

**WISCONSIN KARNER BLUE BUTTERFLY  
HABITAT CONSERVATION PLAN**

**SPECIES AND HABITAT CONSERVATION AGREEMENT**

**FULL PARTNER**

THIS SPECIES AND HABITAT CONSERVATION AGREEMENT (Agreement) is entered into by and between the State of Wisconsin Department of Natural Resources (DNR) and [REDACTED] for the purpose of implementing the Habitat Conservation Plan (HCP) and authorizing the incidental take of the Karner blue butterfly (KBB) in the State of Wisconsin consistent with and during the period of an Incidental Take Permit (Permit) issued by the U.S. Fish and Wildlife Service (FWS).

WHEREAS, the DNR holds a Permit issued by the United States Department of the Interior, Fish and Wildlife Service (FWS) based upon the Habitat Conservation Plan, Species and Habitat Conservation Agreements (SHCA) with the Partners and Implementing Agreement submitted to the FWS with the application for a Permit;

WHEREAS, the statewide KBB conservation program relies on the inter-relationship of SHCAs, a HCP and an Incidental Take Permit (Permit) to form and direct the KBB conservation plan, as well as clarify commitments and obligations of landowners and land users in this effort;

WHEREAS, the Permit from the FWS authorizes the incidental take of the KBB subject to implementation of conservation measures and compliance with procedures, terms and conditions of this Agreement, the HCP and the Permit, by Partners entering into SHCAs with the DNR; and

WHEREAS, the Partner plans to engage in activities that may result in the incidental take of the KBB and is willing to implement conservation measures consistent with the HCP and the Permit on lands under and to the extent of the Partner's control to avoid, minimize or mitigate the take of such species as further provided herein.

IT IS HEREBY AGREED by the parties, based upon the mutual terms and conditions herein, that this Agreement shall constitute the Partner's commitment and agreement to undertake conservation measures for the KBB upon issuance of a Certificate of Inclusion (Certificate). The parties further agree this Certificate is conditioned on the premise that the Agreement shall be consistent with the HCP and conditions of the Permit.

**1. DEFINITIONS.**

For purposes of this Agreement, the following definitions apply:

- A.** "Certificate of Inclusion" (Certificate) is a document issued by the DNR as authorized by the FWS, which, thereby, includes the person or entity it is issued to under the provisions of the Permit and authorizes incidental take consistent with the HCP, the Permit and this Conservation Agreement.

- B. "Implementing Agreement" is a legal contract entered into between the DNR and the FWS that: (1) identifies the responsibilities of all participants to the HCP; (2) legally binds the DNR to their obligations; and (3) is signed by the DNR.
- C. "Incidental take" is the take of a species incidental to, and not for the purpose of, the carrying out of an otherwise lawful activity.
- D. "Incidental take permit" (Permit) is a permit issued by the FWS under the authority of Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of a species listed as endangered or threatened under that Act.
- E. "Intentional take" means the purposeful take of a species not incidental to an otherwise lawful activity e.g. collecting.
- F. "Partner", consistent with the HCP Articles of Partnership (AOP) and determined as a Partner by HCP Implementation Oversight Committee (IOC) assigned this task, is a person, agency or organization that:
  - 1. Enters into and agrees to the HCP and AOP; and
  - 2. Has an ownership interest i.e. fee title or easement in land with existing or potential KBB habitat; or
  - 3. Has economic assets at risk as a result of the listing of the KBB as endangered; or
  - 4. Has a role in implementing the HCP e.g. ASCS, municipalities.

## **2. PERIOD OF AGREEMENT.**

The period of this Agreement shall be from its execution and the issuance of a Certificate authorizing incidental take consistent with this Agreement, during the period of the Permit, unless terminated in accordance with paragraph 11 or amended in accordance with paragraph 12.

## **3. LANDS SUBJECT TO AGREEMENT.**

The lands subject to this Agreement include approximately            acres and are more particularly described in Appendix A (Lands Included) which is attached to and made part of this Agreement, and all future ownership (including, but not limited to, easements and temporary work spaces) within the high potential range of the KBB, subject to the notification and reporting processes, and implementation of conservation practices consistent with this Agreement, the HCP and the Permit.

