



March 13, 2013

To: Finance and Administration Committee
From: Darrell Johnson, Chief Executive Officer
Subject: Performance Audit of the Measure M2 Environmental Mitigation Program

Overview

A performance audit of the Measure M2 Environmental Mitigation Program has been completed by Sjoberg Evashenk Consulting, Inc. Overall, Sjoberg Evashenk Consulting, Inc. found the Environmental Mitigation Program to be well-run, consistent, deliberative, and compliant with relevant laws, rules, ordinances, policies, and procedures.

Recommendation

Receive and file Orange County Transportation Authority Measure M2 Environmental Mitigation Program Performance Audit.

Background

Measure M2 and Environmental Mitigation Program

Measure M2 (M2) established an Environmental Mitigation Program (EMP) that provides for the allocation of at least five percent of net freeway program revenues for environmental mitigation of the thirteen M2 freeway improvement projects. The M2 freeway project impacts are addressed through a consolidated plan, rather than a piecemeal project-by-project effort. In exchange, the state and federal resources agencies, consisting of the California Department of Fish and Wildlife and the United States Fish and Wildlife Service, agreed to fast-track the permitting process and entered into a master agreement for the M2 freeway projects.

The EMP is spearheaded by the Environmental Oversight Committee, which is made up of Orange County Transportation Authority (OCTA) Board members and representatives from the California Department of Transportation, the resource agencies, environmental groups, and the public.

Performance Audit of Environmental Mitigation Program

The Fiscal Year 2012-13 Internal Audit Plan included a review of the EMP. The Internal Audit Department contracted with Sjoberg Evashenk Consulting, Inc. (Sjoberg Evashenk) to conduct the performance audit of the M2 EMP. The objective was to review the controls and processes for procurement, property appraisal and acquisition, and property maintenance, and to review compliance with the M2 Ordinance and related policies and procedures.

Discussion

Overall, Sjoberg Evashenk found the EMP program to be well-run, consistent, deliberative, and compliant with relevant laws, rules, ordinances, policies, and procedures.

Sjoberg Evashenk found that early efforts to accomplish several mitigation objectives created a well-structured and collaborative EMP. It also found that EMP revenues appear adequate to fund mitigation activities. Further, the EMP processes related to conservation needs-assessment, property acquisition, and restoration appeared consistent, vetted, and well-documented. It was also noted that organized and complete records of all program activity and transactions are maintained.

Sjoberg Evashenk did note a departure from standard OCTA competitive procurement practices in the first round of appraisals. This issue was corrected, and the second round of appraisals used a new on-call bench that was established through a competitive process.

Summary

A performance audit of the M2 EMP program has been completed by Sjoberg Evashenk. Sjoberg Evashenk found that the EMP program is well-run, consistent, deliberative, and compliant with relevant laws, rules, ordinances, policies, and procedures.

Attachment

- A. Orange County Transportation Authority Measure M2 Environmental Mitigation Program Performance Audit

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Measure M2 Environmental Mitigation Program Performance Audit

February 2013



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Executive Summary

In 2006, Orange County residents voted to extend an existing half-cent sales tax for an additional thirty years to fund transportation, transit, and environmental programs through the *Measure M2* Ordinance. Sjoberg Evashenk Consulting, working on behalf of the Orange County Transportation Authority (OCTA), completed a performance audit of the *Measure M2* Environmental Mitigation Program. The primary objective of this performance audit was to review the controls and processes for identifying, appraising, procuring, acquiring, and managing property related to environmental mitigation features of *Measure M2*, and to review compliance with the Ordinance and related OCTA policies and procedures.

Although only a few years have transpired since the adoption of the 30-year *Measure M2* extension, OCTA and its partners have already realized many accomplishments intended in the Environmental Mitigation Program (EMP). Overall, we found that the EMP is a well-run program designed and implemented to comprehensively mitigate the effects of construction associated with the 13 *Measure M2* freeway improvement projects by providing for habitat protection and resource preservation through conservation land acquisition, restoration, and management efforts. The EMP employs several best practices, including the execution of mitigation agreements with federal and state wildlife agencies to streamline freeway improvement permitting processes; establishing an active Environmental Oversight Committee (EOC) that effectively brings multiple stakeholders with diverse interests together to work collaboratively on environmental concerns in the region; utilization of science-based processes to evaluate and prioritize conservation lands; and achieving early acquisition of several important conservation lands through its Early Action Plan (EAP).

Our review found that early efforts to accomplish several mitigation objectives created a well-structured and collaborative EMP. For instance, an EAP was implemented to “jump start” funding of transportation improvement projects and EMP activities that resulted in the timely acquisition of conservation lands. Also, the implementation of the EOC facilitated collaboration between representatives from the OCTA, state and federal wildlife agencies, and several environmental organizations to develop and adopt a master environmental mitigation agreement and Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). This plan, now in the final development stages, effectively drives coordinated efforts for mitigating the adverse effects of transportation projects on sensitive species and habitats while streamlining freeway improvement project review and permitting processes.

Further, we found that EMP revenues appear more than adequate to fund the required mitigation activities. Specifically, 2012 updated program revenue estimates suggest that approximately \$317 million would be available for environmental mitigation efforts over the course of the 30-year program. In 2007, the OCTA’s Board of Directors (Board) approved an initial allocation totaling \$55 million for property acquisition and restoration activities. Through October 2012, approximately \$27.5 million in EMP expenditures have been funded through *Measure M2*—the vast majority (93 percent) of these expenditures associated with property acquisition costs. As such, only a fraction of the \$317 million has been spent; yet, according to OCTA, current

analyses suggest that the property acquisition and restoration efforts procured under the initial allocation is anticipated to be sufficient to meet all of the mitigation requirements.

Should the 2012 revenue projections come to fruition; hundreds of millions of dollars will remain earmarked for allocation for EMP. Although all costs of long-term property management have not yet been determined it is likely that a significant portion of the remaining balance for the EMP could be made available for other purposes. The Board will be tasked to determine how future allocations of sales tax revenues should be spent. According to OCTA staff and EOC members we spoke with, recommendations will be made to the Board for allocating future EMP sales tax revenues to assure proper funding of on-going land management and monitoring costs that will result from OCTA's responsibility to manage the acquired and restored lands in perpetuity consistent with a resource plan approved by the wildlife agencies.

Furthermore, our review found that the EMP processes related to conservation needs-assessment, property acquisition, and restoration appear consistent, vetted, and well documented. Specifically, OCTA staff and wildlife agencies developed a science-based needs-assessment and conservation inventory and corresponding system to consistently evaluate and prioritize potential conservation opportunities and lands based on biological criteria. We noted, however, a departure from normal OCTA practices in the first-round appraisal of lands for purchase under the EMP. Specifically, due to the lack of specific expertise, the EMP did not utilize OCTA's on-call list of appraisal companies and the resulting efforts to obtain the services of appraisers with conservation land expertise did not strictly follow OCTA's required competitive processes. However, we found that appraisals and second reviews were conducted on each of the properties by appraisal firms required to adhere to professional standards, the properties were valued utilizing consistent and reasonable methodologies, and the appraisal reviews appeared reasonable and complied with professional standards. During the second-round of appraisals, EMP used an updated on-call list that included appraisal companies with conservation expertise; this updated on-call list was established through a competitive process.

