



Mitigation and Resource Protection Program Oversight Committee
Environmental Oversight Committee

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

March 4, 2009
10 – 11:30 a.m.

AGENDA

- 1. Welcome**
- 2. Approval of February 2009 Minutes**
- 3. Presentation Items**
 - A. Citizens of the Santa Ana Mountain Communities of Silverado, Modjeska and Trabuco Canyons
Rich Gomez, Saddleback Canyons Conservancy
 - B. Brown Act Overview
Ken Smart, OCTA General Counsel
- 4. Approval of Master Agreement and Planning Agreement**

Monte Ward, OCTA Director of Special Projects

 - A. Recommendation: Approve the recommendations in the Approval of Agreements for Renewed Measure M Freeway Mitigation Program Staff Report
- 5. Review and Prioritization for Early Acquisitions**

Monte Ward, OCTA Director of Special Projects
- 6. Outreach Update**

Ellen Burton, OCTA Executive Director of External Affairs
- 7. Public Comments**

Public comments on all items take place at this time.
- 8. Next Meeting – April 1, 2009**
- 9. Committee Member Reports**
- 10. Adjournment**

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

Environmental Oversight Committee Meeting Minutes

February 4, 2009

Committee Members Present:

Chair Patricia Bates, OCTA Board of Directors
Vice-Chair Melanie Schlotterbeck, Measure M Support Groups
Rose Coffin, Taxpayers Oversight Committee
Cathy Green, OCTA Board of Directors
Dan Silver, Endangered Habitats League
Jonathan Snyder, US Fish and Wildlife Services
Sylvia Vega, Caltrans
Erin Wilson, CA Department of Fish and Game

Committee Members Absent:

Stephanie Hall, US Army Corps of Engineers
Adam Probolsky, Probolsky Research
Debbie Townsend, California Wildlife Conservation Board
Judy McKeehan, SWCA Environmental Consultants

Orange County Transportation Authority Staff Present:

Ellen Burton
Marissa Espino
Hal McCutchan
Monte Ward
Janice Kadlec

Members of the Public:

Jennifer Robertson, Robert Martin Company, LLC
Lance Lundberg, Prospect Capital Group
Sean Skaggs, Ebbin Moser & Skaggs LLP
Ed Sauls, The Sauls Company
Jack Dangelo, GDC
Michael O'Connell, Irvine Ranch Conservancy

1. Welcome

Chair Patricia Bates welcomed everyone to the meeting and led the pledge of allegiance. Chair Bates announced that there would be three presentations made at the meeting and asked the presenters to hold their presentations to not more than 10 minutes.

2. Minutes

Chair Patricia Bates asked if there were any corrections or changes to the January 7, 2009 Meeting Minutes. There being no corrections, a motion was made by Vice-Chair Melanie Schlotterbeck and seconded by Cathy Green to approve the January 7, 2009 minutes as presented. The motion passed unanimously.

3. Presentation Items

A. Trabuco Ranch

Jennifer Robertson, Robert Martin Company, LLC and Lance Lundberg, Prospect Capital Group, gave a presentation on the Trabuco/Ferber Ranch property, which they would like considered for the Measure M2 comprehensive mitigation program.

Dan Silver asked if there was any time urgency connected to this property. Lance Lundberg replied they hoped to bring in additional financing to push through with a development plan. They are fairly far along and are looking to start significant work in the next six to nine months.

Sylvia Vega asked for the current zoning of the property. Lance Lundberg said the current zoning was residential, 150 parcels.

B. Trabuco Lands Properties

Ed Sauls, The Sauls Company, gave a presentation on the Trabuco Lands property, which they would like considered for the Measure M2 comprehensive mitigation program. The collective of five properties are owned by three different ownerships and totaled 468.79 acres.

C. Restoration and Invasives Control Opportunities in OC Wildlands

Michael O'Connell, Irvine Ranch Conservancy, gave a presentation on opportunities to work with OCTA on ecosystem resilience and restoration priorities as outlined in the M2 comprehensive mitigation program.

4. Master Agreement and Planning Agreement Update

Monte Ward, OCTA Director of Special Projects, gave an update on the Master Agreement and Planning Agreement. At the next meeting the Committee would be asked to approve the Draft Agreements to send to the Board of Directors for approval. Monte presented an approval schedule for Master Agreement and Planning Agreement and introduced Sean Skaggs, Ebbin Moser & Skaggs LLP, who summarized the most recent changes to the Agreements, in particular the final clarification on the planning area.

Dan Silver said the timeline showed approval of the Agreements by the Dept. of Fish and Game on June 30, 2009. What about Fish and Wildlife Service approval? Erin Wilson replied the schedule needs to be amended to read "Dept. of Fish and Game and Fish and Wildlife Service Approval June 30, 2009".

Vice-Chair Melanie Schlotterbeck commented that the Committee had come a long way in getting the documents in place and she wanted acknowledge OCTA's and Sean Skaggs' hard work in taking the Committee's comments and incorporating them into the documents.

Dan Silver said OCTA has done a wonderful job of moving the documents through; it has been a very orderly process.

Vice-Chair Melanie Schlotterbeck asked if the information on the ability of Caltrans to sign the HCP/NCCP Agreement. Monte said they are still trying to resolve this. Sylvia Vega said she is trying to get clarification from the regulatory agencies on what Caltrans' role should be.

5. Conservation Strategic Implementation Plan Scope of Work

Hal McCutchan, OCTA Environmental Program Manager, presented the Conservation Strategic Implementation Plan Scope of Work. The scope of work was divided into two phases. Phase 1: Conservation Strategic Implementation Plan, and Phase 2: HCP/NCCP/MSAA Joint Programmatic EIR/EIS.

Vice-Chair Melanie Schlotterbeck asked if the Sub-Committee would be working on this and then bringing it back to the EOC for approval. Monte Ward said staff would like some general direction from the EOC to refine the scope of work at the task force level so the RFP can be released at the end of the month.

Dan Silver said it seems there are two goals in this process. One goal is to do the due diligence in the planning area and this will take time. The second goal is to get something accomplished. These two goals are in conflict and a way needs to be found to integrate the two goals. Timing is critical and some things may be lost if action is not taken in an opportune manner. He asked if there is a process to do early acquisitions.

Cathy Green said she did not believe there is a great need for urgency at present because of the economy. Most of the developers have backed off because they cannot get funding. This could all change with the Federal Stimulus Plan but at the present time there is no need for quick decisions. The better plan is to choose and prioritize the project so they are ready to go.

Chair Patricia Bates suggested having internal workshops where the review and prioritization of the projects can be accelerated. She asked staff to contact the working group, come up with some ideas, and bring them to the next meeting.

Monte Ward said the agreements will be in place by the start of the fiscal year and a recommendation will be made to the OCTA Board to appropriate money. The Agreements will stipulate that under certain conditions the money can be expended for acquisitions and/or restoration prior to the completion of the HCP/NCCP process. Dan Silver is correct, a decision will need to be made on some kind of process for early evaluation of property. Part of the prioritization process will be deciding if there are some areas where timing is sensitive. This is the next step in the process and staff can work with the task force to provide recommendations. If Phase one of the Conservation Strategic Implementation Plan can begin, the consultant can be hired and can help with the process. By the end of June or early July there should be something to recommend.

Sylvia Vega reiterated that the primary purpose of the mitigation program is to assist OCTA and Caltrans in delivering transportation projects. From the project level, she deals with time sensitive freeway projects that are underway and they need to rely on mitigation immediately. She also said she agrees that the time is to buy, but there is a need to document as well.

Chair Patricia Bates asked Monte to take this information back to the Working Group and come back to the next EOC meeting with a response on how to achieve this.

6. Property Inventory Update

Ellen Burton, OCTA Executive Director of External Affairs, presented an inventory list of properties recommended for considered for the Measure M2 comprehensive mitigation program. Ellen said a total of 19 submittals have been received totaling approximately 60,000 acres from 10 cities and various unincorporated areas.

Vice-Chair Melanie Schlotterbeck commented, it was previously agreed, prospective projects previously identified on the green vision map, need not fill out the paperwork. As a result, there are more than 45 projects.

Dan Silver briefly wanted to acknowledge the importance of the Irvine Ranch presentation. Acquisitions need to be prioritized. The process of having a programmatic restoration program in place had a lot of merit.

Erinn Wilson asked to have a column added to the matrix indicating what the applicants are requesting.

Ellen Burton asked how the Committee wanted to handle requests from other presenters. Chair Patricia Bates said she would rather have a Workshop where more time can be devoted to this specific area. Monte Ward suggested developing a Workshop concept, providing guidelines for what the presenters should present, and trying to accommodate the Committee member's schedules as best as possible.

7. Public Comments

Michael O'Connell, Irvine Ranch Conservancy, added a quick clarification on the Orange County Property Inventory Recommendations handout. He suggested we clarify which properties were being submitted for restoration and which properties were being submitted for acquisition so the acreage breakdown was more clear.

8. Next Meeting – March 4, 2009

9. Committee Member Reports

There were no further reports from Committee members.

10. Adjournment

The meeting adjourned at 11:15 am.

Agenda
Renewed Measure M
FREEWAY ENVIRONMENTAL MITIGATION PROGRAM

Master Agreement Working Group
and
Impact and Mitigation Working Group

February 11, 2009
1:00 a.m. – noon
600 South Main Street
Orange, CA 92863
Room 1111

1. Introductions

Master Agreement Working Group

2. Review of Draft Master Agreement and Planning Agreements
 - Master Agreement
 - Planning Agreement
 - Species List
 - HCP/NCCP Cost Estimates
3. Review of Conservation Strategic Implementation Plan Scope of Work
4. Caltrans Status

The group discussed whether Caltrans would be a signatory to the Master and Planning agreements. They discussed how to address Renewed Measure M projects that are moving ahead of the NCCP/HCP processes and their individual project mitigation efforts. Dan Silver reiterated the importance of executing the Master and Planning agreements to minimize additional projects having to provide project-level mitigation measures. The schedule for approval of the agreements is anticipated to occur in mid-2009 or earlier.

