

Danny Mayfield  
Commissioner, District 1

Virginia Vigil  
Commissioner, District 2

Robert Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

**DATE:** July 12, 2011

**TO:** Board of County Commissioners

**FROM:** Wayne Dalton, Building and Development Services Supervisor *WD*

**VIA:** Jack Kolkmeyer, Land Use Administrator *JK*  
Shelley Cobau, Building and Development Services Manager *SC*

**FILE REF:** CDRC CASE # V 11-5030 Ivan Salcido Variance

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### ISSUE:

Ivan Salcido, Applicant, requests a variance of Article II, Section 4.3.2c (Family Proper) of the Land Development Code to allow a Family Transfer Land Division of 2.8 acres into two 1.4 acre lots from sibling to sibling.

The property is located at 17 Corral Blanco Road off the East Frontage Road, South of the N.M. 599/I-25 Intersection, within Section 4, Township 15 North, Range 8 East, (Commission District 5).

### SUMMARY

On April 21, 2011, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the Applicant's request for a variance by a unanimous 7-0 vote (Refer to Meeting Minutes Attached as Exhibit "A").

The Applicant requests a variance of Article II, Section 4.3.2c (Family Proper) of the Land Development Code in order to divide 2.8 acres into two 1.4 acre lots. The Applicant states he would convey 1.4 acres to his brother who originally helped him purchase the property. The Applicant claims, that his brother and his brother's family have been residing with him for nearly eight years and it is time his brother resides in his own home. The division will also enable his brother to leave his children something in the future.

There is currently a residence and conventional septic system on the property. The property is served by an off-site shared well. The property is located within the Basin Hydrologic Zone.

Article III, Section 10 (Lot Size Requirements) of the Land Development Code states the minimum lot size in this Hydrologic area is 10-acres and can be reduced to 2.5-acres with water restrictions. Lot size may be further reduced to 1.25 acres via Small Lot Family Transfer per Article II, Section 4.3.5 (Lot Size Standards). The property has been in lawful possession of the Family Proper for over five years, therefore the Applicant can apply for a Small Lot Family Transfer if the proposed variance is approved by the Board of County Commissioners.

Family Proper is described in Article II, Section 4.3.2c, as “lineal relations up to and including the third degree, i.e., grandparent, parent, child. Step relations shall count as natural relationships so long as the step relationship is legally existent at the time of the transfer, including legal guardians who have performed the function of grandparent or parent to the person who is receiving the transferred lot.” (Exhibit “C”)

Article II Section 3 (Variances) of the County Code states: “Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance.” This Section goes on to state “In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.” (Exhibit “D”)

**REQUIRED ACTION:**

The BCC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions or modifications or to table for further analysis of this request.

**RECOMMENDATION:**

Staff has reviewed this Application and has found the following facts **to deny** this Application: Article II, Section 4.3.2c (Family Proper) of the Land Development Code states: lineal relations up to and including the third degree. i.e. grandparent, parent, child, lineal in definition is the direct line of decent from an ancestor or hereditary; the Applicant is requesting the variance to allow for a Small Lot Family Transfer Land Division to be deeded from sibling to sibling, which is not considered a line of decent per Code; the purpose of the Code would be nullified; the Applicant has not justified a hardship which is contemplated by the Code therefore staff recommends **denial** of the Applicants request.

If the decision of the BCC is to approve the Applicant’s request, staff recommends the following conditions be imposed;

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for both lots this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. The Applicant shall enter into a shared well agreement with the owners of Tract B and Tract C.
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
4. No further division of either tract shall be permitted. This shall be noted on the Plat.
5. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the property line.

**ATTACHMENTS:**

- Exhibit "A"- April 21, 2011, CDRC Meeting Minutes  
Exhibit "B"- Letter of request  
Exhibit "C"- Article II, Section 4.3.2c (Family Proper)  
Exhibit "D"- Article II, Section 3 (Variances)  
Exhibit "E"- Photos of Site  
Exhibit "F"- Plat of Survey  
Exhibit "G"- Aerial of Site and Surrounding Area  
Exhibit "H"- Vicinity Map

issue in that people are allowed to develop their property within the limitations set forth in the code. At least 20 new lots have been created recently and none were required to come in for a variance. She pointed out that on the original 160-acre Tapia property just south of I-25 there are now 48 lots.

Member Katz asked about the original access to the 40 acres. Ms. Jenkins showed the historic route of Old Galisteo Way before it was realigned. Potential access easements through the Santiago Subdivision were vacated.

Member Katz asked if the new access would still have to go through the Greer property. Ms. Jenkins said the County will be involved in future negotiations.

Greg Tapia clarified that when Mr. Terrell's grandfather purchased his property it was landlocked and as a neighborly gesture, Filiberto Tapia granted an easement through his property, which resulted in his family being taken advantage of.

The public hearing was closed.

Member Anaya moved to approve the variance in Case #V 11-5070. Member Pato seconded and the motion carried 6-0 with Chair DeAnda abstaining. The motion was remade to include the condition.

Attorney Trujillo clarified that substantial compliance with notice requirements is called for and she recommended the motion include that the Melton-Robinson property owners be notified of any future meetings.

