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**The Mclain Habitat Conservation Plan for the threatened Olympia  
subspecies of the Mazama pocket gopher (*Thomomys mazama  
pugetensis*) associated with construction of a Single-family Residence  
in Thurston County, Washington**

Prepared by:  
*Steven Mclain*  
9925 Nunn Road SW  
Olympia, WA 98512

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## LIST OF ACROYNMS, ABBREVIATIONS, AND FREQUENTLY USED TERMS

Applicant	Refers to any person, as defined in section 3(13) of the ESA, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting an action (50 CFR 402.02). The Applicant submitting this habitat conservation plan is Mr. Steven Mclain.
Categorical Exclusion	(NEPA definition) A category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedure adopted by a Federal agency in implementations of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4).
CFR	Code of Federal Regulations
Changed Circumstances	Changes in circumstances affecting a species or geographic area covered by a conservation plan or conservation agreement that can reasonably be anticipated by plan or agreement developers and USFWS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).
Conservation Bank	A method used to offset impacts occurring elsewhere to the same listed species. Conservation Banks consist of non-Federal lands containing natural resource values conserved and managed in perpetuity. Conservation banking is a tool for Federal agencies, project applicants, and other entities to address the adverse effects of proposed actions on listed and other federally-managed species, and to support the recovery of listed species and their habitats. A Conservation Bank is a parcel of land containing natural resource values the banker has conserved, restored, created and managed in perpetuity for Federal or state protected species.
Covered Activities	Activities that a permittee will conduct for which take is authorized in an ESA section 10 permit. The Covered Activities include all actions in the plan area that are 1) likely to result in incidental take, 2) are reasonably certain to occur over the life of the permit, and 3) are under the Applicant's control.
Covered Species	Species for which incidental take is authorized in an incidental take permit and is adequately covered in a habitat conservation plan. The proposed covered species that is the subject of this habitat conservation plan is the Olympia subspecies of the Mazama pocket gopher ( <i>Thomomys mazama pugetensis</i> ), also referred to as the Olympia pocket gopher.

EA	(NEPA definition) Environmental Assessment. A concise public document, prepared in compliance with NEPA, that briefly discusses the purpose and need for an action, alternatives to such action, and provides sufficient evidence and analysis of impacts to determine whether to prepare an Environmental Impact Statement or Finding of No Significant Impact (40 CFR 1508.9).
EIS	(NEPA definition) Environmental Impact Statement. A detailed written statement required by section 102(2)(C) of NEPA containing, among other things, an analyses of environmental impacts of a proposed action and alternative considered, adverse effects of the project that cannot be avoided, alternative courses of action, short-term uses of the environment versus the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources (NEPA section 102(2)(C); 40 CFR 1508.11 and 40 CFR 1502).
ESA	The Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543; 87 Stat 884) (50 CFR 17.3).
FR	The Federal Register is the official journal of the Federal government that contains most routine publications and public notices of government agencies. The Federal Register is compiled by the Office of the Federal Register (within the National Archives and Records Administration) and is printed by the Government Printing Office. Section 10(c) of the ESA requires each application for an exception or permit under Section 10 to be published in the Federal Register.
Harass	Defined by USFWS as "... an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering" (50 CFR 17.3).
Harm	Defined by USFWS to mean "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering" (50 CFR 17.3).
HCP	Habitat Conservation Plan
ITP	Incidental Take Permit. A permit issued under section 10(a)(1)(B) of the ESA to a non-Federal party undertaking an otherwise lawful project that might result in the take of an endangered or threatened species. Application for an incidental take permit is subject to certain requirements, including preparation by the permit applicant of a

conservation plan, generally known as a "Habitat Conservation Plan" or "HCP."

Low-effect HCP	Those HCPs involving minor or negligible effects on federally listed, proposed, or candidate species and their habitats covered under the HCP and minor or negligible effects on other environmental values or resources. For an HCP to qualify as low-effect, it must also qualify as a categorical exclusion under NEPA. Effects can be mitigated, such as buying Conservation Bank credits, so that the HCP can be considered "low-effect." Examples may include permanent impacts to a small area of habitat within the plan area or temporary impacts to habitat that have minor or negligible effects on federally listed, proposed, or candidate species.
NEPA	The National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.). A Federal statute that requires Federal agencies to consider the environmental impacts of their discretionary proposed actions, and for significant environmental actions seeking public input on decisions and implementation of Federal actions.
Permit Area	The geographic area where the incidental take permit applies. It includes the area under the control of the applicant/permittee(s) where covered activities will occur. The permit area must be delineated in the permit and be included within the plan area of the HCP.
Plan Area	The specific geographic area where covered activities described in the HCP, including mitigation, may occur. The plan area must be identified in the HCP. Plan areas must include at least the permit area but often include lands outside of the permit area.
SGCN	Species of Greatest Conservation Need, a Washington state designation for certain rare or declining species of plants, fish, or wildlife
Take	"...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct" (ESA Section 3)
Threatened species	Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (ESA section 3(20); 50 CFR 424.10(m)).
Unforeseen circumstances	Changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that could not reasonably have been anticipated by plan or agreement developers and USFWS at the time of the conservation plan's or agreement's negotiation and development, and that result in a substantial and adverse change in the status of the covered species (50 CFR 17.3).

USFWS	U.S. Fish and Wildlife Service
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife

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### Chapter 1 Introduction

#### 1.1 Overview and Background

Mr. Steven Mclain (the Applicant) proposes to construct a single-family residence on property he owns in Thurston County, Washington. The property is known to be occupied by the Olympia subspecies of Mazama pocket gopher (*Thomomys mazama pugetensis*, hereafter Olympia pocket gopher), a species listed as threatened under the Endangered Species Act of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 et seq.) (ESA). The Applicant acknowledges that it will not be possible to completely avoid all adverse effects on this species and its habitat while constructing the new residence. The Applicant prepared this habitat conservation plan (HCP) in partial fulfillment of requirements to seek an incidental take permit (ITP) from U.S. Fish and Wildlife Service (USFWS) in accordance with Section 10(a)(1)(B) of the ESA. An ITP provides exceptions to the prohibitions against “take” of species listed under the ESA under specified conditions in compliance with applicable laws and regulations.

The proposed project is the construction of one new single-family residence at 9925 Nunn Road SW, in Olympia, Washington. The home, driveway and lawn surrounding the home will be confined to approximately 0.5 acres of the 8.22 acre parcel. An existing home, barn, and several small storage sheds currently exist on the property. The remainder of the property will continue to be operated as a family farm as it has for the past 57 years raising hay and a few head of livestock.

This HCP describes the Applicant’s proposed conservation program intended to minimize and mitigate unavoidable impacts to the Olympia pocket gopher and its habitat that may occur during construction of the project.

#### 1.2 Purpose and Need

This HCP was prepared to meet statutory, regulatory, and policy requirements for issuance of an ITP. The USFWS may authorize incidental take by a non-Federal entity through the issuance of an ITP in accordance with Section 10(a)(1)(B) of the ESA. As part of the application for an ITP, the Applicant must prepare an HCP. The purposes of this HCP are to:

- Describe the anticipated impacts of the project and the conservation program on the covered species and its habitat;
- Establish measures to ensure that any take associated with the project and conservation program will be incidental;
- Ensure that the impacts of the taking will be minimized and mitigated to the maximum extent practicable, including provisional procedures to deal with changed and unforeseen circumstances;
- Ensure that mitigation for impacts to listed species will result in a net conservation benefit;

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- Ensure that adequate funding for implementation of the conservation program will be provided; and
- Ensure that the take of listed species will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Applicant needs an ITP because it will not be possible to completely avoid all adverse effects to the threatened Olympia pocket gopher and its habitat while engaging in the otherwise lawful project. Activities that result in take of listed species in the absence of an ITP constitute a violation of the prohibitions in Section 9 of the ESA.

### 1.3 Permit Duration

The Applicant requests a two-year renewable ITP. The Applicant believes construction of the residence will be completed and that the HCP will achieve the described conservation goals within that time-frame. If the proposed project is not complete before the permit expires, the Applicant will renew the permit to ensure coverage for the remaining covered activities. The permit renewal process is described in Section 6.6 of this document.

### 1.4 Plan Area

The plan area for an HCP includes the specific geographic area where covered activities described in the HCP, including mitigation, may occur. The plan area consists of the Applicant's 8.22 acre parcel located at 9925 Nunn Road SW, Olympia, Washington.

### 1.5 Permit Area

The permit area occurs within the plan area and defined as the geographic area of the impacts of the activities for which the ITP is requested within the plan area (i.e., the Covered Activities). It includes the area under the control of the Applicant where covered activities will occur, and consists of a 0.5 acre portion of the Applicant's 8.22 acre parcel located at 9925 Nunn Road SW, Olympia, Washington.

All construction activities will be limited to an approximately 0.5 acre "development envelope" on the Applicant's property. The development envelope is bounded by a line starting about 200 feet from the property's south east corner that extends approximately 200 feet north along the east property boundary, and incorporates the area extending approximately 110 feet to the west of this line (see "Mclain HCP Development Envelope and Conservation Site" map in Appendix C).

The proposed conservation program will occur on the "Conservation Site" further described in Chapter 5 and in Appendices B ("Legal Description"), C ("Mclain HCP Development Envelope and Conservation Site" map), and E (Conservation Easement).

The Applicant intends to continue current and ongoing agricultural (farming) practices on the Conservation Site and the remaining farm lands on the property. The Applicant does not need take coverage for these activities providing they meet the requirements described in the 4(d) Special Rule published for the Mazama pocket gopher on April 9, 2014 (79 FR 68 19795-19796).

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### **1.6 Covered Species**

Olympia pocket gopher mounds were found on the property on two different site visits in the summer of 2016 (see Appendix D “Background Reports and Supporting Documentation”). Because potential habitat is found throughout the parcel and there are no apparent physical barriers to dispersal, it is possible that the species could be present anywhere within the property boundaries. Because the species and its habitat could be present within the proposed development envelope, the project cannot completely avoid impacts to the Olympia pocket gopher and its habitat. The Applicant therefore proposes to cover this species for incidental take.

### **1.7 Regulatory Framework**

#### **1.7.1 Endangered Species Act**

The U.S. Congress enacted the ESA to protect plants and animals threatened with or in danger of extinction. The USFWS is responsible for implementing the ESA for those species under its jurisdiction. The ESA and its implementing regulations in Title 50 of the Code of Federal Regulations (CFR) Section 17 prohibit the take of any fish or wildlife species that is federally listed as threatened or endangered without prior approval pursuant to either Section 7 or Section 10 of the ESA.

Section 3 of the ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct” (16 United States Code [USC] § 1532 (19)).

Section 7(a)(2) of the ESA requires each Federal agency to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat (16 USC § 1536 (a)(2)). If the actions of a Federal agency are not likely to jeopardize the continued existence of any endangered or threatened species, but could adversely affect the species or result in a take, the action must be addressed under Section 7 of the ESA (16 USC § 1536 (a)(2)). Issuance of an ITP is a Federal action that requires USFWS consultation in accordance with Section 7.

Section 9 of the ESA prohibits the “take” of threatened and endangered species. The term “harm” is defined to include any act “which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering” (50 C.F.R. § 17.3). The term “harass” is defined as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 C.F.R. § 17.3).

