

Appendix G

APPENDIX G - REVEGETATION PLAN

This document sets forth the revegetation required by Defendant State of Alaska, Department of Transportation and Public Facilities ("DOT&PF") under this Consent Decree. The terms of this Appendix, including the attached photos (Attachments 1-7) and Workplan (Attachment 8), are incorporated into and set forth binding provisions of the Consent Decree. This revegetation shall be carried out in accordance with all of the terms of the Consent Decree, including the terms set forth below in this document. The revegetation work required under this Revegetation Plan and the Consent Decree shall not be considered to be completed unless and until all of the Success Criteria are met for each Site.

I. SITE 6A – DEEP CREEK

A. *Location:* Site 6A is located along Sterling Highway at milepost 136.4, at Deep Creek adjacent to Alaska State Park Facilities in the Kenai Peninsula Borough, Alaska. The Site is depicted in the photos attached hereto as Attachments 1-3.

B. *Description of revegetation work to be performed:* This Site shall be revegetated by planting native trees and shrubs, and native grasses and/or herbs. The revegetation shall occur along the entire reach of the riprap, and shall extend from the top of the riprap to, as applicable to each portion of the site: (i) the guardrail next to the highway; (ii) the fence or similar barrier next to the parking area; and (iii) the previously established native trees and shrubs that were not disturbed during the placement of the riprap during 2002. Before applying any seed mix or planting native trees or shrubs, a six-inch lift of topsoil shall be applied to the site and "ripped" in to a depth of 12 inches using a small dozer (e.g., a Deere 550-G with hydraulic gang rippers fitted to the rear). The revegetation shall incorporate native species that can fix atmospheric nitrogen, including at least 50% native alder for the areas to be revegetated with native trees and shrubs. The revegetation shall be augmented and/or maintained to ensure that the Success Criteria set forth below are met. The work shall be accomplished in accordance with the Workplan attached hereto as Attachment 8. In the event of an inconsistency between the Workplan and this description of the revegetation work to be performed, the Workplan shall govern.

C. *Success Criteria:* Revegetation at this location will be considered successful if the following criteria are met.

1. By August 15, 2011, the planting of the native trees and shrubs, and native grasses and/or herbs, as discussed above in Section I.B shall be completed in accordance with those specifications.

2. (a) For those portions of this Site where native trees and shrubs are planted to accomplish the revegetation, during the month of August five (5) years after the initial planting discussed above in Section I.B, either: (i) this Site must have 75 percent survival of the native trees and shrubs planted initially as discussed above in Section I.B; or (ii) if, in an effort to augment the revegetation efforts, DOT&PF plants additional native trees and shrubs after the initial planting discussed above in Section I.B, then this Site must have a total survival rate of plantings that are at least three (3) years old equivalent to 75 percent of the initial planting as discussed above in Section I.B.

(b) For those portions of this Site where native grasses and/or herbs are planted to accomplish the revegetation, during the month of August five (5) years after the initial planting discussed above in Section I.B, either: (i) this Site must have 75 percent areal (canopy) coverage with native grasses and/or herbs planted as discussed above in Section I.B; or (ii) if, in an effort to augment the revegetation efforts, DOT&PF plants additional native grasses and/or herbs within two (2) years of the initial planting discussed above in Section I.B, then this Site must have total areal (canopy) coverage from plantings that are at least three (3) years old equivalent to 75 percent of the initial planting as discussed above in Section I.B.

II. SITE 14 – ANCHOR RIVER AT STERLING HIGHWAY MILEPOST 162

A. *Location:* Site 14 is located along Sterling Highway at milepost 162, at the Anchor River in the Kenai Peninsula Borough, Alaska. The Site is depicted in the photos attached hereto at Attachments 4-5.

B. *Description of revegetation work to be performed:* This Site shall be revegetated by planting native trees and shrubs, and native grasses and/or herbs. The revegetation shall occur along the entire reach of the riprap, and shall extend from the top of the riprap to the guardrail. Before applying any seed mix or planting native trees or shrubs, a six-inch lift of topsoil shall be applied to the site and "ripped" in to a depth of 12 inches using a small dozer (e.g., a Deere 550-G with hydraulic gang rippers fitted to the rear). The revegetation shall incorporate native species that can fix atmospheric nitrogen, including at least 50% native alder for the areas to be revegetated with native trees and shrubs. The revegetation shall be augmented and/or maintained to ensure that the Success Criteria set forth below are met. The work shall be accomplished in accordance with the Workplan attached hereto as Attachment 8. In the event of an inconsistency between the Workplan and this description of the revegetation work to be performed, the Workplan shall govern.

C. *Success Criteria:* Revegetation at this location will be considered successful if the following criteria are met.

1. By August 15, 2011, the planting of the native trees and shrubs, and native grasses and/or herbs, as discussed above in Section II.B shall be completed in accordance with those specifications.

2. (a) For those portions of this Site where native trees and shrubs are planted to accomplish the revegetation, during the month of August five (5) years after the initial planting discussed above in Section II.B, either: (i) this Site must have 75 percent survival of the native trees and shrubs planted initially as discussed above in Section II.B; or (ii) if, in an effort to augment the revegetation efforts, DOT&PF plants additional native trees and shrubs within two (2) years of the initial planting discussed above in Section II.B, then this Site must have a total survival rate of plantings that are at least three (3) years old equivalent to 75 percent of the initial planting as discussed above in Section II.B.

(b) For those portions of this Site where native grasses and/or herbs are planted to accomplish the revegetation, during the month of August five (5) years after the

initial planting discussed above in Section II.B, either: (i) this Site must have 75 percent areal (canopy) coverage with native grasses and/or herbs planted as discussed above in Section II.B; or (ii) if, in an effort to augment the revegetation efforts, DOT&PF plants additional native grasses and/or herbs within two (2) years of the initial planting discussed above in Section II.B, then this Site must have total areal (canopy) coverage from plantings that are at least three (3) years old equivalent to 75 percent of the initial planting as discussed above in Section II.B.

III. SITE 15 – ANCHOR RIVER AT STERLING HIGHWAY MILEPOST 162.2

A. *Location:* Site 15 is located along Sterling Highway at milepost 162.2, at the Anchor River, in the Kenai Peninsula Borough, Alaska. The Site is depicted in the photos attached hereto as Attachments 6-7.