Member Anaya rescinded his previous motion and restated it to read: Approval of CDRC Case 11-5070 to include recommendations by staff. Further subdivisions of the land require secondary points of access, to be included on all plats, and also to include notice to all landowners specifically including Melton and Robinson. Member Pato seconded and the motion passed by unanimous 6-0 voice vote with Chair DeAnda abstaining.

Ms. Lucero stated the case will be heard by the BCC in June or July.

- D. **CDRC CASE # V 11-5030 Ivan Salcido Variance. Ivan Salcido, Applicant, requests a variance of Article II, Section 4.3.2c (Family Proper) of the Land Development Code to allow a Family Transfer Land Division of 2.8 acres into two 1.4-acre lots from sibling to sibling. The property is located at 17 Corral Blanco Road off the East Frontage Road, South of the N.M. 599/I-25 Intersection, within Section 4, Township 15 North, Range 8 East, within Commission District 5**

Wayne Dalton gave the following presentation:

"The Applicant requests a variance of Article II, Section 4.3.2c of the Land Development Code in order to divide 2.8 acres into two 1.4-acre lots. The Applicant states he would convey 1.4 acres to his brother who originally helped him purchase the



property. The Applicant claims, that his brother and his brother's family have been residing with him for nearly eight years and it is time his brother resides in his own home. The division will also enable his brother to leave his children something in the future.

"There is currently a residence and conventional septic system on the property. The property is served by an off-site shared well. The property is located within the Basin Hydrologic Zone. Article III, Section 10 of the Land Development Code states that the minimum lot size in this Hydrologic area is 10 acres and can be reduced to 2.5 acres with water restrictions. Lot size may be further reduced to 1.25 acres via Small Lot Family Transfer Article II, Section 4.3.5. The property has been in lawful possession of the Family Proper for over five years, therefore the Applicant can apply for a Small Lot Family Transfer if the proposed variance is approved by the Board of County Commissioners. Family Proper is described in Article II, Section 4.3.2c, as 'lineal relations up to and including the third degree, i.e., grandparent, parent, child. Step relations shall count as natural relationships so long as the step relationship is legally existent at the time of the transfer, including legal guardians who have performed the function of grandparent or parent to the person who is receiving the transferred lot.'"

Mr. Dalton gave the following recommendation: Staff has reviewed this Application and has found the following facts not to support this submittal: Article II, Section 4.3.2c of the Land Development Code states: lineal relations up to and including the third degree, i.e., grandparent, parent, child, lineal in definition is the direct line of descent from an ancestor or hereditary; the Applicant is requesting the variance to allow for a Small Lot Family Transfer Land Division to be deeded from sibling to sibling, which is not considered a line of descent per Code; the purpose of the Code would be nullified; the Applicant has not justified a hardship which is contemplated by the Code therefore staff recommends denial of the Applicant's request.

If the decision of the CDRC is to recommend approval, staff recommends the following conditions be imposed:

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for both lots this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. The Applicant shall enter into a shared well agreement with the owners of Tract B and Tract C.
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
4. No further division of either tract shall be permitted. This shall be noted on the Plat.
5. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the property line.

Duly sworn, Ivan Salcido, 17 Corral Blanco Road, stated when he purchased his property he was told he could split his property in five years. Both he and his brother bought the property but at the time his brother didn't have papers and the land could not

be put in his name. His brother got his papers in order and they want to have the property put in both names and his brother can build a home on the second lot. (Mr. Larrañaga translated on behalf of the applicant.)

There was no one in the audience wishing to speak about this case.

Member Katz asked if they would be allowed to build a second dwelling or guesthouse on the property as it is now. Mr. Dalton said they would not.

Member Anaya asked if the current documents say he can split the property, and Mr. Dalton said there is nothing on the plat of survey to that effect.

Referring to the well agreement, Member Gonzales asked if the applicant understood that. Mr. Dalton said they translated the agreement and the conditions of approval, so he is aware of them. Member Gonzales asked if they were aware only one house was allowed per lot. Mr. Dalton said that condition could be added. Condition #4 specifies no further division is allowed. Member Gonzales asked when County water would be available in that area and Mr. Dalton speculated it could be ten or twenty years.

Member Pato moved to approve Case #V 11-5030 with conditions and Member Valdez seconded. The motion passed by unanimous [7-0] voice vote.

**E. CDRC CASE # V 11-5090 Suzanne Teng Variance. Suzanne Teng, Applicant, Santa Fe County Open Space and Trails, (Colleen Baker), Agent, requests a variance of Ordinance # 2007-2 (Village of Agua Fria Zoning District), Section 10.6 to allow a land division of 2.55 acres into two lots; one lot consisting of 1.51 acres and one lot consisting of 1.04 acres and to allow two dwelling units on 1.51 acres. The property is located at 1673 Camino McMillin, West of Siler Road, within Section 32, Township 17 North, Range 9 East, (Commission District 2)**

Mr. Dalton read the caption and gave the staff report as follows:

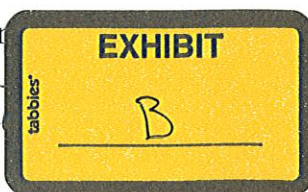
“The Applicant requests a variance of Ordinance # 2007-2, Village of Agua Fria Zoning District, Section 10.6 to allow a land division of 2.55 acres into two lots; one lot consisting of 1.51 acres, Lot 5-A, and one lot consisting of 1.04 acres, Lot 5-B, and to allow two existing dwelling units on Lot 5-A. There is currently a residence, guesthouse, RV garage, a detached two-car garage and two conventional septic systems on the property. The property is served by an on-site well which serves the two existing dwelling units. The property is located within the Village of Agua Fria Low Density Urban Zone (AFLDUZ). Ordinance # 2007-2 states the minimum lot size in this area is 2.5 acres per dwelling unit. Lot size can be reduced to one acre with community water or sewer and can be further reduced to 0.5 acres with both community water and sewer.