## **4. ACTIVITIES/INCIDENTAL TAKE AUTHORIZED/PUBLIC OUTREACH AND EDUCATION/CONSERVATION EFFORTS.**

- A. **ACTIVITIES.** The following specified land management or land use activities, in addition to any other activity covered by an HCP guideline, protocol or management direction, may be engaged in on the Lands Included in accordance with this Agreement, and the incidental take of KBB is authorized, if the activities are conducted consistent with the HCP, HCP standard guidelines and protocols, the Permit, this Agreement and any changes and improvements made with HCP participation processes and consistent with the AOP, which amend these documents; and other protocols or management directions attached to, and made part of this Agreement as Appendix B. Standard HCP guidelines and protocols are published and made available on the HCP webpage; any other protocols and management directions defined by the partner will be listed and attached to Appendix B:

[LIST MANAGEMENT ACTIVITIES PARTNER WISHES TO ENGAGE IN HERE.]

**B. INTENTIONAL TAKE.** The Partner agrees not to engage in the intentional take of the KBB and agree that the entering into of this Agreement does not authorize the intentional take of such species.

**C. PUBLIC OUTREACH AND EDUCATION.** The Partner agrees to engage in the following public outreach and education activities for the purpose of conserving the KBB consistent with the HCP and Permit:

[LIST O&E ACTIVITIES PARTNER COMMITS TO ENGAGE IN HERE.]

**D. CONSERVATION EFFORTS FOR THE KBB.** Other than as described elsewhere in this clause, the Partner intends to engage in the following conservation efforts and practices:

[LIST OTHER CONSERVATION ACTIVITIES PARTNER IS WILLING TO COMMIT TO HERE.]

## 5. OTHER SPECIES.

In addition to those efforts identified in this Agreement for the KBB, the Partner intends to implement the following conservation measures or programs related to the following species:

[LIST OTHER SPECIES OR INSERT "N/A" (Not Applicable) OR "NONE" HERE.]

## 6. SURVEYS.

The Partner agrees to conduct surveys for the KBB and other species identified in paragraph 5 and their habitat consistent with the HCP, on Lands Included, prior to engaging in or conducting a management or land use activity or practice. Written records of all surveys, including identification and qualifications of the person conducting the survey, the results of the survey as to habitat and occurrences observed, and the conservation strategy to be applied to respond to the findings of the survey, shall be maintained by the Partner during the period of and retained for five years following termination of the Agreement, at the following facility (*Include organization name, contact person's name and title, full mailing address including street, road or RFD number, telephone and facsimile numbers and email address*):

[INSERT NAME and TITLE OF CONTACT PERSON, COMPLETE MAILING AND STREET ADDRESS, TELEPHONE AND FACSIMILE NUMBERS AND EMAIL ADDRESS HERE.]

## 7. MONITORING.

The Partner agrees to monitor and maintain written records regarding the effects of land management and use practices and activities on KBB and KBB habitat, consistent with the HCP, on Lands Included, during the period of this Agreement and retain them for five years following termination of the Agreement, at the following facility (*Include organization*

*name, contact person's name and title, full mailing address including street, road or RFD number, telephone and facsimile numbers and email address):*

[INSERT NAME and TITLE OF CONTACT PERSON, COMPLETE MAILING AND STREET ADDRESS, TELEPHONE AND FACSIMILE NUMBERS AND EMAIL ADDRESS HERE.]

## **8. DNR AND FWS INGRESS AND EGRESS.**

### **A. COMPLIANCE MONITORING.**

- (1) During the period of this Agreement, the DNR may conduct compliance monitoring of the activities and records of the Partner. Except as provided in Subparagraph A.(2), compliance monitoring shall be preceded by reasonable notice, not to be less than 24 hours, and shall be conducted in the presence of a representative of the Partner, if the representative is available at the noticed time and date, or other time agreed upon by the Partner and auditing personnel. Access to the property involved, to the extent of the Partner's authority, is authorized. Access to Lands Included and records required by this Agreement, or the HCP, shall be for the purpose of assuring compliance with this Agreement and the HCP, and be unlimited. If the Partner does not have authority to authorize access to the land identified in the notice to be monitored during the compliance monitoring the Partner shall immediately notify the DNR of such lack of authority and the limited use it has in the land identified. Documents of title or interest in the land identified shall be provided to the DNR upon its request. A copy of any final report, map or other record prepared by the DNR on the results of its going upon the land identified or reviewing the records shall be provided to the Partner within thirty (30) days of the DNR access and review.

