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## [EXTERNAL] Ft. Ord, CA Public Comments for Draft Plan

1 message

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**Jacqueline Fobes** [REDACTED]  
To: fw8fortordhcp@fws.gov

Sun, Nov 3, 2019 at 8:20 AM

Dear Sir or Ms,

My only comment would be to leave Ft. Ord in it's natural state. Please do not build any more shopping centers, tacky fast food places, or housing. Once you allow building there you will never get the land back. Leave the area alone for wildlife and keep it open space for walkers, hikers, and bikers. Leave nature be.

1 - DD&A

Clean up the mess, the old housing units, and the decrepit army barracks that FORA did not do. The majority of people here on the Monterey Peninsula believe that all FORA did was charge everyone an exorbitant amount of money and hold multiple meetings that went no where.

2 - DD&A

3 - DD&A

Thank you.

Jacqueline Fobes, Ph.D.

November 4, 2019

Mr. Stephen P. Henry  
Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, CA 93003

Via Email: [fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

RE: Public comments concerning the Habitat Conservation Plan

Dear Mr. Henry:

This letter is my public comment regarding the Habitat Conservation Plan on the “Fort Ord” property on the Central Coast of California.

As a life-long Central California resident, I recall the promises made when the base closed in 1994. The economic development progress and opportunities since the base closure have been minimal and extraordinarily slow in coming.

Habitat and wildlife conservation is extremely important in our world of heavy resource usage and overall high living standards. This goal must be balanced by fair opportunities for the dignity for reasonable housing and jobs for our current and future residents. We were promised a strong emphasis on economic recovery opportunities on a significant portion of the base. The portion of the land dedicated to these promises continues to be reduced.

I respectfully request that your office balance the needs of all parties and focus on the promises made twenty-five years ago.

Respectfully,



Chris Steinbruner, CPA



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**[EXTERNAL] Stephen P. Henry/Fort Ord Road**

1 message

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**Dalila Epperson** <[REDACTED]>  
To: "fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Thu, Nov 7, 2019 at 9:29 AM

Dear Mr Henry,

The residents HOA of East Garrison unanimously agreed and signed a letter letting FORA know our community is fully against any road through Fort Ord's lands.

The impact would destroy the quality of life here. The estimate is about 16k cars per day through and near our community. Have you visited East Garrison? Please do and see for yourself.

Please do not allow any roads through Fort Ord. We and so many other groups use these trails daily. Plus the environmental factor.

Find alternatives and preserve this land wholly.

Thank you,  
Dalila & Steve Epperson  
[REDACTED]



Jesus Christ Loves You!  
Repent, Believe, & Follow Jesus!



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

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## [EXTERNAL] Fort Ord Development Comment

1 message

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**Cynthia Hickey** [REDACTED]  
To: fw8fortordhcp@fws.gov

Mon, Nov 11, 2019 at 7:51 PM

I'm writing this letter in opposition to any development on the former Fort Ord that will result in a take of any federally endangered or threatened species. Urban sprawl of any kind is irresponsible in a time when global extinction rates are rising for many plant and animal species. The Monterey Peninsula has many vacant homes that are used as vacation homes or investments. Any new homes will not have a meaningful impact on affordable housing needs, and new recreation or tourism developments are not sustainable. Please protect these endangered or threatened species by denying applications for takes.

Thank you,  
Cindy Hickey  
Del Rey Oaks

Virgil M. Piper  
3010 Eddy St., Marina, CA. 93933  
(831) 384-9595 (fax 384-6059)  
[pipersvc@sbcglobal.net](mailto:pipersvc@sbcglobal.net)

November 4, 2019

Mr. Stephen P. Ventura  
U.S. Fish & Wildlife Service  
2493 Portola Road, Suite B  
Ventura, CA. 93003  
[Fw8fortordhcp@fws.gov](mailto:Fw8fortordhcp@fws.gov)  
FAX: (805) 644-3958

Dear Mr. Ventura,

The November 2, 2019 issue of the Monterey Herald carried an article concerning some sort of draft of a *Habitat Conservation Plan* in which you folks are proposing to require a "Take" permit on Fort Ord property (as well as other Monterey County properties) in an effort to protect endangered species.

This article offers this definition: ***"A take is defined under the Endangered Species Act as 'to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'"*** - one has to wonder why a Habitat Conservation Plan is being proposed at all since all cities involved in a so-called "take" have their own requirements, planning commissions and must submit and get approved an EIR prior to development which would include meeting the standards of the Endangered Species Act.

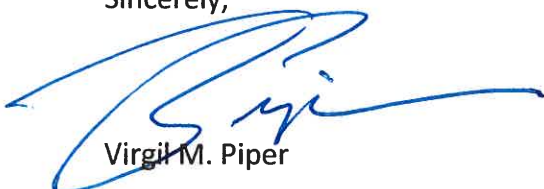
The Herald article does not indicate whether your proposal includes some sort of fee or tax – and, in fact, does not offer any reasonable explanation why any organization (not part of state, county or local government) should be drumming up one more impediment to prevent what might have been affordable land development.

There are endless requirements to be overcome by prospective builders like environmental impact reports justifying water use, air quality, additional traffic solutions, protection of unknown animal species "ad infinitum."

And if a project somehow gets past all this, there are impact fees, architectural reviews, permit fees and then, of course, the ultimate confrontation with planning commissions and city councils or county board of supervisors. But none of this covers the potential litigation put forth by the "smart growth" or "no growth" contingent . . . ***and now you folks are proposing to "Draft a Habitat Conservation Plan" to be added to that list of requirements!***

Possibly, you folks could take the time to explain why your habitat conservation plan does not duplicate EIR requirements already in place?

Sincerely,



Virgil M. Piper

US FISH AND WILDLIFE  
SERVICE

NOV 12 2019

RECEIVED  
VENTURA, CA

**FORT ORD**

# Public Comment Sought on plan

**Fish and Wildlife  
Service habitat  
conservation document  
available until Dec. 16**

**By James Herrera**

*jherrera@montereyherald.com  
@jammerral on Twitter*

**MONTEREY »** The detailed proposal to conserve and protect the flora and fauna at the former Army base at Fort Ord is available for public scrutiny and opinion for the next 45 days.

The Draft Habitat Conservation Plan and associated environmental impact statement for Fort Ord is available for public comment until Dec. 16 and the U.S. Fish and Wildlife Service is seeking community input.

The draft plan aims to balance the need for local economic growth through residential, commercial and recreational development on the former Army base while ensuring the long-term survival of rare plants and animals and their habitat.

According to Pam Bierce, a U.S. Fish and Wildlife Service spokesperson, the agency is working with local governments and land managers represented by the Fort Ord Reuse Authority to streamline the permitting process for future development projects and to ensure threatened and endangered species are conserved.

The authority represents 13 entities jointly applying for an incidental take permit, which requires a habitat conservation plan. A take is defined under the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

Incidental take is defined as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity.

The draft plan finds a balance between economic growth through residential, commercial and recreational development and habitat management that avoids and minimizes effects to listed species and contribute to their recovery, including the federally threatened California tiger salamander, California red-legged frog, western snowy plover, Monterey spinyflower, the federally endangered Smith's blue but-

terfly, Monterey gilia, Yaden's piperia and the state-endangered seaside bird's beak.

The requested permit term under the habitat conservation plan is 50 years after the plan becomes effective. The applicants for the incidental take permit include the Fort Ord Reuse Authority, California Department of Parks and Recreation, regents of the University of California, Monterey County, the cities of Marina, Seaside, Del Rey Oaks and Monterey, the board of trustees of California State University, Monterey Peninsula College, Monterey Peninsula Regional Park District, Marina Coast Water District and Fort Ord Regional Habitat Cooperative.

The former Army base at Fort Ord sits on about 28,000 acres. Permitted activities would occur on those portions of the base that have been or will be transferred out of federal ownership, totaling about 13,000 acres. The rest of the former Army base remains in federal ownership with the majority of the conserved lands being held by the Bureau of Land Management. Fort Ord was shuttered in 1994 as a result of Base Realignment and Closure by the federal government.

The Fish and Wildlife Service will consider and address public comments con-

cerning the Habitat Conservation Plan as it prepares a final environmental impact statement.

Submit comments by U.S. mail to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003, or fax comments to 805-644-3958 or via email at fw8fortordhcp@fws.gov.

Contact reporter James Herrera at 831-726-4344.



*Santa Ynez Band of Chumash Indians*  
*Tribal Elders' Council*

*P.O. Box 517 ♦ Santa Ynez ♦ CA ♦ 93460*

*Phone: (805)688-7997 ♦ Fax: (805)688-9578 ♦ Email: elders@santaynezchumash.org*

December 5, 2019

United States Department of the Interior  
Fish and Wildlife Service  
Ventura Field Station  
2493 Portola Road, Suite B  
Ventura, CA 93003  
Att: Stephen P. Henry, Field Supervisor

Re: 08EVEN00-2020-B0011 Monterey – Fort Ord Military Base Habitat Conservation

Dear Mr. Henry:

Thank you for contacting the Tribal Elders' Council for the Santa Ynez Band of Chumash Indians in regards to the above mentioned project.

*At this time*, the Elders Council requests no further consultation on this project; however, if supplementary literature reveals additional information, or if the scope of the work changes, we kindly ask to be notified.

If you decide to have the presence of a Native American monitor in place during ground disturbance to assure that any cultural items unearthed be identified as quickly as possible, please contact our office or Chumash of the project area.

Thank you for remembering that at one time our ancestors walked this sacred land.

Sincerely Yours,

The Tribal Elders' Council Governing Board



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**[EXTERNAL] Draft EIS for Fort Ord, Monterey, CA**

1 message

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**ANNE GREENE** [REDACTED]

Fri, Dec 6, 2019 at 9:55 AM

Reply-To: ANNE GREENE [REDACTED]

To: fw8fortordhcp@fws.gov

To whom this may concern,

I am writing to ask that you not allow "take" of any endangered creatures in our unique habitat areas of Fort Ord.

No Action Alternative should be applied here and not the Proposed Alternative which allows 'unrestricted development of some of the undisturbed habitat areas.'

No one cannot mitigate these precious endangered species and their habitat, no matter what the developer promises.

I sincerely doubt that mitigation would work to really preserve these species and their habitats, which are confined to our little part of the world and nowhere else on the planet.?

Monterey County holds some of the rarest species on earth. The Monarch butterfly for one, which is now plummeting to extinction thanks to our inability to preserve them, our ocean sanctuary which is the largest feeding ground in the world for sea life (Source Blue Planet part two Green Seas) and equally threatened by cruise ships, Purse seine fishing and pollution.

There can be no amount of money or mitigation that justifies the destruction of these habitats. There are too many unknowns about these habitats that made them special to these forms of life so they could survive in a world where their survival is so threatened. Mitigation by a development entity has no interest in these areas and their rare unique life forms or they wouldn't develop there in the first place!

In a world facing extinction on all levels we must preserve these rare places.

Thank you,  
Anne Greene





[EXTERNAL] Document Number: 2019-23972

1 message

Lorna Moffat [redacted] Fri, Dec 6, 2019 at 1:40 PM
To: Lorna Moffat [redacted], Carrie [redacted], Brent Allen [redacted],
"fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Draft Habitat Conservation Plan for Eight Species; Draft Environmental Impact Statement for the Habitat Conservation Plan for Fort Ord, Monterey County, California

My comments.
submitted by Lorna Moffat

[redacted]

No Action Alternative should be applied here and not the Proposed Alternative which allows 'unrestricted development of some of the undisturbed habitat areas.' 1 - USFWS

No one cannot mitigate these precious endangered species and their habitat no matter what the developer promises .There can be no real cost evaluation that allows the uprooting of these species and their habitats which are confined to our little part of the world and no where else on the planet or if so, just as threatened.

For some un-explainable reason creation chose our Monterey County as a seat of creation for many forms of life both in the sea and on land. 2 - USFWS

The Monarch butterfly for one, which is now plummeting to extinction thanks to our inability to preserve them, our ocean sanctuary which is the largest feeding ground in the world for sea life (Source Blue Planet part two Green Seas) and equally threatened by cruise ships, Purse seine fishing and pollution.

We are not good stewards of this progeny entrusted to us and this Draft EIS?EIR is just another example of exploiting species and environment for money, greed and profit and admits it so in its proposed Alternative which allows' unrestricted development.' 3 - USFWS

There can be no amount of money or mitigation that justifies the destruction of these habitats. There are too many unknowns about these habitats that made them special to these forms of life so they could survive in a world where their survival is so threatened.

Mitigation by a development entity cannot possibly have a real interest in these areas and their rare unique life forms because if they did they wouldn't build there. It is contrary to their well being. 4 - USFWS

In a world facing extinction on all levels we must preserve these rare places.  
The audacity and egotism in the statement below taken from the Draft EIS is just an example of the lack of understanding both spiritually and scientifically of what these species habitat really are. Their significance is reduced to "a less than significant level with implementation of mitigation levels. No wonder our planet is plummeting towards extinction. Humans can't and don't mitigate. We can only take and pretend to retrieve what we once had. And all the money in the world can't replace it.

**SIGNIFICANT ENVIRONMENTAL EFFECTS:** The Draft EIS/EIR did not identify any significant and unavoidable impacts. All potentially significant impacts can be reduced to a less-than-significant level with implementation of the Draft HCP and identified mitigation measures. This direct quote from the Draft EIS/EIR supplies no cost analysis , what and how they plan to mitigate these species and their environments that took millions of years to form. Please address this in the Final EIS?EIR

5 - DD&A

Thank you,  
Sincerely,  
Lorna Moffat



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

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**[EXTERNAL] testsend**

2 messages

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**Lorna Moffat** [REDACTED]  
To: "fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Fri, Dec 6, 2019 at 1:06 PM

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**Ventura Fort Ord HCP, FW8** <fw8fortordhcp@fws.gov>  
To: Lorna Moffat [REDACTED]

Fri, Dec 6, 2019 at 2:22 PM

Good afternoon Lorna,

I received your two voice messages regarding our Fort Ord email account. I left you a voicemail to let you know that we received your voice messages. Based on the number of comments we are receiving via this email account and your email below, it is working. If you have any additional concerns or need further assistance, please give me a call at 805-677-3330.

Thank you,

Leilani Takano

On Fri, Dec 6, 2019 at 1:07 PM Lorna Moffat [REDACTED] wrote:



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## [EXTERNAL] Habitat Conservation Plan for Fort Ord

1 message

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**Nancy Parsons** [REDACTED]

Sat, Dec 7, 2019 at 2:10 PM

To: fw8fortordhcp@fws.gov

I applaud the Fort Ord Reuse Authority's (FORA) mandated desire to create a plan for the protection of wildlife and threatened species. Since the 36 square mile boundary includes housing and business development I would like to bring to your attention a possible threat to the wildlife you are trying to protect. A recent front page article in the Carmel Pine Cone warned of the dire effect of anticoagulants used for the abatement of rats and mice. These pesticides along with others have a deadly effect on non-target wildlife. Rats or mice that trundle off and experience a slow and painful death after eating the pesticide are often then caught by raptors, bob cats, coyotes, etc. I see the black boxes that hold this poison in many developments that are still more wild than urban such as Ryan Ranch, the storage units at Spanish Bay and many other places where owls, hawks, coyotes and other wild animals prey upon infected rodents. Any business, restaurant, or house has access to these poisons at Home Depot as well as other hardware stores. So I would like to suggest to you the banning of any pesticides on former Fort Ord land. Otherwise what is the purpose of creating a safe habitat for these animals? Assembly Bill 1788 will be put before the legislators in 2020 addressing this grave problem of non-target wildlife deaths. Please do the right thing and ban pesticides from use on Fort Ord property otherwise what is the purpose of trying to create safe habitat for our dwindling wild animals?



**DEPARTMENT OF THE ARMY**  
ARMY BASE REALIGNMENT AND CLOSURE, FORT ORD OFFICE  
P.O. BOX 5008, BUILDING #4463 GIGLING ROAD  
MONTEREY, CA 93944-5008

REPLY TO  
ATTENTION OF:

DEC 09 2019

Base Realignment and Closure Office

Steven P. Henry  
Field Supervisor  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, California 93003

Dear Mr. Henry:

It is encouraging to see the Fort Ord Habitat Conservation Plan finalized as it will allow for cohesive regional management of natural resources, as well as provide necessary permits for the planned projects on the former Fort Ord. The Army has several comments on the plan which are listed below.

1. On page 3-45 it is written that Bureau of Land Management's (BLM) "weed abatement and herbicide treatment/mechanical removal is currently paid by the U.S. Army". The Army would like to point out that the money the Army pays BLM through the Service Agreement is only for weed abatement activities that occur on the current Army lands, or in areas affected by the Army's cleanup.
2. On page 5-41 Avoidance and Minimization Measure 45 calls for minimization of chemical herbicide use for controlling non-native invasive plant species. The Army suggests adding a statement that in some areas on the Former Fort Ord, there is a possibility of presence of Munitions and Explosives of Concern (MEC) below the surface. Ground-disturbing or intrusive activities in these areas require Land Use Controls (LUCs) including construction support by UXO-qualified personnel, and munitions recognition and safety training for people who conduct the ground-disturbing activities. The property parcel deeds identify the required LUCs.
3. On page 7-17 year 2023 is listed as the anticipated date by which all lands will be transferred from the Army. Given current schedule, the anticipated transfer completion date is 2028.
4. On page 7-21 section 7.7.3 identifies existing deed restrictions. The Army would also like to point out that Land Use Controls (LUCs) are also in effect for designated properties and the LUC requirements are listed in the deed for each property to manage the potential risk due to remaining MEC.

5. On page 9-45 year 2023 is listed as the anticipated transfer date. Please see comment # 3 above.
6. On page 9-45 it is written that the “Army will provide funding as identified in the Track 3 Impact Area Record of Decision, to allow BLM to implement its HMP requirements safety”. The Army would like to comment that the Army’s funds are regulated under the Federal Anti-Deficiency Act, and that the Army cannot commit a specific amount of money into the future. Thus, the amount of funding the Army provides to BLM may change in the future depending on the availability of Federal funds.

The Army appreciates the opportunity to comment on the Fort Ord Habitat Conservation Plan. A copy of this letter will be furnished to Mr. Eric Morgan of BLM. If you have any questions please don’t hesitate to contact me at by phone at 831-242-7920, or at [william.k.collins.civ@mail.mil](mailto:william.k.collins.civ@mail.mil).

Sincerely,



William, K, Collins  
Base Realignment and Closure  
Environmental Coordinator



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## [EXTERNAL] Habitat Conservation Plan for Fort Ord

1 message

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**Bruce Stenman** [REDACTED]

Tue, Dec 10, 2019 at 9:33 AM

Reply-To: [REDACTED]

To: fw8fortordhcp@fws.gov

Dear FWS

Any habitat plan to protect the snowy plover needs to protect them from cats. At Moss Landing State Beach I frequently see people's pet cats patrolling in the early morning hours and these are indiscriminate killers of birds. A single pet cat can wipe out a breeding area in a few weeks and there should be multiple approaches taken to preventing their entry and dealing with the ones that make it into the breeding area, including trapping. Putting up wires and signage to keep people and their dogs out of the breeding areas while ignoring the cats that freely roam across the area is incredibly foolish.

A second concern I have is with any prescribed burning which needs to be done intelligently and planned by people who truly understand the native plant community dynamics. I know this is breaking new ground but there have to be people in the USA that can provide advice. There is also a lack of awareness that it is the non-native plants that are the fire hazard and that compete with the native plants that are critical to the habitat for all manner of organisms and animals.

It is unfortunate that the last dune area in an undisturbed state was destroyed to put in a golf course at Spanish Bay but there is need to find any that remain in the state to have a restoration target for any plan that is created.

Best regards,

Bruce Stenman

Prunedale, CA



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

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## [EXTERNAL] Habitat Conservation Plan comment

1 message

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**Christian Sousa** [REDACTED]  
To: "fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Tue, Dec 10, 2019 at 10:12 PM

Hello,

Please make it a priority to remove invasive species. Invasive flora and fauna play a major role in species conservation. Setting aside large swaths of wild areas for species is the only way to preserve their wellbeing. Habitat fragmentation destroys the livelihood of many species. We must provide useable space for the threatened and endangered species of Fort Ord, and surrounding areas, before it is all developed.

Thank you,  
Christian Sousa



December 10, 2019

Via E-mail

Stephen P. Henry  
Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B,  
Ventura, CA 93003  
[fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

Board of Directors  
c/o Michael Houlemard  
Fort Ord Reuse Authority  
920 2nd Ave. Suite A, Marina, CA 93933  
[Michael@fora.org](mailto:Michael@fora.org)  
[Board@fora.org](mailto:Board@fora.org)

**Re: Draft Fort Ord Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR)**

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

We offer the following comments on the Fort Ord Multispecies Habitat Conservation Plan (“HCP” or “proposed HCP”) and the Draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”).

**Summary of key issues**

FORA has not demonstrated that the proposed HCP is needed for ESA/CESA compliance, or that it is the best alternative, or even a viable alternative. FORA has not shown that the proposed HCP is financially feasible or that there is, or can be, a committed, enforceable, and adequate funding plan. The wildlife agencies cannot approve the HCP without this funding assurance. The 12 agencies expected to assume liability for the HCP should insist on an adequate legal and financial analysis of both the proposed HCP *and* of the no-action alternative.

The HCP proposed by FORA in the final hours of its 25-year existence would require formation of a new regional governance structure through a Joint Powers Agreement (“JPA”) that would bind five Fort Ord land use jurisdictions and seven other agencies for 50+ years as the Permittees obligated to fund and fulfill habitat management activities for two Incidental Take Permits (“ITPs”).<sup>1</sup> Under this proposal, these 12 agencies and their JPA, and not the project developers, would be primarily liable as the ITP Permittees under the Federal and California Endangered Species Acts for all future Fort Ord development (the “covered activities”).

The HCP and EIR/EIS do not provide the 12 agencies with the information they need to make such a commitment. Critically, the documents do not compare the liability and cost of the

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<sup>1</sup> The agencies bound by the JPA would be the County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, UC, CSUMB, MPC, MPRPD, MCWD, and BLM.

proposed HCP to the no-action alternative. In the no-action alternative, the future developers, not the local agencies, would be liable for ESA/CESA compliance, would obtain their own project-specific ITPs, and would be directly responsible for the cost of compliance. Fort Ord development has proceeded for the past 23 years with such project-specific ITPs.

The proposed HCP is at bottom a vehicle to enable development that destroys habitat by imposing the direct cost and risk of ESA compliance on the agencies instead of the developer. The proposed HCP would also discourage redevelopment of previously developed land by taxing redevelopment to subsidize mitigation costs for habitat destruction on natural lands.

The EIR/EIS acknowledges that 4,241 acres, or 46% of the 9,292 acres of land designated for development in Fort Ord has been previously developed and can be redeveloped without an ITP because there are no covered species or habitat at risk. Twenty-five years after FORA's formation, vast areas of the former Fort Ord remains blighted with vacant buildings, empty asphalt parking lots, and disturbed lands. Before the land use agencies assume the cost to mitigate the destruction of the adjacent 5,051 acres of natural, vegetated lands designated as developable, they should determine whether they really need to permit development of these natural lands, and, if so, whether the land use agencies or the developers should assume the cost and risk of mitigation.

