

RECORD OF DECISION FOR THE PROPOSED ISSUANCE  
OF A SECTION 10(A)(1)(B) INCIDENTAL TAKE PERMIT

**RECORD OF DECISION**

**for  
Proposed Issuance of an Endangered Species Act  
Section 10(a)(1)(B) Incidental Take Permit  
to  
Thurston County  
regarding implementation of the  
Thurston County Habitat Conservation Plan**

**U.S. Fish and Wildlife Service**

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## Introduction

This Record of Decision (ROD) was prepared by the U.S. Fish and Wildlife Service (Service) in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 *et seq.*), as amended. The purpose of this ROD is to document the decision of the Service in response to an application submitted by Thurston County (the county government) (applicant, or County) for an incidental take permit (permit or ITP) addressing species listed under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. §1531 *et seq.*) (covered species). The information contained in this ROD is based on the ITP application and the submission of a supporting habitat conservation plan, the Final Environmental Impact Statement (FEIS) addressing this action, and other information in the administrative record. The Service decision to issue the permit follows a determination that the permit issuance criteria under Section 10(a)(2)(B) of the ESA have been met. The permit allows for the implementation of the Thurston County Habitat Conservation Plan (HCP) by Thurston County in Thurston County, Washington, to occur in compliance with the ESA. The permit and its associated HCP provide protection for and promote the conservation of the covered species, while enabling the applicant to conduct otherwise legal activities associated with the development and maintenance responsibilities of Thurston County and other activities covered by the HCP.

In 2020, the Council on Environmental Quality (CEQ) issued a final rule updating the NEPA implementing regulations (the “2020 Rule;” 85 Federal Register [FR] 43304, July 16, 2020). The 2020 Rule went into effect on September 14, 2020, and it applied to any NEPA process begun after that date. Because the Service published a Notice of Intent (NOI) to develop an EIS for this project on October 16, 2020 (85 FR 65861), the DEIS and FEIS were prepared according to the 2020 Rule. On April 20, 2022, CEQ published a final rule that modified the 2020 Rule, including reinstating the definition of cumulative effects (the “2022 Rule;” 87 FR 23453). The 2022 Rule went into effect on May 20, 2022. While terminology used in the EIS is based on the 2020 Rule, the analysis in the EIS is consistent with the 2020 and 2022 Rule; the purpose and goals of NEPA; longstanding federal judicial and regulatory interpretations; the Department of the Interior’s NEPA regulations (43 CFR Part 46); and Administration priorities and polices including Secretary’s Order No. 3399, requiring bureaus and offices to use “the same application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect.”

This ROD presents the Service’s permit decision and the rationale supporting the decision, identifies the reasonable range of alternatives considered in the FEIS, and discusses whether all practicable means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 C.F.R. §1505.2). The Service also reviewed input from the Tribes; federal, state, and local agencies; and public comments. All applicable laws, regulations, executive orders, and local government plans were considered in evaluation of alternatives. Further, the Service determined, and our Biological Opinion demonstrates that County’s implementation of the selected alternative will not jeopardize listed species or adversely modify or destroy critical habitat. The Service supports the proposed conservation program. This ROD completes the NEPA process.

## **Proposed Federal Action**

The Service proposes to issue an ITP to Thurston County, under the authority of Section 10(a)(1)(B) of the ESA implementing regulations found at 50 C.F.R. §§17.22(b) and 17.32(b), for a period of 30-years. Documents used in the preparation of this ROD include the following, which are incorporated by reference:

- Final HCP (Thurston County, 2022)
- Final EIS for the Thurston County HCP in Thurston County Washington (Thurston County and Service, 2022)
- The Service's Biological Opinion for the Thurston County HCP (Service, 2022a)
- Service Findings and Recommendations for the Proposed Issuance of an ESA Section 10(a)(1)(B) ITP for the Thurston County HCP (Service, 2022b)

## **Purpose and Need**

The purpose and need of the Service's proposed action is to process the County's request for an ITP and fulfill our legal and conservation obligations under Section 10(a)(1)(B) of the ESA in response to the applicant's HCP and permit request addressing the covered activities. The County's goals include providing long-term certainty for growth and economic development in Thurston County, supporting listed and rare species, protecting and maintaining working lands and agriculture, and improving local control over covered activities. The County determined that otherwise lawful activities under the County's jurisdictions are likely to result in take of the covered species.