Notification under this Paragraph shall be in writing, facsimile, or telephone to (*Include organization name, contact person's name and title, full mailing address including street, road or RFD number, telephone and facsimile numbers and email address):*

[INSERT NAME and TITLE OF CONTACT PERSON, COMPLETE MAILING AND STREET ADDRESS, TELEPHONE AND FACSIMILE NUMBERS AND EMAIL ADDRESS HERE.]

- 
- (2) The notice provision in Subparagraph A.(1), shall not apply when the DNR or representatives of the FWS considers that pending or ongoing activities of the Partner, or person authorized by the Partner, based on concerns or complaints made known to them, may adversely affect KBB occupied sites in a manner inconsistent with the Agreement, or result in damage to or destruction of KBB occupied habitat or that may jeopardize the Permit.

- B.** Any refusal of access authorized in Subparagraphs (1) or (2) shall be considered a breach of this Agreement and subject the Partner to all remedies available to the DNR under this Agreement or at law,
- C.** The FWS may accompany the auditor when auditing or monitoring under this Agreement or the HCP.

- D.** In addition to authority granted elsewhere in this Agreement, the FWS may enter the Lands Included or where permission by others with an ownership interest has been granted and access the records of the Partner required for the purpose of overseeing the Permit and activities under it or required by this Agreement.
- E.** Nothing in this Agreement, including this section, shall abrogate the authority of the Secretary of the Interior, through the FWS, to fulfill his or her responsibility in the administration and enforcement of the Endangered Species Act (ESA), 16 USC 1531 et seq. and all implementing regulations including but not limited to 50 CFR Parts 13 and 17.

## **9. ANNUAL REPORT.**

- A.** The Partner shall submit an annual report no later than March 1 following the calendar year which is the subject of the report. Each report shall be consistent with the required conditions of the Permit, the HCP and its guidelines and processes in effect for the reporting period, and this Agreement.

## **10. REMEDIES.**

- A.** The Partner agrees that this Agreement and authorization under the Permit does not apply to conduct resulting in the take of a KBB that does not strictly conform to the requirements of this Agreement or the HCP, and in such a situation the landowner will be acting without a Permit or authority to take a KBB and shall be subject to all provisions, remedies and penalties of the ESA, 16 USC 1531 et seq. and all implementing regulations including but not limited to 50 CFR Parts 13 and 17, 29.415, Wis. Stats., the Wisconsin Endangered Species ACT (WESA) and ch. NR 27, Wis. Adm.Code.
- B. (1)** Upon a breach or violation of this Agreement, as determined by the DNR, and in addition to any remedies provided or pursued under paragraphs 10.a., the DNR may revoke this Agreement and the authorization under it after considering recommendations of the HCP IOC. The Landowner and the FWS shall be notified of an alleged breach or violation by the Partner.

The DNR will notify the FWS of any violation of the Permit, HCP, or Agreement. Such notification shall be made in writing within five (5) calendar days of discovery of the violation, to the address listed below. Notification will include the name of the Party(ies) and individual(s) involved, the nature of the suspected violation, time period when the suspected violation occurred and the specific location(s) of the suspected violation.

**4101 American Blvd East  
Bloomington, MN 55425  
Telephone: (612) 725-3548 ext 2201  
Deputy Field Supervisor  
U.S. Fish and Wildlife Service**

- B. (2)** The Partner shall be provided an opportunity to present information to the DNR and the IOC on an alleged violation and what an appropriate remedy should be prior to the DNR's determination on whether a breach or violation occurred and the appropriate remedy.

Information shall be presented to the DNR and the IOC by the Partner within thirty (30) days of notice of an alleged violation of this Agreement to the Partner.

- B. (3)** If the DNR, after consideration of recommendations of the IOC, determines that action by the Partner may be taken that is reasonable and consistent with ensuring the conservation of the species and its habitat without the application of other remedies in this paragraph, it shall not seek additional remedies on the condition that the Partner completes the remedial action within a time considered reasonable by the DNR.
- C.** The DNR retains all further remedies in law or equity, which it may apply to a breach or violation of this Agreement. Enforcement or other remedies available to the FWS under the ESA shall not be abridged or affected by any decision of the DNR under this paragraph.
- D.** It is understood that unintentional violations of this Agreement may occur, and that the Partners may be required to act in emergency situations that do not allow them to follow all commitments in this Agreement. Should such a situation arise, it is expected that a Partner will report such an activity consistent with the HCP and the HCP Emergency Guideline, detailing the damage, if any, to KBB habitat and such action the Partner intends to take to cure or mitigate any damage to KBB or its habitat. The DNR agrees to consider the circumstances and the Partner's offer to cure or mitigate in any decision it may make regarding appropriate remedial or enforcement action necessary under this Agreement.

