

COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

Rural Communities United (“RCU”), an unincorporated association, **Conserve El Dorado Oaks**, an unincorporated association, **Ellen Van Dyke** and **Cheryl Langley**, collectively hereinafter referred to as “**Petitioners**,” and the **El Dorado County Board of Supervisors** and **County of El Dorado**, hereinafter jointly referred to as “**Respondents**” (each Petitioner and Respondent individually a “**Party**” and collectively, the “**Parties**”) in consideration of the promises made herein, enter into this Compromise Settlement Agreement and Release (“**Settlement Agreement**”). This Agreement shall take effect as provided for in Section 13.

1. **Nature and Effect of Settlement Agreement.** This Settlement Agreement consists of a compromise and settlement by the Parties of: (a) Petitioners’ claim against Respondents arising from the dispute described in Section 2 and a release given by Petitioners to Respondents relinquishing its claims against Respondents; and (b) Respondents’ claim against Petitioners arising from the dispute described in Section 2 and a release given by Respondents to Petitioners relinquishing its claims against Petitioners. By executing this Settlement Agreement, each of the Parties intends to and does hereby extinguish the obligations heretofore existing between them arising from that dispute. This Settlement Agreement is not and shall not be treated as an admission of fault or liability by either Party for any purpose.

2. **Nature and Status of Disputes.**

(a) On or about November 21, 2017, Rural Communities United filed a petition for a writ of mandate against Respondents in the Superior Court in and for County of El Dorado, designated as case number PC20170536, alleging violations of the California Environmental Quality Act related to the County’s adoption of a General Plan Amendment to the biological resources policies, objectives and implementation measures in the General Plan Conservation and Open Space Element; adoption of an Oak Resources Management Plan; establishment of an In-Lieu Mitigation Fee and adoption of an Oak Resources Conservation Ordinance. Petitioner Rural Communities United later amended the petition to include the remaining petitioners. This matter proceeded to trial and judgment, and the trial court granted a limited writ thereon. The trial court granted Respondents’ motion to tax costs and granted in part Petitioners’ motion for attorneys’ fees. Petitioners filed an appeal of the motion to tax costs. Petitioners also appealed and Respondents filed a cross appeal with respect to the Order Following Argument (merits) and judgment, and Petitioners appealed, and Respondents filed a cross appeal with respect to the award of attorneys’ fees.

(b) On or about April 19, 2021, Rural Communities United filed a new petition for writ of mandate (*Rural Communities United v. County of El Dorado, El Dorado County Board of Supervisors, et al.*) in the Superior Court in and for the County of El Dorado, designated as case number PC20210189.

3. **Stipulated Judgment.** The Parties agree to jointly submit to the Superior Court in case number PC20210189 a Stipulated Judgment pursuant to Code of Civil Procedure section

664.6 that: (1) attaches and incorporates this fully-executed Settlement Agreement by reference as Exhibit A ; and (2) provides for the court to retain jurisdiction over the parties to enforce this Settlement Agreement. The form of stipulated judgment is attached hereto as **Exhibit 1**. In the event the Superior Court rejects the Stipulated Judgment, the Parties shall meet and confer. Unless both Parties approve an extension of time to meet and confer, this Agreement shall become null and void thirty (30) days after the Court's rejection of the Stipulated Judgment.

4. **Compromise Settlement Agreement.** In consideration of the mutual covenants herein, the Parties agree as follows:

(a) Within 10 calendar days after service of notice of entry of the Stipulated Judgment, Petitioners and Respondents shall file for the dismissal of all appeals with the Court of Appeal and shall take all such actions required to dismiss the appeals referenced in Section 2(a) above.

(b) Petitioners agree to concurrently execute the Statement of Non-Opposition to Discharge of the Writ (**Exhibit 2**) and Stipulation for Discharge of the Writ (**Exhibit 3**). Petitioners authorize the County to file either or both with the Superior Court for the purpose of discharging the writ in PC20170536. The County agrees to file its motion to discharge the writ within 14 calendar days of dismissal of the appeals referenced in Section 2(a) above.

(c) Petitioners agree not to oppose any Motion to Discharge the Writ or similar action of the Respondents to discharge the Writ.

(d) Pending the Superior Court entering the Stipulated Judgment in PC20210189 as provided for in Section 3 above, Petitioners agree not to amend the petition and the Parties agree to stay all proceedings in PC20210189.

(e) Within 30 calendar days of the discharge of the writ of mandate currently pending in case number PC20170536, Respondents will issue a check payable to Law Offices of Thomas A. Lippe (federal taxpayer ID# 208108186) in the amount of Three Hundred Thousand Dollars (\$300,000.00) in trust for Rural Communities United. The checks will be transmitted by certified registered U.S. mail, signature required.

(f) Funding.

i. Within thirty calendar days of the discharge of the writ of mandate currently pending in case number PC20170536, the County shall set aside Two Hundred Fifty Thousand Dollars (\$250,000.00) ("**One-time Set Aside**") currently held within the County's Oak Resources In-lieu Fee account created by Resolution 130-2017. The One-time Set Aside Funds shall be maintained by the County in a separate account ("**Set Aside Account**" or "**Set Aside Funds**") to be used as set forth in Section 4(g) below.

ii. Effective July 1, 2021, the County shall deposit twenty percent (20%) of oak woodland mitigation fees collected in each fiscal year by the County pursuant to Resolution 130-2017 (a resolution establishing In Lieu Mitigation Fees)

(“**Percent Set Aside**”) in the Set Aside Account referenced in (i) immediately above. The County’s obligation to deposit the Percent Set Aside in the Set Aside Account shall begin with fees paid to the County beginning July 1, 2021 and ending June 30, 2035. The County shall deposit the Percent Set Aside funds for each fiscal year no later than 180 days following the end of each fiscal year. The Set Aside Account shall be held, distributed, and used as provided for in Section 4(g) below.

