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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLARENCE ABELDGAARD,
OCEANVIEW ENTERPRISES, INC.,
CLOYD MOSER, MODEB INVESTMENTS,
and GERALDINE BARLING,

Defendants,

v.

THE CONSERVATION FUND, and
EQUIVEST MORTGAGE INCOME
TRUST, INC.,

Parties in Interest.

Case No. A-01-378 Civil (RRB)

**CONSENT DECREE WITH
DEFENDANT GERALDINE BARLING**

United States v. Abeldgaard, et al., No. A-01-378 Civil (RRB)
Consent Decree With Geraldine Barling

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WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint in this matter against Clarence Abeldgaard and Oceanview Enterprises, Inc. on December 21, 2001, alleging, inter alia, that Clarence Abeldgaard and Oceanview Enterprises, Inc. had violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), by discharging dredged or fill material into waters of the United States at three subdivisions near Anchor Point, Alaska – Stariski Meadows, Piper’s Haven and the Happy Valley 5 Acre Homesites (collectively, the "Site") – without authorization by the United States Department of the Army ("the Corps");

WHEREAS, the United States filed the First Amended Complaint in this matter on July 30, 2002, adding Cloyd Moser and Modeb Investments as defendants;

WHEREAS, by Order dated August 21, 2003, the Court granted the United States’ Motion for Partial Summary Judgment and found, inter alia, that Clarence Abeldgaard and Oceanview Enterprises, Inc. were liable under the CWA for: (1) unpermitted discharges of dredged or fill material in connection with road construction and other activities at 22 locations at the Site; (2) violations of CWA section 402, 33 U.S.C. § 1342; and (3) violations of CWA sections 308 and 309, 33 U.S.C. §§ 1318 and 1319;

WHEREAS, on July 6, 2005, the Court entered the Consent Decree With Defendants Cloyd Moser and Modeb Investments, which resolved the liability of Cloyd Moser and Modeb Investments under the First Amended Complaint;

WHEREAS, the United States filed the Second Amended Complaint in this matter on November 18, 2005, adding Geraldine Barling as a defendant;

WHEREAS, the Second Amended Complaint alleges, inter alia, that Clarence Abeldgaard, Oceanview Enterprises, Inc. and Geraldine Barling violated CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States located at the Site without authorization by the Corps;

WHEREAS, the Second Amended Complaint seeks, inter alia, to: (1) enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) require Clarence Abeldgaard, Oceanview Enterprises, Inc., and Geraldine Barling, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; (3) require those defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d); and (4) pierce the corporate veil of Oceanview Enterprises, Inc. so that Clarence Abeldgaard and Geraldine Barling are personally liable for any relief to be awarded to the United States in this action from Oceanview Enterprises, Inc.;

WHEREAS, The Conservation Fund is a non-profit organization whose activities include protection of land and other resources throughout the United States, including Alaska;

WHEREAS, on May 20, 2005, a Deed of Trust was recorded at the Alaska Department of Natural Resources Recorder's Office in Homer, Alaska ("Homer Recording District") against the property at Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110 (Document Number 2005-002100-0), with Oceanview as Trustor/Grantor, Equivest Mortgage Income Trust, Inc. ("Equivest") as Beneficiary, and First American Title as Trustee;

WHEREAS, on July 11, 2005, Equivest recorded in the Homer Recording District an assignment of the Deed of Trust to Wells Fargo Bank, National Association (Document Number 2005-003103-0);

WHEREAS, Equivest represents that the above-referenced Deed of Trust incorrectly identifies the Plat Number as Plat 98-9 even though it should be identified as Plat 2000-13, and the Kenai Peninsula Borough records refer to Plat 2000013;

WHEREAS, on February 20, 2007, Equivest obtained a Final Judgment against C. E. Abeldgaard and Oceanview Enterprises, Inc. ("Oceanview") in case number 3AN-06-11852 CI (District Court for the State of Alaska, Third Judicial District at Anchorage), and subsequently recorded that judgment at the Homer Recording District on March 27, 2007 (Document Number 2007-001088-0);

WHEREAS, as a result of the recorded judgment in case number 3AN-06-11852 CI, Equivest currently holds a judgment lien on the property at Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110;

WHEREAS, Equivest represents that Wells Fargo allows Equivest to collect on the debts assigned and, after the Court enters this Consent Decree, Wells Fargo would assign the Deed of Trust back to Equivest, and Equivest would execute a Request for Reconveyance to American Title, along with a release of above-referenced judgment lien;

