MEMORANDUM

SUBJECT: Planning Commission consideration of Open Space tax program applications

Planning Commissioners,

Staff completed its review of the two attached Open Space tax program applications, considered the merits of the proposals, and found them to be appropriate for the Open Space tax classification, and an asset to the County. After the presentation of the applications on February 1, 2012, a public hearing may be set for March 7, 2012. The following is a brief outline of the applications in question:

**Provost Property**
- 19 acres
- Farm and Agricultural Conservation Land (FACL)
- Estimated tax shift: $483 (50% reduction)

**Bentley Property**
- 15 acres
- Significant Wildlife Habitat Areas
- Resource Restoration
- Conservation easement
- Estimated tax shift: $1,837 (90% reduction)

If you have any questions, please contact me at (360) 754-3355 x5477

Olivia Story

Attachments:
A – Prevost Application
B – Bentley Application
Attachment A
A. Site Characteristics & Context
The parcel under consideration totals 20 acres with 19 for the open space –open space tax program. The existing home site and accessory buildings occupy 1 acre, and are not part of this application. This property was previously in the Open Space-Agricultural tax program administered by the assessor’s office. Unfortunately, the applicant was not able to meet the minimum income requirements to remain in that program. However, they do qualify for the Open Space-Open Space tax program. The property owners are applying for a high priority classification of Farm and Agricultural Conservation Land (FACL), and Significant Wildlife Habitat Areas. The grazing of cattle is the primary agriculture use on the property. Zoning of the site is Rural Residential/Resource 1 unit per 5 acres (RRR 1/5). Land to the north, south, east, and west are also zoned RRR 1/5. The Urban Growth Area for the City of Rainier is located approximately half a mile to the east of the subject property.
B. Public Benefit Rating System

1. For which Priority Resources categories does the property qualify?
   - Farm and Agriculture Conservation Land (FACL)

2. Which public access category has the property owner agreed to?
   - No public access

3. Does a conservation easement or historic easement apply to the property?
   - No

4. Summary of Public Benefit rating:

<table>
<thead>
<tr>
<th>Category</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farm and Agriculture Conservation Land</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>3</strong></td>
</tr>
</tbody>
</table>

5. Estimated tax shift:

The property is eligible for 3 points under the Thurston County Public Benefit Rating System, qualifying the property for a 50% reduction in market value. The following estimate shows the existing tax shift under the current tax rate, the proposed tax shift under the Open Space-Open Space Program, and the estimated difference:

- **Land Value**: $64,390
- **Avg Levy Rate**: $0.015
- **Current Taxes Paid**: $965.85

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Value</td>
<td>$64,390</td>
</tr>
<tr>
<td>Reduction Percent</td>
<td>50%</td>
</tr>
<tr>
<td><strong>Assessment With Reduction</strong></td>
<td>$32,195</td>
</tr>
<tr>
<td>Land Value</td>
<td>$64,390</td>
</tr>
<tr>
<td>Reduction</td>
<td>$32,195</td>
</tr>
<tr>
<td><strong>Land Value under Program</strong></td>
<td>$32,195</td>
</tr>
<tr>
<td>Reduced Value</td>
<td>$32,195</td>
</tr>
<tr>
<td>Avg Levy Rate</td>
<td>0.015</td>
</tr>
<tr>
<td><strong>Tax Paid Under Program</strong></td>
<td>$483</td>
</tr>
<tr>
<td>Current Taxes Paid</td>
<td>$966</td>
</tr>
<tr>
<td><strong>Estimated Tax Shift</strong></td>
<td>$483</td>
</tr>
</tbody>
</table>

**Note:** These estimates are based on Thurston County Assessor averages. Actual taxes will vary from year to year as the property’s base market value changes.
C. Additional Considerations
Minimum eligibility requirements ensure that only properties meeting the Open Space classifications definitions could be classified as open space. This property meets all of these minimum qualifications. The management of the property as open space is consistent with other properties in the area.

D. Recommendation
Staff recommends approval of classification of 19 acres owned by Gary Prevost and Patricia Fookes-Prevost as open-space land for current use assessment.

Attachments: 1. Application form  
2. Conservation plan  
3. Aerial photo
Thurston County Development Services
Open Space Classification Application
Page 1 of 4

11 110701 VA
Permit Type: Open Space
Sub Type: Open Space-Open Space
Work Type: 
Site: 13332 MILITARY RD SE RAINIER WA 98576
Assessor Property ID: 21607120100
Applicant: GARY T PREVOST
Owner: PATRICIA A FOOKES
Owner: GARY T PREVOST

OPEN SPACE CLASSIFICATION APPLICATION
FOR CURRENT USE-BASED PROPERTY TAX ASSESSMENT

IMPORTANT: Please read the Instructions, Things to Know, and Eligibility Criteria sheets before completing this form.

Name(s) of Applicant(s) (Signature)
GARY PREVOST PATRICIA A FOOKES PREVOST

Mailing Address
PO BOX 547
RAINIER, WA 98576
Day Phone Number(s) 360-446-2764

Tax Parcel Number(s) 21607120100

General Location of Property
THREE MILES NW RAINIER

1. Legal Interest in Property:
☑ Owner ☐ Contract Purchaser ☐ Other (Describe)

2. Total Acreage of Property

3. Acreage to be Enrolled in Open Space Program

4. What is the Property Currently Used for? AGRICULTURAL LAND

5. What kind of public access do you propose? (Note: Public access is not required for program eligibility.)

☑ None

☐ Partial Access (1 point): Public access on a seasonal basis or access by members of the organization utilizing the facility.

☐ Substantial Access (2 points): Year-round access to members and available to the public upon special arrangement. Any user fees may not exceed three times the average cost for members.

☐ Unlimited Access (4 points): Year-round access to the public without special arrangement.

