



Midpeninsula Regional  
Open Space District

R-21-113  
Meeting 21-26  
August 25, 2021

### AGENDA ITEM 3

#### AGENDA ITEM

Contract Amendment with AECOM for additional work associated with the Project Approval and Environmental Document Phase and Mitigated Credit Agreement for the Highway 17 Wildlife and Regional Trail Crossings and Trail Connections Project

#### GENERAL MANAGER'S RECOMMENDATIONS *den*

1. Authorize the General Manager to execute a contract amendment with AECOM in the amount of \$641,700 for additional environmental and engineering consulting services related to the California Environmental Quality Act, National Environmental Policy Act, Caltrans Project Report, and a Mitigation Credit Agreement for the Highway 17 Wildlife and Regional Trail Crossings and Trail Connections Project, for a total base contract amount of \$1,822,085.
2. Authorize a 10% contingency of \$64,170 on the base contract amendment to be reserved for unforeseen conditions, bringing the total contingency to \$182,500.
3. Authorize \$213,830 in allowances for specific potential actions, if required, as described in the report, bringing the total project allowances to \$495,115.

#### SUMMARY

On May 27, 2020, the Midpeninsula Regional Open Space District (District) Board of Directors (Board) authorized a contract with AECOM to complete preliminary engineering designs and environmental review for the Highway 17 Wildlife and Regional Trail Crossings and Trail Connections Project (Highway 17 Project or Project) (R-20-53) for a total contact amount not-to-exceed \$1,580,000. This contract amendment is necessary because Caltrans recently changed its guidance for the use of anticipated federal funding for the Project – now requiring that actions to comply with the National Environmental Policy Act (NEPA) be expanded to include connecting trails *within and outside* the state right-of-way (ROW). The original contract only included trails within the state ROW. Additionally, the Project must comply with federal accessibility requirements for trails within the state ROW, which was not anticipated in the original contract. As a result, this contract amendment scope includes: 1) extending NEPA review for trails outside the state ROW; 2) design and engineering to meet accessibility requirements for trails within the state ROW; and 3) development of a Mitigation Credit Agreement (MCA) to leverage additional external funding for the Project.

The proposed contract amendment, including an expanded allowance and contingency, totals \$919,700 (\$641,700 + \$64,170 + \$213,830), bringing the total not-to-exceed contract amount to \$2,499,700 (\$1,580,000 + \$919,700). While there are sufficient funds in the MAA20-001

Wildlife Corridor: Highway 17 Crossing and MAA20-002 Bay Area Ridge Trail: Highway 17 Crossing Portfolio #20 to cover this Project phase, the funds appropriated in the Fiscal Year 2021-22 (FY22) Budget are insufficient to cover the costs of the recommended action and therefore may require a future budget adjustment. However, a \$5M total grant from the Wildlife Conservation Board (WCB) is secured for the Project, with \$1M allocated for this Project phase. An opportunity also exists with submission of two more private organization grant proposals to further leverage Measure AA (MAA) funds and augment the existing WCB grant.

## **DISCUSSION**

In October 2019, the Board approved moving forward with the environmental analysis of four crossing alternatives for the Highway 17 Project (R-19-136) (Attachment 1). The Project is well underway, with AECOM working to complete preliminary engineering designs and environmental review as part of the Project Approval and Environmental Document (PA&ED) phase. The existing scope of work includes preparation of the: 1) Caltrans Draft and Final Project Reports; 2) California Environmental Quality Act (CEQA) document; and 3) NEPA document, limited to the state ROW.

