



**MEMORANDUM OF UNDERSTANDING
BETWEEN**

**THE UNITED STATES ARMY CORPS OF ENGINEERS
NEW YORK DISTRICT**

AND

THE LONG ISLAND CHAPTER OF THE NATURE CONSERVANCY

INTRODUCTION: The U.S. Army Corps of Engineers (Corps) plays a national leadership role in the development, management, protection, and restoration of the Nation's water resources. The Nature Conservancy (TNC) is an international charitable, non-profit organization whose mission is to preserve plants, animals, and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. This Memorandum of Understanding (MOU) is intended to supplement an MOU signed by the Corps and TNC national headquarters in December 2000.

On Long Island, the Corps and TNC are working together on the Fire Island to Montauk Point Reformulation Study (FIMP) to prepare an implementable, comprehensive, and long-term regional strategy for an 83 mile portion of the south shore of Suffolk County, Long Island, New York. TNC and the Corps share goals of developing an innovative approach to the FIMP that will reduce risks of storm damage to human life and property, while maintaining, enhancing, and restoring ecosystem integrity, natural coastal processes and coastal biodiversity.

Furthermore, TNC has recently acquired 11,500 acres of bay bottom in the South Shore Estuary Reserve, which encompasses about 25% of the underwater lands in the Great South Bay and provides an unprecedented opportunity to restore key species and ecosystems, such as shellfish populations and sea grass communities.

- A. The Corps and TNC share a commitment to managing Long Island's marine and coastal resources in a manner that meets human needs, while also protecting other priority species, natural biological communities, and their habitats.
- B. The Corps and TNC are involved in developing and disseminating information about coastal processes and natural resources, including biological conditions that support management and restoration activities.
- C. The Corps and TNC both seek opportunities to develop partnerships and engage diverse stakeholder groups and local communities to identify, understand, and resolve coastal resource management challenges.

- D. The Corps and TNC have worked together successfully on a limited and largely ad hoc basis.

- I. **PURPOSE.** The purpose of this MOU is to facilitate effective and efficient management of important biological resources within the context of the Corps' civil works mission on Long Island, including the FIMP project area, to meet the objectives outlined below.
 - A. Protect or restore marine and coastal habitats for native animals and plants and natural communities;
 - B. Work cooperatively to identify ecosystem restoration opportunities around Long Island, including but not limited to tributary, shellfish, salt marsh restorations and water quality projects; and to secure approval, outreach capacity and local sponsorship for such projects;
 - C. Advance understanding of the distribution and condition of coastal ecosystems and biological diversity;
 - D. Facilitate coordination and cooperation in FIMP planning, by establishing a process for TNC to provide input to the FIMP interagency technical groups for real estate, communications and restoration framework;
 - E. Promote non-structural flood protection and other measures to maintain and/or restore natural ecosystem functions at sustainable levels;
 - F. Encourage management measures that benefit native animals and plants and natural communities while meeting needs of human communities;
 - G. Cooperate in the monitoring and management of rare and endangered species and their habitat potentially affected by Corps projects such as the FIMP;
 - H. Promote the gathering and sharing of scientific and spatial data and research by either party to this MOU as it may be related to projects of mutual interest and concern;
 - I. Implement active restoration strategies in Long Island estuaries, including the South Shore and Peconic Estuary Reserves. The need for restoration of the Great South Bay is strong, for example, in 1976; over 700,000 bushels of hard clams were harvested from Great South Bay, accounting for over 50% of the national total. However, today reduced availability of clams has restricted harvest to less than 2.5% of the peak harvest level and TNC and Corps restoration efforts can greatly benefit the ecosystem; and

