

Open Space and Habitat Commission Minutes
Monday, November 5, 2018
Community Chambers Conference Room, 23 Russell Boulevard, 6:30 p.m.

Commissioners Present: Patrick Huber (Chair), Jason Bone (Vice Chair), Rachel Aptekar, Marc Hoshovsky, Joy Klineberg, Roberta Millstein

Vacant Positions: Two (One Regular, One Alternate)

Commissioners Absent: None

Assigned Staff: Tracie Reynolds, Manager of Leases and Open Space

Council Liaison: Will Arnold (Regular), Lucas Frerichs (Alternate)

1. Call to Order & Roll Call

Commissioner Huber opened the meeting after a quorum was achieved. Commissioner Aptekar arrived at the meeting during Regular Items.

2. Approval of Agenda

On a motion by Commissioner Millstein, seconded by Commissioner Bone, the Commission voted 5-0-1-0 to approve the November 2018 agenda (Ayes – Bone, Hoshovsky, Huber, Klineberg, Millstein; Noes – None; Absent – Aptekar; Abstentions – None).

3. Brief Announcements from Staff, Commissioners, and City Council Liaisons

Commissioner Huber discussed two ways the Commission could engage with others to promote better open space and habitat outcomes. He said the Commission could engage the City’s Parks and Recreation Department about the renovation of the Veterans’ Memorial Center to advocate for more native plants in the landscaping plan. He also said the Commission could engage U.C. Davis about the reclamation of an environmentally contaminated site adjacent to Putah Creek to advocate for better habitat on the reclaimed site.

Commissioner Hoshovsky mentioned that the Putah Creek Council (“PCC”) was conducting a docent training on November 17 at South Fork Preserve. This work is being done under an agreement between the PCC and the City.

4. Public Comment

There was no public comment.

5. Consent Calendar

There was only one item on the consent calendar: approval of the October 1, 2018 regular meeting minutes. On a motion by Commissioner Bone, seconded by Commissioner Hoshovsky, the Commission voted 4-0-1-1 to approve the October 2018 meeting minutes (Ayes – Bone, Hoshovsky, Klineberg, Millstein; Noes – None; Absent – Aptekar; Abstentions – Huber).

6. Regular Items

Discussion Item – Discuss conservation and mitigation measures for the Western Burrowing Owl proposed by the Burrowing Owl Preservation Society

At previous meetings, the Burrowing Owl Preservation Society (“BOPS”) asked the Commission to consider certain protection and conservation measures related to the Western Burrowing Owl and recommend them to the City Council for approval. BOPS representatives were invited to the Commission’s November 2018 meeting but did not attend.

Staff (John McNerney, the City’s Wildlife Biologist, and Tracie Reynolds, the City’s Open Space Program Manager) prepared a report that provided some background and analysis related to each of these proposed protection and conservation measures. The Commission discussed each one and provided comments. The Commission’s comments are included in the revised staff report attached to these minutes as Attachment 1.

Discussion Item – Discuss possible revisions to the 2018-19 Commission work plan

Commissioner Aptekar expressed her desire to include an action item about the 25 agricultural acres the City owns off Mace Boulevard in the Commission’s 2018-19 work plan. She said should would like the Commission to develop a plan for the property and recommend it to the City Council. Ideas discussed include turning the property into a community farm, a habitat area, or a recreation area. The Commission agreed to put this item on the Commission’s December agenda to discuss the action item in greater detail.

7. Commission and Staff Communications

Commission Work Plan

The work plan was discussed during Regular Items.

Upcoming Meeting Date, Time, Items

The next meeting is December 3. Possible agenda items discussed include (1) the 25 agricultural acres the City owns off Mace Boulevard, and (2) detailed reports from the Working Groups.

Upcoming Events

No upcoming meetings were announced.

Working Groups

Ms. Reynolds gave the following working group updates:

- ***Habitat Restoration.*** Ms. Reynolds said the kick-off meeting with Melton Design Group (“MDG”) will be on November 9. The kick-off meeting will start the process to develop landscape design drawings and cost estimates for the habitat restoration project on City-owned land at F Street and Anderson Road. MDG was selected after a competitive solicitation. Ms. Reynolds also said she hoped the draft grant guidelines for habitat restoration projects using Measure O funds will go before the City Council for approval on November 27.
- ***Public Access and Recreation.*** Ms. Reynolds said the City received a temporary encroachment permit number from the Central Valley Flood Protection Board (“Board”) related to public accessibility improvements at South Fork Preserve, which are being partially funded with a state grant. She said the City expects to receive a 10-day letter from the Board soon. She also said the Board would contact the City to address the issue of elderberry removal/relocation, which needs approval from the U.S. Fish and Wildlife Service.