FORA has not answered basic questions about the no-action alternative. If the proposed HCP is not adopted, what is the continuing obligation to maintain the Habitat Management Areas ("HMAs") designated in the 1997 Habitat Management Plan ("HMP")? If there is an ongoing HMP obligation, who bears it and what is the cost? Can the HMP obligation be reduced by partnering with developers who need habitat mitigation land? By conveying the HMP HMA land to a resource agency? By negotiating revisions of the HMP? By simply making new findings under CEQA as to the availability of substitute mitigation for the HMP (e.g., project-specific ITPs) and/or new findings as to the infeasibility of a basewide HMP as mitigation?

Instead of answering these questions, the EIS/EIR stacks the deck in favor of the proposed HCP. The EIS/EIR assumes without any analysis that, unless the agencies adopt the proposed HCP, the agencies that hold the HMP's HMA lands would be obligated to manage those lands forever, *without any credit for ITP mitigation or funding from development activity*. The EIR/EIS assumes that unless the proposed HCP is adopted, only 25% of the 5,051 acres of the vegetated, natural land designated for development would be developable, because, the EIS/EIR assumes, without the availability of the HMP HMA areas for ITP mitigation, the developers would have to set aside the remaining 75% of the vegetated, natural land as ITP mitigation, even though these lands have been designated for development in the Base Reuse Plan. These assumptions cannot be consistent with the goal of the HMP, because the HMP's HMA areas have always been intended to support ITP mitigation for the developable areas of Fort Ord. Either the EIS/EIR is double counting the benefits of the HMP HMA land in its analysis of the proposed HCP, or it is ignoring those benefits in its analysis of the no-action alternative.

The HCP states that its program would require annual spending of \$2.6 million for the next 50 years, of which \$2.2 million is assumed to come from a \$38 million endowment fund. That endowment fund is assumed to be accumulated *in the next eight years* by taxes or fees generated by payments of the FORA Community Facilities District (“CFD”) tax or an unspecified “replacement funding mechanism” to be adopted by the five land use jurisdictions. Rapid accumulation of the endowment is critical to the financial viability of the HCP, because the funding analysis assumes that a long period of 4.5% annual investment returns on the accumulated endowment fund will pay for the ongoing HCP costs. To make this happen, *the HCP’s financial analysis assumes the complete buildout of Fort Ord by 2030 – a buildout at the rate of 443 houses per year, 6.9 times faster than the historic rate of buildout of 64 units per year.*

FORA’s estimates of the needed endowment continue to grow. A separate financial analysis prepared by the HCP consultant EPS in November, 2019 demonstrates that if buildout proceeds at a mere 4.3 times the historic rate, the endowment would have to be \$43 million, not the \$37 million assumed in the HCP, which would require higher fees and taxes, or recourse to the agencies’ general funds. Contradicting both the HCP and the November, 2019 EPS memo, a December 13, 2019 FORA staff report admits that the “Endowments *were originally projected to be \$9 million but are now expected to cost \$48 to \$66 million.*”<sup>2</sup> In short, the actual funding obligation is unknown. The only certainty appears to be that FORA consistently underestimates the cost.

Critically, there is no analysis of the required endowment if development proceeds at a pace consistent with historical development activity, although such a pace would require a substantially larger endowment and correspondingly higher fees or taxes. The financial analyses also ignore the need to fund startup, capital, and restoration costs in the early years, which would further retard the endowment accumulation and require higher fees or taxes. There is also no acknowledgement of the risk of assuming 4.5% annual returns from inception of the endowment fund when money market funds today barely return 2%.

Funding the HCP is critical for two reasons. First, the agencies have to reach agreement on the cost-apportionment method and the financing mechanisms to replace the FORA CFD, which will not be collectible after 2020. Incredibly, the proposed JPA Agreement would simply defer the determination of cost apportionment and financing mechanisms until *after* the 12 agencies bind themselves to 50 years of liability for the HCP costs. Postponement of a cost-apportionment agreement would be fiscally imprudent. For example, even the incomplete EPS analysis provided in November demonstrates that the cost to some agencies could be 2.5 times higher depending on the apportionment method selected.

Second, HCP funding is critical because the ESA and CESA require that the applicants demonstrate that funding is assured. CEQA and NEPA do not permit reliance on mitigation to be funded by impact fees unless the funding is committed and enforceable. Good intentions

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<sup>2</sup> FORA staff report, Habitat Conservation Plan Update, Dec. 13, 2019, emphasis added, available at <https://fora.org/Board/2019/Packet/121319BrdPacket.pdf>.

without an adopted, enforceable impact fee program are insufficient. Thus, neither FORA nor USFWS, as lead agencies under CEQA and NEPA, could make the requisite findings that mitigation is sufficient, because there is no a committed, enforceable funding mechanism.

The HCP and the EIS/EIR do not disclose the unresolved difficulties of implementing a committed, enforceable funding mechanism. More than half of the future development of Fort Ord expected to fund the HCP is represented by six previously entitled development projects. Because these projects' entitlements are vested, these projects are subject only to the exactions in place when they were approved; they cannot legally be subjected to newly enacted fees or taxes once the FORA CFD becomes uncollectible in 2020. *Thus, there is no apparent legal means to collect funds for over half of the HCP cost.*

Even if this funding problem is resolved, there are others. If the agencies elect to use impact fees as a "replacement funding mechanism," they will need to support them with an analysis to show that those fees have nexus and proportionality. Nexus and proportionality would require that the HCP costs be apportioned to the projects that actually cause the incidental take that triggers the need for the HCP. But it is not clear that the HCP program would be viable without the subsidies from other development. Of course, this problem would not occur in the no-action alternative, because development project that cause incidental take would have to pay for the required mitigation, without depending on subsidies from other projects or the land use agencies.

Nor is it clear that the proposed funding would be viable if it relied on incremental assessment of development fees or taxes as building permits are pulled. The HCP's "stay-ahead" provision requires that the actively managed percentage of the total planned conservation acreage stay 5 or 20 percentage points ahead of the percentage of total baseline incidental take acreage. The HCP provides no analysis of the feasibility of meeting this stay-ahead provision; but there are several reasons why, and scenarios in which, it would not be feasible. For example, unless fees or taxes are directly related to a project's incidental take, there can be no assurance that the project would generate sufficient mitigation funding; but none of the proposed cost apportionment approaches do in fact relate fees or taxes to incidental take. Furthermore, the proposed endowment funding assumes that HCP costs would be incurred on a level basis from year to year, but that is not accurate. The lumpy startup, capital, and restoration costs essential to the stay-ahead goal would be incurred before sufficient funding were available.

Finally, the HCP does not provide an honest discussion of funding assurances in the event that Fort Ord is not built out by 2030. Even though the HCP assures the land use agencies that there would be no recourse to general funds, the HCP later proposes that the agencies that happen to own the habitat lands should incur the management cost for that land in the event of funding shortfalls. This arbitrary and inconsistent assignment of risk should not be palatable to those agencies. Nor are the proposals realistic that call for relying on volunteers or "prison crews" to manage HCP lands in the event of funding shortfalls. Like the financial assumptions, these operational proposals reveal magical thinking.

Our detailed comments follow.

**A. The USFWS and FORA cannot certify the EIS/EIR and the USFWS and CDFG cannot issue ITPs without a committed, enforceable funding plan.**

**1. Federal and state regulations require that HCP funding be assured, which requires a decision about, and a commitment to, cost-apportionment and funding mechanisms.**

The ESA requires that Permittees submit a conservation plan that specifies “the funding that *will* be available to implement” the plan. (16 USC, § 10(a)(2)(A) [emphasis added]; see also 17 CFR §§ 17.22(a)(2)(vi), (b)(2)(C), 17.32(a)(2)(vi), (b)(2)(C).) The ESA requires that the “the applicant *will* ensure that adequate funding for the plan will be provided.” (16 USC, § 10(a)(2)(B) [emphasis added].) The USFWS explains:

There must be funding for the implementation to be successful, *so the applicant must demonstrate how funding will be assured* before we can issue an incidental take permit. The applicant must develop a funding plan early in the planning process that will adequately cover all aspects (financial needs) of HCP implementation and *provide proof of the secured funding sources* before the plan is approved.

(USFWS, Habitat Conservation Plan Handbook, Dec. 6, 2018, p. 11-1, emphasis added.)

State regulations also require that CESA compliance funding be described and assured. (14 CCR §§ 783.2(a)(10), 783.4(a)(4).)

Here, the USFWS has previously warned FORA that an adequate HCP must actually set out the substance of the local ordinances that would be used to implement the HCP:

Ordinances that will be used to implement the HCP's requirements should be enacted before permit issuance to allow public comment on them during the permitting process. If this is not feasible, then the essential required elements of the ordinances should be described in the HCP and take of listed species under the permit should be deferred until the ordinances are in place.

(USFWS, letter to Houlemard, July 29, 2016.)

As a practical matter, the choice of funding mechanism is critical because it is inextricably linked to the apportionment of costs among the Permittees.

Choice of funding mechanism will also be constrained by the HCP's stay ahead provision (HCP, section 7.6), a provision that can only be met if funding is *timely*. As discussed below, timely funding requires that there be a close relation between the development activity that causes incidental take and the funding.

**2. CEQA requires that there be a committed, enforceable funding mechanism for the HCP.**

The HCP proposes that the FORA “CFD [Mello-Roos Act Community Facilities District] Special Tax and/or a replacement funding mechanism” be levied on future development to provide funding assurances; and it states that this “will be sufficient to create the endowments given the expected pace of development (i.e., as development occurs the CFD Tax payments are collected.)” (HCP, section 9.3, p. 9-19.) The HCP provides that, other than the State Parks Department and Monterey Peninsula Regional Parks Department “no Permittee may be compelled to obligate its General Fund to satisfy its financial obligations under the HCP.” (HCP, p. 9-15.) Thus, the HCP relies on the CFD Tax or some replacement funding mechanism that does not obligate the Permittees general funds. The EIS/EIR concludes that impacts to protected species and their habitat will be less than significant because the HCP will avoid and mitigate the impact. (EIR/EIS, section 4.4.)

When a mitigation system relies on payment of impact fees, the record must demonstrate that the necessary mitigation will actually be provided. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728.) “A commitment to pay fees without any evidence that mitigation will actually occur is inadequate.” (*Save Our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140.) Impact fee mitigation is acceptable only if fees will demonstrably be used to implement a “reasonable, enforceable plan or program that the relevant agency commits itself to implementing.” (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188.) In *Anderson First*, conditions required a project to pay 16.87% of the cost of Phase I improvements to an interchange and “to participate in the program” to provide Phase II improvements to that interchange. (*Id.* at 1188.) Even though the agency stated that “it is preparing an update to the Traffic Impact Fee Program to include the I-5 interchange” and “condition 16 requires payment of the impact fee,” the court found that this provision was too vague and speculative to constitute a “reasonable, enforceable plan or program.” (*Id.* at 1189.) The court rejected the agency’s argument that it planned to update its fee program in the future to include the needed improvements. (*Id.* at 1188-1189.) The Court emphasized that actual construction of the improvements must be “fully enforceable,” i.e., part of a fee program that has actually been adopted. (*Id.*)

In *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, the court rejected a mitigation scheme as legally inadequate because neither the agency nor Caltrans had adopted a specific plan for necessary improvements – even though the agency had announced an intent to complete some form of improvements and had a clear methodology for collecting impact fees. (*Gray, supra*, 167 Cal.App.4th at 1122.) The mitigation was deficient because the EIR did not discuss how or when the fees would be collected and spent or whether the agency could ensure funding for necessary improvements.

Regardless of the reasonableness of a developer’s contribution, payment into a fee program is insufficient mitigation where the agency will not have sufficient funds to construct the improvements the program is intended to implement. (*Napa Citizens for Honest Government*

*v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 364; *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 785.)

The failure to identify the relevant improvements and impact fee programs violates CEQA: cumulative impacts are not mitigated by “paying an unspecified amount of money at an unspecified time in compliance with an as yet unenforced or unspecified transit funding mechanism.” (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) Case law specifically rejects the notion that “any fee program is necessarily or presumptively ‘full’ mitigation.” (*California Native Plant Society v. County of Eldorado* (2009) 170 Cal.App.4th 1026, 1055.) Good intentions and “recommendations” for improvements do not count: impact fee mitigation must be part of a committed, funded program when the project is approved. (*Anderson First, supra*, 130 Cal.App.4th 1188; *Gray, supra*, 167 Cal.App.4th at 1121-1122.)

Mitigation fees paid must actually constitute a fair share of all needed projects; if the impact fee program does not actually include a fair share of all of the necessary facilities to mitigate cumulative impacts, even the fact that the agency may plan to increase the impact fee to cover them is not sufficient. (*Anderson First, supra*, 130 Cal.App.4th 1173, 1188.) Where, as here, the impact fee has not even been calculated or mandated, the deficiency is greater. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 197–198.)

### **3. NEPA requires funding assurances if the agency finds impacts would be mitigated under an environmentally preferred alternative.**

Unlike CEQA, NEPA does not contain a substantive mandate that an agency adopt all feasible mitigation. However, NEPA does require that an EIS include mitigation measures among the alternatives compared. (40 CFR, §§ 1502.14(f), 1508.25((b)(3).)

And NEPA requires that when an agency relies on mitigation to identify the environmentally preferable alternative, as it has done here, that mitigation must be legally feasible and there must be sufficient resources to implement it:

When a Federal agency identifies a mitigation alternative in an EA or an EIS, it may commit to implement that mitigation to achieve an environmentally-preferable outcome. Agencies should not commit to mitigation measures considered and analyzed in an EIS or EA if there are insufficient legal authorities, or it is not reasonable to foresee the availability of sufficient resources, to perform or ensure the performance of the mitigation.<sup>3</sup>

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<sup>3</sup> Nancy Sutley, Chair, Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact; Jan. 14, 2011, p. 6, available at [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf).

**B. The HCP’s proposed funding, which relies on the FORA CFD and an unspecified “replacement funding mechanism,” does not amount to a committed, enforceable plan because (1) the current CFD is not collectible after 2020, (2) there is no legal authority to collect replacement fees from the already-entitled development projects, and (3) no replacement funding mechanism is identified, committed, or enforceable for other future projects.**

**1. The FORA CFD will not be collectible after 2020 by FORA or by any other entity.**

The current FORA CFD does not amount to a committed, enforceable plan for funding the HCP because it will not be collectible from already entitled development projects when FORA sunsets in June 2020 and will not be applicable to newly entitled development after that point.

The HCP relies on the collection of the current FORA CFD or an unspecified “replacement funding mechanism” to fund the endowment:

FORA will collect the CFD Special Tax to fund the HCP until its sunset. FORA is expected to sunset during the permit term. If the endowments are not fully funded by FORA’s sunset, FORA’s underlying jurisdictions[], County of Monterey, City of Marina, City of Seaside, City of Del Rey Oaks, and City of Monterey will collect the FORA CFD Special Tax or a replacement funding mechanism, meaning an alternative assessment or assessments, after FORA’s sunset (June 30, 2020) to complete full funding of the HCP endowments.

(HCP, p. 9-19, footnote omitted.) FORA has relied on Mello-Roos Community Facilities District (CFD) taxes to raise revenues for transportation, habitat, and water supply projects. The one-time FORA CFD tax becomes due when a project is issued a building permit.

The Mello-Roos Act requires that there be a sponsoring legislative body with governance authority. (Gov. Code, §§ 53311 *et seq.*) When FORA sunsets, there will be no such body. When FORA sunsets, there will no longer be any agency with the power to levy or collect the FORA CFD tax from either the development projects already entitled but not yet built or from development projects entitled in the future. As FORA acknowledges, the FORA CFD will not be collectible after FORA sunsets without legislation to extend FORA.<sup>4</sup> Proposed legislation that some thought might address this problem, SB 189, did not pass.<sup>5</sup> So the HCP’s conclusion

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<sup>4</sup> See, e.g., FORA Board Report, April 12, 2019, Attachment #2 to Item 5b, FORA Workshop, 5/18/19, p. 2 [FORA CFD “requires legislation to extend beyond June 30, 2020”], available at [https://www.fora.org/Board/2019/Packet/050819BrdPacket\\_Special.pdf](https://www.fora.org/Board/2019/Packet/050819BrdPacket_Special.pdf).

<sup>5</sup> Monterey Herald, “Fort Ord Reuse Authority extension legislation held in committee, Sept. 4, 2019, available at <https://www.montereyherald.com/2019/09/04/fort-ord-reuse-authority-extension-legislation-held-in-committee/>; SB189 available at



that FORA's underlying jurisdictions could collect the FORA CFD tax after FORA sunsets is erroneous.

**2. There is no funding mechanism that *could* collect the CFD or a “replacement funding mechanism” from already entitled development projects, and revenues from this entitled development represents the majority of the needed HCP funding.**

While a land use jurisdiction could impose a “replacement funding mechanism” on a *future* project that does not yet have vested entitlements, it would not be possible to impose a “replacement funding mechanism” on those projects that *already have vested entitlements* but for which a building permit has not yet been issued. The very point of vested entitlements is that they are not subject to exactions adopted after the vested entitlement is granted.

As FORA has repeatedly acknowledged in its transition planning, the *ability to raise revenues from projects that already have development entitlements will terminate when FORA sunsets, because no new taxes or impact fees can be imposed on entitled development projects with vested rights.*<sup>6</sup>

FORA has projected that post-2020 CFD taxes on the six already-entitled development projects would have totaled \$72.2 million.<sup>7</sup> FORA staff projects post-2020 CFD taxes would have been \$14 million for the County's single project; \$55 million for Marina's three projects; \$2.6 million for Seaside's single project; and \$42,370 for Del Rey Oaks' single project.<sup>8</sup> While FORA projected \$72.2 million in CFD taxes from these six entitled projects, it projected only \$55.2 million in CFD taxes from the future projects for which no entitlements have been issued.

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<https://legiscan.com/CA/votes/SB189/2019>. Proposed section 67700(d) of SB189 would have permitted the County to distribute previously *accumulated* CFD revenues upon dissolution of FORA, but it would not have permitted the County to collect or distribute the FORA CFD taxes *after* dissolution.

<sup>6</sup> See, e.g., FORA Resolution No. 18-11, Dec. 19, 2018, Recital M [“Collecting taxes or fees on developments that have already been entitled will require each jurisdiction to obtain agreements from each developer of an entitled project to pay development fees that the developer would not otherwise be obligated to pay. Those fees are estimated to be \$72 million for entitled projects, if all entitled developments are fully completed”], available at [https://www.fora.org/Board/2019/Packet/050819BrdPacket\\_Special.pdf](https://www.fora.org/Board/2019/Packet/050819BrdPacket_Special.pdf), pdf page 6.

<sup>7</sup> These six projects are identified by FORA staff as The Dunes, Seahaven, and Cypress Knolls in Marina; East Garrison in the County; Seaside Resort in Seaside; and the RV Resort in Del Rey Oaks. (See Draft Transition Plan Study Session, presentation to FORA Board, page 12, June 8, 2018, available at [http://fora.org/Board/2018/Presentations/06/TAC-Board\\_StudySession\\_060818.pdf](http://fora.org/Board/2018/Presentations/06/TAC-Board_StudySession_060818.pdf).)

<sup>8</sup> *Id.* at 13.

The assumed 30% share of that \$72.2 million allocable to the HCP would come to \$21.7 million, more than half of the proposed HCP endowment fund. (HCP, pp. 9-18 [Table 9-7], 9-33 [Table 9-12].) There is no committed, enforceable mechanism to replace this CFD tax revenue.

Remarkably, although FORA knew that it was statutorily mandated to sunset when it adopted the CFD tax, FORA made no provision to collect or replace CFD taxes for entitled projects after it sunsets.

Some land use jurisdictions may be in discussion with entitled developers seeking some voluntary agreement to replace the CFD taxes that cannot be collected after FORA sunsets. However, unless and until there are such legally binding agreements in place, the HCP cannot rely on future payments from these projects as a source of funding.

**3. There are no committed, enforceable funding mechanisms for future projects that do not yet have entitlements.**

Where there are no vested entitlements in place yet, the land use jurisdictions do have the power to replace the expected CFD tax revenues from unentitled future projects by creating their own funding mechanisms. These mechanisms might include nexus-based development impact fees, new CFDs, or ad hoc impact fees negotiated through development agreements. However, as discussed below, since there are no currently committed or enforceable fee or tax programs in place for future projects, or even any concrete proposals for such “replacement funding mechanism,” neither the HCP nor the EIS/EIR identifies any assured funding.

Furthermore, there are fundamental issues of equity and efficacy that should be negotiated and that must be resolved before the agencies adopt new funding mechanisms. These issues are also discussed below.

**C. Permittee agencies should not agree to a JPA without a committed, enforceable funding plan. Permittees should understand the cost of the HCP and its alternatives, reach agreement on cost-apportionment, and commit to enforceable funding mechanisms before joining a JPA.**

Even if the CFD funding problems could be resolved and the agencies were free to impose taxes or fees on all development projects, the agencies should not agree to join a JPA unless and until there is agreement that apportions costs and that ensures enforceable, committed funding mechanisms.

**1. As a matter of prudent fiscal management, the Permittees should know their future costs for the proposed HCP and for alternative compliance before they make a 50-year commitment to the proposed HCP by joining a JPA.**

The proposed HCP would require the 12 agencies to form a JPA that would be liable for the implementation and funding of the HCP/ITP conditions for 50+ years. As a Permittee under

the ITP, each agency would be jointly liable for the ITP costs incurred as a result of development decisions made by the other Permittees, and would also be liable for the permitted and unpermitted actions of developers in Fort Ord, both within and outside their own land use jurisdictions. (See, e.g., JPA Agreement sections 6.2 [Responsibility to Wildlife Agencies], 8.0 [Funding of Endowments]; 3.2 [Withdrawal]; HCP section 9.3.5 [Funding Adequacy].) Incentives to minimize overall costs and liability are weakened when those costs and liability can be shifted to other parties, a situation referred to as “moral hazard.”

By contrast, under the no-project alternative, the developers, not the agencies, would be the permittees and would directly bear the costs and liabilities for ESA compliance. Developers would have incentives to avoid development of greenfield land, to minimize incidental take, and to minimize overall HCP compliance cost.

FORA has suggested that there are economies of scale in the joint-HCP approach. However, FORA has not quantified those scale economies or provided a comparison of the habitat management and ESA compliance costs for the project and no-project alternatives. *Before making a decision to join the HCP JPA and to assume liability for 50 years of Permittee costs, the agencies should know the costs and benefits of both alternatives.*

**For the proposed HCP:** the agencies should know the total cost and their own shares of the total costs. As discussed below, each agency's cost for the proposed HCP would depend on a number of factors, including the total cost of the HCP; the cost-apportionment method; the sites and pace of development that determines the cost to meet the stay-ahead provision; the funding mechanisms that would provide an endowment; and the rate of return on that endowment. As discussed below, the HCP and the analysis provides by FORA to date are not sufficient to provide this information.

**For the no-action alternative,** agencies should know the following:

About the agency's own costs and obligations for the no-action alternative, the agencies should know:

- What liability would the agency retain for fulfilling obligations under the existing HMP?
- What is, and who bears, the obligation for ongoing management activity for HMP's HMA acres (e.g., controlled burns, access limitation, any mandated restoration or enhancement)?
  - Note that HMP's HMA acreage is held as follows: State Parks (979 acres), UC/NRS (606 acres), County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres).
- What is the cost for that management activity if it is mandatory?
- Will the ongoing management activity for its portion of the HMP's HMA acres require the agency itself to obtain individual HCP/ITP? If so, at what cost?
- Could the agency reduce or offset its management costs for its portion of the HMP's HMA acres by partnering with a private developer or group of developers who need mitigation land and will pay for its management?

