



# **AGENDA**

## **Environmental Oversight Committee**

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### **Committee Members**

*Lisa Bartlett, Chair  
Melanie Schlotterbeck, Vice Chair  
Charles Baker, Caltrans District 12  
Dr. David Chapel, Grand Jury  
Association of OC  
Lori Donchak, OCTA Board of Directors  
David Mayer, CA Dept. of Fish & Wildlife  
Derek McGregor, DMC Engineering  
Veronica Li, US Army Corps of Engineers  
Dan Silver, Endangered Habitats League  
Jonathan Snyder, US Fish & Wildlife  
Service  
Anthony Villa, Taxpayers Oversight  
Committee Representative  
John Walsh, CA Wildlife Conservation  
Board*

*Orange County Transportation Authority  
600 South Main Street, First Floor - Room 154  
Orange, California*

**Wednesday, March 2, 2016 at 2:30 p.m.**

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the OCTA Clerk of the Board, telephone (714) 560-5676, no less than two (2) business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

- 1. Welcome**
- 2. Pledge of Allegiance**
- 3. Approval of February 3, 2016 Minutes**
- 4. Harriett Wieder Restoration Project Update**  
Lesley Hill, OCTA

*The Bolsa Chica Conservancy (BCC) presented a status update to the Environmental Oversight Committee (EOC) at the November 4<sup>th</sup> EOC meeting. The EOC requested that staff provide monthly status updates and that BCC return every three months with a progress report. BCC staff presented an update during the February EOC meeting. A status update for the project will be provided by OCTA staff this month.*

- 5. Chino Hills State Park Restoration Projects Update**  
Lesley Hill, OCTA

*The California Department of Parks and Recreation are sponsoring two habitat restoration projects: North Coal Canyon and Chino Hills State Park. The North Coal Canyon project consists of 5.5 acres of sage scrub restoration at a cost of \$247,500. The Chino Hills*

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# AGENDA

## Environmental Oversight Committee

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*State Park project is comprised of two restoration areas and includes proposed restoration to riparian (15 acres) and cactus scrub (6 acres) habitats at a total cost of \$193,000. These projects were approved for funding by the OCTA Board of Directors in May of 2012. Department of Parks and Recreation staff (Ken Keitzer) will present an overview and status update to the EOC about these projects.*

### **6. Endowment Scope of Work**

Dan Phu, OCTA

Monte Ward, OCTA Consultant

#### *Recommendation*

- *Endorse the scope of work for the endowment creation manager*

The Orange County Transportation Authority (OCTA) Measure M2 (M2) Environmental Mitigation Program (EMP) provides comprehensive mitigation to offset the environmental impacts of OCTA's 13 M2 freeway improvement projects. This is achieved through funding habitat restoration activities on existing conservation lands, as well as OCTA acquiring vacant lands (Preserves) in Orange County. These Preserves are integrated into the Conservation Plan and will be protected in perpetuity. The Conservation Plan has been prepared to enable OCTA to obtain permits from the California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service (USFWS) related to biological impacts of M2 freeway improvements. The Conservation Plan will require establishment of one or more permanent endowments to fund the long-term management and monitoring of the OCTA Preserves in perpetuity. To date, OCTA has acquired seven Preserves, totaling approximately 1,300 acres in various parts of Orange County.

A preliminary estimate of endowment value needed for the seven Preserves is approximately \$46.2 million, to be achieved over an establishment period of 10 to 12 years. This is based on an estimated \$34.5 million in total deposits from the M2 EMP fund and \$11.7 million in investment returns, net of all management fees. It is proposed that an organization qualified to hold and manage the interim endowment under Government Code §§65965-65968 be selected through a process of Request for Proposal (RFP).

### **7. Trabuco Canyon Company, LLC offer to sell residual parcels**

Dan Phu, OCTA

Monte Ward, OCTA Consultant

*OCTA acquired the Ferber Ranch from the Trabuco Canyon Company, LLC (TCC) in 2013. During this transaction, two residual parcels were carved out and retained by TCC. TCC has retained ownership of the two parcels and have offered to them for sale to OCTA. Guidance and direction is needed from the EOC on OCTA's interest to potentially acquire these parcel(s).*

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# **AGENDA**

## ***Environmental Oversight Committee***

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### **8. Public Comments**

*Members of the public may address the EOC regarding any item. Please complete a speaker's card and submit it to the EOC or notify the EOC the item number on which you wish to speak. Speakers will be recognized by the Chair at the time the agenda item is to be considered. A speaker's comments shall be limited to three (3) minutes.*

### **9. Committee Member Reports**

### **10. Next Meeting – April 6, 2016**

### **11. Adjournment**

The next regularly scheduled meeting of this Committee will be held at 2:30 p.m. on Wednesday, April 6, 2016, at Orange County Transportation Authority Headquarters, 600 South Main Street, First Floor – Conference Room 154, Orange, California.

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## ***Minutes***

### ***Measure M2 Environmental Oversight Committee***

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#### **Committee Members**

*Lisa Bartlett, Chairman  
Melanie Schlotterbeck, Vice Chairman  
Dr. David Chapel, Grand Jury Assoc. of OC  
David Mayer, CA Dept. of Fish & Wildlife  
Derek McGregor, DMc Engineering  
Dan Silver, Endangered Habitats League  
Jonathan Snyder, US Fish & Wildlife  
Anthony Villa, Taxpayers Oversight Comm.*

*Orange County Transportation Authority  
600 South Main Street, Room 154  
Orange, California  
**February 3, 2016 at 2:30 p.m.***

#### **Members Absent**

*Chair Lori Donchak, OCTA Board of Directors  
Charles Baker, Caltrans District 12  
Veronica Li, US Army Corp of Engineers  
John Walsh, CA Wildlife Conserv. Board.*

#### **1. Welcome**

Chairman Lisa Bartlett called the Environmental Oversight Committee (EOC) meeting to order at 2:30 p.m.

#### **2. Pledge of Allegiance**

Vice-Chairman Melanie Schlotterbeck led the Pledge of Allegiance.

#### **3. Approval of November 4, 2015 and December 2, 2015 Minutes**

Chairman Lisa Bartlett asked if there were any additions or corrections to the November 4, 2015 and the December 2, 2015 EOC minutes. A motion was made by Melanie Schlotterbeck, seconded by David Chapel, and passed unanimously to approve the November 4, 2015 and the December 2, 2015 EOC meeting minutes as presented.

#### **4. Harriett Wieder Restoration Projects Update**

Dan Phu, OCTA, introduced David Pryor from the Bolsa Chica Conservancy (BCC). David Pryor gave a progress report and a status update on the Harriett Wieder Restoration Project. This included a recap of a meeting with the California Coastal Commission and the Coastal Development Permit process, which is needed for the project.

## **5. Resource Management Plans Update**

Monte Ward gave an update on the Resource Management Plans (RMPs). The current RMPs are being released for a 90-day period in order to solicit public feedback on these documents. Public comments are being collected through February 8<sup>th</sup> and will be reviewed with the California Department of Fish and Wildlife and the United States Fish and Wildlife Service (Wildlife Agencies).

Monte Ward said the public review is not a requirement but OCTA thought it would be good to go ahead with this because of the amount of community interest. By doing this early, it would also help OCTA understand what their real costs would be like in the long term.

## **6. 2016 Hike and Equestrian Ride Master Calendar**

In an effort to increase public access on the OCTA Preserves, a 2016 Hike and Equestrian Ride Master Calendar was established. Access events will be taking place about every other month and include hikes on the Ferber Ranch, O'Neill Oaks, and Aliso Canyon Preserves as well as equestrian rides on Ferber Ranch.

Marissa Espino gave an overview of the calendar.

## **7. Public Comments**

Delma Johnson - Trabuco Canyon Community: The Trabuco Canyon Community wants daily, preserve access, sunrise to sunset, to the network of local equestrian trails, which allows preserve trail access as depicted in the Foothill/Trabuco Specific Plan.

## **8. Committee Member Reports**

Dan Phu said in the last year staff has been working on how to set up an endowment. In the upcoming months staff will be coming to the EOC to solicit feedback on this process. The first step in this process is to convene a Working Group meeting of the EOC. Anyone who would like to participate in the Working Group please call Dan Phu.

Melanie Schlotterbeck gave a report on some of her efforts in forming coalitions that relate to transportation projects and mitigation. She reported on her work with the six counties in the Southern California Association of Governments (SCAG) region.

Derek McGregor acknowledged OCTA staff for their dedication during the Resource Management Plan public comment period.

## **9. Next Meeting – March 2, 2016**

## **10. Adjournment**

The meeting adjourned at 3.15 p.m.

**Measure M2 Environmental Program  
Potential Endowment Holders**

	Type of organization	Organization's goals and activities	Conformance with SB 1094 (Gov. Code 65966) to hold and manage endowment for habitat conservation	Disbursement process [Note: More information is needed on this topic.]	Organization's investment management fee	Effective spending rate for habitat management	Principal source(s) for description of investment policy, management, and performance
<b>Center for Natural Lands Management</b>	501(c)(3) private nonprofit organization	To conserve native species, their habitat and functioning ecosystems in perpetuity; manage both conserved natural lands and associated endowments (17,118 acres of conservation easement lands as of 9/30/2013)	Yes, if it manages both conserved land and associated endowment	Appropriations are made for preserve management from endowment income, subject to applicable restrictions	0.5%	4.5%	Center for Natural Lands Management, "Management of Funds for Conservation Purposes: A Statement of Processes, Qualifications, and Performance" (May 1, 2015)
<b>Orange County Parks Foundation</b>	501(c)(3) nonprofit corporation established by the County of Orange, with a cooperative agreement with the County	To support management, operation, and stewardship of publicly-owned parks, wildlands, and open spaces in historic Irvine Ranch and other locations in Orange County	Yes, if it manages both conserved land and associated endowment	Endowment income may be used for program activities and according to an annual budget	N.A.	N.A.	Orange County Parks Foundation, "Investment Plan: Restricted Fund for the Historic Irvine Ranch" (Feb. 26, 2014)
<b>National Fish and Wildlife Foundation</b>	501(c)(3) congressionally chartered foundation	To sustain, restore, and enhance the U.S.'s fish, wildlife, plants, and habitats; entered into a master mitigation account agreement with California Dept. of Fish and Wildlife (CDFW) in 2010 to manage endowments for mitigation programs	Yes; a congressionally chartered foundation	For sub-accounts covered by the NFWF-CDFW agreement, CDFW would specify authorized recipients and amounts	1.0%	3.5%	National Fish and Wildlife Foundation and California Department of Fish and Game, "Master Mitigation Account Memorandum of Agreement" (Nov. 2010), with attached investment policy statement (IPS)
<b>Orange County Community Foundation</b>	501(c)(3) community foundation	To fund philanthropic activities in Orange County and elsewhere; grants (either donor-approved or discretionary) are made to other nonprofit or charitable organizations	Yes; a community foundation accredited by National Standards Board	[Not known]	1.0%		Web-based information on investment overview and OCCF publications. The Chronicle of Philanthropy "Administrative Fees for Donor Advised Funds" (May 2012)
<b>The San Diego Foundation</b>	501(c)(3) community foundation	To fund philanthropic activities in San Diego County and elsewhere, including management of endowments for conserved habitat lands	Yes; a community foundation accredited by National Standards Board	Annual or semi-annual payments to nonprofit habitat managers approved by the permitting agencies	0.75%	4.25%	The San Diego Foundation Endowment, "Investment Policy Statement" (Nov. 2014) and investment summary (March 2015)
<b>Jewish Community Foundation of Orange County</b>	501(c)(3) Public Charity	To provide resources through endowment funds to develop programs for the benefit of our local Jewish agencies and other community organizations	Yes; if under conditions of exemption as outlined in 65968(b)(2)(B)	[Not known]			
<b>The Northern Trust Co.</b>	For-Profit Public Entity	To assist in asset servicing, fund administration, investment management, banking and fiduciary solutions for corporations, institutions and affluent individuals	Yes; if under conditions of exemption as outlined in 65968(b)(2)(B)	Various methods of management available dependent on needs.	Dependent upon agreement	Dependent upon agreement	Northern Trust Corporation "2014 Annual Report to Shareholders" (February 2014)

**Orange County Transportation Authority (OCTA)  
Measure M (M2) Freeway Environmental Mitigation Program**

**Solicitation for Financial Services Related to Management of Endowment Creation Phase for  
Habitat Preserves**

**Scope of Work**  
2/23/2016 revised

Background

The Orange County Transportation Authority (OCTA) Measure M2 (M2) Environmental Mitigation Program (EMP) provides comprehensive mitigation to offset the environmental impacts of OCTA's 13 M2 freeway improvement projects. This is achieved through funding habitat restoration activities on existing conservation lands, as well as OCTA acquiring vacant lands (Preserves) in Orange County (County). These Preserves are integrated into the OCTA Natural Community Conservation Plan/Habitat Conservation Plan (Conservation Plan) and will be protected in perpetuity. The Conservation Plan has been prepared to enable OCTA to obtain permits from the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) [collectively referred to as wildlife agencies] related to biological impacts of M2 freeway improvements. The draft NCCP/HCP and Draft Environmental Impact Report/Statement (EIR/EIS) are available: <http://www.octa.net/Measure-M/Environmental/Freeway-Mitigation/Conservation-Plan/>. These documents contain additional information on the Preserves and provides a framework for Preserve management activities. It is anticipated that these documents will be finalized sometime in 2016. The Conservation Plan will require establishment of one or more permanent endowments to fund the long-term management and monitoring of the OCTA Preserves in perpetuity. To date, OCTA has acquired seven Preserves, totaling approximately 1,300 acres in various parts of Orange County (Exhibit 1).

The Preserves in need of long term maintenance will include but are not limited to the following:

1. O'Neill Oaks consists of 119 acres of chaparral, coastal sage scrub (CSS), riparian, and oak woodland habitat and is located on Live Oak in Foothill-Trabuco Canyon, unincorporated Orange County
2. Hafen consists of 48 acres of chaparral, CSS, riparian, and oak woodland habitat and is located on Live Oak in Foothill-Trabuco Canyon, unincorporated Orange County
3. Saddle Creek South consists of 84 acres of chaparral, CSS, grassland, and oak woodland habitat and is located on Live Oak in Foothill-Trabuco Canyon, unincorporated Orange County
4. Ferber Ranch consists of 399 acres of CSS, riparian, oak woodland, and grassland habitat and is located on Trabuco Oaks Drive/Rose Canyon Road in Foothill-Trabuco Canyon, unincorporated Orange County
5. MacPherson consists of 204 acres of chaparral, grassland, CSS, and riparian including oak woodland habitat and is located on Silverado Canyon in Silverado-Modjeska, unincorporated Orange County
6. Aliso Canyon consists of 151 acres of chaparral, grassland, and CSS and is located adjacent to Moulton Meadows Park in Laguna Beach

7. Hayashi consists of 296 acres of chaparral, grassland, riparian, and woodland vegetation, including coast live oak woodland and California walnut woodland and is located southeast of Carbon Canyon Road (SR - 142) just northwest of the Chino Hills State Park, in the City of Brea.

A preliminary estimate of endowment value for all preserve sites (7 Preserves) is approximately \$46.2 million, to be achieved over an establishment period of 10 to 12 years with an estimated \$34.5 million, \$3.0 million each year, in deposits from the M2 EMP fund and \$11.7 million in investment returns, net of all management fees. It is proposed that an organization qualified to hold and manage the endowment under Government Code §§65965-65968 be selected through a process of Request for Proposal (RFP).

#### 1. Endowment Creation Objectives

The endowment creation phase, that is, endowment as it is being established through annual deposits and investment returns, will be managed under the following conditions:

- 1.1 Deposits to the endowment will be made as expenditures by M2 EMP, and the endowment manager will hold the funds in trust for the benefit of M2 EMP preserve lands.
- 1.2 The endowment is intended to achieve a target value at the end of an establishment period or creation phase, estimated to be 10 to 12 years, where the final endowment target value will be determined during the approximate first seven years, based on final estimates of annual management and monitoring costs for all preserve sites and on planned effective spending rate(s) for permanent endowment(s), both of which would be agreed to by OCTA, CDFW, and USFWS.
- 1.3 No disbursements for habitat management or monitoring activities will be made from the endowment during the creation phase. These activities will be funded separately by M2 EMP during the establishment period.
- 1.4 Upon achieving the target endowment value or targeted funding date, permanent endowment(s) will be established and managed by one or more organizations. The organization selected for the management of the endowment during the creation phase (endowment creation manager) may also become a permanent endowment manager through a separate selection process.
- 1.5 Within 45 days of award of contract, the organization selected to be the endowment creation manager will prepare for review and approval by M2 EMP a financing plan including an annual schedule of deposits by M2 EMP, projected investment returns, asset allocation targets, projected rates of price inflation, management fee(s), and current and target endowment values. The financing plan will be updated annually and reviewed and approved by M2 EMP.
- 1.6 The endowment creation manager will provide quarterly reports on the endowment's current market value, deposits to date, realized and unrealized gains and losses, asset allocation, management fees charged, and performance relative to the current financing plan. In addition, the endowment creation manager will provide annual reports pursuant to Government Code §65966(e).