Please describe or explain:
6. Do you propose to apply a conservation easement or historic easement to your property?

☐ Yes (type: _____________)  
☐ No

Who will hold (or does hold) the easement? ___________________________________________

7. Is the open space area dedicated under zoning or subdivision ordinance requirements or used to achieve the maximum development potential under zoning?

☐ Yes  ☒ No

8. **Before completing this part of the application**, use the blue "Eligibility Criteria Checklist" to determine if your property qualifies for any of the Priority Resource categories. (Property must be eligible for at least one Priority Resource and at least 3 points in order to be classified as open space.) Use the list below to indicate which Priority Resource categories you can document eligibility for. Refer to the gray "Help List" for sources of assistance, if needed.

**HIGH PRIORITY RESOURCES** (3 points each)

# Acres

______ a. Archaeological Sites
______ b. Farm and Agricultural Conservation Land (FACL)
______ c. Fish-Rearing Habitat–Ponds and Streams
______ d. Geological and Shoreline Features
______ e. Historical Sites
______ f. Private Recreation Areas
______ g. Rural Open Space Close to Urban or Growth Areas
______ h. Significant Wildlife Habitat Areas
______ i. Special Plant Sites
______ j. Urban or Growth Area Open Space

**MEDIUM PRIORITY RESOURCES** (2 points each)

# Acres

______ a. Public Land Buffers
______ b. Scenic Vista or Resources

**LOW PRIORITY RESOURCES** (1 point each)

# Acres

______ a. Resource Restoration
9. **IMPORTANT! Read all of the following information regarding tax liabilities before signing this application form.**

You will owe to the County the following additional taxes, interest and penalties when your property is removed or withdrawn from current use classification. The following is a summary of state law. Consult RCW Chapter 84.34 for details.

**STATEMENT OF ADDITIONAL TAX, INTEREST, AND PENALTY DUE UPON REMOVAL OF CLASSIFICATION:**

A. Upon removal of classification, an additional tax shall be imposed which shall be due and payable to the county treasurer 30 days after removal or upon sale or transfer, unless the new owner has signed the Notice of Continuance. The additional tax shall be the sum of the following:

   a. The difference between the property tax paid as "Open Space Land" and the amount of property tax otherwise due and payable for the last seven years had the land not been so classified; plus

   b. Interest upon the amounts of the difference (a), paid at the same statutory rate charged on delinquent property taxes.

   c. A penalty of 20% shall be applied to the additional tax if the classified land is applied to some other use except through compliance with the property owner's request for withdrawal process, or except as a result of those conditions listed in (B) below.

B. The additional tax, interest, and penalty specified in (8A) above shall not be imposed if removal resulted solely from:

   a. Transfer to a governmental entity in exchange for other land located within the State of Washington.

   b. A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power.

   c. A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property.

   d. Official action by an agency of the State of Washington or by the county or city where the land is located disallows the present use of such land.

   e. Transfer of land to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020.

   f. Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (See RCW 84.34.108(6)(f)).

   g. Removal of land classified as farm & agricultural land under RCW 84.34.020(2)(e) (farm homesite).
h. Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.

i. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.

j. The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

k. The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as designated forest land under chapter 84.33 RCW, or classified under this chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.

Removals and withdrawals from the program are processed by the Thurston County Assessor.

I (We) the undersigned, swear under the penalty of perjury, that I (We) am (are) the owner(s) or contract purchaser(s), of the land described above and that the above responses are made truthfully and to the best of my (our) knowledge. I (We) also understand that, should there be willful misrepresentation or willful lack of full disclosure on my (our) part, the granting authority, which may hereafter classify said land under the provisions of Chapter 84.34 RCW, may subsequently remove the classification. In addition, I (we) am (are) aware of the potential tax liability described above.

DATE: 9-19-2011

OWNERS: [Signature]

[Signature]

SUBSCRIBED and SWORN to before me this 19th day of September, 2011.

[Notary Public Seal]

Mercy A. Vertz
Notary Public in and for the State of Washington, residing in Thurston County
We are filing this application for open space. Our land conservation plan is to maintain and protect our property in three ways:

We propose to clear the brush annually and enhance the growth of native vegetation. Maintain the integrity of the fence lines. Provide a habitat for wildlife including nest boxes, through and the area for blue bird reproduction. Annual herbicide spraying if needed will be used to control invasive weeds to promote better habitat and soil erosion control.

THURSTON COUNTY
RECEIVED
SEP 19 2011
PERMIT ASSISTANCE CENTER

Mary Prevost
Patricia M. O'Toole Prevost
Attachment B
STAFF REPORT
APPLICATION FOR OPEN SPACE CLASSIFICATION

<table>
<thead>
<tr>
<th>Date</th>
<th>February 1, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Michelle Bentley</td>
</tr>
<tr>
<td>Address</td>
<td>9404 Crete St SE, Olympia, WA 98501</td>
</tr>
<tr>
<td>Location of Property</td>
<td>South of Olympia, off Rich Rd. near Lattins Cider Mill</td>
</tr>
<tr>
<td>Acres in Application</td>
<td>16, with 15 to be enrolled</td>
</tr>
<tr>
<td>Parcel number(s)</td>
<td>11720210300</td>
</tr>
</tbody>
</table>

A. Site Characteristics & Context
The parcel under consideration totals 16 acres with 15 for the open space –open space tax program. The existing home site and accessory buildings occupy 1 acre, and are not part of this application. The property owners are applying for a high priority classification of Significant Wildlife Habitat Areas. With several areas of the property classified as category I wetlands, this property would be an asset to the County in the open space program. The property owners are also applying for a low priority resource classification as Resource Restoration with Partial Public Access. The zoning of the site is Rural Residential/Resource 1 unit per 5 acres (RRR 1/5). The land to the north, south, east, and west are also zoned RRR 1/5. The City of Tumwater Urban Growth Area is located approximately 1 mile to the west of the subject property. The property has a conservation easement through the Capitol Land Trust.
B. Public Benefit Rating System