WHEREAS, Equivest represents that Equivest's actions under this Consent Decree will ensure that the property at Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110, can and will be transferred to The Conservation Fund free of any judgment or lien in connection with any financial transactions between Mr. Clarence Abeldgaard (including under any other names used by Clarence Abeldgaard, including, without limitation, C.E. Abeldgaard) and/or Oceanview, on the one hand, and Equivest on the other hand;

WHEREAS, neither The Conservation Fund nor Equivest was involved with the activities of Defendants that gave rise to the allegations in the Second Amended Complaint, but have consented to be added as parties to this case and be bound by this Consent Decree solely for the limited purposes of performing their respective obligations under Sections IV (Resolution of Lien) and V (Mitigation) below;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Second Amended Complaint against Geraldine Barling ("Defendant") regarding the Site;

WHEREAS, the United States and Defendant agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendant in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendant in this case, and that this Consent Decree

adequately protects the public interest in accordance with the CWA and all other applicable federal law;

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CWA Section 309(b), 33 U.S.C. § 1319(b).

2. Venue is proper in the District of Alaska pursuant to 28 U.S.C. §§ 1391(b) and (c), and CWA Section 309(b), 33 U.S.C. § 1319(b). The subject property is located in this District, the causes of action against Defendant arose in this District and Defendant resides in and conducts business in this District.

3. The Complaint states claims upon which relief can be granted pursuant to CWA Sections 301, 309, 402 and 404, 33 U.S.C. §§ 1311, 1319, 1342 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendant, her agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the Defendant, whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against the Defendant, Defendant shall not raise as a defense the failure of any of her agents, employees or servants, successors or assigns, or any person, firm or corporation acting in concert or participation with Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in any portion of the Site shall not alter or relieve Defendant of her obligation to comply with all of the terms of this Consent Decree. At

least fifteen (15) days prior to the transfer of ownership or other interest in any portion of the Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify the United States at the addresses specified in paragraph 52 below that such notice has been given. As a condition to any such transfer, Defendant in making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Second Amended Complaint against the Defendant under CWA Section 301, 33 U.S.C. § 1311, concerning the Site.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Except as in accordance with this Consent Decree, Defendant and Defendant's agents, employees and servants, and successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. The parties acknowledge that Nationwide Permit 32, 77 Fed. Reg. 10184 (February 21, 2012), authorizes any fill that was placed as of September 1, 2001 at the Site to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree. The parties further acknowledge that Nationwide Permit 32, 77 Fed. Reg. 10184, authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material that is necessary for work required by this Consent Decree

shall be subject to the conditions of the Nationwide Permit and this Consent Decree. For any dredged or fill material remaining in place, Defendant is solely responsible for ensuring that the conditions and requirements of Nationwide Permit 32 have been met and that all necessary authorizations are obtained. For any discharge of dredged or fill material that may occur in connection with the fill removal work pursuant to paragraph 30 below, The Conservation Fund is solely responsible for ensuring that any applicable conditions and requirements of Nationwide Permit 32 have been met and that any necessary authorizations are obtained.

10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to CWA Sections 402 or 404, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit. Nothing in this Consent decree shall limit EPA's ability to exercise its authority pursuant to CWA Section 404(c), 33 U.S.C. § 1344(c), or limit EPA's ability to issue, modify, suspend, revoke or deny any individual or general National Pollutant Discharge Elimination ("NPDES") permit.

11. This Consent Decree in no way affects or relieves Defendant of her responsibility to comply with any applicable federal, state, or local law, regulation or permit.

12. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. RESOLUTION OF LIEN

15. No later than thirty (30) days after entry of this Consent Decree, The Conservation Fund shall pay to Equivest \$7,000.

