



## Joby Funding Round - Exciting news for the former Fort ord Inbox x



**Josh Metz** <josh@fora.org>  
to me

Fri, Jan 17, 2:38 PM (7 days a

Good Afternoon Board Members,

Before everyone heads into the weekend, I wanted to be sure you were aware of some very exciting news received from [Joby Aviation](#), that has significant implications for the near future here on the former Fort Ord.

[Joby Aviation announced Wednesday the closing of a \\$590M series C funding](#) round led by Toyota to power the market leading Electric Vertical Take-off & Landing (Evtol) aircraft - currently planned to be produced at a new Airport.

Congratulations are certainly in order for the company, and the City of Marina for supporting their site location in completing preliminary project planning and [environmental documents \(currently open for public review at Stat](#)

**Joby's presence at the Marina Airport has the increasingly real potential to bring 600-1000+ high skilled to our area.** This will benefit the City of Marina, as well as all the FORA cities. At our [DART Meetup](#) last night, I stood up and expressed how thrilled he and his wife were to relocate to Monterey and join the community. Others recently finding homes in Marina and Seaside. Students from CSUMB & UCSC are already [finding jobs](#) and in opportunities with Joby.

This is very exciting news indeed, with major implications for continued growth of the [Monterey Bay DART](#) eco continued growth of high-skilled, future focused jobs on the former Fort Ord. I hope this news sends you off into a sense of hope and promise for the future, even while we resolve the complex issues in front of us.

All the best  
Josh



Jen Simon <jen@fora.org>

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## Letter re Board's Consideration on Feb 13 of 2nd Vote on Item 8.a.2 from Meeting on Jan. 10

1 message

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Attys@WellingtonLaw.com <attys@wellingtonlaw.com>

Mon, Feb 10, 2020 at 3:35 PM

To: board@fora.org

Cc: josh@fora.org, jgiffen@kaglaw.net, Bruce Delgado <bdelgado62@gmail.com>, gmorton@montereyfamilylaw.com, Frank O'Connell <frank@oconnell4us.com>, Adam Urrutia <adam@adamformarina.com>, Lisa Berkley <lakerkley@icloud.com>, Layne Long <llong@cityofmarina.org>, Matthew Mogensen <mmogensen@cityofmarina.org>, Fred Aegerter <faegerter@cityofmarina.org>, Karen Tiedemann <ktiedemann@goldfarblipman.com>, "Attys@WellingtonLaw.com" <attys@wellingtonlaw.com>

Dear Chair Parker & Fort Ord Reuse Authority Directors:

Please find attached a letter on behalf of the City of Marina for your consideration at your meeting this week on Thursday, February 13, 2020.

Due to the time remaining before your meeting, an original will not follow.

Respectfully,

Robert Rathie

Wellington Law Offices

(831) 373-8733

[attys@wellingtonlaw.com](mailto:attys@wellingtonlaw.com)

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By email to [board@fora.org](mailto:board@fora.org)

February 10, 2020

Fort Ord Reuse Authority  
Board of Directors  
c/o Clerk of the Board  
920 2nd Avenue Suite A  
Marina, California 93933

Re: Consideration at the Board Meeting of February 13, 2020,  
of Item 8.a.2 from the Board Meeting of January 10, 2010.

Dear Chair Parker and Fellow Directors:

Mr. Robert Wellington is City Attorney for the City of Marina and he has requested that I contact you concerning this matter. At the outset, I need to acknowledge neither of us serve as FORA's parliamentarian, that task falling to your Authority Counsel Mr. Giffen. However, an email sent on January 15, 2020, from Ms. Gaddy to the members of the FORA Board was brought to our attention concerning the Board's consideration on its January 10, 2020 agenda of Item 8.a.2. to approve an implementing agreement with the City of Seaside regarding Seaside's acceptance of FORA's obligations under the Economic Development Conveyance Agreement ("EDC") and the Environmental Services Cooperative Agreement ("ESCA") and Seaside's designation as the federally recognized successor Local Redevelopment Agency ("LRA"). During your discussion on January 10, 2020 a motion and substitute motion were offered for adoption by the Board. The substitute motion as amended was subsequently adopted by a vote of seven in favor and six opposed. In accordance with requirements of the FORA Master Resolution the matter will return on the agenda for your meeting on February 13, 2020, for consideration and a second vote.

