

Title Page:

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Legal Authority:

For issuance of Enhancement of Survival Permits and approval of Safe Harbor Agreements and Candidate Conservation Agreements with assurances by the U.S. Fish and Wildlife Service: the Endangered Species Act of 1973, as amended, Section 10(a)(1)(A), as implemented through 50 CFR 17.32 (b)(1) and 17.22(b)(1)

For issuance of Incidental Take Permits with assurances and approval of Low-effect Habitat Conservation Plans by the National Marine Fisheries Service: the Endangered Species Act of 1973, as amended, Section 10(a)(1)(B) as implemented through 50 CFR 222.307

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¹The five parcels are owned in a number of combinations. Tree Management Plus, Inc. owns the Highway 12 and Winter Road parcels. 60 acres of the Kinzie Road parcel is owned 75% by Tree Management Plus, Inc. and 25% by Gary Davis, as tenants in common; the other 7 acres is owned by Tree Management Plus. The Burchett Road parcel is owned by Tree Management Plus and Jim and Patricia Murphy as a 50-50 tenancy in common. The Home parcel is owned by Tom and Sherry Fox, except for 7 acres owned by Tree Management Plus.

SUMMARY

The Permittee has proposed to manage five parcels of forestland totaling 144 acres in Lewis County, Washington, according to the measures set forth in this document. This document comprises a Safe Harbor Agreement (SHA) and Candidate Conservation Agreement with Assurances (CCAA) with respect to species within the jurisdiction of the U.S. Fish and Wildlife Service (FWS) and a Low-effect Habitat Conservation Plan with respect to species within the jurisdiction of the National Marine Fisheries Service of the National Oceanographic and Atmospheric Administration ("NOAA - Fisheries"). For ease of reference, this document refers to the Tagshinny Conservation Plan (or just the "Plan"), but reference to it as a "plan" is not intended to alter the function of the document as an agreement (i.e., as an SHA and CCAA with respect to the FWS).

The Plan describes the habitat enhancement activities and conservation efforts associated with forest management to be implemented by the Permittee that will benefit 17 species of fish and wildlife. All parcels covered by the Plan will be managed with prescriptive measures aimed to conserve and enhance habitat features while maintaining the economic viability of the Tagshinny Tree Farm and its owners. Habitat will be conserved, developed, and enhanced by retaining green wildlife trees and standing dead trees on timber harvest units through the development and retention of mature riparian forests with well-developed understories adjacent to wetlands and streams, and by reforestation of harvested lands to fully stocked stands of conifer, in addition to the currently existing stands of mature timber on the Permittee's property. Each parcel covered by the Plan currently provides habitat for a variety of wildlife species and one or more parcels may reasonably be expected to be occupied by other species in the future. The Permittee seeks regulatory assurances from the FWS and NOAA-Fisheries (referred to together as the "Services"), as provided under the Endangered Species Act (ESA). Assurances are possible through the issuance of Enhancement of Survival Permits (by FWS) under § 10(a)(1)(A) of the ESA and an Incidental Take Permit (by NOAA - Fisheries) under § 10(a)(1)(B) of the ESA which are supported by this Plan and the Permittee's commitment, as set forth below, to implement the provisions contained herein for an 80 year Plan and permit term.

The mature forests on the parcels covered by the Plan are dominated primarily by Douglas-fir (*Pseudotsuga menziesii*) and lodgepole pine (*Pinus contorta*). Less prominent native species include western red cedar (*Thuja plicata*), western hemlock (*Tsuga heterophylla*), and several hardwood species, Oregon ash (*Fraxinus latifolia*), quaking aspen (*Populus tremuloides*), red alder (*Alnus rubra*), black cottonwood (*Populus trichocarpa*), and bitter cherry (*Prunus emarginata*). Four of the five parcels were partially harvested prior to acquisition of the parcels by the Permittee. There is one potential fish-bearing seasonal stream located on one of the parcels with maturing hardwood and conifer canopy and understory vegetation providing riparian functions.

