SAFE HARBOR AGREEMENT
WITH SCOTT ERION
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES
BENEFITTING THE STREAKED HORNED LARK

1. PARTIES AND PURPOSE

This Safe Harbor Agreement (Agreement) is entered into between Scott Erion (Cooperator), in Linn County, Oregon and the U.S. Fish and Wildlife Service (Service), hereinafter collectively called the "Parties." The purpose of this Agreement is to contribute to the recovery of the streaked horned lark (*Eremophila alpestris strigata*) ("lark") through restoration and stewardship of wet and dry prairie habitat on sites owned by the Cooperator. This Agreement follows the Service's Safe Harbor Agreement final policy and regulations which implement section 10(a)(1)(A) of the Endangered Species Act (ESA) (Fish and Wildlife Service 1999, entire). The Safe Harbor Agreement program encourages proactive conservation efforts by non-federal landowners while providing them certainty that future property-use restrictions will not be imposed if those efforts result in increased numbers of listed species, in this case the lark. The lands enrolled under this Agreement ("Enrolled Lands") are located within the range of larks in the Willamette Valley in Oregon and are suitable for protecting, restoring and/or enhancing habitat for larks. The recovery of larks is heavily reliant upon the voluntary conservation actions of private landowners across their range. In return for voluntary conservation commitments, this Agreement will extend assurances to the Cooperator, allowing future alteration or modification of the Enrolled Lands to its original baseline conditions. Without this cooperative effort, the Enrolled Lands may not otherwise be utilized by these species in the foreseeable future.

When signed, this Agreement will serve as the basis for the Service to issue an enhancement of survival permit under ESA section 10(a)(1)(A) for the take of the covered species and will allow for the potential future return to the baseline conditions on the Enrolled Lands.

2. COVERED SPECIES

This Agreement covers the streaked horned lark, federally listed as a threatened species (Fish and Wildlife Service 2013a, entire). Critical habitat was also designated for the species at four sites on the outer coast of Washington, nine islands in the lower Columbia River, and on three units of the Service's Willamette Valley National Wildlife Refuge Complex (Fish and Wildlife Service 2013b, entire).

The streaked horned lark is a small songbird native to the Pacific Northwest (historically they were found in British Columbia, Washington, and Oregon) (Fish and Wildlife Service 2016, p. 4). They are one of 15 subspecies of the horned lark (*Eremophila alpestris*), which ranges throughout western North America. The streaked horned lark is distinguished from other horned larks based on their overall smaller size, yellower underparts and darker brown back feathers (Fish and Wildlife Service 2019, p. 2). Their diet consists primarily of seeds and they forage in habitats that contain low-statured or bare ground. Their nesting season generally is from mid-April through late August and they build their nests on the ground in shallow depressions lined with soft vegetation. The larks prefer habitats containing extensive bare ground, such as fallow

and active agricultural fields, native prairies, coastal dunes, wetland mudflats, sparsely vegetated edges of grass fields, gravel roads or dredge material deposition sites along the lower Columbia River (Fish and Wildlife Service 2019, p. 2). The majority of the larks that nest in the Willamette Valley have been found to remain their over the winter (Fish and Wildlife Service 2019, p. 3). They also exhibit strong fidelity to nest sites where they were born and generally return each year until the habitat at the breeding sites become too densely vegetated (Fish and Wildlife Service 2019, p. 6).

Some of the current threats to the streaked horned lark include: loss of habitat through the alteration of natural disturbance processes; incompatible habitat management; the adverse effects of military training, aircraft operation, and agricultural activities; small population issues and potential inbreeding depression; predation; disease; and possible poisoning caused by rodenticides used in agricultural fields (Fish and Wildlife Service 2019, p. 15-27). Recent population estimates for streaked horned larks is around 1,610 individuals (Fish and Wildlife Service 2019, p. 9).

3. DESCRIPTION OF THE ENROLLED LANDS

The Enrolled Lands are approximately 315 acres in size and is the entire property owned by the Cooperator (Attachment A). This site is located approximately 8 miles south of Brownsville, Oregon, in Linn County. General navigational directions are approximately south of Belt's Drive, north of Diamond Hill Road, west of Gap Road, and about 2.34 miles east of Interstate 5. The legal description is Township 15S; Range 3W; Sections 1 and 2; Willamette Meridian (tax lots 15S-03W-02 00300, 15S-03@-01 00300, 15S-03W-01 00201). The approximate decimal degrees of the main access point to the Enrolled Lands are -123.0135954° W, 44.2964808°N.

Historically (i.e., prior to the Cooperator's ownership of the Enrolled Lands) there was at least one residence and several other outbuildings on site (Attachment B). Based upon visual analysis from aerial imagery taken in 1944, the land was likely used for agriculture, livestock grazing, and other uses (Attachment B). Records indicate that since about the 1950s, the entire 315-acre parcel of land was farmed for grass seed production (Brinton, *in litt.* 2019, no pagination). Following the Cooperator's acquisition of the property, all buildings formerly located on the site had been demolished and the Cooperator has gradually started reducing farming activities on the entire property.