Any permit issued by the Service must meet all applicable ESA issuance criteria and implementation should be technically and economically feasible. See 16 U.S.C. §1539(a)(2)(B); 43 C.F.R. §46.420(b). Issuance criteria under the ESA includes, without limitation, the requirements that the applicant will minimize and mitigate the impacts of the taking on covered species to the maximum extent practicable, and the taking will not appreciably reduce the likelihood of survival and recovery of the covered species in the wild.

The permit is conditioned on implementation of the HCP and compliance with permit terms and conditions.

## **Project Description**

### ***Plan Area***

The HCP's plan area includes the entirety of Thurston County, and includes all areas that may be influenced by HCP implementation regardless of ownership, political boundaries, or whether impacts to the covered species are likely to occur. The plan area also includes sites where mitigation may occur, downstream or down-slope areas where erosion or sedimentation effects could result from covered activities, or where benefits resulting from the HCP Conservation Program implementation are expected. The EIS also defines a study area for each environmental discipline as the area of consideration and the area where the effects of the Proposed Action and alternatives would occur, which may be broader than the HCP plan area.

The proposed permit area for this HCP includes lands over which Thurston County has permitting authority, approximately 412,228 ac (166,823 ha) (HCP Figure 1.2), which defines the boundary of the area in which the covered activities and resulting take will occur. The permit area excludes lands not under Thurston County jurisdiction, such as lands within the limits of incorporated cities, on Tribal lands, or Federal lands, even where such lands may fall within the boundaries of the County. The requested permit area includes all areas under County jurisdiction where habitat for covered species may occur, which is estimated to be approximately 126,000 acres distributed within the larger permit area.

***Covered Species***

The permit would authorize incidental take of six species/subspecies (Table 1), including one species that is under consideration for listing (non-listed species that may become listed during the term of a proposed permit can be included in an HCP and ITP; take coverage would become effective if and when the species is listed). The HCP includes measures to minimize and mitigate the impacts of the taking on all covered species to the maximum extent practicable, including fully offsetting the impact of the taking, and that otherwise comply with the permitting criteria of 16 U.S.C. § 1539(a) and 50 C.F.R. §§17.22(b),17.32(b). The HCP also includes measurable habitat surrogates that are a reliable indicator of the amount and extent of take (acres) as well as measurable habitat surrogates that are a reliable indicator of the impacts of the taking (functional acres, or acres for the Oregon spotted frog).

Table 1: Covered Species under the Thurston County Habitat Conservation Plan

Common Name	Scientific Name	ESA Status	Amount of Take (impacts)
Olympia pocket gopher	<i>Thomomys mazama pugetensis</i>	Threatened	1,210 acres (632 functional-acres)
Tenino pocket gopher	<i>T. mazama tumuli</i>	Threatened	425 acres (178 functional-acres)
Yelm pocket gopher	<i>T. mazama yelmensis</i>	Threatened	North: 2,720 acres (1,357 functional-acres)
			East: 2,141 acres (1,043 functional-acres)
			South: 1,960 acres (1,346 functional-acres)
Oregon spotted frog	<i>Rana pretiosa</i>	Threatened	618 acres
Taylor’s checkerspot butterfly	<i>Euphydryas editha taylori</i>	Endangered	54 acres (16 functional-acres)
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>	Under Review	93 acres (25 functional-acres)

### ***Covered Activities***

The applicant seeks take authorization for covered activities occurring within the permit area as described in the HCP, and those activities necessary to carry out all mitigation and other conservation measures identified in the HCP and/or the permit. The covered activities are described in greater detail in the HCP and include residential development; added accessory structures; septic repair or extension and home heating oil tank removal; commercial and industrial development; public service facility construction; transportation capital projects; transportation maintenance and work in rights-of-way; landfill and solid waste management; water resources management; and county parks, trails, and land management. The HCP details the number and extent of these projects proposed for ITP coverage. The total extent of covered activities will not exceed 9,221 acres combined across activities (HCP, Tables 4.5 and 4.6). The HCP covered activities will occur in the portions of Thurston County jurisdiction with habitat for covered species (approximately 126,000 acres), and does not include areas in incorporated cities, Tribal sovereign lands, and Federal lands. Permit coverage would not apply to mining, forestry activities, activities not under County jurisdiction, or activities not described in the HCP.