As recorded in the FORA document linked to Ms. Gaddy's email entitled "Draft – FORA Board Meeting 1/20/20 Item 8a Motion Transcript" the substitute motion was offered by Director Morton, representing the City of Marina, as follows:


*“ . . . so, I'd like to make a substitute motion, that we move forward with the empowering of the ESCA transferring for Seaside to be the Successor in FORA's stead with regard to ESCA . . . and also with regard to any remaining transfers excepting . . . that they would step into the place of FORA as the Successor to accept, distribute, transfer title to deeds and amendments that are not accomplished prior to June 30, 2020. That's my motion.”*

Letter to FORA Board of Directors  
February 10, 2020  
Page 2.

Director O'Connell seconded Director Morton's motion. Subsequently, a friendly amendment from Director Wizard was accepted by Director Morton "*that the contract as to the LRC [sic] and the transfer of real estate be to the terms of the federal government.*"<sup>1</sup>

During the discussion that followed Director Morton having made her substitute motion the Chair restated the motion three times. The Transcript identifies the Chair's third restatement as a "(2<sup>nd</sup> motion)." That is incorrect. Robert's Rules of order provide "When a motion has been made and seconded, it is the duty of the chair, unless he rules it out of order, immediately to *state the question* -- that is, state the exact question that is before the assembly for its consideration and action."<sup>2</sup> The Chair's subsequent statements of the question, i.e., the substitute motion as amended, were not themselves offered as substitute motions nor did they receive a second. A subsequent statement of the motion by a presiding officer does not operate as a substitute motion or as an amendment to the motion. Accordingly, at your February 13, 2020, meeting there is only a single motion properly before the Board for a second vote, that being Director Morton's substitute motion as set forth above.

The City appreciates the Authority Counsel and the Board's attention to these concerns which are offered to ensure consideration of this important matter can take place in a manner that continues to protect the interest of the Marina's residents and the unique and special attributes of FORA's respective jurisdictions.

Respectfully,  
  
Robert Rathie

RWR:ms

cc: FORA Executive Director ([josh@fora.org](mailto:josh@fora.org))  
FORA Legal Counsel ([jgiffen@kaglaw.net](mailto:jgiffen@kaglaw.net))  
Mayor, Mayor Pro Tem & Council Members  
City Manager  
Asst. City Manager  
Community Development Director  
Karen Tiedemann, Esq.

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<sup>1</sup> Ms. Gaddy's Transcript does not include this amendment and the reference to "LRC" was clarified as "LRA."

<sup>2</sup> Robert's Rules of Order, Part I, Article I, Section 6.



Jen Simon <jen@fora.org>

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## FORA Board Meeting Agenda Item 8d, contract amendments to complete HCP EIR/EIS

1 message

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John Farrow <jfarrow@mrwolfeassociates.com>

Mon, Feb 10, 2020 at 4:32 PM

To: board@fora.org, josh@fora.org, Dominique Davis <dominique@fora.org>

Cc: fw8fortordhcp@fws.gov, rachel\_henry@fws.gov, Julie.Vance@wildlife.ca.gov, Dino Pick <DPick@delreyoaks.org>,

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"mckeecj@co.monterey.ca.us" <mckeecj@co.monterey.ca.us>, Michael DeLapa <execdir@landwatch.org>

Dear Members of the FORA Board,

Attached is a letter on behalf of LandWatch Monterey County asking that the Board decline to approve almost \$300,000 in proposed contract modifications for the HCP EIR/EIS consultants, requested in order to complete the EIR/EIS for an HCP that is unlikely to be approved.

