



**Mitigation and Resource Protection Program Oversight Committee**

**Environmental Oversight Committee**

**Orange County Transportation Authority**

**600 S. Main Street, Orange CA**

**Oct. 1, 2008**

**10 – 11:30 a.m.**

**AGENDA**

- 1. Welcome**
- 2. Approval of September 2008 Minutes**
- 3. Presentation Item**
  - A. Hillside Open Space Education Coalition (HOSEC) Presentation –  
Puente-Chino Hills Preservation Area  
Tim O'Donnell, HOSEC Executive Committee Chair and City Manager, City of Brea  
John Beauman, HOSEC Steering Committee Vice Chair and Mayor Pro Tem, City of Brea  
Steve Simonian, HOSEC Steering Committee Member and Councilman, City of La Habra
- 4. Restoration and Acquisition Criteria Update**  
Melanie Schlotterbeck, EOC Vice Chair
- 5. Master Agreement: HCP/NCCP Process**  
Monte Ward, OCTA Director of Special Projects
- 6. Public Comments**  
*Public comments on all items take place at this time.*
- 7. Next Meeting – Nov. 5, 2008**
- 8. Committee Member Reports**
- 9. 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.

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## **Environmental Oversight Committee**

**September 3, 2008**

### **Committee Members Present:**

Chair Patricia Bates, OCTA Board of Directors  
Vice-Chair Melanie Schlotterbeck, Measure M Support Groups  
Judy McKeehan, SWCA Environmental Consultants  
Adam Probolsky, Probolsky Research  
Dan Silver, Endangered Habitats League  
Jonathan Snyder, US Fish and Wildlife Services  
Sylvia Vega, Caltrans  
Erinn Wilson, CA Department of Fish and Game

### **Committee Members Absent:**

Matthew Chirdon, CA Department of Fish and Game  
Cathy Green, OCTA Board of Directors  
Stephanie Hall, US Army Corps of Engineers  
Debbie Townsend, California Wildlife Conservation Board

### **Orange County Transportation Authority Staff Present:**

Monte Ward  
Dan Phu  
Marissa Espino

### **Members of the Public:**

Dan Vander, Bolsa Chica Land Conservancy

#### **1. Welcome**

Chair Patricia Bates began the meeting by welcoming the members.

#### **2. Minutes**

Melanie Schlotterbeck had two corrections to the July 2, 2008 meeting minutes:  
Page 3, paragraph 2, - Sean Skaggs name is misspelled in the last sentence. Page 5, paragraph 2, - Santa Monica Conservancy should be Santa Ana Mountains Conservancy and Santa Monica's program should be the Conservancy's program. Also in the same paragraph it should be National Parks Service not National Forest.

A motion to approve the minutes as corrected was made by Melanie Schlotterbeck and seconded by Adam Probolsky. The motion passed unanimously.

#### **3. 2020 Committee/OCTA Board Status Report**

Monte Ward presented a Status Report on Renewed Measure M Environmental Programs. This report has been prepared and presented to the Transportation 2020 Committee of the OCTA Board and the OCTA Board. There are two components to the report, a discussion of the progress made to date of both environmental

programs, the environmental oversight program and water quality program. Monte said he would characterize the interest level of especially the Transportation 2020 Committee as very high and very supportive of early action in this area and in this program.

Chair Bates commented on an excellent overview and the report was very comprehensive. It was like an Executive Summary and very beneficial to have on hand to answer questions that come up.

#### **4. Restoration and Acquisition Criteria Approval**

Vice Chair Melanie Schlotterbeck reported the Impact and Mitigation Working Group met in August to go over the restoration and acquisition criteria and ensure the definitions were appropriate and covered the scope the committee wanted in the document. At this time a decision was made to have a “check box” of whether or not properties contained or had the attributes of properties listed in the criteria worksheet as opposed to a ranking system. The criteria has been updated since last July and the only significant change applies to property constraints, cost will now be considered as a factor. Melanie thanked Jonathan Snyder for providing the property management criteria, which essentially says that a property analysis will need to be done.

