



FORT ORD REUSE AUTHORITY

SPECIAL MEETING

FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Monday, September 24, 2018 at 9:00 a.m. | 910 2nd Avenue, Marina, CA 93933 (Carpenters Union Hall)

HABITAT CONSERVATION PLAN WORKSHOP AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

4. HABITAT CONSERVATION PLAN UPDATE

RECOMMENDATION(S):

- i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (HCP) report regarding United States Fish and Wildlife Service (USFWS) HCP and State of California Department of Fish and Wildlife (CDFW) 2081 Incidental Take Permit (ITP) developments.
- ii. Consider directing staff to work with the jurisdictions on formation of a Joint Powers Authority (JPA) to implement base-wide habitat management activities required by the 1997 Fort Ord Habitat Management Plan (HMP).

5. PUBLIC COMMENT PERIOD

INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

6. ITEMS FROM MEMBERS

INFORMATION

Receive communication from Board members as it pertains to future agenda items.

7. ADJOURNMENT

FORT ORD REUSE AUTHORITY BOARD REPORT

SPECIAL MEETING

Subject: Habitat Conservation Plan Update

Meeting Date: September 24, 2018

Agenda Number: 4

INFORMATION/ACTION

RECOMMENDATION(S):

- i. Receive a Fort Ord Multi-Species Habitat Conservation Plan (HCP) report regarding United States Fish and Wildlife Service (USFWS) HCP and State of California Department of Fish and Wildlife (CDFW) 2081 Incidental Take Permit (ITP) developments.
- ii. Consider directing staff to work with the jurisdictions on formation of a Joint Powers Authority (JPA) to implement base-wide habitat management activities required by the 1997 Fort Ord Habitat Management Plan (HMP).

BACKGROUND:

To complete the reuse of former Fort Ord as envisioned in the 1997 Fort Ord Base Reuse Plan (BRP), the Fort Ord Reuse Authority (FORA) must complete an HCP for “take” of Federally-listed species and a 2081 ITP for take of State-listed species as required by the Endangered Species Act (ESA) and California Endangered Species Act (CESA), respectively. Such permits are required to fully implement Habitat Management Plan (HMP) activities and the BRP. Since 1997, FORA pursued a base-wide HCP, and worked through many challenges in its pursuit, including impediments to conducting habitat restoration burns, listing of California Tiger Salamander (CTS), changing CDFW and USFWS staffing, added funding requirements, and adjusted HCP/2081 ITP requirements.

In late 2016, USFWS Ventura Office Field Supervisor Stephen P. Henry issued FORA a comment letter outlining nine general recommendations for changes to the draft Fort Ord HCP which caused major revisions to the species covered and the areas included as federal permit “preserved” habitat. Due to the need for these extensive revisions, FORA staff and consultants worked significantly longer to complete the screencheck draft HCP. However, USFWS and CDFW representatives agreed to meet an HCP schedule allowing one 60-day review period prior to publishing the public review draft HCP and its Environmental Impact Statement/ Environmental Impact Report (EIS/EIR). In July 2017, FORA distributed the screencheck draft HCP to USFWS, CDFW, and Permittees’ for the 60-day review. While other parties met the timeline, CDFW took eleven months to send in comments on the screencheck draft HCP. Many of CDFW staff comments brought up issues that were already resolved through discussions and compromises with CDFW staff in previous years. Staff found the degree and amount of the comments challenging, and recognized that strategic meetings, rather than editorial rewrites of the draft document, were in order.

CDFW and FORA staff agreed to meet on July 27th, July 30th, August 13th, and August 22nd for phone conference meetings to work through the new comments. Nearly every issue has been resolved. The one main issue to be resolved is CDFW assurances of Bureau of Land

Management (BLM) continued management of the Fort Ord National Monument in a manner consistent with HCP. Other issues pertaining to new information on California tiger salamander protection measures were incorporated into the HCP, with USFWS consent. Sand gilia take that had been permitted by CDFW in the Seahaven project and counted as impact to the species in the HCP as well as untied from the HCP. Other issues CDFW wished to see addressed for the ITP were addressed within the HCP document, so it can stand as the main source of mitigations for both Federal and State permits.

