



**Mitigation and Resource Protection Program Oversight Committee
Environmental Oversight Committee**

July 2, 2014

**Orange County Transportation Authority
600 S. Main Street, Orange CA**

**10:00 a.m. to 11:30 a.m.
Room 154**

AGENDA

- 1. Welcome**
- 2. Approval of April 2, 2014 Minutes**
- 3. Ad-Hoc Working Group Meetings Summary/Recommendations**
Dan Phu, OCTA
Monte Ward, OCTA Consultant
Action Recommendations:
 - A. Endorse recommendations developed by the Ad Hoc Working Group to establish the endowment framework to meet the obligations of the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) outlined herein.
 - B. Direct staff to present the recommendations on the endowment framework to the Finance and Administration Committee and the OCTA Board of Directors for approval.
- 4. NCCP/HCP, DEIR/EIS, and Resource Management Plans Status Update**
Dan Phu, OCTA
- 5. EMP Program Update**
Dan Phu, OCTA
- 6. Public Tours**
Marissa Espino, OCTA
- 7. Public Comments**
- 8. Committee Member Reports**
- 9. Next Meeting – TBD**

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.

10. Closed Session

Pursuant to Government Code Section 54956.8 to discuss the price and terms of payment for the acquisition of the following real properties.

The negotiator for OCTA is Dan Phu. The negotiators for the real properties are as specified.

<u>Real Property</u>	<u>Geographic Area</u>	<u>Assessor's Parcel Number</u>	<u>Owner's Negotiator</u>	<u>Acreage</u>
Aliso Canyon	Coastal	056-240-66	John Mansour	150
Irvine Mesa Corridor	Cleveland Nat'l	105-060-02, 105-060-09, 105-060-19, 105-051-36, 876-011-02, 876-011-03, 876-011-19, 876-011-07, 876-011-08, 876-011-11, 876-011-18, 105-051-18, 876-021-15, 876-021-04, 876-021-05, 105-051-33, 105-051-21, 105-051-57, 105-201-12, 105-201-11	David Meyers	670
Holtz Ranch (CCRC Farms LLC)	Cleveland Nat'l Forest	876-034-01, 876-041-01, 105-051-83, 105-051-84, 105-051-85, 105-070-93	Brad Schnepf	327.9
MacPherson	Cleveland Nat'l Forest	105-051-06, 105-051-08	Craig MacPherson	216.7
Mitchell Properties West	Trabuco	842-081-12	Steven U. Parker	101.7
Saddleback Meadows	Trabuco	856-071-01/09, 856-072-01/51, 856-073-01/58, 856-074-01/45, 856-075-01/57, 856-081-01/11, 856-082-01/44, 856-083-01/46, 856-084-01/37, 856-085-01/41, 856-086-01/37, 856-091-02/11, 856-092-01/42, 856-093-01/25, 856-094-01/34, 856-095-01/62, 856-096-01/57, 856-097-01/34, 856-098-01/37	William Fleissig	222
Sky Ranch	Trabuco	842-021-4, 05, 07, 08 and 842-031-04, 05, 08, 09	Dave and Michael Eadie	526.9
Takahashi (Baker Square LLC)	Cleveland Nat'l Forest	105-051-12	Carl Reinhart	643
Watson	Trabuco	858-021-10, 11	Dave and Michael Eadie	98.3

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.

Measure M2 Environmental Oversight Committee

April 2, 2014
Meeting Minutes

Committee Members Present:

Chair Patricia Bates, OCTA Board of Directors
Vice-Chair Melanie Schlotterbeck, Measure M Support Groups
Veronica Chan, US Army Corps of Engineers
Lori Donchak, OCTA Board of Directors
Nancy Jimeno, California State University, Fullerton
Philip La Puma, Measure M2 Taxpayer Oversight Committee
David Mayer, CA Department of Fish and Wildlife
Derek McGregor, Public Member
Dan Silver, Endangered Habitats League
Jonathan Snyder, US Fish and Wildlife Service
John Walsh, California Wildlife Conservation Board

Committee Member(s) Absent:

Sylvia Vega, Caltrans

Orange County Transportation Authority Staff Present:

Ellen Burton, Executive Director of External Affairs
Marissa Espino, Strategic Communications Officer
Lesley Hill, Planning Department Project Manager
Janice Kadlec, Public Reporter
Dan Phu, Project Development Section Manager
Monte Ward, Measure M Consultant

1. Welcome

Chair Patricia Bates called the Environmental Oversight Committee (EOC) meeting to order at 9:00 a.m. She asked Derek McGregor to lead the Pledge of Allegiance.