- Could the agency reduce or offset its management costs for its portion of the HMP's HMA acres by conveying the HMA land to another agency with a habitat/recreation mission, e.g., BLM, State Parks, UC/NRS?
- Could the agency reduce or avoid its management costs for its portion of the HMP's HMA acres by obtaining revisions to the HMP based on changes in land use plans or other conditions?
  - Note that the HMP indicates that changes may be negotiated with the USFWS. (HMP, p. 1-14.)
  - Agencies have negotiated changes to the HMP in the past, e.g., by swapping mitigation and development land designations.
  - Whose permission would be required to revise the HMP?
- The HMP is apparently not sufficient to provide ESA compliance for ITPs without more actions.<sup>9</sup> It appears that the HMP adoption has been relied on only to fulfill mitigation obligations under CEQA and NEPA, with the understanding that the HMP may *facilitate* later ESA compliance.<sup>10</sup> If the HMP is mandatory only as a form of CEQA/NEPA mitigation, *can the agencies alter the HMP obligation if they make findings of adequate substitute mitigation and/or infeasibility?* (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359 [mitigation may be modified or deleted with stated rationale supported with substantial evidence]; see also *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508; *Katzeff v. Department of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 614.)

About the agency's developers' costs and obligations for the no-action alternative, the agencies should know:

- For the development areas within an agency's jurisdiction, what would be the approximate cost of future ESA/CESA compliance that would be born directly by developer-permittees in their project-specific HCPs/ITPs? How would that cost compare to the jurisdiction's share of the cost of the proposed HCP?
- Assuming that developers bear the cost of ESA compliance directly, how much less greenfield development would occur under the no-project alternative than under the proposed HCP?
  - Note that the proposed cost apportionment in the HCP document call for assessing costs based on CFD replacement revenues. This cost apportionment would not create *any* incentive for a private developer to avoid take and minimize ESA compliance costs by developing on unvegetated, previously developed land rather than on vegetated land providing habitat, because CFD taxes would be the same either way.

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<sup>9</sup> See Base Reuse Plan EIR, p. 4-164.

<sup>10</sup> *Ibid*; see Robert Walker, Assistant Secretary of the Army, Fort Ord, California, Disposal and Reuse, Supplemental Environmental Impact Statement, Record of Decision, June 18, 1997, available at [http://docs.fortordcleanup.com/ar\\_pdfs/AR-BW-1790/bw-1790.pdf](http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1790/bw-1790.pdf).

For the no-action alternative, it is particularly important that the agencies clarify the continuing obligations under the HMP *and* the ability to coordinate the management of the HMP's habitat management areas with project-specific ITPs. As discussed below, the EIS/EIR assumes for the no-action alternative that HMP obligations cannot be coordinated with project-specific ITPs; but this assumption is not supported with any actual analysis.

**2. Formation of JPA should not occur until the HCP is finalized and there is agreement on, and commitment to, enforceable cost-apportionment and funding mechanisms.**

The HCP contemplates that the JPA will be formed prior to the implementation of the HCP and permit issuance. (HCP, pp. ES-10, 7-1.) This is apparently required by the USFWS. (Stephen Henry, USFWS, letter to Michael Houlemard, FORA, July 29, 2016, p. 5, point # 6.) The draft JPA Agreement provides that the "final HCP" is incorporated by reference and that conflicting provisions in the HCP will supersede the JPA Agreement. It is unclear how many changes need to be made to the HCP to make it "final" or whether future changes to the HCP would be binding on each JPA member.<sup>11</sup>

The cost apportionment and the funding mechanisms are critical questions that remain unresolved in the JPA Agreement. Section 8 of the JPA Agreement mentions an array of *possible* alternative funding mechanisms (e.g., CFD Taxes, developer impact fees, lump sum or annual payments by Permittees, state and federal grants and appropriations) and *possible* alternative cost-apportionment methods (e.g., apportionment based on acreage, developable acreage, market value of acreage, habitat value of acreage, previous funding commitments). Section 8 provides that *after* the JPA is formed, the parties will "cooperatively develop" both the "funding mechanisms" and the "methods of apportioning funding responsibility among the Parties." Even if it were not dictated by the ESA, CESA, CEQA, and NEPA, it would be prudent for the agencies to reach agreement on cost-apportionment and funding mechanisms *before* committing themselves to a 50-year liability.

In contrast to the JPA Agreement, the draft HCP appears to have settled that the funding mechanism and cost apportionment *will be* based on the CFD Tax and some replacement funding mechanism that is equivalent to the current CFD tax, to be developed by the land use jurisdictions, without any use of the General Funds of the land use jurisdictions. (HCP, section 9-3.)

Despite the HCP's apparent commitment to this approach, a November 13, 2019 EPS memo refers to the CFD-based cost apportionment method assumed in the HCP as the "baseline analysis" and then discusses several alternative cost and funding scenarios.

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<sup>11</sup> If substantial changes are made to the proposed HCP circulated for public review and comment, the revised HCP and a revised EIS/EIR should be recirculated for additional review and comment.

In short, the cost-apportionment method and funding mechanism are neither adopted, nor even agreed. Accordingly, the HCP does not meet the federal or state requirements for assured funding or the CEQA and NEPA requirements for committed, enforceable mitigation financing.

In light of the JPA's provision that the final HCP is controlling over the JPA (JPA, section 4.0) and the fact that the HCP assumes a cost-apportionment and funding mechanism but the JPA does not, each jurisdiction should require that the HCP be in "final" form at the time that the JPA Agreement is signed and that funding mechanisms and cost-apportionment be agreed, committed, and consistently spelled out in both the HCP and the JPA. The JPA Agreement should also provide an acceptable mechanism to negotiate future changes to the final HCP document.

**D. Permittees should evaluate a range of cost-apportionment methods and funding mechanisms if they intend to pursue the proposed HCP.**

**1. The September 2019 HCP assumes that endowment funding will come from the FORA CFD or an equivalent but unspecified "replacement funding mechanism" after FORA sunsets.**

The JPA Agreement leaves the choice of cost apportionment as a matter to be decided after the jurisdictions join the JPA and after the HCP is adopted. (JPA Agreement, section 8 [cost apportionment method to be determined], section 4 [HCP to be incorporated by reference; its provisions supersede the JPA Agreement].)

However, the HCP states that HCP endowment funding will come from the CFD Special Tax and from state and federal budget appropriations and that no Permittees other than State Parks and MPRPD would be required to obligate its General Fund to satisfy its financial obligations. (HCP, p. 9-15.) Since budget appropriations are uncertain and outside the control of the Permittees, and since the proposed endowment funds would provide essentially all of the HCP funding, financial assurances will rely on Permittees' ability to raise revenues through the FORA CFD or an unspecified "replacement funding mechanism" that would generate the same revenue stream as the existing CFD tax. Thus, the HCP assumes that the HCP endowment will be funded by a CFD Special Tax revenue stream and will be apportioned among the Permittees based on their collection of CFD tax revenues. (HCP, section 9.3.1.)

**2. The November 2019 EPS memo discusses alternative funding-mechanisms.**

Although the information is not in the HCP, the HCP consultant EPS modeled cost-apportionment based on several different funding mechanisms in a memorandum captioned "Financial Model Sensitivity Analysis and Cost Allocation Alternatives." (EPS, letter to FORA Administrative Committee, Nov. 13, 2019 ("EPS2").) These included apportioning cost based on CFD Replacement Revenues, on short and long-term developable acres, and on water allocations. Allocation Alternative 1 in the EPS Sensitivity Analysis, which is based on "CFD Replacement Revenues," is the cost allocation method used in the HCP document.

**3. The agencies should consider appropriate criteria and options for adequate cost-apportionment methods and funding mechanisms.**

Criteria for adequate cost-apportionment methods and funding mechanisms might include the following:

- Funding should be sufficiently proportionate to incidental take that the stay-ahead provision can be met.
- Funding should be feasible, committed, and enforceable.
- Funding should be equitable among the Permittees and among the types of development (e.g., residential, office, commercial, industrial, retail)

Options for cost-apportionment methods and funding mechanisms might include:

- The FORA CFD tax, as long as it can legally be collected,
- A new CFD tax enacted and levied by the JPA, applicable to all development within the HCP,
- A local CFD tax enacted and levied by an individual Permittee that is a land use jurisdiction, applicable only to development within that jurisdiction,
- A development impact fee enacted and levied by the JPA, applicable to all development within the HCP,
- A local development impact fee enacted and levied by an individual Permittee that is a land use jurisdiction, applicable only to development within that jurisdiction,
- Ad hoc fees imposed through development agreements,
- General fund revenues of the Permittees,
- Grants and appropriations.

**4. The choice of funding mechanisms should matter to agency/Permittees because it is likely to determine the cost-apportionment of the HCP. There are *substantial* differences in each Permittee's funding obligations depending on the choice of cost-apportionment and funding mechanism.**

The choice of funding mechanism would likely be allowed to determine the cost-apportionment among the Permittees. For example, if development impact fees or CFD taxes are the primary funding mechanism, cost would likely be apportioned among Permittees in proportion to the fees or taxes raised in each Permittee's jurisdiction. The HCP and the EPS Sensitivity Analysis memorandum (EPS2) assume this to be the case under normal conditions. Uncoupling the funding mechanism from the cost-apportionment could be accomplished, e.g., through side-payments among Permittees, but this would introduce complexities that should be avoided absent good reason.

Note, however, that the HCP does propose that funding and cost apportionment be at least temporarily uncoupled in the event that CFD payments were insufficient to pay for HCP required actions on all HMAs: in that event the HCP proposes that the owner of the HMA land

incur the cost and seek reimbursement from the other Permittees later. (HCP, section 9.3.5.1, p. 9-35.)

Impact fees, CFD taxes, and development agreement fees can be levied on various bases. The current CFD levies fees based on type of development and number of units. Impact fees can do the same. But CFD taxes and impact fees could also be based on the developed acres, or the vegetated developed acres, or based on the amount of incidental take caused by development.

The choice of the fee or tax basis can make a large difference in cost apportionment. EPS's Sensitivity Analysis memorandum modeled cost-apportionment based on the existing CFD taxes, on short and long-term developable acres, and on water allocations. Allocation Alternatives 2a and 2b in the EPS Sensitivity Analysis are based on developable acres. Alternative 2a is based on short-term development in the planning pipeline and Alternative 2B is based on the total buildout acres over the 50-year HCP permit term. (EPS2, Tables 6 and 7, D-1 [long-term developable acres by jurisdiction].)

EPS's modelling demonstrates that costs could be 2.5 times higher for some land use jurisdictions, depending on the basis of apportionment. (EPS2, Table 7 [Marina Alt. 1 cost of \$18.7m vs. Alt 2B cost of \$10.1m; DRO Alt. 1 cost of \$4.2m vs. Alt. 2B cost of \$5.6m; County Alt. 1 cost of \$4.5m vs. Alt 2B cost of \$1.8m].) Given the amounts at issue, the land use jurisdictions should resolve the basis of cost apportionment before entering into a JPA that binds them to an unfavorable or inequitable cost-apportionment method, not to mention the joint and several liability. (JPA Agreement, sections 8.0, 6.2, 3.2.)

**E. Even if a funding mechanism identical in the amount and apportionment to the current CFD tax could somehow be imposed, it would not demonstrably assure adequate funding for the HCP because there is no assurance that this revenue stream could meet the stay-ahead provision and because such a cost-apportionment is likely to be rejected as inequitable.**

The HCP provides no actual analysis to demonstrate the feasibility of the "stay ahead" provision and there are reasons to doubt it will be feasible.

- 1. The HCP does not actually match the schedule of habitat maintenance, enhancement, and restoration to the build-out assumed to occur in order to show that the HCP can in fact stay ahead.**

HCP Section 7.6 provides a stay-ahead rule, but without an analysis to demonstrate that it will work within the funding constraints.

The HCP defines "take percentage" as the impact on each species in acres of take divided by baseline acres. The HCP defines "conservation percentage" as the acreage actively managed and commensurately funded divided by total protected acreage for each species habitat required by the HCP. The stay-ahead rule requires that the conservation percentage must be 5 percentage points greater than the take percentage for most fauna habitat. For the CTS and CRLF, the



conservation percentage must be 20 percentage points greater than the take percentage until successful completion of aquatic restoration projects, which would require that the HCP incur the front-loaded costs of restoration. Similarly, for HCP plant species, the conservation percentage must be 20 percentage points greater than the take percentage until successful completion of restoration and seeding projects, which must occur “as early as possible in the permit term.” (HCP, p. 7-17.)

The HCP presents two examples of the calculation.<sup>12</sup> But the examples of the *application* of the stay-ahead rule does not constitute any evidence that *attaining* the stay-ahead provision would be feasible.

**2. The HCP does not actually match the schedule of habitat maintenance, enhancement, and restoration to the build-out assumed to occur in order to show that the HCP can in fact stay ahead.**

The HCP acknowledges that a slower pace of development than it assumes is a critical risk to meeting the stay-ahead provision. However, HCP section 9.3.5 provides only a qualitative discussion of that risk, a discussion that does not demonstrate that conservation will in fact stay ahead of incidental take in the event that full Fort Ord buildout does not occur by 2030 as the HCP assumes:

Annual HCP required action costs and CFD Special Tax revenues are both triggered by FORA’s land use development. If the pace of development slows, annual CFD Special Tax revenues would be generated at a slower rate. However, the timing of HCP required actions would also be delayed, consequently reducing annual HCP required action costs. This relation between annual endowment costs and revenues reduces the possibility of inordinate funding shortfalls being experienced during the permit and post-permit periods. Section 7.6, Stay-Ahead Provision, describes in further detail how HMA funding is an integral part of how preserved acres are counted toward the stay-ahead provision.”

(HCP, p. 9-33.) While this relation between endowment revenues collection and the pace at which costs are incurred might, under some circumstances, “reduce” the possibility of a funding mismatch, it does not eliminate it.

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<sup>12</sup> Example: if a developer seeks development that impacts 50% of Sand Gilia (756 acres of 1511 acres baseline acres) then 55% of conservation goal would have to be met before take was allowed (839 acres of the required 1,525 acres). This example assumes that required Gilia restoration and seeding has already occurred so that the stay ahead percentage is only 5%, not the 20% required before restoration is deemed successful.

### **3. Mismatches in conservation funding and incidental take are likely to prevent meeting the stay-ahead provision.**

The HCP's cost and funding analysis simply assumes that the incidental take caused by development projects and the funding contributed by those projects toward the HCP would remain proportionate and that this proportionality would ensure that the stay-ahead provision could be met. However, the CFD-based cost-apportionment method assumed in the HCP does not actually ensure that funding would be generated in proportion to incidental take from development. Thus, it cannot assure that the HCP would be adequately funded to meet the stay-ahead provision.

There are a number of reasons that attaining the stay-ahead provision may not be feasible.

a. A CFD-like tax collection does not materially precede incidental take.

First, the CFD payments are not due until a building permit is issued, at which time the developer may immediately begin causing take. Conservation funding could therefore lag behind take. Conservation funding should be required sufficiently before construction to ensure that the required stay-ahead habitat acreage is maintained, enhanced, and restored.

b. A CFD-like tax may not cover fixed initial costs for startup, capital, and restoration.

Second, the cash flow analysis assumes constant annual costs of \$2.2 million will be paid for through the endowment. (HCP, App. O, Tables 8 and 13.) The constant cost assumption does not provide for the needed front-loading of costs for start-up, capital, and habitat restoration. (See HCP, Table 9-1a.)

The 20% stay ahead for plants and the CTS and CRLF will be particularly difficult to attain because the 20% stay-ahead mandate applies until the front-loaded costs are incurred for successful habitat restoration and enhancement.

c. CFD-like taxes may be insufficient if early projects occur disproportionately in incidental take areas.

Third, early projects may be in sensitive areas and therefore make larger contributions to take percentage than the conservation percentage that their CFD payments can fund.

EPS's Sensitivity Analysis memorandum identifies development projects that are in the "short-term planning pipeline" that reflects "a market and resource constrained scenario whereby only portions of the total developable areas are anticipated to develop." (EPS2, pp. 7-8.) EPS sets out the projects expected to develop in the short-term in Tables C1 through C6. (EPS2, Appendix C, "Projected Replacement CFD Special Tax Revenue".) Many of these short term projects will result in substantial incidental take because they are located in natural, vegetated land on which the HCP identifies the presence of multiple protected species.

For example:

- Table C-1 identifies 148.5 acres of short-term development in Del Rey Oaks. (EPS2, Table C-1.) According to the HCP, the developable Del Rey Oaks land contains Seaside Bird's Beak, Monterey Spineflower, Yadon's Pioperia, and habitat for the California Red Legged Frog ("CRLF") and the California Tiger Salamander ("CTF"). (HCP, Appendix A, Figures A-8, A-7, A-4, A-3a, A-2a.)
- Table C-3 identifies 59.7 acres of short-term development in the City of Monterey. (EPS2, Table C-3.) According to the HCP, the developable City of Monterey land contains Seaside Bird's Beak, Monterey Spineflower, Yadon's Pioperia, and habitat for the California Red Legged Frog ("CRLF") and the California Tiger Salamander ("CTF"). (HCP, Appendix A, Figures A-8, A-7, A-4, A-3a, A-2a.)

Other early development projects in EPS's Sensitivity Analysis memorandum would occur on natural, vegetated land on which protected species are located. The disproportionate need for mitigation funding may prevent attainment of the stay-ahead provision if early development projects occur on lands rich in protected species and habitat, rather than on the already developed land on which no protected species or habitat are present.

d. CFD-like taxes may not be sufficient if early projects are disproportionately non-residential.

Fourth, the relative underfunding of mitigation by non-residential projects may preclude meeting the stay-ahead provision. Allocation Alternative 1 in the EPS Sensitivity Analysis, based on CFD Replacement Revenues, is used in the HCP document. This allocation method skews the lion's share of total HCP cost to residential units and away from non-residential development. For example, the CFD cost for residential development in the County would be \$152,000 per acre, compared to \$3,327 per acre for office or industrial development acre. (EPS2, Table C-4.)

Again, a CFD-like cost apportionment method cannot assure funding of the stay-ahead provision if funding is not sufficiently related to incidental take impact. For example, funding would not match stay-ahead costs if substantial development of office or industrial projects occurred before residential development, especially if that development were sited on vegetated development land with HCP habitat so as to result in incidental take.

An historical example of such development was the MST/Whispering Oaks project. Although the project approvals were ultimately rescinded in the face of fierce community opposition, this 115-acre project would have removed 3,400 oak trees to construct a bus maintenance project and a business park. CFD fees from the project based on the CFD tax rate for industrial and office use would have been minimal. The HCP indicates that the site contains Monterey Spineflower and upland habitat for CRLF and CTS. (HCP, Appendix A, Figures A-3a, A7, A-8.)

The general plans of the land use jurisdictions identify a number of areas designated for office and industrial uses that are located in areas that the HCP identifies as rich in protected species. For example:

- The City of Marina has designated a number of parcels south and southeast of the Marina Municipal Airport as “Office/Research.”<sup>13</sup> The HCP indicates that this area contains Sand Gilia, Monterey Spineflower, Seaside Bird’s Beak, and Smith’s Blue Butterfly. (HCP, Appendix A, Figures A-1, A-3a, A-4, A05e.)
- The County of Monterey has designated land east of Gigling and Eighth as Business Park/Light Industrial Office/R & D.<sup>14</sup> The HCP indicates that the site contains Monterey Spineflower and upland habitat for CRLF and CTS. (HCP, Appendix A, Figures A-3a, A7, A-8.)
- The Fort Ord Reuse Plan designates most of the parcels within the jurisdiction of the City of Monterey and Del Rey Oaks as “Business Park/Light Industrial Office/R & D.” (Fort Ord Reuse Plan, Figure 3.2-1 [Proposed Project Land Use Concept].) The City of Monterey has designated this land as “Industrial” in its General Plan land use map.<sup>15</sup> Del Rey Oaks has designated portions of this land a “General Commercial/Office-Professional.”<sup>16</sup> As noted above, the HCP indicates that this land contains Seaside Bird’s Beak, Monterey Spineflower, Yadon’s Pioperia, and habitat for the California Red Legged Frog (“CRLF”) and the California Tiger Salamander (“CTF”). (HCP, Appendix A, Figures A-8, A-7, A-4, A-3a, A-2a.)

In addition, other parcels designated as “Commercial” or “Mixed Use” within the Fort Ord land use jurisdictions could be developed with office or industrial uses and be subject to the low CFD tax rate for those uses.

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<sup>13</sup> City of Marina, General Plan Land Use Map, updated May 27, 2011, available at <https://cityofmarina.org/DocumentCenter/View/1421/Figure-2-2---5-27-2011?bidId=>.

<sup>14</sup> 2010 Monterey County General Plan, Figure LU6a, Monterey County Land Use Plan, Fort Ord Master Plan, Oct. 24, 2006, available at <https://www.co.monterey.ca.us/home/showdocument?id=45966>.

<sup>15</sup> City of Monterey, General Plan, Map 3, Nov. 2, 2010, available at <https://monterey.org/Portals/0/Policies-Procedures/Planning/GeneralPlan/3-Land-Use.pdf>.

<sup>16</sup> City of Del Rey Oaks, General Plan Update, January 1997, p. 30, Figure 2, Land Use Map, available at [https://www.delreyoaks.org/sites/default/files/fileattachments/city\\_manager/page/1506/1997\\_generalplanupdate.pdf](https://www.delreyoaks.org/sites/default/files/fileattachments/city_manager/page/1506/1997_generalplanupdate.pdf).

Relying disproportionately on residential development for HCP funding would also make the stay-ahead provision much more difficult to attain even under the alternative, slower development scenario modeled in the EPS Sensitivity Analysis memorandum. EPS provides two development scenarios. The “baseline” scenario, based on the FORA CIP, assumes complete buildout of the Base Reuse Plan by 2030 at 433 residential units per year, which is completely inconsistent with historic buildout rates. (EPS2, Table 2.) This is the scenario assumed in the HCP document. The slightly slower paced “Delayed Revenues and Costs” scenario spreads residential development over 16 years at 300 units per year, but still assumes that *non*-residential buildout is largely complete by 2030. (EPS2, Table 3.) Under this “Delayed Revenues and Costs” scenario, the non-residential development occurs earlier than the residential development and pays much less per acre toward the HCP. Thus, there would be less funding available per developed acre, rendering the stay-ahead provision more difficult to attain.

Although EPS acknowledges its scenarios are hypothetical, the earlier development of the lower taxed non-residential uses is likely because land use jurisdictions tend to favor non-residential development in order to obtain its higher local property and sales tax revenues. Indeed, that is why the CFD taxes for non-residential uses are lower.

**4. The CFD-based cost-apportionment is likely to be viewed as inequitable because it is not based on incidental take impact.**

In addition to the risk that the CFD-based cost-apportionment method would fail to assure the stay-ahead provision, it is unlikely that this system would be viewed as an equitable apportionment by Permittees or developers. There appears to be no principled rationale for assessing residential development at a rate of \$152,000 per acre and office development at \$3,327 per acres. And jurisdictions that have planned relatively more residential than non-residential development would likely object to being required to provide disproportionate funding.

