



Mitigation and Resource Protection Program Oversight Committee

Environmental Oversight Committee

Orange County Transportation Authority

600 S. Main Street, Orange CA

July 2, 2008

10 – 11:30 a.m.

AGENDA

- 1. Welcome**
- 2. Approval of June 2008 Minutes**
- 3. Restoration and Acquisition Criteria**
Melanie Schlotterbeck, EOC Vice Chair
- 4. Analysis and Documentation Options**
Monte Ward, OCTA Director of Special Projects
 - Conceptual Approach
 - Summary of Analysis and Documentation Options
- 5. Program Schedule**
Monte Ward, OCTA Director of Special Projects
- 6. Master Agreement Working Group Report**
Monte Ward, OCTA Director of Special Projects
- 7. Impact and Mitigation Working Group Report**
Dan Phu, OCTA Section Manager II of Development
- 8. Public Comments**
- 9. Next Meeting – August 6, 2008**
- 10. Committee Member Reports**
- 11. 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

June 5, 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
Dan Silver, Endangered Habitats League
Jonathan Snyder, US Fish and Wildlife Services
Sylvia Vega, Caltrans
Erinn Wilson, CA Department of Fish and Game
Stephanie Hall, US Army Corps of Engineers
Merlin L. Henry Jr., Taxpayers Oversight Committee
Adam Probolsky, Probolsky Research
Debbie Townsend, California Wildlife Conservation Board

Committee Members Absent:

Judy McKeehan, SWCA Environmental Consultants

Orange County Transportation Authority Staff Present:

Monte Ward
Ellen Burton
Jim Sterling
Marissa Espino
Ryan Maloney

Members of the Public Present:

Derek Ostensen

1. Welcome

Chair Patricia Bates began the meeting at 10 a.m. by welcoming the committee members and leading the flag salute.

2. Minutes

A motion was made to approve the minutes from May 7 by Melanie Schlotterbeck, and seconded by Cathy Green. The minutes were unanimously approved without changes.

Marissa Espino told the members that future minutes for the committee would be more in the style of action minutes than verbatim minutes. The members approved of this change and Chair Bates commented that more streamlined minutes may reduce the number of revisions to the minutes.

3. Presentation Items

A. Conservation Efforts in the City of San Juan Capistrano

Mark Nielsen, Mayor Pro Tem of the city of San Juan Capistrano, provided the committee with an overview of the city's efforts to preserve open space, such as a proposed initiative requiring public approval to rezone open space.

After sharing several of the city's environmental accomplishments, Mark introduced Tim Neely, San Juan Capistrano Planning Commissioner and Director of the County of Orange's Planning and Development Services, to detail some of the benefits of land acquisitions to connect established land reserves in the San Juan Capistrano area. Tim advised the committee to choose land parcels carefully and consider saving funds for restoration and management. Tim said that the updated results of the Northwest biological study would be provided by the city to committee members.

Mark said that the city of San Juan Capistrano was considering a \$30 million open space bond measure in an upcoming election and was looking for matching funds in the next year to take advantage of depressed real estate prices.

Monte Ward, Director of Special Projects, said that the committee should consider how to review proposals from interested cities and agencies, as the planned public outreach campaign will increase the number of presentations to the committee. Monte asked the committee for their thoughts on how to manage requests for presentations. Subcommittees have suggested that the committee focus on the resource value and connectivity of available properties.

Chair Bates said that creating the guidelines for selection should be added as a future committee agenda item, and information should be provided to the OCTA Board of Directors.

4. Public Outreach Program

Ellen Burton, Executive Director of External Affairs, presented the committee with suggested goals and tactics for a public outreach program and requested committee input on target audiences and what level of detail was needed for evaluation. Ellen commented that the target audiences were flexible and requested committee input by July.

Adam Probolsky asked if there was a specific geographic area for property acquisitions. Chair Bates responded that the committee was looking countywide, working from the Green Vision map.