- 1.7 The endowment creation manager will be expected to provide periodic status updates to the Environmental Oversight Committee (EOC), sub-committees of the OCTA Board or Directors (Board), and Board. This may be on a quarterly basis or on an as-needed basis.
- 1.8 Proposed fee for the management during the creation phase of the endowment will remain fixed for the duration of the establishment period.

## 2. Qualifications of the Endowment Creation Manager

The endowment creation manager should have and demonstrate the following qualifications:

- 2.1 Description of legal framework within which the organization operates (e.g., public benefit nonprofit corporation, etc.).
- 2.2 Certification that the organization meets the requirements of Government Code §65968(e) for a manager of endowment for mitigation purposes.
- 2.3 Organization's history and experience with respect to management of endowment funds for environmental mitigation and with federal or state agencies with authority to approve endowment management and operation.
- 2.4 Description of investment management and decision-making process, including investment goals, and individuals or parties (external or in-house and their backgrounds and qualifications) responsible for those decisions. Identify any sub-advisory relationships that will participate on the management of M2 EMP funds. Also clarify if in-house staff will be available to provide day to day updates as necessary or if this would be handled by external staff.
- 2.5 Strategy for preserving the purchasing power of endowment returns, such as annual adjustment for inflation.
- 2.6 Ten (10) years or, if endowment has been in existence for fewer than ten years, full history of consolidated endowment investment performance, including average annual investment size and asset allocation, withdrawals from endowment, annual rates of return, adjustment (if any) for changes in purchasing power due to inflation, and fund management or other fees. If available, please provide a comparison of your organization's past projections and actuals.
- 2.7 Detail how rate of return is calculated. Is return set and approved by the endowment's governing body, such as a Board of Directors, or tied directly to investment performance?

## 3. Additional Information to Be Provided

- 3.1 Restrictions on and procedures for making early withdrawals from endowment fund, either partial or in whole, for transfer to permanent endowment(s), which may or may not be managed by the responder organization.
- 3.2 References of and permission to contact current or prior client organizations which have established endowments with the responder organization.
- 3.3 Copies of investment policy statement, sample fund or endowment agreement, and any other document(s) governing investment decisions and client organization's access to endowment.

## 4. Supplemental Information

4.1 Appropriate termination clause will be included in the contract.

DRAFT



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

## **Approval of Minutes**

### **Minutes**



# **MINUTES**

## ***Board of Directors' Meeting***

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### **22. (Continued)**

Director Nguyen thanked staff for their support of the Garden Grove event held last Sunday in her district.

A brief discussion followed and a motion was made by Director Jones, seconded by Director Bates, and declared passed by those present, to receive and file this item as information.

Director Pulido was not present to vote on this item.

## **Orange County Local Transportation Authority Regular Calendar Matters**

### **23. Measure M2 Sales Tax Forecast**

Deputy CEO, Mr. Phipps, provided opening comments and stated that the fourth quarter true-up was received, which provides actuals for the sales tax revenues.

Andy Oftelie, Executive Director of Finance and Administration, provided this presentation, stating that the sales tax revenues, while growing, did not meet expectations in fiscal year '14, and there are some concerning short-term trends.

A brief discussion followed, and Director Donchak stated that she had attended the annual Saddleback College President's Breakfast a couple weeks ago, and on their top 10 list for the first time is a South County Economic Forecast. She requested staff to reach out to Saddleback to see what they are doing, and review if there is any knowledge from that which may be of value to OCTA.

A motion was made by Director Moorlach, seconded by Director Ury, and declared passed by those present, to receive and file this item as information.

### **24. Environmental Mitigation Program Endowment Recommendations to Fund Preserved Lands**

Public comment was heard from Melanie Schlotterbeck, representing the Environmental Coalition and serves as Vice Chair on the Environmental Oversight Committee. Ms. Schlotterbeck expressed the Coalition's support for the recommendations before the Board at this time, and stated that they believe it is in OCTA's best interests to stay with its core mission instead of managing conservation lands and stewardship dollars.



# **MINUTES**

## ***Board of Directors' Meeting***

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### **24. (Continued)**

Monte Ward, Principal, Monte Ward and Associates, provided a presentation on the program and recommendations to fund preserved lands.

Director Bates offered comments of appreciation and thanks to Ms. Schlotterbeck, Monte Ward, and Dan Phu, as well as Director Donchak, for their work and significant success on this endeavor.

A motion was made by Director Bates, seconded by Director Moorlach, and declared passed by those present, to:

- A. Approve a non-wasting endowment target of approximately \$34.5 million in accordance with the July 2, 2014 Environmental Oversight Committee recommendations on endowment funding. This will demonstrate commitment to managing the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan Preserves.
- B. Direct staff to develop appropriate investment parameters, reporting, and accounting standards through the Environmental Oversight Committee, the Finance and Administration Committee, and the Board of Directors.
- C. Direct staff to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies.

Director Pulido was not present to vote on this item.

## **Discussion Items**

### **25. Public Comments**

Chairman Nelson announced that members of the public who wished to address the Board of Directors regarding any item appearing on the agenda could complete a speaker's card and submit it to the Clerk of the Board or notify the Clerk of the Board of an item on which they wished to speak.

There were no public comments offered at this time.



## **BOARD AGENDA**

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### **Orange County Local Transportation Authority Regular Calendar Matters**

**23. Measure M2 Sales Tax Forecast**

Sean Murdock/Andrew Oftelie

***Overview***

The Orange County Transportation Authority contracts with three universities to provide a long-range forecast of taxable sales to project Measure M revenues. All three universities have recently updated their forecasts, and staff has incorporated this new information to develop a current long-range forecast of Measure M2 taxable sales.

***Recommendation***

Receive and file as an information item.

**24. Environmental Mitigation Program Endowment Recommendations to Fund Preserved Lands**

Dan Phu/Kia Mortazavi

***Overview***

Measure M2 provides funding for programmatic mitigation to off-set impacts of Measure M2 freeway projects. The Natural Community Conservation Plan/Habitat Conservation Plan, along with a draft environmental impact report/environmental impact statement, demonstrates that sufficient conservation is being provided to address biological mitigation needs related to the Measure M2 freeway projects. In addition, an endowment is necessary to fund long-term land management activities for the acquired properties.

***Recommendations***

- A. Approve a non-wasting endowment target of approximately \$34.5 million in accordance with the July 2, 2014 Environmental Oversight Committee recommendations on endowment funding. This will demonstrate commitment to managing the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan Preserves.



## **BOARD AGENDA**

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### **24. (Continued)**

- B. Direct staff to develop appropriate investment parameters, reporting, and accounting standards through the Environmental Oversight Committee, the Finance and Administration Committee, and the Board of Directors.
- C. Direct staff to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies.

## **Discussion Items**

### **25. Public Comments**

At this time, members of the public may address the Board of Directors regarding any items within the subject matter jurisdiction of the Board of Directors, but no action may be taken on off-agenda items unless authorized by law. Comments shall be limited to three (3) minutes per speaker, unless different time limits are set by the Chairman subject to the approval of the Board of Directors.

### **26. Chief Executive Officer's Report**

### **27. Directors' Reports**

### **28. Closed Session**

A Closed Session will be held:

- A. Pursuant to Government Code Section 54956.9 (d)(1) to discuss Pauline Fosdick v. Orange County Transportation Authority; OCSC No. 30-2013-00677904.
- B. Pursuant to Government Code Section 54956.9 (d)(1) to discuss Audrey Calvert v. Orange County Transportation Authority; OCSC No. 30-2013-00683430.
- C. Pursuant to Government Code Section 54956.9 (d)(4), one matter.



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**BOARD AGENDA****29. Adjournment**

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, October 27, 2014**, at Orange County Transportation Authority Headquarters.



## COMMITTEE TRANSMITTAL

**October 13, 2014**

**To:** Members of the Board of Directors

**From:** Wendy Knowles, <sup>WCK</sup> Clerk of the Board

**Subject:** Environmental Mitigation Program Endowment  
Recommendations to Fund Preserved Lands

### Finance and Administration Committee Meeting of October 8, 2014

**Present:** Directors Bates, Hennessey, Jones, Lalloway, Moorlach, Pulido, Spitzer, and Ury

**Absent:** None

### **Committee Vote**

This item was passed by the Members present.

Director Pulido was not present to vote on this item.

### **Committee Recommendations**

- A. Approve a non-wasting endowment target of approximately \$34.5 million in accordance with the July 2, 2014 Environmental Oversight Committee recommendations on endowment funding. This will demonstrate commitment to managing the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan Preserves.
- B. Direct staff to develop appropriate investment parameters, reporting, and accounting standards through the Environmental Oversight Committee, the Finance and Administration Committee, and the Board of Directors.
- C. Direct staff to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies.



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Environmental Mitigation Program Endowment  
Recommendations to Fund Preserved Lands**

**Staff Report**



**October 8, 2014**

**To:** Finance and Administration Committee

**From:** Darrell Johnson, Chief Executive Officer

**Subject:** Environmental Mitigation Program Endowment Recommendations to Fund Preserved Lands

### **Overview**

Measure M2 provides funding for programmatic mitigation to off-set impacts of Measure M2 freeway projects. The Natural Community Conservation Plan/Habitat Conservation Plan, along with a draft environmental impact report/environmental impact statement, demonstrates that sufficient conservation is being provided to address biological mitigation needs related to the Measure M2 freeway projects. In addition, an endowment is necessary to fund long-term land management activities for the acquired properties.

### **Recommendations**

- A. Approve a non-wasting endowment target of approximately \$34.5 million in accordance with the July 2, 2014 Environmental Oversight Committee recommendations on endowment funding. This will demonstrate commitment to managing the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan Preserves.
- B. Direct staff to develop appropriate investment parameters, reporting, and accounting standards through the Environmental Oversight Committee, the Finance and Administration Committee, and the Board of Directors.
- C. Direct staff to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies.

### **Background**

The Orange County Transportation Authority's (OCTA) Environmental Mitigation Program (Mitigation Program) allocates a portion of the Measure M2 (M2)

Freeway Program budget for comprehensive environmental mitigation to off-set impacts from the freeway improvements. The Mitigation Program is intended to minimize biological regulatory permitting delays in the implementation of the M2 freeway projects. In November 2006, the Mitigation Program was approved by Orange County voters under the M2 half-cent sales tax for transportation improvements.

Pursuant to the M2 Ordinance, the Mitigation Program was implemented under the master and planning agreements between OCTA, the California Department of Transportation, as well as the state and federal resource agencies. These agreements established the roles, responsibilities, and commitments for the preparation of a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and a draft environmental impact report/environmental impact statement (DEIR/EIS). The NCCP/HCP planning process began in mid-2010 and is expected to conclude in 2015. This process provides programmatic mitigation to streamline the biological permitting process and reduces freeway project delays.

OCTA has acquired approximately 1,150 acres of open space lands and has funded approximately 400 acres of habitat restoration projects. The acquired lands (Preserves) and restoration projects are integrated into the NCCP/HCP as part of OCTA's mitigation commitment. This commitment also sets aside funds to pay for the long-term management and maintenance costs of the Preserves. These Preserves will complement other existing preserved lands within Orange County.

As part of the final approval of the NCCP/HCP, OCTA and the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service, collectively referred to as Resource Agencies, will enter into an implementing agreement (IA) that encapsulates the obligations and commitments of each party. This IA, in conjunction with the resource management plans for each preserve, will define specific long-term management and maintenance obligations for OCTA.

### ***Discussion***

Over the last six months, the Environmental Oversight Committee (EOC) Ad Hoc Working Group has examined the legal, financial, and policy elements related to the establishment of endowments to support the long-term management and protection of the Preserves. The purpose of this exercise was not meant to determine who will be the appropriate endowment holder, nor establish the terms of the investment(s). Rather, it is to establish the framework for the endowment, which is the beginning of a series of decisions that will be

vetted with the EOC, the appropriate Board of Directors (Board) committees, and ultimately decided by the Board.

The EOC Ad Hoc Working Group, in conjunction with staff, researched a variety of issues to better understand the risks and best course of action for establishing endowments. This analysis included:

- OCTA's investment policy and whether it is best suited to satisfy the commitments identified in the NCCP/HCP (i.e., a mechanism by which non-wasting endowment can be optimally established)
- Current and anticipated Mitigation Program expenditures and revenues
- Management costs for other non-OCTA Preserves, as well as more accurate per-acre estimates for OCTA
- Legislative constraints if OCTA holds the endowment, as well as potential eligible entities/constraints
- External agencies' investment policies and land management costs
- Available cash-flow under different recommended investment scenarios
- Draft investment parameters/policies for either an OCTA or third-party endowment
- Draft audit/oversight/reporting requirements for OCTA or third-party endowment holder
- Various schedules for funding an endowment

At this stage in the development of the NCCP/HCP, it is not possible to have accurate 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 and thereafter. However, OCTA must demonstrate to the Resource Agencies the financial and management capacity to ensure that the Preserves can be properly managed in perpetuity through an enduring endowment.

The endowment will be created over an extended time period (greater than ten years). Since more precise information will become available during this period, it is prudent to establish general guidance and parameters at this point. This approach allows OCTA to make adjustments as more information becomes available. As a consequence, these recommendations anticipate ongoing refinements to the financial and cost estimates and, ultimately, the amount of the endowment.

Finally, this is the first step as part of a larger effort to develop recommendations on a long-term funding plan for the Mitigation Program. Recommendations from

the EOC on how to prioritize and allocate future M2 revenues for this program will be forthcoming.

Attachment A contains the framework and recommendations related to the establishment of an endowment. Various endowment deposit schedule scenarios were considered. These scenarios took into account the available revenues along with the effective spending rate that would yield sufficient funds to adequately manage the Preserves.

Attachment B outlines the current and anticipated expenditures based on commitments made through the NCCP/HCP planning process. These expenditures include:

- The acquisition of the Preserves and restoration projects
- Long-term management (endowment) of the Preserves
- Early Action Plan borrowing cost for the Mitigation Program
- Development of the NCCP/HCP
- Forecasted expenditures for the remaining obligations to fulfill NCCP/HCP requirements

The information was shared with the EOC on July 2, 2014, and a non-wasting endowment target of \$34.5 million (with annual deposits of \$2.875 over 12 years starting in 2016) was recommended. This assumption was based on a balanced approach to allow for the Mitigation Program to meet current and future obligations and meet the requirements of the resources agencies. The EOC endorsed this recommendation for committee and Board consideration. This topic was presented to the Finance and Administration Committee (F&A Committee) as a discussion item on August 13 and September 24, 2014. The F&A Committee generally agreed:

- with the basis for cost assumptions for the Mitigation Program;
- with the endowment concept for meeting the long-term management responsibilities of the Mitigation Program;
- with the preliminary financial assumptions, but acknowledging that these assumptions will change over time; and
- that land management and management of the associated endowment(s) are not part of OCTA's core business and should be transferred to appropriate and qualified third parties to reduce OCTA's financial risk.

The F&A Committee underscored the importance of protecting OCTA from risks regarding unexpected expenditures, lower than expected earnings, and

potential unknown legislative changes. Some of these issues can be addressed by a thorough and comprehensive third-party investment policy, as well as regular reporting and audits. The F&A Committee also discussed how risk transfer can be addressed with future agreements executed prior to the start of a 12-year endowment deposit period and “lessons learned” from other agencies. Legislative risk could be reduced by including appropriate provisions in third-party agreements.

Lastly, the F&A Committee directed staff to work with other Orange County entities with mitigation lands to develop and recommend comprehensive land management strategies that would seek economies of scale, efficiencies, and consistency as appropriate among the many public and private mitigation land managers.

With Board approval, staff will begin development of appropriate investment parameters, reporting, and accounting standards, and work through the EOC and the F&A Committee process. Staff will also begin to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies. Implementation of actual annual deposits to a third-party endowment(s) would not begin until agreements are negotiated and executed that address the issues discussed above, expected to be completed in the next 12 months.

### ***Summary***

M2 provides funding for programmatic mitigation to offset impacts of M2 freeway projects. The NCCP/HCP and DEIR/EIS demonstrate that sufficient conservation is being provided to address the biological mitigations related to M2 freeway projects. In addition, an endowment is necessary to fund long-term land management activities for the acquired properties. The report recommends a target endowment of \$34.5 million and directs staff to develop the relevant safeguards and Preserve management approach.

