

**CITY OF ALBANY  
WATERFRONT COMMITTEE  
STAFF REPORT**

Meeting date: June 6, 2012  
Prepared by: JB

**ITEM/ 5-2**

**SUBJECT: Report on Burrowing Owl Habitat Project.**

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**STAFF RECOMMENDATION**

For information only.

**BACKGROUND & DISCUSSION**

In 2006, the City Council approved the establishment of a Burrowing Owl habitat on 8 acres of the plateau area of the Albany waterfront (Attachment 1). The habitat is located on property owned the EBRPD Site Plan Attachment 2).

In October 2007, an agreement between the City and EBRPD was executed that detailed the roles of the City and District in the construction and management of the habitat (Attachment 2). In summary, the City was responsible for construction of the habitat and for five years of monitoring after the District accepted the improvements.

The District accepted the construction of the project in August 2008, which began the five-year monitoring period (Attachment 3). The five-year obligation ends in August 2013, at which point, the management of the property will revert to EBRPD, similar to their other properties on the Albany waterfront.

Attached is the most recent monitoring report (Attachment 4). In summary, the monitor has not observed evidence of a Burrowing Owl. The condition of the habitat is appropriate for the owl, although the report recommends that more frequent mowing occur.

**ATTACHMENTS**

1. City Council Resolution #06-13
2. Site Plan
3. City-EBRPD Agreement
4. EBRPD Acceptance
5. Monitoring Report

Revised  
4/3/06

1 **RESOLUTION # 06-13**  
2 **A RESOLUTION OF THE ALBANY CITY COUNCIL APPROVING THE**  
3 **ESTABLISHMENT OF A BURROWING OWL HABITAT AT THE ALBANY**  
4 **PLATEAU**

5 **WHEREAS**, upon historic sightings of burrowing owl at the proposed sports fields  
6 project south of Gilman Avenue, the Initial Study/mitigated negative declaration for that project the  
7 determined that mitigation of a burrowing owl habitat shall occur on-site, or alternatively as an off-  
8 site mitigation; and

9 **WHEREAS**, the Albany Plateau was identified as an appropriate alternative site because  
10 of its size, low grass cover, and consistency with the Eastshore State Park General Plan and  
11 confirmed as an appropriate site by habitat biologists from State Fish and Game, California State  
12 parks and an independent biologist hired by the City of Albany; and

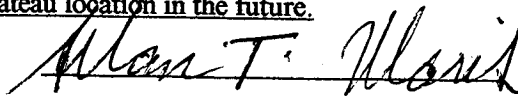
13 **WHEREAS**, the Waterfront Committee held a noticed public meeting on February 2,  
14 2006 where representatives from the City of Berkeley and the independent biologist hired by the  
15 Albany were present; and numerous notices were posted at the Albany Plateau, a front page article  
16 appeared in The Journal, and notices were sent to local interest websites; and

17 **WHEREAS**, the Waterfront Committee received information contained in Exhibit 1  
18 (attached), heard public testimony, and deliberated on the matter, and ultimately recommended that  
19 the City Council approve the establishment of a burrowing owl habitat at the Albany Plateau, with  
20 the proviso that the Joint Powers Agreement Cities (JPA) work with the East Bay Regional Park  
21 District to study alternative possibilities for the habitat, including shifting the location from the  
22 Plateau, or modifying the Plateau location in the future; and

23 **WHEREAS**, on April 3, 2006, the City Council held a public meeting, which was also  
24 noticed through the posting of notices at the Albany Plateau and use of local interest websites; and

25 **WHEREAS**, the City Council considered information contained in the staff report,  
26 including letters from the public, and has heard testimony on this issue.

27 **NOW THEREFORE BE IT RESOLVED THAT**, the Albany City Council:  
28 Approves the establishment of a burrowing owl habitat at the Albany Plateau as described  
29 in Exhibit 1 (attached) entitled "Burrowing Owl Habitat Project at the Albany Plateau" dated  
30 March 10, 2006, with the proviso that the Joint Powers Agreement Cities (JPA) work with East  
31 Bay Regional Park District to study alternative possibilities for the habitat, including shifting the  
32 location from the Plateau, or modifying the Plateau location in the future.