**5. The CFD-based cost-apportionment is likely to be viewed as inequitable because it would exact habitat fees from previously permitted projects that have already funded independent ITPs.**

The CFD-based cost allocation (EPS 2, Alternative 1) is also likely to be viewed as inequitable because it assumes that the already-entitled development *that has obtained an independent HCP/ITP* will still have to make contributions to the new HCP. (EPS2, Table C-2 [counting \$23m in total CFD revenues from 920 units at Seahaven, of which 30% or \$7m would be used to fund the new HCP].)

Furthermore, as discussed, there is no legal way to compel new exactions from projects like Seahaven that have vested entitlements.

**F. FORA has not provided sufficient analysis of the efficacy of alternative cost-apportionment methods in the HCP or elsewhere.**

As explained, the proposed CFD-based cost-apportionment cannot *assure* funding sufficient for the stay-ahead provision and would not likely be viewed as equitable. Equity and the stay-ahead provision dictate a closer relation between incidental take and funding.

Allocation Alternatives 2a and 2b in the EPS Sensitivity Analysis are based on “developable acres.” Alternative 2a is based on short-term development in the planning pipeline and Alternative 2B is based on the total buildout acres over the 50-year HCP permit term. (EPS2, Tables 6 and 7, D-1 [long-term developable acres by jurisdiction].) These allocations are somewhat more equitable than the Alternative 1, CFD-based allocation, and they may be less risky with respect to meeting the stay ahead provision. *However, the use of “developable acres” does not assure an adequate relation between funding and incidental take because not all developable acres would result in similar incidental take and thus trigger similar stay-ahead cost obligations.*

The EIS/EIR explains that the 9,292 developable areas consist of 4,242 acres of previously developed land and 5,051 acres of natural or vegetated land. (EIS/EIR, p. 2-12.) The EIS/EIR states that an HCP/ITP is not required in order to develop those 4,241 acres of designated development areas within Fort Ord that were previously developed, because that land is devoid of vegetation and habitat for listed species. (EIS/EIR, p. 2-3.) The only incidental take that would occur on land designated for development is on the 5,051 acres of natural, vegetated land. The development of this vegetated acreage, not the redevelopment of previously developed land, should bear the cost of the HCP so that the cost apportionment is based on the actual incidental take impact.

If funding were based on developable acres regardless whether those acres contain habitat, there could be no assurance that funding would match stay-ahead costs. Stay-ahead cost would not be met if substantial development occurred on vegetated or natural lands *before* redevelopment occurred on previously developed land. If the development on vegetated land were not paying the full cost of incidental take mitigation (because part of that cost was apportioned to disturbed land), incidental take would occur sooner than the collection of funds needed to mitigate it, and it would be more difficult to meet the stay-ahead provision.

It is foreseeable that development may in fact occur earlier on vegetated land rather than disturbed land. As discussed above, the EPS Sensitivity Analysis identifies substantial acreage of short-term development in the planning pipeline that is located on parcels containing protected species and habitat.

It is also foreseeable that development will occur disproportionately on vegetated land that is subject to incidental take rather than on previously developed land in which take would not occur. Indeed, the EIS/EIR establishes that the vegetated, natural land in which development is permitted and take will occur comprise 5,051 acres. (EIS/EIR, p. ES-2.) This compares to

only 4,241 acres of previously developed land in which redevelopment will occur and in which there would be no take. (*Ibid.*)

In short, there can be no adequate assurance that funding would be sufficient to meet the stay-ahead provision unless the source of funding is closely tied to incidental take impacts. Ideally, the funding exacted from development projects would be directly proportionate to take impacts. *This is the system that would in fact be used in the event that the proposed HCP were not adopted and each development project were required to fund its own ITP.*

At minimum, FORA should be required to demonstrate that the HCP funding mechanism would in fact generate sufficient funds in time to meet the stay-ahead provision.

Unfortunately, neither EPS nor FORA have discussed or modeled apportionment of HCP costs based on vegetated acreage much less on actual incidental take impacts. FORA should, at minimum, prepare an analysis of the allocation of HCP cost based on each jurisdiction's share of vegetated development acres. The wildlife agencies must be satisfied that the proposed cost-apportionment will in fact assure that the stay-ahead provision can be met before FORA and USFWS certify the EIS/EIR and the wildlife agencies issue ITPs. Each Permittee should also want to be satisfied that the proposed cost-apportionment would be equitable to the Permittees and equitable to the future redevelopers of the previously disturbed areas whose projects would not cause any incidental take.

In sum, take-based cost-apportionment would be likely to be viewed as more equitable because it would match the benefits and costs of the proposed HCP. Take-based cost-apportionment would also be more efficient because it would tend to discourage greenfield development that causes take and incurs additional costs for take mitigation. To the extent that the cost-apportionment diverges from a take-based approach, it would penalize development that does not cause take, subsidize development that does cause take, and thereby increase the overall cost of HCP compliance. Divergence from a take-based cost apportionment also increases the risk that the Permittees could not attain the stay-ahead provision.

**G. FORA cannot demonstrate that CFD “replacement funding mechanisms” are committed, enforceable, or even feasible.**

As noted, the HCP relies on the FORA CFD tax and/or an unspecified “replacement funding mechanism” after FORA sunsets. (HCP, p. 9-19.) None of these mechanisms are committed or enforceable, or even described in the HCP. Accordingly, they do not meet the requirements of the ESA, the CESA, CEQA, or NEPA that an HCP application and its environmental review demonstrate an assured funding source.

The USFWS explained that an adequate HCP must set out the substance of the local ordinances that would be used to implement the HCP. (USFWS, letter to Houlemard, July 29, 2016.) Instead, the HCP states that the Permittees would develop implementing ordinances within 120 days of permit issuance, and merely includes a "model" ordinance. (HCP, section 7.4, p. 7-10; HCP, App. J.) The model ordinance provides that, after FORA sunsets, the

Permittee will somehow “ensure collection of the Special Tax,” i.e., the 2002 FORA CFD tax, and then disburse it to the JPA. (HCP, App. J, Section VII.A.4.) As discussed, FORA has previously acknowledged that the CFD will not be collectible from any project when FORA sunsets and there is no legal authority to collect and disburse the new exactions from development entitled in the past.

Adequate new mechanisms for fees or taxes to replace the FORA CFD tax may be infeasible. As discussed above, no new fees can be imposed on development that is already entitled. Even if that problem could be solved, for the reasons discussed below there is no assurance that other funding mechanisms are committed, enforceable, or feasible, as required for an adequate HCP and its environmental review.

**1. Impact fees may not be feasible because the nexus and proportionality requirements may preclude adequate funding, and there has been no analysis of nexus and proportionality. In addition, they are not committed and enforceable.**

Development impact fees must meet the nexus and proportionality mandates under case law and the Mitigation Fee Act. (Gov. Code, §§ 66000 et seq.) If development impact fees are proposed, they may not be legally imposed on the 4,241 acres of previously developed areas that do not actually require an ITP because there would be no nexus or proportionality. If the entire cost of the HCP were to be borne by the 5,051 vegetated acres, or the subset of those acres with actual incidental take impacts, the cost per acre for the HCP endowment would be 185% higher, based on the ratio of vegetated to total developable acreage. This exaction might inhibit development of the vegetated acres, and result in a much smaller HCP requirement. It is not clear that a smaller HCP could feasibly cover the scale of the proposed costs for startup, capital, and restoration.

If the JPA were to impose a development impact fee, it would need to prepare an analysis to justify nexus and proportionality. This has not been done.

The HCP implies that each Permittee might be free to select its own funding mechanism. If some local jurisdictions were to impose their own development impact fees, each would need to prepare an analysis that demonstrates nexus and proportionality for the land to be assessed within that jurisdiction. This has not been done.

Demonstrating nexus and proportionality would require a realistic appraisal of both the fixed and variable costs of the likely scope of the HCP needed to cover foreseeable development. Despite the HCP’s implication, the HCP is not fully scalable. (HCP, section 9.7.) The HCP cost analysis assumes that the entire Base Reuse Plan will be developed within the 50-year permit period. The overall scale of the HCP has been designed and negotiated to provide an ITP that would cover this ultimate level of development. If this level of development is not certain to occur, it would be unreasonable to exact the fixed costs of an HCP designed to accommodate it.

Although certain variable costs might be scalable, and would not be incurred unless and until development occurs, the capital and habitat restoration costs are based on full buildout and



would be incurred regardless of the level of ultimate development. HCP Table 9-1a indicates that 50% of capital costs would be incurred in years 1-10 and 75% by year 20. Essentially all of the habitat restoration costs would be incurred in years 1-20, with 78% incurred in years 1-10. These spending commitments would have to be incurred in the early years of the HCP, before the total scope of covered activities would be known. Imposing almost \$10 million in fixed costs on development before the scale of these costs has been justified by actual development applications would not meet nexus and proportionality requirements. The HCP has not considered this issue or provided any analysis to support a nexus and proportionality determination.

**2. Replacement CFD taxes are not committed or enforceable, and there is no analysis to assure that they could meet the stay-ahead provision.**

Permittees might consider a new CFD, sponsored by the JPA, or separate CFDs, sponsored by each Permittee that is a land use jurisdiction as the “replacement funding mechanism” mentioned in the HCP. (HCP, p. 9-19.)

A CFD tax need not have nexus and proportionality. Indeed, this opportunity to impose subsidization of non-residential development through a skewed tax assessment was a key reason that FORA chose CFD taxes rather than development impact fees to finance the Base Reuse Plan infrastructure. However, unless a replacement CFD tax did in fact have nexus and proportionality, i.e., a close relation between the tax on a development project and the incidental take caused by that project, there would be no assurance that the CFD tax could meet the stay-ahead provision. Again, as discussed above, FORA simply has not done the analysis to propose such a tax and to show that it feasibly meets the stay-ahead provision.

And, again, a replacement CFD tax is currently neither committed nor enforceable.

**3. Ad hoc funding via development agreement exactions are not committed or enforceable, and there is no analysis to assure that they could meet the stay-ahead provision.**

Like CFD taxes, exactions via development agreements are not required to have nexus and proportionality. However, as for hypothetical replacement CFD taxes, there is no analysis to propose such exactions and to show that they would feasibly meet the stay-ahead provision. And since development agreement exactions must be negotiated project-by-project, they are intrinsically speculative, and there could be no present assurance that they are committed or enforceable.

**4. Grants and appropriations are not committed or enforceable.**

The HCP suggests that grants, appropriations, and/or volunteer labor might be used as partial funding. (HCP, pp. 9-29 to 9-9-32.) The amounts of the appropriations would be limited to the relatively small portion of the overall HCP funding represented by the assumed obligations of MPC, CSUMP, and State Parks. There is no suggestion that appropriations would be

available to fund the HCP activities related to private development. Furthermore, the HCP does not demonstrate that appropriations, grants, or volunteer labor is part of a committed enforceable plan.

A “plan” to seek funding from other government agencies in the future is not sufficient mitigation. (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 103-104.) An agency may not simply assume that grants or appropriations will be available. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 364 [“there simply was no reason to assume that funding was or would be available”].)

**5. The HCP equivocates on use of Permittee general funds; Permittees should insist that this equivocation be resolved and that there be a cost-apportionment agreement.**

The HCP states: “no Permittee may be compelled to obligate its General Fund to satisfy its financial obligations under the HCP.” (HCP, section 9.3, p. 9-15.) However, the HCP’s discussion of funding assurances equivocates on this principal because it proposes to “[h]ave Permittees pay for HCP required actions on HMAs under their ownership” in the event that funding is insufficient to meet the stay-ahead provision. (HCP, section 9.3.5.1, p. 9-35.) This provision would obligate the Permittees that happen to own HMA land to bear the cost of HCP implementation, subject to possible reimbursement from the JPA at some point in the future.<sup>17</sup>

Furthermore, the JPA Agreement unequivocally imposes the funding obligation on the Permittees. (JPA Agreement sections 6.2 [Responsibility to Wildlife Agencies], 8.0 [Funding of Endowments]; 3.2 [Withdrawal].) If the Permittees were unable to collect funds from third party developers, they would have no alternative but recourse to their general funds.

However, it is unclear that Permittees are willing to fund the HCP from general fund revenue. At any rate, the HCP cannot provide adequate funding assurances as long as this remains unresolved.

Even if Permittees are willing to encumber their general funds, the HCP or the JPA Agreement should specify how the cost would be apportioned. The default cost-apportionment assumption in the HCP is that costs would be apportioned in proportion to FORA CFD-like tax revenues collected by each jurisdiction. If the funding mechanism does not in fact use the CFD tax rates or if those revenues are insufficient, the HCP should set out the actual cost-apportionment (and funding mechanisms) that would be in place after 2020, particularly the apportionment of revenue shortfalls.

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<sup>17</sup> HMA lands under the HMP include: BLM (14,645 acres), State Parks (979 acres), UC/NRS (606 acres), County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres)

**H. The HCP's assumptions for endowment accumulation and for endowment funded costs are unrealistic.**

**1. The HCP makes specific assumptions about buildout, tax revenues, the timing of costs, and endowment fund accumulation.**

The HCP assumes that the cost to implement the HCP on non-federal land (i.e., the cost exclusive of BLM costs to fulfill its FONM obligations) would be \$2.6 million per year during the 50-year permit term and a \$1.4 million per year thereafter. (HCP, Table 9-1a, p. 9-4.) The HCP proposes that this be funded through endowment funds created from CFD taxes (and small one-time payments from MPC, CSUMB, and MPRPD) and from an annual \$518,000 allocation of state budget appropriations for State Parks. (HCP, pp. 9-15 to 9-31.) Thus, about 80% of the non-federal funding would come from CFD taxes and about 20% from the state budget.

The HCP assumes that all of the Fort Ord development for the next 50 years will occur by 2030, i.e., the complete build-out of the Fort Ord Reuse Plan including:

- 4,878 new residential units
- 47 existing unit replacements
- 177.1 acres of office
- 81.3 acres of industrial
- 69.7 acres of retail
- 1,342 hotel rooms
- 

(HCP, App. O, Table 6.) The HCP assumes that this projected development will generate \$137 million in CFD taxes with \$41 million (30.2%) going to HCP funding. (HCP, Table 9-7, page 9-18.) The HCP assumes that these CFD taxes will be sufficient to fund the annually required HCP actions for the first 7 years of the HCP and to fund two endowment funds that will be sufficient to fund \$2.2 million of the \$2.6 million annual cost to manage the non-federal HMA areas. (See HCP, Tables 9-6 and 9-7, pp. 9-17, 9-18.) The HCP assumes that the endowment will be fully funded by the end of year 8, and that endowment funds will earn returns of 4.2% and 4.5%. (HCP, Table 9-6, p. 9-17; HCP, p. 9-20.)

There are several fundamental flaws in the HCP's case flow assumptions.

**1. The assumption of level annual costs makes no provision for front-loaded startup, capital, and restoration costs.**

The HCP's cash flow performance analysis assumes that the HCP costs to be funded by the endowment would be incurred on an absolutely level basis, at the rate of \$2.2 million per year. (HCP, App. O, p. 6 and Tables 8 and 13 [showing no variation in annual costs incurred by the endowment funds] .) However, the HCP itself shows that significant capital and restoration costs would be incurred in early years:

- \$6.2 million of the total \$10.4m capital costs would be incurred in years 1-20

- \$1.8 million in habitat restoration would be incurred in years 1-20, with none in later years.
- \$1.4 million in “start-up costs” would be incurred in years 1 and 2.

(HCP, Table 9.1a, pp. 9-9-3 to 9-4.) Early implementation of these fixed costs is critical to the success of the stay-ahead provision. For example, the stay-ahead discussion emphasizes that Permittees will implement restoration and seeding as early as possible during the permit term. (HCP, p. 7-17.) Only by successful seeding and restoration can the requirement of a 20% stay-ahead for plants and the CRLF be reduced to 5%.

However, the cash flow analysis fails to reflect that a larger share of costs would be incurred in early years, and, thus, a larger endowment than assumed would be required to compensate for reduced long-term earnings on the endowment funds.

## **2. The HCP analysis is critically dependent on a wildly optimistic pace of development – full buildout by 2030.**

The assumption that all remaining Fort Ord development will occur by 2030 is completely inconsistent with the historic rate of development in Fort Ord. The HCP admits that this rate of development is “uncertain.” (HCP, p. 9-34.) In fact, it is wildly optimistic. The HCP projects 4,878 new residential units by 2030, built at a rate of 443 units per year. However, from 1997 to April 30, 2019, only 1,457 new residential units were constructed in Fort Ord, a rate of 64 units per year.<sup>18</sup> The HCP presents no evidence to support the assumption of such a substantial and sustained increase in market demand.

However, the unsupported assumption of an early, rapid, and complete build-out – *6.9 times faster than the historic rate of development* – is critical to the cash-flow analysis. Unless there is a rapid development to support rapid accumulation of the endowment fund, the earnings on the endowment fund over time will be substantially lessened, and a larger endowment fund would be required. The proposed current level of CFD taxes would not then be sufficient to fund the endowment.

## **3. Alternative scenarios evaluated by EPS show that the required endowment would increase substantially if buildout did not occur by 2030, but even these scenarios are remain problematic.**

Although the HCP discusses the possibility that development might occur more slowly, the HCP does not analyze this scenario. The November 13, 2019 EPS Sensitivity Analysis does purport to analyze a slower development scenario, “Scenario 2: Delayed Revenues and Costs,” which would increase the required endowment from \$37.8 million to \$43.6 million. But this scenario still assumes a build-out rate of 300 residential units per year, which is still *4.7 times*

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<sup>18</sup> FORA, Annual Report, Fiscal Year 2018-2019, p. 6, available at <https://www.fora.org/Reports/AR/AnnualReport2019-Full.pdf>.

*faster than the historic rate of 64 units per year.* (EPS2, Table 3.) In short, EPS's analysis shows that the size of the required endowment is very sensitive to the assumed residential buildout rate, but EPS has still not evaluated a realistic buildout rate.

Furthermore, EPS's Delayed Revenues and Costs scenario does not materially slow the pace of *non-residential* development; it continues to assume that all of the non-residential development is essentially complete by 2030.

In addition, the Delayed Revenues and Costs scenario arbitrarily assumes 5%, 10%, and 20% reductions in early year costs. (EPS2, p. 5.) EPS admits that these arbitrary cost reductions "are not based on an analysis of the habitat management costs relative to anticipated development and are instead based on hypothetical cost reduction scenarios to illustrate the associated financial modeling dynamics." (EPS2, p. 7.) EPS admits that "[f]urther analysis on the part of the HCP consultants would be necessary to relate anticipated development timing to projected habitat management costs." (*Ibid.*) The HCP does not provide the further analysis.

However, there is reason to doubt that, even if development were to occur at a rate of 300 residential units per year instead of 443 units per year, the early year costs borne by the endowment funds would be materially reduced from assumed level cost of \$2.2 million per year. (HCP, App. O, p. 6 and Table 8.) A material cost reduction is unlikely because, as discussed above, the \$2.2 million level annual draw-down of the endowment fails to reflect the need for higher than average early year spending to cover capital and restoration costs.

Finally, even with its unsupported assumption that development would occur 4.7 times faster than historic rates, that early year HCP costs would be 5%, 10%, or even 15% less, and that costs would remain level from year to year, the Delayed Revenues and Costs scenario *still* projects that the level of required HCP endowment funding would increase. (EPS2, p. 5.)

In sum, unless the most wildly optimistic development scenario occurs with development at 6.9 times the historic development rate, the Permittees would have to assess fees or taxes greater than the current CFD tax.

**4. Endowment funding estimates are all over the map: FORA staff now reports that the endowment may need to be \$48 to \$66 million, not the \$37 or \$43 million reported in the HCP and the November EPS memorandum, much less the \$9 million originally projected.**

The most recent FORA staff report on HCP funding acknowledges that FORA has consistently and substantially underestimated HCP funding needs, and that the HCP funding projections have grown astronomically over time. FORA's December 2019 estimates are now much higher than the \$37 million and \$43 million estimates in the HCP document and the November EPS Sensitivity Analysis:

The required Endowments *were originally projected to be \$9 million but are now*

*expected to cost \$48 to \$66 million.* By FORA sunset, about \$17 million is expected to be collected for this use. FORA has set 30% of CFO [sic, CFD] funds aside for HCP funding. Given the June 30, 2020 FORA sunset, permittees/jurisdictions must determine how to generate the remaining \$27 to \$45 million required to demonstrate to USFWS/CDFW ("Wildlife Agencies") [sic, sentence fragment].<sup>19</sup>

The agencies should insist that FORA provide a credible and stable projection of required HCP funding.

**5. The HCP's analysis fails to assess the inhibition of development caused by higher fees and taxes.**

At a certain point, the cost of HCP fees will inhibit development. Lower long-term development would not require, and may not be able to fund, the HCP's initial fixed costs for capital and restoration that assume that full buildout will occur. Even though the EPS Sensitivity Analysis shows that higher fees or taxes would be necessary under slower development, the HCP does not consider the possible permanent reduction in Fort Ord development caused by higher development fees or taxes.

**6. The HCP's analysis fails to assess the effect of variation in assumed rates of return.**

The cash-flow analysis is critically dependent on the assumptions that the smaller endowment fund (the FONR Endowment Fund) would earn 4.2% annually and that the larger endowment fund (the Cooperative Endowment Fund) would earn 4.5% annually. (HCP, p. 9-20.) The analysis assumes these rates of return would occur constantly, year after year. Even if similar funds have had average long-term returns of that order of magnitude, there is a considerable risk to the endowment strategy if the rate of return is not constant. For example, even if a fund were able to attain a 4.5% return over a 50-year period, a lower rate of return in the early years would require the accumulation of a much larger endowment – and correspondingly higher fees or taxes – to cover all HCP costs. The HCP fails to assess the sensitivity of its funding strategy to variations in rates of return over time. It is relevant that current long-term interest rates on federal obligations are now below 2%.

**7. The EPS memorandum's scenario for lower overall HCP costs is purely speculative and therefore misleading.**

The EPS Sensitivity Analysis, which is not part of the HCP, evaluates a third scenario, "Delayed Revenues and Reduced Costs." (EPS2, p. 7.) In this scenario, EPS arbitrarily reduces the cost of HCP compliance by 15% and 25% overall, not just in the early years. As with Scenario 2, "Delayed Revenues and Costs," EPS admits that the Delayed Revenues and Reduced Costs scenario is "based on hypothetical cost reduction scenarios." (*Ibid.*)

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<sup>19</sup> FORA staff report, Habitat Conservation Plan Update, Dec. 13, 2019, emphasis added, available at <https://fora.org/Board/2019/Packet/121319BrdPacket.pdf>.

This scenario is entirely misleading. The HCP claims that its analysis of the cost of HCP compliance is based on a “detailed, custom cost model.” (HCP, p. 9-8.) That model, set out in Appendix M, purports to provide realistic cost estimates for every aspect of the HCP implementation from office supplies to feral pig eradication. The cost model is the *only* available analysis of the HCP plan cost that contains any level of detail. The notion that this budget might magically be reduced by 15% or 25% is simply without any foundation.

