

# Appendix H

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Butte Regional Conservation Plan Planning Agreement

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# **Planning Agreement**

by and among

**Butte County, City of Biggs, City of Chico, City of Gridley,  
City of Oroville, the California Department of Fish and Game,  
the United States Fish and Wildlife Service, and the  
National Marine Fisheries Service**

regarding the

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

**October 26, 2007**

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## **Butte County HCP/NCCP Planning Agreement**

This agreement regarding the planning and preparation of the Butte County Habitat Conservation Plan and Natural Community Conservation Plan (“Planning Agreement”) is entered into as of the Effective Date by and among the Local Agencies, the California Department of Fish and Game (“DFG”), the United States Fish and Wildlife Service (“USFWS”), the National Marine Fisheries Service (“NMFS”), and the Butte County Association of Governments (“BCAG”) These entities are referred to collectively as “Parties” and each individually as a “Party.” The DFG, USFWS, and NMFS are referred to collectively as “Wildlife Agencies.”

### **1. Definitions**

Terms that are defined in Fish and Game Code section 2805 have the same meaning when used in this Planning Agreement. In addition, the following terms used in this Planning Agreement will have the meanings set forth below.

**1.1** “Anti-Deficiency Act” means title 31 of the United States Code section 1341.

**1.2** “Bald and Golden Eagle Protection Act” means the act prohibiting the taking or possession of and commerce in bald and golden eagles, title 16 of the United States Code section 668-668d.

**1.3** “BCAG” means the Butte County Association of Governments, a Joint Powers Authority formed pursuant to the Joint Exercise of Powers Act, Government Code sections 6500 et seq.

**1.4** “Biological Assessment” or “BA” means the information prepared by or under the direction of a Federal Action Agency for the purpose of identifying the potential effects of the agency action within the Planning Area on species which are listed or proposed to be listed and critical habitat which has been designated or proposed pursuant to section 7(c)(1) of FESA.

**1.5** “CEQA” means the California Environmental Quality Act, Public Resources Code, section 21000, *et seq.*

**1.6** “CESA” means the California Endangered Species Act, California Fish and Game Code, section 2050, *et seq.*

**1.7** “City” or “Cities” means the governments of the cities of Biggs, Chico, Gridley, and Oroville.

**1.8** “Cooperative Endangered Species Conservation Fund” means the funding available through the FWS from the Endangered Species Act, AKA Section 6 Non-traditional grants program.

- 1.9** “Corps” means the United States Army Corps of Engineers.
- 1.10** “County” means the government of the County of Butte.
- 1.11** “Covered Activities” means the activities that will be addressed in the Plan and for which the Local Agencies will seek an NCCP permit pursuant to Fish and Game Code, section 2835 and an incidental take permit pursuant to section 10 of FESA.
- 1.12** “Covered Species” means those species, both listed and non-listed, conserved and managed under an approved Plan that may be authorized for take under state and/or federal law.
- 1.13** “DFG” means the California Department of Fish and Game, a state agency formed pursuant to Fish and Game Code section 700.
- 1.14** “Effective Date” means the date on which this Planning Agreement is fully executed by the Parties.
- 1.15** “Federal Action Agency” means a federal agency that authorizes, funds, or carries out actions that may require consultation with USFWS and/or NMFS pursuant to FESA section 7(a)(2).
- 1.16** “FESA” means the federal Endangered Species Act, 16 United States Code Section 1530, *et seq.*
- 1.17** “Habitat Conservation Plan” or “HCP” means a conservation plan prepared pursuant to section 10(a)(1)(B) of FESA.
- 1.18** “HCP/NCCP” means the joint Butte County Habitat Conservation Plan and Natural Community Conservation Plan also referred to as the “Plan.”
- 1.19** “Implementing Agreement” or “IA” means the agreement required pursuant to Fish and Game Code section 2820, subdivision (b) and authorized under title 14 of the United States Code section 1539 (a)(2)(B) which defines the terms for implementing the Plan.
- 1.20** “Independent Science Advisors” or “Science Advisors” means a body consisting of scientists convened by BCAG to provide independent scientific input and analysis to assist in the preparation of the Plan.
- 1.21** “Land and Water Conservation Fund” means a program administered by the State Parks Department to provide matching grants to local governments for the acquisition and development of public outdoor recreation areas and facilities.
- 1.22** “Listed Species” means those species designated as candidate, threatened or endangered pursuant to CESA and/or listed as threatened or endangered under FESA.

**1.23** “Local Agencies” and “Local Agency” mean, individually or collectively, the County of Butte and cities of Biggs, Chico, Gridley, and Oroville.

**1.24** “Natural Community Conservation Plan” or “NCCP” means a conservation plan created to meet the requirements of Fish and Game Code, section 2801, *et seq.*

**1.25** “Natural Community Conservation Planning Act” or “NCCPA” means Fish and Game Code, section 2801, *et seq.*

**1.26** “NEPA” means the National Environmental Policy Act, title 42 of the United States Code section 4321, *et seq.*

**1.27** “NMFS” means the National Marine Fisheries Service, a federal agency and a division of the Department of Commerce, also referred to as the National Oceanographic and Atmospheric Administration (“NOAA Fisheries”).

