



Midpeninsula Regional
Open Space District

Memorandum

DATE: February 9, 2022

MEMO TO: Board of Directors

THROUGH: Ana Ruiz, General Manager *AR*

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SUBJECT: Highway 17 Wildlife and Regional Trail Crossings Project Status Update

BACKGROUND

The Highway 17 Wildlife and Regional Trails Projects: MAA20-001 (Wildlife Crossing) and MAA20-002 (Regional Trail Crossing) were among the highest ranked priority actions during the Vision Plan Process in 2014. The Project supports the Midpeninsula Regional Open Space District (District) goal of providing safe, regional wildlife and trail access across Highway 17 near the Lexington Reservoir just south of the towns of Monte Sereno and Los Gatos. A total of \$14 million in Measure AA funds is allocated to the two projects. Project construction is anticipated to begin in 2025/2026 pending the securing of full construction funding.

District staff began working on the project in 2014, and completed the Caltrans Project Initiation Document phase, including finalization of the Project Study Report- Project Development Support (PSR-PDS) process in October 2019. At that time, the Board approved moving forward with the environmental analysis of four crossing alternatives for the Highway 17 Project (R-19-136) as part of the Caltrans Project Approval and Environmental Document (PA&ED) phase. Work on the PA&ED phase is underway, and staff is currently working with the District's consultant (AECOM) to complete preliminary engineering designs and environmental review.

DISCUSSION

Partnerships and Project Delivery Approach

The current phase of work includes preparation of the: 1) Caltrans Draft and Final Project Reports; 2) California Environmental Quality Act (CEQA) document; and 3) National Environmental Policy Act (NEPA) document.

The cooperative agreement with Caltrans for the PA&ED phase establishes the District as the CEQA lead agency and Caltrans as the NEPA lead agency. Caltrans has the authority delegated

by the Federal Highway Administration (FHA) to act as a lead agency for NEPA. NEPA is the federal equivalent of CEQA and is required for the Project to receive federal funding.

The most common actions that require or create a nexus to NEPA for local agencies are projects proposed on federal lands, have a federal partner, and/or where federal funding is involved. The Highway 17 Project (Project) is not located on federal lands, and the District does not currently have a formal federal partner or federal funding allocated to the Project. This has created a challenge because while Caltrans has agreed to be the lead agency for NEPA, Caltrans cannot initiate federal agency consultations that are required under NEPA or consider approval of a NEPA document for the Project until there is a NEPA nexus. Out of the three common actions, securing federal funding, is the most practical way to establish a NEPA nexus for the Project.

To this end, the District has been working with the Metropolitan Transportation Commission (MTC) and Santa Clara Valley Transportation Authority (VTA) to identify federal funds that could be directed to the Project to establish a NEPA nexus. Through discussions with MTC and VTA, a solution has been identified for a funding exchange agreement with MTC whereby the District would exchange District funds with discretionary federal transportation funding that is administered through MTC. With this approach, MTC would direct federal transportation funds to the Project for construction, anticipated to be in the amount of \$500,000, effectively establishing a NEPA nexus. In exchange, the District would provide the same amount of local District funding to MTC. This is the most expedient approach to secure a NEPA nexus for the project while reserving critical funds for future construction. By establishing a NEPA nexus now, the District would be able to proceed with preparing the NEPA document on schedule (with Caltrans remaining as the lead NEPA agency) and efficiently utilize consultant services to both complete the CEQA/NEPA analysis and ensure that the findings are consistent. Once the NEPA document is completed, the Project will become eligible to compete for funds from other federal funding sources.

In order to pursue this opportunity and keep the concurrent CEQA/NEPA process on track, the District needs to partner with a Project Sponsor eligible to encumber MTC's federal funds. To receive MTC's federal transportation funding, the Project must have a Project Sponsor that is a transportation agency with the expertise and staff resources necessary to deliver the project and meet all federal aid requirements. VTA has been actively engaged with the Project and has the necessary transportation agency authority to take on the Project Sponsor role and encumber federal funding identified by MTC.

On October 9, 2021, the General Manager submitted a letter to VTA requesting that VTA consider becoming the Project Sponsor during the current phase and enter into discussions with the District to become the Project Delivery Partner during the next phase. As the Project Delivery Partner, VTA would lead the Plans, Specifications and Estimates (PS&E) phase of the Project and manage a prime consultant to complete final designs, develop operation and maintenance agreements and move the Project through final construction, working in collaboration with the District and Caltrans.

