT TO THE  
SANTA MONICA BAY RESTORATION COMMISSION  
MEMORANDUM OF UNDERSTANDING**

**SANTA MONICA BAY  
RESTORATION COMMISSION**

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## List of Acronyms and Abbreviations

<b>Acronym or Term</b>	<b>Meaning</b>
2014 MOU	2014 Santa Monica Bay Restoration Commission Memorandum of Understanding
Account	Santa Monica Bay Restoration Account
Action Plan	The CCMP Action Plan adopted by the Governing Board in October 2018
Amendment	Proposed amendment to the 2014 Santa Monica Bay Restoration Commission Memorandum of Understanding
Annual Work Plans	Santa Monica Bay NEP Annual Work Plans
CalEPA	California Environmental Protection Agency
CCMP	Santa Monica Bay NEP Comprehensive Conservation and Management Plan
Commission	Santa Monica Bay Restoration Commission
CWA	Clean Water Act
Host Entity	Santa Monica Bay NEP Host Entity
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEP	National Estuary Program
NEP Grant	Annual federal CWA Section 320 NEP grant
SB	Senate Bill
State Water Board	State Water Resources Control Board
TAC	Technical Advisory Committee
US EPA	United States Environmental Protection Agency
WAC	Watershed Advisory Council

## **1 Executive Summary**

The Santa Monica Bay Restoration Commission (Commission) Memorandum of Understanding (MOU) was adopted and signed in 2003 to delineate the authority, governance, and membership of the Commission; ensure the coordination of state programs affecting Santa Monica Bay as required by the establishing legislation, Senate Bill 1381 (SB 1381 (Kuehl, 2001-2002 Reg. Sess.); see specifically Pub. Resources Code, § 30988.2, subd. (b)); and ensure the success of the Santa Monica Bay National Estuary Program (NEP). Since the adoption of the original MOU, the Commission has amended the MOU several times to ensure its structure and governance is improved as needed in order to meet its mission, goal, and objectives. The MOU was most recently amended in 2014 (2014 MOU).

The Santa Monica Bay NEP is designated by the US Environmental Protection Agency (US EPA) to promote collaborative watershed-based partnerships in order to develop and implement a Comprehensive Conservation and Management Plan (hereafter CCMP) that addresses a range of environmental problems facing Santa Monica Bay, while recognizing and balancing the needs of the local community (see Section 320 of the Clean Water Act (CWA) (33 U.S.C., § 1330)). The Commission serves as the Management Conference for the Santa Monica Bay NEP. As such, the Commission is responsible for overseeing the effective implementation of the CCMP and ensuring the success of the Santa Monica Bay NEP. Consistent with US EPA NEP requirements, the CCMP is reviewed and updated every three to five years with major revisions approximately every 10 years to address new and emerging issues and assess the NEP's governance structure. As part of the review and update to the CCMP beginning in 2018, Commission and State Water Resources Control Board (State Water Board) staff initiated a public process to evaluate and revise the Commission's governance structure and considered input from the Commission and the public to develop a proposed amendment to the 2014 MOU (hereafter Amendment). For clarity, the Staff Report will reference the 2014 MOU, the October 14, 2019 draft of the Amendment, the Amendment, or the MOU in general as appropriate.

### **1.1 PURPOSE OF THIS STAFF REPORT**

The purpose of this Staff Report and the Response to Comments document (Attachment C of the Staff Report) are to provide the rationale for the Amendment and explain how the changes support the Commission's ability to oversee and promote CCMP implementation and ensure the success of the Santa Monica Bay NEP. Major changes to the 2014 MOU in the Amendment include:

- Clarified that the Santa Monica Bay NEP is comprised of two distinct entities, the Management Conference and the Host Entity, which includes the NEP Director;
- Clarified that the Commission serves as the Management Conference for the Santa Monica Bay NEP and is comprised of the Governing Board, Executive Committee, Technical Advisory Committee (TAC), Commission staff, and Santa Monica Bay Stakeholders;

- Ensured a clear distinction between authorities and discretionary functions of the Commission as described in the establishing legislation;
- Revised and expanded the functions of the Commission and its components to reflect current practice and the establishing legislation, and enhance to the Commission's ability to serve as the Management Conference for the Santa Monica Bay NEP consistent with US EPA guidance;
- Clarified that the Governing Board is the key decision-making body of the Commission, but may delegate authority to Executive Committee, including decision-making authority;
- Described the Executive Committee and outlined the roles and functions of the Executive Committee including establishing mechanisms for the Commission and the Host Entity, including the NEP Director, to identify issues in the watershed;
- Added the Chief Deputy Director of State Water Board as an ex officio voting member of the Governing Board and Executive Committee; added the NEP Director as an ex officio non-voting member of the Governing Board and Executive Committee; and added the US EPA Regional Administrator of Region 9 as an ex officio non-voting member of the Executive Committee to improve coordination and information exchange within the Santa Monica Bay NEP and advise the long-term vision and day-to-day activities of the Santa Monica Bay NEP;
- Clarified that the TAC serves in an advisory capacity to provide recommendations and information to the Commission and the Host Entity, including the NEP Director;
- Made significant improvements to the Commission's stakeholder engagement processes, including the replacement of the Watershed Advisory Council (WAC) with the Santa Monica Bay Stakeholders and the addition of roles and functions to the components of the Commission for considering input from the Santa Monica Bay Stakeholders;
- Outlined the administrative services provided by the State Water Board as required by the establishing legislation including the roles and functions of Commission staff;
- Characterized the collaborative partnership with the Host Entity and outlined the roles and functions of the Host Entity, including the NEP Director, consistent with US EPA guidance;
- Removed the Operation section because the Santa Monica Bay Restoration Account (Account) was terminated;
- Clarified that the Conflict of Interest and Disclosure Policy applies to voting members of the Governing Board and Executive Committee;
- Removed the Dispute Resolution Procedures because the Commission's structure incorporates processes to discuss and resolve disputes within each of the components;
- Added language to describe the reservation of authority, intended beneficiaries, construction, and execution and amendment of the MOU;
- Clarified the agreement of the signatories of the MOU; and

- Updated and added attachments to provide supplementary information on US EPA's role in the Santa Monica Bay NEP, the Santa Monica Bay NEP entities' interrelationships, and the Governing Board and Executive Committee's membership.

The development of the Amendment was based on US EPA NEP guidance and informed by the establishing legislation, historical organizational documents, information from partners, and examples of structure from other 'sister' NEPs. Commission and State Water Board staff also solicited input from members of the Commission and the general public at several facilitated workshops, Commission meetings, and public workshops to inform the development of the Amendment. Facilitated workshops were held December 13, 2018, January 17, 2019, and January 24, 2019 during Commission meetings. An online survey of the members of the Commission and general public was distributed on February 14, 2019. On May 16, 2019, July 18, 2019, November 21, 2019, and January 16, 2020, the Executive Committee considered scheduling discussion of the Amendment for the Governing Board meeting agendas. Commission and State Water Board staff held public workshops and solicited input in conjunction with the June 20, 2019, October 24, 2019, and December 12, 2019 Governing Board meetings. Commission and State Water Board staff released a draft Amendment on October 14, 2019 for public comment and provided updates at the February 20, 2020 and April 16, 2020 Governing Board meeting. The Governing Board is anticipated to consider approval of the Amendment and Staff Report on June 18, 2020.

Following this Executive Summary, Section 2 of the Staff Report summarizes the goals of the Amendment. Section 3 provides background information on the establishment of the Commission and the components of the Commission as described in the Amendment. Section 4 summarizes the Commission's legislative history and Section 5 summarizes accomplishments of the Santa Monica Bay NEP. Section 6 discusses the Amendment process, including review and update of the CCMP, opportunities to provide input, and feedback received. Section 7 describes the revisions to the Amendment, suggestions by members of the Commission and the public regarding the Amendment, and rationale for incorporating the revisions and suggestions. Attachments of the Staff Report include supplementary information on the entities of the Santa Monica Bay NEP and the components of the Commission, a table of the functions of the Commission per the establishing legislation, an informal list of Santa Monica Bay Stakeholders, and the responses to comments received on the October 14, 2019 draft of the Amendment.

## **2 Goals of the Amendment**

The goals of the Amendment are to update and clarify the composition, roles, functions, mission, policy, and practices of the Commission consistent with establishing legislation, the CCMP (see more below), and US EPA NEP guidance<sup>1</sup> in order to:

<sup>1</sup> US EPA NEP guidance is available online at <https://www.epa.gov/nep/community->

1. Improve the governance structure of the Commission,
2. Clarify the authority of the Commission and its components,
3. Improve the ability for the Commission to implement the CCMP,
4. Enhance the Santa Monica Bay NEP partnership and serve effectively as the Management Conference of the Santa Monica Bay NEP as prescribed in US EPA guidance for the NEPs,
5. Improve and enhance mechanisms for broader and more effective stakeholder participation, and
6. Streamline processes and improve program efficacy.

### **3 Background**

The Commission was established by the State Legislature in 2002 (SB 1381) as a non-regulatory state entity.<sup>2</sup> SB 1381 called for development of a MOU that ensures the coordination of state programs affecting Santa Monica Bay, delineates the authority of the Commission and its governance structure with respect to the implementation of those state programs, and prescribes the Commission's membership and governance. Pursuant to the requirement of California Public Resources Code (§§ 30988-30988.3), the original MOU was adopted and signed in 2003 by the Secretary for California Environmental Protection Agency (CalEPA), the Secretary for California Natural Resources Agency, and the Chair of Bay Watershed Council of the Commission.

The MOU has been amended in 2005, 2007, 2009, 2011, 2012, 2013 and 2014 by majority vote of the Governing Board. To ensure the structure and governance may be improved as needed, Section VII.3 of the 2014 MOU expressly authorizes the Governing Board of the Commission to amend the MOU by a majority vote. The last significant revisions to the MOU were made in 2011, which included increasing the number of the Governing Board voting members, expanding the local watershed membership, expanding the role of local Councils of Governments in the Governing Board membership, and establishing the WAC.

State law establishing the Commission also recognizes, and designates by reference, the Commission to replace the former Santa Monica Bay Restoration Project as the Management Conference for the Santa Monica Bay NEP established under Section 320 of the CWA and administered by the US EPA (see Attachment A of the Amendment). In accordance with the US EPA NEP funding guidelines, the Santa Monica Bay NEP was charged with the planning of Santa Monica Bay's restoration and overseeing the implementation of the Santa Monica Bay Restoration Plan, also known as the CCMP. The CCMP is a living document that is updated every three to five years with major

[based-watershed-management-handbook](#) and [https://www.smbrc.ca.gov/about\\_us/orientation/docs/usepa\\_nep\\_governance\\_faq.pdf](https://www.smbrc.ca.gov/about_us/orientation/docs/usepa_nep_governance_faq.pdf) (referred to as US EPA's 2015 NEP Guidance in this Staff Report). Also, see Attachment A of the Amendment.

<sup>2</sup> SB 1381 can be accessed online at

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200120020SB1381](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB1381).

revisions approximately every 10 years to incorporate new information, priorities, and actions for the Santa Monica Bay NEP.

The Santa Monica Bay NEP is comprised of two distinct entities, the Management Conference and Host Entity. The Commission serves as the Management Conference of the Santa Monica Bay NEP and all of the Commission's activities are for furtherance of the Santa Monica Bay NEP. The Commission is comprised of the Governing Board, Executive Committee, TAC, Commission staff, and the Santa Monica Bay Stakeholders (formerly the WAC in the 2014 MOU). The Commission has a long-term partnership with the Host Entity, The Bay Foundation, which has been receiving and administering the annual federal CWA Section 320 NEP grant (NEP Grant) funds and utilizing the NEP Grant as well as other sources of funding to carry out implementation of the CCMP since 2006 (Figure 1 of the Staff Report).

#### **4 Legislative History**

In 1988, the State of California and US EPA established the Santa Monica Bay Restoration Project as a NEP under the provisions of Section 320 of the CWA. The Santa Monica Bay Restoration Project was among the first of 28 NEPs established nationwide to promote collaborative watershed-based partnerships to develop and implement a CCMP that addresses the range of environmental problems facing the estuary, while recognizing and balancing the needs of the local community.

The Santa Monica Bay Restoration Project developed a CCMP for Santa Monica Bay consistent with the NEP requirements, which was finalized and approved by Governor Wilson and the US EPA Administrator in 1995. Following the CCMP approval, the Santa Monica Bay Restoration Project oversaw implementation of the CCMP as carried out by the various partner agencies and sought and secured funding for many important initiatives that have furthered the goals of the Santa Monica Bay NEP.

On September 29, 2000, Governor Davis signed SB 57 (Hayden, 1999-2000 Reg. Sess., Stats. 2000, ch. 983), that authorized continuing operation of the Santa Monica Bay Restoration Project within the State Water Board and the Los Angeles Regional Water Quality Control Board. SB 57 required the Secretary for CalEPA, in consultation with the Secretary for the California Resources Agency and the Santa Monica Bay Restoration Project, to make recommendations for measures to monitor, assess, and coordinate state programs affecting beneficial uses or restoration and enhancement of Santa Monica Bay, including coordinating and planning activities associated with the restoration and protection of Santa Monica Bay and its watersheds.

On September 15, 2002, Governor Davis signed SB 1381, which succeeded SB 57, reflected the recommendations of the report to the Legislature, and renamed the Santa Monica Bay Restoration Project to the Santa Monica Bay Restoration Commission (codified at Pub. Resources Code §§ 30988-30988.3). SB 1381 requires the State Water Board to provide administrative services to the Commission. SB 1381 indicated that the Commission possesses independent authority to execute the duties required by SB 1381, including to:

*“(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 restoration 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; and (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.”* (Pub. Resources Code § 30988.2 subd. (c)).

SB 1381 also called for the development of a MOU that ensures the coordination of state programs affecting Santa Monica Bay and that delineates the authority of the Commission and its governance structure with respect to the implementation of those state programs and prescribes the Commission’s membership and governance. Pursuant to the Public Resources Code (§§ 30988-30988.3), the original MOU was adopted and signed in 2003 by the Secretary for CalEPA, the Secretary for the California Resources Agency, and the Chair of the Bay Watershed Council of the Commission. The Bay Watershed Council served as the Policy Committee for the former Santa Monica Bay Restoration Project. Following the formation of the Governing Board, the Bay Watershed Council functioned as a Citizen Advisory Committee and was eventually reorganized into the Commission’s WAC. The Governing Board has served as the key decision-making authority and Policy Committee for the Commission since 2011 and the Chair of the Governing Board is successor to the Chair of the Bay Watershed Council.

## **5 Santa Monica Bay NEP Accomplishments**

Since the formation of the Santa Monica Bay NEP in 1988, the Santa Monica Bay Restoration Project, followed by the Commission since 2003, has achieved the purposes and goals intended by enabling federal and state laws through monitoring, assessment, coordination, and other types of assistance to state programs and prioritizing earmarked bond funding that affects the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watersheds. Major achievements include the landmark epidemiological study on health risks associated with swimming at urban-runoff contaminated beaches, which led to new laws and regulatory standards that have improved water quality monitoring and reduced potential health risks at beaches throughout California and the United States; more than 30 contaminated storm water runoff reduction projects funded through the leveraging of \$65 million of earmarked state bond funding; and the restoration of kelp, coastal dune, and wetland habitats, including most prominently the Malibu Lagoon, through the leveraging of the same earmarked state bond funds as well as other sources of funding.

Major milestones and accomplishments of the Santa Monica Bay NEP over the past few years include prioritization of remaining \$9 million in Proposition 84 funds for projects that protect Santa Monica Bay, including projects to prevent contamination and degradation of beaches, coastal waters, and watersheds and to protect and restore Santa Monica Bay’s marine, freshwater, and terrestrial habitats; prioritization of

remaining \$6.9 million in Proposition 12 funds for projects that implement storm water and urban-runoff pollution prevention programs, habitat restoration, and other priority actions specified in the CCMP; successful restoration of Malibu Lagoon as demonstrated by five years of post-restoration monitoring conducted by The Bay Foundation; recovery of more than 40 acres of kelp forest by purple sea urchin removal off the Palos Verdes Peninsula; restoration of three acres of sandy coastal habitats on the beaches of Santa Monica to bring back a healthy, diverse coastal plant and wildlife community and address climate change issues for both humans and wildlife; and success of Southern California's Boater Education Program to help boaters implement best management practices to reduce non-point discharges to the ocean, recognized by the Outstanding Service Award for the Pumpout Nav app.

Additional information on recent accomplishments are described in Santa Monica Bay NEP Annual Work Plans (Annual Work Plans), annual reports, and semi-annual reports available on the Commission's website.<sup>3</sup>

## **6 MOU Amendment Process**

NEPs are dynamic and it is important that the governance structure of the Management Conference overseeing the NEP adapts and reflects changes over time to the NEP. Although the MOU was last amended in 2014, the last significant amendments were made in 2011, and the Santa Monica Bay NEP has progressed since that time. The original CCMP was finalized by the Santa Monica Bay Restoration Project and approved by US EPA in 1995. The CCMP is a living document and US EPA requires NEPs to review and update the CCMP every three to five years with major revisions approximately every 10 years to address new and emerging issues. The Commission, in collaboration with The Bay Foundation, initiated the Santa Monica Bay NEP's CCMP revision that included the development and adoption of the October 2018 CCMP Action Plan (Action Plan).<sup>4</sup> The Action Plan, which is the centerpiece of the CCMP, incorporated new information, priorities, and actions, including efforts to address impacts of climate change.

Following the adoption of the Action Plan, Commission staff in collaboration with State Water Board staff initiated a public process in June 2018 to evaluate and revise the Commission's governance structure, which is also a significant part of the CCMP. US EPA requires the CCMP revision process to include a description of the current NEP's Management Conference and membership with any proposed changes and an explanation of how the structure will support the NEP's ability to oversee and promote CCMP implementation. This Staff Report and the Response to Comments (Attachment C of the Staff Report) includes the rationale for the amendments and explanations for

<sup>3</sup> Santa Monica Bay NEP Annual Work Plans, annual reports, and semi-annual reports are available on the Commission's website at [https://www.smbrc.ca.gov/reports\\_workplans/](https://www.smbrc.ca.gov/reports_workplans/).

<sup>4</sup> October 2018 CCMP Action Plan is available on the Commission's website at [https://www.smbrc.ca.gov/about\\_us/smbr\\_plan/docs/smbnep\\_ccmp\\_action\\_plan\\_2018.pdf](https://www.smbrc.ca.gov/about_us/smbr_plan/docs/smbnep_ccmp_action_plan_2018.pdf).

how the proposed changes will support the NEP's ability to oversee and promote CCMP implementation and ensure the success of the Santa Monica Bay NEP. Commission and State Water Board staff solicited input from stakeholders on the proposed revisions to the Amendment throughout the amendment process. Commission and State Water Board staff conducted extensive outreach where the Commission and stakeholders had the opportunity to provide input on the Amendment (see below). While all comments were reviewed and considered, only comments directly relevant to the Amendment are addressed in the Staff Report.