(g) Petitioners’ preferred location for lands and interests to be acquired through the use of the Set Aside Funds are as follows:

i. Petitioners’ acquisition priorities are as follows:

First priority: Within 3.5 miles north or south of Highway 50 and determined to be important for north-south wildlife habitat connectivity by a qualified wildlife biologist.

Second priority: Within 7 miles north or south of Highway 50 and determined to be important for north-south wildlife habitat connectivity by a qualified wildlife biologist; and in areas with large blocks of undeveloped oak woodlands.

Third priority: Within any IBC area depicted in ORMP Figure 2, attached hereto as **Exhibit 4**.

Fourth priority: Within any PCA depicted in ORMP Figure 2, attached hereto as **Exhibit 4**.

ii. The County has determined that the lands located within the areas immediately described above can qualify for funding using the Set Aside Account funds, subject to meeting the County requirements contained within the **Biological Resources Update**, defined as including: (i) the Oak Resources Conservation Ordinance; (ii) the Oak Resources Management Plan; (iii) Amendments to the General Plan Biological Resources Policies, Objectives and Implementation Measures in the General Plan Conservation and Open Space Element; (iv) the In-Lieu Mitigation Fees and the Oak Resources In-Lieu Fees Nexus Study; and (v) related mitigation measures (if any). (Project approved on October 24, 2017, as may be amended from time to time.)

(h) As a condition precedent to the effectiveness of this Settlement Agreement, the County agrees to concurrently enter into a fund transfer agreement with a third-party Conservation Organization (“Conservation Organization”) and RCU in the form attached hereto as **Exhibit 5**.

(i) The Parties agree that the Conservation Organization is the entity solely responsible for the identification of parcel(s) to be funded through this Settlement Agreement, and that the County shall have no liability for the acquisitions proposed by the

Conservation Organization. The Parties agree to rely upon the scientific and technical expertise of the Conservation Organization in the Conservation Organization's selection of any particular parcel or easement proposed for acquisition.

(j) The Conservation Organization shall have until January 1, 2037, to submit complete application requests for funding to the County. Effective July 1, 2037, all remaining unallocated funds shall be vested in and used by the County as authorized by law.

(k) The sole source of the Set Aside Account funds are the mitigation fees collected by the County pursuant to the County's Oak Resources In-Lieu Mitigation Fee program. No other County funds or revenue sources, including but not limited to the County General Fund, shall be liable to fund the Set Aside Account.

5. **Release and Discharge.** Petitioners and Respondents hereby release and discharge each other, and successors in interest, heirs, and assigns from, and relinquishes, any and all past, present, or future claims, demands, obligations, or causes of action for compensatory or punitive damages, costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery, that Petitioners or Respondents now have or may hereafter have against the other Party arising from the subject of the petitions described in Section 2.

6. **Unknown Claims.**

(a) Petitioners acknowledge and agree that the release that [he or she] gives to Respondents on executing this Settlement Agreement applies to all claims for injuries, damages, or losses to Petitioners' person and property, real or personal (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, or patent or latent) that Petitioners may have against Respondents arising from the subject of the petitions described in Section 2, and Petitioners thereby waives application of Civil Code Section 1542 with respect to such claims.

(b) Each of the Petitioners certifies that [he or she] has read the following provisions of Civil Code Section 1542:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”

and indicates that fact by signing his/her/its initials here:

_____ RCU
_____ Conserve El Dorado Oaks
_____ Ellen Van Dyke
_____ Cheryl Langley

(c) Petitioners understand and acknowledge that in consequence of this waiver of Civil Code Section 1542, even if he/she/it should eventually suffer additional damages

arising out of the facts referred to in Section 2, he/she/it will not be able to make any claim for those damages. Furthermore, Petitioners acknowledges that he/she/it intends these consequences even as to claims for damages that may exist as of the date of this release, but that Petitioners does not know exist, and that, if known, would materially affect Petitioners' decision to execute this release, regardless of whether Petitioners' lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7. **Advice of Attorney.** Each Party warrants and represents that in executing this Settlement Agreement, it has relied on legal advice from the attorney of its choice; that the terms of this Settlement Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to it by that attorney; and that it fully understands the terms of this Settlement Agreement. Each Petitioner and Respondent further acknowledges and represents that, in executing this release, it has not relied on any inducements, promises, or representations made by the other Party not set forth in this Settlement Agreement.

8. **Conditions of Execution.** Each Party acknowledges and warrants that its execution of this release is free and voluntary.

9. **Breach.** The Parties agree that in any action for breach of this Settlement Agreement, specific performance is the sole remedy. Any Party alleging any breach of the Settlement Agreement or Conservation Agreement shall give written notice of the alleged breach to the breaching Party, and the breaching Party shall have sixty (60) calendar days within which to remedy the breach, or such longer period as the Parties may agree to. The Party alleging the breach may not unreasonably refuse to accept the other Party's cure of an alleged breach of an affirmative obligation set forth in Section 4 of this Settlement Agreement.

10. **Attorneys' fees.** Except as provided in section 4(e), each Party to this Settlement Agreement shall bear its own attorneys' fees and costs arising from the subject matter of the complaints described in Section 2 including all associated administrative proceedings, complaints, petitions, appeals, discharge of writ, entry of judgment, and the negotiation, preparation and execution of this Settlement Agreement and the Conservation Agreement up through entry of the Stipulated Judgment described in Section 3.

11. **Authority.** Each person signing this Settlement Agreement on behalf of a Party hereby represents that he or she has complete authority to bind that Party to the terms and conditions of this Settlement Agreement.

12. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties.

13. **Effective Date.** Petitioners shall deliver their executed Agreement to mediator Michael Levy. The Board of Supervisors will act to consider this Agreement and the Conservation Agreement following Petitioners' delivery of the Executed Agreement to Mr. Levy. The effectiveness of this Agreement is conditioned on: (1) Respondents execution and delivery of their executed Agreement to Mr. Levy within forty-five days after Petitioners deliver their executed Agreement to Mr. Levy; (2) execution of the Conservation Agreement by the parties to the

Conservation Agreement within forty-five days after Petitioners deliver their executed Agreement to Mr. Levy. The Effective Date of this Agreement shall be the date when Mr. Levy delivers the fully executed Settlement Agreement and Conservation Agreement to Petitioners and Respondents.

