



FORT ORD REUSE AUTHORITY

**REGULAR MEETING
FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP
and
SPECIAL MEETING
FORT ORD REUSE AUTHORITY (FORA) ADMINISTRATIVE COMMITTEE
Friday, January 24, 2020 at 10:00 a.m.
910 2nd Avenue, Suite A, Marina, CA 93933 (Carpenters Hall)
AGENDA**

1. CALL TO ORDER

2. PUBLIC COMMENT PERIOD

Members of the public wishing to address the Committee on matters within its jurisdiction, not on the agenda, may do so for up to 3 minutes and will not receive Committee action. Whenever possible, written correspondence should be submitted to the Committee in advance of the meeting, to provide adequate time for its consideration.

3. BUSINESS ITEMS

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| a. Approve meeting minutes from January 10, 2020 | ACTION |
| b. Approve meeting minutes from January 17, 2020 | |
| c. Today's Meeting Objective | INFORMATION |
| d. Exploration of HCP Reduced Scope & Phasing Options | INFORMATION |
| <i>i. Opportunity and Constraints Overview (Erin Harwayne DDA)</i> | |
| <i>ii. Jurisdiction Scenarios – Caucus & Report</i> | |
| <i>iii. Group Discussion</i> | |

4. FUTURE AGENDA ITEMS

DISCUSSION

Proposed Topics:

- *1/31/20: Governance Structure & Priorities*
- *2/7/20: Finances*
- *2/14/20: Revised Governance Agreement*

5. ADJOURNMENT

NEXT MEETING: January 31, 2020



REGULAR MEETING

FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP

10:00 a.m. Friday, January 10, 2020 | FORA Board Room
920nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:00 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Monterey County)
Mayor Pro Tem Gayle Morton (City of Marina)
Councilmember John Gaglioti (City of Del Rey Oaks)
Councilmember Alan Haffa (City of Monterey)
Councilmember Ian Oglesby (City of Seaside)
Layne Long (City of Marina)
Hans Uslar (City of Monterey)
Craig Malin (City of Seaside)
Patrick Breen (MCWD)

Members of the Consultant Team included:

Kendall Flint (RGS)
Tom Graves (RGS)
Aaron Gabbe (ICF)
Erin Harwayne (DDA)
Ellen Martin (EPS)

2. PUBLIC COMMENT PERIOD

No public comments were received.

3. BUSINESS ITEMS

a. Discussion of Meeting Objectives

The group held a brief discussion outlining the purpose of the Habitat Working Group: to identify possible options for agencies to address environmental compliance with state and federal requirements for habitat management and/or mitigation on the former Fort Ord. This would include discussions regarding the viability of implementation via a Habitat Management Plan, a Habitat Conservation Plan and/or a hybrid approach if possible.

b. Committee Structure

Co-Chair Parker described the proposed structure of the committee with herself and Executive Officer Josh Metz serving as Co-Chairs. No objections were made.

Meetings will be jointly noticed to allow members of the FORA Board and Administrative Committee to attend and share information freely. Public comment will be allowed following each business item discussed.

Any public agency with property in the former Fort Ord that may require habitat management may participate in the Working Group. It is anticipated that participation would include a Board member representing the agency, an Administrative Committee member representing the agency and/or staff members including but not limited to legal counsel. The group determined that there was no set number of participants per agency as the objective was to achieve consensus as opposed to voting on specific items. Co-Chair Parker said the Working Group would be informing the FORA Board what it has come up with. If actions are taken, they would be shared with the Board as recommendations.

c. Group Exercise: Define Key Topic Areas for Future Meetings

The Working Group held a breakout session by Agency to identify key areas of concerns, questions for the Group and its consultant team to address at future meetings, and challenges to the environmental compliance process including fiscal impacts and potential liabilities to each agency. A list of questions already identified by agencies were provided to all participants for review. Each group reported back its concerns with the goal of identifying common concerns for future meeting discussions.