The structural evaluation of the Santa Monica Bay NEP as part of the CCMP revision is based on NEP guidance issued by US EPA, and informed by the establishing legislation, historical organizational documents, information from partners, examples of structure from other 'sister' NEPs throughout the United States, and most importantly, input that the Santa Monica Bay NEP has solicited from Management Conference members as well as the general public through a public process. These opportunities to provide verbal and written comments on the Amendment are summarized below.

Section 6.1 includes a summary of the opportunities for the Commission and stakeholders to provide input on the Amendment. Section 6.2 includes a detailed discussion of the facilitated stakeholder workshops and the feedback received during that process. Section 6.3 includes a discussion of the stakeholder outreach after that process up through when the Commission considered approval of the Amendment.

## **6.1 SUMMARY OF COMMISSION AND STAKEHOLDER OUTREACH ON THE AMENDMENT**

The opportunities provided for input on the Amendment include:

- Facilitated workshop at the December 13, 2018 Governing Board meeting;
- Facilitated workshop at the January 17, 2019 Executive Committee meeting;
- Facilitated workshop at the January 24, 2019 WAC meeting;
- eSurvey distributed on February 14, 2019 and completed on March 19, 2019;
- May 16, 2019 Executive Committee meeting;
- June 20, 2019 Governing Board meeting, public workshop, and public comment period;
- July 18, 2019 Executive Committee meeting;
- October 14, 2019 to November 7, 2019 public comment period on October 14, 2019 draft of the Amendment and Staff Reports<sup>5</sup>;
- October 24, 2019 Governing Board meeting and public workshop;
- November 21, 2019 Executive Committee meeting;
- December 12, 2019 Governing Board meeting and public workshop;

<sup>5</sup> All comments received by the November 7, 2019 deadline are available on the Commission's website at [https://www.smbrc.ca.gov/about\\_us/agendas/public\\_comments.shtml](https://www.smbrc.ca.gov/about_us/agendas/public_comments.shtml) and can also be accessed in the Response to Comments document (Attachment C of the Staff Report).

- January 16, 2020 Executive Committee meeting;
- February 20, 2020 Governing Board meeting; and
- April 16, 2020 Governing Board meeting.

Additional feedback could have been provided at any time to the Chief Administrative Director. All comments were considered for the Amendment. However, some suggestions were accepted, and others were rejected and the rationale for the decisions are contained in the Response to Comments document (Attachment C of the Staff Report).

## **6.2 FACILITATED WORKSHOPS**

In June 2018, Commission and The Bay Foundation staff presented background on the structure of the Santa Monica Bay NEP and the components to the Management Conference for the Santa Monica Bay NEP. Subsequently, with engagement of a facilitator hired with US EPA funding support, three workshops were held during the Governing Board (December 13, 2018), Executive Committee (January 17, 2019), and WAC (January 24, 2019) meetings to receive input from Management Conference members and stakeholders regarding the Santa Monica Bay NEP governance. The facilitator developed and issued a preliminary online survey after the Governing Board workshop in December 2018 to solicit input on areas for improvement and to identify any issues with the current governance. The facilitator distributed a detailed eSurvey on February 14, 2019, which was completed on March 4, 2019. The facilitator compiled and summarized the feedback in a draft final report and submitted it to the Commission staff in early May 2019. The final report<sup>6</sup> was distributed to Governing Board members and also made available online for review and as background for the scoping workshop scheduled for June 20, 2019. Below is a summary of the key feedback received during the facilitated stakeholder workshops on the review of the Santa Monica Bay NEP governance as summarized in the final report:

- The original intent of the State legislation establishing the Commission, which is also the key feature of the NEP by design, is local watershed-based, broad stakeholder presentation and involvement. The current governance structure of the Santa Monica Bay NEP meets this legislative intent by retaining this key feature.
- There is still strong support from participating members and stakeholders for the activities and operation of the current Management Conference and desire to remain active and involved.
- The Commission and the Santa Monica Bay NEP is effective for a resource-limited program. The effectiveness can be mostly attributed to the collaboration and partnerships among participating stakeholders, including the broad representation of stakeholders on the Governing Board, and the tiered structure of an Executive Committee in bringing focus and guiding the agenda of an

<sup>6</sup> The final Santa Monica Bay NEP Governance Review Summary report (June 2019) is available on the Commission's website at [https://www.smbrc.ca.gov/about\\_us/agendas/](https://www.smbrc.ca.gov/about_us/agendas/).

unusually large governing body, the TAC, and the Commission-The Bay Foundation partnership.

- Despite the overall soundness of the current governance structure of the Commission, many members and stakeholders suggested that various governance components be assessed and modified to improve their participation and to reduce administrative inefficiencies. There are also provisions in the MOU that have proven to be unwieldy, confusing, or outdated. These problems should be addressed through amendment of the MOU.
- Several areas were identified that members and stakeholders think the Commission should devote more attention and efforts toward improving. These areas include raising funds, especially through improving legislative outreach, making policy, conducting stakeholder outreach, and facilitating communication in decision-making orientation.
- Stakeholder outreach and effective public input have been identified as a priority area for improvement, especially concerning the current WAC, in order to continue interest and support for the priorities and build collaborative relationships.

A public workshop was conducted on June 20, 2019 during the Commission's Governing Board meeting to receive comments and input on the scope of the Amendment. Governing Board members and stakeholders were also given the opportunity and encouraged to provide written comments. Comments received at and after the June 20, 2019 workshop include:

- Affirmation of willingness to continue participation in the Commission with no change to the roles of current Governing Board members, and willingness to participate in various subcommittees;
- Need for more involvement by agencies like the California Department of Fish and Wildlife;
- Clarification and specificity as to how all the various components of the governance structure interact with each other, and the need for more communication and education between various groups under the Commission;
- Clarification of the role and authority of the Commission under the Commission's statutory mission, especially related to policy development and final approval for projects designed to achieve Bay restoration; and
- Clear definition of the relationship between the Commission and the NEP with US EPA buy-in.

### **6.3 ADDITIONAL OUTREACH**

An Executive Committee meeting was held on May 16, 2019 to consider scheduling a scoping workshop for the Amendment at the June 20, 2019 Governing Board meeting and to receive member and public input. An Executive Committee meeting was held on July 18, 2019 to consider scheduling a workshop on draft language for the Amendment at the next Governing Board meeting and to receive member and public input. Commission and State Water Board staff distributed a draft Amendment for public comment on October 14, 2019. A public workshop was conducted to receive input on

the Amendment during the October 24, 2019 Governing Board meeting. After the workshop, the comment period was extended until November 7, 2019 for Governing Board members and stakeholders to provide written comments. An Executive Committee meeting was held on November 21, 2019 to consider scheduling a staff update on the Amendment at the December 12, 2019 Governing Board meeting and to receive member and public input. A second public workshop was conducted during the December 12, 2019 Governing Board meeting to receive additional input regarding key issues raised from the comments received. Comments received in writing and at the December workshop include:

- Distinction between the Governing Board's and the Executive Committee's functions, specifically regarding which body may make decisions and the type of decisions that may be made;
- Improvements in meeting procedures and coordination between the components of the Commission;
- Clarification and expansion of the members of the Executive Committee to fulfill its role in guiding development of revisions and updates to the CCMP and implementation of the CCMP;
- Clarification of the TAC's processes for fulfilling their roles and functions;
- Improvement in stakeholder participation, including the effectiveness of the Santa Monica Bay Stakeholders serving as the NEP's Citizen Advisory Committee consistent with US EPA guidance; and
- Clarification on the partnership with the Host Entity.

An Executive Committee meeting was held on January 16, 2020 to consider scheduling the consideration of approval of the Amendment for the February 20, 2020 Governing Board meeting. Due to the need for additional time to address comments received, an update on staff's progress was scheduled instead of the consideration of approval of the Amendment. Commission staff provided an update at the February 20, 2020 Governing Board meeting and member and public input was received. Commission staff also provided an update at the April 16, 2020 Governing Board meeting. Commission staff anticipated bringing the Amendment to the Governing Board for consideration of approval of the Amendment at the June 18, 2020 Governing Board meeting.

## **7 Summary of the Amendment**

The changes to the 2014 MOU (Amendment) are introduced below with a brief summary of the change and discussion of the rationale for the change. The Amendment includes non-substantive changes such as the addition of a table of contents, formatting, and editorial changes that are not described in this section but can be seen in the track-change versions of the Amendment. All references below refer to topics and sections within the Amendment. References to sections of the 2014 MOU will reference "Section...of the 2014 MOU". References to sections of this Staff Report will reference "Section...of the Staff Report".

## 7.1 SECTION I. INTRODUCTION

The purpose of this section of the Amendment is to: introduce the Commission as a non-regulatory, locally based state entity established by the State Legislature and as the Management Conference for the Santa Monica Bay NEP; define the entities comprising the Santa Monica Bay NEP; provide the historical background on the genesis of the Commission, especially with regards to the establishing legislation and the establishment of the Santa Monica Bay NEP; state the purpose of the MOU; and identify the MOU signatories. This section of the Amendment includes the following changes to the 2014 MOU:

**Merged the Introduction, Background, and Legislative History sections of the 2014 MOU and moved some text from the Introduction, Background, and Legislative History sections in the 2014 MOU to Sections 3 and 4 of this Staff Report.** This consolidation was done to ensure that the MOU functions as a streamlined, clear document outlining the Commission's current governance, while the historical background information is still retained.

The Amendment moved most of the Legislative History in the 2014 MOU to Section 4 of the Staff Report as this level of detail was not necessary in the MOU and moving it to the Staff Report does not change the legislative history or Commission's authorities. The Amendment retained the purpose of the MOU and references to the Commission's establishing legislation, including reference to the Public Resources Code.

The Amendment added a reference to the relevant section of the CWA for the NEP. It is important to indicate that the establishment and the mission, goal, and objectives of the Commission are for the furtherance of the Santa Monica Bay NEP, and that the intent of the State legislation is to set up the local mechanism for achieving the goal of the federal NEP.

The Amendment mentions the Santa Monica Bay Restoration Project as the predecessor of the Commission, but additional discussion regarding the former governance (e.g., Santa Monica Bay Restoration Project and the Santa Monica Bay Restoration Plan) were moved to Section 4 of the Staff Report to provide historical context for the Commission and the Santa Monica Bay NEP while preventing confusion with the current governance structure.

**Moved past achievements of the Santa Monica Bay NEP from the 2014 MOU to the Staff Report.** While the recognition of past achievements helps to educate members and stakeholders on the value of the Commission, the Santa Monica Bay NEP has had numerous successes over the years and updating these achievements and including them in the MOU would result in a lengthy narrative. This would have made the main purpose of this MOU, establishment and implementation of the Commission's governance structure, unclear or difficult to identify in the MOU. Consequently, the Santa Monica Bay NEP's accomplishments were moved to Section 5 of the Staff Report along with a link to the Commission's website to access related reports.

**Introduced the entities of the Santa Monica Bay NEP and clarified that the Commission serves as the Management Conference.** Although citing the establishing legislation that renamed the Santa Monica Bay Restoration Project as the Commission, the 2014 MOU did not clearly describe the entities that make up the Santa Monica Bay NEP or the components of the Management Conference of the Santa Monica Bay NEP. The October 14, 2019 draft of the Amendment referred to the Host Entity as a component of the Commission, but did not clearly articulate the longstanding partnership between the Commission and the Host Entity, which includes the NEP Director that is provided by the Host Entity. The MOU was revised to more accurately characterize the structure of the Santa Monica Bay NEP and to state “The Santa Monica Bay NEP is comprised of two distinct entities, the Management Conference (Commission) and the Host Entity”.

The Amendment clarifies that the Commission serves as the Management Conference for the Santa Monica Bay NEP and is comprised of the Governing Board, Executive Committee, TAC, Commission staff, and Santa Monica Bay Stakeholders. The Commission’s structure is consistent with US EPA’s 2015 NEP Guidance, which states that the Management Conference for a NEP typically consists of “several core committees to carry out implementation of the CCMP” and “usually include[s] a policy committee..., a management committee..., and advisory committees” (see Section 7.2.4 of the Staff Report for the Commission’s roles and functions as the Management Conference and Section 7.3 of the Staff Report for the components of the Commission).

US EPA guidance also indicates the NEP structure may include a Host Entity to “administer the [NEP Grant] that supports the activities and projects of the NEP”. Since 2006, the Commission has had a partnership with the Host Entity, The Bay Foundation, to improve implementation of the CCMP and ensure the success of the Santa Monica Bay NEP (see Section 7.9 of the Staff Report for discussion of the Host Entity, including the NEP Director). The Amendment emphasizes that while the Commission and the Host Entity work in collaboration to further the goals of the Santa Monica Bay NEP, they are distinct entities with different roles and functions for supporting the Santa Monica Bay NEP, reporting structures, and administration.

The Amendment reflects the partnership comprising the Santa Monica Bay NEP (see Attachment A of the Amendment) and revisions were made to ensure the governance structure reflects the important partnership between the Commission and the Host Entity. This includes the addition of the NEP Director as an ex officio, non-voting member to the Governing Board and the Executive Committee to ensure the continued close coordination of NEP activities. See Section 7.4.1 and Section 7.5.1 of the Staff Report for discussion of the Governing Board and Executive Committee’s memberships, respectively.

The Amendment also specifies that the term “Commission” refers to the Santa Monica Bay NEP Management Conference as a whole; describes the components of the Commission throughout Section III; and describes the partnership with the Host Entity in Section IV of the Amendment.

These revisions meet goals 1 and 2 of the Amendment by clearly defining the structure of the Santa Monica Bay NEP and the role of the Commission within the NEP structure consistent with US EPA NEP guidance.

**Clarified the genesis of the Commission and the original intent and establishment of the Santa Monica Bay NEP.** The following quoted text regarding the designation of the Santa Monica Bay NEP and purpose of NEPs in the 2014 MOU was removed from the October 14, 2019 draft of the Amendment, but then restored in the Amendment to ensure the original intent and establishment of the Santa Monica Bay NEP is clear:

The Santa Monica Bay NEP is designated by the US Environmental Protection Agency (US EPA) *“to promote collaborative watershed-based partnerships in order to develop and implement a [Comprehensive Conservation and Management Plan (hereafter CCMP)] that addresses a range of environmental problems facing [Santa Monica Bay], while recognizing and balancing the needs of the local community.”*

**Expanded and clarified the purpose of the MOU.** One of the key functions of the MOU is to establish and guide how the Commission operates in order to fulfill its role serving as the Management Conference of the Santa Monica Bay NEP. The Amendment added “to establish and implement an effective and efficient governance structure to ensure the success of the Santa Monica Bay [NEP]” to the purpose of the MOU, which emphasizes that all of the Commission’s activities are for furtherance of the Santa Monica Bay NEP.

**Updated the signatories of the Commission.** The Commission’s establishing legislation, SB 1381, requires the “Secretary for Environmental Protection, the Secretary of the Resources Agency, and the chairperson of the former Bay Watershed Council” to be the signatories of the MOU. References to the signatory for the Commission were updated to refer to the Chairperson of the Governing Board of the Commission in the Introduction (Section I) of the Amendment because the Chair of the Governing Board is successor to the Chair of the Bay Watershed Council of the Commission (see Section 4 of the Staff Report).

## **7.2 SECTION II. MISSION, GOAL, OBJECTIVES, AUTHORITIES, AND FUNCTIONS**

The purpose of this section of the Amendment is to state the Commission’s mission, goal, objectives, authorities, and functions because all are key elements to the governance structure. US EPA NEP guidance includes a review of the CCMP and governance structure, including the elements in this section, every three to five years, with major updates every 10 years. The CCMP provides a long-term framework but periodic revisions and updates allow the NEP to make updates to the CCMP to ensure the NEP continuously advances based on evaluation of the key issues in the watershed. The Amendment considers and allows the incorporation of the latest and any future updates to the CCMP along with the Commission’s foundational mission, goal, objectives, authorities, and functions required by the establishing legislation. This section of the Amendment includes the following changes to the 2014 MOU:

### **7.2.1 Mission Statement and Goal**

**Revised the mission statement and goal to include mitigation of sea level rise and climate change as identified in the CCMP.** The overall mission statement and goal statement remain largely the same, except the Amendment added mitigation of sea level rise and climate change. In 2016, the Commission completed a Climate Change Vulnerability Assessment and identified climate change as a significant issue in the watershed and consequently listed it as one of the top priorities in the CCMP. Climate change is anticipated to be an ongoing issue in the watershed and it is important this is reflected in the mission statement and goal of the Commission. The goal statement was also revised to include the protection of the health of Santa Monica Bay's natural and living resources in addition to recreational users to be consistent with the establishing legislation, which lists protecting public health and natural and living resources as restoration objectives for Santa Monica Bay (Pub. Resources Code § 30988.3 subds. (d), (e), respectively).

### **7.2.2 Objectives**

**Revised the objectives to incorporate the goals in the CCMP.** The objectives of the Commission are consistent with the establishing legislation, but the CCMP also contains goals, objectives, and actions that the Commission adopts, which may be updated periodically to address new and emerging issues in the watershed. Rather than incorporate the specific goals in the CCMP, the Amendment incorporates the goals in the CCMP by reference. This highlights the importance of the CCMP goals while providing flexibility so that updates to the CCMP do not require amendments to the MOU. Additionally, the Amendment acknowledges that the goals and objectives can be updated at any time through an amendment to the MOU, but the goals and objectives must be consistent with the establishing legislation and the CCMP. As a reference, the current CCMP goals, which were originally developed by the TAC and adopted by the Commission's Governing Board in October 2018, are as follows:

1. Protect, enhance, and improve ecosystems of Santa Monica Bay and its watersheds;
2. Improve water availability;
3. Improve water quality;
4. Enhance socio-economic benefits to the public;
5. Enhance public engagement and education;
6. Mitigate impacts and increase resiliency to climate change; and
7. Improve monitoring and ability to assess effectiveness of management actions.

### **7.2.3 Authorities of the Commission**

Revised the introductory sentence of this section to cite the establishing legislation that grants the Commission's authorities. The Amendment did not change the Commission's authorities listed in the 2014 MOU because these authorities are consistent with Public Resources Code section 30988.2, subdivision (c) that grants the Commission's authorities. However, the Amendment made it clear that the Commission "may do all of the following" functions, to be consistent with Public Resources Code section 30988.2, subdivision (c). The statute allows the Commission discretion to take on certain tasks and indicates the required versus optional authorities and functions of the Commission.

Attachment A of the Staff Report provides a table of the required and optional functions of the Commission per the Public Resources Code. The listed Commission authorities in this section fall under the optional function category in Attachment A of the Staff Report. The Amendment therefore reflects the statutory language.

#### **7.2.4 Functions of the Commission**

**Clarified that the listed functions are within the Commission’s authority outlined in the establishing legislation.** The functions of the Commission are included to further describe how the Commission exercises its authority to meet its mission, goal, and objectives. By adding the phrase “within its authority”, the Amendment emphasizes that the functions at issue need to be consistent with the Commission’s authority outlined in Public Resources Code section 30988.2, subdivision (c).

The first sentence of this section was revised to replace the term “shall” with “may” to clarify the “Functions” of the Commission are discretionary rather than obligatory tasks as defined in the establishing legislation (see Section 7.2.3 and Attachment A of the Staff Report).

