

MEMORANDUM OF UNDERSTANDING
Concerning
MITIGATION AND CONSERVATION BANKING IN CALIFORNIA
Between the
California Resources Agency
And
California Department of Fish and Game
And
United States Army Corps of Engineers
And
United States Fish and Wildlife Service
And
NOAA National Marine Fisheries Service
And
United States Environmental Protection Agency
And
USDA Natural Resources Conservation Service

This Memorandum of Understanding ("MOU") is entered into by the California Resources Agency (the "CRA"), the California Department of Fish and Game (the "CDFG"), the U.S. Army Corps of Engineers (the "Corps"), the U.S. Fish and Wildlife Service (the "FWS"), the National Marine Fisheries Service (the "NMFS"), the U.S. Environmental Protection Agency (the "EPA"), and the USDA Natural Resources Conservation Service (the "NRCS"), collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Federal resource agencies published the Federal Guidance for the Establishment, Use, Operation of Mitigation Banks, 60 Fed. Reg. 58,605-58,614 (Nov. 28, 1995) where the Corps has the primary responsibility to review wetland mitigation banks that may be used to offset unavoidable impacts to waters of the U.S.; and

WHEREAS, the FWS published Guidance for the Establishment, Use, and Operation of Conservation Banks, 68 Fed. Reg. 24,753 (May 8, 2003); and

WHEREAS, the California Resources Agency and California Environmental Protection Agency, jointly published the Official Policy on Conservation Banks, April 7, 1995; and

WHEREAS, the Parties agree that the creation and use of mitigation and conservation banks can be an effective method to protect important habitat and also to mitigate for unavoidable impacts associated with development projects; and

WHEREAS, the Parties agree that it will be beneficial to create a more streamlined, coordinated approach for the submittal, review and approval of bank documents.

NOW, THEREFORE, the Parties intend to agree as follows:

Section 1 - Purpose

A. This MOU is entered into by the Parties for the purpose of establishing a framework for developing and using combined and coordinated approaches to mitigation and conservation banking in California to improve consistency of processes, services and products. It is the intent of the Parties that this MOU will provide a collaborative process for the completion of standardized banking documents (see Sections 3 and 4) and confirmation of an agreed upon process for continuous improvement of those documents and the processes defined therein.

B. The coordinated approach will aid in more rapid and conclusive review, comment and completion of proposed bank documents. A clearly defined and widely recognized process for development, review and approval of standardized banking documents will facilitate and accelerate the bank establishment process, simplify and clarify the process for bank sponsors, save agency staff time, reduce the cost of evaluating a bank proposal, and simplify oversight of operating banks to assure compliance with the Parties' responsibilities.

C. The use of mitigation and conservation banks to offset unavoidable adverse impacts shall be based first on accepted ecological principles, taking into consideration the practicability of using alternative mitigation strategies (e.g., on-site mitigation or use of an in-lieu fee program). The appropriateness of the use of mitigation and conservation banks shall be evaluated on a case-by-case basis as part of the permitting and consultation process.

D. This MOU does not in any manner affect statutory authorities and responsibilities of the Parties.

Section 2 - Incorporation with Regional Planning Efforts

It is understood that the FWS and CDFG have the primary responsibility to review conservation banks that may be used as a component of regional planning, Habitat Conservation Plan ("HCP"), and Natural Community Conservation Plan ("NCCP") planning and implementation. Banks may be included in long-term implementation strategies of State and Federal Agency-approved HCPs and NCCPs, as determined on a case-by-case basis by the Parties and HCP and NCCP participants.

Section 3 - Banking Documents

Banking documents (hereinafter, the "Templates") consist of the following:

A. A Bank Enabling Instrument ("BEI"). The BEI documents agency and bank sponsor concurrence on the objectives and administration of banks that mitigate impacts to waters of the U.S., including wetlands, and the physical and legal characteristics of the bank.

B. A Conservation Easement (“CE”). The CE is an interest in real property in perpetuity to retain land for specific goals for which the bank was established.

C. A Management Plan (“MP”). The MP is a plan to ensure the bank is managed and maintained in perpetuity consistent with the goals of the bank.

D. A Conservation Bank Agreement (“CBA”). The CBA documents agency and bank sponsor concurrence on the objectives and administration of banks containing natural resource values that are conserved and managed in perpetuity and used to offset impacts to specified listed species.

E. A Bank Proposal/Review Checklist (“Checklist”). The Checklist documents exhibits and addenda required for a complete bank proposal.

Section 4 - Responsibilities of the Parties

A. Responsibilities of the Banking Agency Management Team.

1. The Banking Agency Management Team (the “BAMT”) is composed of one representative from each Party who, at a minimum, has direct or delegated statewide responsibility for that agency. Members include:

- a. Corps - South Pacific Division, San Francisco, CA
- b. FWS - California-Nevada Operations, Sacramento, CA
- c. NMFS – Southwest Region, Long Beach, CA
- d. CDFG – Headquarters, Sacramento, CA
- e. EPA – Region IX, San Francisco, CA
- f. NRCS – California State Office, Davis, CA

There shall be no overlap between members of the BAMT and Mitigation Bank Review Teams (the “MBRTs”).