Section 10 of the ESA allows non-Federal Applicants, under certain terms and conditions, to incidentally take ESA-listed species that would otherwise be prohibited under Section 9. When a non-Federal landowner or other non-Federal entity wishes to proceed with an activity that is legal in all other respects, but that may result in the incidental taking of a listed species, an ITP is required. Incidental take is defined as take that is “incidental to, and not the purpose of, the

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carrying out of an otherwise lawful activity” (50 CFR § 17.3). Section 10 of the ESA requires that an Applicant submit an HCP as a component of an application for an ITP. The USFWS is required to verify that the HCP complies with the provisions of the ESA [50 CFR 17.22 (b)(2)] prior to issuance of an ITP.

An HCP submitted in support of a Section 10 permit application must specify (16 U.S.C. § 1539(a)(2)(A)(i)-(iv); 50 C.F.R. § 17.22(b)(1)(iii)):

- The impact that will likely result from such taking;
- What steps the Applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;
- What alternative actions to such taking the Applicant considered and the reasons why such alternatives are not proposed to be utilized; and
- Such other measures that the Director (of USFWS) may require as being necessary or appropriate for purposes of the plan.

To issue an incidental take permit, USFWS must find that (16 U.S.C. § 10(a)(2)(B); 50 C.F.R. §§ 17.22(b)(2) and 17.32(b)(2)):

- The taking will be incidental;
- The Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;
- The Applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;
- The Applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;
- The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild;
- The measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and
- (The Director) has received such other assurances as he or she may require that the plan will be implemented.

### **1.7.2 National Environmental Policy Act**

The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. § 4321 et seq.), requires that Federal agencies analyze and publicly disclose the social, economic and environmental effects associated with “major Federal actions” (§ 4332). The issuance of an ITP under Section 10(a)(1)(B) of the ESA is considered a “major Federal action” and is therefore

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subject to NEPA compliance. The Applicant understands that USFWS is required to complete a NEPA analysis of the effects of issuing the requested permit on the “human environment”, including the incidental take authorized by permit issuance and the effects associated with implementation of an HCP. The results of this analysis will be documented in either an Environmental Action Statement supporting a determination that an action can be categorically excluded from further analysis, an Environmental Assessment supporting a Finding of No Significant Effect, or an Environmental Impact Statement resulting in a Record of Decision.

### 1.7.3 National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC § 40 et seq.)(NHPA), requires Federal agencies to take into account the effects of their undertakings on properties eligible for inclusion in the National Register of Historic Places. An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency; including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. “Properties” are defined as “cultural resources,” which includes prehistoric and historic sites, buildings, and structures that are listed or eligible for listing in the National Register of Historic Places. The issuance of an ITP is an undertaking subject to compliance with this statute, and the Applicant understands that USFWS must consult with the Regional Historic Preservation Officer and others as needed to secure NHPA clearance prior to issuing any permit.

### 1.7.4 Other Relevant Laws and Regulations

The Applicant understands that an ITP is valid providing the proposed project remains in compliance with all relevant Federal, state, and local laws, regulations, and ordinances and acknowledges that he is responsible for ensuring that that the proposed project meets all applicable requirements.

The Washington Fish and Wildlife Commission (Commission) is the supervising authority for the Washington Department of Fish and Wildlife (WDFW). The Commission’s primary role is to establish policy and direction for fish and wildlife species and their habitats in Washington and monitor implementation of the goals, policies, and objectives established by the Commission. The Commission also classifies wildlife and establishes the basic rules and regulations governing the time, place, manner, and methods used to harvest or enjoy fish and wildlife. The Washington Administrative Code (WAC) defines endangered as:

*“any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state” (WAC 232-12-297, § 2.4);*

and defines threatened as:

*“any wildlife species native to the state of Washington that is likely to become an endangered species within the foreseeable future throughout a significant portion of its*

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*range within the state without cooperative management or removal of threats” (WAC 232-17-297, § 2.5).*

The Commission designated the Mazama pocket gopher in the state as threatened in 2006 (WAC 232-12-011[1]). This designation classifies the species as protected wildlife (WAC 121-12-011) subject to regulation under the Revised Code of Washington (RCW 77.12). Unlawful taking of species designated as threatened by the Commission is prohibited under state law (RCW 77.15.130).

Washington State Code provides that taking of endangered and threatened fish and wildlife is not unlawful if authorized by a permit issued under the ESA (RCW 77.15.130(1)(c)(ii)). The Applicant will satisfy Washington State prohibitions against taking state-listed species by securing an ESA permit authorizing incidental take of the federally-listed Olympia pocket gopher.

The Washington State Environmental Policy Act (RCW 43.21C) and its implementing regulations (WAC 197-11) may require review by Thurston County or other local entities to ensure that any permits or authorizations associated with the project identify possible environmental impacts resulting from governmental decisions.

The Applicant will comply with relevant Thurston County Critical Area Ordinances and secure applicable permits and project approvals. Permits likely to be required include but are not limited to those for grading and clearing, extending power lines, water lines, extending the existing driveway, constructing a residence, and installing or connecting to the existing septic system.

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### Chapter 2 Project Description and Covered Activities

#### 2.1 Project Description

The proposed project consists of construction of one single-family home and associated utility infrastructure. All project activities; including staging areas, equipment operation, construction, and utilities installation will be contained within and may occur throughout the designated 0.5 acre development envelope (see Appendix C).

Construction equipment for the project will be transported on existing roadways and across the existing driveway on the site. No new temporary or permanent roads or access corridors will be required to complete the work.

The development envelope is vegetated with introduced grasses, native and non-native forbs and weedy species, and several trees and shrubs. The area will be cleared of most vegetation and woody vegetation and root balls will be grubbed out to prepare the site. The project will require grading and site leveling.

An approximately 3,100 square foot home with attached two-car garage will be built on site using conventional construction techniques in accordance with local building codes. A perimeter fence will be constructed to maintain separation between the residential area within the development envelope and the agricultural uses that will continue on the balance of the property.

Trenching for new power and water lines will follow existing roadways to minimize adverse effects on covered species or their habitats. Power will be extended approximately 200 feet from an existing transformer to the construction site. Power and water lines will be extended approximately 200 feet from an existing well to the new home site. A septic system and drain field will be installed, and a driveway that currently serves the existing home on the property will be extended approximately 80 feet to the new home site. These activities will be contained within the 0.5 acre development envelope.

The area around the new home and within the development envelope will be finish graded and landscaping will be installed.

The Applicant proposes to initiate the project upon issuance of the requested permit, and plans to complete construction of the home as soon as possible, preferably within the current year's spring and summer building season.

#### 2.2 Covered Activities

Residential development involves multiple activities that could result in take of Olympia pocket gophers. For ease of description, these activities are grouped into general categories, including pre-development, development and construction, and installation of utilities and supporting infrastructure, and are further described in Table 1: Covered Activities by Project Phase and Sub-Activity. The general description of "development and construction of one single-family home and supporting infrastructure" is intended to be inclusive of each these actions for the purposes of this HCP.

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Pre-development activities include actions related to land clearing and preparing the site for construction. Development and construction activities include building the home, driveway, and landscaping. Installation of utilities and supporting infrastructure includes installing or connecting septic systems, electrical and water utilities, and associated landscaping.

Table 1. Covered Activities by Project Phase and Sub-Activity

<b>Covered Activity</b>	<b>Project Phase</b>	<b>Sub-Activity</b>	<b>Duration</b> (estimates subject to weather and site conditions)
Development and construction of one single-family home and supporting infrastructure	Pre-development/Site preparation	Cutting and removal of vegetation	Days
		Grubbing	Days
		Soil Testing	Days to weeks
		Creation of workspace/staging area	Days
		Stockpiling debris/rock/soils/vegetation onsite	Days
	Development and construction activities	Use of heavy equipment	Weeks to months
		Excavation and removal of soils	Weeks
		Debris removal	Days
		Compacting substrates	Days
		Digging and installing footings or piers	Days
		Addition of fill/gravel/aggregate substrates or imported soil	Days
		Building concrete slab or foundation	Days to weeks
		Finish grading	Days
		Driveway construction	Days
		Redistribute soils	Days
		Regrade/resurface	Days

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<b>Covered Activity</b>	<b>Project Phase</b>	<b>Sub-Activity</b>	<b>Duration</b> (estimates subject to weather and site conditions)
		Install sod	Days
		Landscaping/ restoration	Days to weeks
		Construction of the residence	Months
	Installation of utilities and supporting infrastructure	Digging chamber for septic tank	Days
		Installing septic system and drain field	Days to weeks
		Digging trenches and installing underground electrical and water utilities	Days to weeks
		Debris removal	Days
		Redistributing soils	Days
		Re-grading and resurfacing	Days
		Installing sod and landscaping	Days

## **Chapter 3 Environmental Setting and Biological Resources**

### **3.1 Environmental Setting**

#### **3.1.1 Climate**

Thurston County is located in western Washington at the southern extent of Puget Sound. The average precipitation in the area averages approximately 50 inches/year. The area experiences cool, wet, winters and mild summers. The warmest and driest months generally occur in July and August, with December and January generally the coldest months and November through February generally receiving the greatest amount of precipitation. Fog is common in the area. The average maximum temperature is 60.3 F and the average minimum temperature is 39.6 F (Western Regional Climate Center database 2017).

#### **3.1.2 Topography/Geology**

Thurston County is located in the geologic area known as the Puget Trough, bordered to the west by the Olympic Mountains and to the east by the Cascade Mountains. Most of the geology and soils in the County can be attributed to the deposition and erosion caused by several past glaciations and the advance and retreat of the Vashon glacier. These actions left behind coarse, well drained, sandy glacial outwash. Glacial drift, till, and outwash are found in the majority of the low elevation areas in Thurston County.

Typically, prairie lands found in Thurston County occur on glacial outwash soils and are sandy, well drained layers of often very deep outwash (Drost et al 1998). The prairies that formed in Thurston County on this plateau of glacial gravels generally have sandy to gravelly, deep, well-drained soils with low water-holding capacity.

The property is mostly flat with some slight slopes. The entire property is mapped as containing Cagey loamy sand soils.

#### **3.1.3 Hydrology/Streams, Rivers, and Drainages**

The property is located within the Upper Chehalis subbasin (US Geologic Survey Hydrologic Unit Code 17100103) and consists of uplands containing no wetlands, streams, or rivers.

#### **3.1.4 Existing Land Use**

The property has been owned and operated as a farm by the Mclain family for the last 57 years. There is an existing single family home, a barn, and several small outbuildings that occupy approximately one and one-half acres of the property.

The farm consists of a hayfield and a cattle pasture. The hayfield is vegetated with introduced grasses with a small proportion of native and non-native forbs and grasses. The pasture area is vegetated primarily with non-native pasture grasses and a mixture of native and non-native forbs and weedy species.

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### 3.2 Biological Resources

Common wildlife species in Thurston County include deer mouse (*Peromyscus maniculatus*), vole (*Microtus spp.*), mole (*Scapanus spp.*), raccoon (*Procyon lotor*), Virginia opossum (*Didelphis virginiana*), coyote (*Canis latrans*), black-tailed deer (*Odocoileus hemionus columbianus*), red-tailed hawk (*Buteo jamaicensis*), American robin (*Turdus migratorius*), western meadowlark (*Sturnella neglecta*) song sparrow (*Melospiza melodia*), white-crowned sparrow (*Zonotrichia leucophrys*), black-capped chickadee (*Poecile atricapilla*), dark-eyed junco (*Junco hyemalis*), house finch (*Carpodacus mexicanus*), American crow (*Corvus brachyrhynchos*), marsh wren (*Cistothorus palustris*), Canada goose (*Branta canadensis*), mallard (*Anas platyrhynchos*), killdeer (*Charadrius vociferous*), and Pacific treefrog (*Pseudacris regilla*).