The species list was discussed and the group agreed to consolidate three lists into one: OCTA list (within 660 feet of projects footprint); Long Range Transportation Plan Program EIR species list; and the California Department of Fish and Game list. The goal is to eventually pear down the species to a manageable list.

Hal McCutchan provided an overview of the draft scope of work for the Conservation Strategic Implementation Plan. Melanie Schlotterbeck provided input on the draft scope. Subsequent to the meeting, it was recommended by OCTA staff that Section 5, Land Value Estimation and Acquisition/Restoration Approach, should be taken out of this

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scope and included in a separate scope of work to streamline the process since this is a major effort. This effort is dynamic and requires a specialty consultant with a thorough understanding of land valuation as it relates to biological resources.

Sylvia Vega shared her concerns regarding the projects that are in the environmental phase and the need to obtain the wildlife agencies' permits prior to completion of the NCCP/HCP processes. Sylvia said on the SR-91 improvements project from SR-241 to SR-71, the Army Corps of Engineers would not accept Caltrans assertion that the subject project will be included in a NCCP/HCP and they were required to provide separate project-level mitigation. This caused a delay in the project delivery schedule.

Action Items	Responsible Party	Status
Prepare a list of potentially affected federal/state listed species. Three species lists will be consolidated into one.	OCTA – Dan	Dan to provide electronic copy of the OCTA draft list.
Follow-up discussion with group to refine species list.	OCTA – Dan to set up meeting	Meeting after Working group comments
Comments on scope of work for Strategic Implementation Plan	Working Group	2/11/09 Meeting group provided input.
Agencies and legal review of MOA and Planning Agreement.	OCTA – Monte/Dan to coordinate. Marissa to send out to group.	Need to take to Environmental Oversight Committee
Draft Implementing Agreement	Sean Skaggs	TBD

Impact and Mitigation Working Group

5. Property Assessment Tools and Process
 - Evaluation of early acquisitions
 - Recommendations for next EOC meeting
6. Santa Ana Canyon Projects
7. Next Meeting

The group discussed combining the property information received via the OCTA public outreach effort and the Green Vision Map. Future workshops will facilitate in narrowing down the list of potential properties and their biological value. A more thorough

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documentation process will then take place to justify the needs of the properties potentially to be acquired.

Due to time constraints, discussion regarding the Santa Ana Canyon Projects will be deferred to the next meeting.

Action Items	Responsible Party	Due Date
Develop property information form	Erinn/Melanie/Jonathan	
Schedule workshops to discuss list of potential acquisition/restoration properties.	OCTA – Monte/Hal/Marrisa	
Create sample property information form for discussion at follow-up meeting	Melanie	
Augment HCP / NCCP scope of work to include Master Streambed Alteration Agreement	OCTA – Hal	
Participants / Affiliation	Email Contact Information	
Director Cathy Green / OCTA Board Member	cgreen@surfcity-hb.org	
Monte Ward / OCTA	mward@octa.net	
Marissa Espino / OCTA	mespino@octa.net	
Dan Phu / OCTA	dphu@octa.net	
Hal McCutchan / OCTA	hmccutchan@octa.net	
Melanie Schlotterbeck / Measure M Support Group	melanie@schlotterbeck.net	
Dan Silver / Endangered Habitat League	dsilverla@earthlink.net	
Erinn Wilson / CDFG	EWilson@dfg.ca.gov	
Sylvia Vega / Caltrans	Arianne.Preite@dot.ca.gov	
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Winter King / Shute Mihaly & Weinberger	king@smwlaw.com	
Terry Watt / Friends of Harbors Beaches and Parks; M2 Env. Coalition	terrywattt@att.net	
Claire Schlotterbeck / Friends of Harbors Beaches and Parks; M2 Env. Coalition	Claire@schlotterbeck.net	
Michael White / Conservation Biology Institute	mdwhite@consbio.org	





DRAFT

March 16, 2009

To: Transportation 2020 Committee

From: Arthur T. Leahy, Chief Executive Officer

Subject: Approval of Agreements for Renewed Measure M Freeway Mitigation Program

Overview

Renewed Measure M allocates at least five percent of funds in the freeway mode, subject to a Master Agreement between the Orange County Transportation Authority and state and federal resource agencies, for comprehensive mitigation of the impacts of the thirteen freeway projects in the Renewed Measure M Transportation Investment Plan. A draft Master Agreement and an associated draft Planning Agreement to create a Natural Community Conservation Plan/Habitat Conservation Plan have been developed. The Renewed Measure M Environmental Oversight Committee is recommending these agreements for approval, along with associated actions to enable implementation.

Recommendations

- A. Approve the draft Memorandum of Agreement C-9-0278 among the Orange County Transportation Authority, United States Fish and Wildlife Service, California Department of Fish and Game, and California Department of Transportation to serve as the Master Agreement and guide the implementation of the Renewed Measure M Freeway Mitigation Program.
- B. Approve the draft Planning Agreement C-9-0279 among the Orange County Transportation Authority, United States Fish and Wildlife Service, California Department of Fish and Game, and California Department of Transportation to establish the process, roles, responsibilities and commitments for the preparation of the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan.
- C. Approve draft Agreement C-9-0169 between the Orange County Transportation Authority and the California Department of Fish and Game in an amount not-to-exceed of \$300,000 for staffing services to enable the

Department to meet its responsibilities for preparation and timely approval of the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan.

- D. Authorize up to \$30 million from the Early Action Plan commercial paper program to be available in Fiscal Years 2009-2010 and 2010-2011 to enable implementation of Memorandum of Understanding C-9-0278, Planning Agreement C-9-0279 and Agreement C-9-0169 for contract services and for acquisition, restoration and/or management of conservation properties, subject to the provisions of these agreements and subsequent action by the Board of Directors.

Background

Renewed Measure M calls for negotiation of a Master Agreement between the Orange County Transportation Authority (Authority) and state and federal resource agencies to address freeway environmental mitigation needs in a comprehensive fashion, and “provide higher-value environmental benefits such as habitat protection, wildlife corridors and resource preservation in exchange for streamlined project approvals for the freeway program as a whole.”

The Renewed Measure M Ordinance No. 3 designates an Environmental Oversight Committee (EOC), appointed by the Authority, to make recommendations regarding the allocation of funds for freeway mitigation and to monitor implementation of the Master Agreement. The membership of the EOC is shown in Attachment A. The EOC has developed a recommendation that the Authority, in cooperation with the California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS), prepare a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) as the framework for determining freeway mitigation and permitting. The NCCP/HCP examines habitat resources within broad geographic areas and identifies conservation and mitigation measures to protect habitat and species. There are substantial similarities between the state required NCCP and the federally required HCP.

In addition, with the assistance of the EOC, staff from the Authority and the resource agencies have developed a draft Master Agreement (Attachment B) and NCCP/HCP Planning Agreement (Attachment C) to enable implementation of the freeway mitigation element of Renewed Measure M. The Master Agreement outlines in simple terms the roles, responsibilities and objectives of OCTA, CDFG, USFWS and Caltrans in meeting the intent of Renewed Measure M freeway mitigation provisions through the NCCP/HCP process. The

Planning Agreement describes how the NCCP/HCP process will be carried out, its scope and the roles of the participating agencies.

Finally, the Master Agreement includes an advance credit provision that allows the Authority to invest in mitigation prior to the completion of the NCCP/HCP. The EOC has also developed a recommended plan for financing freeway mitigation expenditures for the next two fiscal years.

All agreements are presented as draft for approval by the Board of Directors to circulate to the resource agencies for their final review and approval. It is expected that there may be some non-substantive refinements to the boilerplate language and/or formatting of the agreements in that process. The agreements will be brought back in their final form for action by the Board of Directors once the resource agencies have approved them.

Discussion

In order to implement the Renewed Measure M freeway mitigation program it is necessary to conduct an analysis of impacts; assess and select mitigation opportunities, conduct the necessary environmental reviews and provide for the transparency and oversight promised to the voters. The objective from the standpoint of the resource agencies and conservation groups is to ensure that all anticipated impacts from the freeway program are properly mitigated as soon as possible, before degradation or loss of habitat or conservation opportunities. From the Authority and Caltrans' standpoint it is important to obtain sufficient regulatory and permitting assurances for mitigation investments being made and save time and money in the freeway project development and implementation process.

The EOC examined a range of alternatives in determining to recommend the NCCP/HCP process as the framework for the Renewed Measure M freeway mitigation program (Attachment D). These included: 1) a process agreement with subsequent mitigation analysis and investments over time on a corridor-by-corridor basis, similar to the approach taken by San Diego's TransNet program; 2) tiering off of the OCTA 2006 Long Range Transportation Plan Environmental Impact Report (EIR); 3) variations on Endangered Species Act Section 7 consultation; and 4) variations on the NCCP/HCP process.

Ultimately it was determined that the NCCP/HCP process is preferable because it offers the highest degree of assurances to the resource agencies regarding mitigation and to the Authority and Caltrans regarding regulatory permits for all of the freeway projects in Renewed Measure M. It also provides for full environmental review and public participation. The NCCP and HCP

processes were developed at the state and federal levels respectively as the legal means to encourage and enable programmatic mitigation as now envisioned within Renewed Measure M.

However these processes involve significant costs and time. It is estimated that the cost for NCCP/HCP preparation and completion of an Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) would cost approximately \$1.5 million and take approximately 18 to 24 months, based upon the experience with similar efforts undertaken by other public and private entities.

