

Appendix L: Model Conservation Easement

General Notes to Reviewers

The following are intended to guide interested parties in their review of the Thurston County HCP Model Conservation Easement.

1. Easement language. This model easement is intended for use on lands Thurston County will enroll in the Thurston County HCP Conservation Land System. Easement language in **orange text** in this model is specific to Conservation Easements that include working lands. The establishment of Conservation Easements on private lands under the Thurston County HCP will provide benefit of conservation for Covered Species and continued viable use of agricultural lands in the Plan Area that provide habitat value for Covered Species. For properties that will not be used for working lands production, omit text provided in **orange**.

The Thurston County HCP expects language provided in the model easement may be modified to address site-specific conditions. In case where variations in easement language are anticipated to occur in the form of replacement language or additional language due to somewhat common conditions, acceptable variations to the primary text will be provided in **brown text** surrounded by brackets, like this [*replace “Thurston County, an incorporated County under the State of Washington” with the full legal name of the Easement Holder of Thurston County is not the Easement Holder*]

Some sections of the easement will require the insertion of easement-specific text. This includes items such as dates, property information, or specific easement conditions. Text that identifies information that is needed is provided in **green text** with brackets, like this: [*insert date*]

Some portions of the easement refer to items described in greater detail in the Thurston County HCP. In cases where this occurs, references to where additional information can be found within the Thurston County HCP are provided for reference in **purple text** within brackets, like this: [*a complete list of Covered Species is found in Section 2.2 of the Thurston County HCP*]. Similarly, **blue text** within brackets is included in some portions of the model easement that uses to provide additional information for those developing or reviewing a draft Conservation Easement that uses this model. Bracketed text should be deleted prior to the finalization of any Conservation Easement.

2. Privately-Owned Lands. This template is prepared for use on privately-owned lands. Some provisions may have to be modified for publicly-owned lands, including but not limited to lands that the Thurston County (or another public entity) acquires in fee title. For example, in an easement covering publicly-owned lands, the easement may include references to provisions of an accompanying Site Management Plan that allow compatible recreational uses and public access.

3. Conservation Values. The intent of the Conservation Easement is to protect and preserve Thurston County HCP Covered Species as well as land cover types that provide habitat for these species within the Easement Area, including the agricultural uses that support these

Conservation Values. The Conservation Easement will describe the Conservation Values of the property in terms of Covered Species and their habitat. It will describe Conservation Values, at a minimum, using the land cover types and Covered Species habitat described in Section 2.2, Covered Species, and Appendix B: Covered Species Descriptions. A legal description and map must be included in the easement.

4. Site Management Plan; Relationship to Conservation Easement. This model Conservation Easement anticipates the concurrent preparation of a site-specific Site Management Plan for each easement area. For each easement property, the final Conservation Easement and Site Management Plan **will work together** to specify (among other things) the allowed, restricted and prohibited uses and activities. The Conservation Easement will generally include terms that will apply **permanently** to uses and activities on the easement property, which the Site Management Plan will contain terms relating to agriculture and other uses that may – with the consent of the landowner, and Thurston County - **vary over time** due to changing conditions. Additionally, the Site Management Plan may contain terms relating to recreational uses, public access, and other uses and activities that are of interest to an individual landowner’s request as long as they uses are determined to be compatible with the Conservation Values of the property.

Some of the prohibitions stated as “generally prohibited” in this model — may be allowed, or allowed under certain conditions in the Site Management Plan, through mutual consent of the Landowner and Thurston County on a case-by-case basis depending on site-specific conditions, landowner preferences and operations, and species and habitat needs. An example of this is the repair, removal, and placement of fencing, particularly for properties with grazing or other agricultural uses that require occasional changes in fencing. These activities are generally allowed in the Site Management Plan for purposes of reasonable and customary agricultural management, and for security in connection with the protection of Conservation Values and reserved uses of the Easement Area.

Thurston County recognizes that changes (e.g., in agricultural practices and technologies, weather cycles, natural resource management technologies, conservation practices) may dictate changes in the management of the Easement Area, consistent with the purposes of this Conservation Easement and the Thurston County HCP. The Site Management Plan may be revised from time to time only with the written approval of both the Landowner and Thurston County (and Easement Holder in situations in which Thurston County is not the Easement Holder), so long as the revision are consistent with the applicable Conservation Values and goals and objectives of the Conservation Program in Chapter 5 of the Thurston County HCP.

5. Easement Holder. This model assumes Thurston County or a qualified conservation organization *{see Section 7.9.2 for description of necessary qualifications}* will hold the Conservation Easement. The primary easement holder language assumes Thurston County is the easement holder and alternative language is included in bracketed brown text for insertion in Conservation Easements that will be held by another qualified conservation organization. An

organization other than Thurston County must be the easement holder in situations in which the County holds the land in fee title.

6. Due Diligence to Accept Conservation Easement. To approve and accept a Conservation Easement, the County must have documentation to ensure ownership, title, and pre-existing easements do not conflict with the conservation goals established for each property enrolled in the Conservation Land System. In order to accomplish this the following documentation shall be completed.

- A pre-acquisition assessment of the property, or baseline report, that summarizes the baseline biological conditions, including the presence and condition of natural communities and Covered Species;
- A title report and legal description of the property;
- Assurance that any superior liens or interests will not substantially conflict with the property's Conservation Values;
- Evidence of all other easements, covenants, restrictions, reserved rights (including mineral rights), and property interests (including water rights);
- A Phase I Environmental Site Assessment to identify potential environmental contamination if there are indications that a property may have previously included uses that have the potential for contamination; and
- A map of the parcel and a description of its physical condition (e.g., roads, buildings, fences, wells, other structures) as well as its relation to other components of the Conservation Land System and other properties that are subject to other permanent protections for conservation purposes.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Easement Holder
Easement Holder Address
Attention: _____

Space Above Line for Recorder's Use Only

GRANT DEED OF CONSERVATION EASEMENT AND PERMANENT RESTRICTIONS ON USE

This GRANT DEED OF CONSERVATION EASEMENT AND PERMANENT RESTRICTIONS ON USE ("Conservation Easement") is made as of _____, 20__ (the "Effective Date") by [*insert full legal name of landowner(s) and address*] ("Landowner"), in favor of Thurston County, an incorporated County under the State of Washington, having an address of 2000 Lakeside Drive SW, Olympia, Washington, 98502 ("Easement Holder") (collectively "Parties") [*replace "Thurston County, an incorporated County under the State of Washington" and address with the full legal name of the Easement Holder AND delete "Thurston County" IF Thurston County is not the Easement Holder*].

