

DRAFT PLANNING AGREEMENT

**Calaveras County,
[Cities??]
the California Department of Fish and Game, and
the United States Fish and Wildlife Service**

[Other Federal Agencies?]

regarding the

**Calaveras County
Natural Community Conservation Plan and
Habitat Conservation Plan**

June 2006

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DRAFT

Calaveras County NCCP/HCP Planning Agreement

This Planning Agreement regarding the Calaveras County Natural Community Conservation Plan and Habitat Conservation Plan (“Planning Agreement”) is entered into as of [the Effective Date] by and among Calaveras County, the California Department of Fish and Game (“DFG”) and the United States Fish and Wildlife Service (“USFWS”). These entities are referred to collectively as “Parties” and each individually as a “Party.” DFG and USFWS are referred to collectively as “Wildlife Agencies.”

1. Definitions

Terms used in this Planning Agreement that are defined in the Natural Community Conservation Planning Act will have the meanings set forth in Fish and Game Code Section 2805. The following terms as used in this Planning Agreement will have the meanings set forth below.

- 1.1. “Board” means the Board of Supervisors of the County of Calaveras.
- 1.2. “CEQA” means the California Environmental Quality Act, Public Resources Code, Section 21000, *et seq.*
- 1.3. “CESA” means the California Endangered Species Act, California Fish and Game Code, Section 2050, *et seq.*
- 1.4. “Cities” means the governments of the cities of [].
- 1.5. “County” means the government of the County of Calaveras.
- 1.6. “Covered Activities” means the activities that will be addressed in the NCCP/HCP and for which the County will seek an NCCPA take permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 of the federal Endangered Species Act (“FESA”).
- 1.7. “Covered Species” means those species, both listed and non-listed, conserved and managed under an approved natural community conservation plan/habitat conservation plan and that may be authorized for take.
- 1.8. “FESA” means the federal Endangered Species Act, title 16, U.S.C., Section 1530, *et seq.*
- 1.9. “Habitat Conservation Plan” or “HCP” means a plan prepared pursuant to Section 10 of FESA.

1.10. "Implementing Agreement" or "IA" means the agreement required pursuant to Fish and Game Code Section 2820, subdivision (b) and authorized under 14 U.S.C. Section 1539(a)(2)(B) that will define the terms for implementing the Plan.

1.11. "COUNTY Parties" means the local member agency signatories to this Planning Agreement including the County of Calaveras [and the cities of ...], as members of the COUNTY and individual land use agencies. COUNTY Parties shall also include representation from [list other agencies such as the water district]. **Note: If other agencies such as cities, special districts or the water agency with either land use authority or land management authority want to actively participate, it may be worth considering a JPA or MOU for "County Parties."**

1.12. "Natural Community Conservation Planning Act" or "NCCPA" means Fish and Game Code, Section 2801, *et seq.*

1.13. "NCCP/HCP" means the joint natural community conservation plan and habitat conservation plan.

1.14. "NEPA" means the National Environmental Policy Act, title 14, U.S.C., section 4321, *et seq.*

1.15. "Planning Agreement" shall mean this Planning Agreement, unless otherwise noted.

1.16. "Planning Area" means the geographic area the Calaveras County Habitat/Natural Community Conservation Plan proposes to cover in the NCCP/HCP as described in Exhibit A.

1.17. "Planning Subareas" means those geographic areas that are smaller units of the planning area that may each have a specific function or jurisdictional boundary within the permitted plan.

1.18. "USFWS" means the United States Fish and Wildlife Service.

1.19. "Wildlife Agencies" means the California Department of Fish and Game and the U.S. Fish and Wildlife Service.

2. Background

2.1. Natural Community Conservation Planning Act

The NCCPA was enacted to encourage broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of natural community conservation planning is to sustain and restore those species, habitats, and ecological processes identified by DFG that are necessary to maintain the continued viability of biological communities impacted by human changes to the landscape. A natural community conservation plan identifies and provides for the measures necessary to conserve and manage natural biological diversity within the NCCP/HCP area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.2. Purposes of Planning Agreement

The purposes of this Planning Agreement are to:

- Define the Parties' goals and obligations with regard to development of a NCCP/HCP;
- Define the geographic scope of the conservation planning area;
- Identify a preliminary list of natural communities and species expected to be found in those communities that are intended to be the initial focus of the NCCP/HCP;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process to ensure the inclusion of independent scientific input into the NCCP/HCP development process;
- Ensure coordination between the Wildlife Agencies;
- Establish an interim process during NCCP/HCP development that encourages conditions conducive to achieving the preliminary conservation objectives; and
- Establish a public participation and outreach program to ensure public participation throughout the NCCP/HCP development.

