

# **Appendix C. Cooperative Agreement Template<sup>3</sup>**

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<sup>3</sup> Subject to revision over time with input from the USFWS and ODA.



## BENTON COUNTY PRAIRIE SPECIES HCP

### COOPERATIVE AGREEMENT

(Between Benton County and HCP Cooperator)

BENTON COUNTY COMMUNITY DEVELOPMENT DEPARTMENT,  
360 SW Avery Avenue, Corvallis, OR

**1. PARTIES AND PURPOSE.** This Cooperative Agreement ("Agreement") is between **Benton County** ("County"), and **[Property owner]** ("Cooperator"). This Agreement is intended to set forth the obligations of the Cooperator for **[short term restoration or permanent]** impacts to **[list the covered species here ("Covered Species")]** on land owned by the Cooperator resulting from covered activities performed by the Cooperator. Participation in this Agreement is a prerequisite for obtaining a Certificate of Inclusion from Benton County issued as part of the County's Prairie Species Habitat Conservation Plan, Incidental Take Permit (Permit # \_\_\_\_\_) from the U.S. Fish and Wildlife Service (USFWS), and Implementing Agreement from the USFWS and Oregon Department of Agriculture (ODA).

The County's Incidental Take Permit, Implementing Agreement, Certificate of Inclusion, and this Agreement do not release the Cooperator from the responsibility to avoid "take" of any covered species already occupying the property.

This Agreement includes, at a minimum:

- (1) Map(s) of Cooperator's property or properties (Exhibit A) showing the following information:
  - a) Property boundaries,
  - b) Area to be impacted by the covered activity ("Impact Area"),
  - c) Location of Covered Species to be impacted by the covered activity, based on a pre-project survey or calculation of nectar species abundance (Documentation attached as Exhibit B),
  - d) For projects requiring mitigation, Prairie Conservation Area where mitigation will be undertaken, including area where Covered Species will be restored, enhanced or augmented;
- (2) For projects requiring mitigation, Notice of Mitigation Initiation (Reporting Form D);
- (3) Current Species Survey/Baseline Assessment (Reporting Form C) of site where habitat restoration, enhancement and management activities or mitigation will occur;
- (4) Effectiveness Monitoring Plan (Attached as Exhibit C);
- (5) Cooperator and County responsibilities under the Agreement; and
- (6) Benton County Habitat Conservation Plan (incorporated herein by reference).

**2. AFFECTED PROPERTY.** The Cooperator owns property identified as **[list tax lot information]** or milepost **[insert milepost information]** in Benton County, Oregon (Exhibit A).

**3. BASELINE CONDITIONS OF MITIGATION SITE.** Cooperators have performed a baseline assessment of the Prairie Conservation Area where mitigation will be performed. This assessment (Reporting Form C), includes a species survey (See HCP Appendix K: Project Site Survey and Reporting Protocols for Plants and Butterfly Habitat) of the Covered Species present on the property and an assessment of the habitat. This baseline assessment will be used to track the effectiveness of the conservation measures required under this Agreement.

**4. IMPACTED HABITAT.** The parties agree Cooperator is allowed to impact **[List the covered species and number of individuals or amount of foliar cover to be affected]** within that area shown on Exhibit A as the Impact Area, as a result of performing the following activities ("Covered Activities") which are covered under the County's Incidental Take Permit, Habitat Conservation Plan, and Implementing Agreement.

- **[List covered activities here]**

**5. CONSERVATION MEASURES.** The purpose of the County's Incidental Take Permit, Habitat Conservation Plan, Implementing Agreement, and this Agreement is to mitigate for impacts to Covered Species or their habitat on Covered Lands resulting from Cooperator's Covered Activities. The biological goal of the Permit is to maintain viable populations of the Covered Species in Benton County. To accomplish this goal, it is essential that the Cooperator and the County work together to provide good habitat and positive stewardship for the Covered Species on Cooperator's lands. Therefore, Cooperator agrees to conduct the following activities to minimize and mitigate for impacts to the Covered Species as provided for in the Certificate of Inclusion and this Agreement:

- **[Specify conservation measures/mitigation to be undertaken]**

**6. EFFECTIVENESS MONITORING**

Cooperator shall undertake effectiveness monitoring for any habitat restoration, enhancement, and management activities required in Section 5 above, and according to the Effectiveness Monitoring Plan (Exhibit C) prepared by the Cooperator. Cooperator shall complete and submit a Reporting Form C: Monitoring Summary, to the County by December 31<sup>st</sup> of each year monitoring is conducted.

