

# Measure M2 Environmental Oversight Committee

July 6, 2011

## Meeting Minutes

### Committee Members Present:

Chair Patricia Bates, OCTA Board of Directors  
Vice-Chair Melanie Schlotterbeck, Measure M Support Groups  
Nancy Jimeno, California State University, Fullerton  
James Kelly, Measure M2 Taxpayers Oversight Committee  
David Mayer, CA Department of Fish and Game  
Adam Probolsky, Probolsky Research  
Jonathan Snyder, US Fish and Wildlife Services  
Dan Silver, Endangered Habitats League  
Sylvia Vega, Caltrans  
Greg Winterbottom, OCTA Board of Directors

### Committee Members Absent:

Veronica Chan, US Army Corps of Engineers  
Chris Flynn, Caltrans  
Dave Means, California Wildlife Conservation Board

### Orange County Transportation Authority Staff Present:

Marissa Espino, Senior Community Relations Specialist  
Dan Phu, Project Development Section Manager  
Janice Kadlec, Public Reporter  
Monte Ward, Measure M2 Consultant

#### 1. Welcome

Chair Patricia Bates welcomed everyone to the meeting at 10 a.m. and asked Nancy Jimeno to lead the Pledge of Allegiance.

#### 2. Approval of May 18, 2011 Minutes

Chair Patricia Bates asked if there were any additions or corrections to the May 18, Environmental Oversight Committee (EOC) meeting minutes. There were no corrections requested. A motion was made by Chair Patricia Bates, seconded by Melanie Schlotterbeck, and passed unanimously to approve the May 18, 2011 EOC meeting minutes.

#### 3. Acquisition Properties

- A. Update Acquisition Properties List/Map: Marissa Espino said the Acquisition Properties list has been updated to reflect the properties' purchased and the list is now online for the public.
- B. Environmental Coalition Commemoration Event: Marissa Espino presented a video of the Environmental Coalition Commemoration Event which took place the previous month. Melanie Schlotterbeck thanked OCTA staff and directors for their efforts and for participating in the event.
- C. Appraisal Status (Aliso Canyon, Irvine-Mesa, and Shell-Aera): Dan Phu gave an update on the appraisal process for the Aliso Canyon, Irvine-Mesa, and Shell-Aera properties. Monte Ward said both the Irvine-Mesa and Shell-Aera properties are going to require a high degree of communication to come up with a reasonable methodology for appraisal. An appraisal is needed which will take into consideration, from OCTA's point of view, maintaining eligibility for federal funding and also recognize the unusual nature of each property.

Melanie Schlotterbeck asked if the meeting to determine the next round of properties would be in September 2011. Dan Phu said it would be either late September or early October 2011.

Dan Silver asked if there had been any changes to the other properties (particularly Tier 1) in terms of availability. Dan Phu said the property list remains unchanged; none of the other properties have dropped off. Monte Ward said OCTA is still in communication with some of the property owners and there may be adjustments or changes in status to the list in the future.

James Kelly said he still has questions and concerns regarding the appraisal methodology and the appraisal criteria. He questioned the use of having a single appraisal. He understood using a single appraisal is better from a cost standpoint. Not having two appraisals on the large properties is troublesome for him but if it is standard methodology maybe this is acceptable. He is concerned about the methodology and the highest and best use; these properties are not necessarily available to be used with the 'highest and best use' because of all the limitations. If OCTA is approaching these properties as 'highest and best use' it could see a price significantly greater than what might be available on just a negotiated transaction which is the object of the appraisal. The second piece of this is the tie in with the federal restrictions in terms of applying the appraisal on a fair market value. A fair market value is a discretionary term depending on the criteria used. He was not familiar with the history of the acquisition of properties in connection with programs funded, in part, by federal highway funds. Is our acquisition program, and the methodology that we follow, something that we have sought the advice and opinion of legal counsel in order to comply with appropriate procurement practices for these types of funds.

Monte Ward said he has raised two questions:

1. What is the methodology – how is the value being determined and what instructions are the appraisers being given to determine the value; and
2. How does the process of maintaining eligibility for obtaining federal funding effect how the offers are being made and how the appraisal and fair market value is being determined.

