Appendix N: Thurston County HCP
Determination Letter, Participation Agreement, and Memorandum of Participation Template

NOTE: The following three documents will be used as Thurston County’s Certificates of Inclusion for the HCP. The Determination Letter is issued by the County to the County permittee seeking take coverage. The Letter identified the property, any associated fees, and a permit file number. The Participation Agreement is entered into by the County and the County permittee, and outlines the impacts that will occur, minimization actions required of the County permittee, and other terms such as monitoring and access to the property. The Memorandum of Participation is recorded with the land, documenting the property’s Incidental Take Permit coverage. These documents were adapted, with permission, from the Williamson County, Texas HCP.

Thurston County Habitat Conservation Plan: Sample Determination Letter

(date)

(Participant name and address)

Re: Description of tract/project/project area/appraisal district identifiers/address/other identifiers;
County file #__________________

Dear ___________________:  
A review of the referenced project has been completed in accordance with the Thurston County Habitat Conservation Plan (Plan). Based on the provided supporting documents the County is able to make the following determination as to this application:

1. The Mitigation Fee for the referenced project will be $_________ (Thousand hundred and No hundredths Dollars). This amount (“Mitigation Fee”) will be reflected in Paragraph 2 of the Participation Agreement (the “Agreement”).
2. Please notify this office as soon as possible – by email to EMAIL or by fax to FAX – of agreement to these participation terms.
3. A Participation Agreement (under separate cover) based on the participation terms will be delivered to (participant) for execution subject to receipt of the Mitigation Fee. Please have the appropriate individuals sign where indicated and enclose a copy of related corporate minutes, resolutions and/or authorizations regarding this participation for inclusion in County files, if appropriate.
4. A portion of the Participation Agreement (“Memorandum of Participation”) is to be filed in the deed records of Thurston County. Please return a signed copy of the Participation Agreement to us. If you wish the County to handle filing and to bill you for the associated fee, please indicate in the space at
Draft Thurston County HCP

the bottom of this letter. Otherwise, please contact this office for filing instructions. Subsequent to County’s receipt of the original recorded copy, this office will 1) provide a copy for your file, and, 2) upon request, prepare and mail a participation certificate. Although the certificate is not an official document, it may be posted at the project site as notification to interested parties of participation in the Thurston County HCP. Should you have any questions about this letter, please contact the Thurston County Community Planning & Economic Development (CPED) Department.

Sincerely,

NAME
TITLE, DEPT, Thurston County

Agreed as to both form and substance:

By:
Title:
Date:
THURSTON COUNTY HABITAT CONSERVATION PLAN

PARTICIPATION AGREEMENT

This THURSTON COUNTY HABITAT CONSERVATION PLAN PARTICIPATION AGREEMENT (this "Participation Agreement") dated ___, 20__, is entered into by ____, (the "Participant"), and THURSTON COUNTY, (the "County").

BACKGROUND

The United States Fish and Wildlife Service (USFWS) issued to Thurston County ("County") an Incidental Take Permit ("Permit") No. __, on [[[Date]]], for a period of 30 years, pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(B). The Permit authorizes the incidental "take" of covered species and its habitat in accordance with the terms and conditions of the Permit, the Thurston County Habitat Conservation Plan ("Plan"). Under the Permit (USFWS), the Participant is authorized to perform certain activities covered in the Plan resulting in the "Take" of covered species and its habitat, provided all applicable terms and conditions of the Permit and this Participating Agreement, which are consistent with the Plan. Incidental take means take that results from, but is not the purpose of, carrying out an otherwise lawful activity.

Participant is the owner (or, if under tract is under contract, the reputed owner) of a tract or tracts of land (the "Property") located in Thurston County, Washington, and described on Exhibit "A" to this Participation Agreement.

AGREEMENT

1. Grant Of Participation Rights And Obligations Of Participant. The County hereby grants to the Participant the right to participate in the Plan with respect to the Participant’s proposed activities on the Property. Exhibit "B" to this Participation Agreement describes the Participant’s proposed activities and the species to be covered under this Participation Agreement. The Participant represents and warrants that the activities proposed to be covered under this Participation Agreement will be carried out in full compliance with all applicable laws and regulations. This Participation Agreement covers only those activities described on Exhibit "B". The Participant shall consult with the County before deviating in any material respect from the described activities. This Participation Agreement is entered into subject to all terms and conditions of the Permit, the Plan, and applicable law and regulations, and the Participant assumes and agrees to be bound by all of such terms and conditions, including without limitation those described on Exhibit "C" to this Participation Agreement.

2. Mitigation Fee. The Participant has paid to the County the total sum of $_______________ as calculated in accordance with the Plan with respect to the Participant’s proposed activities on the Property.

3. Right To Inspect. The County and the U.S. Fish and Wildlife Service shall have the right to inspect the Property in order to ensure compliance with the terms of this Participation Agreement.

