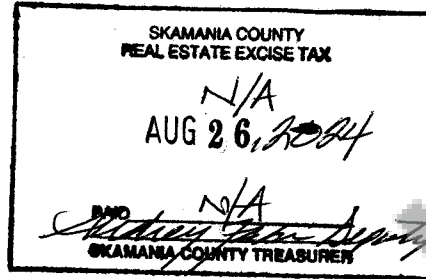




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After Recording Return To:  
 Washington Department of Fish and Wildlife  
 Real Estate Services  
 600 Capitol Way North  
 Olympia, WA 98501-1091  
 Attn: Thom Woodruff



Document Title: Deed of Conservation Easement  
 Grantor: The Nature Conservancy  
 Grantee (WDFW): The State of Washington, The Department of Fish and Wildlife  
 Abbreviated Legal Description: Pt. N $\frac{1}{2}$ , Sec. 30, T7N, R5E W.M.  
 Additional legal at Exhibit A on page 13  
 Assessor's Parcel Nos: 07053000010100 and 07053000010000  
 County: Skamania

LM 8/26/24

## DEED OF CONSERVATION EASEMENT

(The Nature Conservancy "Moss Cave" Property)

**T** HIS DEED OF CONSERVATION EASEMENT ("Easement") is made this 15<sup>th</sup> day of August, 2024, by THE NATURE CONSERVANCY, a District of Columbia non-profit corporation ("GRANTOR"), in favor of THE STATE OF WASHINGTON, by and through THE DEPARTMENT OF FISH AND WILDLIFE, the address of which is 600 Capitol Way North, Olympia, Washington 98501 ("WDFW"):

### RECITALS

WHEREAS, GRANTOR is the sole owner in fee simple of that certain real property in Skamania County, Washington, as more particularly described in the attached Exhibit A ("Property") and as approximately located on the map attached as Exhibit B; and

WHEREAS, one of WDFW's conservation objectives is to identify, protect, preserve, and enhance priority habitats and associated wildlife species; these objectives in Skamania County include roosting and breeding habitat for the Townsend's big-eared bat (*Corynorhinus townsendii*), which is a keystone species listed as a Washington state candidate and federally endangered species; and

WHEREAS, the Property contains caves for roosting and breeding, is undeveloped except for existing utility facilities, and is relatively inaccessible. Collectively, the above-listed elements and benefits are the "Conservation Values" of the Property; and

WHEREAS, WDFW recognizes the Conservation Values and seeks to protect and enhance the Property's Conservation Values for the Townsend's big-eared bat; and

WHEREAS, Washington law authorizes WDFW to acquire rights in real property to protect, preserve, maintain, improve, restore, and limit the future use of land and to conserve land for open space purposes, and further directs WDFW to preserve, protect, and perpetuate all wildlife species, which responsibility WDFW undertakes through the conservation of land and the protection of wildlife habitat [Revised Code of Washington ("RCW") chapters 64.04.130; 77.04; 77.12]; and

WHEREAS, GRANTOR and WDFW have the mutual desire and intent to conserve, protect and enhance the Property in perpetuity for its Conservation Values; and,

NOW, THEREFORE, pursuant to the laws of the State of Washington and in consideration of conservation of habitat and the terms and conditions contained herein, GRANTOR hereby voluntarily grants, conveys, and warrants to WDFW a conservation easement in perpetuity over

the Property consisting of certain rights in the Property, the nature and character of which are set forth in this instrument, all subject to existing rights in and encumbrances on the Property as shown of record.

