

Appendix N OCTA Letter Regarding
Renewed Measure M
Mitigation Commitments

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Arthur T. Leahy
Chief Executive Officer

September 10, 2007

Claire Schlotterbeck
c/o Environmental Coalition That Supported Renewed Measure M
170 Copa De Oro
Brea, CA 92823

Dear Ms. Schlotterbeck:

In light of the work proceeding to complete environmental studies of the Orange Freeway (SR-57) Northbound Widening Project and the Riverside Freeway (SR-91) Eastbound Lane Addition Project, the resource agencies and the environmental and conservation interests that supported the Renewed Measure M (M2) have expressed concerns regarding the relationship of these projects, which are part of the M2 Transportation Investment Plan, to the programmatic mitigation commitments in Renewed Measure M.

These concerns can be summarized as follows:

- Will the SR-57 and SR-91 projects and any impacts attributable to them be included as part of the overall freeway program for purposes of the Master Agreement for programmatic mitigation?
- Will environmental studies for other projects be completed prior to working out a Master Agreement for programmatic mitigation?
- How much money is available for programmatic mitigation?
- How soon could the funds for programmatic mitigation be available and what can be done to minimize the impact of possible financing costs?

Background:

Both the SR-57 and SR-91 projects under study are part of a joint effort of Caltrans and Orange County Transportation Authority (OCTA) dating back to 2004 to identify key chokepoints on the Orange County freeway system and develop limited operational and capacity improvements that would improve freeway performance at relatively low cost and impact. This effort preceded the development and approval of M2. These and other proposed chokepoint projects were incorporated into a more comprehensive program of freeway projects in the Renewed Measure M Transportation Investment Plan.

These projects are proceeding early toward implementation for two reasons.

1. Readiness - they were part of the joint OCTA/Caltrans freeway chokepoint program and Project Study Report (PSR)/conceptual



engineering studies for the improvements were previously completed;
and

2. Funding - they qualified for and received Proposition 1B/Corridor Mobility Improvement Account (CMIA) funding which requires that projects be under construction by 2012.

Both projects are included in the Regional Transportation Plan (RTP) and the Regional Transportation Improvement Program (RTIP) for Southern California for which program-level environmental analysis and air quality conformity requirements have been met. In addition, both were included in the Orange County Long Range Transportation Plan for which a program-level environmental analysis was done. Both projects are currently under environmental review for proposed Mitigation Negative Declaration/Environmental Assessments (MND).

At this point, neither project is being funded with M2 dollars. The SR-91 project is funded with a combination of CMIA, other state funds and toll revenues. The SR-57 project is funded with CMIA and Measure M (M1) funds. The Measure M Taxpayers Oversight Committee has approved the allocation of M1 funds to this project.

OCTA's Commitment to Programmatic Mitigation of Freeway Projects

As part of M2, freeway funds must be committed to programmatic mitigation of the freeway program, subject to a Master Agreement with state and federal resource agencies. With voter approval of M2, OCTA has developed and adopted the Renewed Measure M Early Action Plan (EAP) that lays out the M2 projects and programs to be underway or completed in the next five years. This includes completing negotiation of the Master Agreement for mitigation of the freeway program and the potential expenditure of funds for mitigation purposes.

OCTA has demonstrated its firm commitment to this component of M2 with specific actions. The Board of Directors has included it as a priority in the EAP; authorized the addition of staff and consultant resources to support the development and implementation of the Master Agreement; directed that a Plan of Finance be completed, which includes the ability to fund commitments in the Master Agreement within the next five years; and convened meetings among representatives of OCTA, the resource agencies, and other interested parties to begin the process. Over the next couple of months OCTA will also recruit for, appoint, and convene the Mitigation and Resource Protection Oversight

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Committee that will make recommendations on the allocation of mitigation funds and monitor implementation of the Master Agreement.

It is OCTA's desire to successfully negotiate a Master Agreement and to begin allocation of funds to mitigation as soon as possible for the same reasons that the EAP was developed and adopted – the benefits are gained sooner at a lower cost. However, OCTA does not completely control the pace and the outcome of negotiations. It is also dependent upon the actions and good faith of the resource agencies, the conservation community and other interested parties.