14. **Governing Law.** This Settlement Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California.

15. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

16. **Notices.** All notices required under this Settlement Agreement shall be in writing and may be given either personally or by registered or certified mail (return receipt requested) or by email (if stated below) with written confirmation by the receiving Party that the email was received. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. All notices required under this Settlement Agreement shall be given to the Parties at their addresses set forth below:

If to RCU, Conserve El Dorado Oaks, Ellen Van Dyke, and Cheryl Langley:

Email address for RCU: contactRCU@gmail.com

Email address for Ellen Van Dyke: contactRCU@gmail.com

Email address for Conserve El Dorado Oaks: Cheryl.FMR@gmail.com

Email address for Cheryl Langley: Cheryl.FMR@gmail.com

Unless and until updated by RCU by notice to County and Conservation Organization

If to the Board of Supervisors or County of El Dorado:

Office of County Counsel
County of El Dorado
330 Fair Lane
Placerville, CA 95667

With a Copy to:

Director, Planning and Building Department
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

17. **Amendment.** This Settlement Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Settlement Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver

of any provisions of this Settlement Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

18. **Non-admission of liability.** The execution of this Settlement Agreement constitutes the settlement of claims that are disputed, contested and denied. The Parties understand and agree that nothing in this Settlement Agreement is intended to nor shall be deemed or construed to be an admission of liability by any Party in any respect or to any extent whatsoever, and the Parties shall not make any representation to the contrary. Nothing in the settlement nor in this Settlement Agreement, or any document referred to herein, nor any act (including, but not limited to, the execution of this Settlement Agreement and/or the County's set aside of mitigation fees and/or the payment of attorney fees) shall be treated, construed or deemed as an admission by any Party hereto of any liability, fault, responsibility, or guilt of any kind as to any allegation or claim in the litigation for any purpose whatsoever.

19. **Retention of Discretion.** Except as expressly provided for within this Settlement Agreement, nothing in this Settlement Agreement shall restrict the discretion of the County.

20. **Severability.** If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms shall remain in full force and effect and shall not be affected.

Executed at Placerville, California.

RURAL COMMUNITIES UNITED

By: _____

Its: Coordinator_____

CONSERVE EL DORADO OAKS

By_____

Its: Coordinator_____

ELLEN VAN DYKE

CHERYL LANGELY

APPROVED AS TO FORM

Thomas A. Lippe

Michael W. Graf

**RESPONDENTS
BOARD OF SUPERVISORS FOR THE COUNTY OF EL DORADO
COUNTY OF EL DORADO**

Chair

Date

ATTEST

Clerk of the Board

APPROVED AS TO FORM

Abbott & Kindermann, Inc.

EXHIBIT 1

1 DAVID LIVINGSTON (SBN 215754)
County Counsel
2 KATHLEEN A. MARKHAM (SBN 114518)
Sr. Deputy County Counsel
3 County of El Dorado
330 Fair Lane
4 Placerville, CA 95667
Telephone: (530) 621-5770
5 Facsimile: (530) 621-2937

6 WILLIAM W. ABBOTT (SBN 083976)
GLEN C. HANSEN (SBN 166923)
7 ABBOTT & KINDERMANN, INC.
2100 21st Street
8 Sacramento, CA 95818
Telephone: (916) 456-9595
9 Facsimile: (916) 456-9599
Email: wabbott@aklandlaw.com
10 Email: ghansen@aklandlaw.com

**EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE § 6103**

11
12 Attorneys for Respondents
EL DORADO COUNTY BOARD OF
13 SUPERVISORS, THE COUNTY OF EL DORADO

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF EL DORADO

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18 RURAL COMMUNITIES UNITED, an
unincorporated association,
19
20 Plaintiff,
21
22 v.
23 COUNTY OF EL DORADO; EL DORADO
COUNTY BOARD OF
SUPERVISORS, and
DOES 1-25,
24 Respondents.

CASE NO. PC20210189
*Assigned for all purposes to:
Hon. Michael J. McLaughlin – Dept.4
South Lake Tahoe Branch*

**[PROPOSED] STIPULATED
JUDGMENT**

Petition Filed: April 14, 2021

1 Plaintiff Rural Communities United (“Plaintiff”) and Respondents County of El Dorado
2 and El Dorado County Board of Supervisors (“Respondents” or “County”) jointly submit this
3 stipulation for judgment.

4 **STIPULATION**

5 1. This action has been settled as between Plaintiff and Respondent as set forth in the
6 Compromise Settlement Agreement And Release (“Settlement”; attached as Exhibit “A,” hereto).

7 2. Each party has executed the Settlement and warrantied therein its capacity to do
8 so.

9 3. During the negotiations and execution of this stipulated judgment, each Party had
10 the full opportunity to, and did secure legal advice from independent legal counsel of its choice
11 and was in fact represented by legal counsel at all times prior to entering into the Settlement and
12 this stipulated judgment.

13 4. The Parties hereto respectfully and expressly stipulate to and submit to the
14 continuing personal and subject matter jurisdiction of this Court over the matter and the Parties
15 and respectfully and expressly stipulate to confer upon this Court full continuing jurisdiction to
16 enforce the terms of the Settlement pursuant to California Code of Civil Procedure Section 664.6
17 and any other applicable statute, rule, or law.

18 5. As set forth in the Settlement, the Parties request based upon the foregoing that
19 this Court enter this Stipulated Judgment as the Judgment in this matter and retain jurisdiction in
20 this matter and over the Parties.

21 It is so stipulated.
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LAW OFFICES OF THOMAS N. LIPPE, APC

Dated: _____, 2022

By: _____

THOMAS N. LIPPE
Attorney for Plaintiff
RURAL COMMUNITIES UNITED

LAW OFFICES OF MICHAEL W. GRAF

Dated: _____, 2022

By: _____

MICHAEL W. GRAF
Attorney for Plaintiff
RURAL COMMUNITIES UNITED

ABBOTT & KINDERMANN, INC.

