

## **APPENDIX D – Comments and Responses**

### **Section 1: Comment Letters Received**

Letter 1 – Burrowing Owl Preservation Society dated October 17, 2016 – Received electronically on October 17, 2016 and by US Mail on October 19, 2016.

Letter 2 – Sierra Club Yolano Group dated October 20, 2016 – Received electronically on October 21, 2016 (*Received after the close of the public review period*)

### **Section 2: Response to Comment Letters**

**Burrowing Owl Preservation Society**  
**A non profit organization dedicated to increasing the burrowing owl population**  
**through education and enhancement of grassland habitat**  
**14841 CR 91 B, Woodland CA 95695**  
[cportman@gmail.com](mailto:cportman@gmail.com)      **530-666-0882**  
[www.burrowingowlpreservation.org](http://www.burrowingowlpreservation.org)

October 17, 2016

City of Davis  
Community Development  
23 Russell Blvd, Suite 2  
Davis, CA 95616

The following comments pertain to the proposed Residence Inn at Mace Ranch, PA 15-70. The physical address of the proposed project is 4647 Fermi Place, Davis, CA. The Initial Study (IS) for the project does not adequately analyze the impacts to wildlife. The Determination, that the project would not have a significant affect on the environment is incorrect. Mitigated Negative Declaration is not an adequate level of CEQA review for this project.

The IS check list, Environmental Factors Potentially Affected, analysis conclusions are incorrect. The correct conclusion for #3 is that the proposed project **would** significantly affect burrowing owls (BUOW), a Species of Special Concern. BUOW have occupied the project site and have successfully reproduced there. Conclusion #11 is incorrect. The project **would** disadvantage long term environmental goals. The BUOW pair at the project site is one of only three remaining pairs within the City of Davis. The long term goal to stop the BUOW population decline and prevent local extinction depends largely on the reproduction of the remaining pairs. Conclusion #12 is incorrect. The exclusion (eviction) of the pair on the project site **will** result in an adverse cumulative impact, i.e. local extinction of a sensitive species.

Bio 1, c. Do not allow reduction of buffer areas. Human disturbance can cause negative affects on BUOW's natural life cycle.

Bio 1, e. Do not allow exclusion during breeding season. It would be invasive for a biologist to determine whether there are eggs in the nest burrow. Do not allow the nest burrow to be disturbed. Owls can lay a second clutch.

The IS does not analyze the impact of evicting owls from their burrow nor the impact of closing all other burrows on the project site. The CEQA process must include analysis of the impacts of eviction.

Excluding an owl from its burrow is a significant impact and **one which cannot be mitigated**. The Staff Report on Burrowing Owl Mitigation (Dept. of Fish and Game, March 7, 2012) says exclusion likely leads to inadvertent take. The following is a quote from the Staff Report.

“The long-term demographic consequences of these techniques have not been thoroughly evaluated, and the fate of evicted or excluded burrowing owls has not been systematically studied. Because burrowing owls are **dependent on burrows at all times of the year** [emphasis ours] for survival and/or reproduction, evicting them from nesting, roosting,

and satellite burrows may lead to indirect impacts or take. Temporary or permanent closure of burrows may result in significant loss of burrows and habitat for reproduction and other life history requirements. Depending on the proximity and availability of alternate habitat, loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows.”

The lead agency must require the project proponent to hire a qualified burrowing owl biologist (as defined in the Staff Report) for all aspects of avoidance and mitigation.

If eviction is the ultimate fate of the owls on the project site, the lead agency should require the project proponent to monitor the evicted owls into the next breeding season. The lead agency should make public, via local news media and on the City’s web site, the BUOW monitoring results, so that the citizens of Davis may know the outcome.

Bio 2- BUOW Habitat Mitigation. The vacant land that the BUOW pair occupies at Fermi Place is 11 acres. Mitigation must include the entire foraging area, which will be unavailable to them during construction and equipment staging.

If the mitigation habitat will be land that owls already occupy, that logically means that the mitigation land would be outside Davis. If the mitigation land is outside Yolo County, then the long term impact to the species and the likelihood that local population could recover is diminished. The IS does not analyze the cumulative impact of evicting the BUOW pair on the project site.

