



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2021

Approved

Date

**6/1/2021**

**COUNCIL DISTRICT: 4**

**SUBJECT: AMENDMENT TO THE AGREEMENT WITH SANTA CLARA VALLEY  
HABITAT AGENCY TO MANAGE THE BURROWING OWL HABITAT**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager to execute the First Amendment to the Agreement between the Santa Clara Valley Habitat Agency and the City of San José for Burrowing Owl Habitat Management at the San José-Santa Clara Regional Wastewater Facility to increase the term from July 1, 2016 through June 30, 2026.

## **OUTCOME**

The proposed amendment to the agreement will continue to ensure that the owl habitat will be managed to protect and grow the region's largest and most successful burrowing owl population. The cost of managing the burrowing owl habitat will remain with the Santa Clara Valley Habitat Agency (SCVHA).

## **BACKGROUND**

The Western Burrowing Owl is listed as a Federal and State Species of Special Concern, with significant population decreases over the past several decades. The Western Burrowing Owl is a small owl, about nine inches tall, and is typically migratory throughout much of its range, although many birds reside year-round in California. Western Burrowing Owls are both diurnal and nocturnal and are most active at dawn and dusk. They do not hoot as do most other owl species and are the only species of owls worldwide that live and nest underground.

Western Burrowing Owls will use other "burrows" such as pipes, crevices in rocks, or burrows dug by other animals.

Western Burrowing Owls have been documented to nest at the San José-Santa Clara Regional Wastewater Facility<sup>1</sup> (RWF) in the open grasslands also known as the bufferlands for the past decade; however, numbers had declined until the City of San José (City) initiated habitat improvements in 2012. Staff implemented improvement activities based on the City's Bufferlands Interim Burrowing Owl Management Plan (Interim Plan) as temporary measures until the Plant Master Plan (PMP) Environmental Impact Report (EIR) was certified. City Council certified the PMP EIR on November 19, 2013. As part of the PMP's goal to improve habitat and minimize impacts to the local and global environment, it designated 180 acres as burrowing owl habitat. Improving the habitat quality at the bufferlands has increased the number of nesting owls and promoted reproductive success, two goals the City sought to achieve on the bufferlands.

In May 2014, Cisco Systems donated 21.4 acres of land to the City that is adjacent to the existing owl habitat. The addition of this land brought the total acreage of the owl habitat up to 201 acres.

The City entered into a Grant Agreement with Santa Clara Valley Audubon Society (SCVAS) from March 2014 through June 2016 to provide services related to the upkeep, improvement, and promotion of the burrowing owl habitat and colony of burrowing owls. The work performed was consistent with the PMP EIR and the guidelines set forth in the Interim Plan, which were designed to improve foraging and nesting habitat for the owls.

The Habitat Agency was formed in May 2013 and has a major role in implementing the south region's Habitat Plan, which was developed by the Santa Clara Valley Transportation Authority, Valley Water, County of Santa Clara, and the Cities of Gilroy, Morgan Hill, and San José. The Habitat Plan covers about two-thirds of the area of Santa Clara County. It provides streamlined state and federal permitting for public and private projects, while offering a comprehensive and effective way to address impacts of those projects on endangered and threatened species and their habitats. The most significant role of the Habitat Agency is to acquire and manage a Reserve System of land that will serve as mitigation for project impacts and contribute to the recovery of the species covered by the Habitat Plan, including the Western Burrowing Owl.

In 2016, the City entered into a five-year agreement (July 1, 2016 – June 30, 2021) with the Santa Clara Valley Habitat Agency (Habitat Agency) to transfer the cost, oversight, and underwriting of management activities. The Habitat Agency subcontracted with the SCVAS, San Francisco Bay Bird Observatory (SFBBO), Debra Chromczak (Burrowing Owl Researcher and Consultant), Talon Ecological Research Group (Talon), and Long's Custom Disking, Inc. Management activities included monthly surveys, supplemental feeding, motion-triggered trail cameras, vegetation management, and soil burrow management. The Habitat Agency has successfully met the terms of the agreement and has been an invaluable and reliable partner to the City in maintaining the suitability of the habitat. Habitat Agency staff with their

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<sup>1</sup> The legal, official name of the facility remains San José-Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

subcontractors and City staff have worked side-by-side addressing and successfully overcoming a variety of challenges on the habitat, including but not limited to trespassing, illegal fireworks, dumping, and utility breaks. City staff also work closely with the Habitat Agency on RWF capital projects and nearby development projects, which require intricate coordination efforts. Without hesitation, Habitat Agency staff is proactive and willing to work with City staff in ironing out any unexpected or unforeseen issues.