B. *Description of revegetation work to be performed:* This Site shall be revegetated by planting native trees and shrubs, and native grasses and/or herbs. The revegetation shall occur along the entire reach of the riprap, and shall extend from the top of the rip rap through the berm as far as safety conditions allow. Before applying any seed mix or planting native trees or shrubs, a six-inch lift of topsoil shall be applied to the site and "ripped" in to a depth of 12 inches using a small dozer (e.g., a Deere 550-G with hydraulic gang rippers fitted to the rear). The revegetation shall incorporate native species that can fix atmospheric nitrogen, including at least 50% native alder for the areas to be revegetated with native trees and shrubs. The revegetation shall be augmented and/or maintained to ensure that the Success Criteria set forth below are met. The work shall be accomplished in accordance with the Workplan attached hereto as Attachment 8. In the event of an inconsistency between the Workplan and this description of the revegetation work to be performed, the Workplan shall govern.

C. *Success Criteria:* Revegetation at this location will be considered successful if the following criteria are met.

1. By August 15, 2011, the planting of the native trees and shrubs, and native grasses and/or herbs, as discussed above in Section III.B shall be completed in accordance with those specifications.

2. (a) During the month of August five (5) years after the initial planting discussed above in Section III.B, either: (i) this Site must have 75 percent survival of the native trees and shrubs planted initially as discussed above in Section III.B; or (ii) if, in an effort to augment the revegetation efforts, DOT&PF plants additional native trees and shrubs within two (2) years of the initial planting discussed above in Section III.B, then this Site must have a total survival rate of plantings that are at least three (3) years old equivalent to 75 percent of the initial planting as discussed above in Section III.B.

(b) For those portions of this Site where native grasses and/or herbs are planted to accomplish the revegetation, during the month of August five (5) years after the initial planting discussed above in Section III.B, either: (i) this Site must have 75 percent areal (canopy) coverage with native grasses and/or herbs planted as discussed above in Section III.B; or (ii) if, in an effort to augment the revegetation efforts, DOT&PF plants additional native

grasses and/or herbs within two (2) years of the initial planting discussed above in Section III.B, then this Site must have total areal (canopy) coverage from plantings that are at least three (3) years old equivalent to 75 percent of the initial planting as discussed above in Section III.B.

IV. ISSUES APPLICABLE GENERALLY

A. *Permitting*: DOT&PF shall be responsible for obtaining all permits and/or authorizations applicable to the work described herein.

B. *Prior Notice of Work Dates and On-site Coordination*: At least fourteen (14) days prior to commencement of any revegetation work, DOT&PF shall notify EPA's Wetlands Compliance Officer of the anticipated dates that the work will take place. The notice shall be provided in accordance with Paragraph 35 of the Consent Decree.

C. *Notice of Completion of Revegetation*: Within fourteen (14) days after completion of any revegetation work, DOT&PF shall notify EPA's Wetland Compliance Officer that the work is complete. The notice shall be provided in accordance with Paragraph 35 of the Consent Decree.

D. *Monitoring*: After the revegetation work is completed, DOT&PF shall monitor the success of revegetation at each Site at least once between June 1 and August 15 during each year until all Success Criteria are met at that Site.

E. *Notice of Completion of Monitoring*: Within fourteen (14) days after completion of any monitoring event, DOT&PF shall notify EPA's Wetland Compliance Officer that the monitoring event has occurred. The notice shall be provided in accordance with Paragraph 35 of the Consent Decree.

F. *Early Satisfaction of Success Criteria for a Site(s)*: As an early, alternative means of satisfying the Success Criteria set forth in Sections I.C, II.C, and III.C above, those Success Criteria for a Site shall be deemed to be satisfied if, four (4) years after the initial plantings discussed above in Sections I.B, II.B and III.B., all of the percentage Success Criteria for a Site have been met by plantings that are at least three (3) years old.

G. *Report Submissions to EPA*:

1. Within forty-five (45) days of the completion of the revegetation work at each of the three Sites as discussed above in Sections I.B, II.B and III.B, DOT&PF shall prepare and submit a report to EPA's Wetlands Compliance Officer in accordance with Paragraphs 35 and 36 of the Consent Decree. For each of the three Sites, the report shall: (a) include a copy of the plans and specifications for the work performed and the contract documents for performance of the work; (b) identify the problem(s) encountered and the action(s) taken to address the problems; and (c) include comprehensive photographic documentation from fixed points and camera angles of the Site: (i) immediately prior to the commencement of the revegetation work; (ii) during performance of the revegetation work; and (iii) after the revegetation is completed.

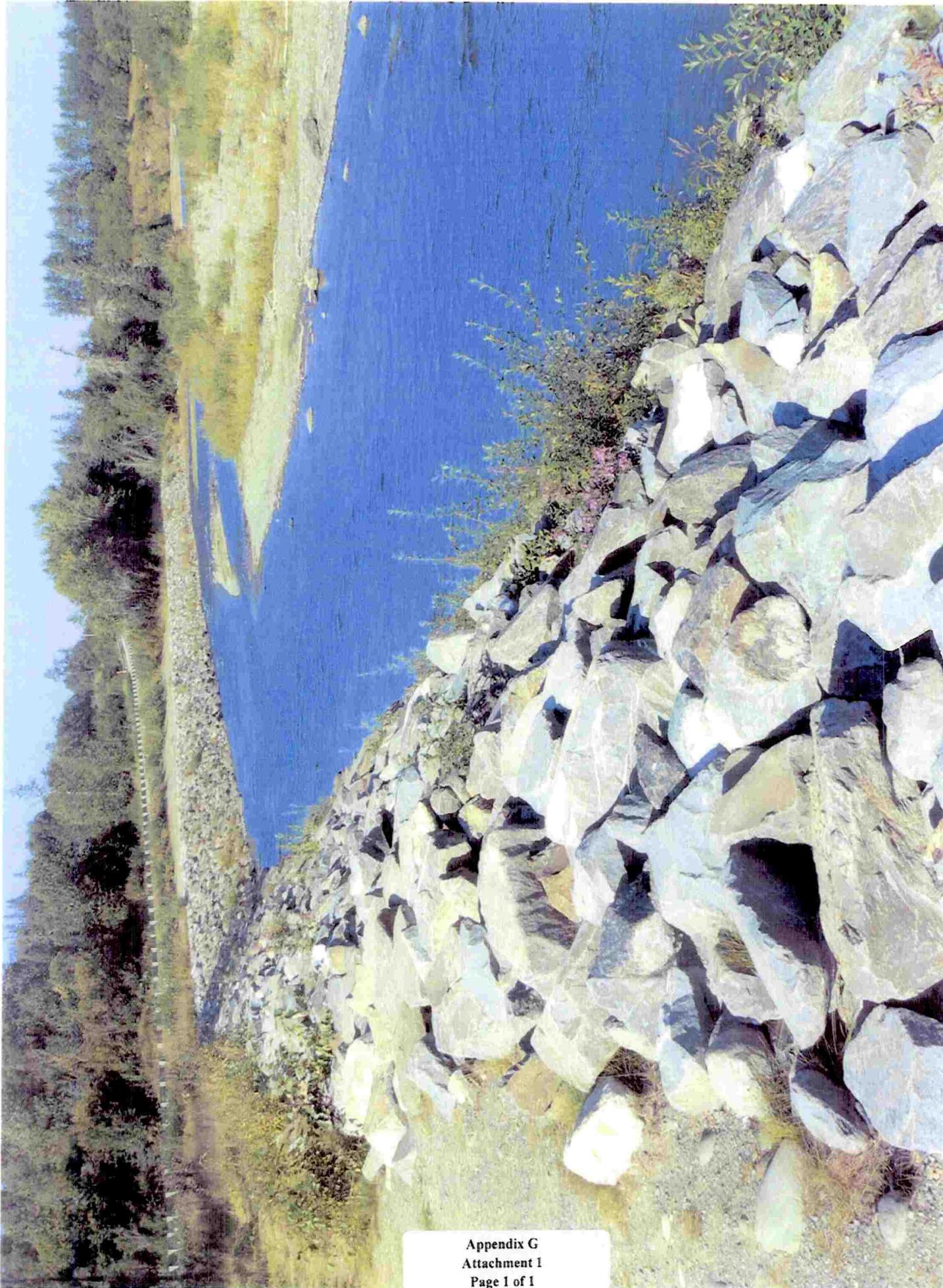
2. Within forty-five (45) days after each monitoring event discussed above in Section IV.D, DOT&PF shall prepare and submit a separate report to EPA's Wetlands Compliance Officer in accordance with Paragraphs 35 and 36 of the Consent Decree. For each of the three Sites, the monitoring reports shall: (a) describe the condition of the location and whether the revegetation has been successful to date; (b) identify the problem(s) discovered and the action(s) taken to address the problem(s), including any follow-up revegetation work that is required to meet the Success Criteria for any Site; and (c) include comprehensive photographic documentation, including, at a minimum, from the same fixed points and camera angles used in the report required under Paragraph IV.G.1 above.

