

SUPPLEMENTAL

COUNCIL AGENDA: 8-17-10
ITEM: 4.1



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: August 2, 2010

Approved

Date

8/2/10

COUNCIL DISTRICT: City-Wide
SNI AREA: All

SUPPLEMENTAL MEMO

**SUBJECT: SANTA CLARA VALLEY HABITAT CONSERVATION PLAN -
STATUS REPORT**

REASON FOR SUPPLEMENTAL

New information regarding the Western Burrowing Owl has been received since the Committee's discussion of the Santa Clara Valley Habitat Plan (SCVHP) status report (see attached the July 13, 2010, ICF – Jones & Stokes memorandum regarding "Decision Points for Burrowing Owl Conservation Strategy"). This information prompted the Administration to prepare Guiding Principles for Council consideration in addition to the recommendation from the Committee.

RECOMMENDATION

Staff recommends the City Council accept the Draft Guiding Principles for the Burrowing Owl Conservation Strategy and direct staff to continue to dialogue with the Local Partners and Wildlife Agencies regarding potential inclusion of City owned land in the Western Burrowing Owl (WBO) conservation strategy in accordance with the Guiding Principles.

OUTCOME

Council acceptance of the proposed Guiding Principles for the Burrowing Owl Conservation Strategy will indicate the City's willingness to consider the inclusion of City owned public land

for permanent use and management as burrowing owl habitat preserve land. These lands would be considered mitigation for development within San José. The City's final decision would be made in conjunction with consideration of the overall SCVHP adoption anticipated in 2011.

BACKGROUND

The ICF - Jones & Stokes memorandum provides a detailed summary of the issues regarding inclusion of burrowing owls as a covered species in the SCVHP, which could be beneficial for the City. The report outlines the City's long-term burrowing owl mitigation needs and opportunities for meeting those needs within the framework of the SCVHP.

ANALYSIS

The Western Burrowing Owl (WBO) issue is one of the last remaining issues to be resolved before the completion and release of a Public Draft Plan. The Local Partners must make a decision before the end of August whether or not to include burrowing owls as a covered species. The ICF - Jones & Stokes memorandum is self-explanatory. Although there are remaining uncertainties, the burrowing owl conservation strategy approach outlined in the memo is the last remaining option for potentially retaining burrowing owls in the SCVHP as a covered species.

In response to the ICF recommendations on behalf of the Local Partners, the Administration is recommending a set of Draft Guiding Principles, which have been coordinated with other City departments. The Administration would use the Draft Guiding Principles in its continued dialogue with the other Local Partners, consultants and Wildlife Agencies with regard to the City's willingness to consider permanent use and management of City owned land for burrowing owl mitigation and conservation to facilitate development in San Jose. It is highly unlikely that the SCVHP would include burrowing owls as a covered species if the City is not willing to consider use of public lands for permanent burrowing owl conservation. The key WBO conservation strategy benefit to the City is certainty for public and private project mitigation requirements for the next 50 years even if the WBO is listed as an endangered species.

COORDINATION

This project was coordinated with the Airport, Environmental Services and Parks, Recreation and Neighborhood Services Departments, Office of Economic Development, and the City Attorney.

HONORABLE MAYOR AND CITY COUNCIL

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CEQA

Not a project, PP10-069 (a) Status Report.

/s/

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

For questions please contact Darryl Boyd, Principal Planner, at 408-535-7898.

Attachments: ICF-- Jones & Stokes Memorandum

Draft Guiding Principles for the Burrowing Owl Conservation Strategy



Memorandum

Date:	July 13, 2010
To:	Joe Horwedel, City of San Jose
Cc:	Darryl Boyd, City of San Jose Ken Schreiber, Santa Clara Valley Habitat Plan Management Team
From:	Troy Rahmig and David Zippin, ICF International
Subject:	Decision Points for Burrowing Owl Conservation Strategy

Background

One of the most challenging issues facing the Santa Clara Valley Habitat Conservation Plan (VHP) is the long-term conservation of burrowing owls. The conservation of this species is different from and more difficult than other species covered by the Habitat Plan. The reason for this difference and difficulty is that all of the remaining burrowing owl nesting sites, and the sites that hold the most potential for future conservation efforts are in or adjacent to urbanized areas in the South Bay.

