



Santa Clara Valley Habitat Agency

# Pre-Habitat Plan Projects Impacting Burrowing Owls Policy

## 1. PURPOSE

Prior to the approval of the Santa Clara Valley Habitat Plan (Habitat Plan), state and federal incidental take permits were not required for projects that could result in harm to, harassment of, or mortality of the western burrowing owl (*Athene cunicularia hypugaea*). The bird was afforded protection under the Migratory Bird Treaty Act and is a state species of special concern and a Santa Clara County local species of interest. Before Habitat Plan approval, mitigation for impacts on western burrowing owls was typically addressed in environmental documents prepared under the California Environmental Quality Act (CEQA). Today, the western burrowing owl is a Habitat Plan covered species, and covered projects that could affect this species are subject to the rules, regulations, and policies of the Habitat Plan. The Santa Clara Valley Habitat Agency (Habitat Agency) is charged with implementing federal and state endangered species laws and Habitat Plan conservation actions to ensure the persistence and recovery of all covered species in the Habitat Plan permit area. All public and private covered projects within the Burrowing Owl Conservation Fee Zone will have avoidance, minimization (implementation of Condition 15), and mitigation (payment of the Burrowing Owl Conservation Fee) addressed in their CEQA documents as CEQA mitigation.

The Habitat Agency will undertake a suite of measures aimed at reversing the declining trend of the burrowing owl population in an expanded study area for burrowing owl conservation. The conservation goal is to establish a burrowing owl population that is first stable, then increasing over time, while accounting for normal fluctuations in population levels. The general approach will be to increase the numbers, distribution, and connectivity of burrowing owl colonies in the permit area so that the potential for conservation success is high. Because of the far reaching scope of the conservation strategy for western burrowing owl, extending beyond Santa Clara County, it is important that all projects that could affect western burrowing owl implement a consistent set of avoidance, minimization, and mitigation measures.

Completing CEQA documents can take months or years, and CEQA compliance for many projects was already underway when the Habitat Plan became operative on October 14, 2013. To accommodate any time lag in the processing of CEQA documents, July 31, 2014, was set as a deadline after which projects would be subject to Habitat Plan provisions. Projects with environmental review certified and grading permits secured prior to the deadline are referred to as *pipeline projects*. Commencing August 1, 2014, public and private projects in

the Habitat Plan permit area fall into one of three categories: (1) pre-Habitat Plan projects, (2) pipeline projects, or (3) Habitat Plan projects.

## 2. SCOPE

This policy applies to all public and private pre-Habitat Plan and pipeline projects for which western burrowing owl impacts were addressed in a CEQA document prior to July 31, 2014.

## 3. POLICY

The responsibilities of public or private entities to avoid, minimize, and mitigate impacts on western burrowing owl for pre-Habitat Plan and pipeline projects are dictated by the CEQA documents certified for those projects. Both pre-Habitat Plan and pipeline projects are not subject to the provisions of the Habitat Plan; however, it is recommended that they be consistent with Condition 15 of the Habitat Plan. Condition 15 outlines the responsibilities of covered projects to avoid and minimize impacts on western burrowing owls. It would apply to projects in the following situations.

- a. If the CEQA document for the project's construction does not address burrowing owl eviction and the project proponent needs guidance on this issue, the Habitat Agency recommends that Condition 15 be used for guidance. Condition 15 represents the most current, approved methodology for avoiding and minimizing project impacts on western burrowing owls on project sites.
- b. If the project includes ongoing operations and maintenance (O&M) activities that affect western burrowing owl occupied, potentially occupied, or overwintering habitat, the Habitat Agency recommends that Condition 15 be used for guidance for the reasons stated in Item a, above.

Projects that fall into the above categories may opt to address burrowing owl impacts through the Voluntary Fee Payments Policy (EO-2) found here: <http://scv-habitatagency.org/DocumentCenter/View/345>.

## 4. DEFINITIONS

### Term: Condition 15

**Definition:** This condition incorporates survey, avoidance, and minimization guidelines from the following western burrowing owl conservation plans and other sources pertaining to the study area.

- California Department of Fish and Wildlife's *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game 1995; California Department of Fish and Wildlife 2012).
- City of San José's *Draft Burrowing Owl Habitat Conservation Strategy and Implementation Plan* (City of San José 2000).
- City of Morgan Hill's *Citywide Burrowing Owl Habitat Mitigation Plan* (City of Morgan Hill 2003).
- City of Sunnyvale's *DPW 13-15 Protecting Burrowing Owl Habitat on City Facilities* (City of Sunnyvale 2013).
- Personal communication with Jack Barclay regarding ongoing monitoring efforts in the study area including annual monitoring at San José International Airport.
- Various unpublished reports from survey efforts in the study area.
- Guidance from the California Department of Fish and Wildlife.

The avoidance and minimization process for western burrowing owl as required in this condition is illustrated in Habitat Plan Figure 6-4.

**Term: Expanded Study Area for Burrowing Owl Conservation**

**Definition:** The expanded study area for burrowing owl conservation includes the northern edge of Santa Clara County in portions of the cities of San José, Santa Clara, Mountain View, Milpitas, and Sunnyvale; in Fremont in Alameda County; and a small portion of San Mateo County. The allowable covered activities in this expanded study area are limited only to conservation actions for western burrowing owl.

**Term: Habitat Plan project**

**Definition:** A development project subject to the Habitat Plan. Generally, these are projects receiving local jurisdiction approvals on or after August 1, 2014.

**Term: permit area**

**Definition:** The permit area is the area in which Habitat Plan projects occur. The permit area constitutes those lands within the study area and expanded study area for burrowing owl conservation on which covered activities occur. The permit area lies primarily within southern Santa Clara County. The boundary of the permit area is based on ecological and hydrologic factors along with jurisdictional boundaries. All covered projects and conservation actions will occur in the permit area. The permit area boundary is defined by the following.

- Includes all of the city of San José except Baylands.
- Includes all of the cities of Morgan Hill and Gilroy.
- Includes all of Santa Clara County in the Guadalupe, Coyote, and Pajaro Watersheds.
- Excludes Henry Coe State Park.

**Term: Pipeline project**

**Definition:** A development project, or a portion thereof, which received approval prior to August 1, 2014. A pipeline project is not subject to the Habitat Plan if all of the following apply.

- a. Prior to plan adoption, the project received at least one of the following approved development entitlements with a specified expiration date, including allowed renewals/extensions: site and architectural permit/approval, planned development approval, conditional use approval, or a tentative map.
- b. The project was issued a grading or building permit within 1 year of issuance of the Habitat Plan's state and federal incidental take permits.
- c. The project's environmental review process identified no impacts on any of the Habitat Plan's covered species.

This provision applies only to the portion of a project issued a grading and/or building permit(s) within the 1-year period.

**Term: pre-Habitat Plan project**

**Definition:** A development project, or a portion thereof, for which CEQA review was completed and which received local jurisdiction approvals prior to the October 14, 2013 adoption of the Habitat Plan.

**5. REFERENCES**

California Department of Fish and Game. 1995. Staff Report on Burrowing Owl Mitigation.

California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. March. Available: <<http://www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>>. Accessed: June 24, 2012.

City of Morgan Hill. 2003. Citywide Burrowing Owl Habitat Mitigation Plan. June.

City of San José. 2000. Draft Burrowing Owl Habitat Conservation Strategy and Implementation Plan.