



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668 June 7, 2007

Juneau, Alaska 99802-1668

Colonel Kevin J. Wilson
District Engineer
U.S. Army Corps of Engineers
P.O. Box 6898
Anchorage, Alaska 99506-0898

Re: POA-2006-377-2
Ulloa Channel

Attn: Serena Sweet

Dear Colonel Wilson:

The National Marine Fisheries Service (NMFS) has reviewed the above referenced application from the University of Alaska to develop land on Prince of Wales Island for the purpose of generating income to support the University's educational system. The project consists of a timber harvest and supporting infrastructure including roads, a log transfer facility (LTF), and rock quarries (see Figure 1). Future development at the site will include a high-end remote recreational subdivision. The permit for this project, if issued, would authorize construction only of the proposed roads, LTF, and quarry sites. The future owners of the lots will be required to apply for and obtain individual authorizations from the Corps for each lot; however the potential cumulative impacts from this proposed development is being considered during the current review process.

The timber harvest will take place on approximately 900 acres using traditional and selective harvest methods. The Alaska Department of Fish and Game's Anadromous Waters Catalog indicates several anadromous fish streams in the vicinity of the proposed project. In April 2006 a fishery biologist from the Alaska Department of Natural Resources identified four anadromous streams in the proposed subdivision. These streams support runs of coho and pink salmon and are an important component of the estuary system. A log transfer facility (LTF) and road system will be constructed as part of the timber harvest operations, and these will serve as the access for the future subdivision lots. The road system will consist of 18,000 feet of linear gravel road, two modular steel bridges, nine log stringer bridges, and 35 culverts of varying diameters to maintain natural surface drainage patterns. The proposed roads will cross four anadromous fish streams.

Construction of the roads will result in the loss of approximately 7.4 acres of wetlands habitat. Construction of the LTF will result in the loss of 0.3 acres of intertidal habitat and an additional 0.9 acres of wetland habitat will be filled to construct an LTF staging area. Logs will be transferred directly to a barge. Up to four rock quarries will be constructed resulting in the loss of up to 5.9 acres of wetland habitat. The subdivision will convert approximately 288 acres of currently undeveloped land into 84 lots varying in size from 1.0 to 13.0 acres. The applicant estimates that future development on 45 of



the lots will result in the loss of an estimated 33.75 acres of wetlands habitat¹. Wetland losses could be higher or lower depending on the scale of the development on the individual lots.

During an agency meeting organized by the Alaska Coastal Management Program on 31 May 2007, the applicant provided a map of the proposed subdivision identifying the location of major features and the type of logging that is proposed to be conducted on different portions of the property. The applicant has indicated that the placement of subdivision lots on this map is preliminary and is intended to represent a “worst case” scenario. NMFS is concerned about the impact of the timber sale and the proposed development on both riparian and estuarine habitat.

Riparian habitat

Anadromous streams intersect or border approximately 32 lots in the proposed subdivision. To protect fish habitat as individual lots are developed the applicant is proposing to include a “note” on the final plat that would require a 20-foot vegetative leave strip along both banks of all major creeks, and subject properties to a 50-foot public access easement along each side of the ordinary high water mark of three streams. The applicant further proposes to incorporate a requirement for a 50-foot buffer of “undisturbed” vegetation between the tree line along Ulloa Channel or the ordinary high water line of any major stream and lot development into covenants, conditions and restrictions for the Waterfall Subdivision. However; land owners may remove any tree within this buffer to improve the view, and may trim and top herbaceous and wood shrubs to a height of three feet or higher. The applicant uses the term “major” stream to define fish-bearing waters. It is unclear whether these buffers also apply to the proposed timber harvest.

NMFS is concerned that measures proposed to protect riparian habitat are inadequate and would require enforcement beyond what the University of Alaska has indicated it would be willing to provide. The University intends to create a neighborhood association to oversee implementation of the covenants, conditions and restrictions; however, the University intends to be a member of this association only as long as there are lots remaining to be sold. Thus, the University’s ability to enforce the proposed protective measures is destined to be short lived. Presumably the neighborhood association would have the authority to amend or eliminate these covenants, conditions and restrictions. Even if the covenants, conditions and restriction are enforced, the proposed 50-foot buffer is not actually an area of “undisturbed” vegetation, because property owners may remove “any tree” or trim vegetation to enhance views or for other purposes². There is no limit to the amount of tree removal that may occur under this exemption. Thus, the actual area of undisturbed vegetation is only the 20-foot leave strip required around major streams that will be included as a note on the final plat of the subdivision. No protection

¹ Page 8 of 10. Subdivision development impacts.