For the past five years, the RWF has experienced one of the highest population densities of burrowing owls when compared to other breeding sites in the County. But like the rest of the County, owl populations at this site have declined since a peak in 2017. Still, the RFW holds hope for the species locally as it has been managed for optimal owl habitat and owls continue to use the site for breeding and foraging. In addition, this is the only site in the County in which the Habitat Agency and SCVAS have been providing supplemental feeding, captive rearing, and very recently, captive breeding. The extreme efforts to stabilize the population at this site represents the firm belief of all local burrowing owl biologists that this site holds the best potential to stabilize the population and even provide additional offspring that can be translocated to help other breeding sites become stronger in years to come.

## **ANALYSIS**

Protection and maintenance of the owl habitat is provided under the terms of required mitigation measures in the Mitigation Monitoring and Reporting Program (MMRP) from the PMP EIR. Council Policy 6-31 also supports the use of RWF bufferlands to provide direct benefit to habitat lands supporting United States Department of Fish and Wildlife and California Department of Fish and Wildlife Species of Special Concern. The proposed amendment to the agreement would enable the City to continue protecting and maintaining the habitat through the Habitat Agency.

The proposed five-year extension would allow the Habitat Agency to continue carrying out the needed management activities and adaptive management practices, especially the more recently embarked upon Juvenile Burrowing Owl Overwintering and Release program efforts that require years of implementation before results can be realized. The RWF would maintain ownership of the land and continue to manage security services. Other optional services such as soil transport or creation of prey refuge, among others could also be provided by the City if deemed applicable and feasible.

## **CONCLUSION**

The Western Burrowing Owl is a protected Special Species of Concern that continues to reside in the grasslands of the RWF due to the many actions the City and its partners have taken to continue protecting this species. The City proposes to continue doing so for another five years under this amendment to the management agreement with the Habitat Agency. The Habitat

Agency would continue managing the owl habitat and all the future adaptive management practices, and City staff will continue coordinating activities, as needed.

### **EVALUATION AND FOLLOW-UP**

The Habitat Agency and its subcontractors will continue to manage the habitat and report on the performance and issues through monthly and annual summary reports. The management of this land will continue in parallel to the City's continued participation and negotiation of future land-in-lieu of fees agreement that would allow the City to comply with the estimated \$1,400,000 in Habitat Agency development fees for four of the RWF Capital Improvement Program projects by enrolling a portion of the managed habitat into the Habitat Agencies reserve system. The proposed enrollment will be brought back to the City Council for consideration at a future time.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **POLICY ALTERNATIVES**

***Alternative: Direct City staff to continue management of the owl habitat***

**Pros:** The City would retain control of managing the owl habitat.

**Cons:** The City would continue to fund habitat management at a rate of approximately \$102,000 per year

**Reason for not recommending:** Having the SCVHA manage the habitat utilizes the agency as designed and is fiscally prudent since the costs associated with ongoing management responsibilities would transfer from the City to SCVHA.

### **PUBLIC OUTREACH**

Three annual program reports regarding the burrowing owl habitat have been made to both the T&E Committee and Treatment Plant Advisory Committee (TPAC) dating back to 2013.

This memorandum will be considered at the June 10, 2021 TPAC meeting and will be posted on the City's Internet website for the June 22, 2021 City Council agenda.

HONORABLE MAYOR AND CITY COUNCIL

June 1, 2021

**Subject: Agreement with Santa Clara Valley Habitat Agency to Manage Burrowing Owl Habitat**

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### **COORDINATION**

This proposal and memorandum have been coordinated with the City Manager's Budget Office, the Planning, Building, Code, and Enforcement Department, and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

This memorandum will be considered at the June 10, 2021 TPAC meeting.

### **COST SUMMARY/IMPLICATIONS**

The amendment to the agreement with Habitat Agency will not result in any additional cost to the City.

### **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions, please contact Jennifer Voccola-Brown, Sustainability and Compliance Manager, at (408) 975-2594.