

APPENDIX A.
THE NATURE CONSERVANCY – EASTERN NEW YORK
SAFE HARBOR COOPERATIVE AGREEMENT

This cooperative agreement constitutes a written, binding contract between the parties identified in Section 1 below, and recognizes the unique and important role that private landowners in New York can play in helping conserve rare species that are valued by the people of the state and of the nation. The purpose of the agreement is to enable land management activities beneficial to rare species to be carried out on privately owned land while minimizing the impact of such activities on the right and ability of the owner or manager thereof to use the land as he or she wishes, consistent with State and Federal law. The terms of this agreement are as follows:

1. The Nature Conservancy (“TNC”) and _____ (“Cooperator”) have entered into this Cooperative Agreement to maintain, improve, and manage habitat for the Karner blue butterfly and frosted elfin butterfly on certain land owned or managed by the Cooperator and delineated on the attached map (Exhibit A). The land subject to this agreement is currently used for [describe current land use] and the nature and condition of the habitat thereon is [describe nature and condition of habitat]. [Note: if useful, photos or legal descriptions of the property may be referenced here as well.]
2. The United States Fish and Wildlife Service (“Service”) and the New York State Department of Environmental Conservation (“State”) have issued to TNC permits dated [provide date] and [provide date] that authorize, until the year 2057, the incidental taking of the Karner blue butterfly by TNC and Cooperators to whom TNC has issued certificates of inclusion under such permits. In addition, the State’s permit authorizes, until the year 2057, the incidental taking of the frosted elfin. Should the frosted elfin become Federally-listed in the future, TNC may request an amendment to its Federal permit to include the frosted elfin.
3. Cooperator agrees to undertake, or to allow TNC to undertake on Cooperator’s property, for a period of [X] years from the date of this Agreement, management activities intended to maintain or enhance the suitability of currently occupied habitat at the locations designated as “existing occupied habitat” on the attached map (Exhibit A). Those management activities are set forth in Exhibit B attached hereto. In addition, Cooperator agrees to undertake, or to allow TNC to undertake on Cooperator’s property, for the same period, such of the following management activities as are indicated by the Cooperator’s initials immediately preceding the description of the activity:
 - _____ a) restoring or creating new suitable habitat at the locations designated as “proposed restoration sites” on the attached map (Exhibit A) through management activities specified in Exhibit B, and maintaining such habitat for a period of [X] years from the date of this Cooperative Agreement.
 - _____ b) translocating either species of butterfly, with the concurrence of the Service and the State and in accordance with applicable State and Federal laws to suitable habitat on Cooperator’s property from elsewhere.

_____c) translocating either species of butterfly from Cooperator's property to locations elsewhere, with the concurrence of the Service and the State and in accordance with applicable State and Federal laws where they are needed for conservation purposes in the judgment of the Service and the State.

But for Cooperator's commitments as set forth in Section 3, TNC would not enter into this agreement.

4. In consideration of the foregoing, TNC has issued to the Cooperator the attached Certificate of Inclusion under TNC's permits. This Certificate authorizes the Cooperator:

- a) to take the two species of butterflies incidental to implementing the management activities set forth in this Cooperative Agreement;
- b) after initiation of, and consistent with such management activities, to carry out any other lawful activity that may cause the incidental taking of the two species of butterflies on Cooperator's property, provided that such taking does not reduce the amount of occupied habitat for such butterflies on such property below the amount specified below as the "baseline habitat."

As used in this Cooperative Agreement, "incidental" take refers to the unintentional or unavoidable killing or injuring of either of the butterfly species in the course of carrying out otherwise lawful activities. Nothing in this Cooperative Agreement authorizes Cooperator to capture, collect, or deliberately kill or injure any such butterflies. But for the commitments set forth in this paragraph, Cooperator would not enter into this agreement.

5. Cooperator agrees to give TNC at least 60 days notice prior to commencing any change in land use likely to eliminate or reduce the amount of occupied habitat, and to allow TNC, the Service, and the State the opportunity to translocate butterflies from Cooperator's land to avoid their incidental taking.

6. The Cooperator and TNC agree that at the time that this Cooperative Agreement was signed, [neither of the two butterfly species occurred on the property and, therefore, there are no baseline responsibilities applicable to the property]

OR

[Habitat occupied by [the Karner blue butterfly] AND/OR [the frosted elfin butterfly] occurs on the property. The amount of occupied habitat present on the property is approximately X acres and its location is delineated on the attached map (Exhibit A). That amount of occupied habitat shall be considered the "baseline habitat" applicable to the property. To assist Cooperator in knowing where and how much occupied habitat exists on Cooperator's property in the future, TNC will, upon the request of the Cooperator, identify the amount and location of such habitat within a reasonable period after such request. TNC's butterfly survey of the property upon which the above baseline determination was made is attached hereto.