16. In return for the payment from The Conservation Fund discussed in paragraph 15, Equivest shall, no later than sixty (60) days after entry of this Consent Decree, ensure that the property at Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110, is released entirely from any lien or encumbrance which resulted from any judgment or lien in connection with any financial transactions between Clarence Abeldgaard (including under any other names used by Clarence Abeldgaard, including, without limitation, C.E. Abeldgaard) and/or Oceanview, on the one hand, and Equivest on the other hand, so that the property may be transferred to The Conservation Fund free of any such lien or encumbrance. No later than sixty (60) days after entry of this Consent Decree, Equivest shall, including without limitation and as appropriate and necessary to ensure that the property may be transferred to The Conservation Fund free of any such lien or encumbrance, take the following actions: (a) release the judgment lien it holds against Clarence Abeldgaard (including under any other names used by Clarence Abeldgaard, including, without limitation, C.E. Abeldgaard) and/or Oceanview Enterprises, Inc. on the property at Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110; (b) file at the Homer Recording District an appropriate Release of judgment lien on the property; (c) ensure that Wells Fargo assigns back to Equivest the above-referenced Deed of Trust related to the property; (d) execute a Request of Full Reconveyance; and (e) ensure that American Title issues and records with the Homer, Alaska, Recording District a Deed of Reconveyance for the property.

17. The \$7,000 payment from The Conservation Fund shall be applied toward reducing the balance owed to Equivest by Clarence Abeldgaard and/or Oceanview. This Consent Decree shall not act as a full satisfaction of the judgment obtained by Equivest, but rather as a full release of the judgment lien as to the property at Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110, and as a partial satisfaction (in the amount of \$7,000) of the amount owed on the judgment.

V. MITIGATION

18. Defendant shall complete the following mitigation projects, which the parties agree are intended to secure significant environmental protection as part of a permanent wetland conservation area.

19. No later than thirty (30) days after entry of this Consent Decree, Defendant shall sign the document(s) required and take all other steps necessary to transfer the fee simple interest in Stariski Meadows Lot 14, parcel number 15920088 (Violation Site 4P) to The Conservation Fund, free and clear of all liens, claims and other encumbrances. Undersigned counsel for Ms. Barling then shall ensure that the fee simple interest in Stariski Meadows Lot 14, parcel number 15920088 (Violation Site 4P), is transferred to The Conservation Fund between April 15, 2015, and May 15, 2015.

20. No later than thirty (30) days after entry of this Consent Decree, Defendant shall sign the document(s) required and take all other steps necessary to transfer the fee simple interest in Piper's Haven Unit 3 Replat Lot 1-D, parcel number 15920111 (Violation Site 9Pb) to The Conservation Fund, free and clear of all liens, claims and other encumbrances. Undersigned counsel for Ms. Barling then shall ensure that the fee simple interest in Piper's Haven Unit 3 Replat Lot 1-D, parcel number 15920111 (Violation Site 9P), is transferred to The Conservation Fund between April 15, 2015, and May 15, 2015.

21. No later than ninety (90) days after entry of this Consent Decree, Defendant shall sign the document(s) required and take all other steps necessary to transfer the fee simple interest in Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110, to The Conservation Fund, free and clear of all liens, claims and other encumbrances. Undersigned counsel for Ms. Barling then shall ensure that the fee simple interest in Piper's Haven Unit 3 Replat Lot 1-C, parcel number 15920110, is transferred to The Conservation Fund between April 15, 2015, and July 1, 2015.

22. The Conservation Fund shall ensure that the properties transferred to it pursuant

to paragraphs 19-21 above are protected while The Conservation Fund holds title to the property, by preventing development on any part of the transferred property that does not promote the conservation of the riparian areas, and specifically by preventing usage of the property in a manner that impairs or interferes with the preservation of water quality or salmon habitat on or near the property.

23. The Conservation Fund may sell or donate to the Kachemak Heritage Land Trust or to another conservation organization the properties transferred pursuant to paragraphs 19-21, so long as The Conservation Fund ensures that, upon transfer of the property, permanent deed restrictions are attached to the property that would continue in perpetuity to prevent development on any part of the transferred property that does not promote the conservation of the riparian areas, and specifically would prevent usage of the property in a manner that could impair or interfere with the preservation of water quality or salmon habitat on or near the property. If The Conservation Fund ceases to retain ownership of any of the properties that it acquires as described in Paragraphs 19-21, then The Conservation Fund shall provide written notice to the United States within fifteen (15) days after the transaction under which The Conservation Fund ceases to retain such ownership.

24. With regard to the mitigation projects, Defendant certifies the truth and accuracy of each of the following:

a. that, as of the date of executing this Consent Decree, Defendant is not required to perform or develop the mitigation projects by any federal, state, or local law or regulation and is not required to perform or develop the mitigation project by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that none of the mitigation projects is a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

c. that Defendant has not received, and is not negotiating to receive, credit for any of the mitigation projects in any other enforcement action; and

d. that Defendant will not receive any reimbursement for any portion of any of the mitigation projects from any other person.