² Page 10 of 10, Number 4. “Trees may be cleared and thinned to provide adequate building sites, yards, gardens, access, utilities, to enhance views and for reasons of safety, provided that, to the extent reasonably possible, the natural beauty and aesthetic value of the lots are maintained.”

is afforded to non-fish bearing streams in the proposed plan, however the applicant indicated the intention to require a 20-foot vegetated leave zone along non-fish bearing streams. It is unclear how enforcement of the proposed “notes on the final plat” of the subdivision will be accomplished.

Stable riparian habitat is important for spawning and juvenile salmonids, and for reducing erosion and sediment loading into nearshore waters. Riparian buffer requirements should apply to both the timber harvest and the proposed subdivision. NMFS proposes that the area set aside as riparian buffers be excluded from the saleable lot acreage and that ownership of this land be retained by the University or a third party (e.g. land trust). This would facilitate enforcement of the no-clear areas since property owners would have no legal basis for clearing land outside their property boundaries. The size of the buffers should be determined based on the type of stream and the surrounding terrain. Most of the non-fish bearing streams are located in an area of steep terrain subject to high winds and windthrow. Buffers on these streams should be adequately sized to minimize windthrow loss. NMFS recommends that a 50 to 100-foot buffer of undisturbed vegetation be retained on all fish bearing (major) streams. The width of the buffer should be determined based on the geology and terrain surrounding the stream and may vary along a stream bank. Large portions of the property adjacent to these streams are wetland soils that are susceptible to windthrow. Buffers should be adequately sized to minimize windthrow adjacent to these streams.

Estuary habitat

The nearshore area adjacent to the central portion of the property is shallow water estuarine habitat as shown in the attached images are from the NMFS Shorezone inventory. Water depths in this area range from $\frac{1}{4}$ to $3\frac{3}{4}$ fathoms MLLW. Eelgrass may be present. The applicant proposes Conventional Select A timber harvesting in this area. The public notice does not specify that vegetative buffer will be retained along the shoreline of the property or around the estuary. The proposal for the subdivision includes the requirement for a 50-foot buffer of undisturbed vegetation to be left between the tree line along Ulloa Channel and lot development as discussed above. Property owners may remove “any tree” within this buffer to improve the view or for other purposes and may trim vegetation.

Approximately 31 proposed lots border the estuary. For the reasons discussed above, NMFS does not believe that the proposed buffer will adequately protect estuarine resources. Estuaries are highly productive habitats where freshwater and saltwater meet. Estuarine habitat is important for juvenile salmon for smolting, feeding and predator avoidance during the spring and summer prior to their migration out to sea. This area also provides important nursery habitat for the juvenile stages of such commercially important species as rockfish, sole, and flounder as well as for many important forage fish, such as herring, that are eaten by birds, mammals, and other fishes. The mudflats in this estuarine area are special aquatic sites as defined in CWA Section 404(b)(1) Subpart E (40 CFR 230).

While NMFS recognizes the potentially high economic value of waterfront lots in the planned subdivision, we recommend that some of the proposed lots adjacent to the estuary be removed from potential sale. These have been marked in red on the attached map of the subdivision. These lots have limited developable land when buffers and wetlands are excluded, and they are located within sensitive habitat. Additionally, NMFS recommends a 100-foot buffer of undisturbed vegetation along the shoreline of the lots marked in blue. The area set aside as estuarine buffers should be excluded from the saleable lot acreage and ownership of this land should be retained by the University. The size of this buffer is consistent with the requirements of both the Tongass Land Management Plan and the Alaska State Forest Practices Act for beach fringe buffers.

Additional impacts to the estuary and nearshore waters may come from installation and operation of a large number of individual septic systems, especially if they have discharge into marine waters. Individual power generation systems and fuel storage also may adversely affect essential fish habitat (EFH). As indicated above, a portion of the tidelands adjacent to the property are designated as special aquatic sites. This designation will affect, and could limit, development options on several of the proposed lots.