1. RECITALS

- 1.1 Landowner is the owner in fee simple of the certain parcels of real property containing [*insert acers*] acres (hereinafter, "Easement Area"), located in Thurston County, Washington, designated Assessor's Parcel Number(s) [*insert APNs*]. Said real property is more particularly described in Exhibit "A" ("Legal Description") and shown on Exhibit "B" ("Site Map"), which are attached to this instrument and incorporated herein by this reference. [*If easement area is a portion of the property then replace "Easement Area" above with "Property" and add the following sentence: Landowner intends to grant a Conservation Easement over ___ acres of the Property, as described and depicted in Exhibit A.1 (the "Easement Area").*]
- 1.2 The Easement Area possesses significant wildlife habitat values of great importance to the Easement Holder, and the people of the United States (collectively, "Conservation Values"). The Easement Area will provide Conservation Values for wildlife and the ecosystems upon which they depend, including [*list the appropriate Covered Species {a complete list of Covered Species is found in Section 2.2 of the Thurston County HCP}*] and contains [*list functional habitat land cover types present in the Easement Area {this includes the land cover*

type(s) present on the site that provide for the identified Covered Species in Section 2.2 of the Thurston County HCP (e.g., grassland and prairie habitats on certain soil types) along with the habitat functions that the identified land cover type provides (e.g., foraging, nesting, breeding, overwintering)]. The status of the Conservation Values, including the **agricultural** uses that support these Conservation Values, as well as other uses and improvements within the Easement Area at the time of the execution of the Conservation Easement are described in the “Baseline Documentation Report”. Both Parties acknowledge, as described in Exhibit C attached hereto and incorporated herein by reference, that each has received a copy of the Baseline Conditions Report, and that it accurately represents the Easement Area as of the date of the Conservation Easement.

- 1.3** The Parties intend that the Conservation Values be preserved and maintained in perpetuity by permitting only those land uses within the Easement Area that serve and do not impair or interfere with the Conservation Values.
- 1.4** Landowner, as owner of the Easement Area, has the right to protect and preserve the Conservation Values, and desires and intends to transfer such rights to Easement Holder in perpetuity to ensure the Landowner is protecting and preserving this Conservation Easement as set forth in this document.
- 1.5** This Conservation Easement is being executed and delivered to satisfy habitat conservation requirements set forth in the following documents (collectively the **“Thurston County HCP Instruments”**):
 - 1.5.1** The Thurston County HCP (**“Thurston HCP”**), dated _____, prepared by County of Thurston, and approved by the United States Fish and Wildlife Service (**“USFWS”**) (16 U.S.C. Section 1531 *et seq.*, as it may be amended from time to time) (**“ESA”**); and
 - 1.5.2** Implementing Agreement for the HCP (the **“Implementing Agreement”**), dated _____, by and among USFWS and Thurston County (referred to herein as **“Permittees”**);
 - 1.5.3** The federal incidental take permit issued by USFWS to the Permittee for the Thurston County HCP pursuant to Section 10 of ESA.
- 1.6** Execution is also intended to satisfy Thurston County’s Critical Areas Ordinance under chapter 24.25 Thurston County Code.
- 1.7** The State of Washington recognizes the public importance and validity of Conservation Easements by enactment of Washington RCW 64.04.130.
- 1.8** USFWS, an agency within the United States Department of the Interior and is authorized by Federal law to be a third party beneficiary (**“Beneficiary”**) of the

Conservation Easement and has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the ESA, the Fish and Wildlife Coordination Act, 16 U.S.C. sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. section 742(f) et seq., and other provisions of federal law.

- 1.9** Thurston County serves as the **“Implementing Entity”** of the Thurston HCP, and as such, is responsible for overseeing implementation of the Thurston County HCP Instruments, including carrying out planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with BENEFICIARY. The Thurston County HCP Instruments confer separate rights and obligations on the Implementing Entity that will survive any future transfer of the Conservation Easement.
- 1.10** Following recordation of this Conservation Easement, the Easement Area will be incorporated into the Conservation Land System (as such term is defined in the Thurston HCP *{see Chapter 5 of the HCP}*) (**“Conservation Land System”**) and will count toward the land acquisition requirements set forth in the Thurston HCP.
- 1.11** A Site Management Plan will be developed, known as *“[insert title for Site Management Plan – typically this includes the site name {see Site Management Plan Template, Appendix I}]”*, that applies to the Easement Area (the **“Site Management Plan”**). The Site Management Plan will be developed in accordance with the applicable requirements of the Thurston County HCP Instruments. The Site Management Plan shall include provisions that preserve and maintain the **productive agricultural** use of the Easement Area to the fullest extent such use is compatible with the preservation of its Conservation Values.

The Site Management Plan, as may be amended from time to time. Landowner and Easement Holder recognize that changes (e.g., in agricultural practices and technologies, weather cycles, natural resource management technologies, conservation practices) may dictate changes in the management of the Easement Area, consistent with the purposes of this Conservation Easement and the Thurston County HCP Instruments. The Site Management Plan may be revised from time to time only with the written approval of both the Landowner and Easement Holder, so long as the revisions are consistent with the requirements of the Thurston County HCP Instruments. The final, approved copy of the Site Management Plan, and any amendments thereto approved by the Parties, shall be kept on file at Thurston County.

2. CONVEYANCE AND CONSIDERATION

- 2.1** The Recitals set forth above are incorporated into the terms of this Conservation Easement for all intents and purposes.
- 2.2** For the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Washington and in particular RCW 64.04.130, Landowner, on behalf of itself, its successors, assigns, heirs and executors hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Easement Holder, its successors and assigns a Conservation Easement in perpetuity the Easement Areas.
- 2.3** This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.4** Landowner expressly intends that this Conservation Easement runs with the land and that this Conservation Easement, including all duties, obligations, and rights conferred herein, shall be binding upon Landowner's and Easement Holder's successors, assigns, and heirs and executors in perpetuity.
- 2.5 Third-Party Beneficiary.**
- 2.5.1** Landowner and Easement Holder acknowledge that USFWS is a third-party beneficiary to this Conservation Easement. The Beneficiary has the right to enforce the terms and conditions of this Conservation Easement and is entitled to the same remedies as the Parties. Landowner and Easement Holder acknowledge and agree that Beneficiary is expressly granted certain additional rights under this Conservation Easement including, but not limited to, prior written notice of certain specified actions and a right of approval of certain specified actions. The Beneficiary rights are in addition to, and do not limit, the rights of the Beneficiary to take other enforcement actions under the Permit or other applicable law.
- 2.5.2** The Parties do not intend to, and have not, transferred any property interest in the Easement Area to Beneficiary.
- 2.5.3** Beneficiary is granted the same right of access to the Easement Area granted to the Easement Holder pursuant to Section 5.2 of this Conservation Easement for purposes of monitoring the condition of the Easement Area and ensuring that easement Purpose (as defined below) are met, consistent with the terms and conditions of this Conservation Easement.

2.5.4 Easement Holder shall have primary responsibility for monitoring the Conservation Easement and ensuring compliance with the terms and conditions of this Conservation Easement. In the event that Beneficiary and Easement Holder do not agree as to whether the Landowner is complying with the terms of the easement, Beneficiary or Easement Holder may proceed with enforcement actions without the consent of the other.

