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Board Report

Legistar File Number: RES 15-007

January 27, 2015

Introduced: 1/22/2015

Version: 1

Current Status: Agenda Ready

Matter Type: BoS Resolution

Adopt a resolution:

- a. Approving and authorizing the Chair to sign a Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California between the County, the Fort Ord Reuse Authority, and UCP East Garrison LLC to fund and implement interim habitat management for California Tiger Salamander on approximately 134 acres of County-owned property at the former Fort Ord; and
- b. Approving and authorizing the Chair to sign the grant of a Conservation Easement Deed to the State of California over said property, and directing the RMA Director to transmit the signed Easement to CDFW for acceptance and recording.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution:

- a. Approving a *Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California* between the County, the Fort Ord Reuse Authority, and UCP East Garrison LLC to fund and implement interim habitat management for California Tiger Salamander on approximately 134 acres of County-owned property at the former Fort Ord; and
- b. Approving the grant of a Conservation Easement Deed to the Californian Department of Fish & Wildlife over said property, and directing the RMA Director to transmit the signed Easement to CDFW for acceptance and recording.

SUMMARY:

As a condition of renewal of its Section 2081 Incidental Take Permit for Phase II of the East Garrison housing development, the California Department of Fish & Wildlife (CDFW) is requiring the developer to implement “interim” habitat restoration, conservation, and enhancement mitigations for the California Tiger Salamander (CTS) prior to and until the Fort Ord Reuse Authority (FORA) Habitat Conservation Plan (HCP) is adopted and CDFW issues the 2081 Incidental Take Permit for the Fort Ord HCP.

The property selected by CDFW for this activity is a 134-acre portion of County-owned property designated for future habitat reserve (Attachment 1). This property was recently accepted by the County as part of the “County North” property transfer approved by the Board of Supervisors on September 9, 2014. The selected property is the northerly portion of the 379-acre habitat reserve property (Parcel E19a.4) designated in the Habitat Management Plan (HMP) as “Habitat Reserve” and designated in the draft HCP as the “Parker Flat Habitat Reserve”.

There are two components for consideration:

1. Memorandum of Agreement (MOA). CDFW proposed an agreement among UCP, FORA, and the County with terms that include:
 - County records a permanent Conservation Easement (CE) over 134 acres,
 - UCP funds interim habitat activities for this easement area, and
 - County retains a consultant to implement habitat activities until the base-wide HCP Incidental Take Permit is issued.
2. Conservation Easement (CE). CDFW requires a governing document establishing the County's role and responsibility regarding this particular property. There is intent of the land use agencies to place all of the lands restricted by CE under a joint powers authority; however this is still a work in progress. Staff has viewed this CE as negotiating the template for future conservation easements within the former Fort Ord area. As such, staff has worked diligently to align the CE with the planned HCP. While this will help with review of other CE's once the HCP is adopted, the difficulty of this CE has been that this work precedes the HCP (review and adoption), so County staff is relying in part on the parties that have been involved in drafting the HCP and its related documents. Staff has resolved issues with potential conflicts developing the planned future Eastside Road and with liability/risk language.

DISCUSSION:

On July 27, 2006, CDFW approved a Section 2081 Incidental Take Permit for the East Garrison development based on a Specific Plan and Subdivision Map approved in 2005. This permit determined that the developer's payment of the FORA development impact fees and implementation of the anticipated Habitat Conservation Plan (HCP) would fulfill the East Garrison development's mitigation requirements. Additionally in 2005, a biological opinion on California Tiger Salamander (CTS) was issued by US Fish and Wildlife that specified restrictions applicable to the East Garrison Specific Plan.

Subsequent to completing grading for the East Garrison Phase 1 and 2 areas in 2008, CTS was listed as a State-protected species under the California Endangered Species Act (CESA). Mitigation of impacts on this species was not included in the State's 2006 East Garrison Incidental Take Permit, although the developer had prepared all of the necessary studies and obtained a permit from US Fish and Wildlife that included CTS as a listed species under the federal Endangered Species Act (ESA).

Section 2080.1 of the CESA allows an applicant who has obtained a federal incidental take statement pursuant to a federal Section 7 consultation or a federal Section 10(a) incidental take permit to notify the Director of CDFW in writing that the applicant has been issued an incidental take statement or an incidental take permit pursuant to the ESA. CDFW prefers 2081(b) permits to making a Consistency Determinations under Section 2080.1, primarily because the State wants to be a party to the conservation easement deed.

The draft HCP includes CTS mitigation, and is expected to be released for public review in 2015. As FORA continues to complete and prepare to implement the HCP, CDFW has determined that UCP East Garrison, LLC is required to apply for and receive a new Section

2081 Incidental Take Permit for the East Garrison development and to implement mitigations for the California Tiger Salamander in order to be allowed to continue with the development.

