



**December 5, 2022**

**To:** Regional Highways and Planning Committee  
**From:** Darrell E. Johnson, Chief Executive Officer  
**Subject:** Measure M2 Environmental Mitigation Program Update

A handwritten signature in blue ink, appearing to read "Darrell E. Johnson", is positioned to the right of the "From:" field.

**Overview**

Measure M2 includes a program to deliver comprehensive mitigation for biological impacts of 13 freeway projects in exchange for streamlined project approvals from state and federal resource agencies. The Environmental Mitigation Program has acquired conservation properties and provided habitat restoration projects funding as part of the Natural Community Conservation Plan/Habitat Conservation Plan. Summaries of past and 2022 Environmental Mitigation Program activities are provided for information purposes.

**Recommendation**

Receive and file as an information item.

**Background**

Measure M2 (M2) includes the Environmental Mitigation Program (EMP) which is intended to mitigate biological resource impacts of 13 M2 freeway projects and streamline the approval process with state and federal resource agencies. This was achieved through the development of a Natural Community Conservation Plan/Habitat Conservation Plan (Conservation Plan), approved by the California Department of Fish and Wildlife (CDFW), and the United States Fish and Wildlife Service (collectively referred to as Wildlife Agencies). Consistent with the Conservation Plan, the Orange County Transportation Authority (OCTA) has acquired seven conservation properties (Preserves) and funded 12 habitat restoration projects, depicted in Attachment A. Many of the restoration projects are close to, or have fulfilled, the requirements of the Wildlife Agencies. In addition, an endowment is being established to fund the long-term management of the Preserves, as a provision of the Conservation Plan. On a parallel path, the United States Army Corps of Engineers (ACOE) and the State Water Resources Control Board (SWRCB), commonly referred to as the Regulatory Agencies, have also established a framework to expedite the permitting process. The aforementioned accomplishments have largely met the intent of the EMP.

***Discussion*****2021 Conservation Plan Annual Report**

As a commitment of the Conservation Plan, OCTA is required to prepare an annual report on the implementation processes. The annual report integrates reports from OCTA consultants, contractors, and restoration project managers. The data is collected for the calendar year and then summarized in individual reports, which are not produced until early the following year. OCTA then synthesizes these reports. The annual report is not deemed final until OCTA obtains Wildlife Agency approval. This process typically extends until the middle of the following year. The executive summary for the 2021 Conservation Plan Annual Report is included as Attachment B. The complete annual report is available on the OCTA website.

This annual report documents OCTA's activities between January 1, 2021, and December 31, 2021, and indicates that OCTA's efforts on this program are in keeping with existing commitments. This report includes the tracking of biological impacts associated with covered freeway improvement projects, management, monitoring, status, and activities on the Preserves, the progress of the restoration projects, as well as additional plan administration and public outreach activities. The annual report was reviewed and approved without exceptions by the Wildlife Agencies, provided to the Environmental Oversight Committee (EOC), and is available for public review. The annual report documenting the 2022 calendar year activities is anticipated to be shared with the EOC and Board of Directors (Board) in mid-2023.

**Southern California Edison (SCE) Coordination**

In recent years, unauthorized trails were discovered at the OCTA-owned Pacific Horizon (151 acres in Laguna Beach) and Silverado Chaparral (204 acres in Silverado Canyon) Preserves. In addition to the unauthorized trails, OCTA discovered severed fence lines and damage to protected habitat on the Preserves. SCE confirmed that damage to the fence lines and a number of unauthorized trails were caused by their contractors in the performance of maintenance on SCE facilities pursuant to California Public Resources Code 4292. This statute requires the utility agencies to "maintain a firebreak of at least ten feet in the radius of a utility pole, with tree limbs within the ten-foot radius of the pole being removed up to eight feet above ground." Since SCE's activities have caused damage to the Preserves, OCTA and SCE are working towards an agreement for compensation of these impacts and a potential access agreement that defines SCE's access to all OCTA Preserves. OCTA has initiated an effort to have Preserves professionally surveyed for all utility poles and overhead lines. SCE had previously communicated that no easements for utilities existed on the Preserves. Further, OCTA's original surveys were focused on establishing boundary lines for property documentation and did not cover utilities. This information is necessary as OCTA moves forward with recording conservation

easements for the Preserves. In addition, OCTA will be coordinating with the Wildlife Agencies on an administrative amendment to the Conservation Plan to document the poles, impacts, and measures to offset those impacts.

