

**SAFE HARBOR AGREEMENT WITH THE NATURE CONSERVANCY, AND
PRIVATE PROPERTY OWNERS FOR VOLUNTARY ENHANCEMENT/
RESTORATION ACTIVITIES BENEFITING OREGON SILVERSPOT BUTTERFLY
CENTRAL COAST POPULATIONS IN LANE COUNTY, OREGON**

This Safe Harbor Agreement (“Agreement”) is by and between the The Nature Conservancy, a District of Columbia non profit corporation (“TNC” or “Permittee”), and the **United States Fish and Wildlife Service**, an agency of the United States Department of the Interior (“Service”). This Agreement shall become effective on the date of execution by the Service.

1. RECITALS

1.1 PURPOSES OF THIS AGREEMENT: The purposes of this Agreement are (1) to establish a collaborative process to implement conservation measures for the Covered Species defined herein by preserving suitable habitat and providing for its restoration; and (2) to establish a legal basis for the issuance of an “Enhancement of Survival” permit that will authorize implementation of the conservation actions and other activities provided in this Agreement as well as the incidental take of Covered Species (as defined in Section 2, below) that results from activities that do not lower the baseline condition of the Enrolled Property (see definition of Enrolled Property below). The geographic scope of this Agreement may include all properties on the central coast of Oregon located in whole or in part within the ten-mile corridor surrounding Siuslaw National Forest managed sites, Bray Point and Rock Creek, as shown on attached **Figure A**, which is incorporated herein by reference.

1.2 SAFE HARBOR POLICY AND PROGRAM: This Agreement follows and is consistent with the Service’s Safe Harbor Agreement final policies (64 Federal Register (FR) 32717) and final regulations, and implements the intent of TNC and the Service to follow the procedural and substantive requirements of the Endangered Species Act of 1973, as amended (“ESA”) with respect to Safe Harbor Agreements. The Safe Harbor program encourages proactive conservation efforts by non-Federal landowners by providing them certainty that future property-use restrictions will not be imposed if those conservation efforts attract Covered Species to the Enrolled Property or result in increased numbers or distributions of species already present.

Under this Agreement, private lands may be enrolled through individual Cooperative Agreements (sometimes referred to as “CA”) between the Service, TNC and landowners (landowners may be referred to as “Cooperators”). Cooperators will be issued a Certificate of Inclusion (“CI”) which will allow activities on the Enrolled Property to be included within TNC’s Section 10(a)(1)(A) Enhancement of Survival permit (the “Permit”).

1.3 VALUE TO SPECIES AND HABITATS: Conservation and preservation of the Enrolled Property is valuable for the survival and recovery of the Covered Species, identified in Section 2 herein, because of the location of the Enrolled Property in the Central Oregon Coast,

where development pressure and recreational use have resulted in very few areas that remain as natural open space to support the habitats required by the Covered Species.

1.4 NET CONSERVATION BENEFIT: The Enrolled Property could be substantially improved for use by the Covered Species by prohibiting development therein and through the active management and conservation efforts by TNC and Cooperators, including habitat restoration and preservation described herein.

2. COVERED SPECIES

This Agreement covers the federally listed Oregon silverspot butterfly (*Speyeria zerene hippolyta*), which is hereafter referred to as “butterfly” or "Covered Species". When signed, this Agreement will serve as the basis for the Service to issue the Permit under the ESA section 10(a)(1)(A) for the take of covered, listed species associated with the potential future return of the Enrolled Property to its regulatory baseline (i.e. section 9 responsibility prior to the Agreement).

3. DESCRIPTION OF ENROLLED PROPERTY AND BASELINE CONDITIONS

3.1 ENROLLED PROPERTIES. Private landowners within the geographic scope of this Agreement as shown on Figure A are eligible to enroll their property in the program for a minimum of 10 years. Conservation efforts will be focused on this small region, especially on lands adjacent to the existing Covered Species population centers. This approach will concentrate the ecological benefits on butterfly nectaring, ovipositing, and breeding habitat. Lands suitable for inclusion will be those within the coastal meadow habitat corridor located at the interface of the Pacific Ocean and the spruce/hemlock forest. Open, grassy meadows within five miles (i.e. the documented dispersal distance of the covered species) of this corridor may be included if habitat quality and quantity is sufficient to support butterflies. Highway 101 bisects the entire 10-mile habitat corridor. This Agreement may be amended pursuant to its terms to include additional land applicable to the goals of this Agreement.

