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Habitat Management Discussion

Discussion

Existing Habitat Obligations

The BRP requires habitat conservation and management. Currently, habitat management is being done under the provisions of the *Installation-Wide Multispecies Management Plan for Former Fort Ord, California*, dated April 1997 (“Habitat Management Plan” or “HMP”). All agencies signatory to the HMP and those who receive properties within Fort Ord are required to comply with the provisions of the HMP. The signatories include, BLM, The Army, UCSC, The County, the City of Marina, State Parks, Caltrans, and MPRPD. Habitat management is currently being done by several of the agencies mentioned. FORA participates in habitat management through an annual contract with UCSC.

The conservation and restoration activities in the HMP are broadly described, leaving some room for interpretation and further refinement. To fully implement the HMP on the County properties, it is anticipated that both State and Federal Incidental Take Permits (ITP) would be necessary. To make the ITP applications, a Habitat Conservation Plan (HCP) is needed for the Federal ITP and a Mitigation and Management (MMP) for the State ITP; these documents are commonly a single combined document. Because the goals of the HMP are to conserve and restore habitat, staff anticipates the HCP/MMP would be fairly straightforward and the issuance of ITPs would be supported by the wildlife agencies.

The County is anticipated to own 1,849 acres of the 18,540 acres of total habitat management lands on the former Fort Ord; the US Bureau of Land Management (BLM) will own the majority of habitat lands, 14,645 acres planned to be part of the Fort Ord National Monument (FONM). The primary species of concern on the County properties is the California Tiger Salamander (CTS). It is anticipated that the County could mitigate the HMP activities within its own habitat lands.

The East Garrison developer, UCP East Garrison LLC (UCP), secured a State ITP for the development, and UCP, FORA and the County entered into a *Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California* (MOA) to allow a CTS Preservation and Habitat Restoration Area (CTS PHRA) be preserved and managed to mitigate the development’s impacts to CTS. The MOA contemplated the completion of the under-development *Installation-Wide Multispecies Habitat Conservation Plan* (HCP) and subsequent issuance of State and Federal ITPs for anticipated base-wide development. The MOA requires UCP to fund management and monitoring activities at the CTS PHRA at Parker Flats, until the HCP ITPs have been issued and not more than five (5) years; if the HCP ITPs are not issued prior within five years (by 2020), the MOA term may be extended and UCP remains responsible for funding CTS management activities for the extended term.

Prior to or in the absence of HCP ITPs being issued, FORA’s existing habitat liabilities/obligations (HMP; MOA CTS management) as well as CFD funding collected for habitat management may be assigned to the individual habitat land owners or to a Joint Powers Authority (JPA).

Basewide Habitat Conservation Plan and Incidental Take Permits

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The HMP is an approved plan by the USFWS. However, the HMP does not provide specific authorization for incidental take of Federal or State listed species to existing or future non-federal land recipients under the Federal and State Endangered Species Acts. FORA and the Fort Ord property owners have been working with the wildlife agencies to complete an HCP and receive base-wide Federal and State ITPs. The participating agencies are currently working on developing the HCP, but it is not known when or if the HCP will be adopted. Due to different permit issuance requirements, the base-wide HCP is much more rigorous than the HMP, yet is required for the issuance of Federal and State ITPs. A base-wide HCP ITP approach is a more holistic approach for protecting and managing protected species. It also provides the greatest security to future developments as it establishes a set amount of mitigation requirements for a defined amount of development.

The Draft HCP being developed proposes to provide take coverage for the following activities on County Fort Ord lands: habitat management activities (including HMP implementation); CTS mitigation for East Garrison; the activities described in the County's Draft Fort Ord Recreation and Habitat Area Master Trails Plan and Open Space Management Plan (FORHA Plan); and potential future development on developable parcels within the County's jurisdiction, including possible improvements at Laguna Seca Race Track.

As discussed above, implementation of the HMP and CTS mitigation for the East Garrison development could likely be accomplished on County lands without issuance of base-wide HCP ITPs, and should be fully funded assuming the County receives a fair-share of the anticipated \$21 million of CFD funds FORA will have collected by its sunset in 2020. It is also anticipated that a certain amount of the proposed activities and development anticipated in the Draft FORHA Plan could be handled with individual ITPs; however, at some point, future development on County lands would be expected to exceed a threshold that makes a base-wide HCP ITPs preferable for mitigating the development. It is difficult to determine what threshold level of development could tip the scales making a base-wide HCP ITP approach preferable for the County over obtaining individual project ITPs.