- J. Work cooperatively in eco-regional planning and exchange information necessary for this process.
- II. **BENEFITS.** The Corps and TNC agree that the ability to achieve common and related natural resource goals can be enhanced significantly under the more coordinated approach outlined in this MOU.
- A. The Corps will benefit from access to TNC's extensive and active network of conservation partnerships, biological expertise, presence and successful history of work in local communities, and from TNC's unique position as a leading conservation organization known for its use of sound science and collaborative approaches in resolving natural resource management issues. Moreover, TNC will devote significant effort and resources to working on the FIMP and other collaborative projects.
 - B. TNC can benefit from the Corps' large, multi-disciplinary staff, and extensive technical experience in fields such as GIS mapping and analytical capacities, including projects for environmental restoration and protection and developing or modifying decision-support models for evaluating such management options.
- III. **RESPONSIBILITIES.** In consideration of the foregoing, the parties agree as follows:
- A. The Corps and TNC will cooperate in developing a FIMP plan that will reduce risks of storm damage to human life and property, while maintaining, enhancing, and restoring ecosystem integrity, natural coastal processes and coastal biodiversity.
 - B. TNC agrees to provide input to the FIMP interagency technical groups, and devote staff time and resources to the planning and outreach necessary to support this project.
 - C. As a component of the FIMP real state subcommittee evaluation, the Corps and TNC agree to share information and the Corps agrees to provide TNC access to relevant data, including digitized repetitive loss parcel data. TNC will work in collaboration with the Corps and the subcommittee to develop valuation methodology for real estate components of FIMP;
 - D. Due to Endangered Species Act considerations in the FIMP project area, the parties agree to work cooperatively with the U.S. Fish and Wildlife Service and the N.Y. Department of Environmental Conservation Region 1 towards the development of a Long Term Regional Comprehensive Management Plan for Threatened and Endangered species (LTRCMP) for the FIMP, if required.

- E. Both parties agree to participate in and lend expertise toward such a plan until its conclusion or its termination.
- F. The parties agree to develop plans, project objectives and goals for restoration activities in the Great South Bay, Peconic and other Long Island estuaries and cooperatively seek the necessary approvals, local support and long term monitoring commitments.
- G. The parties look to develop and agree upon an annual workplan that itemizes and details the specific project tasks within the scope of this agreement;
- H. The parties agree to work towards regional cooperation and mutual solutions to ecosystem restoration challenges by working within their respective organizations, and to elevate participation to the parties' regional and national headquarters as appropriate.
- I. For the purposes of this MOU, the Executive Agents are the Corps' New York Environmental Analysis Branch Coastal Coordinator and the TNC Coastal Program Director.
- J. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to the MOU will be made in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for the noncompetitive award to TNC of any contract or other agreement

IV. MODIFICATION, TERMINATION, AND OTHER CONDITIONS.

- A. This MOU may be modified or amended by mutual agreement of both parties in writing, and may be terminated by either party upon sixty (60) days prior written notice to the other party.
- B. This MOU in no way restricts the parties from participating with other public or private agencies, organizations, and individuals. Both parties recognize the importance of continuing cooperation and participation with non-governmental organizations and institutions in programs of mutual interest.
- C. This MOU does not create a private right of action in favor of any person not a party hereto.

- D. The Corps and TNC intend to conduct the activities contemplated in this agreement in accordance with existing authorities. If any provisions of this MOU are determined to be inconsistent with existing laws, regulations or directives governing the signatories, (including, without limitation, the Federal Advisory Committee Act 5 U.S.C. Appendix II) then such laws, regulations or directives shall control. However, the provisions of this MOU not affected by a finding of inconsistency shall remain in full force and effect.
- E. The parties understand that nothing in this MOU shall be deemed to affect the Corps' authority to determine whether Department of the Army permits under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act or Section 103 of the Ocean Dumping Act are or are not in the public interest, nor shall the MOU affect the Corps' procedures in making such determinations.
- F. The parties may extend the term of this MOU by mutual agreement. In the absence of such extension, this MOU will terminate on June 30, 2009.
- V. **IMPLEMENTATION.** This MOU becomes effective when signed by both signatory parties and remains in effect until modified or terminated.

**U.S.ARMY CORPS OF ENGINEERS
NEW YORK DISTRICT**

Richard J. Polo, Jr., Colonel, U.S. Army

By: _____ /s/ _____
District Engineer

August 25, 2004
Date

**THE NATURE CONSERVANCY
LONG ISLAND CHAPTER**

Paul Rabinovitch

By: _____ /s/ _____
Executive Director

August 25, 2004
Date