

## **Appendix J Memorandum of Understanding**

This appendix contains the Memorandum of Understanding (MOU) signed by the County of San Luis Obispo (County) and the California Department of Fish and Wildlife (CDFW) which sets forth the terms by which the County may access and undertake certain habitat enhancement, restoration, monitoring, and management activities within the Morro Dunes Ecological Reserve.

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MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
AND THE COUNTY OF SAN LUIS OBISPO

This Memorandum of Understanding (MOU) is entered into by and between the California Department of Fish and Wildlife (Department) and the County of San Luis Obispo (County) and sets forth the terms by which the County may access and undertake certain habitat enhancement, restoration, monitoring, and management activities (Mitigation) actions within the Morro Dunes Ecological Reserve (Property).

RECITALS

- A. The County proposes to utilize the Property for Mitigation described in the Los Osos Habitat Conservation Plan (HCP) to mitigate take/impacts resulting from HCP covered activities (Project) to Morro shoulderband snail (*Helminthoglypta walkeriana*), Morro manzanita (*Arctostaphylos morroensis*), Indian Knob mountainbalm (*Eriodictyon altissimum*), and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*), which are species listed pursuant to the federal Endangered Species Act.
- B. The Department is owner in fee title to the Property in the community of Los Osos, within which all portions of the Property to be utilized by the County for Mitigation are included. The Property, which is composed of the Pecho and Bayview Units, is depicted on Exhibit A.
- C. The Property is designated as an ecological reserve in California Code of Regulations, title 14, section 630, subdivision (b)(82), and is maintained for the primary purpose of developing a statewide program for protection of rare, threatened, or endangered native plants, wildlife, aquatic organisms, and specialized terrestrial or aquatic habitat types. As specified in California Code of Regulations, title 14, sections 550 and 630, certain uses within the Property are prohibited, including the removal of plants, bike riding, horseback riding, off-highway vehicle use, and camping. The County is dedicated to supplementing existing State resources to minimize the occurrence of these prohibited activities. Additional measures will include fencing, signage, physical barriers, and public outreach.
- D. The Property is in an unimproved natural condition and possesses wildlife and habitat values of great importance to the Department and the people of the State of California. The Property provides high quality habitat for Morro shoulderband snail, Morro manzanita, Indian Knob mountainbalm and possibly Morro Bay kangaroo rat. The Property is also comprised of two sensitive vegetation communities – central maritime chaparral and

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coastal dune scrub. In addition, the Property supports habitat that is suitable for other wildlife species of special concern including California legless lizard (*Anniella pulchra*), Blainville's horned lizard (*Phrynosoma blainvillii*), and Morro Bay blue butterfly (*Icaricia icarioides moroensis*).

- E. The County wishes to enter upon the Property to conduct the activities necessary to mitigate for a portion of impacts related to the Project. The Project includes, but may not be limited to, the development of up to 701 vacant parcels in and adjacent to the community of Los Osos; capital improvement projects; facility operation and maintenance activities, conducted by the County, Los Osos Community Services District and two private water purveyors; road and trail creation and maintenance; park expansion and creation; and water system upgrades, operation, and maintenance.
- F. The Department desires to accommodate the County's requested special use of the Property for the Purposes described in Section I of this MOU to the extent the Mitigation is compatible with the purposes and regulation of the Property and so long as the County bears the full cost of the Mitigation and associated long-term management and monitoring.

I. Purposes

- A. The purpose of this MOU is to establish the terms and conditions upon which the Department would authorize the County to undertake Mitigation on the Property and is also intended to serve as the Cooperative Management Agreement between the County and Department required under the HCP for enrollment of the Property into the Los Osos HCP Preserve System (Purposes). The Department by this MOU seeks to ensure the Mitigation:
  - B. Is consistent and not in conflict with the current and future uses of the Property, including the protection of rare, threatened, or endangered native plants, wildlife, aquatic organisms, and specialized terrestrial or aquatic habitat types and any encumbrances, easements, or public use values;
  - C. is consistent with the purposes for which the Property was acquired, the funding sourced used for acquisition, and the regulations for the Property, including California Code of Regulations, title 14, sections 550, 550.5, and 630;
  - D. will maintain or enhance the current ecological and public use values of the Property; and

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- E. will not preclude, diminish, or interfere with Property encumbrances or management of the Property, including the 1982 management plan for the Pecho Unit attached as Exhibit B.