2.3. Regulatory Goals

The COUNTY intends that the NCCP/HCP will allow for development and growth consistent with the NCCPA goals, and consistent with State and federal regulatory requirements. By agreeing to assume responsibility for development of the NCCP/HCP, and committing staff and financial resources for that purpose, the COUNTY intends for the NCCP/HCP to yield numerous benefits in addition to natural resource conservation, including greater regulatory efficiency, streamlining and certainty.

2.3.1. Compliance with the California Endangered Species Act and the federal Endangered Species Act.

Calaveras County, as a whole, contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the NCCP/HCP Planning Area are certain species that are protected, or may be protected in the future, under the California Endangered Species Act (“CESA”), the federal Endangered Species Act (“FESA”), or both CESA and FESA. The Parties intend to develop a conservation plan that satisfies the requirements for a habitat conservation plan under Section 10 of FESA, and a natural community conservation plan under the NCCPA (the “NCCP/HCP”). The NCCP/HCP is intended to serve as the basis for take authorizations pursuant to section 10(a) of FESA and section 2835 of the NCCPA. The NCCPA provides that after the approval of a natural community conservation plan, DFG may permit the taking of any Covered Species, both listed and non-listed, whose conservation and management is provided for in the NCCP/HCP. Take authorization of state-listed species during the interim period may be provided pursuant to CESA. After approval of the NCCP/HCP, take authorization will be provided pursuant to the NCCPA.

FESA provides that after the approval of an HCP, USFWS may permit the taking of species covered in the HCP if the HCP meets the requirements of section 10(a)(2)(A) of FESA. Take authorization for federally listed species covered in the HCP is effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during plan preparation for species listed pursuant to FESA may be provided pursuant to individual permits issued pursuant to section 10(a)(1)(B), or consultations under section 7 of FESA.

2.3.2. Concurrent Planning for Wetlands and Waters of the United States

The COUNTY intends to address impacts to wetlands and waters of the United States in the NCCP/HCP to be consistent with, or meet the requirements of, the Clean Water Act regarding Covered Activities. The COUNTY further intends to address in the NCCP/HCP impacts resulting from changes to the bed, bank or channel of rivers, streams and lakes within the Planning Area to meet the requirements of and obtaining all necessary authorizations under Fish and Game Code Section 1601 or Section 1603 for Covered Activities. Based on the NCCP/HCP, the COUNTY may seek programmatic permits or authorizations under the Clean Water Act and Section 1601 (or Section 1603) as necessary for Covered Activities. However, such programmatic permits or authorizations are not necessary for approval of the NCCP/HCP or for issuances of incidental take permits.

[INSERT SIMILAR SECTION FOR OAK WOODLANDS CONSERVATION ACT]

2.3.3. Section 7 of FESA

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the NCCP/HCP, once approved by the USFWS and included as a condition of incidental take permits to the Parties, will be adopted by the USFWS and incorporated into future Section 7 consultations between the USFWS and the United States Army Corps of Engineers, the United States Bureau of Reclamation, or other applicable federal agencies regarding Covered Activities that may adversely affect species covered by the NCCP/HCP.

2.3.4. Assurances

The Parties anticipate that the USFWS will provide assurances pursuant to applicable federal law and regulations then in effect upon issuance of the federal incidental take permit to the COUNTY. In addition, the Parties intend that if the NCCP/HCP meets the criteria for a NCCPA take permit under Section 2835 of the Fish and Game Code, DFG will provide regulatory assurances consistent with its statutory authority upon approval of the NCCP/HCP and issuance of a NCCPA take permit to the COUNTY. DFG assurances may be given commensurate with long-term conservation assurances and associated implementation measures as provided in Section 2820(f) of the Fish and Game Code. In order to ensure that the NCCP/HCP assurances are legally binding, such provisions will be included in the IA subject to certain conditions outlined in the IA and existing law.

