

Template Neighboring Landowner Agreement for Conservation Benefit Agreements

1.0 Neighboring Landowner Information

Name:

Address:

Phone:

Email:

2.0 Covered Species

[include common and scientific name of the species for which you are seeking incidental take through this neighboring landowner agreement]

3.0 Description of Lands to be Covered by the Neighboring landowner agreement

[Include a written legal description of the property.]

4.0 Baseline for the Covered Species

[Describe the habitat and population baseline or existing conditions of the property at time this agreement is signed as described in the appropriate section of the of the Conservation Benefit Agreement.]

5.0 Baseline for Current Land Uses

[Include a description of current land use practices on the property that are relevant to the covered species.]

6.0 Land Use Activities

The following land use activities may result in incidental take of covered species under this Neighboring Landowner Agreement:

[Describe land use activities that are anticipated to take place on the neighboring lands]

7.0 Neighboring Landowner Agreement

The duration of this Neighboring Landowner Agreement will be *[insert # of years]* years

from the date of signature, as long as the terms of the CBA and the Neighboring Landowner Agreement are met or terminated by either the Cooperator (neighboring landowner) or Authorizing Party (see Section 10 below).

8.0 Assurances to the Neighboring Landowner

This agreement will provide the neighboring landowner with incidental take coverage of the covered species identified in this Neighboring Landowner Agreement for the following activities:

- A. Any land use activities described above in Section 6.0, *Land Use Activities*.
- B. Returning the enrolled lands to baseline through otherwise lawful means, following required conditions described in *[insert section #]* of the CBA.

In the event a non-listed covered species becomes federally listed, neighboring landowners would receive take authorization and assurances for the above activities upon listing.

9.0 Modifications and Termination

- A. **Neighboring Landowner Agreement:** Any party to this Neighboring Landowner Agreement may propose modifications by providing written notice to the other parties explaining the proposed modification and the reasons for the modification. Approval of a modification will require the written consent of *[insert name of permittee]* and neighboring landowner and must be consistent with the assurances described in *[insert section # and title of the section]* of the CBA. Any proposed modification to the Neighboring Landowner Agreement will be considered effective as of the date that all affected parties have agreed in writing to the modification.
- B. **Early Termination of the Neighboring Landowner Agreement:** *[insert name of permittee]* may terminate the Neighboring Landowner Agreement prior to the expiration date. A neighboring landowner may terminate their CBA Neighboring Landowner Agreement before the expiration date.
The neighboring landowner will, if possible, provide *[insert name of permittee]* the opportunity to relocate the covered species within sixty (60) days of receipt of the termination notice. Neighboring landowners will allow *[insert name of permittee or appropriate entity]* access to their enrolled properties to capture covered species and move them off the property, if deemed advisable, prior to the return to baseline conditions. If a property is being returned to baseline conditions, this return must be completed within the Neighboring Landowner Agreement's permit term. Refer to *[insert Sections # of CBA as appropriate]*, *Termination of a Landowner Agreement or Neighboring Landowner Agreement by a Cooperator or Party*, of the CBA for additional information pertaining to termination of a Neighboring Landowner Agreement.

10.0 Other Measures

- A. **Remedies.** No party shall be liable in monetary damages for any breach of this

Neighboring Landowner Agreement, any performance or failure to perform an obligation under this Neighboring Landowner Agreement, or any other cause of action arising from this Neighboring Landowner Agreement.

- B. **Dispute Resolution.** The Parties agree to work together in good faith to resolve any disputes using dispute resolution procedures agreed upon by all Parties.
- C. **Succession and Transfer.** As provided in 50 CFR Section 13.25, if a neighboring landowner transfers his or her interest in the lands covered by this agreement to another non-federal entity, the new owner has the option to accept the original neighboring landowner's responsibilities and assurances. If the new owner chooses to accept the original neighboring landowner's responsibilities and assurances, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the lands covered by this agreement as the original neighboring landowner for the remainder of the term of the agreement.
- D. **Availability of Funds.** Nothing in this Neighboring Landowner Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from *[insert name of permittee or appropriate entity]*.
- E. **No Third-Party Beneficiaries.** This Neighboring Landowner Agreement does not create any new right or interest in any member of the public as third-party beneficiary, nor shall it authorize anyone not a party to this Neighboring Landowner Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Neighboring Landowner Agreement. The duties, obligations, and responsibilities of the parties to this Neighboring Landowner Agreement with respect to any third-party shall remain as imposed under existing law.
- F. **Notification of Take.** To the extent possible, under this agreement, landowners agree to provide *[insert name of permittee/FWS or other appropriate entity]* with an opportunity to rescue individuals of the Covered Species before anticipated and authorized take occurs (e.g., ground-disturbing activities anticipated to result in extreme sedimentation of nearby covered species habitat). In such cases, notification of take should be provided to *[insert name of permittee/FWS or other appropriate entity]* 30 days prior to the action; minimally, notification must occur no less than 14 days prior to the action. For those situations in which unanticipated, authorized take has occurred, the enrolled landowner agrees to notify *[insert name of permittee or appropriate entity]* within 48 hours of any observation of take of the covered species on the enrolled lands.