3. If EPA determines that a report submitted pursuant to paragraphs IV.G.1 or IV.G.2 above is materially deficient, then EPA shall notify DOT&PF in writing within six (6) months from the date of receipt of the report of the specific deficiencies in the report, and DOT&PF shall have the opportunity to cure those deficiencies within thirty (30) days after receiving written notice from EPA. If EPA does not provide such written notice of deficiency within the prescribed time period, the report shall be deemed sufficient.

4. If, four (4) years or more after the initial plantings discussed above in Sections I.B, II.B and III.B, DOT&PF asserts in a timely submitted report described in paragraph IV.G.2 above that all of the Success Criteria have been met at a Site by plantings that are at least three (3) years old, then EPA shall have until December 15 of the year of that submission to dispute, in writing, DOT&PF's assertion. If EPA does not dispute DOT&PF's assertion in writing by December 15 of that year, then all of the Success Criteria shall be deemed to be met at that Site. If EPA disputes DOT&PF's assertion by December 15 of that year, in writing, then the dispute shall be addressed in accordance with the Dispute Resolution provisions set forth in Section XI of the Consent Decree.

Appendix G

Attachment 1



Appendix G
Attachment 1
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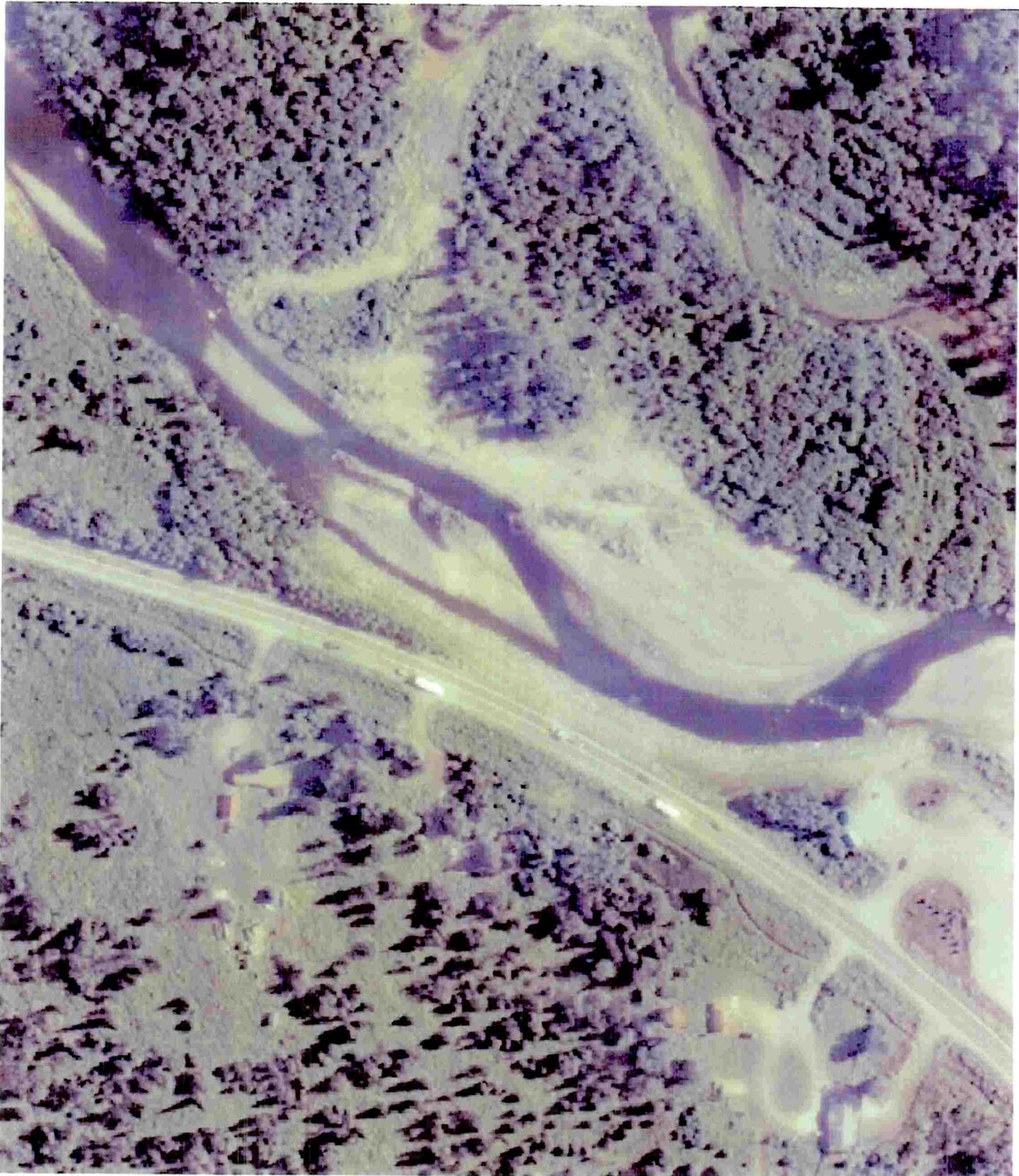
Appendix G