II. TERM

- A. Term. This MOU will become effective as of the date of last signature. It will remain in effect through December 31, 2025, unless terminated as provided for in this Section. This MOU may be extended by written mutual agreement for subsequent terms not to exceed five years each. The Parties to this MOU shall finalize a draft MOU for renewal on or before 90 days prior to the date of expiration of this MOU. Should the Parties fail to renew the MOU, and the MOU terminates upon the expiration date of this MOU, the County will remain responsible for all costs of the Mitigation under section III.F. and any requirement to reimburse the Department for restoration under section V.C.
- B. Termination of MOU. The Department has the right to terminate this MOU in its sole discretion upon giving 90 days written notice of termination to the County as provided in Section V.I. below. If the Department or the County determines that a violation of a term of this MOU has occurred or is threatened, the Department or the County will give written notice of the violation to the other party as provided in Section V.I. below. The other party will have 30 days, or a longer period agreeable to the County and the Department, to cure the violation. If the violation is not timely cured, the notifying party may terminate the MOU by written notice.

III. HABITAT MANAGEMENT AND MONITORING

- A. Mitigation Description. The Mitigation consists of the closure and restoration of trails, the control of nonnative plant species, long-term management, and monitoring as will be more fully described in a Mitigation Plan for the Property which will be developed consistent with subsection III.B., immediately below. The Mitigation will enhance and restore habitat with the goal of supporting populations of Morro shoulderband snail, Morro manzanita, Indian Knob mountainbalm, and Morro Bay kangaroo rat.
- B. Mitigation Plan Development. The County, at its sole expense, will develop and provide the Department a draft Mitigation Plan for the Department's review and approval. The Mitigation Plan will identify individual Mitigation actions or distinct projects (each a Mitigation Action) that can be undertaken independently but contribute to the overall Mitigation. The Mitigation Plan must describe the specific management and/or restoration actions that will be implemented and the monitoring that will be used to evaluate their effectiveness, consistent with the Adaptive Management

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and Monitoring Plan (AMMP) for the Los Osos HCP Preserve System, which will be developed as outlined in Section 5.3.3 of the HCP

- C. Department Approval of Mitigation Plan. The Mitigation Plan must be approved in writing by the Department prior to the Department's issuance of a Special Use Permit (SUP) to the County and the County's entry onto the Property to implement the Mitigation. The Department may authorize the County to enter the Property for investigative or planning efforts necessary to the development of the Mitigation Plan or to secure any required permits for the Mitigation.
- D. Documentation. The County will provide the Department adequate documentation, subject to the review and approval of the Department, that the Mitigation will enhance current ecological values and maintain existing allowable public uses of the Property.
- E. Property Modifications. The County must take only those Mitigation Actions on the Property necessary to implement the Mitigation as described in the Mitigation Plan, and as authorized under its Special Use Permit, and agrees to remove any and all facilities or other improvements that are not essential to the Mitigation Plan following completion of a Mitigation Action.
- F. Mitigation Implementation, Management, and Monitoring. The County will be fully responsible for the costs, implementation, management, and monitoring of Mitigation. The County will designate an Implementing Entity acceptable to the Department, such as a land trust or conservancy, to implement, manage, and monitor the Mitigation.
- G. Long-term Funding. The County must provide for the full cost of implementation of the Mitigation Plan on the Property, including all capital improvements, restoration, enhancement, monitoring, long-term management and maintenance, and reimbursement for any Department staff time, including enforcement. Any SUP issued for a Mitigation Action will ensure that the County provides for such costs.
- H. Damage to the Mitigation Beyond the Department's Control. The Department will not be liable for or required to restore any damage to the Mitigation resulting from (i) any natural cause beyond the Department's control, including, without limitation, fire not caused by the Department, flood, storm, and earth movement, or any prudent action taken by the Department under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by the County or third parties not under the control of the Department.