1. For which Priority Resources categories does the property qualify?
   - Significant Wildlife Habitat Areas
   - Resource Restoration

2. Which public access category has the property owner agreed to?
   - Partial public access

3. Does a conservation easement or historic easement apply to the property?
   - Yes, through Capitol Land Trust

4. Summary of Public Benefit rating:

<table>
<thead>
<tr>
<th>Category</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant Wildlife Habitat Areas</td>
<td>3</td>
</tr>
<tr>
<td>Resource Restoration</td>
<td>1</td>
</tr>
<tr>
<td>Partial Access</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>5</strong></td>
</tr>
</tbody>
</table>

5. Estimated tax shift:

   The property is eligible for 5 points under the Thurston County Public Benefit Rating System, plus a conservation easement, qualifying the property for a 90% reduction in market value. The following estimate shows the existing tax shift under the current tax rate, the proposed tax shift under the Open Space-Open Space Program and the estimated difference:

<table>
<thead>
<tr>
<th>Land Value</th>
<th>Avg Levy Rate</th>
<th>Current Taxes Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>$136,050</td>
<td>x 0.015</td>
<td>$2,040.75</td>
</tr>
</tbody>
</table>

   **Land Value under Program**: $13,605

<table>
<thead>
<tr>
<th>Reduced Value</th>
<th>Avg Levy Rate</th>
<th>Tax Paid Under Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>$13,605</td>
<td>x 0.015</td>
<td>$204</td>
</tr>
</tbody>
</table>

   **Estimated Tax Shift**: $1,837

   **Note**: These estimates are based on County Assessor averages. Actual taxes will as property base market value changes.

   Bentley
C. **Additional Considerations**
Minimum eligibility requirements ensure that only properties meeting the Open Space classifications definitions could be classified as open space. This property meets all of these minimum qualifications. The management of the property as open space is consistent with other properties in the area.

D. **Recommendation**
Staff recommends approval of classification of 16 acres owned by Michelle Bentley as open-space land for current use assessment.

Attachments:  1. Application form
              2. Conservation plan
              3. Aerial photo
OPEN SPACE CLASSIFICATION APPLICATION
FOR CURRENT USE-BASED PROPERTY TAX ASSESSMENT

IMPORTANT: Please read the Instructions, Things to Know, and Eligibility Criteria sheets before completing this form.

Name(s) of Applicant(s)  Michelle Bentley
Mailing Address  9404 Creek St SE
                 Olympia, WA 98501
Day Phone Number(s)  360-455-1985
Tax Parcel Number(s)  1720210300
General Location of Property  South of Olympia off Rich Road, near Lattins Cider Mill

1. Legal Interest in Property:
   - [ ] Owner  [ ] Contract Purchaser  [ ] Other (Describe)

2. Total Acreage of Property  10

3. Acreage to be Enrolled in Open Space Program

4. What is the Property Currently Used for?  Residence, Organic Fruit Veg Garden, Habitat

5. What kind of public access do you propose?  (Note: Public access is not required for program eligibility.)
   - [ ] None
   - [ ] Partial Access (1 point): Public access on a seasonal basis or access by members of the organization utilizing the facility.
   - [ ] Substantial Access (2 points): Year-round access to members and available to the public upon special arrangement. Any user fees may not exceed three times the average cost for members.
   - [ ] Unlimited Access (4 points): Year-round access to the public without special arrangement.

Please describe or explain:
6. Do you propose to apply a conservation easement or historic easement to your property?

☑ Yes (type: Conservation)  Does one exist now? ☐ Yes (type: ________)  ☐ No

Who will hold (or does hold) the easement? ________________

7. Is the open space area dedicated under zoning or subdivision ordinance requirements or used to achieve the maximum development potential under zoning?

☐ Yes  ☑ No

8. Before completing this part of the application, use the blue "Eligibility Criteria Checklist" to determine if your property qualifies for any of the Priority Resource categories. (Property must be eligible for at least one Priority Resource and at least 3 points in order to be classified as open space.) Use the list below to indicate which Priority Resource categories you can document eligibility for. Refer to the gray "Help List" for sources of assistance, if needed.

**HIGH PRIORITY RESOURCES** (3 points each)

# Acres

______  a. Archaeological Sites

______  b. Farm and Agricultural Conservation Land (FACL)

______  c. Fish-Rearing Habitat--Ponds and Streams

______  d. Geological and Shoreline Features

______  e. Historical Sites

______  f. Private Recreation Areas

______  g. Rural Open Space Close to Urban or Growth Areas

☑  h. Significant Wildlife Habitat Areas

______  i. Special Plant Sites

______  j. Urban or Growth Area Open Space

**MEDIUM PRIORITY RESOURCES** (2 points each)

# Acres

______  a. Public Land Buffers

______  b. Scenic Vista or Resources

**LOW PRIORITY RESOURCES** (1 point each)

# Acres

☑  a. Resource Restoration
9. IMPORTANT! Read all of the following information regarding tax liabilities before signing this application form.

You will owe to the County the following additional taxes, interest and penalties when your property is removed or withdrawn from current use classification. The following is a summary of state law. Consult RCW Chapter 84.34 for details.

STATEMENT OF ADDITIONAL TAX, INTEREST, AND PENALTY DUE UPON REMOVAL OF CLASSIFICATION:

A. Upon removal of classification, an additional tax shall be imposed which shall be due and payable to the county treasurer 30 days after removal or upon sale or transfer, unless the new owner has signed the Notice of Continuance. The additional tax shall be the sum of the following:

   a. The difference between the property tax paid as "Open Space Land" and the amount of property tax otherwise due and payable for the last seven years had the land not been so classified; plus

   b. Interest upon the amounts of the difference (a), paid at the same statutory rate charged on delinquent property taxes.

   c. A penalty of 20% shall be applied to the additional tax if the classified land is applied to some other use except through compliance with the property owner’s request for withdrawal process, or except as a result of those conditions listed in (B) below.