Mayor Allan Maris



# City of Albany

1000 SAN PABLO AVENUE • ALBANY, CALIFORNIA 94706-2295

CITY ADMINISTRATOR  
PH. (510) 528-5710  
FAX (510) 528-5797

CITY ATTORNEY  
PH. (510) 524-9205  
FAX (510) 526-9190

CITY CLERK  
PH. (510) 528-5720  
FAX (510) 528-5797

CITY COUNCIL  
PH. (510) 528-5720  
FAX (510) 528-5797

**COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES**

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- Engineering
- Environmental Resources
- Maintenance
- Planning

PH. (510) 528-5760  
FAX (510) 524-9359

**FINANCE & ADMINISTRATIVE SERVICES**

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FAX (510) 528-2743

**FIRE & EMERGENCY MEDICAL SERVICES**

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1249 Marin Avenue  
PH. (510) 524-9283  
FAX (510) 528-8914

- Friendship Club/Childcare Program  
PH. (510) 524-0135
- Senior Center  
PH. (510) 524-9122  
FAX (510) 524-8940
- Teen Center  
PH. (510) 525-0576

RESOLUTION NO. 06-13

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

this 3rd day of April, 2006, by the following votes:

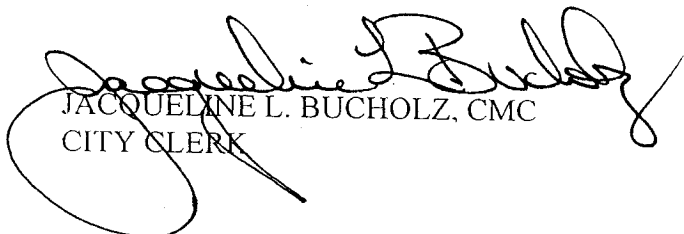
AYES: Council Members Good, Javandel, Lieber & Mayor Maris

NOES: None

ABSENT: Council Member Okawachi

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 4th

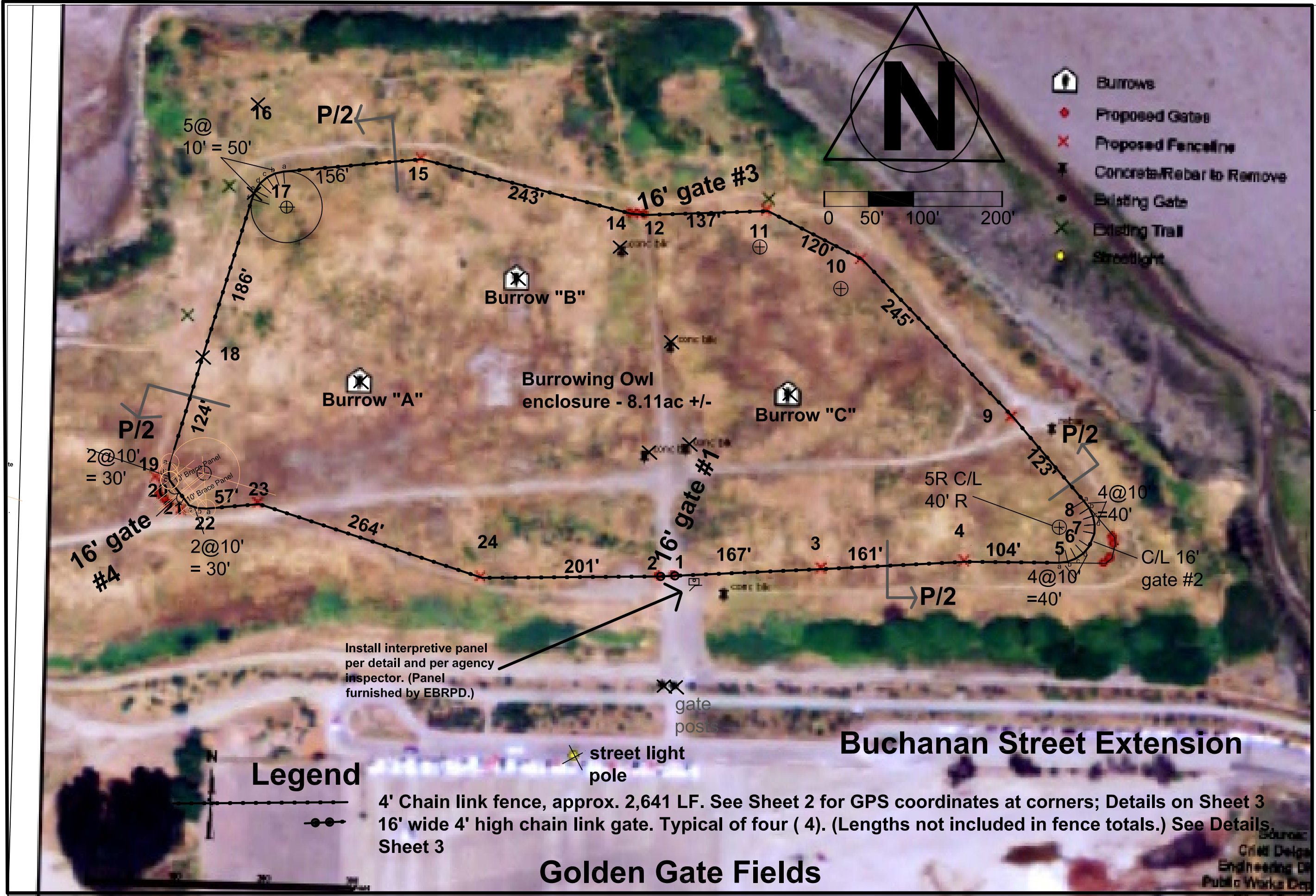
day of April, 2006.

