

**August 5, 2021 STAFF DRAFT  
PROPOSED AMENDMENT TO THE  
MEMORANDUM OF AGREEMENT  
BETWEEN THE SANTA MONICA BAY RESTORATION COMMISSION  
AND THE BAY FOUNDATION REGARDING THE  
SANTA MONICA BAY NATIONAL ESTUARY PROGRAM**  
As Amended [adoption date of the MOA] by  
Governing Board Resolution XX-XX

**I. INTRODUCTION**

The National Estuary Program (NEP) of the US Environmental Protection Agency (US EPA) was established in 1987 under Section 320 of the Clean Water Act (33 U.S.C., § 1330) to protect and restore the ecological integrity of estuaries of national significance. Santa Monica Bay was identified as an estuary of national significance and the Santa Monica Bay NEP was established in 1988 to promote collaborative watershed-based partnerships in order to develop and implement a Comprehensive Conservation and Management Plan (CCMP) that addresses a range of environmental problems facing Santa Monica Bay while recognizing and balancing the needs of the local community. US EPA advises, provides program management and oversight, and financial and technical assistance to the NEPs, including award and administration of the annual federal Clean Water Act Section 320 NEP grant (US EPA NEP Grant).<sup>1</sup>

Consistent with US EPA NEP guidance, the Santa Monica Bay NEP is comprised of two distinct entities, the Santa Monica Bay Restoration Commission (Commission) serving as the Management Conference and The Bay Foundation serving as the Host Entity (collectively the Parties). The Commission is a non-regulatory, state government entity comprised of the Governing Board, Executive Committee, Technical Advisory Committee, Commission staff, and Santa Monica Bay Stakeholders. The governance structure of the Commission is described in the Commission's Memorandum of Understanding (MOU).<sup>2</sup> The Bay Foundation is an Internal Revenue Code section 501(c)(3) nonprofit organization and is governed by its own Board of Directors. As the Host Entity of the Santa Monica Bay NEP, The Bay Foundation receives and administers the US EPA NEP Grant after determination by US EPA that The Bay Foundation meets the general administrative requirements for federal grants and solicits and receives additional sources of grant funding for CCMP implementation.

The purpose of this Memorandum of Agreement (MOA) is to set forth the agreement between the Commission as the Management Conference and The Bay Foundation as the Host Entity of the Santa Monica Bay NEP and to describe the respective roles and responsibilities and the collaborative relationship between the Commission and The Bay Foundation in order to further the goals of the Santa Monica Bay NEP.

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<sup>1</sup> See US EPA's April 9, 2020 memorandum to the Chair of the Commission regarding US EPA's role in the Santa Monica Bay NEP (Attachment A, page 17, of the Commission's Memorandum of Understanding (MOU)).

<sup>2</sup> The Commission's MOU is available on the Commission's website at [https://www.smbrc.ca.gov/about\\_us/docs/mou.pdf](https://www.smbrc.ca.gov/about_us/docs/mou.pdf).

The respective roles and responsibilities of the Commission and The Bay Foundation and the relationship between the two entities are described with reference to applicable US EPA NEP guidance including, but not limited to, Clean Water Act Section 320 NEP funding guidance and *Frequently Asked Questions on National Estuary Program (NEP) Governance* (US EPA 2015).

## **II. AGREEMENT**

Consistent with the above premises, US EPA NEP guidance, and the Commission's MOU, and to further the success of the Santa Monica Bay NEP, the Parties hereto agree as follows:

Serving as the Management Conference of the Santa Monica Bay NEP, the Commission agrees to perform functions within its authority consistent with the Commission's MOU, including but not limited to:

1. Review, approve, and support the development and implementation of revisions and updates to the CCMP, Santa Monica Bay NEP Annual Work Plans, and other plans or products of the Santa Monica Bay NEP;
2. Provide opportunities to receive input from The Bay Foundation, including the NEP Director, and consider input from The Bay Foundation and NEP Director; and
3. Consult with The Bay Foundation on the identification of the NEP Director.