Chair Bates said that a clear statement of purpose was needed for the committee to help focus what properties would be of interest. Adam commented that with a clear sense of priority, the market will bring available properties to the committee. Cathy Green suggested leveraging Renewed Measure M funds with other sources of funding to maximize benefits. Dan Silver suggested the committee generated a

sense of eligible projects with the impact and mitigation working group before beginning a public outreach campaign.

Sylvia Vega asked if lands acquired for mitigation need to match freeway projects. Melanie Schlotterbeck said that acquired land needed to have a nexus to the freeway program, but did not need to be directly connected to a project. The committee consensus was that regional rather than direct project impacts would be considered as a nexus.

Monte provided a summary of the working group's actions to date. The group provided two suggested focuses for the committee: working to expand existing protected areas and improving the connectivity of protected lands.

Monte said that three elements of land consideration had been defined by the working group: is the area related to existing areas that are protected; does the area enhance connectivity of the existing system; and how does the land relate to existing freeway impacts.

Chair Bates asked if the Impact and Mitigation working group was considering what Renewed Measure M projects are connected to areas on the Green Vision map. Monte said that this was being considered in addition to possible impacts on vegetation and animal species. Monte commented that the working group was working to provide the committee with guidelines as quickly as possible.

Chair Bates said that it was too early for a major public outreach campaign, but more general committee information and early information needs to be available to the public so that interested publics can more easily track the actions of the committee. Ellen said that public information would offer updates on committee discussion and would wait for the guidelines before initiating public outreach program.

Chair Bates asked Ellen to present to the California Coastal Commission to provide an update on the committee.

Ellen commented that guidelines on project selection would greatly assist the public outreach campaign by providing a clearer public message.

After discussion, the committee decided to have staff generate a draft of guidelines for project selection. These draft guidelines would then be discussed by Melanie and the Impact and Mitigation working group, with a report back to the full committee in July.

Chair Bates requested the guidelines reflect the committee's discussion on reserve land connectivity, encouraging matching funds and a regional focus on freeway program mitigation.

Chair Bates asked to bring the draft guidelines along with a status report and a timeline for future action to the Board of Directors by the end of the year.

5. Master Agreement Working Group Report

Monte reported that the Master Agreement working group would travel to Carlsbad on June 11 to learn about San Diego's master agreement and its creation process. Monte commented that the working group hopes to go beyond San Diego's process agreement to directly link freeway impact mitigation with a comprehensive evaluation program. Monte suggested that the result would fall between an Environmental Impact Report and a Natural Community Conservation Program-like habitat conservation effort, or some option in the middle. Monte said the working group would report back with their findings.

Monte said that the working group has retained legal counsel to help guide discussion as the working group moves beyond San Diego's process agreement. Monte commented that resource agencies and cities may have strong opinions on the best approach for the master agreement.

6. Impact and Mitigation Working Group Report

In the absence of Dan Phu and Jim Sterling, Monte provided an update on the Impact and Mitigation working group's efforts. The group is making progress with incorporating available data to assess the direct impacts of the freeway program. Early indications are that the freeway projects have specific impacts that do not effect expansive areas. While there is not a large direct impact, the working group is considering the indirect impacts to prioritize land parcels.

Chair Bates asked for an update on these findings in July.

7. Public Comments

There were no public comments.

8. Next Meeting – July 2, 2008

9. Committee Member Reports

There were no committee member reports.

10. Adjournment

Chair Bates announced that the next EOC meeting would be on July 2, 2008, and the meeting was adjourned at 11:10 a.m.

Suggestions for Renewed Measure M Restoration Criteria

These restoration criteria were prepared for discussion with members of the Environmental Oversight Committee. The criteria are separated into four distinct categories.

BIOLOGICAL ASSESSMENT CRITERIA

The following criteria are listed in order of priority from the viewpoint of the permitting/resource agencies for the mitigation of habitat impacts by Renewed Measure M freeway projects. Each criterion includes a brief definition to clarify any potential misunderstandings. At a future date, and after more research and input, it is expected these criteria will include a weighting system for ranking potential restoration projects.

- **Restores Impacted Habitats**

An inventory of the property shows it includes the same vegetative communities as those habitats lost to freeway projects, including habitats such as: coastal sage scrub, riparian woodlands, grasslands, etc. and possibly includes ties to historical land coverage.