7. Cooperator's successors and assigns may incur the responsibilities and benefits of this Agreement by becoming a party thereto in writing. If Cooperator decides to sell or otherwise transfer ownership of the property, Cooperator agrees to give TNC notice of such decision prior to the intended sale or transfer and to give the purchaser or transferee notice of this Cooperative Agreement so that the purchaser or transferee can become a party to it if he or she so wishes. Cooperator will inform TNC in the event all, or part of, the Cooperator's property delineated on the map labeled Exhibit A is transferred to another owner.

8. The Cooperator shall grant TNC access to Cooperator's property to verify that the conditions of the Cooperative Agreement are being upheld, to assess the condition of the habitats being managed under the Cooperative Agreement, and to monitor and mark individual butterflies as appropriate. TNC shall give the Cooperator 30 days notice of these visits and shall be accompanied by the Cooperator or a representative of the Cooperator if the Cooperator so desires. The Cooperator also agrees, upon the request of the Service or the State made through TNC, to grant either or both access to the Cooperator's property for the purpose of evaluating the suitability of the property for butterfly translocations to or from it, or for the purpose of evaluating the effectiveness of the management activities carried out on such property. The Service or the State shall be accompanied by TNC and the Cooperator or a representative of the Cooperator if the Cooperator so desires.

9. The Cooperator may terminate the Cooperative Agreement for reasons outside of his control at any time by giving 60 days written notification to TNC, in which case the Cooperator or the Cooperator's successors or assigns shall retain the right to incidentally take Karner blue butterflies as previously provided. If the Cooperative Agreement is terminated for any other reason, nothing in this Cooperative Agreement shall confer the authority to incidentally take either species of butterfly. TNC may terminate this Cooperative Agreement if it notifies the Cooperator in writing of a significant failure to comply with the terms thereof and the Cooperator fails to correct the failure within 90 days of receiving such notification. This Agreement can be renewed or extended, for valuable consideration, at any time subject to both the Cooperator's and TNC's approval.

10. Cooperator and TNC agree with respect to liability and indemnification for injuries to persons or property arising out of this Agreement as follows: [details may vary from agreement to agreement].

11. So long as the Service- and State-issued permits and Certificate of Inclusion remain in effect, and provided the management activities required by this Agreement have been carried out, the Cooperator may exercise the right conferred by TNC's permits and the Certificate of Inclusion to incidentally take Karner blue and frosted elfin butterflies on the Cooperator's property.

12. This Cooperative Agreement, which constitutes a written, binding contract, shall be interpreted in accordance with the laws of the State of New York. In ascertaining the intent of the parties, the Service and State permits issued to TNC, and referenced in Section 2 and Exhibit B, as well as the [date] Safe Harbor Agreement between TNC, the Service, and the State, shall be further evidence of this contract.

13. This Cooperative Agreement shall take effect upon execution and shall remain in effect for [X] years (not to exceed the number of years remaining in TNC's permits), unless terminated earlier pursuant to Section 9.

The Nature Conservancy _____, Cooperator

By _____ By _____

Date _____ Date _____

[Reviewed and concurred on behalf of the New York Department of Environmental Conservation
by:

Date: _____]

Exhibit A

[map of the property subject to the cooperative agreement]

Exhibit B

[specifications for management actions to be carried out]

EASTERN NEW YORK
SAFE HARBOR AGREEMENT

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [DESCRIPTION], owned by [NAME OF COOPERATOR], is included within the scope of Permit No. ____ issued by the U.S. Fish and Wildlife Service on [DATE] and Permit No. ____ issued by the New York State Department of Environmental Conservation, each for a period of __ years to The Nature Conservancy, under the authorities of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A), and Section 182.4 of Title 6 of the New York Code of Rules and Regulations, respectively. Such permits authorize certain activities by participating landowners as part of a safe harbor program to restore and enhance habitat for the Karner blue and frosted elfin butterflies. Pursuant to those permits and this certificate, the holder of this certificate is authorized to engage in activities on the above described property that may result in the incidental taking of Karner blue or frosted elfin butterflies, subject only to the terms and conditions of such permits and the cooperative agreement entered into pursuant thereto by The Nature Conservancy and [NAME OF COOPERATOR] on [DATE].

Name and Title of Representative of The Nature Conservancy

Date: _____