Under the FWS' regulations and safe harbor policy, the baseline conditions in a safe harbor agreement may be expressed in terms of numbers of animals, numbers and distribution of animals, and/or amounts of habitat. The metric employed in this Plan is habitat for the species covered by the safe harbor aspect of the Plan. The baseline in this Plan for listed species that use forested

habitat is best measured by using the amount of forest age-class of trees over 40 years old as a surrogate for habitat quality on all five parcels combined (144 acres). Forests over 40 years old serve as a reasonable starting point for providing the complex structure necessary to meet the conservation needs of numerous listed and unlisted species known to occur in and around the Tagshinny Tree Farm. Many landowners routinely harvest their forests when they are approximately 40 years old because they are concerned about regulatory restrictions that could result if listed species such as northern spotted owls or bald eagles occupy their forests. The safe harbor and incidental take baseline for covered species that use aquatic (stream and wetland) habitats is best measured by the ability of the riparian habitat to moderate water temperatures and microclimate, filter sediments, and to contribute in-stream structure adult and juvenile salmon rearing habitats for one or more species life-stages.

Forested habitat characteristics on the individual parcels are highly variable. Forest cover of trees greater than 40 years old ranges from approximately 15 to 100 percent of each parcel. Collectively, the current amount of forest stands older than 40 years on the Tagshinny Tree Farm is 25% (33 acres). This drops to 19% and 20% in the third and fourth decades, respectively, although this acreage will be older and constitute higher quality habitat than that extant at the outset of the Plan. Thus, the safe harbor baseline for this Plan is 19% of forest age class 40 years or older; 2% of which must be 80+ years old. During the middle of the Plan term, approximately 76% (101 acres) of the forested ownership will be over 40 years old, and at the end of the 80-year Plan term, approximately 26% (35 acres) will be over 40 years old.

The current condition of the riparian habitat adjacent to the potentially fish-bearing stream consists mostly of small clumps of hardwoods and thick understory brush. Conifers approximately 8 years old have been planted within 30 feet of the stream. Through active management, it is expected that the riparian habitat will develop into a mix of hardwoods and conifers that will provide sufficient shade for the stream, a source for down logs for structure and for organic matter, and the ability to filter the low levels of sediment generated by management activities on adjacent harvest units. The safe harbor baseline for the riparian zone adjacent to the potentially fish-bearing stream consists of 150 trees > 8" dbh, w/ a minimum of 8 conifers >16" dbh, per 1,000 feet of stream. This baseline is actually higher than that which is present today; it is the future condition that will be achieved through the management activities implemented under this Plan.

Forest management activities to be conducted on the Tagshinny Tree Farm include improving the health of the existing mature forest by pre-commercial and commercial thinning, pruning where practicable or necessary for reducing disease, and reforestation with a diverse group of tree species on harvested areas. Management activities under the plan are designed to protect, develop and enhance a diversity of habitats on the Permittee's property that will benefit the covered species, and minimize the impacts of these activities on covered species.

The conservation measures for the Tagshinny Tree Farm were designed to conserve and enhance habitat for 14 terrestrial vertebrate species, and three species of fish. Each of these species will be a "covered species" under the Plan and is included, as appropriate, in the permits issued and supported by this Conservation Plan. Specifically, the FWS expects to issue an Enhancement of Survival Permit covering species currently listed under the ESA (as addressed in the SHA) and covering proposed, candidate and other species of concern (as addressed in the CCAA). NOAA-Fisheries expects to issue an Incidental Take Permit for one species listed under the ESA plus one

species that is not currently listed. NOAA-Fisheries considers this Plan to be sufficient to support issuance of an Incidental Take Permit and to serve as a Low-effect Habitat Conservation Plan. As such, this Plan in effect will serve as an Unlisted Species Agreement between NOAA-Fisheries and the Permittee, whereby NOAA-Fisheries commits to issue an Incidental Take Permit.

