

Appendix 3.1

**Final Report from the Council Appointed Burrowing Owl
Habitat Committee**

Council
Agency
SOSA

- EXHIBIT M



Date: April 28, 2000
To: City Manager for Council Action
From: Assistant City Manager
Subject: **FINAL REPORT FROM THE COUNCIL APPOINTED BURROWING OWL HABITAT COMMITTEE**

EXECUTIVE SUMMARY

Overview

The Council established the Burrowing Owl Habitat Committee on August 24, 1999. Council Members Mahan, McLemore, and Parle were appointed to serve on the Committee with Vice Mayor McLemore acting as Committee Chair. The Council expressed their desire to have a broad base of community representation on this Council Committee.

The Committee was established under the umbrella of the larger Council discussion involving the proposed development of 103 acres of City-owned property in the North Bayshore Redevelopment Area. Council's policy direction to the Committee was to:

- ◆ Include community stakeholders and provide notification to identified and interested parties to be included in the process;
- ◆ Identify potential pocket habitats within the City. This direction was clarified at their September 14, 1999 meeting where Council directed staff to seek a goal of 103 acres of mitigation habitat within or outside City boundaries, including the proposed 58.5 acres of Byron habitat as part of the 103 acre total;
- ◆ Develop an outreach plan to other regional cities to coordinate habitat creation and maintenance efforts wherever possible;
- ◆ Develop Best Management Practices (BMPs) for maintenance of City properties to prevent habitat impacts where possible;
- ◆ Direct information to be disseminated in normal ways and also on the web site and through other City publications to be developed in conjunction with staff;
- ◆ Report out to Council with Committee recommendations by February 2000.

Committee Response to Council Direction

The bullet points delineated below describe Council direction and the Habitat Committee's response to a number of issues. At the culmination of the Committee's efforts, certain recommendations were made and are listed below. Many of the Committee's recommendations have both Committee and staff concurrence, other recommendations listed in this report are additional ideas suggested by the Committee.

◆ **Include Community Stakeholders**

Nine Committee meetings were held between early November 1999 and the end of March 2000. The meetings were open to the public with attendance by interested citizens and representatives of the following groups or organizations: Loma Prieta Chapter of the Sierra Club, Mission College, Northside Residents Association, People for Open Space, Santa Clara Chamber of Commerce, Santa Clara Police Activities League, Santa Clara Valley Audubon Society, Santa Clara University, and the State Department of Fish and Game (DF&G).

◆ **Identify pocket habitats in Santa Clara**

On March 14, 2000, Council approved the acquisition of 58.5 acres of mitigation credits from the State Department of General Services. The property is located in Byron, approximately 38 miles northeast of Santa Clara. The 58.5 acres were the only contractual habitat mitigation required for the development of the 103 acres of City-owned property addressed in the North Bayshore Environmental Impact Report (EIR). The Committee's efforts have focused on the remaining 44.5 acres needed to meet Council's goal of 103 acres of habitat area. These 44.5 acres are a voluntary commitment by the City, not a legal requirement.

The Committee reviewed 10 potential sites as possible owl habitat. The sites are classified in four categories:

1. City-owned lands;
2. Privately owned land within the City;
3. Land adjacent to the City;
4. Land owned by another local entity.

Exhibit A provides a summary of the property reviewed.

Staff recommends seeking habitat opportunities on three sites:

1. The closed Lafayette landfill adjacent to PAL BMX track. There are approximately 17 acres of potential habitat available in this area. PAL has requested at least 4 acres additional parking for the BMX activity. It is possible to reconfigure the existing BMX track site to allow for additional parking while maintaining approximately 17 acres for habitat. **Exhibit B** is a letter from PAL

addressing this issue. **Exhibit B1** is an aerial view of the existing closed landfill site. Estimated boundaries have been drawn to denote the current footprint of the BMX activity area and the proposed revised footprint. Essentially, the slope areas of the current BMX Track site would be exchanged for an additional parking area along the top of the landfill. Total acreage allocated to the BMX track activity would remain unchanged. Of the four possible habitat configuration options explored by the Committee, the Committee and staff concur that Option 4 (**Exhibit C**) has the best potential to meet both the Committee's and PAL's needs. Cost estimates for creating habitat on the closed landfill are attached (**Exhibit C**).