3. PURPOSE

3.1 Purpose. The Purpose of this Conservation Easement is to protect the Habitat Conservation Values of the Easement Area in perpetuity in its *[insert the following terms for the specific site: natural, restored, enhanced, and/or agricultural or otherwise functional habitat]* as contemplated by the Thurston HCP [and *[if one created the Site Management Plan]*], and prevent any use of the Easement Area that will impair or interfere with the Conservation Values. Landowner intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with the purposes set forth herein. The Parties agree that the protection of the Conservation Values may be achieved through the continuation of existing compatible **agricultural and other** uses *[replace references to continued existing compatible agricultural uses with the following text for sites that consist entirely of natural lands types: “by maintain the Easement Area in its natural or existing conditions (not precluding future enhancement or restoration)”]* on the Easement Area provided that the uses preserve the Easement Area’s Covered Species and their associated functional habitats as described in the Baseline Documentation Report and consistent with the terms and conditions of this Conservation Easement [and *[where completed the Site Management Plan]*].

3.2 Interpretation of the Conservation Easement

3.2.1 The Parties intend that this Conservation Easement be interpreted in a manner consistent with its Purpose. In the event of a conflict between one or more of the Conservation Easement, the HCP, Conservation Site Management Plan and any conservation requirement contained in the Permit, the interpretation which best protect Conservation Values shall control.

3.2.2 The Parties intend that this Conservation Easement be interpreted to confine the Landowner’s use of the Easement Area to such activities that are consistent with the Purpose and terms of this Conservation Easement. At the same time, the Parties intend, and this Conservation Easement is structured, to give Landowner maximum flexibility and discretion to

undertake activities that are consistent with the Purpose and terms of this Conservation Easement.

3.2.3 **Public Access.** Nothing contained in this Conservation Easement gives or grants to the public an independent right to enter upon or use the Easement Area or any portion thereof. Nor shall this Conservation Easement extinguish any existing public right to enter upon or use the Easement Area, provided said right is disclosed to the Easement Holder and documented in *[add if created "the Site Management Plan and/or]* an exhibit to this Conservation Easement.

3.2.4 **No Merger.** This Conservation Easement shall not terminate or be deemed to have been extinguished on the basis of the doctrine of merger in any case in which the interests of the Landowner and Easement Holder are held by the same person or entity.

4. RESERVED RIGHTS LANDOWNER

4.1 Land owner reserves to itself, and to its personal representatives, heir and successor and assigns all rights from Landowner's ownership of the Easement Area, including the right to engage in or permit or invite others to engage in **agricultural** activities, including lawful and routine **agricultural and ranching** practices, so long as such activities are consistent with the purposes of this Conservation Easement, as set forth above in Section 3, *[and [where one is completed the Site Management Plan].*

4.1.1 *[Development Envelope. In situations where the site has, or there is an interest in retaining the right to have, a residence or other area where buildings and other improvements are allowed, a Development Envelope can be designated within the Easement Area. The area within the Development Envelope is subject to the provisions of the Conservation Easement except where explicitly stated otherwise and allowable uses within the Development Envelope cannot interfere with the protection or enhancement of the Conservation Values on the portions of the Easement Area that are not included in the Development Envelope. Lands within Development Envelope areas do not count towards the goals and objectives of the Thurston HCP conservation strategy.]*

5. RIGHTS CONVEYED TO EASEMENT HOLDER

To accomplish the Purpose of this Conservation Easement, the following rights are conveyed to Easement Holder by this Conservation Easement:

5.1 Protection. Easement Holder shall have the right and responsibility to:

- 5.1.1 Preserve and protect the Habitat Conservation Values of the Easement Area in perpetuity;
- 5.1.2 *[In situations where the Parties agree to conduct restoration or enhancement activities on the site as a condition of the easement the following language will be inserted: To restore or enhance the Conservation Values with the consent of the Landowner in accordance with the Site Management Plan and the terms and conditions of this Conservation Easement;]*
- 5.1.3 Prevent any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement; and
- 5.1.4 Require that all mineral, air and water rights as Easement Holder deems necessary to preserve, protect, and sustain the Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area consistent with the purposes of this Conservation Easement.

5.2 Access. As provided for and limited herein, Landowner hereby grants to Easement Holder reasonable and non-exclusive access at reasonable times on the Easement Area solely for the purposes of fulfilling Easement Holder's obligations under this Conservation Easement and exercising its affirmative rights under this Conservation Easement. Specifically, Easement Holder shall have the right:

- 5.2.1 To enter upon, inspect, observe and study the Easement Area, with such persons as Easement Holder may require, at mutually agreeable dates and times and at least fort-eight (48) hours advance notice to Landowner, for the purpose of (a) identifying the current uses and practices on the Easement Area and the condition of the Easement Area, and (b) monitoring the uses and activities on the Easement Area to determine whether they are consistent with this Conservation Easement.
- 5.2.2 To enter upon the Easement Area, at a mutually agreeable date and time and upon prior notice to Landowner, to inspect the Easement Area after major natural events occur, such as fires, windstorms, and floods.
- 5.2.3 To enter upon the Easement Area at such other times as are necessary if there is reason to believe that a violation of the Conservation Easement is occurring, for the purposes of enforcing the provisions of this Conservation

Easement. Prior to entry, Easement Holder must provide Landowner notice, and describe the basis of the reasonable belief that a violation is occurring on the Easement Area.

5.2.4 Easement Holder shall exercise its access rights in compliance with applicable law and in a manner that will not materially disturb or interfere with Landowner's reserved rights, any other person's lawful use of the Easement Area, or Landowner's quiet enjoyment of the Easement Area.

5.2.5 Landowner shall not unreasonably withhold or delay its consent to dates and times of access proposed by Easement Holder.

5.3 Injunction and Restoration. Easement Holder shall have the right to prevent, or cause Landowner to prevent, any use of, or activity on, the Easement Area that is inconsistent with the Purpose and terms of this Conservation Easement, including trespasses by members of the public, and shall have the right to undertake or cause to be undertaken the restoration of such areas or features of the Easement Area as may be materially damaged by activities contrary to the provisions hereof, all in accordance with Section 10.

5.4 Enforcement. Easement Holder shall have the right to enforce the terms of this Conservation Easement, consistent with other provisions of this Deed.

5.5 Assignment. Easement Holder shall have the right to assign, convey, or otherwise transfer Easement Holder's interest in the Easement Area in accordance with Section 14 to maintain the original Purpose of this Conservation Easement.

6. PERMITTED USES

6.1 Agricultural Activities. Landowner may engage in, and allow others to engage in, Agricultural Activities (as defined below) on the Easement Area, as further provided for and limited in this Section and in Section 7.