**1.28** “Planning Area” means the geographic area proposed to be addressed in the Plan as described in Exhibit A.

**1.29** “Reportable Interim Project” means (1) general plan amendments, specific plans or community plans, annexations, and rezoning actions that allow development and construction activities or other projects or activities that require discretionary approvals from the Local Agencies that (2) are proposed prior to adoption of the Plan, and that (3) have the potential to adversely impact the proposed Covered Species and natural communities within the Planning Area. -

**1.30** “Stakeholder Committee” means a committee assembled by the Steering Committee that will be comprised of representatives of HCP/NCCP stakeholder interests and is intended to represent a diverse cross-section of the interests and views of the community, including representatives of landowners, growers, ranchers, tribes, developers and conservationists.

**1.31** “Steering Committee” means a committee comprised of BCAG staff and representatives from the Local Agencies and other agencies receiving permits from Wildlife Agencies upon completion of an approved HCP/NCCP which serves in an administrative capacity on behalf of the Local Agencies and is responsible for the preparation of the Plan.

**1.32** “Take” or “Taking” refers to those terms as defined in the ESA and CESA.

**1.33** “Technical Subcommittee” means a subcommittee established, as needed, by the Steering Committee to focus on development of specific aspects of the HCP/NCCP.

**1.34** “USFWS” means the United States Fish and Wildlife Service, a federal agency of the United States Department of the Interior.

**1.35** “Wildlife Agencies” means, collectively, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the National Marine Fisheries 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 provide for the conservation of biological diversity by protecting biological communities at the ecosystem and landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. An NCCP identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

### **2.2 Purposes of NCCP Planning Agreements**

The purposes of NCCP Planning Agreements are to:

- Define the Parties’ goals and commitments with regard to development of the Butte County HCP/NCCP;
- Define the initial geographic scope of the Planning Area;
- Identify a preliminary list of natural communities and species known or reasonably expected to be found in those communities that are intended to be the initial focus of the Butte County HCP/NCCP;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process for the inclusion of independent scientific input into the planning process;
- Facilitate coordination among the Wildlife Agencies, particularly with respect to FESA;
- Establish a process to review Reportable Interim Projects within the Planning Area that will help achieve the preliminary conservation objectives and maintain viable conservation opportunities and alternatives for the Plan; and
- Ensure public participation and outreach throughout the planning process.

### **2.3 Compliance with CESA and FESA**

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA and/or FESA. The Parties intend for the Plan to satisfy the requirements

for an HCP under section 10(a)(1)(B) of FESA, and an NCCP under the NCCPA, and to serve as the basis for take authorizations under both Acts.

Section 2835 of the Fish and Game Code provides that after the approval of an NCCP, DFG may permit the taking of any covered species, listed or non-listed, whose conservation and management is provided for in the NCCP. Take of state-listed species may be authorized pursuant to CESA during development of the Plan.

FESA provides that after the approval of an HCP, USFWS and/or NMFS may permit the taking of wildlife species covered in the HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of FESA. Take authorization for federally listed wildlife species covered in the HCP shall generally be effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed wildlife species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during plan preparation for wildlife 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.

#### **2.4 Section 7 of FESA**

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the Plan, approved by the USFWS or NMFS and included as a condition of federal incidental take permits to the Local Agencies, will be incorporated into future Section 7 consultations between the USFWS or NMFS 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 Covered Species or their habitat.

#### **2.5 Other Fish and Wildlife Protection Laws**

Based on the Plan, the Local Agencies may seek approval or authorization under other state and federal fish and wildlife protection laws, including, but not necessarily limited to, the Magnuson-Stevens Fishery Conservation and Management Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and various provisions of the Water Code and Fish and Game Code. The Parties agree to collaborate to explore the feasibility of developing the Plan to serve as the means by which Covered Activities may comply with these additional laws.

#### **2.6 Concurrent Planning for Wetlands and Waters of the United States**

The Local Agencies intend to address impacts to wetlands and waters of the United States and changes to the bed, bank or channel of rivers, streams and lakes resulting from Covered Activities in the Planning Area. Based on the Plan, the Local Agencies may seek future programmatic permits or authorizations under the Clean Water Act and section 1601 (or section 1603) of the Fish and

Game Code as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent but separate planning regarding these permits. However, such programmatic permits or authorizations are not necessary for approval of the Plan or for issuances of take permits.

## **2.7 Assurances**

### **2.7.1 Regulatory Assurances Under FESA**

Upon approval of the Plan and issuance of incidental take permits for Covered Activities, USFWS and NMFS will provide assurances that neither the USFWS nor NMFS will require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for Covered Species, without the consent of the affected Local Agencies, in accordance with 50 C.F.R. section 17.22(b)(5), section 17.32(b)(5), and section 222.307(g).