Attachment 2



Appendix G

Attachment 3



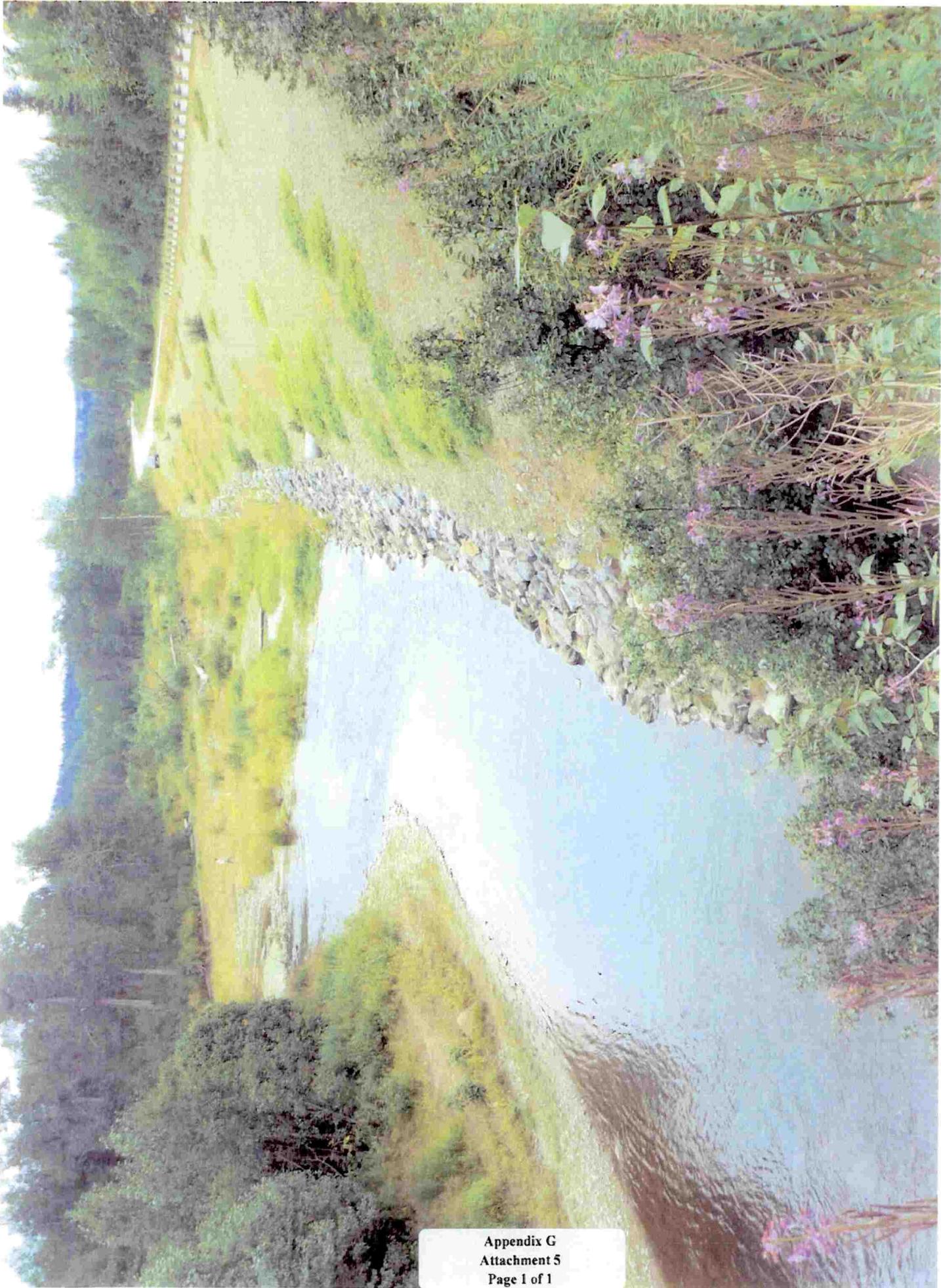
Appendix G

Attachment 4



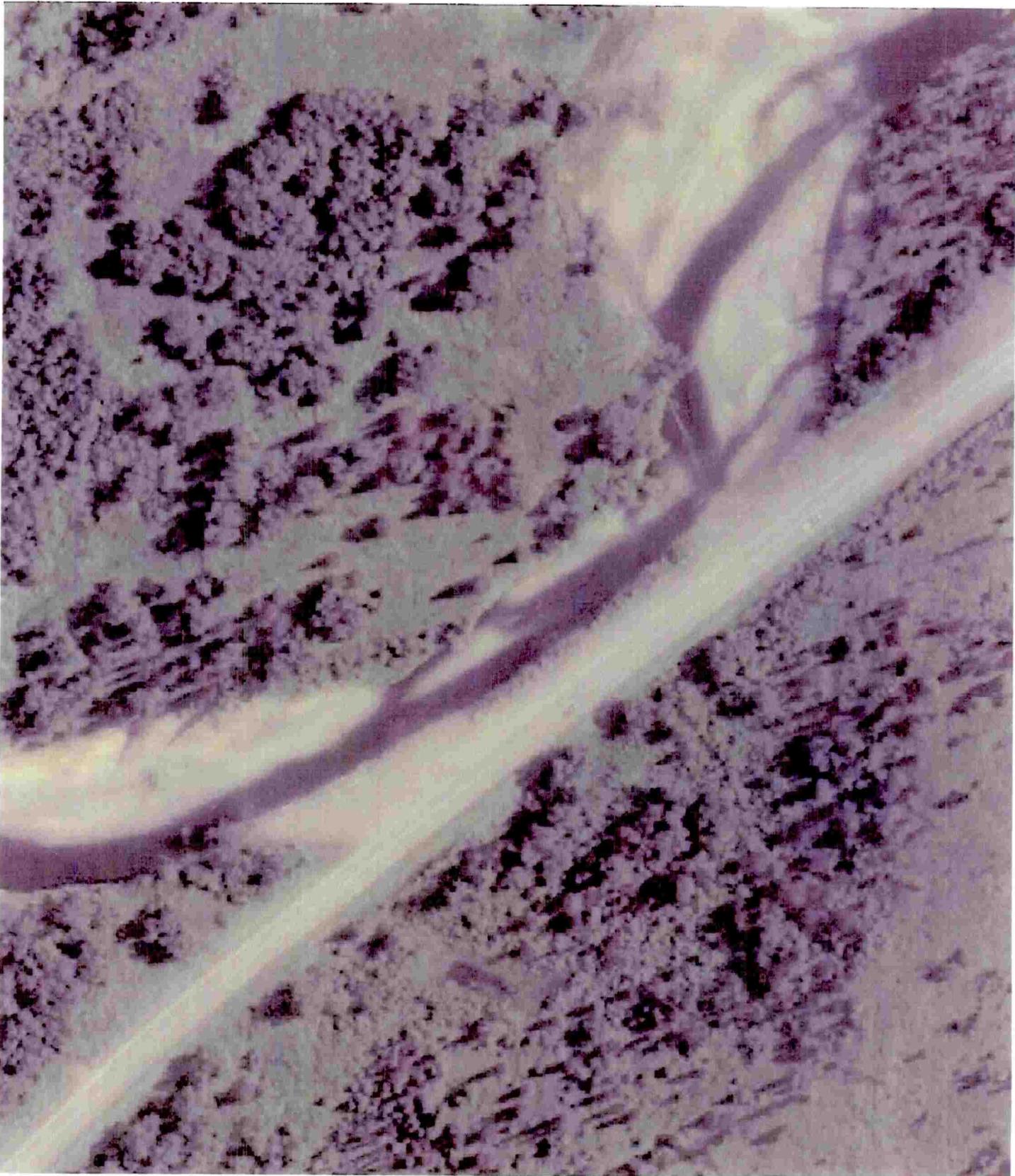
Appendix G

Attachment 5



Appendix G

Attachment 6



Appendix G