  
JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK

*The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.*



PRINTED ON RECYCLED PAPER



Install interpretive panel per detail and per agency inspector. (Panel furnished by EBRPD.)

### Buchanan Street Extension

### Golden Gate Fields

4' Chain link fence, approx. 2,641 LF. See Sheet 2 for GPS coordinates at corners; Details on Sheet 3  
 16' wide 4' high chain link gate. Typical of four ( 4). (Lengths not included in fence totals.) See Details, Sheet 3

Source:  
 Civil Design  
 Engineering  
 Public Works Dept

# Avocet Research Associates, LLC

*wildlife biology*

PO Box 839, Point Reyes Station, California 94956-0839

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## Memorandum

**Date:** May 25, 2012

**To:** Jeff Bond and Anne Chaney, Community Development, City of Albany

**From:** Jules Evens, ARA

**Re:** Albany Plateau Burrowing Owl Project (Contract #C08-2, Feb. 4, 2008)

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This memorandum summarizes monitoring of the constructed Burrowing Owl nest sites at Albany Bulb by Avocet Research biologists during the 2011 and 2012 nesting seasons (March-May).

### Coverage

We conducted five protocol-level surveys of the site in each year to determine presence or absence of owls, the condition of the habitat and the burrows, and to evaluate the presence or absence of nesting owl. The coverage followed protocols developed by the Santa Cruz Predatory Bird Research Group.<sup>1</sup> As described in those guidelines, surveys were conducted at approximate three-week intervals from mid-March through early-May. The dates of coverage during each year are given in Table 1.

Table 1. Dates of coverage.

3/16/11	dawn		3/22/12	dawn
4/01/11	evening		4/06/12	dawn
4/17/11	evening		4/20/12	evening
5/09/11	dawn		4/30/12	evening
5/23/11	evening		5/16/12	dawn

Surveys were conducted from two hours before sunset to one-half hour after or from sunrise to two hours after sunrise and only when weather was conducive to observing

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<sup>1</sup> <http://www2.ucsc.edu/scpbrg/section1.htm>

# **MEMORANDUM OF AGREEMENT BETWEEN CITY OF ALBANY AND EAST BAY REGIONAL PARK DISTRICT RELATING TO BURROWING OWL HABITAT AND PUBLIC ACCESS IMPROVEMENTS AT ALBANY PLATEAU, EASTSHORE STATE PARK**

The purpose of this Memorandum of Agreement ("Agreement") between the City of Albany ("City") and the East Bay Regional Park District ("District") is to identify and agree upon the mutual obligations and purpose of City's implementation and funding of burrowing owl habitat and public access improvements on the Albany Plateau in Eastshore State Park.