In addition the CDFG is unable to support this effort within its existing staffing and budget (Attachment E). This risk to timely implementation of Renewed Measure M was identified in the Orange County Business Council (OCBC) readiness report presented to the Board of Directors (Board) in January. A draft agreement between CDFG and the Authority has been developed to provide for the necessary timely participation and review by CDFG in the NCCP/HCP process (Attachment F). The first year fully loaded cost would be \$167,000. It is estimated that the agreement may need to extend up to two years. However, according to CDFG the second year cost likely would be less because some loaded costs would not be included.

Staff is exploring grant-funding opportunities to offset costs related to the NCCP/HCP efforts. Potential funding opportunities exist through the HCP Assistance Grant Program (USFWS Section 6 Grant), State Wildlife Grant Program, and other sources that may offset costs related to document preparation, outreach, baseline surveys and inventories. These grants are highly competitive and with the uncertainty of the resource agencies' budgets, available funding may be limited.

Although the estimated total cost for the NCCP/HCP effort is significant, the advantages of assured permitting and reduced risk of delays to the Renewed Measure M freeway program from environmental mitigation challenges justify the investment. In recent years, annual increases in costs for freeway construction have ranged as high as 10 percent or more. Forecasts indicate future annual cost growth in the 3 percent range. Even given the current extraordinary economic downturn and a concomitant drop in construction bids, it is unlikely that freeway construction would experience longer-term reductions in cost for construction materials, equipment, services and labor.

Staff recommends that funding for the NCCP/HCP planning effort and CDFG support be provided from Renewed Measure M freeway funds, at least five percent of which are earmarked in the Renewed Measure M Transportation

Investment Plan for freeway mitigation. In 2007, when the Board of Directors approved the Renewed Measure M Early Action Plan (EAP), an accompanying Plan of Finance was adopted for its implementation. The Renewed Measure M freeway mitigation program was included as part of the EAP and the Board also approved capacity to fund freeway mitigation through the Authority's commercial paper program. The NCCP/HCP planning and CDFG support are eligible to be funded from this source and it is recommended that the funds be appropriated for this purpose for fiscal years 2009-10 and 2010-11.

The 18 to 24 month timetable for completion of the NCCP/HCP process presents a potential challenge to the desire of the resource agencies and conservation community for timely mitigation efforts. The advanced credit provision included in the Master Agreement permits the Authority, with the concurrence of CDFG and USFWS, to invest in property acquisitions and/or restoration for mitigation purposes prior to completion of the NCCP/HCP process.

There are three principal reasons for pursuing advanced property acquisitions and restoration for mitigation purposes. First is to remain consistent with Renewed Measure M Ordinance No. 3 that states, " A Master Agreement shall be developed as soon as practicable following the approval of the ballot proposition by the electors. It is the intent of the Authority and state and federal resource agencies to develop a Master Agreement prior to the implementation of Freeway Projects." The second is to take timely advantage of opportunities to protect areas that may be subject to degradation and that can strategically enhance the connectivity and quality of existing conservation areas. The third is the potential cost savings and acquisition opportunities presented by the significant downturn in the economy and property values.

The Board approved Plan of Finance for the EAP anticipated up to \$80 million from the commercial paper program could be available for advance freeway mitigation expenditures based upon revenue estimates at the time (mid-year 2007). Subsequent downward adjustments in sales tax revenue projections have reduced this anticipated capacity to \$60 million with the funds available in two tranches on the following schedule.

First Series	Second Series
2009	2011
\$30 Million	\$30 Million

This schedule represents the advanced funding that would be available during the EAP period for freeway mitigation according to the provisions of the

Renewed Measure M Transportation Investment Plan and Ordinance No. 3, accounting for the financing costs if expenditures are advanced rather than spread over the full thirty years of the tax measure. An additional tranche of funding could also be available in 2016 outside the EAP period.

Based upon current financial and revenue uncertainties it is recommended that the Board appropriate only the first \$30 million tranche available through the commercial paper program for expenditure within the next two fiscal years 2009-10 and 2010-2011. This would allow for advanced mitigation funding over the short term, with the opportunity for review based upon overall financial conditions, revenue trends and results from the initial acquisitions/restorations before proceeding further.

In order for actual acquisition or restoration expenditures to take place four conditions would need to be met:

1. The Master and Planning agreements would need to have final approval from the signatory agencies (OCTA, CDFG, USFWS and Caltrans). This is anticipated to be completed by the end of June 2009 (Attachment G);
2. The EOC would need to develop and present recommendations for property acquisition and/or restoration;
3. The recommendations of the EOC would need to be acceptable to CDFG and USFWS under the Master Agreement advance credit provisions; and
4. The Transportation 2020 Committee and the full Board of Directors would need to approve the specific acquisitions/restorations recommended by the EOC.

The EOC has been working toward enabling early mitigation efforts. In an August 2008 status report to the Board, initial efforts to identify mitigation opportunities were shared. This included using as a baseline inventory, the Green Vision Plan, a comprehensive listing of potential conservation opportunities in Orange County developed by a consortium of non-governmental environmental groups.

At the direction of the Transportation 2020 Committee in September 2008, this baseline has subsequently been expanded through an extensive outreach program to build the inventory of potential conservation sites. The Committee also adopted preliminary criteria (Attachment H) for evaluating the biological mitigation potential of properties that may be acquired or restored.

These criteria are intended to provide guidance to both the EOC and property owners and conservation organizations to help evaluate the potential resource and conservation value of properties that may be available for acquisition or restoration. At a future date, these criteria will include a mechanism for evaluating potential restoration projects that will ultimately lead to the selection of eligible properties.

To build the inventory of potential conservation sites and share the preliminary criteria with interested property owners and conservation organizations, a general public outreach plan was executed in December 2008. OCTA staff distributed mailings to more than 800 landowners, property managers, local governments, conservation organizations, and community groups. The EOC collected property information on more than 40 Orange County properties, which are currently being assessed and included in the baseline inventory. The next outreach effort will involve holding at least one field hearing this spring to invite the public to showcase their property before the EOC.

Contingent upon Board approval of the recommendations in this report, the EOC and staff will be working over the next several months on setting the stage for initiation of the NCCP/HCP process and preparation of recommendations for advance property acquisition and/or restoration. These activities include:

- Procure consultant services to complete the NCCP/HCP and associated environmental documents. The Transportation 2020 Committee and the Board will approve the consultant selection.
- Conduct an assessment of the conservation values for properties inventoried from the Green Vision Plan and community outreach.
- Develop recommended strategies for negotiating and completing acquisitions and providing for interim and long-term management of acquired properties.
- Develop recommendations for early property acquisition and/or restoration for consideration by the Transportation 2020 Committee and the Board.

Summary

A series of recommendations are presented to begin development and implementation of an Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) as a means to meet the commitments made in Renewed Measure M to a comprehensive freeway mitigation program. The Board is asked to approve the necessary agreements to develop the NCCP/HCP and authorize funding for freeway mitigation purposes.

Attachments

- A. Environmental Oversight Committee Roster
- B. Memorandum of Understanding, Agreement C-9-0278
- C. Planning Agreement C-9-0279
- D. M2 Freeway Mitigation Program: Summary Analysis and Documentation Options
- E. CDFG Letter
- F. CDFG Agreement for Contract Services Agreement C-9-0169
- G. Approval Schedule For Master and Planning Agreements
- H. Mitigation and Resource Protection Program Renewed Measure M Criteria

Prepared by:

Monte Ward
Director, Special Projects
714-560-5582

Approved by:

Monte Ward
Director, Special Projects
714-560-5582



**Environmental Oversight Committee
Roster**

Chairman Patricia Bates

OCTA Board of Directors
Orange County Supervisor, 5th District
County of Orange

Vice Chairman Melanie Schlotterbeck

Environmental Consultant
Measure M Support Groups

Cathy Green

OCTA Board of Directors
Huntington Beach City Council Member
City of Huntington Beach

Mark Cohen

Senior Project Manager
US Army Corps of Engineers

Rose Coffin

Taxpayers Oversight Committee
OCTA

Judy McKeehan

Environmental Consultant

Erinn Wilson

Staff Environmental Scientist,
South Coast Region
CA Department of Fish & Game

Adam Probolsky

Chairman & CEO
Probolsky Research

Dan Silver

Executive Director
Endangered Habitats League

Jonathan Snyder

Wildlife Biologist
US Fish and Wildlife Service

Debbie Townsend

Assistant Executive Director,
Land Acquisition Program
California Wildlife Conservation Board

Sylvia Vega

Deputy District Director,
Environmental Division
Caltrans, District 12

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

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

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

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

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

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

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

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

WHEREAS, OCTA has been designated by the Orange County Board of Supervisors as the authority responsible for implementing Renewed Measure M;

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

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

1. OCTA will develop a Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”) that will include a conservation strategy to fully mitigate adverse effects to sensitive species and habitat as a result of construction of the freeway improvement projects.
2. The Parties agree to execute an HCP/NCCP Planning Agreement (Attachment A) that will outline the roles and responsibilities of each Party in the development and review of the OCTA HCP/NCCP.
3. The Parties agree to work closely together through the Environmental Oversight Committee to develop guidelines and criteria for directing habitat acquisition and/or restoration under Renewed Measure M as part of the conservation strategy for the OCTA HCP/NCCP.
4. OCTA has adopted a Plan of Finance that will allow up to \$60 million to be expended on habitat acquisition and/or restoration by 2013. Expenditures for sensitive species habitat may commence upon execution of the MOA and the HCP/NCCP Planning Agreement by the Parties.
5. OCTA will receive advance credit for acquisition and/or restoration of sensitive species habitat that occurs prior to the permitting of the thirteen freeway improvement projects, as provided in the HCP/NCCP Planning Agreement.
6. Regulatory assurances for Renewed Measure M projects will be provided through the issuance of ESA and NCCP Act permits for the OCTA HCP/NCCP, provided that USFWS and CDFG determine that their respective permit issuance criteria have been satisfied by the OCTA HCP/NCCP.
7. In developing the HCP/NCCP, OCTA will determine the implementing structure for long-term management and monitoring of habitat acquired through the Environmental Mitigation Program, including selecting the entity that will oversee

management and monitoring of the habitat areas. OCTA will work closely with Caltrans, USFWS, and CDFG in the development of the habitat management program.

