

Environmental Oversight Committee Meeting Minutes

April 7, 2010

Committee Members Present:

Vice-Chair Melanie Schlotterbeck, Measure M Support Groups
Rose Coffin, Taxpayers Oversight Committee
Nancy Jimeno, California State University, Fullerton
Dan Silver, Endangered Habitats League
Jonathan Snyder, US Fish and Wildlife Services
Adam Probolsky, Probolsky Research
Debbie Townsend, California Wildlife Conservation Board
Erinn Wilson, CA Department of Fish and Game
Greg Winterbottom, OCTA Board of Directors

Committee Members Absent:

Chair Patricia Bates, OCTA Board of Directors
Veronica Chan, US Army Corps of Engineers
Sylvia Vega, Caltrans

Orange County Transportation Authority Staff Present:

Marissa Espino, Senior Community Relations Specialist
Janice Kadlec, Public Reporter
Dan Phu, Project Development Section Manager

Members of the Public

Jack D'Angelo, Trabuco Land Representative
Bob Stein, City of Newport Beach
Ed Sauls, The Sauls Company

1. Welcome

Vice-Chair Melanie Schlotterbeck opened the meeting at 10:05 a.m. and welcomed everyone. She asked Jonathan Snyder to lead the Pledge of Allegiance.

2. Approval of February and March 2010 Minutes

Vice-Chair Melanie Schlotterbeck asked if there were any additions or corrections to the February 24, and March 30, 2010 EOC Meeting Minutes.

Vice-Chair Schlotterbeck asked for the following correction in the March 30, 2010 minutes: page 4, under Committee Member Reports, second paragraph, first sentence: *"Melanie Schlotterbeck said ~~wilderness~~ public access is one of the listed co-benefits...."*

Adam Probolsky asked for a clarification of the February 24, 2010 minutes. He said there was a discussion toward the end of the meeting about including properties in

the appraisal process. Marissa Espino said she checked the tape of the meeting because she was asked to clarify what was said during the discussion. Director Bates did state in the motion on page 6, paragraph 7, as recorded in the minutes under "B", *"Take a second look at the Lavender Lane Property, Saddleback Meadows Property, and Their Properties to determine if they should be moved higher in the grouping"*. In moving these properties higher they may be considered for the appraisal process but it was not stated that way.

A motion was made by Greg Winterbottom and seconded by Adam Probolsky to approve the February 24 and March 30, 2010 EOC meeting minutes as corrected. The motion passed unanimously.

3. Property Acquisition Evaluation Status Update

Dan Phu presented the updated list of acquisition properties. The Group 1 properties were updated based on the latest willing seller status. Five properties were dropped to the bottom of the list because the owners were unwilling sellers. The EOC Working Group recommends including four more properties (MacPherson, Saddleback Meadows, Siena Summit, and Sky Ranch) with the concurrence of the T2020 to the list for the appraisal process. This would bring the Group 1 total to 14 properties that are recommended for further consideration and five properties that are no longer under consideration because the owners/representatives no longer wish to participate in the Measure M2 (M2) Environmental Mitigation Program. Six properties remain on the Group 2 list; four were withdrawn from the original ten and added to the bottom of the list because of unwilling sellers.

Public Comment

Jack D'Angelo, a Trabuco area land representative, encouraged inclusion of the six properties on the Group 2 list into the appraisal process. He said it would make sense to go ahead and appraise these properties now to have them ready because they have already gone through the biological evaluation process and there is still the risk of other properties dropping out because of unwilling sellers.

Greg Winterbottom asked what the cost of the property appraisals would be. Dan Phu said the appraisals would include elements such as Threat Assessment and Appraisal Review and would cost between \$10,000 and \$12,000 per property. Greg Winterbottom asked what the chances were of the Group 2 properties moving up on the list. Dan said the 14 properties being considered in Group 1 is a relatively good number of properties to consider given the amount of money available for the first round funding.

Jack D'Angelo said there has been a great deal of talk about grouping properties in regions. If the appraisal process moves forward with the six Group 2 properties, it would give the Committee a much better perspective in terms of aggregating the property and obtaining the best value for the dollar. When dealing with a \$27 million

program, spending another \$40,000 to \$50,000 to get a good perspective would be prudent money spent.