2. The southerly and easterly slopes of the closed landfill used for siting the two relocated holes of the golf course (**Exhibit C1**). The south slope faces the existing golf course while the east slope faces Lafayette Street. There are approximately 7 acres of potential habitat in this area.
3. A portion of the San Jose/Santa Clara Water Pollution Control Treatment Plant. Santa Clara is an approximate 20% owner of the Plant. Staff believes that the remaining 20.5 acres can be found at the plant. The City's consultant biologist identified an approximate 49-acre portion of the Plant that appeared viable for owl habitat.

The City of San Jose has previously created owl habitat on the plant property. Staff has communicated with the City Manager's Office in San Jose (**Exhibit D**) and received a response from San Jose (**Exhibit E**), encouraging future discussion on the creation of habitat opportunities on plant property.

Summary of Proposed Habitat Land Opportunities

1. Closed landfill adjacent to PAL-BMX track	17.0 acres (in Santa Clara)
2. Closed landfill slopes for the new golf holes	7.0 acres (in Santa Clara)
3. Portion of the SJ/SC Treatment Plant Property	20.5 acres (adjacent to Santa Clara)
4. Byron Conservation Area	58.5 acres (38 miles from Santa Clara)

Total	103 acres

Staff does not recommend exceeding the 103 acres of habitat area requested by Council. The other habitat options listed on **Exhibit A** include the acquisition either in fee or conservation easement of property owned privately, by other government agencies, or in the case of Benicia, by a City Charter defined electric utility enterprise fund. In all cases, it is anticipated that some amount of General Fund payment would be required for habitat acquisition in these areas.

The Santa Clara Chamber of Commerce has provided a letter to the Council requesting that no more land beyond the 58.5 acres required by the North Bayshore EIR be acquired for burrowing owl habitat (**Exhibit F**).

◆ **Develop an outreach plan to other regional cities to coordinate efforts wherever possible.**

Staff has been in contact with a number of South Bay cities the past two years seeking some type of regional approach to the burrowing owl habitat issue. Staff believes the most viable opportunity to create habitat in conjunction with another public agency would be at the San Jose/Santa Clara Treatment Plant. As requested by the San Jose City Manager (**Exhibit E**) staff will be meeting with San Jose to pursue habitat opportunities on Plant property.

◆ **Develop Best Management Practices (BMPs) for the maintenance of City properties to prevent impacts on habitat where possible.**

The City's consultant biologist, Dr. David Plumpton, has created guidelines for the maximization of habitat to the benefit of the burrowing owl. Staff and the Committee recommends using the BMPs for any property determined by Council to be converted to owl habitat (**Exhibit G**).

◆ **Direct information to be disseminated in normal ways and also on the web site and through other City publications in conjunction with staff.**

Over the past 2 years, staff has used the City's web site and the City newspaper to inform the community of activities involved in the development of the North Bayshore area. The issue of burrowing owl mitigation has been discussed. In the future, the web site, City newspaper, Cable Channel 15, and *Mission City SCENES*, can be used to inform citizens of the issues surrounding burrowing owl habitat both in Santa Clara and the South Bay.

In addition to the initial direction provided by Council, the Committee is proposing a number of related recommendations:

- ◆ That the City perform a survey of burrowing owls annually in the general area of the golf course and adjacent City-owned property.
- ◆ That the Council place an annual item on the City/Mission College Liaison Committee Agenda that would have the college provide an update of campus facility development and the effect of that development on the campus' burrowing owl population. Additionally, the College would be requested to share its intermittent survey of the owl population on campus with the City.
- ◆ That the Council direct staff to work with the Department of Fish and Game to create a Safe Harbor Agreement that would "passively encourage" owls to return to the slope areas on the four corners of Tasman and Centennial. The concept of the Agreement would be that the City could receive dispensation from DF&G for the 150 foot/250 foot "no disturbance" requirement imposed around nesting owls and, therefore, continue construction, remodeling or renovation work on any of the

projects that might be developed at any of the four corner sites. Under this concept the nests would have to be reasonably protected by hay bales or some other method that would allow construction to occur. Staff's concerns about this type of an arrangement are called out in the **DISCUSSION** section of this report.