## SECTION I

### Purpose and General Provisions

- A. **Purpose.** It is the Purpose of this Easement to ensure that the Property will be retained forever in its natural and open space condition, to protect habitat, and to prevent any use of the Property that will damage, impair, or interfere with the Conservation Values of the Property, except those uses authorized by rights through an existing utility easement, (collectively the "Purpose of this Easement"). GRANTOR intends that this Easement will confine the use of the Property to those activities that are consistent with the Purpose of this Easement. Any use of, or activity on, the Property that is inconsistent with the Purpose of this Easement is prohibited and is a violation of this Easement, except as specifically allowed herein.
- B. **Perpetual Restrictions.** This Easement will run with the land and will encumber the title to the Property in perpetuity. The terms and conditions of this Easement will be binding upon and inure to the benefit of GRANTOR and WDFW and their respective successors and assigns.
- C. **Residual Rights.** Except as limited by this Easement, GRANTOR may exercise and enjoy all rights accruing from ownership of the Property, including the right to use the Property for any purpose that is consistent with this Easement.
- D. **Pre-Existing Rights.** The Property, at the time of creation of this Easement, is subject to the following pre-existing utility easements: Instrument dated August 12, 1957, and recorded August 28, 1957, in Book 44, Page 99, Auditor's File No. 52658, in Skamania County, Washington records; Instrument dated May 25, 1961, and recorded June 15, 1961, in Book 48, Page 503, in Skamania County, Washington records (collectively the "Utility Easements"). The Utility Easements are not limited by or subordinated to this Easement and grant property rights that are superior to the restrictions and rights created by this Easement. In addition, at the time of creation of this Easement the GRANTOR and WDFW anticipate the potential conveyance of the Property to the current holder of the Utility Easements and intend that the terms of the Utility Easements will survive such conveyance and not merge into the fee interest in the Property. GRANTOR and the holder of the Utility Easements have entered into and may update and amend a Cooperative Maintenance Agreement ("CMA") and may add WDFW as a party to the CMA. The CMA may contain terms related to establishing buffer areas around particularly sensitive areas of the Property within the Utility Easements, regulating access, the time of year maintenance should be completed, vegetation control, and emergency public safety work.
- E. **Baseline Documentation Report.** GRANTOR and WDFW acknowledge that the Conservation Values, condition, relevant features, and current uses of the Property have been documented in a Baseline Documentation Report, dated August 2, 2024, prepared by The Nature Conservancy, which is on record in WDFW's official files and is incorporated herein by this reference. This documentation is intended to serve as a baseline for monitoring compliance with the terms and conditions of this Easement.
- F. **Uses in General:** Any activity on, or use of, the Property that is inconsistent with the terms or conditions of this Easement, or that threatens to impair or interfere with the Conservation Values and is not an activity or use authorized by rights through the Utility Easements, is expressly prohibited. GRANTOR acknowledges these prohibitions and agrees to not conduct, engage in, or permit any prohibited use or activity. For the avoidance of doubt the GRANTOR takes on no affirmative obligation to implement habitat enhancement or restoration where there has been no violation of this Easement by or through GRANTOR's acts or omissions.
- G. **Public Access.** This Easement does not grant a right of access to the public, but GRANTOR is not obligated to prohibit the public from accessing the Property.

**SECTION II**  
**Rights Conveyed to WDFW**

The following rights are conveyed by GRANTOR to WDFW by this Easement:

- A. To identify, protect, monitor, and enhance the Conservation Values of the Property in perpetuity;
- B. Undertake habitat restoration or enhancement activity if preceded by notice to the GRANTOR.
- C. To enforce the terms and conditions of this Easement;
- D. To enjoin any use of, or activity on, the Property that is inconsistent with the Purpose of this Easement, including trespass by members of the public, and to require or undertake restoration of the Property resulting from such inconsistent uses or activities to the greater habitat value condition existing at either the time of the grant of this Easement, or the time preceding the events giving rise to any damage or deterioration of the Property or its Conservation Values;
- E. To assign, convey, and otherwise transfer WDFW's interest in the Property, in accordance with Section IX, subsection F, below;
- F. Upon reasonable prior notice to GRANTOR, to enter upon the Property, with employees, contractors, and invitees, for the following-described purposes:
  - 1. To inspect the Property to monitor compliance with the terms and conditions of this Easement, or to evaluate a suspected violation of this Easement;
  - 2. To identify, preserve, and protect the Conservation Values, subject to GRANTOR's reserved rights in this Easement;
  - 3. To engage in habitat-restoration projects and enhancement activities on the Property, and, subject to GRANTOR's approval which will not be unreasonably withheld, allow third parties to exercise this right on WDFW's behalf;
  - 4. To plant, prune, mark, cut, and remove trees and other vegetation to prevent and abate disease and insect infestation;
  - 5. To conduct environmental education and research following prior notice and coordination with GRANTOR;
  - 6. To post regulatory and other signs and notices related to the Purpose of this Easement; and
  - 7. To install new, or maintain existing barriers (e.g., steel cages) over and around cave entrances for the purpose of excluding human access to bat habitat.
- G. To enter upon the Property, with employees and contractors, for the following: when WDFW has reason to believe that a violation of this Easement is imminent, is occurring, or has occurred; to mitigate or terminate a violation of this Easement; and, to enforce the terms and conditions of this Easement; and,