Lastly, we noted that the EMP maintains organized and complete records of all program activity and transactions. These well-kept files include detailed records of all evaluation and prioritization analyses as well as separate binders for each acquired property with information such as negotiation and offer processes, property deeds, title and escrow documents, purchase and sales agreements, expenditure support, appraisal documents, property management contracts, property photographs, and important correspondence.

Overall, we found the EMP program to be well run, consistent, deliberative, and compliant with relevant laws, rules, ordinances, policies, and procedures.

Objectives, Scope, and Methodology

Sjoberg Evashenk Consulting was hired by the Orange County Transportation Authority (OCTA) to conduct a performance audit of the *Measure M2 (M2)* Environmental Mitigation Program (EMP). The primary objective of this performance audit was to review the controls and processes for procurement, property appraisal and acquisition, and property maintenance, and to review compliance with the M2 Ordinance and related policies and procedures.

The OCTA set forth the following specific tasks and activities to be included in the performance audit:

1. Review the M2 Ordinance, the Master Environmental Mitigation and Resource Protection Plan and Agreement, and service contracts related to the environmental program. Provide a brief overview of program objectives and operations.
2. Interview the Chairman of the Finance and Administration Committee regarding program intent and approach.
3. Interview personnel responsible for program execution and oversight and evaluate procedures and controls in place for administration of the program and for ensuring compliance with the M2 Ordinance. Test as appropriate to determine controls are operating as intended.
4. Review procedures for procurement, property appraisal and acquisition, and property maintenance to determine they are consistent with the M2 Ordinance, Board-approved processes, and applicable OCTA policies and procedures.
5. Examine consultant contracts to ensure adequate safeguards are in place to avoid/identify conflicts of interest and that services were procured in compliance with OCTA policies and procedures.
6. Review scope of work provided for appraisal services and contract task orders issued for specific appraisals to ensure consultants were required to comply with appropriate standards and practices.
7. For a sample of 3 acquisitions: a. Review the appraisal and identify whether the documentation indicates that it was conducted in accordance with required standards and practices. b. Review the secondary, “review appraisal” and its findings. c. Review negotiation documentation and final price negotiated and determine compliance with Board-approved processes and limits.
8. Select a sample of expenditures from the general ledger detail and test to ensure expenditures are properly supported and in compliance with the M2 Ordinance and OCTA policies and procedures.

To meet the audit objectives, we performed the following procedures:

- ✓ Reviewed various key documents, including: M2 Ordinance, Master Environmental Mitigation and Resource Protection Plan and Agreement, EMP Memorandum of Agreement between OCTA and wildlife agencies, Natural Community Conservation Plan

(NCCP) and Habitat Conservation Plan (HCP), EMP status reports and discussion memos to decision makers, OCTA Board decisions, and other program guidance.

- ✓ Reviewed M2 provisions, Board processes, and policies, procedures, guidance, handbooks, manuals or other documents providing guidance for conducting the various activities of the EMP as well as for real property procurement, analysis, appraisal, and acquisition.
- ✓ Reviewed regional conservation plans and stakeholder involvement in developing plans, needs-assessments, and conservation land inventory.
- ✓ Analyzed guidance associated with evaluating and prioritizing conservation properties and projects.
- ✓ Analyzed financial data, including budgeted allocations and actual program expenditures related to acquisitions, restoration, management, and administration activities.
- ✓ Interviewed OCTA EMP program management and staff involved in the EMP as well as pertinent stakeholders including the Environmental Oversight Committee (EOC) Group Chairperson, EOC wildlife representative, and Chairman of the Finance and Administration Committee.
- ✓ Reviewed negotiation documentation and final price negotiated, determined compliance with Board-approved processes and limits, and compared actual land acquisitions acres and costs against estimated mitigation requirements.
- ✓ Reviewed three land acquisition appraisals and appraisal reviews to ensure they were conducted in accordance with required standards and practices.
- ✓ Examined appraisal consultant contracts to ensure adequate safeguards are in place to avoid/identify conflicts of interest and that services were procured in compliance with OCTA policies and procedures.
- ✓ Reviewed scope of work provided for appraisal services and contract task orders issued for specific appraisals to ensure consultants were required to comply with appropriate standards and practices.
- ✓ Tested a sample of expenditures from the general ledger detail to ensure expenditures are properly supported and in compliance with the M2 Ordinance and OCTA policies and procedures.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

To continue Orange County's investment in regional transportation improvement projects, in November 2006 voters approved an extension of the one-half cent sales tax increment for an additional 30 years to 2041. When *Measure M2 (M2)* was passed in 2006, an estimated \$11.3 billion in total net revenues¹ was projected to be collected over the 30-year life of the program and was to be allocated as follows for regional transportation improvements and upgrades:

- Freeways— 43 percent, or \$4.9 billion
- Streets and Roads— 32 percent, or \$3.6 billion
- Public Transit— 25 percent, or \$2.8 billion

In addition to the regional transportation improvements, *M2* also includes provisions to protect, preserve, and restore native habitats disturbed by the construction of 13 planned freeway projects. To accomplish this environmental mitigation requirement, *M2* requires that at least five percent of the net sales tax revenue allocated for freeway improvement projects be used to establish a comprehensive Environmental Mitigation Plan (EMP) that will secure the necessary permits from resource agencies to begin construction of the freeway projects in exchange for establishing a long-term management framework for conserving and restoring natural communities and habitats. The Orange County Transportation Authority (OCTA) Board of Directors (Board) is responsible for overseeing the successful implementation of an EMP that aligns the region's mitigation needs with available conservation opportunities; OCTA staff within the Planning Division are responsible for administering the EMP program. An EMP requires considerable cooperation and coordination among many stakeholders, including OCTA, California Department of Transportation (Caltrans), U.S. Fish and Wildlife Service, and the California Department of Fish and Game².

With an estimated \$317 million (based on 2012 estimates) in *M2* funding projected to be available over the next 30 years to support its environmental mitigation requirements, we found that early EMP efforts created a well-structured and adequately funded program where EMP activities, including needs-assessment, property acquisition, and restoration processes appear consistent, vetted, and well documented.

¹ Revenues net of environmental cleanup (water quality), taxpayer safeguards and audits, and administrative costs.

² California Department of Fish and Game changed its name to the California Department of Fish and Wildlife in January 2013.