ADVANTAGES/DISADVANTAGES

Council direction has been to find a balance between development opportunities on City-owned property that insure the long-term financial viability of the community and the desire to assist the long-term maintenance of a specie of special concern—the Western Burrowing Owl. The Burrowing Owl Habitat Committee has worked diligently to find that balance. Recommendations contained in this report will facilitate this effort.

The primary disadvantage of creating additional owl habitat beyond DF&G's EIR mitigation requirement is that certain development projects could be negatively impacted by changing State and/or Federal laws or court decisions effecting the area of species protection.

FISCAL/ECONOMIC IMPACTS

By limiting total habitat acreage to 103 acres, using portions of City-owned property and jointly owned Treatment Plant property, the City can develop habitat opportunities at a reasonable cost. Funding for the development of additional burrowing owl habitat is available in the Redevelopment Agency's Capital Improvement Project budget. Staff estimates that habitat development on the 44.5 acres of property listed in this report will cost approximately \$90,000 (\$76,000 for the Lafayette Landfill site and an estimated \$14,000 for the Pollution Control Plant and golf course site). By law, Agency funding can only be used for project construction, not project maintenance. Maintenance of habitat will become an additional annual operating expense to the General Fund, estimated at approximately \$10,000 per year.

RECOMMENDATIONS

Staff recommends that Council:

1. Direct the City Manager to seek the development and maintenance of 44.5 acres of burrowing owl habitat in some combination on the following three sites—the closed Lafayette landfill adjacent to the PAL/BMX Track, two of the four slopes of the relocated golf holes and at the San Jose/Santa Clara Water Pollution Control Plant;
2. Direct the City Manager to work with the City of San Jose in the identification and development of burrowing owl habitat land at the San Jose/Santa Clara Water Pollution Control Plant;

3. Direct the City Manager to adopt and implement Best Management Practices for the long-term maintenance of City-owned designated habitat;
4. Direct the City Manager to communicate the status of the City's efforts in the area of burrowing owl habitat management through use of the City's web site, the City newspaper, the City's Cable Channel 15, and *Mission City SCENES*.
5. Direct the City Manager to work with the Police Activities League to create an amendment to the existing BMX Track lease to redefine the land area included in the lease with the land area remaining at +12 acres.
6. Direct the City Manager to use appropriated Redevelopment Agency funds (939-9011-8030-9048), not to exceed \$90,000, for the development of burrowing owl habitat on the voluntary 44.5 acres.

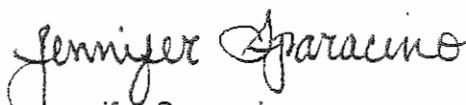
The Committee concurred with the staff recommendations above and added the following recommendations:

7. Direct the City Manager to perform an annual survey of burrowing owls in the general area of the golf course and adjacent City-owned properties.
8. Direct the City Manager to request that the City/Mission College Liaison Committee place an annual item on their meeting agenda to have the College provide the Liaison Committee with an update of facilities development on the campus and the effect of development on the College's burrowing owl population.
9. Direct the City Manager to negotiate a Safe Harbor Agreement with the State of California, Department of Fish and Game that would allow owls to return to the slope areas only along Tasman Drive/Centennial Boulevard and not have the City held to the construction clearance requirements from nesting owls currently enforced by the Department of Fish and Game.



Ronald E. Garratt
Assistant City Manager

Approved:



Jennifer Sparacino
City Manager

REG/sc

Attachments

DISCUSSION

Mowing Only Ordinance

The Committee's deliberations included the concept of a "Mowing Only" Ordinance in the City of Santa Clara. This issue was not brought forward as a recommendation of the Committee or staff, because of the issues outlined below.

The Committee discussed the Council adoption of an ordinance that would require mowing of any bare land sites to encourage owl habitat. Discing would be prohibited by the ordinance. In 1999, the City moved to a "mowing only" policy for all City owned lands. For large properties not maintained by the owner, the County of Santa Clara will first survey for owl nests, mow 250 feet around a nest if one is present, and disc the remainder of the site. Smaller sites are typically mowed. A private property owner who controls weeds on his/her property can currently select any available method for weed abatement.