Adam Probolsky asked how many of the check boxes are needed to pursue a property or are they just guidelines. Melanie said they are just guidelines.

Marissa Espino brought the Committee’s attention to the Preliminary Criteria for Property Acquisition and Restoration for Renewed Measure M Program-Level Freeway Mitigation staff report scheduled to be presented to the Transportation 2020 Board Committee on Sept. 15 and then to the OCTA Board on Sept. 22. The staff report’s recommendations are to adopt the preliminary criteria for evaluating the biological mitigation potential of properties and to direct staff to implement a public outreach plan to build an inventory of potential conservation sites.

Monte Ward said this is a fully public process, staff wanted to make sure that if someone was interested in the program, or there was anyone who had property meeting some or all of the criteria, or they are a conservation group with an interest - they had an opportunity to see the criteria and make any recommendations they might have.

Sylvia Vega asked if Caltrans would be a signatory on the HCP/NCCP master agreement. Monte Ward said yes. Sylvia asked if this would be reflected to the 2020 Committee. Monte said yes, but at a future meeting. It is still an outstanding issue but most likely Caltrans would be a signatory.

A motion was made by Vice Chair Melanie Schlotterbeck and seconded by Dan Silver to approve the recommendations in the staff report. The motion passed unanimously.

At this time Chair Patricia Bates turned the gavel over to Vice-Chair Melanie Schlotterbeck and left the meeting.

## **5. Master Agreement/Analysis and Documentation Update**

Monte Ward gave an update on the Master Agreement: Analysis and Documentation on the HCP/NCCP process as the underlying basis for the M2 comprehensive freeway mitigation program. Two meetings have been held with representatives from OCTA, legal council, the Department of Fish & Game and the U.S. Fish and Wildlife Service to discuss the approach and assess the risks and benefits. Monte gave a summary of the status of these efforts.

Adam Probolsky asked Monte to explain the complexities of the acquisition timeline versus environmental documents. Monte said CEQA wanted all the environmental documents completed on a project before implementing the project. Adam said this is a great time to make some acquisitions and he wouldn't want to see this opportunity get away. Monte said it is complex, but there have been a number of acquisitions being acted on in advance of completion of the process so we are closely looking at those.

Sylvia Vega asked if there is a need to do mitigation is there a way to move forward on projects that have been approved. Monte said once the master agreement and planning agreement are complete the project can proceed. Sylvia said Caltrans has had to do mitigation and work with the regulatory agencies on its own, it would really be helpful to have OCTA come in and address some of the mitigation issues. It seems like OCTA and Caltrans are going on two parallel paths while projects are in the pipeline and nothing is getting done. Monte said the intent is to move the process along as quickly as possible. The agreement is in place and by the end of the year, or the start of 2009, it should be time to proceed with actual expenditures.

Dan Silver said in Riverside there were a number of acquisitions done before the plan was adopted or the EIR completed, the plan just said any acquisition completed by a certain date would be credited.

Erinn Wilson asked what the range of cost was, was it just consulting fees. Monte said it did not fully include the processing costs. In the case of the Wildlife Service they did have a Caltrans grant covering some of these costs but in the case of the Dept. of Fish and Game they do not have the resources to cover this. Erinn asked what is included. Monte said it was based on examples of two or three other efforts. Principally, the sponsoring agency, the consultants, and the expertise that went into the documents and reports.

Vice Chair Melanie Schlotterbeck asked when the next master agreement workshop meeting was going to take place. Monte Ward said the meeting should be this month prior to the next meeting.

Sylvia Vega asked who would take the lead on the EIR/EIS? Monte Ward said typically OCTA would do the EIR.

**6. Public Comments**

Dan Vander asked the committee to consider acquisition of coastal property not just inland property. All residents in Orange County pay into Measure M and should benefit from it.

He also noted that the Agenda should state: *"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"*. He would have liked to speak earlier but no one asked for public comments after the item.

**7. Next Meeting – October 1, 2008**

There were no comments.

**8. Committee Member Reports**

There were no committee member reports.

**9. Adjournment**

The meeting was adjourned at 10:44 a.m.



