



Mitigation and Resource Protection Program Oversight Committee

Environmental Oversight Committee

Orange County Transportation Authority

600 S. Main Street, Orange CA

May 7, 2008

10 – 11:30 a.m.

AGENDA

- 1. Welcome**
- 2. Approval of April 2008 Minutes**
- 3. Master Agreement Working Group Report**
- 4. Work Plan Refinements**
- 5. Impact and Mitigation Working Group Report**
- 6. Future Presentations**
- 7. Public Comments**
- 8. Next Meeting – June 4, 2008**
- 9. Committee Member Reports**
- 10. Adjournment**

Public Comments: The Agenda descriptions are intended to give notice to members of the public of a general summary of items of business to be transacted or discussed. Members from the public wishing to address the Committee will be recognized by the Chairman at the time the Agenda item is to be considered. A speaker's comments shall be limited to three (3) minutes. Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the OCTA at (714) 560-5725, no less than two (2) business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

Environmental Oversight Committee

**April 2, 2008
Meeting Minutes**

Committee Members Present:

Chair Patricia Bates, OCTA Board of Directors
Vice-Chair Melanie Schlotterbeck, Measure M Support Groups
Cathy Green, OCTA Board of Directors
Stephanie Hall, US Army Corps of Engineers
Dan Silver, Endangered Habitats League
Debbie Townsend, California Wildlife Conservation Board
Sylvia Vega, Caltrans
Erinn Wilson, CA Department of Fish & Game

Committee Members Absent:

Merlin L. "Bud" Henry Jr., Taxpayers Oversight Committee
Judy McKeehan, SWCA Environmental Consultants
Adam Probolsky, Probolsky Research
Jonathan Snyder, US Fish and Wildlife Service

Orange County Transportation Authority Staff Present:

Monte Ward
Ellen Burton
Jim Sterling
Marissa Espino
Belinda Riva

Members of the Public Present:

Claire Schlotterbeck
Phil McWilliams
Ed Amador
Sherri Loveland
Jennifer Hamlin
Jane Olinger

1. Welcome

Chair Bates welcomed the committee members and called the meeting to order at 10:03 a.m.

2. Minutes

Vice-Chair Schlotterbeck provided corrections to several small errors in the March minutes, and Chair Bates asked the committee for any further corrections. Without any further comments, the minutes were approved with corrections.

3. Presentation Items

Claire and Melanie Schlotterbeck of Friends of Harbors, Beaches and Parks (FHBP) gave a PowerPoint presentation on the Green Vision Project and Natural Lands Acquisition Opportunities.

- As one of only 20 hot spots of biodiversity on the Earth, Southern California demonstrates a unique ecological opportunity for conservation. Orange County's existing open spaces play an important role in the regional context.
- In 2000, the regional non-profit Friends of Harbors, Beaches and Parks (FHBP) created the Green Vision Map to document public and private protected lands and with it a wish list of properties to purchase and restore. In 2005, the 75 members that support the Green Vision Project discussed supporting OCTA's Measure M.
- With the establishment of a programmatic mitigation component in the Freeway Program, 33 of those groups became part of the coalition that ultimately supported the Measure. The coalition believes the Green Vision Map offers significant opportunities that will help secure the health of this important landscape.

Copies of the Green Vision Map and selected PowerPoint slides were distributed to Committee members. Chair Bates requested copies of the PowerPoint as well.

Monte Ward, Director of Special Projects, asked Melanie to expand on the difference between the Green Vision Project and the framework Tim Neely, Director of the County of Orange - Planning and Development Services, presented at the March meeting. In response to the presentation by Tim Neely, Melanie Schlotterbeck stressed that conservation efforts need a comprehensive vision to look at ecosystems as a whole rather than focus on a limited elevation and a single endangered species.

Monte indicated that large areas have been set aside due to negotiations from private land owners and asked Melanie to explain how the process of the Green Vision Project has accommodated those negotiations.

