

Environmental Oversight Committee Meeting Minutes

September 1, 2010

Committee Members Present:

Chair Patricia Bates, OCTA Board of Directors
Vice-Chair Melanie Schlotterbeck, Measure M Support Groups
Nancy Jimeno, California State University, Fullerton
Adam Probolsky, Probolsky Research
Dan Silver, Endangered Habitats League
Jonathan Snyder, US Fish and Wildlife Services - **Teleconference**
Sylvia Vega and Chris Flynn, Caltrans
Erinn Wilson, CA Department of Fish and Game

Committee Members Absent:

Veronica Chan, US Army Corps of Engineers
Greg Winterbottom, OCTA Board of Directors

Orange County Transportation Authority Staff Present:

Alison Army, Senior Transportation Analyst
Janice Kadlec, Public Reporter
Dan Phu, Project Development Section Manager
Monte Ward, OCTA Consultant

Members of the Public

Mike O'Connell, Irvine Ranch Conservancy

1. Welcome

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

2. Approval of July 2010 Minutes

Chair Patricia Bates asked if there were any additions or corrections to the August 4, 2010 Environmental Oversight Committee (EOC) meeting minutes. There were no additions or corrections. A motion was made by Melanie Schlotterbeck and seconded by Nancy Jimeno to approve the August 4, 2010 EOC meeting minutes as presented. The motion passed unanimously.

3. Draft Restoration Funding Guidelines

Monte Ward said the Draft Restoration Funding Guidelines (Guidelines) along with the recommendations on funding defined for the EOC, the OCTA Board of Directors (Board), and particularly the people applying for restoration what will be expected of them in the process. There will also be a follow-up once the funds are allocated with

a specific agreement for each applicant on what will be expected of them. The Guidelines provide a framework for this process.

Dan Phu said the Guidelines are really meant as a starting point for the project sponsor to gain a better understanding of what the expectations are. OCTA is very flexible as far as discussing with the various project sponsors the uniqueness of their project and how to customize their projects to meet the Guidelines.

Alison Army gave an overview of the Guidelines and highlighted specific important areas.

Chair Patricia Bates asked if during the creation of the Draft Guidelines were there any overriding or contentious issues discussed. The Working Group indicated there were none. Monte Ward said he would characterize the outlook of the Working Group and others as yes these are Guidelines but each project has its own characteristics and there will be a plan and agreement with each project sponsor which fits their situation. The Guidelines should be treated as guidelines and not a rule making process.

Melanie Schlotterbeck asked in terms of where the flexibility lies, who has the ultimate say of what is acceptable in terms how long something is monitored. Is this something OCTA, Caltrans, and the other resource agencies would have to agree to in the Restoration Plan? Monte Ward said yes.

Sylvia Vega questioned Guideline 7.1 – *“Prior to sign off, the Project Sponsor will place a conservation easement,…”* Caltrans usually needs this conservation easement prior to doing the work. Erinn Wilson said a ‘conservation easement’ placed on a restoration site typically would not need a permit until later. Monte Ward said funds will be awarded hopefully before the end of the year. As indicated in the Guidelines the conservation status of the land and the property needed to be known before the restoration project begins. It would not be feasible or practical to require the conservation easement to be in place before the end of the year for the award of funding. Sylvia Vega said if it takes a number of years to restore, this would be a big investment. Monte said this is correct but through the Restoration Plan and Funding Agreement it is clear this is part of the process and needs to be completed.

Dan Silver said he would like to begin a discussion on larger funding issues. He said Guideline 1.2 stated *“With a current allocation goal of 80 percent of funds for acquisition and 20 percent for restoration over the life of the freeway mitigation program, the first tranche of funding will yield approximately \$5.5 million towards restoration projects.”* He said this is a correct statement but the 80/20 split is envisioned over the life of the program. He would like to be convinced that 80/20 is the right split for the first or second tranche. There may be opportunities to take advantage of something even if it means a different split of funds in the first tranche. He would not like to be held to these arbitrary figures. Monte Ward said he and Dan

Phu have brought this issue to the T2020 Committee and they were told to keep it at 80/20 for the first cycle. Monte Ward said the policy decision has not been made for the second cycle of funding. He believes Dan Silver is raising a good point but staff was unsuccessful to change this at the policy level. Chair Patricia Bates said it is safe to say the dialog will continue in this area.

Melanie Schlotterbeck asked Erinn Wilson if only the area restored would need a conservation easement. Erinn Wilson said yes, only the part receiving mitigation credit would need the easement. Also it would not need to be a conservation easement it could be some other mechanism. Melanie Schlotterbeck asked if in the case of a park could it be in the General Plan. Erinn Wilson said it would need to be a stronger mechanism than that. She said the point of requiring a conservation easement after restoration takes place is a conservation easement takes very long time to obtain and as Monte Ward indicated the money would be awarded before the end of the year. Melanie Schlotterbeck asked who would hold the easement. Erinn Wilson said the property management or another third party entity. Jonathan Snyder said as part of getting someone to hold the easement, deed restrictions with a third party beneficiary cannot be used.