In accordance with Section 305(b)(4)(A) of the MSA, NMFS makes the following EFH Conservation Recommendations:

1. Buffers of undisturbed vegetation should be required along all streams and adjacent to estuarine waters. These buffers should be excluded from the saleable lot acreage.
 - a. For non-fish bearing streams, the width of the buffer should be adequately sized to minimize windthrow loss (20-feet or larger depending on the slope, geology, etc.)
 - b. For fish bearing (major) streams, the width of the buffer should be 50 to 100-feet based on the geology and terrain surrounding the stream. The width may vary along a stream bank.
 - c. For lots marked in blue on the accompanying drawing, a 100-foot buffer of undisturbed vegetation should be retained along the shoreline.
2. Lots marked in red on the accompanying map should be removed from the proposed subdivision due to their high habitat value and limited developable areas.
3. In marine waters no in-water work should be permitted from April 1 through June 15 of any year to protect out-migrating salmon.
4. No structures that block sunlight should be placed in or over eelgrass beds.
5. No fill should be placed in eelgrass beds.
4. The use of any wood that has been surface or pressure-treated with pentachlorophenol should be prohibited. Treated wood that comes in contact with water should be treated with waterborne preservatives approved for use in aquatic and/or marine environments. These include, but are not limited to: Chromated

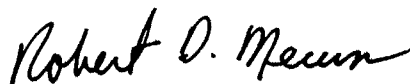
Copper Arsenic (CCA) Type C, Ammoniacal Copper Zinc Arsenate (ACZA), Alkaline Copper Quat (ACQ), Copper Boron Azole (CBA) or Copper Azole (CA). Use wood treated with waterborne preservatives in accordance with Best Management Practices developed by the Western Wood Preservers Institute.

5. A watershed analysis should be conducted to determine the location of all fish streams, their channel type, and habitat quality.

Under section 305(b)(4) of the Magnuson-Stevens Act, the Corps is required to respond to NMFS EFH Conservation Recommendations in writing within 30 days. If the Corps will not make a decision within 30 days of receiving NMFS EFH Conservation Recommendations, the Corps should provide NMFS with a letter within 30 days to that effect, and indicate when a full response will be provided.

If you have any questions regarding our recommendations for this project, please contact Katharine Miller at 907-586-7643 or Katharine.miller@noaa.gov.