3.2 BASELINE CONDITION OF THE ENROLLED PROPERTY: TNC and the Service agree that the Safe Harbor baseline applicable to this Agreement is as follows and will be determined as described below: a mutually agreed upon baseline determination will be made for each property prior to issuing a Certificate of Inclusion, and will be specified in each CA.

Initial baseline determinations will be made by the Service or TNC based on the presence or absence of the butterfly’s larval host plant, the early blue violet (*Viola adunca*), prior to restoration efforts. The peak blooming season for the early blue violet is between April and June and it is during this time period that it would be most appropriate to determine the regulatory baseline. The baseline for each CA must include an assessment of the number of early blue violets and/or the area occupied by early blue violets. Sites lacking early blue violets will have a baseline condition of zero. The baseline conditions will be based upon the number of early blue

violets and/or their areal coverage which reflect the potential number of Oregon silverspot butterflies that may occur at the site. The final baseline determination will be mutually agreed upon by TNC, the Service, and the Cooperators and a baseline determination, map, and description of enrolled properties will be provided in each CA.

4. RESTORATION AND MANAGEMENT ACTIONS

4.1 Restoration and Management Activities. TNC, or the Cooperator pursuant to a Cooperative Agreement, may conduct the following restoration and management activities which are intended to benefit coastal meadow Oregon silverspot butterfly habitat. Such activities may be applied adaptively to each Cooperator's Enrolled Property, and will be further detailed in the individual CAs.

4.1.1 Modifying Existing Vegetation. Suppress or remove invasive vegetation via a combination of techniques approved by the Service, TNC and the Cooperator. Mowing, brush cutting, grazing, burning, infrared or weed burner, smothering, and tilling are proposed management techniques. Suppression of invasive vegetation is intended to allow native nectar plants and early blue violet to be habitat components accessible to butterflies.

4.1.2 Planting Native Vegetation. Reseed and/or replant with native coastal meadow vegetation, including native nectar sources preferred by butterflies, including, but not limited to, Canada goldenrod (*Solidago canadensis*), dune goldenrod (*Solidago spathulata*) California aster (*Symphotrichum chilense*), pearly everlasting (*Anaphalis margaritacea*), dune thistle (*Cirsium edule*), and yarrow (*Achillea millefolium*). Planting of native vegetation will occur when in TNC's judgment, suppression of invasive vegetation is at a level where native species could be successfully reintroduced. Establishing a native plant matrix is a key factor in making the essential habitat components of nectar and violets available for use by butterflies, and TNC shall provide a summary of such plant matrix in the annual reports to the Service.

4.1.3 Enhancing Early Blue Violet Populations. Grow seeds of early blue violet and outplant mature plants into habitat with a native grass and forb matrix to increase potential sources of larval food plant. Specifically enhancing or establishing early blue violet populations will be a key factor to encourage butterfly ovipositing and breeding activity.

The voluntary restoration and management actions listed above are intended to increase early blue violet densities, increase the nectar source availability and ultimately increase the number of Oregon silverspot butterflies by improving the quality of their habitat within an important dispersal corridor between two existing populations. Successful establishment of habitat will require multiple years of habitat manipulation, depending on the habitat condition and degree of exotic plant invasion on each property. This process is expected to take approximately two to three habitat management treatments and approximately two to three seasons.

Nothing in this Agreement prevents TNC, or the Cooperator after consultation with TNC and the Service, from implementing restoration and management activities not described in the Agreement, as long as such actions maintain the baseline conditions or enhance native coastal meadow habitat, and do not adversely affect the beneficial actions set forth in this Agreement.

4.2 Monitoring. Habitat restoration activities will be followed by post-project monitoring. Site inspections are likely to occur to determine long-term success of coastal meadow habitat restoration efforts. Reasonable advance notice of site inspections will always be provided to TNC and the Cooperator, as stated in the CA. Cooperators shall allow access to TNC or Service (or designee thereof) to conduct restoration and management actions and monitor habitat conditions to determine long-term success of such actions.

4.3 Annual Reports. Annual reports will describe restoration and management activities undertaken during the previous year and anticipated restoration and management activities for the upcoming year. The first report will be due on one year from date of signature.