### **Key Components of the Recommended Base Contract Amendment**

#### ***NEPA Compliance***

The Project includes not only wildlife and recreational trail crossings across the highway, but also development of connecting trails within the state ROW and to existing regional trails outside of state ROW (e.g., the Los Gatos Creek Trail and Bay Area Ridge Trail). The original scope of work included: a) analyzing the entire project (including discontinuous trail segments outside of the state ROW) under CEQA with the District as the CEQA lead agency, and b) analyzing only the wildlife undercrossing, recreational trail overcrossing, and components such as directional fencing and minor trail transitions in the state ROW under NEPA with Caltrans as the NEPA lead agency. The scope was developed based on Caltrans confirmation that Caltrans would be the NEPA lead agency and their jurisdiction would extend only to Project elements within the state ROW. Caltrans has recently conveyed that NEPA review and clearance for the entire Project – including Project elements within and outside of the state ROW – is required for the Project to receive federal funding through the Federal Highway Administration (FHWA), which is the most likely source of federal funding for the Project. The District is pursuing multiple opportunities to secure FHWA funding, including working with Caltrans and Valley Transportation Authority (VTA) to identify potential FHWA funding, working with VTA on a possible application for a federally funded competitive grant program, and submitting a congressional Community Project Funding Program proposal for construction funds. This contract amendment facilitates completion of additional NEPA compliance for the entire Project.

The following items will be added to the Scope of Work in order to meet NEPA requirements:

1. Environmental studies and technical report preparation for trails outside of the state ROW.
2. Expansion of the NEPA environmental report to include the entirety of the Project.

#### ***Accessibility Requirements***

As part of the work completed to date on the Caltrans Draft Project Report, at this time it is the District's understanding that Caltrans has determined that all trails in the state ROW must adhere to the accessibility standards set forth in Caltrans Design Information Bulletin (DIB) 82-06.

When accessibility standards cannot be met within the state ROW, exceptions to those design standards must be documented in accordance with DIB 82-06 and approved by Caltrans. This requires the design of existing and proposed trails in the state ROW to be documented or developed with generally the same level of design as the proposed highway crossing structures. This information was unknown when the Board approved the original contract; therefore, this level of effort was not included in the original scope.

Caltrans does not have jurisdiction over the design of trails outside of the state ROW. For these portions of the Project, the 2015 Architectural Barriers Act (ABA) Standards for Outdoor Developed Areas are considered the best practice for trails. ABA provides exceptions where compliance is not practicable due to terrain or would fundamentally alter the function or purpose of the trail or setting. Designing to ABA guidelines will ensure that eligible portions of connecting trails meet applicable standards and guidance and position those portions to be qualified for future funding.

The following items will be added to the Scope of Work in order to meet Caltrans accessibility requirements:

1. Additional engineering technical studies, including new Caltrans requirements to prepare a utility policy variance report, Design Standard Decision Document, and Complete Streets Decision Document associated with accessibility standards. All new and existing trails in the state ROW must meet accessibility standards or document why those standards cannot be met. As a result, the project design will include a greater level of detail than originally anticipated, with new surveys and mapping, including elevation details, cross sections, etc. This process may also require documenting the following:
  - Additional parcel impacts to properties (as identified by assessor's parcel numbers) that are outside the state ROW.
  - Additional consideration of geotechnical constraints for trail construction.
  - Inclusion of trails in the construction cost estimate and schedule.
  - Inclusion of trails in the civil plan sheets.
  - Preparation of an Exceptions to Accessibility Design Standards document to address trails in the state ROW and any requested exceptions to the accessibility standards.
2. Subconsultant costs to prepare additional engineering and environmental reports.
3. Additional report finalization for the engineering technical reports and Caltrans' Draft and Final Project Reports.

### ***Mitigation Credit Agreement***

On May 27, 2020, the Board authorized a contract with AECOM that included a task for Early Coordination and Consultation of a Mitigation Credit Agreement (MCA) for the Highway 17 Project (R-20-53). MCAs are developed under an approved Regional Conservation Investment Strategy (RCIS) and are developed in collaboration with the California Department of Fish and Wildlife (CDFW) to create mitigation credits by implementing conservation or habitat enhancement actions identified in a RCIS. The Project location is identified in the Santa Clara County RCIS as a Conservation Priority for landscape connectivity.

Under the current task, a MCA concept has been developed with input from CDFW, Caltrans, U.S. Fish and Wildlife Service, species-specific experts, and the Santa Clara Valley Habitat Agency that would generate credits for the following species: mountain lion and California red-

legged frog (focal species in the RCIS) as well as American badger and Western pond turtle (non-focal species in the RCIS). These animals would benefit from habitat connectivity within the Project area, making a MCA for the Project viable. General habitat connectivity credits would also be developed for other species for which species-specific credits may not be warranted (such as Santa Cruz black salamander). District goals in developing a MCA for this Project are to:

1. Implement conservation strategies identified in the Santa Clara County RCIS;
2. Offset impacts from the Project by providing habitat connectivity enhancements for wildlife; and
3. Generate saleable credits that could be used to offset Project implementation costs if the Project benefits are greater than impacts.

