Appendix P: Model Conservation Easement

GRANT DEED OF CONSERVATION EASEMENT

This GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made by OWNER(S) NAME HERE, an individual, having an address of MAILING ADDRESS HERE ("Grantor"), in favor of Thurston County, an incorporated County under the State of Washington, having an address of 2000 Lakeside Drive SW, Olympia, Washington, 98502 ("Grantee") (collectively "Parties"). The United States of America (currently acting through United States Fish and Wildlife Service) (Beneficiary) is a third-party Beneficiary to this Easement and has certain rights hereunder, including third-party right of enforcement. The United States Fish and Wildlife Service’s address is 510 Desmond Drive SE, Suite 102, Lacey, Washington, 98503.

1. RECITALS

11. Grantor is the owner in fee simple of the certain real property (hereinafter, “Protected Property”) located in Thurston County, Washington, 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. The Protected Property consists of approximately _____ acre out of the approximately _____ acre parcel located at SITE ADDRESS HERE.

12. The Protected Property possesses significant wildlife habitat values of great importance to Grantor, Grantee, the people of Thurston County, the people of the State of Washington, and the people of the United States (collectively, “Habitat Conservation Values”). The Habitat Conservation Values include native plants and wildlife and the ecosystems upon which they depend, including the Yelm subspecies of the Mazama pocket gopher, a species listed as threatened by the Washington Fish and Wildlife Commission under Washington Administrative Code (WAC) 232-17-297 § 2.5, and as threatened by the USFWS under the Endangered Species Act of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 et seq.) (ESA). Federally Listed Species and Associated Habitats are also protected as critical areas under Thurston County Code 24.25.

13. The Parties intend that the Habitat Conservation Values be preserved and maintained in perpetuity by permitting only those land uses on the Protected Property that do not impair or interfere with the Habitat Conservation Values.

14. Grantor, as owner of the Protected Property, has the right to protect and preserve the Habitat Conservation Values, and desires and intends to transfer such rights to ensure Grantor is protecting and preserving this easement as set forth in this document in perpetuity, or for a period of time until a preferred county-sponsored mitigation site is available.

2. CONVEYANCE AND CONSIDERATION
21. 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 and RCW 84.34.210, Grantor hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the title matters set forth in Exhibit C (Permitted Exceptions), which is attached to this instrument and incorporated herein by this reference.

22. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

23. The Parties enter into this agreement with the understanding that this Easement partially fulfills requirements established by the Beneficiary and the Grantee in order to approve the Grantor’s submittal of a Habitat Conservation Plan.

24. Grantor expressly intends that this Easement runs with the land and that this Easement, including all duties, obligations, and rights conferred herein, shall be binding upon Grantor’s and Grantee’s successors and assigns in perpetuity.

3. PURPOSE

31. Purpose. The Purpose of this Easement is to protect the Habitat Conservation Values of the Protected Property in perpetuity; and prevent any use of the Protected Property that will impair or interfere with its Habitat Conservation Values.

32. Interpretation of the Easement

3.2.1 The Parties intend that this Easement be interpreted in a manner consistent with its Purpose.

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

33. No Public Rights Conveyed Through Easement. The Parties acknowledge that, except as specifically provided herein, Grantor does not grant, expand or extend any rights to the general public through this Easement, including without limitation, any rights of public access to, on or across, or public use of, the Protected Property.

4. RIGHTS CONVEYED TO GRANTEE

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

41. Protection. Grantee shall have the right to identify and monitor the Habitat Conservation Values
of the Protected Property in perpetuity.

42. **Access by Grantee.** As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access at reasonable times on the Protected Property solely for the purposes of fulfilling Grantee’s obligations under this Easement and exercising its affirmative rights under this Easement. Specifically, Grantee shall have the right:

42.1. To enter upon, inspect, observe and study the Protected Property, with such persons as Grantee may require, at mutually agreeable dates and times and upon reasonable prior notice to the Grantor, for the purpose of (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property, and (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with this Easement.

42.2. To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.

42.3. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement. Prior to entry, Grantee must provide Grantor notice, and describe the basis of the reasonable belief that a violation is occurring on the Protected Property.