**I. The funding assurances in the event of “early implementation and uncertain timing in CFD tax payments” are inadequate.**

The HCP contains a discussion captioned “Funding Assurances for Early Implementation and Uncertain Timing in CFD Special Tax Payments.” (HCP, section 9.3.5.1, pp. 9-34 to 9-35.) As discussed above, there are a number of reasons that funding would not match the need for early implementation. These include the need for early spending for start-up, capital, and restoration and the potential that early development would have disproportionately large incidental take or small CFD taxes in light of the HCP’s failure to match the incidental take from development to the funding actually provided by that development. The HCP’s discussion of funding assurances to address these risks is inadequate for the reasons set out below.

**1. The suggestion in HCP that funding may be adequate even if there is early implementation and/or shortfalls in CFD taxes is misleading because it fails to acknowledge that funding must be permanently endowed.**

The HCP claims that the existing \$15.9 million in seed money would fund 3 *years* of the required actions under the HCP for which the JPA would be obligated. (HCP, p. 9-34.) The HCP also claims that “funding is available for management of 3,702 out of 3,895 total non-federal HMA acres, or conservation percentage of 95%, *for 8 years* without collection of additional taxes.” (HCP, p. 9-35.) The HCP argues that “[d]uring this time, Permittees’ development impacts would be limited to an approximate take percentage of 75% to 90% depending on individual species distribution to maintain stay-ahead provision compliance.” (HCP, p. 9-35.)

These claims ignore the need for *permanent* endowment of HCP activities. To get stay-ahead credit, the funding must be available for management and maintenance of the conservation area *through the permit period and post-permit period*, not just for 3 or 8 years.

The necessary funding that is used to determine the maximum allowed take percentage in the stay-ahead determination must be permanently endowed. The HCP states that for an HMA area to be counted in the conservation percentage, “an HMA manager must have sufficient funding to implement the conservation strategy.” (HCP, p. 7-16.) The conservation strategy can only be implemented if funding is available in perpetuity, i.e., endowed. If existing funds, e.g., the \$15.9 million from FORA’s account, are used to fund the first 8 years of HCP activity, those funds could not be used to fund the endowment for HCP activity after those 8 years. The cash flow analysis in HCP Appendix O assumes that the entire endowment will be created in the first

7 years. Any departure from that development pace would require a larger endowment fund, generated by higher fees or taxes.

**2. The discussion of fallback funding assurances if there is early implementation and/or shortfalls in CFD taxes is not realistic.**

The HCP identifies a number of “courses of action” to ensure that the stay-ahead provision is met even if there is early implementation and/or shortfalls in CFD taxes. (HCP, p. 9-35.) The discussion does not identify realistic options.

First, “[l]imiting implementation of flexible capital costs such as habitat restoration” is not feasible. The timing of these costs is not flexible. As discussed, the stay-ahead provision requires that restoration and seeding occur “as early as possible during the permit term,” particularly because without restoration, the stay-ahead differential between the take and conservation percentages must be 20 rather than 5 percentage points. (HCP, p. 7-17.)

Second, the use of volunteers or other inexpensive labor is on its face unrealistic, especially given the prevailing wage rules in Fort Ord.

Third, the “temporary” use of State Parks staff or FORA staff is unrealistic. FORA will sunset in 2020. And State Parks has no authority to loan its resources.

Fourth, grant funding is uncertain.

Fifth, requiring that “Permittees pay for HCP costs on HMAs under their ownership” with some unspecified reimbursement agreement from the Cooperative would require those Permittees with HMA acreage to bankroll the HCP for the other Permittees. The major owners of non-federal HMA land are the County, State Parks, and UC/NRS, and Marina.<sup>20</sup> (HCP, Table 7-3, p. 7-19.) It is unlikely that these entities would be authorized or willing to pay for continued HCP management in the event of a funding shortfall. Furthermore, this provision directly conflicts with the HCP provision that “no Permittee may be compelled to obligate its General Fund to satisfy financial obligations under the HCP.” (HCP, p. 9-15.)

Note that the provisions for assuring funding in the event that management or monitoring costs exceed projections also includes these unrealistic suggestions, including the use of volunteer labor or “prison crews,” some form of ad hoc temporary increase in CFD tax rates or allocations to HCP endowments, or “other fees or fee appropriations available to the Permittees.” (HCP, p. 9-36.) The discussion fails to establish the necessary funding assurances because the proposals are facially unrealistic, unquantified, inconsistent with other HCP provisions (no General Fund obligation), and because there is nothing about the proposals that is committed or enforceable.

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<sup>20</sup> HMA lands under the HMP include: BLM (14,645 acres), State Parks (979 acres), UC/NRS (606 acres), the County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres).



**3. The proposal that CDFG and USFWS could suspend the permits if the HCP is not a funding assurance.**

In its section 9.3.5 discussion of funding assurances, the HCP notes that the Wildlife Agencies could suspend the ITPs in the event that funding constraints preclude meeting the HCP terms. (HCP, section 9.3.5.4, p. 9-36.) Suspension of the ITPs is not a funding assurance; it is an acknowledgement and consequence of the failure to fund the HCP. Once the development has occurred, the take will have occurred, and Permittees will find themselves liable for remedies that may be sought by the wildlife agencies or under the ESA's citizen suit provisions.

**J. Permittees could not avoid future funding obligations through withdrawal from the JPA.**

The option to withdraw from the JPA would not afford a Permittee protection from ongoing liability for the ITP. Section 3.2 of the JPA Agreement would obligate withdrawing agencies to contribute money to pay debts, liabilities, and obligations incurred by, arising from, or related to actions taken by the JPA while the withdrawing party was a member. The proposed HCP would result in one joint application of a federal ITP and one joint application for a state ITP. (HCP, section 1.9.) Once those two permits are issued, obligations would arise to fund permit activities triggered by development projects, including avoidance and minimization measures, mitigation measures, monitoring measures, program administration measures, reporting measures, and changed circumstances measures. (HCP, section 1.9.)

Because most of these activities are perpetual obligations undertaken and funded from a common set of endowments, it is not clear whether and how the costs could be allocated to permit activities triggered by covered activities approved "before withdrawal" and permit activities triggered by covered activities approved "after withdrawal" activities. It appears that under the JPA itself the withdrawing party would remain obligated to pay a share of the costs of the ongoing permit activities that had been necessitated by covered activities undertaken while the withdrawing member was a party. The obligation to undertake many of those covered activities would be incurred as soon as the Permits are issued because the covered activities are not dependent on particular development project approvals (e.g., management activities within HMA areas, resource management actions – see JPA Agreement, section 1.20.) It is unclear how, under the terms of the JPA, a withdrawing agency's share of that perpetual obligation would be determined or met in the event of withdrawal.

Furthermore, even if the JPA language were clear, the JPA would only govern the mutual obligations of the Permittees to each other. The liability to the Wildlife Agencies and the liability under the ESA's citizen suit provisions that a Permittee assumed by becoming a party to an ITP would remain, and this liability may not be avoided by withdrawal from the JPA.

**K. The EIS/EIR's analysis and comparison of the no-action alternative is fundamentally flawed.**

The analysis of the no-action alternative in the HCP's EIS/EIR unaccountably assumes that development in the no-action alternative would be limited to 25% of the 5,051 acres of vegetated development areas because of the need for a 3:1 mitigation – even though mitigation land is available in the HMP's Habitat Management Areas.

While the extent and number of individual ITPs the USFWS and/or CDFW would approve is unknown, for the purpose of this analysis, it is assumed that approximately 25% of the vegetated development areas (1,263 acres) could be developed during the 50-year period and the remaining vegetated development areas (3,788 acres) would be suitable, available, and provide the mitigation lands required by ITPs, if needed.

(EIS/EIR, p. 2-6; *see also* EIS/EIR, p. 4.4-4). The EIS/EIR ignores the fact that development projects can mitigate and conserve off-site and outside the vegetated developable areas, e.g., in the existing areas designated as Habitat Management Areas under the HMP. HMA lands under the HMP are or will be owned by BLM (14,645 acres), State Parks (979 acres), UC/NRS (606 acres), the County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres).

There are no reasons in principle that ITPs for individual projects in the no-action alternative could not rely on the same HMP HMA mitigation lands using the same management actions (conservation, restoration, enhancement, maintenance) that would be used in the proposed HCP. That land has been intended since 1997 to be managed as mitigation land to facilitate ITPs for future development.

Denying the use of that land in the event that the proposed base-wide HCP were not adopted would in effect mandate that the previously planned mitigation land set-aside be doubled. Under the EIS/EIR's analysis of the no-action alternative, the HMP management obligations, which are just short of ITP requirements, would presumably continue in the HMP's HMA areas. The purpose of that HMA land set-aside was to mitigate development impacts in the vegetated areas designated for development. However, under the EIS/EIR's analysis of the no-action alternative, the future ITP permittees would *also* be obligated to set aside *additional* mitigation land at a 3:1 mitigation ratio and therefore not to develop 75% of the vegetated land that was previously intended for development.

The EIS/EIR's assumption that the HMP's HMNA land would not be available to mitigate incidental take in development areas under the no-action alternative is inconsistent with past practice. The obligation to manage portions of the HMP's HMA land has already been identified as the basis of an individual ITP, the CDFW ITP for CTS for the East Garrison project. At its January 27, 2015 meeting, the Board of Supervisors considered the grant of a conservation easement deed to the CDFW over a 134-acre parcel in Parker Flats that had been designated as HMA land (Habitat Reserve) in the HMP. The purpose of the easement was to provide mitigation for an ITP for CTS through management activities paid for by the developer on an HMA parcel. Although the agreement provided that the management obligation for this

mitigation land could be assigned in the event a base-wide HCP were adopted, nothing in the agreement precludes the continued management of the mitigation land by the County or its designee as the basis for the CTS ITP if a basewide HCP is not adopted.

The EIS/EIR provides no explanation for its assumption that the full extent of the vegetated land designated for development could not be developed. The assumption that 75% of the vegetated development land could not be developed skews the analysis of impacts from the no-action alternative by understating the permitted extent of development. More problematically, the assumption that 75% of the vegetated development land could not be developed skews the analysis of the *feasibility* of the no-action alternative by implying that this alternative could not meet the project objective to enable the agencies to implement their development plans.

**2. The analysis of the no-action alternative unaccountably assumes that no ITPs would be issued for “HMP-required habitat management activities” in the HMA areas.**

The EIS/EIR states that, under the no-action alternative, the wildlife agencies would not issue ITPs for “HMP-required habitat management activities within the habitat reserve areas.” (EIS/EIR, p. 4.4-4.) The rationale is that there is “limited availability of mitigation land in the area.” (Ibid.)

As discussed, this assumption inexplicably rules out using the land the HMP has designated for ITP mitigation since 1997 for that very purpose. While using the HMP’s HMA land for *development* might require additional mitigation land, there appears to be no principled or legal reason why the wildlife agencies could not count the enhancement, restoration, conservation, and maintenance of the HMP’s HMA land as mitigation for development in the areas designated for development, as was always intended – without the enhancement, restoration, conservation, and maintenance of some *additional* “mitigation land in the area.” Again, it appears that the EIS/EIR is somehow putting its thumb on the scale by doubling the required conservation land set-aside in the event that the agencies reject the proposed HCP.

In the event that the a project-specific ITP for development of a parcel in the vegetated development area relies on enhancement, restoration, conservation, and maintenance of some mitigation land in the HMP’s HMA, there appears to be no reason why that ITP would require *additional* mitigation land just to mitigate incidental take on the mitigation land. This would amount to an infinite regress of mitigation land set-asides.

Most perplexing is the Catch-22 suggestion that the wildlife agencies would not permit the owners of HMA land to continue their “*HMP-required* habitat management activities within the habitat reserve areas.” (EIS/EIR, p. 4.4-4, emphasis added.) The implications of this statement are that (1) there are a set of mandatory HMP-required habitat management activities; (2) those activities themselves require an ITP – even if they are not being performed to support an ITP for development elsewhere; and (3) there is no way that the owners of these lands can obtain that ITP because that would require set-aside of additional mitigation land that is not

December 10, 2019

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available. In effect the EIS/EIR implies that the owners of HMA land would inevitably have to violate the ESA and CESA unless the proposed HCP is adopted. This cannot be true.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

cc: City Managers and County Administrative Officer  
Dino Pick, City of Del Rey Oaks, [DPick@delreyoaks.org](mailto:DPick@delreyoaks.org)  
Layne Long, City of Marina, [llong@cityofmarina.org](mailto:llong@cityofmarina.org)  
Hans Uslar, City of Monterey, [uslar@monterey.org](mailto:uslar@monterey.org)  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

December 11, 2019

Mr. Stephen P. Henry  
Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, California 93003

Subject: Draft Environmental Impact Statement for the Fort Ord Habitat Conservation Plan,  
Monterey County, California (EIS No. 20190262)

Dear Mr. Henry:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

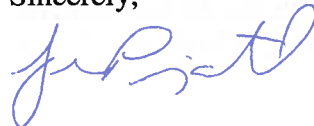
The EPA recognizes the years of planning, environmental review, and land conveyance decisions relative to the closure, disposal, and reuse of former Fort Ord. As part of this planning and environmental review process, the EPA supports the many thoughtful conservation and restoration actions included in the Fort Ord habitat conservation plan and evaluated in this Draft Environmental Impact Statement, including the provision that no development would occur in aquatic or wetland habitats in the habitat management areas (including known or potential breeding habitat for California tiger salamander and California red-legged frog) and the inclusion of a Construction Dust Mitigation Plan and Prescribed Burn Management Plan to address air quality impacts associated with proposed covered activities.

The DEIS describes that the development of the Fort Ord HCP was informed to a great extent by the habitat management plan (HMP) issued for Fort Ord by the U.S. Army Corps of Engineers on behalf of the U.S. Department of the Army in 1997. Indeed, the Fort Ord HCP includes many of the key components of the HMP, including the habitat reserve areas, development areas, and to a limited extent, the species included for incidental take permit coverage. The DEIS notes that since the HMP was finalized in 1997, changes have been made and additional details have become available with respect to land uses on certain parcels, including new habitat areas added to the original HMP reserve configuration, and that the proposed Multi-Modal Transportation Corridor through the UC's South Reserve has been relocated. The DEIS, however, provides only limited detail about these and other changes in the plan area in the more than 20 years since the HMP was implemented. We recommend the Fish and Wildlife Service include additional information in the Final EIS about how changes in the plan area since the HMP was first adopted – stemming from drought, human development, or other pressures – may have impacted integral plan components, such as the suitability of the habitat reserve areas. Additionally, because the proposed 50-year period of incidental take coverage will likely be a time of

considerable change in the plan area, we recommend that the FEIS include a discussion of projected future changes that may affect the covered species and the habitats on which they depend, and how the HCP's adaptive management plan will address issues associated with these changes. For example, consider changes to the status of covered species, distribution of species throughout the plan area, the success of restoration efforts, and the potential need for new or expanded conservation lands.

We note that effective October 22, 2018, the EPA no longer includes ratings in our comment letters. Information about this change and the EPA's continued roles and responsibilities in the review of federal actions can be found on our website at: <https://www.epa.gov/nepa/epa-review-process-under-section-309-clean-air-act>. The EPA appreciates the opportunity to review this DEIS, and we are available to discuss our comments. When the FEIS is released for public review, please send one hard copy and one CD to the address above (mail code: TIP-2). If you have any questions, please contact me at 415-947-4167, or contact Jason Gerdes, the lead reviewer for this project. Mr. Gerdes can be reached at 415-947-4221 or [gerdes.jason@epa.gov](mailto:gerdes.jason@epa.gov).

Sincerely,



Jean Prijatel, Manager  
Environmental Review Branch

December 12, 2019

Monterey Peninsula Properties, LLC.  
Sean Kranyak  
General Manager  
200 Clocktower Place, Suite D208  
Carmel, CA 93923

To Whom It May Concern:

As former Fort Ord Property owners in the City of Del Rey Oaks, we appreciate the opportunity to comment on the Fort Ord HCP Draft EIS/EIR.

The Plan Area & Surrounding Area Land Use Map (Figure 3.11-3) has incorrectly identified the southeastern most portion of Del Rey Oaks' former Fort Ord property as being classified/designated for Office/Professional development per the City of Del Rey Oaks' General Plan. The 1997 Del Rey Oaks General Plan was amended in 2016 via the Monument RV Resort Initiative Measure (Resolution No. 2016-08), in which the amendment replaced the Office/Professional classification/designation on the subject portion of property with the classification/designation of General Commercial-Visitor.

The Monument RV Resort Initiative Measure's resulting land use designation and zoning may also be worthy of mention in Section 3.11.3.4 of the Draft EIS/EIR. The Initiative Measure not only amended the City's General Plan, but also amended the City's Zoning Code, which incorporated Recreational Vehicle parks and other recreational related activities as being principally permitted uses (among other amendments). While the Initiative Measure did not alter the Fort Ord Reuse Plan Land Use Designation in the City of Del Rey Oaks, the Initiative Measure was deemed consistent with the Fort Ord Reuse Plan (Resolution No. 16-18) by virtue of the fact that the Initiative Measure's resulting land use designation and zoning would not establish a land use more intense than the uses permitted in the Base Reuse Plan. The aforementioned General Plan, Zoning Code amendments, and associated Base Reuse Plan consistency determination are important with respect to the City of Del Rey Oaks' former Fort Ord land use context.

Monterey Peninsula Properties looks forward to reviewing the Final EIS/EIR. If you have any questions regarding this response, please call me at 831-574-3330 or contact me by email at [seankranyak@yahoo.com](mailto:seankranyak@yahoo.com).

Sincerely,



Sean Kranyak  
General Manager



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## [EXTERNAL] Comments on Fort Ord Habitat Conservation Plan

1 message

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**Bartholomew Kowalski** [REDACTED]  
To: fw8fortordhcp@fws.gov

Mon, Dec 16, 2019 at 5:00 PM

Dear Mr. Henry

I am writing you in support of the Fort Ord Habitat Conservation Plan (HCP). As you know, it took many years for this document to be completed. During that time, many of the recipients of the Fort Ord parcels had requirements for habitat management activities under the Habitat Management Plan (HMP), such as removal of invasive weeds and erosion control, which are listed in the deeds. Unfortunately, some of the land recipients have not been complying with these requirements. The result is that while the Army, BLM, and State Parks spent millions of dollars and thousands of man hours treating weeds on the Fort Ord National Monument, adjacent lands have stands of pampas grass that not only degrade the parcels in which they are present, but also spread their seed to areas where managers are trying to control and eradicate these invasive species.

The HCP provides for a funding structure to manage natural resources on the former Fort Ord including invasive weed management which would provide all HCP partners with money necessary to alleviate this problem.

Additionally, the HCP provides an opportunity for coordinated wildfire prevention. If the past is any indication, I am afraid that without cooperation described in the HCP, many of the natural areas along the urban interface will become overgrown and will pose an increased fire risk at a time when California is seeing record destruction from wildfires that spread to urban areas.

As a resident of northern Monterey County I support the HCP being approved and implemented to better manage our rare species, invasive plants, and wildfire prevention.

Sincerely,

Bart Kowalski

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Bart Kowalski, MS

*Follow my Adventures with Wildlife*  
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## CALIFORNIA COASTAL COMMISSION

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December 16, 2019

Stephen P. Henry, Field Supervisor  
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### **RE: Draft Habitat Conservation Plan for Eight Species; Draft Environmental Impact Statement for the Habitat Conservation Plan for Fort Ord, Monterey County, California**

Mr. Henry:

On behalf of Coastal Commission [Commission] staff, thank you for the opportunity to comment on the *Draft Habitat Conservation Plan* [HCP] for Fort Ord and the associated EIS. As an agency, our role within the context of the HCP's covered area is one as a partner overseeing development in the Habitat Management Area [HMA] located at the Fort Ord Dunes State Park [FODSP], which falls within the Coastal Zone. The Coastal Act provides our regulatory authority to address development efforts, including those which may affect sensitive coastal resources, through planning and permit issuance. The Coastal Act definition of development is notably broad, and includes changes in use and/or intensity as well as restoration efforts among other activities.

In July 2017, the Commission conditionally-approved Coastal Development Permit [CDP] 3-14-1613, to allow for the California Department of Parks and Recreation [State Parks] to construct and operate a new campground facility at FODSP. At that time, the draft HCP was not yet available and though our staff report acknowledged the work in progress, the permit was structured to be independent of any uncertain timelines or particulars that the HCP might eventually resolve. As such, we required that pre-construction surveys and during construction monitoring account for several sensitive species at the site, including some of those addressed in the HCP, and that State Parks acquire our Executive Director's approval to proceed when such resources were encountered (or injured) only following consultation with partners at the Service and/or California Department of Fish and Wildlife [CDFW], as applicable. Finalization of the draft HCP should help to streamline our required consultation process for the relevant species, so long as State Parks' actions are consistent with the HCP, Incidental Take Permits [ITPs], and our CDP, but it will not eliminate the need obtain our approval to proceed under specified circumstances. Moreover, consultation with our partners will remain potentially necessary for other sensitive species and habitat resources, as recognized under Coastal Act.

Generally, the Avoidance and Minimization Measures, and Monitoring and Adaptive Management program, put forth in the draft appear to be well-conceived and we believe these will collectively advance conservation goals at FODSP for the HCP-species. Within the FODSP, two plants (sand gilia and Monterey spineflower) and two wildlife species (Smith's blue butterfly and western snowy plover) are relevant, including the associated critical

habitat areas for Monterey spineflower and western snowy plover. Accordingly, our abbreviated review of the EIS and HCP at this time has focused on these resources, at FODSP. We observe that we may need to address particular components more directly in the future, as issues often arise through the course of project review(s). For now, some specific comments:

1. While we understand the rationale for setting the adjusted baseline to January 2017 for the draft, we note that more recent and relevant information is ever available for a number of resources and should be incorporated to management decisions going forward and as part of the Fort Ord Regional Habitat Cooperative's Adaptive Management program:
  - a. Monterey spineflower was observed many places throughout the region over Spring and Summer 2017, subsequent to a particularly wet winter following a sustained drought. These observations presumably represented an expression of previously-dormant seed banks responding to recent environmental conditions. We have directly observed blooming spineflower at FODSP in areas where it had not been previously mapped, though it falls within designated critical habitat and areas related to the proposed Cal-Am Water desalination conveyance. Observations of spineflower have been newly recorded elsewhere in the coastal, central Monterey Bay region as well over this period and so, we suggest that added caution may be warranted when determining the annual species' presence and potential spatial extent where it has not been documented previously.
  - b. In 2018, CDFW provided an important update to the 2010 Natural Communities List that was used for the HCP and though communities are not the subject of the HCP, they are relevant to jurisdictions such as ours. The update substantially refined the treatment of vegetation community alliances and associations as defined by the Manual of California Vegetation, Second Edition (Sawyer *et al* 2009) and has established community rarity rankings in a much more systematic way. Such rankings inform Commission staff determinations of environmentally sensitive habitat areas [ESHA] and more broadly, would seem germane to the management of sensitive vegetation communities throughout Fort Ord. Because these lists are being updated on an ongoing basis, and to the finer level of community associations, it is likely that mosaics of suitable habitat for HCP species may also become increasingly refined (e.g., buckwheat supporting Smith's blue butterfly or habitat suitable to buckwheat restoration). The Coastal Commission will always rely upon the most current version of this list and the cumulative record of observations in our review of permit applications and compliance.
  - c. In February 2018, CDFW released the third version of its Areas of Conservation Emphasis [ACE] tool, which leapt forward dramatically in terms of its spatial modeling for biodiversity, habitat connectivity, and climate change resiliency across California's landscape. FODSP is spread across three cells of the 2.5 sq mi-hexagonal grid and the models highlight the significant conservation value of the area in terms of biodiversity, irreplaceability, and climate resilience. We encourage the parties involved in the long-term management to explore this tool and consider how management actions such as invasive species removal (as prioritized in the HCP) and the reestablishment of habitat corridors (also a priority in the HCP), particularly for coastal species moving through FODSP to other restored dunes up-coast and down-coast, can advance conservation goals for HCP-species and more broadly, the State.