### ***Protection Measures and Conservation Strategies***

The HCP includes a variety of measures to minimize and mitigate effects on the covered species. Impact avoidance and minimization measures associated with covered activities are described in Section 2.1.3 of the FEIS and in Section 5.2 and Appendices C through G of the HCP. They include siting and locating activities, construction minimization, and voluntary measures to maintain and or enhance habitat values and functions for covered species outside of development envelopes. The mitigation component of the conservation strategy of the HCP (described in Section 2.1.3.5 of the FEIS and in the HCP in Chapters 5 through 8 and Appendices H through M) is intended to offset impacts to the covered species through permanent dedication and maintenance of conservation sites (following habitat enhancement, when required). Conservation sites will occur on new reserves, working agricultural lands, and on existing reserves where such management commitments do not currently exist.

The Thurston County would abide by the terms and conditions of the HCP when conducting or approving covered activities. Project proponents seeking coverage under the Thurston County HCP would execute enforceable documents with the County to carry out ITP-authorized covered activities. Impacts to covered species would be avoided or minimized, when possible, using best management practices, and unavoidable impacts of the taking would be fully offset by mitigation provided through the HCP conservation program.

Under the HCP the conservation program, the County would establish a network of permanently managed and monitored mitigation lands for the benefit of the covered species. Conservation lands, habitat enhancements, and associated funding would be incrementally added to the permanent conservation network over the 30-year ITP term. Conservation lands would be permanently protected and managed in accordance with the terms of enforceable documents which many include, without limitation, conservation easements, fee simple acquisition deeds, or agreements with State entities respecting the management of State-owned preserves. The pace of these conservation actions, including funding to support them, would be managed to stay ahead

of the impacts of the taking on covered species. Site-specific management plans for must be developed for all conservation lands included in the conservation system. The site management plans must be consistent with the Site Management Plan Template Appendix I of the HCP. These implementation requirements are detailed in the Chapter 7 of the HCP.

The conservation program includes measures to avoid or minimize impacts on covered species and the habitats on which they depend. In the ranges of the Mazama pocket gopher subspecies, the Taylor's checkerspot butterfly and the Oregon vesper sparrow, these conservation measures will be applied during covered activities that occur in any prairie or grassland areas in the mapped extent of habitat for each species. The habitat extent is based primarily on suitable soils for the Mazama pocket gopher subspecies, and proximity to known populations for the Taylor's checkerspot butterfly and the Oregon vesper sparrow. An additional HCP conservation measure applied to construction activities in the range of the Taylor's checkerspot butterfly is to delay mowing until after the nectar species have finished flowering and seed production.

In the range of the Oregon spotted frog, HCP conservation measures for covered activities include multiple approaches to siting and locating activities away from habitat for the species and conditions on construction to avoid or reduce exposure of Oregon spotted frogs where practicable. These measures include the County's existing protections for wetlands codified in the Thurston County Critical Areas Ordinance. Additionally, HCP conservation measures for transportation maintenance include the designation of "special management areas for Oregon spotted frog" along stretches of roadside rights-of-way that support Oregon spotted frog (including occupied habitat and hydrologically connected areas) to ensure implementation of best management practices where appropriate.

Conservation measures to mitigate unavoidable impacts of the taking of covered species include protecting, enhancing, and maintaining new reserves; securing and maintaining conservation easements on working agricultural lands; and enhancing and maintaining existing preserves. Criteria to ensure the mitigation measures support the covered species are detailed in the HCP (Chapters 5 - 7, and Appendices H - M). Conservation sites will be permanently managed to offset impacts on covered species by producing an equal number of functional-acre credits through habitat maintenance or enhancements in a conservation network comprised of:

- Olympia pocket gopher: 346 acres of new reserves.
- Tenino pocket gopher:
  - 73 acres of new reserves
  - 28 acres of conservation easements on working agricultural lands
- Yelm pocket gopher
  - North Service Area: 744 acres of new reserves.
  - East Service Area:
    - 400 acres of new reserves.
    - 163 acres of conservation easements on working agricultural lands.
    - 130 acres of enhanced existing reserves.