42.4. Grantee shall exercise its access rights in compliance with applicable law and in a manner that will not materially disturb or interfere with Grantor’s reserved rights, any other person’s lawful use of the Protected Property, or Grantor’s quiet enjoyment of the Protected Property.

42.5. Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Grantee.

43. **Financial Reimbursement.** Grantor hereby agrees to financially reimburse Grantee for the cost and expense of site visits conducted under Section 4.2 above, and as follows:

43.1. Fees. Grantor is responsible and obligated to submit an application by September 1 of every year that precedes a 12 month period of identifying and monitoring the Habitat Conservation Values of the Protected Property. Such costs and expenses shall be calculated based upon a base fee of five hundred and sixty-four dollars ($564.00) per year. In addition to the annual base fee, an hourly rate of one hundred and eighty-two dollars ($182.00) shall be assessed for any additional time expended by an individual employee of Grantee that exceeds three hours in any year.

43.2. Fees Subject to Change. The fees, as described above in 4.3.1., are subject to change and automatically adjust each January 1 by the percentage increase, if any, in the April Consumer Price Index for the previous year. The maximum increase each year shall not exceed three and one-half percent (3.5%). The fees, described under 4.3.1, shall be assessed and adjusted within these limitations and according to the Grantee’s current fee schedule, as adopted at the time of services. Such fees are identified in
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the Grantee’s current fee schedule for “Other Administrative Action – minor,” or in the event this category is changed or the fee schedule ceases to be used for any reasons, the equivalent will be assessed for this purpose by the Grantee, its successors or assigns.

44. Development Rights. Grantor 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 Protected Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise.

45. Injunction and Restoration. Grantee shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with the Purpose and terms of this 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 Protected Property as may be materially damaged by activities contrary to the provisions hereof, all in accordance with Section 9.

46. Enforcement. Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 8 and 9.

47. Assignment. Grantee shall have the right to assign, convey, or otherwise transfer Grantee’s interest in the Protected Property in accordance with Section 13.

5. PERMITTED USES

51. General. Grantor reserves for itself and its successors and assigns, any and all rights not otherwise conveyed to Grantee under this Easement and any and all uses of, or activities on, the Protected Property that are not inconsistent with the Purpose and terms of this Easement, and that are not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its successors and assigns the following uses and activities, which shall be considered permitted uses and activities under the Easement.

52. Agricultural Activities. Grantor may engage in, and allow others to engage in, Agricultural Activities (as defined below) on the Protected Property, as further provided for and limited in this Section and in Section 6.

52.1. As used herein, “Agricultural Activities” shall mean the commercial production of horticultural, or animal products, including livestock or livestock products, not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, and all conditions and activities occurring on a farm in connection with such production, including, but not limited to, noise; odors; dust; fumes; operation of machinery; use of water for agricultural purposes; turning top soil as consistent with conditions specified in Exhibit C; movement of equipment and livestock; protection from damage by wildlife; and prevention of trespass.

52.2. All Agricultural Activities shall be carried out in accordance with applicable law and in compliance with the Purpose and terms of this Easement. Grantor 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 Habitat Conservation Values consistent with the Purpose and terms of this Easement.

5.2.3. Only Agricultural Activities described in the ESA Section 4(d) Special rules for Mazama pocket gophers (further described in Exhibit C) shall be permitted within the Protected Property.

53. **Stewardship Activities.** Grantor may engage in, and allow others to engage in, any activity to monitor, protect and maintain the Habitat Conservation Values, including but not limited to habitat restoration, enhancement and management activities ("Habitat Activities"), pursuant to the Habitat Conservation Plan covering the Protected Property and agreed to by the parties to the Habitat Conservation Plan. All Habitat Activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement.

54. **Recreational or Educational Activities.** Grantor may engage in, and allow others to engage in, recreational or educational activities on the Protected Property. 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 Protected Property shall be carried out in compliance with the Purpose and terms of this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the farmland character and use of the Protected Property.

55. **Forestry Use:** Grantor may remove trees from the Protected Property when required for safety, fire protection, salvage purposes, pest control, disease control, restoration, domestic use, or as necessary to benefit Habitat Activities (the “Forestry Activities”). All Forestry Activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement and applicable provisions of Thurston County Code. Grantor shall not engage in or permit any Forestry Activities that would preclude its Habitat Conservation Values or the opportunity for agricultural activity upon the Protected Property.