Listed species addressed by the Plan include: the threatened northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), and Lower Columbia River steelhead (*Oncorhynchus mykiss*). None of these listed species are currently known to be present on the Tagshinny Tree Farm, but Lower Columbia River steelhead are, however, expected to occupy a portion of the Plan area in the near future because of a recent removal of a downstream fish passage barrier.

Thirteen unlisted species are addressed by the Plan. These include; Federal candidate species Lower Columbia River/SW Washington coho and salmon (*O. kisutch*), Oregon spotted frog (*Rana pretiosa*) and the coastal cutthroat trout (*O. clarki clarki*). The remaining species are considered species of concern by the Western Washington Fish and Wildlife Office, including the northwestern pond turtle (*Clemmys marmorata*), great blue heron (*Ardea herodias*), pileated woodpecker (*Dryocopus pileatus*), osprey (*Pandion haliaetus*), northern goshawk (*Accipiter gentilis*), olive-sided flycatcher (*Contopus borealis*), long-eared myotis (*Myotis evotis*), long-legged myotis (*Myotis volans*), Pacific Townsend's big-eared bat (*Corynorhinus townsendii*) and Van Dyke's salamander (*Plethodon vandykei*).

The Plan calls for monitoring of conservation measures and enhancement activities to ensure compliance with the Plan and associated permits, and to determine the effectiveness of the forest management activities in achieving habitat goals. The Permittee will submit a report to the Western Washington Fish and Wildlife Office and the NOAA - Fisheries Washington State Habitat Branch in Lacey, Washington, by March 31st of the year following the year when management activities are undertaken. The report will consist of information on timber management activities, biological information such as the status of any covered species observed on the ownership, and an assessment of the then current condition of the habitat on the Tagshinny Tree Farm.

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be used by the long-legged myotis. Take of long-legged myotis would be in the form of disturbance and degradation of roosting and foraging habitat as these forest stands are thinned and regeneration harvested; each stand receiving approximately one forest management entry per decade for these activities.

Pacific Townsend's big eared bat. Townsend's big-eared bat are likely to be found foraging at the Kinzie Road parcel. This parcel is in closest proximity to the Cowlitz River where small overhangs, or cave-like features, may occur along the banks of the river providing potential roost sites. Take would be in the form of disturbance and degradation of foraging habitat on the Kinzie Road parcel as it is managed; on average once per decade for thinning and one regeneration harvest.

The FWS has determined that this level of take is consistent with the overall goal of precluding the need to list the species, if it is assumed that conservation measures were also to be implemented on other necessary properties.

IX. TERMINATION CLAUSE

(A) The Permittee may at any time terminate this Plan for good cause (which includes but is not limited to illness or death to family members, financial hardships, other economically profitable ventures, or other reasonable circumstances making it infeasible, in the Permittee's judgment, to continue to implement this Plan) by providing thirty (30) days written notice to the Services. If and when this Plan is terminated, the associated Permits will also be relinquished. Since the Services have determined that the conservation benefits to the species covered under this Plan outweigh the impacts of the Plan at any and all points in time the Plan remains in effect, the Permittee will not be responsible for providing any mitigation following termination of this Plan and relinquishment of the associated permits.

(B) If the Permittee wishes to dispose of lands covered by this Plan, the Permittee will give the Services thirty (30) days written notice and shall indicate in such notice whether the prospective purchaser has indicated an interest in assuming the obligations of the Plan on the parcels being acquired. Upon the closing of the disposition transaction, the lands disposed of will no longer be covered by the Plan and the Permits will be terminated with respect to the disposed lands. A landowner acquiring lands covered by this Plan may receive the coverage and associated ESA assurances if (a) it agrees to continue the terms and conservation provisions of the Plan, (b) the Services agree with the Permittee and acquiring landowner on an allocation of their responsibility to meet the safe harbor baseline requirements (age class percentages) of this Plan, and (c) the Permittee and the proposed transferee comply with the regulations regarding permit transfers that are applicable at the time of the proposed transfer (such regulations currently found at 50 CFR § 13.25 and 50 C.F.R. § 222.305).