Thurston County is also home to several species of plants, fish or wildlife that may be rare or in decline. Some of these have been designated by WDFW or the USFWS as threatened or endangered, and others may be candidates for such status or recognized as “species of greatest conservation need” (SGCN) (see Table 2).

After reviewing the habitat requirements of the plants, fish, and wildlife species with state or Federal status and receiving technical assistance from USFWS, the Applicant determined that the only species likely to be exposed to take as a result of the proposed construction on the property is the Olympia pocket gopher. Olympia pocket gopher mounds were documented on the property by WDFW and USFWS biologists on two different site visits in July and August 2016 (see map and supporting documentation in Appendix C).

Though Tenino and Yelm pocket gophers are found in Thurston County, the three distinct subspecies of Mazama pocket gopher are understood to have non-overlapping ranges. The project site is located within the described range of the Olympia pocket gopher, and is therefore not expected to affect the other listed subspecies of pocket gophers.

There are no wetlands, riparian corridors, or creeks, streams or rivers that could provide habitat for any of the aquatic or riparian-associated species with regulatory status in Thurston County (including Yellow-billed cuckoo, Oregon spotted frog, bull trout, Puget Sound Chinook salmon, and water howellia).

There are no mature conifer ecosystems on the property that could support forest-associated species such as the Northern spotted owl or the marbled murrelet. There are also no Oregon white oaks (*Quercus garryana*) on the property that make up key habitat elements for the Western gray squirrel and the slender-billed white-breasted nuthatch. Several of the species including the streaked horned lark and the Oregon vesper sparrow require large open areas for nesting or foraging. These landscapes are not present on the Applicant’s property, and these species therefore will not be affected by the proposed project.

The property has been operated as a family farm with hayfield and cattle pastures for five decades, and none of the rare or listed plants or butterfly species have been seen on or are expected to occur on the property (including Taylor’s checkerspot butterfly, Puget blue butterfly, Hoary elfin, Oregon branded skipper, Mardon skipper, Valley silverspot butterfly, Golden

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paintbrush, Kincaid’s lupine, marsh sandwort, Nelson’s checker-mallow, or the rose checker-mallow).

Table 2. Species with State or Federal Status in Thurston County

<b>Common name</b>	<b>Specific name</b>	<b>State status</b>	<b>Federal status</b>
Olympia pocket gopher	<i>Thomomys mazama pugetensis</i>	Threatened	Threatened
Tenino pocket gopher	<i>T. m. tumuli</i>	Threatened	Threatened
Yelm pocket gopher	<i>T. m. yelmensis</i>	Threatened	Threatened
Western gray squirrel	<i>Sciurus griseus</i>	Threatened	None
Streaked horned lark	<i>Eremophila alpestris strigata</i>	Endangered	Threatened
Marbled murrelet	<i>Brachyramphus marmoratus</i>	Threatened	Threatened
Northern spotted owl	<i>Strix occidentalis caurina</i>	Endangered	Threatened
Oregon vesper sparrow	<i>Pooecetes gramineus</i>	Candidate	None
Slender-billed white-breasted nuthatch	<i>Sitta carolinensis aculeata</i>	Candidate	None
Yellow-billed cuckoo	<i>Coccyzus americanus</i>	Candidate	Threatened
Oregon spotted frog	<i>Rana pretiosa</i>	Endangered	Threatened
Western toad	<i>Anaxyrus boreas</i>	Candidate	None
Bull trout	<i>Salvelinus confluentus</i>	Candidate	Threatened
Puget sound chinook salmon	<i>Oncorhynchus tshawytscha</i>	Candidate	Threatened
Taylor’s checkerspot butterfly	<i>Euphydryas editha taylori</i>	Endangered	Endangered
Puget blue butterfly	<i>Icaricia icarioides blackmorei</i>	Candidate	None
Hoary elfin	<i>Callophrys polios</i>	SGCN	None
Oregon branded skipper	<i>Hesperia colorado oregonia</i>	SGCN	None
Mardon skipper	<i>Polites mardon</i>	Endangered	None

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<b>Common name</b>	<b>Specific name</b>	<b>State status</b>	<b>Federal status</b>
Valley silverspot butterfly	<i>Speyeria zerene</i>	Candidate	None
Golden paintbrush	<i>Castilleja levisecta</i>	Threatened	Threatened
Kincaid’s lupine	<i>Lupinus sulphureus kincaidii</i>	Endangered	Threatened
Marsh sandwort	<i>Arenaria paludicola</i>	Extirpated	Endangered
Nelson’s checker-mallow	<i>Sidalcea nelsoniana</i>	Endangered	Threatened
Rose checker-mallow	<i>Sidalcea malviflora ssp. virgata</i>	Endangered	None
Water howellia	<i>Howellia aquatilis</i>	Sensitive	Threatened

**3.2.1 Covered Species**

Steven McLain proposes to cover the Olympia pocket gopher, *Thomomys mazama pugetensis* (Merriam, 1897) for incidental take that may occur as a result of engaging in activities related to the otherwise lawful construction of a new home.

**3.2.2 Status and Distribution**

In 1991 the Washington Fish and Wildlife Commission determined the Cathlamet (*T. m. louiei*), Roy (*T. m. glacialis*), Shelton, (*T. m. couchi*), Tacoma (*T. m. tacomensis*), and Tenino (*T. m. tumuli*) subspecies of the Mazama pocket gopher to be candidates for listing as threatened or endangered under state law (per RCW title 77 and WACs 232-12-011, 232-12-014, and 232-12-297). In 2001 the USFWS published notification in the Federal Register that the Mazama pocket gopher was a candidate for listing under the ESA (66 FR 54808-54832). The state of Washington listed the Mazama pocket gopher (inclusive of all subspecies) as threatened under state law in 2006. In 2011 the USFWS entered into a settlement agreement to resolve litigation related to listing activities under the ESA. In the settlement agreement the USFWS agreed to, among other things, issue proposed listing rules or not warranted findings for all species considered candidates for listing as of November 10, 2010, including the Mazama pocket gopher. On April 9, 2014, USFWS listed the Olympia, Roy, Tenino, and Yelm subspecies of Mazama pocket gopher as threatened under the ESA (79FR 19760-19796).

Mazama pocket gophers were historically more widespread and abundant on the glacial outwash prairies of the southern Puget Sound region, and are found today in northern California, western Oregon, and western Washington. In Washington, Mazama pocket gophers are found on remnant glacial outwash prairies of the southern Puget Sound region and on subalpine meadows of the Olympic Mountains. Though multiple subspecies of Mazama pocket gophers are known from

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Washington State, this status of the species description will focus on the Olympia pocket gopher that will be affected by the Covered Activities, and is the subject of this HCP.

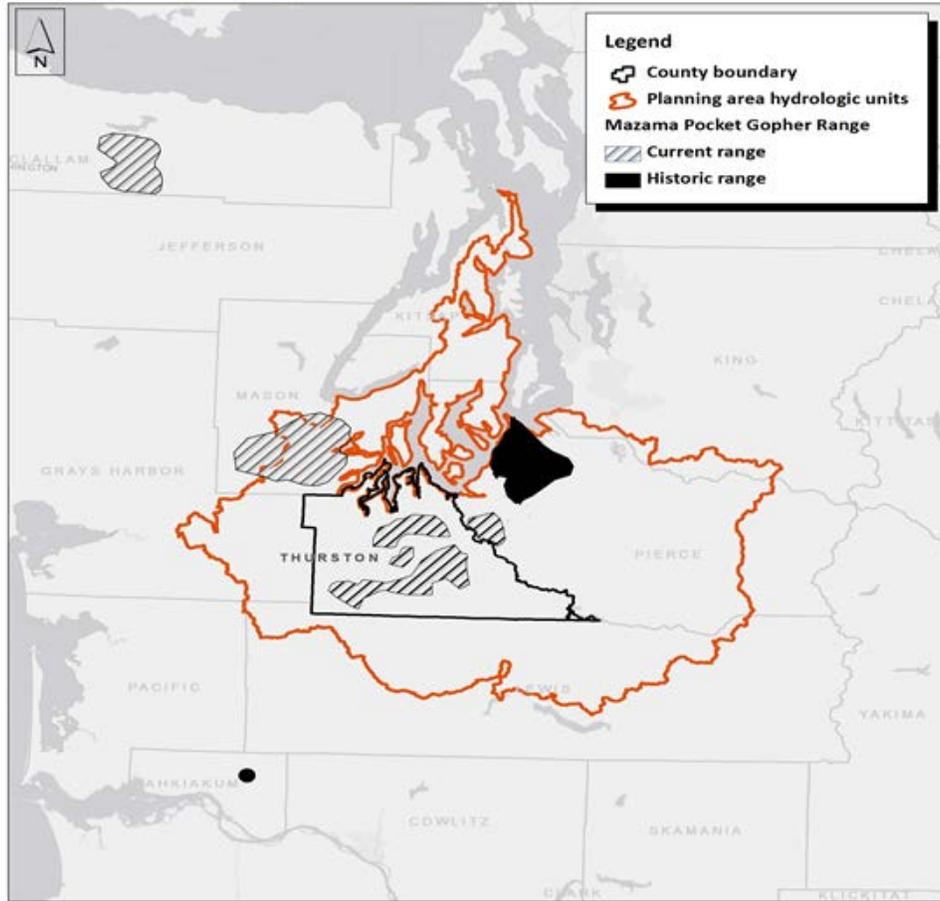


Figure 1 Historical and current range of the Mazama pocket gopher in Washington based on museum specimens and WDFW data.

Documented Mazama pocket gopher occurrences and prairie soil types in the southern Puget Sound region are separated by distance or rivers and vary widely depending on soils present and the land-use history. Abundance and distribution data for the subspecies in the south Puget Sound region is based on primarily on museum specimens, WDFW and USFWS data, and Dalquest and Sheffer 1944, and is summarized below.

Many surviving subpopulations are small (<50) and appear to be isolated from other subpopulations, although there are few data on dispersal to help delineate genetically connected populations. Small subpopulations are unlikely to persist for long without at least occasional demographic and genetic recharge by dispersing individuals from other nearby populations. Re-colonization becomes less likely as habitat is fragmented and populations become isolated.

The largest known population of the Olympia pocket gopher is found in the loamy sand soils at the Olympia Regional Airport and surroundings in Tumwater on the historical Bush Prairie. Olympia pocket gophers are known from the maintained grasslands at the Olympia Regional

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Airport, where they are relatively undisturbed by humans or domestic animals. Olympia pocket gophers are also found in vacant lots, yards, and pastures in nearby locations both east and west of Interstate 5.

### Life History and Ecology

Mazama pocket gophers spend most of their time within their system of burrows. Gophers are believed to be generally solitary and exclude other gophers from their burrows except when breeding and when females have litters. When pocket gophers have established a territory, they generally remain there, although they will shift their home range in response to seasonally wet soils.

*Thomomys* pocket gophers adjust their annual cycle of activity to the seasonal changes of weather, soil, and plant growth where they occur (Cox and Hunt 1992). Pocket gopher territory sizes (i.e., burrow systems) vary with habitat quality and reproductive status. Using radio-telemetry, Witmer et al. (1996) estimated that the late winter-early spring home range of *T. mazama* on a fallow field averaged 108 m<sup>2</sup> (1,160 ft.<sup>2</sup>) for 4 males (range 73–143 m<sup>2</sup>, 785-1539 ft.<sup>2</sup>), and 97 m<sup>2</sup> (1044 ft.<sup>2</sup>) for 4 females (range 47–151 m<sup>2</sup>; 506-1625 ft.<sup>2</sup>). WDFW personnel captured an average of 9 gophers/ac in a 22 ac plot at Olympia Airport, but some gophers remained in the plot uncaptured (G. Olson, unpubl. data).