Currently about 131 acres (out of the 315 acre Enrolled Lands) are being farmed for grass seed production by a tenant as of fall 2020 (under the purview of the Cooperator). Approximately 65 acres (out of the entire Enrolled Lands) have been delegated to receive management treatments that will create habitat favored by larks (Attachment A) (Jebousek 2020, pers. comm.). At the time of this Agreement, six total earthen berms have been constructed (as of fall 2020), with the intent that they will become vernal pools following precipitation. Spots of ground like this that seasonally collect rainwater are very common in the Willamette Valley and can conveniently provide lark nesting habitat (Moore and Kotaich 2009, p.14). Future management actions taken on the Enrolled Lands will follow an adaptive management approach and the broad spectrum of techniques are listed in Section 5 of this Agreement.

On July 8, 2020, the Cooperator enrolled in the Partners for Fish and Wildlife Program (PFWP) (Attachment C). The term of the agreement is for 10 years; expiring on July 8, 2030. During this time, the PFWP may provide technical, in-kind, and cash support to implement mutually agreed upon restoration actions throughout the property.

4. BASELINE CONDITIONS

The baseline condition of the Enrolled Lands has been determined based upon surveys of larks during 2016-2017 (Jebousek, *in litt*. 2019a, no pagination). Informal visual and vocal surveys to detect presence or absence of larks were conducted during multiple seasons, including the lark nesting season. None were observed visually or audibly during this time. Therefore, baseline condition for the Enrolled Lands covered by this Agreement is "zero" larks.

According to the Service's Safe Harbor Policy, baseline is generally determined by the condition of the enrolled property at the time a SHA is executed. Nevertheless, it is appropriate to deviate from that general policy under these particular circumstances. We are using the condition of the property when surveyed during 2016-17 because the Cooperator voluntarily agreed to begin activities for the benefit of larks, and timely applied for a permit with the good faith expectation that it would be processed expeditiously. There were no streaked horned larks present on the Enrolled Lands prior to any habitat management activities commencing. In addition, the decision to use "number of birds" instead of "acres of habitat" baseline was primarily because of the behavior of the lark, as they tend to be nomadic in their choice of nesting habitats, and it would be difficult to quantify the amount of suitable habitat needed by larks (for example, was it dependent on the substrate or the presence of nearby vegetation, etc.). Thus, the Service and the Cooperator have mutually agreed that the number of larks are the metric, and the baseline is zero.

5. MANAGEMENT ACTIVITIES

The Cooperator, or designee thereof, may carry out on the Enrolled Lands the list of management activities below, with the intent of restoring and maintaining prairies and mixed emergent wetland/prairie habitats that will support the lark. Specific treatments and follow-up management actions will be implemented under an adaptive framework in coordination between the Service and the Cooperator (see Table 1):

- Seeding and planting: Typically done in the fall (late September through early November).
- Haying: The Cooperator may hay sites where grass cover is excessive, and as a method to reduce thatch development on prairies. The best time for haying is usually late June or early July.
- Mowing: This may be done as part of haying or separately and is timed to avoid disturbance and/or habitat destruction for the larks during their nesting season, which is typically mid-April through August.
- Tilling, disking, harrowing, and other activities associated with moving soil (for example, with the purpose to create earthen berms and "scrapes" that create seasonal pools of water): these activities may occur at any time of year, although they are most frequently performed in winter, early spring, and fall.

- Herbicide application: This may occur at any time of year, although it is most often conducted in spring and fall. The timing coincides with green-up of undesired vegetation and should not co-occur with the lark nesting season.
- Burning: Broadcast burning is usually conducted in late September and early October, however there are occasions for spring burning. In these cases, a spring spray out of undesirable vegetation may result in enough cured fuel in the month of June to implement a burn and should not co-occur with the lark nesting season.
- Applied or other research: Examples include vocal attraction experiments, vegetation manipulations, predator surveys, translocations, and other work done in partnership with academia and/or other conservation groups.
- Nothing in this Agreement prevents the Cooperator from implementing land management activities not described in this Agreement, as long as such actions maintain or enhance suitable habitat for larks and are described by the Cooperator for the annual report.

MONTH	**J**	**F**	**M**	**A**	**M**	**J**	**J**	**A**	**S**	**O**	**N**	**D**
Seeding and planting		X	X						X	X	X	
Haying					X	X						
Mowing					X	X	X	X	X	X		
Tilling, disking, harrowing, or earthen berm construction					X	X	X	X	X	X		
Spot sprays	X	X	X	X	X	X	X	X	X	X	X	X
Lark surveying		X	X	X	X	X						
Applied research	X	X	X	X	X	X	X	X	X	X	X	X
Site visits and tours	X	X	X	X	X	X	X	X	X	X	X	X
Burning						X			X	X		

Table 1: Months that various management activities are reasonably expected to occur.