***Attachments***

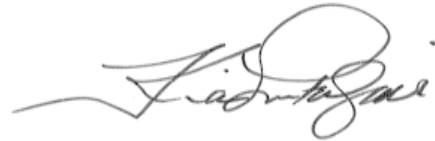
- A.    July 2, 2014 Environmental Oversight Committee Recommendations on Endowment Funding
- B.    Environmental Mitigation Program Current and Anticipated Expenditures

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**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Environmental Mitigation Program Endowment  
Recommendations to Fund Preserved Lands**

**Attachment A**

July 2, 2014 Environmental Oversight Committee  
Recommendations on Endowment Funding

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***Policy Discussion/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 the Orange County Transportation Authority (OCTA) or another qualified public or private non-profit entity. OCTA's principal agency mission is not ownership or management of conservation resources. A process for fully evaluating the willingness, capacity, relative costs, and suitability of potential land managers will be recommended and undertaken in concert with the final approval of the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). 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 the OCTA IA. The resources agencies approve the IA that accompanies 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 Environmental Oversight Committee (EOC) and the Board of Directors (Board).

***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 ten 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 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.

***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 Environmental Mitigation Program (EMP) revenue stream (derived from at least five 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 percent 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 (Exhibit 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.
- 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.

**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
<b>1.5% Effective Spending Rate (4.5% Nominal Interest, 2.5% Inflation, 0.5% Fund Management)</b>						
1A Front-Loaded	2016-2030 (15 Years)	2031	\$61.8 million (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)
<b>2.5% Effective Spending Rate (5.75% Nominal Interest, 2.5% Inflation, 0.75% Fund Management)</b>						
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)



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Environmental Mitigation Program Endowment  
Recommendations to Fund Preserved Lands**

**Attachment B**

## Environmental Mitigation Program Current and Anticipated Expenditures

Actions		Estimated Amount
1.0 Preserve Acquisition and Management		
1.1 Acquisition		
1.1.1 Acquired		\$27,418,907
1.1.2 Future Acquisitions		\$4,864,574
SUBTOTAL		\$32,283,481
1.2 Start Up Expenditures		\$2,903,600
1.3 Interim Preserve Management*		\$10,818,211
1.4 Permanent, Non-Wasting Endowment		\$34,500,000
2.0 Restoration Projects		
2.1 Round 1		\$5,362,500
2.2 Round 2		\$5,137,500
2.2.1 Future		\$421,420
2.3 Round 3 Future		\$5,000,000
2.4 Round 4 Future		\$5,000,000
3.0 Plan Development		
3.1 NCCP/HCP Plan Development		\$2,500,000
4.0 Debt Service		
4.1 Interests on Early Action Plan		\$37,200,000
*Cost is escalated at a rate of 2.5% per year for 12 years. First year management cost is estimated to be \$784,181. Annual management costs would be paid through existing revenue stream for the first 12 years, while the endowment is established. Costs beyond the 12-year period would be drawn from the interest earned from the endowment. **Preliminary estimates subject to change		
TOTAL		\$141,126,712**

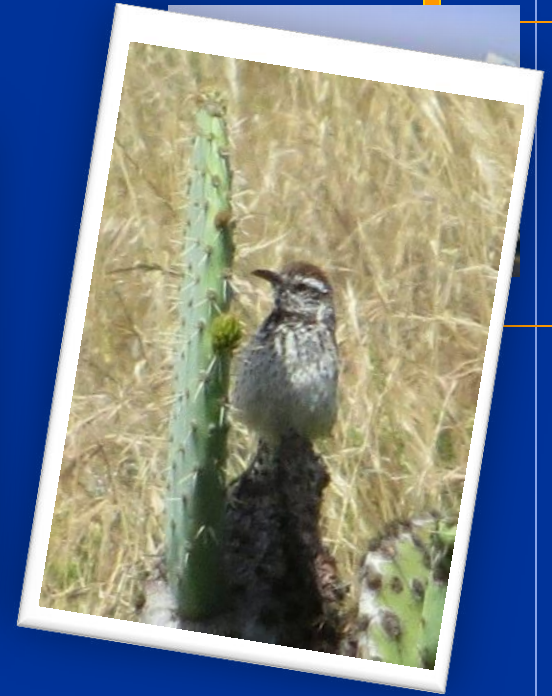
NCCP/HCP - Natural Community Conservation Plan/Habitat Conservation Plan



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Environmental Mitigation Program Endowment  
Recommendations to Fund Preserved Lands**

**PowerPoint**



## Environmental Mitigation Program Endowment Recommendations to Fund Preserved Lands

# Objective

- The OCTA Environmental Mitigation Program allocates at least five percent of the M2 freeway program budget for comprehensive environmental mitigation to off-set impacts from the freeway improvements.
  - This will help to expedite the biological resources permitting processes to facilitate with the timely implementation of the freeway projects.

OCTA – Orange County Transportation Authority  
M2 – Measure M2

# Purpose

- Demonstrate to Resource Agencies that OCTA has the financial capacity to assure the mitigation Preserves can be properly managed in perpetuity.
  - Estimated annual cost \$784K (2014 dollars)

Preserves - Environmental Mitigation Program acquired lands

Resource Agencies - United States Fish and Wildlife Service, and California Department of Fish and Wildlife



# EOC Assumptions

- Endowment Management:
  - Public or private, non-profit other than OCTA.
  - Keep option for OCTA in Conservation Plan.
  - Develop investment parameters, reporting, and accountability in open process prior to determining endowment manager.
- Management Costs:
  - Use current Preserve management and monitoring costs as baseline.
  - Review and refine costs every two years in an open public process.
- Financial Assumptions:
  - Effective spending rate of 2.5% (interest rate of 5.75% minus inflation of 2.5% and management cost of 0.75%).
  - 12-year even deposit schedule anticipated to begin in 2016.

# Endowment Deposit Scenarios

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
<b>1.5% Effective Spending Rate (4.5% Nominal Interest, 2.5% Inflation, 0.5% Fund Management)</b>						
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)
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<b>2.5% Effective Spending Rate (5.75% Nominal Interest, 2.5% Inflation, 0.75% Fund Management)</b>						
2A Front-Loaded	2016-2025 (10 Years)	2026	\$33.5 M	\$9.9 M	\$43.4 M	\$3.5 M (2016-2024)
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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)

# Review of September 24, 2014 – F&A Discussion/Input

- General agreement with:
  - The recommended basis for cost assumptions for the mitigation program.
  - The endowment concept for meeting the long- term management responsibilities of the mitigation program.
  - The financial assumptions regarding earnings, inflation, and management costs for an endowment.
  - Mitigation land management and management of the associated endowment(s) not being part of OCTA's core business and should be transferred to appropriate and qualified third parties.

# Review of September 24, 2014 – F&A Discussion/Input (continued)

- Questions about the options and pros/cons for endowment managers and various investment policies and strategies.
- Clarifications on:
  - The legal vesting timing of the endowment.
  - The legislative history guiding endowment requirements and the stability of these requirements.
  - OCTA's protection from risks regarding unexpected expenditures or poor earnings if mitigation lands and associated endowments are transferred to third parties.

# **Review of September 24, 2014 – F&A Discussion/Input (continued)**

- Chairman Spitzer made a motion to direct staff to work with other entities with mitigation lands to develop and recommend comprehensive land management strategies.

# Recommendations

- For purposes of demonstrating commitment to management of the OCTA NCCP/HCP or Conservation Plan Preserves, approve multi-year deposits, totaling approximately \$34.5 million, to a non-wasting endowment in accordance with the July 2, 2014, EOC recommendations on endowment funding.
- Direct staff to develop the appropriate investment parameters and reporting and accounting standards through a public process involving the EOC, the F&A, and the Board.
- Direct staff to work with other entities with mitigation lands to identify logical land managers to develop potential land management strategies.

NCCP/HCP or Conservation Plan Preserves - Natural Community Conservation Plan/Habitat Conservation Plan  
Board - Board of Directors

## GOVERNMENT CODE

### SECTION 65965-65968

65965. For the purposes of this chapter, the following definitions apply:

(a) "Endowment" means the funds that are conveyed solely for the long-term stewardship of a mitigation property. Endowment funds are held as charitable trusts that are permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside. Endowments shall be governed by the underlying laws, regulations, and specific governmental approvals under those laws and regulations pursuant to which the endowments were exacted, consistent with subdivision (b) of Section 65966 and with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). Endowments do not include funds conveyed for meeting short-term performance objectives of a project.

(b) "Community foundation" means any community foundation that meets all of the following requirements:

(1) Meets the requirements of a community trust under Section 1.170A-9(f)(10)-(11) of Title 26 of the Code of Federal Regulations.

(2) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(3) Is qualified to do business in this state.

(4) Is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(5) Has complied with National Standards for U.S. Community Foundations as determined by the Community Foundations National Standards Board, a supporting organization of the Council on Foundations.

(6) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.

(c) "Conservation easement" means a conservation easement created pursuant to Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(d) "Direct protection" means the permanent protection, conservation, and preservation of lands, waters, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(e) "Governmental entity" means any state agency, office, officer, department, division, bureau, board, commission, public postsecondary educational institution, city, county, or city and county, or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) that meets either of the following requirements:

(1) The joint powers authority was created for the principal purpose and activity of the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(2) The joint powers authority was created for the purpose of constructing, maintaining, managing, controlling, and operating transportation infrastructure, such as major thoroughfares and bridges.

(f) (1) "Mitigation agreement" means either of the following:

(A) A written agreement between the project proponent and the entity qualified to hold the property and the endowment pursuant to this chapter, which is submitted to the state or local agency for the purpose of obtaining any permit, clearance, or mitigation approval from that state or local agency.

(B) A written agreement between the project proponent and the entity qualified to hold the property pursuant to this chapter, including any agreement with an entity qualified to hold the endowment pursuant to this chapter, which is submitted to the state or local agency for the purpose of obtaining any permit, clearance, or mitigation approval from that state or local agency.

(2) A mitigation agreement shall govern the long-term stewardship of the property and the endowment.

(g) "Congressionally chartered foundation" means a nonprofit organization that meets all of the following requirements:

(1) Is chartered by the United States Congress.

(2) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(3) Is qualified to do business in this state.

(4) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.

(5) Has as a purpose the conservation and management of fish, wildlife, plants, and other natural resources, which includes, but is not limited to, the direct protection or stewardship of land, water, or natural wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(h) "Nonprofit organization" means any nonprofit organization that meets all of the following requirements:

(1) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(2) Is qualified to do business in this state.

(3) Is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(4) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.

(5) Has as its principal purpose and activity the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(i) "Project proponent" means an individual, business entity, agency, or other entity that is developing a project or facility and is required to mitigate any adverse impact upon natural resources.

(j) "Property" means fee title land or any partial interest in real property, including a conservation easement, that may be conveyed pursuant to a mitigation requirement by a state or local agency.

(k) "Special district" means any of the following special districts:

(1) A special district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 or Division 26 (commencing with Section 35100) of the Public Resources Code.

(2) A resource conservation district organized pursuant to Division 9 (commencing with Section 9001) of the Public Resources Code.

(3) A district organized or formed pursuant to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969).

(4) A county water district organized under Division 12 (commencing with Section 30000) of the Water Code, that has more than

5,000 acres of mitigation lands.

(5) A special district formed pursuant to Chapter 2 (commencing with Section 11561) of Division 6 of the Public Utilities Code that provides water and wastewater treatment services.

(6) A district organized or formed pursuant to the County Water Authority Act (Chapter 545 of the Statutes of 1943).

(7) A local flood control district formed pursuant to any law.

(1) "Stewardship" encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

65966. (a) Any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration, whether created pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of this code or Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of the Civil Code.

(b) Any local or state agency that requires property to be protected pursuant to subdivision (a) or (b) of Section 65967 may identify how the funding needs of the long-term stewardship of the property will be met. Nothing in this chapter shall be construed as otherwise precluding other methods of funding for the long-term stewardship of the property. If an endowment is conveyed or secured at the time the property is protected, all of the following shall apply:

(1) The endowment shall be held, managed, invested, and disbursed solely for, and permanently restricted to, the long-term stewardship of the specific property for which the funds were set aside.

(2) The endowment shall be calculated to include a principal amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity.

(3) The endowment shall be held, managed, invested, disbursed, and governed as described in subdivision (a) of Section 65965 consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(c) If a nonprofit corporation holds the endowment, the nonprofit shall utilize generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board or any successor entity.

(d) If a local agency holds the endowment, the local agency shall do all of the following:

(1) Hold, manage, and invest the endowment consistent with subdivision (b) to the extent allowed by law.

(2) Disburse funds on a timely basis to meet the stewardship expenses of the entity holding the property.

(3) Utilize accounting standards consistent with standards promulgated by the Governmental Accounting Standards Board or any successor entity.

(e) (1) Unless the mitigation agreement provides that another person or entity shall prepare the annual fiscal report described below, a governmental entity, community foundation, special district, a congressionally chartered foundation, or a nonprofit organization that holds funds pursuant to this chapter, including an endowment or moneys for initial stewardship costs, shall provide the local or state agency that required the endowment with an annual fiscal report that contains at least the following elements with respect to each

individual endowment dedicated and held by that entity:

(A) The balance of each individual endowment at the beginning of the reporting period.

(B) The amount of any contribution to the endowment during the reporting period including, but not limited to, gifts, grants, and contributions received.

(C) The net amounts of investment earnings, gains, and losses during the reporting period, including both realized and unrealized amounts.

(D) The amounts distributed during the reporting period that accomplish the purpose for which the endowment was established.

(E) The administrative expenses charged to the endowment from internal or third-party sources during the reporting period.

(F) The balance of the endowment or other fund at the end of the reporting period.

(G) The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments.

(H) The most recent financial statements for the organization audited by an independent auditor who is, at a minimum, a certified public accountant.

(2) If an entity is required to submit an identical annual fiscal report pursuant to paragraph (1) to the Department of Fish and Game and any other state or local agency, then that report shall be provided only to the Department of Fish and Game. In that instance, the Department of Fish and Game shall provide a copy of that annual fiscal report on its Internet Web site for a minimum of five years.

(f) If a state agency authorizes a governmental entity, special district, or nonprofit organization to hold property pursuant to subdivision (a) or (b) of Section 65967 in connection with a development project, the agency may require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of potential holders of the property and approving those holders. This one-time fee shall be collected only if the agency can demonstrate its actual review of qualifications and approval of holders.

(g) If a local agency authorizes a governmental entity, special district, or nonprofit organization to hold property or an endowment pursuant to this chapter, the agency may require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of the parties identified in the mitigation agreement, approving those parties, and any regular oversight over those parties to ensure that the parties are complying with all applicable laws. This one-time fee shall be collected only if the agency can demonstrate its actual review of qualifications, approval of parties, or regular oversight of compliance and performance.

(h) A local agency may require a project proponent to provide a one-time payment that will provide for the initial stewardship costs for up to three years while the endowment begins to accumulate investment earnings. The funds for the initial stewardship costs are distinct from the funds that may be conveyed for long-term stewardship, construction, or other costs. If there are funds remaining at the completion of the initial stewardship period, the funds shall be conveyed to the project proponent.

(i) The local agency may contract with or designate a qualified third party to do any of the following:

(1) Review the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward natural land or resources pursuant to subdivision (c) of Section

65967.

(2) Review the qualifications of a governmental entity, community foundation, or nonprofit organization to hold and manage the endowment that is set aside for long-term stewardship of the property.

(3) Review reports or other performance indicators to evaluate the stewardship of lands, natural resources, or funds, and compliance with the mitigation agreement.

(j) If a property conserved pursuant to subdivision (a) or (b) of Section 65967 is condemned, the net proceeds from the condemnation of the real property interest set aside for mitigation purposes shall be used for the purchase of property that replaces the natural resource characteristics the original mitigation was intended to protect, or as near as reasonably feasible. Any endowment held for the condemned property shall be held for the long-term stewardship of the replacement property.

(k) Unless prohibited by law, no provision in this chapter is intended to prohibit for-profit entities from holding, acquiring, or providing property for mitigation purposes.

(l) Nothing in this section shall prohibit a state agency from exercising any powers described in subdivision (d), (g), or (h).

(m) A governmental entity, special district, or nonprofit organization may contract with a community foundation or congressionally chartered foundation at any time to hold, manage, and invest the endowment for a mitigation property and disburse payments from the endowment to the holder of the mitigation property consistent with the fund agreement.

(n) Except as expressly authorized in paragraph (1) of subdivision (e), the mitigation agreement shall not include any provision to waive or exempt the parties from any requirement, in whole or part, of this chapter.

(o) Subdivisions (b) to (e), inclusive, shall not apply to funds, including funds from mitigation fees, held for the long-term management and stewardship of property pursuant to either an interim or approved habitat conservation plan pursuant to Chapter 35 (commencing with Section 1531) of Title 16 of the United States Code or an interim or approved natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, if, in the interim or approved plan documents, the permitting agency determines the endowment to be established with those funds will be adequate and provides a schedule for funding the endowment.

