Fort Ord Reuse Authority

Jen Simon <jen@fora.org>

Fort Ord Habitat Conservation Plan - cost comparison to no-action alternative

1 message

John Farrow <jfarrow@mrwolfeassociates.com> Sat, Dec 14, 2019 at 5:16 PM
To: fw8fortordhcp@fws.gov, michael@fora.org, board@fora.org, uslar@monterey.org
Cc: Dino Pick <DPick@delreyoaks.org>, "LLong@CityofMarina.org" <LLong@cityofmarina.org>, cmalin@ci.seaside.ca.us, "mckeecj@co.monterey.ca.us" <mckeecj@co.monterey.ca.us>, Michael DeLapa <execdir@landwatch.org>

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

On behalf of LandWatch Monterey County, I offer the attached comments on the Fort Ord Multispecies Habitat Conservation Plan and the Draft Environmental Impact Statement/Environmental Impact Report. The comments address the inadequacy of a FORA staff comparison of the costs of the HCP vs. the costs of the no-action alternative.

I would very much appreciate it if Messrs. Henry and Houlemard would acknowledge receipt of these comments by replying to the emails.

Thank you,

John Farrow

John H. Farrow | **M. R. Wolfe & Associates, P.C.** | Attorneys-At-Law
555 Sutter Street | Suite 405 | San Francisco, CA 94102
Tel: 415.369.9400 | Fax: 415.369.9405 | www.mrwolfeassociates.com

LandWatch comments on FORA HCP vs HMP cost estimates - final.pdf
69K

Fort Ord Reuse Authority

Jen Simon <jen@fora.org>

TAMC-MST Building Removal Bond Shares

1 message

Todd Muck <todd@tamcmonterey.org> Fri, Dec 13, 2019 at 8:49 AM
To: "michael@fora.org" <michael@fora.org>
Cc: "board@fora.org" <board@fora.org>

Dear Michael:

Please accept the attached letter requesting a minor, but important, adjustment to TAMC and MST's allocation of the building removal bond shares.

Todd Muck, AICP

Deputy Executive Director

Transportation Agency for Monterey County

Office: (831) 775-4407

55b Plaza Circle

Salinas, CA 93901

Houlemard - Building Removal Bond shares.pdf
139K

TAMC
PLAN • FUND • BUILD

MST
MONTEREY-SALINAS TRANSIT

December 12, 2019

Michael Houlemard, Executive Officer
Fort Ord Reuse Authority
910 2ndAvenue
Marina, CA 93933

RE: Revision to Building Removal Bond Shares for TAMC and MST

Dear Mr. Houlemard:

On behalf of the Transportation Agency for Monterey County and Monterey-Salinas Transit, we would like to request that the FORA Board include an important revision to the proposed percentage shares for the building removal bond proceeds for our Agencies as follows:

	Est. Building Removal Costs	Current Proposal	Bond Proceeds at $35M	Bond Proceeds at $50M	Modified Proposal	Bond Proceeds at $35M	Bond Proceeds at $50M
TAMC	$3,550,000	6.25%	$2,187,500	$3,125,000	7.00%	$2,450,000	$3,500,000
MST	$430,650	1.75%	$612,500	$875,000	1.00%	$350,000	$500,000

As the chart shows, the current proposal would result in providing Monterey-Salinas Transit more funding for building removal than the current cost estimate, and TAMC less funding than the current cost estimate. Adjusting the percentage shares at your December 13, 2019 Board meeting would take a small action and affect no other parties to the bond proposal, while saving our agencies hours of time and action by our respective Boards of Directors to make a separate cost-sharing arrangement to correct this inadvertent error in the cost sharing proposal before you.

Our agencies are supportive of FORA's work moving forward with the building removal bond, understanding that there is still a great deal of effort needed to finalize it. Working together to present a proposal that all can agree upon is critical to its success. Thank you for your consideration.

Sincerely,

Debra L. Hale, Executive Director
Transportation Agency for Monterey County

Carl Sedoryk, CEO and General Manager
Monterey-Salinas Transit

FORA
Fort Ord Reuse Authority

Jen Simon <jen@fora.org>

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m | r | wolfe
& associates, p.c.
attorneys-at-law

December 14, 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

Board of Directors
c/o Michael Houlemard
Fort Ord Reuse Authority
920 2nd Ave. Suite A, Marina, CA 93933
Michael@fora.org
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 to supplement the comments we submitted on December 10, 2019 on the Fort Ord Multispecies Habitat Conservation Plan ("HCP" or "proposed HCP") and the Draft Environmental Impact Statement/Environmental Impact Report ("EIS/EIR"). We are concerned that FORA's analysis comparing the costs of the proposed HCP to the no-action alternative is seriously flawed, and we seek reconciliation of the inconsistencies in the analyses.