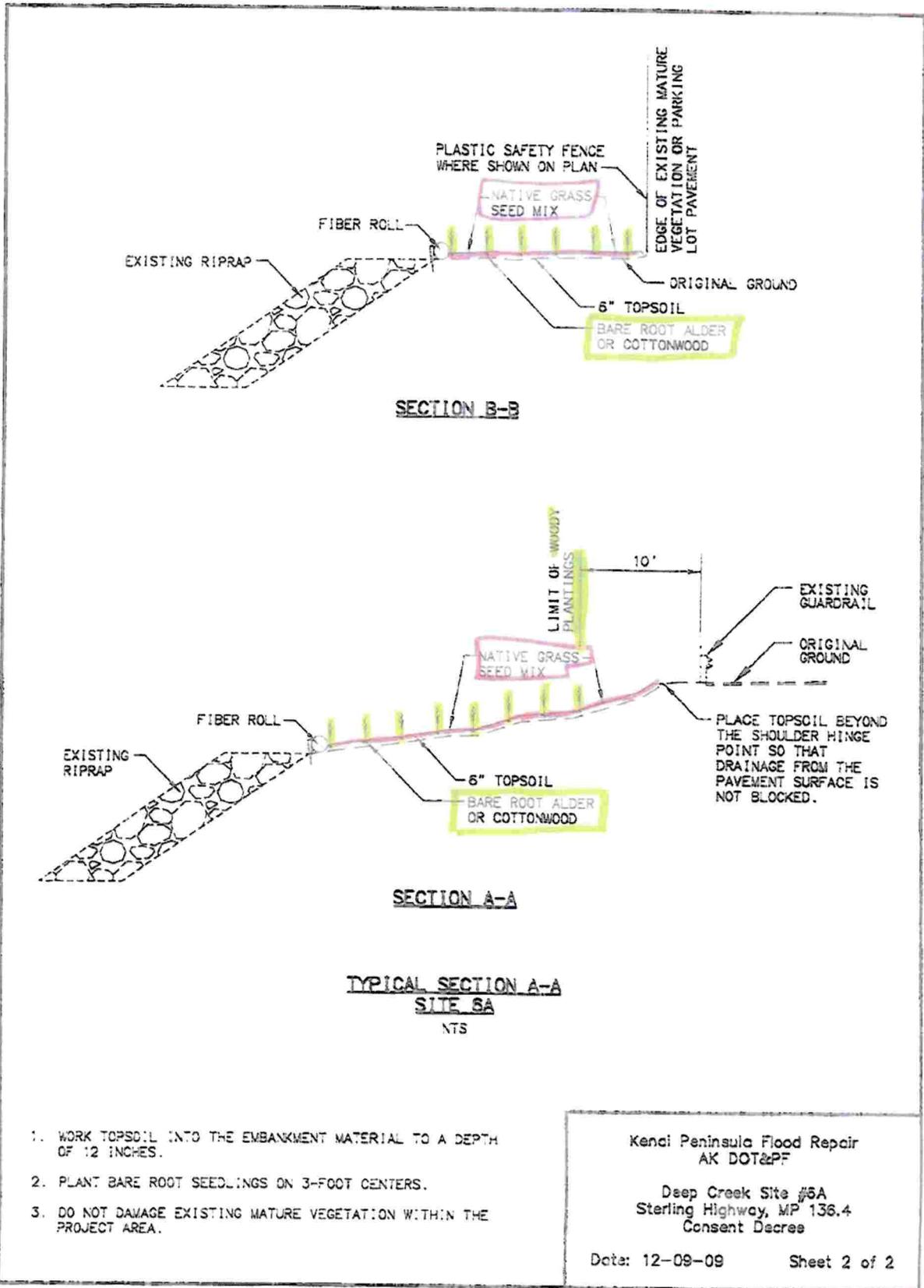
Attachment 7



Appendix G
Attachment 7
Page 1 of 1

Appendix G

Attachment 8



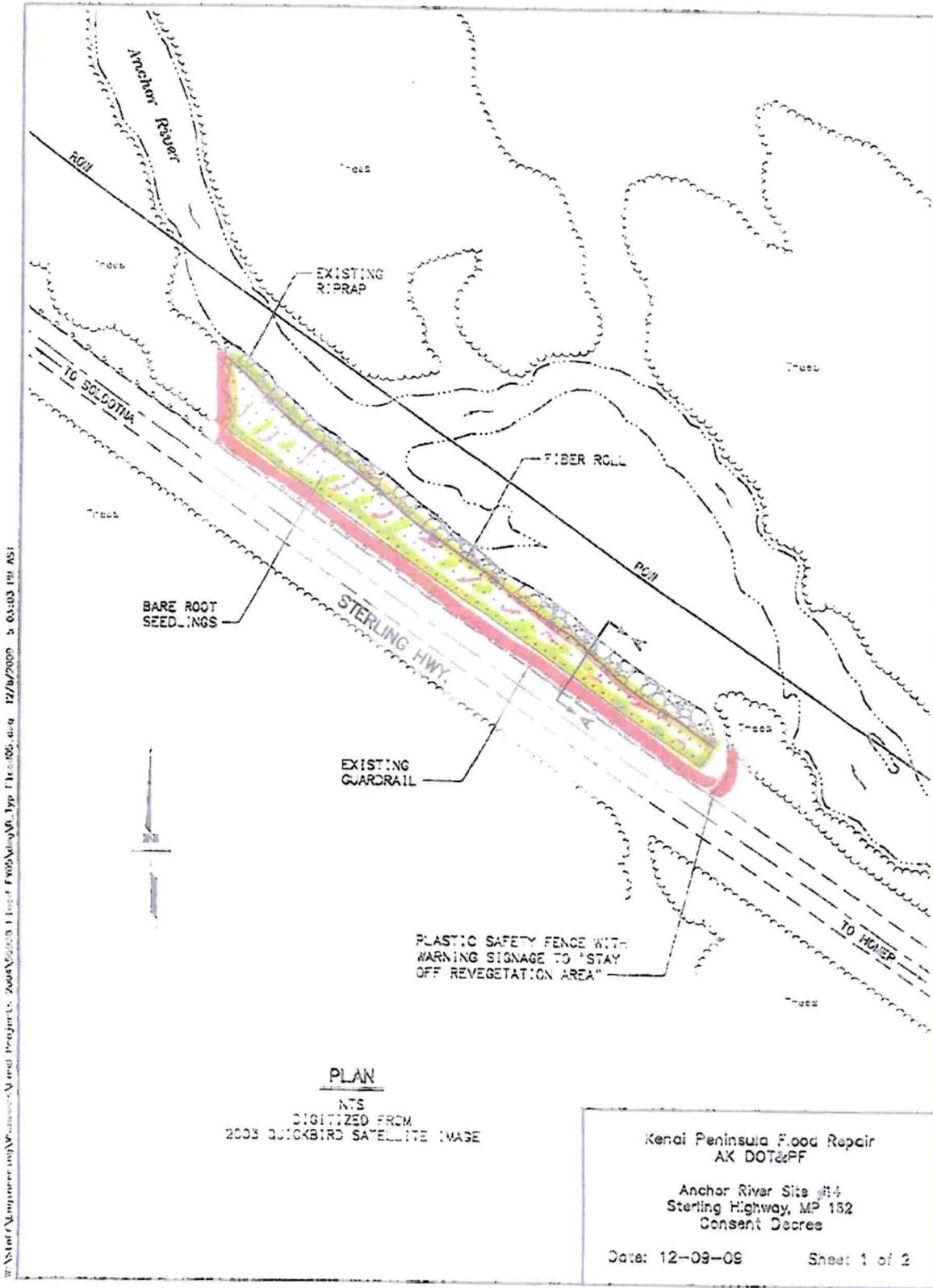
1. WORK TOPSOIL INTO THE EMBANKMENT MATERIAL TO A DEPTH OF 12 INCHES.