The cumulative impact of the loss (and/or depressed reproduction) of one of three remaining pair within the Davis City limits, significantly decreases the number of future owlets needed to reverse the decline of the Yolo County BUOW population. The BUOW pair and their successful reproduction are essential to prevent extirpation of BUOWs from Yolo County.

There are options besides eviction. Active relocation, capture and moving, the pair to the Burrowing Owl Reserve at Grasslands Park would prevent harm from eviction and their continued reproduction could contribute to the Yolo County population. Artificial burrows could be installed away from construction activities. Modifications to the finished landscaping, such as, not planting trees and short vegetation would benefit the owls. The project proponent could pay into the Yolo Habitat Conservancy for a future BUOW conservation easement in Yolo County.

Thank you for your thoughtful consideration,

Catherine Portman, President



Explore, enjoy and protect the planet

October 20, 2016

Katherine Hess, Ash Feeney  
Community Development Administrator  
City of Davis  
Department of Community Development and Sustainability  
23 Russell Blvd.  
Davis, CA 95616

cc: Catherine Portman, Burrowing Owl Preservation Society

Re: Comments on Marriot Residence Inn IS re: Western Burrowing Owl

We want to thank the city of Davis for the opportunity to comment on the Initial Study for the proposed Residence Inn in Mace Ranch. Our comments will focus on the Biological Resources section and impacts on the western burrowing owl, a species of special concern known to occupy the site.

### **Project Description**

The project proponent, represented by Eric Edelmayer, Jackson Properties, is requesting approval to develop a 120 room, four story extended stay hotel on a vacant 2.69 acre parcel located at 4647 Fermi Place. Building size would be 49 feet 4 inches in height with a footprint of about 22,838 square feet and a total project square footage of about 78,953 square feet. The project neighborhood consists of a mix of light industrial, retail and multi-family uses. The parcel to the south is vacant. The Union Pacific Railroad tracks and Interstate 80 (south of the vacant parcel) and the Mace Boulevard Overcrossing form the east and south boundaries of this corner of the Mace Ranch subdivision.

### **Background**

The western burrowing owl is a State Species of Special Concern and a Federal Bird of Conservation Concern. At least one pair of burrowing owls occupies the site, and this pair is known to have fledged young for at least the last two years.

Once a widely distributed, common grassland bird, the burrowing owl has declined significantly in California in the last half century and has been extirpated over a large portion of its former range in the state. The number of breeding burrowing owls statewide declined

60% from the 1980's to the early 90's and continues to decline at roughly 8% per year. The Institute for Bird Populations documented declines of 8% to 10% in state-wide censuses in 1997 and 2007 and extirpation in 12 counties.

In 2014, a Yolo County census revealed a 76% decline of breeding burrowing owls in the seven years since the 2007 census. Most of the state's burrowing owls are on private property, most of which is under enormous development pressure. The 2014 census found that 67% of burrowing owls in Yolo County were on private property. The burrowing owl is in imminent danger of becoming extinct throughout a significant portion of its range in California. The owls at Fermi Place represent one of only three remaining pairs in the city of Davis.

### **Comments on Inaccurate Conclusions in IS**

Under *Environmental Factors Potentially Affected* in the Environmental Checklist, three of the conclusions are, in our opinion, not accurate.

**Conclusion #3** states that the project would not affect a rare or endangered species. In fact, the project most definitely *would* affect the western burrowing owls on-site and the burrowing owl is a state species of special concern.

**Conclusion #11** states that the project would not cause disadvantage of long-term environmental goals. In fact, the owls at Fermi are one of only three remaining pairs in Davis, and a long-term goal is to stop the population decline and prevent local extinction.

**Conclusion #12** states that the project will not result in adverse cumulative impacts. In fact, eviction of the owls at Fermi Place could contribute to local extinction of a sensitive species.