5. RESPONSIBILITIES OF TNC

5.1 Cooperative Agreement Development.

5.1.1 TNC will apply for and hold the Permit and, as funding allows, enroll non-Federal landowners (Cooperators) with Certificates of Inclusion under the Permit when Cooperators sign CAs. The Service has provided the form of CA, attached as Appendix III, and the form of CI, attached as Appendix IV. Each CA will include, at a minimum: (1) tax map of the enrolled property; (2) identification on the map of any existing butterfly baseline responsibilities on that property (i.e., the mutually agreed upon baseline), including an accurate estimate or accounting of the number or aerial extent of early blue violets; (3) specific proposed habitat improvements and the term of the CA (10 year minimum); (4) monitoring requirements; (5) further details of the Cooperator's and TNC's respective responsibilities under the CA, such as responsibilities for compliance with legal requirements when conducting the specified management activities.

5.1.2 The Service will have 30 days to review each CA. If no comments are received within 30 days, the CA will be deemed approved by the Service and TNC may proceed to finalize the CA. TNC will make available to the Service, upon request, records and materials in its possession relating to the implementation of the program, including executed CAs.

5.1.3 Upon execution of each CA, individual Cooperators will be issued a Certificate of Inclusion under the Permit. The Certificate of Inclusion authorizes incidental take of butterflies exceeding baseline conditions as a result of lawful activities within the Enrolled Property for the Permit term.

5.2 Cost Share Administrator. TNC will serve as the administrator of contracts, services, materials acquisitions, and disbursement of the Service's cost-share for activities related to project completion, pending funding from the Service.

5.3 Cooperative Agreement Implementation. TNC will designate a Project Field Manager and will provide, subject to available funding: oversight of baseline property assessments of lands enrolled in the Agreement; implementation of management actions; compliance monitoring (as further described below); annual effectiveness (biological) monitoring; and technical assistance to the maximum extent practicable in developing and implementing management plans.

5.4 Compliance Monitoring and Reporting. Depending upon funding availability, TNC will implement compliance monitoring for management activities specified in each CA, as well as take authorized by the Permit. TNC will monitor butterfly habitat restoration within the CA area annually. In the event that TNC has reductions in staff, or funding for compliance or effectiveness monitoring is unavailable, the Service will fulfill the monitoring responsibilities outlined in this Agreement or find another party to assume these responsibilities. The annual report shall be due no later than December 31 of each year, and shall include the following:

5.4.1 Status of the Permit, including the number, locations, and total acres of enrolled properties;

5.4.2 Baseline conditions of newly Enrolled Property; and

5.4.3 Current status of Enrolled Property, including: (i) management actions implemented and outcomes if known; (ii) description of activities undertaken pursuant to this Agreement or related to butterfly management; and (iii) description of any activities that resulted in or may have resulted in incidental take of butterflies, such as habitat modification or destruction, burning, emergency actions taken to protect life or property, etc.

In no event shall TNC be liable to the Service for the inability to monitor due to lack of funding or staff, or for non-compliance of the Cooperator with the terms of the CA or this Agreement.

5.5 Potential Incidental Take. If butterflies are known or are believed to be present on the Enrolled Property and incidental take is reasonably expected to occur due to otherwise lawful activities, then TNC will make a reasonable estimate of the number and status of the butterflies present, and assess, in consultation with the Service, whether the Oregon silverspot butterflies should remain on the property or be relocated, if feasible. If warranted, TNC and the Service will recommend procedures (i.e. translocation of early blue violets and/or butterflies if appropriate) the Cooperator can take to avoid future incidental take based on incidental take described in past annual reports. Incidental take of butterflies could occur during management activities or when the Cooperator and/or TNC wish to bring the enrolled property back to baseline conditions. Removal of habitat components, specifically early blue violets, could result in incidental take if Oregon silverspot butterflies have been observed on or near the enrolled property.

6. COOPERATORS (LANDOWNERS) ROLE:

The minimum responsibilities of the Cooperator/Landowner are set forth in the Cooperative Agreement, the form of which is attached hereto as Appendix III.

7. JOINT RESPONSIBILITIES OF TNC AND COOPERATORS

7.1 REPORTING: TNC and Cooperators shall report to the Service in writing any observed mortalities, injuries, or diseases of Covered Species on the Enrolled Property within 14 days of observation.