## **RECITALS**

1. The Albany Plateau is located in the City of Albany, Alameda County, California. Albany Plateau is a 20.6-acre portion of Eastshore State Park. The park consists of approximately 2,200 acres of San Francisco Bay shoreline from the City of Richmond south to the City of Oakland.
2. The five-city Joint Powers Agreement (JPA) Cities for the Gilman Street Play Fields project are required to mitigate for burrowing owl impacts resulting from construction of the Play Fields Project in the City of Berkeley, adjacent to Eastshore State Park. The City of Albany is a member of the JPA Cities.
3. The District jointly owns Eastshore State Park with the State Department of Parks and Recreation. The District operates and manages the park through an agreement with the Department of Parks and Recreation.
4. The Department of Fish and Game requires a minimum of 6.5 acres of mitigation for impacts to burrowing owls, plus a suitable buffer in areas where there is public access. This mitigation cannot take place at the Gilman Street Play Fields Project site.
5. The East Bay Regional Park District, City of Albany, City of Berkeley, California Department of Parks and Recreation, and California Department of Fish and Game have all agreed that the Albany Plateau is a suitable location to mitigate impacts to burrowing owls.
6. The Albany Plateau provides suitable habitat for burrowing owls because it contains open contiguous grassland and its use for this purpose is consistent with the Eastshore State Park General Plan.
7. The mitigation project shall be over an 8.1-acre portion of the 20.6-acre Albany Plateau, as depicted on Exhibit "A." The subject mitigation area is henceforth known as the "Burrowing Owl Mitigation Project" or "Project".
8. The Project will provide for 8.1 acres of new burrowing owl habitat and 2,800 feet of roadway around the perimeter of the habitat area sufficient for park maintenance and enforcement purposes. The remaining 12.5 acres of the 20.6-

- acre Albany Plateau will remain available for future informal recreation and/or conservation purposes, as specified in the Eastshore State Park General Plan.
9. The Gilman Street JPA Cities will provide the funding for the Project. On behalf of the JPA Cities, the City of Albany will construct and monitor the Project, and provide funds for District staff to maintain the Project at Albany Plateau for a period of five years.
  10. The Albany City Council unanimously adopted a resolution on April 3, 2006, in support of the Project.
  11. The Berkeley City Council, the CEQA Lead Agency, previously adopted a resolution to approve the Gilman Street Play Fields Project and Mitigated Negative Declaration, which includes the Albany Plateau as the burrowing owl mitigation site.
  12. On May 23, 2006 the District's Board of Directors unanimously adopted a resolution to approve the Project and authorized the District's General Manager to execute an agreement with the City of Albany to provide for construction, monitoring and maintenance of the Project.

## **AGREEMENT**

Therefore, based on the foregoing recitals, City and District agree to cooperate and work in good faith to complete the actions necessary to fulfill the parties obligations under this Memorandum of Agreement, so as to allow City to provide the necessary mitigation for the Gilman Street Play Fields Project.

### **City agrees as follows:**

1. City shall plan, design and construct burrowing owl habitat and public access improvements on the 20.6-acre Albany Plateau at Eastshore State Park, Albany, California. This consists of an 8.1 acre burrowing owl habitat and road improvements. These improvements shall be more specifically described in a Mitigation Monitoring and Maintenance Plan ("Plan") that shall be prepared by City for this Project. City shall provide District with three copies of the Plan for District review and approval
2. City shall prepare and provide District with five sets of the 60% and 100% design drawings and specifications for District review and approval.
3. City shall implement compliance monitoring of habitat improvements for a five year period, commencing at completion of Project construction and District acceptance of City's Project improvements.
4. City shall provide District a sum of \$5,000 per year for a five year period for District maintenance of the Project, commencing upon City's completion of Project construction and District's acceptance of Project improvements. Final

maintenance costs may be revised by mutual agreement upon completion of the final design and specifications.

5. City shall be responsible for obtaining any local, county, state, and federal regulatory approvals and permits to construct, maintain and monitor the Project. The District may be named as co-applicant or co-permittee as the property owner and management agency. The District shall review and approve such applications prior to submittal. City shall be solely responsible for compliance with all permit conditions during construction and monitoring of the Project.
6. City shall obtain a District Encroachment Permit prior to performing any construction or monitoring work on the subject property. The District shall charge a reasonable permit fee in accordance with the anticipated level of effort required to review and inspect the Project, and as necessary, to assure adequate performance of the measures described in this Agreement. This fee shall be determined at the time of Encroachment Permit execution.