8. Adjourn

The meeting was adjourned at approximately 9:05 p.m.

STAFF REPORT

DATE: November 5, 2018

TO: Open Space and Habitat Commission

FROM: Tracie Reynolds, Open Space Program Manager
John McNerney, Wildlife Biologist

SUBJECT: Measures to Protect the Western Burrowing Owl

Recommendation

This item is informational and no specific Commission action is required at this time.

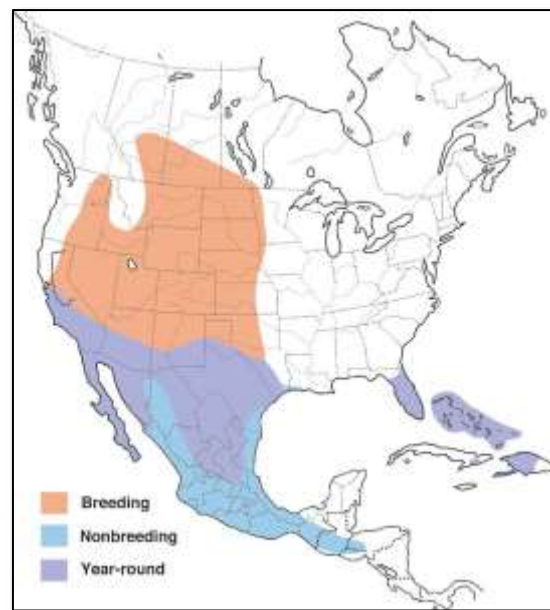
Background and Analysis

The Burrowing Owl Preservation Society (“BOPS”) has asked the Commission to consider certain protection and conservation measures related to the Western Burrowing Owl (See Attachment 1) and recommend them to the City Council for approval. This staff report provides some background and analysis related to each of these proposed protection and conservation measures. Each is addressed below but in a different order than they appear in Attachment 1.

The Western Burrowing Owl (*Athene cunicularia hypugaea*) is not listed as a threatened or endangered species in the United States. It is considered a “Bird of Conservation Concern” by the U.S. Fish and Wildlife Service and a “Species of Special Concern” by the California Department of Fish and Wildlife. It is also one of the 12 “Covered Species” in the Yolo Habitat Conservation and Natural Communities Conservation Plan (“Yolo HCP/NCCP”).

Its habitat stretches from the grasslands and arid regions of western North America to Florida and the Caribbean (See adjacent map). This species is active day and night, nests in underground burrows, and typically nests in small groups.

Over the last 50 years, burrowing owl populations have declined sharply across much of the species' range. Scientists have not been able to pinpoint one factor contributing to this decline. Instead, the decline is likely due to multiple factors: urbanization/loss of habitat, disease, and certain agricultural practices, which obliterate the colonies of burrowing mammals (i.e., prairie dogs and ground squirrels) that the owls depend on for nest sites.



Distribution of Burrowing Owl in the Americas
(Source: Cornell University)