2-2-2011

I Ivan Salcido is asking for a permission to be able to divide the property in half. When I first got the property my brother Mauro Salcido helped me buy it. When we first got it we both agree to get the property and do all the paper work and everything to my name since my brother did not have any identification or residence but when my brother got his residence or an identification we would split the property and then get one half for him and the other half for me. My brother's family and my family have live together in the only house that the property has for almost 8 years and he wanted to move in to his own house. My brother also want to split the property because he has three children and he wants to have the other half so he could have some thing to leave his kids in the future.

I Ivan Salcido is asking for a permission to be able to place a trailer that I bought. The trailer is in very bad conditions and I got it for a really low price. The place where I have it in is a place where there is a lot of street people and they have been destroying it. They have been breaking the windows and graffitiing on it also. I am asking for the permission because I just want to bring it and be able to repair it and be able to have it in a place where I know that there are no people that would destroy it. The trailer is just going to be there no one is going to live in it and that way I could repair it and have it in my property. Another reason is because there was another trailer parked by ours and the other trailer got burned by the street people and I am afraid to have it to mine also.

Ivan G. Salcido



4.3.2 Definitions

For purposes of this Section, the following definitions will apply:

4.3.2a Small Lot Inheritance Transfer - A lot created by an order of a court in probate, but not for the purpose of sale or lease, and which lot does not meet the density requirements of the Code.

4.3.2b Small Lot Family Transfer - A lot created as a gift from a grandparent, parent or legal guardian to his or her natural or adopted child or grandchild or legal ward, which lot does not meet the density requirements of the Code. (These relationships are further defined below in "Family Proper".) Any person may receive only one lot through Small Lot Family Transfer.

→ 4.3.2c Family Proper - Lineal relations up to and including the third degree, i.e. grandparent, parent, child. Step relationships shall count as natural relationships so long as the step relationship is legally existent at the time of the transfer. Also including legal guardians who have performed the function of grandparent or parent to the person who is receiving the transferred lot.

4.3.3 Requirements for Approval4.3.3a Small Lot Inheritance Transfers

- i. Deed(s) transferring the parcel(s) to or among the heirs or beneficiaries shall be recorded at the time the plat is filed.

4.3.3b Small Lot Family Transfers

- i. Deed(s) transferring the parcel(s) to family members shall be recorded at the time the plat is filed;
- ii. Proof that the land has been in the lawful possession of the family proper for no less than five years and that the recipient is an adult or emancipated minor is required;
- iii. Lots created by family transfer under this Section shall be so noted on the plat; and
- iv. An affidavit showing that notice of the application for approval of a family transfer plat has been mailed by certified mail to owners of property, as shown by the records of the County Assessor, adjacent to and within one hundred (100) feet, excluding public right-of-way, of the proposed family transfer parcel(s).
- v. The person transferring the lot shall file an affidavit with the County Clerk containing the following:
  - (i) A legal description of the property being transferred; and
  - (ii) A statement that he or she has not made a family transfer of any other lot(s) to the person receiving the current lot.

4.3.4 Submittal and Review

The submittal and review requirements in Section 2.3 of this Article and Article III, Section 2.4.2 shall apply to the Small Lot Inheritance and Small Lot Family Transfers created under this Section. However, the Code Administrator retains the authority to refer these divisions directly to the County Development Review Committee or the Board when deemed in the public interest.





### 2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

### 2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

### 2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

## → SECTION 3 - VARIANCES

### 3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

### 3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

### 3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

### 3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the





Ivan Salcido

17 Corral Blanco Rd.

3/8/2010





Ivan Salcido

17 Corral Blanco Rd.

3/8/2010



Ivan Salcido

17 Corral Blanco Rd.

3/8/2010

# Land Division Prepared for Rudy R. Fernandez and Mary Louise Romero

REPLAT OF A CERTAIN 8.457 ACRE TRACT OF LAND LOCATED  
WITHIN THE SE 1/4 NW 1/4 SECTION 4, T15N, R8E, N.M.P.M.,  
COUNTY OF SANTA FE, STATE OF NEW MEXICO

PURPOSE STATEMENT:  
THIS PLAT CREATES 3 RESIDENTIAL LOTS

### DINERS' CONSENT

THE UNDERSIGNED OWNERS DO HEREBY CONSENT TO THE DIVISION OF LANDS  
AS SHOWN HEREON. THIS LAND DIVISION IS BEING MADE WITH THEIR FREE CONSENT  
AND WITHOUT COERCION OR UNLAWFUL INFLUENCE. THE DIVISION OF LANDS  
HEREIN IS FOR THE BENEFIT OF ALL CONCERNED PARTIES AND IS NOT MADE FOR  
PURPOSES OF FRAUD OR TO DEFRAUD ANY PARTY. THE UNDERSIGNED OWNERS  
HEREBY AGREE TO WAIVE ANY AND ALL RIGHTS OF FIRST REFUSAL OR RIGHTS OF  
REDEMPTION IN THE LAND DIVISION HEREIN.