The initial two years of prairie restoration (as typical for the Willamette Valley) employs large-scale broadcast spraying to eliminate the residual crop and exhaust weed seeds in the soil. These actions result in a great deal of bare ground suitable to lark nesting. Once this phase is complete, planting (usually seeding) occurs. The following vegetation establishment phase may involve additional spraying and mowing, however, the amount of suitable lark nesting habitat declines over time as the native vegetation becomes established and if it reaches above 24 inches in height (Moore 2011, p. 20). This results in a decline in lark occupancy as well. The eventual number

of larks on many prairie sites in the Willamette Valley is dependent on the soil productivity and the level of ongoing management to maintain some bare ground on the site.

At the time of this Agreement, the Cooperator has designated approximately 65 acres within the entire Enrolled Lands, with the goal to manage that area to be favorable for larks during their nesting season (Attachment A). The utilization of the various management activities discussed in Section 5 of this Agreement all have may benefit larks, especially through the creation of bare ground. In addition, the construction of soil berms (which can become vernal pools during the rainy fall/winter season) and clearing of tall shrubs and trees provide open habitat spaces that larks prefer. Researchers have documented that vernal wetlands set amongst healthy, short-stature crop fields are the standard example of where larks will occupy favored habitat in an otherwise agricultural setting (Moore 2011, p. 7).

6. CONSERVATION MEASURES

Some of the management activities described in Section 5 may be required during the lark nesting season and have the potential to disturb and/or harm breeding larks if present. To minimize take of larks by these actions, the Cooperator will employ the following conservation measures on the Enrolled Lands:

- For management activities that must occur during the nesting season (April 1 to August 31), pre-project surveys will be conducted by the Cooperator or his designee to determine presence/absence of larks in suitable habitat, using survey methods approved by the Service. The Cooperator will use the information acquired through these surveys to direct management activities away from likely nesting areas and/or stagger treatments to allow nests to be incubated, hatched, and fledged on known occupied sites before management activities occur.
- Implement surveys and monitoring activities using the most efficient and least disruptive methods to ensure that streaked horned larks at the management sites are identified and appropriately protected during the management activity. Surveys for streaked horned larks must be conducted according to the current survey protocols recommended by the Service (Pearson *et al*. 2016, p. 20).
- Surveys and monitoring must be conducted by highly qualified staff with a background in avian transect and point count survey techniques. The ability to hear and identify lark songs is necessary.
- Conduct surveys and monitoring in a way that minimizes disturbance of larks on the site; this is particularly important during the breeding season.
- When possible, mowing will be accomplished outside of the April 1 to August 31 lark nesting season. When that is not possible, individual mowing treatments during the nesting season may occur on up to 50 percent of the Enrolled Lands at any given treatment period. Cumulative mowing during the April 1 to August 31 nesting season may equal 100 percent of a project site.
- Mower decks will be raised to highest level possible to achieve the desired biological outcomes and to minimize ground level impacts. Mowing will target tall/dense vegetation to prevent seed set of undesirable species and/or foster native prairie seedlings (i.e. targeted mosaic/patch mowing).

- Prescribed fire may be used on 100 percent of an area to reduce thatch and improve the characteristics of the site for nesting, as long as no larks are present.
- Herbicides will only be used when necessary and applied in strict compliance with label requirements and state and federal regulations. Use the largest spray booms practical to minimize wheel track passes in treatment unit. Where possible use narrow tires and/or four-wheeled machines rather than floatation tires or three-wheeled machines. Individual herbicide applications may cover up to 100 percent of suitable lark habitat on a given site, as long as no larks are present. Apply herbicide sprays only under desirable wind conditions to minimize potential drift, per label instructions. If surveys identify an active lark nest in an area designated for herbicide application, the Cooperator shall not boom spray by tractor within 50 m of the nest cup, but instead may hand-spray if it is necessary to control undesirable vegetation.

7. NET CONSERVATION BENEFIT

The Service has determined that the management activities and conservation measures outlined in this Agreement are reasonably expected to provide a net conservation benefit for larks. The basis for this determination is as follows:

Streaked horned larks require open space and bare ground for nesting. However throughout their historical range in the Willamette Valley, they are at a high risk of extirpation, in part due to a loss of habitat due to activities (such as from increased wildfire control, urbanization, reduced seasonal flooding, etc.) that have interfered with processes that used to create and maintain bare ground naturally. Restoring processes that create and maintain grass-dominated habitats is paramount in importance for lark conservation and require intentional disturbances such as prescribed burns, targeted grazing, herbicide applications, mowing, and/or managed flooding (Fish and Wildlife Service 2016, entire). Seeding and establishing native plant species is also important to control undesirable vegetation that degrades habitat quality for larks.

Researchers have documented lark attraction in the Willamette Valley, as a result of efforts to improve wetland functions with these types of management activities (Moore 2011, p. 4). An example is the MDAC Farms property (MDAC), a nearby 600 acre property that was enrolled in the NRCS' Wetland Reserve Program, which included creation of bare ground areas. As a result of these improved wetland functions, 25 pairs of larks were observed utilizing the property for their breeding/nesting activities. Considering such a tremendous increase in larks using the MDAC property due to the creation and management of bare ground, it is possible that a similar situation may occur on the Enrolled Lands, even though they are about half the size. Moreover, the Enrolled Lands are southwest of the MDAC property and similar habitat improvement tasks will be undertaken there. It is also common for larks to shift nesting locations during subsequent breeding seasons, so the availability of multiple sites that the larks could choose for nesting is ideal (Fish and Wildlife Service 2013a, entire).