**Revised the list of the Commission’s functions to reflect current functions and to state the Commission serves as the Management Conference of the Santa Monica Bay NEP.** The Amendment includes revisions to clearly define the functions of the Commission, ensure a clear distinction between authorities and functions, and ensure the functions are consistent with and within the Commission’s legal authority. These are described further below.

**Added functions 1 and 2 to the Amendment.** Function 1 was added to state that the Commission serves as the Management Conference of the Santa Monica Bay NEP. Function 2 states that the Commission consults with US EPA on NEP activities, oversees effective implementation of the CCMP, and ensures the success of the Santa Monica Bay NEP. Though these functions were implied in the Background section of the 2014 MOU and were understood inherently as among the main functions of the Commission, they are now clearly identified as functions of the Commission in the Amendment. According to US EPA NEP guidance, the Management Conference defines goals, identifies causes of environmental problems, and designs actions to protect and restore habitats and living resources for the NEP. The Commission does this through updating and implementing the CCMP. The addition of functions 1 and 2 meet goals 1-3 of the Amendment by more clearly articulating the role of the Commission for the NEP.

**Added federal governments, state governments, and members of the public to function 3 (formerly function 1 of the 2014 MOU) to the Commission’s function of promoting participation.** Multiple federal and state agencies have served as members of the Governing Board since the establishment of the Commission in 2002. The Commission has benefited significantly from these agencies’ participation, including by awarding grant funding for various restoration projects, administering and overseeing state bond funds allocated to the Commission, and carrying out various programs and projects that directly contribute to implementation of the CCMP. Adding federal and

state governments to this function not only is consistent with the current practice of the Commission, but will promote more participation and partnership in the future and help meet goals 3 and 4 of the Amendment. Adding members of the public to this function also helps to increase stakeholder participation in the Commission's activities, which is goal 5 of the Amendment and is further discussed in Section 7.7 of the Staff Report.

**Made largely non-substantive revisions to functions 4 through 7 (formerly functions 2 through 6 in the 2014 MOU).** Several non-substantive revisions were made to ensure the terminology is updated and applied consistently throughout the MOU. For example, function 7 (formerly function 5) was revised to refer to the CCMP rather than "Bay restoration policies" because the term "CCMP" is used throughout the Amendment to be consistent with US EPA NEP guidance.

**Revised function 8 (formerly function 6 of the 2014 MOU) to specify the Commission's role as an information clearinghouse pertains to "issues that affect the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed".** This revision was made to make this function more specific to issues pertinent to the mission, goals, and objectives of the Commission consistent with the Commission's establishing legislation (Pub. Resources Code, §§ 30988-30988.3).

**Revised function 9 (formerly function 7 of the 2014 MOU) to reflect the Commission's discretion to negotiate and oversee agreements and grants in addition to contracts within its authority.** According to the Commission's establishing legislation, the Commission may award and administer grants and enter into contracts and agreements. The addition of "agreements" and "grants" to this function is consistent with the establishing legislation. To date, the Commission has not directly negotiated and provided oversight of agreements, grants, or contracts as funds have not been directly appropriated to the Commission. In practice, the State Water Board and State Coastal Conservancy have administered state bond funds for projects in accordance with priorities approved by the Commission's Governing Board. If the Commission is appropriated funds, the Amendment reflects the Commission's ability to negotiate and oversee agreements, grants, and contracts. Specifically, the Governing Board has the authority to approve program and funding priorities and the Executive Committee has the authority to develop recommendations for program and funding priorities for the Governing Board's consideration, discussed in Section 7.4.3 and Section 7.5.3 of the Staff Report.

**Added function 10 to include the role of the Commission in identifying and selecting a Host Entity in collaboration with US EPA consistent with their guidance.** As further described in Section 7.9 of the Staff Report, the Host Entity is integral to the success of the Santa Monica Bay NEP. The selection of and partnership with the Host Entity is key in ensuring effective implementation of the CCMP. The Commission also has an agreement that outlines the partnership with the Host Entity and may provide direction to the Host Entity to ensure effective implementation of the CCMP. The Bay Foundation has served as the Host Entity since 2006, and the success of the Santa Monica Bay NEP over the years can be attributed in large part to this longstanding collaboration and partnership. Sustaining and enhancing this partnership

is needed to ensure continuous success of the Santa Monica Bay NEP in the future, and the addition of this function meets goal 4 of the Amendment to enhance the Santa Monica Bay NEP partnership.

**Revised function 11 (formerly function 8 of the 2014 MOU) to clarify the Commission serves to consult with and advise other state programs consistent with the establishing legislation.** Public Resources Code section 30998 states that the Commission is a non-regulatory, locally based state government entity that will monitor, assess, coordinate, and advise all state programs, and oversee funding that affects the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed. This function was revised to remove the text, “draft watershed policies...” and add the consultation with other state programs on “programs, policies and funding that affect the beneficial uses, restoration, and enhancement” of Santa Monica Bay and its watershed.

The Public Resources Code grants the Commission the ability to perform functions within its authority which are listed in Public Resources Code sections 30998 to 30998.3. As a non-regulatory agency, it is within the Commission’s authority to provide information to policymakers (function 13) and also to consult with and advise all state programs, policies, or funding that affect Santa Monica Bay and its watershed (function 11). The Commission may prioritize actions, projects, and funding appropriated to, or received by the Commission for activities or projects to ensure the successful implementation of the CCMP (function 9). However, the Commission does not have rulemaking authority under the current federal and state laws such as the CWA or Porter-Cologne Water Quality Control Act, and the Commission does not have the authority over other state or federal agencies. For example, if another agency is acting as the lead agency for CEQA, the Commission does not have the authority to “approve” a project, certify the Environmental Impact Report, or direct the agency to include or select a specific project alternative.

The Commission can and should engage with other state and federal agencies to leverage resources for restoring and enhancing habitats and natural resources in Santa Monica Bay and its watershed. The Commission members have broad and diverse interests. In some instances, the individual members may want to come together to develop Commission policies, and nothing in the Amendment precludes the Commission members from such initiatives. However, the diversity of opinions and perspectives from the individual Commission members may present challenges in attaining consensus in order to develop policy. For example, the individual members of the Governing Board could engage in a public process independently from the Commission as long as any conflicts of interest are disclosed. In areas where the Commission feels appropriate, it could engage and advise others in policymaking, or members could engage in issues that interest them on an individual basis or on behalf of the agency or entity they represent.

**Revised function 12 (formerly function 9 of the 2014 MOU) to add climate change mitigation and the opportunity to leverage funding to the Commission’s function of facilitating inter-agency and inter-organizational efforts.** This function highlights

the importance of inter-agency and inter-organizational collaboration to address complex issues such as improving water quality and mitigating the effects of climate change in the Santa Monica Bay watershed. Mitigation of the impacts of climate change and sea level rise was added to this function to be consistent with the CCMP goals and revisions to the Amendment elsewhere (see Section 7.2.1 of the Staff Report). This function added “opportunities to leverage funding” to acknowledge that the Commission should also be taking advantage of opportunities to collaborate and leverage funding to fund projects that advance the CCMP and achieve the goal and objectives in the MOU.

**Revised function 13 (formerly function 10 of the 2014 MOU) to incorporate promoting awareness of the Santa Monica Bay NEP in the Commission’s function of providing information to policymakers and the general public.** According to US EPA NEP guidance, promoting awareness of the NEP is essential to garnering support for management actions, achieving greater participation in the NEP’s processes, and the success of the NEP overall. The addition of the language “to promote awareness of the Santa Monica Bay NEP” to function 13 further helps to convey that the Commission serves as the Management Conference for the Santa Monica Bay NEP and all of the Commission’s activities are for furtherance of the Santa Monica Bay NEP. This addition meets goal 3 of the Amendment, to improve the Commission’s ability to implement the CCMP, by increasing public awareness and support for the Commission’s actions and priorities.

Specific mechanisms for promoting awareness were not referenced in function 13 to provide the Commission flexibility in implementing this function. The Commission could promote awareness through press releases, public newsletters, social media, and use of the Commission’s name and logo. Commission staff currently promotes awareness of the Commission’s activities by posting meeting agendas and meeting materials on the Commission’s website with the Commission’s name and logo, notifying Commission members and the public on upcoming Commission meetings via email distribution list, requiring grantees of Proposition 84 projects to use the Commission logo on project signage, and assisting The Bay Foundation staff in developing the Baywire Newsletter, Semi-Annual Reports, Annual Reports, and other outreach materials. The Bay Foundation also promotes awareness by providing volunteer opportunities and events for projects that assist the implementation of the CCMP, conducting outreach at events in the community, publishing reports and technical documents, conducting press releases, and managing several social media accounts including Facebook, Instagram, YouTube, and Twitter.

**Revised function 14 (formerly function 11 of the 2014 MOU) to add “advice” to the Commission’s function of assisting member organizations.** This revision is consistent with the establishing legislation stating the Commission will “advise all state programs” that affect Santa Monica Bay (Pub. Resources Code § 30988 subd. (d)).

**Made non-substantive changes to function 15 (formerly function 12 of the 2014 MOU) to specify “Santa Monica Bay management” rather than “Bay management” for consistency elsewhere in the Amendment.**

**Revised function 16 (formerly function 13 of the 2014 MOU) to reference workshops and seminars in addition to periodic conferences coordinated and hosted by the Commission.** The addition of “workshops” is consistent with the discussion of the Santa Monica Bay Stakeholders workshops which provide additional opportunities for public input (see Section III.D and Section 7.7.3 of the Staff Report) and meets goal 5 of the Amendment to enhance mechanisms for broader stakeholder participation. Also, consistent with current practice, the Commission may conduct seminars to disseminate information related to the state and management of Santa Monica Bay and its natural resources.

### **7.3 SECTION III. ORGANIZATION AND STRUCTURE**

The purpose of this section of the Amendment is to describe the Commission’s governance structure, membership, and the components that make up the Management Conference of the Santa Monica Bay NEP (see Figure 2 of Staff Report and Attachment B of the Amendment). The section includes the NEP equivalent and the membership, member terms, roles and functions, and operating procedures for each component of the Commission, which includes the Governing Board, Executive Committee, TAC, Commission staff, and Santa Monica Bay Stakeholders. There were substantial revisions made to this section of the MOU to meet the goals of the Amendment described in Section 2 of this Staff Report, to ensure the governance structure is sufficiently clear and describe how decisions are made for the Santa Monica Bay NEP. These changes to the 2014 MOU are described in detail below.

**Restructured this section so each component had the information presented in the same order.** While this was a non-substantive change, the standardization helps to improve the clarity of the document because the content was not consistently organized in the 2014 MOU. The Amendment was restructured to present the information in the following order, as applicable, for each component:

- Introduction: provides the overarching description of the component, including the purpose of the component in the Management Conference.
- NEP Parallel: lists the NEP Parallel based on US EPA NEP guidance to indicate how the component fits into the Management Conference for the Santa Monica Bay NEP.
- Members: describes the member composition of the component.
- Member terms: describes the duration, election, and appointment of the membership for ex officio, appointed, and elected members, as applicable.
- Roles and functions: describes the responsibilities of the component and their role in the Management Conference.
- Meetings: describes frequency of meetings.
- Quorum: defines a quorum for applicable components of the Commission (i.e. the Governing Board, Executive Committee, and TAC).

**Removed text referencing the enabling legislation that established the Commission and the list of signatories of the MOU from the introductory**

**paragraph:** This introductory text was removed from Section III as it is redundant with text in Section I (also see Section 7.1 of the Staff Report).

**Listed the components of the Commission and diagram of the Santa Monica Bay NEP.** As described in Section 3 of the Staff Report, the Commission serves as the Management Conference for the Santa Monica Bay NEP and is comprised of the Governing Board, Executive Committee, TAC, Commission staff, and Santa Monica Bay Stakeholders. The introductory paragraph of this section was updated to introduce the components of the Commission that are further described in Section III.A-Section III.E and Section 7.4-7.8 of the Staff Report. This section also references the resolution adopted by the Governing Board in 2005 to establish the Executive Committee (Resolution 05-11) because it is important to cite the document that outlines the intent of this component (see Section 7.5 of the Staff Report for details). The Amendment also clarifies “Commission staff” refers to the State Water Board staff providing administrative support to the Commission, discussed in Section III.E and Section 7.8 of the Staff Report. Attachment B of the Amendment was added to illustrate the interrelationships of the entities of the Santa Monica Bay NEP (see Section 7.16 of the Staff Report).

**Described how the structure of the Commission is consistent with the establishing legislation and fulfills the recommended membership of a NEP Management Conference.** The Commission’s membership meets the requirement of the establishing legislation, which states that the Commission’s membership “shall include federal, state, and local public agency officials and employees, and representatives of other stakeholder interests” (Pub. Resources Code, § 30988.2., subd. (b)(1)). Also, while US EPA provides flexibility for individual NEPs to organize themselves in ways that respond to local conditions, the Amendment lists the typical membership of the NEP Management Conference to illustrate that the Commission’s membership meets the US EPA guidance for a Management Conference. Language was also added to emphasize that the organizational structure of the Commission provides 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, which is consistent with US EPA NEP guidance.

#### **7.4 SECTION III.A – GOVERNING BOARD**

The purpose of this section of the Amendment is to outline the Governing Board’s NEP parallel, membership, member terms, roles and functions, meetings, and quorum; clarify the authority of the Governing Board (goal 2 of the Amendment); improve the Governing Board’s ability to support the successful implementation of the CCMP (goal 3 of the Amendment) and serve effectively as the Policy Committee (goal 4 of the Amendment); and improve stakeholder participation (goal 5 of the Amendment). This section of the Amendment includes the following changes to the 2014 MOU:

#### **7.4.1 Members**

**Expanded the Governing Board membership.** The membership is by design a broad representation of stakeholders in the Santa Monica Bay watershed. Although, the size of the Governing Board is unusually large among governmental entities, which poses unique administrative challenges, the Governing Board membership was revised to add the Chief Deputy Director of the State Water Board as an ex officio voting member and the NEP Director as an ex officio non-voting member of the Governing Board. The State Water Board provides administrative services and Commission staff to the Commission and the addition of the State Water Board to the Governing Board can improve oversight to Commission staff and coordination and information exchange between the Commission and the State Water Board. The NEP Director provides day-to-day management, support, and coordination for Santa Monica Bay NEP activities consistent with US EPA NEP guidance as discussed further in Section IV of the Amendment and Section 7.9 of the Staff Report. The addition of the NEP Director is critical to ensuring effective coordination among the entities of the Santa Monica Bay NEP, and the Governing Board benefits fully from the information, experiences, and expertise gained from on-the-ground implementation. Additionally, US EPA suggested the NEP Director be added as an ex officio non-voting member to the Governing Board and Executive Committee “to help advise Commission activities” (see Attachment A of the Amendment). The addition of both the State Water Board and NEP Director to the Governing Board meet goals 1 and 4 of the Amendment by improving governance of the Commission and enhancing the Santa Monica Bay NEP partnership.

The Amendment reflects the increase in the Governing Board’s total membership from 36 to 38 members, made up of 28 voting members and 10 non-voting members, and outlines the Governing Board membership in Attachment C of the Amendment.

**Clarified the composition of the Governing Board and how members are either ex officio, appointed, or elected members.** Ex officio members of the Governing Board are members by virtue of another position they hold. For example, the Secretary for CalEPA has an ex officio seat on the Governing Board, which means whoever holds that position has a seat on the Governing Board. If that person ceases to hold the Secretary position, then they are no longer a member of the Governing Board, but the incumbent that replaces them would become a member of the Governing Board. Appointed members similarly hold a seat on the Governing Board. These members are appointed as listed in Attachment C of the Amendment, and may be appointed by their entities’ board, local city council, or otherwise. The remaining seats on the Governing Board are nominated and elected consistent with the description in the Amendment, described further below.

**Revised the procedure to elect the seven additional entities to serve on the Governing Board.** Since the WAC was replaced with the Santa Monica Bay Stakeholders, the remaining Governing Board members are no longer elected from the WAC (see Section 7.7 of the Staff Report), but are elected from the same categories listed in the 2014 MOU (e.g., representatives of environmental/public interest organizations). The Amendment clarifies the process for electing the seven elected Governing Board members and specifies that only voting Governing Board members

may nominate and elect the seven additional entities. In the past, all Governing Board members, including non-voting members, participated in members' nominations and elections. However, because a quorum is defined as a majority of the voting members of the Governing Board in the Amendment, only voting members of the Governing Board should participate in actions of the Governing Board, including member elections.

**Specified that the non-voting Governing Board members do not participate in closed session.** This section was revised to clarify that participation in closed session is limited to voting members of the Governing Board. This revision meets goal 6 of the Amendment by clarifying processes for addressing litigation against the Commission.

**Clarified the role of the alternate members of the Governing Board.** Consistent with the 2014 MOU, the Amendment states that each Governing Board member may designate up to two alternates to serve in the member's absence. However, the 2014 MOU did not describe the alternates' authorities, roles, and functions. The Amendment clarifies that the alternates assume all of the Governing Board member's authorities, roles, and functions while serving in the capacity of the Governing Board member, including voting on Governing Board items as voting Governing Board members. The Governing Board members should use the same alternates for the Governing Board and Executive Committee whenever feasible to ensure the alternates are informed and for continuity of communication.

**Reduced the number of elected Vice-chairs of the Governing Board.** The 2014 MOU indicated that the Governing Board elects Vice-chairpersons from among the Governing Board members, but it did not specify the number of Vice-chairs elected. Resolution 05-11 (see Section 7.5 of the Staff Report) indicated that the Executive Committee consists of no more than six Vice-chairs of the Governing Board. The Amendment reduced the number of elected Vice-chairpersons from six to five Vice-chairs due to other changes to the Executive Committee's membership (see Section 7.5.1 of the Staff Report for discussion of the rationale).

**Clarified the roles of the elected Governing Board Chair and Vice-chair, eligibility and the election process.** The revisions to this section were made to improve the description of the responsibilities, eligibility, and the election process of the Governing Board Chair and Vice-chairs consistent with the goals of the Amendment. This section of the Amendment also incorporates some of the information and processes established for the Executive Committee by Resolution 05-11, but these were not incorporated in the MOU until this Amendment. The Amendment clarifies:

- The elected Governing Board Chair serves as Chair of the Executive Committee to ensure there is continuity and communication between the Governing Board and Executive Committee on Commission activities;
- The Vice-chairs of the Governing Board may act as Chair of the Governing Board in the Chair's absence, which was an assumed function of the Vice-chairs but is now clearly stated in the Amendment;
- The duties of the Vice-chairs depend on whether they are acting as and assuming all duties and responsibilities of the Chair of the Governing Board, or

whether they are performing their duties on the Executive Committee (see Section III.B and Section 7.5 of the Staff Report for additional roles of the Vice-chairs as Executive Committee members); and

- Member eligibility and the voting process for the Chair and Vice-chair positions. For example, only voting members of the Governing Board are eligible for election to the Chair and Vice-chair positions.