To access the Property by vehicle and on foot from the public road, for the purposes of exercising the rights granted herein. Certain appurtenant access rights exist, including an Access Easement Agreement (Skamania County AFN 2024-000672, granted to TNC by Chilton, Inc., 06/04/2024), a Road Access Easement (Skamania County AFN 137039, granted to TNC by PacifiCorp dba Pacific Power & Light Company, 12/15/1999), and a reserved right-of-way easement under a certain Warranty Deed (Skamania County AFN 105140, originally reserved by IP Timberlands Operating Company, Ltd. in granting fee property to United States of America, 5/13/1988).

**SECTION III**  
**Development Rights**

By this Easement, GRANTOR conveys to WDFW all of GRANTOR's rights and interest in all present and future development rights on the Property, other than rights expressed in easements and encumbrances existing at the time this Easement was created. Said development rights may not be used on or transferred to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise. No development rights may be used for the purpose of calculating permissible lot yield or density of the Property or any other property regarding any land use or zoning that affects or may affect the Property.

#### SECTION IV GRANTOR's Use of the Property

Any use of, or activity on, the Property that is consistent with the terms or conditions of this Easement is permitted. Any use of, or activity on, the Property that is inconsistent with the terms or conditions of this Easement, or that threatens to impair or interfere with the Conservation Values is prohibited, except as specifically allowed herein or as may be permitted by or arise from rights in the Utility Easements. GRANTOR represents and warrants that GRANTOR will not conduct, engage in, or permit any prohibited uses or activities. Without limiting the generality of this paragraph, these certain uses and activities are specifically restricted as follows:

- A. **Subdivision:** Subdivision of the Property is prohibited. The Property must remain in unified ownership (which may be joint or undivided) without division, partition, subdivision, or other legal or "de facto" creation of lots or parcels in separate ownership. Multiple owners with undivided interests, such as spouses or siblings, are permitted. The Property will always remain in one ownership containing approximately 67.11 acres, regardless of any future changes in local zoning affecting the Property. The boundaries and size of the Property may be increased with boundary line adjustments or other administrative processes. Any lands included into the Property by such processes will become part of the Property and will be encumbered with this Easement.
- B. **Residential Use:** Residential use is prohibited.
- C. **Improvements:** Any structure or road that exists on the effective date of this Easement may be repaired and replaced within its current footprint or, subject to WDFW's prior written approval, at a new location in order to better protect the Conservation Values. Constructing or placing any other temporary or permanent buildings, structures, or other improvements of any kind (including, without limitation, pipelines, power-generating devices, wells, septic systems, drain fields, pavement, or parking areas), except for uses specifically permitted in this Section or uses permitted by the Utility Easements, is prohibited. Construction of temporary roads, used for timber management or utility maintenance, may be permitted only with WDFW's prior written approval.
- D. **Fences:** Constructing and maintaining fences and gates is permitted, provided they are wildlife-passable in accordance with the then-current recommendations of the Washington Department of Fish and Wildlife.
- E. **Ranching:** All ranching occurring on the Property will be managed to be compatible with the protection of the Conservation Values. Therefore, all uses and activities affecting range health will be conducted to foster and maintain the Conservation Values of the Property.

GRANTOR may use the Property for low impact ranching activities, including livestock grazing, feeding, breeding, raising, and management of such livestock as is common locally on the effective date of this Easement. Livestock grazing will not materially degrade or deteriorate the range resources and fish and wildlife habitat, and provided that these activities do not materially affect the Conservation Values.

If WDFW, in its sole discretion, determines that the grazing is detrimental to the Conservation Values, WDFW may require that GRANTOR submit to WDFW for its approval a Grazing Management Plan, prepared by a qualified resource specialist and at GRANTOR's sole cost, that meets the terms and conditions of this Easement and all applicable state and federal laws, regulations, and guidelines. Grazing will be reduced to

levels satisfactory to WDFW until WDFW approves the Grazing Management Plan. All subsequent grazing will be in accordance with the WDFW-approved Grazing Management Plan.

Use of the Property as a commercial feedlot or game farm is prohibited.

