



**County of Orange**

## Modification to Agenda Item

**DATE:** October 24, 2008  
**TO:** Darlene Bloom, Clerk of the Board  
**FROM:** Thomas G. Mauk, County Executive Officer  
**SUBJECT:** Modification to Agenda Staff Report  
**RE:** Agenda Items #33 for the October 28, 2008 Board Meeting

RECEIVED  
2008 OCT 24 PM 3:02  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

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**Explanation:**

Attached is the revised Legislative Bulletin for Agenda Item #33

Revised Exhibits/Attachments (attached)

Revised Legislative Bulletin.

**cc:** Members, Board of Supervisors  
Rob Richardson, County Executive Office  
Ben De Mayo, County Counsel



**DRAFT**

# Legislative Bulletin

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*A Publication of the County Executive Office/Legislative Affairs*

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October 28, 2008  
Item No. 33  
Vol. XIV, No. 25

## **County of Orange Positions on Proposed Legislation**

The Legislative Bulletin provides the Board of Supervisors with analyses of measures pending in Sacramento and Washington that are of interest to the County. Staff provides recommended positions that fall within the range of policies established by the Board. According to the County of Orange Legislative Affairs Procedures adopted by the Board of Supervisors on June 3, 2003, staff recommendations for formal County positions on legislation will be agendized and presented in this document for Board action at regular Board of Supervisors meetings. When the Board takes formal action on a piece of legislation, the CEO will direct the County's legislative advocates to promote the individual bills as approved by the Board. The Legislative Bulletin also provides the Board of Supervisors with informative updates on State and Federal issues.

The 2008 Legislative Platform was adopted by Board of Supervisors' Minute Order dated December 4, 2007. On October 28, 2008, the Board of Supervisors will consider the following actions:

### **RECOMMENDED ACTIONS**

1. Approve Draft Letter re: Habitat Mitigation Financial Assurance Requirements
2. Receive and File Legislative Bulletin

### **SACRAMENTO LEGISLATIVE REPORT**

#### **ACTION ITEMS**

#### **APPROVE DRAFT LETTER RE: HABITAT MITIGATION FINANCIAL ASSURANCE REQUIREMENTS**

At the September 23, 2008, Board of Supervisors meeting, the County Executive Office was directed to work with Board offices to prepare a letter to be sent to the California Department of Fish & Game regarding the high cost to counties of establishing escrow reserves for habitat mitigation and asking that the requirements be reduced. Subsequent discussions with Board staff have led to the drafting of a letter to other Counties alerting them to this issue and

soliciting their support of our proposal. A draft of this letter is included in this report for the Board's consideration.

The County of Orange has become aware of a change in the policies of some of the Resource Agencies [Army Corps of Engineers (Corps), California Department of Fish and Game [CDFG] or Regional Water Quality Control Board [RWQCB]) that could have a significant financial impact on cities and counties around the state. This change significantly increases the costs to public agencies of providing financial assurance for habitat mitigation projects and creates budget problems for local government agencies.

The County has prepared and will enclose with this letter an Excel table that will assist other Counties in assessing their costs of financial assurance for habitat mitigation.

Staff is developing proposed legislation that would amend the California Fish and Game Code by adding language to exempt a city, county or public agency with the authority to levy and collect taxes and fees, from the requirement to demonstrate adequate funding to implement compensatory habitat mitigation projects. This proposal will be part of our 2009 Legislative Platform that will be presented to the Board for approval at the November 18, 2008 Board meeting.

The proposed letter reads as follows:

RE: Habitat Mitigation Financial Assurance Requirements

Dear xx:

In the last few months, the County of Orange has become aware of a change in state policy related to financial assurance for habitat mitigation projects that will have a significant financial impact on cities and counties. The change significantly increases the obligations of public agencies to provide financial assurance for habitat mitigation projects which can result in detrimental effects on the economy of local government and agencies.