Audit Results

Early EMP Efforts Appear to Have Created a Well-Structured and Collaborative Program

We found that OCTA has successfully created a well-structured and collaborative program based on the accomplishment of several early mitigation objectives. Specifically, the OCTA:

- Developed an Early Action Plan (EAP);
- Established an Environmental Oversight Committee (EOC);
- Implemented Master Agreements with Caltrans and the state and federal wildlife agencies; and
- Drafted a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

Early Action Plan (EAP)

In August 2007, the Board approved a five-year EAP to guide the implementation of *M2* and to “jump start” transportation improvement projects and EMP activities prior to the collection of the sales tax increment set to begin in April 2011. The EAP covered years 2007 through 2012 and included nine objectives related to starting construction of freeway projects, awarding funding for local traffic and transit projects, and completing a Master Agreement between OCTA and resource agencies detailing environmental mitigation freeway improvements, project permitting commitments, and mitigation funding. To fund the activities prior to the collection of *M2* revenue, the OCTA relied on its commercial paper program, which are short-term, low-interest loans in order to maintain cash flow for projects. As the 5-year EAP neared completion, OCTA began holding workshops in early 2012 to develop the M2020 Plan to outline projects and programs to be delivered through year 2020.

Environmental Oversight Committee

In October 2007, the Board established an Environmental Oversight Committee (EOC) to provide recommendations to the Board regarding the allocation of revenues for mitigation and to monitor the implementation of the Master Agreement between OCTA, the wildlife agencies, and Caltrans. The 12 member committee includes representatives from the OCTA Board, OCTA Taxpayers Oversight Committee, Caltrans, state and federal wildlife agencies, U.S. Army Corps of Engineers, and several organizations representing various environmental disciplines and interests. Currently, the EOC reports directly to the Board’s Executive Committee.

The EOC provides advice on the development and implementation of mitigation of freeway projects, including the following key items:

- Inventory and assessment of freeway impacts and mitigation opportunities,
- Review and input on funding opportunities, including M2 financing, matching funds, and grant funding, and
- Review and monitor implementation of the Master Agreement, including acquisitions, management, operations, and maintenance activities.

Master Environmental Mitigation Agreement

Prior to the allocation of any net sales tax revenues for mitigation of freeway projects, *M2* requires the development of a Master Environmental Mitigation and Resource Protection Plan and Agreement (Master Agreement) between OCTA, Caltrans, and the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game³ (DFG), collectively the “Wildlife Agencies.” The purpose of the Master Agreement was to design an EMP framework in which to build a comprehensive, rather than piecemeal, mitigation plan to provide habitat protection, wildlife corridors, and resource preservation in exchange for streamlined project review and permitting processes. *M2* required that the Master Agreement include the following key elements:

- Commitments by OCTA to provide for programmatic mitigation of freeway projects,
- Commitments by state and federal resource agencies to reduce project delays associated with permitting and streamline the permit process for freeway projects,
- Accounting process for mitigation obligations and credits that will document net environmental benefit from regional, programmatic mitigation, and
- Description of the specific mitigation actions and expenditures to be undertaken and a phasing, implementation and maintenance plan.

To comply with *M2* requirements and achieve the EAP’s EMP-related objectives, the EOC created a Master Agreement Working Group in February 2008 to begin developing recommendations for a Master Agreement that would establish the necessary framework to build a successful EMP. Through the efforts of the Master Agreement Working Group, the following key actions and activities were identified as necessary to be included in the Master Agreement:

- Defining the roles, responsibilities, and commitments of the agencies to mitigate the adverse effects as a result of construction of freeway improvement projects,
- Coordinating various agencies’ biological mitigation efforts through comprehensive mitigation activities (including land acquisition and restoration) for a collection of improvement projects rather than costly and inefficient project-by-project review and permitting processes,
- Identifying covered improvement projects and activities as well as preliminary conservation objectives and a preliminary list of impacted natural communities and species,
- Ensuring funding of mitigation activities is consistent with *M2*,
- Providing an accounting process to document the net environmental benefits from the plan in exchange for efficient project review and streamlined permit approval,
- Providing regulatory assurances for permitting projects that meet conservation plan criteria and providing clear expectations and regulatory predictability for the agencies carrying out covered mitigation activities, and

³ California Department of Fish and Game changed its name to the California Department of Fish and Wildlife in January 2013.

- Developing long-term habitat management and monitoring plans.

Additionally, the Master Agreement Working Group determined that the basis for the EMP framework should be a combined state NCCP and federal HCP, which is a regional conservation strategy to fully mitigate adverse effects to sensitive species and habitat through comprehensive and coordinated efforts. In July 2009, the EOC endorsed approval of the Master Agreement, which included a Memorandum of Agreement (MOA) and a Planning Agreement. The Board subsequently approved the agreements in November 2009⁴.

Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP)

In order to apply for permits from the wildlife agencies for the 13 freeway improvement projects, OCTA was required to prepare a NCCP/HCP. While still in draft form during audit fieldwork, OCTA's NCCP/HCP is designed to be a 40-year plan to estimate long-range potential environmental impacts of development activities and provide for comprehensive conservation and management of threatened or endangered species and lands. The purpose of the NCCP/HCP is to:

“...offset project-related impacts on threatened and endangered species and their habitat in a manner that protects and enhances ecological diversity and function in Orange County, and enhances the integrity and connectivity of the existing protected lands in Orange County.”

Upon execution of the Master Agreement, OCTA sought proposals from firms experienced in developing conservation plans and entered into a two-year agreement in June 2010 with a consultant to develop the NCCP/HCP for a fixed price of approximately \$1.5 million⁵. The scope of work included:

- Public Involvement and Outreach—providing regular communication through EOC meetings, holding public workshops, assisting with science advisor workshops, and maintaining project website.
- Biological Resources and Wetlands Data Inventory—identifying and inventorying biological, physiographic, ownership/land use/conservation status, and aerial imagery data layers related to biological resources and wetlands. Developing conservation program goals and compiling and updating endangered species/habitat lists and profiles.
- Conservation Strategies Development—defining conservation strategy elements, developing habitat credit assignment and acquisition/restoration prioritization tools, developing science-based monitoring and management plan, and preparing a conservation strategy plan.
- Assessment of Impacts and Level of Take—developing a complete list and full description of covered activities, which is primarily the construction of M2 freeway projects, identifying and assessing impacts associated with the covered activities, and evaluating the

⁴ The agreements were fully executed in January 2010.

⁵ The agreement had subsequently been amended to extend the scope of work (additional biological field study work) as well as the price (additional \$128,000) and term (through October 2013).

necessary level of take required related to the covered activities, and identifying necessary measures to mitigate and protect impacted communities and species.