- F. **Tree and Vegetation Cutting:** All commercial and non-commercial harvest of timber and the cutting, pruning, removing, or destroying of trees or other vegetation by GRANTOR, whether live, standing, dead, dying, down, diseased, or insect-infested, is prohibited, except with WDFW's prior written approval of a Timber Management Plan or Vegetation Management Plan which will be prepared at GRANTOR's sole cost. Selling the trees and vegetation that are removed in accordance with the terms and conditions of the WDFW-approved management plan is permitted. Nothing in this Section shall be construed to prohibit the holder of the Utility Easements from exercising the rights in those easements.
- G. **Cultivation and Farming:** Commercial and non-commercial farming, plowing, sod-busting, and cultivation of crops are prohibited unless otherwise approved by WDFW. GRANTOR is permitted to seed, irrigate and mow consistent with the purposes of this Easement.
- H. **Agrichemicals and Biological Controls:** GRANTOR may use agrichemicals and biological controls, including but not limited to insects, fertilizers, biocides, herbicides, pesticides, insecticides, and rodenticides, but only in accordance with all applicable laws and in those amounts and frequencies constituting the minimum necessary to accomplish reasonable objectives of uses and activities permitted under this Easement. The use of such agents will be conducted in such a manner as to minimize any adverse effect upon the natural ecosystems of the Property and to avoid any impairment of the Conservation Values.
- I. **Stewardship and Restoration:** Preserving and protecting the Conservation Values is consistent with the Purpose of this Easement and permitted. Projects designed to restore or enhance habitat require the prior written approval of WDFW before on-the-ground implementation. WDFW may provide written approval of a Habitat Management Plan (e.g., the Lewis River Wildlife Habitat Management Plan) outlining a suite of management activities consistent with the Purpose of this Easement. Management activities conducted pursuant to an approved Habitat Management Plan do not require prior written approval from WDFW.
- J. **Non-native Species:** Planting or introducing non-native noxious or invasive plant or animal species is prohibited except for species or habitat restoration with written consent of WDFW.
- K. **Water Rights and Alteration of Watercourses:** The GRANTOR may not sever any water rights from the Property except to legally designate those water rights for in-stream flows. Altering and excavating watercourses and wetlands within the Property is prohibited, without the express written consent of WDFW.
- L. **Vehicles Off-Road:** Off-road operation of motorized vehicles is prohibited, except as necessary to conduct permitted uses and activities.
- M. **Mining:** Surface mining for the extraction or removal of hydrocarbons, minerals, rock, gravel, or sand is prohibited, unless such activities are conducted under a WDFW approved habitat restoration project, as permitted in this Section. Excavating, or filling with materials such as soil, sand, gravel, rock, peat, or sod is prohibited.
- N. **Waste Disposal:** Storing and disposing waste, such as rubbish, garbage, debris, unused vehicles, broken equipment, or other materials that are unsightly, offensive, or hazardous, are prohibited.
- O. **Utilities:** New utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel or communication lines, and related facilities, are permitted only to the extent authorized by the existing Utility Easements.



- P. **Aircraft Use:** Fixed wing or rotary wing aircraft may not land on or take off from the Property. Small, unmanned aerial vehicles used for survey or reconnaissance are permitted. Aircraft facilities and landing strips are prohibited.
- Q. **Commercial Use:** All commercial uses and activities are prohibited, except as permitted in this Section.
- R. **Industrial Use:** All industrial uses and activities are prohibited.
- S. **Easements:** The granting of any new easement, right-of-way, or similar encumbrance for a road or utility over, under, or across the Property is permitted only within the existing Utility Easements.
- T. **Billboards:** Billboards, commercial signs, or other advertising material, except those related to the Purpose of this Easement, are prohibited.
- U. **Recreational Fees:** Charging any fee for recreational activities licensed by the Washington Department of Fish and Wildlife, such as hunting, trapping, or fishing, is prohibited.
- V. **Wildlife Harassment:** Harassment of wildlife is prohibited. Lawful hunting is not wildlife harassment.
- W. **Public Health and Safety:** Undertaking activities necessary to protect public health or safety as mandated by an appropriate government authority is permitted, provided that these activities minimize adverse impacts to the Conservation Values.
- X. **Hazardous Substances:** GRANTOR will not dispose or release (or permit the disposal or release of) any hazardous substance on the Property. The term "release" will mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term "hazardous substance" will mean any substance, material, or waste that is hazardous, toxic, dangerous, or harmful, or is designated as, or contains any component that is, or is designated as, hazardous, toxic, dangerous, or harmful and/or which is subject to regulation as hazardous, toxic, dangerous, or harmful, or is designated as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term "hazardous substance" will not include biosolids, herbicides, pesticides, rodenticides, insecticides, or fertilizers applied in accordance with federal, state, and local law. Any storage of a hazardous substance will be in accordance with federal, state, and local law.
- Y. **Inconsistent Uses and Activities:** Any use of, or activity on, the Property that is inconsistent with the Purpose or other terms of this Easement is prohibited, and GRANTOR acknowledges and agrees that GRANTOR will not conduct, engage in, or permit any such use or activity.