## **11. TERMINATION.**

This Agreement or its applicability to any land under it may be terminated by the Partner upon sixty (60) days written notice to the DNR and upon the occurrence of one of the following:

- A.** The Lands Included or management rights are transferred to another by land contract, fee title, easement, or otherwise;
- B.** The KBB is no longer protected by the ESA, (i.e. is delisted) or the KBB is downlisted to threatened and take activities of the Partner is allowed per a 4.d. rule.
- C.** The Partner ceases to exist, in fact or by law.
- D.** Other reasons for termination mutually agreed upon as reasonable by the Partner and the DNR, with advice of the IOC, provided that appropriate conservation and/or compensation has occurred for the take of occupied KBB habitat. It is the responsibility of the Partners to demonstrate to DNR that conservation has occurred prior to termination.

## **12. AMENDMENT.**

This Agreement shall constitute the entire agreement of the parties and any previous communications or agreements are hereby superseded and no modifications of this Agreement or waiver of its terms and conditions shall be effective unless made specifically in writing and mutually agreed upon and signed by both parties.

### **13. CONTRACTING PARTIES.**

In this Agreement, the DNR and the Partner include their respective officers, employees, agents, directors, partners, representatives, successors, heirs, members and servants.

### **14. STATUS OF PARTIES.**

The Partner shall not be considered as an agent, contractor or an employee of the DNR for any purpose, including workers compensation. The DNR agrees that the Partner has sole control of the activities and work conducted on the lands of or under the control of the Partner. The DNR only reserves the right of ingress and egress to the lands and facilities, consistent with paragraph 8, to inspect the lands and records of the Partner, as provided herein, to assure compliance with this Agreement.

### **15. ASSIGNMENT**

In the event the Partner sells, transfers or otherwise divests itself of all Lands Included or management rights to a subsequent owner and no longer has assets at risk due to the listing of the KBB, the Partner may relinquish and assign this Agreement or performance under it that subsequent owner (Assignee) with the consent of the DNR. Consent to assign shall be conditioned upon the Assignee's agreement in writing to comply with all the terms of this Agreement following discussion with the DNR to assure a full understanding of the requirements of the Agreement. The FWS shall be notified of any assignment and shall issue a Certificate of Inclusion covering the Assignee.

### **16. TRANSFER**

In the event that the Partner sells, transfers or otherwise divests itself of some portion of the Lands Included or management rights, but still has a portion of the Lands Included, management rights or assets at risk due to the listing of the KBB, and the Partner chooses to remain a signatory Partner, assignment of any incidental take authorization under this Agreement and the Permit may be transferred to a subsequent owner of the Lands Included or management rights (Transferee) if the Transferee enters into, agrees to and files with the DNR a SHCA, which is acceptable to the DNR. Following review and recommendation by the IOC, the SHCA may be signed. The FWS will be notified of the transfer and approved SHCA and shall issue a Certificate covering the Transferee. Unlike the complete transfer and assignment of an SHCA to an Assignee, incidental take authorization is not afforded to the Transferee until a SHCA unique to the Transferee is approved by the IOC and DNR and a Certificate is issued by the FWS.

The Partner agrees to notify the DNR of any transaction involving Lands Included, management rights, or assets relating to land within the High Potential Range, which may pertain to this Agreement, and coverage under the Permit. Notification of transfers can be made at any time, but must be included prior to any activity which would result in incidental take of KBB in order for incidental take authority to be valid. Incidental take is not authorized on newly acquired land until the transfer is reported to the DNR and added to the Partner's Lands Included.

**17. MODIFICATION/ADAPTIVE MANAGEMENT.**

The Partner agrees to modify responsibilities and duties under this Agreement consistent with the review and adaptive management process established in the HCP unless otherwise stated in this Agreement.