**7. RESPONSIBILITIES OF THE PARTIES**

**Cooperator's Responsibilities.** The Cooperator agrees to limit its impacts on Covered Species to those allowed through the Agreement and Certificate of Inclusion. The Cooperator understands that in order for the County to fulfill the responsibilities of its Incidental Take Permit and Implementing Agreement, the County must report to the U.S. Fish and Wildlife Service and Oregon Department of Agriculture all activities impacting Cooperator's Covered Species in accordance with its Incidental Take Permit and Implementing Agreement. In addition, Cooperator agrees to:

- Implement the Conservation Measures specified herein in compliance with all federal, state and local laws, including, but not limited to, physical delineation of the habitat area on the ground as deemed necessary by the County.
- Perform its Covered Activities in compliance with the Best Management Practices and Management Guidelines identified in the HCP, in addition to all federal, state, and local laws,
- Upon reasonable notice (48 hours), allow access to the Cooperator's Property by the County or its approved contractors, for purposes related to this Agreement, including, but not limited to, compliance monitoring and technical assistance.
- Notify the County, in writing, of any transfer of ownership at least 30 calendar days prior to the intended transfer, so the County can attempt to contact the new owner and explain the responsibilities applicable to the impacted property.
- If pre-mitigation has not been completed, initiate mitigation and within 1 year of the effective date of this agreement. Submit Reporting Form D: Mitigation Notice, Part A: Notification of Mitigation Initiation, with this Agreement and prior to beginning any mitigation required by this Agreement and submit Part B of the form, Notice of Mitigation Completion, at the completion of any mitigation required by this Agreement.
- Conduct effectiveness monitoring as set forth in the Cooperator's Effectiveness Monitoring Plan (Exhibit C), and submit the monitoring forms to the County as required in Section 6 above.
- Submit required Part A and Part B of Reporting Form A: Project Impacts, and Form B: Work Completed, detailing covered activities implemented, including habitat restoration, enhancement and management activities by December 31 of the year in which they were completed.

**County's Responsibilities.** The County's responsibilities include the following:

- Provide 48 hours advance notification to the Cooperator before any visit by County staff or its contractors to Cooperator's Property.

**7. AGREEMENT DURATION.** Obligations under this Agreement will be in effect from the date executed until the conservation measures required under this Agreement have been satisfied and Reporting Form D: Part B: Notice of Mitigation Completion has been submitted to and signed off by the County. Upon signing the Agreement and submitting Notice of Mitigation Initiation (Reporting Form D) (and Notice of Mitigation Completion, if premitigation has already been completed), a Certificate of Inclusion will be issued to the Cooperator under the County's Incidental Take Permit and Implementing Agreement. The Certificate of Inclusion will authorize incidental take of the Covered Species at the time the Certificate of Inclusion is issued. Copies of the Agreement and Certificate of Inclusion will be held by the County, and copies will be submitted to the USFWS and ODA as part of the County's Annual Compliance Report.

**8. INCIDENTAL TAKE.** Take is defined as actions or attempted actions to harass, harm, pursue hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of federally-listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities.

**9. MODIFICATION OF AGREEMENT.** The County or the Cooperator may propose modifications or amendments to this Agreement by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the parties' written concurrence.

**10. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION.** The County may suspend or revoke a Cooperator's Certificate of Inclusion if the Cooperator, without the express written consent of the County, (1) performs activities other than the covered activities allowed for under this Agreement resulting in the take of the Covered Species, (2) does not perform the conservation measures set forth in the Agreement, (3) does not conduct the required effectiveness monitoring required in the Agreement, or (4) does not comply with the provisions of this Agreement. The County will notify the USFWS and ODA within ten (10) business days of the suspension or revocation of the Certificate of Inclusion.

**11. SUCCESSION AND TRANSFER.** This Agreement shall be binding on and shall inure to the benefit of the parties (including officers, directors, employees, lessees and agents thereof) and their respective successors and transferees. The rights and obligations under this Agreement are transferable to subsequent non-Federal property owners, upon consent of the successor or transferee of the land, execution of a new Agreement, and issuance of a Certificate of Inclusion. A new owner(s) will have the same rights and obligations as the original owner.

**12. RELEASE.** The Cooperator releases and shall hold the County harmless from any liability arising from or related to this Agreement or activities undertaken on the Cooperator's Property pursuant to this Agreement.

**13. NOTIFICATION.** Communication/correspondence required by this Agreement should be directed to the addresses below. Names and addresses may be changed upon written notice to all parties.

Benton County Community Development Director  
360 SW Avery Avenue  
Corvallis, OR 97333-1192  
(541) 541-6871

Cooperator's Name  
Address  
City, State, Zip  
Telephone Number

Dated effective as of the last date of signature below.

BENTON COUNTY

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

COOPERATOR

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_