**RODY R. FERNANDEZ**  
COUNTY OF SANTA FE, STATE OF NEW MEXICO  
DATE: 10/23/98

**MARY LOUISE ROMERO**  
COUNTY OF SANTA FE, STATE OF NEW MEXICO  
DATE: 10/23/98

THE FORECLOSURE INSTRUMENT WAS COMMENCED BEFORE ME THIS 20th day of October,  
1998, at Santa Fe, New Mexico, by the undersigned, **RODY R. FERNANDEZ** and  
**MARY LOUISE ROMERO**, both of whom are personally known to me and who are  
well known to me as the owners of the above described land.

Document No. **1099208**  
COUNTY OF SANTA FE, STATE OF NEW MEXICO  
DATE: 10/23/98

Witness my hand and Seal of Office  
this 20th day of October, 1998

**REBECCA BURSTMAN**  
County Clerk, Santa Fe County, New Mexico

**Margaret J. Taylor**  
Notary Public, Santa Fe County, New Mexico

DATE OF BEARING  
FOR THIS SURVEY  
8/01/52/00'E 657'43"  
(SOUTH 52°00'00"E 657.43')

N/7 TA & LORRAINE PALOMEDO  
S/C ASSessor PARCEL CODE NO. 500-45  
NO RECORDING DATA AVAILABLE

RECORDING OF REFERENCE  
0399037  
NOTE: RECORDING DATA SHOWN BELOW REFERS  
TO OFFICE OF SANTA FE COUNTY CLERK

1. PLAT OF SURVEY FOR CHURCH & TAYLOR WITHIN SECTIONS 4 & 5, T15N,  
R8E, N.M.P.M., DATED JANUARY 1971, AS DRAWING NO. 71 P. 3  
2. WARRANTY DEED, C. A. TAYLOR TO JOSE LEONARDO ORTIZ AND MARGIE M.  
ORTIZ, FILED IN WSC BOOK 105, PAGE 337, AS DOCUMENT NO. 506180  
3. RIGHT OF WAY AND EASEMENT, JOSE LEONARDO ORTIZ AND MARGIE M. ORTIZ  
AS DOCUMENT NO. 604241  
4. PLAT OF SURVEY PREPARED FOR JOSE LEONARDO ORTIZ AND MARGIE M. ORTIZ  
AND WILLIAM J. LANZANAGA, DEPENDENT RELATIVES OF A CERTAIN TRACT OF  
LAND LOCATED WITHIN THE SE 1/4 NW 1/4 SECTION 4, T15N, R8E, N.M.P.M.,  
COUNTY OF SANTA FE, STATE OF NEW MEXICO, BY P. L. ANDRUS, N.M.P.S.,  
NO. 13048, FILED ON MARCH 11, 1998, IN PLAT BOOK 362, P. 1-4, 041,  
AS DOCUMENT NO. 1050334

