

**FINDINGS AND RECOMMENDATIONS FOR ISSUANCE OF AN ESA SECTION
10(a)(1)(B) INCIDENTAL TAKE PERMIT FOR THE KAUFMAN HABITAT
CONSERVATION PLAN, THURSTON COUNTY, WASHINGTON**

I. DESCRIPTION OF PROPOSED ACTION

A. Introduction

On August 4, 2015, Kaufman Holdings, Inc., Kaufman Real Estate, LLC, and Liberty Leasing & Construction, Inc. (jointly referred to as the Applicants), submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) and submitted a Habitat Conservation Plan (the Kaufman HCP; or HCP) (Krippner Consulting 2016) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA) (16 USC §1531-1544). This document presents the Service's analysis and findings whether the Kaufman HCP meets the ITP issuance criteria described in section 10(a)(2)(B) of the ESA.

Documents used in preparation of this statement of Findings and Recommendations include the Kaufman HCP (Krippner Consulting 2016), the Service's biological opinion on the permit application (Service 2016), and the Environmental Assessment (EA) prepared to comply with the Service's National Environmental Policy Act of 1969 (NEPA; 40 CFR 1505.2) responsibilities to analyze the effects of issuing the proposed permit (SJC Alliance 2016). These documents are hereby incorporated by reference as described in 40 CFR 1508.13.

The Kaufman HCP acknowledged that the proposed covered activities could not completely avoid incidental take of species listed as threatened or endangered under the ESA, and specified as follows:

1. The impacts likely to result from such taking.
2. What steps the Applicants will take to minimize and mitigate such impacts, and the funding available to implement such steps.
3. What alternative actions to such taking the Applicants considered and the reasons why such alternatives were not being utilized.
4. Other such measures required as necessary or appropriate for the purposes of the plan.

The Service included the "Five Point Policy" as an addendum to the Habitat Conservation Planning Handbook on July 3, 2000 (65 FR 35242). The policy emphasizes the development of biological goals and objectives, adaptive management strategies, monitoring provisions, permit duration considerations, and public participation in HCPs as a way to increase their effectiveness. The Kaufman Properties HCP addresses all aspects of the "Five Point Policy".

The biological opinion documented the Service’s determination that the activities conducted in compliance with the requested ITP are not likely to jeopardize the continued existence of the four covered species or result in the destruction or adverse modification of designated critical habitat for listed covered species.

The EA analyzed and compared three alternatives and the resulting effects on the human environment: 1) the proposed action, issuance of the requested ITP; 2) a no action alternative, and 3) individual site by site HCPs and ITPs.

B. Covered Species and Covered Lands

The requested ITP would authorize incidental take of the endangered Taylor’s checkerspot butterfly (*Euphydryas editha taylori*), the threatened streaked horned lark (*Eremophila alpestris strigata*), and two threatened subspecies of Mazama pocket gophers (Olympia subspecies *Thomomys mazama pugetensis* and Yelm subspecies *T. m. yelmensis*) (collectively, the covered species) for a period of 20 years.

The geographic boundaries of the HCP consist of a plan area that includes all relevant aspects of the proposal including the ranges of the listed species that may be affected and the permit area where covered activities will occur. Though a number of additional candidate, threatened, and endangered species may occur within the plan area described in the HCP, the covered activities are not expected to result in incidental take of any candidate, threatened, or endangered species beyond those described in the HCP. The Applicants therefore did not include any additional candidate, threatened, or endangered species in the HCP. We determined that only the four species described by the Applicants as covered species are likely to be adversely affected by the proposed action, and clarify here that the “No Surprises Rule” assurances (63 FR 8859) apply only to the four covered species described in the conservation plan and listed on the ITP.

The permit area incorporates 13 project development sites and 2 permanent conservation sites (36.2-acre Leitner Prairie and 51.3-acre Deschutes Corridor) located in Thurston County, Washington (see figure 1 in the HCP). The 13 project development sites comprise a total of 204 acres that will be developed or redeveloped for commercial or industrial uses. Of this total acreage, construction activities will impact up to approximately 170 acres. Construction will not occur on the remaining 34 acres because they are set aside under pre-existing commitments related to local governmental (Thurston County) land use ordinances. Of the approximately 170 acres that will be impacted by development and construction activities, approximately 68 acres are occupied or potentially suitable habitat for the covered species. On the two proposed conservation sites, permanent management of 87.5 acres will maintain preferred vegetation and suitable habitat conditions for the covered species. Descriptions of the size, location, and other

pertinent information for each of the project development and conservation sites are found in the HCP Plan Area (HCP pages 10-13), Table 1 (HCP page 11), and in HCP Appendices A and B.

