U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

RECEIVED
AUG 30 1988
ENVIRONMENTAL CONSERVATION
SCRO

AUG 26 1988

REPLY TO ATTN OF: WD-138

WB FILE # 44(b)

AUG 31 1988

EPA says compliance order was followed Feb. 1994 ED

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ben Fleenor
Route 1, Box 69
Ketchikan, Alaska 99901

Re: Findings of Fact and Compliance Order
No. 1088-08-23-309

Dear Mr. Fleenor:

The Environmental Protection Agency (EPA) is committed to taking appropriate enforcement actions to assure a quick return to and continuation of compliance whenever violations of the Clean Water Act are discovered. Based upon available information, we find that you have violated Section 301 of the Clean Water Act, 33 U.S.C. §1311, by discharging dredged and fill material into waters of the United States. The enclosed Findings of Fact and Compliance Order is issued to you pursuant to Section 309 of the Clean Water Act, 33 U.S.C. §1319.

The Order requires you to immediately cease unauthorized discharges of fill materials and to provide information about the discharges of fill materials which have already occurred.

Compliance with the provisions of this Order is expected within the maximum time periods established by each part of the Order. Your cooperation and prompt attention will be appreciated. Since it is the policy of the Environmental Protection Agency to achieve full compliance with the Clean Water Act as rapidly as possible, this office is prepared to help you in any way it can. Questions regarding the technical requirements of this Order should be directed to Linda Comerci in our Anchorage Operations Office at (907) 271-5083. Legal questions may be directed to Adrianne Allen, Assistant Regional Counsel, at (206) 442-7660.

Sincerely,

Robert S. Burd

Robert S. Burd, Director
Water Division

Enclosure

cc: Alaska Department of Environmental Conservation
Alaska Department of Fish & Game

RECEIVED
MAR 20 1989

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF:	)	
	)	
	)	
Mr. Ben H. Fleenor	)	No. 1088-08-23-309
Herring Cove Lumber Company	)	FINDINGS OF FACT AND
	)	COMPLIANCE ORDER

Pursuant to Sections 308 and 309 of the Clean Water Act, 33 U.S.C. §1318 and §1319, and the authority thereunder of the Administrator of the U.S. Environmental Protection Agency (EPA), which authority has been duly delegated to the EPA Regional Administrator, Region 10, the following FINDINGS OF FACT are made and COMPLIANCE ORDER is issued.

FINDINGS OF FACT

1. Mr. Ben Fleenor, Respondent, owns or controls property located near Mile 8.5, South Tongass Highway, Ketchikan, Alaska (S. 35 and S. 36, T. 75 S., R. 91 E., C.R.M.). Respondent is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

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2. On October 2, 1987, a representative of the Alaska Department of Fish and Game (ADF&G) observed the unauthorized filling of a grass/sedge tideland marsh with dumptruck loads of organic silts and woody debris in a portion of the area which is described in paragraph 1. The dump site is located near the Herring Cover Lumber Mill in the upper intertidal area of Herring Cove. Dumping was observed to cover a channel used for the migration and spawning of anadromous salmon. Dozens of dead spawned-out and unspawned pink salmon were observed adjacent to and upstream of the area where the stream channel was being covered.

3. On October 8, 1987, the U.S. Army Corps of Engineers notified Respondent that he had undertaken unauthorized dredge and fill activity on property described in paragraph 1. The Corps of Engineers determined that this work was not authorized by any previously issued Corps permit.

4. On July 13, 1988, a field investigation was conducted by Linda Comerci of the EPA Alaska Operations Office at property owned by the Respondent and described in paragraph 1.

5. During her field investigation, Ms. Comerci observed that fill material consisting of sand, silt and logs had been discharged into an unnamed tributary of Herring Bay Creek [ADF&G Stream No. 101-45-10070-2011], and its adjacent wetlands. The presence of coho salmon fry was also observed in Stream No. 101-45-10070-2011.

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6. Also, during her field investigation, Ms. Comerci verified that the site of dredge and fill activity included an estuarine emergent wetland. The site is a wetland based upon its degree of soil saturation and the normal prevalence on the site of vegetation typically adopted for life in saturated soil conditions.

7. It is a violation of Section 301 of the Clean Water Act (33 U.S.C. §1311) to discharge dredged or fill materials to waters of the United States, including wetlands adjacent to such waters, unless such discharges are authorized by a permit issued under Section 404 of the Clean Water Act (33 U.S.C. §1344) or are otherwise authorized by U.S. Army Corps of Engineers regulations.

8. The dredged and fill material discharged by the Respondent, consisting of sand, silt, and logs, is a pollutant within the meaning of Section 502(6) of the Clean Water Act, 33 U.S.C. §1362(6) and constitutes the discharge of a pollutant within the meaning of Section 502(12), 33 U.S.C. §1362(12).

9. Stream No. 101-45-10070-2011 and its adjacent wetlands to which the discharges described in paragraphs 2, 3, and 5 were made is a water of the United States within the meaning of §502(7) of the Clean Water Act, 33 U.S.C. §1362(7).

10. The discharges by Respondent to the subject waters of the United States were not authorized by a Section 404, 33 U.S.C. §1344, permit or by any regulation issued by the U.S. Army Corps of Engineers.

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11. Therefore, Respondent has violated Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a) by discharging dredged and fill material into stream No. 101-45-10070-2011 and its adjacent wetlands without authorization by a permit issued by the U.S. Army Corps of Engineers.

12. Herring Bay Creek, and Stream No. 101-45-10070-2011 provide migration and intertidal spawning habitat for pink and coho salmon. The instream discharges into Stream No. 101-45-10070-2011 adversely affected salmon habitat and water quality, and cumulatively pose a significant ecological risk to the aquatic resources of the Herring Bay Creek system.

13. On August 11, 1988, the Alaska Department of Fish and Game issued an order directing Respondent to restore the area described in paragraph 2 by removing the unauthorized dredged and fill material. The Respondent has not complied with that order.

ORDER

Based upon the foregoing Findings of Fact, and pursuant to Section 308 and Section 309 of the Clean Water Act [33 U.S.C. §1318 and §1319], it is hereby ORDERED as follows:

1. Upon receipt of this ORDER, Respondent shall cease all discharges of fill material into the above described waters of the United States.

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2. Within fifteen (15) days of receipt of this ORDER, Respondent shall provide the following information to the address listed in paragraph 3 below:

(a) A full chronological description of the nature, purpose, and extent of the described fill project.

(b) Identification of the parties who directed, carried out, financed, or were otherwise responsible for the described fill project.

(c) A clear and concise statement describing any plans for further fill activities in the above-described area.

(d) Copies of all plans, specifications, project schedules, and other technical documents that relate to actual or planned fill activities by Respondent in the described area.

(e) A full description of all measures that Respondent has taken or plans to take to mitigate any environmental harm caused by the discharge of fill materials in the subject area, including compliance with the restoration directive issued by ADF&G on August 11, 1988.

3. Submittals required by this ORDER shall be sent to

U.S. Environmental Protection Agency
Federal Building, Room E-551
701 C Street, Box 19
Anchorage, Alaska 99513
Attn: Linda Comerci
(907) 271-5083

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-76 DOJ

4. Any noncompliance with the terms of this ORDER shall be reported to EPA, Region 10, by telephone, within 24 hours from discovery of the violation. A written report of the violation shall be submitted within five (5) days.