## SECTION V

### Dispute Resolution and WDFW's Remedies

- A. **Notice of Violation and Corrective Action:** Except in those circumstances requiring immediate entry as set forth in subsection F of Section II, if WDFW determines that GRANTOR is in violation of the terms and conditions of this Easement or that a violation is threatened, WDFW will give written notice to GRANTOR of such violation and demand corrective action sufficient to cure the violation and, if the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore that portion of the Property to its condition prior to such violation in accordance with a plan approved by WDFW.
- B. **GRANTOR's Failure to Respond:** WDFW may bring an action as provided in subsection C of this Section, if:
  - 1. GRANTOR fails to initiate a cure the violation within sixty (60) days after receipt of notice of violation from WDFW; or
  - 2. Under circumstances where the cure of the violation cannot reasonably be initiated within a sixty (60) day period, WDFW may initiate an action if GRANTOR fails to

initiate action to cure the violation within the one hundred twenty (120) day period or fails to continue diligently to cure such violation once initiated until finally cured.

3. "Initiate" under this Section shall include but not be limited to planning, design, permitting, contract bidding and other necessary steps to implementation of a physical cure.

**C. WDFW's Action:**

1. **Injunctive Relief:** WDFW may bring actions at law or in equity in a court of competent jurisdiction to enforce the terms and conditions of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require restoration of the Property to the condition that existed prior to the violation if it is proved that GRANTOR caused such violation leading to damage.
  2. **Damages:** WDFW will be entitled to recover actual damages for violation of the terms and conditions of this Easement and injury to any Conservation Values protected by this Easement, including, without limitation, damages for the cost to restore habitat. Without limiting GRANTOR's liability in any way, WDFW, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective or restoration action on the Property.
  3. **Emergency Enforcement:** If WDFW, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, WDFW may pursue its remedies under this Section without prior notice to GRANTOR and without waiting for the period provided for cure to expire.
- D. Scope of Relief:** WDFW's rights under this Section apply equally to actual and threatened violations of the terms and conditions of this Easement. GRANTOR agrees that WDFW's remedies at law for any violation of the terms and conditions of this Easement are inadequate and agrees that WDFW will be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to other relief, including, without limitation, specific performance of the terms and conditions of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. WDFW's remedies described in this paragraph will be cumulative and will be in addition to all remedies now or hereafter existing at law or in equity.
- E. Costs of Enforcement:** WDFW's costs of enforcing the terms and conditions of this Easement in a judicial proceeding, including, without limitation, attorneys' and consultants' costs and fees, will be borne by GRANTOR, except that each party will bear its own costs in the event GRANTOR prevails in a judicial proceeding initiated by WDFW.
- F. WDFW's Discretion:** Forbearance by WDFW to exercise its rights under this Easement in the event of any breach of any of the terms and conditions of this Easement by GRANTOR, or its employees, contractors, agents, licensees, or invitees, will not be deemed or construed to be a waiver by WDFW of its rights under this Easement. Any delay or omission by WDFW in the exercise of any right or remedy will not impair such right or remedy and will not be construed as a waiver.
- G. Waiver of Certain Defenses:** GRANTOR hereby waives any claim or defense of prescription or adverse possession that it may have against WDFW or its successors or assigns concerning the Property.
- H. Force Majeure:** Nothing contained in this Easement will be construed to entitle WDFW to assert rights against or bring any action against GRANTOR for changes in the Conservation Values resulting from causes beyond GRANTOR's control, such as public access, climate change, fire, flood, earthquake, or acts of war.

## **SECTION VI**

### **Notice and Approval**

- A. Written Notice:** GRANTOR and WDFW will provide to each other all notices, requests, and approvals under this Easement in writing and by registered or certified mail to the

address specified below or to such other address as the respective party may designate by written notice. Nothing in this subsection will prohibit or limit in any manner the ability of WDFW to obtain writs or injunctive relief relating to a violation of this Easement.