### **2.7.2 Regulatory Assurances Under NCCPA**

The Parties anticipate that if the Plan meets the criteria for an NCCP permit under section 2835 of the Fish and Game Code, DFG will provide assurances consistent with its statutory authority upon approval of the Plan and issuance of NCCP permits to the Local Agencies. Under section 2820 subdivision (f) of the Fish and Game Code, DFG may provide assurances for plan participants commensurate with the level of long-term conservation and associated implementation measures provided in the Plan. In order to ensure that state regulatory assurances are legally binding, such provisions will be included in an Implementing Agreement.

## **3. Planning Goals**

The planning goals include the following:

- Provide for the conservation and management of Covered Species within the Plan Area;
- Preserve aquatic and terrestrial resources through conservation partnerships with the Local Agencies;
- Allow for appropriate and compatible growth and development that is consistent with applicable laws;
- Balance open space, habitat, agriculture and urban development;
- Protect the rights of property owners;
- Provide a means to implement Covered Activities in a manner that complies with applicable state and federal fish and wildlife protection laws, including CESA and FESA, and other environmental laws, including CEQA and NEPA;
- Provide a basis for permits necessary to lawfully take Covered Species;

- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, and NCCPA within the Planning Area;
- Provide a less costly, equitable, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and
- Comply with the FESA.

The Plan’s goal to “provide for the conservation and management of Covered Species” means that the Plan will ensure the implementation of measures that will contribute to the recovery of Covered Species, taking into consideration the scope of the Planning Area in relation to the geographic range of the Covered Species, and the effect of Covered Activities on these species in relation to other activities not addressed by the Plan.

The Parties further recognize that, until conservation strategies are developed for the Covered Species and their habitats, and conservation partnerships formed, the cost and feasibility of achieving these goals will not be known. During the development of the Plan, the Plan’s goals, preliminary conservation objectives, Covered Species, Covered Activities, and Planning Area may be modified to ensure that implementation of the Plan will be practicable. The Parties recognize that, regardless of any such modifications, the Plan must meet applicable state and federal regulatory requirements to support the issuance of permits or authorizations for Covered Activities.

#### **4. Planning Area and Plan Participants**

##### **4.1 Planning Area**

The geographic area to be addressed in the Plan covers approximately 620,000 acres in Butte County as depicted in Exhibit A. The Planning Area includes the lowland and foothill communities of Butte County. The northern, western, and southern portions of the plan area are bounded by the Butte County line. The eastern boundary of the Planning Area extends to an elevation of 900-1100 feet, which encompasses most of the oak communities present in Butte County. Major drainages and water courses in the Planning Area includes part of the Sacramento River, parts of Butte Creek and Big Chico Creek, and the Feather River downstream of Oroville Dam to the Sutter County line. The Planning Area encompasses the boundaries and spheres of influences (“SOIs”) of the Cities of Chico, Oroville, Biggs, and Gridley.

##### **4.2 BCAG and the Local Agencies**

BCAG and the Local Agencies are the local sponsors of the Plan. As part of this planning process, the Local Agencies have committed to undertake a collaborative, systematic approach to protecting the Planning Area’s ecologically significant resources, including candidate, threatened and endangered species and their habitats, open space, and working landscapes, and to ensure that the

Covered Activities comply with applicable federal and state laws. BCAG will manage and coordinate funding for the development of the HCP/NCCP for submission to the governing boards of the Local Agencies and ultimately to the USFWS and DFG.

#### **4.3 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 1802) for the State on behalf of its residents. DFG is authorized to approve NCCPs pursuant to the NCCPA, administer and enforce CESA and other provisions of the Fish and Game Code and regulations adopted pursuant to the Fish and Game Code, and enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

#### **4.4 National Marine Fisheries Service**

NMFS is an agency of the United States Department of Commerce authorized by Congress to administer and enforce FESA with respect to marine mammals and certain fish species (including anadromous fish), and to enter into agreements with states, local governments, and other entities to conserve federally threatened, endangered, and other species of concern. The NCCPA and this Planning Agreement require coordination with NMFS with respect to FESA.

#### **4.5 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 FESA with respect to terrestrial wildlife, certain fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern. The NCCPA and this Planning Agreement require coordination with USFWS with respect to FESA.

### **5. Preliminary Conservation Objectives**

The preliminary conservation objectives intended to be achieved through the Plan are to:

- Provide for the protection of species, natural communities, and ecosystems on a landscape level;
- Preserve the diversity of plant and animal communities throughout the Planning Area;
- Protect threatened, endangered or other special status plant and animal species, and minimize and mitigate the take or loss of proposed Covered Species;
- Identify and designate biologically sensitive habitat areas;
- Preserve habitat and contribute to the recovery of Covered Species;

- Reduce the need to list additional species;
- Set forth species specific goals and objectives;
- Set forth specific habitat-based goals and objectives expressed in terms of amount, quality, and connectivity of habitat; and
- Implement an adaptive management and monitoring program to respond to changing ecological conditions.