The Habitat Working Group has reached a consensus that the initially proposed HCP should not be approved and that the parties should instead develop and evaluate alternatives, including a scaled-back HCP and the no-project alternative. The Group is now proceeding to evaluate its options. This makes sense.

However, the HWG also proposes that the agencies complete and certify the EIR/EIS for the initially proposed HCP, but without adopting an HCP at the time of certification. This does not make sense.

One rationale suggested for this approach was to establish a higher impact "baseline" for some eventual scaled-back HCP. However, as explained in the attached letter, certifying an EIR without approving a project does not establish a new baseline.

Another suggested rationale is to salvage the sunk costs already invested in the HCP's environmental review. However, that rationale does not justify sinking more costs into review of the wrong project. **Thus, because the agencies are not now planning to adopt the HCP as described in the EIR/EIS, they should cease spending on the environmental document until they develop a revised HCP.**

Thank you for your consideration,

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](http://www.mrwolfeassociates.com)

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LW to FORA Board re premature completion of HCP EIR-EIS.pdf

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February 10, 2020

**By E-mail**

Board of Directors  
Fort Ord Reuse Authority  
920 2nd Ave. Suite A  
Marina, CA 93933  
board@fora.org  
josh@fora.org  
dominique@fora.org

Re: Agenda Item 8d, contract amendment for completion of HCP EIR/EIS

Dear Members of the Board:

In its most recent meeting, the Habitat Working Group (HWG) developed a consensus that the initially proposed Habitat Conservation Plan should not be approved and that the parties should instead develop and evaluate alternatives, including a scaled-back HCP and the no-project alternative. LandWatch Monterey County (“LandWatch”) supports this approach

However, the HWG also proposes that the agencies complete and certify the EIR/EIS for the initially proposed HCP, but without adopting an HCP at the time of certification. One rationale suggested for this approach was to establish a higher impact “baseline” for some eventual scaled-back HCP. However, as explained below, certifying an EIR without approving a project does not establish a new baseline. Another suggested rationale was to salvage the sunk costs already invested in the HCP’s environmental review. However, that rationale does not justify sinking more costs into review of the wrong project. Thus, because the agencies are not now planning to adopt the HCP as described in the EIR/EIS, they should cease spending on the environmental document until they develop a revised HCP.

**Accordingly, LandWatch asks that Board not approve the proposed \$224,252 contract amendment with Denise Duffy & Associates (DDA) to complete the EIR/EIS for an HCP that the agencies do not now plan to adopt.** In addition, the Board should ask ICF to revise its proposed \$68,470 contract amendment to eliminate tasks associated with completion of the current EIR/EIS and to include only tasks associated with supporting the Habitat Working Group.

**1. Certifying the HCP's EIR/EIS now but without approving the HCP will not establish the "baseline" for environmental review of a future HCP.**

Where an agency has certified an EIR and approved a specific project, it may sometimes take advantage of CEQA's provision for a "subsequent EIR" (SEIR) in which the scope of review is limited to the effects of the changes to the project. (CEQA, § 21166.) In effect, the "baseline" for the SEIR would not be existing environmental conditions, as is typical for an EIR, but the conditions that would have obtained if the prior project were implemented. However, using a "prior project" baseline instead of the "existing conditions" baseline would not be an option for a future HCP if the agencies do not actually adopt the proposed HCP when they certify the EIR/EIS. This is because CEQA's section 21166 SEIR provisions do not come into play unless the agency has approved the prior project and the time period for challenging the initial EIR under CEQA section 21177 has run.<sup>1</sup> Thus, completing the existing EIR/EIS without approving the HCP it describes will not allow the agencies to proceed later with an SEIR.

Furthermore, when an agency makes changes to a plan, unlike when it approves changes to a previously approved development project, the revised plan must be evaluated with an "existing conditions" baseline, not with a "prior project" baseline.<sup>2</sup>

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<sup>1</sup> *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1544 holds: "[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired (§ 21167, subd. (c)), and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process."