4. Breach By Participant. The County shall provide Participant written notice specifying any breach of the terms of this Participation Agreement, and Participant shall have seven (7) days thereafter, or such other length of time the County agrees in writing, to cure said breach. The County, at its sole discretion and for good cause, including without limitation Participant’s failure to cure any breach
within the applicable timeframe, may terminate this Participation Agreement. Notification of breach and termination of participation rights shall be made by the County to the Participant in writing at the address provided in Section 11.

5. Participant’s Sole Recourse. In the event that this Participation Agreement is (i) ineffective or deficient with respect to the Property or Participant’s proposed activities for any reason, or (ii) terminated in accordance with the terms and provisions of this Participation Agreement, Participant’s sole recourse shall be to recover from the County an amount not to exceed the total sum referenced in Section 2 of this Participation Agreement, upon surrender and termination of this Participation Agreement by Participant in writing to the County; provided, Participant shall not be entitled to recover administrative fees from the County.

6. Covenants Run with the Land; Recordation. Participant agrees that the covenants provided herein are intended to be binding upon any heirs, successors, and assigns in interest to the Property. Upon any transfer of any ownership interests to all or part of the Property, this Participation Agreement shall not terminate as to the Property, but rather shall continue in full force and effect and shall be fully binding upon any heirs, successors, and assigns in interest to the Property, or any portion thereof. Upon execution of this Participation Agreement by the County and Participant, a Memorandum of Participation Agreement in form substantially the same as attached hereto and incorporated herein for all purposes, shall be signed, acknowledged, and recorded by the Participant in the Official Public Records of Thurston County, Washington.

7. Venue And Choice Of Law. The obligations and undertakings of each of the parties to this Participation Agreement shall be performable in Thurston County, Washington, and this Participation Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Washington.

8. Entirety Of Agreement And Modification. This instrument constitutes the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Participation Agreement are of no force or effect. Any oral representations or modifications concerning this Participation Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the party to be charged and expressly approved by an authorized representative of such party.

9. Non-Assignment. Participant shall not sell, transfer, or assign all or any part of this Participation Agreement to a party other than a successive owner of all or a portion of the Property without prior written consent of the County.

10. Successors And Assigns. This Participation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, as and where authorized pursuant to this Participation Agreement.

11. Notice. All notices under this Participation Agreement shall be in writing and shall be deemed to have been properly given, delivered and received (a) as of the date of delivery if personally delivered, or (b) as of the date of deposit in the mail system if sent by United States certified mail, return receipt requested, postage prepaid. For purposes of notices, the addresses of the parties are as follows
Draft Thurston County HCP

PARTICIPANT:

c/o ________________________________

c/o ________________________________

Attn: County Application File No. ____________
Phone: ____________________

COUNTY:
Thurston County Habitat Conservation Plan
c/o Plan Administrator, Resource Stewardship Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Attn: County Application File No. ____________
or to such other address as hereafter shall be designated in writing by the applicable party.

Term Of Participation Agreement. This Participation Agreement shall terminate upon the expiration or termination of the Permit.

Headings. The headings at the beginning of the various provisions of this Participation Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Participation Agreement.

Number And Gender Defined. As used in this Participation Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

EXECUTED AS OF THE LAST DAY SET FORTH BELOW.

PARTICIPANT:

By: ___________________________ Print
Name: _______________________ Title:

______________________________
Date: _________________________

COUNTY:

By: ___________________________ Print
Name: _______________________ Title:

______________________________
Date: _________________________
Draft Thurston County HCP

**Exhibit List:**

- **Exhibit “A”** – Description of Participant’s Property, including Taxlot Map, GPS coordinates/points (if available)

- **Exhibit “B”** – Covered Species and Participant’s Proposed Activities Relative to Participation Agreement

- **Exhibit “C”** – Special Terms and Conditions in Connection with 10(a) Permit #INSERT USFWS PERMIT #

- **Exhibit “D”** – Thurston County Habitat Conservation Plan Memorandum of Participation Agreement Relative to U.S. Fish and Wildlife Service Permit
EXHIBIT “A”
TO PARTICIPATION AGREEMENT

Legal Description of Participant’s Property, Taxlot Map, and including GPS coordinates/points, if available:
EXHIBIT “B”
TO PARTICIPATION AGREEMENT

Covered Species and Participant’s Proposed Activities Relative to Participation Agreement

Provide a summary describing the scope and nature of the proposed activities and uses of the Property. This summary should provide details regarding the proposed development plan, including square footage or acreage of limit of construction (limit of construction is any area within which any type of construction or land disturbance will occur, i.e., area for erosion controls, driveway, utilities). Attach conceptual plan that identifies the foregoing items.

(DESCRIPTION OF PROJECT)

Identify which of the following activities are covered by this Participation Agreement.

<table>
<thead>
<tr>
<th>Covered Activity</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Added Accessory Structures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial and Industrial Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental Health (extended septic systems, home heating oil tank removal, etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Service Facilities (Schools/Fire Stations)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landfill/Solid Waste Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Works Transportation Projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Works Transportation Maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Resources Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parks and Trail Maintenance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Identify which of the following species are covered by this Participation Agreement.