Staff recommends against any change to the current weed control practices. There are very few large, bare land lots left in Santa Clara. Those owned by the City are already mowed. Many of the remaining bare land parcels are owned by the State (Agnews and Mission College) and, therefore, these owners would be exempt from the adoption of a City ordinance requiring mowing only.

Safe Harbor Agreement

Under the existing Burrowing Owl Mitigation Agreement with the State of California, Department of Fish and Game, the City has the right to passively relocate owls from the 103 acres of City-owned development property, defined in the North Bayshore EIR, in perpetuity or until the Agreement is superceded by case law or higher government authority. Given that the majority of the property contained in the North Bayshore's EIR is intended for long-term ground leasing with terms typically ranging from 55 to 99 years, it has been the City's intent to discourage owl habitation in these areas. The primary method used in discouraging owls to nest in a particular area is to control ground squirrel populations and resultant squirrel holes.

Under the Safe Harbor Agreement the City would seek to "not discourage" owls from returning to selected areas of certain development sites, particularly the slope areas in the four project site area of Tasman Drive and Centennial Boulevard containing the Soccer Park, proposed hotel site and the proposed mixed use site. If owls return to the undeveloped portion of these sites (the slope areas along Tasman-**Exhibit I**) the Agreement would theoretically allow the City to protect the nesting area and continue construction/renovation with a dispensation from the 250 foot clearance rule (February through September), and the 150 foot clearance rule (October through January).

Three of the four sites appear prime for future ground leasing to the private development market. The fourth site is the City managed youth Soccer Park. While a Safe Harbor Agreement would not have to be recorded on the title of any of these properties, the ramifications of the Agreement would definitely have to be disclosed to a potential lessee. Staff believes that this Agreement will "cloud" the typical property rights inherent in a ground lease and negatively effect the economic return from the lease.

Additionally, if the burrowing owl is ever listed as an endangered species, the Agreement would be superceded by Federal law and existing development and site use could be negatively impacted.

Burrowing Owl Habitat Committee List of Potential Pocket Habitat Locations

- Level 1: City-owned land
- Level 2: Privately owned land within the City
- Level 3: Land adjacent to the City
- Level 4: Land owned by any other local entity

Parcel ¹	Level	Acres	Location Description	Vegetation Needed	Vegtn. Mgmt Needed	Suitable as Habitat:		Recommended:	
						Nest	Forage	Committee	Staff
Closed landfill/BMX	1	17	Top of landfill	Yes	Yes	Yes	Yes	Yes	Yes
New golf course holes	1	7	East & south slopes	Yes	Yes	Yes	Yes	Yes	Yes
SJ/SC Treatment Plant	3	20.5	Ruderal/non-native grassland	Existing	Yes	Yes	Yes	Yes	Yes
Total Acreage:		44.5							
Mission College ²	4	1.7	Southeast corner of campus	Existing	Yes	Yes	Yes	N/A	N/A
Open Space Park	1	4.8	South corner	Yes	Yes	No	Yes	No	No
Centennial/Tasman ³	1	2	Slopes on four corners of Tasman at Centennial	Yes	Yes	Yes	Yes	No	No
Benicia Property ⁴	1	100	Not defined	Existing	Yes	Yes	Yes	No	No
Our Lady of Peace Church	2	2	SW corner	Yes	Yes	Yes	Yes	No	No
Radar station	3,4	23.7	Area surrounding radar array	Existing	Yes	Yes	Yes	No	No
Hetch-Hetchy ROW	4	7.7	Between San Tomas Creek & Lick Mill Blvd.	Existing	Yes	No	Yes	No	No

¹ Parcel list does not include City-purchased owl mitigation lands totaling 58.5 acres

² Covered under existing owl habitat management plan (7 year sunset)

³ If "Safe Harbor" agreement approved by Council, it could apply to this parcel

⁴ Additional costs would be incurred in order to use this property as it was paid for by the City's Electric Utility