*INTEROFFICE MEMO*

September 28, 2008

To: Environmental Oversight Committee

From: Monte Ward

Subject: **Update on Master Agreement: HCP/NCCP Process**

**Background**

As reported at the Committee meeting, meetings and discussions have taken place among representatives from OCTA, the Department of Fish & Game and the U.S. Fish & Wildlife Service regarding the feasibility of using the Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) process as the basis for the M2 comprehensive freeway mitigation program. At the staff level, all of these agencies are in now in alignment that this approach is feasible.

The next steps in this process are as follows

1. Preparation of a draft Master Agreement and Planning Agreement that would form the basis for entering into the HCP/NCCP process and potentially the authorization for property acquisitions. Preliminary drafts of these documents, prepared by Ebbins, Moser & Skaggs, are attached. These are meant to form a starting point for development of a final draft agreement through negotiation among the signators, and with review and comment by other members of the Committee.
2. Development of a scope of work, timeline and estimated budget for the preparation of an HCP/NCCP and an accompanying Environmental Impact Report/Environmental Impact Statement (EIR/EIS).
3. Development of recommendations for professional/consultant services to complete the HCP/NCCP and EIR/EIS and an appropriate process and timeline to procure these services.
4. Development of an agreement between OCTA and the Department of Fish & Game regarding any resource/staffing requirements to complete the HCP/NCCP process in a timely manner.
5. Compilation of the elements listed above into a package of agreements and recommendations to be approved by the Committee and forwarded

to the OCTA Transportation 2020 Committee and the Board of Directors for their approval and adoption.

It is recommended that the work of initially reviewing and discussing these various components be undertaken at the ad-hoc working group level.

At this point it appears that the mission of the two existing ad-hoc working groups (Impact & Mitigation and Master Agreement) are overlapping. It is recommended that the Master Agreement group be the primary venue for working out the details of the HCP/NCCP process, with participation by members of the Impact & Mitigation group, as they deem appropriate. Meeting times, agendas and materials would be made available to members of both groups.

The goal is to have a package of recommendations ready for the Committee to consider in January 2009, or earlier if possible.

### **Recommendation**

Environmental Oversight Committee concurrence with the process and timetable outlined in this report.

**Memorandum of Agreement (MOA) Among the Orange County Transportation Authority ("OCTA"), the United States Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("CDFG"), and the California Department of Transportation ("CALTRANS") Regarding the Mitigation for Freeway Improvement Projects Under the Renewed Measure M Ordinance Environmental Mitigation Program**

WHEREAS, in 2006 the Renewed Measure M Transportation Ordinance and Investment Plan was approved by the voters to provide for the continuation of a half-cent transportation transaction and use tax for an additional thirty years;

WHEREAS, Renewed Measure M includes a list of thirteen freeway improvement projects that are intended to improve the quality of life by increasing the mobility of people and goods throughout the region;

WHEREAS, Renewed Measure M establishes an Environmental Mitigation Program that will provide for the allocation of at least five percent of net freeway program revenues for environmental mitigation of freeway projects (estimated at \$243.5 million);

WHEREAS, the early acquisition and management of high quality habitat is more cost-effective and more beneficial biologically than project-by-project mitigation;

WHEREAS, Renewed Measure M is intended to provide for early large-scale acquisition and management of important habitat areas for sensitive species and to create a reliable approach for funding required mitigation for future transportation improvements, thereby enabling the purchase of habitat that may become more scarce in the future, reducing future costs, and accelerating project delivery;

WHEREAS, USFWS has jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species pursuant to the provisions of various federal laws including the Endangered Species Act ("ESA") and the Fish and Wildlife Coordination Act ("FWCA");

WHEREAS, CDFG is a department of the California Resources Agency with jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under various state laws, including the California Endangered Species Act ("CESA") and the Natural Community Conservation Planning Act ("NCCPA");

WHEREAS, OCTA has been designated by the Orange County Board of Supervisors as the authority responsible for implementing Renewed Measure M;  
Ebbin Moser + Skaggs LLP  
Draft  
Privileged and Confidential