#### **7.4.2 Member Terms**

**Clearly defined the terms of the Governing Board members, including Chair and Vice-chairs.** The 2014 MOU defined the term of all voting members as two years. However, most Governing Board members are either ex officio entities that select representatives based on their own internal procedure, or boards, commissions, and municipalities that have representatives chosen and terms set through their own appointment process. Therefore, because the two-year term does not apply to all of the Governing Board members, the Amendment clarifies that the two-year term applies to elected members only and ex officio and appointed members serve terms consistent with the terms of their office or appointment.

The terms of the Chair and Vice-chairs were increased to two years, and the Chair and Vice-chairs are eligible for re-election after their two-year term. This increase from one-year to two-year terms with the opportunity for re-election allows for members to have more knowledge and experience of the program. It also helps to reduce administrative burden and increase consistency with the Governing Board elections, meeting goal 6 of the Amendment.

**Removed requirement to fill all vacancies within 90 days.** The provision on filling member vacancies within 90 days was revised to state they should be filled expeditiously by the appointing body because the time period taken for filling the vacant position is determined by the appointing body and not within the purview of the Commission. The term "in good standing" attached to Governing Board members for the purpose of election nomination was removed because the phrase was not clearly defined in the 2014 MOU. Furthermore, it is redundant because presumably if a member was not in good standing then the individual would no longer be on the Governing Board.

#### **7.4.3 Roles and Functions**

Revised functions of the Governing Board to reflect current functions and to describe the Governing Board's role as the Policy Committee of the Santa Monica Bay NEP. The Governing Board is a key element to the governance of the Management Conference of the Santa Monica Bay NEP. All of the Governing Board's activities should be for the furtherance of the Santa Monica Bay NEP and to meet the mission, goal, and objectives in the MOU. The revisions to this section meet several goals of the Amendment by clearly defining the authority of the Governing Board (goal 2), improving ability of the Governing Board to implement the CCMP (goal 3), enhancing the Governing Board's role as Policy Committee for the Santa Monica Bay NEP (goal 4), and improving stakeholder engagement in the Governing Board's processes (goal 5).

The sentence “The Governing Board shall have the authority to carry out the Commission's statutory mission and implement this [MOU], and specifically has the authority, without limitation...” was revised to state that the Governing Board’s roles and functions support the successful implementation of the mission, goals, and objectives in the MOU and the CCMP. The inclusion of “CCMP” is consistent with the discussion of the Commission’s objectives in Section II (see Section 7.2.2 of the Staff Report). This section was revised to state that the Governing Board “may” perform roles and functions included but not limited to those listed to emphasize that these are optional rather than obligatory tasks. The term “authority” in the 2014 MOU is more appropriate for and is used throughout the Amendment to state what the Commission may do under the enabling legislation (see Section 7.2.3 and Attachment A of the Staff Report). The roles and functions of the Governing Board are described further below.

**Moved and revised roles and functions from elsewhere in the 2014 MOU to reflect the current Governing Board roles and functions.** Function 1 states that one of the key roles of the Governing Board as the Policy Committee is to guide, review, and evaluate the programs for the furtherance of the NEP. This is consistent with US EPA NEP guidance and also meets goal 4 of the Amendment to enhance the Governing Board’s role as Policy Committee for the Santa Monica Bay NEP.

Function 2 highlights the role of the Governing Board in the oversight of Commission work products to ensure they are setting the tone and direction for the Santa Monica Bay NEP and that the Commission is meeting the goals and objectives in the CCMP. This function was revised to address non-substantive changes such as referring to the CCMP rather than “Restoration Plan amendments” because the term “CCMP” is used throughout the Amendment to be consistent with US EPA NEP guidance. This function also refers to “Santa Monica Bay NEP Annual Work Plans” because this is a key product developed by the Commission-Host Entity partnership. The Annual Work Plans describe the actions the Commission will take within a fiscal year to implement the CCMP. Upon the Governing Board’s approval, the Annual Work Plans are submitted to US EPA by the Host Entity to apply for the NEP Grant to implement the program and funding priorities of the Santa Monica Bay NEP. The Amendment specifies that, as the Policy Committee for the Management Conference, the Governing Board is the appropriate body to carry out this function (see Section 7.9 of the Staff Report for discussion of the Host Entity).

Function 3 states that the Governing Board is involved in setting program and funding priorities and providing direction to Commission staff to implement the program and funding priorities. While the Commission itself does not currently receive funds, the Commission has been charged to determine project eligibility and establish grant priorities for State bond funds designated specifically for restoration of Santa Monica Bay (e.g. Proposition 12, 50, and 84). However, the Governing Board does not approve funding budgets and expenditures for those projects as stated in function 1 of the 2014 MOU because those funds have not been directly appropriated to the Commission (further discussed in Section 7.2.4 of the Staff Report). The agencies or organizations that directly receive the funds, such as the State Water Board or State Coastal Conservancy, develop and execute grant agreements for those accounts, including

approval of funding allocations, budgets, and expenditures. These revisions are also consistent with US EPA NEP guidance, which states the Policy Committee sets priorities and provides direction to the NEP, and meets goal 2 of the Amendment.

Function 4 addresses a scenario in the event that the Commission is appropriated funds. The Commission would need to establish an account, and the Governing Board could approve the resource funding allocations, budgets, expenditures, and the use of funds appropriated to, or received by the Commission for activities or projects.

Function 5 specifies the Governing Board may authorize Commission staff to enter into legal agreements on behalf of the Commission. As described above, the Commission does not currently receive funding directly. However, the Governing Board still needs the ability to direct Commission staff to develop grants and contracts to implement the goals and objectives of the Commission. Commission staff provide administrative support consistent with the Commission's establishing legislation (Pub. Resources Code § 30988.2, subd. (c)(3)). The inclusion of this function ensures there is a mechanism to implement the Governing Board's direction on program and funding priorities and also meets goal 1 of the Amendment.

Function 6 reflects the Governing Board's ability to delegate authority, including decision-making authority, to the Executive Committee. This is consistent with US EPA NEP guidance, which states the Policy Committee delegates operational duties to the Management Committee. The Executive Committee serves as the Management Committee for the Santa Monica Bay NEP Management Conference. This function enables the 38-member Governing Board to set the tone and direction for the Commission but enables the smaller Executive Committee to implement that direction. This meets goals 1 and 6 of the Amendment and will enable the Commission to operate more effectively in performing the day-to-day activities.

Function 7 was included to state one of the Governing Board's key roles and functions from the establishing legislation, which states the Commission "will monitor, assess, coordinate, and advise all state programs, and oversee funding that affects the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed" (Pub. Resources Code § 30988, subd.(d)). While the legislation indicates "the Commission," it is appropriate to assign this role and function to the Governing Board. This revision meets goal 2 of the Amendment by clarifying the authority of the Governing Board to carry out the intent of the State Legislature.

Functions 8 and 9 describe the Governing Board's roles and functions related to the selection of a Host Entity and the partnership with the Host Entity in collaboration with US EPA. According to US EPA NEP guidance, the Management Conference may identify, select, and provide direction to a Host Entity. This is something that would be done in collaboration with US EPA as they disburse the NEP Grant to the Host Entity. The Host Entity is responsible for many of the day-to-day activities related to implementing the CCMP and the success of the partnership with the Host Entity ensures effective implementation of the CCMP and the advancement of the Santa Monica Bay NEP. The Governing Board may provide direction to the Host Entity to

ensure the goals and objectives of the CCMP are met; however, the relationship is a partnership and should be collaborative.

Consistent with the establishing legislation, the Commission may enter into agreements “to carry out the purposes of the [C]ommission” (Pub. Resources Code § 30988.2, subd. (c)(3)). The partnership between the Host Entity and Commission would be established in a separate Memorandum of Agreement (MOA). Section 7.9 of the Staff Report includes more detail regarding these functions of the Governing Board and the roles and functions of the Host Entity consistent with US EPA NEP guidance.

Function 10 was from the 2014 MOU and no revisions were made to it.

Function 11 is consistent with current practice to amend the MOU. The Amendment retained the requirement for approving amendments by a majority of the voting members of the Governing Board, which is a higher threshold than the threshold to approve other Governing Board actions (see Section III.A, Governing Board Quorum, of the Amendment). There have been suggestions to further increase the threshold to amend the MOU to a two-thirds majority vote of voting Governing Board members. However, considering the diverse membership of the members, this requirement unreasonably restricts the Governing Board’s ability to amend the MOU.

Function 12 was from the 2014 MOU and no revisions were made to it. See Section 7.12 of the Staff Report for additional discussion of the Conflict of Interest Code.

Function 13 was added to ensure that the Governing Board considers input from the other components of the Commission and the Host Entity, including the NEP Director, when making decisions. US EPA NEP guidance indicates it is important to include the public in the decision-making process. The Governing Board also relies on the other components of the Commission such as the Executive Committee and TAC to provide information to make informed decisions. To highlight the collaborative relationship between the Commission and the Host Entity, this function also includes the Governing Board’s consideration of input from the Host Entity, including the NEP Director. As the entity carrying out the day-to-day activities for implementing the CCMP, the Host Entity and NEP Director provide critical on-the-ground perspectives on issues in the watershed.

To ensure that the Governing Board is actively soliciting this input, the function also indicates the Governing Board should encourage participation from the Santa Monica Bay Stakeholders in defining problems, setting priorities, and implementing solutions, which meets goal 5 of the Amendment and is discussed further in Section 7.7 of the Staff Report. Each member of the Governing Board, especially the ex officio and appointed members, have broader constituencies and can act as a liaison for Commission activities to their constituents. This is an effective way to increase stakeholder engagement in the Commission’s activities and further the Santa Monica Bay NEP. This revision supports goals 1 and 3 of the Amendment by ensuring a collaborative approach to decision-making and problem-solving. Suggestions to improve

procedures of the Governing Board as they relate to stakeholder engagement are discussed in Section 7.7.3 of the Staff Report.

The Governing Board section in the 2014 MOU states the “Governing Board is responsible for establishing policies and priorities”. The Governing Board’s roles and functions still enable the development of policies or resolutions. In the past, the Governing Board has adopted resolutions in support of certain policies and programs such as the establishment of Marine Protected Areas and Designation of Surfrider Beach as a World Surfing Reserve. Although within the Governing Board’s discretion, the Commission is not required or compelled to make a position statement on any policy, program, or project that is within or affects the health of Santa Monica Bay and its watershed. Due to the diverse nature of its membership and limited Commission staff resources, reaching consensus is often a challenging, time-consuming process for the Governing Board. Development and adoption of the revisions and updates to the CCMP has largely served the purpose of developing and adopting new policy resolutions. Commission staff provide letters of support or comments on various policies, programs, and projects by citing goals, objectives, and action priorities stated in the CCMP adopted by the Governing Board and will continue to do so. The ability to adopt policy resolutions is also inherent in the Governing Board’s function to approve resolutions of the Commission (function 2). Also, the Amendment includes language that the Governing Board may enter into legal agreements (function 5) and coordinate and advise all state programs (function 7) that are within the Commission’s statutory authority. The ability to adopt policy resolutions is also captured in the Executive Committee’s function to develop recommendations for the Governing Board regarding resolutions of the Commission (function 3a of the Executive Committee; see Section 7.5.3 of the Staff Report).

#### **7.4.4 Meetings**

**Made non-substantive changes to the description of the Governing Board’s meetings.** The Amendment retained much of the discussion of the Governing Board’s meetings. The language “consisting of at least a majority of the voting members” was removed as this is redundant with the definition of a quorum of the Governing Board, which is a majority of the voting members of the Governing Board (see Section III.A, Governing Board Quorum), and the requirement to hold meetings in accordance with the Bagley-Keene Open Meeting Act (commencing with Gov. Code, § 11120, et seq.).

There have been suggestions to improve the procedures of Governing Board meetings and the processes for stakeholder engagement in Commission activities. For instance, to encourage a constructive, collaborative process and a clear understanding of the roles of the Commission, the Chair could read a code of conduct for Governing Board members and the public as well as a statement describing the Santa Monica Bay NEP at the beginning of each meeting. The Commission will consider developing a code of conduct for Governing Board members and the public to be presented by the Chair at the beginning of each meeting. Suggestions have also been made to facilitate communication among all components of the Commission. Specifically, suggestions were made to release the draft Executive Committee meeting minutes prior to the Governing Board meeting with the caveat that the Executive Committee has not

approved the meeting minutes, to continue to have the Chair provide a summary of the Executive Committee meeting at the Governing Board meeting, and to continue to post the Executive Committee meeting minutes and agendas on the Commission's website, all of which are currently being implemented. Section 7.7.3 of the Staff Report further describes suggestions to improve the Commission's responsiveness to concerns raised by members and stakeholders.

Suggestions related to meeting procedures, including those summarized above, are too detailed for inclusion in the Amendment and including this level of detail in the Amendment could constrain necessary flexibility in executing Commission meetings and activities. However, the Governing Board Chair could direct Commission staff to implement programmatic changes at any time without needing to amend the MOU.

#### **7.4.5 Quorum**

**Made non-substantive changes to clarify the Governing Board quorum.** The Amendment retained the definition of a quorum (a majority of the voting members of the Governing Board) and the requirement for actions taken by the Governing Board. However, this section was revised to state an action is taken by the Governing Board if it is "taken by a majority of a quorum of the Governing Board" rather than "by a majority vote of the voting members present".

### **7.5 SECTION III.B – EXECUTIVE COMMITTEE**

**Added a section for the Executive Committee which serves as the Management Committee of the Santa Monica Bay NEP.** The Executive Committee was established as a component of the Management Conference through adoption of Resolution 05-11 in 2005 and has functionally and effectively served as the Management Committee of the Santa Monica Bay NEP. The Executive Committee has become an integral component of the Commission for ensuring effective operation of the unusually large Governing Board. The Amendment incorporates the content of Resolution 05-11, but also includes revisions to reflect the current governance. The purpose of this section of the Amendment is to outline the Executive Committee's NEP parallel, membership, member terms, roles and functions, meetings, and quorum; clarify the authority of the Executive Committee to make decisions delegated by the Governing Board (goal 2 of the Amendment); enhance the leadership role of the Executive Committee in guiding the revisions, updates, and implementation of the CCMP (goal 3 of the Amendment); serve effectively as the Management Committee (goal 4 of the Amendment); improve stakeholder participation (goal 5 of the Amendment); and streamline processes and improve program efficacy (goal 6 of the Amendment). Any references to the Executive Committee's authority, roles and functions, and membership in the Amendment expand on and supersede Resolution 05-11. This section of the Amendment includes the following changes to the 2014 MOU:

#### **7.5.1 Members**

**Described and expanded the Executive Committee membership.** Resolution 05-11 states the Executive Committee consists of the Chair and Vice-chairs of the Governing Board. The Amendment increased the number of Executive Committee members from

seven to nine, made up of seven voting members and two non-voting members, outlined in Attachment D of the Amendment. The voting members consist of the Chair, five Vice-chairs, and the Chief Deputy Director of the State Water Board. The non-voting members consist of the NEP Director and the US EPA Regional Administrator of Region 9.

The Amendment retained from Resolution 05-11 the intent for the Executive Committee's composition to reflect the diverse stakeholder interests represented on the Governing Board. As the component serving as the Management Committee of the Santa Monica Bay NEP, it's important for the Executive Committee to consider the broad interests of the Governing Board when carrying out its roles and functions in overseeing the day-to-day activities of the Commission. The Executive Committee membership is described further below.

**Reduced the number of elected Executive Committee members.** As discussed in Section III.A of the Amendment, the elected Chair and five Vice-chairs serve on the Executive Committee. The Amendment retained from Resolution 05-11 the seat for the elected Chair on the Executive Committee. To maintain an odd number of voting Executive Committee members with the addition of the State Water Board (described further below), the number of elected Vice-chairs was reduced from six to five Vice-chairs of the Governing Board. An odd number of voting members is preferred to avoid impasse due to a tie. This meets goal 6 of the Amendment by ensuring daily operations of the Commission are continuously carried out.

**Added three ex officio seats to the Executive Committee for the State Water Board, US EPA, and NEP Director because each has an important role in supporting the Santa Monica Bay NEP.** The Chief Deputy Director of the State Water Board was added as an ex officio voting Executive Committee member. As discussed in Section 7.4.1 of the Staff Report regarding similar addition to the Governing Board, the addition of the State Water Board to the Executive Committee will improve coordination with the Commission and oversight to Commission staff, and therefore meets goals 1 and 6 of the Amendment. The State Water Board will participate with other elected Executive Committee members (i.e. the Chair and Vice-chairs of the Governing Board) in closed session because the State Water Board provides legal counsel for the Commission.

To fulfill the Executive Committee's role as the Management Committee of the NEP, and more specifically the role in guiding the development of revisions, updates, and implementation of the CCMP and coordinating and advising Commission activities, the US EPA Regional Administrator of Region 9 and NEP Director were added to the Executive Committee as ex officio non-voting members. The US EPA Regional Administrator of Region 9 currently serves as an ex officio non-voting member of the Governing Board and advises the Commission on US EPA policy, funding, and programmatic guidance. The addition of the US EPA Regional Administrator of Region 9 and the NEP Director ensures continued close coordination between the Commission and the Host Entity's activities consistent with US EPA NEP guidance to further the goals of the Santa Monica Bay NEP (see Section 7.4.1 of the Staff Report). The non-

voting members do not participate in closed session of the Executive Committee, which is consistent with the discussion of non-voting Governing Board members (see Section 7.4.1 of the Staff Report). Attachment D of the Amendment was added to outline the composition of the Executive Committee. Attachment A of the Amendment summarizes US EPA's role in the Santa Monica Bay NEP, specifically with regard to the Management Conference and the Host Entity, and includes a suggestion to add the NEP Director to the Executive Committee as well as the Governing Board.

Consistent with US EPA NEP guidance, these additions to the Executive Committee's membership facilitates communication and synergy among the components of the Commission, enhances the Executive Committee's ability to coordinate the day-to-day activities of the Management Conference of the Santa Monica Bay NEP, and meets goals 3 and 4 of the Amendment.

**Described the role of the Vice-chairs and the alternate members of the Executive Committee Vice-chairs.** Language was added to specify that the Chair of the Governing Board serves as the Chair of the Executive Committee. In the Chair's absence, the Chair's alternates, the voting members of the Executive Committee, or the voting members' alternates may act as the Chair of the Executive Committee, which is consistent with practice and the discussion of the Governing Board (see Section III.A, Governing Board Members).

The Amendment states that each Executive Committee member may designate up to two alternates to serve in the member's absence. The Executive Committee alternates for the Chair, elected Vice-chairs, and Chief Deputy Director of the State Water Board are the same as those designated as the Governing Board alternates to preserve continuity and ensure the Executive Committee can fulfill its roles and functions. The alternates assume all of the Executive Committee member's authorities, roles, and functions while serving in the capacity of that member, including voting on Executive Committee items as a voting member.

### **7.5.2 Member Terms**

Made member terms of the Executive Committee consistent with the Governing Board and described the terms of the ex officio Executive Committee members. Resolution 05-11 states the term of the Executive Committee members is one year. The Amendment increased the term of the elected Executive Committee members (i.e. the Chair and Vice-chairs of the Governing Board) to be two years consistent with the members' term as Vice-chairs of the Governing Board. The term for the ex officio Executive Committee members (i.e. the State Water Board, the US EPA Regional Administrator of Region 9, and the NEP Director) is ongoing in order to ensure directions are provided to Commission staff continuously and effectively for day-to-day activities that support the implementation of the CCMP. These revisions are important steps in achieving goals 1 and 3, improving the governance structure of the Commission and the Commission's ability to implement the CCMP.