C. Covered Activities

Incidental take of the covered species could result from actions related to HCP implementation including the following covered activities as described in the HCP: 1) pre-construction vegetation management of the thirteen development sites; 2) construction of new buildings, pavement, and infrastructure; and 3) mitigation actions on the on-site set-asides and the Leitner Prairie and Deschutes Corridor conservation sites (HCP pages 13-14).

1. Pre-construction vegetation management of the thirteen development sites may include:
 - a. Mowing.
 - b. Mechanical removal and control of nonnative, invasive, and/or undesirable plant species.
 - c. Preparing sites for planting.
 - d. Planting of native seeding.
 - e. Surveys for covered species.
2. Construction may include:
 - a. Construction surveys.
 - b. Grading and earthmoving activities associated with construction.
 - c. Installation and construction of infrastructure associated with new construction projects, including roadways, sidewalks, parking lots, sewer lines, utilities, and lighting.
 - d. Installation of new facilities, including foundations, commercial building, associated structures, parking lots, and access routes.
 - e. Landscaping.
3. Ongoing vegetation management on the on-site set asides and on the Leitner Prairie and Deschutes Corridor conservation sites may include:
 - a. Mowing.
 - b. Mechanical removal and control of nonnative, invasive and/or undesirable plant species.
 - c. Preparing sites for planting.
 - d. Planting.
 - e. Prescribed burns.
 - f. Monitoring.

D. Proposed Impacts

In the biological opinion (Service 2016) the Service analyzed the effects of covered activities and the type and amount of take anticipated to occur over the 20-year duration of the proposed ITP for each of the covered species.

The Service anticipates incidental take of the Taylor's checkerspot butterfly will be difficult to detect for the following reasons: incidental take of actual species numbers may be difficult to detect when the species has a small body size; finding a dead or impaired specimen is unlikely; losses may be masked by seasonal fluctuations in numbers or other causes; and the life history phases of the species makes detection difficult. Take is anticipated in the form of harm to all life stages of the Taylor's checkerspot butterfly as a result of crushing by equipment or associated foot traffic. Harm will occur on 8.5 acres of the 17 acres of suitable butterfly habitat on conservation sites annually in years 10 to 20 of HCP implementation.

The Service anticipates take in the form of harm of streaked horned larks exposed to mowing or other vegetation management. During the 20-year permit term, vegetation management on the covered lands will:

1. Disturb or destroy a maximum total of 1 streaked horned lark nest, including 2 adults and 3 eggs or chicks once in years 4 to 20 of HCP implementation.
2. Injure or kill a maximum total of 3 adult streaked horned larks foraging on the covered lands; of these, no more than 1 individual is likely to be injured or killed every 6 years between years 4 to 20 of HCP implementation.

The Service anticipates incidental take of the Olympia and Yelm subspecies of the Mazama pocket gopher will be difficult to detect for the following reasons: these species are fossorial, and, as such, finding a dead or injured specimen is unlikely. However, the following level of take of these listed species can be anticipated by changes in habitat area and exposure of suitable habitat to equipment operation for construction, habitat restoration, and habitat maintenance:

Take of the Olympia Mazama pocket gopher is anticipated in the form of harm caused by habitat loss on 10 development sites, and by equipment operation for habitat restoration and maintenance on those and at 1 conservation site that is likely to injure or kill individual pocket gophers:

1. Harm of all life history stages of the Olympia pocket gopher is likely to occur on 40.3 acres of suitable habitat on 10 development sites incrementally, as each site is developed, over the 20-year permit term.
2. Harm of all life stages of the Olympia pocket gopher occupying portions of the 10 development sites and the Deschutes Corridor conservation site is also likely to occur as follows:
 - a. Habitat restoration will occur:
 - i. Three times per year on all 46 acres of suitable pocket gopher habitat in years 1 to 3 of HCP implementation.