25. No later than August 1, 2015, Defendant shall submit a Completion Report to the United States regarding the requirements set forth in paragraphs 19-21 above that contains the following information:

a. a detailed description of the projects as implemented;

b. a description of any problems encountered during the projects and the solutions thereto; and

c. certification in accordance with paragraph 33 below that the projects have been fully implemented pursuant to paragraphs 19-21 above.

26. In order to determine the adequacy of completion of the projects, the United States may, in its sole discretion, require information in addition to that described in the preceding paragraph. Defendant shall provide such information.

27. After receiving the Completion Report, the United States will notify Defendant, in writing, whether or not Defendant has satisfactorily completed the projects. If the projects have not been completed satisfactorily in accordance with the project description above, then Stipulated Penalties may be assessed under Section XI of this Consent Decree.

28. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the mitigation projects shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action brought by the U.S. Environmental Protection Agency under the Clean Water Act."

29. Upon entry of this Consent Decree, Defendant shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any of the properties to be transferred pursuant to paragraphs 19-21 above.

30. No later than October 1, 2015, in accordance with the Fill Removal Plan attached hereto as Attachment A, The Conservation Fund shall complete the removal of the unauthorized fill from: (1) Stariski Meadows Lot 14, parcel number 15920088 (Violation Site 4P); (2) Piper's Haven Unit 3 Replat Lot 1-D, parcel number 15920111 (Violation Site 9Pb); and (3) Stariski Meadows Lot 13, Parcel No. 15920087 (Violation Site 9Pa). Any deviation from the Fill Removal Plan that results from unanticipated field conditions must be approved by EPA before the fill removal work occurs. The Conservation Fund shall notify EPA within five (5) business days after the fill has been removed.

31. EPA releases and covenants not to assert any CWA claims that may arise against The Conservation Fund regarding the fill removal work or solely as a result of The Conservation Fund's ownership of the properties to be transferred pursuant to paragraphs 19-21 above, provided that The Conservation Fund completes the fill removal work in accordance with the Fill Removal Plan and this Consent Decree, and complies with paragraphs 22-23 above.

VI. RECORDING OF CONSENT DECREE

32. Defendant shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree in the Homer Recording District, Third Judicial District, State of Alaska so that, thereafter, each deed, title, or other instrument conveying an interest in any property on which or immediately adjacent to any property to be transferred pursuant to paragraphs 19-21 above shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree.

VII. NOTICES AND OTHER SUBMISSIONS

33. In all notices, documents or reports submitted to the United States (including EPA and/or the Department of Justice) pursuant to this Consent Decree, the submitting party shall certify such notices, documents and reports as follows:

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I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Signature)

(Name Typed or Printed)

(Title)

VIII. RETENTION OF RECORDS AND RIGHT OF ENTRY

34. Until three (3) years after entry of this Consent Decree, Defendant, The Conservation Fund and Equivest shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in this Consent Decree, regardless of any personal or corporate retention policy to the contrary.

35. At the conclusion of the document retention period, Defendant, The Conservation Fund and/or Equivest shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendant, The Conservation Fund and/or Equivest shall deliver any such records or documents to EPA. The Defendant, The Conservation Fund and/or Equivest may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant, The Conservation Fund and/or Equivest asserts such a privilege, then such person or entity shall provide the United States with the following:

(1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

36. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the properties to be transferred under paragraphs 19-21 above in order to:

- a. monitor the activities required by this Consent Decree;
- b. verify any data or information submitted to the United States;
- c. obtain samples;
- d. inspect and evaluate fill removal activities; and
- e. inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

37. This Section VIII of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and recordkeeping, and to obtain information as authorized by law.

IX. DISPUTE RESOLUTION

38. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and the other party to the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless a longer period is agreed to in writing by those parties. If a dispute between the United States and another party cannot be resolved by informal negotiations, then the position advanced by the United States

shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the other party files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute involving the Defendant, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

39. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. A party opposing the United States shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute involving the Defendant, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

40. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant, The Conservation Fund or Equivest under this Consent Decree, except for any dispute in which The Conservation Fund claims in accordance with Section X that a Force Majeure event prevented its performance, and except as provided in paragraph 46 regarding payment of Stipulated Penalties by Defendant.