2.4. Planning Goals

The NCCP/HCP planning goals include the following:

- Allow appropriate and compatible economic growth and development consistent with applicable local land use laws and associated General Plans;
- Provide a basis for permits and authorizations necessary to lawfully take Covered Species which have been listed as threatened or endangered pursuant to the terms of FESA and/or CESA;
- Provide a process for issuance of take authorizations for Covered Species which are not currently listed which may be listed in the future without the imposition of additional mitigation requirements outside of the NCCP/HCP process;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, NCCPA and other applicable laws and regulations relating to biological and natural resources within the Planning Area so that public and private actions will be governed equally and consistently, thus reducing delays, expenses and regulatory duplication;
- Provide a less costly, more efficient project review process which results in greater conservation values than the current project-by-project, species-by-species review and regulatory regime;
- Serve as a platform for the coordination of and cooperation among the various and on-going conservation planning efforts, occurring both within the County and in neighboring jurisdictions; and
- Provide clear expectations and regulatory predictability for the land users and other conservation efforts within the Planning Area.

2.4.1. Consistency with Existing County and City Programs.

The Parties recognize that the NCCP/HCP is intended to provide the framework for compliance with FESA and the NCCPA and agree that the NCCP/HCP will be based to the greatest extent practicable on the existing County and City programs, including but not limited to local General Plans, Community Plans, Specific Plans, Zoning Code, and Subdivision Ordinances. The Parties recognize that the County and City programs are not specifically intended to fulfill the State and federal regulatory requirements that may apply to Covered Activities. The Parties therefore expect the NCCP/HCP to contain some measures, standards or requirements that are not specifically identified in existing County or City documents.

2.4.2. Departure from Project-by-Project Planning Approach.

The Parties agree that the process of undertaking habitat conservation planning on a project-by-project basis is costly and inefficient. All Parties assume that the development of a successful NCCP/HCP will be a less expensive and more effective method of complying with the species conservation requirements of FESA, NCCPA, and the environmental review processes of NEPA and CEQA than through a project-by-project approach. The Parties also agree that a successful NCCP/HCP may provide a greater benefit from the standpoint of habitat conservation and economic development than would be realized from individual project permitting.

2.4.3. Covered Activities

Covered Activities under the NCCP/HCP are those activities that may result in take of Covered Species that will be identified and addressed in the NCCP/HCP. Covered Activities under the NCCP/HCP may include those land uses over which the Parties have land use authority, and may also address certain agricultural activities and adaptive habitat management and monitoring activities in the Planning Area. The Parties intend that the NCCP/HCP will allow Covered Activities in the Planning Area to be carried out in compliance with the NCCPA and FESA. Covered Activities are generally anticipated to include the following:

- Urban Development
- Rural Development
- Reserve Management and Conservation Activities
- On-Going Agricultural Operations

The term “On-going Agricultural Operations” is specifically limited to include a mechanism for farmers who would be interested in seeking to voluntarily participate in the NCCP/HCP. These Covered Activities may be modified throughout the NCCP/HCP planning process.

2.4.4. Natural Communities and Covered Species

The Parties intend for the NCCP/HCP to address the impacts of taking likely to result from Covered Activities in the Planning Area on natural communities, on covered endangered and threatened species listed under FESA or CESA, and on other covered unlisted species. The Parties intend to establish a program through the NCCP/HCP for the identification and long-term sustainability and/or enhancement of various ecosystems throughout the County. The purpose of addressing unlisted species will be to provide for their conservation and management, and help ensure that such species do not become listed as threatened or endangered under FESA or CESA. Addressing unlisted species in the NCCP/HCP is also intended to avoid the need to develop new and different measures or restrictions to mitigate for impacts should such species become listed in the future. It is also the goal to include, at a minimum, measures sufficient to enable the USFWS to issue incidental take permits, in the event covered unlisted species are listed and subject to the “take” prohibition. A preliminary list of natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the NCCP/HCP is identified in this Planning Agreement under Sections 5.1.2 and 5.1.3. Sections 5.1.2 and 5.1.3 identify the species and ecosystem areas that the COUNTY and the Wildlife Agencies will evaluate for inclusion in

the NCCP/HCP. Sections 5.1.2 and 5.1.3 do not necessarily represent the NCCP/HCP's final Covered Species list or natural communities to be evaluated.

3. Planning Area and Participating Parties

The area to be addressed by the NCCP/HCP "Planning Area" (Exhibit A) includes the entirety of Calaveras County and all incorporated areas which total _____ acres. Within the Planning Area, the Parties anticipate three primary phases of evaluation and assessment, herein referred to as "Planning Subareas". Phase One includes those areas anticipated for planned urbanization and conservation within western Calaveras County (_____ acres). Phase Two includes _____. And Phase Three includes the remainder of the County consisting of unincorporated areas including, but not limited, to _____ (_____ acres). A map depicting these three Planning Subareas is attached as Exhibit A.