## **5.1 Conservation Elements**

### **5.1.1 Ecosystems, Natural Communities, and Species List**

The Plan will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the Plan will employ species-specific take minimization, mitigation, conservation and management measures where appropriate.

A narrative description of natural communities and a preliminary list of the endangered, threatened, candidate, or other sensitive species known, or reasonably expected to be found in the Planning Area, that are intended to be the initial focus of the Plan is attached as Exhibit B. This list identifies the species that the Parties will evaluate for inclusion in the Plan. Exhibit B is not necessarily the Plan's final Covered Species list. The Parties anticipate that species may be added or removed from the list once more is learned about the nature of the Covered Activities and the impact of Covered Activities on native species within the Planning Area. The Parties acknowledge that inclusion of a particular species as a Covered Species in the Plan will require an individual determination by the applicable Wildlife Agency that the Plan adequately provides for conservation of the species in accordance with state and/or federal permit issuance requirements.

### **5.1.2 Conservation Areas and Viable Habitat Linkages**

The Plan will protect, enhance, or restore habitat throughout the Planning Area and provide or enhance habitat linkages, where appropriate within the Planning Area. It will also identify where linkages between the conservation areas and important habitat areas outside the Planning Area should occur. The Plan's conservation strategy will address a range of environmental gradients and ecological functions, and will address appropriate principles of ecosystem management, ecosystem restoration and population biology.

### **5.1.3 Project Design**

The Plan will ensure that Covered Activities will be appropriately designed to avoid and/or minimize and mitigate on-site and off-site impacts to resources.

## **6. Preparing the Plan**

The Parties intend that this Planning Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the Plan that fulfills the requirements of the NCCPA and FESA. The process used to develop the Plan will incorporate independent scientific input and analysis, and include extensive public participation with ample opportunity for comment from the general public as well as advice solicited by the Local Agencies from key groups of stakeholders as described below.

### **6.1 Best Available Scientific Information**

The Plan will be based on the best available scientific information, including, but not limited to:

- principles of conservation biology, community ecology, landscape ecology, individual species' ecology, and other scientific data and information;
- thorough information about all natural communities and proposed Covered Species on lands throughout the Planning Area; and
- advice from well-qualified, independent scientists.

### **6.2 Data Collection**

The Parties agree that information regarding the subjects briefly described below in Section 6.2.1. is important for preparation of the Plan. The Parties therefore agree that data collection for preparation of the Plan should be prioritized to develop more complete information on these subjects. Preference should be given to collecting 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 Plan. Data needed for preparation of the Plan may not be known at this time nor 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 Plan will be made available to the Wildlife Agencies and the Local Agencies in hard and digital formats, as requested.

#### **6.2.1 Types of Data**

Data will be gathered to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species life histories, species occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, hydrologic regime, hydrodynamics, temperature, flow patterns, water quality, barrier and hazard types and locations, habitat connectivity, ecological threats and stressors.

### **6.3 Independent Scientific Input**

The Local Agencies and DFG intend to include independent scientific input and analysis to assist in the preparation of the Plan. For that purpose, a list of potential Independent Science Advisors is being developed by BCAG. The Science Advisors will at a minimum, provide recommendations, advice and guidance to the Local Agencies and DFG on:

- scientifically sound conservation strategies for species and natural communities proposed to be covered by the Plan;
- reserve design principles that address the needs of species, landscapes, ecosystems, and ecological processes in the planning area proposed to be addressed by the Plan;
- management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan; and
- data gaps and uncertainties so that risk factors can be evaluated.

The Science Advisors will consist of approximately 12 scientists currently being assembled by BCAG, in consultation with the Wildlife Agencies, to provide technical expertise on the affected taxonomic groups, larger scale ecological processes, principles of conservation biology, and conservation and land use planning in practice. The Independent Science Advisors may be asked to provide additional feedback on key issues during preparation of the Plan, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Local Agencies and DFG.

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

### **6.4 Public Participation**

The Local Agencies and BCAG will prepare the Plan in an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interests including state, local, and tribal governments, landowners, conservation organizations, agricultural commissioners, agricultural organizations, and the general public. The planning process will provide for thorough public review and comment, and include a stakeholder group that will review the Plan at every stage of development. To assist in the development of the Plan, BCAG will form the following ad hoc groups: 1) a Steering Committee,

2) Stakeholder Committee, and 3) Technical Subcommittees. The Stakeholder Committee will be open to public participation as set forth below in Section 6.4.2.