6.1.1 All Agricultural Activities shall be carried out in accordance with applicable law and in compliance with the Purpose and terms of this Conservation Easement and the Landowner's Incidental Take Permit for HCP implementation. Landowner retains discretion over the specific character and content of the management decisions and practices necessary to identify, protect, preserve, maintain and conserve in perpetuity; and to enhance, restore, or improve the Conservation Values consistent with the Purpose and terms of this Conservation Easement. *[add for properties which have Mazama pocket gopher within Easement area: "Only Agricultural Activities described in the ESA Section 4(d) Special rules for Mazama pocket gophers (further described in Exhibit E) shall be permitted within the Easement Area."]*

- 6.2 Stewardship Activities.** Landowner may engage in, and allow others to engage in, any activity to monitor, protect, or maintain the Habitat Conservation Values, including but not limited to habitat restoration, enhancement and management activities (“Habitat Activities”), pursuant to the HCP covering the Easement Area and agreed to by the parties to the HCP including the Site Management Plan. All Habitat Activities on the Easement Area shall be carried out in compliance with the Purpose and terms of this Conservation Easement and the Landowner’s Incidental Take Permit.
- 6.3 Recreational or Educational Activities.** Landowner may engage in, and allow others to engage in, recreational or educational activities on the Easement Area. Recreational and educational uses are limited to uses that do not require site modification to accommodate motorized, mechanical or electronic accessories. All forms of developed recreation or recreation that adversely impacts the Habitat Conservation Values are prohibited. All recreational and educational activities on the Easement Area shall be carried out in compliance with the Purpose and terms of this Conservation Easement, and in a manner that maintains the primacy of, and remains subordinate to the Habitat Conservation Values in accordance with this Conservation Easement and the HCP.
- 6.4 Forestry Use.** Landowner may remove trees from the Easement Area when required for safety, fire protection, pest control, disease control, restoration, domestic use, or as necessary to benefit Habitat Activities (the “Forestry Activities”). All Forestry Activities on the Easement Area shall be carried out in compliance with the Purpose and terms of this Conservation Easement.
- 6.5 Emergencies.** Landowner may undertake emergency activities that are necessary to protect health or safety or prevent significant property damage on the Easement Area or are required by and subject to compulsion of any governmental agency consistent with the Landowner’s Incidental Take Permit for HCP implementation; provided, however, that Landowner shall, to the greatest extent practicable under the circumstances, attempt to notify Easement Holder prior to taking such action and seek its consent. If Easement Holder cannot provide consent, with or without conditions, within such time as is reasonable under the circumstances, Landowner may proceed with such action without consent.

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Any use of, or activity on, the Easement Area inconsistent with the Purpose or other terms of the Conservation Easement is prohibited, and Landowner acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Easement Area are either (a) inconsistent with the Purpose of this Conservation Easement and prohibited or (b) limited as provided herein to make such uses or activities consistent with the Purpose of this Conservation Easement.

[**Note to Landowners:** Many of the following uses—while described herein as “generally prohibited”—may often be allowed in the Site Management Plan through mutual consent of the Landowner and Thurston County in the Site Management Plan on a case-by-case basis depending on site-specific conditions, landowner preferences and operations, and species and habitat needs. The Site Management Plan Template provides examples of how uses can be authorized on an individual basis, particularly for properties that will remain in active agricultural use. The terms of the Management Plan can also be modified over time (with the mutual consent of the Parties) to reflect changes in the Landowner’s needs that do not adversely affect the Conservation Values.

This model Conservation Easement represents only a starting point for consideration of the following uses. In unusual circumstances, in addition to the following restrictions, it may be appropriate to include restrictions beyond those set forth below. Additionally, this Section may require modification to address public access and recreation uses to the extent contemplated by the Landowner or required in the Easement Area under the Site Management Plan.]

7.1 General Prohibitions

- 7.1.1 Unseasonable watering inconsistent with the Habitat Conservation Values; recreational activities such as, but not limited to, horseback riding, biking, or hunting; use of off-road vehicles and use of any other motorized vehicles except on existing roadways or as necessary for approved uses; planting, introduction, or dispersal of non-native invasive or exotic plant or animal species; and any and all other activities and uses which may adversely affect the Conservation Values of the Easement Area or otherwise interfere with the Purposes of this Conservation Easement.
- 7.1.2 Removing, destroying, or cutting of trees, shrubs, or other vegetation except as allowed in the Site Management Plan;
- 7.1.3 Planting, introduction, or dispersal of invasive plant or animal species
- 7.1.4 Any activity or use that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Landowner, the Easement Area, or the activity or use in question.

7.2 No Conversion to Incompatible Uses. Landowner shall not convert the Easement Area to any use that is incompatible with maintaining the Purposes on the Easement Area.

7.3 Treatments. Use of fertilizers, pesticides, biocides, herbicides or other chemicals except as allowable under applicable law and as provided in the Site Management Plan in connection with the **agricultural** use of the Easement Area or other activities or uses that are authorized or reserved hereunder.

- 7.4 Limitations on Agricultural Use.** Vineyards, orchards, nurseries, intensive livestock use (e.g., dairy, commercial feedlot), and other agricultural uses except as allowed in the Site Management Plan. For purposes of this Conservation Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used to receive livestock that are confined solely for the purpose of growing or finishing. However, nothing in this Section shall prevent Landowner from leasing pasture for the grazing of livestock owned by others consistent with Section 6.1 and other provisions of this Conservation Easement. Landowner shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Easement Area. *[Note to landowners: The specific agricultural practices identified above are prohibited for all Conservation Easements. This does not preclude a landowner from having fruit trees or vines within a designated development envelope area, as are common around a home site. For easements that include active agricultural lands at the time the easement is established, the existing agricultural uses that support the Conservation Values of the site will be allowed in the Site Management Plan. For example, if the site includes pasture fields that provide habitat for a Covered Species, agricultural use of the site as needed to maintain the pasture fields that provide habitat to the species will be allowed uses in the Site Management Plan];*
- 7.5 Limitations on Improvements.** Except as set forth in the Site Management Plan [or within the Development Envelope], any construction, reconstruction, relocation or placement of any road, building, billboard, or sign, or any other structure or improvement of any kind, or altering the surface or general topography of the Easement Area without written approval by the Easement Holder and BENEFICIARY *[Note to landowners: The repair, removal, and placement of fencing, particularly for properties with irrigated pasture or other agricultural uses that require occasional changes in fencing are generally allowed in the Site Management Plan for purposes of reasonable, lawful, and routine agricultural practices, and for the security in connection with the protection of Conservation Values and reserved uses of the Easement Area. The relocation of formal and informal access roads may also need to be addressed in the Site Management Plan on some properties];*
- 7.6 Limitations on Mining.** Landowner shall not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance.
- 7.7 Limitations on Alteration of Land.** Landowner shall not, nor authorize other to, alter the surface or subsurface of the land, including, without limitation, grading, trenching, excavating or removing loam, soil, sand, gravel, rock, stone, aggregate, peat, or sod. This provision is not intended to prohibit lawful and routine agricultural practices (e.g., tilling, soil amendments, laser leveling) and other uses

that are associated with site management activities, do not impair the Conservation Values of the Easement Area, and are allowed in the Site Management Plan. [*Note: If mineral rights are separately owned (i.e., have previously been severed from the surface estate) and the Landowner is unable to acquire those rights despite reasonable, documented efforts, the Yolo Habitat Conservancy may consider modifying this provision; any modification must be authorized in writing by the Wildlife Agencies. The Yolo Habitat Conservancy will review factors such as (i) the likelihood such rights will be exercised in the future, (ii) the Covered Species that utilize the Easement Area (i.e., whether they can easily avoid disturbed areas, as in the case of raptors), (iii) whether a right of surface entry exists, and (iv) whether disturbance of the Easement Area can be confined to a small (e.g., 1 acre) footprint and otherwise limited so that it does not adversely affect the Conservation Values. Thurston County and Beneficiary have sole discretion to reject a proposed Conservation Easement if an acceptable arrangement on severed mineral rights cannot be reached.*];