SANTA FE COUNTY APPROVAL NOTICES & CONDITIONS  
DATE: 10/16/98  
11/17/98

1. DATA IN PARENTHESES ( ) TAKEN FROM REFERENCE DOC. NO. 1.  
2. DATA IN DIL. PARENTHESES (D) TAKEN FROM REFERENCE DOC. NO. 2.  
3. THIS PROPERTY DOES NOT LIE WITHIN THE 100 YEAR FLOOD  
HAZARD ZONE AS SHOWN ON FEDERAL EMERGENCY MANAGEMENT  
AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) NO. 25099  
0200 B, DATED NOVEMBER 4, 1988.  
4. PURSUANT TO THE SANTA FE COUNTY LAND DEVELOPMENT CODE, THE SOILS  
RATINGS ON THIS PROPERTY IS CLASSIFIED AS **SL**. THE MINIMUM  
CONSTRUCTION REQUIREMENTS FOR THIS PROPERTY SHOULD BE AS  
SPECIFIED IN THE SANTA FE COUNTY LAND DEVELOPMENT CODE.  
5. SANTA FE COUNTY APPROVAL OF THIS SURVEY PLAT DOES NOT INCLUDE  
THE CONTRIBUTION OF THE PROPOSED CANTONMENT TO THE OVERALL  
WATER QUALITY OF THE AREA. IT IS THE RESPONSIBILITY OF THE  
OWNER TO OBTAIN NECESSARY PERMITS FROM THE APPROPRIATE  
AGENCY AND TO OBTAIN APPROVAL OF THE SANTA FE COUNTY LAND  
DEVELOPMENT CODE.  
6. MAINTENANCE OF THE LAND DIVISION SHALL BE MAINTAINED  
BY THE SANTA FE PUBLIC WORKS DEPARTMENT.  
7. NEW DRIVEWAY/ROAD ACCESS FROM ANY COUNTY ROAD IS SUBJECT TO  
APPROVAL BY THE SANTA FE COUNTY ENGINEER FOR CONSTRUCTION.  
8. PRIVATE ROAD SHALL BE DEVELOPED IN COMPLIANCE WITH SECTION 152 OF  
THE LRA.  
9. WATER WELL WITHDRAWAL ON THESE TRACTS RESTRICTED BY CONDOMINIUM  
PLAT AND THE ZONING OF THE COUNTY (SEE SECTION 152 OF THE LRA).  
EACH LOT WILL BE BOUND BY A 10' WIDE DRIVEWAY.  
10. THE APPROVAL OF THIS PLAT DOES NOT CONSTITUTE THE APPROVAL OF ANY  
FURTHER DEVELOPMENT INCLUDING BUILDING PERMITS.  
11. IF ANY PART OF THIS PROPERTY OVERSIGHTS BACK BY CONFORMANCE  
TO ANY FUTURE DEVELOPMENT OF THE COUNTY, THE OWNER SHALL  
BE RESPONSIBLE FOR THE COSTS OF THE DEVELOPMENT OF THE  
PROPERTY AND SHALL BE CONSIDERED REDEVELOPED.  
12. THE PARCELS AS PLATTED HEREON ARE SUBJECT TO ARTICLE VI, SECTION 3  
OF THE SANTA FE COUNTY CHARTER.  
13. CANTONMENT SHALL OCCUR WITHIN THE BOUNDARIES OF THE  
CANTONMENT AS PLATTED HEREON AND DOES NOT CONSTITUTE A SURVEY  
OF THE PROPERTY.  
14. ALL DOCUMENTS SHALL OCCUR WITHIN BOUNDABLE AREAS AS PER THE  
SANTA FE COUNTY LAND DEVELOPMENT CODE.  
15. INFORMATION SHOWN ON ADJOINING PROPERTIES IS BACKGROUND  
INFORMATION AND DOES NOT CONSTITUTE A SURVEY  
OF ADJOINING PROPERTIES.  
16. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS,  
AND RESERVATIONS OF RECORD.  
17. NO SLOPES ON THIS PROPERTY EXCEED 10% SLOPE.  
18. ONLY ONE (1) DWELLING UNIT PER LOT IS PERMITTED.  
19. EXISTING NATURAL OBSTACLES WILL NOT BE MOVED OR MOVED WITHOUT  
THE WRITTEN APPROVAL OF THE LAND USE ADMINISTRATOR OF COUNTY  
ENGINEERING. THE DEVELOPER SHALL NOT MAKE RESTORATION NOTES OF  
PATTERNS TO OR FROM THESE LOTS.

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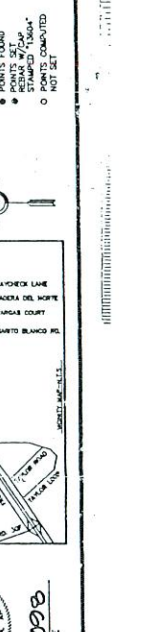
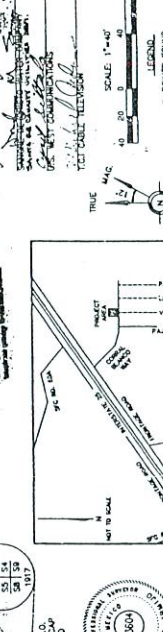
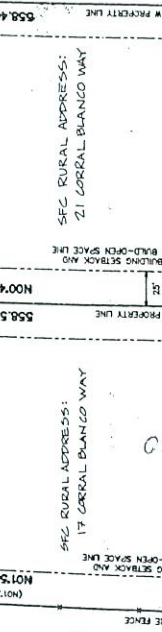
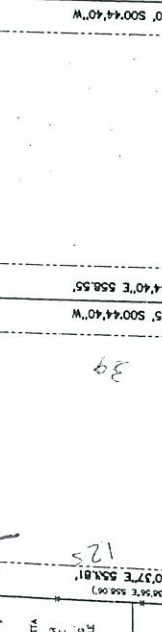
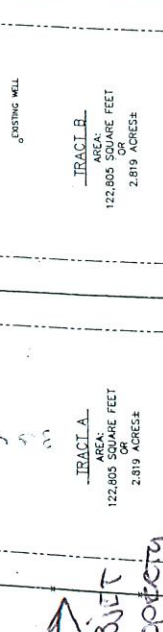
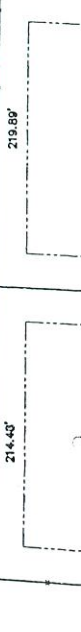
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1. CERTAIN THAT I AM A REGISTERED PROFESSIONAL SURVEYOR AND THAT  
THIS PLAT WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION  
AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, I COMPLY WITH THE  
REQUIREMENTS OF THE SANTA FE COUNTY LAND DEVELOPMENT CODE AND  
THE STATE OF NEW MEXICO.  
2. I HAVE CONDUCTED A REASONABLE INVESTIGATION OF THE PROPERTIES  
AND HAVE FOUND THEM TO BE IN CONFORMANCE WITH THE SANTA FE COUNTY  
LAND DEVELOPMENT CODE AND THE STATE OF NEW MEXICO.  
3. I HAVE BEEN ADVISED BY THE OWNER THAT THE PROPERTY IS NOT SUBJECT  
TO ANY EASEMENTS, RESTRICTIONS, OR ENCUMBRANCES.  
4. I HAVE BEEN ADVISED BY THE OWNER THAT THE PROPERTY IS NOT SUBJECT  
TO ANY EASEMENTS, RESTRICTIONS, OR ENCUMBRANCES.  
5. I HAVE BEEN ADVISED BY THE OWNER THAT THE PROPERTY IS NOT SUBJECT  
TO ANY EASEMENTS, RESTRICTIONS, OR ENCUMBRANCES.