65967. (a) If a state or local agency requires a project proponent to transfer property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the agency may authorize a governmental entity, special district, a nonprofit organization, a for-profit entity, a person, or another entity to hold title to and manage that property.

(b) If a state or local agency, in the development of its own project, is required to protect property to mitigate an adverse impact upon natural resources, the agency may take any action that the agency deems necessary in order to meet its mitigation obligations, including, but not limited to, the following:

(1) Transfer the interest, or obligation to restore and enhance property, to a governmental entity, special district, or nonprofit organization that meets the requirements set forth in subdivision (c).

(2) Provide funds to a governmental entity, nonprofit organization, a special district, a for-profit entity, a person, or other entity to acquire land or easements, or to implement a restoration or enhancement project, that satisfies the agency's mitigation obligations.

(3) Hold an endowment in an account administered by an elected official provided that the state or local agency is protecting, restoring, or enhancing its own property.

(c) A state or local agency shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources. The local agency may adopt guidelines to assist it in that review process, which may include, but are not limited to, the use of or reliance upon guidelines, standards, or accreditation established by a qualified entity that are in widespread state or national use.

(d) The state or local agency may require the governmental entity, special district, or nonprofit organization to submit a report not more than once every 12 months and for the number of years specified in the mitigation agreement that details the stewardship and condition of the property and any other requirements pursuant to the mitigation agreement for the property.

(e) The recorded instrument that places the fee title or partial interest in real property with a governmental entity, special district, nonprofit organization, or for-profit entity, pursuant to subdivision (a) or (b) shall include a provision that if the state or local agency or its successor agency reasonably determines that the property conveyed to meet the mitigation requirement is not being held, monitored, or stewarded for conservation purposes in the manner specified in that instrument or in the mitigation agreement, the property shall revert to the state or local agency, or to another public agency, governmental entity, special district, or nonprofit organization pursuant to subdivision (c) and subject to approval by the state or local agency. If a state or local agency determines that a property must revert, it shall work with the parties to the mitigation agreement, or other affected entities, to ensure that any contracts, permits, funding, or other obligations and responsibilities are met.

65968. (a) Notwithstanding Section 13014 of the Fish and Game Code, if an endowment is conveyed pursuant to Section 65966 for property conveyed pursuant to Section 65967, the endowment may be held by the same governmental entity, special district, or nonprofit organization that holds the property pursuant to this section.

(b) (1) Except as permitted pursuant to paragraph (2), the endowment shall be held by one of the following:

(A) The agency or agencies that required the mitigation.

(B) The governmental entity, special district, or nonprofit organization that either holds the property, or holds an interest in the property, for conservation purposes.

(C) The governmental entity or special district that retains the property after conveying an interest in the property for conservation purposes if that governmental entity or special district is protecting, restoring, or enhancing the property that was retained.

(2) The exceptions to paragraph (1) are the following:

(A) An endowment that is held by an entity other than the state or holder of the mitigation property as of January 1, 2012.

(B) An endowment that is held by another entity, which is

qualified pursuant to this chapter, pursuant to the terms of a natural community conservation plan (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) or a safe harbor agreement (Article 3.7 (commencing with Section 2089.2) of Chapter 1.5 of Division 3 of the Fish and Game Code). In order for this paragraph to apply, prior to setting aside any endowments, the implementation agreement that is a part of an approved natural community conservation plan, the planning agreement for any natural community conservation plan that has not yet been approved, or the safe harbor agreement shall specifically address the arrangements for the endowment including, but not limited to, qualifications of the endowment holder, capitalization rate, return objectives, and the spending rule and disbursement policies.

(C) If existing law prohibits the holder of the mitigation property to hold the endowment, including for-profit entities.

(D) If the project proponent and the holder of the mitigation property or conservation easement agree that a community foundation or a congressionally chartered foundation shall hold the endowment.

(E) If the mitigation property is held or managed by a federal agency.

(F) If any of the same mitigation property is required to be conveyed pursuant to both a federal and state governmental approval, and under the federal governmental approval the federal agency does not approve one of the entities described in paragraph (1) of subdivision (b) as chosen to hold the endowment by the agreement of the project proponent and the holder of the mitigation property or conservation easement.

(c) A community foundation or congressionally chartered foundation that holds an endowment pursuant to subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (b), shall meet all the qualifications and requirements of this chapter for holding, managing, investing, and disbursing the endowment funds.

(d) Any entity that holds an endowment under this chapter shall hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property in accordance with subdivision (a) of Section 65965.

(e) The holder of an endowment shall certify to the project proponent or the holder of the mitigation property or a conservation easement and the local or state agency that required the endowment that it meets all of the following requirements:

(1) The holder has the capacity to effectively manage the mitigation funds.

(2) The holder has the capacity to achieve reasonable rates of return on the investment of those funds similar to those of other prudent investors for endowment funds and shall manage and invest the endowment in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(3) The holder utilizes generally accepted accounting practices as promulgated by either of the following:

(A) The Financial Accounting Standards Board or any successor entity for nonprofit organizations.

(B) The Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any requirement for special districts in Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5.

(4) The holder will be able to ensure that funds are accounted

for, and tied to, a specific property.

(5) If the holder is a nonprofit organization, a community foundation, or a congressionally chartered foundation, it has an investment policy that is consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(f) If a governmental entity, community foundation, special district, nonprofit organization, or a congressionally chartered foundation meets the requirements of this chapter, it is qualified to be a holder of the endowment for the purpose of obtaining any permit, clearance, or mitigation approval from a state or local agency.

(g) Except for a mitigation agreement prepared by a state agency, the mitigation agreement that authorizes the funds to be conveyed to a governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization pursuant to subdivision (a) shall include a provision that requires the endowment be held by a governmental entity, special district, or a nonprofit organization to revert to the local agency, or to a successor organization identified by the agency and subject to subdivision (e), if any of the following occurs:

(1) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization ceases to exist.

(2) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization is dissolved.

(3) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization becomes bankrupt or insolvent.

(4) The local agency reasonably determines that the endowment held by the governmental entity, community foundation, special district, or nonprofit organization, or its successor entity, is not being held, managed, invested, or disbursed for conservation purposes and consistent with the mitigation agreement and legal requirements. Any reverted funds shall continue to be held, managed, and disbursed only for long-term stewardship and benefit of the specific property for which they were set aside. If the funds revert from the governmental entity, community foundation, special district, or nonprofit organization, the special district or nonprofit organization may choose to relinquish the property. If the property is relinquished, the local agency shall accept title to the property or identify an approved governmental entity, community foundation, special district, or nonprofit organization to accept title to the property.

(h) Nothing in this section shall prohibit a state or local agency from determining that a governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization meets the requirements of this section and is qualified to hold the endowment, or including a provision in the mitigation agreement as described in subdivision (g).

(i) A state or local agency may allow the endowment to be held temporarily in an escrow account until December 31, 2012, after which time the funds shall be transferred to the entity that will permanently hold the endowment.

(j) Subject to subdivision (g), any endowment that is conveyed to and held by a governmental entity, special district, or nonprofit organization pursuant to this section shall continue to be held by the entity if this section is repealed.

(k) A state or local agency shall not require, as a condition of obtaining any permit, clearance, agreement, or mitigation approval

from the state or local agency, that a preferred or exclusively named entity by the state or local agency be named as the entity to hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property for which the funds were set aside.

(1) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

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## **8.1 Introduction**

OCTA, as Permittee, has responsibility for Plan Implementation. As described in this chapter, OCTA will use other groups for coordination and to facilitate Plan compliance and implement various aspects of the Plan. Implementation of the conservation strategy, monitoring program, and reporting will require coordinated actions among OCTA, Caltrans, Preserve Managers, Monitoring Biologists, Restoration Project Entities, and the Wildlife Agencies. This chapter describes the overall implementation structure, policies, and guidelines of the Plan, including roles and responsibilities, Plan funding, annual reporting requirements, and procedures for amending the Plan. In addition, this chapter addresses Plan responses to Changed and Unforeseen Circumstances that may occur during the duration of the Plan.

## **8.2 Roles and Responsibilities**

This section outlines the structure for Plan implementation in terms of the roles and responsibilities of OCTA and the other participants.

### **8.2.1 OCTA**

OCTA is responsible for implementing the Plan. OCTA will act as the NCCP/HCP Administrator and be responsible for filling the roles of Preserve Manager and the Monitoring Biologist, either directly with OCTA staff, or by contracting with another entity (e.g., public entities such as Orange County Parks or State Parks, or a private entity). In addition, OCTA is responsible for overseeing covered freeway improvement projects to ensure avoidance and minimization measures are implemented as outlined in the Plan.

#### **8.2.1.1 NCCP/HCP Administrator**

The NCCP/HCP Administrator's role is to oversee and coordinate Plan implementation. The NCCP/HCP Administrator will communicate regularly with Preserve Managers regarding the status of Preserve stewardship; the progress on conservation action implementation, monitoring, and management; and new or ongoing issues to be addressed. The NCCP/HCP Administrator will be responsible for contacting the Wildlife Agencies as needed and described in the Plan, and for conducting biannual (twice a year) meetings with the Preserve Managers and Wildlife Agencies to facilitate coordination among the Preserve Areas. The NCCP/HCP Administrator will be responsible for the RMPs and annual work plans prepared by Preserve Managers for each Preserve and ensuring that they contribute to the biological goals and objectives of the Plan, and are implemented properly throughout the year. Finally, the NCCP/HCP Administrator will be responsible for coordinating with other regional management and monitoring programs, submitting monitoring data collected at the OCTA Preserves to regional databases (e.g., CDFW-managed CNDDDB and BIOS databases), preparing the Annual Report demonstrating NCCP/HCP compliance, and hosting an annual public meeting to

report on the status of Plan implementation. The public meeting can be a presentation to the EOC or OCTA Board.

### **8.2.1.2 Preserve Manager**

The Preserve Manager will be responsible for the basic property management and Preserve management addressing the stewardship of the ecological values and recreational uses in each Preserve Area (see Section 7.2.2, “Levels of Preserve Management and Monitoring,” Levels 1 and 2). The Preserve Manager role may be fulfilled by one or multiple entities. The Preserve Manager will report periodically, at least quarterly, to the NCCP/HCP Administrator regarding the status of the Preserve, progress of active management actions and issues that need addressing, and will participate in biannual (twice a year) meetings with other Preserve Managers and the Wildlife Agencies. Preserve Managers are expected to manage their Preserves following the principles and procedures of adaptive management outlined in Section 7.2.7, “Adaptive Management and Monitoring of the Preserves.” They will be responsible for collecting monitoring data directly related to evaluating management activities and Preserve-specific species protection actions (e.g., trail use effects on riparian habitat, cowbird trapping for protection of least Bell’s vireo) and coordinating with the Monitoring Biologist to interpret results of vegetation and Covered Species effectiveness monitoring in relation to management activities.

The Preserve Manager will oversee all activities within the Preserve to ensure that their implementation will avoid or minimize direct and indirect impacts on Covered Species. The Preserve Manager will assess the qualifications of its internal staff or contractors working in the Preserve to ensure they have the qualifications for the particular activity. If a restoration project is undertaken on the Preserve, the Preserve Manager will coordinate with OCTA and Wildlife Agencies to provide authorization for seed collection of covered plant species, if applicable.

### **8.2.1.3 Monitoring Biologist**

The Monitoring Biologist may be a staff member of the Preserve Manager or may be selected as a separate contractor. The NCCP/HCP Administrator will approve the entity selected to fulfill this role. The Monitoring Biologist will be responsible for periodic monitoring of the status of natural communities and Covered Species within the Preserves. The Monitoring Biologist role will be periodic based on the schedule for species and natural community effectiveness monitoring established in the Plan (see Section 7.2.2, “Levels of Preserve Management and Monitoring”). Monitoring data are collected based on accepted species and natural community monitoring methods. The Monitoring Biologist provides the NCCP/HCP Administrator and the Preserve Manager with the monitoring data, monitoring reports, and biological expertise in interpreting results and making recommendations for future Preserve management actions. The Monitoring Biologist role may be fulfilled by one or multiple entities.

### **8.2.1.4 Restoration Project Entities**

For each restoration project for which OCTA provides funding as part of the NCCP/HCP conservation strategy (see Section 5.5, “Restoration Projects”), there will be a Restoration Project Sponsor and an underlying Land Management Entity. The Restoration Project Sponsor will be responsible for implementing the restoration projects as they are described in the approved restoration plans. The Restoration Project Sponsor will also be responsible for completing all appropriate regulatory permitting and environmental documentation required to complete the

project and will abide by all required avoidance and minimization requirements and BMPs. The Restoration Project Sponsor will complete monitoring of the project to ensure performance criteria are met. After performance criteria are met, any long-term management of restoration projects will be the responsibility of the underlying Land Management Entity and may be completed in coordination with the Project Sponsor. The Land Management Entity will manage the restoration project location for biological values as part of its overall management activities and responsibilities. OCTA and Wildlife Agencies will continue to have access to restoration project locations to conduct assessments and qualitative monitoring of restoration project success over time to gain insights and knowledge of restoration strategies.

#### **8.2.1.5 Environmental Oversight Committee**

The EOC will continue to serve as the interagency, interorganization, and public forum for decisions and recommendations regarding the selection of new Preserve acquisitions, new restoration projects, and other high-level issues pertaining to Preserve management, monitoring, and public access. The NCCP/HCP Administrator will report regularly to the EOC regarding Preserve status; key stewardship, management, and coordination issues; and implementation of the annual work plans and RMPs. The EOC will address ad hoc NCCP/HCP issues as needed and will provide recommendations to the OCTA Board. It is anticipated that the frequency of EOC meetings during the initial implementation of the Plan will be higher (quarterly) and then become more spaced out as the program becomes established.

#### **8.2.1.6 OCTA Board of Directors**

The OCTA Board will provide the final decision-making authority for all substantial matters involving OCTA commitments in funding and staffing. The NCCP/HCP Administrator will coordinate with OCTA staff and the EOC to prepare items for Board consideration following the standard procedures for the Board. Agenda items that will typically come before the Board include, but will not be limited to, review and approval of future restoration project funding, long-term endowments, agreements with third-party entities for Preserve management, and amendments to the Plan.

#### **8.2.1.7 Project Manager of Covered Projects**

For all covered freeway improvement projects, OCTA will have a Project Manager overseeing the activities undertaken by the Construction Lead. The OCTA Project Manager will be responsible for ensuring all avoidance and minimization measures are completed and documented by the Construction Lead and its contractors following the requirements as set forth by the Plan. The Project Manager will coordinate and oversee the preparation of project-specific environmental documents (CEQA/NEPA) that will be prepared by either OCTA and/or Caltrans, and approved by Caltrans.

### **8.2.2 Construction Lead**

For each individual covered freeway improvement project, OCTA and Caltrans will establish cooperative agreements that define the responsibilities and oversight of each organization. Under the normal design, bid, build process, Caltrans is anticipated to be the Construction Lead. In certain instances, OCTA may be the Construction Lead for select M2 freeway improvement projects. It is anticipated Caltrans will be the Construction Lead for the majority of the M2 freeway improvement

projects. OCTA will work closely with Caltrans during the construction phase to ensure that the measures outlined in the Plan are implemented.

### **8.2.2.1 Caltrans as Construction Lead**

Caltrans, as owner and operator of the freeway system, will most often be responsible for the construction of covered freeway improvement projects. In that capacity as the Construction Lead, Caltrans will be required to follow all applicable avoidance and minimization measures as described in the Plan and will be responsible for completing preactivity surveys and determining the appropriate minimization measures (e.g., flagging sensitive zones and habitats) prior to the start of construction. The OCTA Project Manager for Covered Projects will work closely with Caltrans to ensure projects conform to the Plan requirements.

### **8.2.2.2 OCTA as Construction Lead**

In situations in which OCTA is the Construction Lead, OCTA will complete the project design and hire a construction contractor to construct the project or contract with one entity to design-build the project. Caltrans will review and approve all plans and specifications to ensure the project is constructed to meet Caltrans requirements. OCTA will have a Project Manager for the Covered Project that will provide internal oversight of the OCTA design and construction management staff to ensure the project follows the Plan avoidance and minimization measures.

## **8.2.3 Wildlife Agencies**

The Wildlife Agencies will have an active role in the oversight and administration of the Plan. Wildlife Agency responsibilities will include, but will not be limited to the following:

- Review and approve avoidance and minimization measures as appropriate on Covered Projects and Activities, including but not limited to review of wildlife crossing design plans, review of monitoring buffer exceptions for nesting birds, and determination of best options for covered plant species mitigation. The Construction Lead for Covered Projects will submit a project-specific “Biological Resources Avoidance and Minimization Plan” that will address and summarize compliance with each of the avoidance and minimization policies set forth in the Plan to the Wildlife Agencies for review and approval.
- Review and approve future restoration project selection and restoration project design plans and determine whether success criteria have been achieved.
- Review and approve Preserve RMPs, annual work plans, and adaptive management strategies.
- Review and approve Annual Reports.
- Participate on EOC.
- Participate in biannual (twice a year) meetings with OCTA and Preserve Managers.
- Review and approve any proposed changes amending the Plan (clerical and administrative changes, minor amendments, and major amendments).
- Review and approve responses by OCTA to Changed Circumstances.
- Respond to and address Unforeseen Circumstances.