In our December 10, 2019 comments we urged the agencies to compare the cost of the proposed HCP to the cost of the no-action alternative. The comparison is obviously relevant to prudent fiscal management. The comparison will also reveal whether the analysis of funding assurances for the proposed HCP is well founded, or whether it is contradicted by other analyses prepared by FORA of the costs of habitat management.

The costs of the no-action alternative would include the costs to agencies that own habitat reserve land of any continuing obligations under the 1997 Habitat Management Plan ("HMP") and the cost to developers to obtain individual ITPs for development projects in the future. In this connection, we urged the agencies to make a careful determination of their actual continuing obligations under the HMP and to determine if there are available means to reduce those obligations, including conveying away the reserve lands, negotiating reduced obligations with the wildlife agencies to reflect the actual scope of Fort Ord development, and/or obtaining funding from future developers of the Fort Ord land who need mitigation banking to obtain project-specific ITPs.

It appears that FORA's claims that the proposed HCP would be less costly overall than the no-action alternative may be founded on a FORA staff report, "Habitat Management Plan

Responsibilities Analysis" ("HMP Responsibilities Analysis").[1] LandWatch asks that the response to these comments indicate whether there is in fact any other analysis of the cost of the no-action alternative and provide that analysis.

The HMP Responsibilities Analysis conflicts with the analyses in the HCP and the HCP EIS/EIR in two important respects, which must be resolved. In addition, the HMP Responsibilities Analysis contains a conceptual error: it fails to recognize that developer payments to agencies for mitigation banking would reduce agency habitat management costs in the no-action alternative.

CONFLICTING ASSUMPTIONS REGARDING USE OF HMP HABITAT RESERVE LAND FOR DEVELOPMENT PROJECT MITIGATION: First, contrary to the EIS/EIR, the HMP Responsibilities Analysis states that the HMP habitat reserve lands *could in fact be used to mitigate take that occurs on the land designated for development even if the basewide HCP is not adopted:*

> If USFWS and CDFW are willing to negotiate permits relating to former Fort Ord development parcels without a basewide HCP, acreages within the Habitat Reserves could serve to mitigate for take.

(HMP Responsibilities Analysis, p. 14.) By contrast, the HCP EIS/EIR assumes that in the no-action alternative, the HMP's habitat reserve areas could *not* be used as the mitigation land for take on the vegetated land designated for development. The EIS/EIR assumes that mitigation for the take by development projects would have to occur either outside Fort Ord or on the vegetated development land itself. Thus, the EIS/EIR assumed that only 25% of the vegetated development land could actually be developed in the no-action alternative. ((EIS/EIR, p. 2-6; *see also* EIS/EIR, p. 4.4-4). The EIS/EIR ignores the fact that development projects can be credited for mitigation through conservation and management of land designated as Habitat Management Areas under the HMP.

FAILURE TO REDUCE AGENCY HABITAT MANAGEMENT COSTS BY THE AMOUNTS PAID BY PRIVATE DEVELOPERS FOR MITIGATION BANKING: Despite the assumption in the HMP Responsibilities Analysis that mitigation for development in areas designated for development *could* rely on acreages within the Habitat Reserves to mitigate for take, the analysis fails to reflect that synergy in its discussion of the total agency cost to fulfill HMP obligations and developer cost to pay for project-specific individual ITPs.

The sole analysis of the cost of individual ITP's, tacked onto the report in a final paragraph, assumes that 600 acres of land would be developed and would have to pay $50,000 per acre for mitigation banking, a $30 million cost to the private developers. (HMP Responsibilities Analysis, p. 17.) The discussion then states that this $30 million would be "above and beyond the $35.1 to $52.3 million required for HMP management requirements."

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(*Ibid.*) Based only on this analysis, the HMP Responsibilities Analysis states that "this estimated cost far exceeds estimated basewide HCP costs." (*Ibid.*) *This fails to account for the possibility that private developers could pay that $30 million to the agencies that own the habitat reserve lands, thereby reducing those agencies' costs by $30 million.* In effect, the HMP Responsibilities Analysis double counts the cost of meeting HMP obligations and the cost of mitigation banking for private development.