At VTA's November 4, 2021 Board of Directors meeting, Director and Santa Clara County Board of Supervisor Cindy Chavez submitted a [Referral to the VTA Administration](#) (agenda item No. 8.3), directing VTA staff to work with the District to analyze the resources and project timeline necessary for VTA to become the Project Sponsor and Project Delivery Partner to support efforts in securing near-term federal transportation funding and ultimately deliver the project through construction. Following the November VTA Board meeting, District staff have worked with VTA and MTC on identifying the steps necessary for VTA to become the Project

Sponsor and Project Delivery Partner, and the process for a funding exchange agreement with MTC that would bring federal funding to the Project quickly and allow Caltrans to fulfill its NEPA lead agency role within the current Project timeline.

MTC Funding Exchange

For the District to enter into a funding exchange agreement with MTC, the Project must be added to the Bay Area's Transportation Improvement Program (TIP), which is managed by MTC and approved by Caltrans, through a TIP amendment. The TIP lists regionally significant transportation projects and programs receiving Federal Highway Administration/Federal Transit Administration funds or for which an action by a federal agency is expected. MTC would first need to identify federal funds for the Project and then submit the TIP amendment for final approval by Caltrans. The District and MTC would then enter into a funding exchange agreement to exchange District funding for federal funding. Listing the Project in the region's TIP with programmed federal funds would establish a NEPA nexus and make the Project eligible for additional future federal funding opportunities to support construction. It is anticipated that District staff would forward a funding exchange agreement with MTC to the Board for consideration in Spring 2022.

VTA Project Sponsor/Project Delivery Partner Agreement

For the Project to be included in the region's TIP and to enter into an exchange agreement with MTC, the District needs to partner with a transportation agency with the ability to **encumber** federal transportation funds. For federal funding eligibility and because the Project includes significant transportation infrastructure outside of the District's open space preserves, the District has been exploring partnership opportunities with Caltrans, VTA, and County of Santa Clara Roads and Airports. Through those discussions, VTA has been identified as the best suited Project Sponsor and Delivery Partner because of their shared goals, ability to work with MTC's federal transportation funds, technical expertise, and their experience in delivering transportation infrastructure projects through the Caltrans process.

As a Project Sponsor, VTA fulfills the requirement for the District to execute a funding exchange agreement with MTC. As a Project Delivery Partner, VTA would lead the PS&E phase of the Project and manage a prime consultant to complete final designs, develop an operation and maintenance agreement, and move the components of the Project within the Caltrans right-of-way through permitting and construction. The District would work in partnership with VTA as VTA takes the lead role for the Project through construction. The tradeoff with VTA leading the remainder of the project delivery process includes: (a) transferring control over subsequent components of the Project such as final design, and (b) transferring oversight of the Project schedule, budget and construction cost management. The benefits significantly outweigh the tradeoffs and include: (a) eligibility through VTA to encumber MTC's federal funding by March/April 2022 for construction; (b) bringing on greater staffing, expertise and resources through VTA to facilitate project completion of a major capital transportation project; and (c) access to additional sources of federal funding to fill the \$16 to \$20 million funding gap.

District staff do not have the same level of expertise in delivering transportation infrastructure projects of this scale, nor the ability to maintain infrastructure on the state highway system. In addition, the District is not eligible to encumber federal funds managed by MTC since it is not a transportation agency. While the District is eligible to secure federal funding through future competitive grant program applications, the outcomes of competitive applications are uncertain and construction grants must be timed for use in 2025 through end of construction. Working with

an experienced transportation partner such as VTA could significantly strengthen our position to compete for federal grants.

VTA staff have provided example partner agreements for District review. The District will have the opportunity to meet with VTA on the draft Project Delivery Partner Agreement (Agreement) concurrently with the MTC TIP Amendment process. District staff will request a key role in providing input on aesthetic elements of the Project's engineered infrastructure, including the overcrossing and bridge railing, retaining walls and sound barriers, fencing, and interpretive/educational features that will educate the public of the wildlife crossing. Additionally, involvement in the PS&E design consultant selection, and other factors such as District participation in monthly Project Development Team meetings with VTA, Caltrans, and the consultant for the PS&E phase may also be requested for inclusion in the Agreement.