Melanie clarified that allocated funding would assist in the acquisition of land that has been identified in red as important or an immediate threat on the Green Vision Map. The Green Vision Project currently relies on different funding sources and Melanie foresees with the Measure M process that this would be an additional source to acquire identified lands.

Monte pointed out that the Green Vision Project represents a variety of organizations and there is not enough Measure M money to acquire all of the identified areas, but the committee looks forward to a process that is open and transparent.

Melanie Schlotterbeck responded that the members of the Green Vision Project recognize that this project is not about advocating for a particular property but rather resource-based decision making to ensure that these mitigations are appropriate.

Ellen Burton asked Monte what kind of a nexus needs to happen between the freeway program in Measure M and the mitigation, and how does that relate to prioritization.

Monte Ward responded that the nexus question is what the ad hoc working group is looking at in the resources and freeway map. The difference is that the committee can look at a larger scale at what is the impact of freeway projects and determine how to scale that to the mitigation. Monte also indicated that the mitigation does not have to be tied to transportation but there is a different standard when dealing on the project level.

In response, Claire Schlotterbeck said that Measure M provides a local funding source and that it takes political will and expertise to find sources for funding.

Monte added that in the transportation arena, leveraging and matching funds is familiar and the benefit of working with environmental groups and resources helps in gaining better knowledge for acquisition or restoration of properties.

Sylvia Vega asked what is the zoning in some of the areas on the Green Vision Map, specifically along Cleveland National Forest and Chino Hills.

Melanie Schlotterbeck responded that the zoning depends on the area and indicated that various areas are governed by the Foothill Trabuco Specific Plan, Silverado Modjeska Specific Plan, and the Hillside Ordinance in the General Plan of the City of Brea.

Sylvia also asked Melanie if those areas are slated for development. Melanie pointed out on the Green Vision Map that if the area is in red, a group is actively working on the land because it is slighted for development or it is a targeted area for acquisition.

Chair Bates suggested that there should be a legend produced that shows already existing plans or a document that oversees development. Chair Bates thanked Claire and Melanie Schlotterbeck of FHBP for their presentation.

4. Public Information Approval

Monte Ward prefaced the public information materials as documents that would be posted on the Orange County Transportation Authority (OCTA) website. Monte asked Marissa Espino if there were any changes or corrections to the public information documents: Frequently Asked Questions and Timeline. Marissa indicated that there were no changes made since the last meeting in March.

The committee approved the public information materials.

Ellen Burton explained that on the OCTA website, there is a renewed Measure M section and these documents will be posted in the Environmental Mitigation Program portal and the Project X section on Environmental Cleanup. The committee can continue to upload data as it becomes available.

Monte Ward suggested that the committee would direct the public to the website rather than distributing materials via mail.

5. Ad-Hoc Working Groups Update:

A. Master Agreement Working Group

- Monte Ward indicated that this group has not had its first meeting yet but is scheduled for Tuesday, April 8th 9-11:30 a.m.

B. Impact and Mitigation Working Group

- Jim Sterling reported that the first meeting on February 25th was well attended with 10 participants. This working group intends to compile and assemble environmental and freeway project databases for analysis. The group started to define the methods that will be used for analysis, drafted a work plan, and set a meeting schedule for the next four months.
- Dan Phu presented a general description and status of all the M2 freeway projects. The Working Group distributed maps to show the sites of the freeway projects in the context of the environmental data. These maps were provided for review and comment; the group is looking for feedback before the next meeting.
- The group requested that they are provided more detailed data in the form of maps. Jim indicated that those maps would be available through an FTP site by the end of the week.

Monte Ward said that the next meeting should include reports from the groups, which will address what has been done and engage the full committee on the presentation and some of the issues. Among these issues will be what levels of direct and indirect impacts will be included, and how do we define these impacts.

Chair Bates asked if the Master Agreement Working Group would probably be in relation to the Impact and Mitigation Working Group. Monte suggested there are issues the committee can look at without integrating the two groups. The plan is to look at what San Diego has done as a starting point and then see where the Master Agreement Working Group needs to go from there. Working with OCTA Legal Counsel and firms with experience, the group will work on drafting and developing the Master Agreement.