WHEREAS, the Parties have determined that entering into this MOA does not constitute the adoption of, or a commitment to carry out, the mitigation plan as those terms are used in the California Environmental Quality Act ("CEQA"), that entering into this MOA does not constitute a major federal action significantly affecting the human environment as those terms are used in the National Environmental Policy Act ("NEPA") and that completion of CEQA and NEPA compliance, where applicable, is a condition precedent to any party being committed to carry out any obligations set forth in this MOA;

NOW, THEREFORE, BE IT RESOLVED that the Parties agree to implement the Environmental Mitigation Program as follows:

1. OCTA will develop a Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP") that will include a conservation strategy to fully mitigate adverse effects to sensitive species and habitat as a result of construction of the freeway improvement projects.
2. The Parties agree to execute an HCP/NCCP Planning Agreement (Attachment A) that will spell out the roles and responsibilities of each Party in the development and review of the OCTA HCP/NCCP.
3. The Parties agree to work closely together through the Environmental Oversight Committee to develop guidelines and criteria for directing habitat acquisition under Renewed Measure M as part of the conservation strategy for the OCTA HCP/NCCP.
4. OCTA [will] adopt a Plan of Finance that will allow \$80 million to be expended on sensitive species habitat by 2013. Expenditures for sensitive species habitat may commence upon execution of the MOA and the HCP/NCCP Planning Agreement by the Parties.
5. OCTA will receive advance credit for acquisition of sensitive species habitat that occurs prior to the permitting of the thirteen freeway improvement projects, as provided in the HCP/NCCP Planning Agreement.
6. Regulatory assurances for Renewed Measure M projects will be provided through the issuance of ESA and NCCP Act permits for the OCTA HCP/NCCP, provided that USFWS and CDFG determine that their respective permit issuance criteria have been satisfied by the OCTA HCP/NCCP.
7. In developing the HCP/NCCP, OCTA will determine the implementing structure for long-term management and monitoring of habitat acquired through the Environmental Mitigation Program, including selecting the entity that will oversee management and monitoring of the habitat areas. OCTA will work closely with Caltrans, USFWS, and CDFG in the development of the habitat management program.

8. USFWS and CDFG will actively partner with OCTA during the permitting process for Renewed Measure M projects impacting wetlands and waters of the United States regulated by the U.S. Army Corps of Engineers ("Corps"), the Environmental Protection Agency ("USEPA"), the Regional Water Quality Control Board ("RWQCB"), and CDFG in the interest of ensuring that OCTA habitat acquisitions in wetland habitat prior to the wetland permitting process would receive credit by those agencies when developing wetland banking agreements, master streambed alteration agreements, regional general permits, and other appropriate permits or mechanisms.

9. The signatories agree in good faith to provide the legal, financial, technical, and staff resources necessary to implement the provisions of this MOA. Nothing in this MOA shall be construed, however, as obligating the signatories to expend funds, or for the future payment of money, in excess of appropriations authorized by law, nor does this MOA guarantee the issuance of permits.

[10. Amendment provision]

[11. Withdrawal provision]

Nothing in this MOA shall supersede those provisions adopted by the voters in 2006 under the Renewed Measure M Transportation Ordinance and Investment Plan.

ORANGE COUNTY TRANSPORTATION AUTHORITY

\_\_\_\_\_

\_\_\_\_\_  
Date

UNITED STATES FISH AND WILDLIFE SERVICE

\_\_\_\_\_

\_\_\_\_\_  
Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

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Date

CALIFORNIA DEPARTMENT OF TRANSPORTATION

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Date

DRAFT

**Planning Agreement  
for the  
Orange County Transportation Authority Conservation Plan**

**Draft  
August 2008**

DRAFT

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## 9.8 No Precedence

### 1. Definitions

The following terms as used in this Planning Agreement will have the meanings set forth below.