Thus, the determination that the project would not have a significant effect on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game (now Fish and Wildlife) or U.S. Fish and Wildlife Service is incorrect. The western burrowing owl is considered a sensitive species by both agencies. The assumption is that the project impacts can be mitigated to less than significant. However, the project would have significant impacts on western burrowing owls occupying the site and those impacts could not be mitigated.

Under Response a), it is stated in part that "*Direct or in direct impacts to burrowing owl nests or individuals may occur as a result of construction, and would be considered potentially significant.*" Also that "*Avoidance of the occupied burrowing owl burrow is not possible with the proposed development plan.*"

**BIO-1, Burrowing Owl Surveys and Passive Exclusion.** Here it is stated that, for active burrowing owls on site or within specified buffer distances, certain seasonal restrictions and buffers will be implemented.

- During non-breeding season, a biologist will establish a 160 foot buffer area around the burrow.

- During breeding season, the biologist will establish a 250 foot buffer around the burrow in consultation with CDFW.
- The size of the buffer may be reduced if the biologist determines that no disturbance of the burrowing owls is occurring and depends on location of the burrow relative to the project, project activities, and other project specific factors.
- If the burrow is within the construction zone and it is within the non-breeding season, eviction from the burrow can be implemented.
- If the burrow is within the construction zone and it is within the breeding season, eviction can only take place if the biologist determines that the owl has not begun egg-laying and incubation, clutch was unsuccessful, or juveniles are foraging independently and are capable of independent survival.
- A burrowing owl exclusion plan will be prepared and implemented in accordance with the CDFW Staff Report.
- The plan will require site monitoring sufficient to ensure take is avoided. This will occur as daily monitoring for at least one week to confirm the young have fledged if the eviction occurs immediately at the end of breeding season.

Therefore, it is clear that, regardless of other attempts to avoid disturbance of the owls or their nest, the ultimate action is to be *eviction* of the burrowing owls, as it has already been established that avoidance of the burrow is not possible.

Exclusion (eviction) of burrowing owls from their burrow(s) is a significant impact and one which cannot be mitigated. CDFW's own Staff Report on Burrowing Owl Mitigation (March 7, 2012) admits that exclusion likely leads to take, and the CDFW has no evidence that eviction does not result in take. The following is a quote from the Staff Report.

*“The long-term demographic consequences of these techniques have not been thoroughly evaluated, and the fate of evicted or excluded burrowing owls has not been systematically studied. Because burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Temporary or permanent closure of burrows may result in significant loss of burrows and habitat for reproduction and other life history requirements. Depending on the proximity and availability of alternate habitat, loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction increase predation, increase energy costs, and introduce risks posed by having to find and compete for available burrows.”*

The Staff Report states clearly that eviction likely leads to inadvertent take and furthermore that, depending on “*proximity and availability of alternate habitat*”, loss of access to burrows could lead to reduced reproductive success, increased predation, increased energy usage by the owls, and other risks.

Though the project site contains other small mammal burrows suitable for burrowing owls, and burrows also occur to the north and south, along the Mace overcrossing and railroad tracks, the site is not considered to be high-quality habitat for owls due to its highly disturbed nature, proximity to high-traffic roads and the railroad tracks, and urban surroundings. The

CNDDDB ranks this location as “D”, signifying a small or non-viable population with degraded habitat that is not in good condition and not expected to persist over 5 years.

In other words, eviction of the owls from their burrow(s) at this site would likely result in take, or death of the owls, due to lack of availability of adequate habitat and suitable burrows in the area.

The IS does not adequately assess this impact of evicting the owls from their burrows. This is a significant impact and must be evaluated.

In a brief response to proposed Mitigation Measures under BIO-1:

BIO-1, re reduction of the 250 foot buffer in breeding season: We believe that there should be no reduction of this buffer. How can a biologist determine that no disturbance to the owls is occurring by observing?

BIO-1, re eviction during breeding season: This should not be allowed under any circumstances. For a biologist to determine the owls have not begun laying or there is no incubation or the clutch was unsuccessful would require invasive action, and even if the clutch were unsuccessful, owls have been known to lay a second clutch.