2. PLANT BARE ROOT SEEDLINGS ON 3-FOOT CENTERS.
3. DO NOT DAMAGE EXISTING MATURE VEGETATION WITHIN THE PROJECT AREA.

Kenai Peninsula Flood Repair
AK DOT&PF

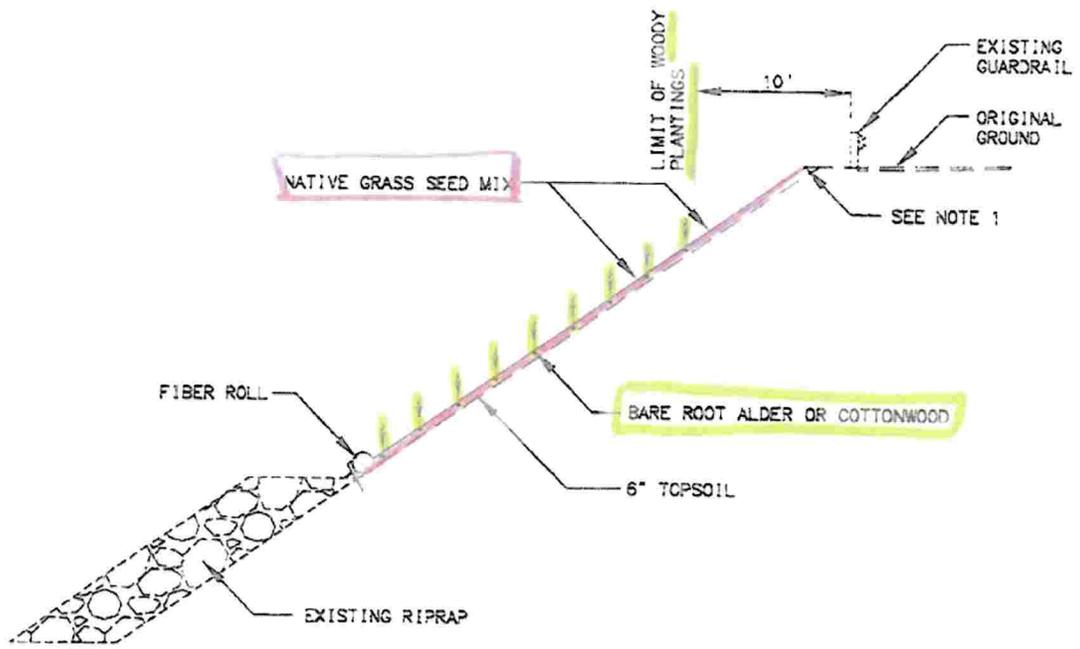
Deep Creek Site #6A
Sterling Highway, MP 136.4
Consent Decree