In order to meet the overall Project construction timeline, District staff will need to continue working with VTA to develop a Project Delivery Partner Agreement that defines roles and responsibilities through the final phases of the project, including long term operation and maintenance of infrastructure within the Caltrans right-of-way. It is anticipated that a draft Project Delivery Partner Agreement would be presented to the Board for input in Spring 2022, followed by consideration of final Board approval in Summer 2022.

Funding Opportunities

The pre-construction phases of the Project are fully funded. Current grants are being administered by the Wildlife Conservation Board (WCB), California Department of Parks and Recreation (CDPR), the Gordon and Betty Moore Foundation, and a private fund. District state and federal consultants, Environmental & Energy Consulting (EEC) and The Ferguson Group (TFG), are coordinating to support the exchange agreement with MTC and partner agreement with VTA.

With the District allocation of \$14M in Measure AA funding and approximately \$9M in external support, the funding gap to complete construction of the wildlife undercrossing, trail overcrossing, directional fencing, and trail connections is estimated to be \$16M to \$20M. The District's overall funding strategy for the construction phase anticipates securing external grants from state (55%), federal (40%), and local (5%) sources to leverage District funds. District staff have had initial conversations with potential funding agencies and anticipate applying to the State Coastal Conservancy (SCC) San Francisco Bay Program for Bay Area Ridge Trail and wildlife corridor priorities, WCB's Fish Passage and Wildlife Corridor Program for a second grant, and CDPR's Recreational Trails Program for connector trails outside the state right of way. EEC continues to support District staff with state agency coordination and state budget member requests in addition to tracking state agency funding allocations in the [Governor's FY2023 Budget](#). With billions of federal dollars available for transportation, regional trails, and wildlife habitat projects, completing NEPA/CEQA in 2023, partnering with an experienced transportation agency, and securing significant state and local funding will position the District well to be competitive for federal grant programs. The [Infrastructure Investment and Jobs Act](#) will fund a new US Department of Transportation Wildlife/Vehicle Collision Pilot Program, which VTA and the District have discussed pursuing collaboratively. TFG has also facilitated initial discussions with Congresswoman Anna Eshoo's office on a federal [Community Project Funding](#) request for the Project. Locally, [Valley Water](#) has met with the District on new wildlife corridor funding and possible local partner support.

Removal of the Ravine Creek Wildlife Undercrossing Alternative from Further Consideration

The District was advised by the Project consultant, AECOM, that based on refined topographic mapping completed during environmental field studies, the proposed wildlife crossing at Ravine Creek (Alternative 1) is infeasible to construct. Refined topography indicates that to provide adequate dimensions needed to successfully cross large wildlife at this location, the undercrossing would need to be placed at the flow line of Ravine Creek, resulting in stormwater and/or flooding of the new crossing during storm events. This would render the wildlife crossing ineffective and cause stormwater to discharge onto the Los Gatos Creek Trail on the other side of Highway 17. Due to the very limited area in which to construct a crossing at this location, it was determined that there is not a viable or cost-effective way to successfully engineer a crossing at Ravine Creek that would meet the Project's intended purpose.

District staff recommended to Caltrans that this Alternative be removed from further consideration and not be advanced into additional design or environmental review to reduce overall project costs. AECOM submitted a technical memo to Caltrans on December 14, 2021 requesting written concurrence from Caltrans in eliminating this alternative. Caltrans responded on January 20, 2022 confirming their concurrence with the recommendation.

The remaining wildlife crossing alternative at Trout Creek (Alternative 2) remains feasible to construct, meets the Project's purpose and need, and will continue into environmental review and design.

NEXT STEPS

In summary, District staff will be proceeding with the following tentative schedule for the partnership agreements with MTC and VTA.

MTC and VTA Partner Agreement Milestones	Lead Agency(s)	Tentative Completion Timeline
Transportation Improvement Program (TIP) Amendment	MTC	Spring 2022
District/MTC Funding Exchange Agreement	MTC and District	Spring 2022
Project Sponsor/Project Delivery Partner Agreement	VTA and District	Summer 2022

Finally, AECOM is currently preparing an "aesthetics" informational memo for District staff that will provide information on different options and general costs for design elements of the Project's engineered infrastructure. This information will be shared with the Board upon completion of the memo (anticipated in March 2022).

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