This Agreement will also support lark population recovery objectives, which are to ensure:

1) The abundance of streaked horned larks in a self-sustaining range-wide population is of sufficient size to counteract small population issues

2) Sufficient habitat is protected and managed to support a well-distributed range-wide population within the historical range of the subspecies

3) Key threats (*e.g.*, human-caused disturbance during the breeding season, inappropriate habitat management activities, predation pressure exacerbated by small population issues) are ameliorated sufficiently to achieve objectives 1 and 2 (Fish and Wildlife Service 2016, entire).

The Parties anticipate this Agreement will result in the creation of suitable habitat for larks within the area of the Enrolled Lands, and result in an increase in the number, distribution, and/or total area of occupied suitable habitat of larks in their range. Without these management activities, the Enrolled Lands would not otherwise be utilized by the species in the foreseeable future.

8. RESPONSIBILITIES OF THE PARTIES

The Cooperator and the Service agree to carry out certain responsibilities under this Agreement. The Cooperator understands that in order to fulfill the responsibilities of this Agreement, he must report to the Service all activities he implements related to, or affecting lark management in accordance with this Agreement. The Cooperator may use a designated representative but remains ultimately responsible for commitments in this Agreement.

a. The Cooperator agrees to:

   i. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, hold an enhancement of survival permit in accordance with ESA section 10(a)(1)(A), authorizing incidental take of the covered species as a result of lawful activities on the Enrolled Lands, in accordance with the provisions of such permit and this Agreement. The term of the permit will be 10 years.

   ii. Conduct habitat management activities (such as those described in Section 5 of this Agreement) and Conservation Measures (Section 6 of this Agreement) on the Enrolled Lands for the term of this Agreement that are anticipated to produce a net conservation benefit to larks.

   iii. Allow access by the Service or other mutually agreed upon parties to the Enrolled Lands (with reasonable notice) for purposes related to surveys/monitoring of larks or for other management activities, as described in Section 5 of this Agreement.

   iv. Report to the Service any dead, injured, or ill larks on the Enrolled Lands.

   v. Notify the Service 60 calendar days in advance of any planned activity that the Cooperator reasonably anticipates will result in "take" (i.e., death, injury or other harm) of larks on the Enrolled Lands. Notify the Service immediately of any unexpected "take" on the Enrolled Lands. This includes "take" that may result from management activities. Notification may be by letter, e-mail, or phone.

vi. Cooperate with the Service, or other designees of the Service, to provide information for the Service or its designee to prepare annual reports, starting at the date this Agreement is signed through the 10 year Agreement term. These annual reports will list the management activities undertaken on the Enrolled Lands and anticipated management activities for the upcoming year. Also, observations of larks (if any) will be provided, including avoidance measures, and any activities that may have resulted in the harm of nesting larks and their progeny. Reports shall be due to the Service by December 31st of each year. See Attachment D for a report template.

vii. Notification of return to baseline: Notify the Service 60 days prior (or per written agreement by both Parties, notice of sufficient amount of time) to returning the Enrolled Lands to the baseline conditions and identify the actions that would result in the return to baseline.

Notification of change of landowner: If a land transfer is proposed that affects any or all of the Enrolled Lands, the Cooperator will provide the Service 60 days advance written notice. The new landowner will have the option to become a party to the terms and conditions set forth in this Agreement. Should the new landowner not wish to enter into the Agreement, the Service retains the opportunity to relocate affected covered species prior to the land transfer.

b. The Service agrees to:

i. Upon execution of this Agreement and satisfaction of all other applicable legal requirements, the Service will issue a permit to the Cooperator in accordance with ESA section 10(a)(1)(A) with a ten-year term. This 10(a)(1)(A) permit will authorize incidental take of the covered species as a result of lawful activities upon the Enrolled Lands.

ii. Prepare annual reports based on the information provided by the Cooperator starting at the time this Agreement is signed through December 31, 2030, which list the management activities undertaken on the Enrolled Lands and anticipated management activities for the upcoming year. Additionally, the Service or its designee will document in the annual report based on information from the Cooperator and/or information collected from the Service or its designee (such as survey results): number of larks detected during annual surveys (if any), lark use of each site (if detected); the dates and types of activities conducted during their presence while engaged in nesting and rearing of young to the fledgling stage; steps to reduce nesting and fledging disruption, as discussed above, including avoidance measures; and, any activities that may have resulted in the harm of nesting larks and their progeny. The Service or its designee will complete the annual report based on the information from the Cooperator and submit the report for the permit file by December 31st of each year. See Attachment D for a report template.

iii. Provide the Cooperator, and/or the Cooperator's designee with technical assistance when requested (or as needed), to implement this Agreement.