X. FORCE MAJEURE

41. Defendant, The Conservation Fund and Equivest (which may be referred to in collectively as the "Performing Parties" or individually as a "Performing Party") shall perform

the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events that constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of the Performing Party, including the Performing Party's employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. With respect to The Conservation Fund's obligation to complete the fill removal in accordance with the Fill Removal Plan, a Force Majeure event includes but is not limited to not having the properties identified in paragraphs 19-20 above transferred to The Conservation Fund by June 1, 2015, and/or failure to obtain authorization under Nationwide Permit 32, provided that the delay or failure arises from causes beyond the control of The Conservation Fund. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, or failure to obtain federal, state or local permits (except for The Conservation Fund's failure to obtain authorization under Nationwide Permit 32 as provided in this paragraph 41).

42. If a Performing Party believes that a Force Majeure event has affected the Performing Party's ability to perform any action required under this Consent Decree, then the Performing Party shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in paragraph 52. Such notice shall include a discussion of the following:

- a. what action has been affected;
- b. the specific cause(s) of the delay;
- c. the length or estimated duration of the delay; and
- d. any measures taken or planned by the Performing Party to prevent or

minimize the delay and a schedule for the implementation of such measures. The Performing Party may also provide to the United States any additional information that the Performing Party

deems appropriate to support the Performing Party's conclusion that a Force Majeure event has affected the Performing Party's ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

43. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. The Performing Party shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

44. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section IX of this Consent Decree.

45. The Performing Party shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of the Performing Party and any entity controlled by the Performing Party, including the Performing Party's contractors and consultants; (2) that the Performing Party or any entity controlled by the Performing Party could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

XI. STIPULATED PENALTIES

46. After entry of this Consent Decree, if Defendant (stipulated penalties do not apply to The Conservation Fund or Equivest) fails to timely fulfill any requirement of the Consent Decree, Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

a. For failure to complete mitigation:

1. For Day 1 up to and including

- | | | |
|----|---|--------------------|
| | Day 30 of non-compliance | \$500.00 per day |
| 2. | For Day 31 up to and including 60 of non-compliance | \$1,000.00 per day |
| 3. | For Day 61 and beyond of non-compliance | \$1,500.00 per day |
- b. For failure to fulfill any other requirements of this Consent Decree, including providing notices, reports or other submissions:
- | | | |
|----|--|--------------------|
| 1. | For Day 1 up to and including Day 30 of non-compliance | \$250.00 per day |
| 2. | For Day 31 up to and including 60 of non-compliance | \$500.00 per day |
| 3. | For Day 61 and beyond of non-compliance | \$1,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

47. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section IX and/or the Force Majeure provisions in Section X shall be resolved upon motion to this Court as provided in paragraphs 38-40.

48. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section.

49. To the extent Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in paragraph 41 above) or otherwise

prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

50. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

51. Defendant shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2001V00226, EPA Region X and the DOJ case number 90-5-1-1-16195. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Alaska. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

XII. ADDRESSES

52. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

As to the United States:

Chief, Environmental Defense Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
PHONE: (202) 514-2219
Fax: (202) 514-8865

Mark A. Nitzynski
U.S. Department of Justice
Environmental Defense Section
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
PHONE: (303) 844-1498

Fax: (303) 844-1350

As to EPA:

Chan Pongkhamsing
Enforcement Coordinator
U.S. Environmental Protection Agency, Region 10
Aquatic Resources Unit
ETPA 083
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
PHONE: (206) 553-1806
Fax: (206) 553-1775

As to The Conservation Fund:

Holly Cannon, Senior Counsel
The Conservation Fund
1655 N Ft. Myer Drive, Suite 1300
Arlington, VA 22209-3198
PHONE: (703) 525-6300
Fax: (703) 525-4610

As to Equivest:

Ralph B. Cushman
LAW OFFICES OF JAMES H. McCOLLUM, LLC
400 L Street, Suite 100
Anchorage, Ak 99501
PHONE: (907) 770-7773
Fax: (907) 770-7737

As to Defendant:

Darryl L. Thompson
841 I Street
Anchorage, AK 99501
PHONE: (907) 272-9322
Fax: (907) 277-1373

XIII. COSTS OF SUIT

53. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant shall be liable for any costs or attorneys'

fees incurred by the United States in any action against Defendant for noncompliance with or enforcement of this Consent Decree.