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

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

10. This MOA may be amended only with the written consent of all of the Parties.

11. Any Party may withdraw from this MOA upon 30 days written notice to the other Parties

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

ORANGE COUNTY TRANSPORTATION AUTHORITY

Date

UNITED STATES FISH AND WILDLIFE SERVICE

Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

Date

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Date

ATTACHMENT A

**DRAFT
Planning Agreement**

by and among

**Orange County Transportation Authority, California Department of
Transportation**

California Department of Fish and Game, and

United States Fish and Wildlife Service

for the

**Orange County Transportation Authority
Natural Community Conservation Plan (NCCP)/ Habitat Conservation
Plan (HCP)**

Draft

February 2009

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**Orange County Transportation Authority Habitat Conservation Plan
(HCP)/Natural Community Conservation Plan (NCCP)
Planning Agreement**

This agreement regarding the planning and preparation of the Orange County Transportation Authority Natural Community Conservation Plan and Habitat Conservation Plan (Planning Agreement) is entered into as of the Effective Date by and among the Orange County Transportation Authority (OCTA), the California Department of Transportation (Caltrans), the California Department of Fish and Game (CDFG), and the United States Fish and Wildlife Service (USFWS). These entities are referred to collectively as “Parties” and each individually as a “Party.” CDFG and USFWS are referred to collectively as “Wildlife Agencies.”

1.0 Definitions

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

- 1.1 “CEQA” means the California Environmental Quality Act, Public Resources Code, section 21000, *et seq.*
- 1.2 “CESA” means the California Endangered Species Act, California Fish and Game Code, section 2050 *et seq.*
- 1.3 “Covered Activities” means those certain activities that will be addressed in the NCCP/HCP and for which the OCTA and Caltrans may seek take authorizations pursuant to the California Fish and Game Code section 2835 and the Federal Endangered Species Act (“ESA”).
- 1.4 “Covered Species” means those species identified in the NCCP/HCP, both listed and non-listed, whose conservation and management are provided for in the NCCP/HCP, and which may be authorized for take under State and/or federal law once the NCCP/HCP is approved.
- 1.5 “Effective Date” means the date on which this Planning Agreement has been executed by the Parties.
- 1.6 “ESA” means the Federal Endangered Species Act, 16 United States Code section 1530, *et seq.*
- 1.7 “Habitat Conservation Plan” or “HCP” means a conservation plan prepared pursuant to section 10(a)(1)(B) of the ESA.

- 1.8 “Implementing Agreement” or “IA” means an agreement that defines the terms for implementing the NCCP/HCP.
- 1.9 “Listed Species” means those species designated as candidate, threatened or endangered pursuant to CESA and/or listed as threatened or endangered under the ESA.
- 1.10 “Natural Community Conservation Plan” or “NCCP” means a conservation plan created to meet the requirements of Fish and Game Code, section 2800, *et seq.*
- 1.11 “NCCP Act” means the Natural Community Conservation Planning Act, Fish and Game Code section 2800 *et seq.*
- 1.12 “NEPA” means the National Environmental Policy Act, 42 United States Code section 4321, *et seq.*
- 1.13 “Party” means an entity that is a signatory to this Planning Agreement. Such entities may be referred to individually as “Party” or collectively as “Parties.”
- 1.14 “Planning Area” means the geographic are proposed to be addressed in the NCCP/HCP as described in section 5.
- 1.15 “Renewed Measure M” means the Orange County Renewed Measure M Transportation Ordinance and Investment Plan.
- 1.16 “Section 7” means 16 United States Code section 1536.
- 1.17 “Section 10” means 16 United States Code section 1539.
- 1.18 “Steering Committee” means the committee established in accordance with section 7.4.1 of this Planning Agreement.

2.0 Background

2.1 Compliance with State and Federal Fish and Wildlife Protection Laws

The Planning Area contains valuable biological resources, including native species of fish and wildlife and their habitats. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA or the ESA. The Parties intend for the NCCP/HCP to meet the requirements of state and federal fish and wildlife protection laws that apply to Covered Activities and to provide a basis for state and federal authorizations for the take of Covered Species that may be caused by the Covered Activities.

Under state law, take of species listed pursuant to CESA may be authorized under Fish and Game Code section 2080.1 or section 2081, or section 2835 of the NCCP Act. The NCCP Act provides that after the approval of an NCCP, CDFG may permit the taking of any identified species, listed or non-listed, whose conservation and management is provided for in the NCCP. Take of listed species may also be authorized under CESA.

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

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

2.2 Purposes of this Agreement

The purposes of this Planning Agreement are to:

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

2.3 Future ESA Section 7 Consultations

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

2.4 Other Fish and Wildlife Protection Laws

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

2.5 Concurrent Planning for Wetlands and Waters of the United States

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

2.6 Assurances

2.6.1 Regulatory Assurances Under the ESA

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

2.6.2 Regulatory Assurances Under the NCCP Act

If the OCTA NCCP/HCP meets the criteria for issuance of an NCCP permit under section 2835 of the Fish and Game Code, CDFG will approve the NCCP and provide assurances

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

3.0 Planning Goals

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

- Provide for the conservation and management of Covered Species within the Planning Area;
- Preserve, restore and enhance aquatic, riparian and terrestrial natural communities and ecosystems that support Covered Species within the Planning Area;
- Provide a means to implement Covered Activities in a manner that complies with applicable state and federal fish and wildlife protection laws, including CESA and the ESA;
- Provide a basis for permits necessary to lawfully take Covered Species;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide an accounting process that will document net environmental benefit from regional, programmatic mitigation in exchange for net benefit in the delivery of transportation improvements through streamlined and timely approvals and permitting;
- Provide a less costly, more efficient project review process that results in greater conservation values than project-by-project, species-by-species review; and
- Provide clear expectations and certain regulatory assurances regarding Covered Activities occurring within the Planning Area.

4.0 Planning Area and Plan Participants

4.1 Geographic Scope

The Planning Area includes all of Orange County. Regardless of the scope of the Planning Area, nothing in this Planning Agreement shall be construed to limit the consideration of adjacent areas outside of the County that are appropriate to take into account for preserve design purposes.

4.2 Local Agencies

The OCTA is the local sponsor of the NCCP/HCP. As part of this planning process, the OCTA has committed to undertake a collaborative, systematic approach to protecting the Planning Area's ecologically significant resources, including candidate, threatened and endangered species and their habitats, open space, and working landscapes, and to ensure that the Covered Activities comply with applicable federal and state laws.

4.3 California Department of Transportation

Caltrans is the owner and operator of the state highway system. It is the lead agency for construction and rehabilitation projects undertaken on the State highway system.

4.4 California Department of Fish and Game

CDFG is the agency of the State of California authorized to act as trustee for the state's wildlife. CDFG is authorized to approve NCCPs pursuant to the NCCP Act, administer and enforce CESA and other provisions of the Fish and Game Code, and enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCP Act.

4.5 United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce the ESA with respect to terrestrial wildlife, non-anadromous fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern. The NCCP Act and this Planning Agreement require coordination with USFWS with respect to the ESA.

5.0 Preliminary Conservation Objectives

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

- Provide meaningful comprehensive environmental mitigation;
- Provide for habitat connectivity to ensure reserves maintain their biological functions and values;
- Provide for the protection of Covered Species and associated natural communities and ecosystems that occur within the Planning Area;
- Preserve the diversity of fish, wildlife, plant and natural communities in the Planning Area through the preservation and/or restoration of habitat;

- Avoid, minimize, and/or mitigate the take of Covered Species and their habitat; and
- Implement an adaptive management and monitoring program to respond to changing ecological conditions.

5.1 Conservation Elements

5.1.1 Ecosystems, Natural Communities, and Covered Species List

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

Natural communities that are likely to be addressed by the NCCP/HCP include, but are not limited to California Walnut Woodland, Canyon Live Oak Ravine Forest, Riversidian Alluvial Fan Scrub, Southern Coast Live Oak Riparian Forest, Southern Cottonwood Willow Riparian Forest, Southern Mixed Riparian Forest, Southern Willow Scrub, and Valley Needlegrass Grassland.

Species that are intended to be covered by the NCCP/HCP include, but are not limited to Braunton's milkvetch, San Fernando valley spineflower, Santa Ana River woollystar, Santa Ana sucker, coastal California gnatcatcher, southwestern willow flycatcher, coastal cactus wren, grasshopper sparrow, northern harrier, least Bell's vireo, pond turtle, arroyo toad, and spadefoot toad. Issuance of state and federal take authorizations for any particular Covered Species will require an individual determination by the applicable Wildlife Agency that the NCCP/HCP meets applicable state or federal permit issuance requirements.

5.1.2 Conservation Areas and Viable Habitat Linkages

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

5.1.3 Project Design

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

6.0 Preparing the NCCP/HCP

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

6.1 Best Available Scientific Information

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

- Principles of conservation biology, community ecology, individual species ecology, and other appropriate scientific data and information;
- Thorough information about all natural communities and proposed Covered Species within the Planning Area; and
- Advice from well-qualified, independent scientists.