The VHP is at a critical time for preparation of a Public Draft Plan. By the later part of August, a decision will need to be made as to whether the Draft VHP will include a burrowing owl conservation strategy. To reach that point, the Local Partners will need to propose a strategy and the Wildlife Agencies (California Department of Fish and Game and the U.S. Fish and Wildlife Service) will need to accept that strategy.

Having a burrowing owl conservation strategy in the VHP is of primary interest to the City of San Jose (San Jose) since all of the remaining burrowing owl nesting pairs, and a notable amount of foraging habitat, occur within San Jose boundaries. At this time it is not certain that the Wildlife Agencies will issue incidental take permits for the burrowing owl based on any conservation strategy. What is clear is that the success of a burrowing owl conservation strategy depends on the ability of San Jose to make commitments of some of its land for the long-term conservation of this species. Therefore to move the issue to a point where the Wildlife Agencies can accept or reject the conservation strategy, a signal from San Jose is needed regarding use of some City lands.

Recommendations

As noted, it is not clear if the VHP's draft burrowing owl conservation strategy will be acceptable to the Wildlife Agencies. Therefore, the recommendation is that the City indicate a series of actions that would be acceptable to the City if the Wildlife Agencies and Local Partners, including the City, can come to agreement on a conservation strategy including an amount of authorized burrowing owl take. The recommended actions include:

- 1) Indicate a willingness to designate the San Jose Airport VOR site and a portion of Guadalupe Gardens as future burrowing owl conservation areas for use under the burrowing owl conservation strategy of the VHP.
- 2) Request staff to determine which, if any, City surplus lands meet the habitat needs of burrowing owls and a willingness to designate those lands as future burrowing owl mitigation sites.
- 3) Request staff to assess how to maximize the use of the City's Water Pollution Control Plant buffer lands (especially Pond A-18) to not only mitigate for the loss of burrowing owl habitat that will result from the build out of the Plant's Master Plan, but to potentially provide a burrowing owl habitat "bank" to mitigate future City and private sector projects through the VHP burrowing owl conservation strategy.
- 4) Indicate a willingness to have City staff examine all City owned parklands and golf courses and create a list of properties where changes in land management could benefit burrowing owls.
- 5) Indicate a willingness to consider, consistent with landfill closure regulations, a policy that allows for the management of closed City landfills to be managed as burrowing owl conservation areas.

Status of the Western Burrowing Owl

The burrowing owl is not currently listed as threatened or endangered by either the State or Federal Wildlife Agencies. California's burrowing owl population has shown a slight decline statewide, but a considerable decline in the Bay Area. Both public and private sector biologists have advised that state listing of the burrowing owl under the California Endangered Species Act could occur within five years. A federal listing is likely much further in the future. If and when listed, the VHP will provide coverage for the burrowing owl under State and Federal regulations. The "no surprises" provision of the VHP means that if and when listed, treatment of the burrowing owl would be based on the VHP conservation strategy and not on new rules and expectations.

City of San Jose's Long-term Burrowing Owl Mitigation Need

Based on analysis conducted for the Habitat Plan, virtually all vacant lands with ruderal or grassland habitat within northern San Jose can have some value for burrowing owls. According to the administrative draft Habitat Plan, if those areas are within 0.5-mile of a documented nest colony they are considered occupied burrowing owl habitat because they provide foraging habitat for burrowing owls that nest nearby. Based on this definition, we have estimated that approximately 200 acres of occupied burrowing owl habitat will be lost to covered activities. Areas lost tend to be small, single parcels. This is based on the assumption that San Jose will be built out as stated in the current General Plan.

The single largest burrowing owl mitigation need that San Jose will face is related to the implementation of the San Jose Water Pollution Control Plant (Plant) Master Plan. The buildout of the Plant Master Plan is not a covered activity under the Habitat Plan and thus will be pursuing mitigation for impacts to burrowing owl habitat separately. This project is critical because there is a finite amount of burrowing owl habitat on the Plant site that can be available as potential mitigation sites. Three alternatives have been identified during the master plan process. Those alternatives would result in the loss of between 210 and 340 acres of existing burrowing owl habitat and conserve between 90 and 155 acres for burrowing owls onsite. We derived these estimates based on the graphics of the alternatives provided on San Jose's "Rebuild the Plant" website. Therefore, these ranges are very preliminary; the California Environmental Quality Act (CEQA) analysis has not occurred yet.