Sincerely,

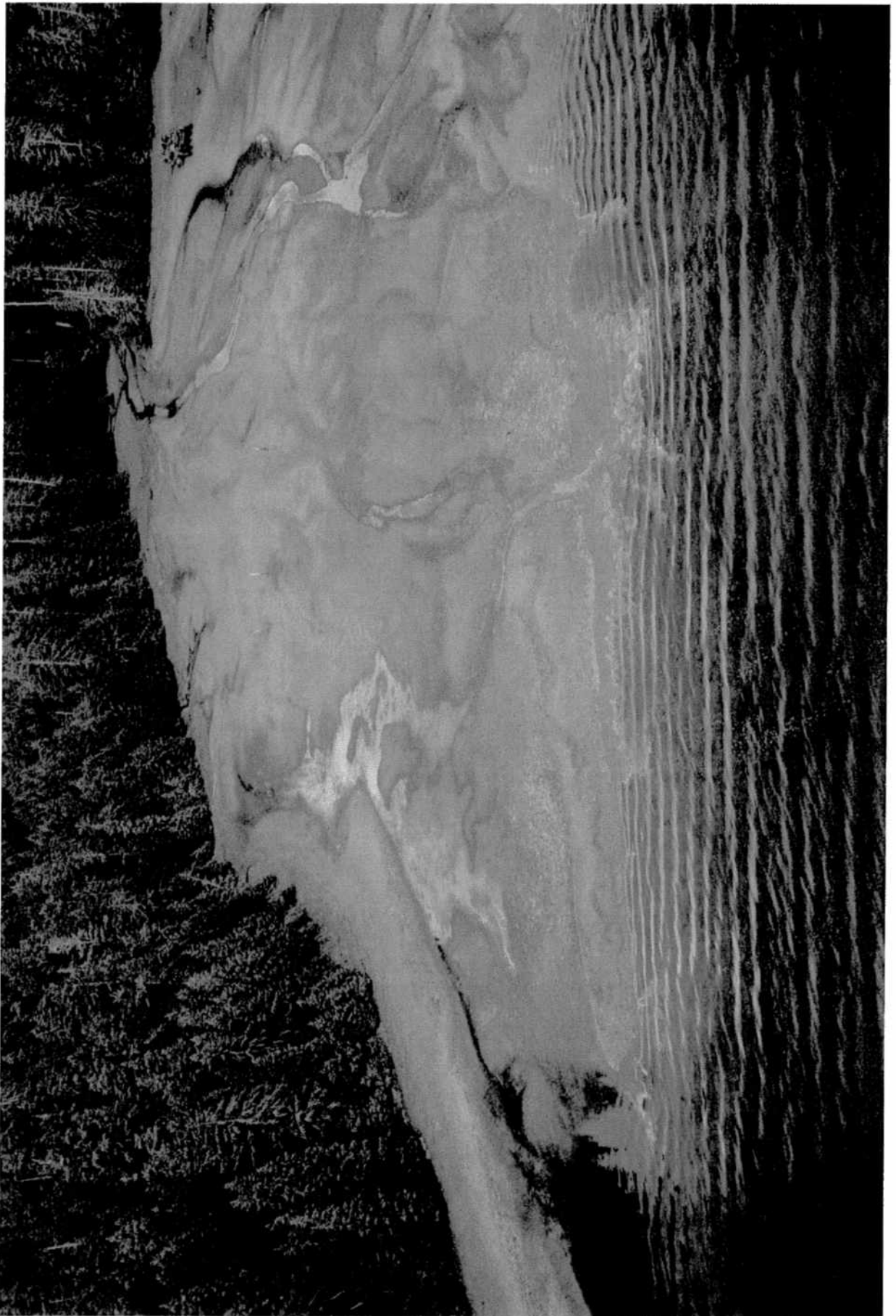


Robert D. Mecum
Acting Administrator, Alaska Region

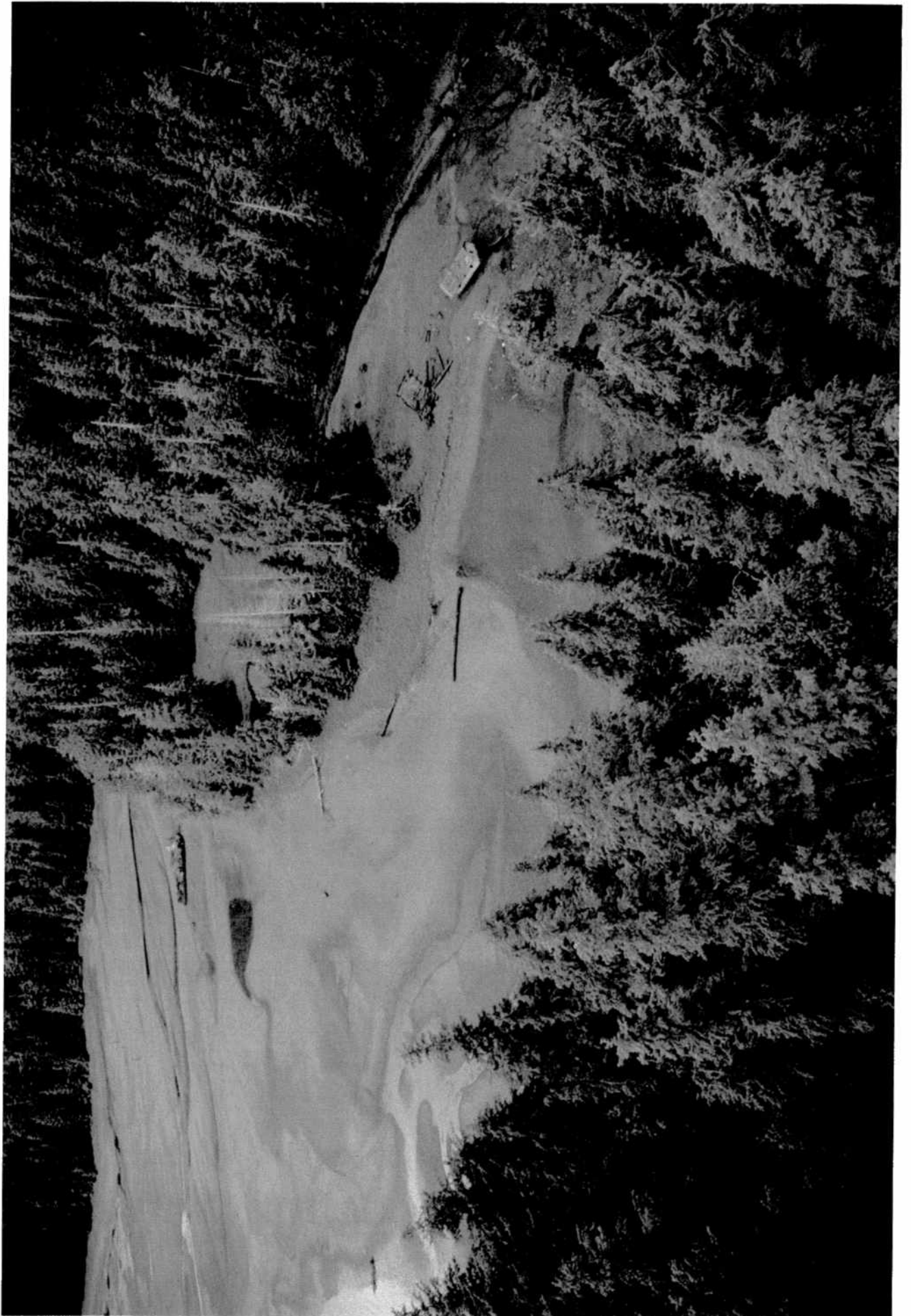
Enclosures