The schedule for completion of the HCP was delayed by several months by CDFW's prolonged review, as discussed above. However, a new development in the regulation of federal Environmental Impact Statements (EISs) by the Department of Interior may provide an opportunity for expediting the project timeline. On April 27, 2018, the Deputy Secretary of the Interior sent out a Memorandum mandating that all outstanding EISs with a Notice of Intent published on or before August 31, 2017 must publish a project schedule with a Final EIS completion and Record of Decision (ROD) issuance date of no later than 365 days from the effective date of the Memorandum. This pertains to the HCP, and follow-up communications with USFWS indicate that they will work on a tight timeline to complete the review. Therefore, the HCP schedule (**Attachment A**) has been adjusted to bring it to completion for a ROD in April 2019. Consistent with their new standard practice, USFWS officials urged FORA to remove the Implementing Agreement from the documents to be submitted for permits. Staff complied, and began an editorial process to assure no critical content was lost among the remaining documents (HCP, EIS/EIR and Appendices, and HCP JPA agreement). Because USFWS is the lead agency on the HCP under the National Environmental Policy Act (NEPA), their solicitor is currently doing the final screencheck review before Public Draft.

The HCP program is based on building to a habitat endowment that would generate enough annual interest earnings to fund protection in "perpetuity" for costs of restoring and managing habitat areas. The Cities, County, and other members of a future Joint Powers Authority (JPA) (called the "Cooperative") would be issued Federal and State ITPs and oversee stay-ahead provisions so that no species take would exceed completed mitigations. Additional background is included in **Attachment B**.

DISCUSSION:

Discussions at Transition Task Force (TTF) meetings have often focused on the cost of the HCP. HCP preparation and environmental review has been paid for by FORA, using Community Facilities District (CFD) monies collected from former Fort Ord development. FORA has paid \$2-3 million for the environmental review and document preparation so far as performed by consultants and staff. The required Endowments were originally projected to be \$9 million but is now expected to cost \$48 to \$66 million with about \$21 million expected to be collected by FORA before June 30, 2020. It is estimated that, if FORA sunsets, the jurisdictions would have to figure out how to generate the remaining \$27 to \$45 million required by USFWS/CDFW if they were to continue the effort, or, alternatively, the State Legislature might extend FORA's financing ability with FORA assigning that revenue stream to a successor.

Some have raised the idea that HMP obligations can be met by using current HCP funding, and that will be as useful to individual jurisdictions as a functioning base-wide HCP. There are several issues associated with this approach:

- 1) The HMP obligations are for a longer list of species;
- 2) The HMP sets aside Habitat Management Areas (HMAs), but does not provide a mechanism for take of species in the required management actions for the HMAs;
- 3) Without a base-wide USFWS HCP and CDFW 2081 ITPs, any development project will have to process Federal and State ITPs individually. Additive costs for such an approach are estimated to be much higher than a base-wide approach;
- 4) Also, mitigation for listed plant species is most commonly in the form of preserved habitat. As a result, some jurisdictions may not be able to find sufficient mitigation land for the permits that they seek.

The Transition Ad Hoc Committee (TAC) discussed Habitat Management on May 16, 2018 and subsequent meetings, and several Task Force members were concerned that, without a JPA to assign HCP work to, the Transition Plan to be delivered to the Local Agency Formation Commission (LAFCO) of Monterey County by the end of 2018 would have a loose end. This discussion was elevated to Board on July 13, in a Transition Plan study session. In response, Authority Counsel has considered options to allow for early execution of a JPA Agreement. At a meeting on August 30th, prospective permittees reviewed an updated version of the agreement. Those in attendance were not opposed to forming a JPA with the purpose of implementing base-wide habitat management activities required by the HMP. If the HCP and its accompanying EIS/EIR are completed in the future, the JPA's purpose could be amended. It is important to note that Take authorization would be required to manage the HMAs and FONM Borderlands (in designated development areas and HMAs).

CDFW, BLM and FORA have time to resolve the remaining issue after the HCP and its supporting documents are brought forward for public comment in November, 2018. CDFW expressed, in recent meetings, that would be settled after the Federal permit requirements are met (HCP approval and ROD) with State conditions for approval. Therefore, there are no known major impediments to the HCP completion by mid-2019, as shown in **Attachment A**.

The FORA Board may entertain options and alternatives to the current assumed approach. It is an option put forth by the TAC that the participants sign a form of JPA Agreement establishing a Habitat Cooperative promptly. This would provide an existing recipient for Habitat obligations in the 2018 Transition Plan, rather than a planned JPA. The TAC anticipates this Habitat Cooperative would continue discussing how to protect and manage habitat on the former Fort Ord and set up a permitting structure.