Date: 12-09-09 Sheet 2 of 2

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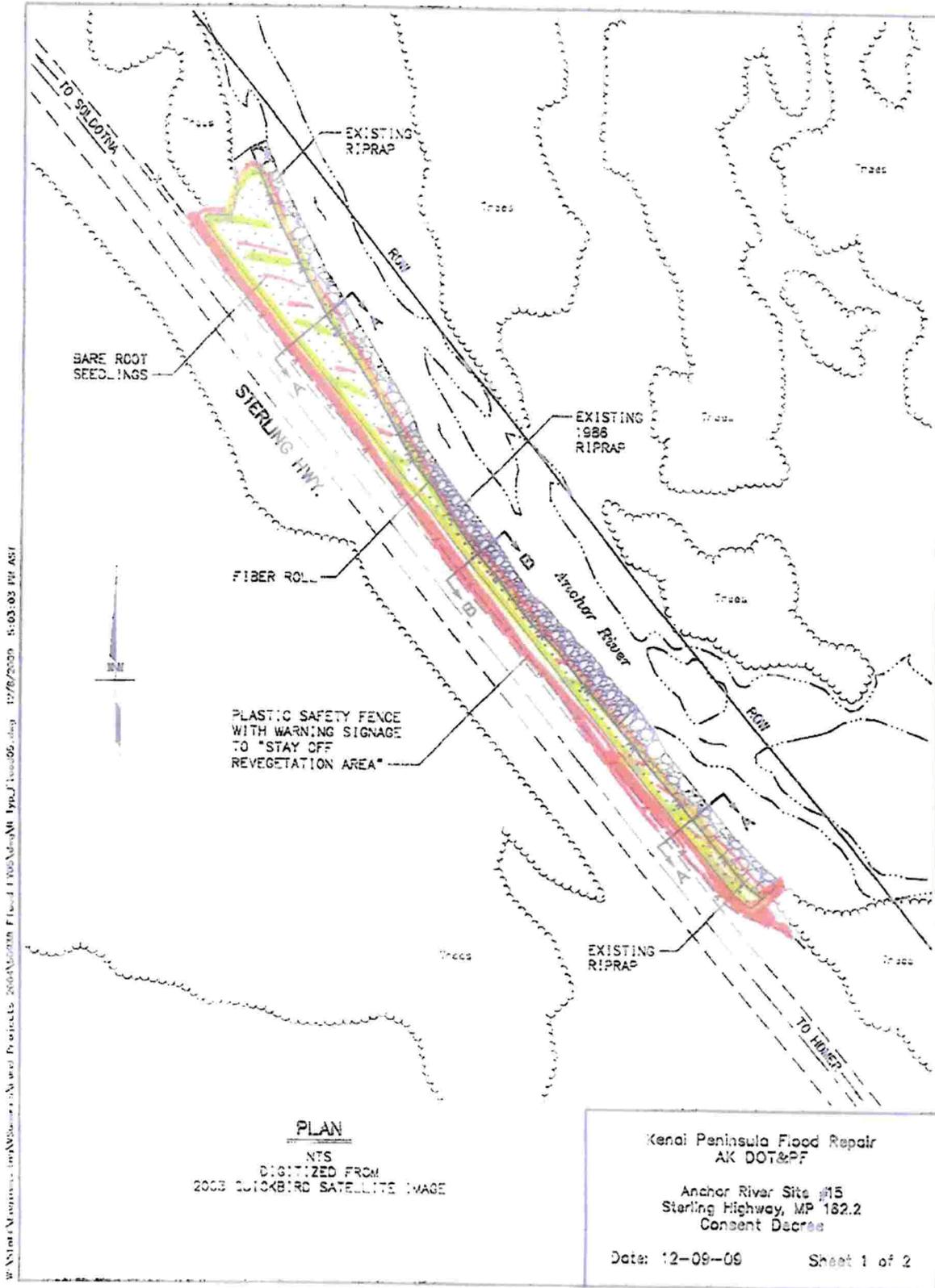
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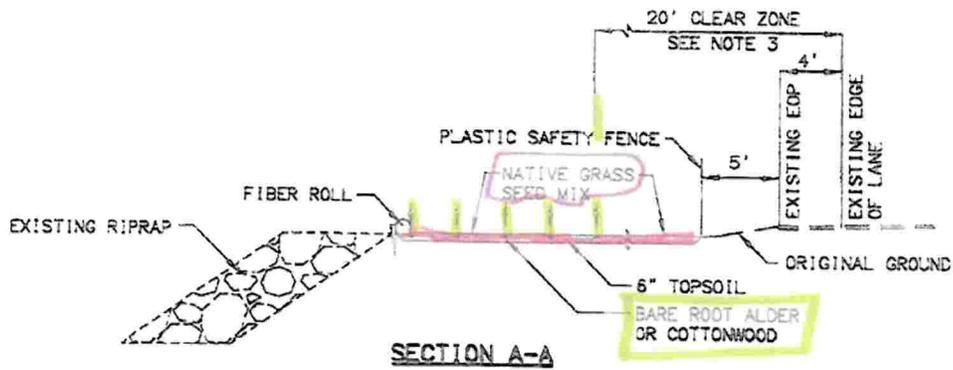
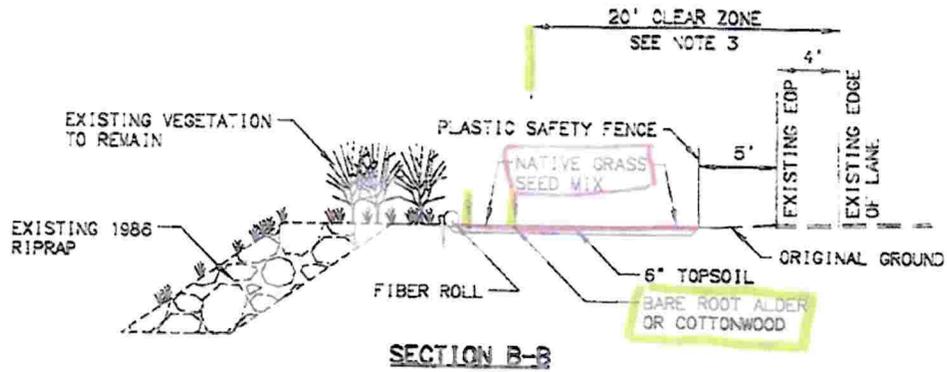


TYPICAL SECTION A-A
SITE 14
 NTS

1. PLACE TOPSOIL BEYOND THE SHOULDER HINGE POINT SO THAT DRAINAGE FROM THE PAVEMENT SURFACE IS NOT BLOCKED.
2. WORK TOPSOIL INTO THE EMBANKMENT MATERIAL TO A DEPTH OF 12 INCHES.
3. PLANT BARE ROOT SEEDLINGS ON 3-FOOT CENTERS.