Melanie Schlotterbeck asked if there should be a time limit for the easement. Monte Ward said given the duration of the projects – five to ten years – this should not be a problem.

Adam Probolsky asked what is the mechanism used when a landowner takes the money and agrees to actively pursue the easement. Dan Phu said there will be some kind of Grants Agreement similar to a cooperative agreement mechanism which would provide OCTA with a legal tool. Adam Probolsky said if the project sponsor did not perform as promised they would be in violation of contract. What is OCTA's recourse? Dan Phu said there are corrective actions defined in the Guidelines. Adam Probolsky asked what the penalty was for not putting in an easement on the property. Monte Ward said in the most extreme cases the contract and Grants Agreement would come into play and the legal issues associated with them. Also within the Measure M2 Ordinance there is a provision regarding the misuse of funds. If an eligible government jurisdiction is involved they stand to lose all Measure M project money for a considerable time.

Nancy Jimeno questioned the language Item 7 – *“Project Sponsor(s) shall document the site-specific conservation mechanisms and long-term land management tasks and costs.”* Is OCTA saying before sign-offs some mechanism needs to be in place or the Grant money will be refused? Dan Phu said OCTA needs to be assured in the long term of the survivorship of the site. OCTA is flexible with the mechanism but the bottom line is they want to be assured the site is protected for the next ten to fifteen years. Erinn Wilson said there needs to be some assurances for long-term management – it does not have to be an endowment. The Wildlife Agencies do not

care how it gets funded – with M2 money or with some other money just as long as there are assurances in the long run.

Melanie Schlotterbeck asked for the following correction to the Restoration Funding Guidelines. Item 2.1 on Page 7, second paragraph: “*The protection status of the land shall also be provided including any documentation indicating the ~~land owner~~ **project sponsor** has permission to restore habitat with the appropriate conservation easement or deed restrictions*”.

Public Comment

Mike O’Connell addressed the EOC and complimented staff on the thoroughness of the Restoration Guidelines. It did an outstanding job of addressing the breadth of the different mythologies and opportunities which may exist within restoration. This was a very good job of setting up a framework which will allow success of the different properties.

Mike O’Connell questioned whether the detailed implementation plan considered part of the proposal or part of the project. He questioned this because there may be projects sponsors which would find it financially difficult to produce this detailed plan without having advance funding. Monte Ward said the detailed implementation plan could be part of the project.

A motion was made by Melanie Schlotterbeck recommending approval of the draft Restoration Funding Guidelines with her correction in Item 2.1. Nancy Jimeno seconded the motion. The motion passed unanimously.

4. Restoration Funding Recommendation

Dan Phu gave an overview of the Restoration Funding Recommendation. Six Primary Group projects from the total of eleven projects in Groups 1 and 2 are being recommended for funding. Three other projects from the original eleven were designated as Secondary Group (or “Contingency”) projects and will be funded if any of the Primary Group projects fall out. The projects were evaluated based on impacts tied back to the M2 freeway projects and the watershed benefits. Another consideration was whether the projects would be “shovel ready” by spring of 2011. Dan Phu went over the list of six Primary Group and three Secondary Group projects along with the reasons for selection of these projects and some of the price negotiations which went into the selections. Dan Phu said upon recommendation of the EOC this item will go to the T2020 Committee for approval on September 20 and the OCTA Board for approval on September 27.

Nancy Jimeno noted the Orange County Great Park was not on the list to be funded. Monte Ward said staff spent a great deal of time with them. They had a very complex proposal and because of the complexity the timing was found not to be ideal for this

cycle. The project still has some merit and can proceed at a future date with some additional work.

Melanie Schlotterbeck said if the Board approves the projects this month the project sponsors will be spending time and money coming up with their Restoration Plans during the next three months. How will OCTA accommodate them fitting into the 20 percent of money allotted for this tranche? Monte Ward said the policy direction is to do a 80/20 split of the money available for the first tranche of funding. No policy directions have been given for the second tranche of money.

Erinn Wilson observed many of the projects are large and will be completed over a period of time. Is there an opportunity to phase the funding? Monte Ward said this could be done but from OCTA's perspective they do not make a funding commitment without appropriating the funds and preserving them for that purpose. Erinn Wilson asked if they could borrow back from the next tranche of funding. Monte Ward said this would get into the policy discussion of what the split of funds would be for the next cycle. If the EOC wants to raise the issue of revisiting the 80/20 split for the first cycle of funding with a majority vote this can go forward. His advice is there would not be a great deal of success with this. A better option would be to look at the current acquisition process and appraisals and look at how the second tranche of funding will be handled.

Dan Silver said as an example, Fairview Park in Costa Mesa is public land and not going anywhere. The \$2 million for this project could be split with \$1 million for the first tranche and \$1 million for the second tranche. From his point of view the window for acquisitions is much more imperative. Why get into decision making with the Board when it is unknown if this is a problem; the appraisals have not been seen yet. He was of the opinion that we should not lock in the 80/20 split when no one knows what opportunities will come up. He would like to move forward with a tentative recommendation and reserve the ability to revisit when the final acquisition packages come before the Committee. This is a recommendation and the T2020 doesn't have to listen to it but he would feel better if it was made.