Monterey County***Habitat***

If we reduce the scale of the HCP, would this reduce the costs and stay ahead provision? Would this reduction in scope lower start-up costs for implementation?

Finance

What is the mechanism for collection of fees for future development to replace the existing CFD? Who will defend and pay for litigation over HCP/EIR approval? Would this fall to the JPA or to agencies?

Take Permits

Should we reduce the permit for realistic near-term development over the next 25 years?

Other

Who would manage the proposed JPA if one is established by July 1, 2020? What can we feasibly accomplish by June 30, 2020? If the EIR is approved but no project (the HCP) has been selected?

City of Monterey

Habitat

Prefers the JPA concept for governance as it allows for joint management of the habitat at a reduced cost, facilitates access to take permits, offers legal protection and shared risks. The City also noted that the EIR/EIS is almost complete

How long (planning horizon) do we really need to plan for?

City of Marina and City of Del Rey Oaks

Habitat

If we reduce the scale of the HCP would the EIR and EIS still be valid? Can we reopen the HCP to better reflect development assumptions?

Finance

Marina has already established and set a fee for development yielding a set amount. How will other agencies collect set and collect fees and will they be enough to cover the cost of establishing a proposed endowment to fund the HCP?

City of Seaside

Habitat

What species does each agency have, where are they located and how many acres must be maintained/restored?

What protections do agencies have if others are non-compliant?

How can we best optimize mitigation areas within habitat management areas?

Non-Land Use Agencies

What liability/responsibilities would these agencies incur if a JPA is formed?

d. Approve Draft Schedule

Co-Chair Metz then focused on upcoming meeting topics and agendas. A series of eight additional meetings are planned. Topics for future meetings will be discussed each week. The group agreed on the next two subject areas for upcoming meetings:

- January 17th will focus on compliance requirements with representative from United States Fish & Wildlife Service and California Fish and Game.
- January 24th will focus on legal and financial issues related to establishing a “cooperative” and/or other mechanism(s) to address environmental compliance and review options related to reducing the size of the proposed mitigation and management areas.

4. ITEMS FROM MEMBERS

None.

5. ADJOURNMENT 12:00 p.m.

Co-Chair Parker adjourned the meeting at noon.

DRAFT



REGULAR MEETING

FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP And SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE

10:00 a.m. Friday, January 17, 2020 | FORA Board Room
920 2nd Avenue, Suite A, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:02 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Co-Chair, Monterey County)
David Martin, Monterey Peninsula College
Mayor Pro Tem Gayle Morton (City of Marina)
Councilmember John Gaglioti (City of Del Rey Oaks)
Councilmember Alan Haffa (City of Monterey)
Councilmember Ian Oglesby (City of Seaside)
Dino Pick, (City of Del Rey Oaks)
Layne Long (City of Marina)
Hans Usler (City of Monterey)
Craig Mallin (City of Seaside)
Patrick Breen (MCWD)
Josh Metz, (Executive Director, Co-Chair)

Members of the Consultant Team included:

Kendall Flint (RGS)
Tom Graves (RGS)
Aaron Gabbe (ICF)
Erin Harwayne (DDA)
Ellen Martin (EPS)

Other Attendees included:

Matt Mogensen, City of Marina, Assistant City Manager
Sherri Damon, City of Seaside City Attorney
David Willoughby, FORA Counsel's Office
Wendy Stribling, Monterey County Sr. Deputy County Counsel
Mike Langley, Marina Coast Water District, District Engineer

2. PUBLIC COMMENT PERIOD

No public comments were received.

Co-Chair Parker explained that there were actually two Committees in attendance today: The Fort Ord Reuse Authority Habitat Working Group (HWG) as a Regular Meeting and the Fort Ord Reuse Authority Administrative Committee as a Special Meeting.