Since a primary goal of the Project is habitat connectivity, the Project benefits are expected to exceed any impacts. These goals are consistent with the draft Mitigation Policy presented to the Board in April 2021 (R-21-50).

MCA credits generated from the Project may be used as compensatory mitigation for impacts under CEQA, the California Endangered Species Act and the CDFW Lake and Streambed Alteration Program. Credits may also be eligible to offset mitigation requirements from other regulatory agencies. This will allow the District to mitigate project impacts with elements that are already part of the Project primary goals instead of having to purchase credits or fund additional mitigation work that may not be as effective in supporting habitat connectivity. MCA credits are also saleable and transferrable and could result in an opportunity to bring additional external funding to the Project. Developing an MCA could allow for long-term investment in the Project, including potential funding for components that may otherwise be costly and/or difficult to fund and implement. One potential benefit would be funding for long-term operation and maintenance of the wildlife crossing and/or associated features such as directional fencing. AECOM is a highly qualified team for this task as they have experience developing the Monterey County RCIS and have worked with the District and CDFW to develop the current MCA concept to date.

If approved by the Board, this contract amendment would fund the development of the current MCA concept into a MCA application package for review by CDFW. The District, as the Project sponsor, would work collaboratively with CDFW to create a MCA focused on Habitat Connectivity and determine how to appropriately value Habitat Connectivity credits. If approved by CDFW, this may provide a model for future Habitat Connectivity MCAs throughout the state. MCA development will run parallel with the current phase of the Project, and final MCA approval would come during permitting in the next phase of the Project to ensure that credits generated will offset Project impacts and multi-agency mitigation requirements where possible.

### **Recommended Allowance for Potential Additional Scope**

The District has gained additional experience working with Caltrans and recognizes that additional tasks will likely be required by Caltrans, but definitive direction is not always provided in advance. Adaptive management is an important component to successful project delivery and changes can arise as technical information becomes available, circumstances change, or the appropriate Caltrans employee becomes involved in the Project. Allowances provide the flexibility to perform these tasks without affecting the Project schedule – e.g., returning to the Board for consideration of additional contract amendments - which has been highly beneficial to maintaining the Project schedule thus far. Allowances in the initial contract

and this proposed amendment are earmarked for specific potential tasks. To date, \$156,000 of allowances from the original contract allowance amount of \$281,285 have been used from the base contract. These funds were used for additional Caltrans engineering requirements, including ABC topographic mapping and geotechnical field exploration and lab testing. This leaves approximately \$125,285 in allowance tasks still available from the base contract - which do not include the allowances associated with this amendment - in the event that Caltrans requires them. Allowances included in this contract amendment in the amount of \$213,830 would address the following specific additional tasks should they be required by Caltrans during this phase of work:

1. Paleontological Evaluation Report and Mitigation Plan
2. Additional surveys
3. Additional document reviews beyond those assumed in scope
4. Additional engineering services requested by Caltrans

### **Recommended Contingency**

Contingency funds are for unknown and unanticipated costs arising during the Project. Contingency funds from the original contract plus this amendment (\$182,500) comprise approximately 7.3% of the total contract amount. Examples of how the contingency funds have been used thus far include: additional LiDAR (for detailed mapping), grant application writing support for the successful WCB grant, and a California Highway Patrol contract and lane closure plan requested by Caltrans to perform geotechnical studies along Highway 17.

### **Cost Analysis**

The proposed contract amendment, including an expanded allowance and contingency, would bring the total not-to-exceed contract amount to \$2,499,700, which is between 6.1% and 7.6% of the total estimated Project cost of \$33.1M to \$41.2M. Considering the Project is essentially three projects in one (wildlife undercrossing, recreational overcrossing, and connecting trails) this cost is comparable to the environmental review cost of other similar large projects. Additionally, the cost proposal is on the lower end of the Caltrans cost estimate of \$1.69-\$4.9M for this phase of work, as identified in the Project Study Report.