B. The additional tax, interest, and penalty specified in (8A) above shall not be imposed if removal resulted solely from:

   a. Transfer to a governmental entity in exchange for other land located within the State of Washington.

   b. A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power.

   c. A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property.

   d. Official action by an agency of the State of Washington or by the county or city where the land is located disallows the present use of such land.

   e. Transfer of land to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020.

   f. Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (See RCW 84.34.108(6)(f)).

   g. Removal of land classified as farm & agricultural land under RCW 84.34.020(2)(e) (farm homesite).
h. Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.

i. The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.

j. The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

k. The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as designated forest land under chapter 84.33 RCW, or classified under this chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.

Removals and withdrawals from the program are processed by the Thurston County Assessor.

I (We) the undersigned, swear under the penalty of perjury, that I (we) am (are) the owner(s) or contract purchaser(s), of the land described above and that the above responses are made truthfully and to the best of my (our) knowledge. I (We) also understand that, should there be willful misrepresentation or willful lack of full disclosure on my (our) part, the granting authority, which may hereafter classify said land under the provisions of Chapter 84.34 RCW, may subsequently remove the classification. In addition, I (we) am (are) aware of the potential tax liability described above.

DATE: 10/5/11       OWNERS: Michelle Bentley


SUBSCRIBED and SWORN to before me this 5th day of October, 2011.

Notary Public in and for the State of Washington, residing in Thurston County
Michelle Bentley, having an address at 9404 Crete Street ("Grantor"), and Capitol Land Trust, a Washington Nonprofit Corporation, having an address at 209 East 4th Avenue, Suite #205, Olympia, Washington, 98501 ("Grantee") (collectively "Parties") hereby enter into this Deed of Conservation Easement ("Easement") on this ______ day of _________, 2011 and agree as follows:

I. BACKGROUND

1) Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Thurston County, Washington, more particularly described in Exhibit A (legal description) and shown on Exhibit B: Site Map of Property Subject to Conservation Easement (site map), which are attached and incorporated into this Easement by this reference.

2) The Property possesses natural, scenic, open space, scientific, biological, and ecological values (collectively "Conservation Values") of great importance to Grantor, the people of Thurston County, and the people of the State of Washington, described in paragraphs 3 through 9 of this section.

3) The legislatively declared policies of the State of Washington in the Washington State Open Deed of Conservation Easement
Space Tax Act, Chapter 84.34 RCW, provide “that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.” Under the Open Space Act, lands eligible for preferential real property tax treatment include such lands as the Protected Property where the permanent preservation of its open space lands in their current use would conserve and enhance natural resources and promote conservation of marine shorelines, threatened wildlife habitat, scenic viewsheds, and agricultural and forest lands.

4) Thurston County. Protection of the Property is consistent with Thurston County Comprehensive Plan Chapter 9, Goal 1, Objective B: Critical Areas in which the Thurston County Board of County Commissioners has recognized “the county should continue to protect areas containing wildlife habitats which are important to the long-term viability of important species of Thurston County, habitats which are unique or rare, or which contain important species from these State Priority Species which are known to occur in Thurston County, as provided in the Critical Areas Ordinance.”

5) Consistency with Plans. Protection of the Property’s Conservation Values is consistent with goals and actions identified in the following plans: WRIA 13 Limiting Factors Analysis (Haring & Konovsky 1999), Salmon Habitat Protection and Restoration Plan for Water Resource Inventory Area 13: Deschutes (Thurston County 2005), Capitol Land Trust Strategic Plan (2008).

6) Spurgeon Creek, on which the Property is located, provides important spawning and rearing habitat for several species of anadromous fish including steelhead, coho salmon, Chinook salmon, and coastal cutthroat trout.

7) The Property would be extremely desirable for residential development because of its location and orientation. In the absence of this Conservation Easement, the Property could be developed in a manner that would destroy the open space and rural character of the Property, and its ecological value.

8) There is a reasonable possibility that Capitol Land Trust may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.

9) Specific Conservation Values on the Property have been documented in a natural resource inventory dated __________, 2011, on file at offices of Grantee and incorporated herein by this reference (“Baseline Documentation”), which consists of reports, maps, photographs, flora and fauna surveys, and other documentation that collectively provide an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.
10) Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land uses on the Property that do not significantly impair or interfere with those Conservation Values. These current uses include the residential, agricultural, and recreational uses consistent with this Easement.

11) Grantor, as owner in fee of the Property has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Property, and desires to transfer such rights to Grantee. This Easement, however, shall not be interpreted to deprive Grantor’s ability to also identify, protect, and preserve such Conservation Values.

12) Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended (“Code”), and the regulations promulgated thereunder, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is the conservation, appreciation, and stewardship of the diverse open space of the southern Puget Sound region.

13) Grantee agrees, by accepting this grant, to honor the intentions of Grantor’s stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and generations to come.

II. AGREEMENT

1) Consideration. For the reasons stated above, and in consideration of the above Recitals, the mutual covenants, terms, conditions, and restrictions contained in this Easement, and other good and valuable consideration, the receipt of which the Grantor acknowledges, Grantor grants, conveys and warrants to Grantee a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the restrictions contained in this Easement.

2) Conveyance of Real Property. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and is made as an absolute, unconditional, unqualified, and completed grant, subject only to the mutual covenants, terms, conditions and restrictions set forth in the Easement and those encumbrances of record.

3) Purpose. The purpose of this Easement is to assure the Property will be retained forever, predominantly in its natural and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values except as specifically allowed herein. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those that are consistent with the purpose of this Easement.
4) **Public Access.** This Easement does not grant to the general public a right of access.

