

IMPLEMENTING AGREEMENT

For the

DAYBREAK MINE EXPANSION

AND

HABITAT ENHANCEMENT PROJECT

HABITAT CONSERVATION PLAN

For

DAYBREAK MINE

CLARK COUNTY, WASHINGTON

OPERATED AND MANAGED BY

J. L. STOREDAHL & SONS, INC.

OWNED BY

STOREDAHL PROPERTIES LLC

CONTENTS

1.0	PARTIES.....	1
2.0	RECITALS AND PURPOSES.....	1
2.1	Recitals	1
2.2	Purposes.....	2
3.0	DEFINITIONS	3
3.1	Terms Defined in Endangered Species Act.....	3
4.0	OBLIGATIONS OF THE PARTIES	4
4.1	Obligations of Storedahl.....	4
4.2	Obligations of the Services.....	5
4.2.1	Permit Coverage	5
4.2.2	"No Surprises" Assurances.....	5
5.0	INCORPORATION OF HCP.....	5
6.0	TERM	6
6.1	Initial Term.....	6
6.2	Permit Suspension or Revocation.....	6
6.3	Relinquishment of the Permit.....	6
6.3.1	Generally	6
6.3.2	Procedure for Relinquishment.....	7
6.4	Extension of the Permit	8
7.0	FUNDING	8
8.0	MONITORING AND REPORTING	8
8.1	Planned Periodic Reports	8

8.2	Other Reports.....	8
8.3	Certification of Reports.....	8
8.4	Monitoring by Services.....	9
9.0	CHANGED CIRCUMSTANCES.....	9
9.1	Storedahl-Initiated Response to Changed Circumstances.....	9
9.2	Service-Initiated Response to Changed Circumstances.....	9
9.3	Listing of Species That Are Not Covered Species.....	9
10.0	ADAPTIVE MANAGEMENT.....	10
10.1	Storedahl-Initiated Adaptive Management.....	10
10.2	Service-Initiated Adaptive Management.....	10
10.3	Reductions in Mitigation.....	10
10.4	No Increase in Take.....	11
11.0	FORCE MAJEURE.....	11
11.1	Force Majeure Procedures.....	11
11.2	Termination Through Force Majeure.....	12
12.0	LAND TRANSACTIONS.....	12
12.1	Acquisition of Land by Storedahl.....	12
12.2	Disposal of Land by Storedahl.....	12
13.0	MODIFICATIONS AND AMENDMENTS.....	13
13.1	Minor Modifications.....	13
13.2	Amendment of the Permit.....	14
14.0	REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION.....	14
14.1	In General.....	14

14.2	No Monetary Damages	14
14.3	Enforcement Authority of the United States	14
14.4	Dispute Resolution	15
14.5	Informal Dispute Resolution Process	15
15.0	MISCELLANEOUS PROVISIONS	16
15.1	No Partnership	16
15.2	Notices	16
15.3	Entire Agreement.....	17
15.4	Severability	17
15.5	Elected Officials Not to Benefit.....	17
15.6	Availability of Funds	17
15.7	Duplicate Originals.....	18
15.8	No Third-Party Beneficiaries.....	18
15.9	Services Authorities.....	18
15.10	References to Regulations	18
15.11	Applicable Laws	18
15.12	Successors and Assigns	18
16.0	CONTENTS NOT BINDING IN OTHER LITIGATION	18

IMPLEMENTING AGREEMENT

1.0 PARTIES

The parties to this Implementing Agreement are J. L. Storedahl & Sons, Inc. and Storedahl Properties LLC (jointly referred to as "Storedahl"), the United States Fish and Wildlife Service ("F&WS"), and the National Marine Fisheries Service ("NMFS" or "NOAA Fisheries"). In this Agreement, F&WS and NMFS are collectively referred to as the "Services."