7.2 NOTIFICATION OF PLANNED ACTIVITIES: TNC and Cooperators shall notify the Service 60 days in advance of any otherwise lawful activities planned to be undertaken on the Enrolled Property that TNC or the Cooperator reasonably anticipates could result in the take of Covered Species above the baseline determination. During such 60 day period, TNC and Cooperators shall consult with the Service to attempt to minimize the effects of the planned activities on Covered Species and will provide the Service the opportunity within such 60 day period to capture and/or relocate any potentially affected Covered Species.

7.4 COMPLIANCE WITH LAWS: Permit issuance will not preclude the need for TNC and Cooperators to abide by all other applicable Federal, State, and local laws and regulations that may apply, including but not limited to those imposed by relevant land use authorities.

8. SERVICE RESPONSIBILITIES

8.1 ISSUE PERMIT. The Service agrees to, upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue the Permit, authorizing take of the Covered Species as a result of lawful activities on the Enrolled Property in accordance with the terms of such Permit. The Service will provide TNC and Cooperators technical assistance in preparing the permit application and individual CAs, and developing and implementing management plans, to the maximum extent practicable.

8.2 CONSULTATION. As needed, the Service will be responsible to seek out and incorporate input from non-federal landowners, TNC, Tribes, Oregon Parks and Recreation Department (OPRD), and other interested parties as the Service deems appropriate.

8.3 FUNDING INFORMATION. The Service will provide information to TNC and Cooperators on Federal funding programs and will work to secure funding for long-term monitoring to ensure that the conditions of each CA are being met, to evaluate effectiveness of restoration and management activities, and to evaluate baseline conditions of future Enrolled Property.

8.4 REVIEW OF COOPERATIVE AGREEMENTS. The Service will review and provide input on Certificates of Inclusion and CAs for landowners meeting the enrollment conditions of the Agreement. The Service will have 30 days from receipt to review and concur with the CA, or to decline concurrence, in which case the Service will provide a written explanation for its non-concurrence and TNC will not proceed with the CA. If the Service does not provide written notice of its decision to TNC within 30 days, TNC and the Cooperator may execute the CA, which, in turn, will cause issuance of a CI to the Cooperator.

9. INCIDENTAL TAKE PERMIT

9.1 ASSURANCES TO PERMITTEE: Provided such take does not lower the condition of the Enrolled Property below the baseline condition with respect to the number of Covered Species and their respective habitats currently located on the Enrolled Property as described herein, TNC and Cooperators, their agents and assigns, shall be authorized to take Covered Species on the Enrolled Property in the following circumstances:

9.1.1 Implementing the management activities identified in Part **4.1** hereof.

9.1.2 Carrying out any normal (e.g., agricultural, silvicultural, recreational, or other) activity on, or adjacent to, the Enrolled Property after restoration and management activities identified in this Agreement and the respective CAs have been initiated.

9.1.3 Making any lawful use of the Enrolled Property after the management activities identified in this Agreement and the respective CAs have been fully implemented.

The maximum number of Covered Species individuals that can be taken pursuant to this Agreement and the Permit will be no more than the number of additional Covered Species individuals resulting from an increase in the baseline conditions created through this Agreement. The net impact of the incidental take authorized under this program is, at the very most, a return to the *status quo ante* or baseline. In no event may habitat be impacted until 60 days after the Service has received written notice of potential take of Oregon silverspot butterflies in order to relocate any remaining early blue violets or Oregon silverspot butterflies from the area to be impacted, as deemed appropriate by the Service.

9.2 EFFECTIVE DATE: The Permit will take effect for Covered Species as of the date of this Agreement.

9.3 TERM OF AGREEMENT AND PERMIT: The duration of this Agreement and Permit is for a period of 35 years, unless earlier terminated pursuant to the terms of this Agreement.

9.4 PERMIT AMENDMENT: The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, 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.

9.5 PERMIT RENEWAL: The Permit may be renewed in accordance with all applicable legal requirements, and specifically those administered under the ESA and the Service's permit regulations (see 50 CFR 13.22). A Permit renewal request needs to be in writing at least 30 days prior to the permit's expiration, certify that all statements and information in the original application are still correct or include a list of changes.

9.6 SUSPENSION AND 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 shall exercise all possible measures to remedy the situation without suspending or revoking the Permit, and shall provide notice in writing to all Cooperators of the potential revocation.