56. **Emergencies:** Grantor may undertake any activities that are necessary to protect health or safety or prevent significant property damage on the Protected Property or are required by and subject to compulsion of any governmental agency; provided, however, that Grantor shall first reasonably attempt to notify Grantee prior to taking such action. If Grantee cannot provide consent, with or without conditions, within such time as is reasonable under the circumstances, Grantor may proceed with such action without consent.

6. **PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES**

61. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose or other terms of the Easement is prohibited, and Grantor 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 Protected Property are either (a) inconsistent with the Habitat Conservation Values and Purpose of this Easement and prohibited herein or (b) limited as provided herein to make such uses or activities consistent with the Habitat Conservation Values and Purpose of this Easement.
6.2 No Conversion to Incompatible Uses. Grantor shall not convert the Protected Property to industrial or suburban/residential development or to any other use that is incompatible with maintaining the Habitat conservation Values on the Protected Property.

6.3 Limitations on Subdivision. Grantor shall not legally or in a “de facto” manner subdivide the Protected Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots, without prior written notice to and consent of Grantee as provided for in Section 7. Such consent shall not be granted unless Grantor demonstrates that the proposed subdivision is consistent with the Purpose and terms of this Easement. Grantor shall incorporate by express reference on the face of any plat, short plat, or other legal instrument by which the Protected Property is divided into lots the following restrictions: i) the terms of this Easement; ii) the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above; iii) any additional restrictions necessary to meet the impervious surface limit of Section 6.6.1, as determined by Grantee as part of its consent; and iv) any additional restrictions necessary to achieve the Purpose of this Easement, as determined by Grantee as part of its consent. If land possessing water rights is subdivided, a water right of sufficient quantity to support agriculture must be allocated to each parcel created by the subdivision. The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

6.4 Limitations on Agricultural Use. The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this 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, seasonal confinement of animals raised on the Protected Property and year-round confinement for the commercial production of dairy products on the Protected Property are expressly permitted. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.

6.4.1 Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Protected Property.

6.5 Limitations on Improvements Related to Advertising. Commercial signs, billboards, or other improvements installed, built or constructed for the purpose of advertising nonagricultural activities or products are not allowed on the Protected Property, except in connection with the sale or lease of the Protected Property or to state the conditions of access to the Protected Property. Signage consistent with the character of a working farm, and for Agricultural Activities, is allowed on the Protected Property.

6.6 Limitations on Mining. Grantor 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, using any surface mining method, except to the extent required by applicable law or by the terms of a lease, easement or other encumbrance that existed and was recorded in the records of the County auditor before the Effective Date of this Easement and not subordinated to this Easement. Grantor may conduct or engage
in mineral extraction if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the land that does not damage, impair or endanger the Habitat Conservation Values of the Protected Property. No extraction permitted pursuant to this Section shall occur without prior written notice to and consent of Grantee as provided for in Section 7. Notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

6.7 Limitations on Alteration of Land. Grantor shall not alter the surface or subsurface of the land, including, without limitation, grading, trenching, excavating or removing soil, sand, gravel, rock, stone, aggregate, peat, or sod; except those consistent with the character of a working farm in the course of agricultural activities consistent with conditions specified in Exhibit C.

6.7.1 No Significant Erosion or Pollution. Grantor 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 Protected Property.

6.8 Limitations on Waste Disposal.

6.8.1 Grantor may not accumulate and store ashes, garbage or other waste (“Trash”) on the Protected Property.

6.8.2 Grantor shall not store, otherwise dispose, or Release (or permit the disposal or release of) any Hazardous Substance on the Protected Property. The term “Release” shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term “Hazardous Substance” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

6.9 Compliance with Regulatory Requirements. Grantor shall conduct all reserved and permitted uses and activities under this Easement to meet all requirements of federal, state and local statutes, rules, ordinances and regulations as they may be amended from time to time.

