

**FIRST AMENDMENT TO AGREEMENT BETWEEN THE
SANTA CLARA VALLEY HABITAT AGENCY AND THE CITY OF SAN JOSE
FOR BURROWING OWL HABITAT MANAGEMENT
AT THE SAN JOSE-SANTA CLARA
REGIONAL WASTEWATER FACILITY**

This 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 ("First Amendment") is entered into as of _____, 2021 ("Effective Date") by and between the Santa Clara Valley Habitat Agency ("AGENCY"), a California joint powers agency, and the City of San José ("CITY"), a California municipal corporation.

RECITALS

WHEREAS, on August 2, 2016, CITY and AGENCY entered into an agreement entitled "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" ("Agreement"); and

WHEREAS, CITY and AGENCY desire to amend the Agreement to extend the term and revise the Management Plan and the contact information for notices.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

SECTION 1. Section 1, "Management Plan," is amended to read as follows:

"AGENCY shall perform management activities specified in detail in Revised Exhibit B entitled "Burrowing Owl Habitat Management Plan" ("Management Plan"), which is attached and incorporated."

SECTION 2. Section 2, "Term of Agreement," is amended to read as follows:

"The term of this Agreement shall be from July 1, 2016 to June 30, 2026, inclusive, subject to the provisions of Section 9 of this Agreement."

SECTION 3. Section 19, "Notices," is amended to read as follows:

"All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service, or United States mail, postage prepaid. A notice or other communication that is e-mailed is effective when sent. A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 Business Days after deposit in the United States mail. All

notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To AGENCY: Santa Clara Valley Habitat Agency
C/O Edmund Sullivan, Executive Officer
535 Alkire Avenue, Suite 100
Morgan Hill, CA 95037

To CITY: City of San José Environmental Services Department
C/O Jennifer Voccola-Brown
Sustainability & Compliance Division Manager
200 E. Santa Clara Street, 10th Floor
San José, CA 95113

SECTION 4. Exhibit B, "Burrowing Owl Habitat Management Plan," is amended to read as shown in Revised Exhibit B, which is attached and incorporated into this First Amendment.

SECTION 5. All of the terms and conditions of the original Agreement not specifically modified by this First Amendment shall remain in full force and effect.

SECTION 6. Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

The Parties whose signatures are affixed below are fully authorized to have executed this First Amendment:

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APPROVED AS TO FORM:

“AGENCY”
SANTA CLARA VALLEY HABITAT AGENCY,
a California joint powers agency

By _____
VALERIE J. ARMENTO
General Counsel

By _____
EDMUND SULLIVAN
Executive Officer

APPROVED AS TO FORM:

“CITY”
CITY OF SAN JOSE,
a California municipal corporation

By _____
ROSA TSONGTAATARII
Senior Deputy City Attorney

By _____
JENNIFER MAGUIRE
Assistant City Manager

Revised Exhibit B, Burrowing Owl Habitat Management Plan (“Management Plan”)

**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY BURROWING
OWL MANAGEMENT PROJECT PROPOSAL**

July 2021 – June 2026

**Santa Clara Valley Audubon Society – Talon Ecological Research Group
Partnership**

Date: March 25, 2021

Submitted to: Edmund Sullivan, Executive Officer
Santa Clara Valley Habitat Agency (SCVHA)
535 Alkire Avenue, Suite 100, Morgan Hill, CA 95037-4128

Subject: Proposed Burrowing Owl Management Project at the RWF, Alviso

Submitted by: Santa Clara Valley Audubon Society & Talon Ecological Research Group

Prepared by: Philip Higgins & Sandra Menzel

Reviewed by: Matthew Dodder



SCVAS

McClellan Ranch Preserve
22221 McClellan Road
95103Cupertino, CA 95014



Talon

105 N 1st Street #424
San Jose, CA

Introduction

Santa Clara Valley Audubon Society (SCVAS) will partner with Talon Ecological Research Group (Talon) to monitor and manage burrowing owls and their habitat at the San José - Santa Clara Regional Wastewater Facility (RWF) bufferlands in Alviso.

Talon has extensive experience with burrowing owl research and conservation management, thus this new partnership with SCVAS is an ideal complement for moving the recovery efforts of burrowing owls at the RWF forward and streamlining conservation efforts.

The work proposed here will be in conjunction with the following Santa Clara Valley Habitat Agency (Habitat Agency) funded projects that Talon will be conducting at this site:

1. Banding both adults and owlets during the breeding season,
2. Supplemental Feeding Project,
3. Juvenile Burrowing Owl Overwintering Project, and
4. Captive Breeding Program with release of owls at RWF and other sites.