2. Approval of the January 15, 2014 Minutes

Chair Patricia Bates asked if there were any additions or corrections to the January 15, 2014 EOC meeting minutes.

Melanie Schlotterbeck had the following correction on page 5, paragraph 3, last sentence: *Extending the north-south wildlife connection from ~~Irvine/Costa~~ **Mesa** to the Cleveland National Forest is very important.*

A motion was made by Lori Donchak, seconded by Melanie Schlotterbeck, and passed unanimously to approve the January 15, 2014 EOC meeting minutes as corrected.

3. NCCP/HCP and DEIR/EIS Status Update

Dan Phu gave a status update of the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and the Draft Environmental Impact Report/ Draft Environmental Impact Study (DEIR/DEIS). OCTA has been working with the wildlife agencies in refining the Conservation Plan and issues have come up during this process which will take a little longer to refine. Therefore, there will be a delay in issuing the Plan. The original target date to issue the Plan was late April 2014. The target date is now late summer 2014. Dan Phu said he believed the time being taken on the front end of the project will save time on the back end. This additional effort will help the wildlife agencies in making their findings on these documents as well as support the approval of the Implementing Agreement (IA). The IA along with permits issued out of the process from the wildlife agencies will serve as the permit for construction of the freeway projects.

4. Resource Management Plan Update

Lesley Hill gave an update on the Resource Management Plans (RMP's). The RMP's need the NCCP/HCP requirements to move forward. Once the NCCP/HCP requirements are finalized and approved they will be folded into the RMP and the RMP can be released.

Monte Ward said they will have a focus session for the EOC on the Conservation Plan and on another day a focus session for the EOC on the RMP's. This will include comments from the public.

Chair Patricia Bates asked if other focus sessions will be held. Monte Ward said yes, there will be other sessions in the evening at OCTA and also out in the field where the other properties are located.

5. Public Tours

Marissa Espino reported OCTA will be doing property tours during the spring and summer. Hike and ride tours will be offered on different days. The first two tours will be in late May or early June and then another in August.

Marissa Espino also brought examples of new branding for the mitigation program and passed them around the room.

6. Ad-Hoc Working Group Meetings Summary

Monte Ward gave a summary of the Ad-Hoc Working Group meetings. This group is looking closely into the endowment issues for the acquired properties and also the long term funding of the program. He was confident there would be a

recommendation on the endowment coming to the EOC in a couple of meetings, and a little further out on the long term funding plan.

Chair Patricia Bates asked if recommendations from the Ad-Hoc Working Group would be coming to the EOC in the third quarter of 2014. Monte Ward said he was fairly confident this would be the case.

7. Public Comments

There were no further public comments.

8. Committee Member Reports

Lori Donchak asked if Monte Ward was speaking at a public event soon. Monte Ward said yes, the event was in Aliso Viejo and he would be talking about the Environmental Mitigation Program, the Water Quality Program, and touch on Transportation but did not know the name of the group. He promised to get back to her. Lori Donchak said the name of the forum was ECO Strikes Sustainability Forum and it will be held on April 17 from 8:30 to 11:30 am.

Melanie Schlotterbeck reported she and Dan Phu spoke to the Taxpayer Oversight Committee (TOC) at the request of Philip La Puma. The TOC had great questions and seemed to know a lot about the programs. Philip La Puma said their presentation was excellent and thanked them for giving it.

Melanie Schlotterbeck reported she, Lesley Hill, Dan Phu and Jonathan Snyder sat on a panel along with the consultant from ICF and presented on March 24 for the Association of Environmental Professionals. It was well received with lots of good feedback.

9. Next Meeting – TBD

The date and time of the next EOC meeting will be determined at a later date.

10. Adjournment to Closed Session

The EOC adjourned to Closed Session at 10:30 a.m.

Pursuant to Government Code Section 54956.8 the EOC adjourned to discuss the price and terms of payment for the acquisition of the following real properties.

The negotiator for OCTA is Dan Phu. The negotiators for the real properties are as specified.

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Overview

The Environmental Oversight Committee (EOC) Ad Hoc Working Group has examined the legal, financial and policy elements affecting the establishment of endowments to support the long-term management and protection of properties and biological resources under the Orange County Transportation Authority (OCTA) Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). Recommendations are presented for the Environmental Oversight Committee (EOC) to consider.