Under all alternatives there will be a net loss of burrowing owl habitat on the Plant site. Therefore, it is likely that San Jose will need additional burrowing owl mitigation, beyond the 90 to 155 acres, once the CEQA process and discussions with the California Department of Fish and Game are completed. In the past the Department of Fish and Game has required a mitigation of 6.5 acres of land for every lost nest site. However, Fish and Game staff has very recently indicated that this standard no longer applies. The Department of Fish and Game has become more sensitive to the link between nesting locations and foraging land around those nest sites. Essentially, a nest site cannot function without adequate foraging habitat. However, a new Fish and Game mitigation standard, while under development, has not yet been approved. During recent communications with the Department of Fish and Game it was noted that for project specific activities (i.e., the Plant Master Plan) they would prescribe mitigation on a project-by-project bases taking into account all aspects of burrowing owl habitat use (nesting, foraging, wintering, dispersal, and migration) and the value of project sites and mitigation sites for the species. If burrowing owl mitigation land is acquired at a rate similar to habitat for other species in the Habitat Plan it would result in the protection of land at a ratio of roughly 2:1 when compared to impacts. Based on this assumption, San Jose would need between 300 and 600 acres of additional off-site mitigation for burrowing owl. Note that this is just an estimate. Once the CEQA analysis is completed for the Plant Master Plan, a more refined estimate could be made.

Based on that assumption we estimate that the total burrowing owl mitigation need for San Jose over the next 50 years would be between 500 and 800 acres. This would include the development of small undeveloped parcels in San Jose under the Habitat Plan and the buildout of the Water Pollution Control Plant.

Valley Habitat Plan Draft Burrowing Owl Conservation Strategy

The draft burrowing owl conservation approach for the Draft Valley Habitat Plan involves a series of strategies:

1. Focus land conservation (land preservation and active burrowing owl-oriented land management) efforts on areas in the northern part of the Study Area (see attached map) where there are burrowing owl nests or the land has been designated for burrowing owl use or is close enough to existing nests to provide near-term expansion of the number of nests.
Areas of interest include:

- San Jose-Santa Clara Water Pollution Control Plant
 - San Jose International Airport
 - San Jose International Airport VOR site
 - Guadalupe Gardens (areas just south of San Jose Airport)
 - Don Edwards National Wildlife Refuge
 - VTA Cerone Bus yard
 - Areas with historic or current burrowing owl mitigation agreements that could be renewed
 - City of San Jose Pond A18
2. Maintain approximately 150 acres of WBO foraging habitat within one-half mile of nest sites. The need for 150 acres of foraging land within one-half mile of nest sites is derived from local burrowing owl research including a Population Viability Analysis prepared for the VHP.
 3. Expand the Habitat Plan's burrowing owl permit area to include South Bay shoreline areas as far north as the Dumbarton Bridge on the west side of the Bay and the City of Fremont on the east side of the Bay.

The expanded permit area addresses two purposes:

- Provide a geographical focus for a coordinated South Bay burrowing owl conservation effort. The VHP Implementation Entity would be responsible for carrying out a coordination strategy including regular meetings with staff from jurisdictions in the area as well as Wildlife Agencies, collecting data and assisting mitigation approaches that address the broader South Bay burrowing owl conservation effort.
 - Provide burrowing owl take authorization for work related to implementing the conservation strategy (e.g. habitat management, handling of owls for research purposes). No other public or private sector covered activities would be part of the expanded burrowing owl permit area.
4. Acquire and maintain habitat intended to facilitate burrowing owl occupancy in southern portions of the County.

The conservation strategy for the burrowing owl is broad and includes a combination of standard conservation actions, such as protection and management of lands, as well as more creative measures, such as having the VHP Implementation Entity take a leadership role in identifying and coordinating a larger South Bay burrowing owl conservation effort, focused burrowing owl population data collection and analysis and potential reintroduction of the species to unoccupied areas. For other covered species, land acquisition is a major component of the conservation strategy. For burrowing owls the protection and management of land is equally important but the high cost of land within their range (i.e., \$1-2 million/acre in urban areas of the South Bay) makes large-scale acquisition of land infeasible. Therefore, purchasing land cannot be a primary component of the burrowing owl conservation strategy. Protecting and managing land for burrowing owls in north San Jose is critical to the success of the Habitat Plan for this species and critical to recovering burrowing owls in the South Bay Area.