2.0 RECITALS AND PURPOSES

2.1 Recitals

The parties have entered into this Agreement in consideration of the following facts:

- (a) Storedahl owns approximately 300 acres of land adjacent to the East Fork Lewis River. Approximately 80 acres of this land have been operated as a sand and gravel mine or are used to process sand and gravel. Those lands not used for mining purposes have been used for agricultural and such land is comprised primarily of relatively flat pastures;
- (b) Historically, the Storedahl property was likely comprised of a number of braided channels, wetlands, alluvial fans and oxbow ponds and, in terms of plant communities, was occupied by wetland, riparian, and upland woodlands. By the mid-1900s, these lands had been cleared, leveled, and graded and put to agricultural uses. Most if not all of the natural features conducive to supporting diverse populations of fish and wildlife were changed to features conducive to agriculture. The Storedahl property has the potential to be managed over the long-term in a manner that would benefit fish and wildlife generally and, more specifically, to create and enhance habitat for a variety of fish and wildlife listed as threatened or endangered under the Endangered Species Act;
- (c) The East Fork Lewis River and portions of the Storedahl property have been determined to provide, or have the potential to provide habitat for a variety of fish and wildlife some of which are candidates for listing, proposed for listing, identified by the Services as "species of concern" or listed as threatened or endangered under the Endangered Species Act.

These species that are listed, proposed for listing or candidates for listing or "species of concern" are identified and discussed in Section 3 of the Daybreak Mine Expansion and Habitat Enhancement Project Habitat Conservation Plan (the "HCP");

- (d) Storedahl has developed a series of conservation measures, described in the HCP, that would tailor mining expansion and processing operations so as to minimize and mitigate, to the maximum extent practicable, the impact of potential take on Covered Species incidental to Storedahl's covered activities and to provide long term benefits to Covered Species as well as fish and wildlife generally; and
- (e) Under the HCP, Storedahl would, among other things: (i) undertake mining and processing activity concomitantly with number of conservation measures designed to benefit Covered Species; (ii) once covered activity (mining and processing) is completed and conservation measures and reclamation activities are implemented, convey a conservation easement to an appropriate conservation organization; (iii) create an endowment fund to further the conservation purposes of covered lands as set forth in the conservation easement and the HCP; and (iv) convey fee title to an appropriate not-for-profit conservation organization when covered activities, conservation measures, and reclamation activities are completed.

2.2 Purposes

The purposes of this Agreement are:

- (a) To ensure implementation of each of the terms of the HCP;
- (b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this Agreement; and
- (c) To provide assurances to Storedahl, consistent with the No Surprises regulations adopted by the Services and as the No Surprises regulations may be modified, clarified or nullified or reinstated by subsequent regulation or by a court of competent jurisdiction that, as long as the terms of the HCP, the Permit, and this Agreement are performed, no additional mitigation will be required of Storedahl with respect to Covered Species, except as expressly provided for in this Agreement or required by law.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

3.1 Terms Defined in Endangered Species Act

Terms used in this Agreement and specifically defined in the Endangered Species Act ("ESA") or in regulations adopted by the Services under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 "Changed circumstances" means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by Storedahl and that can reasonably be planned for in the HCP (e.g., the listing of a new species or a fire or other natural catastrophic event in areas prone to such event). Changed circumstances and the planned responses to those circumstances are described in Section 2.1.2.3 of the HCP. Changed circumstances are not unforeseen circumstances.

3.3 "Covered activities" means certain activities carried out by Storedahl on covered lands described in Section 1.5 of the HCP. Covered activities also include conservation and monitoring measures set forth in the HCP in Sections 4 and 5.

3.4 "Covered lands" means the lands, waters, and facilities located within the Project HCP area as described in Section 1.4 of the HCP and upon which the Permit authorizes incidental take of Covered Species and the lands to which the HCP's conservation and mitigation measures apply. These lands are also known as the Daybreak Mine Lands and are described in Exhibit 1 of this Agreement.

3.5 "Covered species" means the species identified in Section 1.7 of the HCP, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take Permit under ESA § 10(a)(1)(B).

3.6 "Force majeure" means events that are beyond the reasonable control of Storedahl or entities controlled by Storedahl, including its contractors and subcontractors, to the extent that such entities are carrying out activities and measures authorized and including but not limited to Acts of God, sudden actions of the elements including fire, earthquake, floods, or the actions or inaction of federal, state and local agencies that may prevent the implementation of conservation measures.