3.1. COUNTY and Its Member Agencies

The local sponsor of the NCCP/HCP is the COUNTY. As part of this planning process, the COUNTY has committed to undertaking a collaborative, systematic approach to protecting Calaveras County's ecologically significant resources, open space, and agricultural lands, and to ensuring that the Covered Activities comply with applicable federal and State environmental laws.

3.2. California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for wildlife, as defined in Fish and Game Code Section 711.2. DFG is authorized to approve NCCP's pursuant to the NCCPA, to enforce the terms of the CESA, and to enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

3.3. United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce the terms of the FESA, and to enter into agreements with States, local governments, and other entities to conserve threatened, endangered, and other species of concern. This Planning Agreement and the NCCPA requires coordination with federal wildlife agencies with respect to FESA.

4. Preliminary Conservation Objectives

The preliminary conservation objectives of the NCCP/HCP are to:

- Preserve and enhance the natural diversity of native plant and animal communities throughout the Planning Area;
- Protect the viability of identified special status plant and animal species;

- Identify and designate biologically sensitive habitat areas, from both the existing network of conservation activities in the County and other areas to be identified;
- Preserve habitat, and contribute to the recovery of threatened, endangered and other identified plant and animal species covered by the NCCP/HCP (“Covered Species”);
- Reduce the need to list additional species;
- Set forth specific habitat-based goals and objectives expressed in terms of amount and quality of habitat to be protected and preserved;
- Determine the extent of impacts to species from incidental take caused by Covered Activities; and
- Provide an effective adaptive management and monitoring strategy for Covered Species and natural communities.

4.1. Conservation Elements

4.1.1. Ecosystems and Natural Communities

The NCCP/HCP will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes to ensure the conservation of Covered Species in the Planning Area. In addition, the NCCP/HCP will employ species-specific conservation and management measures where appropriate.

4.1.2. Reserves and Viable Habitat Linkages

The NCCP/HCP will establish conservation areas throughout the Planning Area and provide linkages, where appropriate, between the conservation areas. It will also designate where linkages between the conservation areas and important habitat areas outside the Planning Area should occur. Such conservation areas will include a range of environmental gradients and ecological functions, and will address edge effects and other reserve design principles.

4.1.3. Project Design

The NCCP/HCP will ensure that projects will be appropriately designed to minimize and mitigate on-site and off-site impacts to resources.

5. Planning Process

The Parties and Wildlife Agencies intend that this Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the NCCP/HCP that fulfills the requirements of the NCCPA and FESA.

5.1. NCCPA Planning Process for Calaveras County Habitat/Natural Community Conservation Plan.

The process used to develop the NCCP/HCP will incorporate independent scientific input and analysis, and include extensive public participation, with ample opportunity for comment from the general public, as well as solicited advice from key groups of stakeholders.

5.1.1. Geographic Scope

The NCCP/HCP will address conservation issues in the jurisdictional boundary of Calaveras County, including the ___ Cities in the County as described in more detail in Section 3 and shown in Exhibit A.

5.1.2. Natural Communities

The NCCP/HCP will provide for conservation of ecosystems, habitats, and ecosystem function to assure conservation of biological diversity. The following natural communities are anticipated to be included as the initial focus in the Plan. However, the list of natural communities may be expanded when additional data is gathered from unsurveyed portions of Calaveras County.

- **Riparian.** Riparian vegetation is generally found along stream courses, and includes the entire range of streamside vegetation types and other special elements that are associated with drainages in Calaveras County. The riparian community includes stream courses, Oak Riparian, and Riparian Forest.
- **Wetland.** Wetland habitat includes natural wetlands or drainages, modified creeks and drainage ways, and various artificial impoundments. The wetland community includes marsh, vernal pools, ponds, lakes, open water, and alkali sinks.
- **Woodland.** Woodland habitat includes a continuously varying series of habitat types dominated in height, if not in area, by trees. The woodland community includes oak woodlands, scattered oaks, wooded savannah, and elderberry savannah.
- **Grasslands.** Grasslands include areas dominated by both native and non-native grasses.
- **Agriculture.** Cultivated lands (currently or in recent past). Includes row crops, vineyards, orchards, irrigated hay/pastures, rice, non-irrigated hay fields and dry land farms. Habitat value is related to the type of agriculture and species that use/occupy such areas.
- **Forest Lands.** Need description(s).
- **Other??**