- ii. Twice per year on 60 percent of the suitable pocket gopher habitat (27.6 acres) in years 4 to 9 of HCP implementation.
- b. Habitat maintenance activities will affect:
- i. 9.2 acres of suitable pocket gopher habitat annually in years 1 to 3 of HCP implementation, 18.4 acres of suitable pocket gopher habitat annually in years 4 to 9 of HCP implementation.
 - ii. 46 acres of suitable pocket gopher habitat annually in years 10 to 20 of HCP implementation.
 - iii. 40.3 acres of suitable pocket gopher habitat annually on 10 development sites until each site is developed in years 1 to 20 of HCP implementation .

Take of the Yelm pocket gopher is anticipated in the form of harm caused by habitat loss on 3 development sites, and by equipment operation for habitat maintenance on those and 1 conservation site that is likely to injure or kill individual pocket gophers:

1. Harm of all life history stages of the Yelm pocket gopher due to habitat loss is likely to occur on the 27.7 acres of suitable pocket gopher habitat on 3 development sites incrementally, as each site is developed in years 1 to 20 of HCP implementation.
2. Harm of all life history stages of the Yelm pocket gopher on the 3 development sites and the Leitner Prairie conservation site is also likely to occur from annual habitat maintenance on:
 - a. 27.7 acres of suitable pocket gopher habitat on the 3 development sites until each site is developed in years 1 to 20 of HCP implementation.
 - b. 36.2 acres of suitable pocket gopher habitat on the Leitner Prairie conservation site in years 1 to 20 of HCP implementation.

E. Conservation Strategy

The Conservation Program section in the Kaufman HCP (pages 57-65) describes the Applicants' strategies to provide for the conservation of the covered species, and consists of six components:

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

The Biological Goals of the program include:

1. The Applicants will contribute to conservation of Taylor's checkerspot butterfly with the goal of maintaining persistence of the species in the Permit area by establishing and permanently maintaining areas of sufficient size and plant species composition that can support foraging and reproduction of the species. The Applicants will also generate short-term benefits for the species by managing potential Taylor's checkerspot habitat that currently exists on the project development sites until such time as these sites are developed.
2. The Applicants will contribute to conservation of streaked horned lark with the goal of maintaining persistence of the species in the Permit area by creating and permanently maintaining suitable habitat that can support streaked horned lark foraging behavior. To accomplish this goal, the Applicants will restore and provide for the ongoing maintenance of streaked horned lark foraging habitat on the conservation sites. Short-term benefits will also be provided by maintaining potential foraging habitat that currently exists on the project development sites until such time as these sites are developed.
3. The Applicants will also contribute to the conservation of the Olympia and Yelm subspecies of Mazama pocket gophers by restoring and permanently managing sufficient habitat to maintain viable populations of these subspecies in the Permit area. The Applicants will also generate short-term benefits for the Olympia and Yelm subspecies of Mazama pocket gophers by managing and maintaining potential habitat on each project development site until such time as these sites are developed.

Biological objectives describe measurable performance targets to evaluate progress towards achieving the plan's biological goals:

1. Dedicate the approximately 36.18 acre Leitner Prairie conservation site for the permanent conservation of Taylor's checkerspot butterfly, the streaked horned lark, and the Yelm subspecies of Mazama pocket gopher.
2. Dedicate the approximately 51.32 acre Deschutes Corridor conservation site for the permanent conservation of Taylor's checkerspot butterfly, the streaked horned lark, and the Olympia subspecies of Mazama pocket gopher.
3. Control unauthorized access and activities on the permanent conservation sites to benefit the Covered Species for which they are managed. This objective will benefit Taylor's checkerspot butterfly, streaked horned lark, and both subspecies of Mazama pocket gophers on the Conservation Sites.
4. Manage invasive plant species, especially Scot's broom (*Cytisus coparius*), on project development sites to achieve and maintain the following standards until such time as these properties are developed. Maintain a total areal cover of no more than 10% Scot's broom and woody vegetation greater than 12 inches in height. Management actions that

will achieve these objectives are described in the Site Management Plans found in Appendices C, D, and E. This objective will benefit Taylor's checkerspot butterfly and both subspecies of Mazama pocket gophers where they exist on these sites.