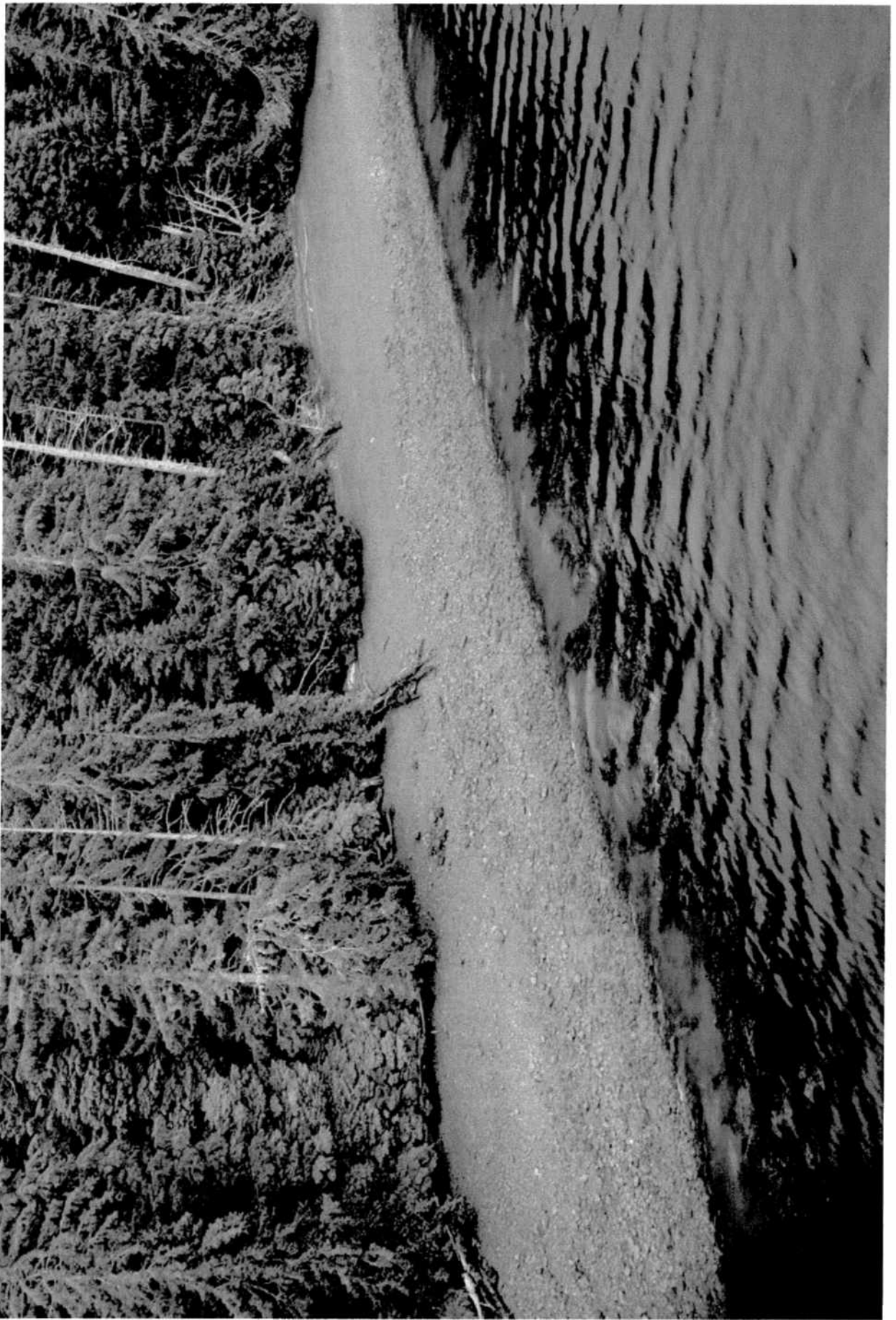
cc: Applicant
EPA Juneau, Chris Meade*
ADNR, Mark Minnillo*
USFWS Juneau, Richard Enriquez*
ADEC Juneau, Brenda Krauss*
OHMP, Erin Allee*