5.1.3. Covered Species

The following initial list of Covered Species, both plant and animal, is based upon existing scientific data regarding the known or anticipated occurrence of such species in

Calaveras County. This scientific data will be expanded upon through the NCCP/HCP process to cover all parts of the County, including those areas previously unsurveyed. In order for the NCCP/HCP process to be effective, the Parties acknowledge that the primary purpose of this initial list of “special status” species is to ensure their continued survival, propagation, and recovery.

The Parties also acknowledge that this list is not exhaustive, and is anticipated to be modified through the NCCP/HCP process. The Parties acknowledge that inclusion of a particular species as a Covered Species in the Plan will require a determination by the Wildlife Agencies that the Plan provides for conservation of the species in accordance with State and federal permit issuance requirements.

Species Proposed For Coverage

Common Name	Scientific name	Federal	State	CNPS
Plants				

Invertebrates

Amphibians

Reptiles

Birds

Mammals

Status = status of species relative to the Federal and State Endangered Species Acts and Fish and Game Code of California

Federal

Endangered (E)	=	listed as endangered under the federal ESA
Threatened (T)	=	listed as threatened under the federal ESA
FC	=	federal candidate species
SOC	=	federal species of concern

CNPS:

1A	=	presumed extinct in California
1B	=	rare or endangered in California
2	=	rare or endangered in California
3	=	Plants for which we need more information

State

Endangered (SE)	=	listed as endangered under CSEA
Threatened (ST)	=	listed as threatened under CSEA
SSC	=	Species of concern in California

5.1.4. Best Available Scientific Information

The NCCP/HCP will be based on the best available scientific information, including:

- Principles of conservation biology, community ecology, landscape ecology, individual species' ecology, and other scientific knowledge and thought;
- Information about all natural communities and species of federal, State and local concern on lands throughout the Planning Area; and;
- Advice from well-qualified, independent scientists.

5.1.5. Data Collection

The Parties agree that information regarding the following subjects is important for preparation of the NCCP/HCP. The Parties therefore agree that data collection for preparation of the NCCP/HCP should be prioritized to develop more complete information on these subjects. Preference for data collection should be given to the data essential to address conservation requirements of natural communities and proposed Covered Species. The science advisory process and analysis of existing information may reveal data gaps currently not known that are necessary for the full and accurate development of the NCCP/HCP. Data needed for preparation of the NCCP/HCP may include subjects not known at this time or not identified herein. Therefore, the Parties anticipate that data collection priorities may be adjusted from time to time

during the planning process. All data collected for the preparation and implementation of the HCCP/NCP will be made available to the Wildlife Agencies in hard and digital formats, as requested.

The data anticipated to be developed for the NCCP/HCP includes the following topic areas:

- Existing land uses broken down into detailed categories;
- City and District boundaries and Urban Limit lines;
- Existing preserves and other public lands, including conservation easements;
- Habitat areas including areas of concern for listed and Covered Species as agreed to by USFWS and DFG;
- Parcel ownership for the unincorporated areas that cross-over between Amador, Tuolumne, El Dorado and Calaveras Counties;
- Waterways, flood zones, and riparian corridors;
- Watershed boundaries;
- Habitat quality;
- Agricultural resources of significance to Covered Species;
- Historical and current locations of species;
- Vernal pool areas by type;
- Vegetation types;
- Easements, zoning designations and land use limitations.

5.1.6. Independent Scientific Input

The Parties intend that preparation of the NCCP/HCP will be guided by independent scientific input and analysis. For that purpose, independent scientists representing a broad range of disciplines, including conservation biology and locally-relevant ecological knowledge, will, at a minimum:

- 1) recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the NCCP/HCP;
- 2) recommend a set of reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the Planning Area and proposed to be addressed by the NCCP/HCP;

3) recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the NCCP/HCP; and

4) identify data gaps and uncertainties so that risk factors can be evaluated.

The Science Advisors may be asked to provide additional feedback on key issues during preparation of the NCCP/HCP, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Parties.