5. Nothing in this ORDER shall preclude EPA from (a) obtaining any judicial relief which it deems appropriate, (b) requiring further and additional activities as may be authorized by law, or (c) amending or modifying this ORDER as circumstances may, in EPA's judgement, warrant from time to time. This ORDER shall not preclude Respondent from making a request to EPA for an extension of time to comply with the requirements of the ORDER or for other amendments to or modifications of the ORDER. Any such extensions, amendments, or modifications shall be at EPA's discretion.

CONFIDENTIALITY

Pursuant to 40 CFR §2.203(a) you are hereby notified as follows:

1. You may assert a business confidentiality claim covering all or part of the information requested, in a manner specified by 40 CFR §2.203(b);

2. Any information covered by such a claim will be disclosed by EPA only as provided in 40 CFR Part 2, subpart B;

3. If no such claims accompany the information when received by EPA, then the information may be made available to the public by EPA without further notice to you;

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4. EPA's regulations covering this subject appear in 40 CFR §§ 2.201 - 2.309, and 41 Fed. Reg. 36902 - 24 (September 1, 1976) as amended at 43 Fed. Reg. 40003 (September 8, 1978); and

5. Information may not be withheld from EPA on grounds that it is confidential.

OPPORTUNITY TO CONFER

1. Nothing in this Order shall preclude Respondent from requesting a conference with EPA to discuss any terms of the Order which Respondent considers unwarranted or any requirements which Respondent considers unachievable. Any amendments or modifications to this Order shall be at the discretion of EPA. Any such requests shall include at least the following:

(a) A clear and concise presentation of the reasons for modification or waiver of the requirement at issue.

(b) Evidence of Respondent's efforts, if any, to comply with the requirement.

(c) A detailed presentation of any alternatives to the requirement which Respondent believes are appropriate.

(d) The request shall be sent to the EPA contact listed in paragraph 3 of the Order.

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EFFECTIVE DATE

This Order shall become effective on the date it is issued, as indicated below.

SANCTIONS

Notice is hereby given that violation of or failure to comply with any of the provisions of the foregoing ORDER shall subject Respondent to civil penalties pursuant to Section 309(d) of the Act, 33 U.S.C. §1319(d).

Nothing in this ORDER shall be construed to relieve Respondent of any obligations under any applicable Federal, State, or local law.

Dated this 25th day of August, 1988

Robert S. Burd
Water Division Director

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MEMORANDUM

State of Alaska

AUG 31 1988

TO Sergeant Skip Demmert
Department of Public Safety
Division of Fish & Wildlife
Protection
Ketchikan

DATE August 30, 1988

FILE NO:

TELEPHONE NO: 225-2027

FROM. Jack Gustafson
Area Habitat Biologist
Habitat Division
Department of Fish and Game
Ketchikan

SUBJECT: Herring Cove Field Inspection

On August 26, 1988, Karl Hofmeister (ADF&G), Officer Todd Sharp, and myself conducted a field inspection in the vicinity of the Herring Bay Lumber Company violations between 11:30 am and 1:45 pm. Seven minnow traps were set in this wetlands area between 12:00 to 12:20 pm and retrieved between 1:00 to 1:20 pm. The results of this one-hour soak with minnow traps is as follows:

Trap #1: Set near high gradient portions of stream above state road culvert. Captured seven Dolly Varden and one coho.

Trap #2: Set in forested spawning portion of stream below road CMP, but above High High Water (HHW). No fish captured.

Trap #3: Set in impacted zone just above the primary mud and wood barrier across the main channel. Captured four coho, one Dolly Varden, and five sculpin. The Dolly Varden, one coho and one sculpin were preserved and given to Officer Sharp.

Trap #4: Wetlands approximately 100 feet west of main impacted area, apparently in the location where Mr. Fleenor would like to put additional fill. Area is between the HHW and Mean High Water (MHW). Typical coho rearing habitat with no spawning sites. Captured twenty-three juvenile coho.

Trap #5: Wetlands 150-200 feet west of impacted stream. No fish captured.

Trap #6: Adjacent to major fish passage blockage in main channel which has been severely impacted. Bottom is sterile, with some bark laying on mud in channel and banks. Area has distinctive and offensive odor, possibly from decaying organic material. No fish captured.

Trap #7: Adjacent to mud fill next to MHW, just downstream of blockage. No fish captured.

All fish captured were over one year in age, and young-of-the-year fry were not observed in the impacted area. Numerous adult pinks and chums were observed in the channel below the blockage, but none had traveled upstream beyond the blockage. Karl Hofmeister, the ADF&G pink salmon research biologist, verified that pink salmon can successfully spawn in the stream's habitat between the road and the area of impact, provided there is access to this portion of the stream. Mean High Water (15.4 feet) at 12:59 pm reached the lower portions of the fill but did not pond water around the fill and provide upstream access. Some of the higher tidal stages between MHW and HHW would, however, result in ponded water going around the fill. Fish would be able to traverse this area at this time, though it is not presently known specifically how high such tides would need to be, or how often such access would occur. Access may also be available during high flows. Access is not available in the impacted area, either in the marshy intertidal wetlands which were filled or in the main stream channel, which was also filled. As gravels wash out from the logs in the stream channel, though, some juveniles may be able to swim downstream through this area, but only if a "french-drain" type situation does not exist. AS 16.05.840, however, requires a durable and efficient fishway, which has not been provided for in either the main stream channel or on the marshy intertidal wetlands.

On August 25, three other traps were also set for a one-hour time period. Two traps were empty (one in upstream spawning habitat and the other adjacent to downstream side of fill). The trap set in the deepest portion of the main slack-water rearing area caught 11 juvenile coho and 11 sculpin. The only young-of-the-year fish observed were found below the channel blockage. All fish captured were more than one year old. A single adult-sized spawning pink salmon had made it above (around) the barrier. Numerous adult pink and chum salmon were schooled and milling in the channel below the barrier.

The Herring Bay intertidal wetlands in the vicinity of the previous citations could be described as a prolific and important coho rearing area. Good numbers of pink and chum salmon were observed downstream. The upstream spawning habitat is not very extensive or "high-density," but pink salmon can successfully spawn there when access is available. Sculpin, Dolly Varden, and possibly sticklebacks are other fish species which occupy the area. Furbearers, herons, kingfishers, ducks, and other birds and mammals also utilize these estuarine wetlands. The availability of coho rearing habitat on site has been known for more than a decade, but the potential productivity of this rearing habitat appears to be even more fertile than I originally thought.

While on site it was brought to Officer Sharp's attention that a previously unreported violation seems to have occurred after the original citations were issued. This is in addition to another suspected October or November violation described in my November 26, 1987, memo to you (page 5, last paragraph). The new violation(s) is (are) associated with the clam-shell dredging operation and the disposal of dredged materials. The clam-shell has been swinging dredged spoils over to the edge of the fill, releasing the spoils (mud, silts and woody debris) in such a manner that they are flowing directly into the lower portion of the cataloged tributary (Stream #101-45-1070-2011) that was illegally filled last fall. This is in violation of the COE permit, the coastal consistency determination, the ADEC Certificate of Reasonable Assurance, and AS 16.05.870. The impacted area is about 100 feet downstream from the unauthorized filling which took place last fall. Some of this dredged material goes below the MHW. Stakes were placed to delineate the amount of fill placed in the stream below the MHW. Further investigation could also reveal that this dredging may have taken place between August 15 through May 30, which was also explicitly prohibited by all permits issued. Photographs taken on July 13, 1988 show the spoils in the stream on that date.