- 7.8 No Significant Erosion or Pollution.** Landowner shall not engage in any use or activity that causes or is likely to cause soil degradation or erosion or contamination or pollution of any soils or surface or subsurface waters on the Easement Area.
- 7.9 Construction of commercial, industrial, institutional, agricultural or residential structures or uses.** Reconstruction, expansion, location, relocation, installation, or placement of any building, road, trail, billboard or sign, or any other structure or improvement of any kind, is prohibited [*except within the Development Envelope*].
- 7.10 Subdivision.** Any legal or de facto division, subdivision or partitioning of the Easement Area, including a request for a certificate of compliance pursuant to the Subdivision Map Act, is prohibited. Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with the Conservation Site Management Plan for (1) fire breaks, (2) maintenance of existing foot trails or roads that are otherwise permitted under this Conservation Easement, or (3) prevention or treatment of disease, is prohibited.
- 7.11 Water Bodies or Courses.** Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, is prohibited. [*Note to landowners: The management and maintenance of canals, ponds, and other artificial water features as needed to maintain cultivated lands and other site conditions that support the Conservation Values of the site are allowed as described in the Site Management Plan.*]

7.12 Limitations on Waste Disposal.

- 7.12.1 Landowner may not accumulate and store ashes, garbage, bio-solids, or other waste ("Trash") on the Easement Area.
- 7.12.2 Landowner shall not store, otherwise dispose, or Release (or permit the disposal or release of) any Hazardous Materials (as defined in Section 13) on the Easement Area. The term "Release" shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment.

7.13 Limitation on Transfers.

- 7.13.1 **Transfer.** For purposes of this Section, "Transfer" includes but is not limited to any sale, grant, lease, hypothecation, assignment, conveyance, or any transaction the purpose of which is to effect a sale, grant, lease, hypothecation, assignment, or conveyance.
- 7.13.2 **Notice and Consent Requirements.** Landowner shall not undertake or permit any Transfer of any rights in the Easement Area without prior notice to and consent of Easement Holder and the Beneficiary as provided for in Section 7; provided, however, that such consent shall not be withheld unless Easement Holder or the Beneficiary determines that the proposed Transfer would be inconsistent with the Purpose and terms of this Conservation Easement.
- 7.13.3 **Subsequent Transfers.** With respect to any permitted Transfer, Landowner agrees to: (1) incorporate by express reference the terms of this Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Easement Area; and (2) describe this Conservation Easement in and append it to, any executory contract for the transfer of any interest in the Easement Area. Landowner further agrees to give written notice to the Easement Holder and the Beneficiary of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Easement Holder and the Beneficiary shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. Easement Holder and the Third-Party Beneficiaries shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given actual notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of the Landowner to perform any act required by this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest or lessor of Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in the Easement

Area, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

7.13.4 **Development Rights.** Landowner hereby relinquishes all development rights except as specifically reserved herein, and the Parties agree that such rights may not be used on or transferred off of the Easement Area as it now or hereafter may be bounded or described.

7.13.5 **Water Rights.**

7.13.5.1 Transferring, encumbering, selling, leasing, or otherwise separating the mineral, air, or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (4) any water from wells that are in existence or may be constructed in the future on the Property; is prohibited.

7.13.5.2 Without the prior written consent of Easement Holder, which Easement Holder may reasonably withhold or condition, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area. In determining whether to consent to a short-term transfer or other change relating to water rights under subsection (7.11), the Easement Holder shall evaluate whether the transfer will, during the transfer period, preclude the Landowner from maintaining the Conservation Values, for the

Covered Species that the Easement Area is managed to benefit at the time of the proposed transfer. This determination shall be subject to approval by the BENEFICIARY and Thurston County.

7.13.6 *[Insert additional prohibitions as appropriate for the particular Property and its Conservation Values.]*

8. NOTICE AND CONSENT

8.1 Notice.

8.1.1 **Easement Holder.** Certain provisions of this Conservation Easement require Easement Holder to give notice to Landowner prior to undertaking certain activities. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Conservation Easement, Easement Holder shall provide such notice in writing not less than thirty (30) days prior to the date Easement Holder intends to undertake the use or activity in question. Easement Holder shall provide a copy of any such notice to each Beneficiary of this Conservation Easement concurrently with notice to Landowner.

8.1.2 **Landowner.** Certain provisions of this Conservation Easement require Landowner to give notice to Easement Holder and the Beneficiary prior to undertaking certain activities. The purpose of requiring Landowner to notify Easement Holder and the Beneficiary prior to undertaking these permitted uses and activities is to afford Easement Holder and the Beneficiary an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Conservation Easement. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Conservation Easement, Landowner shall provide such notice in writing not less than ninety (90) days prior to the date Landowner intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Easement Holder and the Beneficiary to make an informed judgment as to its consistency with the terms of this Conservation Easement and the Purpose thereof.

8.2 Consent

- 8.2.1 **Consent by Beneficiary Required.** Notwithstanding any other provision of this agreement, wherever in this Conservation Easement the Easement Holder's consent is required with respect to any material term of this Conservation Easement, such consent shall be provided in writing and is also required of USFWS to this Conservation Easement.
- 8.2.2 **Consent Not Unreasonably Withheld.** Wherever in this Conservation Easement a Party's or Beneficiary consent is required, such consent may be withheld only upon a reasonable determination by the consenting party that the action as proposed would be inconsistent with the Purpose or terms of this Conservation Easement and cannot be modified to make the proposed action consistent with the Purpose and terms of this Conservation Easement. Any consent shall be provided in writing and may include reasonable conditions consistent with the Purpose and terms of this Conservation Easement, the Landowner's Habitat Conservation Plan, and the attached Site Management Plan that must be satisfied in undertaking the proposed action, use, or activity.
- 8.2.3 **Timeline for Consent.** Whenever in this Conservation Easement Landowner's or Easement Holder's consent is required, and no other timeline for consent is set forth elsewhere in this Conservation Easement, the party whose consent is required shall, to the extent practicable, grant or withhold its consent in writing within the following time periods:
- 8.2.3.1 **Landowner.** Where consent by Landowner is required under this Conservation Easement, Landowner shall grant or withhold its consent within ninety (90) days of receipt of a written request for consent.
- 8.2.3.2 **Easement Holder.** Where consent by Easement Holder is required under this Conservation Easement, Easement Holder shall grant or withhold its consent within ninety (90) days of receipt of a written request for consent.
- 8.2.3.3 **Beneficiary.** Where consent by any USFWS is required under this Conservation Easement, the USFWS shall, to the extent practicable, grant or withhold its consent within ninety (90) days of receipt of Easement Holder's written decision to grant or withhold consent or within ninety (90) days of receipt of Landowner's written request for consent, whichever comes later.

- 8.3 **Optional consultation.** If Landowner is unsure whether a proposed use or activity is prohibited by this Conservation Easement, Landowner may consult Easement Holder by providing written notice to Easement Holder describing the nature,

scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Easement Holder to make an informed judgment as to its consistency with the Purpose of this Conservation Easement and to provide comments thereon to Landowner. Easement Holder may consult with Beneficiary in responding to Landowner. This Section 7.3 does not itself impose a requirement of prior consent of the activity described in any such notice.