- Monitor plan implementation and permit compliance, including monitoring of preserves and restoration projects,

## 8.3 Plan Funding

### 8.3.1 Regulatory Context

Both the NCCPA and ESA require that a conservation plan approved pursuant to the respective state or federal law must assure availability of adequate funding to implement the plan's conservation actions. The NCCPA states that, in approving a natural community conservation plan, CDFW must find, among other conditions, that "[t]he plan contains provisions that ensure adequate funding to carry out the conservation actions identified in the plan" (Fish and Game Code, Section 2820(a)(10)). In addition, the plan must also include an "implementation agreement" that contains "[m]echanisms to ensure adequate funding to carry out the conservation actions identified in the plan" (Section 2820(b)(8)).

Similarly, ESA Section 10 (16 USC 1539) states that, prior to approving an HCP and issuing an incidental take permit, the Secretary of the Interior must find, among other conditions, that "the applicant will ensure that adequate funding for the plan will be provided." The USFWS and NMFS have issued a handbook to assist in the preparation and review of an HCP (*HCP Handbook*), which states that the HCP must include "[m]easures the applicant will undertake to monitor, minimize, and mitigate . . . impacts [of incidental take] . . . [and] the funding that will be made available to undertake such measures" (Chapter 3, Section B.1). Large-scale, regional HCPs, such as the OCTA HCP, should also include ". . . funds for long term needs such as biological monitoring and habitat acquisition programs" and possibly ". . . perpetual funding mechanisms to support long-term management of mitigation lands or for monitoring" (Section B.6).

### 8.3.2 Financial Capacity of OCTA to Fund the Plan

The primary source of funding for the Plan will derive from the M2 transportation sales tax designed to raise money to improve Orange County's transportation system. As part of the M2 sales tax initiative, a minimum of 5% of the revenues from the freeway program will be set aside for the M2 Environmental Mitigation Program (EMP) revenues. These funds will be used for "programmatic mitigation." The development and implementation of the M2 NCCP/HCP will use a portion of this funding source to achieve higher-value environmental benefits such as habitat protection, connectivity, and resource preservation/enhancement in exchange for streamlined project approvals for the M2 freeway projects. The expenditures for key components of the Plan conservation strategy that achieve upfront and comprehensive mitigation (e.g., Preserve acquisitions and funding of restoration projects) will be paid for through M2 EMP revenues. Any costs associated with implementing avoidance and minimization measures, as described in Section 5.6 "Avoidance and Minimization," will be funded through the individual construction budgets and will not rely on funding under the M2 EMP.

There are sufficient funds available through the M2 EMP to cover the development and implementation of the Plan. OCTA has projected that EMP revenue will total \$318.8 million (based on 2013 projections) over a 30-year period. The estimated expenditures for the development and implementation of the Plan (including Preserve acquisitions, near-term and long-term Preserve

management and monitoring, funding of restoration projects, program management, and interest of EAP) totals approximately \$160 million. Table 8-1 provides a summary of the expenditures estimated to implement the Plan.

To date, OCTA has not made any other obligations for spending M2 EMP revenues beyond the commitment to implement the Plan. It is anticipated OCTA will apply a portion of the remaining M2 EMP revenues for mitigation of wetland impacts from M2 freeway improvement projects, which are addressed separately from the Plan. OCTA is not yet able to provide an accurate estimate of the funding requirements to address wetlands mitigation because this process is very fluid and currently in negotiation. However, there are sufficient funds to cover both wetland impact mitigation as well as Plan implementation. OCTA will prioritize the funding of Plan implementation and mitigation of wetland impacts before allocating M2 EMP revenues to other actions or activities. OCTA will coordinate with the EOC and Wildlife Agencies to determine an appropriate approach for allocating the M2 EMP revenues until a permanent, non-wasting endowment is fully funded (see Section 8.3.3, "Administration of Funding for Long-Term Commitments").

**Table 8-1. Actual and Estimated Expenditures for NCCP/HCP Plan Development and Implementation**

Actions	Actual or Estimated Amount <sup>1</sup>	Subtotal
<b>1.0 Preserve Acquisition and Management</b>		
1.1 Acquisition		
1.1.1 Prior to October 2013		
1.1.1.1 Ferber Ranch	\$ 12,774,300	
1.1.1.2 Hafen	\$1,707,900	
1.1.1.3 Hayashi	\$2,962,700	
1.1.1.4 O'Neill Oaks	\$4,292,500	
1.1.1.5 Saddle Creek South	\$3,183,800	
1.1.2 After October 2013		
1.1.2.1 MacPherson	\$2,518,700	
1.1.2.1 Future	\$3,798,700	
Total Acquisition <sup>2</sup>		\$32,238,600
1.2 Start Up Expenditures		
1.2.1 Closing Cost (Appraisals, Site Assessments, etc.)		
1.2.1.1 Acquired Prior to October 2013	\$ 789,000	
1.2.1.2 Acquired After October 2013 <sup>3</sup>	\$ 315,600	
1.2.2 Baseline Biological Surveys		
1.2.2.1 Acquired Prior to October 2013	\$ 325,000	
1.2.2.2 Acquired After October 2013 <sup>3</sup>	\$ 130,000	
1.2.3 Initial Site Improvements (fencing, gates, etc.)		
1.2.3.1 Acquired Prior to October 2013	\$ 510,000	
1.2.3.2 Acquired After October 2013 <sup>3</sup>	\$ 204,000	
1.2.4 Preparation of Resource Management Plans		
1.2.4.1 Acquired Prior to October 2013	\$ 200,000	
1.2.4.2 Acquired After October 2013 <sup>3</sup>	\$ 80,000	

Actions	Actual or Estimated Amount <sup>1</sup>	Subtotal
1.2.5 Cultural Resource Treatment Plans		
1.2.5.1 Acquired Prior to October 2013	\$ 200,000	
1.2.5.2 Acquired After October 2013 <sup>3</sup>	\$ 80,000	
1.2.6 Recording Conservation Easements		
1.2.6.1 Acquired Prior to October 2013	\$ 50,000	
1.2.6.2 Acquired After October 2013 <sup>3</sup>	\$ 20,000	
Total Start Up Expenditures		\$ 2,903,600
1.3 Interim Preserve Management and Monitoring <sup>4</sup>		
1.3.1 Preserve Management and Monitoring	Amount <sup>5</sup>	Years <sup>6</sup>
1.3.1.1 Acquired Prior to October 2013	\$ 364,315	2016-25
1.3.1.2 Acquired After October 2013 <sup>3</sup>	\$ 150,000	2016-25
1.3.2 Effectiveness Biological Monitoring <sup>8</sup>		
1.3.2.1 Species/Veg Sampling (Every 4 years)	\$ 350,000	2016-25
1.3.2.2 Complete Vegetation (Every 10 years)	\$ 50,000	2016-25
1.3.3 Adaptive Management <sup>9</sup>		
1.3.3.1 Currently Acquired and Future	\$ 25,716	2016-25
1.3.4 Program Management		
1.3.4.1 Overall Program	\$ 120,000	2016-25
1.3.5 Property Taxes		
1.3.5.1 Currently Acquired and Future	\$ 100,000	2016-18
1.3.6 Changed Circumstances		
1.3.6.1 Minor Response (~ every 3 years)	\$ 25,000	2016-25
1.3.6.2 Moderate Response (~ every 5 years)	\$ 50,000	2016-25
1.3.6.3 Major Response (~ every 15 years) <sup>10</sup>	\$ 200,000	2016-25
Total Interim Preserve Management and Monitoring		\$ 9,160,700
1.4 Permanent, Non-Wasting Endowment		
(see Table 8-2)		\$ 56,287,000
<b>Total Preserve Acquisition and Management</b>		<b>\$100,589,900</b>
<b>2.0 Restoration Projects</b>		
2.1 Round 1		
2.1.1 Aqua Chinon / Bee Flat Canyon <sup>11</sup>	\$1,490,000	
2.1.2 Big Bend	\$87,500	
2.1.3 City Parcel	\$1,500,000	
2.1.4 Fairview Park	\$2,000,000	
2.1.5 UC Irvine Ecological Preserve <sup>11</sup>	\$ 359,400	\$5,436,900
2.2 Round 2		
2.2.1 Aliso Creek	\$1,105,000	
2.2.2 Chino Hills State Park	\$ 193,000	
2.2.3 Harriett Weider Regional Park	\$ 475,000	
2.2.4 Lower Silverado Canyon	\$1,399,580	

Actions	Actual or Estimated Amount <sup>1</sup>	Subtotal
2.2.5 North Coal Canyon	\$ 247,500	
2.2.6 West Loma	\$1,296,000	
2.2.7 Future	\$ 421,420	\$5,137,500
2.3 Round 3		
2.3.2 Future <sup>12</sup>		\$10,000,000
<b>Total Restoration Projects</b>		<b>\$ 20,574,400</b>
<b>3.0 Plan Development</b>		
3.1 NCCP/HCP Plan Development		\$2,500,000
<b>4.0 Interest</b>		
4.1 Interest on Early Action Plan (EAP) <sup>13</sup>		\$37,198,000
<b>TOTAL</b>		<b>\$ 160,862,300</b>

<sup>1</sup> All amounts in current (inflated) dollars and rounded to the nearest hundred, except as noted.

<sup>2</sup> Includes matching funds provided by the National Fish and Wildlife Foundation for acquisition of the Saddle Creek South Preserve.

<sup>3</sup> Future anticipated costs for Preserves acquired after October 2013 calculated based on the actual or estimated cost for the five Preserves acquired before October 2013.

<sup>4</sup> Interim Preserve management will be funded directly by EMP revenue until adequate funds are accumulated to fund the permanent, non-wasting endowment. Deposits will be made over a 10-year period, currently estimated to occur from 2016 to 2025. OCTA may need to utilize annual revenue streams to continue to pay for the management of the Preserve after the endowment deposits are completed. (See Section 8.3.3, "Administration of Funding for Long-Term Commitments".)

<sup>5</sup> Estimated cost per year (for annual activities) or per event (for other frequencies), in 2013 dollars.

<sup>6</sup> Management cost will be paid out of the revenue stream while the endowment is being established. Projected years in which deposits are made to the endowment fund, except for property taxes, which are assumed to end upon recordation of conservation easements. The number of years provided is meant to illustrate as an example the cost for management while the endowment is established, actual cost will vary and will be dependent on the number of years and rates for the endowment when established.

<sup>7</sup> Total expenditure in current dollars for the period noted. Actual expenditure will vary according to actual inflation and if needed for years other than those cited. Assumed rates of inflation are 2% through 2018 and 2.5% for subsequent years.

<sup>8</sup> Effectiveness monitoring is scheduled to occur every 4 years for Covered Species monitoring and every 10 years for vegetation mapping updates. It is assumed that Covered Species monitoring will occur twice during the years cited, and vegetation mapping update will take place after this period.

<sup>9</sup> A separate budget for additional and specific adaptive management actions will be funded for conditions that are above and beyond the general adaptive management steps undertaken by the Preserve Manager. The adaptive management funding will be 5% of the Preserve Management budget.

<sup>10</sup> A major Changed Circumstance event is assumed to occur about once in 15 years, hence is not expected to be necessary during the years cited.

<sup>11</sup> Original project budgets were amended to address additions to the original scope for these restoration projects.

<sup>12</sup> Future restoration includes restoration projects required to fulfill NCCP/HCP goals and objectives and additional restoration may be required as part of comprehensive wetlands permitting.

<sup>13</sup> As part of an EAP, OCTA incurs interest on debt issued against future M2 EMP revenues to implement conservation actions (Preserve acquisitions and restoration projects) to provide upfront and comprehensive mitigation.

### 8.3.3 Administration of Funding for Long-Term Commitments

OCTA will ensure that a non-wasting endowment is established, per the review and approval of the Wildlife Agencies, to provide funding for the permanent Preserve management and monitoring and program management expenses. The assumption for this Plan is that OCTA will be responsible for establishing and managing the endowment. Other options of having a third party entity manage the endowment will be explored in coordination with the Wildlife Agencies and EOC. The following is a summary of endowment funding approach and strategy assuming OCTA is the lead entity for managing the endowment and it is generally consistent with the current OCTA investment policies. Ultimately, the OCTA Board of Directors will make the decision on who will manage the endowment as well as the specific investment policies for this program.

OCTA has a track record of managing endowment funds, including those for transit and commuter rail operations, and has a fully functioning treasury with appropriate investment policies and fund management experience. Management of the Plan endowment will follow the safeguards and audit features applied to the M2 program including, but not limited to the following:

- All spending is subject to an annual independent audit.
- Spending decisions must be annually reviewed and certified by an independent Taxpayer Oversight Committee.
- The endowment must be subject to public review at least every 10 years and an assessment of progress in delivery, public support, and changed circumstances. Any significant proposed changes to the endowment must be approved by the Taxpayer Oversight Committee (TOC) and OCTA Board. The Wildlife Agencies will be consulted on changes to the endowment prior to its presentation to the TOC and OCTA Board.
- All entities receiving funds must report annually on expenditures and progress in implementing projects.
- At any time, at its discretion, the Taxpayer Oversight Committee may conduct independent reviews or audits of the spending of endowment funds.

The endowment shall be governed by the Uniform Prudent Management of Institutional Funds Act. Changes to the use of the M2 funds that deviates from commitment to the Orange County voters will require approval by the TOC, OCTA Board, and/or Orange County voters. OCTA's endowment funds are held in separate and distinct funds. Each fund is legally protected from the other funds. OCTA utilizes fund accounting for the recording of these assets. Furthermore, the EOC was established pursuant to the M2 Ordinance No. 3 to make recommendations to the OCTA Board on the allocation of net revenues for the EMP. Changes to the use of M2 funds related to the EMP will also require recommendations by the EOC.

It is anticipated there will be endowment(s) established to cover the annual expenses for all Preserve management and monitoring, and program management. OCTA will, most likely, contract with local management entities and biological firms for Preserve management and biological monitoring services.

Prior to the establishment of the endowment, OCTA will provide interim funding for Preserve management and monitoring using ongoing revenue generated for the M2 EMP. OCTA will accumulate funding for the endowment using un-appropriated funds from the annual M2 EMP revenue stream over a 10-year period from Plan approval. OCTA estimates it will take

approximately an additional 1 to 5 years of interest accumulation to generate sufficient funding before the 'hand-off' to the endowment as the source of funding for long-term Preserve management and monitoring. Except for the mitigation of wetland impacts and restoration project funding, OCTA shall prioritize the funding of the Plan endowment before allocating M2 EMP revenue to other actions or activities. OCTA shall disburse funds on a timely basis to meet the Preserve management expenses of the Preserve Managers and other program expenses.

An initial estimate of the endowment funding requirements is included in Table 8-2 that uses a real interest rate (nominal interest rate less inflation rate) of 1.5%. The 1.5% real interest rate is a conservative estimate that is consistent with the current OCTA investment policy. Within the 5 years of Plan approval, the Wildlife Agencies and the EOC will make a determination of the appropriate interest rate for the Plan, which will be used to determine the ultimate endowment needed to meet this Plan's commitments. In addition, the final endowment funding requirements will be based on a Property Analysis Report (PAR) or PAR-like analysis that will be completed by OCTA within 5 years of Plan approval. This analysis will itemize and define the long-term obligations at each Preserve using Preserve specific information developed for the Preserve RMPs. It is expected that additional years of interim habitat management will provide a database and sounder basis for estimating the cost of long-term management costs. The final endowment funding level will be based upon actual negotiated long-term management contracts for each individual Preserve. OCTA will coordinate with the Wildlife Agencies and obtain the Wildlife Agencies' review and approval of the PAR analysis and determination of the permanent endowment funding requirements.