**To GRANTOR:** The Nature Conservancy  
ATTN: Director of Conservation  
74 Wall Street  
Seattle, WA 98121

**To WDFW:** Washington Department of Fish and Wildlife  
Real Estate Services  
600 Capitol Way North  
Olympia, Washington 98501

- B. **Request for Approval:** If any provision of this Easement requires GRANTOR to obtain the prior approval of WDFW, or if GRANTOR intends to undertake any action with respect to the Property that is not expressly addressed in this Easement, then GRANTOR will not proceed with the action until GRANTOR has satisfied the requirements of this Section. Nothing in this Section will prohibit or limit in any manner the ability of WDFW to obtain writs or injunctive relief relating to any violation of this Easement.
- C. **Written Request and Response:** GRANTOR's request will be in writing, will describe all material aspects of the proposed action, and will be delivered to WDFW as set forth above in this Section. WDFW will approve, deny, or condition the request. Any objections will be based upon WDFW's opinion that the proposed action may cause material damage to any of the Conservation Values of this Easement or is otherwise in violation of the terms and conditions of this Easement. If the request is denied or conditioned, GRANTOR will not proceed until GRANTOR modifies the request sufficiently to receive WDFW's written approval. WDFW will have thirty (30) days from receipt of a modified request to approve, deny, or condition it.

## SECTION VII

### Costs and Taxes, Hazardous Substances, Waiver of Wildlife Damage Claims

- A. **Costs, Liabilities, and Insurance:** GRANTOR remains responsible for all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, except those caused by the fault or negligence of WDFW, and the maintenance of such liability insurance coverage as desired by GRANTOR.
- B. **Taxes:** GRANTOR will pay before delinquency all taxes, assessments, fees, and charges of any kind levied on or assessed against the Property by a competent authority, including any taxes imposed upon or incurred because of this Easement (collectively "taxes") and will furnish WDFW with satisfactory evidence of payment upon request. If GRANTOR fails to pay any taxes when due, WDFW is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to GRANTOR, in accordance with any statement procured from the appropriate authority, without inquiry into the validity of the charge, and the obligation created by such payment will bear interest at the maximum rate allowed by law until paid by GRANTOR.
- C. **Environmental Compliance:** GRANTOR represents and warrants that after reasonable investigation and to the best of GRANTOR's knowledge the following are true:
1. GRANTOR and the Property are in compliance with all applicable federal, state, and local environmental laws, regulations, and requirements;
  2. There has been no release, dumping, burying, abandonment, or migration from off-site of any substance, material, or waste that is designated or regulated by a federal, state, or local authority as hazardous, toxic, dangerous, or harmful to human health or the environment; and,



3. There is no pending notice of violation, penalty, claim, civil proceeding, or criminal proceeding arising out of alleged violations of environmental laws at the Property.
- D. **Remediation:** If, at any time, there has occurred or does occur a release in, on, or about the Property of any substance now or hereafter designated or regulated by a federal, state, or local authority as hazardous, toxic, dangerous, or harmful to human health or the environment, GRANTOR agrees to bear the cost of all legally required containment and remediation, except if the release was caused by WDFW.
- E. **Indemnification:** GRANTOR hereby agrees to release and hold harmless, indemnify, and defend WDFW and its commissioners, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, and reasonable attorneys' and consultants' fees that arise from or are in any way connected with any of the following related to the Property: injury to or the death of any person; property damage; a violation of any law concerning hazardous, toxic, or dangerous wastes, substances, or materials; or violation of any term or condition of this Easement (unless said injury, death, property damage, violation of law, or violation of this Easement is proven to have been caused solely by WDFW).
- F. **Waiver of Wildlife Damage Claims:** GRANTOR does hereby waive forever the right to bring a wildlife damage claim under RCW 77.36 (or any successor provision) against WDFW.