Inclusion of all M2 Freeway Projects in the Master Agreement

The projects currently under environmental review were included in the M2 plan as a part of projects G (SR-57) and J (SR-91) and as such will be included in the development of the Master Agreement for mitigation of the freeway component, regardless of their funding sources, timing, state of project development or the nature or outcome of their environmental review. Our intent is to negotiate the Master Agreement for the freeway program as a whole, not on the basis of each individual project or project component, although each individual project must meet environmental requirements under the law. Information gained from environmental and other project studies will be useful for this purpose but not determinative of the outcome or the level or nature of mitigation provided in the Master Agreement. An assessment of impacts will be done as part of the process of developing the Master Agreement and all freeway project impacts (direct, indirect, and cumulative) will be considered as part of that assessment.

Timing of Environmental Studies

The M2 Early Action Plan forecasts general timelines and schedules for nine projects or segments of projects from the M2 freeway component. This schedule anticipates one environmental review to be completed in 2008 for the I-5/Ortega Highway interchange improvements. No other environmental studies are due to be completed until 2009 or beyond. We believe there is sufficient time to complete negotiations on the Master Agreement before any additional environmental studies are completed, with the possible exception of the I-5/ Ortega Highway interchange project. As indicated in the previous section, this project would also be fully considered as part of the overall freeway program in the Master Agreement negotiations.

Funds Available for Programmatic Mitigation

Your representatives have noted that the M2 ordinance (Ordinance No. 3) approved by the voters contains two descriptions of the minimum amount of M2 funding available for programmatic mitigation. The Renewed Measure M Transportation Investment Plan, which was incorporated into Ordinance No. 3, provides that, "a minimum of \$243.5 million will be available, subject to a Master Agreement, to provide for comprehensive, rather than piecemeal, mitigation of the environmental impacts of freeway improvements." Attachment B, Allocation of Net Revenues (also incorporated into Ordinance No. 3), provides that, "at least 5 percent of net revenues allocated for Freeway Projects shall fund Programmatic Mitigation for Freeway Projects."

In 2005 dollars, these are equivalent. However, with future variations in sales tax revenues they may diverge. If actual sales tax revenues are lower than projections, \$243.5 may be greater. If sales tax revenues exceed projections, 5 percent of net freeway revenues may be greater. It is our recommendation that the calculation of the minimum amount of funding should be resolved as part of the Master Agreement process and presented for the appropriate action by the OCTA Board of Directors.

Availability of Funds

OCTA has directed that a Plan of Finance be prepared for the EAP that includes the ability to begin funding freeway program mitigation within the next five years. The actual amount of funding that will be needed and the timing of expenditures is a matter for resolution in the Master Agreement. However, one of the purposes of the Board in adopting the EAP is to make available significant funding for programmatic mitigation early on in preference to funding mitigation on a project-by-project basis.

Sources of funding that will be considered include federal, state, and local grant funds; unallocated M1 funds; and either internal loans of other OCTA funds or debt-financing repaid by future M2 revenues. The M2 EAP also established clear policy guidance that debt-financing costs must accrue to the project or program for which borrowing occurs. To the extent that debt financing is necessary to meet the obligations established in the Master Agreement, financing costs may affect the bottom line for actual mitigation expenditures. However, early expenditures for mitigation purposes, even if debt-financing is necessary, are likely to offer greater benefits at a lower cost.

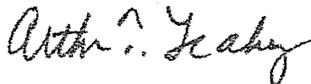
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We are prepared to recommend in the Plan of Finance significant up front funding for programmatic mitigation expenditures, if opportunities are available within the EAP period, and subject to the terms of a Master Agreement. At this point, we have sufficient capacity to finance and/or fund fully the commitments made in the EAP. We understand the desire of the resource agencies and conservation interests to maximize the funding available for mitigation and reduce the possible impacts of financing costs and are committed to working together on the Master Agreement and the EAP Plan of Finance toward that end.

OCTA takes seriously its commitment to the programmatic mitigation of freeway projects in M2 and has demonstrated so through a series of specific early actions on this component. Successful negotiation of a Master Agreement will require the sharing of information, an open exchange of views, and responsiveness on the part of all parties. Hopefully, the information and clarifications provided in this letter address the concerns expressed and will enable progress to continue on both the development of the Master Agreement and the implementation of the freeway program.

Please feel free to contact Monte Ward, Director of Special Projects at 714-560-5582 if you have any additional questions or concerns.

Sincerely



Arthur T. Leahy
Chief Executive Officer

ATL:mw