8.4 Addresses for Notices. Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other shall be in writing either served personally or sent by registered mail or overnight courier with proof of delivery, addressed as follows (or to such other address as any party from time to time shall designate by written notices to the each other party):

To Landowner:	Name Attention: _____ Address
To Easement Holder:	_____ _____ _____
To BENEFICIARY:	USFWS Washington Fish and Wildlife Office 510 Desmond Drive SE, Olympia, Washington 98503 360-753-9440 phone 360-753-9565 fax

9. DISPUTE RESOLUTION

9.1 Preventive Discussions.

- 9.1.1 Landowner and Easement Holder will promptly give the other notice of problems or concerns arising in connection with the other’s actions under this Conservation Easement or the use of or activities or conditions on the Easement Area, and will meet as needed, but no later than fifteen (15) business days after receipt of a written request for a meeting, to minimize the same.
- 9.1.2 Easement Holder will invite the Beneficiary to this Conservation Easement to such preventive discussion meetings provided for in this Section 8.

9.2 Non-Binding Mediation. If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Conservation Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves and Beneficiary to this Conservation Easement, and if Landowner agrees not to proceed with the use or activity pending resolution of the dispute, either Landowner or Easement Holder may refer the dispute to mediation by request made in writing upon the other and with notice to Beneficiary (who have full discretion to participate or not to participate in the mediation). Within ten (10) business days of the receipt of such a request, the parties to the mediation (“Mediation Parties”) shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

9.2.1 **Mediation Purpose.** The purpose of the mediation is to: (a) promote discussion among the Mediation Parties; (b) assist the Mediation Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Mediation Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy that is consistent with the Purpose. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Conservation Easement.

9.2.2 **Participation.** The mediator may meet with the Mediation Parties and their counsel jointly or ex parte. The Mediation Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of all Mediation Parties with settlement authority will attend mediation sessions as requested by the mediator.

9.2.3 **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Mediation Parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party. Records of mediation communications shall be exempt from the requirements of Chapter 42.56 RCW (Washington State Public Records Act) to the extent provided for in Chapter 7.07 RCW (Washington State Uniform Mediation Act).

9.2.4 **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable

likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

- 9.2.5 **Costs.** The costs of the mediator shall be borne equally by the Parties; the Mediation Parties shall bear their own expenses, including attorney's fees, individually.

10. EASEMENT HOLDER'S REMEDIES

10.1 Notice of Non-Compliance. If Easement Holder or any Third-Party Beneficiary (as defined in Section 2.5) determines that the Landowner is in violation of the terms of this Conservation Easement or that a violation is threatened or reasonably foreseeable, Easement Holder shall give written notice to Landowner with a copy to the Beneficiary of such matter and demand corrective action sufficient to cure or avoid the violation, as appropriate. Where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the Purpose or terms of this Conservation Easement, the Notice shall identify and demand to restore the portion of the Easement Area so injured to its prior or potential condition in accordance with a plan to which Easement Holder and Beneficiary has given written consent.

10.2 Landowner's Failure to Respond. Easement Holder may bring an action as provided in Section 10.3 if Landowner:

10.2.1 Fails to cure the violation within sixty (60) days after receipt of notice thereof from Easement Holder;

10.2.2 Under circumstances where the violation cannot reasonably be cured within the sixty (60) day period, fails to begin curing such violation within the sixty (60) day period; or

10.2.3 Fails to continue diligently to cure such violation until finally cured.

10.3 Easement Holder's Action. Easement Holder Third-Party Beneficiary (as defined in Section 1) may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any of the Habitat Conservation Values protected by this Conservation Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Easement Area to the condition that existed prior to any such injury. Without limiting the Landowner's liability, the Easement Holder has the right to undertake corrective action on the Easement Area. All such actions

for injunctive relief may be taken without Easement Holder being required to post bond or provide other security.

- 10.4 Immediate Action Required.** Notwithstanding any other provision of this Conservation Easement, if Easement Holder, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Habitat Conservation Values, Easement Holder may pursue its remedies under this Section 10 without prior notice to Landowner, without participation in dispute resolution as provided for in Section 8, or without waiting for the period provided for cure to expire.
- 10.5 Nature of Remedy.** Easement Holder's rights under this Section 10 apply in the event of violations of the terms of this Conservation Easement. Landowner agrees that Easement Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Easement Holder shall be entitled to the injunctive relief described in this Section 10 both prohibitive and mandatory, in addition to such other relief to which Easement Holder may be entitled, including specific performance of the terms of this Conservation Easement without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Easement Holder's remedies described in this Section 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The provisions of Section 10.6 shall not be interpreted to preclude Easement Holder from obtaining injunctive relief.
- 10.6 Damages.** Inasmuch as the actual damages to the Conservation Values that could result from a breach of this Conservation Easement by Landowner would be impractical or extremely difficult to measure, the Parties agree that the money damages Easement Holder is entitled to recover from Landowner shall be the cost of restoring any Conservation Values that have been damaged by such violation, and instituting such monitoring measures and additional financial mechanisms, e.g., bonds, letters of credit, etc., to reasonably ensure that the restoration will be successful and durable in perpetuity. Easement Holder shall also be entitled to an award of attorney's fees in the event it substantially prevails in a court of competent jurisdiction.
- 10.7 Enforcement Discretion.** Enforcement of the terms of this Conservation Easement shall be at the sole discretion of the Easement Holder and the Beneficiary, and any forbearance by Easement Holder to exercise its rights under this Conservation Easement in the event of any breach of any terms of this Conservation Easement by Landowner shall not be deemed or construed to be a waiver by Easement Holder of such term or of any of Easement Holder's rights under this Conservation Easement. No delay or omission by Easement Holder or Beneficiary in the exercise

of any right or remedy upon any breach by Landowners shall impair such right or remedy or be construed as a waiver.

10.8 Waiver of Certain Defenses. Landowner acknowledges that it has carefully reviewed this Conservation Easement and has been advised by Easement Holder to seek legal counsel to regarding the effect of its terms and conditions. In full knowledge of the provisions of this Conservation Easement, Landowner hereby waives any claim or defense it may have against Easement Holder or its successors in interest under or pertaining to this Conservation Easement based upon abandonment, adverse possession or prescription relating to the Easement Area or this Conservation Easement. Except for the foregoing, Landowner specifically retains any and all rights it has under the law as owner of the Easement Area, including, without limitation, the right to bring claims against Easement Holder for any breach by Easement Holder of the terms of this Conservation Easement.