The Executive Officer suggests that the Board could consider the following alternatives:

- A. Form a JPA Cooperative according to the current HCP schedule (March/April 2019) and continue building the HCP Endowments with HCP replacement funding mechanisms provided by the Jurisdictions post-FORA or an extension of FORA financing authority.
 - Pro: Staff time efficiently directed to completing the HCP within the expedited schedule
 - Con: Possible loose end in the Transition Plan, depending on HCP outcome
- B. Form a JPA Cooperative in the near-term, providing the initial purpose of implementing the 1997 HMP on behalf of its members and supporting member jurisdiction's CESA and ESA ITP processing, prior to providing LAFCO with a draft Transition Plan (December

2018), and provide flexibility that this JPA may amend its purpose in the future to implement the base-wide HCP if that effort is successfully concluded.

Pros: Loose ends are tied up in one aspect of the Transition Plan; the region would have a responsible entity that would fund and implement HMP requirements.

Con: Staff time directed to forming a JPA might divert resources from completing HCP

C. Abandon the HCP process and assign FORA funds collected so far to FORA jurisdictions charged with implementing FORA's habitat management obligations or their own.

Pro: This option would save FORA from expending approximately \$150,000 for HCP consultants in the current FY18-19 budget.

Cons: Individual HCPs and/or ITP applications for future development, trails, etc., lack regional cohesion and as such would be less effective at protecting endangered species. CDFW and USFWS have indicated that individual permits would be difficult to acquire without a regional approach, FORA jurisdictions (Seaside, Del Rey Oaks, Monterey) may not be able to identify enough mitigation land for the permits that they seek.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff and Authority Counsel time for this item is included in the approved annual budget.

COORDINATION:

Authority Counsel, Administrative Committee, ICF International, Denise Duffy & Associates, CDFW, and USFWS.

Prepared by  Mary Israel Reviewed by  Jonathan Brinkmann

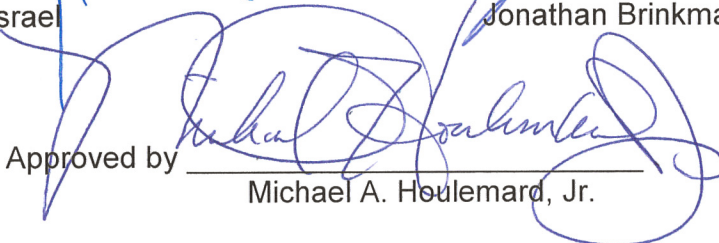
Approved by  Michael A. Houlemard, Jr.

Table 1. Revised Schedule for Installation-Wide Multispecies Habitat Conservation Plan for Former Fort Ord, CA

Key:

Document Preparation
Meetings
Review Periods
Notice prep/publish
Final Approval Steps

	Status	2017												2018												2019																			
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D								
HCP																																													
1	Draft Pre-Public HCP	Done																																											
2	Key Issue Resolution status updates	Done																																											
3	Wildlife Agency and Working Group Review Period (8 wk)	Done																																											
4	Meetings to Identify Key Issues	Done																																											
5	Bi-weekly meetings (as necessary) with Wildlife Agencies, FORA, and Working Group Members to check-in or resolve outstanding issues	Done																																											
6	Prepare 3rd Admin Draft HCP	Done																																											
7	Review 3rd Admin Draft HCP (Permit Applicants and BLM only)	Done																																											
8	Revise 3rd Admin Draft HCP	Done																																											
9	Review 3rd Admin Draft HCP (Permit Applicants, BLM, Wildlife Agencies)	Done																																											
10	Prepare Screen-check Draft HCP	Done																																											
11	Review Screen-check Draft HCP (Wildlife Agencies)	Done																																											
	Prepare 2nd Screen-check Draft HCP	Done																																											
	Agencies and Permittee Review 2nd Screen-check Draft (60 days)																																												
12	Prepare Screencheck Public Draft HCP																																												
13	Solicitor review (2 weeks)																																												
14	Prepare Public Review HCP																																												
15	Prepare and publish Notice in Federal Register for HCP, EIS																																												
16	Public/Agencies Review Period (60 days)																																												
17	Conduct Public Outreach																																												
18	Prepare Final HCP																																												
19	See Approval process steps																																												