Design, funding and implementation of the science advisory process must be done in a coordinated fashion and with the mutual agreement of the Parties. The Parties will establish funding and payment procedures. The independent science advisory process will include the development of a scope of work, use of a professional facilitator, convening of technical experts, and production of a report by the advisors. In addition, the Parties will make the report available for use by all participants and the public during the planning process.

5.1.7. Public Participation

The NCCP/HCP will be prepared in an open and transparent process, with input from all those concerned. The process used to prepare the NCCP/HCP will provide for thorough public review and comment, include a working group that will review the NCCP/HCP at key stages of development and require that negotiations with applicable agencies be conducted in an open manner. To assist in the development of the NCCP/HCP, the COUNTY shall form the following working groups:

5.1.7.1. Steering Committee

The COUNTY has initiated a process to establish a "Stakeholders Steering Committee" (herein referred to as the "Steering Committee"). Steering Committee members are expected to come from a diverse group of interests in the County representing the agricultural community, environmental groups, local scientific community, the development community, landowner groups, conservation groups and public agencies. Throughout the course of the Calaveras County process, the Steering Committee will examine NCCP/HCP policies, review drafts of parts of the NCCP/HCP, serve as a sounding board, assist in negotiating the NCCP/HCP, and form subcommittees as necessary.

5.1.7.2. Outreach

The COUNTY, in concert with the Steering Committee, will provide access to information for persons interested in the NCCP/HCP with an emphasis on obtaining input from a balanced variety of public and private interests including State and local governments, landowners, conservation organizations, agricultural commissioners, other agricultural organizations, and the general public. The Parties expect and intend that public outreach regarding preparation of the NCCP/HCP will be conducted largely by and through the Steering Committee meetings and through workshops and related public forums. In addition, the COUNTY will continue to hold public meetings before the Board to present key decisions regarding the preparation of the NCCP/HCP in order to afford the public the opportunity to

comment on and inquire about the decisions. Other outreach efforts may include periodic newsletters, creation of a website, press releases, and related activities.

5.1.7.3. Availability of Public Review Drafts

The COUNTY will designate and make available for public review in a reasonable and timely manner “preliminary public review drafts” of pertinent planning documents including, but not limited to, plans, memoranda of understanding, maps, conservation guidelines, and species coverage lists. Such documents will be made available by the COUNTY at least ten working days prior to any public hearing addressing these documents. In addition, the COUNTY will make available reports and formal memoranda prepared by the Steering Committee. This obligation will not necessarily apply to all technical and working documents drafted during preparation of the Plan. Public review draft documents that are being considered for adoption by the COUNTY shall be available for public review and comment for a minimum of 60 days prior to their adoption. Comments on public review drafts shall be received consistent with State Planning and Zoning Laws, CEQA, and the NCCPA. The COUNTY expects to fulfill this obligation by distributing the draft NCCP/HCP and implementing agreement with the draft Environmental Impact Report prepared for the NCCP/HCP pursuant to CEQA, and/or the draft Environmental Impact Statement prepared for the NCCP/HCP pursuant to NEPA.

The Parties agree the COUNTY internet website will be one of the principle means of making documents pertaining to the NCCP/HCP available for public review, as well as more traditional means such as distribution and display of hard copies of such documents.

5.1.7.4. Public Hearings

Public hearings regarding the NCCP/HCP development and/or approval will be planned and conducted to complement or integrate with hearings otherwise required by law and in a manner that satisfies the requirements of CEQA, NEPA and any other applicable State and federal laws.

5.1.8. Interim Project Processing

The Parties recognize that before the Wildlife Agencies approve the NCCP/HCP, certain projects and activities that must comply with FESA and/or CESA may be proposed within the NCCP/HCP Planning Area. The Parties intend that these projects and activities will not be unduly delayed because of NCCP/HCP preparation, and shall adhere to the guidelines established in the attached Interim Review Process (**To Be Developed**). The Parties also agree that projects, actions and activities proposed or implemented within the NCCP/HCP Planning Area during preparation of the NCCP/HCP (“interim projects”) should not compromise the NCCP/HCP successful development or implementation. In order to identify the effects of interim projects the Parties agree to establish an interim process during the NCCP/HCP development wherein discretionary projects that are within the Planning Area, that are subject to Division 13, commencing with Section 21000, of the Public Resources Code, and that potentially impact Covered Species or the natural communities identified in this Planning Agreement, or conflict with the preliminary conservation objectives contained in Section 4 of this Planning Agreement are reviewed by DFG prior to the time, or as soon as possible after, the project application is deemed complete pursuant to Government Code, Section 65943. For such projects, DFG shall

recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. Information developed by the Science Advisors shall be considered by DFG and other Parties during interim project review.