10.9 Acts Beyond Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle Easement Holder to bring any action against Landowner to abate, correct, or restore any condition on the Easement Area or to recover damages for any injury to or change in the Easement Area resulting from actions by a trespasser upon the Easement Area or causes beyond Landowner's control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes. In the event the terms of this Conservation Easement are violated by acts of trespassers, and Landowner has not undertaken suit itself, Landowner agrees, at Easement Holder's option, to assign its right of action to Easement Holder or to appoint Easement Holder its attorney in fact, for purposes of pursuing enforcement action against the responsible parties. In the event of repeated violations by acts of trespassers, Landowner shall take reasonable steps to abate further trespass, including use of fencing or installation of surveillance. *[for public agency-owned lands include the following language: or (iii) acts by persons that entered the Easement Area lawfully or unlawfully whose activities degrade or harm the Conservation Values of the Easement Area or whose activities are otherwise inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to discourage or prevent such activities].*

10.10 Compliance Certificates. Upon request by Landowner, Easement Holder shall, as soon as possible and no later than thirty (30) days after receipt of such request, execute and deliver to Landowner any document, including a certificate, which certifies, to the best of Easement Holder's knowledge, Landowner's compliance or lack thereof with any obligation of Landowner contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as requested by Landowner. Such certification shall be limited to the condition of the

Easement Area as of Easement Holder's most recent inspection. If Landowner requests more current documentation, Easement Holder shall conduct an inspection, at Landowner's expense, within forty-five (45) days of receipt of Landowner's written request and payment therefor. Notwithstanding the foregoing, neither Easement Holder nor Beneficiary to this Conservation Easement shall be estopped from claiming or enforcing a violation of this Conservation Easement as the result of an executed Compliance Certificate.

11. LIABILITIES AND TAXES, AND WARRANTIES

11.1 Liabilities (and Insurance). Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area. Landowner remains solely responsible for obtaining any applicable governmental permits and approval for any activity or use permitted by this Conservation Easement, and all activity on or use of the Easement Area shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Landowner shall keep the Easement Area free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Landowner; provided that the Easement Area shall be deemed to be free of such liens if i) Landowner or Easement Holder, as the case may be, is diligently challenging the application of such liens to the Easement Area; or ii) such liens are subordinated to this Conservation Easement and do not require any action or inaction inconsistent with the Purpose and terms of this Conservation Easement.

11.2 Taxes. Landowner shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Easement Holder with satisfactory evidence of payment upon request. Nothing in this agreement prohibits the Landowner from seeking tax relief as a result of the Conservation Easement.

12. REPRESENTATIONS AND WARRANTIES. Landowner represents and warrants that, after reasonable investigation and to the best of Landowner's knowledge:

12.1 Warranty. Landowner represents and warrants that Landowner is the sole owner of fee simple title to the Easement Area; that the Easement Area is not subject to any other Conservation Easement; and that there are no outstanding mortgages, liens, encumbrances or other interests in the Easement Area (including, without limitation, water and mineral interests) [*for situations where mineral rights have been severed add the following: "except as noted on Exhibit D ("Title Encumbrances") attached hereto for severed mineral rights covered by Section _____,"*] and Landowner has full right and authority to enter into this Conservation Easement and convey the Conservation Easement to Easement Holder. There are no monetary liens and encumbrances recorded against the Easement Area except

as expressly identified in Exhibit D, that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written Subordination Agreement approved by Easement Holder and the Wildlife Agencies. All deeds of trust and mortgages recorded against the Easement Area, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement; documentation of such subordinations are contained in Exhibit D.

- 12.1.1 Landowner and the Easement Area are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use *[except as disclosed in the Report]*. *[Insert site specific conditions, if applicable]*;
- 12.1.2 To the knowledge of Landowner, there has been no release, dumping, burying, abandonment or migration from off-site on the Easement Area of any substances, materials, or wastes that are or are designated as, hazardous, toxic, dangerous, or harmful or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
- 12.1.3 Neither Landowner nor Landowner's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and
- 12.1.4 There is no pending or threatened litigation affecting the Easement Area or any portion of the Easement Area that will materially impair the Conservation Values of any portion of the Easement Area. No civil or criminal proceedings have been instigated or are pending against Landowner or its predecessors by government agencies or third parties arising out of alleged violations of Environmental Laws, and neither Landowner nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of Environmental Laws.

12.2 Remediation. If, at any time, there occurs, or has occurred, a Release in, on, or about the Easement Area of a Hazardous Substance, Landowner agrees to take or compel responsible third parties to take all steps required under applicable law and necessary to assure its containment and remediation, including any cleanup that may be required (except that the use of institutional controls shall not be allowed without Easement Holder's consent), unless the Release was caused by Easement Holder, in which case Easement Holder shall be responsible for such

remediation to the extent the Release was caused by Easement Holder. At its discretion, Easement Holder may assist Landowner in compelling third parties to contain and remediate any such Release.

12.3 Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Easement Holder or any Beneficiary to this Conservation Easement to exercise physical or managerial control over the day-to-day operations of the Easement Area, or any of Landowner's activities on the Easement Area, or otherwise to become an operator with respect to the Easement Area within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

13. No Hazardous Materials Liability.

13.1 Except as disclosed in any Phase 1 report provided to Easement Holder prior to the recordation of this Conservation Easement, Landowner represents and warrants to Easement Holder and Beneficiary that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

13.2 Without limiting any other obligations of Landowner under this Conservation Easement, Landowner hereby releases and agrees to indemnify, protect and hold harmless Easement Holder's Indemnified Parties and Beneficiary's Indemnified Parties (each as defined in Section 18 from and against any and all Claims (as defined in Section 18 arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, or otherwise associated with the Easement Area at any time, except that this release and indemnification shall be inapplicable to the Easement Holder's Indemnified Parties or Beneficiary's Indemnified Parties with respect to any Hazardous Materials placed, disposed, or released by Easement Holder's Indemnified Parties or Beneficiary's Indemnified Parties. This release and indemnification includes, without limitation, Claims for (a) injury to or death of any person or physical damage to any property; and (b) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice from the Beneficiary or Easement Holder Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the respective Indemnified Party or reimburse the respective Indemnified Party for all charges incurred for services of the U.S. Department of Justice or Thurston County Prosecutors Office in defending the action or proceeding.

- 13.3** Despite any contrary provision of this Conservation Easement, the Parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Easement Holder or Beneficiary any of the following:
- 13.3.1 The obligations or liability of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601 *et seq.*; hereinafter, “CERCLA”); or
 - 13.3.2 The obligations or liabilities of a person described in 42 U.S.C. section 9607(a)(3) or (4); or
 - 13.3.3 The obligations of a responsible person under any applicable Environmental Laws; or
 - 13.3.4 The right or duty to investigate and remediate any Hazardous Materials associated with the Property; or
 - 13.3.5 Any control over Landowner’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.
- 13.4** The term “Hazardous Materials” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 *et seq.*; hereinafter “RCRA”); the Hazardous Materials Transportation Act (49 U.S.C. section 5101 *et seq.*; hereinafter “HTA”); the Hazardous Waste Control Law (California Health & Safety Code section 25100 *et seq.*; hereinafter “HCL”); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code section 25300 *et seq.*; hereinafter “HSA”), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.
- 13.5** The term “Environmental Laws” includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, code, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Landowner represents, warrants and covenants to Easement Holder and Beneficiary that activities upon and use of the Property by Landowner, its agents,

employees, invitees and contractors will comply with all Environmental Laws. Easement Holder represents, warrants and covenants to Landowner and Beneficiary that activities upon and use of the Property by Easement Holder, its agents, employees, invitees and contractors will comply with all Environmental Laws.

14. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

14.1 Extinguishment.

14.1.1 This Conservation Easement constitutes a property right. It is the Parties' intention that the terms and conditions of this Conservation Easement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Thurston County's interest in the Easement Area, and if the Easement Area, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, the Thurston County shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the Easement Area, the amounts described below shall be calculated based on the actual number of acres subject to extinguishment.