**Bio-2 Burrowing Owl Habitat Mitigation.** *“Prior to implementing passive exclusion, translocation, or issuance of a grading permit, the applicant shall mitigate for the loss of burrowing owl nesting habitat in the amount of six (6) acres. Mitigation lands shall be of greater quality than the existing site with the same or greater number of suitable nest burrows and occupied by nesting burrowing owls”.* As an alternative, we would be amenable to an active relocation of the existing pair of burrowing owls to the Burrowing Owl Preserve in Grasslands Park provided an additional donation is made to the existing endowment for maintenance of this preserve that is equivalent to the costs of otherwise obtaining easements or providing the mitigation as described above.

### **Conclusion.**

Burrowing owls are dependent on their burrows for more than nesting. They depend on their burrows year-round for protection from predators, human activities, and from extreme weather. The act of eviction, especially where there are no near-by suitable, available burrows, will likely result in the death of the owls. Currently, there is no evidence that this is not the case. The land surrounding the project site does have other burrows, but most are unsuitable, unavailable or in unsuitable locations. The Fermi owls are one of only 3 known breeding pairs left in Davis. Burrowing owls are facing extinction in much of our state and have already been extirpated in several counties. Actions taken that will adversely affect the survival of these owls should be carefully analyzed prior to implementation.

There are alternatives to eviction. CDFW will allow active relocations (capture and relocation of burrowing owls) within the context of scientific research or a NCCP conservation strategy. There are several studies that have been done using active relocation techniques, and several of these have been successful in terms of successful breeding and fledging of young burrowing owls for at least 2 to 3 years from time of relocation. This strategy should be

implemented for the Fermi owls, since the surrounding environment is not considered good habitat for burrowing owls due to its highly degraded nature, and there are few available suitable burrows near-by.

Given the importance of the ultimate fate of the burrowing owls at the project site, we believe that a high level of environmental review is required for this project, in particular for evaluating mitigations and alternatives for the relocation of burrowing owls on the site and/or amount and location of habitat to make up for that lost to this project and that intensive study would be necessary to examine a wider range of alternatives for mitigation for impacts on burrowing owls.

We thank you for consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Alan E. Pryor". The signature is written in a cursive, slightly slanted style.

Alan Pryor, Chair

## **RESPONSE TO COMMENTS ON THE PUBLIC DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION FOR THE RESIDENCE INN – MACE RANCH PROJECT AT 4647 FERMI PLACE**

**Burrowing Owl Preservation Society (BOPS) Comment 1-**The Determination, that the project would not have a significant affect on the environment is incorrect. Mitigated Negative Declaration is not an adequate level of CEQA review for this project.

**Response 1 –** The City has reviewed potential impacts on Burrowing Owls in the Mace Ranch/East Davis area on prior projects. The environmental review for the project and the mitigation measures proposed are consistent with prior Environmental Impact Reports and prior Mitigated Negative Declarations that have been prepared for the Mace Ranch and East Davis area. Furthermore, CEQA Guidelines Section 15065(b)1 states that if “prior to the commencement of public review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.”

**Comment 2-**The correct conclusion for #3 is that the proposed project would significantly affect burrowing owls (BUOW), a Species of Special Concern. BUOW have occupied the project site and have successfully reproduced there.

**Response 2 -** Conclusion # 3 on page 7 of 44 of the Initial Study is correct in stating that no ‘*rare or endangered species of animal or plant, or habitat of such species*’ would be affected by the proposed Project. The Burrowing Owl is identified by CDFW as a ‘Species of Special Concern’. The conclusion has been expanded to state ‘*It will not affect rare or endangered species of animal or plant, or habitat of such species. It will not result in a significant effect to any other special status species*’ (***see revised measure at the end of the response to comments***). Furthermore, mitigation measures BIO-1 and BIO-2 reduce impacts to burrowing owl to less than significant.

**Comment 3 -** Conclusion #11 is incorrect. The project would disadvantage long term environmental goals. The BUOW pair at the project site is one of only three remaining pairs within the City of Davis. The long term goal to stop the BUOW population decline and prevent local extinction depends largely on the reproduction of the remaining pairs.