Mazama pocket gophers attain sexual maturity by the breeding season after their birth, when approximately 9 months old and rear a single litter of about 5 (2-7) pups per year (Witmer et al. 1996, Verts and Carraway 2000). Gopher populations can increase dramatically in the summer after the dispersal of young of the year, and may increase to three to four times the spring adult population. In addition to this annual influx of young-of-the-year, gopher populations also fluctuate year-to-year due to environmental conditions. Pocket gopher populations are characterized by local extinction and recolonization (Baker et al. 2003). Territoriality and extreme weather may influence pocket gopher populations more than any other factors.

Pocket gophers have been called ‘keystone species’ and ‘ecosystem engineers’ because they affect the presence and abundance of plants and other animals (Vaughan 1961, 1974; Reichman and Seabloom 2002). Their extensive excavations affect soil structure and chemistry; food caches and latrines enrich the soil, affecting plant community composition and productivity. Mazama pocket gophers are an important prey species for many predators, including hawks, owls, coyotes, and weasels; their burrows provide retreats for salamanders, western toads, frogs, lizards, small mammals, and invertebrates (Stinson 2005).

### 3.2.3 Habitat Characteristics and Use

Mazama pocket gophers live on open meadows, prairies and grassland habitats of the glacial outwash plain where there are porous, well-drained soils (Dalquest 1948). Mazama pocket gophers do not require high quality prairie, but can live in a wide range of grasslands, particularly if they include a significant component of forbs, such as clover, lupines, dandelions, false dandelions, and camas. In addition to remnant prairies, occupied sites in Washington include grassy fields at airports, pastures, fields, Christmas tree farms, and occasionally clearcuts.

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Although most of the populations are found in grasslands on land that was historically prairie, they will move into sites with well-drained soil where forest cover has been removed, including recent clearcuts. Mazama pocket gophers have been observed moving 160 meters (524 ft) from one cluster of locations, with subsequent locations creating a new cluster (Olson 2012). A recent WDFW report documents movement of one individual a total of 367 meters (1,200 ft.) in a single day (Olson 2015). Gophers are known to populate sites after timber harvest and become common for a few years while grasses and forbs are available, but decline as the area regenerates to forest. This has been observed most frequently in Mason County. They are otherwise essentially absent from forest habitats in Washington. Mazama pocket gophers occur in woodland in Oregon, particularly in ponderosa pine communities, but they are absent from dense forest (Verts and Carraway 1999). Gophers also are rare where grassland has been taken over by dense Scot's broom (Steinberg 1996, Olson 2011b).

Perennial forbs are preferred for food over grasses, and fleshy roots and bulbs, such as camas (*Camasia* spp.) are important when green vegetation is not available. The availability of forbs may provide nutrients important for gopher growth and reproduction. Gophers also eat fungi and disseminate the spores of species that have an important role in facilitating plant growth.

The distribution and abundance of pocket gophers is greatly affected by soils. Soil characteristics that affect gophers include depth and texture, particularly rock and clay content that affects burrowing ability, permeability that can result in periodic flooding of burrows, and water-holding capacity and fertility that affect growth of plant foods. Pocket gophers generally prefer deep, light-textured, porous, well-drained soils, and do not occur in peat or heavy clay soils (Chase et al. 1982, Baker et al. 2003). Mazama pocket gophers are seldom found in sites with very rocky soil.

Distribution of Mazama pocket gophers appears correlated with prairie soil types, but they are not found on all remnant prairie sites. They rarely occur where soil is very rocky (Steinberg 1996a, Olson 2011b). There are local populations in non-prairie loam, sandy, and gravelly soil types (e.g., Indianola loamy sand, Grove, Everett) that may have been unused by gophers historically due to forest cover. These occurrences often are adjacent to more typical prairie soils (e.g., Nisqually soils). They may be able to occupy any site that supports herbaceous vegetation, does not have significant tree cover, and is well-drained sandy, loamy, or gravelly soil. *T. mazama* in Washington have not been found in clay, and there are few records in silt soils. In sum, deep well-drained, sandy loam or loamy sand with sufficient fertility and water holding capacity to support desired forbs appears to provide optimal habitat (Baker et al. 2003).

Much of the Mazama pocket gopher habitat in the south Puget Sound has been lost to development, agriculture, and succession to forest, and what remains continues to be degraded by invasion of Scot's broom and other non-native plants. Residential development that becomes high density has been particularly destructive to prairie habitat, and probably led to extinction of *T. m. tacomensis*. Habitat loss has eliminated most of the prairie vegetation, though significant areas remain in grassland. Though Mazama pocket gophers are generally protected in recent years by state, county, and local regulation, development may result in some unavoidable habitat loss and additional fragmentation and isolation of habitat patches. Degraded sites may often represent habitat that can support young that have dispersed, but offer inadequate food to consistently support reproduction. Mazama pocket gophers may not persist in high density

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residential areas due to effects of frequent mowing, herbicides, impervious surfaces, and perhaps elevated mortality rates resulting from predation by cats and dogs and illegal trapping or poisoning of gophers. Most occupied habitat on public lands is affected by uses including military training and recreation. Mazama pocket gopher populations at airports can be affected by development of airport-related facilities and businesses and management of the vegetation around airport runways and taxiways. Mazama pocket gopher populations at airports benefit from mowing which prevents invasion of the extensive grassland by woody vegetation.

Trends in the human population suggest that amount and quality of habitat will continue to decline without protection and careful management of conflicting uses. Thurston County is projected to have 170,000 additional people and need an additional 50,000 detached single-family housing units, and >25,000 multi-family units by 2040 (Sustainable Thurston 2011:A11). As the habitat patches become smaller, fewer, and farther apart, the likelihood of each patch continuing to support grassland-dependent species declines as intervening habitat patches are lost. These trends generally affect gophers negatively.

The persistence of Mazama pocket gophers on roadsides, vacant lots, lightly grazed pastures, and within commercial timberland suggests that they are relatively resilient, and may be able to persist in rural and low density developed areas. However, recent extinction of the Tacoma pocket gopher indicates that life for gophers in high density residential and commercial areas is hazardous and recruitment and re-colonization is inadequate to maintain local populations. The last possible records of the Tacoma pocket gopher were animals that were killed by pet cats and identified as gophers by homeowners (Ramsey and Slipp 1974). It is not known if the mortalities from these sources have a significant effect on gopher populations, particularly in less densely settled areas. Dogs also are known to kill pocket gophers, but are probably less often free-roaming in unfenced areas.

Pocket gophers can damage young trees and, like moles, their mounds may be considered a nuisance to landowners. They can also be considered a problem in vegetable gardens and at Christmas tree, berry, and vegetable farms in the area. Mazama pocket gophers cannot be taken without a permit; but the frequency that they might be purposefully or incidentally trapped or poisoned (by landowners attempting to control moles, for example) is unknown. When larger populations are suppressed by these methods, they readily recover if habitat remains suitable, but for small and isolated populations, mortality from persecution added to other hazards may lead to extirpation.

Gophers may survive in pastures in rural residential areas, but studies in California indicate that gopher density tends to decrease in heavily grazed pastures (Eviner and Chapin 2003). *T. mazama* has persisted on well-managed ranches in Thurston County.

Pocket gophers occur in grasslands surrounding airport runways and adjoining lands at the Olympia Regional Airport. Airport safety considerations requires that the vegetation be mowed to maintain visibility, eliminate cover for large animals that might pose a hazard for aircraft, and provide a safety margin should aircraft overshoot or land short of the runway. This type of management benefits gophers by preventing woody vegetation and maintaining the grassland. Development of aviation facilities and the surrounding Port lands at the Olympia Regional Airport poses a potential loss of habitat. The Olympia Regional Airport designated 8.6 ac as a

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Mazama pocket gopher habitat conservation area in an interlocal agreement with WDFW as part of the Airport Five Year Development Plan, and any additional development would be subject to Tumwater critical area ordinances. The Port of Olympia Master Plan projects significant future land developed for general aviation (~114 ac), aviation related/compatible industry (~245 ac), and additional area for parallel taxiways (Barnard Dunkelberg & Co. 2011).

The fire regime established and perpetuated by Native Americans maintained the south Puget Sound prairies for the past 4,000 years, or more. Fire suppression allows succession by native and exotic flora, and without vegetation management the native prairies would probably disappear. Fire suppression allows fire-sensitive species to invade and allows an unusual build-up of fuels that can lead to very hot fires that harm the normally fire-tolerant native species (Tveten 1997).

Fire suppression allows Douglas-fir to invade and overwhelm prairie. Disturbances such as grazing and vehicle traffic may accelerate colonization by Douglas-fir because Douglas-fir seed germination is enhanced by disturbance that increases mineral soil contact, while native plants may decline with the loss of the moss carpet.

Scot's broom is the most visible invasive species that can cover prairies relatively rapidly. Olson (2011a) reported that Scot's broom negatively affected the probability of gopher site occupancy and plot use; the model suggested that plot use appears to decline as Scot's broom cover approached 10%. Parker (2002) reported that the glacial outwash prairie ecosystem is readily invaded by Scot's broom and that simply reducing soil disturbance and fires would not stop broom invasion (Parker 2002). Rook et al. (2011) noted that Scot's broom has long lasting effects on the soil that reduces germination and success of some native species. Scot's broom is killed through burning, hand pulling, or herbicide, but control requires an ongoing program because the plants produce abundant seeds that remain viable in the soil for several decades. Regular mowing can prevent additional Scot's broom seed production. Fire often stimulates germination of Scot's broom seeds in the soil, so a second prescribed burn or herbicide application is needed to kill the abundant seedlings. Portions of the Artillery Impact Area on JBLM are Scot's broom free, indicating that frequent burning prevents establishment, but this can also affect native species.

Pocket gophers are vulnerable to local extinctions because of the small size of local breeding populations (Steinberg 1999). Low effective size of local populations and relatively large genetic differences between populations may be typical of gopher populations (Daly and Patton 1990). Pocket gophers have probably persisted by continually re-colonizing habitat after local extinctions; the loss of habitat patches and increases in hazards such as busy roads may have inhibited the re-colonization that historically occurred. Where additional habitat exists within a few hundred meters, some dispersal and resulting gene flow probably occurs between local populations, and vacant habitat is rapidly colonized. However, as habitat patches become smaller, fewer, and further apart, the likelihood of each patch continuing to support pocket gophers declines.

### **3.2.4 Occurrence in the Project Area**

Olympia pocket gophers can be difficult to detect because they spend most of their lives underground, with the exception of very brief surface forays for feeding or for dispersal of young

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from their natal burrow systems. Olympia pocket gophers are typically detected by searching potential habitat for the presence of gopher mounds. Detection of mounds can verify presence of the species on a site, but does not provide abundance or distribution data.

Field surveys conducted by Thurston County staff and biologists from WDFW and USFWS verified the presence of Olympia pocket gophers on the property on July 5th and August 4th 2016 (see Appendix D for map and supporting information). Groups of mounds indicative of Olympia pocket gopher burrow systems were found in the pasture and hayfield areas on the site. Because Olympia pocket gopher occupancy has been verified on the site, the property by definition contains habitat for the species. Contiguous soils and vegetation types on the property suggest that the entire site is suitable for occupancy.