6.10 Limitation on Transfers.

6.10.1 For purposes of this Section, “Transfer” includes but is not limited to any sale, grant, lease, hypothecation, encumbrance, assignment, conveyance, or any transaction the purpose of which is to affect a sale, grant, lease, hypothecation, encumbrance, assignment, or conveyance.

6.10.2 Grantor shall not undertake or permit any Transfer of any rights in the Protected Property without prior notice to and consent of Grantee as provided for in Section 7; provided, however, that such consent shall not be withheld unless Grantee determines that the proposed Transfer would be inconsistent with the Purpose and terms of this Easement.

6.10.3 The following shall require notice to but shall not require consent of Grantee: i) any mortgage, deed of trust, or similar document providing security for an indebtedness of Grantor, provided that such security interest shall be subject and subordinate to this Easement.
7. NOTICE AND CONSENT

7.1. Notice.

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

7.1.2. Grantor. Certain provisions of this Easement require Grantor to give notice to Grantee and the Beneficiary prior to undertaking certain activities. The purpose of requiring Grantor to notify Grantee and the Beneficiary prior to undertaking these permitted uses and activities is to afford Grantee 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 Easement. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Easement, Grantor shall provide such notice in writing not less than ninety (90) days prior to the date Grantor 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 Grantee and the Beneficiary to make an informed judgment as to its consistency with the terms of this Easement and the Purpose thereof.

7.2. Consent

7.2.1. Consent by Beneficiaries Required. Wherever in this Easement Grantee’s consent is required, such consent shall be provided in writing and is also required of each Beneficiary to this Easement.

7.2.2. Consent Not Unreasonably Withheld. Wherever in this Easement a Party’s or a Beneficiary's 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 Easement and cannot be modified to make the proposed action consistent with the Purpose and terms of this Easement. Any consent shall be provided in writing and may include reasonable conditions consistent with the Purpose and terms of this Easement that must be satisfied in undertaking the proposed action, use, or activity.

7.2.3. Timeline for Consent. Whenever in this Easement Grantor’s or Grantee’s consent is required, and no other timeline for consent is set forth elsewhere in this Easement, the party whose consent is required shall grant or withhold its consent in writing within the following time periods:

7.2.3.1. Grantor. Where consent by Grantor is required under this Easement, Grantor shall grant or withhold its consent within sixty (60) days of receipt of a written request for consent.

7.2.3.2. Grantee. Where consent by Grantee is required under this Easement, Grantee shall grant or withhold its consent within ninety (90) days of receipt of a written request for consent.
7.2.3.3. **Beneficiaries.** Where consent by any Beneficiary is required under this Easement, the Beneficiary shall grant or withhold its consent within ninety (90) days of receipt of Grantee’s written decision to grant or withhold consent or within ninety (90) days of receipt of Grantor’s written request for consent, whichever comes later.

7.2.4. **Failure to Grant or Deny Consent Within the Required Time.** When consent is required under this Easement, and when such consent is not granted or denied within the time period and manner set forth in this Section 7, the party requesting consent may conclusively assume the other party’s consent of the proposed action, use, or activity in question. The Parties and the Beneficiary agree that failure to grant or withhold consent within the required time on any proposed action, use or activity shall not be deemed or construed to be a waiver of Grantee’s or the Beneficiary’s rights under this Easement with respect to any future proposed action, use or activity.

7.3. **Optional consultation.** If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee or Beneficiary by providing written notice, describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee or Beneficiary to make an informed judgment as to its consistency with the Purpose of this Easement and to provide comments thereon to Grantor. This Section 7.3 does not itself impose a requirement of prior consent of the activity described in any such notice.

7.4. **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 Grantor:**
NAME
MAILING ADDRESS
PHONE

**To Grantee:**
Thurston County
2000 Lakeside Drive SW, Olympia, Washington 98502
360-786-5490 phone
360-754-2939 fax

**To Beneficiary:**
USFWS
Washington Fish and Wildlife Office
510 Desmond Drive SE, Olympia, Washington 98503
360-753-9440 phone
360-753-9565 fax

8. **DISPUTE RESOLUTION**

8.1. **Preventive Discussions.**
8.1.1. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other’s actions under this Easement or the use of or activities or conditions on the Protected Property, 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.