(C) If the new landowner does not become a party to the Plan and receive a transfer of the associated permits, the new owner will neither have any responsibilities under the Plan with respect to the parcels acquired nor would such landowner receive any assurances relative to ESA Section 9 restrictions or limitations that might apply to covered listed species. In such case, the safe harbor

baseline percentages of forest age classes shall continue to apply to the remaining covered lands. If, as a result of disposal of part of the covered lands, it is not possible to maintain the safe harbor baseline percentages of forest age classes on the remaining covered lands, the Services and Permittee shall confer and assess whether it is possible to establish an adjusted safe harbor baseline that is consistent with the goals of this Plan and all applicable legal requirements. If either of the Services conclude that such an adjusted baseline is not possible, such Service may terminate its Permit. Likewise, as provided for above, if the Permittee concludes that an adjusted safe harbor baseline is infeasible, the Permittee may terminate the Plan.

X. CHANGED AND UNFORESEEN CIRCUMSTANCES

If, during the term of this Plan, circumstances that are not reasonably foreseeable should occur that dramatically change baseline conditions for species covered by the SHA elements of this Plan (see Table 1), the Permittee agrees to meet with the FWS to discuss implementation of possible alternative conservation measures. Such measures will in no way be considered a requirement of the Permittee or condition of the permit, and the Permittee may, after considering the matter, decline to make any modifications to this Plan.

The assurances listed below are specific to the CCAA and Low-effect HCP elements of the Tagshinny Conservation Plan and associated permits, provided that the Plan is being properly implemented by the Permittee. These assurances apply only with respect to species covered by the CCAA and Low-effect HCP elements of the Conservation Plan and do not apply to the SHA elements of the Plan.

(1) *Changed circumstances provided for in the Plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the Plan, the Permittee will implement the measures specified in the Plan.

(2) *Changed circumstances not provided for in the Plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the Plan, the Services will not require any conservation and mitigation measures in addition to those provided for in the Plan without the consent of the Permittee, provided the Plan is being properly implemented.

(3) *Unforeseen circumstances.*

(A) In negotiating unforeseen circumstances, the Services will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the Plan without the consent of the Permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Services may require additional measures of the Permittee where the Plan is being properly implemented, but only if such measures are limited to

modifications within conserved habitat areas (i.e., areas not available for timber harvest or other management activities), if any, or to the Plan's conservation measures for the affected species, and maintain the original terms of the Plan to the maximum extent possible.

Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Plan without the consent of the Permittee.

(C) The Services will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Services will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;
- (2) Percentage of range adversely affected by the Plan;
- (3) Percentage of range conserved by the Plan;
- (4) Ecological significance of that portion of the range affected by the Plan;
- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation measures under the Plan; and
- (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(4) *Litigation affecting this Section X.*

(A) If and to the extent that any final, unappealable judicial decision or determination, including without limitation the decision of the District Court for the District of Columbia in *Spirit of the Sage Council et al v. Norton et al*, 98-CV-1873 (D.D.C. 2003), holds that any of the Services' "No Surprises" assurances rules (or similar successive rules) as embodied in this Section X were unlawfully included in Plans such as this one, then the provisions of this Section X shall be enforceable only to the degree allowed by any such decision or determination; *provided that* the balance of this Plan shall remain in full force and effect to the maximum extent allowed by law (including without limitation the Permittee's ability to terminate this Plan and relinquishment the Permits under Section IX of this Plan).

(B) In the event that an "No Surprises" assurances rule is vacated, held unenforceable or otherwise enjoined but is later reinstated or re-adopted, the provisions of this Section X shall be automatically re-instated to the maximum extent allowed by such reinstatement or re-adoption and shall apply throughout the full term of this Plan. If such reinstated or re-adopted rule differs from the provisions of this Section X, the Permittee and the Service(s) shall meet and confer in good faith concerning amending this Section X to be fully consonant with such reinstated or re-adopted rule.

(C) Notwithstanding any provision of this Plan to the contrary, the occurrence of any of the matters described in Section (4)(A) of this Section X shall be deemed to constitute "good cause" for

Permittee to invoke its rights to terminate this Plan and relinquish the Permits under Section IX(A) of this Plan.