Though no mounds were found within three hundred feet of the proposed construction development envelope, the entire property is underlain with Cagey loamy sand soils, a soil type known to support the species. The vegetation present in the vicinity of the observed mounds, consisting primarily of non-native grasses with native and non-native forbs, is found throughout the undeveloped portions of the site including within the proposed development envelope.

Mazama pocket gophers have been observed moving 160 meters (524 ft.) from one cluster of locations, with subsequent locations creating a new cluster (Olson 2012). A recent WDFW report documents movement of one individual a total of 367 meters (1,200 ft.) in a single day (Olson 2015). Because presence has been verified on the property and there are no apparent physical barriers to underground burrowing activity within the contiguous suitable soils or to surface movement of the species on the site, it is possible that the covered species could be present anywhere on the property including within the proposed development envelope.

## **Chapter 4 Potential Biological Impacts and Take Assessment**

### **4.1 Direct and Indirect Impacts**

Impacts to Olympia pocket gophers incidental to the proposed construction project may result from direct and indirect impacts. Direct impacts are those caused by or resulting from the proposed project and include but are not limited to mortality of individuals due to crushing within burrows as a result of heavy equipment operations, or injury of individuals during digging, soil excavation, or trenching activities. Indirect impacts are those caused by or resulting from the proposed project and are later in time, but are still reasonably certain to occur. Indirect impacts include effects such as removal of vegetation that the species eats, or compaction of soils resulting in destroyed dens or burrow systems.

### **4.2 Anticipated Take**

Section 3 of the ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct” (16 USC § 1532 (19)). The term “harm” includes any act “which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering” (50 C.F.R. § 17.3). The term “harass” is “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 C.F.R. § 17.3).

An HCP must analyze the impact likely to result from taking covered species [ESA section 10(a)(2)(A)(i), 50 CFR 17.32(b)(1)(iii)(C)(1)]. To identify the sources of take that may result in an impact, it is necessary to consider each component of the covered activities. Once the causes, types, and amounts of take have been identified, the resulting impact can be assessed.

Stressors associated with the covered activities that could result in take through harm or harassment of Olympia pocket gophers include loss of needed food materials (forage), soil disturbance and compaction to burrows for breeding and sheltering, and crushing that results in injury or death.

Individual pocket gophers in areas with degraded or limited food resources are expected to require larger home ranges with more extensive burrow systems. Olympia pocket gophers are known to be antagonistic towards each other (except when breeding) which generally results in avoidance behavior that likely distributes individuals across a landscape. This distribution behavior combined with the larger expected home ranges in areas with degraded or limited food resources might result in impacts to fewer individuals when compared to habitat impacts in areas with higher relative habitat quality. With these factors in mind, this effects analysis considers effects on habitat as a surrogate for effects on the species.

When construction is initiated on the project development site, habitat will be lost along with any individuals. Without significant and unforeseen construction delays, incidental take is expected to be highest during initial site clearing, grading, and excavation as these activities will extend

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below the ground and into burrow systems, natal nests, and food caches. Burrow systems may be destroyed and individual animals harmed during these construction activities.

Take in the form of harm may occur during site clearing, excavation, and grading if equipment injures or kills individuals or if forage plants are removed and soils for burrow systems are removed, compacted, or covered with impermeable surfaces. Take may occur wherever suitable habitat is removed and covered with impervious surfaces. Harm or harassment may occur when individuals experience a measurable disruption to their normal behavior when the food items they rely on (forage resources) are removed, they are disturbed, or there is an increased energetic demand from having to relocate and/or rebuild tunnel systems and food caches.

Observing or documenting instances of take may be difficult or impossible because Olympia pocket gophers remain underground for most of their lives. The loss of suitable habitat on the project development site will therefore serve as a surrogate for the amount of take anticipated over the term of the requested permit. Approximately 0.5 acres of Olympia pocket gopher habitat is likely to be permanently lost due to development activities once the site has been developed and construction is complete.

### **4.3 Anticipated Impacts of the Taking**

While take occurs to individuals, the impact of taking occurs at levels above the individual, such as to the population and the species. The proposed covered activities result in take of individuals, which in turn impact the population.

The relative value of Mazama pocket gopher habitat can be assessed based on a number of factors. Pocket gophers prefer deep, light-textured, porous, well-drained soils. Areas that include the soil types described in the USFWS final listing rule for the species (79FR 19760-19796) are considered to have higher habitat quality than sites with other soil types. Mazama pocket gophers prefer perennial forbs for food over grasses. Locations that provide preferred vegetation types such as clover, lupines, dandelions, false dandelions, and camas provide better habitat than sites under grassy cover. Pocket gophers are also less frequently reported where grassland has been taken over by dense Scot's broom (Steinberg 1996, Olson 2011b), and are essentially absent from forest habitats in Washington (Stinson 2013). Habitat value for gophers appears to decrease as the density of woody vegetation and Scot's broom increases.

Sites that contain characteristics associated with the presence of the species may represent potential habitat. These factors include the presence of suitable glacial outwash soil types (such as Alderwood, Cagey, Everett, Indianola, McKenna, Nisqually, Norma, Spana, Spanaway-Nisqually complex, Yelm, and others), the availability of vegetation types known to be used as foods, or proximity to other sites known to be occupied by pocket gophers.

Mazama pocket gophers can be difficult to detect because they spend most of their lives underground, with the exception of very brief surface forays for feeding or for dispersal of young from their natal burrow systems. Mazama pocket gophers are typically detected by searching potential habitat for the presence of gopher mounds. Detection of mounds can verify presence of the species on a site, but does not provide abundance or distribution data.

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When construction is initiated on the project site, habitat will be lost along with any individuals. Incidental take is expected to be highest during initial site clearing, grading, and excavation as these activities will extend below the ground and into burrow systems, natal nests, and food caches. Burrow systems may be destroyed and individual animals harmed during these construction activities.

Take in the form of harm may occur during site clearing, excavation, and grading if equipment injures or kills individuals or if forage plants are removed and soils for burrow systems are removed or compacted. Take may occur in the form of harassment wherever suitable habitat is removed and covered with impervious surfaces. Harassment may occur when individuals experience a measurable disruption to their normal behavior when their forage resources are removed, they are disturbed, or there is an increased energetic demand from having to relocate and/or rebuild tunnel systems and food caches.

Observing or documenting instances of take will be difficult or impossible because Olympia pocket gophers remain underground for most of their lives. The loss of suitable habitat on the project site will therefore serve as a surrogate for the amount of take anticipated over the term of the requested permit.

A total of approximately 0.5 acres of potential Olympia pocket gopher habitat will be impacted by development activities. The Applicant proposes to offset all 0.5 acres of suitable habitat with one acre of suitable habitat that will be managed for the benefit of the species.

The USFWS stated that “there are few data on historical or current population sizes of Mazama pocket gophers in Washington” in the final rule listing the species as threatened (79 FR 19775). Estimates of demographic-level responses to the loss of a portion of potential habitat are therefore difficult. However, the loss of a total of approximately 0.5 acres of poor to moderate quality potential habitat in a rapidly urbanizing area is unlikely to result in a population or demographic-level response because the Applicant will provide permanent protection for the species at the conservation site.

The Applicant believes that managing, and permanently removing known threats (including precluding the potential for future development) on the conservation site, or a suitable off-site replacement if one should become available, will offset the impacts of the taking expected to result from the Covered Activities and is expected to generate a net overall benefit for the Olympia pocket gopher.

## **Chapter 5 Conservation Program**

The Conservation Program describes the actions the Applicant will implement to provide for the conservation of the covered species. In accordance with USFWS guidance for development of HCPs (USFWS and NMFS 2016), the conservation program consists of six components:

1. Biological Goals
2. Biological Objectives
3. Avoidance and Minimization Measures
4. Mitigation Measures
5. Monitoring Plan
6. Adaptive Management Plan

### **5.1 Biological Goals**

Biological goals are intended to be broad, guiding principles that clarify the purpose and direction of the Applicants' HCP (USFWS and NMFS 2016). The biological goals describe what the conservation program aims to accomplish over the course of the permit term for species covered by the plan.

Steve Mclain will contribute to the conservation of the Olympia pocket gopher in the permit area by permanently conserving and maintaining suitable habitat necessary for Olympia pocket gopher breeding, feeding, and sheltering to fully offset the impacts of the taking likely to result from the covered activities.

### **5.2 Biological Objectives**

Biological objectives describe measurable performance targets to evaluate progress towards achieving the program's biological goals. Objectives provide benchmarks for determining the effectiveness of the conservation program and inform effective adaptive management over the duration of the permit.

To achieve the biological goals and objectives established for this HCP, the Applicant will dedicate one acre of the property to permanently support the conservation of the Olympia pocket gopher unless and until an equivalent amount of suitable credit for the covered species is acquired from a USFWS-approved Conservation Bank. No Conservation Banks for the Olympia pocket gopher are available at the time of this proposal, but the Applicant wishes to reserve the right to purchase an equivalent amount of credit when a USFWS-approved Conservation Bank with credits for this species becomes available. The onsite area subject to the Conservation Easement will be referred to as the "Conservation Site" and is identified in the legal description attached as Appendix B.

The Applicant will execute a Conservation Easement that covers the Conservation Site prior to or upon issuance of the requested ITP. The Conservation Easement is intended to provide a net conservation benefit to the Olympia pocket gopher. The Applicant will fully fund any

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monitoring, management, or reporting requirements associated with the Conservation Easement as described in this document.

The Conservation Site will be managed to achieve the following purposes, and the Conservation Easement will include terms and conditions to achieve these objectives:

To prevent the loss of forage vegetation necessary for successful Olympia pocket gopher feeding, the Applicant will avoid, minimize, and mitigate:

1. Removal of forage vegetation, and
2. Encroachment of native and nonnative plant species that compete with forage vegetation.

To prevent the loss of burrowing habitat necessary for successful Olympia pocket gopher breeding and sheltering, the Applicant will avoid, minimize, and mitigate:

1. Compacting, grading, removing, or covering suitable soils with impervious surfaces, and
2. Encroachment of native and nonnative trees and shrubs that overtake the soils with woody roots.

To prevent the loss of Olympia pocket gopher individuals necessary for successful breeding, the Applicant will avoid:

1. Predation by feral and domestic pets (cats and dogs), and
2. Mole trapping or poisoning efforts.

### **5.3 Avoidance and Minimization Measures**

Steve McLain acknowledges that the construction of the proposed home cannot avoid all impacts to pocket gophers and their habitat.

To minimize adverse effects, the originally proposed development envelope has been reduced and placed as close to the existing home, utility infrastructure, and roadway as possible. All grading, excavation, materials storage, construction and development activities will be limited to the area within the development envelope. Construction and/or silt fencing will be installed at the perimeter of the development envelope to ensure that all activities occur within this designated area. Reducing the total area that will be disturbed effectively minimizes the overall impact to the covered species and its habitat.