5. Manage invasive plant species, especially Scot's broom, on the permanent conservation sites to the following performance standard. Ensure that no more than 10% of the area on these sites consists of Scot's broom and woody vegetation greater than 12 inches in height in years 1 through 9, and no more than 5% cover of Scot's broom and woody vegetation greater than 12 inches in height thereafter. Management actions that will be implemented to achieve these objectives are described in the Site Management Plans found in Appendices C and D. This objective is intended to benefit all of the biological goals established for this HCP.
6. Establish and maintain areas that support plant species, as specified in the HCP, that are important for Taylor's checkerspot reproduction and feeding on the permanent conservation sites. Management will ensure that at least 10% of the area of the Leitner Prairie and Deschutes Corridor conservation sites will support these plantspecies by year 4 after permit issuance. Management will increase the cover of these species such that at least 20% of the area of these permanent conservation sites will support these species by year 10 after permit issuance, and will maintain at least this total cover by these species thereafter. Management actions that will be implemented to achieve these objectives are described in the Site Management Plans found in Appendices C and D. This objective supports biological goal 1 for Taylor's checkerspot butterfly.
7. Manage vegetation to establish mostly flat and sparsely vegetated open grassland suitable for streaked horned lark foraging. Create and maintain at least 20% of the area of each conservation site as a contiguous bare ground or open area covered primarily with lichens and moss, and/or low stature grasses and forbs (less than 12 inches tall) by year 4 after permit issuance. Manage vegetation to increase this habitat type to achieve and maintain at least 40% of the area of this site by year 10 after permit issuance, and maintain this thereafter. Management actions that will be implemented to achieve these objectives are described in the Site Management Plans found in Appendices C and D. This objective supports biological goal 2 for streaked horned lark.
8. Manage the permanent conservation sites to restore and maintain these sites as grasslands consisting of forb cover of at least 20% for the first three years after permit issuance, increasing to at least 40% from years four through nine, and at least 80% thereafter. This objective is intended to support biological goals 1 and 3 for Taylor's checkerspot butterfly and both subspecies of Mazama pocket gopher.
9. To further support Taylor's checkerspot butterfly and the two covered subspecies of Mazama pocket gophers, the permanent conservation sites will be managed to restore and maintain areas that meet the definition of high quality grasslands (as defined elsewhere in this document, the EA, and HCP). By year four after permit issuance, at least 10% of the area at the Leitner Prairie and Deschutes Corridor sites will meet this standard, and by

MBTA-covered species. The MBTA prohibits the taking, killing, or possessing of migratory birds, and identifies prohibited activities including the taking of individual birds, young, feathers, eggs, nests, etc. Service policy provides that an ESA Section 10 permit that covers listed migratory birds also serves as a Special Purpose Permit under MTBA (50 CFR 21.27). The streaked horned lark is a threatened species covered under the proposed ITP that would also serve as an MBTA Special Purpose Permit.

The Applicants will avoid and minimize impacts to the streaked horned lark by scheduling timing of activities to occur when this species is unlikely to be present in the permit area. Vegetation management activities (such as the use of brush cutters, rotary cutters, or riding mowers) are unlikely to affect the migratory streaked horned larks in south Puget Sound if these actions implemented during the September through February period when these birds have migrated out of the area. When vegetation management occurs during months when streaked horned larks may be in the area (March through August), the Applicants will employ field observers to determine if the species are present. Vegetation management activities will be suspended on project development or conservation sites that are found to be occupied for the duration that that year's breeding season (until September 1) or until individuals of the species are no longer present on the site.

Mitigation Measures

The HCP describes both short-term and permanent measures intended to mitigate the impacts of the taking resulting from the covered activities. Management of the project development sites during site management (pre-development) to maintain suitable habitat for the covered species will provide temporary refugium sites until these locations are developed.

The 36.2-acre Leitner Prairie and 51.3-acre Deschutes Corridor conservation sites will be dedicated to the management of the four covered species. These permanently conserved sites will serve to offset habitat loss for the covered species on the thirteen project development sites. In addition to setting aside large blocks of permanently managed lands, habitat restoration activities will expand the amount and quality of available habitats for the covered species in these managed areas. Both of the conservation sites are within Reserve Priority Areas for the Mazama pocket gopher. The Service identified these areas as important for the conservation and recovery of the listed species in the Mazama Pocket Gopher Conservation Strategy and Mitigation Guidance memorandum (Service 2015). The dedication of the Leitner Prairie and Deschutes Corridor properties as permanent conservation sites will eliminate the threat that these sites could be developed, and therefore reduce the impacts of fragmentation and loss of habitat considered important for the long-term survival and recovery of the species.