APPROVED AT THE EXTRAJURISDICTIONAL ZONING COMMISSION  
MEETING HELD AT THE CITY OF SANTA FE, NEW MEXICO, ON SEPTEMBER 17, 1998.  
DATE: 9-17-98  
CITY CHAIRMAN: **Mary G. Perry**  
CITY ENGINEER: **John A. ...**  
CITY COMMISSIONER: **...**

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CITY COMMISSIONER: **...**

**EXHIBIT**

T

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CITY CHAIRMAN: **Mary G. Perry**  
CITY ENGINEER: **John A. ...**  
CITY COMMISSIONER: **...**



- Legend**
- Major
  - Minor
  - Parcels



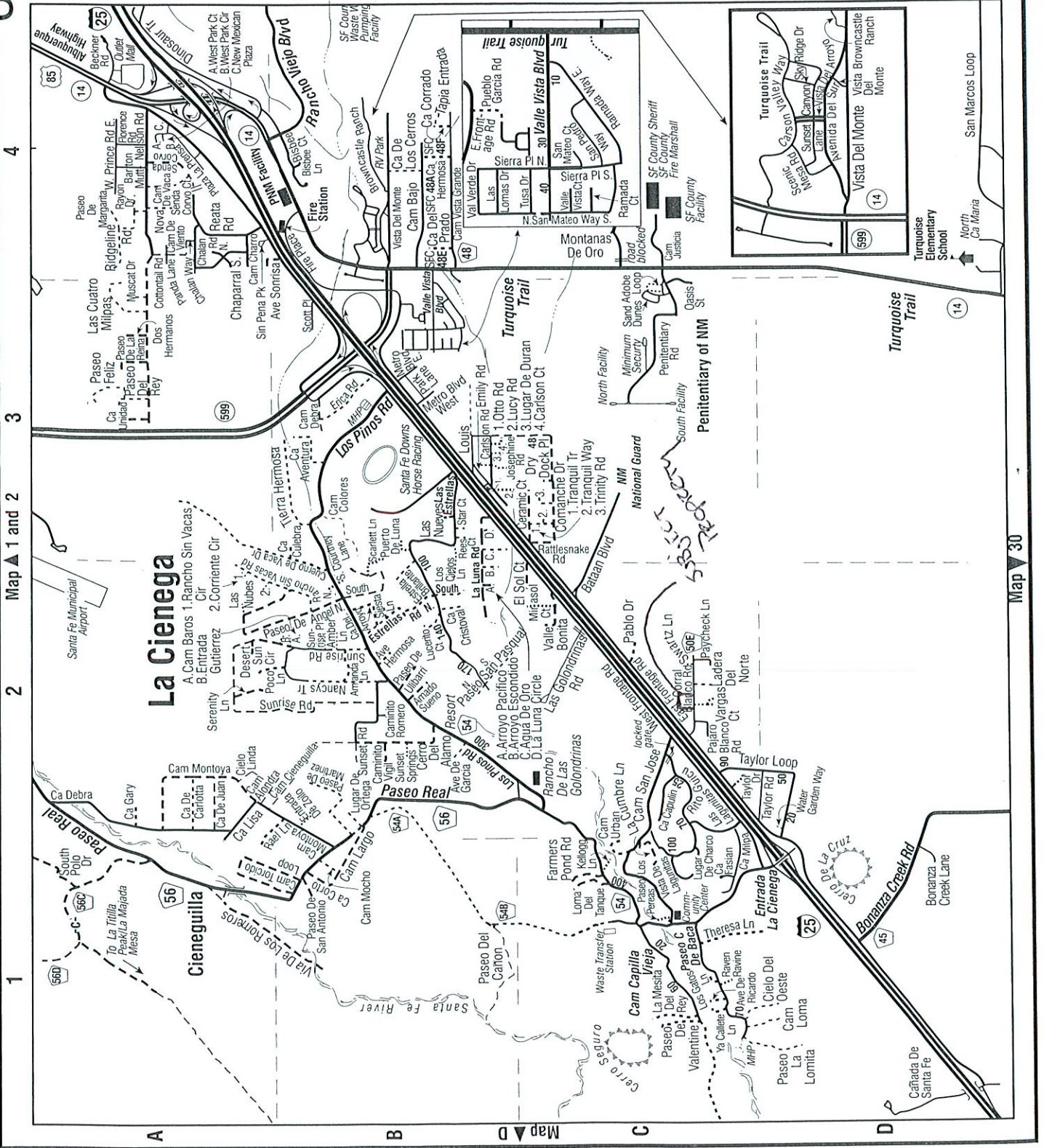
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 1 inch = 99.124091 feet  
 40 20 0 40 Feet



2008 Orthophotography

This information is for reference only.  
 Santa Fe County assumes no liability for  
 errors associated with the use of these data.  
 User are solely responsible for  
 confirming data accuracy.





tabbles

**EXHIBIT**

H

Daniel "Danny" Mayfield  
Commissioner, District 1

Virgina Vigil  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

**DATE:** July 12, 2011

**TO:** Board of County Commissioners

**FROM:** John M. Salazar, Development Review Team Leader *JMS*

**VIA:** Jack Kolkmeier, Land Use Administrator *JK*  
Shelley Cobau, Building and Development Services Manager *JK for SC*  
Wayne Dalton, Building and Development Services Supervisor *WD*

**FILE REF.:** CDRC CASE # V10-5560 Juan Lozoya Variance

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### ISSUE:

Juan Lozoya, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow four dwelling units on 1.25 acres.