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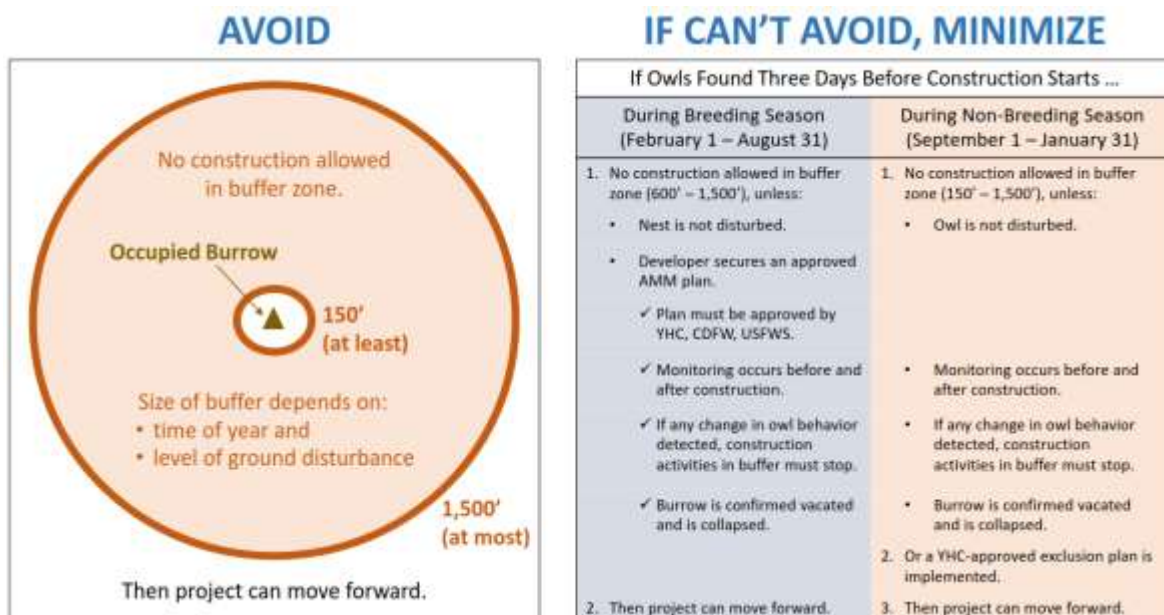
To address this decline in Davis, BOPS has asked the Commission to consider certain protection and conservation measures related to the Western Burrowing Owl (See Attachment 1) and recommend them to the City Council for approval. This staff report discusses each of these measures but in a different order than they appear in Attachment 1. This staff report is organized into the following sections:

1. Owl Habitat on Private Property Slated for Development
2. Owl Habitat on City Property
3. Other Issues (Agricultural Buffers, YHC Mitigation Fees, Mace 25 Acres)

Owl Habitat on Private Property Slated for Development

This section discusses mitigation and conservation measures that apply to development projects proposed on private property where owls and/or owl habitat is found. These measures are required as part of the California Environmental Quality Act (“CEQA”) process to reduce impacts to a “less than significant” level. Before the Yolo HCP/NCCP was adopted, City staff required that CEQA documents include the mitigation and conservation measures recommended for burrowing owls by the California Department of Fish and Wildlife (“2012 CDFW Guidelines”) (See Attachment 2). However, now that the Yolo HCP/NCCP has been adopted, the City (and developers) must follow the mitigation and conservation measures in the Yolo HCP/NCCP (See Attachment 3), which are very similar to the 2012 CDFW Guidelines.

Under the Yolo HCP/NCCP, developers must in general *avoid* any owls found on their property. If they can’t completely avoid the owls (i.e., they must conduct construction activities within the buffer zone), then they must *minimize* the impacts. Minimizing the impacts involves staying out of the buffer zone whenever possible, regular monitoring by a qualified biologist, and stopping construction if the owls change behavior. During the breeding season, developers also must have an Avoidance and Minimization Measures (“AMM”) Plan approved by the Yolo Habitat Conservancy (“YHC”) and the wildlife agencies. A summary of the avoidance and minimization measures *required of developers* in the Yolo HCP/NCCP are summarized in the graphic below:



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As noted in the graphic above, the owls must be left alone at all times of the year and they must be allowed to vacate their nests/burrows on their own naturally. The only time a human intervention is allowed (i.e., an “exclusion” or “passive relocation” plan) is during the non-breeding season. No exclusion/passive relocation is allowed during the breeding season. The developer’s burrowing owl exclusion plan:

1. must include only passive relocation techniques;
2. must be approved by the YHC;¹
3. must be consistent with the 2012 CDFW Guidelines;
4. must be consistent with the YHC’s most up-to-date checklist of passive relocation techniques. These techniques may include the installation of one-way doors by a qualified biologist for a 48-hour period prior to collapsing any potentially occupied burrow; and
5. must include the identification of alternative habitat (either natural or artificial burrows) nearby the development site.²

The Yolo HCP/NCCP states that the YHC may allow other methods of passive or active relocation, based on best available science, if approved by the wildlife agencies. Active relocation of burrowing owls is illegal in California, so it would require special permission from the wildlife agencies.

Violating the requirements in the Yolo HCP/NCCP could jeopardize the YHC’s incidental take permits from the wildlife agencies so the YHC will likely be very diligent in its implementation of these requirements.