5) **Rights of Grantee.** In order to accomplish the purpose of this Easement, Grantor conveys to the Grantee the following rights:

   a) **Identification and Protection.** To identify, protect and preserve in perpetuity and to enhance by mutual agreement the Conservation Values of the Property.

   b) **Access.** Grantee shall have the following rights of access to the Property:

      i) To enter upon the Property upon prior verbal or written notice to the Grantor not less than ten (10) days in advance, for the purpose of making a general inspection to assure compliance with this Easement;

      ii) To allow persons or groups to enter upon the Property for educational, scientific, and biological purposes to observe and study on the Property; provided that any such persons or groups are first approved by the Grantor, make prior arrangements with the Grantor, agree to provide the Grantor with copies of any data or reports resulting from such research, agree to respect the Grantor's privacy, and agree to abide by any restrictions on access and behavior set forth by the Grantor;

      iii) To enter the Property at such other times as necessary if Grantee has a reason to believe a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement and to undertake or require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. Such entry shall be upon prior reasonable notice to Grantor if such notice will not in the reasonable opinion of Grantee result in further damage to the Conservation Values of the Property.

   c) **Markers.** To place and replace small markers to identify boundaries, corners, and other reference points on the Property, to facilitate route finding and boundary line identification, provided such signs are in a location and of a content, size and nature that are approved of in advance by Grantor.

   d) **Injunction and Restoration.** To enjoin any use of, or activity on, the Property that is inconsistent with the purpose of this Easement, including violations of law by members of the public, and to require or undertake the restoration of such areas or features of the Property as may be damaged by uses or activities not allowed by the specific provisions of this Easement;

   e) **Enforcement.** To enforce the terms of this Easement;

   f) **Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Property in

Deed of Conservation Easement
accordance with the provisions set forth in this Easement;

g) **Development Rights.** All development rights now or hereafter allocated to, implied, reserved, or inherent in the Property, except as specifically reserved in this Easement are terminated and extinguished; and

h) **Restoration.** To engage in restoration or habitat enhancement projects on the Property with the Grantor's prior permission. To plant, prune and mark, cut, and/or remove trees and other vegetation for the purposes of restoring or maintaining the aesthetic, natural or scenic qualities of the Property, for prevention of insect infestation, for fish and wildlife habitat enhancement or manipulation projects, and for public health and safety, with the Grantor's prior notice and approval as provided in Section 7.

6) **Conservation Easement Limitations and Permitted Activities.** Any use of, or activity on the Property that violates the specific terms and conditions of the Conservation Values or this Easement is prohibited, and Grantor acknowledges and agrees they will not conduct, engage in or permit any such use or activity. Without limiting the generality of this Section, the following are some specific restrictions, prohibited uses and permitted uses of the Property:

a) **Subdivision.** The legal or "de facto" division, subdivision, or partitioning of the Property is prohibited. This easement also prohibits the transfer of any development right allocated, implied, reserved, or inherent in the Property ("Development Rights") to any other property outside the Property and the use of the Property or the Development Rights for the purpose of calculating the permissible lot yield of any other property.

b) **Development and Construction.** The placement or construction of any buildings, permanent structures or other improvements of any kind (including, without limitation, pipelines, towers, poles, wells, septic systems, drain fields, fences, roads, and parking areas, enclosures, or other improvements of any kind), temporary or permanent (hereinafter collectively referred to as "Improvements"), are prohibited, except as follows:

i) Temporary structures such as greenhouses, sweatlodges, tents, and animal pens are permitted. A temporary structure is a structure without foundations or footings and which can be readily and completely dismantled and removed from the site between periods of actual use.

ii) Temporary structures shall not be located within 50 feet of mean high water line of Spurgeon Creek or within 25 feet of any wetland.

iii) No structure shall significantly materially or adversely affect the Conservation Values of the Property, including by contamination, runoff, noise or light.

c) **Roads and Trails.** The construction of new roads, trails is prohibited. However, Grantor
may maintain, renovate, or replace roads, culverts, parking areas, and trails in existence on the effective date of this Easement in substantially their present location, or reasonably close thereto if a bona fide farming or access reason supports such change, and create new roads, parking areas, and trails in the Easement to the extent it is necessary for Grantors to exercise the rights provided elsewhere in this Easement.

d) Fences. Constructing and maintaining fences is permitted, provided they are wildlife-passable in accordance with then-current recommendations of the Washington Department of Fish and Wildlife. Wildlife impassable fences are not permitted except around hay stacks and other forage crops that have been harvested for farm animals.

e) Utilities. The installation of utility systems, including without limitation, water, sewer, septic, power, fuel and communication lines and related facilities (“Utility Systems”) is prohibited except to maintain, replace or extend existing utility systems or to install new utility systems, including water, septic, sewer, power, fuel, and communication lines and related facilities to the extent necessary to serve residential dwellings and structures allowed in this Easement.

f) Removal of Trees and other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees, shrubs, ground cover, or other non-invasive vegetation, or the harvesting, digging, cutting or removal of forest products, gems and artifacts from the Property is prohibited except as follows:

i) To clear brush, prune, trim, thin, cut and remove trees and other vegetation only to the extent necessary to maintain current uses on the property, to preserve or enhance the conservation values of the property, for fire protection, crop or farming requirements.

ii) As necessary to conduct agricultural activities in the Agricultural Use Zone as provided in Section 6(g).

iii) For Grantor’s personal, non-commercial use of dead and down firewood, provided that it does not impair the Conservation Values of the Property and remains over 50 feet back from the edge of any course of flowing water, including intermittent streams.

g) Agricultural Uses. Agricultural uses are prohibited except in the Agricultural Use Zone as provided in this Section 6(g).