XIV. PUBLIC COMMENT

54. The parties to this Consent Decree acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendant in writing that it no longer supports entry of the Consent Decree.

XV. CONTINUING JURISDICTION OF THE COURT

55. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, either party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XVI. MODIFICATION

56. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Performing Party and approved by the Court.

XVII. TERMINATION

57. Except for paragraphs 22-23 and 29, this Consent Decree may be terminated by either of the following:

a. Defendant and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

b. Defendant may make a unilateral motion to the Court to terminate this Decree after all of the following have occurred: (1) Defendant has completed, obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months; (2) Defendant has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States; (3) Defendant has certified compliance pursuant to this subparagraph b to the Court and to the United States; (4) within forty-five (45) days of receiving such certification from Defendant, the EPA has not contested in writing that such compliance has been achieved; and (5) The Conservation Fund has satisfactorily completed all of the fill removal in accordance with paragraph 30 above. If EPA disputes Defendant's or The Conservation Fund's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

58. The Conservation Fund shall be released from its obligations under this Consent Decree, except for the obligations set forth in paragraphs 22-23 and Sections VII, VIII and IX above, sixty (60) days after EPA's receipt of The Conservation Fund's notice to EPA in accordance with paragraph 30 above that the fill has been removed, unless EPA notifies The Conservation Fund within such sixty (60) day period that EPA has determined that fill removal work addressed in paragraph 30 above has not been completed satisfactorily. If EPA provides a notification to The Conservation Fund that such fill removal work has not been completed satisfactorily within such sixty (60) day period, then The Conservation Fund may invoke the Dispute Resolution procedures set forth in Section IX above in order to seek the release of The Conservation Fund's obligations. Provided that The Conservation Fund complies with the requirements of the first sentence of paragraph 23 above before The Conservation Fund provides written notice to the United States in accordance with the second sentence of Paragraph 23, then

The Conservation Fund shall be released from its obligations under paragraphs 22 and 23 above on the date that The Conservation Fund provides such written notice.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2015.

THE HONORABLE RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

ON BEHALF OF THE UNITED STATES:

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
UNITED STATES DEPARTMENT OF JUSTICE



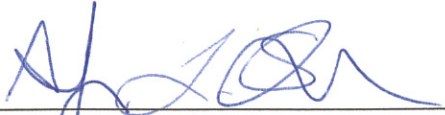
Date: 3/4/15

MARK A. NITCZYNSKI
UNITED STATES DEPARTMENT OF JUSTICE
Environmental Defense Section
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
Phone: (303) 844-1498
Fax: (303) 844-1350

KAREN L. LOEFFLER
United States Attorney
District of Alaska

RICHARD L. POMEROY
Assistant U.S. Attorney

FOR EPA:



Date: 2.26.15

ALLYN L. STERN
Regional Counsel
U.S. Environmental Protection Agency - Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

FOR DEFENDANT:

Date: _____

Darryl L. Thompson
841 I Street
Anchorage, AK 99501

EQUIVEST MORTGAGE INCOME TRUST, INC.:

Date: _____

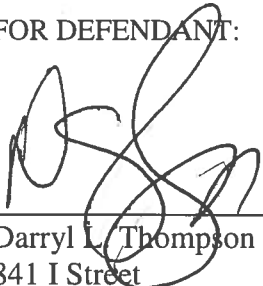
by: Kenneth Jay Gain, President

FOR EPA:

ALLYN L. STERN
Regional Counsel
U.S. Environmental Protection Agency - Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Date: _____

FOR DEFENDANT:



Darryl L. Thompson
841 I Street
Anchorage, AK 99501

Date: 2/27/15

EQUIVEST MORTGAGE INCOME TRUST, INC.:

by: Kenneth Jay Gain, President

United States v. Abeldgaard, et al., No. A-01-378 Civil (RRB)
Consent Decree With Geraldine Barling

FOR EPA:

Date: _____

ALLYN L. STERN
Regional Counsel
U.S. Environmental Protection Agency - Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

FOR DEFENDANT:

Date: _____

Darryl L. Thompson
841 I Street
Anchorage, AK 99501

EQUIVEST MORTGAGE INCOME TRUST, INC.:

Date: 2-20-15


by: Kenneth Jay Gain, President

FOR THE CONSERVATION FUND:



Date: February 23, 2015

Holly Cannon
Senior Counsel and Assistant Secretary
The Conservation Fund
1655 N Ft. Myer Drive, Suite 1300
Arlington, VA 22209-3198

FILL REMOVAL PLAN

This Fill Removal Plan identifies the sites and describes the process for removal of unauthorized fill material placed in wetlands adjacent to Stariski Creek near Anchor Point, Alaska. The Conservation Fund is required to remove unauthorized fill material and prepare the areas described below for natural revegetation of the wetlands.