3. BUSINESS ITEMS

a. Approve meeting minutes from January 10, 2020 (No action taken).

b. Today's Meeting Objective

Co-Chair Parker encouraged members to take advantage of the consultants here today from State and Federal agencies, and to listen carefully to their responses to the questions.

c. Review of Environmental Compliance Requirements and Address Questions

Staff from California Department of Fish and Wildlife and the US Fish and Wildlife Service were in attendance to answer questions.

Julie Vance Regional Manager, Central Region
California Department of Fish and Wildlife

Annee Ferranti, Environmental Program Manager Habitat Conservation Planning
California Department of Fish and Wildlife Central Region

Leilani Takano, Assistant Field Supervisor North Coast Division
US Fish and Wildlife Service, Ventura Fish and Wildlife Office

Rachel Henry, Habitat Conservation Plan Coordinator
U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office

i. What are the basic requirements for each agency to comply with State and Federal provisions?

Regarding permits in general, pursuant to the California Endangered Species Act (CESA). Fort Ord has been on the Incidental Take Permit (ITP) track. That said, if people are interested it might be worth exploring the Natural Community Conservation Plan as opposed to an HCP, but that can be decided at a later date. The take has to be fully mitigated, which is a pretty high standard, and the way that is done is impacts to the covered species and, in this case, there are several State species. Only State species would be addressed in the State program. The impacts are described in the project. There will be a large list of covered activities and generally the mitigation is in the form of perpetual mitigation land conservation. Typically, that's done with recreation and conservation activities, and a professional endowment that funds the management of those properties for the purpose of the current species. The idea is that those management activities provide a lift to those habitats such that impacts are mitigated by enhancing numbers of the species in other plans that are set aside. Otherwise, there would be a net loss.

The State can't issue a take permit to one entity and allow other entities to do the take. That's why the State has always believed that FORA as an umbrella agency would be the perfect transfer agency transitioning to a JPA. The State was assuming that the regional conservation approach was moving forward. If not, for an individual basis, things would have to be looked at differently. Also, on BLM lands, the State has difficulty approving mitigation on Federal land for obvious reasons.

ii. If we reduce the scale of the HCP - would this reduce the costs and stay ahead provision? Would this reduction in scope lower start-up costs for implementation?

Yes, but this depends on how the scale is reduced and on which species would be more or less impacted. State permits can also be amended but it depends on the complexity of the change. Regarding start-up costs, the simple answer is yes. Costs can be passed in, starting lower and rising thereafter.

iii. How long do we really need to plan for?

Currently, the regional HCP is permitting activities for 50 years. This is very atypical. Normally, the Service is comfortable with permitting projects for 25 or 30 years because we are able to analyze effects on species. Permit length really depends on the needs of the applicant and the covered activities. That said, the mitigation or compensation for impact selected species should be in place in perpetuity.

The State added that by shortening the horizon from 50 years to 25 or 30 years, they are able to have more confidence in their analyses.

iv. Can we reopen the HCP to better reflect development assumptions?

(Clarified by Co-Chair Metz to add "before we go to final draft.") The answer is definitely yes, since applicants should be comfortable with the final HCP. It not only assures compliance, but now is the time to change things that need to be changed. However, that said, the State has gone to a new process now, making it very challenging to get registered documents. So just to put the caveat there that yes, it can be reopened.

v. If we reduce the scale of the HCP would the EIR and EIS still be valid?

As long as it is within the scope of the original document, then yes.

vi. Does Borderland management qualify for a different type of take permit?

From the federal perspective - no.

CESA has another provision under Section 21(a) of the Fish & Game Code that allows take for things that are for management or recovery or for research purposes, but it can't be in association of the project.

- vii. *The HCP will cover a subset of the species addressed by the HMP. The HCP will manage natural communities and covered species habitats. Will the permittees still need to implement management, monitoring, and reporting actions for HMP species not covered by the HCP?*

Leilani Takano said that implementation of the HCP was a condition of receiving the land from the Army, and since that is not within the purview of Fish & Wildlife, she didn't want to speak to that. However, USFWS did do an analysis for the Army which resulted in the establishment of the HCP in 1993

- viii. *Can you confirm that HCP permittees need to apply for CDFW 2081 permits?*

Yes.