- **Benefits Targeted Species**

The potential restoration site includes a net benefit (both immediate and long term) in the ecological value for target species through increased breeding/foraging habitat and increases connectivity between areas of suitable habitat.

- **Restores Sensitive Habitats**

The property's habitat restoration includes the state and sub-species rankings under CNDDDB (California Natural Diversity Database).

- **Considers the Threat of Habitat Degradation and Urgency**

The threat of increasing the amount and coverage of non-native species determines restoration urgency, and there may be unique opportunities for restoration, such as burn areas.

- **Evaluates Adequacy of Protection and Management**

The existing level of protection, anticipated public use inside and adjacent to the restoration site should be considered.

- **Enhances Natural Lands Contiguity**

Restoration of this site will limit edge effect, supplement existing open space and improve the quantity and quality of core habitat.

OTHER CRITERIA

This list includes the secondary tier of evaluation criteria after the biological criteria are considered. It is expected that these criteria would require a simpler evaluation (such as yes, no, maybe) and the answers may merely play an informational role.

- **Aligns with Resource Agency Priorities**

Proposed restoration meets resource agencies' particular requirements (e.g., the restoration satisfies the agencies' (ACOE, RWCB, and DFG) definition of habitat creation for the purposes of no-net loss policies for wetlands).

- **Includes Support from Local Government**
This acquisition is supported by local cities, appropriate JPA's, the county or other governmental entities.
- **Includes Support from the Community**
This restoration is supported by the public, environmental and community organizations.
- **Utilizes Partnership & Leveraging Opportunities**
Working on this restoration project would be enhanced by existing conservation efforts, partnerships and/or includes existing funding.

CO-BENEFITS

The following criteria would assist in the event the above criteria are roughly equal. These may take on a simpler evaluation (such as yes, no, or maybe) and the answers may merely play an informational role.

- Watershed Protection
- Proximity to Underserved Area
- Scenic/Viewshed/Enhanced recreation experience
- Economic Benefits (supports local businesses)
- Public Access

RESTORATION CONSTRAINTS

In addition to streamlining OCTA's regulatory process, the intent of the comprehensive environmental mitigation program is to provide the greatest possible biological benefit for the region with the available funding. Consequently, the cost of potential restoration activities will be an important factor in selecting restoration sites. The following criteria are potential constraints to restoration, but detailed information regarding some of these constraints may not be available until later in the evaluation process.

- **Includes Access to Site**
The restoration site is accessible for restoration work, maintenance and management.
- **Determines Hazardous Conditions**
Through a Phase I – Environmental Assessment, determine the property's historical use and any potential or known hazardous materials on-site.
- **Availability and Delivery of Water**
The water used for the restoration is available, does not increase environmental impacts when delivered to the site and works with local water agencies to ensure groundwater sources are not impacted by water withdrawal.

Suggestions for Measure M Property Acquisition Criteria

These acquisition criteria were prepared for discussion with members of the Environmental Oversight Committee of M2. The criteria are separated into four distinct categories.

BIOLOGICAL ASSESSMENT CRITERIA

The following criteria are listed in order of priority from the viewpoint of the permitting/resource agencies for the mitigation of habitat impacts by Renewed Measure M freeway projects. Each criterion includes a brief definition to clarify any potential misunderstandings. At a future date, and after more research and input, it is expected these criteria will include a weighting system for ranking potential acquisitions.