1. Sites of Fill Material Removal

Unauthorized fill material would be removed from two areas within Stariski Meadows near Anchor Point, Alaska. One of the fill removal areas (sites 9Pa & 9Pb) is located on separate parcels owned by two different owners. Table 1 provides a description of the sites, as well as estimates of the area and volume of fill material to be removed. Refer to Figure 1 for an aerial photograph of the site locations.

Table 1. Site Description Information

Site	Description	Kenai Peninsula Borough Parcel No.	Owner	Fill Area (ac) ¹	Fill Volume (cy) ¹
4P	Stariski Meadows Lot 14	15920088	Barling	0.15	490
9Pa	Stariski Meadows Lot 13	15920087	Rude	0.37	1,192
9Pb	Piper's Haven Unit 3 Replat Lot 1-D	15920111	Barling	0.24	787

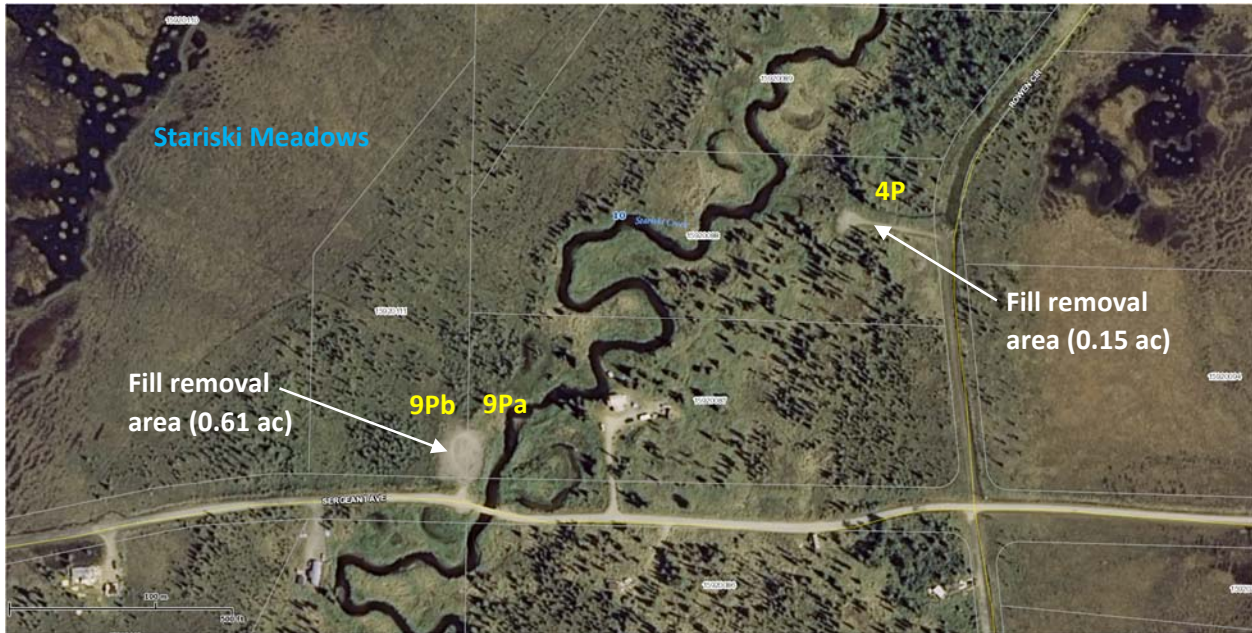


Figure 1. Sites within Stariski Meadows where the unauthorized fill material would be removed.