#### SECTION VIII Extinguishment and Valuation

- A. **Extinguishment:** This Easement may be extinguished, whether in whole or in part, only under one or more of the following circumstances:
1. When GRANTOR and WDFW jointly agree to extinguish this Easement, or release a portion of the Property from this Easement, based on WDFW's determination, in its sole discretion, that circumstances have rendered the Purpose of this Easement impractical to achieve;
  2. When a court having jurisdiction over this Easement determines in judicial proceedings that circumstances have rendered the Purpose of this Easement impossible to achieve; or,
  3. When all or any of the Property is taken by exercise of the power of eminent domain, condemnation, or acquisition in lieu of condemnation, whether by public, corporate, or other authority.
- In the event of an eminent domain or condemnation action, GRANTOR will bring and WDFW may join an appropriate action to recover the full value of the taking and all direct and incidental damages resulting from such taking. The recovered proceeds first will be used to reimburse GRANTOR and WDFW for all reasonable expenses incurred in said recovery action or will be divided between GRANTOR and WDFW in proportion to their respective reasonable expenses in the event the recovered proceeds are insufficient to cover full reimbursement. Any remainder of the recovered proceeds will be divided between GRANTOR and WDFW according to their respective proportionate interest in the Property as provided in subsection B of this Section.
- B. **Valuation.** In the event of extinguishment, judicial action, eminent domain, or condemnation, WDFW will be entitled to a percentage of the proceeds as provided in this Section. This Easement constitutes a real property interest immediately vested in WDFW, which, for the purpose of this Easement, the Parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by this Easement (minus any increase in the value after the date of this grant attributable to improvements) by (2) the percentage of the value of this Easement at the time of this grant to the value of the Property, without deduction for the value of this Easement, at the time of this grant. For the purposes of this Section, the percentage of the value of this Easement to the value of the Property (minus any increase in the value after the date of this grant attributable to improvements) unencumbered by this Easement will remain constant.

**SECTION IX**  
**Miscellaneous Provisions**

- A. **Recording:** GRANTOR will record this Easement in the official records of Skamania County, Washington.
- B. **Amendment:** No amendment to or modification of this Easement is valid unless it is mutually agreed by both GRANTOR and WDFW, in writing, consistent with the original Purpose of this Easement, and recorded in the official records of Skamania County. Any amendment or modification that is inconsistent with the original Purpose of this Easement or would shorten its duration is prohibited.
- C. **GRANTOR's Transfer of Interest in the Property:** GRANTOR agrees to incorporate the terms of this Easement and the Utility Easement by reference in any deed or other legal instrument by which GRANTOR transfers any interest in the Property, including, without limitation, a leasehold interest, and further agrees to attach a copy of this Easement to said instrument. No later than 45 days before the effective date of the transfer, GRANTOR will notify WDFW according to the notice provisions of Section VI, above, and include a description of the transfer, a legal description of the portion of the Property to be affected, and the prospective transferee's name and contact information. GRANTOR's failure to comply with the terms of this paragraph will not limit the enforceability of this Easement or impair its validity in any way.
- D. **Survival of Liability:** GRANTOR's rights and obligations under this Easement terminate upon GRANTOR's transfer of its interest in the Property, except that GRANTOR's liability for acts or omissions occurring prior to transfer will survive the transfer.
- E. **Joint Obligation:** In the event the Property is or becomes jointly held by two or more individuals or entities, the obligations imposed by this Easement will be individual, joint, and several upon each and all of them and their successors, assigns, personal representatives, executors, and heirs.
- F. **WDFW's Transfer of this Easement:** This Easement is transferable and WDFW may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Chapter 64.04.130 or Chapter 84.34.250 Revised Code of Washington (or any successor provision(s)) then applicable). As a condition of the transfer, WDFW will require transferee to exercise its rights in a manner that is consistent with the Purpose of this Easement. In advance of any transfer, WDFW will notify GRANTOR according to the notice provisions of Section VI, above. WDFW's failure to give notice will not impair the validity of the transfer or limit the validity or enforceability of this Easement in any way.
- G. **Governing Law:** This Easement will be interpreted and performed in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Easement, jurisdiction and venue are proper only in the State of Washington, Skamania County Superior Court.
- H. **Construction:** Any general rule of construction to the contrary notwithstanding, this Easement and each of its provisions will be liberally construed in favor of the grant to affect the Purpose of this Easement.
- I. **Partial Invalidity:** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the application of such provision to other persons and circumstances and the remainder of the provisions of this Easement will not be affected thereby.
- J. **Severability:** If any covenant or provision of this Easement will be adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision, or part thereof.
- K. **Titles:** Section and subsection titles are for convenience only and will not be deemed to have legal effect.