- Economic Analysis of Conservation Funding Mechanism—estimating anticipated costs of the conservation plan and ensuring appropriate assumptions are used to develop costs to implement the plan, conduct management and monitoring activities, and acquire conservation land.
- Alternatives to Take Considered and Rejected—identifying alternatives to take of covered species, including a no project/no action alternative.
- Implementation Approach and Structure—describing the “who” and “how” of the plan, such as which existing or new organization will implement the conservation measures, the role of OCTA, stakeholders, and the public, and procedures to select properties for acquisition and/or restoration.

One of the key drivers for the EMP is the early implementation of the plans developed within the OCTA’s NCCP/HCP. We found that the development of OCTA’s NCCP/HCP appears to be consistent with the scope of work reflected in the agreement between OCTA and the consultant. Specifically, the draft plan describes how specific conservation actions undertaken by OCTA to acquire preserves, fund restoration projects, and implement avoidance and minimization measures will achieve a level of conservation that exceeds the required mitigation and results in a contribution to recovery of impacted species. Throughout the development of the plan many public presentations and meetings have included stakeholders and ensured communication of the progress and purpose of the NCCP/HCP.

Even though the NCCP/HCP is still in administrative draft form, OCTA appears to have accomplished the vast majority of conservation mitigation requirements through recent property acquisition and restoration activities. Acquisition and restoration activities completed prior to the approval of the NCCP/HCP (allowable per the EAP and executed Master Agreement) will be incorporated into the NCCP/HCP. For example, Table 1 reflects the September 2012 draft NCCP/HCP identification of natural communities land targets compared to OCTA acquisition and restoration activities to-date.

Table 1. Natural Communities Land Targets (in acres) Compared to Acquisition and Restoration Activities

Natural Communities (acres)	Plan Conservation Targets	Conservation Activities		Net Conservation
		Preserve Acquisitions	Restoration Projects	
Chaparral	29.6	304.1	4.3	278.8
Coniferous Forest	0.0	0.0	0.0	0.0
Grassland	360.7	69.2	101.9	-189.6
Riparian	34.5	9.3	137.7	112.5
Scrub	59.0	189.6	123.0	253.6
Water	0.1	0.0	1.0	1.0
Wet Meadows/Marsh	0.0	0.0	5.0	5.0
Woodland	11.9	313.4	28.1	329.6
Totals	495.6	885.5	401.0	790.9

Source: Orange County Transportation Authority (OCTA) M2 Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) Draft Report – September 2012

As illustrated in Table 1, the conservation of all natural communities types are substantially above their targets except for grasslands. According to OCTA, future acquisition and restoration efforts will focus on grasslands.

Once the NCCP/HCP is approved, OCTA will request permits from the wildlife agencies that will authorize impacts (“take”) to all covered species associated with a collection of activities and projects in exchange for execution of the approved conservation strategy to compensate for those impacts—all impacts and conservation activities must be in compliance with the NCCP/HCP. Additionally, the approved NCCP/HCP will provide OCTA assurances from the wildlife agencies that no further commitments of funds, land, or water will be required to address impacts on covered species beyond what is described in the NCCP/HCP. A draft NCCP/HCP is anticipated to be released for a 60-day public comment period in early 2013 and approved later in the year. Future EMP expenditures will focus on completing the remaining NCCP/HCP requirements and long-term property management of conserved and restored properties.

EMP Revenues Appear Adequate to Fund Required Mitigation Activities

M2 requires that at least five percent of the revenue allocated for freeway projects be utilized to mitigate the environmental impacts of the freeway improvements through acquisition, restoration and management of conservation land. When voters passed M2 in 2006, projections indicated that \$4.9 billion in sales tax revenue would be available for regional freeway improvement projects, of which five percent, or \$243.6 million, would be allocated for environmental mitigation. In 2012, sales tax revenue estimates, largely based on forecasts prepared by three

local universities⁶, were revised in nominal dollars to reflect that \$317 million would be available for environmental mitigation efforts over the course of the 30-year program.

As part of the 2007 EAP, the Board approved a total of \$55 million for property acquisition and restoration activities, as follows:

- Property Acquisitions (including land management)—\$42,000,000⁷
- Restoration—\$10,500,000
- NCCP/HCP and Other Planning—\$2,500,000

In July 2009, the Board adopted a policy to establish a goal of 80 percent of allocated funds to be utilized for property acquisition and 20 percent to be used for restoration activities over the life of the program. Our review finds that the initial program budget closely adheres to the allocation goal as approximately 76.4 percent of budgeted funds were allocated to acquisition activities. Since the Board's 80/20 goal does not consider other costs such as NCCP/HCP and other planning expenses, removing these other costs from the total allocation reveals that the acquisition/restoration allocation ratio is 80 percent acquisition to 20 percent restoration.

Under provisions of *M2*, prior to allocating funds for freeway mitigation, a Master Agreement must be executed between OCTA, Caltrans, and the wildlife agencies and the EOC be appointed to make recommendations for the allocation of mitigation funds and to monitor the implementation of the Master Agreement. As described earlier, the EOC was appointed by the Board in October 2007 and the Master Agreement was executed by all parties in January 2010. Apart from approximately \$50,000 in expenses to establish the Master Agreement, the EMP first began utilizing approved funding in August 2010—well after the required Master Agreement was executed.

Since *M2* sales tax revenues were not available until April 2011, funding of early environmental mitigation activities relied largely on revenue anticipation bonds, tax-exempt commercial paper loans, and a grant from the federal wildlife agency. As of October 31, 2012, of the \$55 million budget, OCTA has expended \$28,570,351, as follows:

- Property Acquisitions—\$25,847,028
- Restoration—\$1,345,609
- NCCP/HCP and Other Planning—1,377,714

Of the \$28,570,351 in EMP expenditures, \$1,032,272 was paid for through a federal wildlife agency grant—resulting in \$27,538,079 expenditures paid for with *M2* funding. Additionally, we found that EMP actual expenditures are reasonably consistent with the Board's 80/20 allocation goal between acquisition and restoration activities given the early focus on program acquisition activities.

⁶ University of California, Los Angeles, California State University, Fullerton, and Chapman University.

⁷ \$35 million for property acquisition related costs and \$7 million for long-term property management costs related to acquired properties.

Overall, as of the end of October 2012, the EMP has expended about 52 percent of the \$55 million allocation with the remaining approximate \$26 million to be utilized for additional property acquisitions, restoration activities, and land management services associated with the acquired and restored properties. As mentioned earlier, 2012 revenue estimates suggest that \$317 million would be available for environmental mitigation efforts over the course of the program; should these projections come to fruition, hundreds of millions of dollars will remain to be allocated. Because current analyses suggest that the property acquisition and restoration efforts procured under the initial allocation is anticipated to be sufficient to meet all of the mitigation requirements associated with the planned freeway improvement projects, the Board will be tasked to determine how future allocations of sales tax revenues should be spent. According to OCTA staff and EOC members we spoke with, recommendations will be made to the Board to allocate future EMP sales tax revenues for on-going land management and monitoring costs that will result from OCTA's responsibility to manage the acquired and restored lands in perpetuity consistent with a resource plan approved by the wildlife agencies.