Irregardless of when dredging occurred, we should explain that it is unquestionable that at least one violation pursuant to AS 16.05.870 has taken place. If dredging occurred between our field inspection last fall and May 30, 1988, then there is a violation on the main stem of Herring Bay Creek (Stream #101-45-1070). Mr. Fleenor, though, will contend that in this scenario the fill going into the tributary was not a second "870" violation because it was not properly cataloged. If this is true, however, "840" may apply to the upstream fill while "870" would apply to the downstream dredging.

If dredging and fill occurred between May 31 and July 13, then Mr. Fleenor is not subject to "870" prosecution for dredging on Stream #101-45-1070, but he would be subject to "870" prosecution for unauthorized filling into tributary #101-45-1070-2011. No permit was sought or obtained by Mr. Fleenor to place silts, mud and woody debris into this stream after May 31, 1988. Mr. Fleenor contests that this tributary was improperly cataloged last fall, but as catographic adjustments were made in the atlas this spring, it is unquestionable that "870" protection existed with the adoption of this year's edition of the atlas. Officer Sharp has photographed the site. If you have additional questions regarding this new violation or fish resources present in the area, please contact me at 225-2027.

cc: R. Reed, ADF&G, Juneau
D. Mayer, OMB, Juneau
D. Stokes, ADEC, Juneau
R. Sumner, EPA, Anchorage
R. McVey, NMFS, Juneau
N. Holmberg, USFW, Juneau
S. West, Ketchikan

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

HABITAT DIVISION

STEVE COWPER, GOVERNOR

2030 SEA LEVEL DRIVE
SUITE 205
KETCHIKAN, ALASKA 99901-6064
PHONE: (907) 225-2027

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AUG 15 1988

August 11, 1988

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File with COE Permit Reville Channell 12 & think!

Mr. Ben Fleenor
Herring Bay Lumber Company
P. O. Box 69
Ketchikan, Alaska 99901

Dear Mr. Fleenor,

Re: Unauthorized Herring Bay Fill

Department of Fish and Game and Ketchikan District Court records show that on or prior to October 2, 1987, the Herring Bay Lumber Company bulldozed and dumped an eight foot thick layer of mud and logs into stream #101-45-10070-2011, a tributary of Herring Bay Creek. This was done in violation of AS 16.05.870 and AS 16.05.840, authorities pursuant to Department of Fish and Game review and enforcement.

AS 16.05.840 requires that a durable and efficient fishway be installed and maintained in a practical and effective manner. No fishway application was received prior to construction, a fishway was not installed, and the mud and woody debris deposited in the stream are a blockage to the passage of anadromous fish. Though past damages to fisheries have not been quantified, they likely included the blockage to upstream migrating salmon last fall, the blockage of downstream outmigrant pink salmon juveniles this spring, and unquantified stream impacts due to siltation and changes in channel morphology. Salmon will be returning to this area in the very near future, where once again their upstream passage will be blocked and their downstream eggs will be exposed to siltation from mud during washing rains.

The unauthorized stream deposits described above are currently in violation of AS 16.05.840 and need to be removed immediately to avoid further misdemeanors and penalties as described by AS 16.05.860, which is punishable by a fine of not more than $1,000, except that each day you fail to comply constitutes a separate offense.

By order of this letter, you are required to remove the unauthorized stream deposits within seven days time of your receipt of this letter. For each day the deposits remain in the stream beyond 2400 hours (midnight) on August 18, 1988, you will be considered to be in violation of a separate misdemeanor offense pursuant to AS 16.05.840 and AS 16.05.860.

11-K69LH

Heavy or tracked equipment is not authorized to enter the stream or break-down undisturbed banks to facilitate the removal of the mud and debris. The original channel configuration and streambanks shall be restored to as near their original condition as possible. All mud and debris which was deposited in the stream channel shall be removed, unless otherwise authorized upon your request to the Commissioner or a designated Ketchikan Department of Fish and Game field representative. Although these requirements are necessary to meet the conditions of AS 16.05.840 and AS 16.05.860, please be advised that other state or federal laws may have been violated and that additional restoration may be necessary under either court or agency enforcement actions.

We cannot inform you as to the restoration which may eventually be required by other agencies. However, were you to voluntarily comply with the conditions described below, we are confident you would meet the potential onsite restoration activities which may be required by the Alaska Department of Fish and Game. You may wish to accomplish some or all of these activities while removing stream blockages, though you are not required to do so at this time:

(1) Completely rehabilitate the affected stream and adjacent wetlands. To minimize stream damages and siltation during sensitive periods, and to prevent further salmon blockages and possible mortalities, this rehabilitation work shall be accomplished between the dates of June 15 and August 18, 1988.

(2) Rehabilitation during the above referenced time period should include the removal of all materials hauled to or bulldozed on site last fall. All mud, logs, root wads, and other fill materials which were not a part of the fill in April 1987, or stored upon this previously existing fill, shall be removed to an acceptable solid waste disposal site.

(3) The original stream channel through the wetlands is to be restored. This reconstruction, especially the excavation of mud and other fill materials in the stream, is not to cause any physical disturbance of the original streambanks. As backhoe excavations approach the streambanks, hand labor should be used to prevent mechanical damage to both the streambanks and the channel substrate.

(4) The siltation of the residual mud fill following the removal of unauthorized fill materials may be a source of continued stream impacts. Revegetation of these wetlands, if necessary, shall be accomplished to prevent future siltation into Herring Bay Creek and its adjacent tributaries. Revegetation is also somewhat dependent upon the quality of the fill removal work accomplished.

(5) We recommend that all fill on the north side of the channel be removed prior to fish blockage removal. Once the stream channel is breeched, mud and debris on the north bank will become isolated on the wetlands, with future access for removal by conventional means extremely difficult. If removal is eventually mandated, other technology available for removal would likely be very expensive.

Please note that the removal of the above referenced fish blockage is to allow the uninterrupted access of this year's adult pink salmon returns to stream #101-45-10070-2011. The removal of this barrier does not release the Herring Bay Lumber Company from other potential abatement, fines, and/or reimbursements of state costs or damages to public resources. Thank you in advance for your cooperation in the removal of this stream obstruction.

Sincerely.

Norman A. Cohen
Deputy Commissioner

by Jack Gustafson

By: Jack Gustafson
Area Habitat Biologist

cc: B. Baker, ADF&G, Juneau
R. Reed, ADF&G, Juneau
Sgt. Demmert, FWP, Ketchikan
A. Kruse, ADEC, Juneau
D. Mayer, OMB, Juneau
S. West, Assistant DA, Ketchikan
J. Peterson, Attorney, Ketchikan
R. Sumner, EPA, Anchorage
J. Towner, COE, Anchorage
N. Holmberg, USFWS, Juneau
R. McVey, NMFS, Juneau

beak consultants incorporated

Corporate Headquarters
317 S.W. Alder, Suite 800
Portland, Oregon 97204-2583
(503) 248-9507

13 March 1989

Alaska Department of Environmental Conservation,
Southeast Office
Attn: Mr. Dick Stokes/Ms. Amy Cruse
P.O. Box 3-2420
Juneau, AK 99803

Re: Change of Date for Onsite Meeting at Herring Bay Lumber Company

Dear Meeting Attendee:

As I mentioned in our telephone conversation of last week or in a message that was left for you, the date of the onsite pre-permit application meeting on Herring Bay Lumber Company property near Ketchikan has been changed from 23 March (Thursday) to 24 March (Friday). As previously planned, the meeting will start at 1:00 PM. A conflict in scheduling of key agency personnel that plan on attending the meeting was the cause for the date change. I apologize for the switch in plans but hopefully you can modify your travel arrangements in time to accomodate the change. We look forward to seeing you at the meeting. Please stop at the mill office when arriving for the meeting. I suggest bringing along a pair of rubber boots since the site can be wet and muddy this time of year.