[ ]

### 2. Purposes of this Agreement

The purposes of this Planning Agreement are to:

- Define the Parties' goals and commitments with regard to development of the OCTA HCP/NCCP;
- Define the initial geographic scope of the Planning Area;
- Identify a preliminary list of natural communities and species known or reasonably expected to be found in those communities that are intended to be the initial focus of the HCP/NCCP;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process for the inclusion of independent scientific input into the planning process;
- Ensure coordination among CDFG, USFWS, and OCTA;
- Establish a process to review certain interim projects within the Planning Area that will help achieve the preliminary conservation objectives and maintain viable conservation objectives and alternatives for the HCP/NCCP; and
- Ensure public participation and outreach throughout the planning process.

### 3. Planning Goals

The planning goals for the OCTA HCP/NCCP include the following:

- Provide for the conservation and management of Covered Species within the Planning Area;
- Preserve, restore and enhance aquatic, riparian and terrestrial natural communities and ecosystems that support Covered Species within the Planning Area;
- Provide a means to implement Covered Activities in a manner that complies with applicable state and federal fish and wildlife protection laws, including CESA and the ESA, and other environmental laws, including CEQA and NEPA;
- Provide a basis for permits necessary to lawfully take Covered Species;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide a less costly, more efficient project review process that results in greater conservation values than project-by-project, species-by-species review; and
- Provide clear expectations and regulatory assurances regarding Covered Activities occurring within the Planning Area.

### 4. Compliance with State and Federal Fish and Wildlife Protection Laws

The Planning Area contains valuable biological resources, including native species of fish and wildlife and their habitats. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA or the ESA.

The Parties intend for the HCP/NCCP to meet the requirements of state and federal fish and wildlife protection laws that apply to Covered Activities and to provide a basis for state and federal authorizations for the take of Covered Species that may be caused by the Covered Activities.

Under state law, take of species listed pursuant to CESA may be authorized under Fish and Game Code section 2080.1 or section 2081, or section 2835 of the NCCP Act. The NCCP Act provides that after the approval of an NCCP, CDFG may permit the taking of any identified species, listed or non-listed, whose conservation and management is provided for in the NCCP. Take of listed species may also be authorized under CESA. Non-listed species may be included as covered species in a conservation plan prepared pursuant to CESA, but a CESA take authorization would become effective with regard to non-listed species only if and when such species were listed.

The Parties intend for the HCP/NCCP to be sufficient to support the issuance of take authorizations for Covered Activities under the NCCPA and the ESA. The Parties acknowledge that the HCP/NCCP may be used to address other state and federal statutes.

The ESA provides that after the approval of an HCP, USFWS may permit the taking of fish and wildlife species covered in the HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of the ESA. Take authorization for federally listed species covered in the HCP are generally effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for any non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to the ESA.

#### **4.1 OCTA's Obligation to Implement the HCP/NCCP**

OCTA will be obligated to fund and implement measures in the HCP/NCCP that are required to appropriately minimize and mitigate the impacts of Covered Activities on Covered Species and their habitat within the Planning Area in accordance with CESA and the ESA. [However, OCTA may elect to include in the HCP/NCCP additional measures that exceed what is necessary to appropriately minimize or mitigate the effects of Covered Activities. For example, the HCP/NCCP may include measures that are necessary to provide for the conservation and management of Covered Species, but are not necessary to minimize and mitigate the impacts of Covered Activities.]

#### **4.2 Future ESA Section 7 Consultations**

To the extent allowed under law, the Parties intend that the measures adopted to meet regulatory standards included in the HCP/NCCP, once approved by USFWS, will serve as the range of measures to be incorporated into biological opinions associated with future section 7 consultations between USFWS and a federal action agency regarding Covered Activities that may adversely affect listed Covered Species or that may result in the destruction or adverse modification of critical habitat.

#### **4.3 Other Fish and Wildlife Protection Laws**

Based on the HCP/NCCP, OCTA may seek approval or authorization under other state or federal fish and wildlife protection laws, including, but not necessarily limited to the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and various provisions of the Fish and Game Code. The Parties agree to collaborate to explore the feasibility of developing the HCP/NCCP to serve as the means by which Covered Activities may comply with these additional laws.