Kendal Peninsula Flood Repair
 AK DOT&PF
 Anchor River Site #14
 Sterling Highway, MP 162
 Consent Decree
 Date: 12-09-09 Sheet 2 of 2





TYPICAL SECTIONS
SITE 15
NTS

1. REMOVE TOP 8 INCHES OF NATIVE MATERIAL AND REPLACE WITH TOPSOIL WHERE INDICATED. DO NOT ALLOW TOPSOIL TO BLOCK DRAINAGE FROM THE PAVEMENT SURFACE.
2. WORK TOPSOIL INTO THE UNDERLYING MATERIAL TO A DEPTH OF 12 INCHES.
3. PLANT BARE ROOT SEEDLINGS ON 3-FOOT CENTERS. PLANT NO WOODY VEGETATION WITHIN THE CLEAR ZONE.

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|---|--------------|
| Kenai Peninsula Flood Repair AK DOT&PF | |
| Anchor River Site #15 Sterling Highway, MP 182.2 Consent Decree | |
| Date: 12-08-09 | Sheet 2 of 2 |

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Appendix H

APPENDIX H

KLHT Resolution Number 2010-08

KHLT Resolution Number 2010-08

May 7, 2010

Management and Stewardship Expenses Formula for Consent Decree

Whereas, the Consent Decree involving the United States of America, the State of Alaska, Department of Transportation and Public Facilities, and Kachemak Heritage Land Trust provides that no later than October 1, 2010, the State of Alaska, Department of Transportation and Public Facilities shall pay \$850,000 to KHLT in order acquire and permanently conserve riparian areas, for the preservation of water quality and salmon habitat, on the Anchor River, Ninilchik River, Deep Creek or Stariski Creek watersheds on the Kenai Peninsula, Alaska; and

Whereas, it is the intent of the parties to maximize the amount of funds that can be applied solely to the acquisition and permanent conservation of the riparian areas for the preservation of water quality and salmon habitat; and

Whereas, the parties acknowledge that certain expenses and administrative costs are necessary to accomplish the acquisitions and conservation; and

Whereas, the Consent Decree provides that the \$850,000 may be applied to reasonable pre-acquisition expenses, perpetual management and stewardship costs, and pre-acquisition administrative costs;

Be it resolved that the amount applied to perpetual management and stewardship costs shall be calculated according to the formula attached to this Resolution.

Resolution by: *Jm/mB*

Vote: *unanimous*

Secretary Signature _____



Kachemak Heritage Land Trust
Management and Stewardship Calculation Worksheet

| | |
|--------------------|--|
| Date: | |
| Property Name: | |
| Legal Description: | |

| | |
|--|------------|
| Up Front Management Costs | |
| Management Plan Development | |
| Actual Costs | |
| Signage | |
| Actual Costs | |
| Additional Up Front Management Costs | |
| Actual Costs | |
| Subtotal of Up Front Management Costs | \$0 |

| | | |
|---|---------------|------------|
| Perpetual Management Costs (Yearly Expenses) | | |
| Insurance | Acres | \$0 |
| Actual cost per acre | Cost/Acre | |
| KHLT Time Managing Property | Hours | \$0 |
| Includes travel, monitoring, reporting. | KHLT Rate | |
| Additional Property Management Responsibilities** | | |
| ** Total from supplemental spreadsheet. | | |
| Subtotal of Perpetual Management Costs | | \$0 |
| 20Year Average Return (US Treasury Securities) | 6.24% Percent | |
| 10 Year Average Inflation (CPI Nationally Averaged) | 2.56% Percent | |
| Difference | 3.68% Percent | |
| Amount Needed to Provide for Annual Costs | | \$0 |

| | |
|---|------------|
| Subtotal of Up Front Management Costs | \$0 |
| Amount Needed to Provide for Annual Costs | \$0 |
| Total Management Costs | \$0 |

| | |
|---------------------------------------|------------|
| Legal Consultation and Defense | \$0 |
| 10% of Total Management Costs | |

| | |
|------------------------------|------------|
| Contingency | \$0 |
| 5% of Total Management Costs | |

| | |
|---|------------|
| Total Funds Required for Land Management | \$0 |
|---|------------|

| | |
|------------------------------|------------|
| Fund Management | \$0 |
| 3% of Total Management Costs | |

| | |
|--|------------|
| Total Funds Required for Land and Fund Management | \$0 |
|--|------------|

GC

Notes: KHLT Rate is based on actual operation costs of KHLT per hour. The 2010 rate is \$130/hour.

Kachemak Heritage Land Trust

| |
|--------------------|
| Date: |
| Property Name: |
| Legal Description: |

| Additional Property Management Responsibilities | | | |
|--|-------------|----------------------------------|--------------------|
| <u>Item</u> | <u>Cost</u> | <u>Frequency of Need (Years)</u> | <u>Yearly Cost</u> |
| Sign Replacement | | 5 | \$0 |
| Fence Replacement/Maitenance | | 1 | \$0 |
| Management Plan Update | | 10 | \$0 |
| etc. | | 1 | \$0 |
| | | 1 | \$0 |
| | | 1 | \$0 |
| | | 1 | \$0 |
| | | 1 | \$0 |
| | | 1 | \$0 |
| Amount Needed to Provide for Annual Costs | | | \$0 |

SL

Appendix I

APPENDIX I

KLHT Resolution Number 2010-09

KHLT Resolution Number 2010-09

May 7, 2010

Administrative Expenses Formula for Consent Decree

Whereas, the Consent Decree involving the United States of America, the State of Alaska, Department of Transportation and Public Facilities, and Kachemak Heritage Land Trust provides that no later than October 1, 2010, the State of Alaska, Department of Transportation and Public Facilities shall pay \$850,000 to KHLT in order acquire and permanently conserve riparian areas, for the preservation of water quality and salmon habitat, on the Anchor River, Ninilchik River, Deep Creek or Stariski Creek watersheds on the Kenai Peninsula, Alaska; and

Whereas, it is the intent of the parties to maximize the amount of funds that can be applied solely to the acquisition and permanent conservation of the riparian areas for the preservation of water quality and salmon habitat; and

Whereas, the parties acknowledge that certain expenses and administrative costs are necessary to accomplish the acquisitions and conservation; and

Whereas, the Consent Decree provides that the \$850,000 may be applied to reasonable pre-acquisition expenses, perpetual management and stewardship costs, and pre-acquisition administrative costs;

Be it resolved that KHLT may charge pre-acquisition administrative costs annually up to five percent (5%) of the amount spent for pre-acquisition expenses, or \$10,000 per year, whichever is smaller.

Resolution by: *LH/SM*

Vote: *unanimous*

Secretary Signature _____