10. MODIFICATIONS

10.1 ASSURANCES TO THE PERMITTEE: To the extent permitted by law, in accordance with 50 CFR 17.32(c)(5)(ii), the Service hereby provides assurances to the Permittee that the Service may not require additional or different management activities to be undertaken by the Permittee without the consent of the Permittee.

10.2 BASELINE ADJUSTMENT. Baseline conditions set forth in the respective CAs may, by mutual agreement of TNC, the Service and the applicable Cooperator, be adjusted if, during the term of the CA and for reasons beyond the reasonably foreseeable control of the Cooperator, the utilization of the Enrolled Property by the Covered Species or the quantity or quality of habitat suitable for or occupied by the Covered Species is reduced from what it was at the time the CA was executed.

10.3 MODIFICATIONS: Either TNC or the Service may propose modifications or amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, either TNC or the Service, as applicable. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. TNC and the Service will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed minor modifications will become effective upon the written concurrence of TNC and the Service. Proposed major modifications will be become effective upon completion of a major amendment process, which includes a 30-day public comment period.

10.4 TERMINATION OF AGREEMENT: As provided in Part 12 of the Service's Safe Harbor Policy (64 FR 32717) TNC may terminate this Agreement for circumstances beyond its control upon 60 days written notice to the Service and the Cooperators. In such event, the Cooperators shall be permitted to return the Enrolled Property to baseline conditions even if the

management and restoration activities described herein have not been fully implemented, provided that TNC gives the Service notice thereof as provided in Section 7.2 prior to carrying out any activity likely to result in the taking of a Covered Species. Termination for any other reason shall require 90 days prior written notice by TNC to the Service and each Cooperator. In that event, the Service will seek to obtain another person or entity to sign and take over the responsibilities under the Agreement, or have the individual Cooperators sign individual Agreements. If TNC terminates the Agreement for any other reason, the Permit shall immediately terminate.

10.5 CATASTROPHIC EVENTS: The Permittee and the Cooperator will not be held responsible for take below original baseline conditions in the event of major adverse habitat impacts (such as destruction of all or the majority of Covered Species population or habitat) resulting from catastrophic events including but not limited to "acts of God", or sudden actions of the elements such as hurricanes, rainstorms, severe drought, tsunamis, or insect/disease epidemics.

10.6 REMEDIES: TNC and the Service shall have all remedies otherwise available to enforce the terms of the Agreement and the Permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement.

10.7 DISPUTES: TNC and the Service agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by both TNC and the Service.

10.8 INTERPRETATION: The CAs will incorporate the terms of this Agreement. Any inconsistency between this Agreement and any CA shall be governed by the terms of this Agreement.

11. MISCELLANEOUS

11.1 BINDING EFFECT: This Agreement and the Permit shall be binding on and shall inure to the benefit of TNC and the Service (including officers, directors, employees, lessees and agents thereof) and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

The rights and obligations of the landowners under the CAs are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25, upon consent of the successor or transferee of the land, execution of a new CA, and issuance of a CI. A new owner(s) will have the same rights and obligations with respect to the Enrolled Property as the original owner. Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

11.2 ANTI-DEFICIENCY ACT: Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed to require the obligation, appropriation, or expenditure of any

funds from the U.S. Treasury. TNC and the Service acknowledge that the Service will not be required under this Agreement 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.

11.3 NO THIRD PARTY BENEFICIARIES: This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it be deemed to authorize any third party to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of TNC and the Service with respect to third parties shall remain as imposed under existing law.

11.4 OTHER LISTED SPECIES: Other listed species may occur in the future on the Enrolled Property as a direct result of the management actions specified herein. If that occurs and TNC so requests, TNC and the Service may agree to amend the Agreement and associated permit to cover additional species and to establish appropriate baseline conditions for such other species.

11.5 NOTICES: Any notices and reports required by this Agreement shall be delivered to the persons at the addresses listed below:

The Nature Conservancy
Oregon Field Office
Oregon Coast Stewardship Ecologist
2499 North Bank Road
Otis, Oregon 97368
(541) 994-5564

State Supervisor
Oregon Fish and Wildlife Office
U.S. Fish and Wildlife Service
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179

This Agreement is to be effective as of the date of execution by the Service.

U.S. Fish and Wildlife Service

By: _____ Date _____
State Supervisor, Portland, Oregon

The Nature Conservancy, a District of Columbia non profit corporation

By: _____

Title: _____

Date