- ix. *How will regulatory agencies enforce environmental compliance?*

There are environmental complaints in the context of permit compliance, and then there are environmental complaints in the context of someone deciding to engage in take without authorization. The Committee asked for information on both.

If someone was engaging in take without authorization, there are enforcement options either pursued through the attorney general as a civil or criminal complaint.

If there are complaints in the context of permit compliance, there would be an attempt to resolve those issues through the administrative process. If things remain unresolved, the permit can be suspended or pulled.

- x. *Do individual agencies have the ability to mitigate onsite?*

It depends. The State would also want to check in and make sure there was not what is described as "postage stamp mitigation" that really don't contribute to the recovery of the species. Mainly it has to be of sufficient size to support the species.

- xi. *Other questions?*

One question was left out: Can you describe the agency view on individual versus collective HMA area management?

CDFW declined to speak about the HMA but did comment on whether it's managed as a unit as opposed to jurisdictions. Ideally, things are being managed consistently and collaboratively, and there's a benefit to the economy of scale that provides. On a per acre basis, it's going to be much more expensive to break it down and do it individually. But that said, it could be done but assurances would be sought that there was a consistent management approach across the landscape.

Questions to the presenters

John Gagliati asked about the cost of the HCP.

CDFW responded that there was some flexibility, but ultimately the take has to be mitigated slightly in advance of the impact. They wouldn't require mitigation for things that were yet to occur. Mr. Gagliati asked if it was even necessary then to open the HCP, or could jurisdictions just live within the boundaries of the Plan? CDFW expressed a willingness to sit and work out the details, and to take another look at the question. Mr. Gagliati then spoke about the \$40M endowment planning number in everybody's heads, and the "donut hole" between what's available and what needs to be contributed. CDFW cautioned that the costs will go up over time, and if not fully capitalized the agency will not be able to have the benefit of a larger endowment building interest. There are pros and cons to that.

Wendy Stribling asked if the totality of the mitigation can be scaled back based on a different projection of the development?

CDFW said maybe. It would necessitate an in-depth discussion but it might be doable. Stribling's other question was on follow-up to two questions: can individual permittees apply for 2081 permits, or does the JPA get the 2081? CDFW said developers would be added to the permit by amendment for their specific element, but it would still all be under the original permit. And finally, Ms. Stribling asked if there was a JPA, and an HCP, and a 2081, and one jurisdiction does something that's out of compliance with the plan, does the permit get revoked or suspended as to all entities? CDFW – Not necessarily. It would depend on the severity of the infraction and the nature of it.

FORA dissolves June 30, 2020. Will this HCP approval make that deadline?

CDFW was unable to answer the question. USFWS said it depends. It really depends on whether the applicants want to move forward with the HCP in its entirety and whether minor changes are wanted versus substantial changes. They asked to be informed as soon as possible if major changes are contemplated because there is a Federal Register process as well. In the meantime, they can still issue individual permits to individual applicants. If FORA sunsets and a JPA isn't formed, they can still issue individual permits to each applicant under the HCP. If one permit was issued to the JPA, inclusion would be given to each applicant.

If agencies carve out certain areas where there are endangered species and decide those lands won't be developed – is a take permit still necessary?

CDFW answered that if developments could be done in a way where endangered species areas were set aside, that would be fantastic. Of course, there would be ways to do less, and obviously if you're setting aside impacted land, this could be phased for really large development projects. In the Central Valley, there are large residential development mixed use projects which are hundreds of acres of development, but it's all going to occur at the same time. What developers will generally say is the first phase will be 75 acres

with mitigation land somewhere in the neighborhood of 10-15%. That's the first phase mitigation. and then have to work toward mitigating those lands and depositing a non-wasting endowment for the perpetual management of those lands. Then they can decide how big phase two will be, phase three and so forth.

