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Via E-mail

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Board of Directors
c/o Michael Houlemard
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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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[1] Mary Israel, FORA Associate planner, Habitat Management Plan Responsibilities Analysis, February 28, 2019, available as pdf pages 51-68 at https://www.fora.org/Board/2019/Packet/030819BrdPacket.pdf

(*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.)

The endowment analysis in the HMP Responsibilities Analysis is fundamentally at odds with the analyses prepared by EPS for the proposed HCP. To put it bluntly, *it makes no sense that the proposed HCP program, which spends $2.5 million per year, needs an endowment no larger than the endowment for the HMP program, which spends only $1.5 million per year*. If the HMP's annual operating cost is only 60% of the HCP's cost, the endowment should be only 60%.

The agencies cannot rely on the HMP Responsibilities Analysis as the basis of a cost comparison of the proposed HCP and the no-action alternative. LandWatch asks that FORA provide a detailed and apples-to-apples analysis of the costs of the proposed project and the no-action alternative in response to these comments.

Yours sincerely,

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

John Farrow

JHF:hs

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