### **5.4 Measures to Mitigate Unavoidable Take**

The USFWS Mazama pocket gopher Conservation Strategy and Mitigation Guidance Memorandum (2015) states:

*“The USFWS believes that, for projects that have unavoidable adverse impacts on MPGs (Mazama pocket gophers), compensatory mitigation is needed to conserve MPGs and*

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*contribute to MPG recovery. The amount of compensatory mitigation to offset a proposed project's impacts should be determined by assessing a project's negative impacts to MPG and their habitat. Impacts to MPGs result from direct mortality to individuals, loss or alteration of suitable MPG soils, loss or degradation of their forage resources, and interference with their dispersal. Impacts to MPG recovery result from loss of individuals and populations; diminishment of genetic variability or individual fitness; and the loss, degradation, and fragmentation that supports or could support MPGs. Impacts may be permanent or temporary, direct or indirect, immediate, or cumulative. It is the collective effects of all of these impacts to MPGs and their habitat that USFWS seeks to account for, avoid, and offset when a project is proposed."*

To mitigate the impacts of the unavoidable taking in accordance with USFWS guidance, the Applicant will:

1. Dedicate one acre of the property to permanently support the conservation of the Olympia pocket gopher unless and until an equivalent amount of suitable credit for the covered species is acquired from a USFWS-approved Conservation Bank. No Conservation Banks for the Olympia pocket gopher are available at the time of this proposal, but the Applicant wishes to reserve the right to purchase an equivalent amount of credit when a USFWS-approved Conservation Bank with credits for this species becomes available. The onsite area subject to the Conservation Easement will be referred to as the "Conservation Site" and is identified in the legal description attached as Appendix B.
2. The entire property is currently zoned for industrial development and is threatened with increasing development pressure due to its proximity to the interstate highway and local commerce centers, including the City of Tumwater and the Olympia Airport. The Applicant will execute a Conservation Easement over the Conservation Site held by Thurston County to ensure conservation benefits to the Olympia pocket gopher. A copy of the Conservation Easement is attached to this HCP in Appendix E.
3. The Conservation Easement will extinguish development and subdivision rights on the Conservation Site thereby reducing the threat of further Olympia pocket gopher habitat loss and fragmentation unless and until an equivalent amount of suitable credit for the covered species is acquired from a USFWS-approved Conservation Bank. No Conservation Banks for the Olympia pocket gopher are available at the time of this proposal, but the Applicant wishes to reserve the right to purchase an equivalent amount of credit when a USFWS-approved Conservation Bank with credits for this species becomes available.
4. The Applicant reserves the right to engage in current and ongoing agricultural (farming) practices on the Conservation Site and other agricultural use areas within the Applicant's 8.22 acre parcel so long as they meet the requirements described in the 4(d) Special Rule published for the Mazama pocket gopher on April 9, 2014 (79 FR 68 19795-19796) and any additional terms and conditions contained herein.
5. The Applicant will provide funding to implement the ongoing management actions or documentation verifying that such management actions have been provided (see Chapter 7 for description of statutorily required Financial Assurances).

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6. The Applicant will execute and record the Conservation Easement prior to or upon issuance of the requested ITP, and prior to initiating any ground-disturbing covered activities.

The Applicant understands that, per the USFWS Mazama pocket gopher Conservation Strategy and Mitigation Guidance Memorandum (USFWS 2015):

*“The USFWS will consider a number of primary factors when determining how much mitigation should be provided to adequately offset impacts that will be incurred by a proposed project. These primary factors are:*

- a. Type and amount of MPG soils to be impacted;*
- b. MPG occupancy and use of the site to be impacted;*
- c. Type and distribution of woody vegetation covering the site to be impacted; and*
- d. Location and landscape context of the site to be impacted.”*

The Applicant believes that this mitigation proposal is in keeping with the principles outlined in the USFWS Guidance. Specifically, the Conservation Site:

- a. Will preserve soils of the same type and quality as those impacted by the proposed project;
- b. Is currently occupied by Olympia pocket gophers;
- c. Is predominantly vegetated by low-statured forbs and grasses, and is not a monoculture;
- d. Is located within an area considered a Reserve Priority Area for the Olympia pocket gopher by WDFW and USFWS; and
- e. Will be legally and permanently conserved, managed, and endowed to help ensure its long-term ecological value consistent with conservation of the covered species, or will be offset with an equivalent permanently conserved, managed, and endowed site to help ensure its long-term ecological value consistent with conservation of the covered species.

Securing the Conservation Site with a Conservation Easement addresses threats specifically identified in the USFWS listing rule (79 FR 68 19760-19796). The Conservation Site is currently zoned for light industrial development, and extinguishing subdivision and development rights ameliorates the threat of habitat fragmentation or loss to development from the site.

### **5.5 Monitoring**

USFWS determined that monitoring is essential to determining and documenting the success of HCP conservation programs (50 CFR 17.32), informing adaptive management efforts, and collecting information needed to meet reporting requirements. Two types of monitoring are incorporated into HCPs. Compliance monitoring will document how the Applicant implements the terms and conditions of the requested Permit. Effectiveness monitoring will determine and document if the stated biological goals and objectives are being achieved.

Compliance monitoring will describe how the HCP is implemented, and will result in an annual report to the USFWS each year for the duration of the requested permit. Compliance monitoring describes implementation of: 1) the Covered Activities, and 2) the conservation program.

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Covered Activities monitoring describes how the avoidance and minimization measures previously described are implemented each year. Covered Activities monitoring also describes the amount of take occurring each year, in terms of individuals of each species when that can be determined, and in terms of the amount of habitat removed or converted. Conservation program monitoring documents the implementation of the plan's conservation measures. The annual report will describe how and when each of the mitigation measures was performed each year.

Effectiveness monitoring determines if the biological goals and objectives of the plan are being achieved. Effectiveness monitoring collects data that will over time determine if the conservation measures are working and how the Covered Species are responding to these actions.

Effectiveness monitoring efforts are focused on ensuring that suitable habitat is maintained for the Covered Species. Annual monitoring of the permanent conservation site will document site conditions. An annual report summarizing existing conditions, management recommendations, other observations of Covered Species or their presence (such as gopher mounds) will be submitted to USFWS.

Monitoring of the conservation site includes quantitative measures of invasive plant species and vegetation cover that benefits the Covered Species. Progressive performance standards to be met during the permit duration are designed to provide an increasing amount of suitable habitat or higher quality habitat for the Covered Species over time. Monitoring results will be used to make management recommendations and guide management activities.

Monitoring reports will be prepared and submitted to USFWS annually until this HCP expires. The monitoring report for the conservation site required in the HCP can be combined with any other required reporting for site development into one annual report for presentation to USFWS. The annual report will document what the Applicant did to comply with the terms and conditions of the ITP, and will address each of the permit terms and conditions.

An annual report including the monitoring reports will include:

1. Activity and date of conservation actions since last monitoring report.
2. Current on-site conditions that are or may be adversely affecting Covered Species and their habitat, as well as any actions being undertaken or contemplated to address such conditions.
3. An evaluation of how conservation goals and performance standards are being met; what activities need to be taken to meet them in future years; or recommendations for revisions to goals and performance standards if changed circumstances have occurred.
4. Conservation actions anticipated prior to the next monitoring report submission.

### **5.6 Adaptive Management Strategy**

The U.S. Department of the Interior defines adaptive management as a structured approach to decision making in the face of uncertainty that makes use of the experience of management and the results of research in an embedded feedback loop of monitoring, evaluation, and adjustments

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in management strategies (Williams et al. 2009). Uncertainties may include a lack of biological information for the Covered Species, a lack of knowledge about the effectiveness of mitigation or management techniques, or doubt about the anticipated effects of the Project. Adaptive management is a required component of HCPs that allows for the incorporation of new information into conservation and mitigation measures during HCP implementation. Effective implementation of this approach requires explicit and measurable objectives, and identifies what actions are to be taken and when they are to occur. Adaptive management measures do not generally trigger the need for an amendment.

The results of ongoing monitoring activities will inform adaptive management proposals to adjust and improve management techniques as site conditions change over time and as new information on Covered Species and their management becomes available.

Adaptive management is intended to improve the effectiveness of ongoing management of the Covered Species and their respective habitats. To ensure that management actions remain focused on the biological goals and objectives specified in the conservation program, the Applicant will employ the following remedial actions if the conservation program's specified goals and objectives are not met.

If forb and woody species cover to support Mazama pocket gophers does not reach the biological goals, and objectives on the conservation site, management efforts such as altering timing of other actions (such as avoiding mowing when these species are setting seed or actively vegetatively reproducing), or planting or seeding to expand populations of these species will be adjusted annually until these objectives are achieved. Different management techniques may continue to be tested until solutions are found for meeting the biological goals and objectives.

### 5.7 Reporting

Reports to the Service will include:

- Brief summary or list of project activities accomplished during the reporting year (e.g. this includes development/construction activities until such time as these activities are complete).
- Description of any take of the covered species observed (includes cause of take, form of take, take amount, location of take and time of day, and deposition of dead or injured individuals).
- Brief description of conservation actions implemented.
- Monitoring results (compliance, effects and effectiveness monitoring) and survey information (if applicable)
- Description of circumstances that made adaptive management necessary and how it was implemented.
- Description of any changed or unforeseen circumstances that occurred and how they were addressed.

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- Description of any minor or major amendments.
- Description of adjusted annual HCP implementation cost estimate and documented financial assurances (described more fully in Chapter 7).

## **Chapter 6 Plan Implementation**

### **6.1 Plan Implementation**

The Conservation Plan will be implemented by the Applicant and will be monitored by Thurston County in accordance with the terms and conditions of the Conservation Easement (attached as Appendix E).

### **6.2 Changed Circumstances**

Changed circumstances include all reasonably foreseeable circumstances that could be anticipated to occur in the plan area within the duration of the proposed permit. This includes natural events that normally occur in the plan area (fire, flood, climate change, earthquake, new species invasions, disease, etc.), the listing of other species within the plan area that may be affected by the covered activities, or other events that could affect the Applicant's ability to meet the biological goals and objectives described in this HCP.

If natural events, such as those listed above, or other events, such as a change in genetic taxonomy, that could affect the Applicant's ability to meet the biological goals and objectives described in this HCP occur at the conservation site, then how these events have affected Covered Species and/or their habitat will be described and addressed in the annual monitoring plan. Site management actions will be altered/adapted using best available science to promote the continued goals and objectives of habitat conservation for the Covered Species.

### **6.3 Unforeseen Circumstances**

Unforeseen circumstances include circumstances that were not anticipated by the Applicant or USFWS during the preparation of the HCP that result in a substantial and adverse change in the status of the Covered Species. Unforeseen Circumstances are defined by Federal regulation (50 CFR §17.3) as "changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that could not reasonably have been anticipated by plan or agreement developers and the USFWS at the time of the conservation plan's or agreement's negotiation and development, and that result in a substantial and adverse change in the status of the covered species."

USFWS bears the burden of demonstrating that Unforeseen Circumstances exist, using the best scientific and commercial data available. If an Unforeseen Circumstance occurs during the term of the HCP, and if USFWS determines that additional conservation and mitigation measures are necessary to respond to such Unforeseen Circumstances, then USFWS may require more conservation measures of the Permittee, but only if such measures are limited to modifications within conserved habitat areas, if any, or the HCP's operating conservation program for the affected species, and if such measures maintain the original terms of the HCP to the maximum extent possible.

Notwithstanding the foregoing paragraph:

1. USFWS will clearly document any findings of Unforeseen Circumstances. In determining whether any event constitutes an unforeseen circumstance, USFWS will consider, but not be limited to, the following factors: 1) the extent of the current range of

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affected species, 2) percentage of range adversely affected by the HCP, 3) the percentage of range of the affected species conserved by the HCP, 4) the ecological significance of that portion of the range affected by the HCP, 5) the level of knowledge about the affected species and habitat and the degree of specificity of the species' conservation program under the HCP, and 6) whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

2. USFWS will not require the commitment of additional land, water, or financial compensation without the consent of the Applicant or impose additional restrictions on the use of land, water, or natural resources otherwise available for use by the Applicant under the original terms of the HCP, including additional restrictions on covered actions that are permitted under the HCP.
3. Nothing in this HCP will be construed to limit or constrain USFWS or any other governmental agency from taking additional actions at its own expense to protect or conserve a species included in the HCP. Nothing in this agreement allows the Federal government or any other party to take either any portion of this property without property owner agreement.