Accordingly, CDFW proposed an agreement among UCP, FORA, and the County to put 134 acres of County-owned “habitat reserve” property into conservation easement in perpetuity ahead of the HCP adoption. The terms of this agreement include:

- The County will record a permanent Conservation Easement over a 134-acre portion of the Parker Flats Habitat Reserve area that lies within the “County North” deed property.
- UCP will provide to the County a deposit of \$104,155 to fund the interim habitat restoration, conservation, and enhancement activities on this parcel for a period not to exceed five years. While it is expected the HCP will be completed and CDFW will issue the base-wide 2081 Incidental Take Permit within this 5-year period, the agreement includes the ability to extend the MOA if needed and to deposit additional funds for related costs.
- The County will retain a consulting firm to implement these activities until such time as CDFW issues the base-wide HCP Incidental Take Permit.
- When the base-wide Incidental Take Permit is issued and FORA assumes responsibility for these activities through adoption of the HCP, the County’s interim habitat management responsibilities would terminate, and any unused funds held by the County would be returned to UCP.

While CDFW is not a signator to the MOA, the state agency must agree on the terms before the state will issue the East Garrison 2081 Incidental Take Permit. On January 22, 2015 staff received confirmation of CDFW’s concurrence with the draft MOA and Conservation easement.

Conservation Easement Deed (CE): State and County staff have agreed to provisions of the CE to express the intent to amend the CE to be consistent with the HCP and its associated documents when the HCP is adopted.

Planned Future Eastside Road: The currently-proposed alignment of the future Eastside Road is immediately adjacent to the subject Habitat Reserve property. The CE being located immediately adjacent to the planned alignment of an Eastside Road could create limitations later. If the easement is granted, it could foreclose any option of adjusting the Eastside Road alignment east on any portion of the conserved 134 acres.

An inter-agency Memorandum of Agreement determining the agreed-upon Eastside Road study corridor (approved by the Board of Supervisors on October 11, 2011) has not been executed by all parties and is the subject of pending litigation. FORA staff has suspended work on the environmental assessment and design until the litigation is resolved. As such, staff expressed a concern that recording the proposed Conservation Easement over the subject portion of Habitat Reserve property at this time could impact potential flexibility the various parties may wish to preserve in regard to possible adjustments to the road alignment and/or location of the habitat reserve property in the Eastside Road environmental review process.

CDFW staff stated that as long as the footprint of the Eastside Road is kept within non-habitat property, and that the “borderland” policies proposed in the draft HCP are adhered to, CDFW

will not object to any necessary “adjustments” to the alignment which may result from that project’s environmental review process. As such, staff identified a corner of the easement extending into the 200-foot impact area identified for the roadway alignment as currently aligned/designed. Consultation with the HCP EIR consultant indicated a corner of the easement extending into the project footprint would not create a new impact for the HCP EIR provided the planned grading limit would not impact the conservation area. Staff was concerned that grading plans at this point are not precise; and therefore, recommended that the easement boundary be adjusted so that no portion of the easement is within the road impact footprint. The CE legal description has been amended to reflect this adjustment, which reduced staff’s concern.

Jerry Smith Corridor: Staff investigated the potential effect of the proposed CE on the existing Jerry Smith Corridor trail, which is outside but immediately adjacent to (east of) the currently-proposed easement boundary. It is anticipated that the trail will ultimately be included in a future conservation easement over the adjacent “habitat corridor” parcel. FORA’s HCP consultant stated that the existing trail is consistent and in compliance with the policies of the current draft of the HCP, so there is no need to provide additional habitat protections or “buffering” on either side of the trail. Similar to the Eastside Road, CDFW staff stated that there is no conflict as long as the footprint of the trail is kept within non-habitat property and that the “borderland” policies of the draft HCP are adhered to.

OTHER AGENCY INVOLVEMENT:

The MOA and Conservation Easement have involved coordinated efforts between County, Fort Ord Reuse Authority, California Department of Fish and Wildlife, and UCP staff as well as legal counsels. County Counsel has been involved in the negotiation of the documents.

On December 10, 2014 the Fort Ord Committee recommended the Board of Supervisors approve the MOA and grant the permanent Conservation Easement to CDFW over said property, subject to finalization of minor corrections therein.

On January 9, 2015 the Board of Directors of the Fort Ord Reuse Authority approved of the MOA, and directed their Executive Director and Counsel to execute the version approved by the County.

Upon full approval of the MOA and recording of the Conservation Easement, it is anticipated that CDFW will issue the 2081 Incidental Take Permit for the East Garrison development.

FINANCING:

The recommended action will have no impact on the General Fund. UCP East Garrison, LLC (UCP) will deposit with the County \$104,155 to fund the County’s implementation of the interim habitat restoration, conservation, and enhancement activities on this parcel until CDFW issues the 2081 Incidental Take Permit for the Fort Ord HCP. This deposit will be placed into Economic Development Department 1070 Fund 182 East Garrison Development Reimbursement Unit 8431 that captures project administration and land use development and wage monitoring for the East Garrison development. The County will retain a consulting firm to implement the habitat management activities. When CDFW issues the HCP Incidental Take Permit and FORA assumes responsibility for these activities, any unused funds held by the

County would be returned to UCP, with the expectation that the management of conservation lands would be managed by a JPA with a funding source (endowment fund) established through FORA.

Prepared by: G.H. Nichols, P.E., Civil Engineer

Approved by: Carl P. Holm, AICP, Acting Director, Resource Management Agency

Attachments:

1. Vicinity Map
2. Resolution
3. Draft Memorandum of Agreement
4. Draft Conservation Easement

Electronic copies of Draft Supplemental EIR and Final Supplemental EIR for the East Garrison Specific Plan are on file with the Clerk to the Board of Supervisors in CD format, where they are available for inspection