### **Funding**

The current environmental review phase (PA&ED) and subsequent Caltrans design phase (PS&E) are projected to cost \$8.5M (approximately \$2.5M for elements described in this report plus an estimated \$6M for design and permitting). Of this, approximately \$450,000 is anticipated to come from MAA funds and \$8.05M from external funding sources. This includes \$7M in authorized state funding (\$5M WCB grant and \$2M from Senator Cortese's member request) and \$1.05M in anticipated grant funds for which the District has been invited to submit by a private foundation and a non-profit organization.

<b>Funding in Development</b>				
<b>Potential Funder</b>	<b>Awarded</b>	<b>Request to be submitted</b>	<b>Project Phase</b>	<b>Grant Period Anticipated (if awarded)</b>
Private Fund		\$50,000	PA&ED, PS&E	2021 - 2023
Moore Foundation		\$1,000,000	PA&ED, PS&E	2021 - 2023
Senator Cortese FY22 Member Request*		\$2,000,000	PS&E	2022 - 2025
Wildlife Conservation Board	\$5,000,000			
MAA Portfolio 20	\$450,000			
Subtotal	\$5,450,000	\$3,050,000		
<b>Grand Total</b>				<b>\$8,500,000</b>

\*Approved in FY22 state budget; award anticipated and funding agreement to be developed in 2022

The construction phase of the Project is a strong candidate for federal funding. Considerable federal funding is expected through the federal Surface Transportation Reauthorization Act of 2021 and a new Community Project Funding Program for congressional member project requests. District staff have met with Congresswoman Anna Eshoo's staff to discuss a proposal for a congressional member request for construction phase funding 2025-2026. The Congresswoman included reference to the Project in her remarks to the House Committee on Transportation & Infrastructure on a provision for a pilot program to fund projects designed to reduce wildlife-vehicle collisions. It is the District's understanding and Caltrans direction that if the District accepts federal funds for any portion of the Project, NEPA must be completed for the entirety of the Project area, not just within the state ROW (as was originally scoped). Work under this contract amendment for AECOM is necessary to be eligible for future federal funding for construction.

This Project is also eligible to develop a MCA under the Santa Clara County RCIS which, if approved by the CDFW, will reduce Project mitigation costs by providing mitigation credits for impacts created by the project and may produce additional saleable credits to offset Project costs. Work under this contract amendment is required to position the District to effectively secure and utilize federal funding in addition to local and state funding to complete the construction phase.

## **FISCAL IMPACT**

The Highway 17 Project encompasses two projects within MAA Portfolio 20 South Bay Foothills: Wildlife Passage and Ridge Trail Improvements – *Wildlife Corridor: Highway 17 Crossing* (MAA20-001) and *Bay Area Ridge Trail: Highway 17 Crossing* (MAA20-002). For shared environmental review contracts (including AECOM), 35% of costs will be allocated to MAA20-001 with the remaining 65% allocated to MAA20-002. The project funds are split in this way because the wildlife undercrossing is anticipated to be self-mitigating, having less potential temporary and permanent impacts under CEQA & NEPA than the recreational trails overcrossing and connecting trails. It is anticipated that the trail buildout will require more environmental review and engineering analysis than the wildlife component.

The below table summarizes the original contract amounts and the contract amendment amounts.

	Original Contract	Amendment	Totals	MAA20-001 (35%)	MAA20-001 (65%)
<b>Base</b>	\$1,180,385	\$641,700	\$1,822,085	\$637,730	\$1,184,355
<b>Allowances</b>	\$281,285	\$213,830	\$495,115	\$173,290	\$321,825
<b>Contingency</b>	\$118,330	\$64,170	\$182,500	\$63,875	\$118,625
<b>Totals</b>	\$1,580,000	\$919,700	\$2,499,700	\$874,895	\$1,624,805

As discussed previously, while there are sufficient funds in Portfolio 20 and the projects MAA20-001 and MAA20-002 to cover this Project phase, the funds appropriated in the FY22 budget are insufficient to cover the costs of the recommended action. However, a \$5M grant is secured for the Project, with \$1M allocated for this Project phase. Additional grant opportunities also exist and are being pursued. If these funding requests are unsuccessful, a future FY22 budget adjustment would be needed.