- South Service Area:
  - 516 acres of new reserves.
  - 210 acres of conservation easements on working agricultural lands.
  - 168 acres of enhanced existing reserves.
- Taylor's checkerspot butterfly
  - 73 acres of new reserves.
  - 28 acres of conservation easements on working agricultural lands.
- Oregon vesper sparrow: 31 acres of conservation easements on working agricultural lands.
- Oregon spotted frog: 618 acres of new reserves.

The amount of mitigation described above assumes full implementation of the projected amount of covered activities. The number and extent of covered activities described in the HCP represent the limit of covered activities that may proceed under the HCP. If fewer covered activities actually occur during the permit term, the commensurate lower amount of mitigation will be provided, as detailed in the HCP. Additionally, the proportion of acres allocated to new reserves, working agricultural lands, and existing reserves is a projected mixture of conservation land categories that could be adjusted (HCP Section 7.9.1) to provide the same amount of habitat benefit as quantified by functional-acre metrics (HCP Appendix H). These conservation measures and their effects on covered species are described in detail in the HCP, analyzed in the Service's biological opinion, and summarized in the Service's Section 10 findings and recommendations.

### ***Monitoring and Adaptive Management***

Chapter 6 of the HCP addresses the monitoring and adaptive management to be implemented as part of the proposed permit action. Section 6.3 of the HCP addresses the adaptive management approach that will be used to evaluate and respond to potential new information within the plan area. Adaptations under adaptive management are primarily targeted at improving achievement of the HCP's biological goals or improving efficiency of the HCP's conservation program. Section 7.15 of the HCP addresses reporting to document annual and cumulative plan implementation and effectiveness. Section 7.12 addresses the applicant's responses to potential changed circumstances within the plan area, to thereby ensure that the conservation measures identified in the HCP are being implemented adequately and meeting the goals and objectives outlined in the HCP.

The HCP includes monitoring of implementation/compliance and effectiveness. Monitoring will assess levels of take of the covered species using appropriate habitat surrogates. Adaptive management will be implemented to ensure management of covered activities and mitigation meet the biological goals, and to ensure that impacts on covered species do not exceed levels authorized under the ITP.

### ***Changes between Draft and Final HCP***

Changes between the draft and final HCP are designed to improve document clarity. The final HCP represents the same proposed measures, outcomes, and analyses as provided in the draft HCP, along with the County's clarifications. The County clarified the HCP to address public comments, internal reviews by the County, and the Service's technical assistance. Clarifications in the HCP include,

- Edits to the template conservation easement intended to reinforce the permanent conservation outcomes expected by the Service and the County.
- Explaining how the extent of covered activities were projected,
- Endowment details, ensuring that management, monitoring, adaptive management, enforcement and changed circumstances are all addressed within the proposed endowment(s) for conservation lands.
- Clarifying the template Certificate of Inclusion in HCP Appendix J to emphasize the commitment to use enforceable documents to implement the HCP.

The Service worked closely with the County by providing technical assistance throughout the County's HCP development. As a result, we have not identified additional measures that must be implemented.

### **Alternatives**

The Service evaluated a reasonable range of alternatives to the proposed action. Three alternatives were analyzed in detail in the EIS, including a no-action alternative consistent with current practices, and two action alternatives. Additional alternatives, including those submitted through public comments (including State, Tribal, and local governments and public commenters) during the scoping period, were also evaluated by the Service in the preparation of the draft EIS (DEIS) and consideration of the HCP, but were eliminated from detailed study (FEIS, Section 1.4.4). The alternatives eliminated from detailed study address different covered species, covered activities, conservation approaches, and permit durations. In consideration of comments received during public scoping and during public review of the DEIS, the Service evaluated the effects of issuing a permit for the proposed HCP, along with one action alternative and a no-action alternative. The No Action Alternative is characterized by ongoing take avoidance strategies for County-issued permits and County-conducted work. The alternative action analyzed is a Modified HCP Alternative similar to the proposed HCP but modified to provide all conservation on new reserves.