Dated: _____, 2022

By: _____

WILLIAM W. ABBOTT
Attorneys for Respondents
COUNTY OF EL DORADO; EL DORADO
COUNTY BOARD OF SUPERVISORS

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JUDGMENT

WHEREAS, Plaintiff Rural Communities United (“Plaintiff”) and Respondents County of El Dorado and El Dorado County Board of Supervisors (“Respondents”) have agreed to the Settlement attached hereto as Exhibit A and incorporated herein by this reference, and;

Good cause appearing, in accordance with the Stipulation and Settlement it is ORDERED that:

1. The Settlement shall serve in lieu of any determination by this Court as to merits of Plaintiff’s allegations in the litigation.
2. This Stipulated Judgment shall be the final Judgment in this matter.
3. The Court reserves jurisdiction to enforce the Settlement pursuant to Section 664.6 upon written request of the parties as provided in *Wackeen v. Malis* (2002) 97 Ca.App.4th 429, 439-441.

IT IS SO ORDERED.

Dated: _____

By: _____

Hon. Michael J. McLaughlin
Judge of the Superior Court
El Dorado County Superior Court

EXHIBIT 2

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606

7 Michael W. Graf, SBN 136172
8 LAW OFFICES OF MICHAEL W. GRAF
9 227 Behrens Street
10 El Cerrito, CA 94530
11 Tel: (510) 525-1208
12 Fax: (510) 525-1208
13 [Email: mwgraf@aol.com](mailto:mwgraf@aol.com)

14 Attorneys for Plaintiffs Rural Communities United,
15 Conserve El Dorado Oaks, Ellen Van Dyke,
16 Cheryl Langley

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF EL DORADO

19 RURAL COMMUNITIES UNITED, an
20 unincorporated association,

21 Plaintiff,

22 v.

23 COUNTY OF EL DORADO;
24 EL DORADO COUNTY BOARD OF
25 SUPERVISORS, and
26 DOES 1-25,

27 Respondents.

CASE NO. PC20170536

*Assigned for all purposes to:
Hon. Dylan Sullivan – Dept. 9*

**STATEMENT OF NON-OPPOSITION TO
DISCHARGE OF THE WRIT**

Petition Filed:	November 21, 2017
Served:	November 30, 2017
Hearing:	Not Set
Trial:	Not Set

1 Pursuant to the terms of a Compromise Settlement Agreement and Release, Petitioners
2 Rural Communities United, Conserve El Dorado Oaks, Ellen Van Dyke and Cheryl Langley by
3 and through their attorneys, file this statement of non-opposition to the discharge of the Writ of
4 Mandate in case number PC 20170536.

5
6 This Stipulation may be executed in counterparts.

7 **LAW OFFICES OF THOMAS N. LIPPE, APC**

8
9 Dated: _____, 2022 By: _____
10 THOMAS N. LIPPE
11 Attorney for Plaintiffs
12 RURAL COMMUNITIES UNITED
13 CONSERVE EL DORADO OAKS
14 ELLEN VAN DYKE
15 CHERYL LANGELY

16 **LAW OFFICES OF MICHAEL W. GRAF**

17 Dated: _____, 2022 By: _____
18 MICHAEL W. GRAF
19 Attorney for Plaintiffs
20 RURAL COMMUNITIES UNITED
21 CONSERVE EL DORADO OAKS
22 ELLEN VAN DYKE
23 CHERYL LANGELY

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EXHIBIT 3

1 DAVID LIVINGSTON (SBN 215754)
County Counsel
2 KATHLEEN A. MARKHAM (SBN 114518)
Sr. Deputy County Counsel
3 County of El Dorado
330 Fair Lane
4 Placerville, CA 95667
Telephone: (530) 621-5770
5 Facsimile: (530) 621-2937

6 WILLIAM W. ABBOTT (SBN 083976)
GLEN C. HANSEN (SBN 166923)
7 ABBOTT & KINDERMANN, INC.
2100 21st Street
8 Sacramento, CA 95818
Telephone: (916) 456-9595
9 Facsimile: (916) 456-9599
Email: wabbott@aklandlaw.com
10 Email: ghansen@aklandlaw.com

**EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE § 6103**

11
12 Attorneys for Respondents and Defendants
EL DORADO COUNTY BOARD OF
13 SUPERVISORS, COUNTY OF EL DORADO

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF EL DORADO

17
18 RURAL COMMUNITIES UNITED, an
unincorporated association,

19 Plaintiff,

20 v.

21 COUNTY OF EL DORADO;
22 EL DORADO COUNTY BOARD OF
SUPERVISORS, and
23 DOES 1-25,

24 Respondents.

CASE NO. PC20170536

**Assigned for all purposes to:
Hon. Dylan Sullivan – Dept. 9**

**STIPULATION FOR THE DISCHARGE OF
THE WRIT**

Petition Filed: November 21, 2017
Served: November 30, 2017
Hearing: Not Set
Trial: Not Set

1 Pursuant to the terms of a Compromise Settlement Agreement and Release, Petitioners
2 Rural Communities United, Conserve El Dorado Oaks, Ellen Van Dyke and Cheryl Langley and
3 Respondents County of El Dorado and El Dorado County Board of Supervisors, by and through
4 their attorneys of record, hereby stipulate to the discharge of the Writ of Mandate in case number
5 PC20170536.

6
7 This stipulation may executed in counterparts.

8 **SO STIPULATED.**

9 **LAW OFFICES OF THOMAS N. LIPPE, APC**

10
11 Dated: _____, 2022

By: _____

12 THOMAS N. LIPPE
13 Attorney for Plaintiffs
14 RURAL COMMUNITIES UNITED
15 CONSERVE EL DORADO OAKS
16 ELLEN VAN DYKE
17 CHERYL LANGELY

18 **LAW OFFICES OF MICHAEL W. GRAF**

19 Dated: _____, 2022

By: _____

20 MICHAEL W. GRAF
21 Attorney for Plaintiffs
22 RURAL COMMUNITIES UNITED
23 CONSERVE EL DORADO OAKS
24 ELLEN VAN DYKE
25 CHERYL LANGELY

26 Dated: _____, 2022

ABBOTT & KINDERMANN, INC.