i) Agricultural Use Zone. Agricultural activities must be confined to the portions of the Property labeled as “Agricultural Use Zone” as shown in Exhibit B.

ii) Agricultural activities permitted in the Agricultural Use Zone are limited to: cultivation of hay, grasses, fruits, and vegetables; raising of chickens, ducks, and
the extent determined necessary by Grantee to preserve or protect the Conservation Values of the Property, is prohibited. Feral domestic mammals and individuals from the family Muridae of the order Rodentia (old world rats and mice) may be killed without approval of Grantee if done so in a manner so as not to adversely impact the native plants and animals.

j) **Water Rights.** The transfer of any water right originating on the Property to any other property outside the Property and the use of such water rights for the purpose of calculating the permissible lot yield of any other property is prohibited.

k) **Wells.** Drilling for or operating new water wells or the operation of surface water collection systems is prohibited except Grantor may drill and maintain additional wells to provide water for permitted uses on the Property and may drill one additional well for residential purposes. Grantor shall notify Grantee before drilling additional wells or developing springs.

l) **Wetlands.** Except in the Wetland Mitigation Area depicted in Exhibit B, the draining, filling, dredging or diking of any wetland areas, except as necessary to restore fish and/or wildlife habitat, is prohibited unless necessary to protect Grantor or any residence on the Property during an emergency. Ditching of agricultural fields is permitted provided that it does not negatively impact the watershed or water quality of Spurgeon Creek or impair the Conservation Values of the property.

m) **Ponds and Water Courses.** Except in the Wetland Mitigation Area depicted in Exhibit B, the alteration of any ponds and water courses, the creation of new water impoundments or water courses, or the disturbance of any soil within fifty (50) feet of the thread of any water course is prohibited, except as necessary to restore ecosystem processes relative to fish and/or wildlife habitat or as needed to undertake permitted uses and activities on the property.

n) **Flooding.** Grantor may undertake such measures as are necessary to prevent flood damage to structures allowed in this Easement provided such activities avoid or minimize impacts to the Conservation Values of the Property.

o) **Soil and Water.** Any non-agricultural use or activity that causes or is likely to cause soil degradation, soil erosion, or pollution of any surface or sub-surface waters is prohibited.

p) **Alteration of Land.** The non-agricultural alteration of the surface of the land, including but not limited to, the excavation, grading, fill or removal of soil, sand, gravel, rock, peat, or sod is prohibited except as deemed necessary by Grantee to preserve or protect the conservation or wildlife habitat improvement values of the Property or as to prevent flood damage to structures allowed in this Easement provided such activities avoid or minimize impacts to the Conservation Values.
q) **Mining.** The exploration for, or development and extraction of, oils, gases, coal, ores, minerals including sand and gravel, geothermal resources, fossils, archaeological, historical or cultural objects, on or below the surface of the Property, is prohibited.

r) **Waste Disposal.** The dumping, disposal or storage of any non agricultural waste, rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other dangerous, or hazardous waste or material as defined in any applicable federal, state or local laws, regulations or ordinances is prohibited, except to compost and store vegetative and other wastes generated by permitted uses and activities on the Property, provided that such other wastes are stored temporarily in appropriate containment for removal at reasonable intervals and in compliance with applicable federal, state, and local laws.

s) **Use of Property.** There shall be no industrial activities on the Property. Conducting a business or other commercial activity is permitted provided such commercial activities do not harm or threaten to harm the Conservation Values of the Property. Grantor may conduct and allow organized educational and academic study such as wildlife, fish and bird surveys, vegetation surveys, water quality sampling, general environmental education, and classroom visits on the Property, provided such activities are conducted in a manner and intensity that do not adversely impact the Conservation Values or Purpose of this Easement.

t) **Signs.** The placement of any signs or billboards is prohibited except to advertise sale of agricultural goods on the farm, to state conditions of access to the Property, prohibit trespass and dumping, and to identify the conservancy of the Property provided such signs do not materially and adversely interfere with the Conservation Values of the Property.

u) **Communication Structures.** Communication structures of any nature, such as cell phone towers, without the express written approval of Grantee are prohibited.

v) **Motor Vehicles.** The operation of motorcycles, all terrain vehicles, snowmobiles, or any other type of off-road motorized vehicles is prohibited. Motorized off-road vehicle use is permitted for maintenance and inspection purposes and for transportation to facilitate agricultural uses.

w) **Recreational Use.** Recreational activities which adversely impact the Conservation Values of this Easement are prohibited. Passive recreational activities such as hiking, wildlife viewing, bird watching, cross country skiing, fishing, property tours are specifically allowed on the Property, provided that such activities are conducted in a manner and intensity that do not adversely impact the Conservation Values or purpose of this Easement. Motorized recreation is prohibited. The charging of any fee for recreational activities licensed by the Washington Department of Fish and Wildlife, such as hunting, trapping, or fishing, is prohibited.
x) **Solar and Wind Facilities.** Grantor may place or construct facilities for the development and utilization of solar or wind energy resources solely for use on the Property provided that the design and location shall not interfere with the Conservation Values of the Property. Grantor shall notify Grantee prior to placement or construction.

y) **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 prohibited. Encumbrances of this type existing at the time of the granting of this Easement are identified in the attached Exhibit C: Permitted Exceptions.

z) **Emergencies.** Grantor may undertake other activities necessary to protect public health or safety, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity (“Emergency Action”), provided that any such activity shall be conducted so that interference with the Conservation Values of the Property is avoided to the greatest extent practicable.