Monitoring

The ongoing monitoring of covered activities, species presence/persistence, and incidental take of the covered species will provide measures of the success of the various management actions. Monitoring activities are described in HCP Section 5 (page 62). Annual reports will summarize implementation of covered activities on development and conservation sites and will summarize incidental take either by the number of individuals of covered species (when that can be determined) or by the area of habitat impacted. Monitoring is intended to ensure that suitable habitat is maintained for the covered species.

Adaptive Management

An adaptive management plan identifies the procedures the Applicants will follow to adjust and improve the effectiveness of ongoing management in response to changing site conditions or as new information regarding the ecology and management of the covered species becomes available. The adaptive management plan and specific steps identified to increase management effectiveness are described in part 6 of the HCP's Conservation Program (page 63).

II. Analysis of Effects

The effects of the proposed action and impacts from HCP implementation are fully analyzed and described in the Service's biological opinion (Service 2016) and in the EA (SCJ Alliance 2016) and are summarized here.

Taylor's Checkerspot Butterfly

The loss of an estimated 6.33 acres of potential Taylor's checkerspot butterfly habitat scattered among the thirteen project development sites over the 20-year duration of the requested permit will be offset through permanent dedication and management of the Leitner Prairie and Deschutes Corridor conservation sites. The biological goals and objectives (HCP pages 57-60) and the conservation site management plans for these areas (HCP Appendices C and D) establish specific implementation timelines and performance standards intended to ensure that these sites enhance and maintain habitat suitability and plant species composition that can support foraging and reproduction of the species. At least 17.5 acres of suitable habitat will be maintained on the two conservation sites by year 10 of HCP implementation and every year thereafter. HCP implementation is expected to result in enhanced Taylor's checkerspot butterfly numbers, distribution, and reproduction.

Though the adverse effects of management activities such as mowing will kill some Taylor's checkerspot butterfly individuals in a portion of the suitable habitat, a significant portion of the individuals present will remain unharmed in a given year. Habitat management will not

directly affect the majority of individuals present in a given year, and those individuals will benefit from the maintenance of suitable habitat. Overall, the HCP will benefit Taylor's checkerspot butterfly by expanding distribution through creation and maintenance of suitable habitat, and contributing habitat for reproduction of the species.

Streaked Horned Lark

A total of approximately 21.41 acres that provide the bare open or low statured vegetation characteristic of streaked horned lark foraging habitat within the Thurston County portion of the species range is found in patches of various sizes (ranging from 0.2 to 7.56 acres) on the thirteen project development sites and will be subject to loss over the 20-year duration of the proposed ITP. The Applicant's Conservation Program will create or enhance and maintain suitable habitat that can support streaked horned lark foraging behavior on the Leitner Prairie and Deschutes Corridor conservation sites.

As described in the biological goals and objectives (HCP pages 57-60) and the conservation site management plans for these areas (HCP Appendices C and D), at least 35 acres on the permanent conservation sites will be managed to provide the open flat areas with sparse and low (less than 12" height) vegetation preferred by streaked horned larks for foraging habitat by year 10 after permit issuance and every year thereafter. The potential foraging areas on the Leitner Prairie and Deschutes Corridor conservation sites represent comparatively large open areas with the greater sightlines the species prefers, and in a landscape contiguous to suitable habitat, such as the mowed and maintained Olympia Regional Airport adjacent to the Deschutes Corridor conservation site.

Conservation measures incorporated into the HCP are intended provide suitable habitat and to minimize the risk of mowing over streaked horned larks. However, streaked horned larks foraging or nesting at very low densities may remain undetected and will thereby be impacted by mowing. We expect that streaked horned larks exposed to mowing or other vegetation management are likely to be injured or killed. The anticipated loss of five adult streaked horned larks and three eggs or chicks on covered lands over 20 years is not expected to result in a population-level effect to the species. The covered lands will support occasional foraging and occasional nesting for streaked horned larks and the proposed management will maintain the open-landscape context of adjacent breeding areas. Use of the conservation site by streaked horned larks will represent a small expansion of the existing population, so the loss of the above-described individuals will occur when the population at the Olympia Airport is growing and expanding. The loss of individuals will represent a small and immediate reduction in productivity of the local population, but this will be offset by the permanent protection of suitable habitat connected to adjacent habitat at the Olympia Airport. Habitat maintenance activities on the conservation site will ensure the long-term suitability of the site for streaked horned larks,

providing for a long-term productivity improvement for the species in the action area that will exceed any minor reduction in numbers resulting from vegetation management.