### **7.5.3 Roles and Functions**

The roles and functions from Resolution 05-11 were incorporated in the Amendment and updated to reflect that the Executive Committee serves as the Management Committee of the Santa Monica Bay NEP. The Executive Committee roles and functions are described further below.

**Added function 1 to state the Executive Committee exercises authority delegated by the Governing Board, including the authority to make decisions.** The Governing Board and the Executive Committee are both empowered to make decisions for the Commission. As described in Section 7.4.3 of the Staff Report, the Governing Board is the key decision-making authority for the Commission and may delegate authority, including decision-making authority, to the Executive Committee. The work of the Executive Committee is typically done under the general guidance and direction from the Governing Board, consistent with US EPA NEP guidance. For example, the Governing Board approves all revisions and updates to the CCMP, Annual Work Plans, and any other plans, products, or resolutions of the Commission, but the Executive Committee may provide direction to Commission staff to collaborate with the Host Entity when developing work products and make interim decision before the final products are presented to the Governing Board (further discussed in function 3 below). See Section 7.8 and Section 7.9 of the Staff Report for further discussion regarding Commission staff's coordination with the Host Entity.

Function 1 also states the Executive Committee acts as a liaison to the Governing Board and facilitates clear communication with the other components of the Commission and the Host Entity. One way the Governing Board coordinates and communicates with the Executive Committee, TAC, Commission staff and Santa Monica Bay Stakeholders is through the Chair. As discussed in Section 7.4.1 of the Staff Report, the Chair of the Governing Board also serves as the Chair of the Executive Committee and should facilitate communication between the two entities of the Santa Monica Bay NEP. This could be done by the Chair providing a brief overview of the previous Executive Committee meeting to the Governing Board. Communication could also include releasing the draft Executive Committee meeting minutes prior to the Governing Board meeting with the caveat that the Executive Committee has not approved the meeting minutes and posting the Executive Committee meeting minutes and agendas on the program website. As discussed in Section 7.5.1 of the Staff Report, the addition of the US EPA Regional Administrator of Region 9 and the NEP Director to the Executive Committee also enhances the Executive Committee's ability to convey the Governing Board's direction and for the Host Entity to provide input to the Commission on the day-to-day activities of the Santa Monica Bay NEP (see function 4 below for the Executive Committee's role in soliciting input from the Host Entity). Above all, the addition of this function is necessary for carrying out other elemental functions, such as developing revisions and updates to the CCMP, Annual Work Plans, or a MOA with the Host Entity, and meeting goals 3 and 6 of the Amendment by improving processes that enhance the Commission's ability to implement the CCMP.

**Added function 2 to indicate the Executive Committee prepares the Governing Board's meeting agendas.** As the Management Committee, the Executive Committee

will have a sense of the day-to-day Commission activities such as the status of the CCMP implementation and priorities identified by the other components of the Commission or the Host Entity, including the NEP Director. The Executive Committee can receive input and plan the agendas for the Governing Board meetings to ensure the Governing Board is considering issues in the watershed and the Commission is meeting the obligations of an NEP. The inclusion of this function addresses goal 6 of the Amendment by improve program efficacy of the Commission.

**Added function 3 to describe the Executive Committee's role in the overseeing Commission work products.** This function of the Executive Committee is consistent with US EPA NEP guidance, which states the Management Committee oversees development of the CCMP, Annual Work Plans, resource and funding allocations, and budgets and makes recommendations to the Policy Committee. Resolution 05-11 states the Executive Committee develops and makes recommendations regarding matters of the Commission including Annual Work Plan priorities, organizational issues, and policies of the Commission. The Amendment revised and expanded this function in order to be consistent with the discussion of the Governing Board's roles and functions and to enhance the Executive Committee's ability to effectively serve as the Management Committee, meeting goals 3, 4, and 6 of the Amendment. Specifically, the Amendment adds to this function the development of revisions and updates to the CCMP and any other plans, products, or resolutions of the Commission (function 3a); the development of recommendations for monitoring, assessing, coordinating with, and advising all state programs that affect the watershed (function 3c); development of legal agreements on behalf of the Commission (function 3d); and the development and implementation of a MOA with a Host Entity (function 3e). The Amendment also includes the Executive Committee's ability to develop and make recommendations on program and funding priorities (function 3b). As described in Section 7.2.4 and Section 7.4.3 of the Staff Report, if the Commission is appropriated funds, the Executive Committee may direct the TAC or Commission staff to develop recommendations to the Governing Board regarding resource and funding allocations, budgets, expenditures, and use of funds appropriated or received by the Commission. The addition of this function will better enable the Executive Committee to fulfill its role as the Management Committee of the Santa Monica Bay NEP, meeting goal 4 of the amendment.

**Added function 4 to establish a mechanism for the Executive Committee to receive input when carrying out its roles and functions.** In order to effectively address issues of concern in the watershed, the Executive Committee solicits and considers input from the other components of the Commission and the Host Entity, including the NEP Director, and communicates this information to the Governing Board as needed. The Executive Committee can also establish mechanisms for the other components of the Commission and the Host Entity to raise issues of importance (function 4a), which is consistent with US EPA's guidance for the Management Committee to define and rank issues of interest in the watershed. These could be issues that have not been identified in the CCMP but have emerged since the CCMP was updated, or they could be issues in the CCMP stakeholders would like to explore further. The Executive Committee would determine how to proceed. For example, the Executive Committee may decide it is appropriate to have an information item on the

issue at a subsequent meeting (function 4c), add it for consideration for the next update to the CCMP, or to form a subcommittee to gather additional information and explore the issue further (function 4b). This flexibility and discretion in the Amendment allows the Executive Committee to decide the best course of action for any given issue.

If the Executive Committee determines it is appropriate to form a subcommittee, the Executive Committee would work with input from the other components of the Commission and the Host Entity to develop the subcommittee's scope of work. The Executive Committee would also develop tasks and operational procedures for the subcommittee, appoint the membership for each subcommittee, and report on subcommittee outcomes (function 4b). The subcommittees would generally be tasked with gathering and presenting information and making recommendations for next steps to the Executive Committee. The subcommittee's operational procedures could specify the duration of the subcommittee and the frequency and type of reporting to the Executive Committee. For example, the Executive Committee may designate a subcommittee as a standing subcommittee to operate on a continual basis or an ad hoc subcommittee formed for a limited period to address a specific need.

The Executive Committee appoints the membership of each subcommittee based on the nature of the issues to be addressed and the required expertise to address those issues. The subcommittee would most likely be members of the Governing Board, but it could also include members of the TAC or Host Entity staff. The Executive Committee would ensure the members are willing and able to participate on the subcommittees.

As the nature of the issue to be addressed may vary, the Amendment provides the Executive Committee the flexibility to structure the membership and report on individual subcommittee's outcomes in ways that achieve the intended goals of each subcommittee. The Executive Committee will determine the mechanism for reporting on subcommittee outcomes such as in the form of a memo or information item at an Executive Committee or Governing Board meeting. In the event subcommittee members do not concur on the recommendations, they can choose to present all recommendations in their report-out for the Governing Board or Executive Committee to consider.

Function 4 of the Executive Committee meets goals 4, 5, and 6 of the Amendment by ensuring the Commission is well informed and can effectively address issues of concern in the Santa Monica Bay watershed.

**Added function 5 to emphasize the importance of engaging the Santa Monica Bay Stakeholders.** Although, function 1 states the Executive Committee facilitates clear communication among the other components of the Commission, including the Santa Monica Bay Stakeholders, function 5 was included so the Executive Committee plays an active role in soliciting input from the Santa Monica Bay Stakeholders. The Executive Committee can support this function, in part, by reaching out to their broader constituencies to share information about Commission activities. This function meets goal 5 of the Amendment by increasing stakeholder participation in the Commission's activities, and is also consistent with US EPA NEP guidance, which states the

Management Committee informs the public about program activities and involves the public during each phase of the management process.

#### **7.5.4 Meetings**

Described the meetings of the Executive Committee consistent with current practice and the discussion of the Governing Board's meetings (Section III.A, Governing Board Meetings). Resolution 05-11 required the Executive Committee to meet at least bi-monthly, alternating those months with the meetings of the Governing Board and to meet more often as directed by the Governing Board or requested by the former Executive Director or two or more members of the Executive Committee. The Amendment states the Executive Committee should try to meet at least four times a year to allow flexibility in the event of unforeseen circumstances. The Amendment language also allows the Executive Committee to meet more often as requested by the Governing Board, Commission staff, or three or more members of the Executive Committee. All Executive Committee meetings are publicly noticed consistent with the Bagley-Keene Open Meeting Act.

#### **7.5.5 Quorum**

**Described the quorum of the Executive Committee.** This section is consistent with the discussion of the quorum for the Governing Board (Section III.A) and requires a majority of a quorum of the Executive Committee for an action to be taken by the Executive Committee.

**Stated inapplicability of quorum for subcommittees as they are not decision-making bodies.** The Amendment specifies that the subcommittees established by the Executive Committee shall not form a quorum of the Governing Board or Executive Committee because subcommittees do not make decisions on behalf of the Commission, but rather serve as mechanisms to provide more information or recommendations on issues of concern in the watershed. The Governing Board has not delegated its decision-making authority to subcommittees of the Commission and the subcommittees should not make policy decisions on behalf of the Commission. Instead, the subcommittees should present their recommendations to the Executive Committee or Governing Board for their consideration. Therefore, a quorum is not applicable to the subcommittees.

### **7.6 SECTION III.C – TECHNICAL ADVISORY COMMITTEE (TAC)**

The TAC serves as the Scientific and Technical Advisory Committee for the Management Conference of the Santa Monica Bay NEP. The Commission must rely on sound science in its decision-making and the TAC and the Host Entity facilitate this by providing technical expertise to the Governing Board and Executive Committee. The TAC advises the Commission, develops scientific information, conducts peer reviews, and can raise awareness for emerging environmental concerns in Santa Monica Bay. The TAC works with Commission staff and in collaboration with the Host Entity to guide the development of revisions and updates to the CCMP, Annual Work Plans, the Bay Comprehensive Monitoring Program, and other reports, plans, or products, of the Commission as necessary. The TAC is responsible for generating the State of the Bay

Reports, which is a science-based comprehensive assessment of Santa Monica Bay's environmental condition.

Much of the feedback received during the solicitation for input on the Amendment indicated strong support for the current structure of the TAC in effectively achieving its intended roles and functions. This section retained much of the content of the 2014 MOU, but the content was reorganized to be consistent with revisions elsewhere in the Amendment. The purpose of this section of the Amendment is to further define the roles and functions of the TAC as a critical advisory committee in the Management Conference and to outline the membership, member terms, meetings, and quorum of the TAC. This section of the Amendment includes the following changes to the 2014 MOU:

#### **7.6.1 Members and Member Terms**

**Updated the discussion of the TAC's membership to include more scientific specialties.** The TAC is comprised of volunteer experts from the scientific community that do not receive compensation for their services to the Commission and members should be able to provide non-biased scientific recommendations to the Commission. The Commission addresses broad and diverse issues related to all of the natural living resources in Santa Monica Bay. The TAC's membership should consist of a range of scientific specialties to support the Commission's diverse work. The Amendment lists examples of scientific specialties that have been represented on the TAC in the past, including those referenced in the 2014 MOU. The Amendment adds "climate change" to reflect that climate change is identified as a significant issue in the watershed and was consequently listed it as one of the top priorities in the CCMP (see Section 7.2.1 of the Staff Report). The list of scientific specialties in the Amendment is not comprehensive nor is it meant to imply that the TAC must cover all of the areas of expertise identified or can only appoint members in the listed specialties. As the work of the Commission, and by extension the work of the TAC, will change over time, these areas of expertise may also change. The goal is to have a TAC composed of the scientific experts capable of addressing the range of issues of concern in the CCMP and Annual Work Plans for the Santa Monica Bay NEP. For example, environmental toxicology, oceanography and coastal processes, environmental engineering, and climate change have been identified recently by the existing TAC as areas of expertise that the Commission can benefit from and new membership in these areas can be added.

**Updated appointment and terms of TAC members, TAC Chair, and TAC Vice-chair.** The Amendment retained the two-year term for TAC members and members can be reappointed for consecutive terms, which is consistent with terms of the Governing Board and Executive Committee membership. The Governing Board confirms appointment of the nominated members of the TAC by "a majority of a quorum of the Governing Board", which is consistent with the requirements to approve Governing Board actions (see Section III.A, Governing Board Quorum). Consistent with practice, the Amendment clarifies that the TAC self-appoints a Chair and Vice-chair who may act as Chair of the TAC in the Chair's absence. The TAC Chair works with the Chief Administrative Director to nominate existing members for reappointment, to identify new TAC members, and to fill TAC vacancies.

## 7.6.2 Roles and Functions

**Listed functions of the TAC to reflect functions consistent with revisions in the Amendment elsewhere and US EPA NEP guidance.** Major activities that the TAC has carried out over the years include:

- Develop the State of the Bay Report every five years.<sup>7</sup> The State of the Bay Report is a science-based comprehensive assessment of Santa Monica Bay's environmental condition. The report is developed, reviewed, and finalized primarily by the TAC with collaboration from outside experts, partner agencies, and organizations. The State of the Bay Report is presented to the Governing Board and general public for review. The TAC finalizes the State of the Bay Report, which is usually released in conjunction with the State of the Bay Conference;
- Develop and update the Bay Comprehensive Monitoring Program, subject to approval by the Governing Board;
- Review and evaluate project proposals for Proposition 50 and Proposition 84 grant funding. The final project recommendations are subject to approval by the Governing Board;
- Develop monitoring plan development guidance. Review and provide input on monitoring plans for Proposition 50 and Proposition 84 funded projects;
- Review and provide input on draft reports of technical studies conducted under the Annual Work Plan. The approval authority varies per requirements of grantors;
- Review and provide input on draft revisions and updates to the CCMP with the focus on identifying key environmental issues and challenges related to Santa Monica Bay habitats and ecosystem protection; and
- Develop research plan and funding priorities per request of the Governing Board and subject to Governing Board approval.

The roles and functions of the TAC in carrying out these activities are all advisory in nature, which are reflected and are incorporated in the Amendment and are described further below.

**Clarified the TAC provides all scientific information and rationale for its recommendations.** The 2014 MOU states that the TAC members should “work collaboratively to reach consensus on technical issues to present to the Governing Board”, but also states “the TAC may provide brief reports with recommendations to the Governing Board along with justifications and varying opinions within the TAC”. The Amendment states that the TAC must work collaboratively in carrying out its roles and functions and may preserve and provide to the Governing Board or Executive Committee the range of the TAC members' opinions and recommendations with the rationale for those opinions. The Amendment does not require the TAC to reach

<sup>7</sup> The 2015 State of the Bay Report is available online at <http://urbancoast.org/volume-5-issue-1-special-issue-state-of-the-bay/>.

consensus on recommendations to ensure that all of the expertise on the TAC is considered along with the rationale for the recommendation. The TAC is made up of diverse scientific experts. Historically, the TAC members worked collaboratively to carry out their roles and functions, including developing and finalizing the State of the Bay Report. However, the Amendment acknowledges that there may be circumstances in which all TAC members do not have the same scientific recommendations or that there may be more than one solution to achieve a specific goal. The TAC should work to identify priorities in the watershed based on their scientific analyses and work towards consensus on their recommendations. However, it is important that the TAC has the ability to document and present all scientific recommendations and the associated rationale to the Governing Board and Executive Committee for their consideration. This is important as the information may be used by the Governing Board or Executive Committee to make decisions.

**Made largely non-substantive changes to functions 1 through 6 of the TAC, which are consistent with current practice and assist the Commission in implementing the CCMP and serving effectively as the Management Conference of the Santa Monica Bay NEP.** The 2014 MOU describes the roles of the TAC consistent with US EPA NEP guidance for the Scientific and Technical Advisory Committee, which requires management strategies to be informed by sound science. Therefore, only minor revisions were made to functions 1 through 6. For example, function 1 added “Host Entity staff” in the TAC’s role of coordinating the State of the Bay Conference because coordination between both Commission staff and Host Entity staff is essential for the organization of large events. Also, function 2 specifies that the TAC identifies the “highest priority” research and projects and makes project recommendations to the Governing Board “and Executive Committee for funding as opportunities arise”, which furthers the Commission’s objectives to prioritize its actions and funding consistent with establishing legislation. Function 3 was revised to indicate the TAC reports to the Commission at the request of the Governing Board or Executive Committee to be consistent with the roles and functions of the Governing Board as the key decision-making body and the Executive Committee in providing oversight and direction to the TAC (see Section 7.4.3 and Section 7.5.3 of the Staff Report). The TAC may provide recommendations on technical issues within the Commission’s statutory authority whether or not the Governing Board or Executive Committee requested the TAC’s recommendations or will be voting on the issues. Function 6 was revised to clarify that when it comes to policy issues, the responsibility of the TAC is to provide scientific recommendations and conclusions and review technical components of policies or policy issues. The TAC is not responsible for making recommendations on policy issues themselves. These revisions help to achieve goals 2 and 6 of the Amendment by clarifying the authorities, function, and operational process of the TAC.

**Added function 7 to ensure the TAC receives input from the other components of the Commission and the Host Entity.** The TAC provides opportunities to receive and consider input from the other components of the Commission and the Host Entity, including requests for recommendations on technical issues. While the TAC should consider input from the other components of the Commission, including the Santa Monica Bay Stakeholders, and the Host Entity when performing their roles and

functions, the TAC will only receive tasks and work assignments from the Governing Board, Executive Committee, or Commission staff to ensure the workload is manageable for this volunteer group. This revision meets goal 5 of the Amendment by ensuring stakeholder input is received at each phase of the planning and implementation process.

### **7.6.3 Meetings**

**Added TAC meeting requirements.** The 2014 MOU did not specify meeting requirements for the TAC. On average, the TAC has met four times per year. It is anticipated that in fulfilling the roles and functions included in the Amendment, the TAC will continue to carry out similar activities and meeting in the similar frequencies. However, because the TAC is comprised of volunteers that do not receive compensation for their services to the Commission, this section was revised to indicate that the TAC endeavors to meet at least once each year and more often as requested by the Governing Board, Executive Committee, or Commission staff in order to fulfill its roles and functions. Although the TAC does not have delegated authority of the Governing Board, the meetings are held in accordance with the Bagley-Keene Open Meeting Act.

### **7.6.4 TAC Quorum**

**Defined quorum for the TAC.** In accordance with the Bagley-Keene Open Meeting Act, a quorum consists of a majority of the members of the TAC. The TAC does not make decisions on behalf of the Commission but serves in an advisory capacity to provide recommendations and information to the Commission.

