

COUNTY OF MERCED

NATURAL COMMUNITY CONSERVATION PLANNING AGREEMENT

This Agreement (“Planning Agreement”) is made and entered into this ___th day of June, 2001, by and among the County of Merced (“County”), the University of California (“UC”), the California Department of Fish and Game (“Department”), and the U.S. Fish and Wildlife Service (“Service”) (collectively the “Parties”).

1. RECITALS

1.1 MERCED COUNTY

In

1995, the University of California (UC) selected a site in Merced County for the development of a new University of California campus (UC Merced). Since then, the County and the UC have engaged in a joint planning process for the development of the campus and associated University Community. As part of this planning process, the County has committed to undertaking a collaborative, systematic approach to protecting eastern Merced County’s ecologically significant resources, open space, and agricultural lands, and to ensuring that the campus, associated community and other development projects comply with applicable federal and state environmental laws.

1.2 DEPARTMENT

The Department is the agency of the State of California authorized and empowered to enforce the terms of the California Endangered Species Act (“CESA”) and to develop Natural Communities Conservation Plans (“NCCP’s”) pursuant to the Natural Community Conservation Planning Act (“NCCP Act”), to act as trustee for wildlife (as defined in Fish and Game Code Section 711.2) of the state on behalf of its residents, and to enter into agreements with federal and local government and other entities for the conservation of species and habitats pursuant to CESA and the NCCP Act.

1.3 SERVICE

The Service is an agency of the United States Department of the Interior authorized and empowered by Congress to enforce the terms of the federal Endangered Species Act (ESA), and to enter into agreements with states, local government, and other entities to conserve threatened, endangered, and other species of concern.

1.4 UC MERCED

UC is public trust of the State of California authorized and empowered under Article IX, Section 9 of the California Constitution to administer the UC system of higher education. Since UC selected Eastern Merced County as the site of the new UC Merced campus, UC and the County have engaged in a joint planning process for the development of the Campus and associated University Community and supporting infrastructure. As part of this planning process, UC and the County have committed to undertake a collaborative, systematic approach to conservation strategies for lands

under their control and to ensure the Campus and University Community comply with applicable federal and state environmental laws.

1.5 COUNTY AND UC PLANNING

Following a lengthy site selection process, UC selected in 1995 a site approximately six miles northeast of the City of Merced in unincorporated Merced County for the development of the new campus. UC Merced has since identified potential alternative sites for the campus for evaluation and is developing a Long Range Development Plan and associated Environmental Impact Report (EIR). The EIR will address several alternatives. The campus is scheduled to open in 2004.

The joint conservation planning and permitting program undertaken pursuant to this Agreement is a natural outgrowth of the need to identify both areas which might be developed for the UC Merced, a UC Community, and other development, and areas important for conservation in the eastern portion of Merced County. The County has expressed its commitment to such conservation efforts through the Open Space and Conservation Elements of the General Plan, and the Planning Principles adopted jointly by the County and UC in October of 1999 (Planning Principles).

1.6 NATURAL COMMUNITY CONSERVATION PLANNING ACT

The Legislature of the State of California has found that there is a need for broad-based planning to provide for effective protection and conservation of the state's wildlife heritage while continuing to allow for appropriate development and growth through the NCCP Act. California Fish and Game Code, Section 2800, et seq.

Pursuant to the NCCP Act, local, state and federal agencies are encouraged to prepare NCCPs to provide comprehensive management and conservation of multiple species and their habitats under a single plan, rather than through the preparation of numerous individual plans on a species-by-species, project-by-project basis. The NCCP Act also anticipates that Plan participants will enter into a Planning Agreement for the purpose of preparing and implementing such Plans (Fish and Game Code Section 2810).