2. The BAMT shall:

- a. Appoint the Project Delivery Team (“PDT”), consisting of representatives from the Parties;
- b. Review and approve the Templates prepared by the PDT;
- c. Disseminate the Templates and any amendments thereto to the MBRTs for use in reviewing and approving bank documents;

d. If needed, meet annually to consider any permanent changes to the Templates suggested by the PDT; and

e. If needed, hold annual public meetings to provide information regarding the process and to address issues, such as new policy or regulatory items, regarding mitigation and conservation banking. Additional public meetings may be held as necessary. The BAMT shall respond affirmatively to requests for meetings, as workload allows. The annual public meeting, to the extent possible, is to be scheduled at the same time as the BAMT's annual meeting in 2d. above.

B. Responsibilities of the MBRTs.

1. Three MBRTs have the responsibility to review and approve bank documents. The MBRTs' areas of responsibility are based on the regulatory boundaries of the Corps districts in California (Los Angeles, San Francisco, and Sacramento). Each MBRT is composed of representatives from that district from each Party. The teams are identified as Los Angeles Bank Review Team (the "**LA-BRT**"), San Francisco Bank Review Team ("**SF-BRT**"), and Sacramento Bank Review Team ("**S-BRT**").

2. Each MBRT shall:

a. Recommend that bank sponsors use the Templates to establish a mitigation and/or conservation bank;

b. Review the information necessary to determine if the applicable Templates meet the Parties' requirements for establishing a mitigation and/or conservation bank;

c. Review the bank documents to determine if they provide adequate environmental, financial and legal surety;

d. Provide for such public input on the bank documents as required by the Parties' respective regulations, policies, practices, and guidance; and

e. Conduct outreach to the mitigation and conservation banking community and other interested communities to generate the widest possible understanding of the Templates and related process.

C. Responsibilities of the PDT.

1. The PDT will develop the standardized Templates according to the following timeframe:

a. The BEI will be completed not later than March, 2006.

- b. The CE will be completed not later than April, 2006.
- c. The MP, CBA and Checklist will be completed not later than June, 2006.

2. When developing each Template, the PDT will consult with the BAMT, MBRTs, bank sponsors and the public to receive their input, and fully consider such feedback before completing the Templates for BAMT approval.

3. The PDT may occasionally consider potential permanent changes to the Templates that have been brought to its attention by its own team members, or at the request of the BAMT, MBRTs, bank sponsors, or the public. The PDT may then develop proposed modifications to the Templates in consultation with the other MBRTs, bank sponsors, and the public. The PDT will submit its proposed modified Templates to the BAMT for consideration and approval.

Section 5 - Amendment, Modification and Termination

This MOU may be modified or amended only by written, mutual agreement of the Parties. Any Party may withdraw from this MOU by providing written notice to the other Parties. The termination will be effective upon the thirtieth (30th) calendar day following receipt of the notice, unless a later date is specified.

Section 6 - Miscellaneous

A. This MOU does not address all aspects of banking, such as types of activities, regulatory authorities, crediting, banking priorities, and mitigation preferences.

B. Participation in this MOU does not imply endorsement of all aspects of a banking proposal. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the Parties.

C. This MOU does not obligate expenditure of funds by any Party.

D. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, upon any Party.

Section 7 - Effective Date

This MOU will become effective when signed by all Parties.

IN WITNESS THEREOF, the California Resources Agency, the California Department of Fish and Game, the U.S. Army Corps of Engineers acting by and through its authorized officer the South Pacific Division Engineer, the U.S. Fish and Wildlife Service, California-Nevada Operations Office, the NOAA National Marine Fisheries Service, Southwest Region, the U.S. Environmental Protection Agency, Region IX, and the USDA Natural Resources Conservation Service, California State Office, have

executed this MOU on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original signatures.

Mike Chisum
SECRETARY, CALIFORNIA RESOURCES AGENCY

1/30/06
DATE

Andy Braddick
DIRECTOR, CALIFORNIA DEPARTMENT OF FISH AND GAME

20 Jan 06
DATE

Joseph Schild
COMMANDER, U.S. ARMY CORPS OF ENGINEERS
SOUTH PACIFIC DIVISION

11 Feb 2006
DATE

Steve Thompson
MANAGER, U.S. FISH AND WILDLIFE SERVICE
CALIFORNIA-NEVADA OPERATIONS

2/23/2006
DATE

Rodney R McInnes
REGIONAL ADMINISTRATOR, NOAA NATIONAL MARINE
FISHERIES SERVICE, SOUTHWEST REGION

4-10-06
DATE

Alvaro Thomas
DIRECTOR, WATER DIVISION
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX

15 March 2006
DATE

Liveston E. Bunker
STATE CONSERVATIONIST, USDA NATURAL RESOURCES
CONSERVATION SERVICE, CALIFORNIA STATE OFFICE

3/1/06
DATE