Serving as the Host Entity of the Santa Monica Bay NEP, The Bay Foundation agrees to perform the following functions, including but not limited to:

1. Develop and implement Santa Monica Bay NEP Annual Work Plans in collaboration with the Commission's Governing Board and consistent with the applicable US EPA NEP Grant agreement(s);
2. Prepare revisions and updates to the CCMP and Santa Monica Bay NEP Annual Work Plans;
3. Receive and manage the US EPA NEP Grant in compliance with terms and conditions of the assistance agreement with US EPA and consistent with the Santa Monica Bay NEP Annual Work Plans;
4. Support the work of the Santa Monica Bay NEP to ensure its long-term financial sustainability by pursuing leveraging opportunities (i.e., financial or in-kind resources provided above and beyond the federal funding provided under the US EPA NEP Grant);
5. Provide administrative and technical support for facilitation and coordination of the Management Conference as a neutral forum for discussion; and

6. Identify, in consultation with the Commission's Governing Board, a staff member of The Bay Foundation as NEP Director who will serve as an ex officio, non-voting member of the Commission's Governing Board and Executive Committee and who generally performs the following Host Entity functions:
  - a. Manages the US EPA NEP Grant;
  - b. Manages day-to-day NEP Host Entity activities and coordinates NEP Host Entity activities with existing efforts in Santa Monica Bay and its watershed;
  - c. Provides programmatic or financial updates as requested by the Commission's Governing Board or Executive Committee; and
  - d. Serves as liaison of the Host Entity to the Commission and US EPA.

The Parties recognize and further agree that:

1. The above-enumerated actions do not limit their ability to carry out other duties or activities that advance the purposes of this MOA;
2. The Commission is not controlled by The Bay Foundation and The Bay Foundation is not controlled by the Commission;
3. The Commission does not act on behalf of The Bay Foundation and The Bay Foundation does not act on behalf of the Commission; and
4. The Bay Foundation is a private, non-governmental entity and is therefore not subject to the California Public Records Act (CPRA). Records that are in the exclusive possession of The Bay Foundation (i.e., neither in the actual or constructive possession of the Commission) are not required by the CPRA to be produced to the Commission. However, The Bay Foundation agrees to provide the final versions of the following documents to the Commission:
  - a. US EPA NEP Grant application;
  - b. US EPA notification of approval of the US EPA NEP Grant application;
  - c. Santa Monica Bay NEP Semi-annual and Annual Reports; and
  - d. NEP Program Evaluation package.

### **III. RESERVATION OF AUTHORITY**

1. Nothing in this MOA shall be construed as limiting or expanding the authority of the Commission or The Bay Foundation in carrying out their legal responsibilities.

2. This MOA does not alter existing law, nor does it create additional responsibilities for either the Commission or The Bay Foundation than each already maintains under existing law.
3. This MOA is not a regulation, nor does it create binding obligations for either Party.

**IV. NO THIRD-PARTY BENEFICIARIES**

1. This MOA is not intended for the benefit of any person or entity other than the Commission and The Bay Foundation. Third parties cannot enforce any provision of this MOA.

**V. CONSTRUCTION**

1. Any determination that a provision of this MOA is invalid does not invalidate any other provision of this MOA or the MOA in its entirety.

**VI. EXECUTION, TERM, AND MODIFICATION**

1. This MOA represents the entire agreement of the Parties and merges and supersedes any prior written or oral representations, discussions, understandings, or agreements by, between, or among the Parties relating to the subject matter of this MOA.
2. The Parties may execute this MOA in counterparts. Each executed counterpart shall have the same force and effect as an original instrument. Taken together, the executed counterparts shall constitute one and the same agreement.
3. This MOA shall become effective upon the date of final signature of the Parties.
4. This MOA shall continue in effect until modified by the mutual consent of the Parties or until terminated by a Party, upon a 90-day advance written notice to the other Party.

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Chair, Santa Monica Bay Restoration Commission  
Governing Board

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Date

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President, The Bay Foundation Board of Directors

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Date