* e-mail PDF



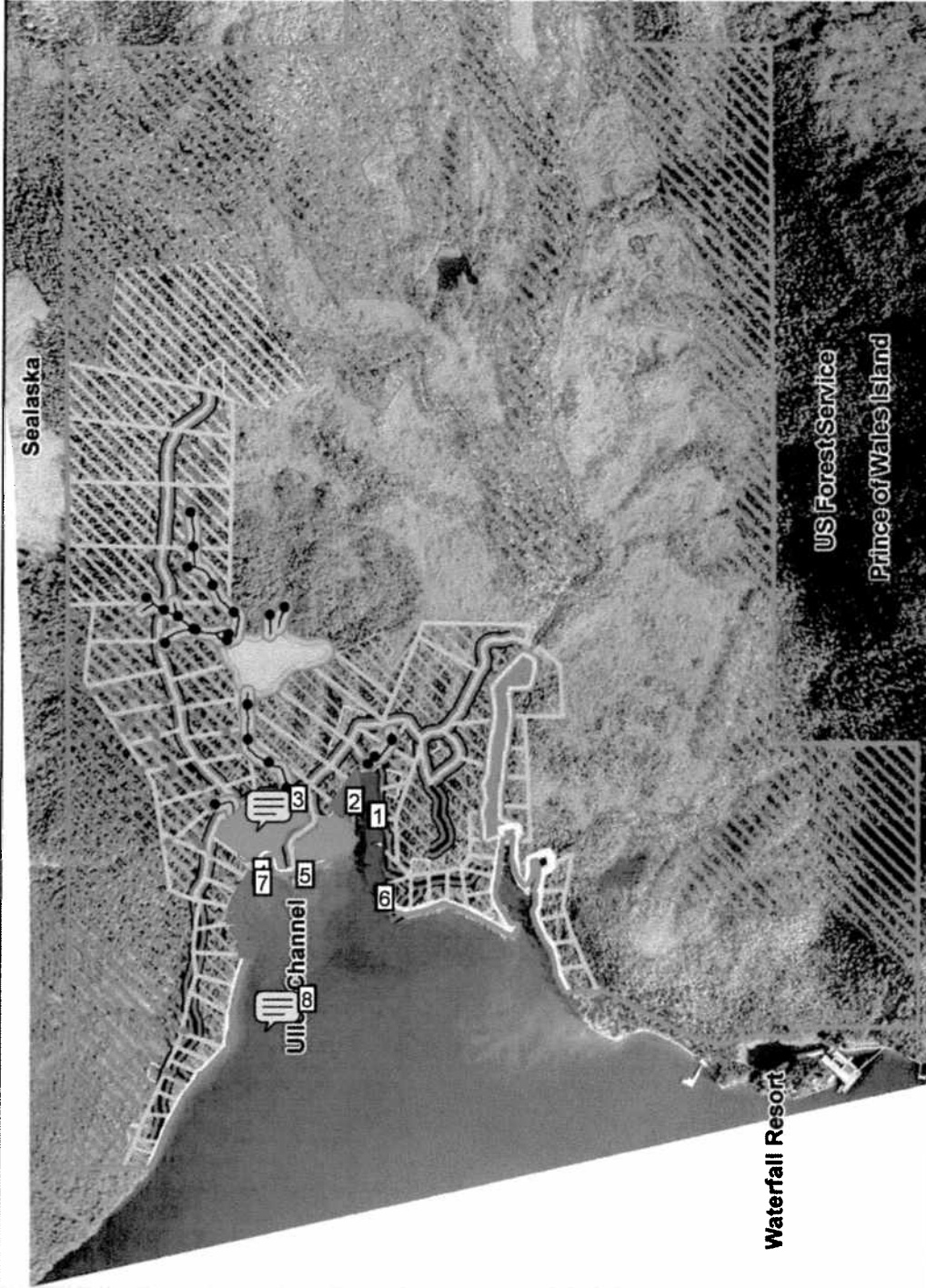






WATERFALL SUBDIVISION DEVELOPMENT PLAN

PW.WF.0001



Meridian CR
Township 76S
Range 80E
Craig B-4 USGS

UA LAND MANAGEMENT

Photo by Aeronap
Photo Date - 10/10/2002