## **7.7 SECTION III.D – SANTA MONICA BAY STAKEHOLDERS: PUBLIC OUTREACH AND INVOLVEMENT**

One of the most frequent comments received during the development of this Amendment was to improve the processes for stakeholder engagement in Commission activities, which is also one of the goals of the Amendment (goal 5; see Section 2 of the Staff Report). Accordingly, stakeholder outreach and effective public input have been identified as a priority area for improvement, especially concerning the deficiencies identified with the WAC structure. US EPA NEP guidance also emphasizes the importance of having the public participate in the Management Conference. Consequently, a number of programmatic changes have been proposed or implemented (see Section III.B.4 (page 10) in the Amendment and Section 7.7.3 of the Staff Report) to increase opportunities for stakeholder engagement in Commission activities and meet goals 3 and 4 of the Amendment. For example, the Amendment replaces the WAC with the Santa Monica Bay Stakeholders, and then further improves and enhances mechanisms for broader and more effective stakeholder participation. The Amendment outlines the Santa Monica Bay Stakeholders' opportunities to engage in the Commissions' activities, and these are described further below. The purpose of this section is to also outline the Santa Monica Bay Stakeholders' NEP parallel, participation, member terms, roles and functions, and meetings to enhance the effectiveness of the Citizen Advisory Committee of the Santa Monica Bay NEP as

prescribed in US EPA NEP guidance. This section of the Amendment includes the following changes to the 2014 MOU:

**Revitalized stakeholder participation by replacing the WAC with the Santa Monica Bay Stakeholders.** Involving the public and interested stakeholders in the activities of the Santa Monica Bay NEP is essential and integral to the program's success. Under the Commission's structure described in the 2014 MOU, stakeholder outreach and involvement is primarily conducted through meetings of the WAC, which was established by the Governing Board through the adoption of an amendment to the MOU in 2011.

The original purpose of the WAC was to provide a forum for disseminating information to and receiving input from a selected group of stakeholders in the watershed on the activities and decision-making of the Commission. The WAC was also considered equivalent to the Citizen Advisory Committee of a typical NEP. However, other Citizen Advisory Committees tend to be small in size with only selected representatives of their broader constituency. The WAC was not only exceptionally large, but its membership largely overlapped with the membership of the Governing Board. Instead of encouraging more participation from broader stakeholders, this structure was counter-productive and ineffective. The WAC structure caused confusion and misunderstanding among the stakeholders with regards to who is eligible to attend WAC meetings and what additional avenues are available for stakeholders to provide input. Additionally, due to the overlap with the Governing Board, management of the WAC's membership created unnecessary administrative burden on Commission staff. For these reasons, and as validated by much of the feedback received during the solicitation for input on the Amendment, the WAC is no longer productive or effective in achieving its original purpose or the intent of the Citizen Advisory Committee (see Section 6.2 and 6.3 of the Staff Report).

To ensure extensive, broad, and diverse stakeholder input is received at all components of the Commission and throughout all phases of the decision-making process, the WAC was revised to the Santa Monica Bay Stakeholders. The section was also moved from Section III.B of the 2014 MOU to Section III.D. This revision meets goals 1, 3, 5, and 6 of the Amendment by improving the structure and processes for public to participate in the program activities, including informing the implementation of the CCMP.

While US EPA provides flexibility for individual NEPs to organize themselves in ways that respond to local conditions and the NEP guidance documents are not intended to be prescriptive, the Santa Monica Bay Stakeholders meets the intent of the Citizens Advisory Committee as described by US EPA NEP guidance by providing and encouraging public participation in each phase of the planning and implementation of the CCMP and by ensuring broad, diverse interests are represented in its open forum structure.

#### **7.7.1 Participation and Member Terms**

**Described open participation of the Santa Monica Bay Stakeholders.** The revision was made to encourage anyone interested in the Commission's activities to engage

with the Commission as an inclusive forum rather than as a large formal council structure that limits participation to appointed individuals. The goal of the Amendment is to encourage more active participation by being open to all stakeholders, increasing the number and diversity of engaged and active stakeholders in the Santa Monica Bay watershed, and encouraging ongoing participation in Commission's activities. To achieve this goal, the Amendment defined the Santa Monica Bay Stakeholders as an inclusive group that is open to anyone who is interested in the Commission's activities in the Santa Monica Bay watershed. Therefore, there are no elections, appointments, or term limits for the Santa Monica Bay Stakeholders. According to US EPA NEP guidance, an open structure for the Citizens Advisory Committee is key to ensuring "widespread representation" as awareness of the Santa Monica Bay NEP increases and "as new interests and issues arise," which further supports the transition from the WAC to the Santa Monica Bay Stakeholders.

Attachment B of the Staff Report includes a list of the Santa Monica Bay Stakeholders as of the adoption of the Amendment. However, as the Santa Monica Bay Stakeholders is an inclusive group open to anyone interested in the Commission's activities, Attachment B of the Staff Report serves as an informal contact list rather than a formal membership list. The list of Santa Monica Bay Stakeholders in Attachment B of the Staff Report was updated from the WAC membership list of the 2014 MOU to reflect the current stakeholders known to Commission staff. Interested parties can contact Commission staff to be added to the Santa Monica Bay Stakeholders email distribution list. The list of Santa Monica Bay Stakeholders was not included as an attachment to the Amendment to allow for the list to be updated as needed without requiring an amendment to the MOU.

### **7.7.2 Roles and Functions**

**Described the role and functions of the Santa Monica Bay Stakeholders to enhance the Santa Monica Bay Stakeholders' role as the Citizen Advisory Committee of the NEP.** The roles and functions reflect the intent for encouraging more active and diverse participation from stakeholders in the Santa Monica Bay watershed. These additions meet goals 1 and 3-6 of the Amendment by outlining how the public participates in the Commission's activities and streamlining processes for engaging stakeholders. The Santa Monica Bay Stakeholders' roles and functions are described further below.

**Added function 1 and 2 to describe the Santa Monica Bay Stakeholders' role in providing input to the Commission and raising issues of public concern in the watershed.** While the 2014 MOU charged the WAC with advising the Governing Board on "priorities for funding, planning, project implementation, monitoring and further research", the WAC's structure impeded the ability to successfully carry out this responsibility. In addition to the improvements in encouraging broad participation, the Amendment clearly outlines the Santa Monica Bay Stakeholders primary function of providing input to the Commission consistent with US EPA NEP guidance. Santa Monica Bay Stakeholders are encouraged to provide comments, information, input, and constructive feedback on Commission work products, activities, and priorities on an ongoing basis and throughout each phase of the planning and implementation process

(function 1). The Santa Monica Bay Stakeholders also raise issues of public concern and provide input on mechanisms to address these issues for the Commission to consider, such as providing information items or forming subcommittees (function 2). As discussed in Section 7.5.3 and 7.8 of the Staff Report, the Executive Committee and Commission staff play active roles in engaging the Santa Monica Bay Stakeholders, including by establishing mechanisms for the Santa Monica Bay Stakeholders to identify issues in the watershed, coordinating with Commission staff to be informed of Commission meetings, events, and activities, and providing suggestions for programmatic improvements.

The Santa Monica Bay Stakeholders are essential to refocusing program visions, priorities, and actions; ensuring the Commission's activities are informed by stakeholders' perspectives; promoting a shared understanding of the problems and priorities in the watershed; and building long-term support for the Commission's activities. The Amendment outlines how the Santa Monica Bay Stakeholders can be engaged in each phase of the planning and implementation process to inform the Commission on the community's perspective on the key issues facing the watershed as well as the relative priority of those issues. See Section 7.7.3 of the Staff Report for additional discussion of mechanisms for stakeholders to engage in and provide input on the Commission's activities. The addition of these functions highlights and strives to achieve a core principle of a successful NEP consistent with US EPA NEP guidance: continuous stakeholder involvement and long-term community support (goals 4 and 5 of the Amendment).

**Added functions 3, 4, and 5 to reflect the Santa Monica Bay Stakeholders role of supporting the Santa Monica Bay NEP consistent with US EPA NEP guidance.**

The Santa Monica Bay Stakeholders are encouraged to promote participation of those who are essential to implementing objectives of the Commission (function 3) and assist member organizations, whether individually or collectively, in increasing awareness of issues within the Santa Monica Bay watershed (function 5). The Santa Monica Bay Stakeholders may also promote collaboration and partnerships among stakeholders including sharing information regarding new funding opportunities (function 4). These functions are consistent with US EPA NEP guidance, which indicates Citizen Advisory Committees assist the NEP by suggesting methods to inform the public, soliciting participation in the Commission's activities and processes, and identifying key people, organizations, and resources that can raise public awareness and build support for the NEP. The inclusion of these functions meets goals 3 and 6 of the Amendment by encouraging stakeholders to assist in building constituencies and long-term financial and public support that are critical to effective implementation of the CCMP.

### **7.7.3 Meetings**

**Outlined opportunities for Santa Monica Bay Stakeholders to provide input to the Commission.** As discussed above, the structure of the WAC caused confusion regarding participation in WAC meetings and additional opportunities for engagement in Commission activities. The Amendment clearly identifies the Santa Monica Bay Stakeholders' opportunities to provide comments, information, input, and constructive feedback, such as at regularly scheduled meetings (e.g., Governing Board meetings)

and any other Commission sponsored activities such as workshops, forums, and conferences. The time allotted for receiving public input may be extended at any time at the discretion of the Chairperson of the Commission event. The October 14, 2019 draft retained the discussion of work groups from the 2014 MOU's description of the WAC. However, given the revision of the WAC to the Santa Monica Bay Stakeholders and the avenues to provide information and input to the Commission, the discussion of work groups was removed from the Amendment. The Santa Monica Bay Stakeholders is an inclusive forum; therefore, they have the flexibility to form informal groups in order to focus on key issues of concern. Consistent with US EPA NEP guidance, these groups can suggest options for addressing problems and develop criteria to prioritize solutions and actions that further the goals of the Commission. Stakeholders could work with Commission staff to determine the appropriate Commission event to provide information and input to the Commission, such as at an upcoming Executive Committee meeting.

The Amendment improves and enhances mechanisms for broader and more effective stakeholder participation by incorporating opportunities for receiving input as a key function for the components of the Commission. As discussed in Section 7.5.3 and 7.7.2 of the Staff Report, the Executive Committee plays an active role in soliciting input from the Santa Monica Bay Stakeholders by considering and communicating input received from the Commission, including in its role of establishing subcommittees to address issues of importance in the Santa Monica Bay watershed.

In addition to the opportunities described above, the Commission will also hold at least one stand-alone Santa Monica Bay Stakeholder workshop per year to inform the public, respond to public inquiry, and solicit public input from Santa Monica Bay Stakeholders on items such as revisions and updates to the CCMP, Annual Work Plan priorities, proposed amendments to the MOU, and other activities of the Commission. The Workshop(s) of the Santa Monica Bay Stakeholders will be publicly noticed and chaired by the Governing Board Chair or Vice-chair. However, there is no chair of the Santa Monica Bay Stakeholders as it is an open forum to provide input on Commission activities. As referenced in Section 7.9.1 of the Staff Report, according to US EPA NEP guidance, one of the NEP Director's roles and functions could be to conduct public outreach and education activities to promote awareness and support of the Santa Monica Bay NEP and its activities. This would allow the Commission to capitalize on the resources and expertise of the Host Entity and the Commission's revised mechanisms for public participation to engage more diverse stakeholders.

There have been suggestions to increase the minimum number of Santa Monica Bay Stakeholders workshops. The minimum of one workshop allows for flexibility considering limited staff resources and additional workshops may be provided at the discretion of the Governing Board or Executive Committee, staff resources permitting. All these events are held in accordance with the Bagley-Keene Open Meeting Act and the agendas and meeting minutes are publicly available for transparency and to promote awareness of Commission activities. As a result, all these mechanisms will provide opportunities for more direct interactions between the Commission and stakeholders than the former WAC structure, and as a result, encourage more active participation by more stakeholders. If at some point the Santa Monica Bay Stakeholders

participation increases to an unmanageable level and the feedback needs to be streamlined through representative stakeholders, the Governing Board could direct the Commission staff to develop a proposed amendment to the MOU to establish a formal council or committee.

In addition to mechanisms described in the Amendment, the Commission is currently developing and implementing several solutions to further improve public participation, such as developing agenda items to discuss issues identified by the Commission and stakeholders in greater detail; varying the time, location, and length of the Commission's meetings and events to increase public accessibility; and providing an online portal for suggestions to allow stakeholders to submit input on an ongoing basis. Programmatic improvements may be implemented at any time to improve stakeholder input and processes. See Section 7.4.4 of the Staff Report for additional discussion of suggestions to improve the procedures of Commission meetings and other programmatic improvements.

#### **7.7.4 No Santa Monica Bay Stakeholders Quorum**

**Quorum is not applicable to Santa Monica Bay Stakeholders.** This portion of Section III.D was removed from the October 14, 2019 draft of the Amendment because a quorum does not apply to the Santa Monica Bay Stakeholders as it is not a state body.

### **7.8 SECTION III.E – ADMINISTRATION AND COMMISSION STAFF**

**Added a new section for Administration and Commission staff consistent with the establishing legislation.** Public Resources Code section 30988.2 requires the State Water Board to provide administrative services to the Commission. The State Water Board meets this legislative requirement by providing staff, office space, and other administrative support. The term “Commission staff” refers to the Chief Administrative Director and additional staff provided by the State Water Board as administrative support to the Commission. Additional administrative support may include other State Water Board staff, such as staff within the State Water Board’s Division of Financial Assistance, Division of Water Quality, or Office of Chief Counsel.

The 2014 MOU referenced responsibilities of Commission staff in discussion of other components’ role and functions, but this information was not organized in its own section. This section of the Amendment describes the roles and functions of Commission staff to ensure successful implementation of the mission, goal, and objectives of the Commission and to ensure the success of the Santa Monica Bay NEP. This section outlines the “administrative support” provided by the State Water Board as required under the establishing legislation. Clear identification of Commission staff’s roles and functions sets expectations for support provided to the Commission, improves interaction and communication, streamlines processes, improves program efficacy, and enhances Commission staff’s ability to serve members of the Commission and the general public (goal 6 of the Amendment).

The Host Entity also provides some administrative support to the Commission, and this is described in Section IV of the Amendment and 7.9 of the Staff Report. The description of the roles and functions of Commission staff in this section and separate description of the roles and functions of the Host Entity in Section 7.9 of the Staff Report also help to explain the collaborative nature of their relationship while clarifying the distinctions between the two entities. The addition of this section provides additional clarity to the governance structure of the Commission and meets goal 1 of the Amendment. This section of the Amendment includes the following changes to the 2014 MOU:

**Revised the reference of “Executive Director” in the 2014 MOU to “Chief Administrative Director” to be consistent with current practice.** The 2014 MOU states that the Governing Board may delegate the day-to-day functions of the Commission to an Executive Director who, with appropriate guidance from the Governing Board, may further delegate other functions of the Commission. The State Water Board has met the legislative requirement by providing Commission staff, a Senior Environmental Scientist (Supervisory) and an Environmental Scientist. The State Water Board may also recruit additional staff, provide counsel service, loan to, or accept the loan of an employee or employees from other state agencies. As of July 2017, the State Water Board provided a Chief Administrative Director to ensure that the Commission has daily administrative support. The term Executive Director was replaced with Chief Administrative Director in the Amendment to be consistent with the current governance structure, which meets the requirements in the enabling legislation. This revision meets goal 1 of the Amendment by clarifying the governance structure of the Commission.

**Outlined the roles and functions of the Commission staff consistent with current practice and discussion of interrelationships of the components of the Commission elsewhere.** The 2014 MOU mentions Commission staff convene meetings and prepare meeting materials, implement the objectives of the Commission, and support and coordinate with the other components of the Commission. The Amendment retained and expanded on these functions to be consistent with current practice and revisions to the amendment elsewhere. The roles and functions of the Commission staff are described further below.

**Incorporated functions 1-4 from the 2014 MOU to ensure daily operations of the Commission are continuously carried out.** Consistent with current practice and the 2014 MOU, function 1 states Commission staff prepare for, coordinate, and execute the meetings and workshops of the Commission. Commission staff reserve venues, ensure quorums, comply with Bagley Keene Open Meeting Act, prepare and distribute meeting materials, and facilitate meetings and workshops. Commission staff also work with direction from the Executive Committee to schedule items for administrative upkeep such as member elections and appointments; developing revisions and updates to the CCMP and Annual Work Plans; considering and implementing suggestions for improvements, such as those discussed in Section 7.4.4 and Section 7.7.3 of the Staff Report; and addressing issues of concern in the watershed. Meetings of the Commission are critical forums for making decisions, developing consensus around

management actions, coordinating partners' activities, disseminating information, promoting awareness of the Santa Monica Bay NEP, soliciting input from the other components of the Commission and the Host Entity, and engaging the public. As such, it is important to identify the component responsible for facilitating the required and necessary public meetings of the Commission.

Function 2 reflects Commission staff's responsibility of managing the membership of the Governing Board, Executive Committee, and TAC. As discussed in Section III of the Amendment and 7.3 of the Staff Report, the Commission's membership includes diverse stakeholder interests in the watershed. According to US EPA NEP guidance, "the Management Conference should remain open to new members as the community learns about the program and wishes to participate." Commission staff ensures the membership of the Commission aligns with the establishing legislation and NEP guidance for the Management Conference and works with the other components of the Commission to fill vacancies. Commission staff also encourage participation from additional stakeholders and maintain up-to-date contact and email distribution lists for Santa Monica Bay Stakeholders (see Section 7.7.1 and Attachment B of the Staff Report for the Santa Monica Bay Stakeholders currently known to Commission staff). The addition of this function ensures the Commission's membership meets the requirements of the establishing legislation, aligns with US EPA NEP guidance for diverse and open membership, and allows for greater flexibility and collaboration in responding to local conditions and citizen concerns.

Function 3 highlights Commission staff's role of serving as a point of contact and liaison among the other components of the Commission. Consistent with US EPA NEP guidance, clear communication among the components allows members of the Commission to gain a better understanding of their roles and responsibilities as well as the activities needed to meet the mission, goal, and objectives as the Management Conference of the Santa Monica Bay NEP. Commission staff fulfill this function by informing members and the public of the intent, authority, and roles and functions of the Commission; communicating the direction of the Governing Board; and coordinating and conveying input among the other components of the Commission, including from the Santa Monica Bay Stakeholders. As discussed in Section 7.7.3 of the Staff Report, Commission staff could work with Santa Monica Bay Stakeholders to determine the appropriate Commission event to provide information and input to the Commission. For instance, Commission staff could encourage Santa Monica Bay Stakeholders to present their information at an upcoming Executive Committee meeting to consider next steps, such as establishing a subcommittee or developing an information item. While Commission staff assist Santa Monica Bay Stakeholders in this manner, due to limited resources, Santa Monica Bay Stakeholders are responsible for compiling information, developing supporting documents, and organizing informal groups to focus on issues of concern without assistance from Commission staff. The Amendment clearly identifies Commission staff's role in establishing an effective channel of communication among the other components of the Commission to ensure the success of the Santa Monica Bay NEP.

Function 4 indicates Commission staff manage the retention of Commission documents and records as part of their administrative duties. This may include managing documents such as meeting minutes, reports, and resolutions of the Commission. The inclusion of this function enables the Commission to meet its obligations of transparency and accountability by maintaining a record of management actions.