#### **6.4.1 Steering Committee**

The Steering Committee will act in an administrative capacity and will be responsible for the preparation of the Plan. Responsibilities of the Steering Committee include:

- managing the Consultants and working with the Consultants to establish timelines, work products and outreach processes;
- reviewing key HCP/NCCP elements (*e.g.*, covered species, Plan Area, covered activities, conservation strategy, impact assessment, implementing entity);
- providing guidance as requested by Technical Subcommittees (see below);
- monitoring HCP/NCCP development budgets;
- securing grant funding for Plan preparation;
- providing oversight of HCP/NCCP development;
- communicating HCP/NCCP progress and issues to the County and City Administrators Committee, Stakeholder Committee, and Planning Directors Group;
- providing for public participation and outreach;
- reviewing and formulating responses to recommendations for HCP/NCCP development made by DFG, USFWS, NMFS, the Science Advisory Panel and the Stakeholder Committee;\_and
- reviewing HCP/NCCP scopes of work, budgets, and scope modifications of the Consultants.

Staff from the Wildlife Agencies will work with the Steering Committee to provide technical expertise and share information for the development and implementation of the Plan. All such meetings are open to the public and provide for public comment.

#### **6.4.2 Stakeholder Committee**

The Stakeholder Committee is responsible for reviewing draft sections of the HCP/NCCP (*e.g.*, Covered Species, Plan Area, ecological baseline report, impact assessment, and elements of the conservation strategy) and providing recommendations for HCP/NCCP development to the Steering Committee. The role of the Committee's members includes representing the interests of their organizations at meetings and reporting on development of the Plan to other members of their organizations on a regular basis. The Stakeholder Committee will meet approximately quarterly. All such meetings are open to the public and provide for public comment.

The NCCP Act section 2801(j) states that "...[t]he process should encourage the active participation and support of landowners and others in the conservation and stewardship of natural resources in the plan area during plan development using appropriate measures, including incentives."

### **6.4.3 Technical Subcommittees**

The Steering Committee may establish one or more technical subcommittees, as needed, to focus on development of specific aspects of the HCP/NCCP.

### **6.4.4 Outreach**

The Local Agencies, in concert with the Steering Committee, will provide access to information for persons interested in the Plan. The Parties expect and intend that public outreach regarding preparation of the Plan will be conducted largely by and through the Stakeholder Committee meetings. In addition, the Local Agencies will continue to hold public meetings to present key decisions regarding the preparation of the Plan to allow the public the opportunity to comment on and inquire about the decisions as such items are presented to their city councils or governing boards. Other outreach efforts will include maintenance of a project website, invited presentations to interested organizations and occasional public workshops.

### **6.4.5 Availability of Public Review Drafts**

The Local Agencies will designate and make available for public review in a reasonable and timely manner "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 Local Agencies at least ten working days prior to any public hearing addressing these documents. In addition, the Local Agencies will make available all reports and formal memoranda prepared by the Steering Committee. To the extent allowed by state and federal law, this obligation will not apply to all documents drafted during preparation of the Plan. However, the Local Agencies will periodically designate various pertinent documents drafted during preparation of the Plan as "public review drafts," and will make these documents available to the public. The Parties agree that documents will be available for public review on the internet at [www.bcag.org](http://www.bcag.org). In addition, documents will be available for distribution by BCAG in hard copy form.

### **6.4.6 Public Hearings**

Public hearings regarding development of the Plan will be planned and conducted in a manner by each Local Agency, as may be appropriate, that satisfies the requirements of CEQA, NEPA, and any other applicable state or federal laws.

#### **6.4.7 Public Review and Comment Period Prior to Adoption**

The Local Agencies will make the proposed draft Plan and Implementing Agreement available for public review and comment a minimum of 60 days before adoption by the Local Agencies. The Local Agencies expect to fulfill this obligation by distributing the draft Plan and Implementing Agreement with the draft environmental impact report prepared for the Plan pursuant to CEQA and/or the draft environmental impact statement prepared for the Plan pursuant to NEPA.

#### **6.5 Covered Activities**

The Plan will identify and address the Covered Activities carried out by the Local Agencies that may result in take of Covered Species within the Planning Area. Covered Activities may include: those existing, planned and proposed land uses over which the Local Agencies have land use authority; certain agricultural activities over which the Local Agencies exercise control for purposes of the Plan; habitat restoration and conservation actions; and adaptive habitat management and monitoring activities in the Planning Area. The Parties intend that the Plan will allow Covered Activities in the Planning Area to be carried out in compliance with NCCPA, CESA and FESA.

#### **6.6 Interim Project Processing**

The Parties recognize that before the Wildlife Agencies approve the Plan, certain projects and activities may be proposed within the Planning Area. The Parties agree to the following interim project process to: (1) help ensure that Reportable Interim Projects approved or initiated in the Planning Area before completion of the Plan are consistent with the preliminary conservation objectives (Section 5) and do not compromise successful completion and implementation of the Plan; (2) facilitate CEQA, CESA, and FESA compliance for interim projects that require such compliance; and (3) ensure that the processing of interim projects is not unduly delayed during preparation of the Plan. DFG and Plan Participants shall consider information developed by the Independent Science Advisors when reviewing such projects and activities.