Indeed, if private developers are in fact willing to pay $50,000 per acre to mitigate take for one species, the developer payments to the agencies that own the HMP habitat reserve lands for mitigation banking would likely exceed the 30% portion of the CFD taxes that FORA has allocated for habitat management and on which the proposed basewide HCP proposes to rely. The agencies may be able to substantially defray or eliminate their continuing obligations for HMP management if they are permitted to act as mitigation bankers for private development. This option needs to be explore carefully.

FAILURE TO PROVIDE ANY MEANINGFUL DETAIL IN THE HMP-ONLY COST ANALYSIS: The HMP Responsibilities Analysis does not provide any actual detail supporting its calculation that the agency cost to run the HMP would total $1.5 million. LandWatch asks that the response to these comments provide the details of the HMP-only cost analysis, which purports to be "based on the HCP cost model prepared by FORA's HCP consultant ICF." (HMP Responsibilities Analysis, p. 16.) In particular, please identify the costs that would be common to both the proposed HCP and the HMP-only analysis. Please separately identify the costs that would be unique to the HCP, i.e, the costs that make up the difference between the HMP-only cost of $1.5 million per year and the HCP cost of $2.5 million per year. What activities account for the additional $1 million in HCP costs?

FORA has claimed that the HCP would attain economies of scale compared to the no-action alternative. Please identify these scale economies in sufficient detail that the agencies can understand whether they would justify the 50-year financial commitment to the HCP.

THE ENDOWMENT NEEDED FOR A $2.5 MILLION PER YEAR HCP CANNOT BE THE SAME AS THAT FOR THE $1.5 MILLION PER YEAR HMP-ONLY: The HMP Responsibilities Analysis assumes annual management costjust to meet the existing HMP obligations of $1.5 million. (HMP Responsibilities Analysis, p. 4, Table 1.) To fund that continuing obligation and start up costs, the HMP Responsibilities Analysis assumes that the agencies (or a JPA formed to manage the HMP obligations) would need to set aside $35.1 to $52.3 million, assuming investment returns of 4.5% to 3%. (HMP Responsibilities Analysis, p. 16.)

By contrast, the HCP assumes annual management costs of $2.5 million would only require a $51 million endowment, consisting of the $16 million FORA will have set aside by 2020 plus an additional $35 million collection of CFD taxes in the next seven years. (HCP, Tables 9.1a and 9-6 [annual cost] and Table 9-6 [cost and funding sources].) Elsewhere, the HCP identifies the required endowment as only $49 million. (HCP, Table 9-8.) The HCP analysis assumes comparable investment returns of 4.5% to 4.2%. The subsequent EPS

Sensitivity Analysis memorandum, which purports to provide a more refined analysis of the proposed HCP funding options, assumes that the HCP endowment need only be from $37 million to $43 million. (EPS, Sensitivity Analysis and Cost Allocation Alternatives, Nov. 13, 2019, p. 6, Figure 3.)

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Yours sincerely,

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John Farrow

JHF:hs

cc: City Managers and County Administrative Officer
Dino Pick, City of Del Rey Oaks, DPick@delreyoaks.org
Layne Long, City of Marina, llong@cityofmarina.org
Hans Uslar, City of Monterey, uslar@monterey.org
Craig Malin, City of Seaside, cmalin@ci.seaside.ca.us
Charles McKee, County of Monterey, mckeecj@co.monterey.ca.us

m | r | wolfe
& associates, p.c.
attorneys-at-law

December 14, 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

Board of Directors
c/o Michael Houlemard
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Layne Long, City of Marina, llong@cityofmarina.org
Hans Uslar, City of Monterey, uslar@monterey.org
Craig Malin, City of Seaside, cmalin@ci.seaside.ca.us
Charles McKee, County of Monterey, mckeecj@co.monterey.ca.us

FORA
Fort Ord Reuse Authority

Jen Simon <jen@fora.org>

Sustainable Seaside comments on the Draft Fort Ord Habitat Conservation Plan (HCP)

1 message

Catherine Crockett <cm_crockett@sbcglobal.net> Mon, Dec 16, 2019 at 10:50 AM
To: fw8fortordhcp@fws.gov, Michael@fora.org, Board@fora.org

Friday, December 16, 2019

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.

Sincerely,
Catherine Crockett

Catherine Crockett
Sustainable Seaside Chair
Attachment: pdf version of comments

Sustainable Seaside comments on FORA HCP draft.pdf
111K

Sustainable Seaside
1739 Havana Street, Seaside CA 93955 (831) 915-7257
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Friday, December 16, 2019

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