3.7 **"HCP"** means the Daybreak Mine Expansion and Habitat Enhancement Project Habitat Conservation Plan prepared by Storedahl for the Daybreak Mine Lands.

3.8 **"Listed species"** means a species (including a subspecies or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.9 **"Permit"** or **"Permits"** means the incidental take Permit issued by the Services to Storedahl pursuant to Section 10(a)(1)(B) of ESA for take of Covered Species incidental to covered activities on the covered lands as such Permit may be amended from time to time.

3.10 **"Storedahl"** means Storedahl LLC or J. L. Storedahl & Sons, Inc., or both.

3.11 **"Take"** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

3.12 **"Unforeseen circumstances"** means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated to occur during the term of the Permit by plan developers and the Services at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

3.13 **"Unlisted species"** means a species (including a subspecies or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Storedahl

Upon execution of this Agreement by all parties, and satisfaction of all other applicable legal requirements, Storedahl will fully and faithfully perform all obligations assigned to it under this Agreement, the Permit, and the HCP.

4.2 Obligations of the Services

The Services will fully and faithfully perform all obligations under this Agreement, the corresponding HCP, and relevant Permits. Further, upon execution of this Agreement by all parties and satisfaction of all other applicable legal requirements, the Services will issue Storedahl a Permit authorizing current and future take, if any, as provided under Section 10 of the ESA, for each listed Covered Species incidental to covered activities.

4.2.1 Permit Coverage

The Permit issued by the Services will identify all of the Covered Species within their respective jurisdictions. The Permit will take effect for Listed Covered Species at the time the Permit issues. Subject to compliance with all other terms of this Agreement, the Permit will take effect for an unlisted Covered Species upon the listing of such species.

4.2.2 "No Surprises" Assurances

The Services provide to the Permittee "No Surprises" assurances as codified at 50 C.F.R. §§17.22(b)(5), 17.23(b)(5) and 222.307(g) at the time this IA is executed. In the event that any judicial decision or determination, including without limitation the decision from the District Court for the District of Columbia in Spirit of the Sage Council, et al. v. Norton, et al., 98-CV-1873 (D.D.C. 2003), may hold that the Services' "No Surprises" assurances rules (or similar successive rules) are vacated, unenforceable or enjoined for any reason or to any extent, the "No Surprises" assurances applicable to the Permits shall be enforceable only to the degree allowed by any such decision or determination; provided that the remainder of the Permits, IA and HCP shall remain in full force and effect to the maximum extent permitted by law. In the event that the "No Surprises" assurances rules may be vacated, unenforceable or enjoined by such decision or determination but are later reinstated, the "No Surprises" assurances applicable to the Permits shall likewise be automatically reinstated and apply to the entire term of the Permit. If, in response to any such judicial decision or determination, the "No Surprises" assurances rules are revised, the "No Surprises" assurances applicable to the Permits shall be automatically amended in a manner consistent with the revised rules to afford the maximum protection to the Permittee consistent with the revised rule.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of

this Agreement and the HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 TERM

6.1 Initial Term

This Agreement and the HCP will become effective on the date that each Services issue their respective Permits. This Agreement, the HCP, and the Permit will remain in effect for a period of 25 years from issuance of the original Permit, except as provided below.

6.2 Permit Suspension or Revocation

The Services 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 regulations applicable to the Permits are found at 50 C.F.R. §§ 13.27 - 13.29, 222.306, and 15 C.F.R. Part 904.) Such suspension or revocation may apply to the entire Permit or only to specified Covered Species, covered lands, or covered activities. In the event of suspension or revocation, Storedahl's obligations under this Agreement and the HCP will continue to the extent that the Services determine that take of Covered Species occurred under the Permit but such take was not fully mitigated in accordance with the HCP. In such event, mitigation measures shall take place until such take has been mitigated to the maximum extent practicable.