By: _____

27 WILLIAM W. ABBOTT
28 Attorneys for Respondents
EL DORADO COUNTY BOARD OF
SUPERVISORS, COUNTY OF EL DORADO

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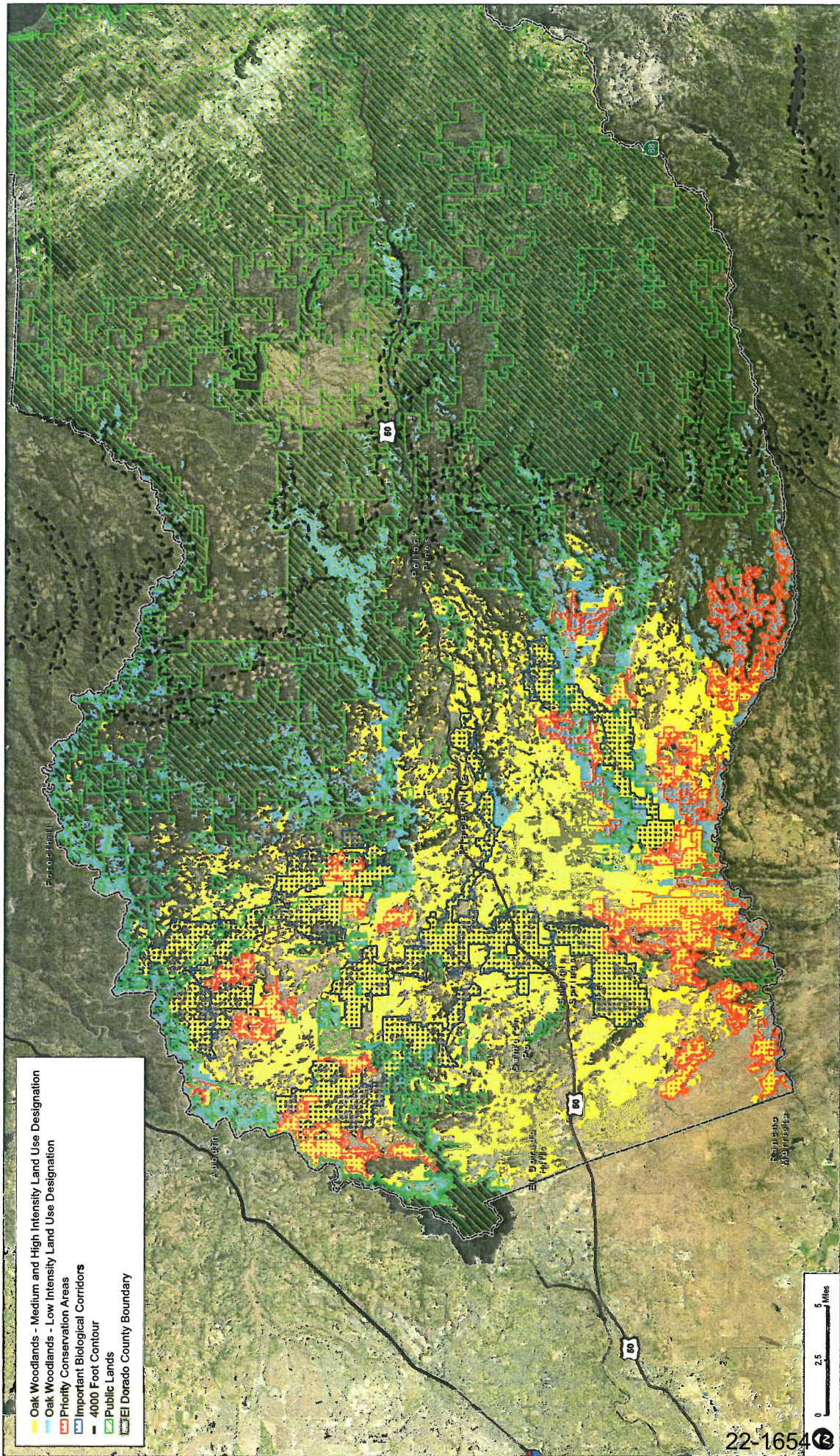
IT IS SO ORDERED.

Dated: _____

By: _____

Hon. Dylan Sullivan
Judge of the Superior Court
El Dorado County Superior Court

EXHIBIT 4



- Oak Woodlands - Medium and High Intensity Land Use Designation
- Oak Woodlands - Low Intensity Land Use Designation
- Priority Conservation Areas
- Important Biological Corridors
- Public Lands
- 4000 Foot Contour
- El Dorado County Boundary



SOURCE: Bing Maps 2014; FRAP 2006; El Dorado County 2014



8228-01

Draft Oak Resources Management Plan

FIGURE 2

Priority Conservation Areas, Oak Woodlands, and Public Lands in El Dorado County

12-1203 27D (Revised) 31 of 213

EXHIBIT 5

CONSERVATION AGREEMENT

This Conservation Agreement (“**AGREEMENT**” or “**CONSERVATION AGREEMENT**”) is entered into between American River Conservancy, a California nonprofit corporation (“**CONSERVATION ORGANIZATION**” or “**CO**”) and the County of El Dorado (“**COUNTY**”) and Rural Communities United (“**RCU**”). The Effective Date is the Effective Date as provided for in that Compromise Settlement Agreement and Release concurrently entered into between Rural Communities United et al (collectively “**RCU et al.**”) and the County. Collectively, the County, RCU, and the CO are referred to herein as the **Parties**.

RECITALS

WHEREAS, RCU and the County have agreed to settle two lawsuits filed in El Dorado County Superior Court (PC20170536 and PC20210189);

WHEREAS, in settlement of this litigation, the County has agreed to enter into an agreement with a qualified entity to manage acquisition of biologically important lands in furtherance of the County adopted Oak Resources Management Plan (ORMP);

WHEREAS, CO represents that it has the experience and expertise to implement this Agreement; and

WHEREAS, the County agrees to set aside a portion of existing and future Oak Resources In-Lieu Mitigation Fees (Resolution 130-2017) in furtherance of this Agreement.