1.6.1 COMPATIBILITY WITH ESA AND CESA

The NCCP Act provides that NCCPs shall be compatible with ESA and CESA. Any NCCP resulting from this Agreement shall also satisfy the requirements for a Habitat Conservation Plan (“HCP”) under Section 10 of ESA, 16 U.S.C. § 1539. Throughout this Agreement the NCCP and HCP will be jointly referred to as “the Plan.” Since it will comply with ESA and the NCCP Act, the Plan will serve as the basis for incidental take authorization pursuant to section 10(a) of ESA, and section 2835 of the NCCP Act. The NCCP Act provides that after the approval of an NCCP, the Department may permit the taking of any identified species whose conservation and management is provided for in the Plan. Conservation is defined in Fish and Game Code Section 2061. The NCCP Act was amended in 2000 to require that NCCP planning agreements include specific requirements for public participation and scientific analysis.

1.6.2 CONCURRENCE WITH GOALS OF THE NATURAL COMMUNITY CONSERVATION PLANNING ACT

The County concurs with the goals of the NCCP Act and intends to pursue actions under the Act to provide appropriate protection for the range of biological resources within its jurisdiction while at the same time safeguarding the economic, agricultural, social, health and safety objectives, and property rights of County residents and property owners. The agreement to, and implementation of, an NCCP requires the approval of the Board of Supervisors and the permitting and development of a UC campus in Eastern Merced County.

1.7 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 not the most effective for species conservation or for cost. All Parties assume that the development of a successful Plan will be a less expensive and more effective method of complying with the species conservation requirements of ESA, CESA, and the environmental review processes of the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”) than through a project-by-project approach. The Parties also agree that a successful Plan can be better for both habitat conservation and economic development than individual project permitting.

2. PURPOSES OF THE PLANNING AGREEMENT

- 2.1 The purposes of this Planning Agreement are to develop a Plan which will:
 - 2.1.1 Preserve important natural habitats, wetlands, and endangered species through the development of a regional conservation plan;
 - 2.1.2 Implement the goals, objectives and policies of a revised Merced County General Plan regarding the preservation of natural resources, open space, and traditional agricultural activities in a manner consistent with the NCCP Act;
 - 2.1.3 Preserve and support agricultural activities, including but not limited to ranching and farming, and the rural character of the region;
 - 2.1.4 Develop a process that benefits landowners by providing an efficient means of satisfying federal and state regulatory requirements that may apply to land development activities they might undertake. This process will assure a coordinated, efficient approach to state and federal permitting, and provide the Parties and landowners with long term regulatory certainty and predictability.
- 2.2 Prior to completion of the Plan, the Parties will work together to:
 - 2.2.1 Develop a process to authorize interim and future development within the Plan Area, including but not limited to permitting for the UC Merced campus, UC community, and related infrastructure and support facilities;
 - 2.2.2 Facilitate the timely completion of the permitting process for the UC Merced campus and University Community, and related infrastructure and support facilities.

3. GOALS AND PRINCIPLES OF THE PLAN

The Parties agree that the eastern Merced County NCCP/HCP will be guided by the following goals and principles:

3.1 The Plan must provide for the efficient use and protection of natural, agricultural, and economic resources while also promoting sensitivity to important elements of the state's critical natural diversity;

3.2 The planning process must provide an interim planning framework for development projects in order to avoid, minimize, and compensate for impacts on wildlife caused by development and growth during Plan development, and to ensure that such projects do not compromise the development of the Plan;

3.2.1 In order to enable the County, UC, property owners, and regulatory agencies to identify the effects of interim projects (i.e., those projects occurring prior to Plan approval) which might preclude important conservation planning options, the parties will cooperatively develop and institute a cooperative process that will be consistent with the County's regulatory authority and will be integrated into the early stages of project review.