14.1.2 The amount of the proceeds to which Easement Holder shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Easement Area subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time.

14.1.3 In granting this Conservation Easement, Landowner has considered the fact that any use of the Easement Area that is prohibited by this Conservation Easement, or any other use as determined to be inconsistent with the Purpose of this Conservation Easement, may become economically more valuable than permitted uses. It is the intent of both Landowner and Easement Holder that such circumstances shall not justify the termination or extinguishment of this Conservation Easement. Landowner's inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

15. AMENDMENT

15.1 If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, the Parties are free to jointly amend this Conservation Easement provided that the Parties first obtain the written consent of the Beneficiary to this Conservation Easement. Any such amendment shall be consistent with the Purpose of this Conservation Easement, shall not affect the qualification of this Conservation Easement or the status of Easement Holder under any applicable laws, shall not shorten the duration of this Conservation Easement and shall be recorded in the official records of Thurston County, Washington, and any other jurisdiction in which such recording is required.

16. ASSIGNMENT

16.1 Assignment of the Conservation Easement. This Conservation Easement is assignable but Easement Holder may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended. Easement Holder shall not assign this Conservation Easement without notice to, and written consent of, Landowner and Beneficiary, which consent shall not be unreasonably withheld. Notwithstanding, any approval of assignment by the Beneficiary must be evaluated by the Beneficiary in accordance with applicable law, regulations, and government policies, and the Beneficiary retains sole discretion in this regard. As a condition of such assignment, Easement Holder shall require that assignee continue to carry out the Purpose of this Conservation Easement. Easement Holder shall notify Landowner in writing, at Landowner's last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however, that the failure of Easement Holder to give such notice or otherwise comply with the requirements of this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Easement Holder retains the right to subcontract its duties and responsibilities at its sole discretion.

16.2 Rights and Obligations Upon Transfer. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Easement Area or this Conservation Easement, as the case may be, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

17. RECORDATION

Easement Holder shall record this instrument in a timely fashion in the official records of Thurston County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Conservation

Easement. Landowner shall pay all recording costs and taxes necessary to record this Conservation Easement in the public record. Landowner will hold Easement Holder harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

18. INDEMNIFICATION AND HOLD HARMLESS

18.1 Landowner shall hold harmless, protect, and indemnify Easement Holder and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Easement Holder Indemnified Party" and, collectively, "Easement Holder's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except that this indemnification, hold harmless and defense covenant shall be inapplicable to any Easement Holder Indemnified Parties with respect to any Claim to the extent due to the negligence or willful misconduct of such Easement Holder Indemnified Parties; (2) violations of or failure by Landowner to perform the obligations required under this Conservation Easement; and (3) the existence or administration of this Conservation Easement.

18.2 Landowner shall hold harmless, protect, and indemnify Beneficiary and its directors, officers, employees, agents, contractors and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a "Beneficiary Indemnified Party" and, collectively, "Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause; and (2) the existence or administration of this Conservation Easement and Restrictions. Provided, however, that this indemnification, defense and hold harmless covenant shall be inapplicable to a Beneficiary Indemnified Party with respect to any Claim to the extent due to the negligence or willful misconduct of that Beneficiary's Indemnified Party.

18.3 If any action or proceeding is brought against any Indemnified Parties by reason of any Claim to which the indemnification in this Section applies, then Landowner shall, at the election of and upon written notice from the Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse the Indemnified Party for all charges incurred for

services of the U.S. Department of Justice or Thurston County Prosecutor's Office in defending the action or proceeding.

- 18.4** If and to the extent that this Conservation Easement is subject to RCW 4.24.115, it is agreed that where liability for damages arising out of bodily injury to persons or damage to property is caused by or results from the concurrent negligence of the Easement Holder or Beneficiary Indemnified Party and Landowner, then Landowner's obligations of indemnity and defense under this Section shall be effective only to the extent of the Landowner's negligence.

19. GENERAL PROVISIONS

- 19.1 Effective Date.** The Effective Date of this Conservation Easement shall be the date on which the Landowner executed this Conservation Easement.
- 19.2 Governing Law and Venue.** The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Conservation Easement. By executing this Conservation Easement, Landowner acknowledges the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Conservation Easement, venue shall be proper only in Thurston County. Notwithstanding, where the Beneficiary is a party in any judicial proceeding, venue shall be a federal court with appropriate jurisdiction.
- 19.3 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Purpose of this Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. It is the intent of this Conservation Easement to preserve the condition of the Easement Area and each of the Conservation Values protected herein, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Conservation Easement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Landowner's use and enjoyment of the Easement Area to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this Conservation Easement is the intended best and most productive use of the Easement Area. The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Conservation Easement and that no rule of construction that ambiguities are to be resolved

against the drafting party shall be employed in the interpretation of this Conservation Easement.

19.4 Severability.

19.4.1 Except as provided in Section 19.4.2 below, if any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

19.4.2 If any material provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, so that the intent of these provisions is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the intent of the superseded provisions consistent with the Purpose of this Conservation Easement and applicable law.

19.5 Entire Agreement. This instrument, including all attachments hereto, sets forth the entire agreement of the Parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 12.

19.6 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Landowner's title in any respect.

19.7 "Landowner" - "Easement Holder". The terms "Landowner" and "Easement Holder," wherever used in this instrument, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Landowner and its successors and assigns, and the above-named Easement Holder and its successors and assigns. The term "Landowner" shall also include any party taking ownership of the Easement Area, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.

19.8 Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, and to any party taking

ownership of the Easement Area, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running in perpetuity.

19.9 Captions. The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

19.10 Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

19.11 Authority. The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

19.12 Recitals. The Parties agree that the terms and recitals set forth in Section 1 (among other terms of this Conservation Easement) are material to this Conservation Easement, and that each Party has relied on the material nature of such terms and recitals in entering into this Conservation Easement. Each term and recital set forth in Section 1 is fully incorporated into this Conservation Easement.

19.13 All parties to this Agreement agree that it was mutually drafted and, in the event of an ambiguity, there shall not be construed against either party based on which party drafted the provision in question.

20. SCHEDULE OF EXHIBITS

Exhibit A – Legal Description

Exhibit B – Site Map

Exhibit C - Baseline Documentation Report

Exhibit D – Title Encumbrances

Exhibit E - ESA Section 4(d) Special rules for Mazama pocket gophers

The foregoing GRANT DEED OF CONSERVATION EASEMENT is executed as of the dates set forth below.

LANDOWNER:

NAME HERE

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

This record was acknowledged before me on _____, 20____,
by _____ as _____ of
Puget Sound Energy.

(Stamp)

(Print Name) _____

Notary Public for the State of Washington

My commission expires: _____

The foregoing GRANT DEED OF CONSERVATION EASEMENT is executed as of the dates set forth below.

EASEMENT HOLDER:

THURSTON COUNTY

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

This record was acknowledged before me on _____, 2020,
by _____ as _____ of
Thurston County, Oregon.

(Stamp)

(Print Name) _____

Notary Public for the State of Washington

My commission expires: _____