6.2 Data Collection

The Parties agree that information regarding species and the effect of Covered Activities is important for preparation of the NCCP/HCP. The Parties therefore agree that data collection for preparation of the NCCP/HCP should be prioritized to develop more complete information on these subjects. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species. The science advisory process and analysis of existing information may reveal data gaps currently not known that are necessary for the full and accurate development of the NCCP/HCP. Data needed for preparation of the NCCP/HCP may not be known at this time nor identified herein. Therefore, the Parties anticipate that data collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the NCCP/HCP will be made available to the Wildlife Agencies in hard and digital formats, as requested and available.

6.3 Independent Scientific Input

A group of independent scientists will be convened to provide input on :

- Species and natural communities covered by the NCCP/HCP
- Adequacy of existing data and methods for filling any data gaps
- Conservation guidelines and preserve design principles
- Conservation analytical methods
- Management and monitoring guidelines

6.4 Public Participation

The Parties will ensure an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interests. The planning process will utilize the Environmental Oversight Committee and the public outreach plan established under Renewed Measure M as well as publication of notices and draft documents to provide opportunities for thorough public participation.

6.4.1 Steering Committee

The Mitigation and Resource Protection Program Oversight Committee (Environment Oversight Committee) will serve as the Steering Committee for the NCCP/HCP.

6.4.2 Outreach

OCTA will establish a public outreach plan to ensure that information concerning the development of the NCCP/HCP reaches landowners, local governments, conservation organizations, community groups, and the general public.

6.4.3 Availability of Public Review Drafts

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

6.4.4 Public Hearings

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

6.4.5 Public Review and Comment Period Prior to Adoption

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

6.5 Covered Activities

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

- 1) **Project A: I-5 Improvements between SR-55 and SR-57**
Reduce freeway congestion through improvements at the SR-55/I-5 interchange area between the Fourth Street Newport Boulevard ramps on I-5, and between Fourth Street and Edinger Avenue on SR-55. Also, add capacity on I-5 between SR-55 and SR-57 to relieve congestion at the “Orange Crush.”
- 2) **Project B: I-5 Improvements from SR-55 to El Toro “Y”**
Build new lanes and improve the interchanges in the area between SR-55 and the SR-133 (near the El Toro “Y”). The project will also make improvements at local interchanges, such as Jamboree Road.
- 3) **Project C: I-5 Improvements south of the El Toro “Y”**
Add new lanes to I-5 from the vicinity of the El Toro Interchange in Lake Forest to the vicinity of SR-73 in Mission Viejo. Also add new lanes on I-5 between Coast Highway and Avenida Pico interchanges to reduce freeway congestion in San Clemente.
- 4) **Project D: I-5 Local Interchange Upgrades**
Update and improve key I-5 interchanges such as Avenida Pico, Ortega Highway, Avery Parkway La Paz Road, El Toro Road, and others to relieve street congestion around older interchanges and on ramps.
- 5) **Project E: SR-22 Access Improvements**
Construct interchange improvements at Euclid Street, Brookhurst Street and Harbor Boulevard to reduce freeway and local street congestion.
- 6) **Project F: SR-55 Improvements (between SR-22 and I-405)**
Add new lanes to SR-55 between SR-22 and I-405, generally within existing right-of-way, including merging lanes between interchanges to smooth traffic flow. This project also provides for freeway operational improvements for the portion of SR-55 between SR-91 and SR-22.
- 7) **Project G: SR-57 Improvements**
Build a new northbound lane between Orangewood Avenue and Lambert Road. Other projects include improvements to the Lambert interchange and the addition of a northbound truck-climbing lane between Lambert and the county line.

- 8) **Project H: SR-91 Improvements from I-5 to SR-57**
Add capacity in the westbound direction and provide operational improvements at on and off ramps to the SR-91 between I-5 and SR-57.
- 9) **Project I: SR-91 Improvements from SR-57 to SR-55 Interchange Area**
Improve the SR-91/SR-55 to SR-91/SR-57 interchange complex, including nearby local interchanges such as Tustin Avenue and Lakeview, as well as adding freeway capacity between SR-55 and SR-57.
- 10) **Project J: SR-91 Improvements from SR-55 to Orange/Riverside County Line**
This project adds capacity on SR-91 beginning at SR-55 to the Orange/Riverside County Line. This will be done in coordination with the Riverside County Transportation Commission's (RCTC) plans to improve the SR-91 freeway into Riverside County. The first priority will be to improve the segment of SR-91 east of SR-241. The goal is to provide up to four new lanes of capacity between SR-241 and Riverside County Line by making best available use of freeway property, adding reversible lanes, building elevated sections and improving connections to SR-241. This project also includes improvements to the segment of SR-91 between SR-241 and SR-55. The concept is to generally add one new lane in each direction and improve the interchanges.
- 11) **Project K: I-405 Improvements between I-605 freeway in Los Alamitos area and SR-55**
Add new lanes to I-405 between I-605 and SR-55. The project will make best use of available freeway property, update interchanges and widen various local overcrossings according to city and regional plans. The improvements will be coordinated with other planned I-405 improvements in the I-405/SR-22/I-605 interchange area to the north and I-405/SR-73 improvements to the south.
- 12) **Project L: I-405 Improvements between SR-55 and I-5**
Add new lanes to the freeway from SR-55 to the I-5. The project will also improve chokepoints at interchanges and add merging lanes near on/off ramps such as Lake Forest Drive, Irvine Center Drive and SR-133 to improve the overall freeway operations in the I-405/I-5 El Toro "Y" area.
- 13) **Project M: I-605 Freeway Access Improvements**
Improve freeway access at I-605/Katella Avenue serving the communities of Los Alamitos and Cypress. The project will be coordinated with other planned improvements along SR-22 and I-405. Specific improvements will be subject to approved plans developed in cooperation with local jurisdictions and affected communities. This improvement will connect to

interchange improvements at I-405 and SR-22 as well as new freeway lanes between I-405 and I-605.

6.6 Interim Project Processing

The Parties recognize that before the Wildlife Agencies approve the NCCP/HCP, certain projects and activities may be proposed within the Planning Area. The Parties agree to the following interim project process to: (1) ensure that development, construction, and other projects or activities approved or initiated in the Planning Area before completion of the NCCP/HCP are consistent with the preliminary conservation objectives and do not compromise successful completion and implementation of the NCCP/HCP; (2) facilitate ESA/CESA compliance for interim projects that require it; and (3) ensure that processing of interim projects is not unduly delayed during preparation of the NCCP/HCP.

The OCTA will notify the Wildlife Agencies about proposed projects or activities requiring discretionary approvals from the OCTA that have the potential to adversely impact proposed Covered Species and natural communities.

If the OCTA proposes to undertake or approve a project, it will notify the Wildlife Agencies of the project prior to the time the project application is deemed complete. The OCTA will notify the Wildlife Agencies of interim projects, and will provide (1) a depiction of the project location on a USGS 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a description of the project along with the land cover types present on the project site using the most current land cover data available; and (3) any other biological information available to the OCTA about the project area.

The Wildlife Agencies will use reasonable efforts to review interim projects in a timely manner. The Wildlife Agencies will recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. Any take of listed or candidate species arising out of a reportable interim project must be authorized pursuant to applicable State and federal law.

6.7 Protection of Habitat and other Resources During Planning Process

6.7.1 Conservation Actions

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

managed. Resources that will be credited to OCTA will be determined and agreed upon by the Parties prior to the acquisition of particular habitat parcels.

6.8 Implementing Agreement

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

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

7.0 Commitment of Resources

7.1 Funding

Funding for the planning effort will be provided through Renewed Measure M revenues. OCTA, with the assistance of the Wildlife Agencies, will also seek grant support under the federal Endangered Species Act (e.g., Section 6 non-traditional planning grant) and State grants such as the NCCP Local Assistance Grants program. Additionally, to assist in prioritizing this NCCP/HCP, OCTA will provide CDFG with funding to support one staff position to assist with the planning effort.

8.0 Miscellaneous Provisions

8.1 Public Officials Not to Benefit

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

8.2 Statutory Authority

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

8.3 Multiple Originals

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

8.4 Effective Date

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

8.5 Duration

This Planning Agreement will be in effect until the NCCP/HCP is approved and permitted by the Wildlife Agencies, but shall not be in effect for more than 36 months following the Effective Date, unless extended by amendment. The Parties intend to initiate and complete the NCCP/HCP process as well as the necessary NEPA/CEQA environmental compliance document within a 24-month period from the Effective Date. This Planning Agreement may be terminated pursuant to Section 9.7 below.

8.6 Amendments

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

8.7 Termination and Withdrawal

This Planning Agreement can be terminated only by written agreement of all Parties. Any Party may withdraw from this Planning Agreement upon 30 day's written notice to the other Parties. Any mitigation credits acquired by OCTA prior to termination or withdrawal from this Planning Agreement would remain available to OCTA to offset the potential impacts of OCTA projects.

8.7.1 Funding

In the event that federal or State funds have been provided to assist with NCCP/HCP preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency unspent funds awarded to that Party prior to

withdrawal. A withdrawing Party shall also provide the remaining Parties with a complete accounting of the use of any federal or State funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received funds shall return any unspent funds to the grantor prior to termination.

8.8 No Precedence

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

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

SIGNATURES:

Dated: _____, 2009

ORANGE COUNTY TRANSPORTATION
AUTHORITY

By: _____

Title: _____

Dated: _____, 2009

CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____

Title: _____

Dated: _____, 2009

U.S. FISH AND WILDLIFE SERVICE

By: _____

Title: _____

Date: _____, 2009

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____

Title: _____

M2 Freeway Mitigation Program Summary of Analysis Options

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



DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov

South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



ATTACHMENT E

November 6, 2008

Chair Patricia Bates
Measure M – Environmental Oversight Committee
Orange County Transportation Authority
550 S. Main St.
Orange, CA 92863-1584
(714) 560-5676

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Ellen B
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Dear Chair Bates:

The Department of Fish and Game (Department) appreciates the opportunity to participate in the Measure M - Environmental Oversight Committee (Committee) and is committed to participation in the Measure M process.