5.1.9. Protection and Conservation of Habitat Land During Planning Process

The Parties may elect to preserve or restore, either by acquisition or other means, lands in the Planning Area that contain native species of wildlife or natural communities prior to the completion or approval of the NCCP/HCP encompassing the lands. The COUNTY, will consult with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to credit such lands, in accordance with their biological value, toward the land acquisition or habitat preservation requirements of the NCCP/HCP encompassing the lands, once it is approved. However, lands, or portions of lands, acquired or preserved to mitigate the impacts of specific projects or activities that occur prior to or during the NCCP/HCP preparation will only be considered as mitigation for those projects. Such lands will be considered during the NCCP/HCP analysis, but will not count toward future mitigation obligations of the Plan.

5.2. FESA Planning Requirements

FESA's requirement for public participation in the development of habitat conservation plans is a minimum 30-day public comment period for all draft habitat conservation plans (16 U.S.C.A., §1539(c); 50 C.F.R. Part 17 and Part 222). However, in conformance with the federal HCP Handbook and the 5 Point Policy, the USFWS customarily allows for public comment periods of 60 days, 90 days, or even longer, depending on the scale and complexity of individual habitat conservation plans. Further, the issuance of incidental take permits by the USFWS are federal actions subject to the requirements of NEPA, which similarly requires a minimum 45 to 60 day public review period for all major federal actions significantly affecting the quality of the human environment. For large-scale, regional, or exceptionally complex habitat conservation plans, the USFWS encourages plan preparers to use informational meetings and external review teams. It is the policy of the USFWS to allow a minimum 90-day public comment period for such habitat conservation plans, unless there is significant public participation during their development.

5.3 Implementing Agreement

While the NCCP/HCP is being developed, the Parties will negotiate a draft implementing agreement that will include specific provisions and procedures for the implementation, monitoring and funding of the NCCP/HCP. A draft of the Implementing Agreement will be made available for public review and comment with the public review draft of the NCCP/HCP. The NCCP/HCP shall include an Implementing Agreement that generally contains provisions for:

- Conditions of species coverage;
- The long-term protection of habitat reserves and other conservation measures;

- Implementation of mitigation and conservation measures;
- Suspension or revocation of the take permit;
- Amendment of the NCCP/HCP;
- Implementation of monitoring and adaptive management;
- Oversight of plan effectiveness and funding; and
- Periodic reporting.

6. Commitment of Resources

6.1. Funding

The COUNTY recognizes that, as a prospective applicant for State and federal permits, it has the primary responsibility for developing a plan that meets applicable legal requirements and that, as a result, the development and implementation of the Plan must be funded primarily from locally derived sources. The development and implementation of the NCCP/HCP may be funded through sources which can include, but are not limited to, federal, State, and locally derived funds.

6.1.1. NCCP Funding

DFG agrees to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds earmarked for natural community conservation planning. DFG makes no guarantee, however, that such funds will be available or that they will be provided for the NCCP/HCP development. The Parties agree that the COUNTY Parties shall not provide reimbursement to DFG for its participation in the planning phase of the NCCP/HCP as provided in Fish and Game Code, Section 2810. DFG's commitments and obligations under this Planning Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized DFG representative. The DFG has assisted in providing initial funding to COUNTY through the recently secured Section 6 Grant funds. Through these funds, DFG has received compensation for "administrative purposes".

6.1.2. USFWS Funding

The USFWS agrees to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds earmarked for habitat conservation planning purposes. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture and Transportation. The commitments of the USFWS under this Planning Agreement are subject to the requirements of the federal Anti-Deficiency Act and the availability of appropriated funds. The Parties acknowledge that this Planning Agreement does not require any federal agency to expend its appropriated funds unless

and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

6.2. Assistance from Wildlife Agencies

Subject to funding and staffing constraints, the Wildlife Agencies agree to provide technical and scientific information, analyses and advice to assist the COUNTY with the timely and efficient development of the NCCP/HCP.

7. Miscellaneous Provisions

7.1. Public Officials Not to Benefit

No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

7.2. Statutory Authority

The Parties will not construe this Planning Agreement to require any Party to act beyond, or inconsistent with, its statutory authority.