EMP Conservation Needs-Assessment, Property Acquisition, and Restoration Processes Appear Consistent, Vetted, and Well Documented

The EMP developed a science-based needs-assessment and conservation inventory and corresponding system to evaluate and prioritize the identified potential conservation opportunities and lands based on biological criteria. Additionally, the EMP's acquisition and restoration processes appear consistent, vetted, and well documented across conservation properties.

Regional Conservation Inventory and Assessment

Since the EAP authorized the OCTA to "jump start" mitigation efforts, the EOC established the Impact and Mitigation Working Group in February 2008. This working group was charged with prioritizing the acquisition and restoration of potential conservation lands based on the potential impacts and environmental needs associated with the planned freeway improvement projects.

In early 2008, the EOC began drafting property acquisition, restoration, and management criteria to provide guidance in the evaluation and prioritization of resource value of potential conservation properties the EMP could acquire and/or restore. The criteria were developed based on biological mitigation potential and included the input of the EOC, OCTA, Caltrans, and wildlife agencies. For example, the property acquisition criteria included key elements such as:

- Aligns with impacted habitats,
- Conserves sensitive habitats,
- Considers property acreage (generally larger is better),
- Contains target species,
- Enhances natural land connectivity,
- Includes a cooperative landowner, and
- Includes support from the community.

The criteria also includes constraint considerations, such as:

- Cost,
- Neighboring land uses,
- Habitat fragmentation, and
- Hazardous conditions.

In September 2008, the Board approved the property acquisition, restoration, and management criteria.

At the same time the criteria to prioritize land acquisition and restoration activities was being developed, the Impact and Mitigation Working Group also began building an inventory of potential conservation lands that the EMP could acquire and/or restore. Their efforts included conducting a conservation assessment, utilizing conservation targets identified by local environmental organizations, and obtaining property nominations from property owners, environmental stakeholders, and other interested organizations.

In May 2009, the Conservation Biology Institute (CBI) was hired to conduct a conservation assessment of Orange County using science-based conservation principles and GIS mapping techniques to assist in prioritizing land acquisitions. The total contracted price including amendments, for this assessment was \$70,175. Specifically, the objectives of the assessment were to:

- Map the distribution of conservation values in Orange County;
- Identify areas where biological resources can be maintained over the long-term;
- Identify properties or groups of properties that support key conservation values; and
- Provide unbiased science-based tools for decision-making on conservation priorities.

The filtering process included focusing on natural lands with high conservation value in Orange County where linkages and buffers could be established. The assessment was to assist decision-makers in prioritizing conservation land for potential acquisition and restoration until a comprehensive NCCP/HCP was developed. The conservation assessment report was finalized in December 2009 and, according to the OCTA, the results of the assessment are being incorporated into the NCCP/HCP process, which was still in draft form during audit fieldwork.

The Impact and Mitigation Working Group also utilized information provided by the Green Vision Project to assist in building an inventory of possible conservation habitat sites. The Green Vision Project is a group of environmental organizations joined together forming a consolidated approach “to promote, protect, and enhance the harbors, beaches, parks, trails, open spaces, natural preserves, and historic sites in Orange County.” As part of the Green Vision Project, the group identified potential conservation lands for acquisition or restoration through mapping conservation target lands that were culturally significant. These efforts to identify potential conservation lands included consideration of a multitude of factors such whether the lands could mitigate certain endangered or threatened species and rare habitat types.

To increase the inventory of potential conservation sites and allow for public participation, the EOC directed OCTA staff to perform public outreach efforts to increase public awareness of the mitigation program and educate potential property owners on the EMP acquisition and restoration criteria and process. On December 17, 2008, OCTA sent out information packets to property managers, owners, local jurisdictions, and other interested parties and organizations describing the program (fact sheet and timeline) and OCTA's interest in seeking property nominations and proposals from the public. For instance, the OCTA held a public workshop on April 15, 2009 where the public was invited to provide presentations on property nominations—14 presentations were given.

As a result of the EOC's efforts to develop an inventory of potential conservation sites, over 100 sites were submitted by landowners, conservation groups, and local agencies for possible acquisition and/or restoration under the EMP. In the summer of 2009, the property acquisition and restoration criteria was converted into a set of evaluation matrices that a conservation site evaluation team (consisting of OCTA EMP staff, Caltrans, and wildlife agencies) used to independently score and prioritize each of the potential conservation properties identified. Through this process, 78 potential conservation sites were placed into one of four property acquisition priority groupings, with Groups 1 and 2 considered by the wildlife agencies to be the highest priority groups:

- Group 1—High quality habitat, heterogeneous habitat, very good connectivity/contiguity opportunities, larger sized properties, aligns with impacted habitats, and contains covered species. 19 sites.
- Group 2—Good quality habitat, homogeneous habitat, good connectivity/contiguity opportunities, medium sized properties, and contains some covered species. 10 sites.
- Group 3—Lower quality habitat, lower connectivity/contiguity opportunities, smaller properties, and highly disturbed. 26 sites.
- Group 4—Typically very small habitat, highly disturbed, and some do not align with freeway habitats. 23 sites.

One of the key aspects of the EMP is the requirement that a property owner be a willing seller as the eminent domain process is not allowed—in other words, participation in the EMP is purely voluntary. As such, since some of the properties were submitted by a third party, OCTA staff sent letters to the property owners in January 2011 to confirm interest in participating in the acquisition and restoration property evaluation process. When OCTA did not receive a written response from the land owners expressing their desire to participate in the program as a willing seller, it was assumed the property owner was not interested and the associated properties were removed from further evaluation and consideration. As a result, nine Group 1 and 2 property owners were removed from consideration leaving 20 high priority properties (fourteen Group 1 and six Group 2) to continue in the acquisition evaluation process.

In 2011, the Board authorized staff to seek and accept applications for additional candidate properties to add to the inventory for possible acquisition for the EMP. As a result, OCTA received 36 additional applications that went through a similar evaluation and prioritization process.

Conservation Property Acquisition, Land Management, and Habitat Restoration Activities

While the EMP does not include formal policies and procedures, we found that program staff developed a number of documents and guidelines to assist the EMP in executing its activities and responsibilities that include such areas as acquisition and restoration evaluation criteria and property acquisition and restoration plans and guidelines. In addition to the previously described acquisition and restoration evaluation criteria, in July 2010, EMP staff and OCTA legal staff prepared a draft property acquisition plan to define the steps needed to complete the acquisition of properties. The property acquisition plan outlined the following tasks:

- Appraisal processes, including sending letters of interest to property owners, conducting appraisals and appraisal reviews, obtaining wildlife agency assurances, and prioritizing the acquisition of properties.
- Negotiation and acquisition processes, including staffing the negotiation team, communicating key decisions with oversight committees and the Board, acquiring properties, and identifying long-term property managers.