3.3 The Plan will not incorporate any means of regulating private property for habitat or species protection purposes beyond what is necessary to meet applicable legal requirements;

- 3.4 During the preparation of the Plan and the development of conservation measures, commitments, and assurances to the County, general agreements regarding issues of policy, funding, schedule and other important principles concerning the Plan will be reached;
- 3.5 The Plan must produce more effective habitat and species conservation than the project-by-project alternative;
- 3.6 In comparison to the option of mitigating for species and habitat impacts on a project-by-project basis, the Plan must be more efficient, less expensive, and less time consuming;
- 3.7 The Plan must be comprehensive and must:
 - 3.7.1 Promote the long term survival of eastern Merced County ecosystems and habitats, and species dependent thereupon, toward a goal of reducing the need to list additional species in the future;
 - 3.7.2 Set forth specific habitat-based goals and objectives expressed in terms of amount and quality of habitat;
 - 3.7.3 Provide an adaptive management strategy that includes: identification of uncertainties and the questions that need to be addressed to resolve the uncertainties; development of alternative conservation strategies; integration of a monitoring program designed to identify the information necessary for strategy evaluation; and incorporation of feedback mechanisms that link implementation

and monitoring to a decision-making process that results in appropriate adjustments to management;

- 3.7.4 Provide a comprehensive means to coordinate, standardize, streamline, and ensure closure regarding mitigation requirements of ESA, CESA, NEPA, CEQA, the California Native Plant Protection Act (“CNPPA”) and other applicable federal and state laws and regulations relating to biological and natural resources within the Plan area;
- 3.7.5 Ensure that mitigation and other requirements addressed in consultation under Section 7 of the ESA, or as applicable, under the Fish and Wildlife Coordination Act, for actions subject to Section 404 of the Clean Water Act will be consistent with mitigation and other provisions of the Plan. To achieve this goal the Parties will develop a process to assure coordination of the Plan with the Section 404 permitting process, including the development of a programmatic biological opinion by the Service and participation in efforts convened by the County, UC, or other federal or state agencies to develop a regional or programmatic approach to Section 404 permitting within the Plan Area;
- 3.7.6 Establish and emphasize the use of incentives to encourage property owners to voluntarily conserve habitat and species within the Plan area;
- 3.7.7 Allow for economic growth consistent with the conservation of biological resources within the Plan area;

- 3.7.8 Provide the basis for issuance of incidental take permits and authorizations for taking listed and State candidate species (collectively called “Take Authorizations”) adequately conserved by the Plan as determined by the Department and the Service (collectively the “Wildlife Agencies”);
- 3.7.9 Provide a process for issuance of Take Authorizations for additional species within the Plan area which are adequately covered by the Plan and may be listed in the future;
- 3.7.10 Establish consistent mitigation standards for covered species for application by the Service under Section 7 of ESA;
- 3.7.11 Establish implementation monitoring programs that assess compliance with the Plan and verify progress towards the biological goals and objectives of the Plan and associated management plans;
- 3.7.12 Provide meaningful opportunity for public participation (see Public Participation in the Planning Process- Section 4, below) in the development of the Plan;
- 3.7.13 Establish a framework for management of the preserve system;
- 3.8 The development and approval of the Plan must be expeditious, recognizing the need to develop the campus and community in a timely manner. All Parties agree to use their best efforts to ensure that the Plan and its environmental documents are completed and approved as quickly as possible;
- 3.9 Expenses for the preparation and implementation of the Plan must be distributed

among local, state and federal participants. Commitments for the local, state, and federal contributions to the Plan will be defined in the implementation agreements among the Parties;

- 3.10 The long term survival of species presently listed as threatened or endangered under CESA and/or ESA which are found within the Plan area will be promoted through conservation actions, taking into account factors relating to the range of each species;
- 3.11 Decisions by all Parties must be made in timely fashion and in compliance with agreed upon time parameters and objectives.

4. PUBLIC PARTICIPATION IN PLAN DEVELOPMENT

- 4.1 The Department, in collaboration with the County and UC, shall jointly establish a public participation process for the development and review of the Plan through the establishment of an Advisory Committee that includes representatives of the conservation organizations, agricultural organizations, landowners in the Plan Area and the general public. The Advisory Committee may also include representatives of other government organizations as needed. The County and UC shall, following consultation with the Department, appoint members of the Advisory Committee representing the above groups. The Department, the County, and UC shall serve as members of the Advisory Committee. From time-to-time, those Parties which serve on the Advisory

Committee may choose to establish ad hoc committees to address specific issues associated with the plan.