iv. Service biologists from the Willamette Valley Partners for Fish and Wildlife Program regularly make field visits to prairie restoration sites during the spring and summer to evaluate native plant establishment, evaluate weed responses to vegetative control treatments, estimate the scheduling of further vegetative treatments, and evaluate the hydrologic response to wetland grading activities. Depending on the stage of restoration, these visits may take place as little as once seasonally to multiple times per season. For the Enrolled Lands, the Partners Program Biologists anticipate being on the site no less than twice during each nesting season. In addition to looking at the hydraulic and vegetative aspects stated above, they will also keep an eye out for wildlife, including streaked horned larks. As they traverse the site, they will note any lark observations and their behavior (singing, foraging, territorial interactions). However, they will not attempt to map territories or locate nests. The exact dates of field visits during the nesting season are unknown, including the time of day—however they will be within normal business hours (between 8 am and 5 pm).

v. Provide assistance to or to carry out annual monitoring/surveying of larks, as described in Section 8(a)(ii) of this Agreement. At a minimum, this shall be done by making periodic site visits to conduct the following compliance monitoring:
    1. Ensure that the agreed-upon management actions and conservation measures (in Section 6) are being implemented, as specified in this Agreement.
    2. Determine whether or not take of larks has occurred.
    3. Assess the habitat and covered species presence or absence in relation to the baseline—which would be to determine whether or not the baseline conditions are being maintained or are increasing for larks.

9. AGREEMENT AND PERMIT DURATION

This Agreement becomes effective upon signature by both Parties and the Service's issuance of the section 10(a)(1)(A) enhancement of survival permit (permit), as previously described in Section 8(b)(i) of this Agreement. This Agreement will have a term of 10 and the permit will concurrently have a term of 10 years.

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this Agreement are transferable to subsequent non-federal owners of the Enrolled Lands pursuant to 50 CFR 13.25. The Cooperator shall notify the Service of any proposed transfer of ownership (as described in Section 8 of this Agreement).

10. DEFINITION OF TAKE AND ASSURANCES REGARDING TAKE OF THE COVERED SPECIES

a. "Take" is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is 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 that is incidental to, but not the purpose of, otherwise lawful activities.

b. After approval of the Agreement, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to the Enrolled Lands, to mitigate or compensate for changes in the conditions or circumstances of the lark except as stipulated in 50 CFR 17.32(c)(5). The section 10(a)1(A) permit referenced in Section 8(b)(i) of this Agreement shall authorize the Cooperator to take the covered species incidental to otherwise lawful activities.

11. MODIFICATIONS

a. Modification of the Agreement/Permit:

Either Party may propose modifications or amendments to this Agreement by providing written notice to, and obtaining the written concurrence of, the other Party. Similarly, either party may propose modification or amendments to the associated permit as provided in 50 CFR 13.23. 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 Party's written concurrence.

b. Termination of the Agreement:

As provided for in Part 12 of the Service's Safe Harbor Policy (Fish and Wildlife Service 1999, entire), the Cooperator may terminate this Agreement for circumstances beyond the Cooperator's control. The Cooperator may terminate this Agreement due to uncontrollable circumstances upon 60 days prior written notice to the Service, provided that the Service is provided an opportunity to relocate affected species within 60 days of that notice. The Cooperator also may terminate the Agreement at any time for any other reason, but termination for reasons other than uncontrollable circumstances shall extinguish the Cooperator's authority to take lark under the incidental take permit.

c. 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. In addition, under 50 C.F.R. 17.32(c)(7), the Service may also revoke the permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery of the species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species; before revoking a permit for these reasons, the Service, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation.

12. OTHER MEASURES

a. Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the Service and Cooperator under law. Neither Party to this Agreement shall be liable in damages to the other Party nor any other third party or person for any performance or failure to perform any obligation identified in this Agreement.

b. Remedies:

   Each Party 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, or any other cause of action arising from this Agreement.

c. Dispute Resolution:

   The Parties agree to work together in good faith to resolve any disputes under this Agreement, and may use dispute resolution procedures agreed upon by both Parties.

d. Succession and Transfer:

   If the Cooperator transfers his interest in the Enrolled Lands to a non-federal entity, the Service will regard the new owner as having the same rights and responsibilities with the respect to the Enrolled Lands as the Cooperator, if the new property owner agrees and commits in writing to become a Party to this Agreement and the permit referenced in Section 9 above, in place of the Cooperator.

e. Availability of Funds:

   Implementation of this Agreement by the Service is subject to the requirements of the Federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement 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 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.

f. Relationship to Other Agreements:

   If the Enrolled Lands as described under this Agreement are currently, or become subject to, any other kind of agreement, contract, obligation, or other classification, those documents and responsibilities are entirely separate from the SHA program and Cooperator responsibilities associated with it. The Cooperator is responsible for ensuring any such documents and responsibilities do not interfere with the commitments in this Agreement, unless otherwise agreed in writing by the Service, which may require amendment of this Agreement.

g. No Third-Party Beneficiaries:

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

h. Other Listed Species, Candidate Species, and Species of Concern:

Although the Service regards it as unlikely, the possibility exists that other listed, proposed, or candidate species, or species of concern may occur in the future on the Enrolled Lands as a direct result of the Cooperator's voluntary management activities specified in Section 5 above. If that occurs and the Cooperator so requests, the Parties may amend the Agreement and associated permit to cover additional species and establish appropriate baseline conditions for such other species.

i. Notices and Reports:

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

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

13. SIGNATURES

IN WITNESS WHEREOF, the Service hereto has executed this Safe Harbor Agreement to be in effect as of the date that the permit referred to in section 9 above is issued.