11.0 Contact Information

Communication, reports, and correspondence required by this Neighboring Landowner Agreement should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

Permittee/Cooperator:

Address:

Phone
Number:

Select One: Legal Landowner
 Landowner's
Representative

[insert name, address, and phone number of other agency as appropriate]

Name:

Address:

Phone Number:

12.0 Certificate of Inclusion

This certifies that the enrolled lands of the Cooperator are included within the scope of the Section 10(a)(1)(A) permit [*reference number*] issued by the Service expiring on [*date*] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. Through the Permit and this COI, the Cooperator is authorized to perform the activities as described herein to protect, enhance, or restore a population of the species on the enrolled lands, as described herein. The holder of this COI is authorized to engage in any otherwise lawful activity on the enrolled lands that may result in the incidental taking of covered species or its habitat above baseline subject to the terms and conditions of the Permit and this Landowner Agreement [*insert number*] entered into by the parties below.

These authorizations and assurances expire on [*date permit expires*].

IN WITNESS WHEREOF, each party hereto has caused this Landowner Agreement and COI to be executed by an authorized official on the day and year of the final signature as set forth below.

COOPERATOR

Name and Title

Date

AUTHORIZING PARTY

[insert name of permittee/appropriate entity]

[insert title of authorizing official]

Date

Designated Landowner Representative Agreement

Landowner Name:

Landowner Representative Name
(Cooperator):

Land Units Leased:

Tract/Parcel:

Acres:

For the above-described land unit that I own, I hereby certify that the above participant will have control of this land for the purpose of satisfying the terms and conditions of this Landowner Agreement. The participant has my permission to participate as a neighboring landowner in this CBA.

Landowner's Signature

Date

NOTICES

PRIVACY ACT STATEMENT

Authority: The information requested is authorized by the following: the Bald and Golden Eagle Protection Act (16 U.S.C. 668), 50 CFR 22; the Endangered Species Act (16 U.S.C. 1531-1544), 50 CFR 17; the Migratory Bird Treaty Act (16 U.S.C. 703-712), 50 CFR 21; the Marine Mammal Protection Act (16 U.S.C. 1361, et seq.), 50 CFR 18; the Wild Bird Conservation Act (16 U.S.C. 4901-4916), 50 CFR 15; the Lacey Act: Injurious Wildlife (18 U.S.C. 42), 50 CFR 16; Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249), 50 CFR 23; General Provisions, 50 CFR 10; General Permit Procedures, 50 CFR 13; and Wildlife Provisions (Import/export/transport), 50 CFR 14.

Purpose: The collection of contact information is to verify the individual has an eligible permit to conduct activities which affect protected species. This helps FWS monitor and report on protected species and assesses the impact of permitted activities on the conservation and management of species and their habitats.

Routine Uses: The collected information may be used to verify an applicant's eligibility for a permit to conduct activities with protected wildlife; to provide the public and the permittees with permit related information; to monitor activities under a permit; to analyze data and produce reports to monitor the use of protected wildlife; to assess the impact of permitted activities on the conservation and management of protected species and their habitats; and to evaluate the effectiveness of the permit programs. More information about routine uses can be found in the System of Records Notice, Permits System, FWS-21.

Disclosure: The information requested in this form is voluntary. However, submission of requested information is required to process applications for permits authorized under the listed authorities. Failure to provide the requested information may be sufficient cause for the U.S. Fish & Wildlife Service to deny the request.

PAPERWORK REDUCTION ACT STATEMENT

We are collecting this information subject to the Paperwork Reduction Act (44 U.S.C. 3501) to provide the U.S. Fish and Wildlife Service the information needed to decide whether or not to allow the requested use and to respond to requests made under the Freedom of Information Act and the Privacy Act of 1974. The information that you provide is voluntary; however, submission of the requested information is required to evaluate the qualifications, determine eligibility, and document permit applicants. Failure to provide all required information is sufficient cause for the U.S. Fish and Wildlife Service to deny a permit. We may not conduct or sponsor, and you are not required to respond to a collection of information, unless it displays a currently valid OMB control number. OMB has approved this collection of information and assigned OMB Control No. 1018-0094.

ESTIMATED BURDEN STATEMENT

We estimate public burden for this collection of information to average 1 hour (as part of the overall conservation agreement development process). This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Service Information Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803, or via email at Info_Coll@fws.gov. Please do not mail your completed form to this address.

FREEDOM OF INFORMATION ACT NOTICE

For organizations, businesses, or individuals operating as a business (i.e., permittees not covered by the Privacy Act), we request that you identify any information that should be considered privileged and confidential business information to allow the Service to meet its responsibilities under the Freedom of Information Act (FOIA). Confidential business information must be clearly marked "Business Confidential" at the top of the letter or page and each succeeding page and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary and remaining documents may be made available to the public under FOIA [43 CFR 2.23 and 43 CFR 2.24].