##### **6.6.1 Reportable Interim Projects**

The Local Agencies proposing to undertake or approve an interim project will notify the Wildlife Agencies pursuant to section 6.6.2 about Reportable Interim Projects that have the potential to adversely impact proposed Covered Species and natural communities within the Planning Area.

##### **6.6.2 Notification Process**

The Local Agency proposing to undertake or approve a Reportable Interim Project will notify the Wildlife Agencies of the project prior to the time, or as soon as possible after, the project application is deemed complete. The Local Agency

will notify the particular individuals<sup>1</sup> designated by the Wildlife Agencies to be notified of Reportable Interim Projects, and will provide these designated individuals with (1) a depiction of the project location on a USGS 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a description of the project along with the land cover types present on the project site using the most current land cover data available to the Local Agency; and (3) any other biological information available to the Local Agency about the project area.

### **6.6.3 Wildlife Agency Review**

The Wildlife Agencies will review Reportable Interim Projects in a timely manner, and will use reasonable efforts to provide any comments on the projects to the referring Local Agency within the legally prescribed comment periods. The Wildlife Agencies will 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. Any take of listed or candidate species arising out of a Reportable Interim Project must be authorized pursuant to applicable federal and/or state law.

### **6.6.4 Coordinating Interim Process with Plan Preparation**

Representatives of the Parties will meet as needed to discuss Reportable Interim Projects and to coordinate with development of the Plan. Independent scientific input will be considered by the Parties during interim project review. Individual project compliance with state and federal laws will continue to be the responsibility of the Local Agency responsible for approval of the Reportable Interim Project.

## **6.7 Protection of Habitat Land During Planning Process**

### **6.7.1 Conservation Lands Acquired/Protected**

The Parties may elect to preserve, enhance or restore, either by acquisition or other means (*e.g.*, conservation easements; designated setbacks), lands in the Planning Area that contain native species of wildlife or natural communities prior to approval of the Plan. The Local Agencies will confer with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to consider such lands toward the land acquisition or habitat protection requirements of the Plan as appropriate, provided the lands are permanently conserved, restored, or enhanced, and managed and contribute to the Plan's conservation strategy.

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<sup>1</sup> DFG Regional Staff Environmental Scientist/Biologist for Butte County, and the Project Leader or Branch Chief of Conservation Planning for the USFWS and NMFS.

## **6.7.2 Mitigation Lands**

Lands, or portions of lands, acquired or otherwise protected solely to mitigate the impacts of specific projects, actions, or activities approved prior to Plan approval will only be considered as mitigation for those projects, actions or activities. Such lands will be considered during the Plan analysis, but will not count toward future mitigation obligations of the Plan.

## **6.8 Implementing Agreement**

The NCCPA requires that any NCCP approved by DFG include an Implementing Agreement (IA) that contains provisions for:

- conditions of species coverage;
- the long-term protection of habitat reserves and/or other conservation measures;
- implementation of mitigation and conservation measures;
- terms for suspension or revocation of the take permit;
- procedures for amendment of the Plan and IA and take authorizations;
- implementation of monitoring and adaptive management;
- oversight of Plan effectiveness and funding; and
- periodic reporting.

While the Plan is being developed, the Parties will negotiate a draft Implementing Agreement that will satisfy the requirements of the NCCPA and FESA, and include specific provisions and procedures for the implementation, monitoring and funding of the Plan. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the Plan.

## **7. Commitment of Resources**

### **7.1 Funding**

The Parties agree that they will work together to bring available funding to the planning effort. Notwithstanding the foregoing, BCAG has assumed the primary responsibility during the planning process for funding the preparation of the Plan.

#### **7.1.1 Local Funding**

Notwithstanding the foregoing, the Parties recognize that the costs and mechanisms for funding the implementation of the Plan shall be determined in the future through the planning process.

#### **7.1.2 DFG Assistance with Funding and DFG Costs**

DFG agrees to cooperate with the other Parties in identifying and securing, where appropriate and available, federal and state funds earmarked for natural

community conservation planning. The Parties agree that the Local Agencies shall not provide reimbursement to DFG for its participation in the planning phase of the Plan as provided in Fish and Game Code, section 2810, except as provided in Section 8.7 of this Planning Agreement. 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.<sup>2</sup>

### **7.1.3 USFWS and NMFS Assistance with Funding**

The USFWS and the NMFS agree 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 or Transportation. The commitments of the USFWS and the NMFS under this Planning Agreement are subject to the requirements of the federal Anti-Deficiency Act (31 U.S.C. Section 1341) 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 provides for such expenditures in writing.

### **7.2 Expertise of Wildlife Agencies**

Subject to funding and staffing constraints, the Wildlife Agencies agree to provide technical and scientific information, analyses and advice to assist the Local Agencies with the timely and efficient development of the Plan. The Parties further agree that the Local Agencies will share with the Wildlife Agencies information obtained through the development of the Plan.

