




July 1, 2024

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

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 funding for habitat restoration projects as part of the Natural Community Conservation Plan/Habitat Conservation Plan. A summary of recent Environmental Mitigation Program activities is 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 the biological resource impacts of 13 M2 freeway projects and streamline approval processes 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 and the United States Fish and Wildlife Service (collectively referred to as the 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. To date, six of the restoration projects have been completed and met the requirements of the Wildlife Agencies. Five additional OCTA funded projects are anticipated to be completed by the end of 2025.

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 and the State Water Resources Control Board (commonly referred to as the Regulatory Agencies) have also established a framework to expedite the permitting process.

The EMP accomplishments have largely met the intent of the program. These efforts are the result of years of positive collaboration between OCTA and the aforementioned agencies, stakeholders, and the public. The success of this program has been recognized at the regional and national level. Through these efforts, pre-negotiated permit terms have helped streamline project implementation and reduce 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. The established permits and partnerships have also enabled swift response to other OCTA project needs.

Discussion

OCTA Preserves Fire Management Plans Update

As required by the OCTA M2 Conservation Plan, fire management plans (Plans) were developed for each of the Preserves. A fire modeling analysis was conducted based on existing vegetation and conditions of the Preserves. The Plans were developed in collaboration with the Wildlife Agencies as well as the applicable responsible fire entity. These Plans provide guidelines for decision-making at all stages including fire prevention, pre-fire vegetation management, suppression activities, and post-fire responses that are compatible with conservation and stewardship responsibilities. In addition, specific maps were developed that highlight Preserve areas containing environmentally sensitive areas to avoid (when feasible) during fire suppression efforts. These Plans are posted on OCTA's website at <https://octa.net/programs-projects/programs/oc-go-measure-m/environmental-programs/environmental-mitigation-program/> and will be incorporated into the Preserve Resource Management Plan (updates are currently underway).

City of Costa Mesa (City) Fairview Park Restoration Project

In February 2011, OCTA awarded the City \$2 million for a 23-acre habitat restoration project within the City's Fairview Regional Park. This project is depicted in Attachment A and described in Attachment B. Approximately 13 acres of the proposed project have been implemented. Once the restoration is approved by the Wildlife Agencies and permanently protected, OCTA can utilize the restored habitat for mitigation as part of the OCTA M2 Conservation Plan. As shared in the December 2023 staff report, various project concerns have been discussed between the City, OCTA, and the Wildlife Agencies. The project is deficient of

approximately ten acres of the committed restoration habitat types. In addition, the City has yet to record a required conservation easement over the project area. If these project requirements are not completed, OCTA would be out of compliance with the Conservation Plan provisions and the City would be out of compliance with their contractual obligations with OCTA.

During the last few Environmental Oversight Committee (EOC) meetings, the City indicated that they will continue to work with the Wildlife Agencies, OCTA, and their consultant to identify a project area for the outstanding remaining acreage. Currently, the City is developing a final restoration plan for the remaining restoration acreage to be included as part of the OCTA-funded restoration project commitments. The restoration plan will require approvals from the EOC and the Board of Directors (Board), as well as the Wildlife Agencies, before implementation. The proposed project area is adjacent to the existing OCTA-funded project area within Fairview Park, as shown in Attachment C. The City currently has a tentative schedule to complete biological site surveys and finalize the restoration plan by the end of July 2024. Site implementation is anticipated to begin in fall 2024 and potentially continue through 2027-2032, depending on vegetation performance. Updates will continue to be provided to the Board and EOC.

Southern California Edison Coordination

As previously shared with the Board, biological impacts occurred at the Pacific Horizon (in the City of Laguna Beach) and Silverado Chaparral (in Silverado Canyon) Preserves as a result of Southern California Edison (SCE) utility powerline maintenance work (Attachment D). OCTA's goal is to ensure that the necessary maintenance needs of SCE are coordinated and completed while also minimizing impacts to protected Preserve habitat. OCTA and SCE are working cooperatively toward these goals. Agreements have been collaboratively developed to define utility access to all of the Preserves and identify expected procedures and information requirements related to any future SCE activities.

SCE does not have easements for the power poles or facilities at either of these Preserves. Consequently, surveys for the utility poles and facilities were completed. The surveys determined that while most of the poles are located on adjacent County-owned land, with one occurring on City of Laguna Beach property, the related access involves the Preserves. Survey information is necessary to develop easements and agreements for the poles and affiliated work areas near and within all of the Preserves. In early 2024, OCTA completed the legal description and depiction of all Preserve property lines and adjacent utilities. The survey documentation and all associated legal documents are currently under review for approval by SCE staff and legal counsel.

OCTA Live Oak Creek Encroachment

In 2023, American Land Title Association surveys were reviewed and, when necessary, additional surveys were conducted for all of the Preserves. During this process, it was discovered that an adjacent landowner made improvements to an unpermitted accessory structure at 19041 Live Oak Canyon Road which further encroached and impacted the Live Oak Creek Preserve. Figures and photos of the encroachment area are shown in Attachment E. OCTA did not approve these encroachments and is concerned about the resulting damage and risks. OCTA staff has discussed the matter with the County's Planning and Development team and have been informed that there are no existing permits for the accessory structure (or related recent improvements). In December 2023, OCTA sent a letter to the County Planning and Development team pertaining to the encroachment (Attachment E). OCTA has requested updates from the County and has been told that the case is still open and that they are working towards a resolution.

The recent outdoor expansion (and affiliated use) not only impacted the OCTA preserve habitat, but also greatly increased the fire risk to OCTA's Preserve and surrounding area. Specifically, OCTA is highly concerned about the fire risk associated with outdoor open flames within and adjacent to heavily vegetated areas. OCTA sent a separate letter to the property owner requesting they halt all outdoor activities and remove all encroaching improvements. OCTA is eager to resolve these issues through a process that respects property boundaries, restores the damaged habitat by the adjacent property owners, and ensures that future improvements on the adjacent property conform to the County's planning and permitting requirements. OCTA staff and legal counsel are currently coordinating with the landowner to seek removal of the encroachment and restoration of the disturbed habitat in order to remain in compliance with the terms of the Conservation Plan that supports OCTA's ability to deliver the M2 freeway improvements. Updates on this coordination will be shared with the Board, the Regional Transportation Planning Committee, and the EOC.

EMP Endowment Fund Investment Report

The Conservation Plan requires the establishment of an endowment to fund the long-term management of the Preserves. A separate quarterly investment report summarizing the status of the endowment was provided to the Finance and Administration (F&A) Committee and Board in June 2024. As of March 31, 2024, the endowment balance was \$28,374,041. Based on the performance to date, current projections indicate that OCTA still remains on track to meet the endowment target of \$46.2 million in fiscal year 2027-28 depending on future performance of the endowment fund. Staff will continue to assess market conditions and provide regular endowment updates to the Board, the F&A Committee, and the EOC.

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 those same mitigation assets to obtain Clean Water Act permits.

Attachments

- A. OCTA Preserves and Funded Restoration Projects
- B. OCTA M2 EMP Funded Restoration Projects Status Table
- C. OCTA Existing and Proposed Restoration Areas at Fairview Park
- D. Pacific Horizon/Southern California Edison Poles and Impacts
- E. Live Oak Creek Preserve Encroachment Figures and December 18, 2023 OCTA Letter to Orange County Development Services

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