**Response 3-** The Initial Study concludes that with implementation of mitigation measures BIO-1 (Burrowing Owl Surveys and Passive Exclusion) and BIO- 2 (Burrowing Owl Habitat Mitigation) Project impacts to Western Burrowing Owl are less than significant. Mitigation measures BIO-1 and BIO- 2 are based on and are consistent with the Staff Report on Burrowing Owl Mitigation (CDFW 2012). The project is consistent with Chapter 14 (Habitat, Wildlife, and Natural Areas), Section VI (Community Resource Conservation) of the City’s General Plan and with the regional effort to prepare a County-Wide Habitat Conservation Plan (HCP).

**Comment 4-** Conclusion #12 is incorrect. The exclusion (eviction) of the pair on the project site will result in an adverse cumulative impact, i.e. local extinction of a sensitive species.

**Response 4 -** The City of Davis General Plan Chapter 14 (Habitat, Wildlife, and Natural Areas) states the following regarding habitat value in the City.

*'The Davis area does not consist of pristine biological conditions in that most of the non-urbanized land is currently used for agriculture...'*

The City of Davis in cooperation with Yolo County, other cities in Yolo County, and the California Department of Fish and Wildlife are currently working on a County-Wide HCP. The HCP is a 20-year plan that provides a framework for long term habitat conservation. The primary HCP goals are to mitigate the loss of biological resources due to urban development, and to maintain agricultural values in areas where mitigation will occur. The HCP will view the County area as a single large ecological system, the HCP intends to provide for species survival at a level that would not occur within isolated pockets of habitat, like those within the City of Davis.

The City General Plan cumulative impact section addressing biological resources states that *'Biological Resources are looked at from a regional perspective.'* (not only within the City limits). The City General Plan states the following regarding cumulative impacts

*'...Implementing the proposed project would not make a considerable contribution to cumulative impacts on biological resources. Regional growth in the area would likely result in the development of lands that were previously unoccupied or existed in a natural condition. Development of these types of areas could result in significant impacts on biological resources. Many biological species are migratory and depend on expansive areas of habitat. Conversion of these areas could result in substantial effects among plant and animal populations...*

*Each of the communities, as well as the counties, has developed policies to preserve natural open space areas and direct new urban growth in urban areas. The provision of greenbelt areas and preservation areas is an attempt to mitigate for the potential impacts on biological resources. With these policy protections and implementation of the mitigation measures identified in Chapter SH of this EIR, the City's contribution to this impact is less than considerable and the effect is **less than significant.**'*

The Project is consistent with Chapter 14 (Habitat, Wildlife, and Natural Areas), Section VI (Community Resource Conservation) of the City's General Plan and with the regional effort to prepare a County-Wide Habitat Conservation Plan (HCP). With implementation of proposed mitigation measures BIO-1 and BIO-2 the projects impacts are less than considerable and the effect is less than significant.

**Comment 5 -** Bio 1, c. Do not allow reduction of buffer areas. Human disturbance can cause negative affects on BUOW's natural life cycle.

**Response 5** - The *Staff Report on Burrowing Owl Mitigation* (CDFW 2012) provides recommended restricted activity dates and setback distances. Burrowing owls respond differently to human disturbance depending on ambient conditions at the burrow site. Owls within urbanized areas that are subject to human disturbance exhibit a greater tolerance for encroachment. Mitigation measure BIO-1 states that any reduction in buffer would only be allowed if monitoring determines that no disturbance to the burrowing owl is occurring. Mitigation measure sub-bullet (the second sub-bullet) currently specifies that *'During the breeding season (1 February through 31 August), the biologist shall establish a 250 ft ESA around the burrow in consultation with CDFW.'* We have added the CDFW consultation language to the third sub-bullet of BIO-1 for consistency within the measure. (***see revised measure at the end of the response to comments***).

**Comment 6** - Bio 1, e. Do not allow exclusion during breeding season. It would be invasive for a biologist to determine whether there are eggs in the nest burrow. Do not allow the nest burrow to be disturbed. Owls can lay a second clutch.