6. Public Comments:

Phil McWilliams, Silverado Modjeska Recreation and Parks District, supports the Green Vision Project as a wonderful process, very inclusive and a good compromise. Phil also wishes to preserve the uniqueness of Orange County.

Ed Amador, Canyon Lands Conservation Fund in Silverado Canyon, worked with the Green Vision Project to find matching state, federal and local funding. Ed highlighted the opportunity to take part in conservation efforts that have been utilized in other states and throughout the Western United States.

Sherri Loveland, Orange County Interfaith Coalition for the Environment, seeks to ensure that the process of the Environmental Oversight Committee would be kept in public view, stressing the transparency of meetings and decisions open to the public.

Jennifer Hamlin, Save Banning Ranch, is looking for funding support through Measure M for acquisition of Banning Ranch in Newport Beach, CA to preserve open space and prevent future residential development of 1,750 new homes. Sylvia Vega asked if Jennifer could point out the location on the Green Vision Map and the area was outlined in red.

Jane Olinger, California Cultural Resources Preservation Alliance, would like to remind the committee that they are stewards of a historical responsibility.

Claire Schlotterbeck recognized the founder of Friends of Harbors, Beaches and Parks, the founder's family and Phil McWilliams, who lost his home in the October 2007 fires, present in the meeting's audience. Chair Bates gave great appreciation to the volunteers and the community of Orange County for their contribution and input.

7. Next Meeting – May 7, 2008

Chair Bates set the goal for the next meeting to define the process and stages that the committee must go through from this committee to move forward. It is important for the committee to outline the layers within the OCTA committee structure and the final decision making process.

8. Committee Member Reports

No committee comments.

9. Adjournment

The committee meeting was adjourned at 10:52 a.m.

Freeway Mitigation Master Agreement Draft Work Plan (Spring 2008 Update)

Tasks	Implementation Schedule	Responsible Party
1.0 Create Oversight Committee		
1.1 Recruitment and appointment policies and procedures	Aug. – Sept. 2007	Monte Ward
1.2 Committee charter and staffing	Aug. – Sept. 2007	Monte Ward/Ellen Burton
1.3 Recruit and select committee members	Sept. – Oct. 2007	OCTA/Marissa Espino
1.4 Convene committee <ul style="list-style-type: none"> Meeting times and dates Select vice-chair Review charter and work plan 	Nov. 2007	OCTA/Marissa Espino
1.5 Committee organization/working subcommittees	Fall 2007/Winter 2008	EOC/Marissa Espino
1.6 Monthly committee meetings	Ongoing	EOC/Marissa Espino
2.0 Work Plan Development		
2.1 Draft Work Plan with Tasks, Estimated Schedule and Responsible Parties	Ongoing	EOC/Monte Ward
2.2 Approval of Work Plan by Allocation Committee	Feb. 2008	EOC/Monte Ward
2.3 Hire/retain staff and/or consultant assistance	Winter/Spring 2008	OCTA
2.4 Monitor and report on progress in implementing Work Plan	Ongoing	Monte Ward
3.0 Revenues and Funding		
3.1 Recommend funding/financing scenario	Oct. – Nov. 2007	Kirk Avila
3.2 Board adopts EAP plan of finance	Nov. 2007	OCTA/Kirk Avila
3.3 M2 funding estimates	Annual update May/June	Ken Phipps
3.4 Matching funds and grants analysis	Fall 2008	TBD
4.0 Assessment of Freeway Program Impacts		
4.1 Review of methodologies and data resources	Sept. 2007	EOC/Jim Sterling
4.2 Collection and compilation of data	Fall 2007/Winter 2008	EOC/Jim Sterling
4.3 Review and refinement of data	Spring/Summer 2008	EOC/Jim Sterling
4.4 Inventory of impacts	Summer/Fall 2008	EOC/Jim Sterling, Dan Phu,