<table>
<thead>
<tr>
<th>Covered Species</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mazama Pocket Gopher (Yelm)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mazama Pocket Gopher (Olympia)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mazama Pocket Gopher (Tenino)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taylor’s Checkerspot Butterfly</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon Vesper Sparrow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon Spotted Frog</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT “C”
TO PARTICIPATION AGREEMENT

Special Terms and Conditions in Connection with 10(a) Permit #INSERT.

1. On property covered by this Participation Agreement, INSERT APPLICABLE MINIMIZATION MEASURES, IF ANY.

2. On property covered by this Participation Agreement, INSERT APPLICABLE LAND USE RESTRICTIONS, IF ANY.

3. On property covered by this Participation Agreement, INSERT APPLICABLE PERFORMANCE MEASURES, IF ANY.

4.
Draft Thurston County HCP

THURSTON COUNTY HABITAT CONSERVATION PLAN

MEMORANDUM OF PARTICIPATION AGREEMENT RELATIVE TO U.S. FISH AND WILDLIFE SERVICE PERMIT (Permit No. INSERT #)

STATE OF WASHINGTON

§

§ KNOW ALL PERSONS BY THESE PRESENTS

§

COUNTY OF THURSTON

§

This THURSTON COUNTY HABITAT CONSERVATION PLAN MEMORANDUM OF PARTICIPATION AGREEMENT RELATIVE TO U.S. FISH AND WILDLIFE SERVICE PERMIT (Permit No. INSERT #) (this “Memorandum”) is made and executed by ____________________________, (“Participant”), effective as of the ___ day of _________, 20XX.

WITNESSETH:

1. Permit. The United States Fish and Wildlife Service (USFWS) issued to Thurston County (“County”) an Incidental Take Permit (“Permit”) No. , on [[[Date]]], for a period of 30 years, pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(B). The Permit authorizes the incidental “take” of covered species and its habitat in accordance with the terms and conditions of the Permit, the Thurston County Habitat Conservation Plan (“Plan”). Under the Permit (USFWS), the Participant is authorized to perform certain activities covered in the Plan resulting in the "Take" of covered species and its habitat, provided all applicable terms and conditions of the Permit and this Participating Agreement, which are consistent with the Plan. Incidental take means take that results from, but is not the purpose of, carrying out an otherwise lawful activity.

2. Participation Agreement; Grant of Participation Rights and Obligations of Participant. Participant is the owner or easement holder of a tract or tracts of land (the “Property”) located in Thurston County, Washington, and described on Exhibit “A” to this Memorandum. Participant and the County entered into the Thurston County Habitat Conservation Plan Participation Agreement dated (“Participation Agreement,” County Application File No.______________). Under the Participation Agreement, the County granted to the Participant the right to participate in the Plan with respect to the Participant’s proposed activities on the Property. The Participation Agreement describes the Participant’s proposed activities and the species to be covered under the Participation Agreement. The Participant also agreed under the Participation Agreement to assume and agree to be bound by all terms and conditions of the Permit, the Plan, and all applicable laws and regulations, including without limitation those terms and conditions specifically set forth as an exhibit to the Participation Agreement.

Commented [BC1]: This is the part that would get recorded with the Property.

Commented [BC2]: Name
3. **Notice.** Participant desires to execute this Memorandum and to have it filed of record in the **Official Public Records** of Thurston County, Washington, providing public and record notice to all persons as to the existence of the Participation Agreement. Further information regarding the Participation Agreement may be obtained by contacting the following:

**PARTICIPANT:**

<table>
<thead>
<tr>
<th>c/o</th>
<th>__________________________</th>
</tr>
</thead>
</table>

Attn: County Application File No.  __________________________
Phone:  __________________________

**FOUNDATION:**
Thurston County Habitat Conservation Plan
<table>
<thead>
<tr>
<th>c/o</th>
<th>HCP Coordinator</th>
</tr>
</thead>
</table>
Thurston County Community Planning & Economic Development (CPED) Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Attn: County Application File No.

[Remainder of page intentionally blank]
EXECUTED as of the effective date first written above.

For the PARTICIPANT:
By: _____________________________
Print Name: _____________________________
Title: _____________________________

THE STATE OF WASHINGTON §
COUNTY OF §

This instrument was acknowledged before me on, 20__, by ______, of __________________________, on behalf of said __________________________

______________________________
NOTARY PUBLIC, State of Washington
Print Name: _____________________________

My Commission Expires:
______________________________

Exhibits:
“A” -- U.S. Fish and Wildlife Service Permit No.
“B” -- Description of Participant’s Property

After Recording, Return To:
Thurston County Habitat Conservation Plan
c/o HCP Coordinator
Thurston County Community Planning & Economic Development (CPED) Department
2000 Lakeridge Drive SW
Olympia, WA 98502
Attn: County Application File No. _____________________________

(004.00046512.6)
EXHIBIT A
TO MEMORANDUM OF PARTICIPATION AGREEMENT

U.S. Fish and Wildlife Service Permit No. INSERT #

Consisting of Four (4) pages following
EXHIBIT B
TO MEMORANDUM OF PARTICIPATION AGREEMENT

Legal Description of Participant’s Property