EIR/EIS	Status	2017												2018												2019													
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D		
1	Prepare 1st Admin Draft EIS/EIR	Done																																					
2	Review Period	Done																																					
3	Prepare 2nd Admin Draft EIS/EIR	Done																																					
4	Solicitor review (2 weeks)																																						
5	Prepare Public Review EIS/EIR																																						
6	Prepare and publish Notice of Availability in Federal Register (see HCP-15 above)																																						
7	Prepare and publish CEQA Notice of Availability																																						
8	Public/Agencies Review Period (60 days)																																						
9	Respond to public comments/Prepare Admin Draft Final EIS/EIR																																						
10	Agency Review Period (2 weeks)																																						
11	Prepare Final Public Draft EIS/EIR - clear for publication																																						
12	Prepared and Publish Notice of Final EIS, HCP Availability in Federal Register - 30 day comment period																																						
13	Publish CEQA Notice of Determination - Permit Applicants - 30 day challenge period																																						
14	CEQA Notice of Determination--CDFW - 30 day challenge period																																						
15	See Approval Process steps																																						

	Status	2017												2018												2019											
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
HCP JPA Agreement																																					
1	Prepare 2nd Admin Draft Agreement	Done																																			
2	Wildlife Agency and Working Group Review Period	Done																																			
7	Prepare 3rd Admin Draft Agreement	Done																																			
8	Review 3rd Admin Draft Agreement (Permit Applicants and BLM only)	Done																																			
9	Respond to comments	Done																																			
10	Review 3rd Admin Draft Agreement (Permit Applicants, BLM, Wildlife Agencies)	Done																																			
11	Prepare Screen-check Draft Agreement	Done																																			
12	Review Screen-check Draft Agreement (Wildlife Agencies)																																				
13	Prepare Public Draft Agreement																																				
14	Public/Agencies Review Period (60 days)																																				
15	Prepare Final Agreement																																				
16	See Approval Process steps																																				

		Status	2017												2018												2019											
			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Approval Process																																						
1	USFWS/FORA Approval of Final Plan, Final EIR/EIS, Final HCP JPA Agreement																																					
2	FWS Findings/Biological Opinion																																					
3	Establish JPA (Implementing Entity)																																					
4	Local Agencies Adopt Imp Ordinances																																					
5	CDFW Findings Preparation																																					
6	Permits Issued by FWS																																					
7	Permits issued by CDFW																																					

Former Fort Ord Habitat Conservation Planning – Significant Historical Events

- 1991 - The United States Department of the Army (“Army”) was directed to close and then dispose of Fort Ord, CA.
- 1993, June – US Army National Environmental Policy Act (“NEPA”) Environmental Impact Statement identified need to develop and implement an Installation-Wide Multispecies Habitat Management Plan (“HMP”) as mitigation regarding impacts to protected species on the former Fort Ord base.
- 1993 – US Fish and Wildlife Service (“USFWS”) issued Biological Opinion (p1-4 Zander Assc.)
 - After sec. 7 consultation with the Army.
 - No Harm would come to species or habitats listed if a proper HMP was adopted to conserve and be implemented in accordance with the law and agreement.
 - Section 1.3 p 4 September 2000 draft
- 1994, February - HMP Developed, published, implemented; By United States Army and initially adopted
 - 18 Species Listed
 - Expands the USFWS’ analysis to accommodate the 1993 NEPA Record of Decision anticipated scenarios for reuse
 - P 1-6 Table 1-2 Plant Species
 - P 1-10 Table 1-3 Animal Species
- 1996, February - The Department of the Interior published in the Federal Register (FR) the Department of the Interior Endangered and Threatened Species, Plant and Animal Taxa; Proposed Rule (61FR7596 February 28,1996). Under the rule, the Category 1 and 2 classifications for federal candidate species are removed.
- 1996, November - HMP revised to be programmatic - HCP to be prepared by FORA and include a group of actions at a time rather than separately
 - Also allows for many entities to be involved in the HCP through “Certificates of Inclusion”
 - In the Fort Ord Reuse Authority’s (FORA’s) first effort, FORA requested the U.S. Army combine a 1996 HMP Implementing/Management Agreement with the Army’s draft HMP. Army agreed.
- 1997, January & April - USFWS issued Biological Opinion
 - No Harm would come to species or habitats listed if a proper HMP were made to conserve and be implemented in accordance with the law and agreement
 - Section 1.3 p 4 September 2000 draft
- 1997 – Army revised HMP and FORA HCP Supplement approach approval
 - HCP created to comply with the federal requirement of Conservation Plan
 - Army HMP filed separately and was approved
 - This required repackaging and resubmitting the FORA HCP