**Response 6** - Mitigation measure BIO-1 is consistent with the guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012) which states *'The current scientific literature indicates that burrow exclusion should only be conducted by qualified biologists (meeting the Biologist's Qualifications above) during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty by site surveillance and/or scoping.'* The fifth (5<sup>th</sup>) sub-bullet of mitigation measure BIO-1 states that the only time that passive relocation is allowed during the breeding season is if a qualified biologist has verified that owl has not begun egg laying and incubation, clutch was unsuccessful, or juveniles from the occupied burrows are foraging independently and are capable of independent survival. If the qualified biologist is unable to confirm these conditions have been met, then exclusion will not occur.

**Comment 7**- The IS does not analyze the impact of evicting owls from their burrow nor the impact of closing all other burrows on the project site. The CEQA process must include analysis of the impacts of eviction.

**Response 7** – Exclusion of burrowing owls is a direct impact and a potentially significant CEQA impact. The Initial Study states the following regarding impacts to burrowing owl *'Direct or indirect impacts to burrowing owl nests or individuals may occur as a result of construction, and would be considered potentially significant.'* The Initial Study concludes that with implementation of mitigation measures BIO-1 (Burrowing Owl Surveys and Passive Exclusion) and BIO- 2 (Burrowing Owl Habitat Mitigation) Project impacts to Western Burrowing Owl are less than significant. The proposed mitigation requires that research and or monitoring of displaced owls occur to monitor the fate of excluded owls, as consistent with the CDFW Staff Report (CDFW 2012). Measure BIO-2 also states that:

*“A Burrowing Owl Exclusion Plan will be prepared and implemented in accordance with Appendix E of the 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012). Plan implementation will only occur after CDFW approval of the Plan.”*

**Comment 8-** The lead agency must require the project proponent to hire a qualified burrowing owl biologist (as defined in the Staff Report) for all aspects of avoidance and mitigation.

**Response 8-** Mitigation measure BIO-1 has been revised to specify that a ‘qualified’ biologist will conduct all burrowing Owl Surveys and Passive Exclusion (***see revised measure at the end of the response to comments***). Mitigation measure BIO-2 does not require revision because use of a biologist is not required.

**Comment 9-** If eviction is the ultimate fate of the owls on the project site, the lead agency should require the project proponent to monitor the evicted owls into the next breeding season. The lead agency should make public, via local news media and on the City’s web site, the BUOW monitoring results, so that the citizens of Davis may know the outcome.

**Response 9 -** Mitigation measure BIO-1 includes the following monitoring requirements:

*‘The Burrowing Owl Exclusion Plan will require site monitoring prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided. The Applicant will conduct daily monitoring for a minimum of one week to confirm the young of the year have fledged if the exclusion will occur immediately after the end of the breeding season.’*

And,

*‘Prior to the implementation of the approved burrow exclusion plan, the project biologist shall coordinate with CDFW and offer the owls to be included in any current applicable study, if the study is able to exclude the owls in 2017. Should CDFW decline the inclusion of these owls in that study, the developer will implement a monitoring program, via a qualified burrowing owl biologist, as described in the CDFW approved Project Burrowing Owl Exclusion Plan.’*

The language in BIO-1 is consistent with the guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012).

**Comment 10 -** Bio 2- BUOW Habitat Mitigation. The vacant land that the BUOW pair occupies at Fermi Place is 11 acres. Mitigation must include the entire foraging area, which will be unavailable to them during construction and equipment staging.

**Response 10-** The proposed project will result in the loss of 2.69 acres of burrowing owl nesting and foraging habitat. The quality of this habitat is considered poor due to the facts that it’s a small in-fill parcel surrounded by anthropogenic disturbance and hazards associated with adjacent vehicle traffic, illegal dumping, and encroachment of pedestrians and domestic animals. The City believes that a 2.23:1

mitigation ratio (6 acres) of greater quality habitat is reasonable and represents a net benefit to the species.