2. A potential issue concerning Western snowy plovers relates to our coastal access policies and requirements, which is something that is cited but warrants emphasis – State Parks and the Cooperative will need to coordinate with Commission staff about, to ensure that both access and natural resource protections as prescribed in the HCP *and as directed under the Coastal Act* can be achieved successfully. We strongly encourage early and frequent discussions on this topic with our Central Coast District office.

We recognize that the intent of the HCP is to support the long-term and Fort Ord-wide management of sensitive listed species under USFWS and CDFW authority, to provide a basis to issue ITPs, and to simplify requirements for consultation through a programmatic approach. The EIS rightly acknowledges that additional permits may be necessary for various actions, including those that would be issued by the Coastal Commission, and that such permits may impose additional restrictions since the ITPs would only pertain to compliance with the federal Endangered Species Act [ESA] and California Endangered Species Act [CESA], specifically. To this end, there are a few overarching interpretations regarding Coastal Act definitions and policies that warrant clarification. We draw your attention to the following:

3. On page 95, the draft EIS discusses environmentally sensitive habitat areas [ESHA], but the information here is neither complete nor accurate. In particular, we clarify that habitat need not necessarily be species-specific but may rather be applied in recognition of broader categories including *assemblages, communities, or ecosystems*. Particular ecosystems may be treated categorically (e.g., oak woodlands or dunes), and the Coastal Act definition includes language to protect ‘especially valuable’ habitat, which may be characterized, for example, by particular genetic types, structures (e.g., long-lived complex woodrat middens), or even non-native tree stands supporting nesting heron or raptor populations among other things. Otherwise unprotected host species supporting listed-species, such as the two buckwheats supporting Smith’s blue butterfly, are considered especially valuable habitat and recognized as ESHA within the butterfly’s range.

Later, in the same paragraph, there is reference to allowable development within ESHA and the text cites “unless the development is *coastal* dependent...” – this is inaccurate. The only allowable uses within ESHA are *ESHA*-dependent, meaning dependent on the specific protected resource that is present, such as an interpretive trail or restoration work, and only so long as it will not have a significant effect on the said resource(s). ESHA-dependent is, importantly, a narrower definition than coastal-dependent.

4. Also worth clarifying is that while a wetland may rise to the level of ESHA based upon the resources present, the Coastal Act also includes more specific policies that pertain to wetlands, including broader definitions of allowable activities therein. The courts have established that because wetland policies are more specific, even when a wetland rises to the level of ESHA, it is the wetland policies that are applicable.
5. Within the documents, wetlands are discussed in terms of the US Army Corps three-parameter definition that requires indicators of hydrophytic vegetation, hydric soils, and hydrology to *all* be present in order to recognize the presence of a wetland. However, under Coastal regulations, only *one* of these indicators need be present to meet the definition of a wetland and receive protection under Coastal Act policies. While FODSP is not particularly likely to have wetlands that even meet our more conservative definition given the drainage of sandy soils, it is possible that wetlands could occur within dune swales or as seasonal features, similar to those observed up-coast in Marina. We recognize that

the HCP is not specific to wetland resources apart from those inhabited by the sensitive amphibian species addressed but do advise that this difference in wetland definitions be recognized for the broader management considerations at the FODSP HMA.

Finally, we note that the Commission has typically considered all dune habitat as ESHA, including at FODSP and as articulated in the aforementioned CDP's staff report. This determination has been independent of habitat condition and species occupation, meaning that even where dunes have been historically disturbed and/or are currently dominated by non-native vegetation, these areas are recognized by the presence of appropriate physical conditions (e.g., geophysical position, substrate, topography) and adapted vegetation (including non-native species), are protected under the Coastal Act, and are generally considered priorities for restoration and enhancement efforts. This has become even more the case in light of climate change impacts on our shores (i.e. sea level rise, increased erosion rates) and the nature-based protection services and adaptation opportunities that dune ecosystems provide for inshore communities as well as the preservation of species and habitat subject to coastal squeeze. Undoubtedly, the importance of these shoreward habitats is a shared priority between our respective mandates.

Thank you again for the opportunity to comment on the draft document. If you would like to discuss any of these comments with us directly or related issues, we welcome the opportunity. I can be reached at [Lauren.Garske@coastal.ca.gov](mailto:Lauren.Garske@coastal.ca.gov) or (415) 904-5296.

Sincerely,

**Lauren Garske-Garcia, Ph.D.**

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**Subject: Ford Ord Multi-Species Habitat Conservation Plan (Project)  
 Draft Environmental Impact Statement (EIS)/Environmental Impact  
 Report (EIR)  
 SCH #2005061119**

Dear Messrs. Metz and Henry:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft EIR/EIS from the Fort Ord Reuse Authority for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW's role is to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related take authorization as provided by Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant(s) is/are responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under limited circumstances such as the provisions of a Natural Communities Conservation Plan (NCCP) or a Memorandum of Understanding for scientific purposes.

**Rare Species:** Species of plants and animals need not be listed as Endangered, Rare or Threatened (E, R or T) pursuant to CESA and/or the Federal Endangered Species Act (ESA) to be considered E, R or T under CEQA. If a species can be shown to meet

the criteria for a listing as E, R or T under CESA and/or ESA as specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15380; hereafter CEQA Guidelines), it should be fully considered in the environmental analysis for the Project.

**Lake and Streambed Alteration:** CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* Section 1602(a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

**Water Pollution:** Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Fort Ord Reuse Authority (hereafter, the Authority)

**Project Description:** The Project consists of the Habitat Conservation Plan (HCP) and the issuance of Federal and State incidental take permits (ITPs) by the United States Fish and Wildlife Service (USFWS) under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, and by CDFW pursuant to Fish and Game Code Section 2081 in compliance with CESA. The issuance of the ITPs would authorize take of the State and Federally listed species identified in the HCP during the development and redevelopment of the former Fort Ord military base.

**Location:** The former Fort Ord military base is the entirety of the area covered by the HCP and is referred to here-in as the Plan Area. The Plan Area is located along the Pacific Ocean, approximately 100 miles south of San Francisco, California and is in the northern portion of the County of Monterey. Approximately seventy-two percent (72%) of the Plan Area is within unincorporated areas of the County of Monterey; approximately fifteen percent (15%) is within the City of Seaside; approximately twelve percent (12%) is within the City of Marina; approximately one percent (1%) is within the City of Del Rey Oaks; and less than half a percent (0.5%) is within the City of Monterey.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources so that the Authority can submit a complete application package to CDFW when an ITP is sought. Editorial comments or other suggestions may also be included to improve the Draft EIR/EIS.

**Project Definition:** In the Draft EIR/EIS the Authority describes the Project as the HCP and the issuance of State and Federal ITPs. However, under CEQA a Project is defined as: "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines, §§ 15378, subd. (a)). The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term "project" does not mean each separate "government approval" (CEQA Guidelines, §§ 15378, subd. (b)). Based on the definition of the term "Project" under CEQA, the Draft EIR/EIS would be more accurate to identify the Project as the development and the redevelopment of the former Fort Ord military base. Nevertheless, CDFW has structured this letter to use the term Project in reference to the development and redevelopment of the former Fort Ord military base and the term HCP to refer to the Draft Multi-Species Habitat Conservation Plan included as an Appendix to the Draft EIR/EIS.

**Survey Methodologies and Project Baseline Conditions:** The methodology discussion in the Draft EIR/EIS and HCP appears to be incomplete and as a result is likely to require supplementation for CDFW to issue an ITP. The methodology sections in the CEQA document and HCP do not fully describe the survey methodologies that were used to inventory special-status species that occur or have the potential to occur within the Plan Area. Instead the Draft EIR/EIS and HCP refer to the original studies; however, these studies were not included in either the CEQA document or its appendices and therefore were not readily available for CDFW review and/or comment. Since these surveys provide the baseline assessment of the Plan Area and the Draft EIR/EIS acknowledges limitations and assumptions exist within these survey methodologies (ex. potential overestimations of occupied habitat, studies conducted over a single floristic season, etc.), CDFW strongly recommends, that at a minimum, the original survey methodologies and results that were used to establish the CEQA baseline for the Project be provided to CDFW as part of any application for an ITP.

Based on the information provided, CDFW cannot determine if impacts to the Monterey gilia, one of the CESA listed species, are being minimized and mitigated by this approach since the habitat that is set aside as mitigation may be unoccupied, occupied at lower densities than habitat being impacted by the Project, or may be reduced in



quality from the habitat that is being impacted. CDFW recommend that it be contacted prior to preparing the ITP application submittal to ensure CDFW receives the information and analysis it needs.

**Avoidance and Minimization Measures (AMM) and Mitigation Measures (MM):** The Draft EIR/EIS does not fully describe the extent of the development activities that will be allowed in the Habitat Mitigation Areas (HMA) and where they will occur within each parcel in contrast to where species populations occur within the Plan Area. Due to this lack of information, and the lack of species-specific population occurrences described within the entire Plan Area, CDFW cannot fully evaluate Project-related impacts to special-status species or provide thorough and robust comments on the proposed AMM and MM. Species-specific population occurrences and a discussion of the location of development activities within the HMAs in relation to these occurrences for the CESA-listed species would be useful for CDFW when it is reviewing an ITP application.

In addition, more information about the AMM and MM that are currently described in the Draft EIR/EIS would assist CDFW's review of an application. For example, the CEQA document describes the use of escape ramps and trench covers to minimize special-status species entrapment within excavations; however, design requirements for the escape ramps and trench covers and other requirements for their use are not described in the CEQA document or included as an AMM.

The Draft EIR/EIS also references AMM and MM in other plans, such as the Reuse Plan and Habitat Management Plan (HMP) that would reduce impacts to special-status species. Clear inclusion of AMM and MM from other plans or documents to mitigate impacts on the CESA listed species would also assist in CDFW's review. Currently, it is unclear how measures in other documents informed the lead agency's CEQA significance determination in the Draft EIR/EIS. Also, assuming the measures were used to inform the significance determination, it is also unclear how the measures would be enforceable or implemented to ensure the significance determination is accurate.

**Project-Related Impacts:** The Draft EIR/EIS and HCP state that impacts occurring within designated development areas that were previously developed as part of the Fort Ord military base would not require State and Federal ITPs. However, these areas have been mostly abandoned since the closure of the Fort Ord military base and have the potential to provide habitat for several special status animal species. While a more limited possibility, special status plants also have the potential to occur within these abandoned areas if recolonization or population expansion has occurred since the closure of the military base or previously unidentified populations remain within these areas. The assumption of the absence of special-status species within these developed areas in the Draft EIR/EIS and HCP may result in an underestimation of the Project's potential impacts on these species.

CDFW also disagrees with the Draft EIR/EIS definition of a temporary impact. For ITP purposes, CDFW generally considers temporary impacts to be impacts that occur only during the Project-related activity (e.g., temporary impacts occurring during the active installation of a bridge, etc.) as opposed to impacts that continue to occur after the activity has been completed for up to a period of five (5) years. Temporal impacts that extend beyond active construction and preclude use as foraging, denning, dispersal, reproduction, or movement corridors would be considered to be permanent impacts in an ITP. CDFW would also appreciate more information about several Project-related activities such as, but not limited to: beach species management activities; controlled burns; California tiger salamander (*Ambystoma californiense*; CTS) hybrid identification, removal, and potential habitat impacts; special status plant species seed collection and reseeding; CTS barriers; fencing design and location; and other described and undescribed Project-related activities. The CEQA document lacks sufficient detail and analysis for CDFW to fully assess any future ITP application.

**Proposed Mitigation and Mitigation Lands:** The Plan Area consists of a total of 27,832 acres, of which 10,069 acres will be impacted by the Project. The proposed mitigation lands for the Project will occur on a combination of Federal (14,645 acres) and non-Federal lands (3,895 acres), with the largest portion of the mitigation lands occurring on Bureau of Land Management (BLM) lands (i.e., federal lands) within the Fort Ord National Monument (FONM) (14,645 acres). The Draft EIR/EIS and HCP state that the use of Federal lands is critical to the HCP; however, BLM will not be a Permittee under the State ITP or a party to the HCP, nor otherwise subject to the requirements of the HCP. While the intention of the Draft EIR/EIS and HCP is for BLM to participate with the ITP Permittees to allow Project mitigation to take place on the FONM, and manage those lands in accordance with the HCP, “nothing in the HCP will or shall be interpreted as superseding BLM’s requirements under the Rangeland Management Plan, its step-down plans, national monument designation, Area of Critical Environmental Concern designation, HMP, or any requirements of BLM’s governing law and regulation” (Draft EIR/EIS 2019). “In addition, Congress may modify the FONM designation or other requirements of Federal land management. Nothing in the HCP may be interpreted as impacting the ability of the Department of the Interior, BLM or Congress in making these modifications” (Draft EIR/EIS 2019). The Draft EIR/EIS and the HCP also clearly state that the activities and MM described in all the aforementioned documents may change and are not permanent restrictions on use or obligations for use. This includes the two percent (2%) development restriction included in the HCP for development on BLM lands.

Since the majority of the mitigation lands occur on BLM lands and BLM will not be a permittee under the Federal or State permits, and as a result will not be bound to comply with any MM included in either the Draft EIR/EIS, HCP or State and Federal ITPs, and measures listed within the HCP may be changed either through an

amendment to the HCP or through adaptive management measures, the Project as proposed may not meet State ITP issuance criteria without additional information or analysis because currently: (1) there is no certainty that the impacts of the authorized take will be minimized and fully mitigated through a binding instrument in perpetuity, (2) there is no assurance that the measures required to minimize and fully mitigate the impacts of the authorized take will be roughly proportional in extent to the impact of the taking on the species, and (3) there is no assurance that impacts of the taking will not jeopardize the continued existence of a State listed species because there is no guarantee that the HMA lands within the BLM's jurisdiction will be permanently conserved and managed for the benefit of the species in perpetuity.

**Mitigation Credit:** In several locations the Draft EIR/EIS states that BLM's current management activities and any additional MM would be credited to the Permittees by CDFW for its Section 2081 ITP. In order to satisfy ITP requirements, mitigation must result in the permanent protection and perpetual management of compensatory habitat and is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking on the Covered Species that will result with implementation of the Project.

CDFW is unclear if the amounts calculated for mitigation land acreages include some of the development areas as mitigation (ex. trails, disturbance areas, land above underground pipelines, etc.). For example, Wolf Hill and Look Out Ridge are limited to thirty (30) acres and one-hundred and ten (110) acres for habitat conversion activities, respectively. However, the HCP states that the specific requirement is that facilities do not extend beyond areas already disturbed by Army activities. The HCP does not define the current Army disturbance area and CDFW is unclear if the Army has disturbed more area than is restricted in the thirty (30) and one-hundred and ten (110) acre habitat conversion amounts listed above. The HCP also seems to include overflow parking areas in the amount of mitigation land acreages described in the HCP. If these activities occur on lands included in the amount of mitigation land described in the HCP, CDFW recommends these areas be removed from the total acreages of mitigation lands since these areas will be impacted by the Project on an ongoing basis and will not be consistently managed for the primary benefit of the species.

**Adaptive Management:** The Draft EIR/EIS and HCP incorporate adaptive management practices into the AMM and MM which will allow specific actions, monitoring protocols and other activities described in the HCP to be implemented or revised without needing to amend the HCP. CDFW would like to remind the Authority that if these measures are included in a State ITP, the Permittees will not be able to use adaptive management measures as a Covered Activity under the ITP unless they are fully described and incorporated into the ITP or the ITP is amended to include these measures and all potential impacts from these measures are fully mitigated prior to their

implementation. CDFW also recommends all potential adaptive management measures be fully described in any application for an ITP for CDFW to fully evaluate any potential impacts to CESA-listed species.

**Third Party State ITP Take Coverage:** There is language in the Draft EIR/EIS and HCP that alludes to Permittees having the authority to convey State ITP take coverage to other developers that are not listed as a Permittee under a State ITP that would be completing a project within the Plan Area. There is also language that states that if a Permittee under a State ITP sells land within the Plan Area the new landowner may obtain take coverage under a Certification of Inclusion issued by the Permittee. CDFW would like to clarify that for a project or landowner to have State ITP take coverage, each project or landowner would be required to either obtain their own ITP or be added as a Permittee to an existing ITP that covers the project area.

The Draft EIR/EIS and HCP also includes language that defines the qualifications and duties that will be performed by a Designated Biologist and Biological Monitor. Please be advised that the ITP(s) will specifically define the qualifications and duties that will be required of the Designated Biologist and Biological Monitor and may not necessarily conform to those listed in the HCP.

Contrary to the language included in the HCP, CDFW has not received an application for an ITP and therefore, CDFW cannot at this time determine if the Project can meet ITP issuance criteria as described in Fish and Game Code section 2081. However, the Project does not currently appear to meet the requirements for ITP issuance as discussed in the Proposed Mitigation and Mitigation Lands section of this letter and additional information or analysis will likely be needed prior to ITP issuance. In addition, CDFW response times for ITP application review and ITP issuance will comply with statutory mandates. Please note that any subsequent changes to the HCP that will affect the Project description, impacts and/or Covered Activities will require an ITP amendment prior to the initiation of these changes if the changes will result in impacts not described and contemplated in the ITP.

**Hybrid CTS Removal:** The Draft EIR/EIS includes a discussion about the control and removal of hybrid CTS from the Plan Area. However, a detailed description of these methods and the criteria for determining if a CTS is a hybrid have been omitted from the Draft EIR/EIS and HCP. In addition, some of the suggested methods (e.g., reducing pool hydroperiods, removal of CTS, etc.) may harm, negatively impact, or result in take of native CTS or other special-status species, or their associated habitats. CDFW advises that these potential impacts be fully described, analyzed, and include quantified enforceable measures to reduce these impacts to less than significant in any application to CDFW for an ITP.

Please be advised that in order for CTS hybrids to be removed from the population or for habitat conditions to be altered to be inhospitable to CTS hybrids, the Project will first need to obtain a State ITP and will be required to include a CTS hybrid identification plan and impact analysis for CTS hybrid removal.

**Monterey Gilia:** The Plan Area has one of the largest known occurrences of Monterey gilia in the entire species range (USFWS 1998). Preliminary estimates indicate that as much as sixty percent (60%) of the total known individuals of this species occur within the Plan Area (USFWS 1998). While the Draft EIR/EIS and HCP do not provide a discussion of the Project's impacts to Monterey gilia based on impacts to population occurrences (instead impacts are focused on preserved versus impacted habitat) the *USFWS Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly* (USFWS Recovery Plan) and the *USFWS Monterey Gilia 5 Year Review* (USFWS 5 Year Review) specifically discuss the impact of the HCP on populations of Monterey gilia.

As described in the HCP and further discussed in the USFWS Recovery Plan, under the HCP several population occurrences of Monterey gilia on the former Fort Ord military base are designated for development and while these areas are relatively small in acreage they contain high quality habitat and a high density of individuals (USFWS 1998). "Development of these lands will constitute the loss of some of the most productive and high density occupied habitat known for this subspecies" (USFWS 2008). The majority of the remaining occurrences in the central and eastern portion of the Plan Area are intended to be managed for conservation by BLM; however, the density of Monterey gilia individuals within these occurrences appear to be low (USFWS 2008). "It has also been observed that in the more inland areas of its distribution, Monterey gilia has morphological characteristics that intergrade with *Gilia tenuiflora* ssp. *tenuiflora*" which is not endangered and is not a special-status species of any kind (USFWS 2008). According to the USFWS 5 Year Review, the baseline studies conducted on the former Fort Ord military base assumed that all plants observed were Monterey gilia due to the difficulty to identify the subspecies in the eastern portion of the former military base and later surveys conducted by BLM personnel also followed this protocol to simplify their procedures. Therefore, it "is important to understand the morphological and genetic variability in Monterey gilia in inland areas, because most of the future development on the former Fort Ord military base is planned for the western half of the base. Preservations of populations farther north and east, including where the taxonomy is in question, is intended as mitigation for the development-associated losses in the western areas" and additional surveys will be needed to clarify the taxonomic identities of *Gilia* subspecies within the Plan Area (USFWS 2008). Due to the extent of Project-related impacts on high density populations, the preservation of lower quality habitat with fewer individuals, the question of taxonomy in the eastern preserved areas and the uncertainty of BLM in regards to permanent protection and perpetual management for the benefit of the species on the mitigation lands (see

Proposed Mitigation and Mitigation Lands section above), additional information or analysis is likely to be needed in order to meet State ITP issuance criteria for take of Monterey gilia and ensure that permit issuance does not jeopardize the continued existence of this subspecies.

**Lake and Streambed Alteration:** Project activities are proposed that may involve work within the bed, bank, or channel (which may include associated riparian resources) of rivers, streams, or lakes which could require notification to CDFW and an agreement under Section 1600 et seq. of the Fish and Game Code.

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams (including any floodplain) and wetlands within and adjacent to the Plan Area. Please note that, while there is overlap, State and Federal definitions of wetlands as well as what activities require Notification pursuant to Fish and Game Code Section 1602 differ. Therefore, it is advised that a wetland delineation be completed that identifies both State and Federal wetlands in the Plan Area as well as what activities may require Notification to comply with Fish and Game Code. Fish and Game Code Section 2785(g) defines wetlands; further, sections 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from the United States Army Corps of Engineers and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with a revised Draft EIR/EIS along with an analysis of potential Project-related impacts to CDFW jurisdictional features. Including this information in an EIR will facilitate CDFW's issuance of an agreement under Fish and Game Code Section 1603. The Project applicant must also submit a Lake and Streambed Alteration Notification to CDFW for any Project-related impacts to CDFW jurisdictional features.

**HCP Implementation and Compliance:** The HCP states that CDFW and USFWS are participants in the oversight of HCP implementation and compliance. CDFW would like to clarify that the HCP is for a federal approval and as a result CDFW has no authority to oversee its implementation or compliance. In contrast, CDFW will monitor a Project's State ITP for Permittee compliance and implementation. As a result, CDFW would participate in HCP implementation and compliance only to the extent there is overlap with the State ITP. Nevertheless, CDFW is available to provide input on resource issues that don't implicate the State ITP to the extent that CDFW staff are available. CDFW welcomes any questions related to CDFW's role during permit oversight and compliance.

**Other State ITPs Within the Plan Area:** In contrast to language included in the HCP, project-specific ITPs that are within the Plan Area that were issued prior to issuance of the Fort Ord ITP, will remain in effect and the Permittees of those ITPs will be required to complete all mitigation obligations required by the ITP unless the Permittees have not engaged in project-related activities covered under the ITP and notify CDFW that they would like to withdraw their ITP.