## **8. Miscellaneous Provisions**

### **8.1 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.

### **8.2 Statutory Authority**

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

### **8.3 Multiple Originals**

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<sup>2</sup> Subject to review of funding arrangement with CDFG.

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

#### **8.4 Effective Date**

The Effective Date of this Planning Agreement will be the date on which it is fully executed by DFG and the Local Agencies. This Planning Agreement is effective as to each of the other Parties at the time that Party signs the Planning Agreement.

#### **8.5 Duration**

This Planning Agreement will be in effect until the Plan is approved and permitted by the Wildlife Agencies, but shall not be in effect for more than five years following the Effective Date, unless extended by amendment. The Parties intend that the Plan be adopted and permits issued prior to the end of calendar year 2010. This Planning Agreement may be terminated pursuant to section 8.7 below.

#### **8.6 Amendments**

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

#### **8.7 Termination and Withdrawal**

Subject to the requirement in Section 8.7.1 of the Planning Agreement, any party may withdraw from this Planning Agreement upon 30 days' written notice to the other Parties. The Planning Agreement will remain in effect as to all non-withdrawing Parties unless the remaining Parties determine that the withdrawal requires termination of the Planning Agreement. This Planning Agreement can be terminated only by written agreement of all Parties.

##### **8.7.1 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 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\_\_

\_\_\_\_\_  
City of Biggs

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
City of Chico

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
City of Gridley

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
City of Oroville

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
County of Butte

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

CALIFORNIA DEPARTMENT OF FISH AND  
GAME

By: \_\_\_\_\_

Sonke Mastrup, Deputy Director  
Resources Management  
and Policy Division

Dated: \_\_\_\_\_, 20\_\_

US FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_

Susan K. Moore, Field Supervisor  
Sacramento Fish and Wildlife Office

Dated: \_\_\_\_\_, 20\_\_

NATIONAL MARINE FISHERIES SERVICE

By: \_\_\_\_\_

Maria Rea, Supervisor  
Sacramento Area Office  
Protected Resources Division  
Southwest Region