Olympia subspecies of Mazama Pocket Gopher

A total of approximately 40.3 acres (consisting of patches ranging in size from 0.1-acre to 15.99 acres) of potential habitat for the Olympia subspecies of Mazama pocket gopher (*T. m. pugetensis*) is found among the 10 project development sites within the range of the subspecies. Habitat suitability on these sites ranges from poor to moderate, as many of the sites contain soils compacted by previous land uses (such as gravel parking areas, construction material staging sites, etc.), high seasonal groundwater levels that saturate surface soils for portions of each year, dense accumulations of invasive plant species or woody cover, or cover with limited forage value, such as those dominated by dense grasses or degraded grasslands. The Applicants propose to set aside and manage the approximately 51.32-acre Deschutes Corridor location as a permanent conservation site for the Olympia subspecies of Mazama pocket gopher. About 46 acres of this site contain soils and other characteristics that provide suitable habitat for the species. The permanent dedication and management of the proposed conservation site will provide habitat that is greater in quality and quantity than the fragmented habitat patches that remain on the 10 separate project development sites.

The effect of ITP issuance for HCP implementation on Olympia pocket gophers, will be to replace degraded habitat threatened by development with high quality habitat protected from development in perpetuity. Some individuals will be permanently displaced, injured, or killed by construction activities associated with development or re-development. Habitat restoration and maintenance activities may also disturb the normal behaviors of some individuals. The HCP will enhance the subspecies' rangewide productivity and resilience. The habitat areas on the development sites consist of areas with low productivity. By contrast, the larger area of intact habitat on the conservation site and its connectivity to a source population will impart significant short-term and long-term benefits for the subspecies by improving the numbers and distribution of the Olympia subspecies of the Mazama pocket gopher. As a result, HCP implementation will enhance productivity of Olympia pocket gophers in the action area.

Yelm subspecies of Mazama Pocket Gopher

A total of approximately 27.66 acres of potential habitat (consisting of patches ranging in size from 3.23 to 16.69 acres) is found among the three project development sites within the range of the Yelm subspecies of the Mazama pocket gopher (*T. m. yelmensis*). The habitat suitability on these sites is generally poor, as the potentially suitable soils on these sites today consist of dense, degraded grasslands and fill soils. The Applicants' Conservation Program at the Leitner Prairie permanent conservation site will offset the impacts of the taking. The permanent dedication and

management of this site will provide habitat that is greater in quality and quantity than the fragmented habitat patches that remain on the three separate project development sites in the range of the Yelm subspecies of *Mazama* pocket gopher.

Because we anticipate the Yelm subspecies of pocket gopher on the development sites has low long-term productivity and resilience to disturbance, it is extremely unlikely that the losses on these sites will amount to a measurable demographic effect for the subspecies. We expect that HCP implementation, over the long-term, will have a positive demographic effect for the Yelm subspecies of pocket gopher because of increased productivity and resilience resulting from management for higher quality habitat on the conservation site. The effect of Permit issuance for HCP implementation on the Yelm subspecies of *Mazama* pocket gophers will be to replace degraded habitat threatened by development with high quality habitat protected from development in perpetuity.

Some individuals will be permanently displaced, injured, or killed by construction activities associated with development or re-development, and habitat maintenance activities may disturb the normal behaviors of some individuals. The HCP will enhance the subspecies' range wide productivity and resilience, fully mitigating for the anticipated adverse effects on the subspecies. Habitat enhancement on the conservation site with an existing source population will impart significant short-term and long-term benefits for the subspecies by improving the reproduction and numbers of Yelm subspecies of pocket gopher. Increased productivity from habitat enhancement on Leitner Prairie will also result in improved distribution of the subspecies because it will increase the numbers of dispersing juveniles each year and the conservation site has better connectivity to other suitable habitat than do the conservation sites.

III. PUBLIC INVOLVEMENT

The Service made diligent efforts to involve the public by making the draft Kaufman HCP and the associated EA available for review and comment. We published a Notice of Availability (NOA) with a request for review and comments in the *Federal Register* on October 21, 2015 (80 FR 63830-63832). The NOA described the proposed Federal action (i.e., issuance of an ITP) and the purpose and need for the action. The public comment period lasted for 60 days and closed on December 21, 2015.