The endowment will cover the following types of expenses in perpetuity:

- Preserve Management – This includes all general Preserve management activities such as access control, enforcement, fencing, maintenance, signage, public outreach, vegetation management, invasive species control, erosion control, and fire management. In addition, this includes periodic and ongoing biological assessments, a comprehensive annual assessment to identify major threats, Preserve-specific biological monitoring above and beyond effectiveness monitoring, ongoing adaptive management, Preserve level data management, and Preserve level annual reporting.
- Adaptive Management – Preserve Managers will be expected and responsible for managing their Preserves following the principles and procedures of adaptive management, as outlined in Section 7.2.7, "Adaptive Management and Monitoring of the Preserves". A separate budget line-item will be set aside to fund additional and specific adaptive management actions (e.g., monitoring and evaluation of different weed-control methods to protect covered plant species populations on a Preserve) that are above and beyond the general adaptive management steps undertaken by the Preserve Manager. The adaptive management funding will be 5% of the Preserve Management budget.
- Effectiveness Biological Monitoring – Comprehensive biological monitoring (following established protocols) will occur every 4 years for Covered Species and vegetation statistical sampling and every 10 years for comprehensive vegetation mapping updates.
- Program Management – OCTA will provide staffing for program oversight, coordination, and management of Preserve Managers, program-level data management, participation on regional planning and monitoring, and preparation of the annual report.
- Changed Circumstances – A separate subfund within the endowment will be established and managed to provide funding for responding to events that meet the triggers of a Changed

Circumstance (see Section 8.6.3, “Costs and Timing for Addressing Changed Circumstances”). This subfund will be funded with \$2,320,000 (estimated) to generate, at a minimum, revenue to cover a minor response (\$25,000) every 3 years, a moderate response (\$50,000) every 5 years, and a major response (\$200,000) every 15 years.

**Table 8-2. Estimate of Funding Requirements for Permanent Endowment**

Annual Expenditures	Annual Average <sup>1</sup>
<b>Preserve Management</b>	
Acquired prior to October 2013	\$ 364,315
Acquired after October 2013	\$ 150,000
<b>Adaptive Management</b>	
Specific and additional adaptive management actions	\$ 25,716
<b>Effectiveness Biological Monitoring</b>	
Covered Species / Vegetation Sampling (\$350,000 every 4 years)	\$ 87,500
Comprehensive Vegetation Updates (\$50,000 every 10 years)	\$ 5,000
<b>Program Management</b>	
OCTA staff for program management and coordination	\$ 120,000
<b>Changed Circumstances</b>	
Minor Response (\$25,000 approximately every 3 years)	\$8,333
Moderate Response (\$50,000 approximately every 5 years)	\$10,000
Major Response (\$200,000 approximately every 15 years)	\$13,333
<b>Total Average Annual Expenditures</b>	<b>\$ 784,197</b>
	Deposits to Endowment Fund to Generate Required Revenue <sup>2</sup>
<b>Deposits to Endowment Subfunds</b>	
Preserve Management <sup>3</sup>	\$ 47,340,000
Effectiveness Biological Monitoring <sup>4</sup>	\$ 6,627,000
Changed Circumstances <sup>5</sup>	\$ 2,320,000
<b>Total Endowment Deposits Required (estimated)</b>	<b>\$ 56,287,000</b>

<sup>1</sup> Amounts in 2013 dollars, except for deposits to endowment, which are in current dollars.

<sup>2</sup> Amounts represent total deposits to the endowment fund for the management, monitoring, and actions in response to Changed Circumstances for the Preserves managed under the Plan. Deposits will be made over a 10-year period, from 2016 to 2025 and estimated that it will be allowed to accrue interest for an additional 1 to 5 years before funding expenditures. Together with accumulated interest, the endowment at completion is anticipated to total \$75.5 million in current (2028) dollars. Calculations were based on a real interest rate of 1.5% (average long-term nominal interest rate of 4% and inflation rate of 2.5%). Actual terms of the deposit schedule may change, subject to the action of the OCTA Board.

<sup>3</sup> Preserve Management, or operating, subfund is applied to annual expenditures on Preserve management, adaptive management, and program administration.

<sup>4</sup> Effectiveness Biological Monitoring subfund is applied to effectiveness biological monitoring actions for Covered Species and vegetation statistical sampling (every 4 years) and comprehensive vegetation mapping updates (every 10 years).

<sup>5</sup> Changed Circumstances subfund is applied to responses to events that meet the triggers of Changed Circumstances, which may occur at irregular intervals.

Once OCTA has established a permanent, non-wasting endowment and the endowment has been reviewed and approved by the Wildlife Agencies, the endowment will be deemed as adequate funding to carry out the obligations under the Plan, and the Wildlife Agencies will not require additional funding from OCTA.

## 8.4 Annual Reporting Requirements

OCTA will prepare an Annual Report summarizing activities over the reporting year (January 1 to December 31). Annual reporting will involve report submittal to the Wildlife Agencies by March 1 of each calendar year (or other date as agreed upon by OCTA and the Wildlife Agencies). A public meeting on the report will be held within 60 days of the report submittal or in conjunction with EOC meetings. The Annual Report will include, but not be limited to, the following:

- Description and location of Covered Projects and Activities completed, including a summary of avoidance and minimization measures undertaken for each Covered Project and any onsite restoration that is required to offset temporary impacts.
- Summary of any Minor Amendments for Covered Projects in which the project has changed but that would result in an equivalent level of the type and amount of project effects (and would stay within the overall cap of project effects).
- Summary of total acres of natural habitat types affected by Covered Projects and an accounting of the Plan-to-date habitat types impacts in comparison with the impact caps approved by the Plan.
- For covered plant species only, accounting in ledger-type format of credits and debits.
- Summary of any impacts exceeding 0.10 acre to natural habitat resulting from Covered Preserve management activities and an accounting of Plan-to-date natural habitat impacts in comparison with the 11-acre cap approved by the Plan.
- Summary of the status of Preserve management and monitoring activities, including any actions taken through adaptive management and/or as a response to Changed Circumstances;
- Summary of the status of OCTA-funded restoration projects, including the results of monitoring activities and any remedial actions taken to achieve success criteria.
- Summary of Plan funding, including endowment budgets. This should include the amount of earnings, amount spent or obligated, and amount of inflation, though this may not have to be adjusted annually.
- Any revisions/amendments to the Plan, Permits, or IA.

## 8.5 Amending the Plan

### 8.5.1 Processing Plan Changes

The information necessary to document proposed changes to the Plan will be presented to the Wildlife Agencies in the form of an addendum to the Plan. The addendum will state the need for the change, the proposed change, and, based on the type of change, specific information and findings to

justify the change(s). While the addendum will be prepared as a separate document, the addendum may also be incorporated as an element of any required CEQA or NEPA document circulated for public review and comment for the proposed action. OCTA will coordinate with the Wildlife Agencies to reach a consensus of the Plan changes prior to going out for CEQA and NEPA public review. Three types of changes to the Plan may occur: clerical or administrative changes, minor Plan amendments, or major Plan amendments. An Annual Report on the Plan's implementation will document all Plan changes and amendments for the previous calendar year, and include the supporting addenda. Most changes to the Plan are expected to be Minor Amendments, although some Major Amendments may be necessary.

## 8.5.2 Clerical and Administrative Changes to the Plan

Clerical and administrative edits and updates to the Plan, such as clerical changes (typographical corrections and minor editing that do not affect conservation commitments), vegetation mapping and species occurrence updates, addition of Preserves under the Plan, and adaptive management changes made pursuant to monitoring results and discussions with the Wildlife Agencies, are not amendments.

Management and monitoring within the Preserve Areas may identify new practices that can improve habitat conditions and/or Covered Species' status. Changes to management (and monitoring) practices will be proposed and discussed in the Annual Report. Because these changes would be expected to enhance habitat conditions and/or Covered Species' status, OCTA anticipates that they will be processed as administrative changes. Changes to the list of invasive plant species maintained by the Cal-IPC, or an equivalent organization or agency, are expected to occur over time. Changes to the list will be reported in the Annual Report.

These nonsubstantive changes to the NCCP/HCP may be made by OCTA on its own initiative or in response to a written request submitted by a Wildlife Agency and will not require any amendment to the NCCP/HCP, Permits, or Implementing Agreement. All proposed clerical or administrative changes will be circulated in writing among the parties by the party proposing the change. If no party objects to the proposed clerical or administrative change within 30 days of receipt, the change will be deemed accepted. If a party objects to a proposed clerical or administrative change, the proposing party may elect to propose the change as a minor or major amendment to the Plan. Each Annual Report will include a summary of all clerical and administrative changes made to the NCCP/HCP during the preceding calendar year.

## 8.5.3 Minor Amendments

The Plan may, under certain circumstances, be modified without amending the Permits, provided such amendments are minor in nature, the effects on the Covered Species involved and the levels of take resulting from the amendment are not greater than those described in the Plan and provided for by the Permits, and the action is otherwise consistent with the Plan, IA, and associated Permits and will not result in new or greater environmental effects beyond those analyzed under NEPA and CEQA for the Plan as originally approved. Minor amendments will not alter the terms of the Section 10(a)(1)(B) Permit and/or NCCPA Permit.

Examples of actions that may require Minor Amendments to the Plan include, but are not limited to:

- Change in the location of a Covered Project provided that the revised Covered Project location is within the Permit Area, changes do not exceed the caps for impacts on habitat types, result in an

increased level of take for Covered Species, or result in new environmental impacts that were not addressed in the Plan and the EIR/EIS. OCTA will be required to address the project changes and demonstrate that the changes are consistent with these criteria.

- Change to cap of 500 individuals of each covered plant species if OCTA can demonstrate to the Wildlife Agencies that mitigation achieved through the Plan conservation actions or through project-specific biological superior alternative(s) provides a biological benefit that is greater than the anticipated impacts. The relative biological benefit of impacts and conservation/restoration will depend not only on the number of individuals impacted or conserved, but also on factors such as long-term sustainability of the occurrences, importance for maintaining connectivity and contiguity between other occurrences in the area, and other factors that may make the occurrences in question biologically valuable or unique (see Section 5.6.2.2, "Covered Plant Species Policy").

OCTA will submit in writing to the Wildlife Agencies a description of the proposed Minor Amendment in the form of an addendum with the following subject items addressed:

- An explanation why the Minor Amendment is necessary or desirable.
- An explanation of why OCTA believes the effects of the proposal are not significantly different from those described in the original Plan and would not result in greater impacts on the environment, including the Covered Species and their habitats, or levels of take beyond those analyzed in connection with the Plan and the Permits.
- An analysis of the environmental impacts of the proposed change.

OCTA may propose a Minor Amendment to the NCCP/HCP Plan by providing a written submission to the Wildlife Agencies. The Wildlife Agencies will use their reasonable efforts to respond to proposed Minor Amendments within 60 days of receipt of such submission by either approving or denying the Minor Amendment or by notifying the OCTA that the proposed Minor Amendment must be processed as a Permit Amendment. Proposed Minor Amendments will become effective upon the Wildlife Agencies' written approval. The Wildlife Agencies will not approve Minor Amendments to the Plan if they determine that such Minor Amendments will result in adverse effects on the environment that are new or significantly different from those analyzed in connection with the original Plan or may result in additional take that was not analyzed in connection with the original Plan.

## 8.5.4 Major Amendments

Major Amendments to the Plan will be required if a proposed action were to include but not be limited to any of the following:

- Increased level of take of a Covered Species.
- Addition of a Covered Species.
- Addition or substantial modification to Covered Activities associated with Preserve management that could reduce conservation commitments in the Plan.
- Addition of a Covered Project, or Operation and Maintenance of constructed freeway projects as a Covered Activity.

- Change in the location of a Covered Project that is outside of the Permit Area, results in impacts that exceed caps to habitat type(s), and/or results in new environmental impacts that were not addressed in the Plan and the EIR/EIS.
- Increased impacts associated with covered freeway projects that result in the caps for habitat type(s) to be exceeded. Adjustments to the caps can be made based on an analysis of conservation achieved under the Plan and if excess credits warrant the caps on a specific habitat to be increased.
- Increased permanent impacts within Preserves that result in the cap of 11 acres of impact on natural habitat to be exceeded.
- Addition of a Preserve or other conservation actions that contribute to the conservation credits under the Plan.

Major Amendments to the Plan will require detailed analyses of the anticipated effects of the proposed action on habitats and Covered Species, sensitive habitats and species not addressed in the Plan, and additional conservation, if warranted, to be provided through the Major Amendment process. Major Amendments will be processed as Permit Amendments in accordance with all applicable federal and state statutory and regulatory requirements, including NEPA and CEQA. The Wildlife Agencies will provide technical assistance to OCTA during the amendment process. All Major Amendments to the Plan will be memorialized through an addendum to the Plan and a Permit Amendment and will be documented in the Annual Report.

## **8.6 Regulatory Assurances, Changed Circumstances, and Unforeseen Circumstances**

### **8.6.1 Regulatory Assurances**

ESA regulations and provisions of the NCCPA provide for regulatory assurances to parties covered by approved HCPs or NCCPs concerning their obligations. Specifically, these assurances are intended to provide a degree of certainty regarding the overall costs associated with species mitigation and other conservation measures, and add durability and reliability to agreements reached between Permittee and the Wildlife Agencies. As such, under the federal no surprises rule, if Unforeseen Circumstances occur that adversely affect species covered by an HCP the USFWS will not require additional land, water, or financial compensation or impose additional restrictions on the use of land, water, or other natural resources beyond that provided for under the HCP, without the consent of the Permittee. Similarly, under the NCCPA, additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources shall not be required without the consent of plan participants.

The regulatory assurances provided under the ESA and the NCCPA do not prohibit or restrain USFWS, CDFW, or any other public agency from taking additional actions to protect or conserve species covered by an NCCP or HCP. The state and federal agencies may use the variety of tools at their disposal and take actions to reduce the effects of other stressors to ensure that the needs of species affected by unforeseen events are adequately addressed.

### **8.6.1.1 Regulatory Assurances under the Endangered Species Act—The No Surprises Rule**

No Surprises Rule 50 CFR 17.22(b)(5)(iii)(A) and 17.32(b)(5)(iii)(A) provides that once an incidental take permit has been issued pursuant to an HCP, and its terms and conditions are being fully implemented, 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 the species covered by the conservation plan without the consent of the Permittee.” If the status of a species addressed under an HCP unexpectedly declines, the primary obligation for undertaking additional conservation measures rests with the federal government, other government agencies, or other non-federal landowners who have not yet developed HCPs. The preamble to the No Surprises Rule provides the following explanation.

Once an HCP permit has been issued and its terms and conditions are being fully complied with, the Permittee may remain secure regarding the agreed upon cost of conservation and mitigation. If the status of a species addressed under an HCP unexpectedly worsens because of unforeseen circumstances, the primary obligation for implementing additional conservation measures would be the responsibility of the Federal government, other government agencies, and other non-Federal landowners who have not yet developed an HCP (63 FR 8867).

However, in the event of Unforeseen Circumstances, USFWS may require additional measures beyond those provided under the Plan provided they are limited to modifications in conserved natural community areas or to the Preserve RMPs for the affected species or to the Plan’s operating conservation program for the affected species and maintain the original terms of the conservation plan to the maximum extent practicable. These measures may not involve additional financial commitments or resource restrictions beyond those provided under the Plan without the consent of the Permittee (50 CFR 17.22(b)(5)(iii)(B) and 17.32(b)(5)(iii)(B)).

The assurances provided by the No Surprises Rule are not absolute and are tempered by other regulatory provisions of the ESA. The Permit Revocation Rule moderates the scope of the No Surprises Rule, providing that in instances where the survival and recovery of a species covered by an HCP is threatened, USFWS may revoke the HCP permit (50 CFR 17.22(b)(8)).

### **8.6.1.2 Regulatory Assurances under the NCCPA**

Under the NCCPA, CDFW provides assurances to Permittees commensurate with the long-term conservation assurances and associated implementation measures that will be implemented under the Plan.<sup>1</sup> In its determination of the level and term of the assurances to be afforded a Permittee, CDFW takes into account the conditions specific to the NCCP, including such factors as the level and quality of information regarding Covered Species and natural communities, the sufficiency and use of the best available scientific information in the analysis of impacts on these resources, reliability of mitigation strategies, and appropriateness of monitoring techniques, including the use of centralized data to evaluate the effectiveness of the NCCP; the adequacy of funding assurances; the range of foreseeable circumstances that are addressed by the plan; and the size and duration of the plan.<sup>2</sup>

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<sup>1</sup> California Fish and Game Code 2820(f) states “The department may provide assurances for plan participants commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan.”

<sup>2</sup> CDFW bases its determination of the level of assurances on multiple factors. See California Fish and Game Code 2820(f).

The assurances provided under the NCCPA will, at a minimum, ensure that if there are unforeseen circumstances, no additional financial obligations or restrictions on the use of resources will be required of the Permittee without its consent. Specifically, the NCCPA directs that,

[i]f there are unforeseen circumstances, additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources shall not be required without the consent of plan participants for a period of time specified in the implementation agreement, unless [CDFW] determines that the plan is not being implemented consistent with the substantive terms of the implementation agreement (California Fish and Game Code 2829(f)(2)).

Like the provision in the ESA regulations, however, the NCCPA requires that CDFW suspend or revoke a Permit, in whole or in part, if the continued take of a Covered Species would jeopardize its continued existence.