- 4.2 All Advisory Committee Meetings shall be open to the public and publicly noticed consistent with the requirements of the Brown Act.
- 4.3 The County and UC shall make available to the public either electronically or in hard copy (as appropriate) in a reasonable and timely manner public review drafts of: plans; memoranda of understanding; maps; conservation guidelines; species coverage lists; and other planning documents associated with the Plan.

In addition, as part of the public participation process, the County and UC shall ensure that all draft documents in furtherance of this Planning Agreement and associated with the Plan, and which require approval and adoption by UC or the County, to meet the requirements of Section 10 of the Federal ESA or NCCP Act, are available for public review for a minimum of 45 days prior to the adoption of the draft document and that said documents shall be available for at least 10 working days prior to any public hearing held by the County addressing draft documents. These review periods may run concurrent with the review period provided for any documents required by the CEQA, NEPA, and ESA that are associated with the Plan. Public hearings associated with the Plan shall be complementary to or integrated with those hearings otherwise provided by law.

- 4.4 The Parties shall develop a public outreach program which includes conducting

public workshops, at times and locations conducive to public participation, at important stages of the planning process (e.g., following release of scientific advisory reports; development of species coverage lists; development of implementation strategies; etc.). The goal of the public workshops is to provide information for persons interested in the planning effort and to obtain public input from a balanced variety of affected public and private interests including state and local governments, landowners, conservation organizations, agricultural organizations and the general public.

- 4.5 The Service acknowledges the requirement for the establishment by the Department, in collaboration with the County and UC, of the Advisory Committee under the NCCP. The Service agrees that it will review information by the Advisory Committee as one element of all information developed from public input on the planning process.

5. TERM OF PLAN, PERMITS AND MANAGEMENT AUTHORIZATION

The Plan, including the conservation, protection and management measures provided for thereunder, will be designed to provide for the long-term conservation of species. It is the anticipation of the Parties that Take Authorizations resulting therefrom will have an effective period of no less than 50 years. While the overall conservation benefits of the Plan and the

conservation and management of lands set aside under the Plan shall survive in perpetuity, other conservation measures of varying durations, if appropriate, may be fashioned under the Plan.

6. GEOGRAPHIC AREA COVERED BY THE PLAN

The area covered by the Plan shall generally include eastern Merced County, California, including:

- 6.1 Unincorporated areas of the County located east of Highway 99, south of the Stanislaus County Line, west of the Mariposa County line, and north of the Madera County Line;
and
- 6.2 Incorporated areas within cities in the Plan area which choose to participate in the NCCP/HCP planning process for eastern Merced County.

7. SPECIES AND HABITATS COVERED BY THE PLAN

7.1 ALL SPECIES AND HABITATS

The intention of the Parties is to develop and implement a Plan for eastern Merced County that will:

- 7.1.1 Provide for the effective conservation, protection, management, and contribution to the long term survival of plant and animal species and their habitats located within the boundaries of the Plan area, whether currently listed or unlisted, in accordance with the provisions of ESA, CESA, the NCCP Act,

and other applicable laws, taking into consideration appropriate economic and political constraints, as permitted by those laws;

- 7.1.2 Focus upon the conservation, protection, management, and restoration of habitats as the means of ensuring that the Plan and any incidental takings which occur as a result of permits and management authorizations issued pursuant thereto, shall not appreciably reduce the likelihood of the long term survival in the wild of species covered by the Plan.

7.2 CONSERVATION ELEMENTS

7.2.1 ECOSYSTEMS AND HABITATS

The Plan will employ a strategy that focuses on the conservation of ecosystems and habitats as the means of ensuring the conservation of species in the Plan Area.