**Trustee Agency Comments:**

CDFW offers the following comments and recommendations below as a Trustee Agency to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife resources.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under certain limited circumstances such as through an NCCP or a Memorandum of Understanding for scientific purposes which do not currently apply to the Project. The fully protected California brown pelican (*Pelecanus occidentalis californicus*), white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*) are known to occur within the Plan Area, and the American peregrine falcon (*Falco peregrinus anatum*), California black rail (*Laterallus jamaicensis coturniculus*), and Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) have the potential to occur within the Plan Area. This status, and the absence of an NCCP for the Project, precludes CDFW from authorizing any amount of incidental take for fully protected species. When projects show the potential to cause take of fully protected species, we advise on appropriate measures to avoid take. Given the legal status of fully protected animals, take avoidance measures must meet very high standards of effectiveness, substantially greater than the measures to minimize take required under ITPs. CDFW recommends that permittees prepare an analysis of potential project-related impacts to fully protected species and include appropriate AMM and MM to ensure full avoidance of the above-listed species. If full avoidance cannot be achieved, CDFW recommends the Project apply for an NCCP.

**Rare Plants:** A large number of rare plant species are known to occur or have the potential to occur within the Plan Area and may be impacted by Project-related activities. The following twenty-eight (28) plant species are listed as California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1B species, are known to occur within the Plan Area, and meet the aforementioned CEQA Guidelines for consideration under CEQA: *vernal pool bent grass (Agrostis lacuna-vernalis)*, *Hickman's onion (Allium hickmanii)*, *Hooker's manzanita (Arctostaphylos hookeri ssp.*

*hookeri*), Toro manzanita (*Arctostaphylos montereyensis*), Pajaro manzanita (*Arctostaphylos pajaroensis*), sandmat manzanita (*Arctostaphylos pumila*), pink Johnny-nip (*Castilleja ambigua* var. *insalutata*), Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), Fort Ord spineflower (*Chorizanthe minutiflora*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), robust spineflower (*Chorizanthe robusta* var. *robusta*), seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), Eastwood's goldenbush (*Ericameria fasciculata*), sand-loving wallflower (*Erysimum ammophilum*), Yadon's wallflower (*Erysimum menziesii* ssp. *yadonii*), Monterey (sand) gilia (*Gilia tenuiflora* ssp. *arenaria*), Monterey cypress (*Hesperocyparis macrocarpa*), Kellogg's horkelia (*Horkelia cuneata* var. *sericea*), Contra Costa goldfields (*Lasthenia conjugens*), legenere (*Legenere limosa*), Oregon meconella (*Meconella oregana*), marsh microseris (*Microseris paludosa*), northern curly-leaved monardella (*Monardella sinuata* ssp. *nigrescens*), Monterey pine (*Pinus radiata*), Yadon's rein orchid (*Piperia yadonii*), Choris' popcornflower (*Plagiobothrys chorisianus* var. *chorisianus*), Santa Cruz clover (*Trifolium buckwestiorum*), and Pacific Grove clover (*Trifolium polyodon*).

An additional twenty-four (24) plant species may also occur within the Plan Area and are listed as CNPS CRPR 1B species that also meet the aforementioned CEQA Guidelines for consideration under CEQA: Little Sur manzanita (*Arctostaphylos edmundsii*), alkali milk-vetch (*Astragalus tener* var. *tener*), coastal dunes milk-vetch (*Astragalus tener* var. *titi*), round-leaved filaree (*California macrophylla*), Jolon clarkia (*Clarkia jolonensis*), San Francisco collinsia (*Collinsia multicolor*), Hospital Canyon larkspur (*Delphinium californicum* ssp. *interius*), Hutchinson's larkspur (*Delphinium hutchinsoniae*), Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*), fragrant fritillary (*Fritillaria liliacea*), Santa Cruz tarplant (*Holocarpha macradenia*), Point Reyes horkelia (*Point Reyes horkelia*), beach layia (*Layia carnosa*), Tidestrom's lupine (*Lupinus tidestromii*), Carmel Valley bush-mallow (*Malacothamnus palmeri* var. *involucratus*), Santa Lucia bush-mallow (*Malacothamnus palmeri* var. *palmeri*), Carmel Valley malacothrix (*Malacothrix saxatilis* var. *arachnoidea*), woodland woollythreads (*Monolopia gracilens*), San Francisco popcornflower (*Plagiobothrys diffusus*), Hickman's cinquefoil (*Potentilla hickmanii*), angel's hair lichen (*Ramalina thrausta*), Santa Cruz microseris (*Stebbinsoseris decipiens*), maple-leaved checkerbloom (*Sidalcea malachroides*), and California screw-moss (*Tortula californica*).

The Draft EIR/EIS notes that impact analysis for special-status plant species determined to have a low or unlikely potential to occur within the Plan Area is not necessary. The determination of low or unlikely potential for habitation appears to be based upon documented occurrences within the Plan Area, California Natural Diversity Database (CNDDDB) documented occurrences, and whether the species was planted or occurred naturally within the Plan Area.

As stated in the Draft EIR/EIS, the "most comprehensive surveys that took place in the Plan Area were the 1992 *Flora and Fauna Baseline Study of Fort Ord, California*"



conducted in 1992. The baseline studies were only conducted during one season, were outside of the floristic period for many of the rare plants listed above, did not focus on the documentation of specific plant population locations, or follow approved floristic survey methodologies which include the use of reference populations. As has been stated previously, while the baseline studies were updated to include resource agency database occurrences and results from surveys conducted for various projects in the Plan Area up through 2017, these surveys were project site-specific and did not cover the entire Plan Area and were not all plant focused. CDFW cautions that the CNDDDB is a voluntary database that is reliant on the *voluntary* submission of data from outside sources. Therefore, it is not a complete assessment of species presence; and absence of species data in the database should not be used to provide justification for absence. Furthermore, the planting of special-status plant species within the Plan Area does not remove their special status designation, and potential Project-related impacts to these species are advised to be analyzed under CEQA.

The Draft EIR/EIS and HCP also failed to analyze potential Project-related impacts to the remainder of the rare plant species listed above. The Draft EIR/EIS referred to the HCP for the Project-related impact analysis, AMM, and MM that would benefit these species. However, the HCP only addresses four (4) plant species (i.e., Monterey spineflower, seaside bird's-beak, Monterey (sand) gilia and Yadon's rein orchid) and the impact analysis and associated AMM and MM are specific to these four (4) plant species. While a few AMM and MM may provide some incidental benefit to the rare plant species, they are not specific measures to reduce impacts to these species and the overall benefit and Project-related impacts to these species cannot be determined since an impact analysis was not provided in either the Draft EIR/EIS or the HCP. Therefore, CDFW recommends an AMM and MM be added to the Draft DEIR/DEIS that requires surveys to be conducted for special status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018) prior to initiation of any vegetation or ground disturbing activities in all areas that have potentially suitable habitat for special-status plant species. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then CDFW recommends providing greater detail regarding alternate minimization and compensatory mitigation measures, such as reduced buffers, describing the intent and anticipated success of transplanting, and specifying success criteria for transplanted plants and related long-term protection and management that would occur under a conservation easement.

**Cumulative impacts:** Due to the generalized way in which the Draft EIR/EIS has defined cumulative impacts, the CEQA document does not appear to contain a complete analysis of cumulative impacts. Therefore, CDFW recommends more information and analysis of cumulative impacts involving past, present and reasonably foreseeable probable future projects in and within the vicinity of the Plan Area including, but not limited to, the realignment of State Route 68 and the Fort Ord Regional and Greenway Project be included as part of any ITP application.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the Draft EIR/EIS to assist the Authority in identifying and mitigating Project impacts on biological resources and for the Authority to prepare an application to CDFW for an ITP. Due to the issues presented in this letter, CDFW concludes that additional information and analysis is likely necessary in order for CDFW to issue a State ITP and fulfill its related CEQA obligations in its role as a Responsible Agency.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to Lori Bono,

Josh Metz, Fort Ord Reuse Authority  
Stephen Henry, United States Fish and Wildlife Service  
December 13, 2019  
Page 15

Senior Environmental Scientist (Specialist), at the address provided on this letterhead,  
by telephone at (559) 243-4014, extension 350, or by electronic email at  
Lori.Bono@wildlife.ca.gov.

Sincerely,



Julie A. Vance  
Regional Manager

cc: Office of Planning and Research  
State Clearinghouse  
Post Office Box 3044  
Sacramento, California 95812-3044

ec: Annee Ferranti, CDFW, Annee.Ferranti@wildlife.ca.gov  
Lori Bono, CDFW, Lori.Bono@wildlife.ca.gov

## **REFERENCES**

CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.

USFWS, September 1998. Seven Coastal Plants and the Myrtle's Silverspot Butterfly Recovery Plan.

USFWS, March 2008. Monterey Gilia Five-Year Review: Summary and Evaluation.

# California Native Plant Society

2707 K Street, Ste. 1 • Sacramento, CA 95816-5113 • (916)447-2677 • FAX (916)447-2727

Monterey Bay Chapter – P.O. Box 221303, Carmel, CA 93923

December 16, 2019

Sent via email to: [fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)  
Leilani Takano, [takano@fws.gov](mailto:takano@fws.gov)

COMMENTS ON DRAFT HCP and EIS FOR FORT ORD, Monterey County, CA

Thank you for the opportunity to provide comments on the Draft Habitat Conservation Plan for Eight Species At Fort Ord, and the Draft EIS for the HCP. Please accept the following comments.:

1. The Monterey Bay Chapter of the California Native Plant Society (MB-CNPS) has had a nearly 50-year history of plant and habitat conservation efforts at the Fort Ord former military installation. In the early 1970's, the Chapter worked with Base Command to establish 10 Native Plant Reserves that protected the finest examples of native habitat types within the mosaic of rich Mediterranean natural communities on the military base. Wetlands, Maritime Chaparral, "Sandhill Oak" Woodlands, Dune Scrub and concentrations of special status plant species were identified by CNPS and conserved by the Army. In the early 1990's, three additional Native Plant Reserves were identified. The conservation of ALL 13 reserves in perpetuity was formalized through mitigation agreements signed jointly by the Monterey Bay Chapter of CNPS and the U.S. Army.

We note that Plant Reserve #3 has not been identified as a permanently conserved area, as per mitigation agreements executed by the Army Base Command and MB-CNPS.

We note that an additional (14<sup>th</sup>) Plant Reserve, referred to by MB-CNPS as Plant Reserve 1 North, has not been identified in the Draft HCP and EIS. This additional Plant Reserve was established in Parcel E29a.1 by a fully executed agreement in 1998, as amended in 1999, by the President of MB-CNPS, the Mayor of Del Rey Oaks and the Executive Director of the Fort Ord Reuse Authority (FORA). Plant Reserve 1 North supports the CA endangered Seaside bird's beak and the federally threatened Monterey spineflower, in addition to extremely high-quality examples of Maritime Chaparral. This Reserve has not officially been surveyed for the presence of federally endangered Yadon's Piperia. This 5.65-acre parcel, which is within Del Rey Oaks jurisdiction, is incorrectly designated as a development area in the Draft HCP and EIS.

Seaside bird's beak is a hemi-parasitic plant and it may not be possible to mitigate for potential impacts to this species since no substantive life history and host plant information is available to inform revegetation or habitat restoration efforts.

The Draft HCP and EIS must be amended to note that the MB-CNPS Plant Reserves are conservation areas to be protected in perpetuity, in particular Plant Reserve #3 and 1 North. Reserve #3 is in the jurisdiction of Seaside and Reserve 1 North is in the jurisdiction of Del Rey Oaks – these cities must manage the Plant Reserves in perpetuity for their important conservation values and rare plant populations (page 5-45).



Dedicated to the preservation of California native flora



2. A 50-year permit for take, or incidental take of special status species is beyond a reasonable time-frame and adaptive management strategies outlined in the Draft HCP do not adequately address potential habitat and species population changes that will occur as current climate conditions alter. In addition, the eventual build-out of Fort Ord will substantially modify the natural ecological condition and dynamics of remaining habitat stands that support special status species. The Draft HCP fails to adequately account for the impacts of climate change and build-out, and incorrectly bases its perpetual 50-year recommendations and protocols on existing conditions. The Draft HCP incorrectly assumes that adaptive management strategies will be implemented to address plant or animal migration and changing population dynamics as climate changes. It remains unclear who, or what entity will be monitoring, evaluating and potentially determining whether adaptive management steps must be undertaken.

3. The list of Permittees noted in the Draft HCP does not consider future ownership of Fort Ord lands by any other federal, state, local, or Tribal ownership entity that may acquire lands from one of the jurisdictions noted on page ES-2.

4. General development areas have previously been identified, however in the future these areas may become of critical importance to the survival of special status plants and animal as climate changes. The classification of development lands is entirely based on current conditions. Current conditions will not remain static, therefore the classification of development lands must be reconsidered.

5. Ferrini Ranch, page 4-42: this holding has been encumbered by a Conservation Easement held by the Ag Land Trust and only a handful of residential homes will be constructed. The HCP should be amended to reflect this land use change.

Thank you for your consideration.

Sincerely,



Nicole Nedeff  
Conservation Committee

cc: Board of Directors  
Brandon Sanderson, CDFW



December 16, 2019

Stephen P. Henry, Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B,  
Ventura, CA 93003

Re: Comment letter on the Fort Ord Multi-Species Habitat Conservation Plan Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR)

Dear Mr. Henry,

California State University Monterey Bay (CSUMB) has reviewed the Multi-Species Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIS) and offers the following comments:

**Draft HCP, Vol 1**

1. Page 289 - "Mitigation Measure-1. Adopt implementing ordinance or policy. Each Permittee will adopt an implementing ordinance or policy to implement the HCP on the local, agency, or institutional level. The ordinance or policy will incorporate the relevant components of the HCP for private applicants and clearly identify the requirements for development on former Fort Ord (see Section 7.4, Local Implementing Ordinances and Policies, for full requirement discussion)."
  - The ultimate implementing ordinance language and adoption process will be determined by the California State University.
2. Page 551 – "Table 9-6. Cost and Funding Sources"
  - CSUMB will fund its borderland costs through annual payments in accordance with the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and CSUMB, dated September 14, 2009.
3. Page 561 - "Table 9-11. Borderlands Costs and Funding - CSUMB will fund its borderland costs through annual payments in accordance with the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and CSUMB, dated September 14, 2009."
  - CSUMB's HCP cost obligations are described above.
4. Page 563 - "The Board of Trustees of California State University (on behalf of CSUMB) has agreed to request money from the State Legislature to make certain negotiated payments to FORA to mitigate regional educational-related development impacts. As provided in the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and CSUMB, dated September 14, 2009, CSUMB shall request legislative funding to pay FORA a

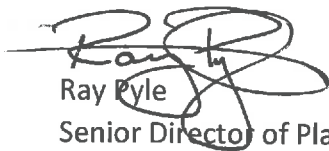
one-time payment of \$47,800.00 for HCP preparation costs plus \$4,784.91 annual payment to manage the CSUMB Borderland property. After FORA's dissolution, CSUMB shall make its \$4,784.91 annual payment to the Cooperative. CSUMB shall make its one-time payment of \$47,800 before June 30 of the first full fiscal year (July 1 to June 30) of the fifty (50) year Permit term. CSUMB shall make its annual payment of \$4,784.91 before June 30 of each fiscal year, commencing with the first full fiscal year of the Permit term. If the Legislature denies CSUMB's initial funding request, CSUMB shall: (a) resubmit, and exercise all reasonable efforts to diligently pursue, the request during the following CSUMB budget cycle, and (b) continue to resubmit, and exercise all reasonable efforts to diligently pursue, the request not less frequently than annually until the funding is appropriated or until the obligations of all Parties with respect to the HCP have been fully performed, whichever comes first. If the Legislature has not appropriated the funding at or before the time the HCP is executed by all other Parties, CSUMB shall seek, and exercise all reasonable efforts to diligently pursue, authority from the California State University Board of Trustees to engage in discussions with representatives of FORA and Marina regarding the availability of alternative funding sources, if any, for CSUMB's one-time payment of \$47,800.00 and its annual payments of \$4,784.91. To the extent funding is appropriated from the Legislature or provided through an agreed alternative funding source, FORA, and thereafter its successor agency, if any, shall allocate CSUMB's payments to reimburse HCP preparation costs and for management of CSUMB Borderlands property to the HCP Fund. With respect to the Federal Permit and the State Permit, CSUMB's payments to FORA will fulfill all of CSUMB's HCP funding obligations and Borderlands management obligations, pursuant to this HCP. CSUMB will not be subject to any additional fees including special assessments, taxes, or CFD Special Taxes. If the negotiated payments are not paid, then the take on CSUMB lands will not be allowed."

- CSUMB's HCP cost obligations are described above.

#### **Draft HCP, Vol 2**

5. Page 384 – "Policy Re: collection of CFD Special Tax & Implementation Procedures for the FO Multispecies HCP"
  - The ultimate implementing ordinance language and adoption process will be determined by the CSU.

Sincerely,



Ray Pyle

Senior Director of Planning Design and Construction  
Campus Planning & Development



Fort Ord Community Advisory Group  
Email: [focagemail@yahoo.com](mailto:focagemail@yahoo.com)

"The Fort Ord Community Advisory Group (FOCAG) is a public interest group formed to review, comment, and advise on the remediation (cleanup) of the Fort Ord Army Base Superfund Site, to ensure that human health, safety, and the environment are protected to the greatest extent possible." - Mission Statement

Re: Responses to DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

**PROJECT TITLE:** Fort Ord Multi-Species Habitat Conservation Plan (Former Fort Ord HCP)

**PROJECT LOCATION:** Former Fort Ord, including areas within the Cities of Seaside, Marina, Monterey, and Del Rey Oaks and County of Monterey, California

**CEQA Lead Agency:** Fort Ord Reuse Authority, % Stan@fora.org

**NEPA Lead Agency:** U.S. Fish and Wildlife Service, % Stephen P. Henry  
[fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

**Public Review Period:** November 1, 2019 through December 16, 2019

December 16, 2019

Dear FORA and U.S. Fish and Wildlife Service,

The FOCAG has the following comments;

1) The Laguna Seca Recreation Area was created as a Monterey County Park circa 1974. The United States Army needed a governmental entity to turn the property over to. United State's Congressman Bert Talcott facilitated the transfer. At the time he felt the County would be a better steward of the gift than the State or Federal Government would be. An E.I.R. in Monterey County was prepared in 1977 regarding this new County Park and its uses

Since that time there has been expansion of the race track from 9 to 11 turns, as well as the use of Lookout Ridge and Wolf Hill for additional parking. Access and egress has been channeled through areas of former Fort Ord. Both the the number and size of events has increased dramatically, but without adequate environmental review. The Use Permit entitlements granted by previous Monterey County Board of Supervisors have been exceeded.

The HCP Public Draft, Volume 1, page 2-28, Section 2.3.9 contains a counted seven sentences. Although threatened species are identified, there is no analysis of the impacts that the both the size and the frequency of events the the Laguna Seca Recreation Area is having upon them. We ask that a separate EIR be prepared for this Laguna Seca Recreation Area. In addition to impacts to threatened species, It will also have to take into account water usage, traffic issues, and the frequency and duration of noise, including unlimited sound noise impacts to not only threatened species but to surrounding area residents.

2) This Draft document fails to take into account the Monterey County adopted and recorded Official Plan Lines for California State Highway 68 including the Corral de Tierra Bypass. These Official Plan Lines were adopted in 1977. State Highway 68 borders former Fort Ord. The Official Plans Lines for the Corral de Tierra Bypass are different than what was called the Fort Ord Bypass Plan Lines studied in 1992 and included with the adopted 1997 FORA Reuse Plan. The transfer of much of former Fort Ord to BLM, was done rather quickly, with BLM not fully knowing of former transportation commitments, AND the California Department of Transportation not being fully apprised. Highway 68 is a designated State Scenic Highway.

3) Section 4.4.2 Proposed Development Adjacent to Plan Area needs to be updated and corrected. For example, the approved Corral de Tierra Shopping Center was allowed a lot line adjustment on two existing parcels, but not an increase to seven individual parcels. The groundwater contamination issue is not mentioned. Also, the Ferrini Ranch may be sold to the Monterey County Ag Land Trust.

4) The beaches of the Fort Ord Dunes State Park have homeless people living on them. Also, nearby college students and others visit theses beaches frequently, many going off trails. The remaining lead bullet fragments and lead dust on the areas here are a health threat to humans and other living organisms. However, the California Department of Parks and Recreation has still not put up Proposition 65 signage warning the public of the threat.

5) In Volume 2 of this Former Fort Ord Habitat Conservation Plan document, under "Preventing the Spread of Invasive Plants, Best Management Practices for Land Managers 3rd Edition", I call your attention to Section II, #10, Fire and Fuel Management BMP's, p.p. 35-47;

Page 3

Page 36 of this section states:

“Wildfire is a natural part of California ecosystems. The structure and composition of most California plant communities are dependent on the periodic occurrence of fire.”

Please know the FOCAG finds this BLM assumption particularly troubling. Please do reference the extensive Scoping Comments prepared by H.O.P.E. (Helping Our Peninsula’s Environment). H.O.P.E.’s scoping comments prepared for this Former Fort Ord Habitat Conservation Plan offer extensive evidence and analysis of this specific area of California, i.e., the Monterey Peninsula (including former Fort Ord). Natural wild fires caused by lightning are rare here. The United State’s Army unintentionally set the Army base on fire when it was an Infantry Training Base and the West Coast CDC Center. The United States Army BRAC intentionally set portions of the former Army Base on fire (many times) to rid areas of leftover unexploded ammunition. These latter were called Army Prescribed Burns. Unhealthful choking smoke was imposed on both the Monterey Peninsula and surrounding populated areas.

Please do correct the unfounded assumptions, and do suggest and recommend healthful alternatives to Prescribed Burns, such as mechanical clearing, or more grazing of sheep and goats.

Also, the residential areas surrounding former Fort Ord are having trouble obtaining and/or keeping Fire Insurance on their homes. Fire Insurance rates have gone up too. BLM should be a good neighbor and a good steward of the land. This Habitat Conservation Plan should be specific to Former Fort Ord and NOT a compilation of off-the-shelf practices used elsewhere. Don’t you agree? If not, why not?

Thank you for the opportunity to comment.

Mike Weaver, Co-Chair  
FOCAG  
831-484-2243





DEPARTMENT OF PARKS AND RECREATION  
Monterey District  
2211 Garden Road  
Monterey, CA 93940

Lisa Ann L. Mangat, Director

RE: FORT ORD  
MULTI-SPECIES HABITAT CONSERVATION PLAN  
PUBLIC DRAFT DEIS/EIR  
SCH #2005061119

FROM: California State Parks  
DEIS/EIR Comments  
(December 16, 2019)

Thank you for the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan Public Draft DEIS/EIR, SCH #2005061119. The comments below reflect State Park staff and Counsel Review.

**FORT ORD  
MULTI-SPECIES HABITAT CONSERVATION PLAN  
PUBLIC DRAFT DEIS/EIR  
SCH #2005061119**

**VOLUME 1: Habitat Conservation Plan  
(State Park Comments)**

**Page 5-10 Section 5.3.3.2 Objective 13.2b**

This objective needs to be deleted or modified so that it is achievable. FODSP experienced a fledging rate of 4 in 2019. This low fledging rate was not due to campground operations or increased public access and State Parks would be starting this HCP requirement off in a deficit with one more low year. The fledging rate should consider the regional population and not a few isolated individuals. Ecology is not restricted to artificial boundaries and individuals may move north or south for unknown reasons, even if provided prime habitat.