NOW THEREFORE, the Parties agree as follows:

TERMS

1. **Recitals.** The Recitals stated above are true and correct and are incorporated by reference herein.
2. **Exercise of Discretion by the CO.** The Parties acknowledge that the ability of the CO to acquire interests in property is impacted by a number of factors, including but not limited to availability of land, seller’s price demands, relative conservation values of competing sites, projections for future lands uses on nearby parcels, and financial support by interested agencies and non-profits. The Parties agree to rely upon and defer to the expertise and sole discretion of the CO as to which property interests are submitted for funding, either in whole or in part, through this Agreement.
3. **Priorities for Acquisition.** The CO shall make commercially reasonable efforts to acquire lands with funding through this Agreement according to the following priorities:

(a) **First priority:** Within 3.5 miles north or south of Highway 50 and where the subject land is determined to be important for north-south wildlife habitat connectivity by a qualified wildlife biologist.

(b) **Second priority:** Within 7 miles north or south of Highway 50 and where the subject land is determined to be important for north-south wildlife habitat connectivity by a qualified wildlife biologist; and in areas with large blocks of undeveloped oak woodlands.

(c) **Third priority:** Within any Important Biological Corridor depicted in ORMP Figure 2, attached hereto as **Exhibit 1**.

(d) **Fourth priority:** Within any Priority Conservation Area depicted in ORMP Figure 2, attached hereto as **Exhibit 1**.

Notwithstanding the foregoing provisions, the decision to seek funding for the acquisition of any particular parcel or easement shall be in the sole and complete discretion of the CO.

4. **County Funding.**

(a) Within thirty (30) calendar days of the discharge of writ of mandate currently pending in El Dorado County Superior Court case number PC20170536, the County shall set aside two hundred fifty thousand dollars (\$250,000.00) (“**One-time Set Aside**”) currently held within the County’s Oak Woodlands Conservation account created by Resolution 130-2017. The One-time Set Aside Funds shall be maintained by the County in a separate account (“**Set Aside Account**” or “**Set Aside Funds**”) to be used for conservation acquisitions authorized by this Agreement.

(b) Beginning July 1, 2021, the County shall deposit twenty percent (20%) of oak woodland mitigation fees collected in each fiscal year by the County pursuant to Resolution 130-2017 (a resolution establishing in-lieu mitigation fees) (“**Percent Set Aside**”) in the Set Aside Account referenced in section 4(a) above. The County’s obligation to deposit the Percent Set Aside in the Set Aside Account shall begin with fees paid to the County beginning July 1, 2021 and ending June 30, 2035. The County shall deposit the Percent Set Aside funds for each fiscal year no later than one hundred eighty (180) days from the end of each fiscal year (“**Outside Funding Date**”). Within thirty (30) days of the Outside Funding Date, the County shall notify the CO of the balance in the Set Aside Account for the prior fiscal year.

5. **Application Requests for Funding.**

(a) For the purpose of facilitating the successful processing of applications for funding, the CO at least once a year shall update the Director of the Planning and Building Department (“**Director**”), or designee, as to potential acquisition sites and anticipated acquisition dates. Prior to filing a complete application for funding as provided for in section 5(b) below, the CO shall file a written request with the Director

for a pre-application determination of consistency as described herein. Concurrent with its request, the CO shall include all relevant information and analysis necessary to support a determination of consistency. The Director shall consider the information and analysis provided by the CO and shall make a written determination of consistency within sixty (60) days after the CO files the pre-application request including all supporting information. The consistency evaluation shall address whether the conservation interest in land to be funded is consistent with the “Biological Resources Policy Update” (approved on October 24, 2017, as may be amended from time to time,) consisting of: (i) the Oak Resources Conservation Ordinance; (ii) the Oak Resources Management Plan; (iii) Amendments to the General Plan Biological Resources Policies, Objectives and Implementation Measures in the General Plan Conservation and Open Space Element; (iv) the In Lieu Mitigation Fees and the Oak Resources In Lieu Fees Nexus Study; and (v) related mitigation measures (if any).) The Director’s consistency determination shall be supported by substantial evidence and shall not be unreasonably denied. The Director’s affirmative determination of consistency shall be valid for eighteen (18) months unless there is a material change to the underlying facts and analysis that supported the consistency determination.

(b) An application for funding shall be filed with the Director and shall include: (i) the Director’s determination of consistency as described in section 5(a) above, (ii) a current title report (dated within two (2) weeks of submittal of the completed application for funding); (iii) a study dated within ninety (90) days of submittal attesting to the significant biological values consistent with section 4.1 and 4.3 of the ORMP, as applicable; (iv) a funding plan reflecting the CO’s strategy to obtain sufficient funding so as to permit close of escrow and for long term endowment; (v) a draft long term management plan; (vi) any proposed covenants to be recorded upon closing of escrow; and (vii) proposed CEQA documentation or exemption. An application for funding that includes the elements described in (i)-(vii) of this section 5(b) is deemed “complete.” The Director may request supplemental information pertaining to items (i) - (vii) but any such request shall not extend the Board’s 90-day period to act on a funding request set forth in section 5(c) below unless the Conservation Organization consents to the extension. The Director in his or her discretion can waive the requirements in items (i) - (vii). Notwithstanding the foregoing provisions, the CO shall have the option to defer delivery of the long-term management plan until after final approval of the application for funding by the CO’s Board of Directors.

(c) The Board of Supervisors (“Board”) shall act upon the application for funding within ninety (90) days of the filing of a complete application for funding. The Board’s decision regarding approval of an application for funding shall not be delayed beyond ninety (90) days after receipt of the complete application for funding or unreasonably denied or conditioned. By way of illustration, the County may condition its approval of funding upon the requirement that escrow close within eighteen (18) months following the Board’s funding approval.