**Comment 11-** The IS does not analyze the cumulative impact of evicting the BUOW pair on the project site.

**Response 11-** The Project is consistent with Chapter 14 (Habitat, Wildlife, and Natural Areas), Section VI (Community Resource Conservation) of the City's General Plan and with the regional effort to prepare a County-Wide Habitat Conservation Plan (HCP). With implementation of proposed mitigation measures BIO-1 and BIO-2 the projects impacts are less than considerable and the effect is less than significant.

**Comment 12 -** The cumulative impact of the loss (and/or depressed reproduction) of one of three remaining pair within the Davis City limits, significantly decreases the number of future owlets needed to reverse the decline of the Yolo County BUOW population. The BUOW pair and their successful reproduction are essential to prevent extirpation of BUOWs from Yolo County.

**Response 12 –** See Response 4.

**Comment 13 -** There are options besides eviction. Active relocation, capture and moving, the pair to the Burrowing Owl Reserve at Grasslands Park would prevent harm from eviction and their continued reproduction could contribute to the Yolo County population. Artificial burrows could be installed away from construction activities. Modifications to the finished landscaping, such as, not planting trees and short vegetation would benefit the owls. The project proponent could pay into the Yolo Habitat Conservancy for a future BUOW conservation easement in Yolo County.

**Response 13-** The City understands the commenter's interest in conducting active relocation of the burrowing owls and is willing to include the alternative with an authorizing state permit or policy. However, the City is unaware of research or policy that supports translocation as a superior action to passive exclusion. Further, the City understands that translocation is not currently permissible under state law without a scientific collection permit or in the absence of an approved Habitat Conservation Plan.

Mitigation measure BIO-1 includes the following action that addresses alternatives to passive exclusion:

- *The developer may choose to work with burrowing owl researchers to translocate any owls found on the Project property, in-lieu of exclusion, as long as such translocation is approved by the California Department of Fish and Wildlife with the appropriate permits. Translocation of burrowing owls would be completed prior to any soil disturbance or construction activity on the site.'*

Mitigation measure BIO-2 specifies that mitigation acres '*may be acquired at a CDFW approved burrowing owl mitigation or conservation bank or permanently protect private lands that provide suitable nesting burrowing owl habitat. Use of private lands for burrowing owl mitigation will require recordation of a conservation easement, a burrowing owl habitat*

management plan, and establishment of an approved endowment to fund for the perpetual management activities.”

REVISED MITIGATION (~~strike through~~ text to be deleted, **bold italic** text to be inserted)

**BIO-1. Burrowing Owl Surveys and Passive Exclusion**

- *For active burrowing owl burrows on-site or within specified buffer distances, the following seasonal restrictions and buffer distances shall be implemented:*
  - *During the non-breeding season (1 September through 31 January), the **qualified** biologist shall establish a 160 ft environmental sensitive area (ESA) around the burrow.*
  - *During the breeding season (1 February through 31 August), the **qualified** biologist shall establish a 250 ft ESA around the burrow in consultation with CDFW. Based on the existing level of disturbance on site and the close proximity of existing transportation, retail, commercial, and residential land uses a 250 buffer is sufficient to protect active burrowing owl burrows.*
  - *The size of the ESA may be reduced if, **in consultation with CDFW**, the **qualified** biologist monitors the construction activities and determines that no disturbance to the burrowing owl is occurring. Reduction of ESA size depends on the location of the burrow relative to the project, project activities during the time the burrow is active, and other project-specific factors.*
  - *If the burrow is located within the construction zone and it is during the non-breeding season, the burrowing owl can be passively excluded from the burrow using one-way doors, as described in the Exclusion Plan of Appendix E of the Staff Report on Burrowing Owl Mitigation (CDFW 2012).*
  - *If the burrow is located within the construction zone and it is during the breeding season, the burrow owl can only be passively excluded if it has been confirmed by a qualified ~~burrowing owl~~ biologist that the owl has not begun egg laying and incubation, clutch was unsuccessful, or juveniles from the occupied burrows are foraging independently and are capable of independent survival.*
- *A Burrowing Owl Exclusion Plan will be prepared and implemented in accordance with Appendix E of the 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012). Plan implementation will only occur after CDFW approval of the Plan.*
- *The Burrowing Owl Exclusion Plan will require site monitoring prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided. The Applicant will conduct daily monitoring for a minimum of one week to confirm the young of the year have fledged if the exclusion will occur immediately after the end of the breeding season.*
- *Prior to the implementation of the approved burrow exclusion plan, the ~~project~~ **qualified** biologist shall coordinate with CDFW and offer the owls to be included in any current applicable study, if the study is able to exclude the owls in 2017. Should CDFW decline the inclusion of these owls in that study, the developer will implement a*