Dan Silver asked if the cost would be less to include the six appraisals into the appraisal contract at this time rather than pay more in the future. Dan Phu said the Request For Proposal (RFP) has not been posted yet and it would be hard to determine what the composition of the appraisal will be. It is a possibility the appraisals would cost more later on but in setting the Scope of Work (SOW) for this contract, a maximum of approximately 20 appraisals was set as the number in the SOW to enable the perspective bidders to price it correctly.

Erinn Wilson asked if a second appraisal would be needed for properties selected in the second tranche of funding. Dan Phu said appraisals are generally good for a six-month timeframe after that they may need to be re-appraised.

Vice-Chair Melanie Schlotterbeck said appraising properties in groups could offer an advantage if aligning with other grant opportunities and some of the research may not need to be repeated for each individual property.

Erinn Wilson asked how long an appraisal would take. Dan Phu said four to six weeks. Debbie Townsend said it can take four to six weeks to get the appraisal, but additional time will be needed for review. Dan said the RFP will include appraisal review services and any consultant who bids on the review services will not be allowed to bid on the other services.

Nancy Jimeno asked if it would take less time if the appraisals for Group 1 and 2 were done at the same time. Jonathan Snyder suggested it would take longer if six more properties were added to the list to be appraised. Nancy Jimeno asked if just one appraiser was going to be hired. Dan Phu said this is another detail that needed to be worked out – whether to hire a team of appraisers or individual firms sharing the work. OCTA is trying to streamline the process and find the best way to economize the scale and maximize efficiency.

Nancy Jimeno said this work needed to be done in as timely a manner as possible or more properties will drop off the list. It would make sense to use more than one appraiser and maybe get a different perspective from each. Dan Phu said the foundation of the entire program needed to be looked at; the properties were grouped for a reason. During the evaluations with Caltrans and the Wildlife Agencies the potential biological values of the properties were looked at, this is the reason for the groupings, and Group 1 presented the highest biological value. Not only the cost of the property needs to be looked at, but the biological value of the property should be considered along with the mitigation credits from the Wildlife Agencies. Nancy Jimeno said this makes sense but if it costs too much - it costs too much.

Erinn Wilson asked for a clarification of the time schedule. Dan Phu said once the RFP has been released it will take four to six weeks before a contract is signed.

Adam Probolsky asked if it was necessary to designate the properties in the RFP. Dan Phu said perspective bidders need to be given an idea of what might be appraised; they need to know at least the geographic location. Adam asked if Jack D'Angelo could indicate the specific properties he would like included in the appraisal process. Jack D'Angelo said he did not have a specific list he was just asking for the six Group 2 properties to be included in the appraisal process.

Adam Probolsky asked if there is any downside to letting property owners paying for their own appraisal. Vice-Chair Melanie Schlotterbeck said there are two issues to this, 1) the mitigation value may be affected, and 2) the appearance of a fair and transparent process. In addition, she stated that in previous meetings Supervisor Bates had weighed in on the issue and did not support a pay to play approach. Dan Phu said all properties should be looked at on a level playing field by independent appraisers. At the end of the day it is about what is the maximum amount of mitigation credit OCTA would be able to obtain from the Wildlife Agencies while balancing the cost of the property.

Erinn Wilson said the properties were evaluated as a stand-alone property in that each property was evaluated biologically by itself, but in her opinion more credit may be obtained in building a reserve.

Adam Probolsky said he is not influenced by someone having money or not having money. Just because property is in Group 2 does not mean they are a great deal different in biological value from Group 1. As long as the process is going on he did not see a great deal of difference between the property owner paying for the appraisal or OCTA paying for the appraisal as long as the evaluation criterion does not change.

Nancy Jimeno said if a group of properties will connect the Natural Community Conservation Plan and receive more mitigation credits, it would make sense to think of them as a group and stop thinking of them as separate properties.