**District agrees as follows:**

1. District shall grant access to City to plan, design, construct and monitor the Project for a five-year period, commencing upon execution of this Agreement.
2. District shall assume and be fully responsible for maintaining the Project for five years following construction and District acceptance of Project improvements, as described in a Plan to be developed by the City for the Project.
3. City shall not be responsible for planning, managing and funding any additional habitat and/or capital improvements at the Eastshore State Park other than as provided for in this Agreement and in Plan.
4. The District will cooperate fully with City and perform any acts or execute any documents reasonably necessary to enable City to obtain any local, county, state, and federal regulatory approvals and permits necessary for City to construct, maintain and monitor the Project at the Albany Plateau.

**GENERAL PROVISIONS**

**Entire Agreement**

This Agreement constitutes the entire Agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.



### **Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs.

### **Elected Officials Not to Benefit**

No member of, or delegate to, the City of Albany or East Bay Regional Park District shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

### **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

### **Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

### **No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

### **Applicable Laws**

All activities undertaken pursuant to this Agreement must be in compliance with all applicable local, state and federal laws and regulations.

### **Severability**

In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

**Due Authorization**

The City and District each represent and warrant that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each party has the authority to bind that party.

**Assignment**

This Agreement is not assignable. The parties to this Agreement shall not assign their rights or obligations under this Agreement to any other individual or entity.

**Termination and Amendment of Agreement**

This Agreement shall become null and void on January 1, 2009, if City fails to fully fund and construct the Project. This Agreement may be extended or amended by mutual written agreement of the City and District.

**CITY OF ALBANY**

By: Beth Pollard  
Name: Beth Pollard  
Title: City Administrator  
Date: 10-15-07

**EAST BAY REGIONAL PARK DISTRICT**

By: Pat O'Brien  
Name: Pat O'Brien  
Title: General Manager  
Date: Oct - 3 - 07

**EXHIBIT "A"**

Map depicting the 8.1-acre Albany Plateau Burrowing Owl Mitigation Site



Burrowing Owl Habitat Project  
 City of Albany - Community Development  
 Fence and Service Road Plan:  
 July 17, 2007 - scale: 1"=100' U.O.N. Sheet 1/4



August 5, 2008

City of Albany  
Ann Chaney, Director of Community Development  
1000 San Pablo Avenue  
Albany, CA. 94706

**SUBJECT: BURROWING OWL HABITAT PROJECT  
ALBANY WATERFRONT**

Dear Ms. Chaney,

In accordance with item four in the "City agrees as follows" section of the Agreement between the City of Albany and East Bay Regional Parks District dated October 3, 2007, the District considers the subject project complete and accepts the Project improvements. The date of this acceptance commences the five year period of District maintenance.

Thank you for your cooperation.

Bob Thomas  
Construction Manager

cc. Roger Miller, City of Berkeley  
Brad Olson, EBRPD

Board of Directors

John Sutter  
President  
Ward 2

Ayn Wieskamp  
Vice-President  
Ward 5

Ted Radke  
Treasurer  
Ward 7

Doug Siden  
Secretary  
Ward 4.

Beverly Lane  
Ward 6

Carol Severin  
Ward 3

Nancy Skinner  
Ward 1

Pat O'Brien  
General Manager

# Avocet Research Associates, LLC

*wildlife biology*

PO Box 839, Point Reyes Station, California 94956-0839

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<sup>1</sup> <http://www2.ucsc.edu/scpbrg/section1.htm>

owls outside their burrows; no surveys were done during heavy rain, high winds (> 20 mph), or dense fog.

On each site visit we traversed the fenced-off area and examined each burrow for evidence of occupancy by owls or other animals.

### Findings

No evidence of owl occupancy was found—no individual birds, no pellets, no burrowing owl feathers—in either year of coverage.

Passerines recorded on the site included Rock Pigeon (*Columbia livia*), Mourning Dove (*Zenaida macroura*), Anna's Hummingbird (*Calypte anna*), Northern Flicker (*Colaptes auratus*), Black Phoebe (*Sayornis nigricans*), Say's Phoebe (*Sayornis saya*), American robin (*Turdus migratorius*), European Starling (*Sturnus vulgaris*), Yellow-rumped Warbler (*Setophaga coronata*), American Pipit (*Anthus rubescens*), Western Meadowlark (*Sturnella neglecta*), Song Sparrow (*Melospiza melodia*), Savannah Sparrow (*Passerculus sandwichensis*), House Finch (*Carpodacus mexicanus*), Red-winged Blackbird (*Agelaius phoeniceus*), Brewer's Blackbird (*Euphagus cyanocephalus*), and American goldfinch (*Spinus tristis*). Several aerial insectivores (Barn, Tree, Violet-green, Cliff and Northern Rough-winged swallows) were noted foraging over the site. Avian predators observed in the vicinity include: White-tailed Kite (*Elanus leucurus*), Peregrine Falcon (*Falco peregrinus*), Red-tailed Hawk (*Buteo jamaicensis*), Cooper's Hawk (*Accipiter cooperii*), Barn Owl (*Tyto alba*), Great Horned Owl (*Bubo virginianus*) and Common Raven (*Corvus corax*). Regarding mammals, feral cats were seen on or adjacent to the site on several occasions and ground squirrel scat was present at two of the burrow entrances on nearly every visit. Undoubtedly other rodents are present, though none was detected during our visits.