*monitoring program, via a qualified ~~burrowing owl~~ biologist, as described in the CDFW approved Project Burrowing Owl Exclusion Plan.*

**BIO- 2. Burrowing Owl Habitat Mitigation**

- *Prior to implementing passive exclusion, translocation, or issuance of a grading permit, the applicant shall mitigate for the loss of burrowing owl nesting habitat in the amount of six (6) acres. Mitigation lands shall be of greater quality than the existing site with the same or greater number of suitable nest burrows and occupied by nesting burrowing owls.*

*Mitigation acres may be acquired at a CDFW approved burrowing owl mitigation or conservation bank or permanently protect private lands that provide suitable nesting burrowing owl habitat. Use of private lands for burrowing owl mitigation will require recordation of a conservation easement, a burrowing owl habitat management plan, and establishment of an approved endowment to fund for the perpetual management activities. The applicant may use the permanent protection of Swainson's hawk foraging habitat and/or the purchase of Swainson's hawk foraging credits to satisfy this requirement, provided CDFW verifies that those lands and proposed uses are suitable for burrowing owl.*

**Sierra Club Yolano Group (SCYG) Comment 1** - Conclusion #3 states that the project would not affect a rare or endangered species. In fact, the project most definitely *would* affect the western burrowing owls on-site and the burrowing owl is a state species of special concern.

**Response 1** – See Response 2 to BOPS

**SCYG Comment 2** - Conclusion #11 states that the project would not cause disadvantage of long-term environmental goals. In fact, the owls at Fermi are one of only three remaining pairs in Davis, and a long-term goal is to stop the population decline and prevent local extinction.

**Response 2** – See Response 3 to BOPS

**SCYG Comment 3** - Conclusion #12 states that the project will not result in adverse cumulative impacts. In fact, eviction of the owls at Fermi Place could contribute to local extinction of a sensitive species.

**Response 3** – See Response 4 to BOPS

**SCYG Comment 4** - The IS does not adequately assess this impact of evicting the owls from their burrows. This is a significant impact and must be evaluated.

**Response 4** – See Response 7 to BOPS

**SCYC Comment 5** - BIO-1, re reduction of the 250 foot buffer in breeding season: We believe that there should be no reduction of this buffer. How can a biologist determine that no disturbance to the owls is occurring by observing?

**Response 5** – See Response 5 to BOPS

**SCYC Comment 6** - BIO-1, re eviction during breeding season: This should not be allowed under any circumstances. For a biologist to determine the owls have not begun laying or there is no incubation or the clutch was unsuccessful would require invasive action, and even if the clutch were unsuccessful, owls have been known to lay a second clutch.

**Response 6** – See Response 6 to BOPS

**SCYC Comment 7** - Bio-2 Burrowing Owl Habitat Mitigation. *“Prior to implementing passive exclusion, translocation, or issuance of a grading permit, the applicant shall mitigate for the loss of burrowing owl nesting habitat in the amount of six (6) acres. Mitigation lands shall be of greater quality than the existing site with the same or greater number of suitable nest burrows and occupied by nesting burrowing owls”*. As an alternative, we would be amenable to an active relocation of the existing pair of burrowing owls to the Burrowing Owl Preserve in Grasslands Park provided an additional donation is made to the existing endowment for maintenance of this preserve that is equivalent to the costs of otherwise obtaining easements or providing the mitigation as described above.

**Response 7** – See Response 13 to BOPS

**SCYC Comment 8** - We believe that a high level of environmental review is required for this project.

**Response 8** – See Response 1 to BOPS