Erinn Wilson asked Debbie Townsend if it was normal procedure to accept appraisals paid for by the property owner. Debbie Townsend said they do accept appraisals by property owners but they prefer to see the grants to other state and federal entities and non-profit organizations come from them and not property owners. Nancy Jimeno said she has done non-property appraisals and there have always been certain standards that need to be met regardless of who pays for them. Adam Probolsky said in other instances the property owner would pay for an EIR and the government agency would facilitate it - he saw no difference.

Rose Coffin suggested they would be giving false hope to Group 2 properties. Even if half the properties in Group 1 withdraw there would still be a number of properties who would not be selected in Group 1. Adam Probolsky said he is not worried about

false hope; there are a number of property owners who would write a check for an appraisal just to stay in the game.

Dan Phu said this was discussed at the March 22 OCTA Board meeting and it was a policy decision by the Board not to take into consideration a property owner paying for the appraisal. Adam Probolsky asked if any action was taken. Dan Phu said no, but it was brought up at the Board Meeting and at the March 14, T2020. The consensus from both meetings was not to entertain offers of property owners paying for their own appraisal. Erinn Wilson asked why the Board considers this different from a property owner funding the property management. Dan Phu said part of this is getting deeper into the process and the issue with the property owner paying for the appraisal might be seen as buying their way up the list.

Greg Winterbottom said there seems a lot of agreement on the Board on this issue. The major issue for him is the mitigation program cannot fund all 14 properties in Group 1. It is not a good idea to spend money for appraisals of property which will only be good for six months on the chance most of the properties in Group 1 will fall off the list. Vice-Chair Melanie Schlotterbeck agreed. Because of the length of the process, the Group 1 properties may need new or updated appraisals before being funded. Also she believed this would need to be approved by the T2020 which would delay moving forward in the process.

A member of the public asked for a clarification on the appraisal and review time schedule. His understanding was the appraisals would not begin until August, appraisal review would not be complete until October, and then negotiation with property owners would begin. Dan Phu said it would take a little less time because the appraisal review services would already be hired and waiting to begin work. The member of the public said the second tranche starts in the next fiscal year. It seemed to him OCTA should start looking at how to pull funds forward to efficiently use all the information collected.

Vice-Chair Melanie Schlotterbeck said the EOC will have the ability to add on other properties once the appraisers are hired because of the way the RFP is written. There would not be the same delay as what is happening now. Dan Phu said because of the authority granted by the Board to EOC with T2020 approval, Group 1 properties can be moved up for consideration. Requests to move up Group 2 properties would still need to be approved by the Board and there could be some delay if this was to happen.

Dan Silver said the two options discussed are very good; get all the information at once is right but on the other hand it is reasonable to do it incrementally knowing additional information may be obtained very quickly if needed. It seems to him it would be best to go with the option of least delay. He felt the current approach is very fluid but he agreed with Erinn Wilson to not look at Group 1 just biologically but to look at both Groups in terms of adjacency and synergy.

Dan Phu clarified that the next tranche of funding will be available in fiscal year 2011-12, which begins in July 2011.

Vice-Chair Melanie Schlotterbeck said some excellent concerns have been brought to the table but in terms of Board direction and least delay the wisest course of action would be the recommended action as presented in the agenda to include the four remaining Group 1 properties for appraisal.

Ed Sauls, The Sauls Company, said appraisers have at least three levels of appraisals. The standard "yellow book" appraisal can run \$15,000 more or less but a market valuation appraisal can be obtained for considerably less. He recommended this approach be considered because there are 12 properties being considered in the Trabuco Canyon area which were evaluated individually but not collectively. If OCTA is looking for the best mitigation for the dollar and some of the property has unknown value the question of "What property is the best mitigation for the dollar?" cannot be answered. He suggested including the appraisals in the RFP and seeking clarification from the Board and T2020 while the RFP is on the street.

Dan Phu said Mr. Sauls suggestion is a good possibility but another Board question is ultimately the release of funds, because it is a sales tax program, is at the discretion of the Board. The Board needs to look at the entire County of Orange and not focus on one particular area. It is about balancing the policy decisions with the biological evaluations. M2 freeway projects are all over the County, the Board will have to consider mitigation efforts equitably throughout the County.