# EXHIBIT A

## Planning Area Boundaries

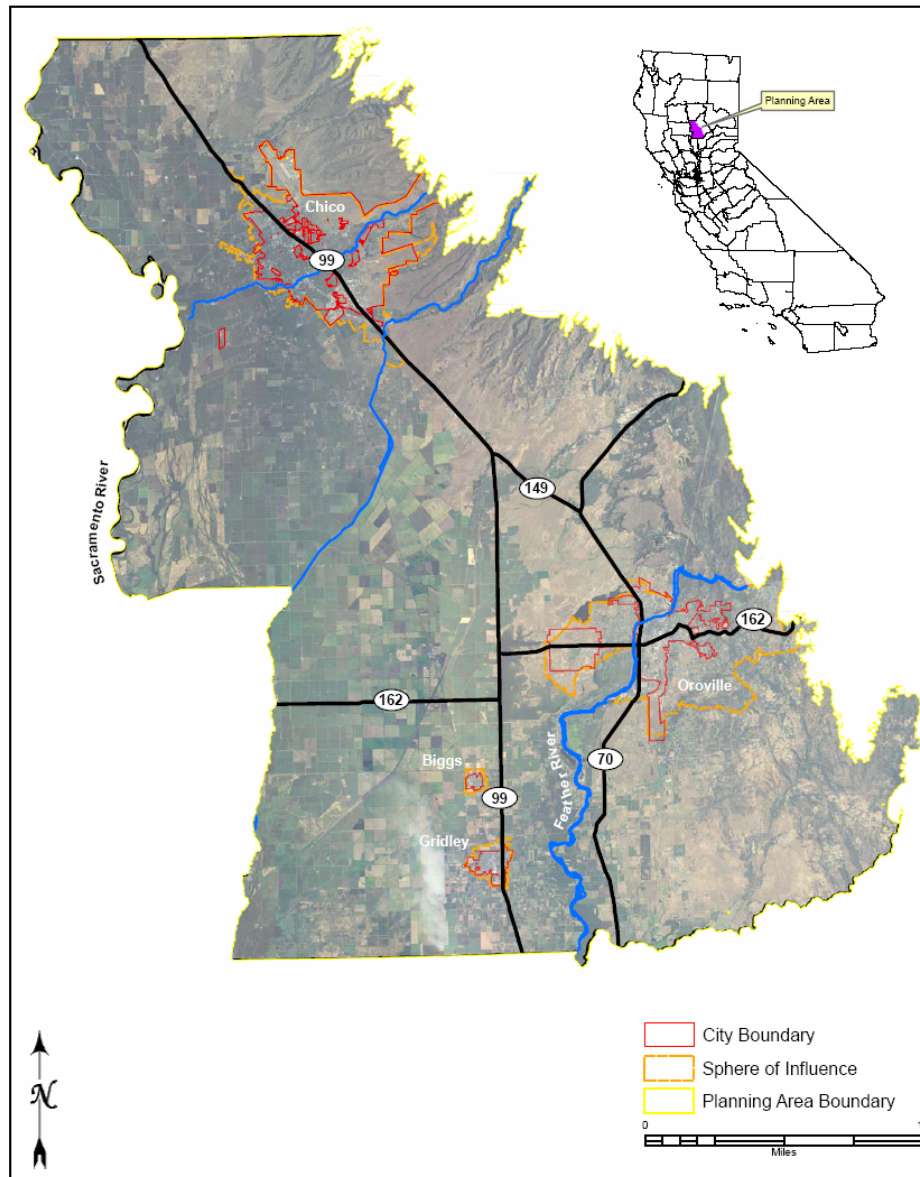


Figure 3-1. Planning Area for Butte Regional HCP/NCCP

## EXHIBIT B

### Natural Communities and Species List

<i>Natural Community</i>	<i>Constituent Land Cover Types</i>
Oak Woodland and Savanna	Blue oak savanna
	Blue oak woodland
	Interior live oak woodland
	Mixed oak woodland
Grassland	Grassland without vernal pools
	Grassland with vernal pools >1%
	Grassland with vernal pools <1%
Riparian	Cottonwood-willow riparian forest
	Valley oak riparian forest
	Willow scrub
	Herbaceous riparian and river bar
Wetland	Emergent wetland
	Managed wetland
Aquatic	Open water
	Major canal
	Stock pond
Agriculture	Rice
	Irrigated cropland
	Irrigated pasture
	Orchard/vineyard

## Proposed Butte Regional HCP/NCCP Covered Species

<b>Federal and State Listed Species</b>	
<b>Animals</b>	Central Valley spring run Chinook salmon <i>Oncorhynchus tshawytscha</i>
Bald eagle <i>Haliaeetus leucocephalus</i>	Central Valley winter run Chinook salmon <i>Oncorhynchus tshawytscha</i>
Swainson's hawk <i>Buteo swainsoni</i>	Valley elderberry longhorn beetle <sup>1</sup> Desmocerus californicus dimorphus
Greater sandhill crane <i>Grus canadensis tabida</i>	Conservancy fairy shrimp Branchinecta conservatio
California black rail <i>Laterallus jamaicensis coturniculus</i>	Vernal pool fairy shrimp <i>Branchinecta lynchi</i>
Western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i>	Vernal pool tadpole shrimp <i>Lepidurus packardii</i>
American Peregrine Falcon <i>Falco peregrinus anatum</i>	
Bank swallow <i>Riparia riparia</i>	<b>Plants</b>
Giant garter snake <i>Thamnophis gigas</i>	Hoover's spurge <i>Chamaesyce hooveri</i>
California tiger salamander <i>Ambystoma californiense</i>	Butte County meadowfoam <i>Limnanthes floccosa</i> ssp. <i>californica</i>
California red-legged frog <i>Rana aurora draytonii</i>	Hairy Orcutt grass <i>Orcuttia pilosa</i>
Green sturgeon <i>Acipenser medirostris</i>	Greene's tuctoria <i>Tuctoria greenei</i>
Central Valley steelhead <i>Oncorhynchus mykiss</i>	Veiny Monardella <i>Monardella douglasii</i> ssp. <i>venosa</i>
<b>Non-Listed Species</b>	
<b>Animals</b>	<b>Plants</b>
White-tailed kite <i>Elanus leucurus</i>	Central Valley fall/late-fall run Chinook salmon <i>Oncorhynchus tshawytscha</i>
Western burrowing owl <i>Athene cunicularia hypugea</i>	Sacramento splittail <i>Pogonichthys macrolepidotus</i>

**Proposed Butte Regional HCP/NCCP Covered Species (continued)**

<b><i>Animals (cont.)</i></b>	<b><i>Plants (cont.)</i></b>
Yellow-breasted chat <i>Icteria virens</i>	Ferris's milkvetch <i>Astragalus tener</i> var. <i>ferrisae</i>
Tricolored blackbird <i>Agelaius tricolor</i>	Lesser saltscale <i>Atriplex minuscula</i>
California horned lizard <i>Phrynosoma coronatum frontale</i>	Ahart's dwarf rush <i>Juncus leiospermus</i> var. <i>ahartii</i>
Northwestern pond turtle <i>Clemmys marmorata marmorata</i>	Butte County checkerbloom <i>Sidalcea robusta</i>
Western spadefoot <i>Scaphiopus hammondii</i>	Butte County golden clover <i>Trifolium jokerstii</i>
California Foothill Yellow-legged frog <i>Rana boylei</i>	
River lamprey <i>Lampetra ayresi</i>	
<sup>1</sup> Valley elderberry longhorn beetle was proposed for de-listing by USFWS in October 2006. If it is removed from federal protection status, it may no longer meet the criteria for coverage under the BR HCP/NCCP.	