




July 6, 2020

To: Regional Highways and Planning Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Measure M2 Environmental Mitigation Program Update, Annual Report, and Restoration Project Amendment Request

Overview

Measure M2 includes a program to deliver comprehensive mitigation for the environmental impacts of 13 freeway projects in exchange for streamlined project approvals from the state and federal resources agencies. The Environmental Mitigation Program has acquired conservation properties and provided funding for habitat restoration projects as part of the Natural Community Conservation Plan/Habitat Conservation Plan. A summary of the Environmental Mitigation Program activities for 2019 is provided, in addition to a request to amend an existing agreement with the Laguna Canyon Foundation for additional restoration activities.

Recommendations

- A. Approve an increase to the Laguna Canyon Foundation Aliso Creek Restoration Project budget by \$275,000, consistent with the recommendations of the Environmental Oversight Committee.
- B. Authorize the Chief Executive Officer to negotiate and execute a contract amendment with the Laguna Canyon Foundation amendment, in the amount of \$275,000, for additional Aliso Creek Restoration Project activities. If approved, the maximum cumulative obligation for this project would be \$1,482,100.

Background

Measure M2 (M2) includes the Environmental Mitigation Program (EMP) intended to mitigate certain impacts and streamline the approval process for 13 M2 freeway projects. 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 and the United States Fish and Wildlife Service (Wildlife Agencies) in 2017. Consistent with the Conservation Plan, OCTA has purchased seven conservation properties (Preserves) and funded 12 habitat restoration projects, depicted in Attachment A. An endowment

was established for the long-term management of the Preserves. In a parallel process, the United States Army Corps of Engineers (ACOE) and the State Water Resources Control Board (SWRCB) have also established a framework to expedite the regulatory permitting process.

The development of the Conservation Plan and subsequent purchase of these Preserves and the restoration projects has largely met the intent of the EMP, and the mitigation needs of the M2 freeway projects. Many of the restoration projects are close to or have obtained approvals from the Wildlife Agencies.

Discussion

2019 Conservation Plan Annual Report

As a commitment of the Conservation Plan, OCTA is required to prepare an annual report on the implementation processes. The executive summary for the 2019 Conservation Plan Annual Report (Annual Report) is included as Attachment B. The complete Annual Report is available on the OCTA website at <http://www.octa.net/About-OC-Go/OC-Go-Environmental-Programs/Preserve-Management/>. This Annual Report includes the tracking of biological impacts associated with covered freeway improvement projects, other management and monitoring activities on the Preserves, status and activities on the Preserves, progress of the restoration projects, and additional plan administration and public outreach activities. This Annual Report documents that OCTA's activities between January 1, 2019 and December 31, 2019, comply and are on target with the Conservation Plan commitments. OCTA will continue its efforts to complete the required objectives in a timely manner. The Annual Report was reviewed and approved by the Wildlife Agencies, provided to the EOC, and is available for public review.

OCTA Preserve Fire Management Plans

As required by the Conservation Plan, OCTA began developing fire management plans (Plan) for the Preserves in 2018. Each preserve will have its own separate Plan. The first Plan (Silverado Chaparral Preserve) has been drafted and approved by Orange County Fire Authority. OCTA is currently working with the Wildlife Agencies to obtain their final approval, which will be key to the streamlined development of additional Plans. The Wildlife Agencies are reviewing the Plans to ensure that they are consistent with the Conservation Plan objectives. It is anticipated that all Plans will be completed in 2020, then shared with the EOC and stakeholders.

OCTA Pacific Horizon Preserve Habitat Impacts

Southern California Edison (SCE) contractors cut an unauthorized trail at the OCTA-owned Pacific Horizon Preserve (Attachment C) that is located within the City of Laguna Beach. The contractor was performing maintenance in response to California Public Resources Code 4292. This code requires the maintenance of a ten-foot radius firebreak around SCE-owned utility poles; however, the clearings exceeded the requirements and affected the protected habitat. The trail was cut through habitat on the Preserve and continues down into the County of Orange's Aliso and Wood Canyon Wilderness Park. OCTA has been coordinating with SCE, OC Parks, the Wildlife Agencies, and the California Coastal Commission to remedy this issue. SCE has agreed to repair the damage and work is underway. It is anticipated that coordination and work will continue through 2021 to complete all the needed repairs.