Performance Period

July 2021 – June 2026

Project Team

SCVAS

Matthew Dodder – Executive Director

Philip Higgins – Lead Biologist

Sandra Menzel – Lead Biologist

Talon

Philip Higgins – Lead Biologist

Sandra Menzel – Lead Biologist

Ryan Phillips – Biologist

Grant Huber - Biologist

PROJECT PLAN AND SCOPE OF SERVICES

Task 1: Project Management, Coordination, and Reporting

A. Coordinate project activities with the Habitat Agency.

Dodder (SCVAS), Higgins (SCVAS & Talon), and Menzel (SCVAS & Talon) will coordinate all activities with the Habitat Agency.

B. Coordinate site access with the City of San José.

Project Team will notify RWF at least 48 hours in advance of our intent to enter the site via email. Project Team will notify the Computer Room at the RWF upon our arrival at and departure from the site for each visit. Sandra Menzel and/or Philip Higgins will coordinate access to the site depending on what activity is occurring and who is responsible for that activity.

C. Provide reports.

Monthly Reports and an Annual Report will be delivered to the Habitat Agency to provide detailed updates of the work progress. Philip Higgins and Sandra Menzel will prepare these reports.

D. Review Management and Monitoring Plan.

Philip Higgins and Sandra Menzel will review and provide feedback on the Management and Monitoring Plan in the form of a brief report.

E. Recruit and coordinate volunteers.

SCVAS volunteer coordinator Carolyn Knight and Philip Higgins will perform these tasks for their respective organizations.

F. Invoice Habitat Agency.

Matthew Dodder will submit invoices to the Habitat Agency for payment for both SCVAS and Talon staff.

Task 2. Burrowing Owl Surveys and Habitat Management

A. Surveys (Higgins & Menzel)

- The Project Team will conduct monthly burrowing owl surveys in the management area year-round (Figure 1). We will conduct additional focused nest surveys, as needed, during the peak of the breeding season from May through July to enable accurate counts of offspring. Monthly surveys will provide important demographic data, including trends of colony size during the breeding and migratory season, movement patterns, and band identification to determine the age of individuals, mate selections, incestuous relationships, and survival rates. Project Team will conduct transect surveys during the non- breeding

season. When owls have chosen natal burrows and are actively incubating/brooding, we will conduct focused point-count surveys at each burrow to determine reproductive success without disturbing nesting activities. Surveys include at least two breeding season surveys consistent with the South Bay Burrowing Owl Survey Network data collection and documentation protocols.

- The Project Team will provide monitoring results and management recommendations to the Habitat Agency. Higgins and Menzel will provide all relevant results in the monthly and annual reports.
- The Project Team will survey security, fencing, and signage. Surveying of the perimeter fence will occur during the monthly surveys. While conducting transect surveys one individual will walk along the perimeter of the fence to observe and record any damage or openings that would permit human access or predators such as dogs. Any issues regarding the fencing will then be provided to the RWF and the Habitat Agency.