The property is located at 31-A Cerro del Alamo, within Section 28, Township 16 North, Range 8 East, (Commission District 3).

### SUMMARY:

The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow four dwelling units on 1.25 acres (Exhibit "L"). The Applicant received a Notice of Violation from County Code Enforcement on July 21, 2010 on a Constituent complaint for exceeding density and unpermitted development (Exhibit "G").

The County Development Review Committee (CDRC) met and acted on this case at their regularly scheduled meeting of March 17, 2011. The decision of the CDRC was to recommend denial of the Applicant's request on a unanimous vote of 7-0.

The subject property was created through a small lot family transfer in 1997 and is under a .25-acre foot per year water restriction. Per Code the .25-acre foot per year water restriction is sufficient for a family of four and could not sustain three additional dwelling units. No meter readings have been submitted to the Land Use Administrator since the lot was created so it is uncertain at this time how much water is actually being used on the property.



The Applicant states that he bought the property in its current state with the three unit apartment building and a single wide mobile home. All four units are currently rented and the Applicant states that he needs the income at this time.

Staff has researched the property chain of title, and found that it was originally owned by the Applicant's brother Bernardo Lozoya. Bernardo Lozoya applied for, and received a development permit for a garage in 1998 (Permit #98-1264). The permitted garage has since been remodeled into a three unit apartment building consisting of a one bedroom unit and two (2), two bedroom units. All three units have kitchens, a single bathroom and share a laundry facility accessed from the outside. All facilities are currently served by a single conventional septic system.

Property sizes along Cerro Del Alamo range in size from .43 to 9.64 acres.

The minimum lot size required for a conventional septic system is 0.75 acres for a three bedroom home, the lot size minimum increases with each additional bedroom (Exhibit "J"). The State Environment Department (NMED) has specific regulation regarding maximum design flow based on parcel size; NMED staff has indicated that the maximum number of bedrooms that could be allowed on a 1.25 acre parcel is five. The Applicant has been advised by NMED that an advanced liquid waste treatment system will be required. Permitting of the liquid waste disposal system is through the NMED, and must be addressed prior to application for a County Development Permit.

Article III, Section 10 states the maximum allowable lot size within the Basin Hydrologic Zone is 2.5 acres per dwelling unit. The subject property is currently 1.25 acres because of a small lot family transfer that took place in August of 1997. Additionally, the property does not meet NMED standards to sustain four separate septic systems, and the Applicant has not provided current documentation from the NMED regarding the existing system.

Article II Section 3 (Variances) of the County Code states that "where in the case of proposed development it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This section goes on to state, "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified."

**REQUIRED ACTION:**

The BCC should review the attached material and consider the recommendation of the CDRC and staff; take action to approve, deny, and approve with conditions or table for further analysis of this request.

**RECOMMENDATION:**

Staff along with the CDRC recommends that the request for a variance be denied; Article III, Section 10 states that the minimum lot size in this area is 2.5 acres per dwelling unit. The lot size was reduced to 1.25 acres via the Small Lot Family Transfer process in August of 1997 (Exhibit D). The subject property is currently restricted to a .25 acre foot per year water restriction which cannot sustain four dwelling units and does not contain enough acreage to sustain septic systems required for each dwelling unit. The parcel is outside any commercial node that would allow rezoning as an apartment; rezoning would also require a variance which would not be supported by staff.

Should the BCC approve this request, staff recommends the following conditions of approval:

1. The Applicant shall update his liquid waste permit and shall comply with all NMED standards.
2. The Applicant shall submit for a Santa Fe County Land Development Permit and shall comply with all submittal requirements.
3. The Applicant shall install a water meter in each dwelling unit on the property and submit annual meter readings to the Santa Fe County Land Use Administrator by January 30<sup>th</sup> of each year.
4. The Applicant shall permit the structure and comply with all State of New Mexico Construction Industries Division requirements and standards.

Should the BCC deny this request, staff recommends the following conditions of denial:

1. The Applicant has thirty (30) days from the date of the July 12, 2011 BCC meeting to return the accessory structure to its original permitted use of a garage.
2. The Applicant shall contact Santa Fe County Land Use Code Enforcement to conduct a final walk-thru in order for the County to verify that all plumbing has been removed, walls separating each dwelling unit have been removed, and the general appearance of the accessory structure resembles that of a garage as per development permit #98-1264.
3. Should the Applicant not come into compliance within thirty (30) days from the date of this BCC meeting, Santa Fe County will file the Applicant into 1<sup>st</sup> Judicial District Court.

