

**WISCONSIN KARNER BLUE BUTTERFLY
HABITAT CONSERVATION PLAN**

SPECIES AND HABITAT CONSERVATION AGREEMENT

LIMITED PARTNER

THIS SPECIES AND HABITAT CONSERVATION AGREEMENT (Agreement) is entered into by and between the State of Wisconsin Department of Natural Resources (DNR) and _____, (Partner) for the purpose of implementing the Wisconsin Statewide Karner Blue Butterfly 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 the 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 agrees to implement conservation measures consistent with the HCP and the Permit on lands under its control 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 DNR and the Partner (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

SPECIES AND HABITAT CONSERVATION AGREEMENT – LIMITED PARTNER

Page 2

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", defined as "Limited Partners" within the HCP, means a person, agency or organization that is engaged in a limited suite of management activities, such as predefined best management practices, on a local level, typically resulting in short term take and subsequently, favorable habitat conditions. Examples include, but are not limited to, county highway departments, townships and 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/ INFORMATION

- 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

SPECIES AND HABITAT CONSERVATION AGREEMENT – LIMITED PARTNER

Page 3

guidelines and protocols, the Permit, this Agreement and any changes and improvements made with HCP participation processes 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. Select from examples listed below.]

Highway or road right of way maintenance, including:

- (1) Mowing,
- (2) Brushing (including tree pruning and hazard tree removal),
- (3) Use of pesticides to control vegetation,
- (4) Shoulder maintenance and grooming,
- (5) Snowplowing.

Certain highway or road and road right of way construction, (may be subject to project plan or activity review and approval by WDNR and USFWS), including:

- (1) Ditch maintenance and construction,
- (2) Shoulder construction,
- (3) Road and road right of way construction,
- (4) Other construction, which may impact occupied Karner blue butterfly habitat.

B. INTENTIONAL TAKE. The Partner agrees not to engage in the intentional take of the KBB, as defined in Paragraph 1.E., and agrees 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 respond to questions by the public regarding their activities relating to KBB conservation and provide information on the KBB program when opportunities arise, e.g. budget deliberations, planning or information meetings, etc.

D. INFORMATION. Partner agrees to provide updated guidelines and protocols to those officers, employees, agents or contractors responsible for implementing this agreement.

5. SURVEYS.

The Partner agrees to conduct surveys for wild lupine (*Lupinus perennis*) consistent with the HCP and the survey protocols described in the HCP User's Guide (accessed on the DNR's KBB HCP website or otherwise provided by the DNR), on lands identified in Appendix A or lands the DNR is notified of through the process provided in this Agreement and approves as being subject to it, and maintain written records of all surveys, including:

- a. identification and qualifications of the person conducting the survey,

- b. the results of the survey as to habitat and occurrences observed, and
- c. the written records 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, full mailing address, including street, road or RFD number, telephone number and email address):

6. MONITORING.

The Partner agrees to monitor and maintain written records regarding the effects of land management and use practices and activities, consistent with the Plan, on the lands subject to this Agreement, as identified in Appendix A during the period of this Agreement. Written records will be maintained, including, but not limited to:

- a. the location and dates of management activities on Kbb occupied (if known) lupine habitat,
- b. the conservation strategy/protocol applied, and
- c. written records will be retained for five years following termination of the Agreement, at the following facility:

(Include Organization Name, contact person, full mailing address, including street, road or RFD number, telephone number and email address):

7. DNR AND FWS INGRESS AND EGRESS.

A. COMPLIANCE MONITORING.

(1) During the period of this Agreement, the DNR may audit and monitor the activities and records of the Partner. Except as provided in A.(2), auditing and 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 the lands subject to this Agreement and records required by it, 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 or audited, or during the audit, the Partner shall immediately notify the DNR of such lack of authority and the limited use it has in the property. Documents of title or interest in the property 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 or reviewing the records shall be provided to the Partner within thirty (30) days of the DNR access and review.