8.1.2. Grantee will invite each Beneficiary to this Easement to such preventive discussion meetings provided for in this Section 8.

82. Non-Binding Mediation. If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves and each Beneficiary to this Easement, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either Grantor or Grantee 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:

82.1. 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. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Easement.

82.2. 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.

82.3. 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).

82.4. 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.

82.5. 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.
9. GRANTEE’S REMEDIES

9.1 Notice of Non-Compliance. If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is likely to occur, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose or terms of this Easement, to restore the portion of the Protected Property so injured to its prior or potential condition in accordance with a plan to which Grantee has given consent. In addition to seeking compliance through this agreement, Grantee may pursue any enforcement against the Grantor to the extent available under Thurston County Code.

9.2 Grantor’s Failure to Respond. Grantee may bring an action as provided in Section 9.3 if Grantor:

9.2.1. Fails to cure the violation within sixty (60) days after receipt of notice thereof from Grantee;

9.2.2. 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

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

9.3 Grantee’s Action. Grantee may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this 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 Easement or injury to any of the Habitat Conservation Values protected by this Easement, including damages for the loss of the Habitat Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting the Grantor’s liability, the Grantee has the right to undertake corrective action on the Protected Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.

9.4 Immediate Action Required. Notwithstanding any other provision of this Easement, if Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Habitat Conservation Values, Grantee may pursue its remedies under this Section 9 without prior notice to Grantor, without participation in dispute resolution as provided for in Section 8, or without waiting for the period provided for cure to expire.

9.5 Nature of Remedy. Grantee’s rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee’s remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 9 both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee’s remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or
hereafter existing at law or in equity. The provisions of Section 9.6 shall not be interpreted to preclude Grantee from obtaining injunctive relief.

9.6 Damages. Inasmuch as the actual damages to the Habitat Conservation Values that could result from a breach of this Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages Grantee is entitled to recover from Grantor shall be the cost of restoring any Habitat Conservation Values that have been damaged by such violation.

9.7 Grantee’s Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee’s rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

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

9.9 Acts Beyond Grantor’s Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from actions by a trespasser upon the Protected Property or causes beyond Grantor’s control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee’s option, to assign its right of action to Grantee or to appoint Grantee its attorney in fact, for purposes of pursuing enforcement action against the responsible parties.

9.10 Compliance Certificates. Upon request by Grantor, Grantee shall, as soon as possible and no later than thirty (30) days after receipt of such request, execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the best of Grantee’s knowledge, Grantor’s compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor. Such certification shall be limited to the condition of the
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Protected Property as of Grantee’s most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor’s expense, within forty-five (45) days of receipt of Grantor’s written request and payment therefor. Any Beneficiary to this Easement shall not be estopped from claiming or enforcing a violation of this Easement unless such Beneficiary has also executed the Compliance Certificate.

10. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

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

10.2 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

10.3 Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor’s knowledge:

10.3.1 Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

10.3.2 There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property 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;

10.3.3 Neither Grantor nor Grantor’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
10.3.4 There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Habitat Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor 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.

10.4 Remediation. If, at any time, there occurs, or has occurred, a Release in, on, or about the Protected Property of a Hazardous Substance, Grantor 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 Grantee’s consent), unless the Release was caused by Grantee, in which case Grantee shall be responsible for such remediation to the extent the Release was caused by Grantee. At its discretion, Grantee may assist Grantor in compelling third parties to contain and remediate any such Release.

10.5 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or any Beneficiary to this Easement to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor’s activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”).

11. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

11.1 Extinguishment.

11.1.1 If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction or by mutual written agreement of the grantor, the grantee, and the Beneficiary.

11.1.2 The amount of the proceeds to which Grantee and any Beneficiary to this Easement shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section 11.3.

11.1.3 In granting this Easement, Grantor has considered the fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement. Grantor’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
Easement or be considered grounds for its termination or extinguishment.

11.4. (Proposed addition from Todd Tveten) In granting this Easement, Grantor has reserved the right to justify the extinguishment of this Easement if and when the opportunity arises, and is taken, in the future to join an approved and permitted county-sponsored mitigation site and/or purchase an equivalent amount of credit from an approved land conservation bank.