- 1999, March - USFWS issued another Biological Opinion
- 2000-2002 – USFWS delayed HCP review due to concerns regarding the US Army’s ability to perform the rotational burn regimen required by the HMP for Fort Ord.
- 2002 - East Garrison Land Swap Agreement -Agreement completed in 2002, successful 2005 habitat burn.
- 2004 – California tiger salamander listed under the Federal Endangered Species Act
- 2005 - FORA-University of California Santa Cruz (“UCSC”) Fort Ord Natural Reserve Funding Agreement whereby FORA funds ongoing UC habitat management efforts.
- 2005, July - FORA decided to concentrate its Habitat Conservation Plan (“HCP”) efforts on a bifurcated approach of processing a California Department of Fish and (“CDFG”) 2081 Incidental Take Permit application concurrently with the Federal USFWS HCP process.
 - CDFG and USFWS agreed to this approach in August 2005.
- 2005, October - Del Rey Oaks and East Garrison developers signed Memoranda of Agreement (“MOA’s”) designed to assure that federal permitting delays will not take place as long as FORA is working toward regulatory approval of the basewide HCP.
- 2006 - Funding Chapter of State HCP Agreement.
- 2006 - Base-wide State 2081 Incidental Take Permit (Requires a State HCP, EIR, agreements listed above, and State approval)
 - Draft State HCP submitted June 2006; Zander Associates revising; State HCP to be completed in 2006
 - A meeting with the regulatory agencies was held on June 29, 2006 where CDFG representatives introduced a number of new requirements regarding fiscal assurances
 - CDFG introduced new provisions to be accomplished by the prospective land managers, including Bureau of Land Management, State Parks, and the U.S. Army. The regulatory agencies suggested that they might require a provision for withholding land transfers from the Army to FORA if the Army is unable to clean and convey lands slated for BLM in a timely manner. Army staff responded that, until those lands convey to BLM, U.S. Army will continue its’ extensive clean-up program and continue to manage the habitat under the provisions of the Habitat Management Plan.
- 2007, January – Zander Associates completes administrative draft HCP and submits it to CDFG and USFWS for review.
- 2007, May – ICF hired as HCP consultant to complete the process.
- 2009, December - ICF completed an administrative draft HCP.
- 2007, September - An amendment to the HCP contract for additional tasks and budget to recombine State and Federal HCP’s was approved

- 2007-2012 Regulatory agencies made additional requirements, including mitigation monitoring, fiscal and other assurances, and a series of line item contingencies to be additionally defined.
- 2010, February - FORA member jurisdictions completed a comment and review period.
- 2010, August - California tiger salamander listed under the California Endangered Species Act.
- 2012, March - ICF completed the administrative draft
 - FORA disseminated the draft to permittees, CA Department of Fish and Wildlife (“CDFW” and formerly CDFG), and USFWS.
- 2012, July - Update: FORA received comments from USFWS and CDFG staff in August 2012, and held in-person meetings on October 30 and 31, 2012 to discuss specific comments; however, *a legal review from these wildlife agencies is not yet complete.*
- 2014, December, - FORA staff requested review of the HCP governing documents (Implementing Agreement, Joint Powers Agreement, HCP ordinance/policy) from FORA Administrative Committee members by January 24, 2014.
- 2015, March - ICF completed the screencheck draft
 - FORA disseminated the draft to permittees, CA Department of Fish and Wildlife (“CDFW” and formerly CDFG), and USFWS.
- 2016, December - FORA staff and consultants have received sufficient guidance to prepare the public review draft HCP and it’s EIS/EIR. Key revisions include: (1) no longer managing species that are not listed under the federal Endangered Species Act (ESA) or California Endangered Species Act (CESA), or, if listed, are not known to occur in former Fort Ord outside of the Fort Ord National Monument (“Monument”); (2) additional mitigation measures to benefit 8 HCP species within the Monument; and (3) rewriting the HCP to only rely on Monument lands for mitigation when Permittee’s additional mitigation measures provide a link for the reliance.
- 2016, July - US Fish and Wildlife Service (USFWS) Letter
 - USFWS provided nine general recommendations for HCP changes
- 2017, July - FORA distributed the 2nd screencheck draft HCP for USFWS, CDFW, and Permittees’ 60-day review
 - While other parties met the timeline, CDFW took eleven months to send in comments on the screen-check draft HCP. Many of CDFW staff comments brought up issues that were already resolved through discussions and compromises with CDFW staff in previous years. Staff found the degree and amount of the comments challenging, and recognized that strategic meetings, rather than editorial rewrites of the draft document, were in order.