If you have any questions concerning the meeting, how to get to the property, or details of the information package sent out earlier, please call me anytime. Thank you.

Sincerely,

Richard C. Konopacky
Senior Scientist
BEAK CONSULTANTS INCORPORATED

cc: File
BHF
JWP

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MAR 15 1989
Department of Environmental Conservation
Southeast Regional Office

beak consultants incorporated

Corporate Headquarters
317 S.W. Alder, Suite 800
Portland, Oregon 97204-2583
(503) 248-9507

RECEIVED
MAR - 8 1989
Department of Environmental Conservation
Southeast Regional Office

March 7, 1989

DEC/Southeast Office
Attn: Dick Stokes/Amy Cruse
P. O. Box 3-2420
Juneau, AK 99803

Reference: Site Visit Notification/Request for Permit Application Package for Herring Bay Lumber Company Project

Dear Mr. Stokes/Ms. Cruse:

As mentioned in our telephone conversations earlier this week, Herring Bay Lumber Company (HBLC) is proposing a new project that will involve permitting an expansion of the existing logyard. We are planning a pre-permit application visit on HBLC land owned by Ben H. Fleenor. We would like the site visit to start at 1:00 PM on 23 March 1989 (Thursday). The 22nd (Wednesday) would be an alternate date, if necessary. BEAK has been retained by Mr. Fleenor for technical assistance during the permitting aspects of the project.

The basis for the site visit is to assemble as many personnel from agencies that will be involved in the permitting (via completion of the Coastal Project Questionaire and Certification Statement) and conduct onsite discussions of the proposed project at the project site. The various agencies and their respective personnel that were contacted and are invited to the site visit are:

Alaska Department of Fish and Game, Ketchikan; Jack Gustafson
Alaska Department of Natural Resources, Juneau; Andy Pekovitch/Bill Hansen
Alaska Department of Environmental Conservation; Dick Stokes/Amy Cruse
Alaska Department of Governmental Coordination, Juneau; Diane Mayer
U.S. Army Corps of Engineers, Anchorage; Rich Gutlieber
U.S. Environmental Protection Agency, Anchorage; Linda Comerci
U.S. Department of Commerce, NOAA, NMFS, Anchorage, Tamra Faris

The above list was developed from answers to the questionaire, from a past history of the project or actions that currently involve the project, or conversations with individuals on the list. I have asked the listed personnel to suggest other attendees for the visit or to inform me of other local agency contacts that would be more suitable for this visit. We are not trying to preclude anyone from the visit. If you are aware of other interested parties that may want to attend, please feel free to bring them along.

We would also like to take this opportunity to request any State of Alaska permit application forms as outlined in the Coastal Questionaire, i.e. DFG, DEC, or other permits necessary to complete the project given the enclosed information. We understand that onsite and future discussions will probably decide which state permits are ultimately necessary.

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The purpose of this packet and the visit is to identify the who, what, why, where and when of Ben's anticipated project prior to the formal permit process and to identify minor/major inconsistencies of the project from the permitting agency standpoint. Which permits will be needed for the project will also be discussed on site. Ben and I appreciate your attendance in view of the relatively short notice given. I hope, after you read the short enclosed description of the project that you will understand the need for expediency.

The proposed project is to incorporate actions necessary to remedy an existing non-permitted fill into an expansion of the Herring Bay Lumber Company's logyard storage to an area across or west of the tributary to Herring Bay Creek. Ben is proposing this project since his needs for expansion have persisted over time and, from a sense of efficiency, he could remedy the non-permitted fill problems and begin his expansion (when permitted) at the same time. I have attached copies of three figures/drawings related to the proposed project for your review prior to the site visit. Figure 1 is a conceptual drawing of the location of the existing non-permitted fill. Figure 2 is an excerpt from a borough plat map that shows land parcel size and distribution in the project area. Figure 3 is a conceptual drawing of the proposed project superimposed on a borough plat/topographical map. The plat map was updated within the last month and the topographical map was developed from aerial photos taken on 23 September 1984. Again, what Ben is attempting to do is cross the tributary in an acceptable manner and thereby incorporate actions required to remedy the non-permitted fill, i.e. remove fill material from stream and stabilize banks. The stream crossing would be from Lot 77 to Lot 105 (both owned by HBLC) and incorporate the correct size corrugated metal pipe (CMP) culvert and clean rock/gravel approach material. The crossing would occur in the same reach and slightly upstream of the non-permitted fill. The expansion of the logyard would require the construction of a perimeter dike of clean rock material that would enclose approximately 1.3 to 1.4 acres of the lowland across the tributary. The dike could be placed on geotextile cloth of the kind generally used to support roads. The inside of the dike would be lined with additional geotextile cloth or related material and/or a clean inorganic layer of compacted sand or other material that would act as a sieve for finer particles of the anticipated fill. Fill material would originate as onsite overburden or overburden from nearby construction, e.g. City of Saxman. Fill material could be sorted to an acceptable level of organic content. After adequate consolidation of the fill material, the fill would be top-dressed with clean compacted shot rock. From a conceptual standpoint, the dike/fill would be approximately eight feet in height near the north end of the project and two feet in height near the south end of the project (end near Wood Road).

We would like to hold this meeting as soon as possible since: the proposed project would require a federal permit (U.S. Army Corps of Engineer); the project will involve the state agency review process; and since Ben needs to remove the non-permitted fill from the stream and stabilize the banks between 1 June and

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1 August 1989. We would hope that any proposed action that is inconsistent with state or federal policy or any minor or major error in design/planning, e.g., area of the expansion or distance from the tributary, could be discussed/modified at the on-site meeting. We would like also to discuss potential mitigation options for impacts of the proposed project to the wetland during the visit. Mitigation could occur as in-kind, out-of-kind, onsite and/or offsite actions. It is our feeling that we have incorporated what Ben needs to do with the non-permitted fill into the logyard expansion. We would like to stress that Ben will remove the fill from the stream and stabilize the banks regardless of what happens at the site-visit or in the permitting process for the logyard expansion.

Thank you for your time and effort on this project. We look forward to meeting with you and discussing the project. Please call me anytime if you have any questions concerning this information packet or the onsite meeting.