Freeway Mitigation Master Agreement Draft Work Plan (Spring 2008 Update)

		consultant(s)
5.0 Assessment of Mitigation Opportunities		
5.1 Inventory of potential acquisitions/restorations	Spring/Summer 2008	Ad Hoc/Jim Sterling
5.2 Evaluation of nexus with freeway impacts	Spring/Summer 2008	Ad Hoc/Jim Sterling/consultant
5.3 Evaluation of resource value of properties	Summer/Fall 2008	Ad Hoc/Jim Sterling/consultant
5.3 Assessments of potential price/costs	Summer/Fall 2008	Ad Hoc/Jim Sterling/consultant
5.4 Ranking of mitigation measures	Summer/Fall 2008	Ad Hoc/Jim Sterling/consultant
6.0 Develop Master Agreement		
6.1 Establish drafting team	Spring 2008	EOC
6.2 Develop draft framework for agreement	Summer 2008	Ad Hoc/OCTA legal
6.3 Develop draft agreement	Fall 2008/Winter 2009	Ad Hoc/OCTA legal
6.3 Legal review of draft agreement	Winter 2009	Resource Agencies/OCTA
6.4 Agency reviews of draft agreement	Spring 2009	Resource Agencies/OCTA
6.5 Adoption/approval of final agreement	Spring 2009	Resource Agencies/OCTA
7.0 Implement Mitigation Program		
7.1 Land acquisitions	TBD	TBD
7.2 Habitat restoration projects	TBD	TBD
7.3 Management program	TBD	TBD
7.4 Monitoring	TBD	TBD

Update for Environmental Oversight Committee, 5/7/2008

**Impact and Mitigation Working Group
Meeting #2, 4/17/2008**

- **The working group reviewed maps of freeway projects and key environmental data sets (vegetation, water resources, open space).**

Additional data sets will be included in the impact analysis, but were not mapped at the project level (habitat boundaries and species occurrence)

- **As next steps, potential direct and indirect impacts will be inventoried for each project**
 - Vegetation impacts will be quantified (acreages)
 - Presence / absence of all other resources will be tabulated
 - More detailed maps of certain project will be produced
- **The group agreed that, if feasible, it would be beneficial to include an analysis of cumulative and growth induced impacts in the master agreement.**

However, there is no clear approach for including such impacts at this time. The group agreed that activities would proceed along three parallel tracks:

1. Direct and indirect impacts will be inventoried as previously described;
 2. A subgroup will develop a working paper of potential approaches for analyzing cumulative and growth induced impacts; and
 3. The process of inventorying mitigation opportunities will be advanced by:
 - Identifying target areas and properties
 - Developing criteria for their evaluation and prioritization
- **The next Impact and Mitigation Working Group meeting is scheduled for May 15.**

**Environmental Oversight Committee
Master Agreement Ad-Hoc Working Group
Initial Meeting Discussion Guide and Questionnaire**

1. Should we use the SANDAG Memorandum of Agreement as the starting point for the OCTA Master Agreement?

Yes, but we need to do more research on the key points of conflict and difficulties in the San Diego/TransNet process. The ad-hoc group should meet with the San Diego negotiators to better understand their process and results. There may be areas of the SANDAG agreement that can be improved upon or customized to reflect the circumstances in Orange County.

2. What are the key differences between the Orange County and San Diego mitigation programs?

See #1 above. Orange County freeway program is better defined and has less impact. The status of open space protection differs significantly between the two counties, although there is an opportunity in both to integrate with existing Natural Community Conservation Programs.

3. What are the strengths and weaknesses of the SANDAG agreement?

See #1 above. The San Diego agreement focuses mainly on process and leaves much to individual project-specific agreements.

4. Which agencies must be and which should be signators of the agreement?

Signators should include OCTA, Fish & Game, Fish & Wildlife, and Caltrans. Consideration should be given to also including the Army

Corps of Engineers and Regional Water Quality Control Board(s); FHWA and Wildlife Conservation Board should be consulted.