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- I. **Method of Habitat Protection.** As an ecological reserve, the Property is protected pursuant to Fish and Game Code sections 1580 and 1764, and managed per California Code of Regulations, title 14, sections 550 and 630. In the event there is a change in the laws or regulations that remove protection for the Property, the Department, if feasible, will provide the County and the United States Fish and Wildlife Service (USFWS) no less than sixty (60) days advance notice before taking action to void or modify the protected status of the Property. In the event there is a change in law or regulation that removes protection for Property lands enhanced, restored, or managed by the County as part of the Conservation Program, the County will meet with the USFWS to identify alternative compensatory mitigation acceptable to the USFWS for any loss of mitigation value resulting from such a change in the Property's protected status.
  
- J. **Site Visits and Enforcement.** Currently, Department Environmental Scientists conduct occasional site visits and Department Wardens conduct necessary law enforcement activities within the Property. The Department has a land management plan (LMP) that provides recommendations for management and monitoring of the Pecho Unit of the Property; however, the LMP and other management, restoration, or monitoring activities are currently only implemented within the Property as Department funds and other resources allow. For purposes of this MOU, the Department agrees to continue to conduct occasional site visits and necessary law enforcement activities, as funds and resources allow, to continue to manage the Property at the same level as prior to entering into this agreement. This maintenance of effort is designed to ensure that the habitat restoration, management, and monitoring conducted by the County on the Property is above and beyond that which is already being conducted by the Department and therefore can mitigate project impacts under the HCP.

#### IV. SPECIAL USE PERMIT

- A. **SUP Required.** The County will apply for a Type 3 SUP for the Mitigation pursuant to California Code of Regulations, title 14, section 550.5, subdivision (d). The County and the Department recognize that separate Type 3 SUPs may be required for Mitigation Actions as appropriate given concerns related to implementation timing, location, and other specifics regarding the Mitigation that will be described in the Mitigation Plan.
  
- B. **SUP Fee.** The County will pay the SUP fee, if applicable, specified at California Code of Regulations, title 14, section 730.
  
- C. **Release, Waiver, and Indemnity.** To the maximum extent permitted by law, the County as a condition of the SUP will agree to waive all claims against the Department, its officers, agents, and employees for loss or damage

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caused by, arising out of, or in any way connected with the Mitigation or exercise of the SUP, and the County will agree to protect, save harmless, indemnify, and defend the Department, its officers, agents, employees, and contractors from any and all loss, damage, or liability, which may be suffered or incurred by the Department, its officers, agents, employees, or contractors, caused by, arising out of, or in any way connected with the exercise by the County of the rights granted in the SUP or for the Mitigation, except those arising out of the sole active negligence or willful misconduct of the Department. The County will further cause such indemnification and waiver of claims in favor of the Department to be inserted in each contract that the County executes for the provision of services in connection with the Mitigation.

- D. Additional SUP Terms and Conditions. The Department may incorporate any or all of the terms and conditions of this MOU in the SUP. The Department may include additional terms and conditions in the SUP necessary to protect and maintain the Property in accordance with its purposes and corresponding regulations.

V. GENERAL TERMS AND CONDITIONS

- A. Compliance with Laws. The County will be responsible for California Environmental Quality Act compliance and must obtain and maintain all state, federal, and local permits, licenses and approvals applicable to the Project. The County must comply with all current laws, ordinances, orders, rules, regulations and permits with respect to its use of the Properties pursuant to this Agreement.
- B. As-Is Condition and Assumption of Risk. The County will accept the condition of the Property as-is with any and all defects or hazards, whether or not known or suspected, and acknowledges that the Department is under no obligation to provide any additional preparations or improvements to the Property prior to use by the County, and the County's use of the Property is entirely at its own risk. Prior to commencing a Mitigation Action on the Property, the County, or its Implementing Entity, and the Department shall do a walk-through of each area where the Mitigation Action will occur and document, in writing and/or pictures, any existing damage, defects or hazards in the work area (Baseline Condition) to ensure that both parties acknowledge the existing, baseline conditions of the area prior to mitigation work.
- C. Restoration of Properties. If the County or its officers, employees, agents or contractors cause any damage to the Baseline Condition of the Property in connection with the implementation of this MOU or the Mitigation, the County must notify the Department of the damage within 48 hours and then fully restore the Property to its Baseline Condition in