7.3. Counterparts

This Planning Agreement may be executed by the Parties in several counterparts, each of which will be deemed to be an official original copy.

7.4. Effective Date

The Effective Date of this Planning Agreement will be the date on which it is executed by DFG and the COUNTY.

7.5. Duration

This Planning Agreement will be in effect until the NCCP/HCP is approved by DFG and USFWS, but shall not be for more than five years following the Effective Date, unless extended by amendment or terminated pursuant to section 7.7 of this Planning Agreement.

7.6. Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

7.7. Termination and Withdrawal

Subject to the requirements of section 7.7.1 of this Planning Agreement, any party may withdraw from this Planning Agreement upon 60 days' written notice to the other Parties. This Planning Agreement can be terminated only by written agreement of all remaining Parties.

7.7.1. Funding

In the event that federal or State funds have been provided to assist with Plan preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency within 60 days unspent funds awarded to that party prior to withdrawal. A withdrawing Party shall also provide the remaining parties with a complete accounting of the use of any federal or State funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all parties who received funds shall return any unspent funds to the grantor prior to termination.

SIGNATURES:

Dated: _____, 20__
CALAVERAS COUNTY
By: _____
COUNTY Board Chair

Dated: _____, 20__
CALIFORNIA DEPARTMENT OF FISH AND GAME
By: _____
Sandra C. Morey, Regional Director

Dated: _____, 20__
US FISH AND WILDLIFE SERVICE
By: _____
Field Supervisor
Sacramento Field Office

EXHIBIT A Planning Area Map

EXHIBIT B Interim Project Processing

The purpose of the Interim Review Process is to ensure that development/construction projects approved or initiated in the Planning Area before completion of the NCCP/HCP do not compromise the successful implementation of the NCCP/HCP. It can also facilitate CESA and FESA compliance for interim projects that require it, as well as to ensure that interim projects are not delayed solely due to preparation of the NCCP/HCP.

The COUNTY Parties shall notify DFG and USFWS of proposed development or construction projects in the Planning Area that meet the criteria described below in the Reportable Interim Projects section. The notification shall occur when the COUNTY Party determines that the proposed project is not exempt from the California Environmental Quality Act. The following information shall be provided:

- The location of the proposed project shall be described on an 11 x 17, 1:24,000 aerial photo of the site and surrounding area, or similarly formatted map.
- The land cover types present on the site of the proposed development shall be listed.
- Any other biological information available to the COUNTY Party about the project area.

It is recommended that DFG and USFWS each designate one individual to receive notification of interim projects. The notification process shall end upon completion of the NCCP/HCP or upon termination of the Planning Agreement.

Reportable Interim Projects can be proposed development or construction projects, whether conducted by a COUNTY Party or requiring permits from the COUNTY Party, that are located in the Planning Area shall be reported as described in the Notification Process if they meet all of the following criteria:

- A determination has been made by the COUNTY Party that the proposed project is not exempt from the California Environmental Quality Act; and
- The proposed project is located in the "Reportable Area". The Reportable Area is the entire Planning Area.

Examples of reportable interim projects include, but are not limited to:

- Residential, commercial, and industrial developments requiring an initial study;
- Road construction, road widening, and bridge construction;
- New pipelines and treatment plants;
- New recreational facilities; and
- Communications services projects such as cellular phone antennas;
- Rural residential projects.

Examples of non-reportable interim projects include, but are not limited to:

- Residential, commercial, and industrial developments not requiring an initial study;
- Projects only requiring a building permit;
- Applications for construction of a second unit on a lot with an existing single family home;
- and
- Road and infrastructure maintenance.

Representatives from the COUNTY Parties shall meet bi-monthly to discuss interim projects and coordination of interim projects during the development of the NCCP. In addition, the Parties shall periodically confer to determine how input and analysis provided through the science advisory process should be incorporated into this Interim Review Process. Such input and analysis should perform various functions such as evaluate the impacts of interim projects, develop mitigation measures, provide guidance on how to avoid precluding reserve design options, and/or establish monitoring requirements as deemed necessary or appropriate by the Parties.

Coordination with existing mitigation programs is also very important. Throughout the preparation of the NCCP, the Parties will continue to collect fees or other appropriate mitigation actions necessary to meet the intent of the NCCP/HCP interim process associated with the mitigation of impacts to a certain species. This process may be conducted through a separate agreement such as an MOU and may be expected to terminate upon completion of the NCCP/HCP.