(d) If the Board of Supervisors approves the application for funding, the County shall transfer the funds into the escrow account, described below, within thirty

(30) days of the Board approval. In the event that escrow is contingent upon third party funding, the County is not required to transfer its funds into escrow until it receives written confirmation from the CO that all funding sources are ready to fund, subject to commercially reasonable closing contingencies.

(e) Condition Precedent to the Distribution of Funds. No Set-Aside Funds shall be released by the County until the trial court discharges the writ in PC20170536.

6. **Allowed Expenses.** Set Aside Account funds can only be used to (i) underwrite the cost of the interest in land as reflected in the purchase price in the purchase and sale agreement; (ii) endowment funding for the long-term maintenance and monitoring; and (iii) for necessary soft costs (including but not limited to appraisals, mapping, staff salaries, transaction filing fees, legal fees, etc.) as long as such necessary soft costs do not exceed twenty percent (20%) of the funds transferred.

7. **Third Party Funds.** The CO shall use reasonable efforts to secure third-party matching funds for each conservation purchase. The County shall not deny the transfer of Set Aside Account funds for conservation purchases if the CO is unable to secure such matching funds.

8. **Escrow.** Upon determining to fund a specific acquisition, the County shall transfer Set Aside Account funds in the amount approved by County to the third-party escrow agent responsible for the acquisition transaction within the time frame described in section 5(d) of this Agreement, with release of the funds contingent upon close of escrow. The County reserves the right to submit escrow instructions consistent with the terms of this Agreement. In the event of a conflict, the terms of this Agreement shall prevail. The County shall have the right to approve the form of conservation easement and/or covenants, such approval not to be unreasonably denied, conditioned, or delayed.

9. **Termination of County Obligation to Release Funds From the Set Aside Account.** The CO shall have until January 1, 2037, to submit complete application requests for funding to the County. Effective July 1, 2037, the remaining unallocated funds shall be vested in and used by the County as authorized by law.

10. **Ineligible Lands for Acquisition with Set Aside Funds.** Lands designated in the County General Plan for commercial or multi-family purposes are ineligible for acquisition through this Agreement unless such restriction is waived by the County, as may be determined by the County in its sole and absolute discretion.

11. **Assignment.** The CO may assign its rights and obligations under this Agreement to a qualified conservation organization with similar expertise and qualifications. Any assignment shall be in writing, on a form approved by the County Counsel. The County shall have the right to approve any such assignment, and such approval shall not to be unreasonably denied, conditioned, or delayed. Assignment of any rights or obligations under this Agreement shall completely relieve the CO of such rights and obligations which arise after the effective date of the assignment.

12. **Breach by the County.**

(a) In the event of any breach by the County of its obligations under this Agreement, the CO's sole remedy, following the notice and opportunity to cure as provided for in section 16 below, shall be an action for specific performance.

(b) RCU shall have limited rights to enforce this Agreement. Subject to the notice and cure provisions provided for in section 16 below, RCU's rights to enforce this Agreement against the County are limited to only the following provisions: (i) the County's failure to provide the annual accounting within one hundred eighty (180) days of the end of the fiscal year; (ii) the Director's unreasonable determination of inconsistency or the Director's failure to act pursuant to section 5(a) of this Agreement; (iii) the Board of Supervisors' unreasonable denial or conditioning of approval of a request for funding or the Board of Supervisors' refusal to act on a request for funding within ninety (90) days pursuant to section 5(c) of this Agreement,; and (iv) the County's failure to transfer Set Aside Account funds in the amount approved by County to the third-party escrow agent responsible for the acquisition as provided in Sections 5(d) and 8, above.

13. **Funding Source.** The sole source of the Set Aside Account funds is the mitigation fees collected by the County pursuant to the County's Oak Resources In-Lieu Mitigation Fee program. No other County funds or revenue sources, including but not limited to the County General Fund, shall be liable to fund the Set Aside Account.

GENERAL PROVISIONS

14. **Advice of Attorney.** Each Party warrants and represents that in executing this Agreement, it has relied on legal advice from the attorney of its choice; that the terms of this Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to it by that attorney; and that it fully understands the terms of this Agreement. RCU, County, and CO further acknowledge and represent that, in executing this release, they have not relied on any inducements, promises, or representations made by the other Party not set forth in this Agreement.

15. **Contract Administrator.** The County officer or employee with responsibility for administering this Agreement is Karen Garner, Director, Planning and Building Department or her successor.

16. **Breach.** The Parties agree that specific performance is the sole remedy for any breach of this Agreement. The County's failure to fund the Set Aside Account as required under section 4 of this Agreement shall constitute a separate breach. Any Party alleging any breach of this Agreement shall give written notice of the alleged breach to the breaching Party, and the breaching Party shall have sixty (60) calendar days within which to remedy the breach, or such longer period as the Parties may agree to. The Party alleging the breach may not unreasonably

refuse to accept the other Party's cure of an alleged breach of an affirmative obligation set forth in this Agreement.

17. **Authority.** Each person signing this Agreement on behalf of a Party hereby represents that he or she has complete authority to bind that Party to the terms and conditions of this Agreement.

18. **Entire Agreement.** This Agreement contains the entire agreement between the Parties.

19. **Governing Law.** This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California.

20. **Indemnity.** To the fullest extent permitted by law, the CO shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind, and description, including attorney's fees and costs incurred, brought for or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of CO or its officers, agents, or employees in rendering the services, operations, or performance in connection with this Agreement, except for liability, claims, suits, losses, damages, or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of CO to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

21. **Insurance.** CO shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that CO maintains insurance that meets the following requirements:

(a) Full Workers' Compensation and Employers' Liability Insurance covering all employees of CO as required by law in the State of California.

(b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.

(c) Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by CO in performance of the Agreement.

(d) Omitted.

(e) CO shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.

(f) The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

(g) CO agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CO agrees to provide, at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CO agrees that no work or services shall be performed prior to the giving of such approval. In the event CO fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

(h) The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and

2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

(i) CO's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of CO's insurance and shall not contribute with it.