6.3 Relinquishment of the Permit

6.3.1 Generally

Storedahl may elect to relinquish the Permit, or each of them, in whole or in part, as to specified covered activities or as to certain species, or both. In the event that Storedahl elects to relinquish the permit(s), then Storedahl will be obligated to implement all applicable conservation measures on those lands on which mining of sand or aggregate was conducted during the period of time the ITP was in effect. Further, in the event that Storedahl elects to relinquish the Permit prior to completion of mining at the Daybreak Mine, Storedahl will implement CM-12 on a pro-rata basis by granting, to an appropriate conservation organization or government entity, fee-simple title to 1.8 acres of land for each acre of covered land that was first disturbed by mining or processing activity conducted during the period of time that the ITP was in effect. In selecting land to be granted, Storedahl shall give priority consideration to land located in the 100-year floodplain and closest to the East Fork Lewis River.

Otherwise, at the time of the relinquishment, Storedahl will have no post-relinquishment requirement to continue mitigation measures developed specifically for a relinquished activity unless the Services determine that:

- (a) continuation of a specific mitigation measure as set forth in the HCP is necessary to offset the impacts of take that are caused by or associated with another activity for which Storedahl is retaining Permit coverage;
- (b) continuation is necessary to mitigate the impacts of take that occurred as a result of the relinquished activity during the time it was covered by the Permit.

If any post-relinquishment conservation measures are required, as set forth above, to mitigate for the impact of take, Storedahl's obligations for such measures will continue until the specified activities are completed and the Services concur that the post-relinquishment mitigation is completed or no longer required. Unless the parties agree otherwise, the Services may not require more mitigation than would have been provided if Storedahl had carried out the full term of the HCP.

6.3.2 Procedure for Relinquishment

If Storedahl elects to relinquish the Permit as to any but less than all of the specified Covered Species, or specified Covered Activities at any time during the term of the Permits, Storedahl will provide notice to the Services at least 120 days prior to the planned relinquishment. Such notice will include a status report detailing the nature and amount of take of all Covered Species, the mitigation provided for those species prior to relinquishment, the number of acres first disturbed by mining or processing activities while the ITP was in effect, and the status of Storedahl's compliance with all other terms of the HCP. Within 120 days after receiving a notice and status report meeting the requirements of this paragraph, the Services will give notice to Storedahl stating whether any post-relinquishment mitigation is required and, if so, the amount and terms of such mitigation and the basis for the Services' conclusions. If the Services determine that no post-relinquishment mitigation is required, all obligations assumed by the parties under this Agreement will terminate upon the Services' issuance of such notice. If Storedahl disagrees with the Services' determination, the parties may choose to use the dispute resolution procedures described in Section 14 of this Agreement. Storedahl will continue to carry out its obligations under the HCP until any such dispute is resolved. If the parties are unable to agree, the Services will have the final authority to determine whether Storedahl is required to provide post-relinquishment mitigation.

6.4 Extension of the Permit

Upon Agreement of the parties and compliance with all applicable laws, the Permit may be extended beyond its initial term under regulations of the Services in force on the date of such extension. If Storedahl desires to extend the Permit, it will so notify the Services at least 180 days before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that the Services may require at the time of extension.

7.0 FUNDING

Storedahl warrants that it has or will have, and will expend, such funds as may be necessary to fulfill its obligations under the HCP and this Agreement. Storedahl will promptly notify the Services of any material change in Storedahl's financial ability to fulfill its obligations. To ensure notification of any material change in Storedahl's financial ability to discharge its obligations during the life of the Permit, Storedahl will, upon request, convene a meeting with the Services and present current reclamation bond information and the financial status of the conservation endowment fund and other reasonably available financial information as is mutually agreeable to Storedahl and the Services.

8.0 MONITORING AND REPORTING

8.1 Planned Periodic Reports

As described in Section 5 of the HCP, Storedahl will submit periodic reports describing its activities and results of the monitoring program provided for in the HCP.

8.2 Other Reports

Storedahl will provide, within 30 days of being requested by the Services, any additional information in its possession or control pertaining to implementation of the HCP that is requested by the Services for the purpose of assessing whether the terms and conditions of the HCP, including the HCP's adaptive management plan, are being fully implemented. Responsive information need not be presented in any form other than the manner in which it is kept in the ordinary course of business.