#### Coastal Fire Update

In May 2022, the Coastal Fire impacted approximately 35 acres of the 151-acre, OCTA-owned, Pacific Horizon Preserve in the City of Laguna Beach. Two memos dated May 13 and June 22, were provided to update the Board on the impacts of the fire. The June 22 memo is included as Attachment C. OCTA is not required to restore the burned vegetation on the Preserve, but will be responsible for monitoring and controlling invasive weeds that may grow in the area. To date, monitoring has shown some regrowth of the existing native vegetation. OCTA will continue to maintain fence lines to prohibit recreation through the burn area and monitor and coordinate activities with the Wildlife Agencies, as well as OC Parks staff at Aliso and Wood Canyons Wilderness Park.

#### Clean Water Act Permits Update

Many of the M2 freeway projects will impact waters of the State or jurisdictional waters that are subject to regulation by the SWRCB, the CDFW, and the ACOE and will require mitigation. Before construction activities can occur, OCTA must obtain permits from the aforementioned Regulatory Agencies. The Conservation Plan's mitigation was utilized to obtain these permits, streamlining the processes and reducing the chances of project delays. These efforts are the result of years of collaboration between OCTA and the Regulatory Agencies and constitute another groundbreaking milestone for the M2 EMP. The success of the partnership that this program has garnered is evident with the recognition from Federal Highway Administration, as well as the ACOE's swift response to the projects below and other OCTA project needs.

#### Freeway Projects Update

The following OC Go freeway projects have benefited from the EMP. Through these efforts, pre-negotiated permit terms and timing have helped to streamline the permitting and further minimize the required mitigation needs. Without the EMP's established process, additional mitigation-related requirements could have been incurred, resulting in increased project costs and schedule risks.

- Project C (Interstate 5 [I-5] improvement project from State Route 73 [SR-73] to El Toro Road),
- Project F (State Route 55 [SR-55] improvement project between Interstate 405 [I-405] and I-5),
- Project I (Segment 1) (State Route 91 improvement project between SR-55 and Lakeview Avenue), and

- Project K (I-405 improvement project from SR-73 to the Los Angeles County Line).

#### EMP Endowment Fund Investment Report

The Conservation Plan requires the establishment of an endowment to fund the long-term management of the Preserves. As of September 30, 2022, the endowment balance was \$21,276,964, which is below the fiscal year (FY) 2022-23 target of \$24,015,673. Current projections indicate that OCTA still remains on track to meet the endowment target of \$46.2 million in FY 2027-28; however, the performance of the endowment fund may affect this time frame. To date, OCTA has made seven endowment deposits. A separate quarterly investment report summarizing the status of the endowment. OCTA will continue to assess market conditions and provide regular endowment updates to the Board, the Finance and Administration Committee, and the EOC.

#### Hikes and Equestrian Rides

Six hikes and five equestrian rides were held on the OCTA Preserves in 2022. OCTA will release the 2023 Wilderness Preserve Hiking and Equestrian Riding Tour calendar early next year.

#### ***Summary***

M2 includes an EMP that provides funding for programmatic mitigation to offset certain impacts of the 13 M2 freeway projects. To expedite the delivery of the M2 freeway projects, this program was initiated to implement early project mitigation through preservation and habitat restoration. This program is administered through a Conservation Plan, which was approved by the Wildlife Agencies in mid-2017. To maximize the benefits of the investments, OCTA has utilized some of that same mitigation assets to obtain Clean Water Act permits.

**Attachments**

- A. OCTA Preserves and Funded Restoration Projects
- B. M2 Natural Community Conservation Plan/Habitat Conservation Plan – 2021 Annual Report
- C. Memorandum to the Members of the Board of Directors from Darrell E. Johnson, Chief Executive Officer, dated June 22, 2022, Subject: Environmental Mitigation Program Coastal Fire Impacts Status Update

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