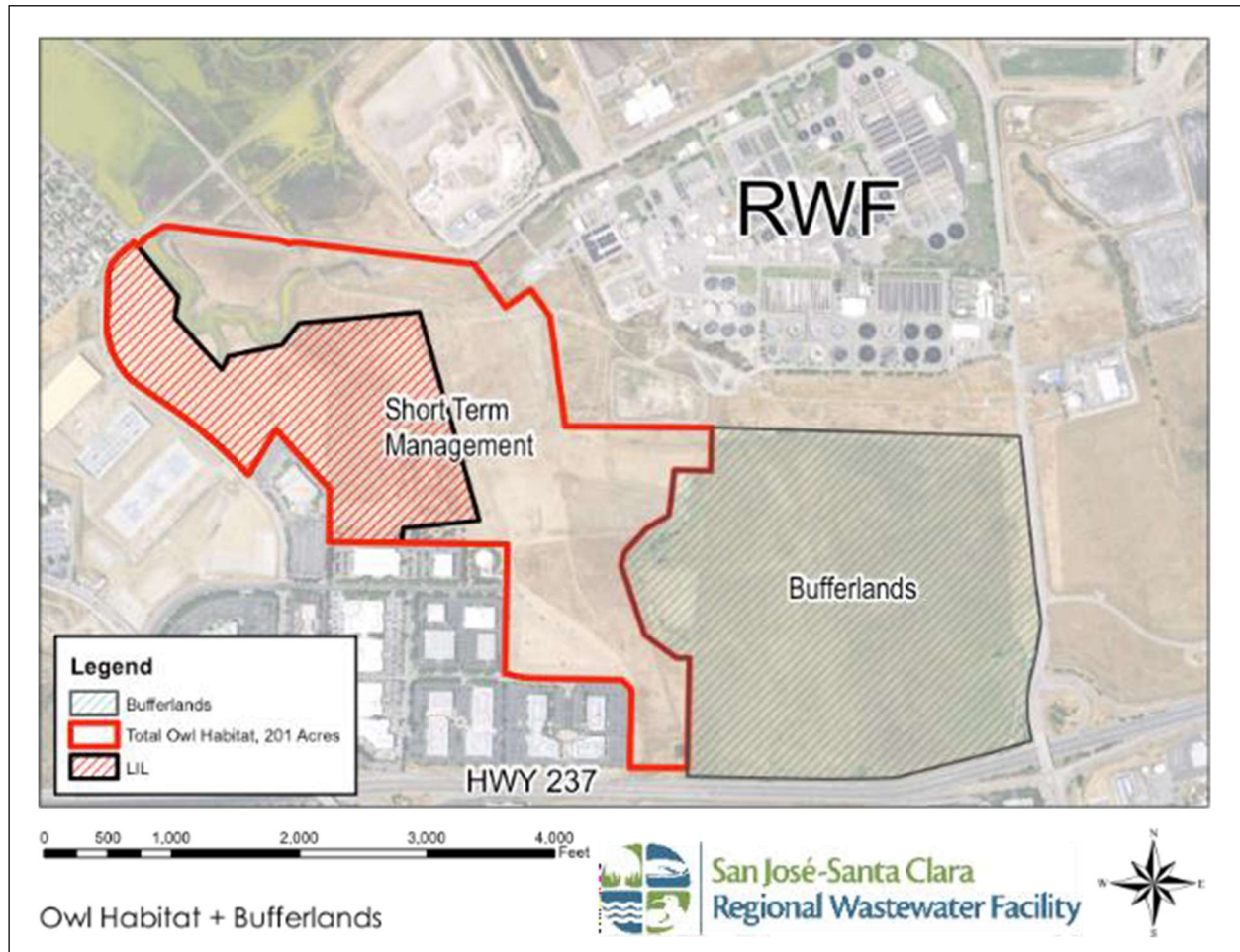


Figure 1. Burrowing owl management area at the San José-Santa Clara Regional Wastewater Facility (RWF) outlined in red. The remainder of the "Bufferlands" to the east is not managed for burrowing owls, but should be surveyed for this species up to four times a year. (LIL = land in lieu)

B. Habitat Management

- The Project Team will assess vegetation height and delineate areas that are too tall for burrowing owls (>6 inches) and therefore require mowing and provide the RWF and Habitat Agency with a map of areas which identify mow and no-mow areas. The Project Team will monitor vegetation height during the monthly surveys of the site to determine the timing of mowing. Philip Higgins will create maps for the City and Habitat Agency. Vegetation within prime nesting areas should be maintained short (<6 inches) year-round, but especially during the breeding season (March-August). Vegetation monitoring will focus on all historically used burrows (both artificial and natural). In addition, all mounds and berms both with artificial burrows and natural ground squirrel burrows will be managed to encourage burrowing owls' usage.
- The Project Team will reduce impacts to Condon's tar plant (which has a CNPS listing of 1B.1) during vegetation management. This species occurs on site and varies in abundance and range from year to year depending on the amount of rainfall and other factors. The former Cisco Mitigation site was partially mitigated for this plant species. We recommend that areas with Congdon's tar plant will not be mowed after ~May 15th to reduce impacts on this plant; as an annual, mowing could reduce flowering/seed production.
- The Project Team will perform maintenance in the immediate area around occupied burrows to ensure vegetation height is >6 inches during the breeding season. We will use handtools and/or weed trimmers.
- The Project Team will create prey refugia to increase burrowing owl prey base. Philip Higgins will evaluate the project site for strategic locations for the installation of prey refugia.
 - Vegetative Islands: We will maintain existing islands, including removal of invasive species and planting new plant starts during the rainy season. Project Team will source plants from our own personal collections. Planting additional vegetative islands is prohibitive because there is no water source for irrigation on site.
 - Rock and Brush Piles: An additional five rock piles and five brush piles would be installed in areas adjacent to the fence line and tall trees (Figure 2) to enhance source populations for prey species for burrowing owls. As previously, the rock and brush piles would be sourced from RWF operations, if and when available, such as construction sites and landscaping projects. Thus, no cost would be involved in the procurement of these materials. The rock and brush piles would be created similar to the existing piles on site.