#### **4.4 Concurrent Planning for Wetlands and Waters of the United States**

Based on the HCP/NCCP, OCTA may seek future programmatic permits or other form of authorization under the Clean Water Act, section 1600 *et seq.* of the Fish and Game Code as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent but separate planning regarding these permits. Such programmatic permits or other forms of authorization are not necessary, however, for approval of the HCP/NCCP or for issuance of take permits.

#### **4.5 Regulatory Assurances Under the ESA**

Upon approval of the HCP and issuance of an incidental take permit for Covered Activities, USFWS will provide assurances to OCTA that the USFWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for Covered Species, without the consent of OCTA, in accordance with 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5).

#### **4.6 Regulatory Assurances Under the NCCP Act**

If the OCTA HCP/NCCP meets the criteria for issuance of an NCCP permit under section 2835 of the Fish and Game Code, CDFG will approve the NCCP and provide assurances consistent with its statutory authority upon issuance of the NCCP permit. Under section 2820(f) of the Fish and Game Code, CDFG may provide assurance for the Covered Activities commensurate with the level of long-term conservation and associated implementation measures provided in the NCCP. Assurances include that if unforeseen circumstances arise during implementation of the NCCP, CDFG will not require additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources without the consent of OCTA as long as the NCCP is being implemented consistent with the terms of the Implementation Agreement and associated take permit.

### **5. Planning Area**

[Orange County]

### **6. Preliminary Conservation Objectives**

The preliminary conservation objectives the Parties intend to achieve through the HCP/NCCP are to:

- Provide for the protection of Covered Species and associated natural communities and ecosystems that occur within the Planning Area;



- Preserve the diversity of fish, wildlife, plant and natural communities in the Planning Area through the preservation of habitat;
- Minimize and mitigate the take of Covered Species; and
- Implement an adaptive management and monitoring program to respond to changing ecological conditions.

## **6.1 Conservation Elements**

### **6.1.1. Ecosystems, Natural Communities, and Covered Species List**

The HCP/NCCP will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the HCP/NCCP will establish species-specific minimization, mitigation, conservation and management measures where appropriate.

Natural communities that are likely to be addressed by the HCP/NCCP include \_\_\_\_\_.

Species that are intended to be covered by the HCP/NCCP include \_\_\_\_\_. Issuance of state and federal take authorizations for any particular Covered Species will require an individual determination by the applicable Wildlife Agency that the HCP/NCCP meets applicable state or federal permit issuance requirements.

### **6.1.2. Conservation Areas and Viable Habitat Linkages**

The HCP/NCCP will protect, enhance, or restore habitat and provide or enhance habitat linkages throughout the Planning Area. The HCP/NCCP conservation strategy will address a range of environmental gradients and ecological functions, and will address appropriate principles of ecosystem management, ecosystem restoration, and population biology.

### **6.1.3 Project Design**

The HCP/NCCP will ensure that each Covered Activity is appropriately designed to avoid and minimize impacts to Covered Species and their habitats.

## **7. Preparing the HCP/NCCP**

The Parties intend that this Planning Agreement will establish a mutually agreeable process for preparing the HCP/NCCP that meets the procedural requirements of the NCCP Act, CESA, and the ESA. The process used to develop the HCP/NCCP will incorporate independent scientific input and analysis and include public participation with ample opportunity for comment from the general public and from key groups of stakeholders.

### **7.1 Best Available Scientific Information**

The HCP/NCCP will be based on the best available scientific information, including, but not limited to:

- Principles of conservation biology, community ecology, individual species ecology, and other appropriate scientific data and information;

- Thorough information about all natural communities and proposed Covered Species within the Planning Area; and
- Advice from well-qualified, independent scientists.

## **7.2 Data Collection**

### **7.2.1 Types of Data**

## **7.3 Independent Scientific Input**

## **7.4 Public Participation**

The Parties will ensure an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interest. The planning process will provide for thorough public review and comment.