Wildlife Corridor: Highway 17 Crossing MAA20-001	Prior Year Actuals	FY22 Adopted	FY23 Projected	FY24 Projected	Estimated Future Years	TOTAL
District Funded (Fund 30):	\$558,748	(\$557,035)	\$885,076	\$1,000,000	\$5,700,000	\$7,586,789
Grant Amount:	\$0	\$900,000	\$100,000	\$0	\$4,000,000	\$5,000,000
<b>Total Budget:</b>	<b>\$558,748</b>	<b>\$342,965</b>	<b>\$985,076</b>	<b>\$1,000,000</b>	<b>\$9,700,000</b>	<b>\$12,586,789</b>
Spent-to-Date (as of 8/6/2021):	(\$558,748)	(\$2,386)	\$0	\$0	\$0	(\$561,134)
Encumbrances (remainder of original contract, including allowances and contingency):	\$0	(\$363,829)	\$0	\$0	\$0	(\$363,829)
AECOM Contract Amendment:	\$0	(\$71,346)	(\$153,249)	\$0	\$0	(\$224,595)
Additional Allowance:	\$0	(\$24,565)	(\$50,276)	\$0	\$0	(\$74,841)
Additional 10% Contingency:	\$0	(\$18,267)	(\$4,193)	\$0	\$0	(\$22,460)
<b>Budget Remaining (Proposed):</b>	<b>\$0</b>	<b>(\$137,427)</b>	<b>\$777,358</b>	<b>\$1,000,000</b>	<b>\$9,700,000</b>	<b>\$11,339,931</b>

Bay Area Ridge Trail: Highway 17 Crossing MAA20-002	Prior Year Actuals	FY22 Adopted	FY23 Projected	FY24 Projected	Estimated Future Years	TOTAL
District Funded (Fund 30):	\$538,086	\$683,054	\$1,409,115	\$2,000,000	\$1,000,000	\$5,630,255
Fund 40 Projected:	\$0	\$0	\$0	\$0	\$18,100,000	\$18,100,000
<b>Total Budget:</b>	<b>\$538,086</b>	<b>\$683,054</b>	<b>\$1,409,115</b>	<b>\$2,000,000</b>	<b>\$19,100,000</b>	<b>\$23,730,255</b>
Spent-to-Date (as of 8/6/2021):	(\$538,086)	(\$7,794)	\$0	\$0	\$0	(\$545,880)
Encumbrances (remainder of original contract, including allowances and contingency):	\$0	(\$675,683)	\$0	\$0	\$0	(\$675,683)
AECOM Contract Amendment:	\$0	(\$132,500)	(\$284,605)	\$0	\$0	(\$417,105)
Allowances:	\$0	(\$45,620)	(\$93,369)	\$0	\$0	(\$138,990)
10% Contingency:	\$0	(\$33,924)	(\$7,787)	\$0	\$0	(\$41,711)
<b>Budget Remaining (Proposed):</b>	<b>\$0</b>	<b>(\$212,467)</b>	<b>\$1,023,354</b>	<b>\$2,000,000</b>	<b>\$19,100,000</b>	<b>\$21,910,887</b>

The following table outlines the Measure AA Portfolio 20 South Bay Foothills: Wildlife Passage and Ridge Trail Improvements allocation, costs-to-date, projected future Project expenditures and projected portfolio balance remaining.

<b>MAA20 South Bay Foothills: Wildlife Passage and Ridge Trail Improvements Portfolio Allocation:</b>	<b>\$13,966,000</b>
Grant Income (through FY25):	\$5,000,000
Fund 40 projected:	\$18,100,000
<b>Total Portfolio Allocation:</b>	<b>\$37,066,000</b>
Life-to-Date Spent (as of 8/6/2021):	(\$1,112,236)
Encumbrances:	(\$1,039,512)
Remaining FY22 Project Budgets:	\$349,894
Future MAA20 project costs (projected through FY25):	(\$34,515,190)
<b>Total Portfolio Expenditures:</b>	<b>(\$36,317,044)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$748,956</b>

The following table outlines the Measure AA Portfolio 20 allocation, projected life of Project expenditures and projected portfolio balance remaining.