In the event of Unforeseen Circumstances USFWS will provide written notice (except where there is substantial threat of imminent, significant adverse impacts to a Covered Species) to the Applicant with a detailed statement of the facts regarding the unforeseen circumstance involved, the anticipated impact(s) to the Covered Species and their habitat(s), and all information and data that supports the assertion. In addition, the notice will include any proposed conservation measure(s) that is believed would address the Unforeseen Circumstance, an estimate of the cost of implementing such conservation measure(s), and the likely effects upon the Applicant. No additional cost may be required of the of the Applicant or property owner should additional measures need to be implemented.

### **6.3.1 Evaluation of Unforeseen Circumstances**

During the period necessary to determine the nature and location of additional or modified mitigation, the USFWS may perform an analysis of the Covered Species or its habitat. The Applicant may submit additional information to the USFWS. The USFWS may use requested or provided information to propose modifications or redirection of existing conservation measures.

### **6.3.2 The “No Surprises” Regulations**

The USFWS “No Surprises” regulations (69 FR 71723) states that if the Applicant is properly implementing an HCP that has been approved by USFWS, no additional commitment of resources beyond that already specified in the plan will be required. “Properly implemented conservation plan” means any HCP and permit whose commitments and provisions have been and are being fully implemented by the Applicant and in which the Applicant is in full compliance with the terms and conditions of the permit, so the HCP is consistent with the agreed-upon operating conservation program for the project. A properly-implemented conservation plan for the HCP includes implementation of all elements of the conservation plan,

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including the Adaptive Management, Monitoring Program, and responses to Changed Circumstances.

The Applicant seeks the regulatory (No Surprises) assurances for the Covered Species in the plan. In accordance with No Surprises, the Applicant will be responsible for implementing and funding adaptive management and remedial measures in response to any Changed Circumstances as described in the HCP. The Applicant would only be obligated to address Unforeseen Circumstances within the specified limits described above.

The Applicant understands that No Surprises assurances are contingent on the proper implementation of the ITP and the HCP. The Applicant also understands that USFWS may suspend or revoke the Federal permit, in whole or in part, in accordance with Federal regulations (50 CFR Section 13.27 and 13.28 and other applicable laws and regulations) in force at the time of such suspension if the Applicant fails to comply with the agreement.

### **6.4 Amendments**

It may be necessary at some time over the duration of the proposed permit for the USFWS and the Applicant to clarify provisions of the HCP or the requested ITP with respect to program implementation or the meaning and intent of language contained in these documents. Such clarifications should not change the substantive provisions of any of the documents in any way, but merely clarify and make more precise the existing provisions.

In addition, it may be necessary to make administrative changes or minor modifications to the documents at some time over the duration of the proposed permit. Such changes should not result in substantive changes to any provisions of the documents, but may be necessary or convenient to represent the overall intent of the Applicant and the USFWS. Examples of such administrative changes or minor modifications include correction of typographic errors in the documents, changes in the legal business name or mailing address of a permittee, or clarification of reporting procedures. Requests for administrative changes and minor modifications must be received in writing and may be reviewed and approved by the USFWS Regional Office or by the State USFWS Ecological Services Office in accordance with applicable regulations and policies (50 CFR 13).

Except as provided for above, the HCP and the ITP may not be amended or modified in any way without the written approval of the Applicant and the USFWS. Major amendments to the HCP or the ITP would be required for changes in location, covered activity, type or amount of take, or covered species. Examples of changes requiring major amendments to the documents include the listing of a species not currently addressed in the HCP that may be affected by the Covered Activities; the modification of any Covered Activity, minimization, or mitigation measure under the HCP, including funding, that may affect the type or amount of take, the effects of the Covered Activities, or the nature or scope of the minimization or mitigation measures in a manner or to an extent not previously considered in issuing the ITP; or any other modification of the Covered Activities that causes an effect to the Covered Species or their designated critical habitat not considered in the original ITP.

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Such major amendments will be processed by the USFWS in accordance with the provisions of the ESA, the applicable regulations (50 CFR 13 and 17), and will be subject to the appropriate level of environmental review under the provisions of NEPA.

### **6.5 Permit Suspension/Revocation**

The USFWS may suspend or revoke their respective permits if the Applicant fails to implement the HCP in accordance with the terms and conditions of the permits or if suspension or revocation is otherwise required by law. Suspension or revocation of the Section 10(a)(1)(B) permit, in whole or in part, by the Service shall be in accordance with 50 CFR 13.27-29, 17.32 (b)(8).

### **6.6 Permit Renewal**

If unanticipated construction or other delays preclude completion of the project during the requested duration of the ITP, permit renewal may be required.

Upon expiration, the Section 10(a)(1)(B) permit may be renewed without the issuance of a new permit, provided that the permit is renewable, and that biological circumstances and other pertinent factors affecting covered species are not significantly different than those described in the original HCP. To renew the permit, Steve Mclain shall submit to the Service, in writing:

- a request to renew the permit; reference to the original permit number;
- certification that all statements and information provided in the original HCP and permit application, together with any approved HCP amendments, are still true and correct, and inclusion of a list of changes;
- a description of any take that has occurred under the existing permit; and
- a description of any portions of the project still to be completed, if applicable, or what activities under the original permit the renewal is intended to cover.

If the Service concurs with the information provided in the request, it shall renew the permit consistent with permit renewal procedures required by Federal regulation (50 CFR 13.22). If Steve Mclain files a renewal request and the request is on file with the issuing Service office at least 30 days prior to the permits expiration, the permit shall remain valid while the renewal is being processed, provided the existing permit is renewable. However, the Applicant may not take listed species beyond the quantity authorized by the original permit or change the scope of the HCP. If Steve Mclain fails to file a renewal request within 30 days prior to permit expiration, the permit shall become invalid upon expiration.

### **6.7 Permit Transfer**

In the event of a sale or transfer of ownership of the property during the life of the permit, the following will be submitted to the Service by the new owner(s): a new permit application, permit fee, and written documentation providing assurances pursuant to 50 CFR 13.25 (b)(2) that the new owner will provide sufficient funding for the HCP and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation. The

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new owner(s) will commit to all requirements regarding the take authorization and mitigation obligations of this HCP unless otherwise specified in writing and agreed to in advance by the Service.

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### Chapter 7 Funding

An HCP submitted in support of a Section 10 permit application must specify the funding that will be available to implement the minimization and mitigation measures identified in the plan (16 U.S.C. § 1539(a)(2)(A)(i)-(iv); 50 C.F.R. § 17.22(b)(1)(iii)).

#### 7.1 Costs and Budget for Conservation Program and Plan Implementation

Implementing the conservation program will require annual expenditures including those to maintain the conservation site for the benefit of the covered species, any fees or other expenses assessed by Thurston County in association with the administration of the conservation easement, and costs associated with annual reporting.

- Maintenance of the conservation site for the benefit of the covered species will require mowing on no less than an annual basis or otherwise removing native and nonnative plants that compete with forage for the covered species on the site. Mowing or other management may also be required to control encroachment of native and nonnative trees and shrubs (including Scot's broom and blackberry) that can overtake soils on the conservation site with woody roots.
- The Applicant will execute a conservation easement over the conservation site with Thurston County prior to initiating construction of the project. Thurston County's annual fee associated with administration of the conservation easement is currently \$564.00, though this amount is subject to change in accordance with County policy (as described in the conservation easement agreement).
- Costs associated with reporting include printing and mailing a copy of the summary of conservation actions to the USFWS.

The Applicant estimates that these costs currently amount to approximately \$750.00 per year.

#### 7.2 Funding Assurances

To issue an incidental take permit, the USFWS must find that the Applicant will ensure that adequate funding will be provided [ESA § 10(a)(2)(B), 50 CFR 17.32].

The Applicant must therefore identify the financial and/or legal instrument that will be relied upon to ensure that adequate funding will be available in the appropriate amounts and at the appropriate times throughout the life of the permit or the duration of the obligation (whichever is longer).

The Applicant hereby commits to fully fund implementation of the Conservation Program described in this HCP. Funds are assured through provision of documentation from (*name of financial institution*) that the Applicant has secured a line of credit (*or other suitable financial or legal instrument*) of no less than the estimated annual expenditures required to implement the plan. Because the estimated costs are expected to vary over time (due to changes in County conservation easement fees, for example), the Applicant will update the implementation cost

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estimate and adjust the funding assurances amount accordingly on an annual basis. These actions and resulting documentation will be provided in the annual report to the USFWS.

## **Chapter 8 Alternatives to the Taking**

### **8.1 Summary**

An HCP is required to describe “what alternative actions to such taking the Applicant considered and the reasons why such alternatives are not being utilized” (ESA §10(a)(2)(A)(iii)).

### **8.2 Alternative #1**

Because the property is known to be occupied and Olympia pocket gophers and their habitat may occur anywhere on the site, it is not possible to construct a single-family home on the site while completely avoiding all impacts to the species and its habitat.

Because construction of a single-family home is an otherwise lawful activity for which incidental take could be authorized under Section 10 of the ESA, the Applicant has decided to move forward with the proposed construction project by pursuing an ITP.

## Chapter 9 References

### 9.1 Literature Cited

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### 9.2 List of Preparers

This HCP was prepared by Steve Mclain, with assistance from the USFWS Washington Fish and Wildlife Office located in Lacey, Washington.

**Appendices**

**DRAFT**

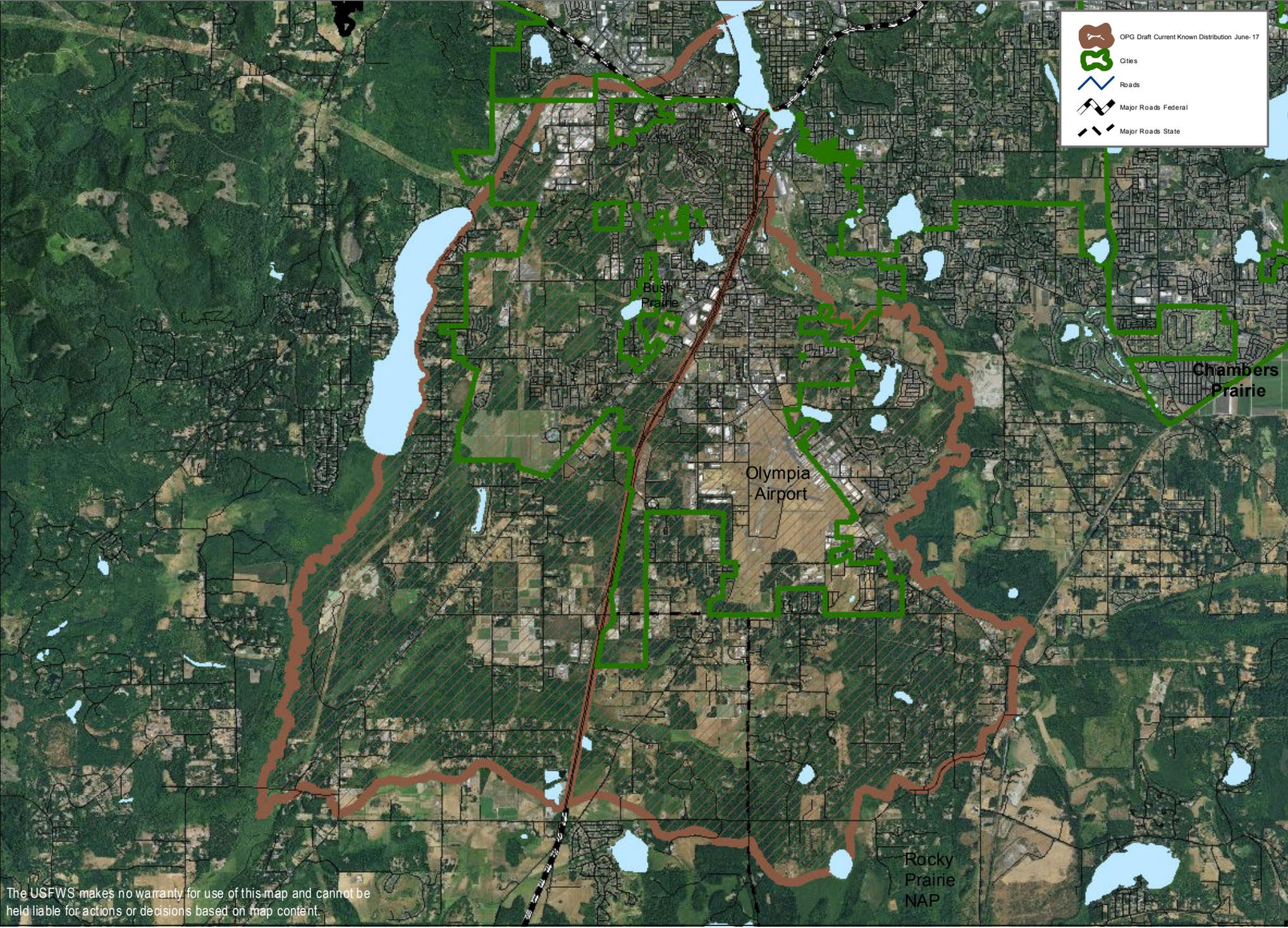
**Appendix A: Olympia pocket gopher Current Known Distribution in Thurston County**