Recent discussions with the Orange County Transportation Authority (OCTA) regarding implementation of the environmental mitigation component of the Measure and the execution of the Master Agreement have led to discussions between OCTA, the Department, U.S. Fish and Wildlife Service (Service) and other Committee members regarding the preference to utilize the State's Natural Community Conservation Planning (NCCP) program to address mitigation requirements for projects identified in the Measure, rather than pursuing one or more individual Take Permits under Fish and Game Section 2050 *et seq.* While approval of an NCCP requires a higher level of conservation than would be necessary under a strict mitigation-based plan, an NCCP would provide additional assurances including allowing OCTA to address cumulative effects of the transportation projects, and enable coverage of species that are not presently listed by the State as threatened or endangered. An NCCP would also make OCTA eligible for state grant funding to assist in studies or other efforts related to the NCCP.

The Department understands that OCTA and the Committee have decided to pursue the NCCP as a comprehensive conservation strategy to address transportation projects within the County of Orange. The Department commends OCTA for its desire to address conservation on a multi-species level and supports OCTA in its efforts. However, the Department also understands that OCTA expects to have the NCCP completed within a 24-month time period. The Department cautions OCTA that based on existing staffing levels within the Department's NCCP program and the existing volume of NCCPs to complete and implement, the Department would not be able to complete OCTA's NCCP in the desired time frame. The Department recommends OCTA consider funding a Department position dedicated to the OCTA process and to the completion of the NCCP within the proposed ambitious timeline.

Conserving California's Wildlife Since 1870

The Department welcomes further discussions related to funding personnel dedicated to completing this task. Please contact Environmental Program Manager **ATTACHMENT E** (805) 569-6863 if you would like to discuss funding a Department position or Senior Environmental Scientist for South Coast Region NCCP Unit, David Mayer at (858) 467-4234 if you have any questions or comments regarding NCCPs.

Sincerely,



For Edmund J. Pert
Regional Manager
South Coast Region

cc: Helen Birss, Los Alamitos
Stephen M. Juarez, San Diego
David Mayer, San Diego
Terri Dickerson, Laguna Niguel
Matt Chirdon, Oceanside
HabCon-Chron, Department of Fish and Game, San Diego

AGREEMENT NO. C-9-0169

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CALIFORNIA DEPARTMENT OF FISH AND GAME

THIS AGREEMENT is effective this ____ day of _____, 2009, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the state of California (hereinafter referred to as "OCTA"), and California Department of Fish and Game, {Insert Address}(hereinafter referred to as "DEPARTMENT").

WITNESSETH:

WHEREAS, OCTA administers the Renewed Measure M (M2) Orange County's local voter-approved 1/2 cent transportation sales tax, that among other actions establishes and Environmental Mitigation Program to provide for the allocation of at least five (5) percent of net freeway program revenues (estimated at \$243.5 million) for environmental mitigation of 13 freeway projects. The Environmental Mitigation Program is intended to provide for early large-scale acquisition/restoration and management of important habitat areas for sensitive species and to create a reliable approach for funding required mitigation for future transportation improvements, thereby enabling the purchase of habitat that may become more scarce in the future, reducing future costs, and accelerating project delivery; and

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

1 **WHEREAS**, OCTA, under agreements with DEPARTMENT, the U.S. Fish and Wildlife Service
2 and the California Department of Transportation (Master Agreement and Planning Agreement) will
3 develop an Orange County Transportation Authority Habitat Conservation Plan/Natural Community
4 Conservation Plan ("HCP/NCCP") that will include a conservation strategy to fully mitigate adverse
5 effects to sensitive species and habitat as a result of construction of the thirteen (13) M2 freeway
6 improvement projects; and

7 **WHEREAS**, to accomplish the HCP/NCCP, OCTA and DEPARTMENT must cooperate in their
8 work. Timely participation by DEPARTMENT will be essential to the successful development of the
9 HCP/NCCP and the implementation of the M2 Environmental Mitigation Program. The DEPARTMENT
10 has extremely limited resources and will have difficulty reviewing and processing any plans the Master
11 Agreement and Planning Agreement. The purpose of this Agreement is to assist the DEPARTMENT
12 by providing additional staff resources that can focus on the HCP/NCCP and the M2 Environmental
13 Mitigation Program.

14 **WHEREAS**, OCTA in the fulfillment of the commitments made to the values in the Renewed
15 Measure M Transportation Investment Plan makes applications to or requests for permits, certifications,
16 waivers or other actions, needs, or services from the DEPARTMENT; and

17 **WHEREAS**, DEPARTMENT, under its authority from Fish and Game Code Section 2800 et
18 set., CESA, and as trustee agency for fish and wildlife resources, does advise, regulate, certify, and
19 permit various actions and projects of OCTA,

20 **WHEREAS**, DEPARTMENT, under its authority from Fish and Game Code Section 1600 et
21 set., CESA, and as trustee agency for fish and wildlife resources, does advise, regulate, certify, and
22 permit various actions and projects of OCTA, and

23 **WHEREAS**, OCTA and DEPARTMENT, agree that the timely processing of OCTA's
24 applications or requests for permits, certifications, waivers or other actions, needs, or services from the
25 DEPARTMENT, particularly in connection with the preparation and review of the OCTA HCP/NCCP
26 and streambed alteration is in the best interest of the public and the DEPARTMENT.

1 **WHEREAS**, without this Agreement, the DEPARTMENT cannot dedicate staff solely to the
2 applications or requests of OCTA and may not be able to provide timely processing, and

3 **WHEREAS**, the AUTHORITY's Board of Directors approved this Agreement on _____;

4 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and
5 DEPARTMENT as follows:

6 **ARTICLE 1. COMPLETE AGREEMENT**

7 A. This Agreement, including all exhibits and documents incorporated herein and made
8 applicable by reference, constitutes the complete and exclusive statement of the terms and conditions
9 of this Agreement between AUTHORITY and DEPARTMENT and it supersedes all prior
10 representations, understandings and communications. The invalidity in whole or in part of any term or
11 condition of this Agreement shall not affect the validity of other terms or conditions.

12 B. The DEPARTMENT agrees that waiver by OCTA of any breach or violation of any term or
13 condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained
14 herein or a waiver of any subsequent breach or violation of the same or any other terms or conditions.
15 AUTHORITY's failure to insist in any one or more instances upon DEPARTMENT's performance of any
16 terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of
17 AUTHORITY's right to such performance or to future performance of such terms or conditions and
18 DEPARTMENT's obligation in respect thereto shall continue in full force and effect.

19 **ARTICLE 2. AUTHORITY DESIGNEE**

20 The Chief Executive Officer of AUTHORITY, or designee, shall have the authority to act for and
21 exercise any of the rights of AUTHORITY as set forth in this Agreement.

22 **ARTICLE 3. SCOPE OF WORK**

23 A. The DEPARTMENT shall perform the work necessary to complete in a manner satisfactory
24 to AUTHORITY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this
25 reference, incorporated in and made a part of this Agreement.

26 /

1 B. The DEPARTMENT solely retains complete and absolute discretion to act as provided by
2 law and Department policy. The only limitation this Agreement imposes on the Department is the
3 category of projects to which the Department's staff resources will be dedicated, as set forth in
4 Agreement Section 3. Nothing in this Agreement is intended to, nor shall it be interpreted to, constitute
5 a violation of the Political Reform Act of 1974, as amended, commencing with California government
6 Code Section 81000.

7 **ARTICLE 4. TERM OF AGREEMENT**

8 This Agreement shall commence upon execution by both parties, and shall continue in full force
9 and effect through February 28, 2011, unless earlier terminated or extended as provided in this
10 Agreement. Continuance of this Agreement is subject to DEPARTMENT providing OCTA with a
11 proposed annual budget, written annual renewal by OCTA, and DEPARTMENT accepting the agreed
12 upon annual budget in accordance with the provisions of Section 5, and the ability of the Parties to
13 Terminate this Agreement pursuant to Article 13.

14 **ARTICLE 5. PAYMENT**

15 A. OCTA agrees to pay for the services provided in accordance with the budget as
16 itemized below, up to the equivalent cost for the full-time employment of a Department Staff
17 Environmental Scientist. The total amount of this Agreement for the first twelve (12) months will not
18 exceed One Hundred Sixty-Seven Thousand Dollars (\$167,000.00) and for months thirteen (13)
19 through twenty-four (24), the total amount will not exceed One Hundred and Thirty-Three Thousand
20 Dollars (\$133,000.00), for a total Not-To-Exceed Amount for the entire term of this Agreement of Three
21 Hundred Thousand Dollars (\$300,000.00). Funding for subsequent years will be contingent upon
22 OCTA's approval of the DEPARTMENT's proposed annual budget and OCTA's ability to provide the
23 required level of funding to the DEPARTMENT.

24 B. Annual costs for each subsequent year shall be determined within thirty (30) days of the
25 anniversary date of this Agreement. The DEPARTMENT shall not propose to increase the annual
26 costs stated above by more than ten (10) percent of the prior year's annual total. This Agreement shall

1 not terminate if the Parties have mutually expressed an interest in continuing the Agreement even
2 thought the DEPARTMENT may not have provided OCTA with a proposed annual budget prior to the
3 Agreement's anniversary date. In that event, OCTA shall approve the proposed annual budget with the
4 DEPARTMENT within 30 days of receipt of the proposed annual budget.