<b>MAA20 South Bay Foothills: Wildlife Passage and Ridge Trail Improvements Portfolio Allocation:</b>	<b>\$13,966,000</b>
Grant Income (through FY25):	\$5,000,000
Fund 40 projected:	\$18,100,000
<b>Total Portfolio Allocation:</b>	<b>\$37,066,000</b>
Projected Project Expenditures (life of project):	
20-001 Wildlife Corridor: Highway 17 Crossing	(\$12,586,789)
20-002 Bay Area Ridge Trail: Highway 17 Crossing	(\$23,730,255)
<b>Total Portfolio Expenditures:</b>	<b>(\$36,317,044)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$748,956</b>

## BOARD AND COMMITTEE REVIEW

- February 24, 2016: Award of contract to Trail People for conceptual design and feasibility study ([R-16-18](#), [meeting minutes](#))
- August 24, 2016: Caltrans cooperative agreement for Project Initiation Document phase ([R-16-105](#), [meeting minutes](#))
- October 12, 2016: Contract Amendment with Trail People for additional Caltrans analysis ([R-16-126](#), [meeting minutes](#))
- November 9, 2016: Resolution and approval of Caltrans cooperative agreement ([R-16-147](#), [meeting minutes](#))
- June 27, 2018: Advance eight alternatives to Caltrans PSR-PDS phase and contract amendment with Trail People ([R-18-66](#), [meeting minutes](#))
- October 24, 2018: FYI noticing the Board of an upcoming public meeting for feedback on crossing alternatives ([FYI memo](#), [meeting minutes](#))
- February 13, 2019: FYI Final Revised Alternatives Report ([FYI memo](#), [meeting minutes](#))
- September 17, 2019: Planning & Natural Resources Committee, Crossing alternatives, Caltrans Project Study Report, environmental review, public outreach and funding ([R-19-124](#), [meeting minutes](#))
- October 23, 2019: Approve Caltrans PSR-PDS document and Cooperative Agreement to begin the PA&ED phase ([R-19-136](#), [meeting minutes](#))
- May 27, 2020: Award of Contract to AECOM for PA&ED phase CEQA/NEPA ([R-20-53](#), [meeting minutes](#))



- December 9, 2020: Application for Grant Funding from the Wildlife Conservation Board ([R-20-144](#), [meeting minutes](#))

## PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

## CEQA COMPLIANCE

Board consideration of a contract amendment is not a project subject to the California Environmental Quality Act. Retention of professional consultants will not result in a direct physical change to the environment and does not constitute Board approval of the proposed Project or related proposed Project elements. The contract scope includes completion of the necessary environmental review under CEQA and NEPA for implementation of the Highway 17 Project. The Board will have the opportunity to review the findings related to CEQA as the lead agency at a future board meeting.

## NEXT STEPS

Pending Board approval, the General Manager will execute the contract amendment with AECOM for additional environmental and engineering consulting services and pursuit of a MCA.

- Staff will present the CEQA Project Description for the Highway 17 Project to the Board for acceptance to initiate CEQA and NEPA review, anticipated to occur prior to the end of calendar year 2021.
- The CEQA phase is anticipated to be substantially complete by spring 2023. The District is working with Caltrans with the goal of having NEPA proceed concurrently with CEQA. Continuation of concurrent timing is dependent on federal funding being programmed and/or Caltrans confirming Caltrans leadership of the NEPA process.

## Tentative Schedule

Milestones	Tentative timeline
Board consideration of CEQA Project Description	Fall 2021
Administrative Draft IS/MND	Spring 2022
Draft IS/MND public circulation	Summer 2022
Board certification of IS/MND and Caltrans Co-Operative Agreement for PS&E phase; Caltrans PA&ED approval	Winter 2022 - Spring 2023
MCA Completion	2023 - 2024
Caltrans PS&E (Design) Phase and Permitting	2023 - 2025
Bidding and Construction	2025 and beyond

Attachment

1. Project area map

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