7) **Notice and Approval.**

a) **Notice:** Grantor shall notify Grantee prior to undertaking the activities requiring notice and approval in this Easement. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required and other than for an Emergency Action, Grantor shall notify Grantee in writing not less than forty five (45) 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 activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

b) **Approval.** Where Grantee’s approval is required and other than for an emergency action, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor’s written request for approval. Grantee’s approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement. Grantee’s approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity. If Grantor must undertake an Emergency Action, Grantor may proceed with such action without Grantee’s approval only if Grantor notifies Grantee prior to taking such action promptly after the emergency and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

c) **Addresses for Notices.** Any notice, demand, request, consent, approval, or communication that Grantor or Grantee desires or is required to give to the other Party shall be in writing either served personally or sent by first class mail, postage prepaid, addressed as follows:

**Deed of Conservation Easement**
To Grantor:  Michelle Bentley
             9404 Crete St. SE
             Olympia, WA 98501

To Grantee:  Capitol Land Trust
             A Washington Nonprofit Corporation
             209 4th Avenue East, #205
             Olympia, Washington 98501

or to such other address as Grantor or Grantee from time to time shall designate by written notices to the other Party.

8) **Alternative Dispute Resolution.** In the event a dispute arises between Grantee and the Grantor relating to this Easement, a formal mediation regarding the dispute may be held by the Parties, to be attended by representatives with decision-making authority, to attempt in good faith to negotiate a mutually acceptable resolution of the dispute. If the dispute cannot be resolved within a reasonable time not to exceed sixty (60) days, which time may be extended by mutual consent of the Parties, then the Parties may bring an action at law or in equity to resolve the dispute and enforce the terms of this Easement.

9) **Remedies.**

a) **Immediate Action Required.** If Grantor or Grantee, each in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantor or Grantee may, without notice to the other Party and without utilizing the Alternative Dispute Resolution procedures contained in this Easement, file an action in Thurston County Superior Court to obtain a temporary restraining order and preliminary injunction. All such actions for injunctive relief shall be taken without Grantee or Grantor being required to post bond or provide other security. However, upon entry of a preliminary injunction restraining the conduct in question in a manner sufficient to prevent or mitigate significant damage to the Conservation Values of the Property, the court may refer the matter to mediation in accordance with the Alternative Dispute Resolution provisions of this Easement.

b) **Nature of Remedy.** Grantee’s or Grantor’s rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor and Grantee agree that their remedies at law for any violation of the terms of this Easement are inadequate and that each Party shall be entitled to the injunctive relief described in this Section both prohibitive and mandatory, in addition to such other relief to which each Party 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. The remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. No provisions of this Easement shall be interpreted to preclude Grantee from obtaining injunctive relief.

c) **Costs of Enforcement.** In the event Grantor or Grantee finds it necessary to take action against the other Party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing Party in any such action or proceeding shall be paid all costs, reasonable attorneys’ by the other Party and all such costs, attorneys’ fees shall be included in any judgment, order or award secured by such prevailing Party.

d) **Damages.** Grantee shall be entitled to recover damages for damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of environmental values. Without limiting Grantor’s liability in any way, Grantee may, in its sole discretion, apply any damages recovered to the cost of undertaking corrective or restoration action on the Conservation Zone.

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

f) **Waiver of Certain Defenses.** Grantor and Grantee acknowledge that they have carefully reviewed this Easement and have consulted with and been advised by counsel of its terms and requirements. 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 adverse possession or prescription relating to the Property or this Easement.

g) **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 Washington Department of Fish and Wildlife.

h) **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 Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor’s control, including, without limitation, fire, flood, storm and earth movement, from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes, or from acts of trespassers or third parties. In the event the
terms of this Easement are violated by acts of trespassers, Grantor agrees, at Grantee’s option and expense, to join in any suit, to assign its right of action regarding damage to the Easement to Grantee, or to appoint Grantee as its attorney-in-fact, for the purpose of pursuing enforcement action for damage to the Easement against the responsible Parties. It shall be Grantor’s burden to demonstrate that a violation was caused by a trespasser and that Grantor could not reasonably have anticipated or prevented such violation.

i) **Compliance Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days 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 Property as of Grantee’s most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor’s expense, within thirty (30) days of receipt of Grantor’s written request and payment therefore.

j) **Governing Law.** The laws of the State of Washington shall govern this Easement. The courts of Thurston County, State of Washington, shall be the venue for any legal proceedings either Party commences with regard to this Easement. The Parties agree to submit themselves to the jurisdiction of the courts of the State of Washington for any disputes arising out of this Easement.

10) **Access by Public.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

11) **Costs, Liabilities, Taxes and Environmental Compliance.**

a) **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 Property, including the maintenance of adequate comprehensive general liability insurance coverage. Such insurance shall include Grantee’s interest and name Grantee as an additional insured and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured Party. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other 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 Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor.

b) **Taxes.** Grantor shall pay, before delinquency, all taxes, assessments, fees, charges of whatever description levied on or assessed against the 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.
Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon ninety (90) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by the Grantor at the maximum rate allowed by law for judgments.

c) **Grantor’s Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, and successors and assigns of each of them (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments caused by Grantor or persons under Grantor’s control or by Grantor’s employees, agents and contractors, including, without limitation, reasonable attorneys’ and consultants’ fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is not a consequence of any activity of any of the Indemnified Parties.

d) **Grantee’s Indemnification.** Grantee shall hold harmless, indemnify, and defend Grantor and Grantor’s heirs, personal representatives, successors, and assigns (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys’ and consultants’ fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is a consequence of Grantee’s actions or omissions or the actions or omissions of Grantee’s members, directors, officers, employees, agents or contractors on or about the Property.

e) **Environmental Representations and Warranties.** Grantor represents and warrants that as of the effective date of this Easement to the best of Grantor’s actual knowledge:

i) There are no apparent or latent defects in or on the Property that materially affect the Conservation Values;

ii) Grantor and the Property are in substantial compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations, and requirements;

iii) There has been no release, generation, treatment, disposal, storage, dumping, burying or abandonment (“Release”) on the Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, 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 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") and the Model Toxics Control Act, as amended ("MTCA") or any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product ("Hazardous Substances");

iv) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

v) Grantor has not Released any Hazardous Substances off-site, nor have they Released any substance at a site designated or proposed to be designated as a federal or state Superfund sites;

vi) There is no pending or threatened litigation affecting, involving, or relating to the Property or any portion thereof; and

vii) No civil or criminal proceedings or investigations have been instigated are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

viii) Remediation. If, at any time, there occurs, or has occurred, a Release in, on, or about the Property of a Hazardous Substance, Grantor agree to take all reasonable steps necessary to assure its containment and remediation, including any cleanup that may be required by regulatory officials, unless the release was caused by Grantee, in which case Grantee shall be responsible remediation.

ix) 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 to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor’s activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of CERCLA or MTCA.