Ed Sauls said in Group 1 and 2 there are 12 properties in one area. Eight properties in this area are currently slated for appraisal; it would cost almost nothing to add some valuation to the other four properties. If the Committee decided to include all six Group 2 properties for market evaluation it would make sense. There was incorrect information given on some of the properties in the Virtual Tour and between the incorrect information and looking at the properties on an assembled basis it would help to see where the best mitigation dollars would be.

Vice-Chair Melanie Schlotterbeck said it is a very good point in terms of balancing mitigation dollars. The question is what responsibility is it of OCTA to do the entire assemblage in a specific area.

A motion was made by Greg Winterbottom and seconded by Rose Coffin to endorse the inclusion of the four remaining Group 1 properties for appraisal. The motion passed unanimously.

Dan Silver said the property tours will start very soon and on some of the properties it was indicated there are approved land use plans or other types of land use information available for the properties. These are critical factors for decision making and he would like to see these plans as part of the material for the tours. Dan Phu said he will contact the property owners/representatives and get the information but it

will depend on the ability of the property owners to provide the information in a timely manner.

4. Restoration Proposal Preliminary Results

Dan Phu reported on the Property Restoration Criteria: Biological Factors Preliminary Results which included a ranking of the proposals and a map of where the areas were in Orange County. The restoration proposals are based solely on the biological criteria and may change when non-biological factors are added. The restoration proposals are ranked in four groups, with Groups 1 and 2 recommended for further consideration. Jonathan Snyder reviewed each proposal in Group 1 and 2 with the EOC.

Public Comment

Bob Stein, from the City of Newport Beach clarified some information about the Upper Buck Gully property. The total restoration request of \$867,000 is correct, but there are two tasks. One task (the second priority) is the active and passive restoration. He said the acreages are correct, the unit cost is correct, but the total cost would be \$367,000 with the weighted average at \$5,400 per acre. The first priority is to create barriers along Pelican Hole Road and Newport Coast Road to channel the bobcats and coyotes along a safer route than to cross Pelican Hole and Newport Coast. This is estimated to cost \$500,000.

Jonathan Snyder ended his presentation by saying one of the difficulties in the restoration proposal is they are not as well defined as the acquisition proposals. The Committee is continually getting new information and trying to update the evaluations.

Adam Probolsky asked what the next step in this process would be. Dan Phu said the next step will be to bring the restoration criteria matrices before the T2020 in May and ultimately to the Board. One of the discussions by the Board was they would like to see a comprehensive picture between the acquisition and restoration proposals and a look at any co-benefits (trails, connectors, etc.) that would enable public access and at the same time not compromise the intent of why a property should be acquired.

Vice-Chair Melanie Schlotterbeck asked if another letter needed to be sent to the restoration property owners asking if they wanted to participate in the restoration program. Marissa Espino said letters were sent to the restoration property owners at the same time a letter was sent to the acquisition property owners asking for participation in the program. She said she will revisit the restoration property list to make sure a response letter was returned or OCTA had been contacted.

A motion was made by Greg Winterbottom and seconded by Adam Probolsky to endorse the preliminary restoration evaluation results based on the Property Acquisition/Restoration/Management criteria matrices. The motion passed unanimously.

5. Public Comments

There were no further public comments.

6. Committee Member Reports

Greg Winterbottom said at the last Board Meeting there was a discussion on the date of title purchase on the acquisition properties. Dan Phu said one of the concerns raised by Director Moorlach was the possibility of a property currently owned by a private entity and during the environmental acquisition process was donated or sold to a non-profit organization. Should that non-profit turn around and sell to OCTA there was a concern a profit might be made. The Board asked if any property changed hands during the acquisition process it should be brought to their attention.

Adam Probolsky asked why anyone should care. Greg Winterbottom said the concern is it might be considered a gift of public funds. Dan Phu said the Board wants to be aware of anything like this occurring so they can make the appropriate decision.

Vice-Chair Melanie Schlotterbeck asked about the map putting the properties in perspective. Dan Phu said it is still being worked and should be ready for the property tours.

7. Next Meeting May 5, 2010

The next meeting of the EOC will be Wednesday, May 5, at 10 a.m.

8. Adjournment

The meeting adjourned at 11:40 a.m.