## 8.6.2 Changed Circumstances

Natural habitats are inherently subject to fluctuations, and many vegetation communities in southern California are adapted to cyclical events such as wildfires, floods, droughts, and species' population eruptions. Many of these fluctuations will be monitored and addressed through the adaptive management plans developed for the Preserve Area. However, some events or the scale of events may exceed the level of change that can be addressed through adaptive management responses. Changes greater than those that will be addressed through adaptive management are defined as "Changed Circumstances" and "Unforeseen Circumstances."

Changed Circumstances are defined (50 CFR 17.3) as those events that may affect a species or geographic area covered by this Plan that can reasonably be foreseen by OCTA and the Wildlife Agencies during planning and development of the Plan. Changed Circumstances for this Plan include the following reasonably foreseeable events: flood; fire; extended period of reduced precipitation; invasion by exotic species or disease; toxic spills, vandalism, encroachment, and other illegal human activity; and listing of non-Covered Species. Natural events, such as flood, fire, drought, invasive species, and disease that could initiate Changed Circumstance under this Plan would most likely be of regional concern for some or all of the other conservation plans within this Plan Area, and responses would likely be implemented in coordination with other NCCP/HCP Permittees. OCTA's responses would be implemented to complement responses by other NCCP/HCP Permittees, although OCTA may have specific actions that need to be performed on their Preserves.

The potential for climate change to affect Preserve lands must be taken into account. The World Meteorological Organization (WMO) stated "[t]he decade 2001–2010 was also the warmest on record. Temperatures over the decade averaged 0.46°C above the 1961–1990 mean, 0.21°C warmer than the previous record decade 1991–2000. In turn, 1991–2000 was warmer than previous decades, consistent with a long-term warming trend." (WMO 2010). The California Energy Commission's (CEC's) Public Interest Energy Research Program reports that climate change will have significant societal impacts including effects on the water supply, flood risk, levee vulnerability, air quality, agriculture, and human health (Bonfils et al 2007). In addition to societal impacts, California's vulnerability to climate change and its associated changes in temperature and precipitation will affect water resources, the health of citizens, and natural ecosystems effects of climate change on ecosystems and species in the Plan Area are difficult to quantify at this time, it is clear that climate change has the potential to increase the frequency and severity of four of the Changed Circumstances outlined in the Plan (fire, invasive species, drought, and flood). The Changed

Circumstances affected by climate change, and their associated risk assessments, are discussed below.

Events that meet the Changed Circumstance threshold will be addressed through monitoring and the steps identified below in Sections 8.6.2.1 through 8.6.2.6. This will ensure that OCTA has guidelines for responding to and reporting on Changed Circumstances.

The following outline describes how Changed Circumstances will be addressed should they occur:

- The Preserve Manager will coordinate with the NCCP/HCP Administrator, which will notify the Wildlife Agencies in writing within 30 days that a Changed Circumstance has occurred.
- An assessment and, if necessary, a draft remediation plan will be prepared to determine the severity of an event and its impacts and the appropriate response. The draft remediation plan, timeline, and cost estimate determine if environmental compliance (CEQA/NEPA) is required. The Preserve Manager will prepare the assessment and draft remediation plan in coordination with the NCCP/HCP Administrator.
- The assessment and draft remediation plan will be provided to the Wildlife Agencies for review and approval. The Wildlife Agencies will use their reasonable efforts to provide their concurrence or nonconcurrence within 30 days from receipt of the draft plan, including any specific recommendations to modify the plan. If the Wildlife Agencies do not provide comments or state an objection to OCTA adopting the plan within 30 days of receiving the plan, it will be considered approved.
- The approved remediation plan will be used by the Preserve Manager to implement the identified adaptive management activities, and if necessary, to use the funds allocated for Changed Circumstances. All required environmental compliance will be completed before actions are implemented; if an emergency response is required then the Preserve Manager will follow up with all required post-action documentation. A summary report will be prepared by the Preserve Manager on the Changed Circumstance event/condition, actions implemented, results of the actions, and any recommendations for future activities. The NCCP/HCP Administrator will make a reasonable effort to submit a post-response summary to the Wildlife Agencies within 60 days of completion of the response.

### 8.6.2.1 Flooding

**Definition.** A Changed Circumstance flood event will be defined for a particular floodplain or river valley as a flood greater than the 50-year flood level and less than the 100-year flood level, as defined by the Federal Emergency Management Agency (FEMA) and causing permanent impacts on 10–50% of one or more conserved vegetation communities within the Preserve Area. The determination of permanent loss will be made in consultation with the Wildlife Agencies and may be based on whether the Preserve Manager and Wildlife Agencies conclude that the area cannot be restored within 5 years of the event. FEMA has developed flood zone maps that designate flood hazard areas. A 100-year flood area identifies the elevations that have a 1% chance of being inundated by flood in a given year. These designations may not be applicable to or present within all Preserve habitat areas for which OCTA and Preserve Managers have made a commitment to manage for the benefit of Covered Species. Flood events that exceed the local area's flood-protection level will require OCTA or the Preserve Manager to determine if a response to the Changed Circumstance is required and within their capability to accomplish to address the situation.

**Risk Assessment.** OCTA expects streams, rivers, and floodplains within the Plan Area to flood periodically and to recover naturally from a flood event. Climate change may affect the periodicity and severity of flooding in the future. Predicting the potential for future flooding events, particularly in southern California, is difficult because of its inherent highly variable and localized weather (particularly rainfall). Due to the difficulty in making predictions, the effects of climate change on flooding events cannot be reasonably predicted with the best available scientific information currently available. The severity of a flood event above the design flood stage will increase the likelihood of impacts on conserved habitat.

Flooding in riparian areas is generally considered a periodic and desirable event. Flooding can result in the establishment of new primary and secondary channels and abandonment of other channels. It may also result in redistribution of wetland and riparian communities in the floodplain and multiple age classes of vegetation patches within the floodplain. The primary stressors associated with flooding are 1) the potential for substantial and adverse colonization by nonnative invasive plant species after a significant flood event; and 2) the potential for erosion or downcutting to result in ongoing habitat loss and degradation.

**Preventive Measures and Responses.** The Preserve Manager will use reasonable efforts to prepare and submit to OCTA and the Wildlife Agencies a flood response plan and may initiate responses within 60 days of determining that a flooding Changed Circumstance has occurred following the outline included above. Based on that report and discussions with OCTA and the Wildlife Agencies, the Preserve Manager will implement and maintain responses in addition to standard practices for flood protection as needed for meeting FEMA or local zoning requirements. The possible responses to Changed Circumstances for flooding include, but are not limited to, the following:

- Recontour the area to minimize future erosion risks.
- Install erosion-control structures.
- Restore stream channels in a manner that restores habitat lost to erosion or downcutting and reduces the potential for such impacts to occur in the future.
- If determined appropriate by the Preserve Manager, allow the site to restore passively (primarily wetlands).
- Actively revegetate the site with appropriate plant species.
- Implement an altered monitoring regime (more frequent, different methods) to evaluate the response of Covered Species and their habitats to the flood event.

### **8.6.2.2 Fire**

**Definition.** A Changed Circumstance fire event will be defined as one that exceeds the ability of the Preserve Manager's standard staff/equipment to control and occurs over the same area(s) more frequently than the expected recovery interval. Exceeding the ability of the Preserve Manager means that the available fire-management resources (as described/listed in the RMP) cannot contain or control the fire and additional firefighting resources are required to control and contain the fire. The effects of fire frequency may vary by proximity to the coast, elevation and aspect, time of year, and other factors. Based on the fire history of Orange County and experience on similar preserves, for this Plan, the repeated frequencies triggering Changed Circumstances is three fires within a 50-year span on the same area of a Preserve. If four fires occur within a 50-year time span, this would be considered an Unforeseen Circumstance.

**Risk Assessment.** Fires can result from natural sources such as lightning strikes and from human activities (e.g., campfires, trash/brush burning, vandalism, arson). Many vegetation communities in southern California have evolved from, or even depend on, natural fire events to maintain conditions favorable to their persistence. Montane (coniferous) and chaparral communities generally have evolved and adapted to longer intervals between natural fires than sage scrub and grassland communities. Too frequent fire intervals can lead to disruption of natural regeneration cycles, including loss of mature (reproducing age) native plants and seed beds, which causes shifts to more fire-tolerant native vegetation communities or the expansion of nonnative, invasive species that can greatly disrupt the natural habitats. Preserves that are part of larger natural landscapes/preserve systems may be less likely to experience human-caused fire events. Areas that are adjacent to the urban fringe are potentially more likely to experience human-caused fire events.

Recent reviews of literature on wildfire effects on southern California shrublands suggest that there are no definitive fire frequency intervals that characterize the “natural” fire frequency interval (Diffendorfer 2008, Farm and Home Advisor’s Office 2007, Keeley 1995, Moritz et al. 2004, The Chaparral Institute 2012). These reviews strongly suggest that the frequency/interval of fires is more important than the severity and size of fires in determining long-term community health and resilience. There appears to be a general acknowledgement that fires in sage scrub and chaparral that are more frequent than 30–50 years are likely to cause a loss of typical dominant species and conversion to mixed vegetation communities with higher components of nonnative species. Sage scrub vegetation appears to tolerate more frequent fires than chaparral vegetation, but fires that are more frequent than 2–10 years in sage scrub and 10–30 years in chaparral have shown extirpation of many native species and conversion to nonnative-dominated communities.

Climate change may exacerbate the size and intensity of fires in the future. Climate change models indicate that southern California may show appreciable warming, which, combined with little change in precipitation (as noted above), could increase fire events above the historical condition. However, as with the risk assessment for flooding, it is difficult to predict the specific effects from climate change.

After many natural fire events, vegetation communities would be expected to recover naturally. However, dry conditions and excessive fuel buildup or fires that occur too frequently may result in fire damage that requires remedial actions, particularly to minimize erosion and nonnative invasive species.

**Preventive Measures and Responses.** The Preserve Manager will use reasonable efforts to prepare and submit to OCTA and the Wildlife Agencies a fire response plan within 60 days of a Changed Circumstance fire event following the outline included above. Based on that report and discussions with OCTA and the Wildlife Agencies, the Preserve Manager will implement and maintain responses in addition to standard Preserve fire protection practices. Preserves managed by other entities have or will develop fire management elements in their RMPs. If a Changed Circumstance fire event occurs in a Preserve, a qualified individual will assess the area to determine specific actions to be implemented. Possible responses to a Changed Circumstance fire may involve the following:

- Revise standard fire prevention procedures by the land management entities on Preserves.
- Collaborate with local fire agencies to assess and revise specific fire-related practices in Preserve Areas (fire breaks, vegetation management, etc.).
- Revise Preserve management as outlined in the RMP regarding public access, use, and fire information.

- Install temporary erosion control features.
- Increase invasive (particularly fire-facilitating) species control and native plant reseeding or planting.
- Revise vegetation monitoring in potential fire-prone areas and post-fire areas.
- Implementing an altered monitoring regime (more frequent, different methods) to evaluate the response of Covered Species and their habitats to the fire event.

### 8.6.2.3 Extended Periods of Reduced Precipitation

Definition. A Changed Circumstance due to reduced precipitation (drought) is an event that involves 2 consecutive years of annual precipitation that is less than one standard deviation from an established mean over the previous 20 years.

Risk Assessment. Annual rainfall is variable and not controlled by human activity. Drought cycles are cyclical and a natural event in southern California to which the vegetation communities and species have adapted. Extended periods of reduced precipitation (more than 2 consecutive years) may cause natural communities to sustain significant decreases in plant cover and diversity and subsequently to losses of animal species. Covered Species may be at greater risk than other species if their habitat needs or population numbers are already compromised.

Climate change will affect precipitation, but the changes to southern California may not be as substantial as other areas. As described in the previous sections, climate models are not accurate for localized areas. The effects of climate change on reduced precipitation in the Plan Area cannot be definitively predicted based on current best available scientific information.

Preventive Measures and Responses. OCTA and Preserve Managers have no control over the duration or severity of reduced precipitation. The Preserve Managers will use reasonable efforts to prepare and submit to OCTA and the Wildlife Agencies a drought response plan and may initiate responses within 60 days, following the outline included above, of determining that an extended period of reduced precipitation Changed Circumstance has occurred. Based on that report and discussions with OCTA and the Wildlife Agencies, the Preserve Manager will implement and maintain responses in addition to standard Preserve management practices. Possible actions that may be taken in response to reduced precipitation include the following:

- Revise standards and practices for establishing revegetation sites to maximize planting survival during periods of reduced water availability.
- Collaborate with other conservation area managers to assess regional habitat and Covered Species conditions.
- Implement vegetation reduction (e.g., biomass thinning of nonsensitive/non-Covered Species, particularly nonnative species) to conserve available water.
- Provide limited, temporary irrigation to highly vulnerable areas (e.g., active restoration sites) in the Preserve, subject to water availability.
- Revise the methods for monitoring of vegetation conditions and Covered Species' status to identify areas and species that may require additional management.
- Implement an altered monitoring regime (more frequent, different methods) to evaluate the response of Covered Species and their habitats to a drought event.

- Reduce public access of or close trails to protect habitat.

#### 8.6.2.4 Invasive Nonnative (Exotic) Species or Diseases

Definition. A Changed Circumstance event due to the presence of an invasive nonnative species is the introduction of an invasive species within a Preserve that has either: 1) not previously been known in the Plan Area and has been noxious invasive elsewhere, or 2) is a particularly noxious invasive variety of a nonnative species that continues to expand in areal extent or percent cover despite targeted resistant to typical control measures. The Plan does not monitor for diseases, but a disease Changed Circumstance event is when a federal, state, or local agency declares a disease condition that could threaten the status of a Covered Species.

Risk Assessment. Invasive nonnative species are those that are not indigenous to the Plan Area and have the potential to increase in numbers and/or coverage such that they threaten the continued viability of conserved habitats and/or Covered Species. Many invasive nonnative species presently occur in Preserves and pose little threat to Covered Species. Often, these species reach temporary, but problematic, levels after some disturbance such as drought, excessive precipitation, or fire; or as a result of importation by humans.

Climate change could alter habitat conditions and favor some invasive, nonnative species and diseases over native species. As noted previously, the effects of climate change on habitat conditions in the Plan Area cannot be definitively predicted based on current best available scientific information. However, based on monitoring data and information from other conservation managers and specialists, OCTA or the Preserve Manager will determine if a response is required.

Preventive Measures and Responses. The Preserve RMPs will address invasive species monitoring and control. The Preserve Manager will use reasonable efforts to prepare and submit to OCTA and the Wildlife Agencies an invasive species/disease response plan and may initiate responses within 60 days, following the outline included above, of determining that a Changed Circumstance has occurred. Based on that report and discussions with OCTA and the Wildlife Agencies, the Preserve Manager will implement and maintain responses in addition to standard Preserve invasive species/disease control practices. If a Changed Circumstance event for invasive species or disease is determined by the Preserve Manager to have occurred in a Preserve Area, the Preserve Manager will have a qualified individual (e.g., biologist or pest control specialist) assess the condition to propose specific actions that are appropriate to be implemented. Possible responses to a Changed Circumstance invasive species or disease may involve the following:

- Increase control measures or removal and monitoring of the problem species or location.
- Erect a fence around the perimeter of the infested area.
- Revise specific elements of the RMP to better address overall nonnative species monitoring and management.
- Collaborate with other conservation area managers to assess and implement new control techniques.
- Implement an altered monitoring regime (more frequent, different methods) to evaluate the response of Covered Species and their habitats to invasive species or disease.

### 8.6.2.5 Toxic Spills, Dumping, Vandalism, and Other Illegal Human Activity

**Definition.** Preserve Managers and OCTA staff may transport, store, and use legal but potentially dangerous materials as part of routine Preserve management operations, and are prepared to address minor spills. Most containers for pesticides, cleaners, and spare gas cans are 10 gallons or less, and an accidental spill of a container generally would involve less than 10 gallons. Based on the size of the Preserves and experience with similar preserves, this Plan defines a Changed Circumstance for a toxic material (as defined by local, state, or federal regulations) spill as an incident that involves any potentially toxic material that is over 10 gallons or 200 square feet and up to 25 gallons or 500 square feet. Unauthorized dumping is often associated with isolated, individual actions (throwing out trash, trash bags, pieces of furniture, etc.) that affect small areas, from 5 to 50 square feet. This Plan defines a Changed Circumstance for unauthorized dumping as an incident that exceeds 50 square feet and up to 500 square feet.

**Risk Assessment.** Preserve Areas are mostly not close to urban areas or roads that could be used to transport hazardous materials or that increase the potential for unauthorized dumping and vandalism and could sustain damage that potentially affects Covered Species. This is unlike the preserve lands in other plans, many of which are adjacent to developed areas or major roads and potentially subject to spills by municipal or industrial activities and transport vehicles.