Regarding enforcement, can you outline the plan by which you would enforce the provisions of a habitat management plan, and in particular, how the Service would look at what's going on in management areas?

The Service believe the agreement states that the Army will be the enforcer. Having said that, the Service did issue files that contained a list of all species that would be impacted by the transfer of plants, and that was part of the biological assessment that the Army submitted in the early 90's. They originally proposed that they would develop the original HMP. The HCP could be a tool for restoration actions that have already been decided on about twenty years ago, so that will help facilitate management.

Is it fair to say that if a jurisdiction has a HMA within their jurisdictional boundaries and there is no reason for a HCP, would they need to go back and look at your 1993 biological opinion and see what management actions are required under that opinion for certain types of species, and then take those actions to the services?

It goes back to the Army in that original agreement. If the jurisdiction has been managing all this time through benign neglect, then the Service would step in and try to get that entity into compliance, and to try to do restoration.

How are violations enforced if we are all collectively responsible for the management of the lands?

CDFW – You have no obligation with us, aside from the people that have their own permit. And they have their own specific duties. One thing I didn't talk about is that before someone can engage in development, they either have to put up a Letter of Credit for the full amount of mitigation, which we can cash out if necessary, or they have to have it in place in advance. So, it seems if there's a violation and we're all doing it collectively, the entire permit would be pulled. Maybe, but there are remedies besides permit suspension. It's not in the State's interest to blow the whole thing up and start from scratch.

Going back to the idea of Phasing, in our financial scenario we currently have \$17M. Can we set up Phase A with our \$17M, and then Phase B with, say \$25M, and we decide to stop there. Can you stop there and amend the permit?

Yes. However, \$17M is not a lot of money. If you're going to phase it, and I understand why you would want to do that, you're going to have to need to redo the financials. The other thing I want to say is that I hope you are all passing these costs on to your developers.

The caveat in the permit says that at the time you begin your second phase and the endowment gets deposited, it's been adjusted for inflation using the CPI.

Can we really calibrate the totality of the mitigation to the amount of development if the projects are done in phases?

The permits can be structured any way you want them to be; either everything up front or a structured phase. It's a little bit more complicated to think how that might work on Fort Ord because, in terms of the mitigation of lands, we would have to think about whether that means you're only managing this one area, or perhaps smaller managing levels in larger areas. We can talk about these issues by sitting down with a map and having small conversations.

In Metro Bakersfield there was a developer who did not complete all of the required mitigations. In a series of meetings with staff and the other developers (who were very unhappy about this other developer) sufficient peer pressure was applied to cause this developer to complete their phase of mitigation. So here, too, any conditions of approval for any developer are going to require that they comply with the terms of your permit. And if they don't, you can suspend their permit or red tag them.

At 11:26 a.m., Co-Chair Parker opened the meeting to members of the public.

Kristy Markey, Supervisor Parker's Office

Looking at the financing questions, it said \$40M seemed like a good deal, and that seems about right. Are there any assumptions about the ROI? And then also, looking at the actual expense of the activity, you require a certain number of years. Did any of you have. Chance to read our letter?

No.

Fred Watson

Have public comments been circulated yet? If not, when will they be?

Comments will be circulated with the Final Environmental Impact Report, Final Environmental Impact Statement and the Final Habitat Conservation Plan.

4. FUTURE AGENDA ITEMS

The group expressed a desire to immediately explore phasing options but continue to review components of a potential Joint Powers Agreement.

January 24, 2020: Exploration of HCP Reduced Scope & Phasing Options

- i. Opportunity and Constraints Overview (Erin Harwayne DDA)
- ii. Jurisdiction Scenarios – Caucus & Report
- iii. Group Discussion

Proposed Future Topics:

January 31, 2020: Governance Structure & Priorities

February 7, 2020: Finances

February 14, 2020: Revised Governance Agreement

5. ADJOURNMENT

Co-Chair Parker adjourned the meeting at 12:09 p.m.

DRAFT