12. Subsequent Transfers. Grantor agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee and the Beneficiary of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee and the Beneficiary shall include the name, address, and telephone number of the prospective transferee or such transferee’s representative. The failure of the Grantor to perform any act required by this Section 11 shall not impair the validity of this Easement or limit its enforceability in any way.

12. AMENDMENT

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

13. ASSIGNMENT

13.1. Assignment. This Easement is transferable but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended. Grantee shall not assign this Easement without notice to and consent of Grantor and Beneficiary, which consent shall not be unreasonably withheld. As conditions of such transfer, Grantee shall require that assignee continue to carry out the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor’s last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.

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

13. THIRD PARTY RIGHT OF ENFORCEMENT
The United States of America, presently acting through the Beneficiary, is hereby granted third party right of enforcement of this Easement. As such, Beneficiary may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. Beneficiary and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that Beneficiary expects that Grantee shall have primary responsibility for monitoring the Easement. In the event that Beneficiary and Grantee do not agree as to whether the Grantor is complying with the terms of the easement, Beneficiary or Grantee may proceed with enforcement actions without the consent of the other.

14. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of Thurston County, Washington, and in any other appropriate jurisdictions, and may rerecord it at any time as may be required to preserve its rights in this Easement. Grantor shall pay all recording costs and taxes necessary to record this Easement in the public record. Grantor will hold Grantee harmless for any recording costs or taxes necessary to record this Easement in the public records.

15. GENERAL PROVISIONS

15.1 Effective Date. The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

15.2 Governing Law and Venue. The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Easement. By executing this Easement, Grantor acknowledges the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Easement, venue shall be proper only in Thurston County. Notwithstanding, where the United States is a party in any judicial proceeding, venue shall be a federal court with appropriate jurisdiction.

15.3 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.4 Severability.

15.4.1 Except as provided in Section 20.4.2 below, if any provision of this 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 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.

15.4.2 If any material provision of this 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 Easement and applicable law.

155. **Entire Agreement.** This instrument, including all attachments hereto, sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the 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.

156. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor’s title in any respect.

157. **“Grantor” - “Grantee”**. The terms “Grantor” and “Grantee,” wherever used in this instrument, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns. The term “Grantor” shall also include any party taking ownership of the Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.

158. **Successors.** The covenants, terms, conditions, and restrictions of this 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 Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running in perpetuity.

159. **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.

160. **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.

161. **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.

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

163. 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.

16. SCHEDULE OF EXHIBITS

16.1. Exhibit A. Legal Description of Property Subject to Easement.

16.2. Exhibit B. Site Map.

16.3. Exhibit C. Permitted Exceptions.
TO HAVE AND TO HOLD unto Grantee, its successors, and assigns in perpetuity.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW
IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ______ day of ________________, 20___.

Grantor Todd Tveten

STATE of ____________________________
COUNTY of __________________________

On this _____ day of ________________, 20___, personally appeared before me ____________________________ to me known to be the individual(s) described in and who executed the written instrument, and acknowledged that _____ signed and sealed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

____________________________________
Notary Signature

_______________________________
Printed Notary Name

NOTARY PUBLIC in and for the State of __________, residing at __________________________.

My Appointment Expires __________________
**Thurston County Board of County Commissioners** does hereby accept the above Grant Deed of Conservation Easement.

Dated: ______________

**ATTEST:**

________________________
Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS**
Thurston County, Washington

________________________
Chair

**APPROVED AS TO FORM:**

**JON TUNHEIM**
PROSECUTING ATTORNEY

________________________
Vice-Chair

By: _________________________
Deputy Prosecuting Attorney

________________________
Commissioner

REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE PAGES FOLLOW
STATE of ____________________________

COUNTY of __________________________

On this _____ day of ________________, 20___, personally appeared before me ____________________, to me known to be the individual(s) described in and who executed the written instrument, and acknowledged that _____ signed and sealed the same as ______ free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Signature

Printed Notary Name

NOTARY PUBLIC in and for the State of ______, residing at _____________________.