7.2.2 RESERVES AND VIABLE HABITAT LINKAGES

The Plan will, through its processes, establish conservation areas located throughout the Plan area and provide linkages between the conservation areas and designate where linkages between the conservation areas and important habitat areas outside the Plan should likely occur. Such conservation areas will be designed to ensure that reserves and linkages include habitat necessary to offset for edge effects.

- 7.2.3 Projects will be appropriately designed to minimize offsite impacts to

resources.

7.3 INITIAL FOCUS OF PLANNING PROCESS

The Parties understand and agree that the focus of the planning process will be the identification of species and habitats to be initially covered by the Plan, and an identification by the Service and the Department of the likely requirements necessary to provide for the conservation, protection, and management of those species and habitats.

8. ROLES AND RESPONSIBILITIES IN THE DEVELOPMENT OF THE PLAN

8.1 COUNTY

The County will be the lead agency for the preparation of the Plan and:

- 8.1.1 Facilitate the preparation of the Plan through entering into contracts and agreements for the collecting the biological and other information necessary to develop the Plan and associated documents;
- 8.1.2 Provide adequate meeting times and facilities for the Public Participation Process associated with Plan development;
- 8.1.3 Prepare, using either in house staff or through consultants acceptable to the Department, the Plan and associated documents;
- 8.1.4 Serve as lead agency for purposes of CEQA for the Plan and coordinate the preparation of CEQA documentation with the Department and NEPA documentation with the Service, with the intention of all Parties being to prepare a single, joint NEPA/CEQA document;

- 8.1.5 Apply for Take Authorizations to allow the take of covered species in accordance with all applicable laws and regulations;
- 8.1.6 Prepare and circulate drafts of the Plan and the implementation agreement in coordination with the Service and the Department prior to final approval;
- 8.1.7 As more particularly set forth in Section 4 herein, implement, in coordination with the Department, the Public Participation Process;
- 8.1.8 Work with the UC and the permitting agencies to ensure coordination with the permitting for UC Merced and the Campus Community.

8.2 DEPARTMENT

The Department will:

- 8.2.1 Provide technical assistance to the County (as necessary and agreed upon) to prepare the Plan, including, but not limited to, compilation and evaluation of existing biological data, collection of new biological data, Geographic Information System (“GIS”) services, and coordination with the Science Advisors and the Advisory Committee;
- 8.2.2 Provide such data, information, and documents in their possession or available to them, and provide such services as they shall determine appropriate and advisable to assist in the development of conservation, protection, and management measures to be included within the Plan;

- 8.2.3 In timely fashion, participate in preparing and/or reviewing and submitting specific edits, recommendations, and comments regarding all work products being prepared and/or submitted by the County during the process;
- 8.2.4 Actively advise and assist the Advisory Committee;
- 8.2.5 Cooperate in obtaining federal and state funding to assist in financing the preparation and implementation of the Plan;
- 8.2.6 Act as responsible agency and assist County in preparation of an EIR pursuant to the provisions of CEQA;
- 8.2.7 Implementation of federal and state commitments in this Planning Agreement will be subject to the availability of appropriated funds.

8.3 SERVICE

The Service will:

- 8.3.1 Provide such data, information, and documents in their possession or available to them, and provide such services as they shall determine appropriate and advisable to assist in the development of conservation, protection, and management measures to be included within the Plan;
- 8.3.2 In timely fashion, participate in preparing and/or reviewing and submitting specific edits, recommendations, and comments regarding all work products being prepared and/or submitted by the County during the process;
- 8.3.3 Cooperate in obtaining federal and state funding to assist in financing the preparation and implementation of the Plan;

8.3.4 Act as lead agency for purposes of NEPA and coordinate the preparation of an EIS with the County;

8.3.5 Implementation of federal commitments in this Planning Agreement will be subject to the availability of appropriated funds.