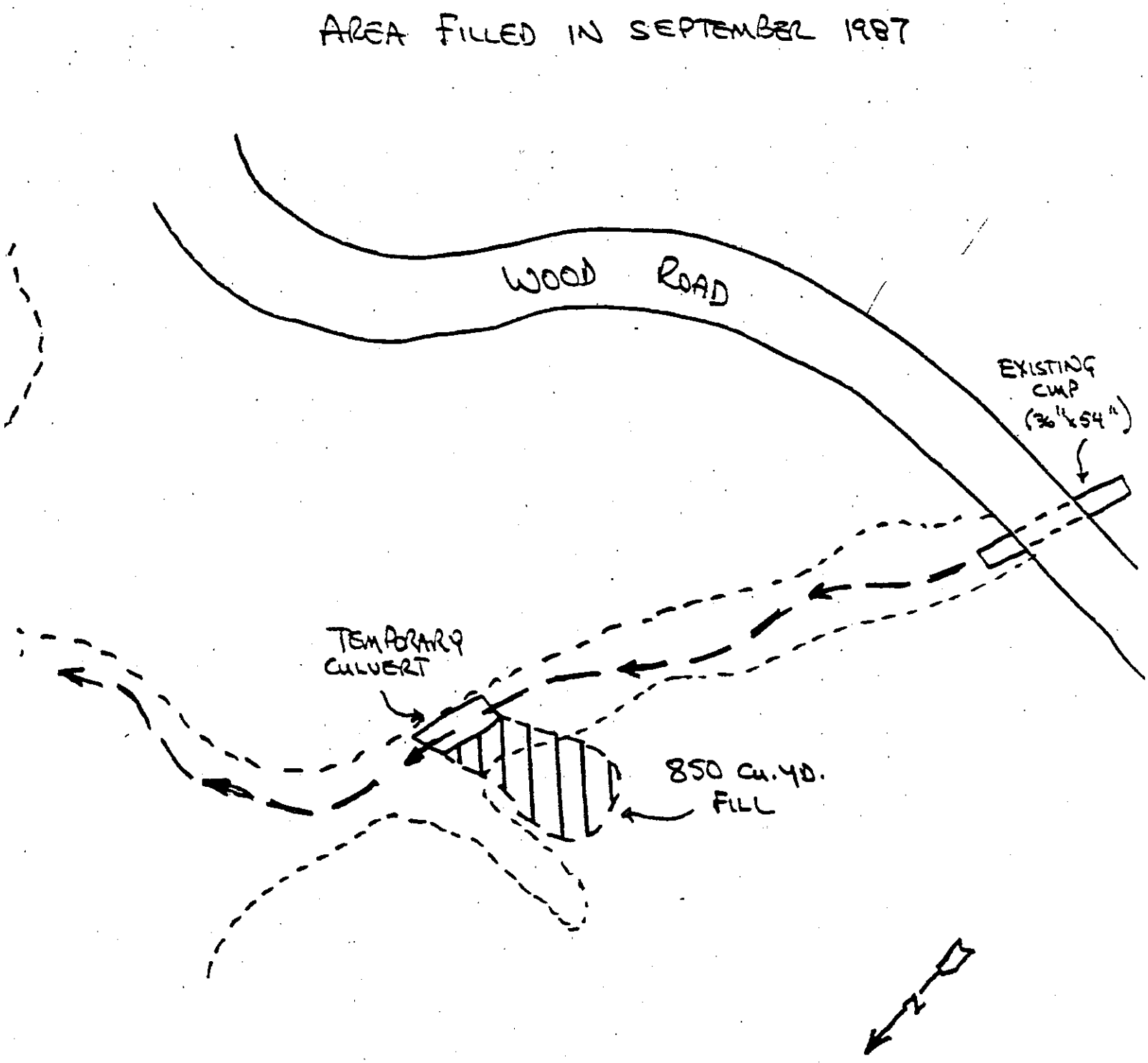
Sincerely,

Richard C. Konopacky
Senior Scientist
BEAK CONSULTANTS INCORPORATED

Attachments
cc: File
Ben Fleenor
John Peterson

HERRING BAY LUMBER COMPANY
Route 1, Box 69 KETCHIKAN, ALASKA 99901 225-4458

Figure 1.



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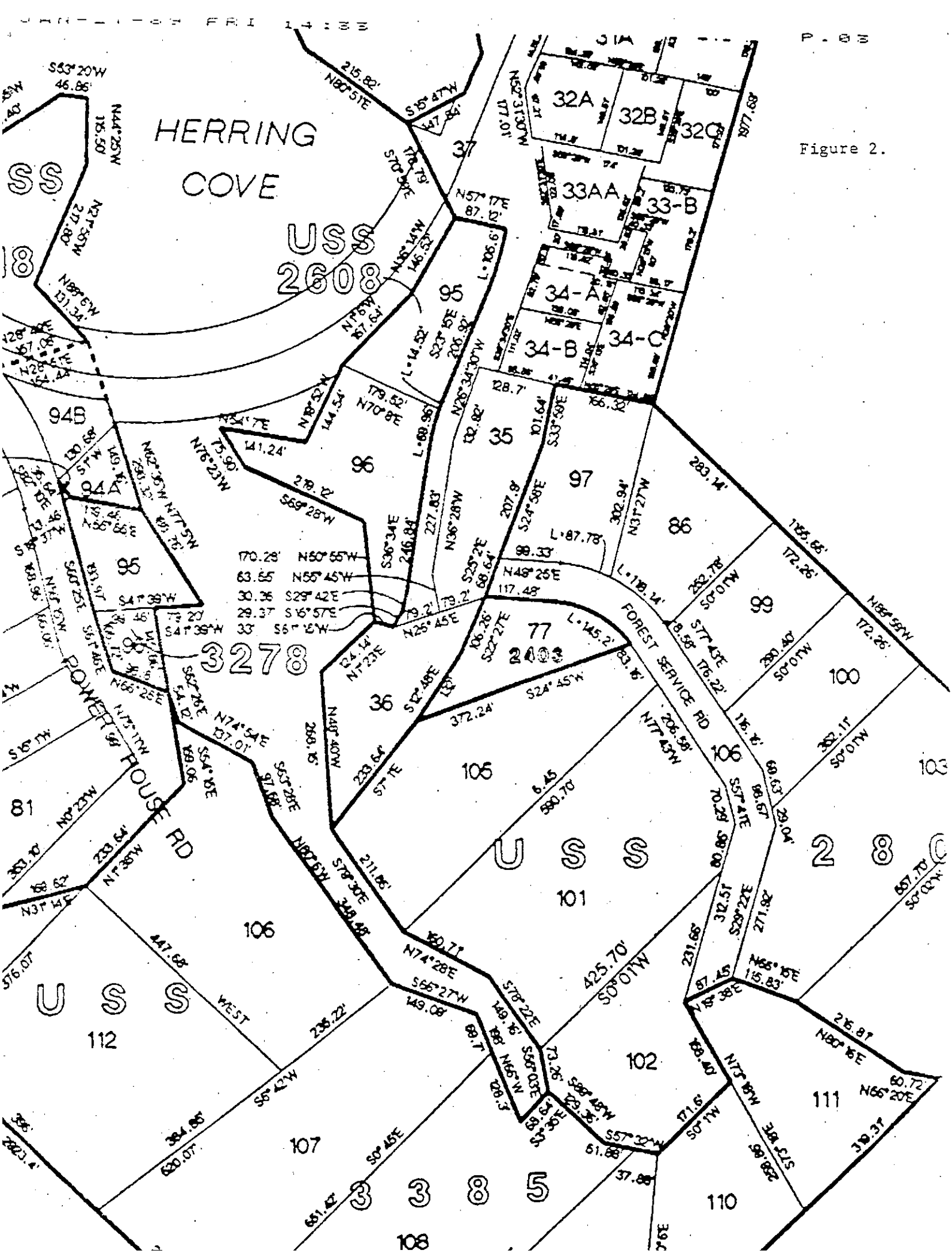
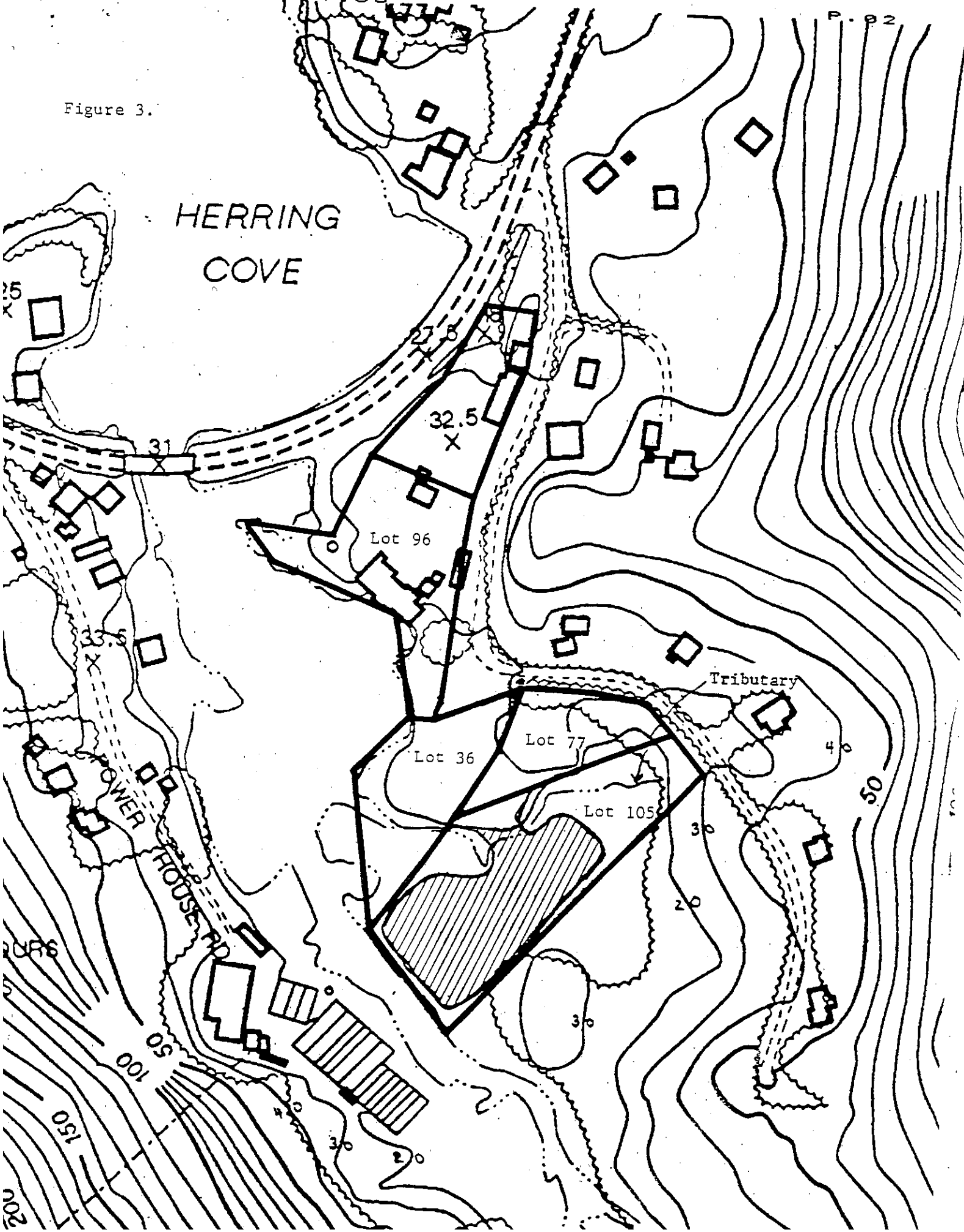

