



May 7, 2020

Supervisor Jane Parker, Chair
Fort Ord Reuse Authority (FORA) Board of Directors
920 2nd Avenue, Suite A
Marina, CA 93933

Dear Chair Parker and Board of Directors:

LandWatch previously urged FORA not to certify a Final EIR for the draft Habitat Conservation Plan ("HCP") because there is no consensus on the scope or timing of that HCP, and no agency is foreseeably in place to implement it. LandWatch urged FORA not to commit another \$224,000 to complete the EIR.

Despite this, FORA's consultant is drafting responses to comments so that FORA certify the EIR for an HCP that no agency is willing to adopt. The consultants are not in fact preparing an amended HCP that could be adopted. For the reasons set out in our February 10, 2020 letter, the certified EIR will have no utility without an agreed and adopted HCP.

There are three compelling additional reasons that FORA should table consideration of the HCP EIR.

First, certification of the HCP EIR will consume even more of FORA's scarce resources. LAFCO has asked FORA to fund an additional \$1 million for the litigation reserve, in part because certifying the HCP EIR will increase litigation risk:

FORA is proceeding with preparation of its Habitat Conservation Plan Environmental Impact Report (HCP EIR) for future FORA Board consideration to certify the document in June 2020, which, in LAFCO's view, has high potential to generate litigation risk. In addition, FORA has not transferred its litigation role for pending litigation matters to a successor or successors.

(Kate McKenna, LAFCO, letter to FORA Board, May 5, 2020, p. 3 [emphasis added].)

Second, certification of the HCP EIR will increase litigation risk not just to FORA, but to FORA's member agencies.

LAFCO has asked FORA to resolve its existing litigation, avoid taking on new risk, assign a successor to litigation that may not be resolved by June 30, and to coordinate on matters of legal risk. These issues are still of concern. Most significantly, FORA has authorized work toward certifying an Environmental Impact Report (EIR) for a proposed Habitat Conservation Plan (HCP) in June. This action increases the legal risk for LAFCO and FORA member agencies.

(Id., p. 2 [emphasis added].)

Third, FORA does not have the time or bandwidth to complete the HCP EIR in light of its more pressing transition obligations. LAFCO's May 5, 2020 letter and its April 27, 2020 staff report outline just some of the critical tasks that remain, including:

- transferring assets, liabilities, and administrative responsibilities;
- distribution of remaining, unassigned funds;
- amending the Transition Plan;
- completing the Multi-Agency Transition Plan Implementing Agreement;
- completing the MCWD services agreement;
- resolving existing litigation where possible;
- assigning future litigation role and funding for existing and potential litigation;
- implementing Transition Plan tasks;
- identifying FORA lead agency projects;
- identifying FORA responsibilities for incomplete mitigation;
- assigning successor agencies for FORA lead agency projects;
- providing an opinion as to the ongoing force of Reuse Plan programs, policies, and mitigation and as to the post-dissolution status of numerous FORA agreements that have not been liquidated;
- resolving disputes with California Native Plant Society regarding road projects;
- resolving disputes with Keep Fort Ord Wild regarding incomplete mitigation;
- resolving disputes with Monterey Peninsula College regarding habitat funding;
- resolving disputes with the Carpenters Union regarding conflicts between the Transition Plan Implementing Agreement and the 2001 Implementing Agreements;
- resolving CalPERS liability funding;
- reaching an agreement with LAFCO and member agencies to fund post-dissolution litigation and administrative expenses.

FORA's Board will hold only four more meetings, and many of these items will require a second vote. FORA does not have the Board time to consider carefully whether to assume the costs and risks of certifying an unnecessary HCP EIR.

Finally, if the consultants' comment responses have any utility, that utility does not depend on certifying the Final EIR. Accordingly, we recommend that FORA forego the additional costs and risks of certification and instead simply make the draft documents and comment responses available to all agencies that may in the future seek to use the documents in connection with a different HCP.

Please, do what needs to be done -- what your staff and board have identified as mission critical -- and avoid wasting time and money.

Thank you for your consideration.

Sincerely,



Michael D. DeLapa
Executive Director