Prey Refugia:
rock & brush

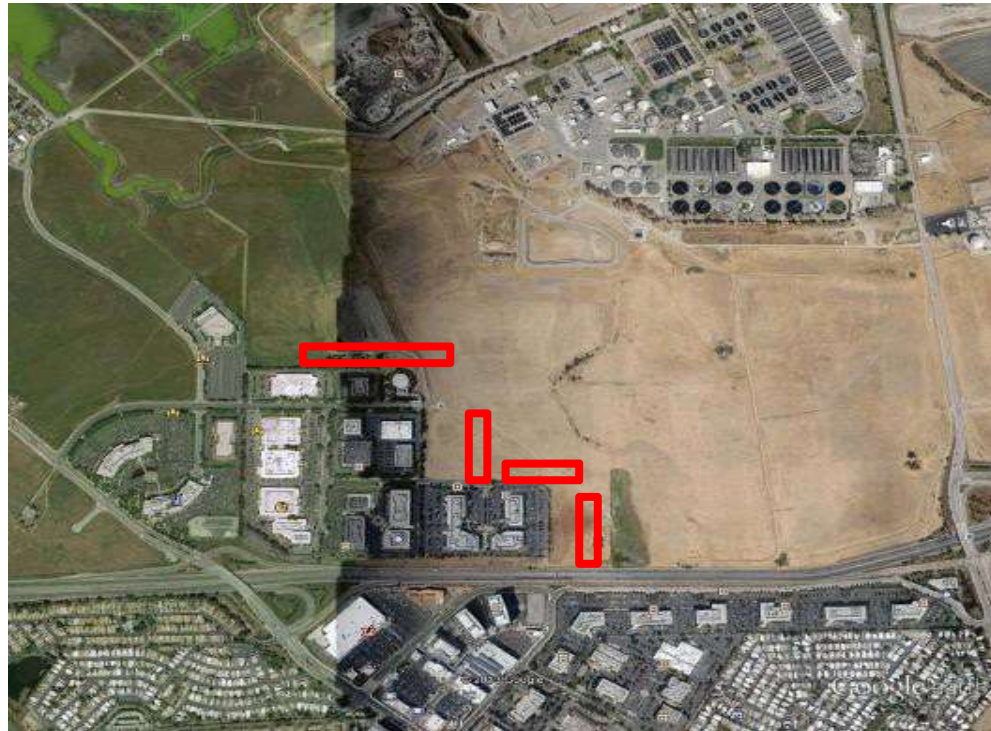


Figure 2: Recommended locations of additional rock and brush piles away from prime nesting areas for burrowing owl, adjacent to the fence line and exiting trees.

- Some areas on site will be left un-mowed to provide prime refugia for rodents and invertebrates, some areas will have increased vegetation management to control invasive weed species, such as pepper weed and tumbleweed, to reduce spread, while other areas will be enhanced to encourage ground squirrel colonization by removing taller, dense vegetation. Not only do ground squirrels provide burrows for burrowing owls, most of the prey items of burrowing owls have been observed within squirrel burrows.

C. Predator Assessment and Management

- The Project Team will monitor owl nests to assess impacts from predators, domestic animals, or human vandalism: Project Team members will assess the abundance and distribution of predators and will provide updates from monthly surveys on nest conditions and negative impacts from predators. Regular observational monitoring for predators will be recorded to determine frequency of occurrence of these species and if any increases in burrowing owl mortality rates are occurring.
- Project Team will identify possible predators and advise the RWF and Habitat Agency on exclusion and trapping efforts, as needed. Menzel and Higgins will address these issues based on regular surveys and observations of the site. Predator species will be recorded and mapped and the data provided to both organizations for review and to

determine the next appropriate steps to take to reduce the impacts from predators.

- The Project Team may propose to remove select palms within the Management area to reduce the potential for future predators to nest in the vicinity of burrows as needed and upon review and approval from the RWF.

D. Perches

- The Project Team will install and maintain short perches for burrowing owls at artificial burrows and occupied natural burrows. The Project Team will perform this task during habitat maintenance or surveys. Wooden stakes under three feet tall will be used to provide perches for owls.

Task 3. Burrow Creation and Maintenance

A. Artificial Burrows

The Project Team members and volunteers will install artificial burrows as needed in areas with low ground squirrel density. Artificial burrow complexes consisting of four artificial burrows within a mound or flush with the surface have proven very successful at the Bufferlands over the past few years.