Under any of the alternatives, the County would continue to permit development and redevelopment that meet regulatory requirements to achieve growth needs. The County would also continue to maintain infrastructure as practicable. Under any of the alternatives, the population of Thurston County will continue to grow, and parcels zoned for residential uses will continue to be developed or redeveloped to accommodate the increasing number of residents in the county within the limits of local, state, and federal law. Under the state's Growth Management Act (RCW 36.70A), the County has an obligation to permit proposals for development that are consistent with the County's Comprehensive Plan, critical areas regulations, and other statutory and regulatory requirements.

Analyses in the HCP and the FEIS are based on the County's projection that buildout of residential-zoned parcels in the County's jurisdiction will not exceed 70 percent (within current zoning allowances) over the 30-year period of the requested ITP (Thurston County 2022). This information is reflected in the HCP by incorporating projections from the Thurston County buildable lands report (TRPC 2021). That report considered population growth, job growth, and other data, as appropriate, to project supply and demand related to buildout of lands zoned for residential, commercial, and industrial uses. The projections were calibrated by jurisdiction and zoning category, and they considered the areas of modeled habitat for listed or covered species (TRPC 2020).

Public infrastructure will be built and maintained to support population growth, public services, and public safety, and existing infrastructure will require maintenance. Such public infrastructure is also considered in the HCP and in the Thurston County buildable lands analysis (TRPC 2020). Over the 30-year period analyzed in the FEIS, the total amount of County-permitted development activity and County infrastructure activity is expected to be the same under the action alternatives or the No Action Alternative, but the locations of development would differ based on which alternative is selected. The following provides brief summaries of the no-action alternative as well as the two action alternatives:

### ***No Action***

Inclusion of the No Action Alternative in the EIS is prescribed by the Federal Council on Environmental Quality regulations (40 C.F.R. §1502.14(c)). Under the No Action Alternative, the Service would not issue incidental take authorization to the County, and the County would not implement the HCP. The County would continue to conduct, permit, and approve activities on a case-by-case basis in compliance with federal, state, and local requirements, including the Thurston County Critical Areas code. The County and individual project proponents would evaluate each project to ensure unauthorized take of ESA-listed species is avoided.

The County would not conduct activities or issue permits for activities that would have unauthorized impacts on ESA-listed species. Under the No Action Alternative, otherwise legal development and infrastructure maintenance projects to meet ongoing growth demands would proceed where unauthorized impacts to ESA-listed species can be avoided. Current County procedures rely on trained biologists to screen project sites for occupancy by these species before County-permitted or County-authorized activities can be conducted in modeled habitat for ESA-listed species (see Chapter 2 of the Thurston County HCP for a detailed discussion of the modeled habitat distribution for each covered species). If evidence of ESA-listed species is found at a proposed project site, the project proponent would withdraw or modify the project to avoid impacts to ESA-listed species.

Under the No Action Alternative, the County would not implement a coordinated, county-wide conservation program. Mitigation would not be required for impacts to potentially suitable habitat where occupancy by ESA-listed species has been evaluated using best available science and has not been detected. This alternative is the current situation in Thurston County.

The No Action Alternative would not provide long-term certainty for growth and economic development in Thurston County, nor would it improve local control over covered activities. In addition, the No Action Alternative would not provide improved conservation through the implementation of coordinated mitigation in consolidated areas.

***Proposed Action Alternative: Permit Issuance for the Thurston County Habitat Conservation Plan***

Under the Proposed Action, the Service would, in accordance with applicable law, issue an ITP to Thurston County for the incidental take of covered species by the covered activities specified in the Thurston County HCP (Thurston County 2022), which is incorporated by reference into the FEIS. The term of the requested ITP is 30 years. As described under the Project Description section above, the County would fully implement the Thurston County HCP and its conservation program, including the implementation of take minimization measures for covered activities, mitigation to fully offset the impacts of the taking of covered species, monitoring and reporting procedures, and commitments to ensure funding for HCP implementation.