The Service received a single comment during the public review and comment period. The written comment submitted to the www.regulations.gov website did not provide substantive comments that required changes to the draft HCP, the draft EA, or other response. The full text of the single comment received can be viewed at the www.regulations.gov website.

IV. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

Section 10(a)(1)(B) requires that the Service determine, after public comment, that five issuance criteria are satisfied before a permit can be issued. The five issuance criteria and our analysis and findings follow.

1. The taking will be incidental.

We determined that the taking of covered species under the Kaufman HCP will be incidental to otherwise lawful activities. The activities for which incidental take coverage are sought under the ITP include actions related to site management (before development), development, construction, and ongoing management (post-construction); including vegetation management on the thirteen project development and the Leitner Prairie and Deschutes Corridor conservation sites. Any take of covered species resulting from implementing the covered activities will be incidental to, but not the purpose of, these otherwise lawful activities.

2. The applicant(s) will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.

We find that the Applicants have minimized and mitigated for the impacts of such taking to the maximum extent practicable.

The Kaufman HCP provides that unavoidable take will be minimized through the following conservation measures:

- a. Pre-construction habitat management: Vegetation management on the thirteen project sites will maintain habitat quality for covered species until such time as these sites are developed. The Applicants will employ methods to avoid or minimize soil disturbance and compaction when engaging in vegetation management or habitat management activities that could affect the covered species.
- b. Biological Monitoring: Monitoring by trained biologists, or others qualified to serve in this role, will be used to detect presence of covered species and to inform vegetation management activities.
- c. Construction timing and best management practices: Wherever practicable, construction will occur outside sensitive times for applicable species (e.g., after breeding season and until young Mazama pocket gophers are mobile). Construction activities on sites occupied by streaked-horned lark, if any, will be delayed until after the breeding season is completed.
- d. Endangered species survey and relocation: A qualified biologist will survey for occupancy, and attempt to trap and relocate any species when deemed necessary and advisable by the Service.

The Kaufman HCP describes mitigation measures intended to offset impacts of the taking by ensuring the persistence of suitable habitat for covered species by permanently protecting two dedicated conservation sites:

- a. The Leitner Prairie and Deschutes Corridor conservation sites will offset the effects of development on the total of 68 acres of fragmented habitat patches scattered among the thirteen individual project development sites with a total of 87.5 acres of suitable habitat managed to benefit the covered species.
- b. Conservation Easements covering the Leitner Prairie and Deschutes Corridor conservation sites will extinguish subdivision and development rights and ensure that these properties are managed for the benefit of the covered species.
- c. Restoration and enhancement activities at these permanently protected conservation sites including but not limited to the removal of trees, shrubs, woody vegetation, and invasive species; planting and seeding of native vegetation; and other techniques to restore functioning prairie ecosystem function and enhance habitat for the covered species in accordance with specific performance standards described in Site Management Plans found in HCP Appendices C and D.

3. The applicant(s) will ensure that adequate funding for the plan will be provided.

The Service finds that the Applicants will ensure funding adequate to implement the HCP. The Applicants' projected costs and the fiscal mechanisms that will be used to fund implementation of the plan are described in the "Funding Assurances" section of the HCP (page 69) and in HCP Appendix F "Estimated Management Funding Requirements".

The Applicants have committed to establish and fund an endowment upon issuance of the requested ITP sufficient to cover all expenses including, but not limited to, administrative and land management costs, monitoring, insurance, reporting, professional services, taxes, and contingencies to address adaptive management and changed circumstances for the first ten years of program implementation. The remaining ten years of administrative and management costs (years 11-20) will be deposited into the endowment no later than the end of the fifth year after ITP issuance. Funding to provide for ongoing and perpetual maintenance of the Leitner Prairie and Deschutes Corridor conservation sites (estimated for years 21-100) will be deposited into the endowment no later than the end of the 15th year after ITP issuance. Annual costs have been estimated based upon each previous year's projected expenses plus an annual inflation rate. Mechanisms are in place to adjust for shortfalls or surpluses to ensure adequate funding for the ongoing management of the permanent conservation sites prior to the expiration of the proposed 20-year ITP duration.