The purpose of financial assurance is to ensure that the California Department of Fish and Game (CDFG) will have sufficient funding available to complete habitat and project mitigation should the project proponent default and fail to complete the required mitigation. To ensure that there is sufficient funding available CDFG has insisted that project proponents, including public agencies, place up to 100% of the mitigation cost in an escrow fund to cover establishment, monitoring and maintenance of the mitigation. This means that the funds can be held for up to 5-7 years past the construction of the mitigation site and are in addition to the public agency's cost for implementing the mitigation plan.

In addition, CDFG can also mandate that a project proponent provide an endowment to cover the in-perpetuity maintenance and monitoring of the mitigation site for a period of time no less than 100 years. Project proponents are being asked to fund an endowment large enough that the annual interest will cover the annual long-term maintenance and monitoring costs for the site. CDFG has suggested that applicants must write CDFG a check for the total amount of

the in-perpetuity costs without a financial agreement between the applicant and CDFG. CDFG would then hold the endowment indefinitely with little control by the applicant as to how the money is spent.

Under these two requirements, the County of Orange has estimated that as much as \$54 million may be tied up in mitigation escrows and endowments as a result of currently anticipated road and flood control project, and as much as \$7 million may be held as a result of future waste management and recycling projects. It is important to note that this \$61 million is in addition to project construction costs and is a freezing of funds which would otherwise be available for other essential public works projects necessary to improve public safety and the environment.

Overall, these financial assurance requirements are burdensome on public agencies who in tight financial times have limited funds to complete essential road, flood, and public infrastructure projects. Further, these requirements are unnecessary given that CDFG already has the authority to issue substantial fines and penalties to ensure that public agencies complete their mitigation projects.

The County of Orange has prepared, and enclosed with this letter, a briefing paper that provides greater detail on these two policies as well as two Excel Spreadsheets that can be used to determine the amount of funds your agency may be required to place into escrow in order to demonstrate financial assurance in both the short-term and in-perpetuity for habitat mitigation projects. We would greatly appreciate you taking the time to calculate what your financial obligations may be and emailing your findings to [John.Arnau@iwmd.ocgov.com](mailto:John.Arnau@iwmd.ocgov.com) so that we can begin to understand the state-wide impact of these policies.

At the present, the County of Orange is contemplating proposing legislation that would amend the California Fish and Game Code by adding language to exempt a city, county or a public agency with the authority to levy and collect taxes and fees, from the requirement to demonstrate adequate funding to implement compensatory habitat mitigation projects.

If you would like to discuss this issue further or if you would like more information, please feel free to contact either John Arnau, Habitat Manager for OC Waste & Recycling Department, at (714) 834-4107 or via email at [John.Arnau@iwmd.ocgov.com](mailto:John.Arnau@iwmd.ocgov.com), or Vince Gin, Interim Manager of Project Management for the OC Public Works Department, at (714) 834-5732 or via email at [Gin, Vincent.Gin@rdmd.ocgov.com](mailto:Gin.Vincent@rdmd.ocgov.com).

Thank you in advance for your response.

Very truly yours,

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**John M. W. Moorlach**  
Chairman of the Board

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**Patricia C. Bates**  
Vice Chair of the Board

## WASHINGTON LEGISLATIVE REPORT

### WASHINGTON UPDATE

The 2008 Legislative Platform for the County of Orange included a proposal from the Office of the Clerk-Recorder to pursue either a legislative or a regulatory means of protecting the Social Security numbers of veterans on their Department of Defense Forms 214, their discharge papers. This is a significant proposal because veterans are urged to file these discharge papers with their county's office of the clerk-recorder, thus making it a public record. If the full Social Security number were displayed on this public document, it would facilitate identity theft.

At the urging of Congresswoman Loretta Sanchez the Department of Defense (DOD) has studied this issue and has recently announced that they will implement a new DD Form 214 that will truncate the Social Security number so that only the last four digits are displayed. The DOD plans to implement this change for fiscal year 2010. Congresswoman Loretta Sanchez is working with the DOD to speed up this implementation.

A copy of the 2008 County of Orange Legislative Platform is available at: <http://www.oc.ca.gov/> under OC Links.

If you or your staff have any questions or require additional information on any of the items in this bulletin, please contact Bruce Matthias, at 714.834.7010.