**18. FUNDING COMMITMENTS.**

The Partner commits to completing its conservation strategies and other obligations as provided in this Agreement, whether accomplished by employees, agents, contractors or cooperators.

**[LIST OTHER FUNDING COMMITMENTS HERE.]**

**19. LIABILITY FOR AGENTS, ETC.**

It is recognized that the Partner often conducts its land management or use activities through an agent, lessee, licensee, contractor, permittee, right-of-way grantee, or purchaser. The Partner has and accepts the obligation to require, normally through written agreement or communication, that activities be conducted in a manner consistent with this Agreement, the HCP and the Permit. Take incidental to otherwise lawful activities by these persons or entities is authorized by the Permit so long as such activity and incidental take resulting from it is authorized by the Partner consistent with this Agreement, the HCP and the Permit. A violation of any authorization which includes procedures and activities for KBB conservation the Partner is required to follow or conduct, consistent with this Agreement, the HCP, and the Permit, by an agent, lessee, licensee, contractor, permittee, right-of-way grantee, or purchaser, shall not result in the suspension, revocation, or termination of the Permit or the authorization to the Partner under this Agreement, the HCP and the Permit; nor shall it affect other benefits, rights, or privileges under this Agreement, the HCP or the Permit, except as to that agent, lessee, licensee, contractor, permittee, right-of-way grantee, or purchaser, who is and will be subject to the provisions of the ESA, including remedies for its violation when acting inconsistent with the authorization from this Partner, this Agreement, the HCP and the Permit. The obligation to demonstrate that the Partner adequately communicated procedures and requirements of this Agreement, the HCP and the Permit to the agent, lessee, licensee, contractor, permittee, right-of way grantee, or purchaser is on the Partner, and cannot be waived by the DNR.

**20. DATA SHARING**

- A. Data provided by the DNR and which constitutes Natural Heritage Inventory data (NHI) may not be used for any purpose other than development of the SHCA or conducting of activities under the Permit. It may not be released or made available to any other person, agency or organization for any purpose unless agreed to in writing by the DNR. Documents or data containing NHI information is included in this restriction.
- B. Data provided to the DNR is subject to Wisconsin's Public Records Law, Ch. 19, Wis. Stats.,

and subject to that law regarding requests for it. Under s.23.27 (3), Wis. Stats., NHI information is considered confidential and release or use of it is controlled by the Department and administrative rules adopted to administer the NHI program.

## **21. ARTICLES OF PARTNERSHIP**

The partner agrees to enter into and comply with the AOP, which are attached to and made part of this Agreement.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

DATE \_\_\_\_\_

BY \_\_\_\_\_

Paul J. DeLong  
Division Administrator of  
Forestry, Wisconsin DNR

AND

DATE \_\_\_\_\_

BY \_\_\_\_\_

Sanjay Olson  
Fish, Wildlife and Parks Division  
Administrator, Wisconsin DNR

[INSERT PARTNER'S ENTITY NAME]

DATE \_\_\_\_\_ BY \_\_\_\_\_

(Partner signatory's name/title)

DATE \_\_\_\_\_ BY \_\_\_\_\_

(Partner signatory's name/title)

\*\*\*\*\*

APPENDIX A  
LANDS INCLUDED

[LIST LANDS FOR WHICH PARTNER WISHES INCIDENTAL TAKE COVERAGE. INCLUDE MAP(S) INDICATING LOCATION OF THESE LANDS, WHICH ARE SUFFICIENTLY SPECIFIC TO PROVIDE USFWS OR DNR ENOUGH INFORMATION FOR AUDITING AND ENFORCEMENT PURPOSES. NECESSARY MAP CHARACTERISTICS INCLUDE, PARTNER NAME, TOWN, RANGE, SECTION, AND COUNTY INFORMATION AND CARDINAL MARKER.]

APPENDIX B

PARTNER SPECIFIC MANAGEMENT GUIDELINES AND PROTOCOLS

[LIST AND ATTACH HERE ALL MANAGEMENT PROCEDURES, CONSERVATION MEASURES, AND MONITORING PROCEDURES **NOT COVERED BY STANDARD HCP MANAGEMENT GUIDELINES AND PROTOCOLS** THAT PARTNER WISHES TO APPLY WHEN PERFORMING ACTIVITIES LISTED IN 4.A. ON LANDS LISTED IN APPENDIX A.]