FORA Draft Transition Plan Consideration Summary

When FORA sunsets, it will be necessary to delegate the responsibility for habitat management to a successor agency(ies). The Transition Task Force recommendation is that this should be done through a JPA of member agencies, with habitat management responsibilities. The JPA would have responsibility for habitat management under the HCP, but if the HCP is not adopted, habitat management responsibilities under the HMP will still exist and will need to be managed and funded. Funds collected for habitat management from the CFD can be used either for HMP or HCP habitat management. It has been suggested that the JPA should be formed now, rather than wait until a decision on the HCP is made or wait until FORA goes away. It is felt that the transition plan will be more likely to be accepted by LAFCO if the successor agencies are formally established. The JPA would most likely include The County, and some or all the city members of FORA, with habitat management responsibilities.

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Options:

- Form JPA as soon as practicable, but prior to the scheduled date of FORA dissolution, with broad responsibility for habitat management, with a proviso that should the HCP be approved, its management and funding would come under the jurisdiction of the JPA. The responsibilities for habitat management could be performed by FORA, until dissolution. This option would provide a structure for habitat management irrespective of adoption of the HCP.
- Form JPA after FORA sunsets, irrespective of HCP status and incorporate HCP, if adopted. This option creates a condition like the first option, but it does not provide the assurances that may be required by LAFCO.
- Form JPA when the HCP is approved, and if the HCP is not approved prior to FORA dissolution then each jurisdiction could assume responsibilities under the HMP. This option allows existing habitat obligations to be met, but results in an unknown time frame and increase uncertainty over habitat management for future development after FORA sunsets.
- Abandon HCP adoption efforts, do not form a JPA, and let each jurisdiction assume its responsibilities under the HMP. Adoption of an HCP provides mitigation assurances for BRP planned development. When each development project obtains individual ITPs, there is risk to future development should mitigation lands be exhausted (earlier development), which could preclude the regulatory agencies from continuing to issue incidental take permits in the future. This would have economic development impacts. This would be a much less expensive option and would probably not require the \$48-60 million endowment.

Suggested Approach

Forming a JPA as soon as practicable to handle existing base-wide habitat management responsibilities, with provisions to bring the HCP under its financing and management responsibility, would provide a smooth transition when FORA sunsets. FORA would continue to fund and manage habitat until its dissolution, when the responsibilities would be transferred to the JPA. The JPA could be administered and staffed by the County or one of the member agencies. If the HCP is approved, this approach only works if the CFD funding is secured and produces the estimated \$48-60 million. Without the CFD funding, there would not be enough money to fund the HCP. CFD funding could come from the existing CFD or from successor individual jurisdiction CFDs. (Please note concerns about individual CFDs described in another issue paper.)

Fiscal Impact

The FORA CFD provides funding for habitat conservation and management in the FORA territory. FORA estimates that the implementation of the HCP, post 2020, will be done through an endowment in the approximate amount of \$48-60 million. The amount of the endowment is a moving target and will not be determined until the HCP is adopted. Funds for the endowment are being generated by the FORA CFD. FORA sets aside 30% of revenues from the CFD to fund the endowment. It is estimated that by the FORA sunset date, there will be approximately \$21 million available for habitat

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management. The FORA CIP and the calculations by EPS, under contract to FORA estimates and additional \$46 million of CFD funds, for habitat conservation, after FORA sunsets.

Should a JPA be established, as a JPA member agency the County would not be free from liability. Should the JPA dissolve, the County would still be required to do its part in the management of an HCP or the HMP. The HMP responsibilities seem to have been managed for several years, without great expense of funds. FORA currently spends about \$100,000 in habitat management through the University of California, Santa Cruz (UCSC) to manage 560 acres of habitat currently owned by UCSC.

Adoption of the HCP would bring greater responsibilities and increased liability, particularly if the CFD is not extended or replaced. There is no guarantee that, even if the \$48-60 million endowment fund was created, it would be sufficient to cover the HCP obligations, in the long term, as new species may be designated or other unknown circumstances could arise. In adopting the HCP, the County should exercise due diligence to make sure that the responsibilities are funded adequately. Also, JPA administration would take funding and the JPA member agencies should ascertain that the CFD revenues can be used for that purpose, or that the endowment will cover JPA administrative costs. The CFD, if extended, will sunset in the early 2050s, but the generation of revenues would end when development is complete.

If the HCP is not adopted, it is possible that the CFD funds on hand at the FORA sunset date would suffice to meet existing habitat obligations. However, as long as the CFD remains active, funds for habitat management will continue to be generated.