HERRING
COVE
USS
2608
3278
2403
USS
2 8
USS
3 3 8 5
POWER HOUSE RD
FOREST SERVICE RD
32A
32B
32C
33AA
33-B
34-A
34-B
34-C
37
95
94B
94A
96
35
97
86
99
100
77
36
105
106
101
102
103
81
112
107
108
110
111
425.70'
S0°01'W
WEST

Figure 2.

Figure 3.


HERRING
COVE
32.5
31
33.5
Lot 96
Lot 36
Lot 77
Lot 105
Tributary
POWER HOUSE RD
50
100
150
200

beak consultants incorporated

Corporate Headquarters
317 S.W. Alder, Suite 800
Portland, Oregon 97204-2583
(503) 248-9507

ATTACHMENT 2

06 March 1989

United States Department of Commerce
NOAA/National Marine Fisheries Service
Attn: Ms. Tamra Faris
P. O. Box 21668
Juneau, AK 99802-1668

Reference: Site Visit Notification/Request for Permit Application Package for Herring Bay Lumber Company Project

Dear Ms. Faris:

As mentioned in our telephone conversations earlier this week, Herring Bay Lumber Company (HBLC) is proposing a new project that will involve permitting an expansion of the existing logyard. We are planning a pre-permit application visit on HBLC land owned by Ben H. Fleenor. We would like the site visit to start at 1:00 PM on 23 March 1989 (Thursday). The 22nd (Wednesday) would be an alternate date, if necessary. BEAK has been retained by Mr. Fleenor for technical assistance during the permitting aspects of the project.

The basis for the site visit is to assemble as many personnel from agencies that will be involved in the permitting (via completion of the Coastal Project Questionaire and Certification Statement) and conduct onsite discussions of the proposed project at the project site. The various agencies and their respective personnel that were contacted and are invited to the site visit are:

Alaska Department of Fish and Game, Ketchikan; Jack Gustafson
Alaska Department of Natural Resources, Juneau; Andy Pekovitch/Bill Hansen
Alaska Department of Environmental Conservation; Dick Stokes/Amy Cruse
Alaska Department of Governmental Coordination, Juneau; Diane Mayer
U.S. Army Corps of Engineers, Anchorage; Rich Gutlieber
U.S. Environmental Protection Agency, Anchorage; Linda Comerci
U.S. Department of Commerce, NOAA, NMFS, Anchorage, Tamra Faris

The above list was developed from answers to the questionaire, from a past history of the project or actions that currently involve the project, or conversations with individuals on the list. I have asked the listed personnel to suggest other attendees for the visit or to inform me of other local agency contacts that would be more suitable for this visit. We are not trying to preclude anyone from the visit. If you are aware of other interested parties that may want to attend, please feel free to bring them along.

We would also like to take this opportunity to request any State of Alaska permit application forms as outlined in the Coastal Questionaire, i.e. DFG, DEC, or other permits necessary to complete the project given the enclosed information. We understand that onsite and future discussions will probably decide which state permits are ultimately necessary.

The purpose of this packet and the visit is to identify the who, what, why, where and when of Ben's anticipated project prior to the formal permit process and to identify minor/major inconsistencies of the project from the permitting agency standpoint. Which permits will be needed for the project will also be discussed on site. Ben and I appreciate your attendance in view of the relatively short notice given. I hope, after you read the short enclosed description of the project that you will understand the need for expediency.