The Service's "no surprises" assurances and measures to address changed circumstances are described in the HCP. The Applicants have committed to implement an adaptive management

process in cooperation with the Service that will modify monitoring, conservation, mitigation, or management measures as needed throughout the term of the proposed ITP (HCP page 65). Unforeseen circumstances are described and will be addressed through close coordination between the Service and the Applicants (HCP page 67). We have determined, therefore, that the Applicants' conservation plan and financial commitments, along with their commitment to address changed and unforeseen circumstances in a cooperative fashion as required by statute and regulation, satisfies this criterion.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Service finds that the incidental taking to be authorized under the proposed ITP will not appreciably reduce the likelihood of survival and recovery of the four covered species in the wild. The legislative history of the ESA establishes the intent of Congress that this issuance criteria be based on a finding of "not likely to jeopardize" under Section 7(a)(2) (see 50 CFR 402.02). As a result, our action of issuance of the permit has been reviewed by the Service under Section 7(a)(2) of the ESA. Our biological opinion (Service 2016) concluded that issuance of the incidental take permit will not jeopardize the continued existence of the covered species in the wild, as described above. No designated critical habitats for any listed species are expected to be destroyed or adversely modified.

5. The measures, if any, required under subparagraph (A)(iv) will be met; and the Secretary of the Interior has received such other assurances as (s)he may require that the plan will be implemented.

The Service assisted the Applicants in developing their HCP, commented on draft documents, participated in numerous meetings and conference calls, and worked closely with the Applicants throughout the planning and document preparation phases of the proposal to ensure that the conservation needs of the covered species would be assured and that recovery would not be precluded by the covered activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. The Applicants will submit an annual report to the Service each year the permit is in effect describing implementation of avoidance, monitoring, minimization, and mitigation measures as described in the HCP. Coordination measures have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (through adaptive management measures) or if changed circumstances occur over the duration of the permit. It is our position that no additional measures are required to implement the intent and purpose of the HCP and the associated incidental take permit.

V. MIGRATORY BIRD TREATY ACT SPECIAL PURPOSE PERMIT

Pursuant to the Migratory Bird Treaty Act, 16 U.S.C. 703-712, and 50 CFR 21.27, the Service finds that the Applicants have made a sufficient showing, in combination with the draft permit terms and conditions, that the streaked horned lark currently listed under the ESA will benefit from the conservation measures included in the Kaufman HCP to minimize disturbance and enhance the habitat of the species. The Section 10(a)(1)(B) permit application, including the HCP submitted by the Applicants, provide information regarding MBTA related activities, the purpose of those activities, the permit areas, the effects of those activities on the MBTA covered species, and other information relevant to the issuance of the Special Purpose Permit required under 50 CFR 21.27. Therefore the Section 10(a)(1)(B) permit, if issued, shall also constitute a Special Purpose Permit under MBTA and 50 CFR 21.27.

VI. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS

The Service has no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b) – (c). The Applicants have met the criteria for the issuance of the permit and there are no disqualifying factors that would prevent the permit from being issued under current regulations.

VII. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, issuance of an ITP to authorize incidental taking of species listed as threatened or endangered under the ESA, including the endangered Taylor's checkerspot butterfly (*Euphydryas editha taylori*), the threatened streaked horned lark (*Eremophila alpestris strigata*), and two threatened subspecies of Mazama pocket gophers (*Thomomys mazama pugetensis* and *T. m. yelmensis*) by the Applicants, in accordance with the HCP, the biological opinion, and Final EA, is recommended.



Theresa Rabot,
Deputy Regional Director, Region 1
U.S. Fish and Wildlife Service

3/21/14
Date

VII. References Cited

SCJ Alliance. 2016. Environmental Assessment, National Environmental Policy Act Review for the Kaufman Habitat conservation Plan. SCJ project reference SCJ#1599.01, January 2016. 41 pp + appendices.

Krippner Consulting. 2016. The Kaufman Habitat Conservation Plan for Taylor's checkerspot butterfly (*Euphydryas editha taylori*); Streaked Horned Lark (*Eremophila alpestris strigata*); and two subspecies of the Mazama Pocket Gopher (*Thomomys mazama pugetensis* and *Thomomys mazama yelmensis*); in Thurston County, Washington. January 2016. 83 pp + appendices.

U.S. Fish and Wildlife Service (Service). 2015. Mazama Pocket Gopher Conservation Strategy and Mitigation Guidance. Memorandum. July 01, 2015. 22 pp.

U.S. Fish and Wildlife Service (Service). 2016. Intra-Service Biological Opinion for the Kaufman Habitat Conservation Plan. USFWS reference 01EWF00-2016-F-0427. 18 February 2016. 32 pp.