Discussion

At this stage in the development and implementation of the OCTA NCCP/HCP, it is not necessary or even possible to have precise estimates of costs, interest or inflation rates. Likewise, important details that will affect the actual costs of preserve management will be developed subsequent to the release of the draft NCCP/HCP, some even after its final approval. What is necessary is that OCTA demonstrate it has the financial and management capacity to assure that the NCCP/HCP open space properties (preserves) can be properly managed in perpetuity.

Since the endowment will be created over an extended time period (more than 10 years) and more precise and detailed data and information will become available during this period, it makes sense to establish general guidance and parameters on the front end and anticipate adjustments as more data is gathered. As a consequence, these recommendations anticipate ongoing refinements in the financial and cost estimates, and ultimately the size of the endowment.

Finally, this is the first element of a larger effort to develop a set of recommendations on a long term funding plan for the freeway Environmental Mitigation Program (EMP) under Measure M. Recommendations on how to prioritize and allocate future Measure M revenues for this program will be forthcoming.

Policy Recommendations:

1) Who holds the endowment(s)?

There are four key elements with respect to a preserve property – ownership, management, conservation restrictions, and endowment. Different entities can be involved in any and/or all of these elements depending upon the particular circumstances and legal requirements. To determine who should hold an endowment, the legal and practical relationship of these four elements must be considered.

Various combinations of preserve management, fee ownership, and endowment management responsibilities are possible. However, preserve management and fee ownership are often linked, and it is sometimes required that the endowment be held by the preserve manager. Conservation restrictions, usually in the form of a conservation easement, are generally required to be held by an entity separate from the owner and/or manager.

Preserve endowments may be held and managed by OCTA or another qualified public or private non-profit entity. OCTA's principal agency mission is not ownership or management of conservation resources. Therefore, it is reasonable to assume that the long-term property title of the OCTA NCCP/HCP preserves and management of these properties will be transferred to another entity or entities for which biological resources conservation is their primary mission. In this regard, it is also reasonable to assume that the endowment(s) for supporting long-term management would be held by an entity approved to hold endowments, not OCTA.

As part of the NCCP/HCP and the accompanying Implementing Agreement (IA) approval process, OCTA needs to demonstrate it has the financial capability to establish the necessary endowment(s) for long-term management. Subsequent to the approval of the NCCP/HCP and IA, OCTA will have the financial obligation to establish the necessary endowment(s) for long-term management. At that time, the resources agencies will have accepted the terms and conditions of the endowment, thereby relieving OCTA of any additional endowment obligations. Once the endowment is created, OCTA has only limited financial risk on the performance of the endowment or liability as defined in the endowment agreement(s), unless the agency is an endowment holder.

Nevertheless, it is prudent to plan for contingencies, and there may be circumstances, as yet unforeseen, in which OCTA would need to hold and manage an endowment. It is possible to preserve that option by including it within an IA that OCTA and the resources agencies approve to accompany the NCCP/HCP. It would seem reasonable to do so in this case.

Finally, it will be necessary prior to a decision to confer responsibility for management of an endowment to establish appropriate investment policy parameters. These parameters will vary to some degree depending upon whether a public or non-profit entity is the endowment manager and should be negotiated as appropriate to the particular situation and entity to ensure security, stability and the necessary reporting and accountability.

Recommendations:

- Assume that OCTA NCCP/HCP preserve properties will be owned and managed, along with an accompanying endowment, by a qualified public or private non-profit entity or entities other than OCTA.
- Maintain the option for OCTA to hold endowments within the NCCP/HCP.
- Prior to determining an endowment manager (or managers) establish the appropriate investment parameters and reporting and accountability standards through a public process involving the EOC and the Board of Directors.

2) What assumptions should be used to determine long-term preserve management costs?

OCTA has accumulated experience with the costs and responsibilities associated with preserve management as part of the interim management of properties purchased to meet the mitigation and conservation goals of the NCCP/HCP. These costs range between \$169 and \$956 per acre per year. Information from the draft NCCP/HCP and early drafts of Resource Management Plans for these properties provide a basis for estimating the total average annual cost for management, monitoring and oversight at \$784,181.