(j) Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or CO shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(k) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

(l) The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

(m) CO's obligations under this Agreement are not limited to the foregoing insurance requirements and shall survive the expiration of this Agreement.

(n) In the event CO cannot provide an occurrence policy, CO shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

(o) The certificate of insurance shall meet such reasonable additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

(p) CO shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide County with proof of same if requested.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

23. **Notices.** All notices required under this Agreement shall be in writing and may be served either personally or by registered or certified mail (return receipt requested) or by email (if stated below) with written confirmation by the receiving Party that the email was received. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. All notices required under this Agreement shall be given to the Parties at their addresses set forth below:

If to Conservation Organization:

Executive Director
American River Conservancy
P.O. Box 562
Coloma, CA 95613

If to County of El Dorado:

Director, Planning and Building Department County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

If to RCU:

Email address for RCU: contactRCU@gmail.com
Unless and until updated by RCU by notice to County and CO.

24. **Amendment.** This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

25. **Retention of Discretion.** Except as expressly provided for within this Agreement, nothing in this Agreement shall restrict the discretion of the County.

26. **Severability.** If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms shall remain in full force and effect and shall not be affected.

27. **Termination.** This Agreement terminates on June 30, 2037.

Executed at Placerville, California.

Conservation Organization

By: _____

Its: Executive Director

Date: _____

Rural Communities United

By: _____

Its: _____

Date: _____

Board of Supervisors for the County of El Dorado

Chair

Date

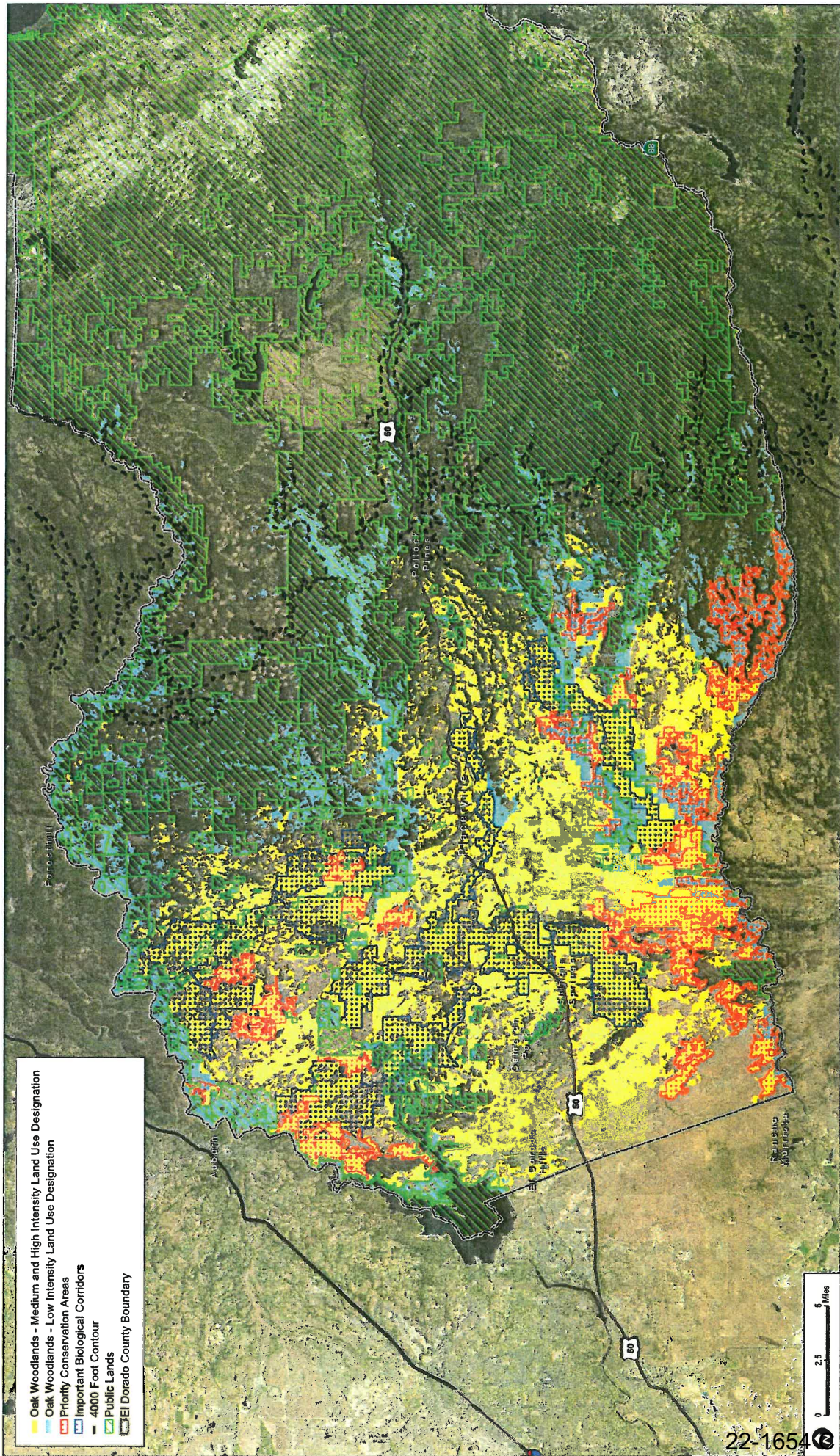
ATTEST

Clerk of the Board

APPROVED AS TO FORM

Abbott & Kindermann, Inc.

EXHIBIT 1



- Oak Woodlands - Medium and High Intensity Land Use Designation
- Oak Woodlands - Low Intensity Land Use Designation
- Priority Conservation Areas
- Important Biological Corridors
- 4000 Foot Contour
- Public Lands
- El Dorado County Boundary



SOURCE: Bing Maps 2014; FRAP 2006; El Dorado County 2014

FIGURE 2

Priority Conservation Areas, Oak Woodlands, and Public Lands in El Dorado County

Draft Oak Resources Management Plan

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