_____	_____
Paul Henson, State Supervisor Oregon Fish and Wildlife Office U.S. Fish and Wildlife Service	Date

_____	_____
Scott Erion, Cooperator	Date

REFERENCES

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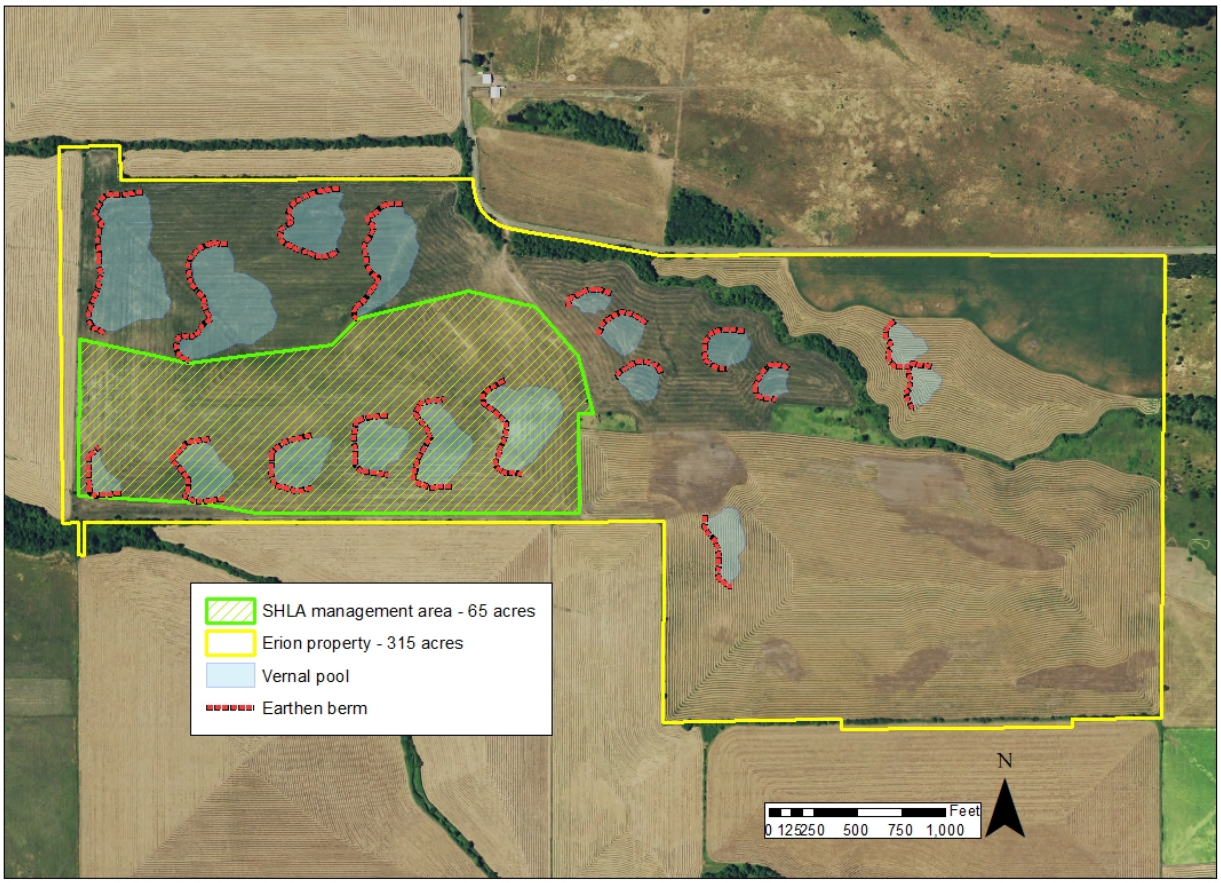
Pearson, Scott F., Mary Linders, Ilai Keren, Hannah Anderson, Randy Moore, Gary Slater, and Ann Kreager. 2016. Survey protocols and strategies for assessing streaked horned lark site occupancy status, population abundance, and trends. Wildlife Science Division, Washington Department of Fish and Wildlife, Olympia, Washington. 25 pp.