Burrowing Owl Conservation on City-Owned Lands

One way to offset the cost of additional land purchase is to dedicate lands that are currently under City ownership as burrowing owl reserves. There are some areas that currently support burrowing owls, have supported burrowing owls in the past, or are within the typical dispersal distance of nest colonies. Most of the current uses on these sites can continue but may need to be modified to ensure they are compatible with providing burrowing owl nesting habitat. Those areas include:

- San Jose International Airport VOR¹ site (~30 acres) – this site would require maintaining burrowing owl compatible grass vegetation with mowing at least twice a year. Some form of permanent protection (i.e., conservation easement) would need to be considered for the site. Site management would require coordination with the San Jose International Airport and management activities could not conflict with the current use of the site by the airport. Because this site is already fenced it has been identified in the Habitat Plan as a potential reintroduction site for burrowing owls in the future.
- Guadalupe Gardens (immediately south of San Jose Airport) (15 – 50 acres currently distinguished in park master plan) – this site would require a management plan that involved mowing and potentially some artificial burrows to attract owls. Ground squirrel control would not be permitted. While 15 acres is discussed in the park master plan as a potential burrowing owl site, there is the potential to manage up to 50 acres for burrowing owls.
- San Jose-Santa Clara Water Pollution Control Plant – the Master Plan buildout of this site will generate its own need for burrowing owl mitigation. Depending on the final land use plan that is analyzed in the CEQA document, the City will likely need to find additional off-site mitigation to fully mitigate the loss of burrowing owl habitat on the site. It is unlikely that there will be excess burrowing owl mitigation available to mitigate other City projects. This could change depending on the future use of Pond A18.
- Pond A18 along the Bay fringe (habitat use undetermined) – this site could be modified to support burrowing owl habitat. Total acreage would vary from less than 50 acres to over 500 acres depending on management. This area is designated for various uses under the three Water Pollution Control Plant Master Plan alternatives, none of which are burrowing owl habitat.
- Any City surplus lands that currently have or could be modified to have burrowing owl habitat potential in the future. An assessment of all City open lands for their value to burrowing owls would be beneficial.

In summary there is potential to permanently protect and manage between 45 and 80 acres of habitat for burrowing owls on City owned lands when the VOR site and Guadalupe Gardens are combined. There is up to an additional 340 acres at the Plant that are slated for other uses under the Plant's Draft Master Plan alternatives, which could be set aside as burrowing owl habitat. This area is currently identified for various uses under the Plant Master Plan alternatives (i.e., light industrial, retail, office R&D). Plus an additional 50 to 500 acres of habitat could be created at Pond A18 pending uses identified in the Water Pollution Control Plan Master Plan.

¹ Very-High Frequency Operational Range, a navigational aid to planes landing at the airport.

Multiple Use Policy

One reason why the burrowing owl population is in decline and why finding mitigation sites is so difficult is because there is little open land remaining in the urbanized South Bay Area. Many of the remaining open lands are being utilized for other public interests (e.g., golf courses, parks), and management of these sites degrades or excludes habitat for burrowing owls. To maximize the open lands that do remain for burrowing owls, as well as other native wildlife species, a more direct multiple use policy is important. This policy would identify management practices that meet the needs of the facility but does not preclude the use of the habitat by burrowing owls. In some cases, the policy would specify management that would directly benefit owls, as long as the other uses of the site are not precluded. This has been done successfully on local golf courses (e.g., Shoreline at Mountain View) and parks with some remaining natural habitat. It would require a property by property assessment for habitat value and existing uses to determine which City owned parklands or golf courses could be utilized as burrowing owl habitat compatible with their current uses, but Meadowfair Park (where owls have nested recently) and Rancho Del Pueblo golf course are examples of lands that meet the criteria.

The greatest opportunity in San Jose for creation of new burrowing owl habitat is on closed landfill sites. These areas support grassland habitat that is suitable for burrowing owls and there are no other public uses permitted on the sites. A key challenge with this idea is how to allow ground squirrel populations to persist (as sources of burrows) without compromising the landfill cap. There have been proposals which include adding several feet of additional overburden to the cap, making it thicker, which would allow the burrowing mammals to persist without compromising the cap. All possibilities should be studied but that cannot occur until the City designates these closed landfill facilities as potential burrowing owl conservation areas. There are currently five closed landfills that could be studied and possibly designated for burrowing owls: Nine Par (30 acres), Singleton Road (80 acres), Roberts (20 acres), Martin Park (4 acres), and Story Road (20 acres). Together these would contribute an additional ~154 acres towards burrowing owl conservation lands in the future.