Monte Ward said he is concerned this would delay the commitment of funds for restoration based on when the appraisals are delivered. This would cause project sponsors to then delay their activities on the projects. The previous target was for spring for the restoration projects.

Sylvia Vega said she agreed with Dan Silver but Caltrans has freeway projects going forward which Caltrans is looking for mitigation credit relief. She sees restoration projects in the recommendation which will give this mitigation credit relief. It's a long road and if some of the restoration projects are delayed, the freeway projects could potentially be delayed.

Chair Patricia Bates said the OCTA Board is concerned about this also. The whole purpose of the M2 Environmental Mitigation is to ensure early delivery of projects. The EOC can certainly send concerns to the T2020 and have them discuss it. Chair Bates said she knows firsthand that getting Caltrans approvals for mitigation is of primary concern for the Board. The EOC could ask the T2020 Committee for their input as to where a couple of million dollars could be obtained if needed for acquisition.

Dan Silver said he does not believe a delay of a month would make much difference. He asked if mitigation credit can be phased over a period of time. Erinn Wilson said it doesn't matter where the funding comes from, if there is a project where \$2 million is allocated for the life of the project the \$2 million will not be spent up front. She suggested taking the \$1 million in reporting and monitoring for years 2, 3, 4, and 5 and put it off so the money is available to spend this year. Monte Ward said OCTA can handle the cash flow issue but from an appropriations aspect the money would have to be committed.

Monte Ward suggested the following recommendation clarification for adoption: The EOC supports the recommendation of funding for restoration projects as presented. Concurrently, the EOC, T2020 Committee, and the Board are also considering property acquisitions. The EOC urges the T2020 and the Board to remain open to creative solutions to maximize the funding acquisition opportunities without compromising the commitment to the restoration projects.

Dan Silver said it made sense to him to look at the dispersal of the first tranche and second tranche. Merge these two tranches, look at it as a package deal, and find out what the best allocation is.

Jonathan Snyder suggested since it is getting closer to the rainy season, it might be helpful to discuss with the project sponsors what are the timeframes they would need the money to make a meaningful start in restoration planting.

Chair Patricia Bates said she suggests asking the T2020 for their input based on the EOC's concerns. She believes the T2020 would be sensitive to not losing an opportunity for acquisition over a rigid funding schedule.

Melanie Schlotterbeck said when the M2 Mitigation Program was formed the environmental groups agreed to acquisition, restoration, and management. She feels the EOC is sending a mixed message if they say "Yes we approve the Restoration Projects with the caveat that we may need money later because they found something else more important". Considering the amount of time the project sponsors have invested, it is not fair to them.

Dan Silver said there are freeway projects that need to be assured of mitigation credits and these projects are wetland riparian. He suggested moving these projects forward and holding back on the other projects which are not so time sensitive.

Chair Patricia Bates asked Monte Ward and Dan Phu to talk to the T2020 and share the EOC's input. He said he could certainly do this but the wording of the recommendation is important.

Adam Probolsky said he liked Monte Ward's previously suggested recommendation but he thought the caveat should be "not at the expense of restoration projects now". He is in favor if there is some nexus for moving around dollars to do more with the acquisition. He does not think anything should be said to the T2020 or the Board that says the EOC is okay with making any decision at the expense of restoration.

Nancy Jimeno asked if higher mitigation assurances were given for restoration versus acquisition. Erinn Wilson said depending on the impact, for example riparian credits for wetlands get higher credits for restoration.

A motion was made by Erinn Wilson and seconded by Adam Probolsky for the following recommendation: The EOC supports the recommendation of funding for the restoration projects as indicated in the report. Currently the Committee and the Board are considering acquisitions. The Committee urges the Board to remain open to creative solutions to maximize the funding of acquisition opportunities without compromising the commitment to the restoration projects. The motion passed unanimously.

Dan Silver suggested adding cash flow basis.

Melanie Schlotterbeck said she is reluctant to say they will pull from tranche two without addressing the issue of projects that did not make into the first funding or that wanted to be reconsidered in the second round.

Dan Silver said he supports the motion.

5. Public Comments

Mike O'Connell said as a project proponent, the issue about the certainty of the projects is important. All money will not be spent in the first year. The project sponsors just need to know the project is committed to; the funding is appropriated; and it will come in over the life of the project.

Nancy Jimeno asked about the seasonal issues. Mike O'Connell said they are already three months behind. They are already doing things out of their own pocket to make sure they are ready to go when the funds are released.

6. Committee Member Reports

There were no reports from Committee Members.

7. Next Meeting – Wednesday, October 6, 2010

The next meeting of the EOC will be Wednesday, October 6, at 10:00 a.m.

8. Adjournment

The motion adjourned at 11:15 a.m.