Preserve Area staff may store and use materials (i.e., pesticides, cleaners, and fuel for maintenance equipment) in small containers (less than 10 gallons) that could accidentally be spilled. Most spills that could affect Preserve Area activities would be expected to result from Preserve staff activities, be small, and contained and cleaned-up by staff. For example, OCTA's standard emergency spill procedures identify spills of less than 10 gallons to be "small events" that can be handled by staff with standard spill response kits. Some spills from Preserve Area accidents could exceed 10 gallons (and up to 200 square feet) that could be handled by reprioritizing Preserve Area staff and resources. Spills greater than 25 gallons or 500 square feet would be unexpected/unlikely and would not be within the Preserve Area staff's abilities to safely and successfully contain and clean up.

Climate change is not expected to have a predictable effect on toxic spills or unauthorized dumping or vandalism.

**Preventive Measures and Responses.** The Preserve Manager will use reasonable efforts to prepare and submit to OCTA and the Wildlife Agencies an illegal dumping response plan and may initiate responses within 60 days, following the outline included above, of determining that a Changed Circumstance has occurred. Based on that report and discussions with OCTA and the Wildlife Agencies, the Preserve Manager will implement and maintain responses in addition to standard spill control practices. Toxic spills will be responded to immediately. If a Changed Circumstance event occurs within a Preserve, a qualified individual (e.g., Hazardous Material Spill Specialist) will assess the area to propose specific actions to be implemented. Dumped material will be assessed for hazardous materials before cleanup. Possible responses to a Changed Circumstance related to illegal human activities may involve the following:

- Immediately, upon notification of a spill, employ all required hazardous spill precautions, particularly to contain the materials.

- Notify appropriate authorities per hazardous spill reporting requirements and request assistance if the response exceeds OCTA or Preserve Manager capabilities (contact lists to be maintained by OCTA Operations and Maintenance/Dispatcher and Preserve Managers).
- Determine if continued unauthorized access is allowing illegal activities to occur on Preserves managed for Covered Species and, where determined by OCTA or the Preserve Manager, install appropriate barriers or increased monitoring.
- Review and revise storage and use of toxic/hazardous materials at the Preserve Areas.
- Notify Wildlife Agencies and other appropriate regulatory agencies if spills, dumping, or vandalism may violate federal, state, or local regulations.
- Notify local enforcement agencies of repeated illegal activities.
- Remove all unauthorized dumped materials.
- If determined appropriate, prosecute and seek remediation from responsible parties.
- Implement an altered monitoring regime (more frequent, different methods) to evaluate the response of Covered Species and their habitats to toxic spills, dumping, vandalism, or other illegal human activities.

#### **8.6.2.6 Future Listing and Designation of Critical Habitat of Non-Covered Species**

Definition. The future listings of non-Covered Species and designation of critical habitat for non-covered listed species are reasonably foreseeable during the term of the Permit and are a Changed Circumstance. The new listing of a species by USFWS or CDFW that is not a Covered Species under the Plan and associated take permits or the designation or revision of critical habitat within the Permit Area covered by the Plan by USFWS will be considered Changed Circumstances.

In the event a non-Covered Species is newly listed or if new critical habitat is designated within the Permit Area covered by the Plan for a non-Covered Species, OCTA will coordinate with one or both of the Wildlife Agencies as appropriate, to identify actions that may cause take, jeopardy, or adverse modification of critical habitat and will initiate those responsive measures, if any, identified by the Wildlife Agencies as necessary to avoid such take, jeopardy, or adverse modification. Those measures will be followed until and unless OCTA's Permit is amended to include coverage for the newly listed species or the Wildlife Agencies notify OCTA that such measures are no longer required to avoid take, jeopardy, or adverse modification. OCTA will obtain appropriate federal and/or state permits to allow take of newly listed animal species prior to impacts occurring. The Major Amendment process for adding a new species to the Covered Species list for this Plan is discussed in Section 8.5.4, "Major Amendments" of this Plan.

### **8.6.3 Costs and Timing for Addressing Changed Circumstances**

As described previously, OCTA will assess the conditions for which Changed Circumstances are being invoked. Funding for addressing Changed Circumstances will be allocated from a separate Changed Circumstance endowment as outlined below. These funds can be used to address flooding, fire, drought, invasive nonnative species, and toxic spills or illegal human activity, but not for future listing of non-Covered Species or designation of critical habitat for non-Covered Species.

1. A separate Changed Circumstances endowment subfund will be established to fund responses to events that meet the requirements (triggers) of a Changed Circumstance.
2. The Changed Circumstance endowment subfund will be generally managed as a non-wasting endowment, but the option will exist to use a portion of the principal if situations warrant. Funding to respond to Changed Circumstance events should come from the accumulated interest in the account and should not cut into principal. If, however, the situation warrants that a portion of the principal be used to address a Changed Circumstance event, OCTA and the Wildlife Agencies can agree to take this step.
3. By definition, Changed Circumstance events are expected to occur infrequently. If the balance in the Changed Circumstance subfund ever reaches two times the original principal, adjusted for inflation, then any subsequent revenue from interest will be put back into the Preserve Management endowment that could be used for additional adaptive management, habitat restoration, or other Preserve management activities.
4. The Changed Circumstance budget will be managed as a budget for all Preserves combined.
5. The Changed Circumstance subfund will be managed as a non-wasting endowment and is expected to be able to function in perpetuity. If, however, it ever occurs that the balance of the Changed Circumstance endowment is depleted, then any future Changed Circumstance event in this situation would be treated as an Unforeseen Circumstance. OCTA will not be responsible for providing additional funds to address Changed Circumstance beyond the funding of the initial endowment principal.

OCTA or the Preserve Managers will estimate the time and costs to address a Changed Circumstance event in the Preserve. Costs to restore, repair, and/or monitor the involved area are discussed below:

Minor Damages. Minor damages are those costing less than \$25,000. It is anticipated that repairs and restoration will be initiated and the primary work completed within 6 months of the incident. Examples of minor damage are as follows:

- Damage to fencing, barriers, and other facilities that may protect Covered Species and their habitats.
- Damage or impacts on small patches (less than 5 acres) of conserved vegetation communities.

Moderate Damages. Moderate damages are those costing \$25,000–\$49,999. It is anticipated that repairs and restoration will be initiated and the primary work completed within 9 months of the incident. Examples of moderate damage are as follows:

- Damage to roads and other facilities that may protect Covered Species.
- Damage to small patches (less than 5 acres) of conserved vegetation communities supporting Covered Species and requiring special studies or species collections for onsite reestablishment.

Major Damages. Major damages are those costing \$50,000 or more. OCTA will implement Plan responses to these events as soon as possible, but note that such responses may require study and trigger the need for regulatory permits before repairs and/or restoration can be initiated.

The frequency and degree to which funding is required to address Changed Circumstance events is variable and difficult to predict. Based on experience on preserves of a similar size and complexity,

the Changed Circumstance endowment will be established with \$2,320,000 to generate adequate revenue to fund:

- Minor Event - \$25,000 ( every 3 years.
- Moderate Event - \$50,000 every 5 years.
- Major Event - \$200,000 every 15 years.

## 8.6.4 Unforeseen Circumstances

USFWS defines Unforeseen Circumstances as those changes in circumstances that affect a species or geographic area covered by an HCP that could not reasonably have been anticipated by the plan participants during the development of the HCP, and that result in a substantial and adverse change in the status of a Covered Species (50 CFR 17.3). Similarly, Unforeseen Circumstances are defined in the NCCPA as changes affecting one or more species, habitat, natural community, or the geographic area covered by an HCP that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more Covered Species (California Fish and Game Code 2805(k)).

Unforeseen Circumstances include future conditions that are not reasonably foreseeable and that are either not defined as Changed Circumstances or that exceed the definitions developed for Changed Circumstances, particularly in terms or severity or extent (e.g., flood or fire affecting species continued existence).

### 8.6.4.1 Planned Response in the Event of Unforeseen Circumstances

Unforeseen Circumstances will require immediate consultation and discussion between the Wildlife Agencies and OCTA. Pursuant to the federal no surprises rule at 50 CFR 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C), USFWS bears the burden of demonstrating that Unforeseen Circumstances exist using the best available scientific and commercial data available and considering certain specific factors including, but not limited to:

- The size of the current range of the affected species.
- The percentage of range adversely affected by the Plan.
- The percentage of the range conserved by the Plan.
- The ecological significance of that portion of the range affected by the Plan.
- The level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Plan.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Any findings of Unforeseen Circumstances must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. It is anticipated that CDFW will make unforeseen circumstances findings under the NCCPA based on the best scientific evidence available after considering any responses submitted by OCTA. Except where there is substantial threat of imminent, significant adverse impacts on a Covered Species, the Wildlife Agencies will provide OCTA at least 60 calendar days written notice of a proposed finding of Unforeseen Circumstances, during which time the Wildlife Agencies will meet with OCTA to discuss

the proposed finding. This will provide OCTA with an opportunity to submit information to rebut the proposed finding, and consider any proposed changes to the Preserve RMP(s) and/or covered freeway project design.

If the Wildlife Agencies make a finding of Unforeseen Circumstances in accordance with the regulations and procedures described above and determine that additional conservation measures are warranted, such additional conservation measures will conform to the maximum extent possible to the original terms of this Plan. Additional conservation measures will be limited to those that would not require additional financial compensation, land or land restrictions, or water or water restrictions beyond those required by the Plan at the time of issuance of the take permits without the consent of OCTA.

## **8.7 Permit Duration and Extension**

OCTA is seeking take authorizations from the state and federal Wildlife Agencies with terms of 40 years. The terms of the take authorizations issued under the Plan would begin from the date of their issuance following the requirements to maintain rough proportionality between conservation measures and time and extent of impacts (see Section 5.8.2, “Maintaining Rough Proportionality”). Prior to expiration of the take permits, the OCTA may apply to the Wildlife Agencies to renew them. The permits may be renewed in accordance with applicable federal and state laws and regulations in effect at the time of the application for renewal. OCTA will initiate the Permit renewal process prior to the expiration of the initial 40-year period with ample time to allow for the review and processing of the Permit renewal application.

The proposed 40-year term is necessary to achieve the overall Plan goals. Many of the key elements of the Plan will require substantial commitments of funding and an extended period of time to fully realize. The duration of the permits must be sufficient to allow for proper sequencing and effective implementation of the actions contemplated by the Plan. Covered Projects are funded through the M2 sales tax initiative that runs from 2006 to 2041. A Permit term of 40 years provides an appropriate time frame in which to carry out the Covered Projects and Covered Activities that will be authorized under the Plan, including adaptive management strategies, and will maximize the benefits of the Plan to Covered Species and their habitats.

### **8.7.1 Dispute Resolution**

OCTA will strive at all times to work in good faith with the Wildlife Agencies to reach mutual agreement on key implementation tasks such as adaptive management, monitoring, and conservation actions. If disagreements arise that cannot be resolved easily, OCTA will follow the “meet and confer” dispute resolution process outlined in the Implementing Agreement, and if necessary, the “elevation of dispute” process outlined in the Implementing Agreement (Appendix B).

### **8.7.2 Permit Suspension or Revocation**

#### **8.7.2.1 Suspension of the Federal Permit**

Under certain circumstances defined by federal regulation, USFWS may suspend, in whole or in part, the incidental take permit. However, except where USFWS determines that emergency action is necessary to avoid irreparable harm to a Covered Species, OCTA anticipates that USFWS will not

suspend an authorization without first attempting to resolve the issue through the dispute resolution process set forth in the IA, and identifying the facts or action or inaction that may warrant the suspension and providing the OCTA a reasonable opportunity to implement appropriate responsive actions.

#### **8.7.2.2 Reinstatement of Suspended Federal Permit**

If USFWS suspends the federal Permit, OCTA intends that as soon as possible USFWS will meet and confer with OCTA to discuss what measures, if any, are available to redress the reasons for suspension.

#### **8.7.2.3 Revocation of the Federal Permit**

USFWS may revoke the federal permit in accordance with applicable regulations governing revocation. Those regulations are currently found at 50 CFR 13.28(a)(1) - (4), 17.22 (b)(8), and 17.32(b)(8).

#### **8.7.2.4 Suspension or Revocation of the State Permit**

The NCCPA requires that the IA include specific terms and conditions that, if violated, result in suspension or revocation of the Section 2835 take permit. Such terms and conditions must include suspension or revocation of the Permit if the Plan participants fail to provide adequate funding to implement the Plan, do not maintain proportionality between impacts on habitats or Covered Species and conservation measures, adopt or approve changes to the Plan that are not consistent with the objectives and requirements of the approved Plan without concurrence of the Wildlife Agencies, or allow the level of take to exceed the Permit limits (Fish and Game Code 2820(b)(3)). CDFW also must suspend or revoke a Section 2835 take permit if continued take would jeopardize a species (Fish and Game Code 2820(c)).

If the Permittee violates the terms and conditions of the state Permit, or if necessary to avoid jeopardizing the continued existence of a Covered Species, CDFW may suspend or revoke the Permit in whole or in part. However, unless immediate revocation is necessary to avoid the likelihood of jeopardy to a Covered Species or to address rough proportionality (see below), CDFW will not suspend or revoke the state Permit without first attempting to resolve any disagreements regarding the implementation or interpretation of the Plan in accordance with the informal dispute resolution process provided in the IA, and notifying the OCTA of the action or inaction that may warrant the suspension or revocation and providing the OCTA with a reasonable opportunity to take appropriate responsive action.

#### **8.7.2.5 Failure to Maintain Rough Proportionality**

The NCCPA requires revocation of a Section 2835 take permit, in whole or in part, if the Plan participants do not maintain rough proportionality between impacts on habitats or Covered Species and conservation measures and do not, within 45 days, remedy such condition or develop a plan with CDFW to provide a remedy (Fish and Game Code 2820(c)).

For the purpose of maintaining rough proportionality, OCTA will ensure that a minimum 2:1 ratio for direct impacts will be maintained for each vegetation community, with the exception of grassland, which will be maintained at a minimum 1:1 ratio. Thus, for each acre of chaparral, riparian vegetation, scrub, and woodland that is directly affected, at least 2 acres will have been

conserved or restored before the impacts take place. For each acre of grassland that is directly affected, at least 1 acre will have been conserved or restored before the impacts take place. If OCTA has not conserved or restored enough grassland habitat to offset grassland impacts, it can offset grassland impacts with “out-of-kind” habitat at a 2:1 ratio. If CDFW determines, after conferring with USFWS and OCTA, that rough proportionality is not being maintained, OCTA and CDFW will meet and confer and, within 45 days of CDFW’s determination, agree on adjustments to the implementation schedule to expeditiously regain rough proportionality. Adjustments to the implementation schedule may include any of a variety of commitments or adjustments to Plan implementation designed to regain rough proportionality, including advancing or accelerating plans to acquire, establish a long-term protection mechanism (e.g., conservation easement), restore, or enhance lands of the appropriate landcover type. OCTA will implement all actions set forth in the agreed-upon adjusted implementation schedule. As an alternative to the agreement, OCTA may regain rough proportionality within 45 days by implementing the actions according to the existing implementation schedule.

### **8.7.2.6 State Permit Suspension and Revocation Steps**

In the event that such circumstances for Permit revocation or suspension were to arise under the Plan, CDFW will work with OCTA to obviate the need for Permit revocation or suspension. CDFW will engage in the following process prior to taking any steps to revoke the Plan Permit.

- In the event of a failure to maintain rough proportionality, OCTA will work with CDFW to remedy the situation as described in Section 5.8.2, “Maintaining Rough Proportionality”, and in accordance with the IA. Note that the Plan monitoring program is designed to identify such issues and that OCTA must report such issues in the annual report.
- For other situations that could result in Permit revocation or suspension or if rough proportionality cannot be regained through schedule adjustments, OCTA and CDFW will determine, through the adaptive management process, whether other changes can be made to the Plan’s conservation strategy to remedy the situation.
- CDFW will determine whether CDFW or the federal fish and wildlife agency or other state and federal agencies can undertake actions that would remedy the situation. It is recognized that the Wildlife Agencies have available a wide array of authorities and resources that can be used to provide additional protection for the species, as do other state and federal agencies.
- OCTA and CDFW will determine whether there are additional voluntary conservation actions that OCTA could undertake to remedy the situation.

CDFW would begin the revocation or suspension process only if no solutions are found and it is determined that the continuation of an OCTA Covered Activity would result in jeopardy to a species or violate any of the terms and conditions subject to Permit revocation or suspension as identified in the IA.

### **8.7.3 Public Input**

Public input is fundamental to ensuring the success of and continuing support for the Plan throughout implementation. The NCCPA requires that the IA provide for periodic reporting to the public on the progress of NCCP implementation. EOC meetings will be open to the public, and public comments will be solicited and heard at each meeting. In addition, the public can contact OCTA staff to comment on various aspects of Plan implementation. All data and reports associated with the

monitoring program for this Plan will be available to the public, with the exception of reports documenting surveys on private lands considered for acquisition or conservation easements not yet acquired by OCTA. Monitoring reports will also be posted electronically on OCTA's M2 website.