My Appointment Expires ________________

______________________________

STATE of ____________________________

COUNTY of __________________________

On this _____ day of ________________, 20___, personally appeared before me ____________________, to me known to be the individual(s) described in and who executed the written instrument, and acknowledged that _____ signed and sealed the same as ______ free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Signature

Printed Notary Name

NOTARY PUBLIC in and for the State of ______, residing at _____________________.

My Appointment Expires ________________

______________________________

STATE of ____________________________

COUNTY of __________________________

On this _____ day of ________________, 20___, personally appeared before me ____________________, to me known to be the individual(s) described in and who executed the written instrument, and acknowledged that _____ signed and sealed the same as ______ free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Signature

Printed Notary Name

NOTARY PUBLIC in and for the State of ______, residing at _____________________.

My Appointment Expires ________________
For the Third-party Beneficiary - The United States of America

Name: ____________________________________________

Title: ____________________________________________

United States Fish and Wildlife Service

STATE of _________________________________
COUNTY of _______________________________

On this _____ day of ____________________, 20__ , personally appeared before me ____________________________, to me known to be the individual(s) described in and who executed the written instrument, and acknowledged that _____ signed and sealed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Signature

Printed Notary Name

NOTARY PUBLIC in and for the State of ______,
residing at __________________________

My Appointment Expires ____________

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EXHIBIT A

Legal Description
Conservation Easement

THE NORTH 275.45 FEET OF THE WEST 217.26 FEET OF PARCEL B OF THURSTON COUNTY BOUNDARY LINE ADJUSTMENT NO. BLA 17 106426, RECORDED AUGUST 2, 2017 UNDER AUDITOR’S FILE NO. 4578178 RECORDS OF THURSTON COUNTY, WASHINGTON.

EXCEPTING THE NORTH 30.00 FEET
ALSO EXCEPTING THE WEST 40.00 FEET.

IN THURSTON COUNTY, WASHINGTON.

CONTAINING 1.00 ACRES
EXHIBIT B

Site Map(s)
EXHIBIT C

Permitted Exceptions

Relevant text excerpted from Federal Register Volume 79, No. 68:

§ 17.40 Special rules—mammals.

(a) Mazama pocket gophers (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis, glacialis, tumuli, and yelmensis*)

(1) Which populations of the Mazama pocket gopher are covered by this special rule?

This special rule covers the four Thurston/Pierce subspecies of the Mazama pocket gopher (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis, glacialis, tumuli, and yelmensis*) wherever they occur.

(2) What activities are prohibited?

Except as noted in paragraphs (a)(3) through (7) of this section, all prohibitions of § 17.31 apply to the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers.

(4) What agricultural activities are allowed on non-Federal lands?

Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from agricultural or horticultural (farming) practices implemented on such lands consistent with State laws on non-Federal lands. For the purposes of this special rule, farm means any facility, including land, buildings, watercourses, and appurtenances, used in the commercial production of crops, nursery or orchard stock, the propagation and raising of nursery or orchard stock, livestock or poultry, or livestock or poultry products.

(i) For the purposes of this special rule, an agricultural (farming) practice means a mode of operation on a farm that:

(A) Is or may be used on a farm of a similar nature;

(B) Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money;

(C) Is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use;

(D) Complies with applicable State laws;

(E) Is done in a reasonable and prudent manner.

(ii) Accepted agricultural or horticultural (farming) practices include:
(A) Grazing;

(B) Routine installation, management, and maintenance of stock water facilities such as stock ponds, berms, troughs, and tanks, pipelines and watering systems to maintain water supplies;

(C) Routine maintenance or construction of fencing;

(D) Planting, harvest, fertilization, harrowing, tilling, or rotation of crops (Disturbance to the soils shall not exceed a 12-inch (30.5-cm) depth. All activities that do not disturb the soil surface are also allowed, such as haying, baling, some orchard and berry plant management activities, etc.);

(E) Maintenance of livestock management facilities such as corrals, sheds, and other ranch outbuildings;

(F) Repair and maintenance of unimproved agricultural roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(G) Placement of mineral supplements, plant nutrients, or soil amendments;

(H) Harvest, control, or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning (Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.); and

(I) Deep tillage (usually at depths of 18–36 inches (45.7–91.4 cm), for compaction reduction purposes) occurring between September 1 and February 28, no more often than once in 10 years.