




September 7, 2017

To: Regional Planning and Highways Committee

From: Darrell Johnson, Chief Executive Officer 

Subject: Measure M2 Environmental Mitigation Program Restoration Projects Additional Funding Request

Overview

Measure M2 includes a program to deliver comprehensive mitigation for the environmental impacts of freeway projects in exchange for streamlined project approvals from the state and federal wildlife agencies. On a parallel path, the Orange County Transportation Authority has developed a similar approach to work with the State Water Resources Control Board and the United States Army Corps of Engineers regarding state and federal clean water permitting requirements to facilitate expedited implementation of the Measure M2 freeway projects. A request for funding authorization to advance the streamlined permitting process is submitted for Board of Directors consideration and approval.

Recommendations

- A. Authorize the Chief Executive Officer to negotiate and execute an amount up to \$805,000 to fund the expedited clean water permitting requirements.
- B. Authorize staff to amend the fiscal year 2017-18 budget to include the recommended funding amount.

Background

Measure M2 (M2) includes an innovative comprehensive Environmental Mitigation Program (EMP) to address the biological impacts of M2 freeway projects. This is achieved through the development of a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP), approved by the California Department of Fish and Wildlife and the United States Fish and Wildlife Service (Wildlife Agencies). These documents were finalized and approved by the Orange County Transportation Authority (OCTA) Board of Directors (Board) in November 2016. The final permits were issued to OCTA by the

Wildlife Agencies in June 2017. It should be noted that the Board previously approved \$34.5 million in funding for the maintenance and operation of the seven Preserves, as committed to in the NCCP/HCP. Payments began in March 2017 to establish an account over a ten to 12 year time period.

On a parallel path, OCTA and the California Department of Transportation staff have been coordinating with the State Water Resources Control Board (State Board) and the Army Corps of Engineers (Corps), collectively referred to as Regulatory Agencies. This coordination has resulted in defining a process that would utilize some of the same mitigation within the NCCP/HCP to also obtain state and federal clean water permits to further streamline the M2 freeway projects. Separate funding is needed to meet the Regulatory Agencies' requirements. This request was presented to and endorsed by the Environmental Oversight Committee (EOC) on August 17, 2017. A summary of the additional funding needs is presented.

Discussion

The construction of the M2 freeway projects is anticipated to result in impacts to jurisdictional waters of the state and United States. These impacts will require that OCTA obtain Section 401 and 404 clean water permits from the Regulatory Agencies, which will require mitigation. On a parallel process to the NCCP/HCP, staff is finalizing program-level authorizations with the Regulatory Agencies, which is further described in Attachment A. This permit will enable OCTA to utilize mitigation included in the NCCP/HCP, as well as lay out an abbreviated process for project level 401 and 404 permit issuance.

Agency coordination has resulted in the determination that the Agua Chinon and Aliso Creek restoration projects, as well as a small portion of the Ferber Ranch Preserve, should satisfy the Regulatory Agencies mitigation needs for the M2 freeway projects. These restoration projects and this Preserve are also included in the NCCP/HCP. Fact sheets for both of these restoration projects are included as Attachment B and Attachment C. As previously discussed, state and federal regulatory requirements include additional compliance that is above and beyond what is required within the NCCP/HCP. For example, these regulations require specific language within the long-term protection assurances, as well as funding to cover long-term management needs of the mitigation sites.

After collaboration with the Regulatory Agencies and the restoration project property owners (County of Orange and The Irvine Company), it has been determined that additional management tasks are necessary to satisfy compliance needs. Additional tasks include activities such as biological monitoring, weed removal, photo documentation, and annual reporting. The Corps requires that funding is provided to facilitate these tasks in perpetuity. This amount has been estimated at approximately \$805,000. On August 17, 2017, the EOC endorsed the course of action and funding amount.

It is important to note that these additional funding needs are separate from the NCCP/HCP endowment. It is anticipated that a one-time payment will be made to a Corps-approved entity that will manage and disperse these funds to the land owners. For example, the National Fish and Wildlife Foundation has been approved to handle these types of services by the Corps.

The additional funding needs for Corps compliance was anticipated and included in the May 2015 Board-approved EMP Long-Term Funding Strategy and Guiding Principles. The EMP Guiding Principles contained the commitment to responsibly meet the M2 obligations, which include complying with regulatory requirements to ensure that freeway project mitigation obligations are met. In addition, the Long-Term Funding Strategy includes the commitment to complete the negotiations with the Corps and State Board, and allocate funding to meet regulatory permit requirements.

If OCTA does not provide this funding, additional mitigation opportunities would need to be explored. Specifically, mitigation would need to be identified within both the San Juan Creek and the San Diego Creek Special Area Management Plan areas to obtain clean water permits for the construction of the freeway projects. These watersheds are known to be challenging to locate mitigation opportunities and the same long term funding requirements would apply. This would take additional time and funding that is expected to exceed the amount presented herein.

Next Steps

Additional funding for the mitigation projects is required as a part of the regulatory permitting process related to clean water requirements. Upon Board approval, OCTA will issue a letter of commitment to the Corps for the restoration projects financial needs. In turn, the Corps and the State Board are anticipated to issue their programmatic authorizations which will help streamline the implementation of the M2 freeway projects. Additional steps are required, and OCTA will continue to work with the Corps and the State Board to complete the regulatory permitting process in order to obtain the applicable clean water authorizations, and are further described in Attachment A.

Summary

M2 includes an EMP that provides funding for programmatic mitigation to off-set impacts of the 13 freeway projects. To expedite the delivery of the freeway projects, this program was initiated in 2007 to implement early project mitigation through property acquisition and habitat restoration. This program is administered through a NCCP/HCCP, which was completed and approved by the Board in November 2016, and permits received in June 2017. State and federal programmatic clean water permits have also been developed and additional mitigation funding needs have been identified and presented for approval.

Attachments

- A. Draft United States Army Corps of Engineers and State Water Resources Control Board Mitigation Funding Needs Summary
- B. Aliso Creek Restoration Project
- C. Agua Chinon and Bee Flat Canyons Restoration Project

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