### Comments

The condition of the burrows over the five years following construction appeared to provide the appropriate habitat characteristics to attract owls. Grasses and ruderal vegetation within the enclosure was mowed periodically keeping the vegetation relatively low, there is some bare-ground on the plateau, and there was no evidence that nest mounds were disturbed by people or dogs. The continuing presence of ground squirrels is a good sign, as owls and ground squirrels always occur together in coastal California.

As in previous reports, our primary recommendation is to mow all the vegetation within the enclosure on a more regular basis, during the growing season to maintain as low a coverage of weeds as possible. The shorter the grass and weeds, and the more availability of bare ground, the more likely that owls will use the site. That said, after five years and zero detections (in addition to the dwindling Bay Area population of this species) it is unlikely that owls will colonize the site.

Several Burrowing Owls have been present at Caesar Chavez Park (1.7 kms SSW) each winter since 2008 when we began our monitoring effort. Those birds do not nest in the Park, but arrive in the fall (August) and leave in the spring (March-April), the regular pattern of dispersal around the shoreline of San Francisco Bay (SFB). Burrowing owls once bred in larger numbers along the SFB shoreline, but have been extirpated from almost all habitat bordering SFB over the last three decades. Recent estimates report 167 pairs<sup>2</sup> remaining in the nine Bay Area counties and most of these are inland, away from the bayshore. Near the shoreline, small populations persisting in the vicinity of the Oakland Airport, in Southern Alameda County, and at Moffett Field Santa Clara County, and near the possibly mouth of Alameda Creek, Fremont. Although the downward population trend in the central and south bay counties has been precipitous<sup>3</sup>, the fact that individuals still winter locally (Caesar Chavez Park) provides the remote possibility that a prospecting pair of owls may occupy the Albany Bulb nest sites in the future. For this to remain a possibility, it is essential that the burrow system be maintained and that the vegetation be mowed regularly, especially early in the growing season (February through early March) when birds may be prospecting.

Other municipalities in Santa Clara and Alameda Counties (Berkeley, San Jose, Palo Alto) and NGOs (Sonoma Land Trust) have recently adapted land-management practices designed to encourage nesting by this beleaguered owl. The recovery of the local population may be beyond reach, but concerted efforts by these various agencies increases the possibility of reestablishing the burrowing owl as a viable member of the SFB wildlife community.

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<sup>2</sup> <http://www2.ucsc.edu/scpbrg/sfbay.htm>

<sup>3</sup> <http://www.fws.gov/desfbay/Archives/Owl/owl.htm>





Figure. 2. Western Burrowing Owl (*Athene cunicularia hypugaea*), by Jules Evens.

The Burrowing Owl is a small owl (19.5-25.0 cm, ~150 g), with long slender tarsi covered with short hair-like feathers that terminate in sparse bristles on the feet. The head is rounded, lacks ear tufts, and is chocolate in color with white streaking or spotting. There are buffy-white margins around the eyes and a white throat patch. Eyes are lemon-yellow and the beak is pale horn-colored. The wings are relatively long and rounded, the tail is short, and both are brown with buff-white barring. The under-tail coverts are white. The dorsal area including head, back, and scapulars are heavily spotted with buffy-white. The belly of adults is buffy and heavily barred with brown on the sides. Juveniles are similar to adults but are unstreaked to lightly streaked, light to brownish buff below, and have more pale secondary coverts.

Burrowing Owls are opportunistic feeders, primarily taking arthropods, small mammals, birds, amphibians and reptiles. Seasonal variability in food habits occurs, with vertebrates occurring more commonly in the winter diet and arthropods occurring more frequently in the summer diet.