¹ Supplement 1. Documentation of Potential Non-Compliance in the Stariski Meadows, Happy Valley, and Piper's Haven Subdivisions. L.C. Lee & Associates

2. Fill Removal Sequence: Activities Applicable to Both Areas of Fill Removal

1. The necessary permissions, authorizations, and permits shall be obtained prior to any fill removal activities.
2. The limits of mechanical disturbance shall be delineated with survey stakes.
3. Descriptive photographs shall be taken from fixed markers/locations of the existing conditions at the site before any fill is removed.
4. Appropriate erosion and sediment control measures shall be installed at the perimeter of the fill removal area following protocols outlined in the Alaska Storm Water Pollution Prevention Guide: <http://dec.alaska.gov/water/wnpspc/stormwater/Guidance.html>. These measures shall minimize disturbance to the adjacent wetlands.
5. Clean equipment (power washed to minimize potential for invasive species introduction at the site) shall be used.
6. At least seven days prior to the commencement of fill removal activities, the EPA inspector identified in Section 5 shall be notified.
7. Using an excavator and dump truck, sand and gravel fill material shall be removed from within the delineated areas at the site. Due to the varying height of the fill material placed on site and the differential settling of the fill material over time, removal of the fill material could range from 0.5-feet to 1-foot below the surrounding grade and slope of the adjacent wetlands to expose the underlying organic soils that would support natural revegetation.
8. Measures shall be taken to eliminate or minimize excessive ponding and formation of ground depression.
9. Photographs shall be taken from fixed markers/locations after completion of the fill removal activities and submitted, along with a brief written description for each photograph, to the EPA contact identified in Section 5. Photographs and descriptions shall be submitted within 30 days of completion of fill removal activities.
10. All sand and gravel fill material that is removed shall be transported by dump truck and placed onto the surface of Sergeant Avenue. A small bulldozer and drum roller shall be used to compact the fill material and re-grade the road.

3. Fill Removal Sequence: Activities Applicable to Individual Areas of Fill Removal

A. Site 4P

1. Site 4P (Parcel No. 15920088; Stariski Meadows Lot 14) is owned by Ms. Geraldine Barling. The entire parcel is approximately 8.93 acres. Fill removal activities shall commence as soon as practicable after ground conditions allow heavy equipment to access this Site and Rowen Circle with minimal disturbance to the wetlands at those locations. The fill removal activities are expected to commence either in late winter/early spring while the ground is frozen or in late summer when the area is relatively dry. The fill removal area shall include the gravel access road and the turnaround pad (0.15 acres).

B. Sites 9Pa & 9Pb

1. The second fill removal area is located on two parcels owned by separate owners. Site 9Pa (Parcel No. 15920087; Stariski Meadows Lot 13) is owned by Larry and Teresa

Rude. This parcel is 9 acres. Site 9Pb (Parcel No. 15920111; Piper's Haven Unit 3 Replat Lot 1-D) is owned by Ms. Geraldine Barling. This parcel is approximately 5.9 acres. The fill removal area shall include the gravel house pad and driveway culvert. The well pipe, the electric light pole/utility box, and the buried electric line to an aboveground outlet box located on Sites 9Pa and 9Pb shall be removed and legally disposed off-site, outside of Stariski Meadows, either as salvage or in an approved landfill. Access to site 9Pa and 9Pb is from the existing Sergeant Avenue. The area of fill material to be removed is approximately 0.61 acres. Fill removal activities shall commence immediately after completion of fill removal activities at Site 4P.

2. The galvanized culvert (12-inch diameter x 15-feet long) that is providing driveway access to the gravel pad from Sergeant Avenue shall be removed and legally disposed off-site, outside of Stariski Meadows, either as salvage or in an approved landfill. To minimize erosion and sedimentation into Stariski Creek, the area disturbed by the culvert removal shall be over excavated by one foot depth. This area shall be backfilled with approximately 10 cubic yards of drain rock (3 to 6 inches) to match the adjacent ditch grade line.

4. Fill Removal Activities - Contact

Coordination associated with this Fill Removal Plan for Stariski Meadows shall be directed to:

Mr. Robert Ruffner, Director
Kenai River Watershed Forum
44129 Sterling Highway
Soldotna, AK 99669
(907) 260-5449 x1204
E-mail: robert@kenaiwatershed.org

5. EPA Point of Contact

At least seven (7) days prior to the commencement of fill removal activities, notification shall be provided to the EPA representative who may request an on Site meeting. Notification shall be provided to:

Mr. Mark Jen, EPA Inspector
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 W. Seventh Avenue, #19
Anchorage, AK 99513
(907) 271-3411
E-mail: jen.mark@epa.gov