8.3 Certification of Reports

All reports will include the following certification from a responsible Storedahl official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 Monitoring by Services

The Services may conduct inspections and monitoring in connection with the Permit in accordance with their respective regulations. (See 50 C.F.R. §§ 13.47, 220.301(j)).

9.0 CHANGED CIRCUMSTANCES

9.1 Storedahl-Initiated Response to Changed Circumstances

Storedahl will give notice to the Services within seven days after learning that any of the Changed Circumstances listed in Section 2 of the HCP has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the Changed Circumstances, Storedahl will modify its activities in the manner described in Section 2 of the HCP, to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species, and will report to the Services on its actions. Storedahl will make such modifications without awaiting notice from the Services.

9.2 Service-Initiated Response to Changed Circumstances

If the Services determine that Changed Circumstances have occurred and that Storedahl has not responded as set forth in Section 2 of the HCP, the Services will so notify Storedahl as provided in the HCP and this Agreement. As soon as practicable after receiving such notice, Storedahl will make the required changes in accord with Section 2 of the HCP and report to the Services on its actions, or respond that it does not believe that Changed Circumstances exist. In the event of disagreement concerning any aspect of the Changed Circumstances provision of the HCP and this Agreement, the parties shall use the dispute resolution procedure set forth in Section 14 of this Agreement.

9.3 Listing of Species That Are Not Covered Species

The Services will promptly notify Storedahl of the Listing of a Species that is not a Covered Species and is known or believed by the Services to use Covered Lands. In the event that a non-Covered Species that may be affected by covered activities becomes listed under the ESA, and is present on Covered Lands, Storedahl will avoid activities that would result in take of such species and will consult with the Services as to measures that may be implemented to avoid take.

10.0 ADAPTIVE MANAGEMENT

10.1 Storedahl-Initiated Adaptive Management

The HCP analyzes and identifies adaptive management measures based on monitoring activities and research and is described in Section 5 of the HCP. As provided in Section 5 of the HCP, Storedahl will implement adaptive management measures when identified triggers are satisfied or met. When changes in management practices are necessary to achieve conservation measures identified in the HCP, Storedahl will make such changes as provided in the HCP without awaiting notice from the Services, and will report to the Services, as provided in the HCP and this Agreement, on any actions taken pursuant to this section.

10.2 Service-Initiated Adaptive Management

If the Services determine that one or more of the adaptive management provisions in Section 5 of the HCP have been triggered and that Storedahl has not changed its management practices in accordance with Section 5 of the HCP, the Services will so notify Storedahl. As soon as practicable after receiving such notice, Storedahl will make the required adaptive management changes in accord with Section 5 of the HCP and within 30 days report to the Services on its actions, or respond that it does not believe that adaptive management triggers have been reached. In the event of disagreement concerning any aspect of the adaptive management provision of the HCP and this Agreement, the parties shall use the dispute resolution procedure set forth in Section 14 of this Agreement. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the Permit or HCP, except as provided in this section.

10.3 Reductions in Mitigation

Storedahl will not implement adaptive management changes not specifically identified in the HCP where such changes will result in less mitigation than provided for Covered Species under the terms of the HCP unless the Services first provide written approval. Storedahl may propose any such adaptive management changes by notice to the Services, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, the Services will either approve the proposed adaptive management changes, approve them as modified by the Services, or notify Storedahl that the proposed changes would constitute Permit amendments that must be reviewed under Section 13.2 of this Agreement.

10.4 No Increase in Take

This section does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, of Covered Species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under Section 13.2 of this Agreement.

11.0 FORCE MAJEURE

11.1 Force Majeure Procedures

In the event Storedahl is wholly or partially prevented from performing the obligations under this Agreement because of a force majeure event, Storedahl will be excused from whatever performance is affected by such force majeure event to the extent so affected, and such failure to perform will not be considered a material breach of this Agreement, provided that nothing in this paragraph will be deemed to authorize the Permittee to violate the ESA or to render the goals of the HCP unobtainable, and provided further that:

- (a) The suspension of performance is no greater in scope or duration than is reasonably required by force majeure.
- (b) The Permittee will promptly notify the Services, by telephone or facsimile, generally, not to exceed 72 hours of becoming aware of an event that constitutes force majeure and provide notice, in writing, within one week of such event. Such notice will identify the event preventing the performance of obligations, whether the prevention of performance may be permanent or temporary and, if temporary, the delay or anticipated timeframe by which the performance may be achieved. Notice is not required where the Services have actual notice of delays or events causing force majeure.
- (c) Storedahl will use reasonable efforts to avoid and mitigate the effects of delay in performance of obligations. A force majeure event may be mitigated by use of adaptive management provisions of this Agreement, the HCP, and by measures subject to the mutual Agreement of Storedahl and the Services.
- (d) When and if Storedahl is able to perform suspended obligations, it will provide prompt notice as set forth in paragraph (b) to the Services to such effect.

11.2 Termination through Force Majeure

Any party may terminate the Permit if a force majeure event renders the goals of the HCP unobtainable. Post-termination mitigation otherwise required under Section 6.0 of this Agreement may, where reasonable, still be required in the event of early termination resulting from force majeure to the extent that such mitigation remains feasible on covered lands.

12.0 LAND TRANSACTIONS

12.1 Acquisition of Land by Storedahl

Nothing in this Agreement, the HCP, or the Permit limits Storedahl's right to acquire additional lands. Any lands that may be acquired will not be covered by the Permit except upon amendment of the Permit as provided in section 13.2 of this Agreement.

12.2 Disposal of Land by Storedahl

As provided in the HCP, Storedahl's transfer of ownership or control of covered land will require prior approval by the Services and an amendment of the Permit in accordance with section 13.2 of this Agreement, except that grants of title or easements under CM-12 of the HCP will not require a Permit amendment, and other transfers of covered lands may be processed as minor modifications in accordance with section 13.1 of this Agreement if:

- (a) The land will be transferred to an agency of the federal government and, prior to transfer, the Services have determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land;
- (b) The land will be transferred to a non-federal entity that has entered into an Agreement acceptable to the Services (e.g., an easement held by the state fish and wildlife agency with the Services as third-party beneficiaries) to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP;
- (c) The land will be transferred to a not-for-profit non-federal entity where (i) the entity is approved in advance by the Services, (ii) the entity's purpose is the conservation of wildlife habitat, or preservation of parks lands, or both, (iii) the land to be transferred is encumbered by a conservation easement acceptable to the Services where the purposes of

such conservation easement is to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP, and (iv) adequate funds are made available to manage such lands;

- (d) The land will be transferred to a non-federal entity that, prior to completion of the land transaction, has agreed to be bound by the HCP as it applies to the transferred land and has obtained an incidental take Permit following normal Permit procedures covering all species then covered by Storedahl's Permit; or
- (e) The Services determine that the amount of land to be transferred does not exceed a cumulative total of 20 acres for all such transactions over the term of the permit, and will not have a material impact on the ability of Storedahl to comply with the requirements of the HCP and the terms and conditions of the Permit.

13.0 MODIFICATIONS AND AMENDMENTS

13.1 Minor Modifications

- (a) Any party may propose minor modifications to the HCP or this Agreement by providing notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects including its effects on operations under the HCP and on Covered Species. The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval. If, for any reason, a receiving party objects to a proposed modification, it must be processed as an amendment of the Permit in accordance with subsection 13.2 of this section. The Services will not propose or approve minor modifications to the HCP or this Agreement if the Services determine that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take not analyzed in connection with the original HCP.
- (b) Minor modifications to the HCP and IA processed pursuant to this subsection may include but are not limited to the following:

- (1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
 - (2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permit or HCP;
 - (3) minor changes to survey, monitoring or reporting protocols.
- (c) Any other modifications to the HCP or IA will be processed as amendments of the Permit in accordance with subsection 13.2 of this section.

13.2 Amendment of the Permit

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 Services' Permit regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects including its effects on operations under the HCP and on Covered Species.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1 In General

Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permit, and the HCP.