8.4 UC MERCED

UC will:

8.4.1 Work with the County, the Department and the Service in the development of a UC Merced subarea plan and related portions of the Plan to address the development of UC Merced and the University Community, together with any infrastructure or facilities intended to serve UC Merced or the University Community;

8.4.2 Serve as a member of the Advisory Committee;

8.4.3 Act as a responsible agency for the purposes of CEQA for the Plan and coordinate with the County any efforts to prepare the joint NEPA/CEQA document described in Section 8.1.4 above;

8.4.4 Act as the recipient and holder (either directly or through an affiliate) of the State and federal Take Authorizations to be issued based upon the UC Merced Subarea Plan for any activities to be carried out by UC (either directly or through an affiliate) in connection with the development of UC Merced or the University Community; and

8.4.5 To the extent UC receives any incidental take authority prior to completion of the Plan and the UC Merced Subarea Plan as described in Section 11.12 below, work with the County, the Department and the Service to assure and coordinate the inclusion in the Plan and the UC Merced Subarea Plan of the conservation strategies and other measures reflected in UC's prior permit documents.

9. TIMETABLE FOR PREPARATION OF THE PLAN

All feasible efforts will be undertaken by the Parties to ensure that the Plan is completed by the County and approved, if all legal requirements are met, by the Service and the Department as expeditiously as possible. With the recognition that the ultimate schedule for completion of the Plan cannot be determined in advance, a target date of June 1, 2004, will be used. The Parties have agreed to create a timetable for Plan preparation and approval activities representing a reasonable and achievable schedule for completion of the NCCP/HCP by the target date.

10. SCIENTIFIC ANALYSIS AND BIOLOGICAL STANDARDS

10.1 The Department and Plan participants shall designate independent scientists (Science Advisors) responsible for proposing conservation criteria or guidelines for the planning process for consideration by the Department and the

Plan participants in providing a general biological context and scientific premises for the Plan.

10.2 The process shall utilize an independent organization with experience with Science Advisors in the context of NCCPs to facilitate the Science Advisor process.

10.2.1 Any reports, documents, or other written material prepared by the Science Advisors and submitted to any of the Parties shall be made available to the public in the manner specified in this Agreement.

10.2.2 Science Advisors will generally be professional scientists knowledgeable in the fields of conservation biology, species biology, biological sampling, natural communities or related fields associated with the Plan.

10.2.3 The Science Advisors will provide scientific advice to the Department and County but will not be involved in the decisions regarding Plan elements and covered species. The Department will utilize the information provided by the Science Advisors in their permit decision processes.

10.2.4 The Service agrees that it will review information provided by the Advisory Committee as one element of all information developed from public input on the planning process.

10.3 SCIENTIFIC ANALYSIS

10.3.1 The Parties shall identify the biological information needed to develop the Plan in cooperation with scientists knowledgeable of the Plan area. Such information shall be based on scientifically sound principles of conservation biology.

10.3.2 The biological information shall be collected using protocols developed or approved by the Wildlife Agencies. Species and habitat experts' input into the protocols shall be solicited as deemed necessary by the Wildlife Agencies.

10.3.3 The biological data shall be gathered by scientists knowledgeable of the species, habitats and natural communities of the Plan area and shall, to the maximum extent possible, utilize recognized species, habitat and natural community experts familiar with the Plan area.

11. BASIC PLANNING CONCEPTS TO BE INCLUDED IN THE PLAN

The Parties agree that the following planning concepts will be incorporated into the Plan:

11.1 USE OF INCENTIVES TO ENCOURAGE VOLUNTARY

CONSERVATION OF HABITAT AND SPECIES ON PRIVATE PROPERTIES

Consistent with the provisions of ESA and CESA, the Plan will use voluntary, incentive-based programs in order to encourage private property owners to conserve habitats and species on their lands.

11.2 PROPERTY ACQUISITIONS FROM WILLING SELLERS ONLY

Any private property whose acquisition is necessary, in fee or by easement, for the Plan will be purchased only from willing sellers.