In September 2010, draft restoration guidelines were developed describing funding parameters, mitigation requirements, restoration performance criteria, maintenance and monitoring plans, and status reporting. These guidelines were updated in May 2012 to revise funding amounts and clarify the responsibilities of restoration project stakeholders. As the processes described below represent, we found that the EMP appeared to adhere to the acquisition and restoration plans and guidelines.

Appraisal Processes Appear Reasonable

Between March and May 2010, the Board authorized staff to appraise all fourteen properties in Group 1, the highest priority group, for funding consideration and potential purchase. The appraisal process began in June 2010 and efforts included environmental site assessments, title reports, valuations, and appraisal reviews. Overall, while we found that the processes to obtain the services of appraisers with conservation land expertise did not follow required competitive processes, we did find that the required appraisals and appraisal reviews conducted appeared reasonable and complied with professional standards. Additionally, appraisal companies with the required expertise have since been added to OCTA's on-call list through competitive procurement processes.

Although the M2 EMP is not federally funded and does not involve eminent domain processes, OCTA legal counsel advised the EOC to adopt a property acquisition policy requiring compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) to ensure consistency across property acquisition processes, including appraisals, negotiations, and acquisitions. The Uniform Act requires that the public properties be appraised before an acquiring agency begins negotiations to acquire it and that the amount of the approved appraisal be the basis of the offer of just compensation.

Because OCTA wanted to keep EMP property acquisition and appraisal processes separate from one another to avoid conflicting interests, the EMP program relied on OCTA's Real Estate and Right-of-Way (ROW) administration within the Capital Programs Division to handle all aspects

of the EMP property appraisal processes. The ROW administration maintains a list of pre-approved firms to provide on-call right-of-way services, including appraisal services, to support the OCTA's responsibilities related to acquisition, management, and disposal of real property on highway projects. After reviewing the expertise of the firms on the pre-approved on-call list, the ROW administration determined that additional specialized expertise beyond what was available via the on-call list was required—specifically related to experience appraising conservation land. According to EMP program staff, it reached out to conservation authorities, including the Wildlife Conservation Board, to obtain referrals for specialized appraisers with conservation land and open space experience. As a result, the names of three appraisal companies were forwarded to the ROW administration for purposes of procuring the specialized appraisal services.

OCTA procurement policies and procedures require competitive bidding processes to be utilized when procuring professional services over \$50,000. However, the ROW administration did not utilize competitive procurement processes—instead it solicited bids and qualifications from recommended specialty appraisers. It selected one of the companies to provide the specialized appraisal services even though the total anticipated fees would exceed the procurement amounts—in particular, the specialized appraisal company's typical fixed fees for conservation appraisals ranged from \$5,000 to \$25,000 each; with 14 properties slated to be appraised at that time, the appraisal services could have been as much as \$350,000. Because OCTA determined it could not contract directly with the specialized appraisal company due to the lack of competitive procurement processes, the ROW administration arranged to have the specialized appraisal company subcontract to a prime contractor appraisal firm already on ROW administration's pre-approved on-call list. The prime contractor's agreement with OCTA to be on the pre-approved list to provide on-call services was established in March 2010 and allowed for total fees under the agreement not to exceed \$1 million. The prime contractor's agreement was increased by \$350,000 later in 2010, and the scope of work was amended to include appraisal services. At the same time, the prime contractor requested approval from OCTA to add the specialized appraisal firm to its contract with OCTA.

The arrangement did not result in additional cost to OCTA as the subcontractor's rate was based on the predetermined conservation appraisal estimates and was passed through to OCTA without an up-charge applied by the prime contractor. Nonetheless, OCTA could be viewed as circumventing the required competitive processes in an effort to expedite and simplify the EMP acquisition process. Competitively procuring appraisal services would have required OCTA to develop and publish a request for proposal, evaluate proposals, and select a contractor amongst the submitted proposals. ROW administration has since conducted a competitive procurement process to ensure the appropriate conservation appraisal expertise is represented on OCTA's pre-approved on-call list of appraisers going forward. As such, the current appraisal bench includes three companies with expertise in open-space/mitigation, which was utilized for a subsequent round of appraisals in 2012.

We reviewed the appraisal processes for three properties acquired by the EMP and found that the required appraisals were conducted on each of the properties by appraisal companies that must adhere to professional standards and the properties were valued utilizing consistent and reasonable methodologies. Specifically, to assess whether the appraisal reports indicate that fair market value was established using practices conducted in accordance with standards and

practices, we compared the appraisal reports of the three selected properties against the Uniform Standards of Professional Appraiser Practice (USPAP) Standard rules 1 and 2. We found that each of the three appraisal reports reasonably comply with the standards. Additionally, the three corresponding appraisal review reports also concluded that the appraisals met USPAP minimum standards and were complete, supported with adequate data, utilized appropriate methods, and appeared reasonable. Further, we noted that each of the appraisals were conducted utilizing consistent methodologies and assumptions. For example, the fair market value of each property was established utilizing the sales comparison approach to land valuation, each property was valued in the middle to lower range of the comparable sales prices per acre, and each property's final valuation included a negative adjustment due to changes in market conditions since the comparable properties were sold.

In addition to obtaining initial public lands appraisals for the targeted properties, the EMP appraisal processes included obtaining second appraisals or appraisal review services to ensure that property appraisals are accurate and consistent, abide by applicable state and federal laws, and conform to industry standards. We found that governing regulations and organizations, such as the USPAP, do not have specific provisions requiring second appraisals. Also, we found that other comparable public agency policies are vague as to when second appraisals are required. For example, the Caltrans property appraisal policies, which are followed by other environmental mitigation programs in California, allow dual reporting under the following circumstances:

- There is a serious question as to the highest and best use.
- Market data is inconclusive because of its scarcity and/or absence of established patterns and value conclusions must, therefore, be based primarily on opinion.
- There are substantial improvements not compatible with the highest and best use of the land. In other words, there is a high degree of economic obsolescence.
- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.
- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

While it is not clear when a second appraisal is needed, the USPAP specifically requires all appraisals to be reviewed. Additionally, good business practices would indicate that the same firms contracted to provide appraisal services to OCTA should not also be contracted to provide appraisal review services. While separate firms conducted the EMP property appraisals and appraisal reviews, ROW administration arranged to have the appraisal firm conducting the specialized EMP appraisals subcontract its services through an appraisal firm that was already contracted to perform the appraisal review services associated with the 2010 appraisals; thus, both the EMP property appraisals and appraisal reviews were procured under the same contract. Specifically, the prime contractor performed the appraisal reviews of the appraisals conducted by its subcontractor. During a subsequent round of appraisals in 2012, appraisals and appraisal reviews were procured separately with different firms. EMP program staff indicated that they will continue to use separate procurements for future acquisitions.