12) Subsequent Transfer or Extinguishment.

a) Extinguishment. This Easement can only be terminated or extinguished, whether in whole or in part, pursuant to the provisions contained in the Uniform Administrative Requirements for Grants and Cooperative Agreements to the State and Local Deed of Conservation Easement
Governments (43 CFR Part 12, Subpart C, 12.71 Real Property), which requires WDFW to request disposition instructions from USFWS pursuant to the USFWS Grant, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with this Easement. Grantee shall use all such proceeds in a manner consistent with the purpose of this Easement.

b) Valuation. This Easement constitutes a real property interest immediately vested in Grantee, 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 the Easement (minus any increase in the value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reasons of this grant, pursuant to Section 170(h) of the Code. The values used shall be determined pursuant to the valuation requirements of Section 170(h) of the Code and the Treasury Regulations thereunder. For the purposes of this Section, the ratio of the value of the Easement to the value of the Property (minus any increase in the value after the date of this grant attributable to improvements) unencumbered by the Easement shall remain constant.

c) Condemnation. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation for the value of the rights conveyed by this Easement and Grantor shall be entitled to compensation for the value of all other rights relating to the Property in accordance with applicable law.

d) Subsequent Transfers. Grantor agrees (1) to 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 Property, including without limitation, a leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee 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 shall not impair the validity of this Easement or limit its enforceability in any way.

13) Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130,
Chapter 84.34 RCW, or Section 170(h) of the Code, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Thurston County, Washington, and any other jurisdiction in which such recording is required.

14) **Assignment and Succession.**

a) **Assignment.** This Easement is transferable, but Grantee may only assign its rights and obligations under this Easement with prior approval of the USFWS pursuant the USFWS Grant and only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the purpose of this Easement continues to be carried out by the transferee. Grantee shall notify Grantor in writing, at Grantor’s last known address, in advance of such assignment.

b) Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Recreation and Conservation Office. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit E.

c) **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Code (or corresponding provision of any future statute) and with due regard to the purposes of this Easement.

15) **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.

16) **Notice of Grant.** This easement was acquired with funding in part from the United States of America, acting by and through the United States Fish and Wildlife Service (“USFWS”), through a Grant Agreement entitled Cooperative Endangered Species Conservation Fund Section 6, Habitat Conservation Plan Land Acquisition, Grant # XXXX (“the USFWS Grant”). Grantor hereby acknowledges its authorization and approval of the Notice of Grant substantially in the form attached to this Easement as Exhibit X.

17) **General Provisions.**
a) **Effective Date.** The effective date of this Easement shall be the date on which the Grantor executed this Easement.

b) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

c) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. 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.

d) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, 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, as the case may be, shall not be affected thereby.

e) **Entire Agreement.** This instrument sets forth the entire agreement of the Grantor and Grantee 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 this Easement.

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

g) **Termination of Rights and Obligations.** Grantor’s rights and obligations under this Easement terminate upon transfer of Grantor’s interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer. Grantee’s rights and obligations under this Easement terminate upon transfer of Grantee’s interest in the Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h) **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.

i) **Counterparts.** Grantor and Grantee may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all 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.
i) **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.

ii) **Recitals.** Each recital set forth above is fully incorporated into this Easement.

18) **Schedule of Exhibits.**

   i. Exhibit A: Legal Description of Property Subject to Easement.
   
   ii. Exhibit B: Site Map of Property Subject to Conservation Easement.
   
   iii. Exhibit C: Permitted Exceptions
   
   iv. Exhibit D: WDFW Assignment of Right
   
   v. Exhibit E: Resource and Conservation Office Assignment of Right

**Exhibit C: Permitted Exceptions**

To have and to hold unto Grantee and its successors and assigns forever.

In Witness **WHEREOF,** the undersigned Grantor, have executed this instrument this ___ day of ______________________ 2011.

**GRANTOR:**

Michelle Bentley  

Date

**GRANTEE:**

Capitol Land Trust  
A Washington Nonprofit Corporation

Bonnie Bunning  
President  

Date

STATE OF WASHINGTON  

)  

ss.  

COUNTY OF THURSTON  

)  

On this day before me, the undersigned, a Notary Public for the State of Washington, duly commissioned and sworn, personally appeared BONNIE BUNNING, to me known to be
the President of Capitol Land Trust, a Washington Nonprofit Corporation, the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument.

Given under my hand and official seal this ___ day of ______________ 2011.

______________________________
Notary Public in and for the State of Washington
Residing at _______________________
Print Name: _______________________
My commission expires _______________________

STATE OF WASHINGTON )
COUNTY OF ___________ ) ss.

I certify that I know or have satisfactory evidence that MICHELLE BENTLEY is the person who appeared before me, and said person acknowledged that she signed this instrument, as her free and voluntary act for the uses and purposes mentioned herein.

Given under my hand and official seal this ___ day of ______________ 2011.

______________________________
Notary Public in and for the State of Washington
Residing at _______________________
Print Name: _______________________
My commission expires _______________________

Deed of Conservation Easement