5 C. The DEPARTMENT shall invoice AUTHORITY on a monthly basis for payments
6 corresponding to the actual labor hours performed by the Environmental Scientist. The anticipated
7 hourly billing rate for this position is \$XXXX.00/per hour. The DEPARTMENT's accounting staff shall
8 furnish OCTA with an invoice containing an accounting of the expenditures for the work performed
9 under this Agreement during the preceding month, according to the above budget. Additionally, the
10 DEPARTMENT's technical staff shall provide a monthly report which identifies OCTA projects
11 supported for the month, the number of hours spent on each project, and the corresponding OCTA
12 contact name, and a list of the work performed. OCTA has the option to request additional information
13 concerning the work performed. OCTA shall dispute any unsatisfactory work or reports within 60 days
14 to DEPARTMENT.

15 D. The DEPARTMENT shall pay its employees salary, benefits, reasonable travel
16 expenses, and per diem allowances incurred during the performance of work under this Agreement at
17 rates not to exceed those amounts paid to DEPARTMENT's equivalently qualified represented
18 employees under collective bargaining agreements currently in effect.

19 E. The DEPARTMENT shall provide appropriate and necessary training to its employees to
20 perform the work required under this Agreement. OCTA shall reimburse the Department for up to 16
21 hours of training annually. Any staff training hours will be listed on the technical staff's monthly report to
22 OCTA.

23 F. The DEPARTMENT shall provide written notice to OCTA thirty (30) days in advance of
24 any proposed rate changes for direct or indirect costs associated with the work to be performed under
25 this Agreement. No proposed rate change shall exceed five (5) percent during any twelve (12) month
26 period.

ARTICLE 6. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and DEPARTMENT mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for DEPARTMENT's profit) shall be Three Hundred Thousand Dollars (\$300,000.00) which shall include all amounts payable to DEPARTMENT for work performed under this Agreement.

ARTICLE 7. NOTICES AND EXECUTION OF AGREEMENT

A. All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

To DEPARTMENT:

California Department of Fish and Game

ATTENTION:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION: Kathleen Perez, Department

Manager – Capital Projects

(714) 560 – 5743

kperetz@octa.net

B. Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail. Either party may notify the other party of a change in point of contact and/or address by providing a written notice thereof.

C. Execution of this Agreement and action thereof shall be upon the direction of the OCTA Chief Executive Officer, or designee and the DEPARTMENT' Director. Execution and Termination of this Agreement by OCTA shall be by the Chief Executive Officer, or designee. Termination of this

1 Agreement by the DEPARTMENT can be performed by the DEPARTMENT's Director or an authorized
2 designee.

3 **ARTICLE 8. INDEPENDENT CONTRACTOR**

4 DEPARTMENT's relationship to AUTHORITY in the performance of this Agreement is that of an
5 independent contractor. DEPARTMENT's personnel performing services under this Agreement shall at
6 all times be under DEPARTMENT's exclusive direction and control and shall be employees of
7 DEPARTMENT and not employees of AUTHORITY. DEPARTMENT shall pay all wages, salaries and
8 other amounts due its employees in connection with this Agreement and shall be responsible for all
9 reports and obligations respecting them, such as social security, income tax withholding, unemployment
10 compensation, workers' compensation and similar matters.

11 **ARTICLE 9. INSURANCE**

12 A. DEPARTMENT shall procure and maintain insurance coverage during the entire term of this
13 Agreement. Coverage shall be full coverage and not subject to self-insurance provisions.
14 DEPARTMENT shall provide the following insurance coverage:

15 1. Commercial General Liability, to include Products/Completed Operations,
16 Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of
17 \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

18 2. Automobile Liability Insurance to include owned, hired and non-owned autos
19 with a combined single limit of \$1,000,000.00 each accident;

20 3. Workers' Compensation with limits as required by the State of California including a
21 waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents;

22 4. Employers' Liability with minimum limits of \$1,000,000.00; and

23 5. Professional Liability with minimum limits of \$1,000,000.00 per claim.

24 B. Proof of such coverage, in the form of an insurance company issued policy endorsement
25 and a broker-issued insurance certificate, must be received by AUTHORITY prior to commencement of
26 any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days

1 from the effective date of this Agreement with the AUTHORITY, its officers, directors, employees and
2 agents designated as additional insured on the general and automobile liability. Such insurance shall
3 be primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.

4 C. DEPARTMENT shall include on the face of the Certificate of Insurance the Agreement
5 Number C-9-0169; and, the Contract Administrator's Name, Kathleen Perez, Department Manager –
6 Capital Projects.

7 **ARTICLE 10. ORDER OF PRECEDENCE**

8 Conflicting provisions hereof, if any, shall prevail in the following descending order of
9 precedence: (1) the provisions of this Agreement, including all exhibits; (2) all other documents, if any,
10 cited herein or incorporated by reference.

11 **ARTICLE 11. CHANGES**

12 AUTHORITY may, from time to time, make changes in the general scope of this Agreement,
13 including, but not limited to, the services furnished to AUTHORITY by DEPARTMENT as described in
14 the Scope of Work. All such changed shall be mutually agreed to in writing by both Parties.

15 **ARTICLE 12. DISPUTES**

16 Except as otherwise provided in this Agreement, any dispute concerning a question of fact
17 arising under this Agreement, which is not disposed of, by supplemental agreement shall be decided by
18 AUTHORITY's Chief Executive Officer and for DEPARTMENT', Director.

19 **ARTICLE 13. TERMINATION**

20 A. OCTA and DEPAARTMENT each shall have the right to terminate this Agreement,
21 without cause, by giving not less than thirty (30) days written notice of termination.

22 B. If DEPARTMENT fails to perform any of its material obligations under this Agreement, in
23 additional to all other remedies provided by law, OCTA may terminate this Agreement immediately
24 upon written notice.

25 C. The Chief Executive Officer, or designee may terminate this Agreement on behalf of
26 OCTA. The DEPARTMENT's Director, or designee, is empowered to terminate this Agreement on

1 behalf of the DEPARTMENT.

2 D. In the event of termination, DEPARTMENT shall deliver to OCTA copies of all reports,
3 documents, and other work performed by DEPARTMENT under this Agreement; and upon receipt
4 thereof, OCTA shall cover DEPARTMENT's costs for services performed and reimbursable expenses
5 incurred to the date of termination.

6 **ARTICLE 14. INDEMNIFICATION**

7 Neither Party is indemnifying the other Party pursuant to this Agreement.

8 **ARTICLE 15. ASSIGNMENTS AND SUBCONTRACTS**

9 The Parties agree that the expertise and experience of the DEPARTMENT are material
10 consideration for this Agreement. The DEPARTMENT shall not assign or transfer any interest in this
11 Agreement, nor the performance of any of DEPARTMENT's obligations hereunder without the prior
12 written consent of OCTA. Any attempt by DEPARTMENT to so assign this Agreement or any rights,
13 duties, or obligations other than noted arising hereunder, shall be void and of no effect.

14 **ARTICLE 16. AUDIT AND INSPECTION OF RECORDS**

15 A. DEPARTMENT shall maintain all documents and records which demonstrate
16 performance under this Agreement for a minimum period of three (3) years, or for any longer period
17 required by law, from the date of termination or completion of this Agreement.

18 B. Any records or documents required to be maintained pursuant to this Agreement shall
19 be made available for inspection or audit, at any time during regular business hours, upon written
20 request by a designated representative of OCTA. Copies of such documents shall be provided to
21 OCTA for inspection at OCTA's offices when it is practical to do so. Otherwise, unless an alternative is
22 mutually agreed upon, the records shall be available at DEPARTMENT's address indicated for receipt
23 of notices in this Agreement.

24 C. Where OCTA has reason to believe that such records or documents may be lost or
25 discarded due to dissolution, disbandment, or termination of DEPARTMENT's business, OCTA may, by
26 written request, require that custody of the records be given to OCTA and that the records and

1 documents be maintained at OCTA's offices. Consistent with the Public Records Act, access to such
2 records and documents shall be granted to any party authorized by DEPARTMENT, DEPARTMENT's
3 representatives, or DEPARTMENT's successor-in-interest.

4 **ARTICLE 17. FEDERAL, STATE AND LOCAL LAWS**

5 OCTA and DEPARTMENT agree that the law governing this Agreement shall be that of the
6 State of California. Both Parties shall comply with all applicable federal, state and local laws, statutes
7 and ordinances and all lawful orders, rules and regulations promulgated thereunder.

8 **ARTICLE 18. EQUAL EMPLOYMENT OPPORTUNITY**

9 In connection with its performance under this Agreement, DEPARTMENT shall not discriminate
10 against any employee or applicant for employment because of race, religion, color, sex, age or national
11 origin. DEPARTMENT shall take affirmative action to ensure that applicants are employed, and that
12 employees are treated during their employment, without regard to their race, religion, color, sex, age or
13 national origin. Such actions shall include, but not be limited to, the following: employment, upgrading,
14 demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
15 forms of compensation; and selection for training, including apprenticeship.

16 **ARTICLE 19. PROHIBITED INTERESTS**

17 A. OCTA and DEPARTMENT shall avoid all conflict of interest or appearance of conflict of
18 interest in the performance of this Agreement.

19 B. DEPARTMENT covenants that, for the term of this Agreement, no director, member, officer
20 or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter shall have any
21 interest, direct or indirect, in this Agreement or the proceeds thereof.

22 **ARTICLE 20. OWNERSHIP OF REPORTS AND DOCUMENTS**

23 All reports, documents, or other material developed by DEPARTMENT or any other person
24 engaged directly or indirectly by DEPARTMENT to perform the services required hereunder shall be
25 and remain the property of DEPARTMENT without restriction or limitation upon their use.