Laguna Canyon Foundation (LCF) Aliso Creek Restoration Project

The LCF Aliso Creek Restoration Project was approved for funding by the Board as a restoration project in 2012. This project was originally intended to satisfy the Conservation Plan mitigation requirements, addressing the restoration needs of the Wildlife Agencies. In addition, benefits to specific watersheds were also considered to address the SWRCB and the ACOE (regulatory agencies) M2 freeway project mitigation needs. The regulatory agencies had additional restoration specific requirements that were above and beyond the needs of the Wildlife Agencies. This regulatory permitting process is a separate but parallel process to the Conservation Plan and discussed further below.

The five-year monitoring report for the Aliso Creek Restoration Project was recently completed and documented that it met or exceeded its required success criteria. However, cost increases that attributed to a higher level of effort (not originally anticipated) to meet the ACOE criteria have occurred. Most of the additional costs (approximately 80 percent) is due to additional level of effort. Specifically, an increased project monitoring timeframe (from five to ten years). Other items that warranted the budget adjustment include longer than assumed time needed to review the restoration plan, coordination with the previously proposed ACOE Aliso Creek Mainstem Project, and additional surveys and avoidance methods required by the ACOE. As a result of these additional requirements, LCF is requesting \$275,000 to cover these increased costs. If approved by the Board, the maximum cumulative obligation would be \$1,482,100. It is important to note that the revised cost is considered reasonable when compared to other funded restoration projects with the same habitat type on a per acre basis. This request was reviewed and endorsed by the EOC on May 6, 2020. Additional information on this item is included in Attachment D.

Clean Water Act Permits Update

The M2 freeway projects are anticipated to impact jurisdictional waters, which will require mitigation. Before construction activities can occur, OCTA must obtain sections 401 and 404 Clean Water Act permits from the regulatory agencies. The Conservation Plan mitigation was also utilized to help obtain Clean Water Act permits. This has streamlined the project-level permitting processes. These efforts are the result of years of collaboration between OCTA and the regulatory agencies, and constitute another groundbreaking milestone for the M2 EMP.

Freeway Projects Update

The following upcoming projects are in construction and were able to benefit from the EMP:

- Project C (Interstate 5 Improvement Project from State Route 73 [SR-73] to El Toro Road); and
- Project K (Interstate 405 Improvement Project from SR-73 to the Los Angeles County line).

Without the EMP's established process, these projects could have incurred mitigation-related requirements and cost, resulting in project cost and schedule risks. A strong partnership has been forged through collaboration with the environmental community as exemplified by their participation on the EOC. Furthermore, there has been substantial reduction in risk from the threat of potential lawsuits because of these partnerships.

Endowment Fund

The Conservation Plan permits were issued by the Wildlife Agencies in mid-2017. As a result, the M2 environmental process has been streamlined, allowing OCTA to expedite the M2 freeway projects. The Conservation Plan requires the establishment of a \$34.5 million endowment to fund the long-term management of the Preserves. To date, OCTA has made four endowment deposits. Quarterly investment reports are provided to the Board, with the most recent one in June 2020. As of March 31, 2020, the balance was \$11,137,651. The balance is below the June 30, 2020 target of \$12,440,408, due to capital markets experiencing sharp declines resulting from the novel coronavirus (COVID-19) pandemic and the resulting adverse effects on economic activity. As of March 31, 2020, the California Community Foundation (CCF) endowment pool is down 14 percent for the first quarter of this year. In April, markets continued to experience various price swings with United States stocks ending the month positive, partially reversing any losses from March. Based on preliminary data, the CCF endowment pool was estimated to be up between six percent to seven percent in April. The CCF's Endowment Pool portfolio is well diversified, with

various asset classes that can handle changes in market volatility. Staff will continue to provide regular endowment updates to the Board, Finance and Administration Committee, and the EOC.

Summary

M2 includes an EMP that provides funding for programmatic mitigation to offset 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. The 2019 Conservation Plan Annual Report has been completed, and documents that OCTA is on track and in compliance with those commitments. Impacts were documented on one of the Preserves and are now being restored. Additional funding has been requested to offset unanticipated costs for the OCTA Aliso Creek Restoration Project. To maximize the benefits of the investments, OCTA has utilized some of that same mitigation to obtain Clean Water Act permits.

Attachments

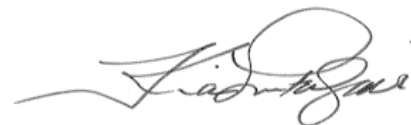
- A. OCTA Preserves and Funded Restoration Projects
- B. M2 Natural Community Conservation Plan/Habitat Conservation Plan – 2019 Annual Report
- C. OCTA Pacific Horizon Preserve Habitat Impacts 2020
- D. Aliso Creek Restoration Project Status Update

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