## FORT ORD RECREATION TRAILS FRIENDS



December 16, 2019

Sent via Email: [fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

Stephen P. Henry, Field Supervisor  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, CA 93003

**Subject: FORT Friends Comments on Draft EIS/EIR for Fort Ord Multi-Species Habitat Conservation Plan (HCP)**

Dear USFWS:

These comments are written on behalf of the Fort Ord Recreation Trails (FORT) Friends board of directors, which discussed this issue on November 25, 2019. FORT Friends is a 501(c)(3) non-profit organization comprised of many types of recreationists (hikers, road and mountain bikers, equestrians, trail runners, naturalists, etc.). We work to preserve and expand public access to Fort Ord trails and encourage volunteerism to give back to the community and the environment.

The HCP and its EIS/EIR are lengthy documents difficult for the layperson to understand. Thus, these comments are more general in nature. As an advocate for responsible public access and recreational enjoyment of Fort Ord trails, FORT Friends supports any HCP alternative that enables activities such as multi-user trail recreation (roads, fire roads and single-track), occasional race events, trail maintenance, new trail construction or trail re-routing in coordination with land managers. FORT Friends previously wrote letters of support for the FORTAG trail system, which will enable safer access to trailheads by the public and encourage bicycle commuting.

As part of the CEQA process, in 2018 FORT Friends wrote a letter to lead agency FORA questioning the need for and proposed alignment of the Northeast-Southwest "Connector" (previously called the "Eastside Parkway"). FORT Friends is very concerned about the adverse impacts of the proposed Connector roadway to recreation, public safety, habitat and wildlife. The "Happy Trails" area that would be most impacted contains many trails that are valuable to the public due to their close proximity to primary trailheads (8<sup>th</sup> and Gigling, Intergarrison/Jerry Smith, and East Garrison/Travel Camp) and the gentle terrain, which is great for young and old to enjoy. These trails are also part of Monterey County's FORHA recreation trail plan.

Given the lack of progress on the Connector EIR, the many problems associated with the proposed Connector, and the impending demise of FORA in June 2020, FORT Friends questions whether the Connector should be included as a covered project in the HCP. FORT Friends recommends that it be removed from Table 2-9a on page 2-20 and Figure 2-5 on page 2-21. If some type of connector road is deemed to be actually needed in the future and a more acceptable alignment is selected, the future road project could be added as a covered activity under the Adaptive Management options that are described in the HCP.

Thank you for your consideration of these comments. Please keep FORT Friends on the mailing list for future opportunities to participate in this process. The FORT Friends contact person is Henrietta Stern at the address on the bottom of page 1 (see footer). The contact email is: [fortfriends.prez@gmail.com](mailto:fortfriends.prez@gmail.com).

Thank you for your consideration of these comments.

Sincerely,



(original signed by)

Henrietta Stern, President

Cc: FORT Friends Board



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## [EXTERNAL] Request for extension of comment deadline for Fort Ord HCP

2 messages

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**Fred Watson** [REDACTED]  
To: fw8fortordhcp@fws.gov

Mon, Dec 16, 2019 at 9:29 AM

Dear USFWS staff,

Can I have a 1-week extension to the deadline for comments on the Fort Ord HCP?

| 1-USFWS

Thank you,

Fred

---

Fred Watson, PhD  
[REDACTED]

---

**Ventura Fort Ord HCP, FW8** <fw8fortordhcp@fws.gov>  
To: Fred Watson [REDACTED]

Mon, Dec 16, 2019 at 7:04 PM

Good evening Mr. Watson,

We are not able to officially extend our public comment period on the Notice of Availability for the Fort Ord Draft HCP and Draft EIS/EIR. However, we encourage you to submit your comments as close to the December 16th deadline as possible. We may be able to address your comments received after December 16, but cannot guarantee this. Our office will work with FORA to address the public comments on their Draft HCP and the Draft EIS/EIR in the coming weeks, so the sooner you can provide us with your comments the better the chances are that we will have the opportunity and time to consider them in our decision process.

Please let me know if you have any additional questions or concerns. We appreciate you reaching out to us regarding this matter.

Best regards,  
Leilani Takano

Assistant Field Supervisor  
Ventura Fish and Wildlife Service

[Quoted text hidden]



December 16, 2019

Stephen P. Henry, Field Supervisor  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, CA 93003  
Email: [fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

SUBJECT: Fort Ord Multi-Species Habitat Conservation Plan DRAFT EIS/EIR

Dear Mr. Henry,

Thank you for providing the Monterey Bay Air Resources District (Air District) with the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan Draft EIS/EIR. The Air District has reviewed the EIS/EIR and has the following comments:

*Air Quality:*

- Construction Dust:

Fugitive dust from construction activities can be significant if not mitigated. The Air District appreciates that the U.S. Fish and Wildlife included a Construction Dust Mitigation Plan in the Mitigation Measures. Supporting information can be found in the Air District's 2008 CEQA Guidelines (Chapter 8). <https://www.mbard.org/ceqa>

- Construction Equipment:

The Air District suggests that when possible cleaner construction equipment be used for any construction project. This includes equipment that conforms to ARB's Tier 3 or Tier 4 emission standards. We further recommend that, whenever feasible, construction equipment use alternative fuels such as compressed natural gas, propane, electricity or biodiesel.

*Permits Required:*

- Prescribed Burning:

State and local laws apply for any open outdoor burning including prescribed burning. Please coordinate with the Air District for applicable permits.

- Portable Equipment:

The Air District permits to operate, or statewide portable equipment registration, may be required for portable equipment such as engine generator sets and compressors. Please make sure to contact the Air District's Engineering Division at (831) 647-9411 to discuss if a Portable Registration is necessary for any portable equipment planned to be utilized for this project.

- Building Demolition/Renovation and Trenching Activities:

If any asbestos piping or asbestos material are uncovered as part of building demolition, earth moving and/or trenching or during any project, Air District rules may apply. These include Rule 424, National Emissions Standards for Hazardous Air Pollutants and Rule 439, Building Removals. Rule 424 contains the investigation and reporting requirements for asbestos which includes surveys and advanced notification on structures being renovated or demolished. Notification to the Air District is required at least ten days prior to renovation or demolition activities. District Rule 439 prohibits the release of any visible emissions from building removals. Rules 424 and 439 can be found online at <https://www.arb.ca.gov/drdb/mbu/cur.htm>. Please contact Shawn Boyle or Cindy Searson at (831) 647-9411 for more information regarding these rules.

*General:*

- Section 3.13.2.2 Fire Services:

- The fire agency “Salinas Rural Fire Department” mentioned is an outdated name. This fire agency is known by Monterey County Regional Fire Protection District (MCRFPD).
  - The Presidio of Monterey Fire Department (POMFD) is located on Fort Ord yet they are not included in the list fire services.
  - The City of Seaside fire department is listed as “the closest fire station to the former Fort Ord area..” however, POMFD is actually located on Fort Ord and MCRFPD has a substation in the East Garrison housing.
  - Figure 3.13-1 also lists the wrong name for MCRFPD and omits POMFD.
- Figure A-2e shows an aerial image of Darwin Road when it supposed to show Evolution Road.

Should you have any questions, please contact me at (831) 647-9411 or [cduymich@mbard.org](mailto:cduymich@mbard.org).

Best Regards,



Christine Duymich  
Air Quality Planner II

cc: David Frisbey  
Shawn Boyle  
Cindy Searson



## [EXTERNAL] Fort Ord Multi-Species Habitat Conservation Plan DEIR/EIR Comment Letter

1 message

Vicki Nakamura <vnakamura@mpc.edu>

Mon, Dec 16, 2019 at 3:40 PM

To: fw8fortordhcp@fws.gov

Cc: David Martin <dmartin@mpc.edu>, Contact <vnakamura@mpc.edu>, Brian Finegan <brian@bfinegan.com>, Michael Harrington <michael@bfinegan.com>

December 16, 2019

Stephen P. Henry, Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Office  
[2493 Portola Road, Suite B](#)

[Ventura, CA 93003](#)

Re: Fort Ord Multi-Species Habitat Conservation Plan Draft Environmental Impact Statement/Environmental Impact Report

Dear Mr. Henry:

This letter contains the comments of the Monterey Peninsula Community College District ("MPC") on the Fort Ord Multi-Species Habitat Conservation Plan Draft Environmental Impact Statement/Environmental Impact Report (DEIR/EIS).

MPC controls lands within the former Fort Ord that are proposed for significant uses essential to the educational mission of MPC. The DEIR/EIS and draft Fort Ord Habitat Conservation Plan (HCP) will support MPC's proposed project and uses while at the same time providing a regional framework for ensuring conservation and enhancement of special status species and their habitat.

Our comments on the DEIR/EIS and HCP are as follows:

**DEIR/EIS, Section 3.11.1, Land Use and Planning Introduction, page 3.11-1** – The DEIR/EIS states: "Property transferred to the CSU or the UC that is used for educationally-related or research-oriented purposes ... are subject to the requirement of their applicable planning documents. These land use recipients are considered sovereign entities and are not subject to the requirements of the Reuse Plan, although they are encouraged to maintain consistency with the Reuse Plan to the extent feasible..." MPC is also considered a sovereign entity as a political subdivision of the state. MPC's development projects are included within its Five Year Capital Outlay Plan which is reviewed by the California Community Colleges Chancellor's Office. MPC educationally-related development projects are under the oversight of the Division of the State Architect and are not subject to local building code regulations. Thus, MPC should also be identified as a sovereign entity in this section to clarify its status.

**DEIR/EIS, Figure 3.11-3, Plan Area & Surrounding Area Land Use Map** – The boundaries of the Military Operations in Urban Terrain Facility (MOUT) are visible on the map, but should be color-coded as blue and listed under #6 in the Notes section to indicate its land use classification as Public Facilities/Institutional. This facility is planned for transfer to the ownership of MPC for use in training public safety officers.

**DEIR/EIS, Figure 3.11-4, Ft. Ord – Major Development Projects** – Under Identified Projects in the County of Monterey listing, the M.O.U.T. Facility should be identified as MPC M.O.U.T. Facility. The MOUT facility is planned for transfer to the ownership of MPC.

**DEIR/EIS, Section 3.11.2.2, General Plan(s), page 3.11-8** – Related to the discussion above under land use and planning, MPC should be identified as a sovereign entity along with BOT/CSUMB, UC, and State Parks.

**DEIR/EIS, page 4-4.24 and Figure 4.4-1, Reserves and Significant Natural Areas** – Area 3 is identified as a CNPS Plant Reserve. This parcel is planned for transfer to MPC as a development parcel.

**DEIR/EIS, Mitigation Measure HAZ-4, page 4.9-11** – The measure states the POM, Directorate of Environmental and Natural Resources Management (DENR) shall be contacted to develop a safety program that specifies protocols relative to munitions and explosives of concern (MEC) in accordance with Cal-OSHA and Army regulations. In addition, this program must be approved before the start of any ground disturbing activities. As part of the Fort Ord Reuse Authority Environmental Services Cooperative Agreement Remediation Program (ESCA) MPC's parcels have been evaluated for the probability of encountering MEC, land use restrictions applied specific to these probabilities, and a Land Use Control Implementation and Operation and Maintenance Program (LUCIP/OMP) developed to specifically address and minimize exposure to MEC. LUCIP/OMP measures include munitions recognition and safety training, construction support by UXO-qualified personnel, restrictions regarding residential use in non-residential development and habitat reserve areas, access management measures in habitat reserve areas, restrictions against inconsistent uses in habitat reserve areas, and adherence to local digging/excavation ordinances. The LUCIP/OMP has been signed off by the Army, the Environmental Protection Agency and the California Department of Toxic Substances Control. Is the safety program specified in the mitigation measure in addition to the LUCIP/OMP requirements? If so, this is another requirement on top of a rigorous program designed to minimize and respond to MEC exposure concerns. How will this safety program provide any additional assurance over and above the LUCIP/OMP? MPC is concerned about the additional time, delay, and cost associated with developing this safety program where the benefit is not clear, given the LUCIP/OMP requirements. MPC recommends the LUCIP/OMP serve in lieu of this additional safety program development.

**HCP Table 3-5, Parcels Designated as Borderlands by Land Recipient, page 3-8** – Adjust spacing to clarify which parcels are owned by a particular land recipient. Currently, the line spacing between the parcels is all the same, making it difficult to line up the parcels with the land recipients.

**HCP Section 5.3.2.6, Objective 10.1, page 5-9** - The Technical Advisory Committee is mentioned without any information defining who and what this committee is. MPC recommends providing a reference to section 7.2.3 where the Technical Advisory Committee is defined. This recommendation would apply to any other instances in the HCP where the Technical Advisory Committee is mentioned.

**HCP, pages 5-52 through 5-68** – The mitigation measures on these pages state the Permittees will conduct the various activities. As the Cooperative will conduct these activities on the behalf of MPC and other jurisdictions, "permittees" should be changed to "the Cooperative and habitat managers" to clarify who will be performing these various actions.

**HCP, Section 7.3.1, Permittees, page 7-4** – This section states "Aside from complying with the requirements of the HCP described herein, upon permit issuance, State government entities such as CSUMB do not have to seek authorization from the local jurisdictions to carry out their covered activities." MPC should be added to this statement to clarify it has the same autonomy.

**HCP, Table 7-3, Habitat Management Areas Currently Transferred and Under Army Jurisdiction, page 7-18** – The table lists the Range 45 Reserve as being owned by MPC. This reserve has yet to be transferred. MPC understands the transfer is in process and the deeds are expected to be received in the next few months.

**HCP, Section 7.9.3.1, Annual Reports from Permittees and HMA Managers, page 7-24** – This section states HCP compliance monitoring results will be submitted by all permittees to the Cooperative for lands for which they are the recipient. The section later states HMA managers will generate HCP compliance for the lands which they have management responsibility. There is an overlap between these 2 categories of lands. It is confusing what results are to be submitted by the permittees.

**HCP, Section 10.2, Alternative 1, page 10-3** – This section states the development activities of the permittees are pursuant to various planning documents, listed by jurisdiction and/or agency. "MPC Five Year Capital Outlay Plan" should be added to the list.

**HCP, Section 10.4, Alternative 3, page 10-6** – This section states the development activities of the permittees are pursuant to various planning documents, listed by jurisdiction and/or agency. "MPC Five Year Capital Outlay Plan" should be added to the list.

Thank you for the opportunity to comment on this significant plan. If you have any questions, please contact Vicki Nakamura at 831-920-9244, email: [vnakamura@mpc.edu](mailto:vnakamura@mpc.edu). We look forward to your responses to our comments and to a Final EIR that will provide a comprehensive regional approach to species and habitat conservation on the former Fort Ord while also supporting planned development of benefit to the region, including MPC's Public Safety Training Center Project.

Sincerely,

Mr. David Martin  
Interim Superintendent/President

Monterey Peninsula College  
980 Fremont Street  
Monterey, CA 93940  
Phone: 831-646-4060



December 16, 2019

Steven P. Henry  
Ventura Fish and Wildlife Office  
US Fish and Wildlife Service  
2493 Portola Road, Suite B, Ventura, CA 93003

Dear Sir,

Thank you for the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan (HCP) and Draft EIS/EIR. Point Blue Conservation Science has monitored the population status and reproductive success of western snowy plovers (*Charadrius nivosus nivosus*) in the Monterey Bay area since 1984 and has worked in collaboration with California State Parks and USFWS to recover the Monterey Bay population since the federal listing in 1993. The following comments are specific to the effects of the implementation of the HCP on the snowy plover at the proposed Fort Ord Dunes State Park (FODSP). We strongly support the conservation strategy within the HCP and we believe that it can be strengthened by considering the following:

1. Impact Assessment (Chapter 4)

The assessment of impacts within the HCP does not adequately account for the cumulative impacts that other proposed beach-front developments in the southern Monterey Bay region will have at FODSP. The proposed developments to the south of FODSP (i.e. Monterey Bay Shores, The Collections) are likely to have substantial adverse effects on snowy plovers at FODSP, resulting from significant increases in human use at beaches along the southern shoreline of the park. Human use of snowy plover nesting beaches in Monterey Bay has increased over the past decade (Point Blue unpubl. data, Neuman et al. 2019), resulting in significant degradation of nesting habitat at some locations where human use is not properly managed. While we support the strategy and mechanisms within the HCP for management of human impacts at FODSP, we remain concerned that the magnitude of impacts will be greater than anticipated when considering the combined effects of HCP implementation and the proposed beach-front developments adjacent to the south end of the park.

2. Conservation Strategy (Chapter 5)

Human-subsidized (i.e. commensal) predator species currently are the primary cause of loss of snowy plover nests in the Monterey Bay area. In 2019, corvids (common ravens and American crows) were responsible for 59% of snowy plover nest loss in Monterey Bay and 50% of nest loss at Fort Ord. Accordingly, the links between predator control and the benefits it provides to snowy plovers should be explicit within the Conservation

Strategy outlined in the HCP. However, control of human-subsidized predators is not emphasized within the framework of the natural community goals and objectives for coastal strand and dunes or the species goals and objectives for the snowy plover, and is mentioned only once within the framework of the required mitigation measures. We believe the Conservation Strategy for snowy plovers can be strengthened by establishing more explicit links between control of human-subsidized predators and the natural community goals, species goals and mitigation measures. Specifically, Objective 10.3 and Mitigation Measure 26 reference control of "non-native species", and "introduced species, roaming and feral animals, and other pests" respectively. These should be broadened to include human-subsidized predators with explicit reference to the benefits provided to snowy plovers.

Thank you for the opportunity to comment.

Sincerely,



Kriss Neuman

Lead Ecologist

Monterey Coastal Program

Point Blue Conservation Science

CC: Manuel Oliva, CEO

Catherine Hickey, Conservation Director

Reference:

Neuman KK, Stenzel LE, Warriner JC, Eyster C, Barbaree B, Dixon D, Haile E, Palkovic A, Hickey C. 2019. Reproductive success and breeding population size of snowy plovers in the Monterey Bay region, California, in 2019. Point Blue Conservation Science, unpubl. report. 40pp.



## Sustainable Seaside

1739 Havana Street, Seaside CA 93955 (831) 915-7257  
info@sustainablemontereycounty.com  
www.sustainablemontereycounty.org

Friday, December 16, 2019

Stephen P. Henry  
Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B,  
Ventura, CA 93003  
[fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

Board of Directors  
c/o Michael Houlemard  
Fort Ord Reuse Authority  
920 2nd Ave. Suite A, Marina, CA 93933  
[Michael@fora.org](mailto:Michael@fora.org)  
[Board@fora.org](mailto:Board@fora.org)

### Re: **Draft Fort Ord Habitat Conservation Plan (HCP)**

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

Sustainable Seaside takes issue with the Draft Fort Ord Habitat Conservation Plan (HCP) for several reasons that we feel are critical to the legal and financial viability of the proposed HCP.

Encumbering a new Joint Powers Agreement (JPA) with the funding liability for HCP/ITP conditions for 50+ years without an actual funding obligation exposes the JPA members to undue risks. There is further risk in proposing that the JPA Agreement defer cost-apportionment determination and financing procedures until after the five jurisdictions and seven participating agencies are locked into 50 years of liability for HCP costs.

There are inconsistencies in the draft plan that expose critical gaps in the HCP analysis. Given the expressed need for rapid accumulation of the Endowment Funding to cover HCP spending, there is no disclosure concerning the risk of relying on a consistent 4% annual return on interest from the Endowment Fund in a fluctuating market where recent money market funds barely return 2%. Furthermore, the assumption that all remaining Fort Ord development will occur by 2030, with a build-out rate of 443 units per year, when the historic rate of development in Fort Ord between 1997 and April 30, 2019 was only 64 units per year, appears to be an unrealistic projection.

And finally, the HCP draft is weighted in favor of the HCP without a full legal and financial analysis of the benefits of the no-action alternative compared to the HCP.

Yours sincerely,

A handwritten signature in black ink that reads "Catherine Crockett".

Catherine Crockett  
Sustainable Seaside Chair



Sustainable Seaside is a project of **Communities for Sustainable Monterey County**  
[www.sustainablemontereycounty.org](http://www.sustainablemontereycounty.org)





[www.morcamt.org](http://www.morcamt.org)

December 16, 2019

Email: [fw8fortordhcp@fws.gov](mailto:fw8fortordhcp@fws.gov)

Stephen P. Henry, Field Supervisor  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, CA 93003

**Subject: MORCA Comments on Draft EIS/EIR for Fort Ord Multi-Species Habitat Conservation Plan (HCP)**

Dear USFWS:

MORCA (Monterey Off-Road Cycling Association), an all-volunteer 501-c-3 non-profit organization, is the voice of responsible mountain biking in Monterey County, and a chapter of IMBA (International Mountain Bicycling Association). We advocate for trail access and give back to the community through extensive volunteerism, primarily at the Fort Ord National Monument. MORCA works closely with the Bureau of Land Management (BLM) by performing monthly trail work totaling more than 1,100 hours each year, including sustainable design, construction and maintenance to benefit all trail users. We are viewed as a valued partner by BLM, and enjoy an excellent relationship with BLM managers, rangers and staff (reference: Eric Morgan, BLM Manager). MORCA/IMBA was also instrumental in the creation of the Fort Ord National Monument by providing legal assistance and trips to Washington DC to speak directly with our elected representatives. In 2019, MORCA used an \$18,000 grant to sign trails in the County –owned area (Travel Camp vicinity) in partnership with Monterey County Resource Management Agency staff. To learn more about MORCA, visit our website at: [www.morcamt.org](http://www.morcamt.org).

The HCP and its EIS/EIR are lengthy documents difficult for the layperson to understand. Thus, these comments are more general in nature. As an advocate for responsible mountain bike access, which includes sustainable trail stewardship in keeping with environmental principles, MORCA supports any HCP alternative that enables activities such as multi-user trail recreation (roads, fire roads and single-track), occasional race events, trail maintenance, new trail construction or trail re-routing in coordination with land managers. MORCA has previously written letters of support for the FORTAG trail system, which will enable safer access to trailheads by cyclists and encourage bicycle commuting.

As part of the CEQA process, MORCA previously wrote a letter to lead agency FORA questioning the need for and proposed alignment of the Northeast-Southwest "Connector" (previously called the "Eastside Parkway"). Given the lack of progress on

the Connector EIR, the many problems associated with the proposed Connector, and the impending demise of FORA in June 2020, MORCA questions whether the Connector should be included as a covered project in the HCP. MORCA recommends that it be removed from Table 2-9a on page 2-20 and Figure 2-5 on page 2-21. If some type of connector road is deemed as actually needed in the future and a more acceptable alignment is selected, the future road project could be added as a covered activity under the Adaptive Management options that are described in the HCP.

Thank you for your consideration of these comments. Please keep MORCA on the mailing list for future opportunities to participate in this process. The MORCA contact person is Henrietta Stern at the address on the bottom of page 1 (see footer). The MORCA board of directors can be reached at: [morca@morcamtb.org](mailto:morca@morcamtb.org).

Sincerely,



Henrietta Stern  
Secretary

Cc: MORCA board

C:\Users\tom\Desktop\Word Henri\MORCA\CommentLetters\20191216\_EIREISforFtOrdHCP.docx