

United States Army Corps of Engineers and
State Water Resources Control Board
Mitigation Funding Needs Summary

Overview: The Orange County Transportation Authority (OCTA) is coordinating with the United States Army Corps of Engineers (Corps) and the State Water Resources Control Board (State Board) to obtain programmatic Clean Water Act (CWA) Section 401 and 404 permits for the Measure M2 (M2) Environmental Mitigation Program (EMP). These permits will provide OCTA with assurances that the mitigation provided to date is acceptable to offset potential M2 freeway project impacts to state and federal jurisdictional waters. OCTA will utilize a subset of the conservation efforts (i.e. mitigation) included in the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). These mitigation sites are illustrated in Figure 1. Separate funding is required by the State Board and the Corps to comply with this process.

Background: On April 6, 2015, the Corps released a Special Public Notice regarding the proposed Section 404 Letter of Permission (LOP) procedures (i.e. program level permit) for the OCTA M2 EMP. These LOPs will establish alternative permitting procedures to address anticipated discharges into Waters of the United States (WOTUS) associated with constructing the freeway projects over the next 15-20 years. LOP procedures are expected to be established via issuance of a CWA Section 404 Individual Permit. The State Board has also committed to issuing an authorization to approve the use of M2 mitigation once the Corps issues the 404 permit. This State Board authorization will provide the needed mitigation assurances and will further streamline the implementation of the M2 freeway projects.

Discussion: The Corps regulations require compliance with the April 10, 2008 mitigation rule. In addition, some M2 freeway projects may impact the San Diego and the San Juan Creek watersheds. These watersheds are subject to federal regulations that include specific Special Area Management Plan requirements. These mitigation requirements are in addition to what the Wildlife Agencies (United States Fish and Wildlife Service and California Department of Fish and Wildlife) require, and what OCTA has committed to in the NCCP/HCP. These regulations also require the development and funding of a long-term management plan for all mitigation sites before the Corps or State Board can issue their permits.

In order to satisfy the applicable CWA compensatory mitigation requirements, OCTA is proposing the following:

1. Freeway project avoidance and minimization measures: Avoidance and minimization measures are a required component of the freeway projects design and construction processes.
2. Two mitigation sites that provide enhancement and rehabilitation of the Waters of the United States: The two sites that provide the most appropriate enhancement and rehabilitation of WOTUS are the Aliso Creek and Agua Chinon restoration projects (also included in the M2 NCCP/HCP). Both restoration projects are within already managed lands. OCTA has been coordinating with the Corps and the property owners

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of the Agua Chinon (The Irvine Company and the County of Orange) and Aliso Creek (the County of Orange) projects. Coordination included the review of the existing management plans and land protection documents (i.e. irrevocable offers of dedication). The Corps has determined that additional management tasks and long-term protection assurances are required. The additional management tasks require OCTA to provide a one-time payment to a Corps-approved finance manager to fund long-term maintenance costs.

3. One mitigation site that provides preservation of important physical, chemical, and biological aquatic functions: Ferber Ranch provides preservation of important physical, chemical, and biological aquatic functions. OCTA will record a conservation easement to assure that the Ferber Ranch Preserve is protected. This is also a commitment within the NCCP/HCP. The clean water requirements can be addressed through the management actions being performed as part of the existing NCCP/HCP commitments. However, the Corps has requested that supplemental funds be set aside in case future conservation easement violations occur at Ferber Ranch.

Overview of Additional Mitigation Requirements:

Mitigation Project Name	Property Owner	Location	Summary of Management Tasks	Estimated Amount Needed*
Ferber Ranch Preserve	OCTA	Trabuco Canyon	None	\$10,000
Aliso Creek Restoration Project	County of Orange (OC Parks)	Aliso and Wood Canyons Wilderness Park	Biological surveys, spot treat weeds, photo documentation and reporting	\$718,500
Agua Chinon Restoration Project	County of Orange (OC Parks) and the Irvine Company	Unincorporated Orange County	Same as above	\$76,000

*Amount based on ~2.5% real interest earnings

Total: \$804,500

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If the funding amounts are approved, OCTA must complete the following steps to meet the CWA permit requirements:

1. Issue a letter of commitment to the Corps for the restoration projects.
2. Continue coordination with the Corps and State Board to finalize the habitat and mitigation monitoring plans (i.e. restoration plans).
3. Obtain Section 401 and 404 authorizations from the State Board (general order/ letter of authorization) and the Corps (LOP procedures).
4. Obtain an agreement between the Corps and a fund manager (i.e. San Diego Community Foundation, California Community Foundation, etc.) and make a one-time payment to the mutually-agreed upon fund manager.
5. Execute an agreement between OCTA and a fund manager to manage and disperse funds on behalf of OCTA to the restoration site land managers.
6. Continue to coordinate with the land owners, Corps, State Board, and the Wildlife Agencies to finalize or amend the land protection documents for the restoration sites.
7. Record a conservation easement over the Ferber Ranch Preserve.
8. Ensure the restoration projects meet their NCCP/HCP set success criteria and performance standards.
9. Record the assignment of assumption document with the land manager of the mitigation sites. This will transfer mitigation responsibilities to the land manager.
10. Request a letter from the Corps documenting mitigation release once the land protection documents have been recorded and funding for the long-term management has been obtained.

OCTA NCCP/HCP Preserves and Funded Restoration Projects

FIGURE 1