XI. AMENDMENT PROCEDURES

Amendments to the Plan may be undertaken only if all parties consent in writing. Amendments to the Plan may include, but are not limited to: mapping corrections; language clarifications; adding species; and land additions or dispositions.

When a species not addressed by this Plan becomes listed, proposed for listing, a candidate for listing in the future, or a Service-designated species of concern, the Permittee may request that the applicable Service add the species to the appropriate Permit. The Services will add the species to the Permit within 90 days of receipt of a written request by the Permittee if they determine that all applicable legal requirements have been met; any change to the Plan or amendment to a section 10(a)(1)(A) Permit to include a non-covered species would be subject to the same review process and issuance criteria as the original Plan and Permit. This will include a determination that the species is present, or may be present in the future, as a direct result of the property owner's conservation actions taken under the Plan. Upon this conclusion, the Services will: 1) at the request of the landowner amend the Plan to reflect the status of the species on or near the Permittee's ownership, the baseline conditions if appropriate, and the benefits of the conservation provisions to the species, and 2) review and revise the Permit, as applicable, to address the presence of additional listed species on the property. If it is appropriate to add species that becomes listed, proposed for listing, a candidate for listing, or a Service-designated species of concern, to the Permit, the Services must determine the enhancement or maintenance actions that are being implemented under this Plan by the Permittee which apply to the newly covered species, and provide a net conservation benefit to a listed species, or preclude the need to list a proposed species, candidate species, or a Service-designated species of concern.

The Permittee may request additional lands be added to the area covered by the Permit. The Services may amend the Permit and this Plan to include such lands, after determining that all applicable legal requirements have been met. The Permittee shall submit to the Services a proposal to include additional lands as covered lands accompanied by a map showing the location and boundaries of the additional lands and a complete description of the type of interest acquired, and all relevant baseline conditions. Any new parcels added will be managed according to the terms of the Plan, provided that extension of the Plan provisions will not result in impacts not analyzed and mitigated under the Plan and will not result in unauthorized take under the Federal Permits.

XII. FUNDING AVAILABILITY

The Permittee will provide the funding necessary for the Permittee's implementation of the enhancement activities and conservation measures proposed under this Plan. The activities

proposed are expected to provide the necessary funding through the sale of timber to implement and complete the requirements of the Plan applicable to the Permittee. Appendix C provides an estimate of projected harvest by decade. The primary cost associated with the proposed action is forgone revenue by deferring timber harvest, rather than a direct expenditure or capitalization cost, therefore funding is assured for implementation of the Plan.

XIII. NO MONETARY DAMAGES

No party shall be liable in damages to any other party or other person for any breach of this Plan, any performance or failure to perform any obligation imposed by this Plan, or any other cause of action arising from this Plan. Nothing in this Plan is intended to limit the authority of the Services to seek penalties for violation of law or otherwise fulfill their responsibilities under the ESA.

XIV. COUNTERPARTS EFFECTIVE.

This Agreement may be executed in counterparts.

XV. SIGNATURES

This Agreement, effective and binding on the date of last signature below, is between Tom and Sherry Fox, Gary Davis, Jim and Tricia Murphy, the U. S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service of the National Oceanographic and Atmospheric Administration (NOAA-Fisheries):

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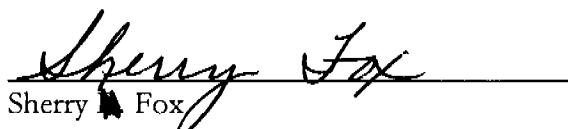
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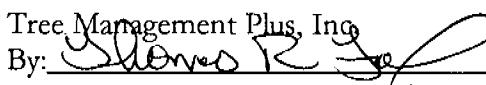
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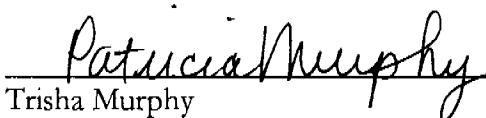
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