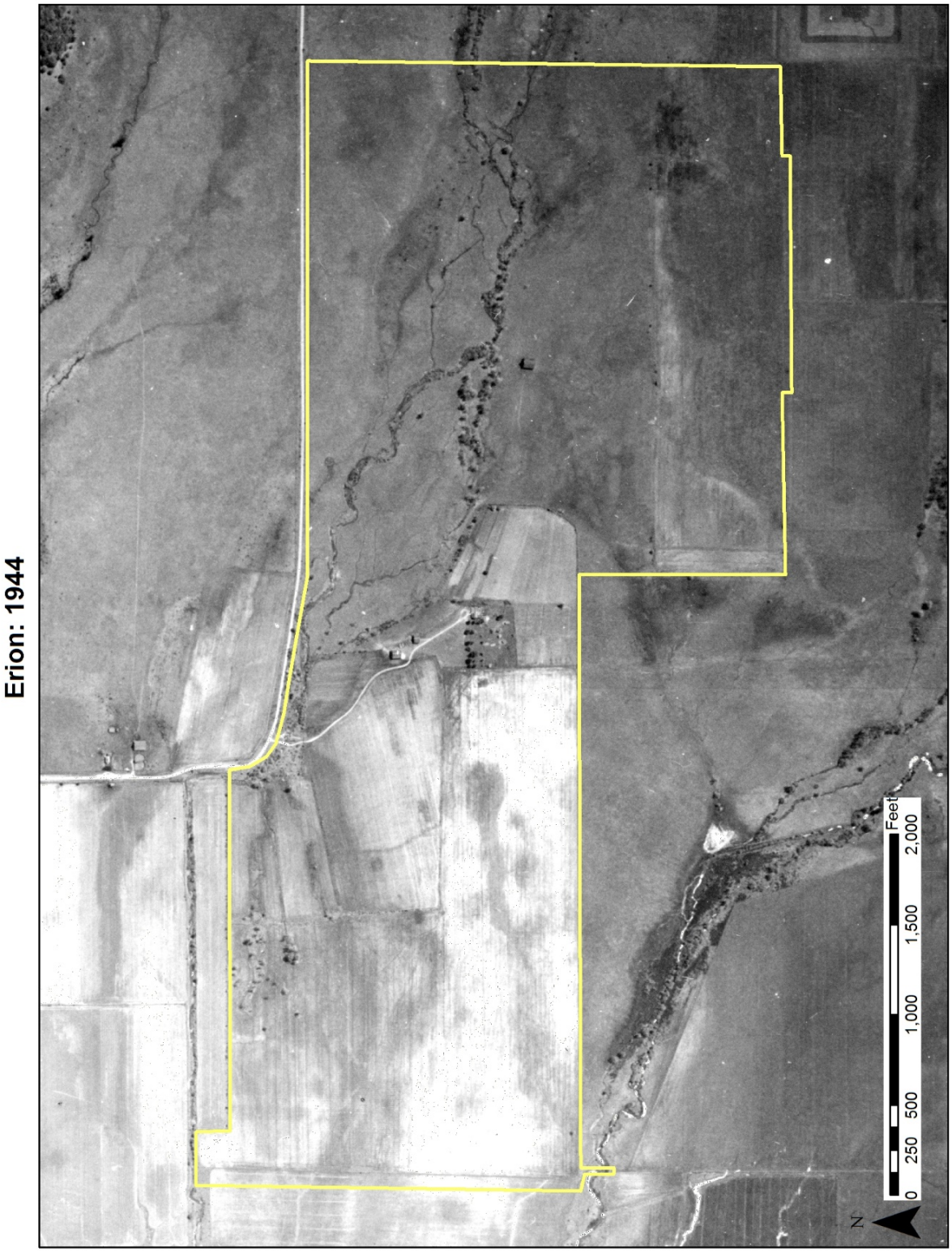
SWCA Environmental Consultants. 2017. Habitat Conservation Plan for Streaked horned lark (*Eremophila alpestris strigata*) on Port of Portland Properties in Portland, Oregon. Report prepared for Port of Portland. SWCA Project No. 26726.11. 120 pp.

ATTACHMENT A:

Erion: Safe Harbor Agreement



ATTACHMENT B:



ATTACHMENT C:

U.S. Fish and Wildlife Service
Willamette Valley National Wildlife Refuge Complex
26208 Finley Refuge Road
Corvallis, OR 97333
541-757-7236

PARTNERS FOR FISH AND WILDLIFE PROGRAM
LANDOWNER AGREEMENT

This Landowner Agreement (Agreement), dated 7-8-20, between Scott Erion and the U.S. Fish and Wildlife Service (USFWS) is entered into pursuant to authority contained in the Partners for Fish and Wildlife Act (P.L. 109-294), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j), as amended. This project was selected because the Landowner(s) share(s) a common objective with the USFWS to restore habitat for the benefit of Federal trust species on private lands, and the project supports priority actions identified in the Regional Partners for Fish and Wildlife (Partners) Program Strategic Plan.

Scott Erion, 30396 Ty Valley Rd. Lebanon, OR 97355, hereby agrees to participate with the USFWS in conducting certain wildlife management practices on lands owned or managed in Linn County, Oregon, described as follows: within, T-15S, R-3W, Sections 1 and 2.

In signing this Agreement, the Landowner(s) join(s) as a participant in a wildlife habitat improvement program and grants to the USFWS authority to complete the habitat improvement project. The activities conducted pursuant to this Agreement are not to replace, supplement or otherwise contribute to any mitigation or compensation that may be required of the Landowner(s) or other parties as a result of any mandated requirements.