5. What should be the relationship between the Master Agreement and CEQA/NEPA?

- *The agreement is not subject to CEQA/NEPA*
- *The agreement does not supplant CEQA/NEPA at project level*
- *Unclear until agreement is negotiated how it will affect CEQA/NEPA evaluation for individual projects.*

6. Should the agreement include priorities and/or a schedule for mitigation/acquisitions, restoration, monitoring and management?

To the extent possible the agreement should include a list of potential mitigation sites, priorities and a process (which could involve EOC) for updating and revising priorities as circumstances change. Costs and responsibilities for monitoring and management need to be addressed. More research needs to be done on how the State and other jurisdictions have handled these issues.

7. To what degree should the agreement detail funding availability, capacity and cash flow?

These elements should either be part of or attached to the agreement. The agreement should define the funding available (dollar amount or percentage?) and allow for periodic review and update of sales tax revenues and cash flows.

8. How should the agreement address progress reporting and updating and potential amendments?

In the agreement, there should be requirements for public disclosure to OCTA of progress and a defined process and criteria for amendments.

9. What is needed in the way of assurances to release funds for mitigation?

A signed agreement should provide assurances that mitigation acquired in the near future will be credited at established ratios for potential effects of future transportation projects. More research is needed and the ad hoc group needs to develop options for establishing and aligning commitments of OCTA and the resource agencies. Need to figure out method of accounting for mitigation (banking, deducting credits, transfer mitigation, etc.). Acquired properties would be an asset (with restrictions) for OCTA.

10. What assurances can the resource agencies provide in the agreement?

See #9 above. Resource agencies must preserve authority to determine compliance with ESA and CESA at the time a project is submitted for approval. However, these agencies can make commitments not to require mitigation beyond that provided in an agreement, except under narrowly defined circumstances.

11. What other agreements or tools might be used to specify mitigation commitments and link funding with assurances?

See #9 above. Potentially, regulatory tools such as Section 7 consultation or a habitat conservation plan.

12. Who should acquire property?

This may vary depending upon the circumstances. Likely not OCTA directly since this is not its primary mission. Entities with experience in Orange County, including Trust for Public Lands, the Conservation Fund, Conservation Land Group and Nature Conservancy might be considered. Recommendations will need to be developed from the discussions of the ad hoc group on impacts and mitigation and the EOC.

13. How should the value of properties to be acquired be established?

This question needs more research and legal review regarding what, if any requirements OCTA must meet. Consider using State Fish & Game process (State Appraisal Standards for Fair Market Value).

14. Who should manage and/or maintain property once it is acquired?

This may vary depending upon the circumstances. OCTA does not want to be in the role of managing or maintaining the property. Likely candidates include State Parks, Forest Service, Park and Rec Districts, OC Parks, NCCP preserve managers, etc. Suggestion that template agreements and general provisions for management and maintenance be developed.

15. Who should do the drafting of the agreement?

OCTA legal counsel.

16. What form should the agreement take (Letter of Agreement, MOA, MOU, etc.)?

Not sure at this point. Need to consult with legal counsel.

17. What should the timetable be for drafting and negotiating the agreement?

Anticipate draft framework for agreement by Summer 2008; negotiation proceeding to full agreement, perhaps by early 2009

18. How often should the ad-hoc group meet?

As needed based upon progress.

19. What is a suitable meeting time and location for the ad-hoc group?

Generally at OCTA offices mid mornings preferred; conference calls and/or field trips (e.g. to consult with TransNet participants) possible.

Ebbin, Moser + Skaggs, LLP

550 Montgomery Street, Suite 900
San Francisco, California 94111
Telephone: 415-362-5050
Fax: 415-391-2779

Sean C. Skaggs

Sean C. Skaggs is a principal in the firm of Ebbin Moser + Skaggs, LLP in San Diego, California, where he specializes in legal and policy matters involving state and federal wildlife and natural resources laws and regulations. Sean's extensive background with federal natural resources law and policy comes from serving as an attorney and policy adviser for the U.S. Department of the Interior for nearly 10 years.