Related to this discussion, BOPS has asked the Commission to consider the following burrowing owl protection and conservation measures (See Attachment 1):

- **Biologist qualifications.** BOPS would like the City to require developers to hire “qualified and experienced” burrowing owl biologists, as defined in the 2012 CDFW Guidelines, to do the site surveys and monitoring.
- ✓ **Staff response.** The City is required to follow the standards for “qualified biologist” in the Yolo HCP/NCCP. A “qualified biologist” under the Yolo HCP/NCCP is someone who meets all the minimum criteria in the 2012 CDFW Guidelines. Those criteria include: (1) familiarity with the species and its local ecology; (2) experience conducting habitat assessments and non-breeding and breeding season surveys, or experience with these surveys conducted under the direction of an experienced surveyor; (3) familiarity with the appropriate state and federal statutes related to

¹ The YHC-approved exclusion plan will be based on a template approved by the CDFW.

² The Yolo HCP/NCCP states that: “Artificial burrows will be constructed prior to exclusion and will be created less than 300 feet from the existing burrows on lands that are protected as part of the reserve system.” YHC is currently in discussions with the wildlife agencies about how to comply with this sentence during the first few years of plan implementation when the reserve is not close to project sites.

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burrowing owls, scientific research, and conservation; and (4) experience with analyzing impacts of development on burrowing owls and their habitat (See Attachment 2, page 5). A qualified biologist as defined above is required to conduct the site surveys and monitoring under the Yolo HCP/NCCP.

- **Burrow availability.** BOPS would like the City to require developers to identify available alternative burrows before an exclusion/passive relocation plan is implemented. BOPS would also like the City to require that the exclusion/passive relocation plan be a part of the project's Final Environmental Impact Report ("Final EIR") before it is certified by the City Council.
- ✓ **Staff response.** The City is required to follow the burrow availability requirements in the Yolo HCP/NCCP. An exclusion plan must include the identification of alternative habitat (either natural or artificial burrows) nearby the development site under the Yolo HCP/NCCP. This plan must be approved by the YHC (and be consistent with the 2012 CDFW Guidelines) before it is implemented and is only allowed during the non-breeding season.

~~The Final EIR will include all of the avoidance and minimization measures required under the Yolo HCP/NCCP (See Attachment 3), including the requirement that the developer secure a YHC-approved exclusion plan if the developer wants to do construction within the buffer zone during the non-breeding season. So, at the Final EIR stage of the development process, the developer will be put on notice that a YHC-approved exclusion plan will be required in the future if the developer wants to start construction within the buffer zone during the non-breeding season. Staff does not believe it would be entirely possible to include the exclusion/passive relocation plan in the Final EIR. This is because developers will not know the timing of construction during the EIR process. They will not know precisely when construction will start and whether one or more owls will be present on the development site three days before construction starts. They may be able to avoid the owls altogether and not need an exclusion/passive relocation plan.~~ If the developer does not comply with the Yolo HCP/NCCP, the City can and will revoke or withhold construction permits in order to ensure compliance.

- **Commitment to specific mitigation measures.** BOPS would like the City to require that developers specifically state how they will implement mitigation measures recommended in the 2012 CDFW Guidelines. BOPS notes that some of the language in the 2012 CDFW Guidelines is presented as recommendations rather than requirements. For example, BOPS notes that the developer of the Mace Ranch Innovation Center did not conduct breeding season surveys because they were recommended and not required.
- ✓ **Staff response.** The City is required to follow the specific mitigation measures required under the Yolo HCP/NCCP (as shown in the graphic above). These measures require developers to secure an AMM plan approved by the YHC and the wildlife agencies before construction can occur within the buffer zone during the breeding season. If any change in owl behavior is detected by the qualified biologist,

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then he/she has the authority to stop construction within the buffer zone. Under the Yolo HCP/NCCP, planning-level and preconstruction surveys by a qualified biologist are required.

- **Habitat replacement.** BOPS would like the City to require that developers specifically state the ratio at which they will replace the permanent loss of burrowing owl habitat, not simply state that they will comply with the 2012 CDFW Guidelines. BOPS notes that the 2012 CDFW Guidelines do not specify a minimum habitat replacement ratio. BOPS recommends that developers secure 10 acres of habitat (in Yolo County) for every acre of habitat lost.

BOPS would also like the City to consider all open land, empty lots, and fields within the City as burrowing owl foraging habitat and require that project proponents mitigate for this habitat loss.