26 /

ARTICLE 21. ALCOHOL AND DRUG POLICY

AUTHORITY and DEPARTMENT shall provide under this Agreement, a safe and healthy work environment free from the influence of alcohol and drugs. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

ARTICLE 22. CONFIDENTIAL INFORMATION

All non-public data, documents, discussions, or other information developed or received by or for DEPARTMENT in performance of this Agreement are confidential and not to be disclosed to any person except in accordance with standard policy of DEPARTMENT, or as required by law. Documents provided to DEPARTMENT by OCTA shall be labeled, as "confidential" to the extent that OCTA believes DEPARTMENT should treat the documents as confidential.

This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-9-0169 to be executed on the date first above written.

**CALIFORNIA DEPARTMENT OF FISH
AND GAME**

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____

By _____

Arthur T. Leahy
Chief Executive Officer

APPROVED AS TO FORM:

By _____

Kennard R. Smart, Jr.
General Counsel

APPROVED:

By _____

APPROVAL SCHEDULE FOR MASTER & PLANNING AGREEMENTS

EOC Approves Drafts March 4	2020 Approves Drafts March 16	OCTA Approves Drafts March 23	CDFG Notice Availability March 23	CDFG Mail & Posting April 6	21 Day Public Review April 27	Response to Comments	Agreements Approved by OCTA May 25	CDFG Counsel Approval June 15	Agreements Approved by CDFG June 30
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Mitigation and Resource Protection Program Renewed Measure M Criteria

The Orange County Transportation Authority's (OCTA) Mitigation and Resource Protection Program is designed to provide for comprehensive, rather than piecemeal, mitigation of the environmental impacts of freeway improvements. The freeway mitigation program was approved under Orange County Renewed Measure M (M2), the half-cent sales tax for transportation improvements approved by Orange County voters in 2006.

Using a proactive, innovative approach, a Master Agreement will be negotiated between OCTA and state and federal resource agencies to provide higher-value environmental benefits such as habitat protection, connectivity and resource preservation in exchange for streamlined project approvals for the 13 M2 freeway projects.

The following sets of criteria were created to provide guidance to property owners and conservation organizations to help evaluate the potential resource and conservation value of properties that may be available for acquisition or restoration. At a future date, these criteria will include a mechanism for evaluating potential restoration projects that will ultimately lead to the selection of eligible properties.

Renewed Measure M Restoration Criteria**BIOLOGICAL ASSESSMENT CRITERIA**

The following criteria are intended to guide the permitting/resource agencies in the recommendation of restoration for the mitigation of habitat impacts by Renewed Measure M freeway projects. Each criterion includes a brief definition to clarify any potential misunderstandings. At a future date, and after more research and input, it is expected these criteria will include a mechanism for evaluating potential restoration projects.

- Benefits Targeted Species**

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

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

Restoration of this site will limit edge effect, supplement existing open space and improve the quantity and quality of core habitat.
- Enhances of Already Conserved Lands for Habitat and Wildlife Connectivity**

Allows funding of restoration and management endowments on previously conserved lands to benefit species and wildlife connectivity in situations deemed appropriate by the permitting/resource agencies.
- Evaluates Adequacy of Protection and Management**

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

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

The property's habitat restoration includes the restoration of species, sub-species, and natural communities ranked as sensitive under CNDDDB (California Natural Diversity Database).

OTHER CRITERIA

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

- Aligns with Resource Agency Priorities**
Proposed restoration meets resource agencies' particular requirements (e.g., the restoration satisfies the agencies' (ACOE, RWCB, and DFG) definition of habitat creation for the purposes of no-net loss policies for wetlands) and/or is determined to otherwise benefit fish and wildlife resources and the habitats upon which they depend.
- Includes Support from Local and State Governments**
This acquisition is supported by local cities, appropriate JPA's, the county or other governmental entities.
- Includes Support from the Community**
This acquisition is supported by the public, environmental and community organizations.
- Utilizes Partnership & Leveraging Opportunities**
Working on this restoration project would be enhanced by existing conservation efforts, partnerships and/or includes existing funding.

CO-BENEFITS

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

Includes:

- Watershed Protection
- Proximity to Underserved Area
- Scenic/Viewshed/Enhanced recreation experience
- Economic Benefits (supports local businesses)
- Public Access
- Archeological Sites
- Cultural and Historical Sites
- Paleontological Sites
- Trail Connectors

RESTORATION CONSTRAINTS

The following criteria are potential constraints to restoration, but detailed information regarding some of these constraints may not be available until later in the evaluation process.

Considers Cost

In addition to streamlining OCTA’s regulatory process, the intent of the comprehensive environmental mitigation program is to provide the greatest possible biological benefit for the region with the available funding. Consequently, the cost of potential restoration will be an important factor in selecting mitigation sites.

Determines Hazardous Conditions

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

Includes Access to Site

The restoration site is accessible for restoration work, maintenance and management.

Includes Availability and Delivery of Water

The water used for the restoration is available, does not increase environmental impacts when delivered to the site and works with local water agencies to ensure groundwater sources are not impacted by water withdrawal.

Renewed Measure M Property Acquisition Criteria**BIOLOGICAL ASSESSMENT CRITERIA**

The following criteria are intended to guide the permitting/resource agencies in the recommendation of sites for the mitigation of habitat impacts by Renewed Measure M freeway projects. Each criterion includes a brief definition to clarify any potential misunderstandings. At a future date, and after more research and input, it is expected these criteria will include a mechanism for evaluating potential acquisitions.

- Aligns with Impacted Habitats**

An inventory of the property shows it includes the same vegetative communities as those habitats lost to freeway projects, including habitats such as: coastal sage scrub, riparian woodlands, grasslands, etc.
- Conserves Sensitive Habitats**

The property's habitat includes the conservation and possible restoration of species, subspecies, and natural communities ranked as sensitive under California Natural Diversity Database (CNDDDB).
- Considers Property Acreage**

Generally larger properties are better.
- Contains Target Species**

The potential property includes the presence of endangered, threatened, species of special concern, and other sensitive species impacted by freeway projects.
- Considers the Threat of Development and Urgency**

The evaluation considers where the landowner is in CEQA and other permitting processes, quantifies the degree of the development threat, and determines if this acquisition creates an opportunity for leveraging expiring conservation funding.
- Enhances Natural Lands Connectivity, including significant Wildlife Corridors**

Acquisition of this property would connect to existing protected areas, examine the effects on multiple taxa (such as birds, large mammals) and could be identified as an essential habitat linkage in regional or local plans.
- Enhances Natural Lands Contiguity**

The property borders existing open spaces and acquisition increases the amount of core habitat or reduces edge effects.
- Includes Species/Habitat Diversity**

The property includes a wide variety of habitat types and species (including subspecies, if known). Special emphasis would be provided for properties with examples of various stages of vegetative structural diversity and functional ecosystem diversity present (e.g., habitat with a natural flood regime).

Provides for Quality Habitat or Potential for Quality Habitat

The property includes mature habitats or property constraints are minimal and property has a high potential to support high-quality habitat after acquisition.

OTHER CRITERIA

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

Aligns with Resource Agency Priorities

The property is included on the DFG & USFWS's list of acquisition priorities.

Includes a Cooperative Landowner

The landowner effectively coordinates with the entity responsible for acquisition to complete tasks required for acquisition.

Includes Support from Local and State Governments

This acquisition is supported by local cities, appropriate JPA's, the county or other governmental entities.

Includes Support from the Community

This acquisition is supported by the public, environmental and community organizations.

Utilizes Partnership & Leveraging Opportunities

Working on this acquisition would be enhanced by existing conservation efforts, partnerships and/or includes existing funding.

CO-BENEFITS

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

Includes:

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

PROPERTY CONSTRAINTS

The following criteria are potential constraints to property acquisition, but detailed information regarding some of these constraints may not be available until later in the evaluation process.

- Considers Cost**

In addition to streamlining OCTA’s regulatory process, the intent of the comprehensive environmental mitigation program is to provide the greatest possible biological benefit for the region with the available funding. Consequently, the cost of potential acquisitions will be an important factor in selecting mitigation sites.
- Consider Conflicting Easements or Inholdings**

The property may have restrictive deeds, easements, other agreements, and/or inholdings that would limit management/public use options.
- Considers Neighboring Land Uses**

Neighboring land uses may decrease the habitat mitigation value of the mitigation property.
- Considers Other Complications**

The property may have unidentified complications associated with acquisition and management including, vector control, vandalism, inadequate access, significant obstacles to restoring water quality (toxics, pesticides, salts), etc.
- Considers the extent of Isolation or Habitat Fragmentation**

The property may be fragmented or isolated from other valuable habitats that may impede its long-term biological value. Fragmented or isolated habitats would make it challenging to have a variety of flora and fauna.
- Determines Hazardous Conditions**

Through a Phase I – Environmental Site Assessment, determine the property’s historical use and any potential or known hazardous materials on-site.
- Understands Management Encroachments**

The property may have unauthorized users; there are adopted plans for future infrastructure that may be inconsistent with habitat mitigation; or the type and quantity of public use inside or adjacent to the property. (e.g. vegetative fuel modification zones are adjacent)

Renewed Measure M Property and Habitat Management Criteria

Endowments will be provided through Measure M funding for long term management of the acquired and restored properties. The amount of funding provided will be determined in each case through the preparation of Property Analysis Record (PAR) or an equivalent method. A PAR analysis involves application of a computer database methodology developed by the Center for Natural Lands Management for estimating the required amount for endowments. Every effort will be made to work with partners to leverage the available Measure M funding to accomplish the necessary long-term management of acquired and restored habitat.