By streamlining development and supporting maintenance of working lands where compatible with landowner goals and species needs, the Proposed Action would address the County's goals of regulatory certainty, improved conservation, and local control.

***Alternative Action – Modified Habitat Conservation Plan with Mitigation on New Reserves Only***

Under the Alternative Action, the Service analyzed the alternative of providing all mitigation on new habitat reserves (referred to as the “Modified HCP Alternative”). Under the Modified HCP Alternative, as under the Proposed Action, the Service would, in accordance with applicable law, issue an ITP to Thurston County with the same permit area, permit term, covered species, and covered activities as described for the Proposed Action. Aside from the composition of the conservation lands, the other elements of the HCP would be the same as those described for the Proposed Action. The amount and extent of covered activities would be the same as the Proposed Action. The minimization measures, monitoring, and adaptive management measures would also be the same as those described in Chapters 4-7 of the HCP.

Modified HCP Alternative explores whether modifying the HCP could provide higher conservation value to covered species by acquiring new habitat reserves and managing them to achieve the highest habitat quality. Working agricultural lands and existing reserves would not be part of the HCP mitigation strategy. Under the Modified HCP Alternative, fewer acres of new conserved habitat may be needed to fully offset the impacts of the taking on covered species because all lands would be managed to the highest practical habitat-quality targets. As under the Proposed Action, the County and project proponents would be responsible for financial assurances for permanent monitoring and management of each new reserve before conducting additional covered activities.

The Modified HCP Alternative would, in the same manner as the Proposed Action, streamline development and address the County's goals of regulatory certainty, improved conservation, and local control. The alternative conservation approach for covered species provided by the Modified HCP Alternative is consistent with the goals and objectives of the applicant and with the Service's purpose and need. By evaluating an alternative conservation approach for covered species, the Modified HCP Alternative meets the requirements for examining a range of alternatives under NEPA.

### **Environmentally Preferable Alternative**

The NEPA implementing regulations at 40 C.F.R. §1505.2(a)(2) require that the ROD identify "the alternative or alternatives considered environmentally preferable." Department of Interior's implementing regulations for NEPA at 43 C.F.R. §46.30 define the environmentally preferable alternative as the alternative(s) "that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources...there may be more than one environmentally preferable alternative." This is not necessarily the agency-preferred alternative, which the FEIS identifies as the Proposed Action.

As described in Chapter 3 of the FEIS, there are no significant differences between the Action Alternatives in terms of environmental consequences to aspects of the human environment such as water resources, air quality, earth resources.

Under either Action Alternative, the HCP would be implemented, allowing covered activities to proceed and establishing a network of permanently protected and managed lands for the conservation of covered species. Both action alternatives provide the same level of offset for impacts of the taking, as measured in functional acres for most covered species or acres for the Oregon spotted frog. There is no expected difference between the alternatives with regard to the Olympia pocket gopher or the Oregon spotted frog because each action alternative relies on new reserves for all conservation for these species. For the remaining covered species, the action alternatives would differ in regard to the composition of covered lands. Under the Proposed Action, these conservation sites would include a mix of new reserves, working agricultural lands and habitat enhancement on existing reserves. Under the Modified HCP Alternative, the same conservation would be achieved only on new reserves managed for high-quality habitat. This means the conservation network would be slightly smaller under the Modified HCP Alternative, with equivalent outcomes for covered species. We estimate the network of conservation lands would be approximately 360 acres smaller under the Modified HCP Alternative than under the Proposed HCP (FEIS Section 3.4.3.3)

In summary, both action alternatives would have equivalent outcomes for covered species, and would result in similar impacts on the human environment. Since the network of the network of conservation lands would be slightly larger and more diverse under the Proposed Action, we consider that to be the Environmentally Preferred Alternative.

## **Decision and Rationale**

The Service's decision is to select the Proposed Action, to issue an ITP that is consistent with the take avoidance, minimization, mitigation, and monitoring measures described both above and in more detail in the HCP, and to include terms and conditions in the ITP that the Service deems necessary to ensure that HCP take limits, monitoring, mitigation, financial assurance, and other applicant commitments are met. Issuance of the ITP authorizes the incidental take of the six covered species identified above, subject to incidental take limits, other requirements of the HCP (take coverage for unlisted covered species would become effective if and when the species is listed), and the terms and conditions of the ITP. The term of the ITP is 30-years. The Service's No Surprises Rule (50 C.F.R. §§ 17.22 and 17.32) would apply to the permit.