14.2 No Monetary Damages

No party shall be liable in damages to any other party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

14.3 Enforcement Authority of the United States

Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

14.4 Dispute Resolution

The parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP, and the Permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

14.5 Informal Dispute Resolution Process

Unless the parties agree upon another dispute resolution process or unless an aggrieved party has initiated administrative proceedings or suit in federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

- (a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.
- (b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time, it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to promptly provide any information then available to it that may be responsive to such inquiries.
- (c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties or will establish a specific process and timetable to seek such a solution.
- (d) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

15.0 MISCELLANEOUS PROVISIONS

15.1 No Partnership

Neither this Agreement nor the HCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

15.2 Notices

Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. The name, address, telephone, and facsimile numbers of the designated representative may be changed at any time by notice to all other parties. Notices may be delivered by facsimile or other electronic means provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Assistant Regional Director
United States Fish and Wildlife Service
911 N.E. 11th Ave.
Portland, Oregon 97232-4181
Telephone: 503-231-6159
Telefax: 503-231-2019

Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way N.E.
Seattle, Washington 98115-0070
Telephone: 206-526-6150
Telefax: 206-526-6426

Storedahl Properties LLC
Jerry Lee Storedahl, Manager
2233 Talley Way,
Kelso, Washington 98626
Telephone: 360-636-2420
Telefax: 360-577-3906

J. L. Storedahl & Sons, Inc.
Kimball L. Storedahl, Vice President
2233 Talley Way,
Kelso, Washington 98626
Telephone: 360-636-2420
Telefax: 360-577-3906

15.3 Entire Agreement

This Agreement, together with the HCP and the Permit, constitutes the entire Agreement among the parties. This Agreement supersedes any and all other Agreements, either oral or in writing, among the parties with respect to the subject matter herein and contains all of the covenants and Agreements among them with respect to said matters and each party acknowledges that no representation, inducement, promise, or Agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any other party that is not embodied herein.

15.4 Severability

If any provision of this Agreement is held to be invalid or otherwise unenforceable, all other provisions shall remain in effect to the extent that they can reasonably be applied in the absence of the invalid or unenforceable provision and continue to generally accomplish the purpose identified in Section 4 of the HCP.

15.5 Elected Officials Not to Benefit

No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

15.6 Availability of Funds

Implementation of this Agreement and the HCP by the Services is subject to the requirements of the 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 money from the U.S. Treasury. The parties acknowledge that the Services 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.

15.7 Duplicate Originals

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the parties hereto.

15.8 No Third-Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary or otherwise, 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.

15.9 Services Authorities

Nothing in this Agreement is intended to limit the authority of the Services to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligation and responsibility of the Services as agencies of the federal government.

15.10 References to Regulations

Any reference in this Agreement, the HCP, or the Permit to any regulation or rule of the Services shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

15.11 Applicable Laws

All activities undertaken pursuant to this Agreement, the HCP, or the Permit must be in compliance with applicable local, state, and federal laws and regulations.

15.12 Successors and Assigns

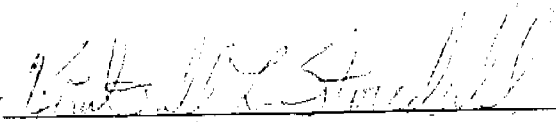
This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or transfer of the Permit shall be governed by the Services' regulations.

16.0 CONTENTS NOT BINDING IN OTHER LITIGATION

The contents of the HCP, Permit, and this Agreement shall not constitute statements against interest or admissions and shall not be binding in litigation except

among parties to this Agreement in matters related to enforcement of the HCP, Permit, and this Agreement. Storedahl reserves the right to assert in any proceeding that one or more activities comprehended by the HCP, Permit, and this Agreement do not require a Permit.

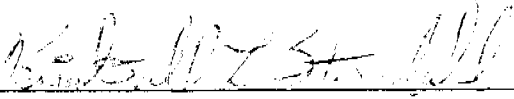
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this
Implementing Agreement to be in effect as of the date that the Services issue the
Permit.

By 

Kimball L. Storedahl
Vice President
J. L. Storedahl & Sons, Inc.

Date 3-31-04

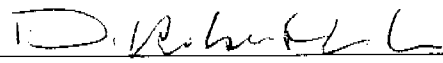
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this
Implementing Agreement to be in effect as of the date that the Services issue the
Permit.