And *Temecula Band of Luiseno Mission Indians v. Rancho California Water Dist.* (1996) 43 Cal.App.4th 425, 437 holds: "[i]f the statute of limitations has run on the previous approval, any challenge to the determination to change the project is limited to the legality of the agency's decision about whether to require a subsequent or supplemental EIR, or subsequent negative declaration, and the underlying EIR or negative declaration may not be attacked. (2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 1993) § 23.26, p. 942)."

<sup>2</sup> *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 351 [error to conclude there would be no impacts simply because new plan permits less development than old plan]; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 190–191 [comparison of what was possible under old plan and amended plan is "illusory"]; *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707 [error to use prior plan as baseline for review of new plan; baseline for revised plan must be existing conditions]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246; ; *St. Vincent's School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1005–1006.



CEQA allows agencies to use the “approved project” baseline only if the previous EIR was for a specific development project, typically where development rights had vested.<sup>3</sup> The HCP EIR/EIS is a “plan” or “program” EIR, not a “project” EIR. So even if the agencies adopted the proposed HCP now, they would still need to use an existing conditions baseline if they later approve a revised HCP.

**2. If the agencies change the HCP, they will need to revise the current EIR/EIS, so there is no point in completing it now.**

An EIR must accurately and consistently describe the project under review.<sup>4</sup> If the agencies decide to adopt an HCP that differs from the currently proposed HCP, they will likely need to revise the project description and recirculate the revised EIR/EIS for public comments.<sup>5</sup> There is no point in completing responses to comments on the current HCP if the agencies will ultimately have to respond to a different set of comments about a different HCP.

Even if the agencies decide to adopt the currently proposed HCP with only minor modifications that do not trigger recirculation, it will still be necessary to reflect those modifications in the EIR/EIS before certifying it. In short, there is no point in completing a final EIR/EIS for the currently proposed HCP.

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<sup>3</sup> *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1477 distinguishes *Christward Ministry, City of Carmel-by-the-Sea, and Environmental Planning and Information Center*: "In none of the cited cases had the projects in question undergone an earlier, final CEQA review. None involved permits that had already been issued or rights that had vested by the time the board made its decision. These cases do not involve the modification of an earlier permit which had become final, and on which CEQA review had been completed. In our case, the actual physical environment includes that which Whitbread has a legal right to build under permits which have already been issued and on which construction has already begun." (See also, *Temecula Band of Luiseno Mission Indians v. Rancho California Water Dist.* (1996) 43 Cal.App.4th 425, 437 [approving 21166 review for previously approved water supply project, citing with approval *Benton's* discussion of the limited circumstances in which 21166 applies]; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 543 [allowing 21166 "with-project" baseline only for the parcel SH2PC on which development of a planned community had already been approved after a project-level EIR, citing *Benton* and *Temecula*].

<sup>4</sup> *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277 [setting aside EIR for failure to identify the project actually proposed, even though the final EIR identified that project]; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193 [project description must be accurate and stable].

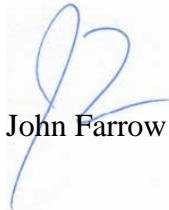
<sup>5</sup> 14 CCR §15088.5(a) [recirculation required for significant new information].

Furthermore, the agencies need not complete the EIR/EIS now to reuse portions of it later. Portions of the draft EIR/EIS might be revised and reused for a revised HCP, but that material already exists. The new material for the final EIR for which the consultants now seek contract amendments – responses to comments and revisions to the EIR/EIS – will have no utility if the agencies materially revise the HCP itself. And even if the agencies eventually decide not to make material changes to the HCP, there is no need to incur the cost to complete the EIR/EIS until that decision is made.

LandWatch asks that the FORA Board not commit almost \$300,000 to completion of an EIR/EIS for an HCP that the Habitat Working Group is now revising. Committing more resources to the environmental review of a plan that has not yet been defined is premature and wasteful.

Yours sincerely,

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

A handwritten signature in blue ink, appearing to read "John Farrow", is positioned above the printed name.

John Farrow

JHF:hs

Cc: Stephen P. Henry, fw8fortordhcp@fws.gov  
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