Based on the findings in the FEIS, our Biological Opinion (Service 2022a), our ESA section 10 Findings and Recommendations (Service 2022b), this ROD, and other information in the administrative record, the Proposed Action is not likely to appreciably reduce the likelihood of the survival and recovery of the covered species in the wild, and the HCP otherwise complies with the permitting standards of 16 U.S.C § 1539(a)(2)(B). The applicant's proposed HCP, as clarified by the terms and conditions of the ITP, is approved because implementation would meet the statutory criteria for issuance of an ITP under section 10 of the ESA 16 USC §1539(a)(2)(B) and Service regulations found at 50 C.F.R. §13 and 50 C.F.R §§17.22, 17.32. Implementation of the final HCP and issuance of the ITP best fulfills the Service's statutory mission and responsibilities while meeting the agency purpose and need to conserve listed species.

Consistent with the requirements of 40 CFR 1505.2(a)(3), the Service has determined that implementation of the HCP, together with Service-required ITP terms and conditions, ensures that all practicable means of avoiding and minimizing environmental harm from implementation of the Proposed Action are adopted. The Proposed Action includes all practicable means to avoid or minimize the take of covered species. Where take of covered species cannot be avoided, the impact of the taking is expected to be fully offset through mitigation. The Service has not identified environmental harm to resources other than covered species and associated habitat from implementation of the Proposed Action. Therefore, no additional environmental harm avoidance or minimization measures have been adopted. Also consistent with the intent of 40 CFR 1505.2(a)(3), implementation of mitigation commitments will be monitored (HCP Section 6.2) and documented through annual reports (HCP Section 7.15). These commitments are made enforceable through the ITP and through other enforceable documents required by the HCP including, without limitation, conservation easements and County-issued permits and approvals that incorporate HCP and ITP requirements.

## **Conditions**

The Service will include terms and conditions in the ITP necessary to ensure that:

- Conservation lands included in the conservation system authorized by the ITP carry sufficient legal protections
- Mitigation site management plans are sufficient,
- Mitigation remains effective and is implemented ahead of the impact of the taking caused by covered activities.

- HCP implementation measures are funded and endowments for permanent conservation actions are non-wasting.
- Impacts to covered species are minimized using the measures described in the HCP, wherever practicable.
- Impacts to covered species are monitored and quantified using the best available information on cover type and species distribution.
- The types and amounts of covered activities are clear:
  - Forestry and mining, including without limitation oil, gas, and mineral extraction are not covered activities,
  - Clarifications on activities related to beaver dam management.
- Other requirements the Service determines necessary and appropriate.

## **Public Involvement**

### ***Scoping***

The Service initially published an initial Notice of Intent (NOI) to prepare a DEIS for the Thurston County HCP on March 20, 2013 (78 FR 17224). In response, the Service and the County received 23 comment letters. The Service used public scoping comments and the best available information to provide technical assistance to the County in the further development of the HCP. Additionally, the County held public meetings, information sessions, and workshops with interested stakeholders throughout the development of their HCP.

On July 30, 2020, Thurston County submitted a draft HCP to the Service. After review, the Service issued a new NOI on October 16, 2020 (85 FR 65861), to announce our intent to develop a DEIS and to open a new public scoping period. The NOI opened a 30-day public scoping period through November 16, 2020. The Service received 19 comment letters during this scoping period. The Service also received a letter and a related email from the U.S. Environmental Protection Agency (EPA) on November 18, 2020, and December 17, 2020, respectively. During the 2020 scoping period, Thurston County concurrently accepted public scoping comments pursuant to the Washington State Environmental Policy Act (SEPA) through a collaborative effort with USFWS and received five public comment letters.

All scoping comments were considered in preparation of the draft and final EIS and are included in the FEIS as Appendix E. Appendix E of the FEIS also includes a summary of the alternatives, information, and analyses received in public scoping comments.