### **7.4.1 Steering Committee and Interested Observers**

#### **7.4.1.1 Process**

#### **7.4.1.2 Reserved Authority**

#### **7.4.1.3 Interested Observers**

### **7.4.2 Outreach**

### **7.4.3 Availability of Public Review Drafts**

The Parties will designate and make available for public review in a reasonable and timely manner “public review drafts” of pertinent planning documents.

### **7.4.4 Public Hearings**

Public hearings regarding development of the HCP/NCCP will be planned and conducted in a manner that satisfies the requirements of CEQA, NEPA, and any other applicable state or federal laws.

### **7.4.5 Public Review and Comment Period Prior to Adoption**

OCTA will make the draft HCP/NCCP available for public review and comment a minimum of 60 days before adoption. The draft HCP/NCCP and Implementing Agreement will be distributed with the draft environmental impact report prepared for the NCCP pursuant to CEQA and the draft Environmental Impact Statement prepared for the HCP pursuant to NEPA.

## **7.5 Covered Activities**

The HCP/NCCP will identify the Covered Activities carried out by OCTA that may result in take of Covered Species within the Planning Area. Covered Activities consist of thirteen freeway improvement projects as follows:

(1)

(2)

(13)

## **7.6 Interim Project Processing**

## **7.7 Protection of Habitat and other Resources During Planning Process**

### **7.7.1 Conservation Actions**

OCTA may elect to acquire and preserve, enhance, or restore habitat in the Planning Area that will support native species of fish, wildlife, or natural communities prior to approval of the HCP/NCCP. OCTA will confer with the Wildlife Agencies regarding potential resources to be protected. The Wildlife Agencies agree to credit such resources towards the habitat protection, enhancement and restoration requirements of the HCP/NCCP provided these resources are appropriately conserved, restored, or enhanced and managed.

### **7.8 Implementing Agreement**

An Implementing Agreement that includes specific provisions and procedures for the implementation, monitoring, and funding of the HCP/NCCP will be developed. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the HCP/NCCP. The Implementing Agreement will contain provisions for:

- Conditions of species coverage;
- The long-term protection of habitat reserves;
- Implementation of conservation measures;
- Adequate funding to implement the HCP/NCCP;
- Terms for suspension or revocation of the permits;
- Procedures for amendment of the HCP/NCCP, Implementing Agreement, and take authorizations;
- Implementation of monitoring and adaptive management;
- Oversight of the HCP/NCCP's effectiveness;
- Periodic reporting.

## **8. Commitment of Resources**

### **8.1 Funding**

The Parties agree that they will work together to bring available funding to the planning effort.

## **9. Miscellaneous Provisions**

### **9.1 Public Officials Not to Benefit**

No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

## **9.2 Statutory Authority**

The Planning Agreement is not intended, nor will it be construed, to modify any authority granted by statute, rule or regulation.

## **9.3 Multiple Originals**

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed to be an official original copy.

## **9.4 Effective Date**

The Effective Date of this Planning Agreement will be the date on which it is fully executed by the parties.

## **9.5 Duration**

This Planning Agreement will be in effect until the HCP/NCCP is approved and permitted by the Wildlife Agencies, but shall not be in effect for more than three years following the Effective Date, unless extended by amendment. This Planning Agreement may be terminated pursuant to Section 9.7 below.

## **9.6 Amendments**

This Planning Agreement can be amended only by written agreement of all Parties.

## **9.7 Termination and Withdrawal**

This Planning Agreement can be terminated only by written agreement of all Parties. Any Party may withdraw from this Planning Agreement upon 30 day's written notice to the other Parties.

## **9.8 No Precedence**

This Planning Agreement is not intended, and shall not be construed, to modify any existing or subsequently amended law, rule, regulation, or other legal authority, or requirements established thereunder.

The Parties execution of this Planning Agreement and participation in the development of the HCP/NCCP is voluntary. The Parties recognize that participation in this Planning Agreement or in the HCP/NCCP planning process does not constitute, expressly or implicitly, an authorization by any of the Wildlife Agencies to take any species listed under CESA or the ESA. The parties further recognize that such participation does not reflect or represent an acknowledgment by any Party that the HCP/NCCP is necessary to comply with CESA or the ESA.