- **Contains Target Species**
The potential property includes the presence of endangered, threatened, species of special concern, and other sensitive species impacted by freeway projects.
- **Aligns with Impacted Habitats**
An inventory of the property shows it includes the same vegetative communities as those habitats lost to freeway projects, including habitats such as: coastal sage scrub, riparian woodlands, grasslands, etc.
- **Enhances Natural Lands Connectivity**
Acquisition of this property would connect to existing protected areas, examine the effects on multiple taxa (such as birds, large mammals) and could be identified as an essential habitat linkage in regional or local plans.
- **Conserves Sensitive Habitats**
The property's habitats include the state and sub-species rankings under CNDDDB (California Natural Diversity Database).
- **Considers Property Acreage**
Generally larger properties are better.
- **Provides for Quality Habitat**
The property includes mature habitats, and the property ranking considers the extent of habitat fragmentation, invasive non-native plants and animals, and other edge effects, as well as the presence/absence of roads.
- **Determines the Threat of Development and Urgency**
The evaluation considers where the landowner is in CEQA and other permitting processes, quantifies the degree of the development threat, and determines if this acquisition creates an opportunity for leveraging expiring conservation funding.
- **Enhances Natural Lands Contiguity**
The property borders existing open spaces and acquisition increases the amount of core habitat.
- **Includes Species/Habitat Diversity**
The property includes a wide variety of habitat types and species (including subspecies, if known) and high structural and functional diversity (e.g., habitat with a natural flood regime).

OTHER CRITERIA

This list includes the secondary tier of evaluation criteria after the biological criteria are considered. It is expected that these criteria would require a simpler evaluation (such as yes, no, maybe) and the answers may merely play an informational role.

- **Aligns with Resource Agency Priorities**
The property is included on the DFG & USFWS's list of acquisition priorities.
- **Includes Support from Local Government**
This acquisition is supported by local cities, appropriate JPA's, the county or other governmental entities.
- **Includes Support from the Community**
This acquisition is supported by the public, environmental and community organizations.
- **Utilizes Partnership & Leveraging Opportunities**
Working on this acquisition would be enhanced by existing conservation efforts, partnerships and/or includes existing funding.
- **Includes a Cooperative Landowner**
The landowner effectively coordinates with the entity responsible for acquisition to complete tasks required for acquisition.

CO-BENEFITS

The following criteria would assist in the event the above criteria are roughly equal. These may take on a simpler evaluation (such as yes, no, or maybe) and the answers may merely play an informational role.

- Archeological Sites
- Cultural Sites
- Paleontological Sites
- Watershed Protection
- Proximity to Underserved Area
- Scenic/Viewshed
- Trail Connectors
- Economic Benefits (supports local businesses)

PROPERTY CONSTRAINTS

In addition to streamlining OCTA's regulatory process, the intent of the comprehensive environmental mitigation program is to provide the greatest possible biological benefit for the region with the available funding. Consequently, the cost of potential acquisitions will be an important factor in selecting mitigation sites. The following criteria are potential constraints to property acquisition, but detailed information regarding some of these constraints may not be available until later in the evaluation process.

- **Understands Management Encroachments**

The property may have unauthorized users; there are plans for future infrastructure that are inconsistent with habitat mitigation; or the type and quantity of public use inside or adjacent to the property.

- **Conflicting Easements or Inholdings**

The property may have restrictive deeds, easements, other agreements, and/or inholdings that would limit management/public use options.

- **Considers Neighboring Land Uses**

Neighboring land uses may decrease the habitat mitigation value of the mitigation property.

- **Determines Hazardous Conditions**

Through a Phase I – Environmental Assessment, determine the property's historical use and any potential or known hazardous materials on-site.

- **Considers Other Complications**

The property may have unidentified complications associated with acquisition and management including, vector control, vandalism, inadequate access, significant obstacles to restoring water quality (toxics, pesticides, salts), etc.

DRAFT

Summary

Conceptual Approach to Comprehensive M2 Freeway Mitigation

Renewed Measure M (M2) provides for a comprehensive environmental mitigation program for thirteen freeway improvement projects. OCTA is seeking predictability and certainty in the project approval process. Resource agencies [primarily the California Department of Fish and Game (CDFG) and the Fish and Wildlife Service (FWS)] along with the conservation community are seeking early permanent protection of habitat areas.

An approach that can satisfy both objectives with an equitable distribution of risk, using an existing legal and administrative framework, is the development of a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) which would enable compliance with the federal and California Endangered Species Acts for the thirteen freeway projects. An NCCP/HCP can take some time (likely 24 months). With an advance credit agreement from the resource agencies and using mitigation banking to manage risk, OCTA can proceed with early acquisition of habitat areas on the front end of the process.