# Olympia Pocket Gopher Current Known Distribution in Thurston County

Draft - 01-June-17



0 0.35 0.7 mi.



The USFWS makes no warranty for use of this map and cannot be held liable for actions or decisions based on map content.

**DRAFT**

**Appendix B: Legal Description of Conservation Site**

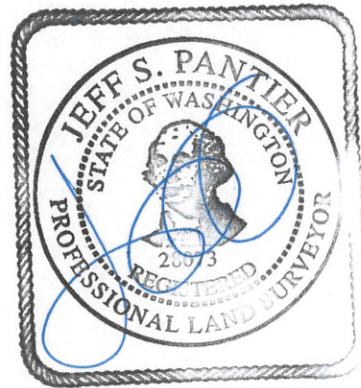
EXHIBIT "B"

Conservation Easement

THE NORTH 208.71 FEET OF THE WEST 208.71 FEET OF THE NORTH 650.00 FEET OF  
THE EAST 550.00 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER  
OF SECTION 21, TOWNSHIP 17 NORTH, RANGE 2 WEST, W.M.

IN THURSTON COUNTY, WASHINGTON,

CONTAINING 1.00 ACRE.



May 3, 2017

**DRAFT**

**Appendix C: Mclain HCP Development Envelope and Conservation Site**



**DRAFT**

**Appendix D: Background Reports and Supporting Documentation**



**MPG ScreenTeam - 08/04/16**

- Postive MPG ID, 1-2 mounds
- Likely MPG, 1-2 mounds; Likely MPG, 1 group (> 3 mounds)
- Likely MPG, 2-3 groups

**MPG ScreenTeam - 07/05/16**

- Postive MPG ID, 1 group (> 3 mounds)
- Likely MPG, 1 group (> 3 mounds)
- Screen Team Parcel(s)



The USFWS makes no warranty for use of this map and cannot be held liable for actions or decisions based on map content.

NUNN ST SW

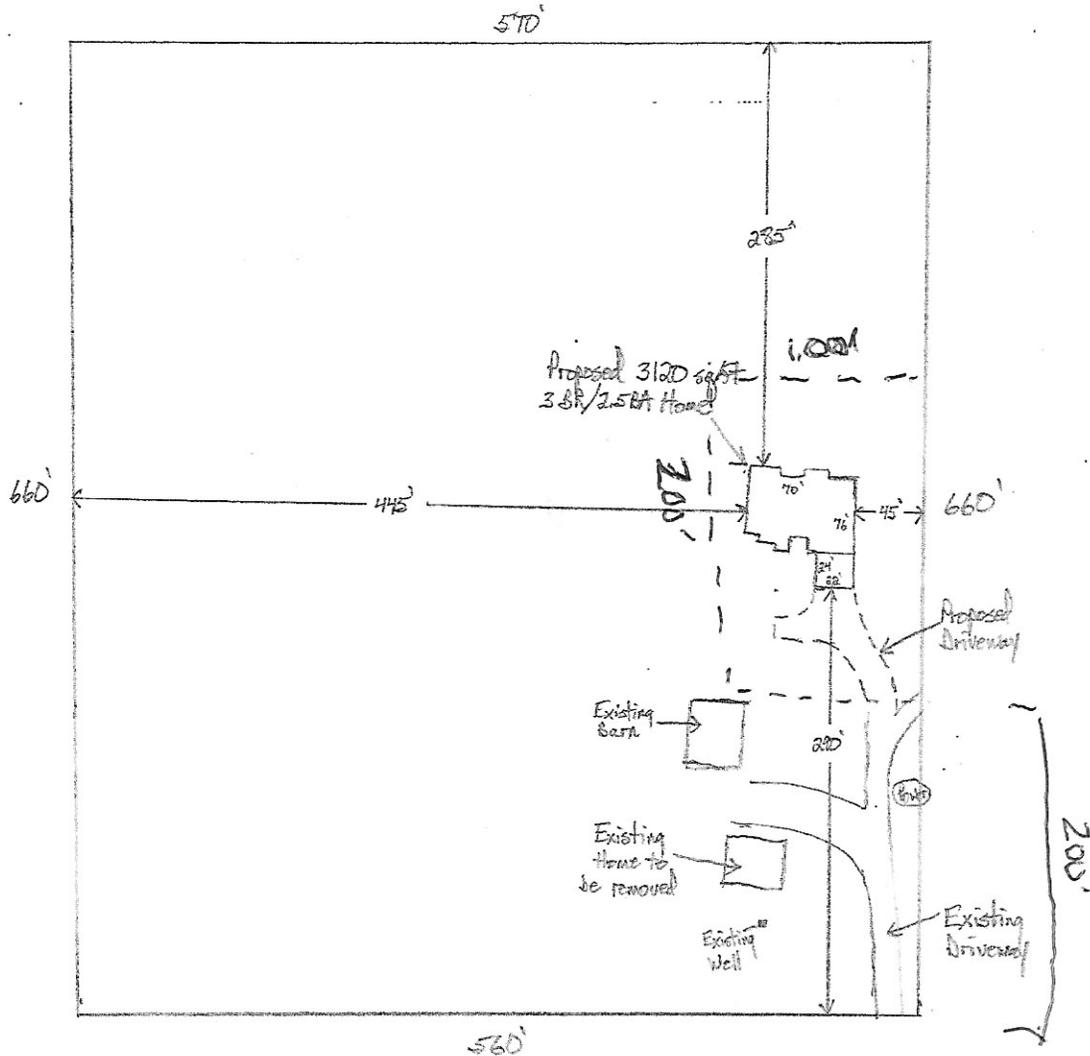
### Plot Plan

Home Owner(s) *Steve & Deborah McLain*  
 Property Location: *9925 Nunn Rd SW Olympia, WA*  
 Tax Lot: *12721430100*

The information on this Plan has been provided and reviewed by the property owner who by signing below:  
 1) Acknowledges and Accepts full responsibility for its accuracy and completeness:  
 2) Is responsible to ensure that the improvements to the site take place in conformance with this plan:  
 3) Will establish all the corner irons, lot lines and code required setbacks required of this property, any change(s) to this plan must be pre-approved by the governmental agencies with jurisdiction, the mortgage lender, the contractor and documented.

Owner \_\_\_\_\_ Date \_\_\_\_\_  
 Owner \_\_\_\_\_ Date \_\_\_\_\_

Scale: 1" = 100'  
 1/2 acre new home area



**DRAFT**

**Appendix E: Conservation Easement**

## GRANT DEED OF CONSERVATION EASEMENT

This GRANT DEED OF CONSERVATION EASEMENT (“Easement”) is made by Steven Mclain, an individual, having an address of 9925 Nunn Road SW, Olympia, Washington, 98501 (“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**

- 1.1.** 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 1.00 acre out of the approximately 8.22 acre parcel commonly known as the “Mclain Farm”, located at 9925 Nunn Road SW, Olympia, Washington, 98512.
- 1.2.** 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 wildlife and the ecosystems upon which they depend, including the Olympia 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).
- 1.3.** 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.
- 1.4.** 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 Grantee in perpetuity to ensure Grantor is protecting and preserving this easement as set forth in this document.

### **2. CONVEYANCE AND CONSIDERATION**

- 2.1.** 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, 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 Grantee, its successors and assigns 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, assigns, and heirs and executors 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:

4.3.1 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.

4.3.2. 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 the Grantee's 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.

4.3.3 **Payment.** Grantor is responsible and obligated for the timely payment of Grantee's fees and shall remit payment within sixty (60) days after receipt of Grantee's invoice. After the expiration of sixty (60) days, Grantee may seek to collect past due amounts under the terms of this agreement, or by any other means available under state law.

**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.

**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.

- 5.2.1. 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.
- 5.2.2. 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.
- 5.3. 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.
- 5.4. 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.
- 5.5. 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. Grantor shall not engage in or permit any Forestry Activities that would preclude the opportunity for agricultural activity upon the Protected Property.

**5.6 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**

**6.1 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, 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 effect 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.

**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 ninety (90) 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 by providing written notice to Grantee describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee 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:                    Mr. Steven Mclain  
                                      9925 Nunn Road SW, Olympia, Washington 98501  
                                      360 791-8478

To Grantee:                    Thurston County  
                                      Resource Stewardship Department  
                                      2000 Lakeside Drive SW, Olympia, Washington 98502  
                                      (360) 709-3005  
                                      (360) 754-2939

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.

**8.2. Non-Binding Mediation.** If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this 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:

821. **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.
822. **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.
823. **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).
824. **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.
825. **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.

**92 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.

**93 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.

**94 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.

**95 Nature of Remedy.** Grantee's rights under this Section 9 apply in the event of 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 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. Nothing in this agreement prohibits the Grantor from seeking tax relief as a result of the Easement.

**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.

**104. 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.

**105. 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.

**11.2 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.

## **13.3 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 re-record 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 from 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 Beneficiary 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.
- 15.5. 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.
- 15.6. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 15.7. "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.
- 15.8. 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.
- 15.9. 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.
- 15.10. 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.
- 15.11. 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.
- 15.12. 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.

- 15.13.** 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.

## **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.

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REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Grantor Steven McLain \_\_\_\_\_

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

Dated: \_\_\_\_\_

**ATTEST:**

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

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
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 \_\_\_\_\_

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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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PAGES FOLLOW (as needed)

**EXHIBIT A**

**Legal Description**

THE NORTH 208.71 FEET OF THE WEST 208.71 FEET OF THE NORTH 650.00 FEET OF THE EAST 550.00 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 17 NORTH, RANGE 2 WEST, W.M.

IN THURSTON COUNTY, WASHINGTON,

CONTAINING 1.00 ACRE.

# 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.