We appreciate your willingness to entertain these recommendations. The more concrete local commitments can be, the better the possibility of achieving an area wide burrowing owl conservation strategy rather than relying on a project specific mitigation approach. If you have additional questions on any of these recommendations please contact Troy Rahmig (408) 434-2244 or David Zippin (415) 677-7179.

DRAFT

City of San José's Guiding Principles for Possible Inclusion of City Lands in the Santa Clara Valley Habitat Plan Burrowing Owl Conservation Strategy

The following are Guiding Principles for consideration of the inclusion of some City owned lands in the draft Santa Clara Valley Habitat Plan (SCVHP) Western Burrowing Owl (WBO) conservation strategy.

GENERAL GUIDING PRINCIPLES

1. The City needs to know if the draft conservation strategy would be acceptable to the Wildlife Agencies before making a final commitment in conjunction with consideration during the SCVHP adoption process anticipated in 2011.
2. The City needs some assurance that the SCVHP will receive incidental take authorization for WBO with inclusion of the conservation strategy in the SCVHP.
3. Prior to making a final decision, the City needs to know what the California Department of Fish and Game (CDFG) will require for WBO impact mitigation on a project-by-project basis if the conservation strategy is not included (e.g. 6.5 acres/nesting pair) to better understand the potential trade-offs.
4. Public land does have some economic value and should not be assumed to be zero.
5. The first priority for use of City owned WBO habitat mitigation land should be to meet the mitigation needs of the City's public projects. Providing burrowing owl mitigation for the City's private development projects, if sufficient land is available, would be a lower priority. Providing burrowing owl mitigation for the projects of other agencies should only occur after the City's own needs have been met.

AIRPORT LAND

6. Airport owl habitat land, including the infield areas of the airfield as well as the parcel on the north side of De La Cruz Blvd. in the City of Santa Clara, is limited to airport master plan impact mitigation (self mitigating) under the City's adopted Airport Master Plan. Therefore, the SCVHP should not be including it as potentially available for broader mitigation. Approximately 80 acres of Airport property are currently protected as burrowing owl habitat as mitigation for Airport development
7. The City's Guadalupe Gardens Master Plan currently designates the approximately 15 acres bounded by Coleman Ave., I-880, Spring St., and Hedding St. for burrowing owl mitigation/education as one potential land use for that site. Implementation would need to be coordinated with the City's Guadalupe Gardens Technical Committee. Consideration for expanding the available Guadalupe Gardens owl mitigation acres would impact other components of the Master Plan and require review by the Technical Committee and amendment of the Master Plan by both the City and the Federal Aviation Administration.

DRAFT SCVHP BURROWING OWL GUIDING PRINCIPLES

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WATER POLLUTION CONTROL PLANT LAND

8. Since the Water Pollution Control Plant (WPCP) lands are controlled and jointly “owned” by San Jose, Santa Clara, and the tributary agencies, it is not appropriate to consider the buffer lands “City owned land.”
9. There will not be certainty about the proposed use of WPCP buffer lands until a preferred alternative for the Master Plan has been identified, which is expected in April 2011.
10. The WPCP is not a covered activity in the SCVHP at this time and will be pursuing mitigation for its WBO and other biology impacts separately/individually.
11. It should be assumed that there is a finite amount of potential Plant buffer land available and suitable for WBO mitigation that could be used for WBO impacts from the Plant Master Plan or other projects.
12. The first priority for potential WPCP owl mitigation land should be to ensure Plant Master Plan impacts are mitigated (i.e., self-mitigating).
13. Santa Clara and the other tributary agency partners are currently not participants in the SCVHP and may be interested in WBO mitigation opportunities benefitting their agencies (either through direct mitigation or payments).
14. WPCP Pond A-18 is not likely to be available for inclusion in any WBO conservation strategy. It is highly unlikely that Pond A-18 could be converted to burrowing owl habitat. The Plant Master Plan team has received very firm guidance from a number of regulators that Pond A-18 must remain “wet.” It could have industrial functions (e.g., treatment wetlands or algae farms); however, it must be a water-based use (akin to its earlier life as a salt pond).

OTHER CITY LANDS

15. Management of closed City owned landfills should be evaluated and considered for management as permanent burrowing owl conservation acres.
16. City owned parklands and golf courses should be examined for potential changes in management practices which could be beneficial to burrowing owls.

Last revised: August 4, 2010