



## ***Minutes***

### ***Measure M2 Environmental Oversight Committee***

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#### **Committee Members**

*Lisa Bartlett, Chairman  
Melanie Schlotterbeck, Vice Chair  
Chris Flynn, Caltrans District 12  
Brian Goodell, OCTA Board of Directors  
Veronica Li, US Army Corp of Engineers  
David Mayer, CA Dept. of Fish & Wildlife  
Derek McGregor, DMc Engineering  
Bev Perry, Civic Engagement Consultant  
Dan Silver, Endangered Habitats League  
Jonathan Snyder, US Fish & Wildlife*

*Orange County Transportation Authority  
Via Teleconference  
Wednesday, August 4, 2021 at 2:30pm*

#### **Member(s) Absent**

*John Walsh, CA Wildlife Conservation Board  
Vacant, Taxpayers Oversight Committee*

#### **1. Welcome**

Chair Lisa Bartlett called the Environmental Oversight Committee (EOC) meeting to order. Chair Bartlett went over meeting protocols and asked Marissa Espino to take roll call attendance.

#### **2. Pledge of Allegiance**

Chair Lisa Bartlett asked Brian Goodell to lead the Pledge of Allegiance.

#### **3. Approval of February 3, 2021 Minutes**

Chairman Lisa Bartlett asked if there are any additions or corrections to the February 3, 2021, EOC minutes. Vice Chair Melanie Schlotterbeck said under Item 5 Fire Updates the third line says together the fires burned over 33 acres, it should be over 34,000 acres. She asked OCTA to clarify because it could be referring to the OCTA portion. Marissa Espino said staff will re-listen to the recording and clarify the information.

*A motion was made by Vice Chair Melanie Schlotterbeck, seconded by Brian Goodell and passed unanimously to approve the August 5, 2020, EOC meeting minutes with corrections.*

#### **4. OCTA Conservation Plan Annual Report**

Lesley Hill presented the M2 Natural Community Conservation Plan (NCCP)/Habitat Conservation Plan (HCP), otherwise known as the Conservation Plan, Third Annual Report. This report is for the calendar year of 2020. Lesley talked about the background of the Plan, the components of the Environmental Mitigation Program, the Preserves and Restoration Projects, and Conservation Plan Annual Report overview. She said currently there are three freeway projects in the construction phase and there were no consistency determinations in 2020. Lesley talked about the tracking of impacts from covered activities. Lesley provided a preserve update. She highlighted the work done on the Pacific Horizon restoration which is an OCTA owned preserve. Lesley provided an update on the Restoration Projects. OCTA has satisfied 12 out of the 13 covered species. She said in summary OCTA is meeting its commitments. <This presentation available upon request.>

#### **5. OCTA Preserves' Fire Management Plans Update**

Lesley Hill provided an update on the Fire Management Plans. She said OCTA is making progress on the drafts. All the fire modeling is done and quite a bit of work has been done on the environmentally sensitive lands map. Lesley said once these are finalized staff will bring a report back to the EOC.

#### **6. City Parcel Restoration Project Update**

Dan Phu provided an update on the City Parcel Restoration Project which is one of the 12 habitat restoration projects that OCTA has funded. This is a 53-acre project located in the City of San Juan Capistrano which was funded in 2011. The project was completed in 2018. In 2013, there was a restrictive covenant (RC) that was placed on the property which is a provision of all habitat restoration projects that it would never change the disposition of the lands. Dan said in late June 2021, the City of San Juan Capistrano approached OCTA about a potential new development on the site adjacent to the conservation piece. The City is proposing access by extending Oso Road for a new development. The Orange County Fire Authority requires a secondary access to this new development, with 150-units or greater. This would require a 50-foot buffer to the west and east of the fire road which would impact about 1.4 acres to the west and approximately 0.7 acres to the east. He said this project has been completed and mitigation credits have been given for construction of freeway projects. Dan said on July 20, 2021 the San Juan Capistrano City Council took action to direct City staff to initiate an update to the general plan housing element and study the feasibility of this site as well as three other sites within the city limits. This site is called Oso Ranch and is considered to meet the Regional Housing Needs Assessment numbers. <This presentation available upon request.>

Discussions ensued regarding:

- Concerns about the impacts to the RC and how this type of action has the potential to be replicated.
- Not wanting to set a precedent for the EMP.
- How this impacts the NCCP/HCP.