As the required administrative support for the Commission, Commission staff are the appropriate component to fulfill these functions. The inclusion of these functions meets goals 1, 3, and 6 by ensuring the day-to-day business fundamental to the Commission's success are continuously and efficiently executed.

**Added functions 5-7 to further characterize Commission staff's role in providing administrative support to the Commission and work in collaboration with the other components of the Commission and the Host Entity to further the goals of the Santa Monica Bay NEP.** Commission staff are responsible for ensuring the Commission operates in compliance with applicable rules and regulations as a state entity and this includes providing programmatic updates to the Commission on a regular basis (function 6). Commission staff also work with the Host Entity, including the NEP Director, to develop and implement revisions and updates to the CCMP and Annual Work Plans (function 5). The Host Entity is the lead entity for the Santa Monica Bay NEP responsible for carrying out the programs and projects in the Annual Work Plans and complying with terms and conditions of the NEP Grant and Commission staff provides support in these activities. Commission staff also coordinate with US EPA and the Host Entity to ensure effective implementation of the CCMP and Annual Work Plans and to ensure the activities are carried out consistent with US EPA NEP guidance (function 7). This collaborative relationship and shared administrative support enable efficient use of limited staff resources and takes advantage of the knowledge, experience and skills of both entities for implementing the CCMP and Annual Work Plans. The inclusion of these functions meets goals 3, 4, and 6 of the Amendment.

**Added function 8 to establish a mechanism to carry out the Governing Board's direction.** As discussed in Section 7.4.3 of the Staff Report, the Governing Board may authorize Commission staff to enter into legal agreements on behalf of the Commission (function 5 of the Governing Board). The inclusion of this function meets goal 1 of the Amendment by ensuring there is a mechanism to implement the Governing Board's direction on program and funding priorities consistent with the establishing legislation.

**Stated the State Water Board is responsible for employing Commission staff.** Consistent with establishing legislation, the State Water Board recruits, determines terms, and employs Commission staff. The key roles of Commission staff are to implement the direction of the Governing Board and support the Commission. However, the State Water Board may recruit and provide additional direction to Commission staff. This ensures the day-to-day operations of the Commission are continuously carried out without requiring instruction from the Governing Board and Executive Committee. For example, the State Water Board may provide supplies, training opportunities, additional staff or other resources without direction from the Governing Board. This function was implied in State Water Board's employment of Commission staff, but is now clearly

stated in the Amendment. This revision meets goal 6 of the Amendment by outlining an efficient process for Commission staff to carry out their roles and functions.

## **7.9 SECTION IV – SANTA MONICA BAY NEP HOST ENTITY AND NEP DIRECTOR**

**Added a section to describe the Host Entity, including the NEP Director, consistent with US EPA NEP guidance.** Although the Commission has had a long-term partnership with the Host Entity to advance the implementation of the CCMP, the 2014 MOU did not mention the Host Entity. The Bay Foundation, which was initially established by the Santa Monica Bay Restoration Project in 1990, is a 501(c)(3) non-profit environmental group and has successfully served as the Host Entity of the Santa Monica Bay NEP since 2006 and provides the NEP Director. The term “Host Entity” is from US EPA’s 2015 NEP Guidance and use of the term in the Amendment is consistent with this guidance. According to US EPA, the Host Entity “serves as an administrative, financial, and operational manager of an NEP” and “administers the [NEP Grant] that supports the activities and projects of the NEP” (see Attachment A of the Amendment). In the Staff Report and the Amendment, “Host Entity staff” refers to the NEP Director and additional staff of the Host Entity. Commission staff (defined in Section III.E and described in Section 7.8 of the Staff Report) and Host Entity staff work collaboratively to further the goals of the Santa Monica Bay NEP and to implement the CCMP and the Annual Work Plans.

The success of the Santa Monica Bay NEP over the years can be attributed in large part to the collaboration and partnerships among participating stakeholders. The Commission-The Bay Foundation partnership plays a key role in effectively and successfully developing and implementing the CCMP and Annual Work Plans, as well as meeting programmatic, operational, and reporting obligations of the NEP.

The purpose of this section of the Amendment is to describe the collaborative partnership between the Commission and the Host Entity and outline roles and functions of the Host Entity, including the NEP Director, as defined by US EPA NEP guidance. The addition of this section validates the longstanding practice of the Santa Monica NEP, which is widely viewed as productive and effective for a resource-limited program. Characterizing this practice and clarifying the structure of the NEP educates members and the public (goal 1 of the Amendment), which further enhances the Santa Monica Bay NEP partnership and garners more stakeholder support (goal 4 of the Amendment), and improves the ability for the Commission to implement the CCMP (goal 3 of the Amendment). This section of the Amendment includes the following changes to the 2014 MOU:

### **7.9.1 Roles and Functions**

**Outlined the roles and functions of the Host Entity defined by US EPA NEP guidance.** Clearly outlining the roles and functions of the Host Entity will help the members of the Commission as well as the general public to understand the Commission-The Bay Foundation partnership. As the grantor of the NEP Grant, US EPA defines the roles, functions, and NEP requirements of the Host Entity and ensures the Host Entity meet any applicable NEP requirements (see Attachment A of the

Amendment for US EPA's summary of their role in the Santa Monica Bay NEP). Since its establishment as the Host Entity, The Bay Foundation has performed these roles and functions with direction from the Commission. The roles and functions in this section indicates the general program areas and the extent of expected collaboration between the Commission and the Host Entity and creates a basis for existing and future amendments to the MOA.

According to US EPA NEP guidance, NEPs successfully implement their objectives by maintaining effective governance structures that promote long-term accountability; securing stable and diverse sources of funding; monitoring and communicating results; and revising and updating the CCMP. The Host Entity supports successful implementation by performing their roles and functions in collaboration with the Commission and consistent with US EPA NEP guidance. This collaborative partnership is described in the MOA between the Commission and the Host Entity (described below). A list of general roles and functions the Host Entity may perform was included in Section IV of the Amendment; these are described further below.

Function 1 and 2 are the most prominent and key roles of the Host Entity carried out with the direction of the Commission. The development and implementation of the Annual Work Plans (function 1) and revisions and updates to the CCMP (function 2) are central to the Santa Monica Bay NEP's success. The Host Entity provides critical experience and knowledge in implementing successful projects, coordinating volunteer programs to broaden public involvement, monitoring and communicating outcomes to the Management Conference and the public, and diversifying sources of funds to sustain support and momentum in implementing the priorities of the Santa Monica Bay NEP (function 4). Based on the adopted Annual Work Plan, the Host Entity applies for and enters into a grant agreement with US EPA to receive the NEP Grant for implementation of the Annual Work Plan and CCMP (function 3). US EPA administers the grant agreement and evaluates the performance of the Host Entity as part of its funding assistance and program management responsibilities. However, the Host Entity may provide summaries or reports on the CCMP implementation and Annual Work Plans at the request of the Governing Board or Executive Committee (function 2). This is consistent with the current practice where The Bay Foundation staff provide updates at Governing Board and Executive Committee meetings.

Consistent with US EPA NEP guidance, the Host Entity also provides administrative and technical support for the Santa Monica Bay NEP (function 5) and a NEP Director (function 6; see discussion below). The Host Entity and Commission staff regularly communicate to ensure daily operations of the NEP are effectively carried out and coordinate on program activities such as preparing progress reports for US EPA, providing updates to the Commission, and organizing NEP events such as the State of the Bay Conference. The Host Entity also collaborates with other Commission components such as the TAC to carry out NEP activities.

US EPA NEP guidance states the Host Entity carries out its function with direction from the Management Conference. The Commission has provided and will continue to provide direction by reviewing and approving and revisions and updates to the CCMP

and Annual Work Plans and strengthening its partnership by supporting collaboration. The Host Entity is well-suited for responding to conditions on the ground and carrying out tasks that are necessary for efficient management of the NEP. The success of the Santa Monica Bay NEP is a culmination of the collaborative partnership between the entities, effective direction from the Management Conference, and the Host Entity's ability to independently execute project-level management actions. For instance, in addition to developing and distributing documents such as the semi-annual and annual progress reports, Baywire newsletter, performance evaluation reports in collaboration with Commission staff, The Bay Foundation also independently produces other project reports, financial reports, and other technical documents associated with underlying projects. While the Commission does not have a role in preparing or approving these documents, the work furthers the NEP by securing critical NEP Grant funds, informing the decisions made by the Commission, advancing restoration goals, and promoting awareness and support of the Santa Monica Bay NEP. The Host Entity also independently makes decisions on administration, finances, and operations, including day-to-day decisions on projects and staff. This is appropriate as The Bay Foundation is an independent, 501(c) 3 non-profit environmental group with its own governance structure, including a Board of Directors. The Bay Foundation hires staff, including the NEP Director, and assigns duties and provides direction and oversight to their staff independent of the State Water Board or the Commission.

Delineating these roles and functions in the Amendment ensures that they be carried out continuously and more effectively and sets expectations for the direction, collaboration, and coordination among the entities of the Santa Monica Bay NEP. These roles and functions meet goal 1 and 4 of the Amendment by clarifying the Santa Monica Bay NEP partnership consistent with US EPA NEP guidance.

**Outlined the primary roles and functions of the NEP Director consistent with US EPA NEP guidance.** According to US EPA's 2015 NEP Guidance, the Host Entity may provide and identify a NEP Director in consultation with the Governing Board, which is the current arrangement for the Santa Monica Bay NEP. While the US EPA NEP guidance has permissive language to provide flexibility for NEPs, the Host Entity providing the NEP Director is beneficial because the NEP Director can more effectively manage daily NEP operations and coordinate with US EPA and Commission staff. Though not formally acknowledged in the 2014 MOU, the role of NEP Director has been functionally carried out by the Executive Director of The Bay Foundation.

As described in US EPA NEP guidance, the roles and functions of the NEP Director may include, but are not limited to, NEP Grant management (function 1); day-to-day management of Santa Monica Bay NEP activities (function 2); programmatic or financial updates as requested by the Governing Board or Executive Committee (function 3); and serving as liaison to the Commission and US EPA and representative of the Santa Monica Bay NEP (function 4). As discussed in Section 7.4.1 and 7.5.1 of the Staff Report, the NEP Director also serves as an ex officio non-voting member of the Governing Board and Executive Committee in order to help advise Commission activities, improve coordination and information exchange among the entities of the Santa Monica Bay NEP regarding day-to-day management and long-term priorities, and

enhance the ability for the Commission to implement the CCMP. According to US EPA NEP guidance, the NEP Director's roles and functions may also consist of reporting results to US EPA, overseeing Host Entity staff in carrying out Annual Work Plan activities, conducting public outreach and education activities, and identifying partners and additional resources that will advance CCMP implementation.

In practice, Commission staff and the NEP Director provide programmatic updates during bi-monthly Governing Board and Executive Committee meetings. The NEP Director could also provide additional financial updates upon the request of the Governing Board or Executive Committee. For example, the Host Entity may provide an overview of how much of the NEP Grant has been spent to date and on which projects. The specific details of the programmatic and financial updates were not prescribed in the Amendment to allow the Governing Board Chair to use discretion in requesting the type, level of detail, and frequency of the reports. Should performance issues arise, the US EPA Regional Administrator of Region 9 and the Chief Administrative Director will confer and jointly develop a remedy and involve the Chair of the Governing Board in the process if necessary.

The inclusion of the roles and functions of NEP Director is consistent with practice and US EPA NEP guidance and builds on the existing Santa Monica Bay NEP partnership. These revisions meet goals 1, 3, 4, and 6 by designating the representative of the Santa Monica Bay NEP and their expectations for supporting the Santa Monica Bay NEP.

**Described The Bay Foundation as the Host Entity and clarified that the details of the Commission-The Bay Foundation partnership are described in a separate MOA.** US EPA conducts five-year assessments of a NEP's progress in implementing the CCMP and continued eligibility to receive the NEP Grant. The Santa Monica Bay NEP partnership has been deemed a successful model for CCMP implementation, and The Bay Foundation's role in the NEP's accomplishment has been acknowledged and illustrated in findings from the most recent Program Evaluation conducted by US EPA in 2019. US EPA concluded that the Santa Monica Bay NEP had "passed" the Program Evaluation and further indicated the Santa Monica Bay NEP "continues to make significant progress in implementing the [Santa Monica Bay] NEP's CCMP," and that US EPA was "impressed by the work [the Santa Monica Bay NEP's] team has accomplished in a wide range of project types and the partnerships [the Santa Monica Bay NEP has] successfully fostered with a host of community and agency partners." <sup>8</sup> The Bay Foundation continues to be instrumental in successful implementation of the CCMP.

The purpose of the MOU is to outline the governance structure while the MOA further characterizes the partnership between the Commission and The Bay Foundation and the expectations in fulfilling their respective roles and functions. Details of the Commission-The Bay Foundation partnership, including dispute resolution procedures

<sup>8</sup> US EPA's 2019 SMBNEP Program Evaluation Letter is available on the Commission's website at

[https://www.smbrc.ca.gov/about\\_us/orientation/docs/smbnep\\_pe\\_06122019.pdf](https://www.smbrc.ca.gov/about_us/orientation/docs/smbnep_pe_06122019.pdf).

between the Host Entity and Commission staff, performance assessments, or methods for the NEP entities to sever ties, are outside the scope of the Amendment and would more appropriately be addressed in a separate amendment to the MOA between the Commission and the Host Entity. To the extent disputes arise, the NEP Director and Chief Administrative Director should strive to efficiently and informally resolve disputes. However, the Governing Board Chair could serve as the mediator for any disputes between the NEP Director and the Chief Administrative Director as needed. The Governing Board could assess the performance of the Host Entity consistent with any terms outlined in the MOA between the Commission and the Host Entity and may identify and select a new Host Entity in collaboration with US EPA (see Section III.A and Section III.B of the Amendment and Section 7.4.3 and Section 7.5.3 of the Staff Report). For example, the Governing Board could determine that the current Host Entity lacks the capacity to support the Santa Monica Bay NEP's administrative or financial needs and initiate a process to identify a new Host Entity in collaboration with US EPA. While the MOA could be amended to clarify the mechanism for the Host Entity to part ways with the Commission, either party could initiate this at any time.

If directed by the Governing Board, Commission staff would develop a proposed amendment to the MOA following the adoption of the Amendment. A proposed amendment to the MOA would be subject to Governing Board review and approval. Amendments to the MOA between the Commission and The Bay Foundation will be consistent with US EPA NEP guidance and the Amendment approved by the Governing Board. The amendment to the MOA could further describe the shared responsibilities in implementing the CCMP and Annual Work Plans as well as the detailed roles and functions of the NEP Director.

The separate MOA was not attached to the Amendment to allow the documents to be updated as needed without requiring an update of the other. However, Commission staff will make an effort to present the two documents as separate but related documents whenever possible, such as on the Commission's website.

## **7.10 FORMER SECTION IV – OPERATION**

The purpose of this section of the 2014 MOU was to discuss the administrative support and the Account consistent with the establishing legislation. This section of the Amendment includes the following changes to the 2014 MOU:

**Deleted the former Operation section and updated the section numbers of subsequent sections.** The Operation section was removed because the State Water Board's administrative support to the Commission is described in the Section III.E (Administration and Commission Staff) of the Amendment (see Section 7.8 of the Staff Report). Also, the Account was terminated on June 1, 2012, so the MOU should not reference an account that no longer exists. According to State Water Board and Department of Finance, the Account was abolished because no money was ever placed into the Account. Pursuant to Public Resources Code section 30988.2, subdivision (c), the Commission may request and receive federal, state, local and private funds. Those funds could not be made available to the Commission without a legislative

appropriation, which is typically done via the Budget Change Proposal process. Any Budget Change Proposal would then have to be written and approved by the Department of Finance, the Governor, and the Legislature in order to receive the appropriation. Section III.A and Section III.B of the Amendment also clarify that, in the event that the Commission is appropriated funds, the Governing Board may approve resource and funding allocations and other funding-related tasks and the Executive Committee may also provide oversight and direction to the TAC and Commission staff to develop recommendations for resource and funding allocations and other funding-related tasks. Additional information is provided in Section 7.2.4 and Section 7.4.3 of the Staff Report. Although the Account is referenced in the establishing legislation, removal of this section meets goal 1 of the Amendment by clarifying the current operations of the Commission.

### **7.11 SECTION V – PROGRESS REPORTS**

The purpose of this section of the Amendment is to discuss the Annual Reports summarizing the progress of the Commission. This section of the Amendment includes the following changes to the 2014 MOU:

**Clarified the preparation of the Annual Reports is a discretionary task.** The first sentence of this section was revised to change the Commission “will” prepare Annual Reports to “may” prepare Annual Reports, which reflects the Commission’s discretion rather than obligation to prepare Annual Reports. The first sentence was also revised to include all components of the Commission, but generally refers to the accomplishments of “the Commission” rather than listing the individual components. The revisions to this section meet goal 2 of the Amendment by clearly distinguishing between obligatory and discretionary tasks within the Commission’s authority.

### **7.12 SECTION VI – CONFLICT OF INTEREST AND DISCLOSURE POLICY**

The purpose of this section of the Amendment is to ensure members who make decisions on behalf of the Commission avoid and disclose any conflict of interest. The Governing Board adopts the conflict of interest code (function 12; see Section III.A of the Amendment) consistent with the Political Reform Act (commencing with Gov. Code, section § 81000) and designates the appropriate positions that are subject to economic interest disclosures. This section of the Amendment includes the following changes to the 2014 MOU:

**Clarified applicable members are voting Governing Board and Executive Committee members.** This section was revised to clarify the conflict of interest code applies to members that make decisions on behalf of the Commission. Therefore, the Amendment specifies the conflict of interest code applies to voting members of the Governing Board and the Executive Committee rather than all members of the Governing Board. This revision meets goal 6 of the Amendment by clarifying processes for encouraging impartial decision-making of the Commission.

### **7.13 SECTION VII-IX – RESERVATION OF AUTHORITY, NO THIRD-PARTY BENEFICIARIES, AND CONSTRUCTION**

The purpose of Sections VII-IX of the Amendment are to outline the standard agreement provisions regarding reservation of the Commission's authority and the intended beneficiaries and construction of the MOU. This section of the Amendment includes the following changes to the 2014 MOU:

**Added Sections VII-IX to the Amendment.** The 2014 MOU did not clearly articulate several terms that are standard provisions to an agreement such as the MOU, including whether the MOU limits or expands the Commission's authority, benefits third parties, or is invalid if a provision of the MOU is determined invalid. These standard agreement provisions were added as described below in order to further clarify the authority of the Commission and the role of its members, and the intended application of the MOU.

**Outlined the Commission's reservation of authority.** Section VII was added to ensure it is clear that the MOU is a guiding document that outlines how the Commission may carry out its roles and functions consistent with the establishing legislation and it does not limit or expand the Commission's authority. The Amendment also clarifies that the MOU is not a regulation, but merely an outline of the Commission's governance structure to ensure the success of the Santa Monica Bay NEP consistent with the establishing legislation. The addition of this section meets goals 2 of the Amendment by further clarifying the authority of the Commission as described in the establishing legislation.