- ✓ **Staff response.** The City is required to follow the habitat mitigation requirements in the Yolo HCP/NCCP. Developers are required to pay a “land cover fee” to mitigate for the lost habitat under the Yolo HCP/NCCP. The land cover fee is based on the “area of impact.” The area of impact is defined as “the area where permanent impact occurs, plus an area 50 feet from these effects, but not extending beyond the boundary of the parcel.” (See Chapter 8, page 34, of the Yolo HCP/NCCP). The current land cover fee per acre is \$12,952. So, for example, if a development project destroys 1.5 acres of burrowing owl habitat (including the 50-foot buffer), the developer would have to pay \$19,428 to the YHC as the land cover fee (a 1:1 ratio). The YHC then is required to ~~would~~ use that money to secure permanent burrowing owl habitat elsewhere within Yolo County as part of the YHC’s reserve system. Although the replacement ratio under the Yolo HCP/NCCP is only 1:1, the replacement acres will be much higher quality habitat because they will be part of a larger protected reserve.

Staff will consider replacement habitat on vacant infill sites on a case-by-case basis. ~~does not support the proposal to consider all vacant/fallow sites within the City limits as suitable burrowing owl habitat that developers have to replace.~~ Under the Yolo HCP/NCCP, most urban infill sites are identified as “developed” and are exempt from paying habitat replacement fees (called “land cover fees” under the Yolo HCP/NCCP) because they are too small and/or exposed to human disturbances to be considered suitable habitat. However, the YHC can change a site’s “developed” designation if it determines that the site is actually suitable habitat. In such a case, the developer would have to pay the land cover fees. In the event the YHC and the City disagree on a site’s designation, the City could impose its own land cover fees.

Owl Habitat on City Property

This section discusses land management practices on City-owned property where owls and/or owl habitat is found. The City’s Open Space Program actively maintains about 235 acres of open space for the enjoyment of Davis residents and for wildlife species. These lands include ag buffers, grasslands/uplands habitat, riparian habitat and native plant sites. The largest is the 110-acre South Fork Preserve. As of 2018, these acres were maintained by one full-time employee

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(the City's Open Space Lands Manager), one seasonal temporary part-time worker, and contractors. Their primary job is to manage these lands for wildlife habitat and compatible human recreation. Some of the main work they do includes (1) controlling and/or eliminating invasive plant species, (2) planting native plants, trees and grasses, (3) improving the land's habitat value, (4) correcting problems resulting from vandalism and illegal overnight camping, and (5) removing garbage.

The City's Open Space Program has an annual budget of only about \$500,000. That equates to about \$2,100 per acre managed per year. So, every month, the City has on average only about \$175 to spend on each acre managed.

Related to this discussion, BOPS has asked the Commission to consider the following burrowing owl protection and conservation measures (See Attachment 1):

- **Nest burrow protection.** BOPS would like the City to enhance the surrounding habitat through vegetation management where nest burrows occur on City property. BOPS would like the City to minimize threats, such as ground disturbing activities, harassment, predation by domestic animals, and rodenticide use.
- ✓ **Staff response.** Staff currently do work to enhance the habitat surrounding active nest burrows through vegetation management as much as possible, given budget constraints. During the last breeding season, occupied burrows were identified at the Wildhorse Agricultural Buffer and on the City's old landfill site on Poleline Road. Staff were not able to confirm that these burrows were nest burrows. Nevertheless, staff managed these sites to protect the owls as much as possible. The City would be open to partnering with an outside organization to maintain vegetation around nest burrows. For example, the City and BOPS could enter into a Memorandum of Understanding that would include a scope of work for BOPS to maintain the vegetation around nest burrows.

City municipal codes already prohibit (i) harassment of wildlife, and (ii) domestic animals, including off-leash dogs, in City open space areas. The City does not support the use of second-generation anticoagulant rodenticides ("SGARs") which are extremely harmful to wildlife. In fact, the City Council passed a resolution in 2014 (Resolution No. 14-044) urging retail businesses in the City to stop selling SGARs and urging Davis residents, contractors, property managers, and staff to avoid buying or using such rodenticides. They are not used on the City's open space areas.