Comparison with other preserve management costs in Orange County and throughout the state indicates widely varying costs from \$49 to more than \$20,000 per acre. The principal finding is that there is no standardized or benchmark cost across jurisdictions for preserve management. Many variables come into play and no two preserves are alike.

However, some general rules of thumb can be discerned:

1. There are economies of scale. Smaller properties are more costly on a per acre basis than large tracts.
2. Adjacent land uses and land owners can have significant impacts on costs either positive or negative depending upon the nature of the ownership and use.
3. Public access imposes added costs related to outreach, supervision, patrolling, monitoring and enforcement.
4. Cost for monitoring and adaptive management activities under the NCCP/HCP can vary significantly depending upon the frequency and complexity of required actions.
5. Over the long term, management costs on a per acre basis appear to decline as preserve conditions stabilize and management activities are refined.

It will take 10 years or longer to accumulate sufficient funding for an endowment for the OCTA NCCP/HCP. During that time, Resource Management Plans for all preserve properties will be completed, detailed Property Analysis Record (PAR) type reviews will be undertaken, and agreements for long-term management will be developed. These processes, along with continued experience with preserve management will serve to refine the estimate of costs. As a result, the specific amount needed for the endowment(s) can be adjusted either by periodically adjusting the amounts deposited or the duration of the deposit schedule.

It seems reasonable to use the current estimated costs for preserve management as a benchmark for the OCTA NCCP/HCP and to provide for periodic refinement of these estimates as more detailed information and management experience accumulates. This refinement of costs and any recommended changes should be undertaken in a public setting involving the EOC and the OCTA Board of Directors.

Recommendations:

- Use the current estimated annual OCTA preserve management and monitoring costs as a factor in calculating the necessary endowment.
- During the period of establishing the endowment, publicly review and refine every two years the estimated preserve management costs and recommend adjustments to the endowment calculation and deposits accordingly.

3) What financial assumptions should be used to establish the amount of the endowment(s)?

The estimate of the amount needed for the endowment is a function of the preserve management costs as well as assumptions about investment policies, interest earnings, and inflation.

OCTA has long-term experience with a treasury function, managing funds for its capital improvement programs. The investment policies for this purpose are built around low risk and liquidity, since the funds are generally held short-term in preparation for transportation improvement projects. OCTA staff and Board members are familiar with fund management and oversight in this context.

The endowment(s) needed for the OCTA NCCP/HCP must serve a different function by providing for annual preserve monitoring and management costs “in perpetuity.” Funds will need to be sufficient to support these activities solely from interest earnings going forward, without reducing the principal (non-wasting endowment). Also, the endowment(s) must be built up from the M2 EMP

revenue stream (derived from at least 5 percent of the Freeway Program revenues) concurrent with funding current obligations and ongoing costs and activities.

There is a high degree of confidence that the necessary endowment(s) can be funded from the forecasted revenues. However, policy choices exist around the assumptions about four factors (interest rates, inflation rates, fund management costs and deposit schedule) in order to determine how large an endowment needs to be and how long it will take to create it.

Using a model created by the OCTA NCCP/HCP financial consultant, with input from OCTA's revenue, inflation and preserve management forecasts, different scenarios for establishing the endowment(s) were examined. Key variables include the effective spending rate (earnings on investments, net of inflation and fund management costs) and the pace and duration of the deposit schedule to create the endowment(s).

Changes in these variables affect the total size of the endowment needed, the amount of management costs paid from revenues before the endowment is fully funded, and the annual balance available in the EMP.

In evaluating these factors, the Ad Hoc Working Group sought to use reasonably conservative assumptions about the effective spending rate while balancing the duration of the deposit schedule with the annual balance in the EMP.

The recommended target for the effective spending rate is 2.5 percent, which assumes a nominal interest earnings rate of 5.75 percent with 2.5 percent inflation and an annual fund management cost of 0.75 percent over the long term. The recommended deposit schedule is for equal annual deposits over a period of 12 years, beginning in 2016 when the OCTA NCCP/HCP is assumed to be approved.

The 2.5 percent effective spending rate, contrasts with OCTA's current rate of 1.5 percent and would require that the agency accommodate investment policies for the NCCP/HCP endowment(s) that vary from those it uses for its own short-term capital improvement fund investments. Placing this in terms of OCTA's current investment policies would mean, for example, utilizing longer term corporate and government fixed income securities, rather than a one- to three-year, short-term portfolio. For a private, non-profit fund manager, investments could include some equities as well.