11.3 INTEGRATION WITH OTHER CONSERVED LANDS

The conservation areas and linkage systems established by the Plan may integrate with existing wildlife habitat areas, research reserves, parks, trails, and open space, as appropriate.

11.4 AGRICULTURAL USES

The Plan will be developed to provide a mechanism for incidental take permits to ongoing agricultural operations, subject to the requirements of law and regulation and on such terms and conditions as may be agreed upon by the Parties. Take of species covered by the Plan will be mitigated through measures set forth in the Plan, with exception of take resulting from the use of pesticides, herbicides, fungicides, and fumigants which are regulated under separate authority. Conversion of natural lands or other open space into new

agricultural uses will be addressed in the Plan in a fair, equitable, and economically viable manner, subject to the requirements of law and on such terms and conditions as may be agreed upon by the Parties.

11.5 STANDARDIZED COMPLIANCE PROCEDURES

Implementation of the Plan will be simple and efficient, and will employ standardized compliance procedures.

11.6 PUBLIC ACCESS

Public access to a preserve system will be permitted for activities that are compatible with conservation values and goals set forth in the Plan and are acceptable to the agencies or entities having jurisdiction over the preserve system. Areas within the preserve system held under private ownership will be accessible to the public only insofar as the landowner expressly grants such access.

11.7 EXISTING INFRASTRUCTURE

The Plan will ensure that operation and maintenance of existing infrastructure improvements within the Plan area (including, but not limited to, public roads and right-of-way, flood control facilities, landfills, gas, electric and other public utility facilities providing services essential to the health, safety, and welfare of the public), as well as planned infrastructure improvements as identified in adopted master plans of participating agencies and existing on the

date of this Agreement, will not require any further mitigation of impacts to covered species beyond that provided by implementation of the Plan, or as provided in existing interagency agreements or permits.

11.8 EMERGENCY RESPONSE

Similar provisions as in 11.7 will be made in the Plan to permit agencies to respond to emergency situations within the Plan area.

11.9 RELATIONSHIP TO UC PERMIT EFFORTS

The Parties acknowledge that the timely permitting of UC Merced and the University Community are critical to the successful development and implementation of the Plan and that, in order to achieve timely permitting, the completion of Section 7 consultations and/or the issuance of incidental take authority under state and federal law, may be required for all or some portion of UC Merced or the University Community (including any related infrastructure or support facilities) prior to completion of the Plan. The County, the Department and the Service will use their best efforts and work cooperatively with UC to facilitate and complete consultation and to issue such incidental take authority and, at a minimum, will comply with any timing requirements imposed under applicable law, provided that UC provides timely and adequate information to complete such consultation. The foregoing permit processes for UC Merced

and the University Community will be governed by the timing and public notice and review requirements imposed under Section 7 of the Endangered Species Act and other laws applicable to such processes (e.g., NEPA/CEQA, Sections 401 and 404 of the Clean Water Act).

12. COMPONENTS OF THE PLAN

In addition to such other elements as required by law or as the Parties shall determine, the Plan shall include the following components:

- 12.1 Identification of any and all existing conserved areas;
- 12.2 Identification of covered activities;
- 12.3 Standards and criteria for new and expanded conservation areas and linkages;
- 12.4 Adaptive management plan which, among other items, provides for a review of the status of habitats and species throughout the Plan area on an ongoing basis and changes in management of conservation areas as needed to achieve the Plan's conservation goals;
- 12.5 Measurable criteria for assessing biological objectives for each covered species and habitat;
- 12.6 Measurable criteria for assessing progress toward the assembly of the preserve system;
- 12.7 Incidental take provisions based upon such assurances by the County as

may be required by law, that the obligations undertaken by them with respect to the conservation, protection, and management measures set forth in the Plan will be accomplished.

**13. FUNDING PRINCIPLES NECESSARY TO ASSURE PLAN
DEVELOPMENT AND IMPLEMENTATION**

In addition to such other elements as required by law or as the Parties shall determine, the Plan shall include the following components:

13.1 APPORTIONMENT

Funding for development and implementation of the Plan will be apportioned among federal, state, and local sources.