The term of this Agreement (also referred to as the habitat retention period) will be completed on 7-8-30. This Agreement may be modified at any time by mutual written consent of the parties. It may be terminated by either party upon 30 days advance written notice to the other party. However, if the Landowner(s) terminate(s) the Agreement before its expiration, or if the Landowner(s) should materially default on these commitments, then the Landowner(s) agree(s) to reimburse the USFWS prior to final termination for the prorated costs of all habitat improvements placed on the land through this Agreement.

Landowner:

The Landowner(s) or his/her land manager, with legal authority over land management decisions, guarantee(s) ownership of the above-described land and warrants that there are no outstanding rights that interfere with this Landowner Agreement.

The Landowner(s) will notify the USFWS of planned or pending changes in ownership. A change of ownership shall not change the terms of this Agreement. The Agreement and terms shall be in effect on the described land for the term of the Agreement.

The Landowner(s) agree(s) to allow access (with advance notice) to the USFWS and other cooperating partner(s) to implement the project described in Exhibit A, and to monitor project

ATTACHMENT C:

success.

The Landowner(s) retain(s) all rights to control trespass and retains all responsibility for taxes, assessments, and damage claims.

During the habitat retention period, the landowner must allow the habitat restored under this award to remain in place without interference.

At the end of the habitat retention period, the habitat improvement project will become the sole property and complete responsibility of the Landowner(s). There shall be no obligation to the USFWS after the term of the Agreement has expired.

The Landowner(s) will be responsible for securing any necessary permits. Technical advice and support may be provided by participating agencies in the application for permit. The Landowner(s) agree(s) to identify USFWS' contribution to the project during public presentations, reports, or other information published about the project, as appropriate.

The Landowner(s) will be free to remove any structure at his/her own expense at the termination of the Agreement; however, the Agreement does not supersede any Local, State, or Federal regulation that would apply to the removal of any such structure(s).

The Landowner(s) will not be responsible for replacing wildlife habitat developments that are damaged or destroyed by severe acts of nature.

If an USFWS easement is granted, the easement will supersede the provisions and terms of this Agreement.

USFWS:

The USFWS will work with the Landowner(s) throughout the entire Agreement term to support actions needed to ensure that the project is designed and constructed per the Agreement and functions as intended.

The USFWS, its agents, or assignees will provide advanced notice prior to accessing the Landowner(s) property to implement the project described in the work plan, and to monitor project success.

The USFWS assumes no liability for damage or injury other than that caused by its own negligence, on the above acreage. The USFWS does not assume jurisdiction over the premises by this Agreement.

Spatial Information Sharing: In accordance with the Privacy Act of 1974, permission must be obtained from the Landowner before any personal information can be released. The only information that can be shared is payment information that is authorized by law. Therefore, Landowner consent is requested to allow for sharing of spatial information about this project solely with conservation cooperators providing technical or financial assistance with the restoration, enhancement or management of fish and wildlife habitat.

ATTACHMENT C:

[X] I, the Landowner, consent to having spatial information about this project shared with other conservation cooperators

[ ] I, the Landowner, do NOT wish to have any spatial information about this project shared with other conservation cooperators

Signatures:

Scott M Erion 7/8/20

Scott Erion, Landowner(s) Date

JAROD JEBOUSEK Digitally signed by JAROD JEBOUSEK Date: 2020.03.26 11:13:57 -07'00'

Jarod Jebousek, USFWS Partners for Fish and Wildlife Program Biologist Date

DAMIEN MILLER Digitally signed by DAMIEN MILLER Date: 2020.03.24 17:24:58 -07'00'

Damien Miller, USFWS Project Leader, Willamette Valley NWR Complex Date

ATTACHMENT D:

Cooperator's Name: Scott Erion

Permit Tracking Number:

Enrolled lands: Legal description: Township 15S; Range 3W; Sections1 and 2; Willamette Meridian.

Covered Species: Streaked horned lark (*Eremophila alpestris strigata*)

Management and Conservation Actions:
Instructions: Provide a summary of significant activities and accomplishments for the period, including 1) actions taken to date on enrolled lands in relation to each of the management and conservation activities described in the site-specific plan, Certificate of Inclusion and Permit, 2) "*take" of covered species, and 3) any supplemental information such as additional comments, observations and copies of photos, data, scientific papers, or other products related to activities covered under this Agreement, as available.*

Monitoring Program:
Instructions: Describe in general terms the monitoring program, results and findings for the current year. Annual reports are designed to provide information to the Service concerning the effects and effectiveness of the Agreement's conservation actions on the covered species, as well as to determine if the conservation actions the Permittee and Cooperator(s) undertake meet the Agreement's "standard" of benefiting the covered species. The monitoring report will document any changes in the condition of individuals of the covered species or the habitat associated with that species over time and will denote whether the data provided is from the Permittee, Cooperator, professional scientist or other specific individual or entity. Photos from established photo monitoring points should be included, if available.

Date of the Report: Due on or before December 31st, for the period covering the fiscal year]
Annual period covered:

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer _____