

***Candidate Conservation
Agreement with Assurances***
For
Species (*Species*)

An Agreement between

Mr. X
of the XYZ Company, Anywhere, Wyoming

and the

U.S. Fish and Wildlife Service

January XX, 200X

DRAFT

**DRAFT XYZ
CANDIDATE CONSERVATION AGREEMENT WITH
ASSURANCES**

This Candidate Conservation Agreement with assurances (CCA), effective and binding on the date of last signature below, is between Mr. X of the XYZ Company, Anywhere, Wyoming, [Wyoming Game and Fish Department, Natural Resource Conservation Service, X County Natural Resource District] (Cooperators), and the U.S. Fish and Wildlife Service (Service):

Property Owners: Mr. X

Cooperators: Wyoming Game and Fish Department, Natural Resource Conservation Service, X County Natural Resource District

Service: The Service designates the following individual as the Agreement Administrator:

Brian T. Kelly, Wyoming Field Supervisor
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009
(307) 772-2374 Extension 234

Tracking Number: *unique identifier to be used as a tracking number for the CCA.*

TABLE OF CONTENTS

DRAFT

1. RESPONSIBILITIES OF THE PARTIES

1.1 PROPERTY OWNERS

The Property Owner(s) agree(s) to undertake the following conservation measures:

1. ...
2. ...
3. ...

1.2 SERVICE

The Service agrees to provide the following technical assistance to aid the Property Owner(s) in implementing the conservation measures, subject to authorized and appropriated funds:

1. Serve as an advisor to the landowners, providing expertise on the management and conservation of X species included in this agreement, and provide information on Service requirements regarding CCAAs.
2. Provide assistance in coordinating development and implementation of this Agreement.

2. ENROLLED LANDS

Description of the lands (including specific location [legals] and map) enrolled in the CCAA

3. AUTHORITY AND PURPOSE

Sections 2, 7, and 10 of the Endangered Species Act of 1973, as amended (Act, 16 U.S.C. 1531 *et seq.*), allow the Service to enter into this CCAA. Section 2 of the Act states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation’s heritage in fish, wildlife, and plants. Section 7 of the Act requires the Service to review programs that it administers and to utilize such programs in furtherance of the purposes of the Act. By entering into this CCAA, the Service is utilizing its Candidate Conservation Programs to further the conservation of the Nation’s fish and wildlife. Lastly, section 10(a)(1)(A) of the Act authorizes the issuance of permits to “enhance the survival” of a listed species.

Consistent with the Service’s “Candidate Conservation Agreement with Assurances Final Policy” (64 FR 32726), the conservation goal of this CCAA is to protect and enhance species X habitat and populations on non-Federal lands within the historic range of the species in Wyoming. This conservation goal will be met by giving the participating landowners incentives to implement conservation measures through regulatory certainty concerning land use restrictions that might otherwise apply should this species become listed under the Act.

The purpose of this CCAA is for the Service to join with Mr. X to implement conservation measures for X by preserving and enhancing habitat for this species, while reducing threats that are controllable within the defined CCAA area (Map 1).

Upon approval of the CCAA, the XYZ Company would be issued a section 10(a)(1)(A) permit by the Service. The section 10(a)(1)(A) permit would authorize incidental take of X should it occur, as long as the permit conditions, including implementation of the CCAA are followed. Incidental take would be authorized for [include specific actions] on the CCAA area (Map 1). The permit would include the Act’s regulatory assurances set forth at CFR 50 17.22(d)(5).

4. DESCRIPTION OF EXISTING CONDITIONS, STATUS AND THREATS

4.1. SPECIES X

Background of why the species is being included in the CCAA (can be from Federal Register notice on petition, other sources of information)

4.1.1 Natural History

4.1.2 Distribution

4.1.3 Factors Affecting the Species

- 4.1.3.1 *The present or threatened destruction, modification, or curtailment of its habitat or range*
- 4.1.3.2 *Overutilization for commercial, recreational, scientific, or educational purposes*
- 4.1.3.3 *Disease or predation*
- 4.1.3.4 *The inadequacy of existing regulatory mechanisms*

4.1.3.5 *Other natural or manmade factors affecting its continued existence*

4.1.4 Conservation Planning Efforts

4.5 DESCRIPTION OF EXISTING CONDITIONS WITHIN THE CCAA AREA

4.5.1 Species Distribution

4.5.1.1 *Species X*

4.5.2 Enrolled Lands Management (what activity has occurred on the landscape, what is happening now, and what are the plans for the future?)

5. CONSERVATION MEASURES

5.1 PROPERTY OWNER

The following conservation measures will begin immediately, as most represent continuation of ongoing land management practices:

5.1.1 Conservation Measures

5.1.1.1

5.1.1.2

5.1.1.3

5.1.1.4 *Minimize incidental take*

5.2 SERVICE

The Service agrees to provide technical assistance in the CCAA and permit application development.

6. EXPECTED BENEFITS

The Service expects the above described Conservation Measures, when implemented, will provide the following benefits to X on the property encompassed by this Agreement:

- ... that should maintain viability of the population.

- Habitat suitable for X will expand ... toward XX,000 acres and X density increases. Management will preclude disturbance within 0.25-mile (0.4 km) of active X nests from April XX through July XX.
- XY will benefit as their prey base increases in association with increased acreage and density of X, and if nesting platforms are utilized, they will be protected with a X-mile (X km) no disturbance buffer from March XX through August XX.
- Additional habitat improvements (e.g., re-seeding, reducing noxious weed infestations) will increase habitat quality, and enhance the native ecosystem.

The Service has determined that the benefits of the specific conservation measures described in this Agreement, when combined with those benefits that would be achieved if it is assumed that similar conservation measures were also implemented on other necessary properties would preclude or remove any need to list the X under the ESA. “Other necessary properties” are other properties on which the conservation measures would need to be implemented in order to preclude or remove any need to list the X.

7. LEVEL/TYPE OF TAKE/IMPACTS

The Service recognizes that the level of take outlined for the following species is consistent with the overall goal of precluding the need to list the species, and that if the Conservation Measures were implemented on other necessary properties, there would be no need to list the species.

7.1 SPECIES X

In order for the landowner to agree to ensure the long-term conservation of X, the landowner requires the ability to ... Therefore, incidental to enhancing the survival of the species through ensuring the long-term conservation of X populations, the Service is authorizing take of X. The take incidental in compliance with this CCAA includes X. This incidental take includes lethal and non-lethal take (e.g., changes in behavior and other factors that may affect survival or reproduction [Citation]).

Take will occur in the form of ...

8. ASSURANCES PROVIDED

Through this CCAA, the Service provides Mr. X assurances that no additional conservation measures nor additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the

“Conservation Measures” section of this CCAA, will be required should the X become listed in the future. These assurances will be authorized with the issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act. The application for the enhancement of survival permit is included as Appendix [X] to this CCAA.

Activities covered by these assurances include the following specific and general actions:

- Allow ... (see Section 7.1, pages X-XX for a detailed description),
- Allow the use of ... (see Section 7.1, pages X-XX for a complete description),
- Allow continuation of current land management practices, such as habitat improvement projects (e.g., ...) with consultation by the Service, and on and off road vehicle use associated with .. (e.g., ...).

9. ASSURANCES PROVIDED TO PROPERTY OWNER IN CASE OF CHANGED OR UNFORESEEN CIRCUMSTANCES

The assurances listed below apply to the Property Owner with an enhancement of survival permit associated with this CCAA where the CCAA is being properly implemented. The assurances apply only with respect to species adequately covered by the CCAA.

(1) Changed circumstances provided for in the CCAA. If additional conservation measures are deemed necessary to respond to changed circumstances and were provided for in the CCAA’s operating conservation program, the permittee will implement the measures specified in the CCAA.

(2) Changed circumstances not provided for in the CCAA. If additional conservation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the CCAA’s operating conservation program, the Service will not require any conservation and mitigation measures in addition to those provided for in the CCAA without the consent of the permittee, provided the CCAA is being properly implemented.

(3) Unforeseen circumstances.

(A) In negotiating unforeseen circumstances, the Service will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or

other natural resources beyond the level otherwise agreed upon for the species covered by the CCAA without the consent of the permittee.

(B) The Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Service will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;**
- (2) Percentage of range adversely affected by the CCAA;**
- (3) Percentage of range conserved by the CCAA;**
- (4) Ecological significance of that portion of the range affected by the CCAA;**
- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA; and**
- (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.**

10. MONITORING PROVISIONS

The X will be managed to maintain a viable population, using adaptive management of the rangeland resource. XYZ Company (or its designate) will monitor the species covered under this CCAA. (For detailed description of monitoring, see discussion of Biological Monitoring below.) Results of this monitoring will determine X management to be implemented during the next season. This provides a safety factor if impacts are occurring then a change in management will occur.

11. COMPLIANCE MONITORING

The Permittee will be responsible for monitoring and reporting specified herein related to implementation of the CCAA and fulfillment of its provisions, including implementation of agreed-upon conservation measures, and take authorized by the permit. The Service, after reasonable prior notice to the Property Owner, may enter the enrolled lands to ascertain compliance with the CCAA. For this CCAA, reasonable prior notice will be considered notice given at two weeks in advance of a visit.

12. BIOLOGICAL MONITORING

12.1 Species X.

The permittee (or his designated alternate) will:

- (1) Determine X density,
- (2) Determine acreages of X occupied habitat annually,
- (3) Determine weekly and annual ...,
- (4) Record and track ..., and
- (5) Specifically, the permittee agrees to:
 - a. Map and determine acreage of X using GPS and GIS systems. Do baseline determination and repeat every other year for life of plan to monitor expansion/contraction within management areas. Record total acreage within CCAA area.
 - b. Determine X presence/absence ...on
 - c. Determine X density yearly using at least two randomly placed line transects with two-meter belts through 70% of the ... Complete surveys after July 31.
 - d. Store data in database maintained by ...

13. NOTIFICATION OF TAKE REQUIREMENT

By signature of this CCAA, Mr. X agree(s) to provide the Service with an opportunity to rescue individuals of the covered species before any authorized take occurs. Notification that take will occur must be provided to the Service at least [30] days in advance of the action. Or if take will be on an ongoing basis can include this language “Because take of this species is on an ongoing basis, notification can be done annually at least 2 weeks prior to ... effort.”

14. DURATION OF CCAA AND PERMIT

The CCAA, including any commitments related to funding under Service programs, will be in effect for a duration of [10] years following its approval and signing by the Parties. The section 10(a)(1)(A) permit authorizing take of the species will have a term of [20] years from the effective date of the

permit. The permit and CCAA may be extended beyond the specified terms through amendment, upon agreement of the Parties.

15. MODIFICATIONS

After approval of the CCAA, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor in interest to the landowner, to compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the CCAA except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5).

16. MODIFICATION OF THE CCAA

Any party may propose modifications or amendments to this CCAA, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Parties. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

17. AMENDMENT OF THE PERMIT

The permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The party proposing the amendment shall provide a statement describing the proposed amendment and the reasons for it.

18. TERMINATION OF THE CCAA

As provided for in Part 8 of the Service's CCAA Policy (FR 64:32726), the Permittee may terminate implementation of the CCAA's voluntary management actions prior to the CCAA's expiration date, for good cause, even if the expected benefits have not been realized. If the Permittee is unable to continue implementation of the plans and stipulations of the CCAA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the Permittee would relinquish the permit to the Service. The Permittee may terminate this CCAA for good cause with [60] days prior written notice to the other Parties,

and the Service is provided an opportunity to relocate affected species within [30] days of that notice. The Permittee also may terminate the CCAA at any time for any other reason, but termination for reasons other than uncontrollable circumstances such as those associated with a force majeure event shall extinguish the Permittee’s authority to take species (if listed) or occupied habitat under the permit.

Additional language may be included here, such as:

Since the XYZ Company does not own all the subsurface mineral rights underlying the CCAA area, there is a potential for the development of those mineral rights to occur without the consent of the surface land owner. This is a threat to the conditions of the CCAA, and the Service must consider potential activities that may occur on the surface property owned by the XYZ Company, but outside their control. If development of these subsurface minerals occurs, the Service will review those actions related to the development to ensure they are compatible with the conditions of the CCAA. If the actions are not compatible, modifications to the CCAA as currently drafted may be necessary through mutual agreement, potentially requiring additional conservation measures by the permit holder. If such modifications are unacceptable or untenable, the permit holder may implement their right to terminate the CCAA.

19. PERMIT SUSPENSION OR REVOCATION

The Service may suspend or revoke the permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 13.28(a)). Prior to revocation, the Service would exercise all possible measures to remedy the situation.

20. REMEDIES

Each party shall have all remedies otherwise available to enforce the terms of the CCAA and the permit, except that no party shall be liable in damages for any breach of this CCAA, any performance or failure to perform an obligation under this CCAA or any other cause of action arising from this CCAA.

21. DISPUTE RESOLUTION

The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

22. SUCCESSION AND TRANSFER

This CCAA shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, (i.e., new owners) in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this CCAA shall run with the ownership of the enrolled property and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. The enhancement of survival permit issued to the Permittee also will be extended to the new owner(s). As a party to the original CCAA and permit, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving CCAA assurances by signing a new CCAA and receiving a new permit. The Permittee shall notify the Service of any transfer of ownership, so that the Service can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing CCAA or a new one to benefit listed species on the property. Assignment or transfer of the permit shall be governed by Service regulations in force at the time.

23. AVAILABILITY OF FUNDS

Implementation of this CCAA is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this CCAA will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this CCAA to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

The Permittee is committed to the plan, and funds to accomplish the plan will not overly burden them since many of the conservation measures are already occurring on the XYZ Company lands in accordance with the CCAA (e.g., habitat improvement projects).

24. RELATIONSHIP TO OTHER AGREEMENTS

The Permittee is a member of the XYZ, a group currently working with the Service on development of a larger-scale, multi-species CCAA. The Permittee may elect to participate in activities under the XYZ's CCAA in the future. This current CCAA is consistent with conservation actions being considered in development of the XYZ's CCAA.

25. NO THIRD-PARTY BENEFICIARIES

This CCAA does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this CCAA to maintain a suit for personal injuries or damages pursuant to the provisions of this CCAA. The duties, obligations, and responsibilities of the Parties to this CCAA with respect to third parties shall remain as imposed under existing law.

26. NOTICES AND REPORTS

Any notices and reports, including monitoring and annual reports, required by this CCAA shall be delivered to the persons listed below, as appropriate:

Mr. X
XYZ Company
ABC Road
Anywhere, WY 82000

Brian T. Kelly
Field Supervisor, Wyoming Field Office
U.S. Fish and Wildlife Service
5353 Yellowstone Road, Suite 308
Cheyenne, WY 82009

IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature date below, executed this Candidate conservation Agreement with Assurances to be in effect as of the date that the Service issues the permit.

Permittee

Date

Field Office Supervisor
U.S. Fish and Wildlife Service

Date

References Cited

DRAFT