This approach would consist of the following components:

1. Agree on the approach. Draft an NCCP Planning Agreement with CDFG and FWS. Draft a brief Master Agreement that references the NCCP Planning Agreement. Complete a process for identifying conservation opportunities.
2. Execute Master Agreement, including an advance credit agreement, and NCCP Planning Agreement at the same time. Execution of the Master Agreement allows expenditures for habitat acquisition to begin. Begin assembly of preserve lands.
3. Develop conservation strategy for NCCP/HCP (goals and objectives, avoidance and minimization measures, and mitigation). The conservation strategy will meet NCCP standards by providing regional or landscape-level habitat preservation, and will further emphasize habitat connectivity and the preservation of other biologically significant lands.
4. Develop other NCCP/HCP plan components, such as Covered Project Descriptions, Environmental Setting, Covered Species Descriptions, Impact Assessment, Adaptive Management, Plan Implementation, and Alternatives Considered (assist with development of NEPA/CEQA document).
5. NCCP/HCP goes out for public review and comment. Respond to comments.
6. Wildlife Agencies finalize decision documents.
7. OCTA implements NCCP/HCP, including transfer of title/easements for preserve lands.

M2 Freeway Mitigation Program

Summary of Analysis and Documentation Options

Option	Description	Time	Pros	Cons	Comments
San Diego Model	Agreement on process only. Requires subsequent analysis for individual projects.	3-6 months	Early agreement. Builds framework for subsequent actions by OCTA and Resource Agencies	Lacks assurances regarding permitting process and may not enable early acquisition.	Likely wouldn't meet goals of M2
San Diego Hybrid	Limited programmatic analysis of impacts under process agreed to by OCTA and Resource Agencies	12 - 18 months	Early agreement. May reduce risk of surprises in permitting process. Provides some analysis to support mitigation	Lacks precedent/tested legal framework. Likely would still fall short on assurances. Potential cost and resource demands.	Banking of mitigation assets might enable early acquisition
•Program EIR •Supplemental Program EIR •Initial Study/Environmental Assessment	Various options. Similar to Hybrid with programmatic analysis of impacts under CEQA/NEPA framework. Could possibly be supplemental to existing OC Long Range Transportation Plan EIR	9 - 18 months	Similar to SD Hybrid but provides legal framework/precedent for analysis and formal public review	May need to address other factors open up M2 freeway program to new challenges (e.g. Air Quality and GHG). Level of assurances unclear. Potential cost and resource demands	Differing levels of complexity depending upon reliance on existing EIR. Banking of mitigation assets might enable early acquisition
Section 10 HCP and section 2081 permit	Develop Habitat Conservation Plan under the ESA for freeway program, combine with section 2081 under CESA.	24+ months	High level of assurances under the federal ESA.	Long timetable would delay acquisitions unless advance credit agreement structured. Potential cost and resource demands. CESA section 2081 permit would not apply to unlisted species and possibly would not provide assurances.	
Section 10 HCP combined with Section 2835 NCCP	Develop Habitat Conservation Plan under the ESA for freeway program; combine with an NCCP.	24 + months	High level of assurances under the ESA and CESA/NCCPA.	Long timetable would delay acquisitions unless advance credit agreement structured (which is provided under NCCPA and is common). Potential cost and resource demands.	Unlisted species could be covered under ESA and CESA. This is the most comprehensive approach available (requires M2 to meet heightened standard of NCCPA, which is possible).
Endangered Species Act Section 7 Consultation	Do biological assessment and conduct Section 7 consultation	6-18 months	High level of assurances	Requires federal nexus and sufficient project information to conduct assessment. Potential cost and resource demands	Does not typically cover unlisted species
Endangered Species Act Section 7 Programmatic Consultation	Two step process: Initial biological opinion w/tiered project level evaluation	6-18 months	Relatively short timetable. Adaptive management/contingent mitigation can reduce assurances risk	Some assurances risk. Requires federal nexus. Potential cost and resource demands	Does not typically cover unlisted species. Requires additional agency review/consultation at project-specific level.

Mitigation and Resource Protection Program Schedule