From 1991 until 1998, Sean served as an attorney in the Department of the Interior's Office of the Solicitor and was responsible for representing the Fish and Wildlife Service in numerous judicial and administrative proceedings involving the Endangered Species Act and other wildlife laws. From 1998 until 2001, Sean was Counselor to the Assistant Secretary for Fish and Wildlife and Parks, where he advised the Department on endangered species policy issues and was substantially involved in numerous Departmental priorities, including the No Surprises rule, the Five Point HCP Policy, creation of the Safe Harbor program, and efforts to negotiate reauthorization of the Endangered Species Act. Sean's role with the Interior Department included advancing Departmental policies with other federal agencies, including the Department of Justice, the Environmental Protection Agency and the Council on Environmental Quality. Sean currently uses his experience to advise public and private clients, including local, state and federal agencies, Native American tribes, and private developers and landowners.

Sean earned his law degree from the College of William and Mary, where he was a founding editor of the William and Mary Journal of Environmental Law. Sean graduated with Highest Honors in Biology from Macalester College in 1987, and prior to entering law school, worked as an endangered species biologist in Florida.

Several public and private entities have recognized Sean's outstanding achievements in the field of natural resources and wildlife conservation, and he is a frequent lecturer on these

issues. Sean authored a chapter in the American Bar Association's Endangered Species Act Deskbook and currently serves as the Editor of the American Bar Association's endangered species newsletter.

500 Montgomery Street, Suite 400
San Francisco, California 94111

Ebbin, Moser + Skaggs, LLP

550 Montgomery Street, Suite 900
San Francisco, California 94111
Telephone: 415-362-5050
Fax: 415-391-2779

Mark J. Ebbin

Marc J. Ebbin is a founding partner in the firm of Ebbin Moser + Skaggs, LLP in San Francisco, California, and specializes in legal and policy matters involving state and federal environmental and natural resources regulation. Marc's extensive background in these matters includes serving for nearly six years as Special Assistant to Secretary Bruce Babbitt of the U.S. Department of the Interior.

Marc has gained a national reputation through his work developing innovative approaches and strategies to addressing a range of regional environmental challenges, such as the conservation of rare and endangered species, habitats, wetlands and watersheds. He currently advises public and private clients throughout the West, including local, state and federal agencies; corporate and development interests; private landowners; agricultural operations; and land conservancies, on complex environmental and natural resource regulatory matters. His experience includes the following:

- advising local governments and other public agencies on devising strategies and developing plans to address regulatory requirements for endangered species, wetlands and other resources on a regional basis;
- assisting private landowners in negotiations with local, state and federal agencies to obtain various environmental permits and approvals;
- representing public and private interests in discussions with state and federal agencies on the development and interpretation of policies, regulations and procedures concerning various environmental and natural resource issues;
- counseling clients on devising new approaches to integrating various regulatory regimes through unified plans or processes.

While at the Interior Department, Marc was responsible for assisting in the development and implementation of

departmental policies concerning the Endangered Species Act and habitat conservation planning, management and planning of national parks, and the effect of federal environmental policies on state and local government and private landowner interests. He also served as the lead federal representative for the experimental conservation planning program in San Diego and Orange counties, and oversaw a variety of matters concerning the Presidio of San Francisco and Yosemite Valley .

After leaving the Interior Department, Marc joined the firm of Beveridge & Diamond. He also practiced litigation with the firm of Jackson , Tufts, Cole & Black in San Francisco and served as a law clerk to Chief Judge Thomas Lambros of the U.S. District Court for the Northern District of Ohio.

Marc received his legal degree from the University of Wisconsin (JD, cum laude, 1988) and served as an articles editor for the Wisconsin Law Review. He graduated from Hamilton College in 1983. Marc is a member of the State Bars of California and Wisconsin .

Marc is a frequent lecturer on endangered species and wetland issues, and has written several published articles on these subjects. He currently serves on the board of directors for the United Kingdom-based conservation organization, Fauna & Flora International .