### ***Draft EIS***

The DEIS was published in the Federal Register for public review on September 24, 2021, in accordance with requirements set forth in the NEPA (42 U.S.C. §4321 et seq.) and its implementing regulations (40 C.F.R. §§1500–1508). Public comments (including State, Tribal, and local governments and public commenters) were accepted for a 45-day period following publication of the Notice of Availability (NOA; 86 Federal Register 53111). Two public information meetings were held during the comment period.

During the comment period, comments were accepted on both the DEIS and the draft HCP. Because the DEIS was developed jointly among the Service and the County, for respective NEPA and SEPA responsibilities, public comments collected through NEPA and SEPA procedures were pooled and considered collectively. Eight comment letters were received by the Service and 24 comment letters were received by the County. In total, 29 unique commenters provided 32 comment letters, including some duplicates. Twenty-two letters were received from private citizens. Two environmental organizations provided comment letters. One comment letter each was received from a utility company, a developer, a farmer, a local municipality, a state agency, and a federal agency.

Comments received during the public comment on the DEIS included the following:

- Support for the HCP and Permit issuance.
- Interest in HCP implementation procedures and timing.
- Interest in protections for covered species and for non-covered species
- Suggestions to ensure a complete analysis in the FEIS.
- Other information for consideration in the NEPA process.

### ***Final EIS***

Following the public comment period on the DEIS and the draft HCP, comments received were incorporated into and resulted in some clarifications of the FEIS, including the following:

- Expanded discussions of impacts of climate change on resources, including a discussion of carbon sequestration
- Clarifications to the extent of the study area for several resource areas
- Clarifications to the relationship between planned actions addressed in this EIS and growth management within city limits
- Clarifications about HCP implementation and covered activities
- Clarification about the potential for the alternatives to affect mining activities or the potential impacts of those activities on the environment
- Incorporation of information and guidance obtained through the public comment process.

No substantial changes to the proposed action or other alternatives were made that are relevant to environmental concerns, and no significant new circumstances or information relevant to the impacts of the alternatives analyzed in the Draft EIS were found. Copies of all comments received, as well as the Service's responses to all substantive comments, are included in FEIS Appendix G, and Attachment 1 to this ROD.

The FEIS was announced in the Federal Register on May 13, 2022 (87 FR 29361). During the 30-day wait period following FEIS publication, no comment letters were received.



**Decision on Permit Issuance**

The Service certifies that we have considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters in developing the environmental impact statement and this ROD.

Based on the foregoing findings with respect to the proposed action, the Service will approve the issuance of Permit Number ESPER0043489 in accordance with the Thurston County HCP.

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Nanette Seto,  
Acting Deputy Regional Director,  
Pacific Region One,  
U.S. Fish and Wildlife Service

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Date

## References

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- Service (U.S. Fish and Wildlife Service). 2022a. Biological Opinion for the Thurston County Habitat Conservation Plan. Prepared by U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office. Lacey, Washington. Document (# 2022-0011016). 154 p. + 7 appendices
- Service (U.S. Fish and Wildlife Service). 2022b. Findings and Recommendations for Thurston County Habitat Conservation Plan. Prepared by U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office. Lacey, Washington. 37 p.
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- Thurston County. 2022. Final Thurston County Habitat Conservation Plan. Prepared by Thurston County Community Planning and Economic Development Department. Prepared for Thurston County. Olympia, Washington. February 22, 2022. 194 p. + 13 appendices.
- Thurston County and Service (U.S. Fish and Wildlife Service). 2022. Final Environmental Impact Statement for the Thurston County Habitat Conservation Plan in Thurston County, Washington. Prepared by Confluence Environmental Company. Seattle, Washington. February, 2022. 195 p (with tables and figures) + 7 appendices.
- TRPC (Thurston Regional Planning Council). 2020. Draft Buildable Lands Report for Thurston County. November 2020. Available at:  
<https://www.trpc.org/DocumentCenter/View/8325/Buildable-Lands-Report-DRAFT-November-2020>. Accessed March 10, 2021
- TRPC (Thurston Regional Planning Council). 2021. Buildable lands report for Thurston County. June, 2021. 105pp +3 appendices.