- **Artificial burrows.** BOPS would like the City to install artificial burrows on City-owned property where there is otherwise suitable habitat and where natural burrows are absent or unavailable. BOPS would like the City to maintain these artificial burrows and implement a management plan to ensure occupancy.
- ✓ **Staff response.** Staff is not opposed to installing artificial burrows in certain open space areas where natural burrows are absent or unavailable. However, the City does not have the resources to properly maintain these artificial burrows. The City would

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be open to partnering with an outside organization to maintain the artificial burrows. For example, the City and BOPS could enter into a Memorandum of Understanding that would include a scope of work for BOPS to maintain the artificial burrows.

- **Adaptive management.** BOPS would like the City to evaluate the effectiveness of these protection and conservation measures on an annual basis and propose revisions, if necessary, in collaboration with local wildlife advocacy groups. BOPS also would like the City to monitor the owl population and the numbers of acres of mitigation habitat acquired and managed.
 - ✓ **Staff response.** One of the action items in the Strategic Plan is to “establish protocols and procedures for monitoring vegetation and wildlife (i.e., identifying targets to monitor, the techniques to monitor them, and the tools required to collect the desired information).” The City also would like to have better data to evaluate the effectiveness of land management techniques. Toward that end, City open space staff have drafted an avian monitoring plan, which will provide protocols and guidelines for conducting annual photo, vegetation and avian monitoring in City-owned open space areas. These protocols and guidelines, which will be attached to land management plans, will ensure surveys are consistent and comparable over time. The work can be conducted by staff, students, or volunteers [under Memoranda of Understanding](#).

The City is not going to monitor the owl population and owl habitat on habitat mitigation lands. That job falls to the YHC under the Yolo HCP/NCCP.

Other Issues

Agricultural Buffers

BOPS would like the City to require developers to replicate California native prairie on all new agricultural buffers. BOPS notes that developers typically plant trees and shrubs in agricultural buffers, which results in unsuitable habitat conditions for burrowing owls because these features limit foraging opportunities and also provide habitat for predators.

Staff would not support this proposal. Staff would support requiring developers to include some California native prairie habitat on all new agricultural buffers, but it would not support the total elimination of trees and shrubs. The main purpose of the agricultural buffer is to “minimize future potential conflicts between agricultural and nonagricultural land uses and to protect the public health.”³ Trees and shrubs in the agricultural buffer help to mitigate drift of chemical applications and dust from adjacent agricultural operations. In addition, staff believes that these agricultural buffers should support a large diversity of wildlife. This means the buffers should provide a diversity of habitats and a variety of vegetation types/structures.

³ See Municipal Code Section 40A.01.050.

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YHC Mitigation Fees

BOPS would like the City to obtain a Memorandum of Understanding with CDFW to collect burrowing owl mitigation fees to purchase future burrowing owl conservation easements through the YHC.

Staff would not support this proposal. Under the Yolo HCP/NCCP, the YHC is responsible for collecting burrowing owl mitigation fees to purchase burrowing owl conservation easements. The City is required to transfer any land cover fees it collects from developers to the YHC so that it can use that money to secure permanent burrowing owl habitat elsewhere within Yolo County as part of the YHC's reserve system.

Mace 25 Acres

BOPS would like the City to consider converting all or part of the 25 acres the City owns along the Mace Boulevard curve to burrowing owl habitat.

Staff ~~is~~ investigating this proposal ~~further~~. Staff's main concern is long-term maintenance of the site as burrowing owl habitat. Currently, the acres are farmed and the City doesn't spend any money to maintain the site. Owls have been found along the property's border and are currently active in the area. If the site was restored to grasslands, it likely could support owls. However, the site would need to be mowed several times a year to maintain its suitability for owls and the City does not have the resources to manage the site that intensely.

One possibility is the City could sell a conservation easement to the YHC. The site would then become part of the YHC's reserve system and the YHC could help manage the site as burrowing owl habitat. City staff has already asked the YHC to formally evaluate the site's burrowing owl habitat potential. The YHC may not be interested in buying a conservation easement on this site if the YHC evaluation determines the site is not high-quality burrowing owl habitat. Staff also has not discussed this possibility with the City Manager or the City Council. The City Manager and/or the City Council may not support this idea because it would likely cost the City money and it would eliminate the possibility that this site could be used for other purposes in the future. To gauge the City's Council's level of support, staff could ask the City Manager to discuss this idea with individual City Council members in 1x1 meetings.

Attachments:

Attachment 1:	BOPS Conservation and Mitigation Measures
Attachment 2:	CDFW 2012 Guidelines
Attachment 3:	Yolo HCP/NCCP AMM 18