B. Soil Mounds

In addition to artificial burrows, we suggest creating simple mounds of 20 cubic yards of soil which will be colonized by ground squirrels. Ground squirrels will create natural burrows, providing prime habitat for burrowing owls. Over the past few years approximately 90% of all burrowing owls at the Bufferlands have used burrows, both artificial and natural, located in soil mounds, berms, as well as artificial burrow complexes flush to the ground. The Project Team created these features over the years, starting near the source population of ground squirrels and then extending outward throughout the management area. With the expansion of the range of ground squirrels on site and the provision of artificial burrows, burrowing owls successfully expanded their distribution on site.

- Project Team recommends the installation of four additional artificial burrow complexes (Figure 3). In addition, 2-3 soil mounds of 20 cubic yards will be installed within 30 feet of each artificial burrow complex for colonization by ground squirrels.

**All Burrow
Locations
& Numbers
Since 2003**

Green indicates
Present or
Historical
Nesting success

Red indicates
Owl presence

New artificial
Burrow installation

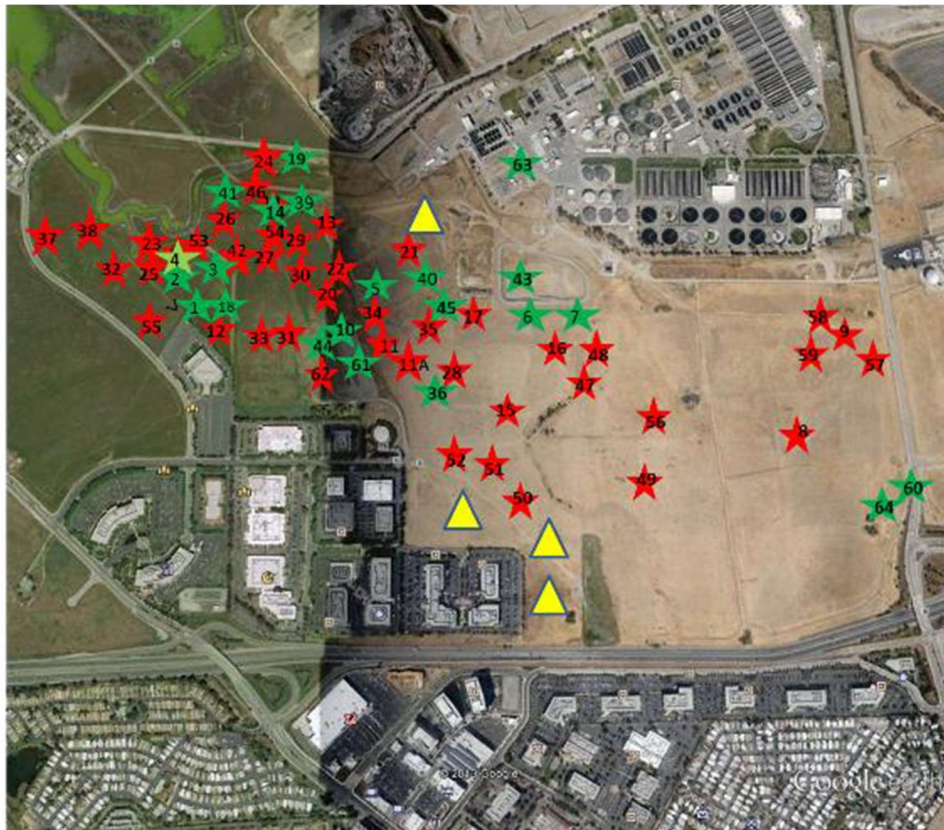


Figure 3. Recommended location of additional artificial burrow installations (yellow triangles) to maximize burrowing owl use of the Management Area (red and green stars show the locations of active burrows over the past three years).

- Non-contaminated soil for the mounds can be acquired for free as done in the past. Several soil haulers operate in the area and will need to provide certification that the soil does not contain toxins (an industry standard). Project Team will provide guidance on the exact location of the soil mounds for soil haulers.
- For each artificial burrow one length of corrugated flexible piping (6-foot long length with a 6-inch diameter) will be needed. A 3-inch wide slot from the bottom of the pipe will be removed, so owls walk on soil and not plastic piping. An irrigation valve box serves as the nesting chamber.
- Maintain the artificial burrow complexes such that entrances are clear and burrow chambers do not become unearthed or flooded. Project Team will organize habitat enhancement days when artificial burrows are maintained and repaired.

Task 4. Burrowing Owl Surveys East of Management Area

- The Project Team will conduct additional burrowing owl surveys east of the management area toward Zanker Road (Bufferlands, Figure 1). Project Team proposes to conduct at least two surveys during the breeding season and two surveys during the migratory period. Project Team have conducted surveys in this area for the last five years to detect any additional breeding pairs, dispersing juveniles, or migratory owls.