**Outlined the intended beneficiaries of the MOU.** Section VIII was added to clarify that only the Commission and the signatories are intended beneficiaries of the MOU and that third-parties cannot enforce provisions of the MOU. While implied in the 2014 MOU and in the establishing legislation, the Amendment now clearly identifies the primary parties that are intended to directly benefit from the MOU. The addition of this section meets goal 6 of the Amendment by clarifying the intent and application of the MOU and improving the efficacy of the program operation.

**Described potential invalid provisions of the MOU.** Section IX was added to clarify that, if there is any determination that a provision of the MOU is invalid, it does not invalidate any other provision of the MOU or the MOU in its entirety. The addition of this section is important to efficiently address validity concerns regarding the MOU and to ensure that the Commission can continuously carry out its functions if a provision of the MOU is deemed invalid, and meets goal 6 of the Amendment.

### **7.14 SECTION X – EXECUTION AND AMENDMENT**

The purpose of this section of the Amendment is to outline the execution and amendment of the MOU. This section of the Amendment includes the following changes to the 2014 MOU:

**Added Section X to the Amendment.** While the 2014 MOU outlined the agreement between the signatories of the MOU, including the ability to amend the MOU, the 2014

MOU did not specify how the signatories may execute or amend the MOU. New language was added as described further below to correct this deficiency.

**Described the execution of the MOU.** Language was added to clarify that the Amendment merges and supersedes any prior representations, discussions, understandings, or agreements by, between, or among the signatories relating to the MOU. Language was also added to specify that the signatories may execute the MOU in counterparts; and the MOU becomes effective upon the date of final signature of the signatories. The addition of this provision meets goal 6 of the Amendment by clarifying the approval process and improve the efficiency in the timely execution of the agreement between the signatories.

**Revised and clarified the MOU amendment process.** The Amendment retained from the 2014 MOU (former Section VII.3) the ability to propose amendments to the MOU to the Chairperson of the Governing Board at any time, which would become effective upon approval by a majority of the voting members of the Governing Board. This is a higher threshold than the threshold to approve other Governing Board actions (see Section 7.4.3 of the Staff Report). This section added language to clarify that the amendments to the MOU are effective the date of the final signature of the signatories of the MOU to be consistent with the discussion of the effective date of the MOU in Section X.3 of the Amendment.

Language was also added to indicate the Governing Board may consult with the Secretary for CalEPA and the Secretary for California Natural Resources Agency because it is important the other signatories be well-briefed on their involvement in any amendment to the MOU. The addition of this provision of the MOU meets goal 6 of the Amendment by ensuring the MOU meets the intent of establishing legislation with buy-in from the signatory agencies.

## **7.15 SECTION XI – AGREEMENT**

The purpose of this section of the Amendment is to outline the agreement between the signatories of the MOU that ensures the coordination of state programs affecting Santa Monica Bay and delineates the authority of Commission and its governance structure with respect to the implementation of those state programs consistent with the establishing legislation. This section of the Amendment includes the following changes to the 2014 MOU:

**Revised Section XI.1 (former Section VII.1 of the 2014 MOU) to clarify the requirements of the signatories of the MOU upon signing.** This section was revised to clarify the signatories of the MOU will support the mission and objectives in addition to the goal of the MOU. The requirement of “the election and appointment of at least a quorum of members of the Governing Board” was removed because the Governing Board membership has already been elected and appointed (Attachment C of the Amendment).

**Removed former section describing the Dispute Resolution Procedures.** Former Section VII.2 of the 2014 MOU, which pertains to Dispute Resolution Procedures referenced in Attachment D of the 2014 MOU, was removed because it did not clearly identify the applicable “parties” of the Procedure and was deemed impracticable. Also, the improvements in the Commission’s structure outlined in the Amendment allow for discussing and resolving disputes within each of the components. For instance, the Governing Board and the Executive Committee (see Section III.A and Section III.B of the Amendment, respectively) vote to take action and make decisions on behalf of the Commission. If there are disputes between members within one of these bodies, including between members representing the signatories of this MOU, on matters pertaining to the Commission, decisions are made through open deliberation, and ultimately by a majority vote of a quorum of that body in the normal course of Commission proceedings. The TAC serves in an advisory capacity by providing scientific information and recommendations to the Commission. To the extent members of the TAC do not agree, all information and recommendations are presented to the Governing Board or Executive Committee for them to consider and inform their decisions. Also, the Santa Monica Bay Stakeholders have the opportunity to provide all information and input to the Commission to inform decision-making. This revision improves the governance of the Commission by replacing ineffective procedures with productive methods for resolving conflicts, meeting goal 1 and 6 of the Amendment.

**Moved and expanded on discussion of amendment process to Section X.** The process for amending the MOU was moved from former Section VII.3 of the 2014 MOU to Section X to address execution and amendment of the MOU in a dedicated section (see Section 7.14 of the Staff Report discussion of additional revisions).

**Removed former Section VII.4 of the 2014 MOU to be consistent with revisions elsewhere.** Former Section VII.4 of the 2014 MOU was deleted because this provision is obsolete with the replacement of the WAC with the Santa Monica Bay Stakeholders (see Section 7.7 of the Staff Report).

## **7.16 ATTACHMENTS TO THE AMENDMENT**

The purpose of this section of the Amendment is to provide supplementary information on the Commission’s structure and function as the Management Conference for the Santa Monica Bay NEP. These additions meet goal 1 by clarifying the governance structure and membership of the Commission and its role in the Santa Monica Bay NEP. This section of the Amendment includes the following changes to the 2014 MOU to be consistent with revisions elsewhere:

**Added attachment to summarize US EPA’s role in the Santa Monica Bay NEP (Attachment A).** Attachment A of the Amendment provides accurate information pertaining to US EPA’s role in the Santa Monica Bay NEP, which includes advising the Management Conference, providing financial and technical assistance, and providing program management and oversight for the Santa Monica Bay NEP. This addition meets goal 1 and 4 of the Amendment by clarifying the coordination between US EPA and the entities that make up the Santa Monica Bay NEP.

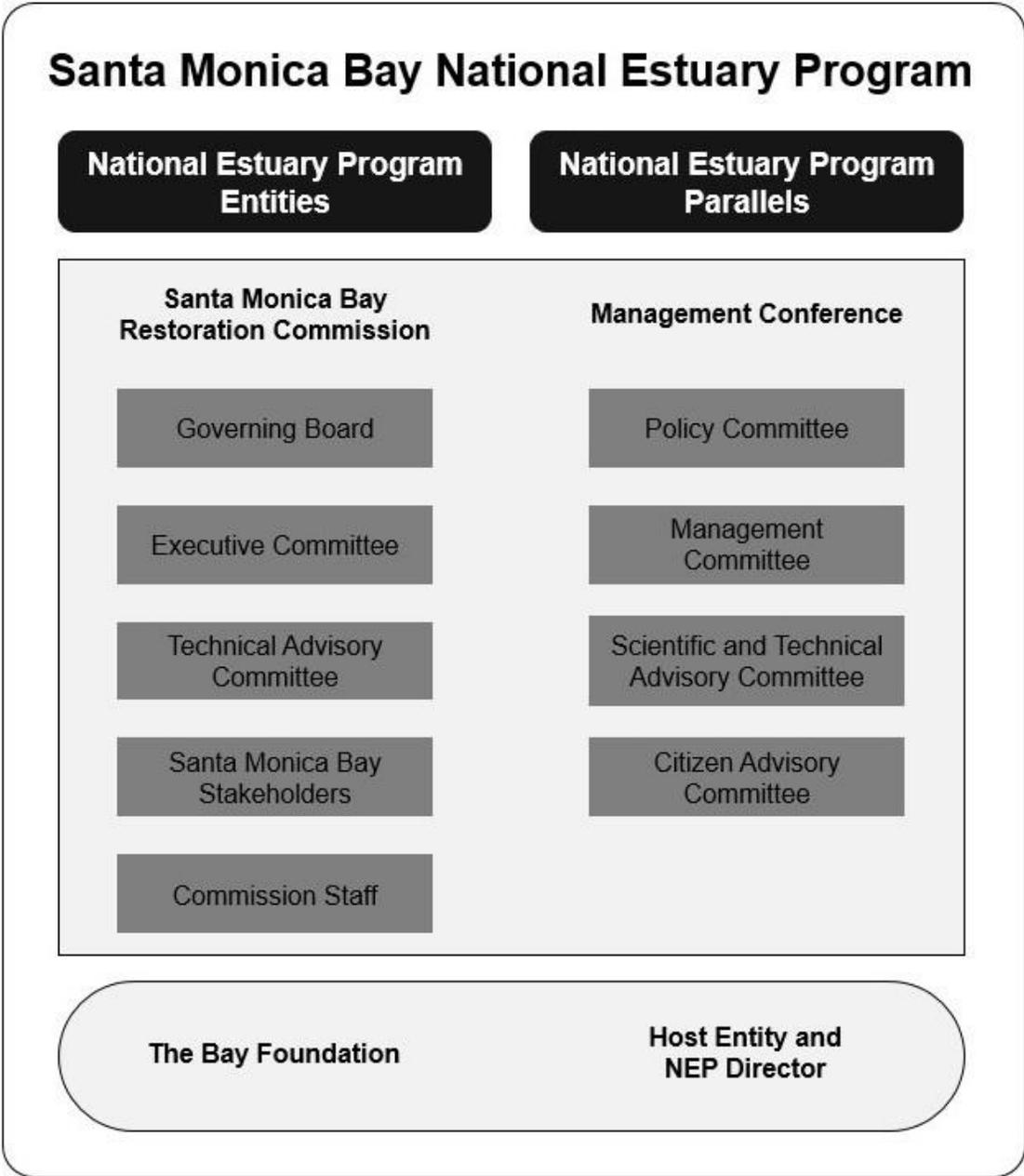
**Removed former Attachment B, which summarized the membership of the WAC.** Former Attachment B of the 2014 MOU was removed because this provision will be obsolete with replacement of the WAC with the Santa Monica Bay Stakeholders. The list of Santa Monica Bay Stakeholders was not included as an attachment to the Amendment to allow for the list to be updated as needed without requiring an amendment to the MOU, but the list was included as Attachment B of this Staff Report (see Section 7.7.1 of the Staff Report).

**Added attachment to illustrate the entities and interrelationships of the Santa Monica Bay NEP (Attachment B).** Attachment B of the Amendment shows that the Santa Monica Bay NEP is a partnership comprised of two distinct entities, the Commission as the Management Conference and the Host Entity, including the NEP Director. This figure and a figure illustrating the Santa Monica Bay NEP entities and NEP parallels are included as attachments to this Staff Report for reference (see Figure 1 and Figure 2 of the Staff Report).

**Updated Attachment C (formerly Attachment A of the 2014 MOU) to reflect the additions to the Governing Board's membership.** Attachment A of the 2014 MOU was revised with the additions of the Chief Deputy Director of the State Water Board as an ex officio voting member and the NEP Director as an ex officio non-voting member to the Governing Board (see Section 7.4.1 of the Staff Report).

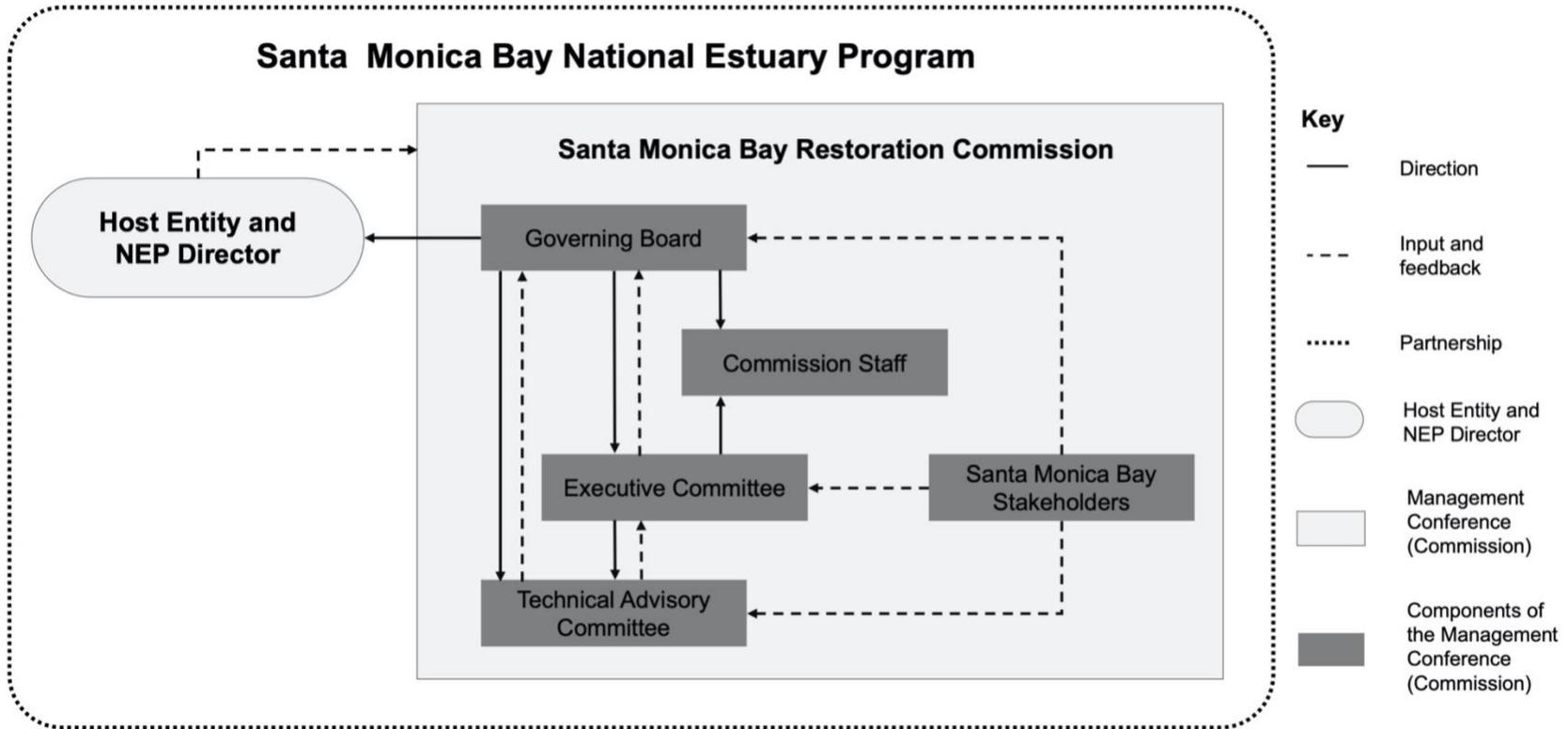
**Removed former Attachment D of the 2014 MOU due to existing mechanisms for resolving disputes.** Attachment D of the 2014 MOU was removed because the applicable disputing parties were unclear. Also, the Amendment outlines mechanisms for the components that make decisions on behalf of the Commission (i.e. the Governing Board and the Executive Committee) to resolve disputes during the normal course of Commission proceedings. The TAC and Santa Monica Bay Stakeholders should provide all information and input to the Commission (see Section 7.6.2, 7.7.2, and 7.15 of the Staff Report).

**Added attachment to summarize the Executive Committee's membership (Attachment D).** Attachment D of the Amendment reflects the Executive Committee's membership of the Amendment (see Section 7.5.1 of the Staff Report).



**FIGURE 1. Santa Monica Bay NEP Entities and NEP Parallels**

Current structure for the Santa Monica Bay National Estuary Program (NEP) and the US EPA NEP parallels. The Santa Monica Bay NEP is a partnership comprised of the Management Conference (Commission) and the Host Entity, including the NEP Director.



**FIGURE 2. Santa Monica Bay NEP Entities and Interrelationships**

Santa Monica Bay National Estuary Program (NEP) entities and the interrelationships. The Santa Monica Bay NEP is a partnership comprised of the Management Conference (Commission) and the Host Entity, including the NEP Director.

**ATTACHMENT A:  
Required and Optional Functions of the Santa Monica Bay Restoration Commission**

Required Functions	Optional Functions
<p>Enter into a memorandum of understanding between the Secretaries for Environmental Protection and the Resources Agency and the Chair of the Bay Watershed Council of the Santa Monica Bay Restoration Commission regarding:</p> <ul style="list-style-type: none"> <li>• The coordination of and governance structure for implementing state programs affecting the Santa Monica Bay and delineation of the authority of the Commission; and</li> <li>• The establishment of Commission membership, including federal, state, and local public agency officials and employees, and representatives of other stakeholder interests.</li> </ul> <p style="text-align: right;"><i>PRC § 30988.2(b)</i></p>	<p>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.</p> <p style="text-align: right;"><i>PRC § 30988.2(c)(1)</i></p> <hr/> <p>Award and administer grants for the restoration and enhancement of Santa Monica Bay and its watershed.</p> <p style="text-align: right;"><i>PRC § 30988.2(c)(2)</i></p>
<p>Prioritize in educational, monitoring, and bond proceeds expenditure decisions, proposals, or projects designed to achieve bay restoration objectives the following:</p> <ul style="list-style-type: none"> <li>• The reduction or elimination of stormwater, urban runoff, and point and nonpoint source pollution;</li> <li>• The reduction or prevention of the threat of oil and sewage spills and leaks;</li> <li>• The reduction and prevention of beach erosion;</li> <li>• The reduction and prevention of public health threats from pollution;</li> </ul>	<p>Enter into contracts and joint powers authority agreements, as necessary, to carry out the purposes of the commission.</p> <p style="text-align: right;"><i>PRC § 30988.2(c)(3)</i></p> <hr/> <p>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.</p> <p style="text-align: right;"><i>PRC § 30988.2(c)(4)</i></p>

Required Functions	Optional Functions
<ul style="list-style-type: none"> <li>• The prevention and restoration of, and protection against, loss of wetlands, coastal and riparian habitats, and Santa Monica Bay’s natural and living resources;</li> <li>• Effective enforcement of appropriate environmental laws;</li> <li>• Public education and warnings of any dangers of consuming contaminated seafood;</li> <li>• Increased public education concerning the Santa Monica Bay in collaboration with universities and grades K-12 schools; and</li> <li>• Assuring that ocean resources are accessible to all Californians regardless of socioeconomic status and are preserved and enhanced for future generations. <span style="float: right;"><i>PRC § 30988.3</i></span></li> </ul>	<p>Expend Santa Monica Bay Restoration Account funds appropriated by the Legislature to support the activities of the Commission.</p> <p style="text-align: right;"><i>PRC § 30988.2(d)(1)</i></p>

## **ATTACHMENT B: Santa Monica Bay Restoration Commission Santa Monica Bay Stakeholders**

The Santa Monica Bay Stakeholders is an inclusive group open to anyone interested in the Commission's activities in the Santa Monica Bay watershed. Below is an informal contact list of the Santa Monica Bay Stakeholders as of the adoption of the Amendment.

### **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 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 District  
State Senators, 27th District  
State Assemblymember, 50<sup>th</sup> District  
State Assemblymember, 62<sup>nd</sup> Districts  
State Assemblymember, 66<sup>th</sup> Districts

## **Other Members**

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

**ATTACHMENT C: Response to Comments on the October 14, 2019 Draft of the Amendment**