



APPROVED

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 Gail Morton (City of Marina)
Councilmember John Gaglioti (City of Del Rey Oaks)
Councilmember Alan Haffa (City of Monterey)
Mayor Ian Oglesby (City of Seaside)
Dino Pick, (City of Del Rey Oaks)
Layne Long (City of Marina)
Hans Uslar (City of Monterey)
Craig Malin (City of Seaside)
Patrick Breen (Marina Coast Water District)
Josh Metz, (Executive Officer, Co-Chair)

Members of the Consultant Team included:

Kendall Flint (RGS)
Aaron Gabbe (ICF)
Erin Harwayne (DDA)
Ellen Martin (EPS)
David Willoughby, FORA Counsel's Office

Other Attendees included:

Matt Mogensen, City of Marina, Assistant City Manager
Sheri Damon, City of Seaside, City Attorney
Wendy Strimling, Monterey County Sr. Deputy County Counsel
Mike Wegley, 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 representatives here today from State and Federal agencies, and to listen carefully to their responses.

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 an endowment that funds the management of those properties for the purpose of species conservation. The idea is that those management activities provide a lift to those habitats such that impacts are mitigated by enhancing numbers of the species. 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 scaled, 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 conservation for selected species should be 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 analysis.

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. 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 HMP 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 Gaglioti 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. Gaglioti 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. Gaglioti 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 Strimling 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. Strimling'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. Strimling 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 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, 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.