The proposed project is to incorporate actions necessary to remedy an existing non-permitted fill into an expansion of the Herring Bay Lumber Company's logyard storage to an area across or west of the tributary to Herring Bay Creek. Ben is proposing this project since his needs for expansion have persisted over time and, from a sense of efficiency, he could remedy the non-permitted fill problems and begin his expansion (when permitted) at the same time. I have attached copies of three figures/drawings related to the proposed project for your review prior to the site visit. Figure 1 is a conceptual drawing of the location of the existing non-permitted fill. Figure 2 is an excerpt from a borough plat map that shows land parcel size and distribution in the project area. Figure 3 is a conceptual drawing of the proposed project superimposed on a borough plat/topographical map. The plat map was updated within the last month and the topographical map was developed from aerial photos taken on 23 September 1984. Again, what Ben is attempting to do is cross the tributary in an acceptable manner and thereby incorporate actions required to remedy the non-permitted fill, i.e. remove fill material from stream and stabilize banks. The stream crossing would be from Lot 77 to Lot 105 (both owned by HBLC) and incorporate the correct size corrugated metal pipe (CMP) culvert and clean rock/gravel approach material. The crossing would occur in the same reach and slightly upstream of the non-permitted fill. The expansion of the logyard would require the construction of a perimeter dike of clean rock material that would enclose approximately 1.3 to 1.4 acres of the lowland across the tributary. The dike could be placed on geotextile cloth of the kind generally used to support roads. The inside of the dike would be lined with additional geotextile cloth or related material and/or a clean inorganic layer of compacted sand or other material that would act as a sieve for finer particles of the anticipated fill. Fill material would originate as onsite overburden or overburden from nearby construction, e.g. City of Saxman. Fill material could be sorted to an acceptable level of organic content. After adequate consolidation of the fill material, the fill would be top-dressed with clean compacted shot rock. From a conceptual standpoint, the dike/fill would be approximately eight feet in height near the north end of the project and two feet in height near the south end of the project (end near Wood Road).

We would like to hold this meeting as soon as possible since: the proposed project would require a federal permit (U.S. Army Corps of Engineer); the project will involve the state agency review process; and since Ben needs to remove the non-permitted fill from the stream and stabilize the banks between 1 June and

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1 August 1989. We would hope that any proposed action that is inconsistent with state or federal policy or any minor or major error in design/planning, e.g., area of the expansion or distance from the tributary, could be discussed/modified at the on-site meeting. We would like also to discuss potential mitigation options for impacts of the proposed project to the wetland during the visit. Mitigation could occur as in-kind, out-of-kind, onsite and/or offsite actions. It is our feeling that we have incorporated what Ben needs to do with the non-permitted fill into the logyard expansion. We would like to stress that Ben will remove the fill from the stream and stabilize the banks regardless of what happens at the site-visit or in the permitting process for the logyard expansion.

Thank you for your time and effort on this project. We look forward to meeting with you and discussing the project. Please call me anytime if you have any questions concerning this information packet or the onsite meeting.

Sincerely,

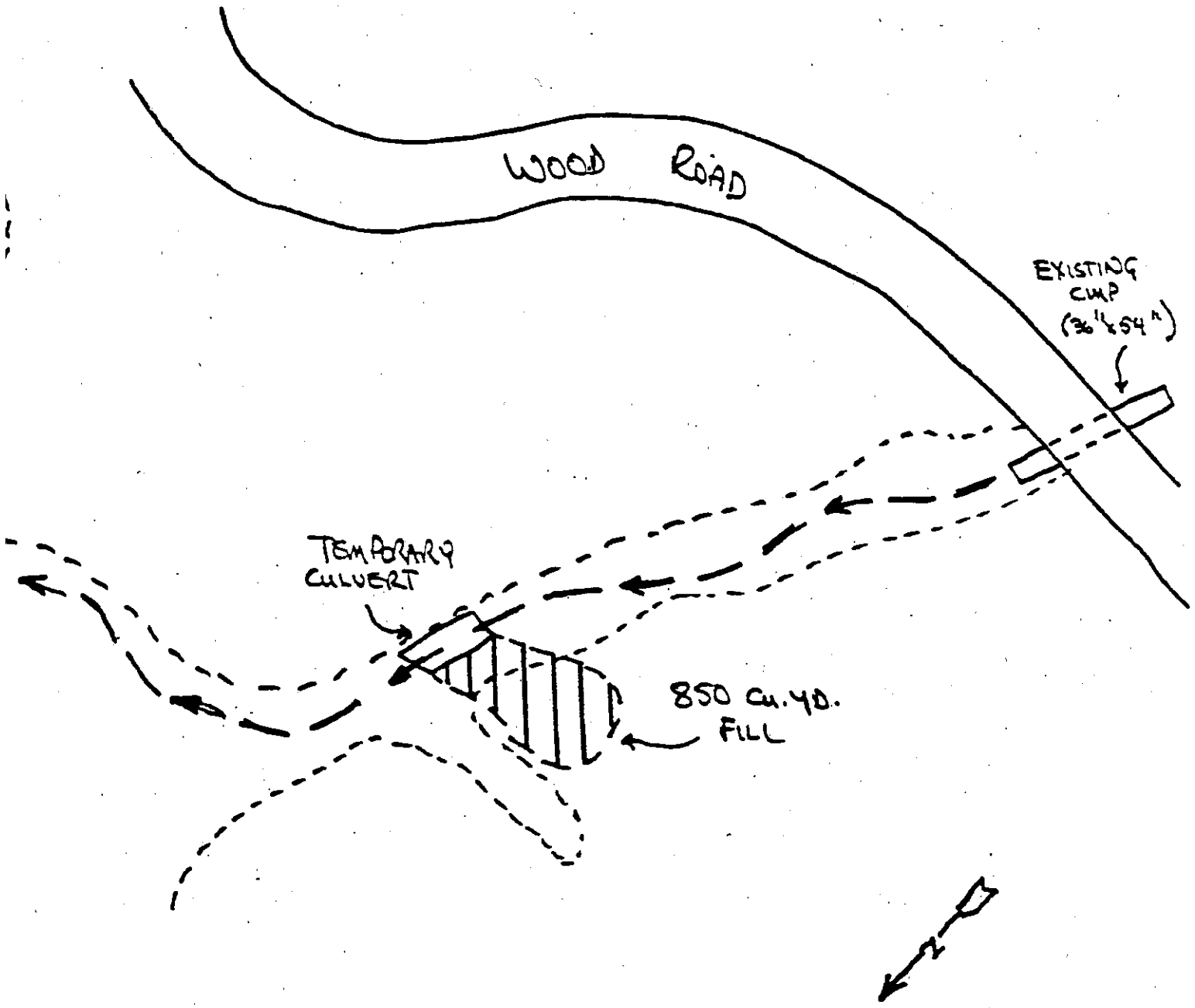
Richard C. Konopacky
Senior Scientist
BEAK CONSULTANTS INCORPORATED

Attachments
cc: File
Ben Fleenor
John Peterson

HERRING BAY LUMBER COMPANY
Route 1, Box 69 KETCHIKAN, ALASKA 99901 225-4458

Figure 1.