James Kelly said also the use of only a single appraisal. Monte Ward said there is a cost issue associated with doing additional appraisals. The single appraisal is looking at comparable values and another company is being used in this round of purchasing than was used in the previous round. The value of doing multiple appraisals was not seen. It matters more what instructions were given to the appraiser and what ‘comps’ were being used. As to the ‘highest and best use’, the appraisal is determined based on what is the potential use of the property and what restriction there might be. Monte Ward believed the appraisal instructions and following up on those with a reasonable appraisal process addresses most of, if not all, the concerns James Kelly addressed.

Monte Ward said, with respect to the federal constraints issue, based on eligibility for federal funding, what is needed is the ability to share with the property owner what the appraisal was, the determination of fair market value made through this process, and to have consistency in the methodology used for offers. These requirements can be met in situations where properties such as Shell-Aera or Irvine-Mesa differ in some respects or the appraisal process may differ in some respects than other properties. Basically it is being open about what the value is and being consistent in how the offers are structured. As far as the risk of over paying for the properties, the properties purchased so far have been purchased for less than comparable value for similar properties.

James Kelly said, as an example, if OCTA was able to obtain the Irvine-Mesa property for 50% of its appraised value, how would this jeopardize federal funding. Monte Ward said the discussion with the property owner was some amount less than the appraised value and in order to come to terms on this, the appraised value needed to be known. OCTA is not bound to offer the appraised value; they are bound to tell them what the appraised amount was and to be consistent in the way they offer for the properties. James Kelly said it was his understanding OCTA could not just pay the property owners’ what they want for the property but would be obligated to pay them something close to the appraised value. Monte Ward said not necessarily. James Kelly said then he misunderstood. Monte Ward said there is no obligation to make an offer at or near the appraised value of any property. OCTA has the flexibility to make an offer less than the appraised value but the appraised value needs to be determined in order to start the process and OCTA must be consistent on how offers on properties are made.

Chair Patricia Bates asked how much money is left in the first round of funding. Dan Phu said approximately \$10 million is available. He said the \$42 million originally available for the first round of funding as part of the Natural Community Conservation Plan (NCCP) is a Department of Fish and Game document and there is an endowment required for the management and maintenance of the properties in perpetuity. The NCCP requires the endowment be set upon completion of documents.

Melanie Schlotterbeck asked if the approximate \$10 million remaining include the endowments or have the endowments been taken off. Dan Phu said the endowments have been taken off – the \$10 million is for purchases.

- D. Action Recommendation: Dan Phu gave an overview of the logic and reasoning for selection of the three proposed Interim Land Managers.

A motion was made by Melanie Schlotterbeck, seconded by Adam Probolsky, and passed unanimously to: Endorse staff's recommendation to seek agreements with the following interim land managers:

- a. Ferber Ranch/ONeill Oaks: Orange County Parks
- b. Hayashi: State Parks
- c. Saddle Creek South: Transportation Corridor Agencies

Nancy Jimeno asked if the cluster of land being considered in Irvine-Mesa was contiguous. Dan Phu said there are some logical pieces that are contiguous and this will be discussed with the property owner regarding clustering the group.

Nancy Jimeno asked what happens to the money set aside for the NCCP endowment. Dan Phu said the money will be put into an interest bearing account managed by the OCTA Treasurer.

#### **4. Restoration Properties**

- A. Second Call for Restoration Projects: Dan Phu gave an update on the Second Call for Restoration Projects. There is approximately \$5 million available for this round of projects.

Chair Patricia Bates mentioned there was a very good turn-out for the last call for projects. Dan Phu agreed and said the last Restoration Call for Projects resulted in approximately 30 potential projects. Projects submitted in the previous Call for Projects may remain on the list without resubmitting unless they change their project. If the project is changed they must resubmit. Monte Ward said this is important because there were a number of projects unfunded in the first round. He characterized them as either not being quite ready and now they had time to

put more work into them, or their project could be done in segments or sequenced and they could now approach the project this way. In both of these cases, it would require modification to their original application.

Chair Patricia Bates said she was pleased to see there will be an event on July 14 for one of the restoration properties. It is good this part of the M2 Environmental Program received some recognition. Marissa Espino said the City of Costa Mesa is celebrating their Restoration Project with this event.

**5. Public Comments**

No one from the public chose to speak.

**6. Committee Member Reports**

Greg Winterbottom congratulated OCTA staff and the Environmental Coalition for the event that took place last month.

**7. Next Meeting – August 3**

The next meeting of the EOC will be Aug. 3 in the OCTA offices.

**8. Adjournment**

The meeting was adjourned 10:45 a.m.