SPECIES AND HABITAT CONSERVATION AGREEMENT – LIMITED PARTNER

Page 5

Notification under this Paragraph shall be in writing, facsimile, or telephone to:

(Include Organization Name, contact person, full mailing address, including street, road or RFD number, telephone number and email address):

(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 this 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, as well as loss of KBB incidental take authorization provided by the FWS through use of this Agreement.
- C.** The FWS may accompany the DNR 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 subject to this Agreement, which are owned by the Partner 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 (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.

8. ANNUAL REPORT.

The Partner shall submit an annual report no later than March 1 following the calendar year, which is the subject of the report which shall be on a form provided by the DNR and fully and accurately completed by the Partner with all attachments requested by the DNR, which may include maps, surveys, records, or other information.

9. ASSIGNMENT.

The Partner may not assign this Agreement or performance under it to another without 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.

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 Partner shall be acting without a Permit or authority to take a Kbb and shall be subject to all provisions, remedies and penalties 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, 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 paragraph 10.A., the DNR may revoke this Agreement and the authorization under it after considering recommendations of the HCP Partners' Implementation and Oversight Committee. The DNR shall notify the Partner and the FWS of an alleged breach or violation.

The DNR shall notify the FWS of any violation of the Permit, HCP or this Agreement. Such notification shall be in writing within five (5) calendar days of discovery of the violation and to the address listed below. Notification shall 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.

**Field Supervisor
U.S. Fish and Wildlife Service
2661 Scott Tower Drive
New Franken, WI 54229
Telephone: (920) 866-1717
Fax: (920) 866-1710**

- (2) The Partner shall be provided an opportunity to present information to the DNR and the HCP Partners' Implementation Oversight Committee 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 HCP Partners' Implementation Oversight Committee by the Partner within thirty (30) days of notice of an alleged violation of this Agreement to the Partner.
- (3) If the DNR, after consideration of recommendations of the HCP Partners' Implementation Oversight Committee, 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 Partner 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 shall 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 Department 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 land or management right over it is 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 down listed 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 HCP Partners' Implementation Oversight Committee, provided that appropriate conservation and/or compensation has occurred for the take of occupied Kbb habitat. It is the responsibility of the Partner 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 7, to inspect the lands and records of the Partner, as provided herein, to assure compliance with this Agreement.

15. TRANSFER.

The Partner agrees to notify the DNR of any transaction involving Lands Included, management rights, or assets relating to land, 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 SHCA Appendix A (lands included).

16. 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.

17. 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.

18. 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 shall 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.

19. 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.

20. NOTIFICATION

Partner agrees to notify the Department of any change in the responsible agent, employee, officer or representative responsible for implementing this agreement.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

DATE _____

BY _____

Paul J. DeLong
Division Administrator of
Forestry, Wisconsin DNR

AND

DATE _____

BY _____

Kurt A. Thiede
Division Administrator of
Land, Wisconsin DNR

[PARTNER NAME below line]

DATE _____

BY _____

(Print name/title below line)

DATE _____

BY _____

(Print name/title below line)

APPENDIX A

PARTNER LANDS INCLUDED

Partner lands included are those road ROWs that the partner has management responsibility for, and which are highlighted on the attached map.

The lands subject to this agreement include roads and highways, and the rights-of- ways (ROW) of which the ROWs are approximately:

_____ feet, meters (*circle one or delete other*) wide on each of two sides, and

_____ feet, meters, miles (*circle one or delete other*) in length.

Total Acres Included for Incidental Take Coverage
= _____ ACRES

Acreage Calculator:

1 meter = 3.2808 feet _____ meters x 3.2808 = _____ feet
1 mile = 5,280 feet _____ miles x 5,280 feet = _____ feet
1 acre = 43,560 square feet _____ ft. wide x _____ ft. long = _____ sq. ft.

_____sq. ft. divided by 43,560 sq. ft. = _____ acres (include in block above)

Attach county or township map with roads partner manages marked with a highlighter. Map will contain:

- **County name**
- **Township name(s)**
- **Town & Range**
- **Cardinal marker**
- **Distance scale (and/or section lines)**

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.]