AREA FILLED IN SEPTEMBER 1987



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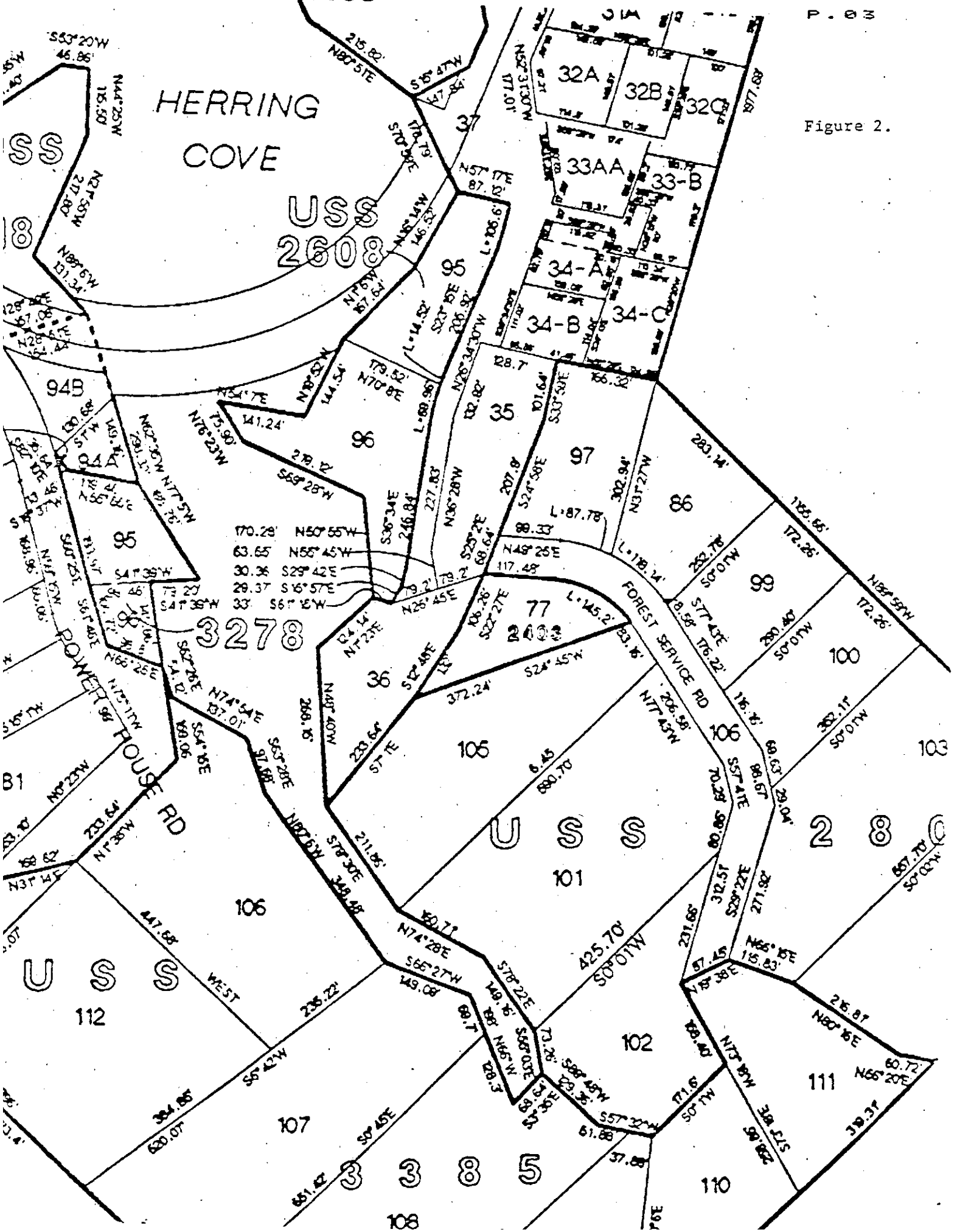
HERRING
COVE
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POWER HOUSE RD
FOREST SERVICE RD
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2803
USS
3385
32A
32B
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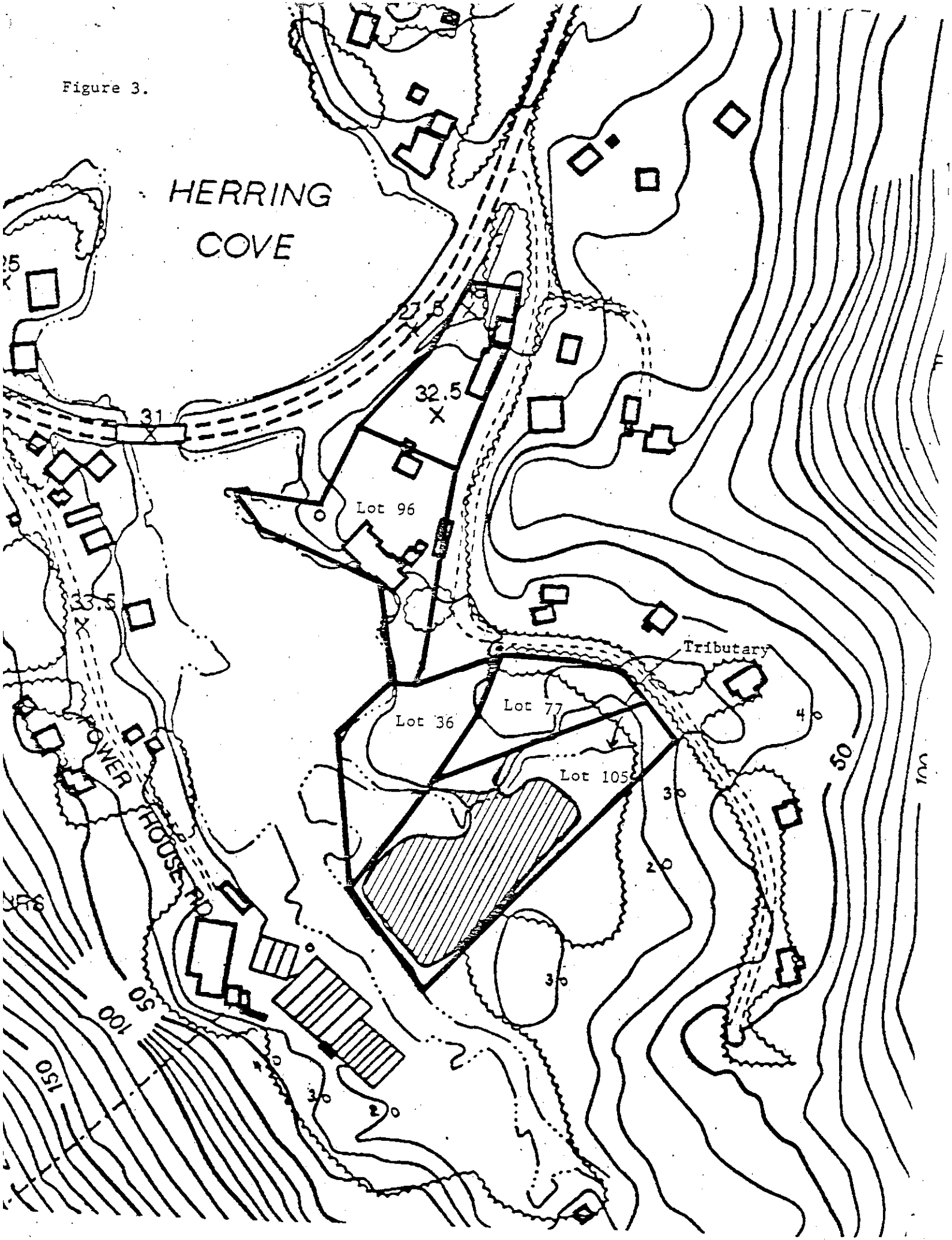
33AA
33-B
34-A
34-B
34-C
94B
94A
95
96
97
35
86
99
100
103
77
36
105
106
101
102
111
110
107
112
108
37
170.29' N50°55'W
63.65' N55°45'W
30.36' S29°42'E
29.37' S16°57'E
33' S61°16'W

Figure 2.

Figure 3.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Lot 77
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Lot 105
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