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accordance with a restoration plan approved by the Department. If the County has not provided the Department with a restoration plan and a schedule for the restoration work acceptable to the Department within 60 calendar days from the date the Department received notice from the County, or from the date the Department notifies the County that the Baseline Condition was damaged, the Department will have the right, but not the obligation, to perform the necessary restoration and the County will be responsible for reimbursing the Department for any costs of such restoration. Upon receipt of the notice of restoration costs, the County will promptly reimburse the Department for the restoration costs incurred, plus an additional amount equal to the Department's then current rate for administrative overhead. The demand for payment by the Department will be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by the Department on behalf of the County.

- D. Advance Notification. Following receipt of its SUP, the County will give the Department 60 days advance notice of its anticipated Mitigation start, timing, and completion. The Department and the County will schedule the walk-through to establish the Baseline Condition at least 30 days prior to the start of any Mitigation Action. Any proposed changes to the schedule will be communicated promptly. Such notice shall be via email or telephone. The County will notify: California Department of Fish and Wildlife via email or telephone to the person specified in subsection I below.
- E. No Grant. Nothing in this MOU will be construed as a grant of title or any interest in the Property.
- F. No Admission of Liability. Nothing in this MOU or the SUP will be construed as an admission of liability by the Department of its responsibility as to any Hazardous Materials which may be found on the Property, nor, except as expressly provided in the SUP, as an admission of liability by the County as to any Hazardous Materials which may be found on the Property.
- G. Access to Property. The County will have the right to use and access the Property for Mitigation as specified in the Mitigation Plan, AMMP, and SUP, but may be subject to reasonable use restrictions. The Department will continue to have the right to use and access the Property in its entirety and to grant use and access rights to third parties, where such use or access does not interfere with Mitigation.
- H. Entire Understanding. This MOU constitutes the entire and integrated understanding of the County and the Department with respect to Mitigation on the Property by the County and may not be altered, modified or



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amended except in writing with the approval of the County and the Department.

- I. Notices. All notices given in conjunction with this MOU, except the Advance Notice for entry specified in Section V.D., must be written, and will be effective upon personal delivery to the other party or, if by mail, three days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

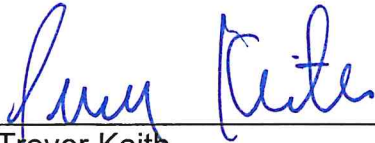
DEPARTMENT	Regional Manager, Central Region California Department of Fish and Wildlife 1234 East Shaw Avenue Fresno, CA 93710 <a href="mailto:reg4assistant@wildlife.ca.gov">reg4assistant@wildlife.ca.gov</a> (559) 243-4005 ext. 151  With copies to: None specified.
County	Los Osos Habitat Conservation Plan Coordinator Department of Planning and Building County of San Luis Obispo County Government Center San Luis Obispo, CA 93408 <a href="mailto:planning@co.slo.ca.us">planning@co.slo.ca.us</a> (805)781-5600  With copies to: Planning Director (same address)

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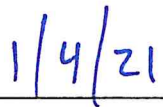
IN WITNESS WHEREOF, the parties have executed this MOU as of the date of last signature below.

COUNTY

County of San Luis Obispo



By: Trevor Keith  
Planning Director



Date

DEPARTMENT

California Department of Fish and Wildlife

DocuSigned by:



FA93F09FE08945A...

By: Julie Vance  
Regional Manager  
Central Region

3/2/2021

Date

DocuSigned by:



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By: Sheree Christensen  
Assistant Chief  
North Coast Law Enforcement District

3/2/2021

Date