Our review of appraisal reviews performed on the appraisals of three properties acquired through the EMP found that the appraisal reviews appeared reasonable and complied with professional standards. Specifically, to assess whether the appraisal reviews were conducted in accordance with standards and practices, we compared the appraisal reviews of the three selected properties against the USPAP Standard rules 3. We found that each of the three appraisal reviews reasonably comply with the standards.

OCTA Applied Reasonable Steps to Negotiate and Acquire EMP Properties

We found that EMP staff employed transparent and reasonable steps to negotiate and acquire EMP properties. For example, EMP staff worked with the wildlife agencies to prioritize properties to acquire, sought the Board's approval to negotiate and execute purchase agreements on the highest priority properties, and utilized consistent and fair negotiation processes with the assistance of legal counsel.

Once the appraisals were completed and valuations established, the EMP program needed to determine how to maximize the available funding and align property acquisitions with sites that offer the highest biological resource value and mitigation credit. To prioritize which of the appraised properties to begin negotiation and acquisition processes, the wildlife agencies and OCTA staff utilized the appraisal information to divide the fourteen Group 1 properties into three priority tiers: Tier 1 (3 properties); Tier 2 (6 properties); and Tier 3 (5 properties).

On November 3, 2010, OCTA staff provided the EOC with the appraised values of all Group 1 properties and recommended Tier 1 properties for acquisition. As a result, the EOC directed staff to begin the negotiation and offer processes on Tier 1 properties and to keep Tier 2 and 3 as contingency properties. As a result of these efforts, 5 properties were acquired for approximately \$24.9 million dollars.

On November 22, 2010, the Board allocated \$42 million to begin purchasing conservation properties. Concurrently, the Board authorized OCTA's Chief Executive Officer to negotiate and execute purchase agreements with any of the Group 1 property owners. According to OCTA staff, \$7 million of the \$42 million allocation was set aside to establish endowments for long-term property management of the acquired properties, leaving approximately \$35 million of the allocation for property acquisition related expenses, such as land costs, taxes, title, and appraisals. Because the allocated funding for property acquisition was much larger than the total appraised value of Tier 1 properties, OCTA was also able to include several Tier 2 properties in the offer and negotiation phase of the process.

In the fall of 2010, the EMP property acquisition negotiation team was assembled and included the OCTA EMP Section Manager, OCTA Legal Counsel, an EMP Consultant, and an Environmental Engineering Consultant. The EMP follows USPAP in its property acquisition processes, and these rules require fair and consistent treatment of property owners regarding negotiation proceedings. To comply, the EMP required that the negotiation team disclose the appraised value of the property to the property owners and provide an initial purchase offer of 85 percent of the appraised value of the property to each property owner—OCTA complied with this requirement as reflected on Table 2 although the ultimate purchase price was higher in some instances as a result of negotiation processes. The difference between the appraised value and

initial purchase offer accounts for estimated long-term habitat management and monitoring expenses associated with the properties. No offer or purchase amount exceeded the appraised value.

The first step of the acquisition process begins when the negotiation team prepares a purchase agreement with the offer price and terms and conditions. After OCTA legal counsel reviews the purchase agreement, the negotiation team sets up a meeting with the property owner to provide the agreement and offer in person. If the buyer does not agree to the initial offer, the buyer may provide the negotiation team with a counter offer—all negotiations are handled via formal letters between OCTA and the property owners. Once the buyer accepts the offer and signs the purchase agreement, OCTA legal counsel conducts a final review and approves the purchase agreement. Upon the legal counsel sign off, the OCTA CEO reviews and approves the agreement. OCTA's Real Estate and Right-of-Way Administration (within the Capital Programs Division) is responsible for conducting the title and escrow processes related to the sale. The final step involves EMP staff creating a payment request (including title and escrow fees) that is signed by the CEO (or designee) and submitted to Accounts Payable Section (within the Finance and Administration Division), and a payment by wire transfer is sent to the title company.

During the negotiation processes, the wildlife agencies provided the OCTA with “assurance letters” for each of the Group 1 properties that were appraised. These assurance letters provided a guarantee that the wildlife agencies would consider the individually appraised conservation properties as appropriate for partial mitigation of impacts resulting from the construction and operation of the *M2* freeway improvement projects. Without these assurances, the acquisition of the proposed properties could not proceed.

By December 2011, the following five Group 1 properties, totaling nearly 950 acres of conservation land, were purchased for the EMP, as reflected on Table 2.

Table 2. Conservation Lands Purchased by the EMP through December 2011

Property	Number of Acres Appraised	Appraised Value	Initial Offer (85% of Appraised Value)	Number of Acres Purchased	Purchase Price ⁸
Ferber Ranch	444	\$15,510,000	\$13,183,500	399	\$12,760,576
Hafen	49	\$1,960,000	\$1,666,000	48	\$1,705,075
Hayashi	298	\$2,980,000	\$2,533,000	296	\$2,960,000
O'Neill Oaks	119	\$4,770,000	\$4,054,500	119	\$4,290,408
Saddle Creek South	84	\$3,300,000	\$2,805,000	84	\$3,178,662
Total	994	\$28,520,000	\$24,242,000	946	\$24,894,721

After, including \$952,307 in related acquisition costs (such as appraisals, taxes, title fees, and start-up and interim property management costs) to the total purchase price of \$24,894,721, the total cost of the five acquired properties was \$25,847,028. The purchases were also allowed under provisions of a federal Fish and Wildlife grant— thus, the total acquisition costs paid for with the *M2* funds could be reduced by \$1,032,271. Therefore, \$24,814,757 in *M2* funds were utilized for property acquisition as of October 31, 2012. As a result, of the \$35 million allocated for property acquisition related costs, just over \$10 million remained available at that point for future property acquisitions and related acquisition costs. According to OCTA staff, negotiations are currently underway for additional property acquisitions and contracts are being established for long-term property management services.

Little Habitat Restoration Activity Has Occurred Thus Far as Early EMP Focus is on Land Acquisition Efforts

In addition to acquiring and maintaining conservation properties, another important required component of the EMP is the mitigation of environmental impacts through regional habitat restoration efforts. As guided by the NCCP/HCP, wildlife agencies, and Army Corps of Engineers, the EMP's habitat restoration processes examine habitat resources throughout the Orange County region to identify conservation and mitigation measures that will protect habitat and species. Through these efforts, the EMP receives mitigation credits and streamlined permit approval.