The 2.5 percent effective spending rate target is still very conservative. By way of comparison, other conservation endowments assume rates of between 3.5 and 4.5 percent. College and university endowments are also within a similar range.

With regard to the assumed fund management cost of 0.75 percent, this is considered a high estimate consistent with that of a private non-profit fund manager. Public fund management costs are likely to be closer to 0.50 percent, which is consistent with OCTA's current costs for its capital funds management.

With respect to the schedule for creating the endowment(s), the Ad Hoc Working Group recommends a target schedule of 12 years with equal annual deposits (Attachment A). This allows for creation of the endowment concurrent with ongoing preserve management, while still maintaining sufficient balance in the EMP to allow for additional mitigation/conservation expenditures and provide for contingencies. It is acknowledged that the schedule may be shortened or lengthened if property management and/or fund management costs are lower or higher than anticipated.

These recommendations are for an endowment deposit, target rate and deposit schedule for planning purposes and to demonstrate OCTA's financial capacity to fund the necessary endowment(s) as part of the review and approval of the NCCP/HCP by 2016. Subsequently, OCTA will determine the disposition of preserves and which entity or entities will be vested with long-term management and preserve endowment responsibilities. At that time, the actual and specific terms of endowment management can be negotiated and approved. Variances from the recommended deposit amount and rate target can be reconciled through adjustments in the deposit rate and/or schedule for the endowment.

Recommendation:

- Use, as a target for endowment planning purposes, an effective spending rate of 2.5 percent and a 12-year even series deposit schedule beginning in 2016.

Summary of Recommendations:

A. Assume that OCTA NCCP/HCP preserves will be owned and managed, along with an accompanying endowment, by a qualified public or private non-profit entity or entities other than OCTA.

B. Maintain the option for OCTA to hold endowments within the NCCP/HCP.

C. Prior to determining an endowment manager (or managers) establish the appropriate investment parameters and reporting and accountability standards through a public process involving the EOC and the Board of Directors.

D. Use the current estimated annual OCTA preserve management and monitoring costs as a factor in calculating the necessary endowment.

E. During the period of establishing the endowment, publicly review and refine every two years the estimated preserve management costs and recommend adjustments to the endowment calculation and deposits accordingly.

F. Use, as a target for endowment planning purposes, an effective spending rate of 2.5 percent, and a 12-year even series deposit schedule beginning in 2016.

DRAFT

OCTA M2 Environmental Mitigation Program
Deposits to Endowment Under Alternative Assumptions and Schedules

Interest Assumption and Type of Deposit Schedule	Beginning and Ending Years of Deposit	First Year Annual Costs Are Paid From Endowment	Total Deposits to Endowment (Excludes Interest)	Annual Management, Etc. Costs Paid Before Hand-Over	Total Deposits Plus Annual Costs Paid Before Hand-Over	Lowest Balance of Freeway Mitigation Program
1.5% Effective Spending Rate (4.5% Nominal Interest, 2.5% Inflation, 0.5% Fund Management)						
1A Front-Loaded	2016-2030 (15 Years)	2031	\$61.8 M	\$15.7 M	\$77.5 M	\$3.5 M (2016-2029)
1B Even Series	2016-2035 (20 Years)	2036	\$61.7 M	\$22.0 M	\$83.7 M	\$7.3 M (2022)
1C Even Series	2016-2040 (25 Years)	2041	\$62.4 M	\$28.9 M	\$91.3 M	\$11.5 M (2020)
2.5% Effective Spending Rate (5.75% Nominal Interest, 2.5% Inflation, 0.75% Fund Management)						
2A Front-Loaded	2016-2025 (10 Years)	2026	\$33.5 M	\$9.9 M	\$43.4 M	\$3.5 M (2016-2024)
2B Even Series	2016-2027 (12 Years)	2028	\$34.5 M	\$12.1 M	\$46.6 M	\$8.9 M (2022)
2C Even Series	2016-2030 (15 Years)	2031	\$34.1 M	\$15.7 M	\$49.8 M	\$12.7 M (2019-2020)
2D Even Series	2016-2035 (20 Years)	2036	\$33.4 M	\$22.0 M	\$55.4 M	\$15.1 M (2017-2018)
2E Even Series	2016-2040 (25 Years)	2041	\$33.0 M	\$28.9 M	\$61.9 M	\$15.8 M (2016-2017)