- L. **"GRANTOR" and "WDFW":** In this instrument, the term "GRANTOR" will mean and include the entity identified above as GRANTOR and its successors and assigns. In this instrument, the term "WDFW" will mean and include The State of Washington, by and through the Department of Fish and Wildlife, and its successors and assigns.
- M. **Compliance with Law:** All uses and activities permitted by this Easement will not exceed or violate applicable state and federal laws.
- N. **Exhibits:** The Exhibits attached hereto are incorporated herein by this reference.
- O. **Entire Agreement:** This instrument sets forth the entire agreement of GRANTOR and WDFW with respect to this Easement. It supersedes all prior discussions and agreements relating to the Property.
- P. **Effective Date:** This Easement will become effective when signed by both GRANTOR and WDFW.
- Q. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

TO HAVE AND TO HOLD unto WDFW and its successors and assigns forever.

IN WITNESS WHEREOF, GRANTOR and WDFW have mutually agreed upon the terms and conditions of this Easement and have caused it to be executed as below subscribed.

GRANTOR:  
The Nature Conservancy

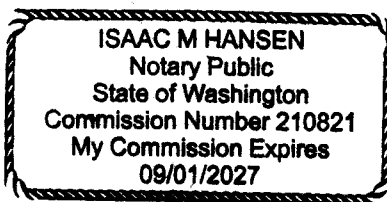
By: *Michael S. Stevens*  
~~James Schroeder, Conservation Director~~  
MICHAEL S. STEVENS  
WASHINGTON STATE DIRECTOR

Date: 08/15/2024

STATE OF WASHINGTON )  
 )ss  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Michael S. Stevens is the person who appeared before me, and said person acknowledged that ~~she~~/he signed this instrument, on oath stated that ~~she~~/he was authorized to execute the instrument and acknowledged it as the Washington State Director of The Nature Conservancy to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 15<sup>th</sup> day of August, 2024.



*Isaac M Hansen*  
Notary Public in and for the State of Washington,  
residing at Seattle, WA  
My appointment expires 09/01/2027.

WDFW:

STATE OF WASHINGTON, DEPARTMENT OF FISH AND WILDLIFE

Cynthia Wilkerson  
Cynthia Wilkerson, Lands Division Manager

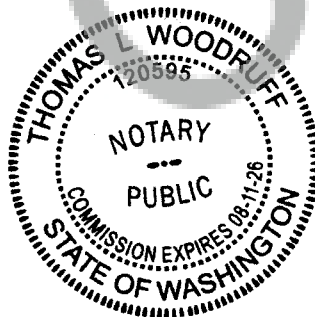
Date: 8/14/24

STATE OF WASHINGTON )  
 )ss  
COUNTY OF THURSTON )

I certify that I know or have satisfactory evidence that Cynthia Wilkerson is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Lands Division Manager of the Washington Department of Fish and Wildlife to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 14<sup>th</sup> day of August, 2024  
Thomas L. Woodruff  
Notary Public in and for the State of Washington,  
residing at TUIN WATER  
My appointment expires 8/11/2026

[Exhibit A: Property Legal Description]  
[Exhibit B: Property Map]



**EXHIBIT A**  
Property Legal Descriptions

All that real property located in the County of Skamania, State of Washington, more particularly described as follows:

That portion of the South half of the Northeast quarter and that portion of the Southeast quarter of the Northwest quarter, all in Section 30, Township 7 North, Range 5 East of the Willamette Meridian, Skamania County, Washington, lying South of the North line of that certain right of way granted to Pacific Power and Light Company by instrument recorded in Book 48, page 503.

EXCEPT BEGINNING at the Northeast corner of Section 30, Township 7 North, Range 5 East of the Willamette Meridian, Skamania County, Washington; thence South  $01^{\circ} 10' 00''$  West along the East line of said Section 30, a distance of 1965.54 feet to the TRUE POINT OF BEGINNING of this description; thence South  $64^{\circ} 23' 34''$  West, a distance of 1473.17 feet to the Southwest corner of the Southeast quarter of the Northeast quarter of Section 30; thence South  $89^{\circ} 09' 08''$  East, along the South line of said Southeast quarter of the Northeast quarter a distance of 1315.25 feet, to the East quarter corner of said Section 30, thence North  $01^{\circ} 10' 00''$  East, along said East line of Section 30, a distance of 656.30 feet to the TRUE POINT OF BEGINNING of this description.

As shown in that certain Survey recorded in Book 3 of Surveys, page 314 records of Skamania County, Washington

Containing approximately 67.11 acres

All in Skamania County, Washington.



**EXHIBIT B**  
Property Map