By 

Kimball Storedahl
Member
Storedahl Properties LLC

Date 3-31-14

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this
Implementing Agreement to be in effect as of the date that the Services issue the
Permit.

By 

D. Robert Lohn
Regional Administrator
National Marine Fisheries Service
Seattle, Washington

Date 4/2/04

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this
Implementing Agreement to be in effect as of the date that the Services issue the
Permit.

By *Carolyn A. Blar*
for David Wesley,
Deputy Regional Director
United States Fish and Wildlife Service
Portland, Oregon

Date _____

EXHIBIT A

For the

DAYBREAK MINE EXPANSION
AND
HABITAT ENHANCEMENT PROJECT

HABITAT CONSERVATION PLAN

For

DAYBREAK MINE
CLARK COUNTY, WASHINGTON
OPERATED AND MANAGED BY
J. L. STOREDAHL & SONS, INC.
OWNED BY
STOREDAHL PROPERTIES LLC

The Daybreak Mine Expansion and Habitat Enhancement Project Habitat Conservation Plan and Implementing Agreement shall apply to the following covered lands:

I. DAYBREAK PROPERTY

TRACT A

The Southwest quarter of the Southwest Quarter (Government Lot 4) of Section 18, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington.

EXCEPT any portion thereof lying North of Dean Creek

TRACT B

The East half of the Southeast quarter of Section 13, Township 4 North, Range 1 East of the Willamette Meridian in Clark County, Washington.

EXCEPT any portion thereof lying North of Dean Creek.

EXCEPT County Roads and right of ways thereto.

TRACT C

The Southeast quarter of the Southwest quarter of Section 18, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington.

EXCEPT any portion lying Northerly and Easterly of Bevin Road as conveyed to John Hanger by instrument recorded under Auditors File No. 9506160047.

EXCEPT any portion lying within NE Bevin Road or within NE 61st Avenue or right of ways thereto.

TRACT D

The Northwest quarter of the Northeast quarter of Section 19, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington.

EXCEPT any portion lying within NE 61st Avenue or right of ways thereto.

TRACT E

The Southwest quarter of the Northeast quarter of Section 19, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington.

EXCEPT the following described tract:

BEGINNING at the Northwest corner of the Southwest quarter of the Northeast quarter of said Section 19; thence running in a Southeasterly direction along the center of the county road known as Lewis River Bottom Road, a distance of 265 feet; thence in a Northerly direction to a point on the North line of the Southwest quarter of the Northeast quarter of said Section 19, which is 300 feet East of the point of beginning; thence West 300 feet to the point of beginning.

EXCEPT any portion lying within NE Bennett Road or within NE 61st Avenue or right of way thereto

TRACT F

The Northeast quarter of the Northwest quarter of Section 19, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington.

EXCEPT any portion lying within NE 61st Avenue or right of way thereto.

TRACT G

The Northwest quarter of the Northwest quarter (Government Lot 1) of Section 19, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington.

TRACT H

The East half of the Northeast quarter of the Northeast quarter of Section 24, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT County Roads and right of way thereto.

TRACT I

That portion of the Northwest quarter of the Southwest quarter (Government Lot 3), Section 18, Township 4 North, Range 1 East of the Willamette Meridian, Clark County, Washington, lying South and West of the County Road (now known as NE J.A. Moore Road).

EXCEPT any portion thereof lying North and West of Dean Creek

TRACT J

All of that portion of the Northeast quarter of the Southwest quarter of Section 18, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington lying Southerly of the J.A. Moore Road and Westerly of the Lewis River Bottom Road, (now known as NE Bevin Road).

II. EAST FORK LEWIS RIVER

Those portions of the East Fork Lewis River, located in Clark County, Washington adjacent to the Daybreak mine site and extending downstream to the beginning of tidal-influence (river mile 5.9) and upstream of the Daybreak mine site to the Daybreak Bridge (river mile 10).

III. DEAN CREEK

Those portions of Dean Creek located in Clark County, Washington adjacent to the Daybreak mine site and extending downstream to the East Fork Lewis River.