- Strongly against making any modifications to NCCP/HCP.
- Concerns relative to connectivity for the wildlife corridor.
- The United States Fish and Wildlife Service (USFWS) would only consider a modification to the restrictive covenant if there is a clear conservation benefit. At this point, the agencies aren't aware of the conservation that may be affiliated with this future development area.
- When the USFWS enters into these kinds of agreements, they are addressing permanent impacts for permanent conservation. These legal site protection instruments are the best way for protection in perpetuity.
- Modifying the RC could involve substantial staff (Wildlife Agencies) time and money to make this type of modification.
- Adding a road through an area that has already been restored is a significant concern as it would affect the functionality of the site.
- The CA Department of Fish Wildlife (and attorneys) would be extremely reticent to open up something that was part of an NCCP measure.
- Needing additional information to understand this complex issue; Property owners and legal rights need to be understood.
- Access going through the adjacent developed property as opposed to the OCTA restoration area.
- From the Army Corps of Engineers point of view, there are significant permitting issues regarding the easement as this area is within a Special Area Management Plan.

Chair Lisa Bartlett requested staff get back to the city about the importance of some of the items that came up today.

Marissa Espino said several public comments were received regarding this agenda item. She said public comments received by OCTA were from Derek Ostensen on Aug. 3 at 6:18 a.m. The comment was emailed to the EOC members on Aug. 3 at 7:48 a.m. Public comments were received from the following people on Aug. 3: Benjamin Siegal, San Juan Capistrano City Manager at 11:44 a.m., Saddleback Valley Christian School board members C.J. Reuter, Cory Monette and Greg Foreman at 12:54 p.m. and Michael Wellborn, president of Friends of Harbors, Beaches and Parks, at 2:41 p.m. All comments were emailed at the same time to the EOC members on Aug. 3 at 2:59 p.m. A public comment was received from David Jackson, Fairmont Schools chair of the board, on Aug. 3 at 3:04 p.m. and the comment was emailed to EOC members on Aug. 3 at 4:35 p.m. On Aug. 4, OCTA received a second public comment from San Juan Capistrano City Manager Benjamin Siegal at 10:45 a.m. The comment was emailed to EOC members on Aug. 4 at 1:34 p.m.

## **7. Federal Highway Administration Case Study**

Dan Phu said recently the Federal Highway Administration (FHWA) interviewed OCTA regarding its success with the Freeway Environmental Mitigation Program. Lesley Hill provided a summary of the FHWA Case Study. She said they reached out to all the

stakeholders involved in OCTA's program. The FHWA listed some of the benefits of the program and looked at the challenges OCTA was able to overcome. Lesley shared the nine steps the FHWA looked at for the "Ego-Logical" approach and how OCTA dealt with each step. One of the areas OCTA could have done better was engaging all potential stakeholders in the early coordination. There were many "best practices" identified by the FHWA including great partnerships and dedicated staff. Lesley thanked the Army Corps of Engineers specifically because their staff at headquarters level had discussions with FHWA and got their attention to look into and perform this case study. She said OCTA looks forward to being a mentor to others wanting to do similar projects. <This presentation available upon request.>

#### **8. Hikes and Equestrian Rides**

Marissa Espino said docent-led hike and equestrian ride events are planned to return starting in September. Staff will continue to monitor the impacts of COVID-19 and determine if there is any new health agency guidance on public gatherings in the future. She said OCTA plans for a hike in September and November and three equestrian rides in September, November and December. Marissa said OCTA will begin promoting these in the next week or so.

#### **9. Public Comments**

Marisa Espino said there were no further comments other than the ones stated earlier in the meeting.

#### **10. Committee Member Reports**

Dan Silver said the Endangered Habitats League (EHL) and OCTA just testified at a hearing of the City of Brea Planning Commission regarding the approval of a proposed large car port adjacent to the Eagle Ridge Preserve. The project is moving rapidly. The City of Brea allowed the construction of a pad for the car port without considering the fact it is 30 feet away from the OCTA property. There is typically 100 feet of clearance that would have impacted the Eagle Ridge Preserve. Dan said he talked to the city planner and he said it is not an unusual practice. Both OCTA and EHL asked for a continuance and the Planning Commission did not have the courtesy of doing it and decided to come up with their own solution. Dan said he believes this is not a long-term solution and it should be revisited by the City Council. Dan said there is a good long-term solution, it is just a question about how to get to it. The fire department said their alternative compliance is acceptable which means it must consist of a non-combustible structure (which it is), sprinklers (which is required) and if they do that, they do not have to go on OCTA's property. He said the condition of approval doesn't close the door on future conflicts. It says you need to provide 100 feet of clearance or alternative compliance and it does not specify the alternative compliance. It leaves it open to the fire department to changing its mind or the landowner changing its mind and the solution needs to be locked in. A permanent solution of alternative compliance needs to be nailed down. The landowner is being helpful, but the city seemed to have missed this important step. Can we get to a revised condition that locks in a permanent

matter that is universally accepted as an acceptable way out of this conflict? This will be resolved one way or another within the next few weeks.

**11. Next Meeting – November 3, 2021**

Chairman Lisa Bartlett thanked all in attendance and said the next meeting is scheduled for November 3, 2021.

**12. Adjournment**

The meeting adjourned at 3:40 p.m.