Over the past few years, parallel with its acquisitions work, the EOC sought potential restoration projects through request for proposals and a restoration evaluation team utilized the same type of evaluation and scoring processes as was used with property acquisition evaluations to evaluate

⁸ Purchase price is sometimes lower than initial offer because OCTA ultimately purchased fewer acres than were appraised.

and prioritize/group the restoration proposals based on biological merits. As mentioned previously, habitat restoration processes account for approximately 20 percent of the EMP’s budgeted activities—approximately \$10.5 million of the initial \$55 million EMP allocation was set aside for these restoration activities. Through two rounds of grant funding, as of the end of October 2012, nearly \$10.1 million in grants had been approved related to 11 habitat restoration projects throughout Orange County, as reflected on Table 3.

Table 3. EMP Restoration Activity Through October 2012

Restoration Project	Agency	Acres	Fiscal Year	Grant Amount	Expended through 10/31/2012
Big Bend	Laguna Canyon Foundation	3.7	2009-10	\$87,500	\$17,502
2C Ranch/Trabuco Creek	City of San Juan Capistrano	53.0	2009-10	\$1,500,000	\$298,853
Fairview Park	City of Costa Mesa	23.0	2009-10	\$2,000,000	\$342,000
Bee Flat Canyon and Aqua Chinon	Irvine Ranch Conservancy	94.9	2009-10	\$1,450,000	\$275,390
UCI Ecological Preserve	University of California, Irvine	8.5	2009-10	\$325,000	\$185,423
Aliso Creek	City of Laguna Niguel	55.0	2011-12	\$1,105,000	\$0
Chino Hills State Park	City of Brea	15.0	2011-12	\$193,000	\$0
Harriett Weider Regional Park	City of Huntington Beach	7.7	2011-12	\$475,000	\$0
Lower Silverado Canyon	City of Irvine	44.0	2011-12	\$1,399,580	\$0
North Coal Canyon	City of Yorba Linda	5.5	2011-12	\$247,500	\$0
West Loma	City of Irvine	80.0	2011-12	\$1,296,000	\$0
Total		390.3		\$10,078,580	\$1,119,168

In May 2012, approximately \$400,000 of the restoration allocation remained to be approved for future restoration projects and the Board approved another call for restoration projects with a focus on watersheds affected by early action M2 freeway projects. According to the EMP Section Manager, the Program is working closely with the Army Corps of Engineers on existing restoration projects to determine mitigation needs before proceeding with another call for projects. They anticipate issuing another call for projects by mid-2013.

As of the end of October 2012, just over \$1.3 million of EMP funding had been spent on restoration activities, including \$1.1 million in expenditures related to the five 2009-2010 restoration projects. Another \$226,441 was charged by the Army Corps of Engineers for their staff time providing technical assistance to the EMP regarding restoration activities associated with Section 214 of the Water Resources Development Act of 2000 that included a number of activities like participating at public meetings, making jurisdictional determinations, and providing permit application reviews.

OCTA Still Needs to Finalize its Role in Conservation Land Management Processes

Land management processes are part and parcel of conservation land acquisition processes. As part of the responsibility to acquire public lands to set aside to meet environmental impacts—the OCTA must manage and oversee those lands in perpetuity. In the past, this type of land management was not an OCTA role. As a result, OCTA has undertaken a number of activities to ensure acquired land is appropriately maintained and overseen. Currently, once conservation properties are acquired, the EMP establishes land management contracts to ensure the environmental integrity of the acquired land that entail such actions as installing fencing and signage as well as removing debris and invasive vegetation. As mentioned earlier, the EMP estimated that land management expenses for acquired and restored conservation lands would cost approximately \$7 million over the life of the program—these costs were developed by OCTA’s contracted conservation land subject matter experts and based on factors such as fencing, weed management, site inspections and patrolling, habitat and water management, operations, and reporting.

For the first five conservation properties acquired, contracts have been established with several entities, including the California Department of Parks and Recreation, to provide initial start-up and interim land management services. The EMP is currently working to establish contracts with entities such as a public agency, conservancy, or a non-profit organizations for long-term habitat management and monitoring services associated with the acquired conservation properties. Currently, the OCTA owns all five acquired properties. According to the EMP Section Manager, OCTA plans to transfer ownership to other entities for long-term management and is currently in the process of determining which entities the properties will be transferred to, such as regional governmental entities or local non-profit environmental organizations. Although no official determination has been made by the OCTA board, it is expected that for the long-term, these acquired lands will ultimately be turned over to local agencies.

EMP Transactions Appear Adequately Documented and Expenditures Appropriately Approved

Overall, we found that the EMP maintains complete and consistent records of all EMP transactions, including details of documentation of all decisions related to prioritization of properties and negotiation and offer processes. We also found that staff maintain separate binders for each acquired property that include property deeds, title and escrow documents, purchase and sales agreements, expenditure support, appraisal documents, property management contracts, property photographs, and important correspondence.

We selected ten EMP expenditures, including seven contractor invoices and three property acquisitions, for review to determine whether sound and appropriate expenditure controls were in place to prevent unauthorized payments and if those processes were consistently followed and whether approved invoices complied with contract terms.

We found that the seven contractor invoices included a number of services such as appraisals, environmental site assessments, NCCP/HCP preparation, EMP support services (strategic management), and property management. These invoices ranged in cost from \$2,700 to over \$100,000. We found that the contractor invoice payment approval processes OCTA followed included:

1. Project Managers review invoices and recommend approval.
2. Invoices recommended for approval are submitted to either Department Managers (up to \$250,000) or Division Directors (above \$250,000) for review and approval.
3. Approved invoices are submitted to the Accounts Payable Section for payment processing.

Further, for the three property acquisitions that involved EMP conservation properties ranging in cost from nearly \$3 million to more than \$12 million, we noted that all were appropriately supported, reasonable, and authorized. We found that the property acquisition payment approval processes followed included:

1. Purchase agreements are prepared by OCTA EMP staff and consultants.
2. OCTA Legal Counsel reviews purchase agreements.
3. Property owners sign purchase agreements.
4. OCTA Legal Counsel reviews, approves, and signs purchase agreements.
5. OCTA Executive Director of Planning reviews purchase agreement and recommends approval.
6. OCTA CEO reviews, approves, and signs purchase agreements.
7. OCTA Right-of-Way Division administers title and escrow processes.
8. EMP Program Manager prepares capital programs payment requests.
9. OCTA Executive Director of Planning and OCTA CEO (or Deputy CEO) review and approve capital program payment requests.
10. Approved capital program payment requests are submitted to the Accounts Payable Section for payment processing via wire transfer.

Our review of the 10 expenditures found that all expenditures appeared to have sufficient documentation, including invoice review checklists, contractor invoices, description and date of services provided, signed purchase agreements, and approved capital program payment requests. Also, we found that all expenditures complied with stated approval processes, as documentation included evidence of appropriate review and approval signatures and expenditures appeared to comply with approved contract amounts and terms.