14. STATE AND FEDERAL SHARES

The Parties anticipate that state and federal agencies will assist in implementing the Plan and they will use their best efforts to secure funding to assist in Plan implementation. Commitments for local, state, and federal financial contributions to the Plan will be defined in the Plan and the implementing agreements among the Parties.

15. ASSURANCES AND COMMITMENTS

15.1 FEDERAL ASSURANCES AND COMMITMENTS

The County expects to receive regulatory assurances from the Service that maximize certainty and predictability in land use planning and development project permitting within the Planning Area. For example, the Parties expect to receive the full benefits of the U.S. Department of the Interior's "no surprises" regulation (50 C.F.R. § 17.22(b)(5)) for all species adequately conserved by an approved Plan. Pursuant to that regulation, the Service will not 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 agreed to in the plans for any action consistent with an approved Plan.

15.2 STATE ASSURANCES

The County expects to receive a package of assurances from the Department commensurate with the level of conservation provided for species and habitats conserved by the Plan and the County intends to provide for the conservation of species and habitats at a level and in a pattern which would allow the Department to provide maximum assurance to the County that, so long as the terms of an approved Plan are being fully implemented, the Department will not seek additional mitigation involving additional land or funds for impacts to species covered by the Plan.

15.3 ASSURANCES IN DOCUMENTS

In order to ensure that Plan assurances are formal, reliable, and legally binding, such provisions will be included in implementation agreements.

15.4 RECOVERY PLANS

The Plan shall take into consideration existing Recovery Plans for covered species. In the event that the Service develops Recovery Plans for other listed species covered by the Plan, it agrees to involve the County in the development of such plans to the maximum extent permitted by law.

16. CREDIT FOR PRELIMINARY ACQUISITION

The County, state and other entities may obtain fee title, conservation easements, or other interests in properties in the Plan Area for conservation purposes prior to or concurrently with the development of the Plan. The Parties agree that full mitigation credit will be given, in consideration of the conservation strategy and as appropriate, by the Wildlife Agencies for such acquisitions for mitigation and/or conservation purposes, even if those transactions are consummated prior to their approval of the Plan.

17. SPECIES PROPOSED FOR LISTING

If any species covered by the Plan is proposed for listing under the ESA or CESA during the preparation or after the approval of the Plan, the Service and the Department will, at the earliest possible date, and in addition to such notices as may be required by law, specifically notify the County of the proposed listing. During their deliberations

concerning proposed listings, the Service and the Department will evaluate the Plan to determine the extent to which its conservation actions can assure species persistence and therefore reduce or eliminate the legal requirement that the species be listed.

18. ENVIRONMENTAL DOCUMENTATION

18.1 CEQA AND NEPA

The Parties will cooperate and seek the cooperation of other appropriate state and federal agencies, including the Army Corps of Engineers, in the preparation and processing of all environmental documents pursuant to requirements of NEPA and CEQA. Joint NEPA/CEQA documents will be prepared whenever practical.

19. AMENDMENTS TO PLANNING AGREEMENT

The Planning Agreement may be amended at any time subject to written concurrence by all parties.

20. COUNTERPARTS

This Agreement may be signed in counterparts.

Dated: June ____, 2001

COUNTY OF MERCED

By: _____
GLORIA CORTEZ KEENE, Chairman
Merced County Board of Supervisors

Dated: June ____, 2001

UNIVERSITY OF CALIFORNIA

By: _____
CAROL TOMLINSON-KEASEY, Chancellor
University of California, Merced

Dated: June ____, 2001

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____
RON REMPEL, Deputy Director
Habitat Conservation Division

Dated: June ____, 2001

US FISH AND WILDLIFE SERVICE

By: _____
WAYNE WHITE, Field Supervisor
Sacramento Fish and Wildlife Office