**ATTACHMENTS:**

- Exhibit "A" - Letter of Request for Variance
- Exhibit "B" - Vicinity Map
- Exhibit "C" - Aerial Photo of Property
- Exhibit "D" - Plat of Record
- Exhibit "E" - Site Plan
- Exhibit "F" - Photos of Property
- Exhibit "G" - Notice of Violations
- Exhibit "H" - Article III, Section 10
- Exhibit "I" - Article II, Section 3
- Exhibit "J" - NMED Criteria for Septic Systems
- Exhibit "K" - Letters of Opposition
- Exhibit "L" - March 17, 2011 CDRC Minutes
- Exhibit "M" - Declarations of Covenants and Restrictions for Tract

LA CIENEGA COMMUNITY

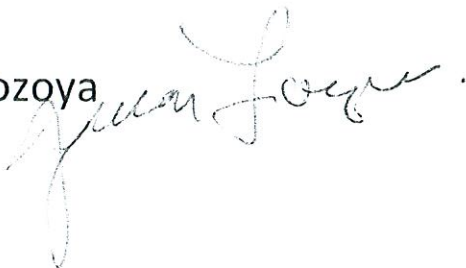
To whom it may concern

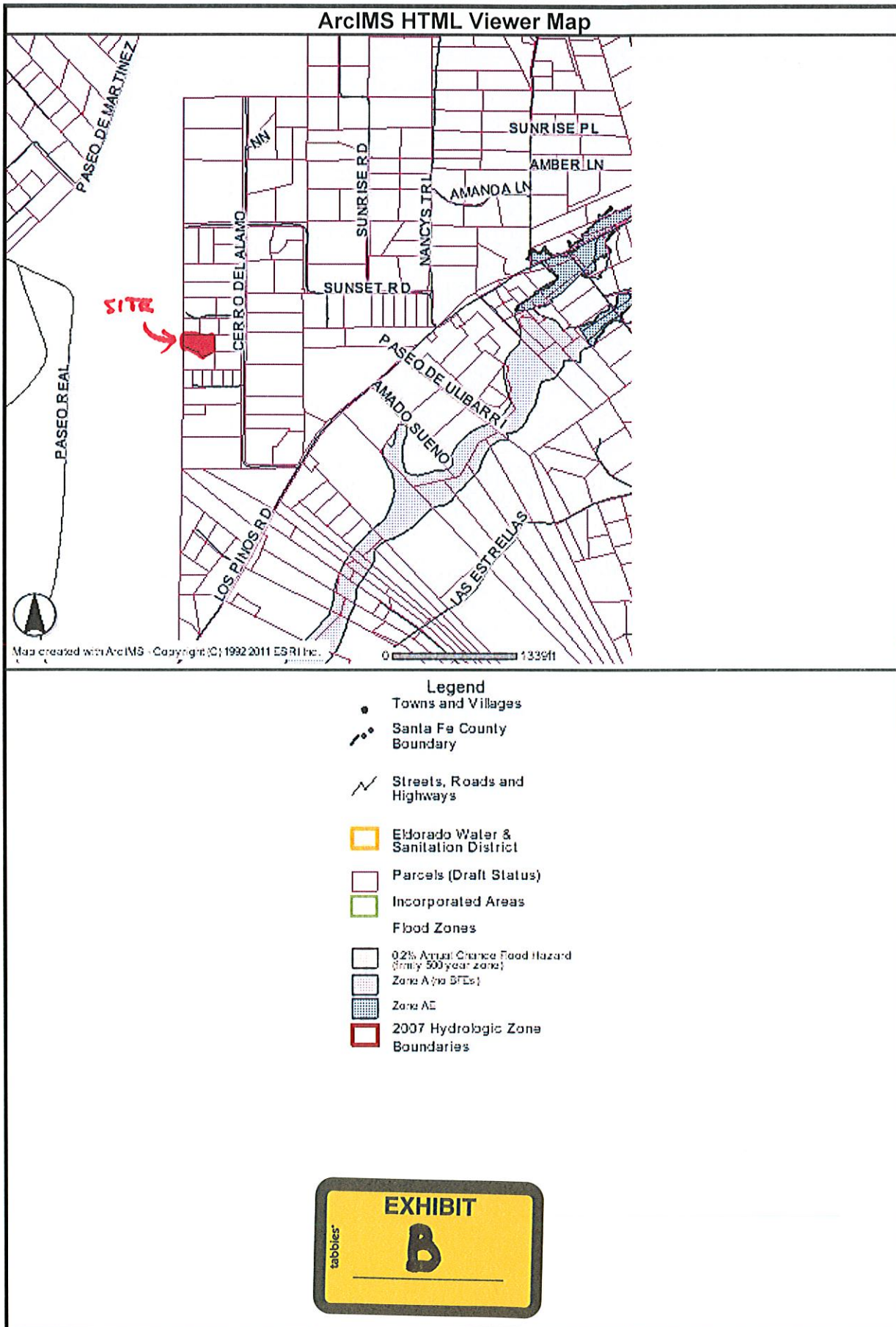
The purpose of this letter is to petition the apartment located At 31 Cerro Del Alamo (lot 31A) Santa Fe NM 87507. At the time when I purchase the property the lot in mention was already built.

At this time the location is being rented, the income is In great need at this time. I hope this letter helps with the approval and authorization of the location mention above.

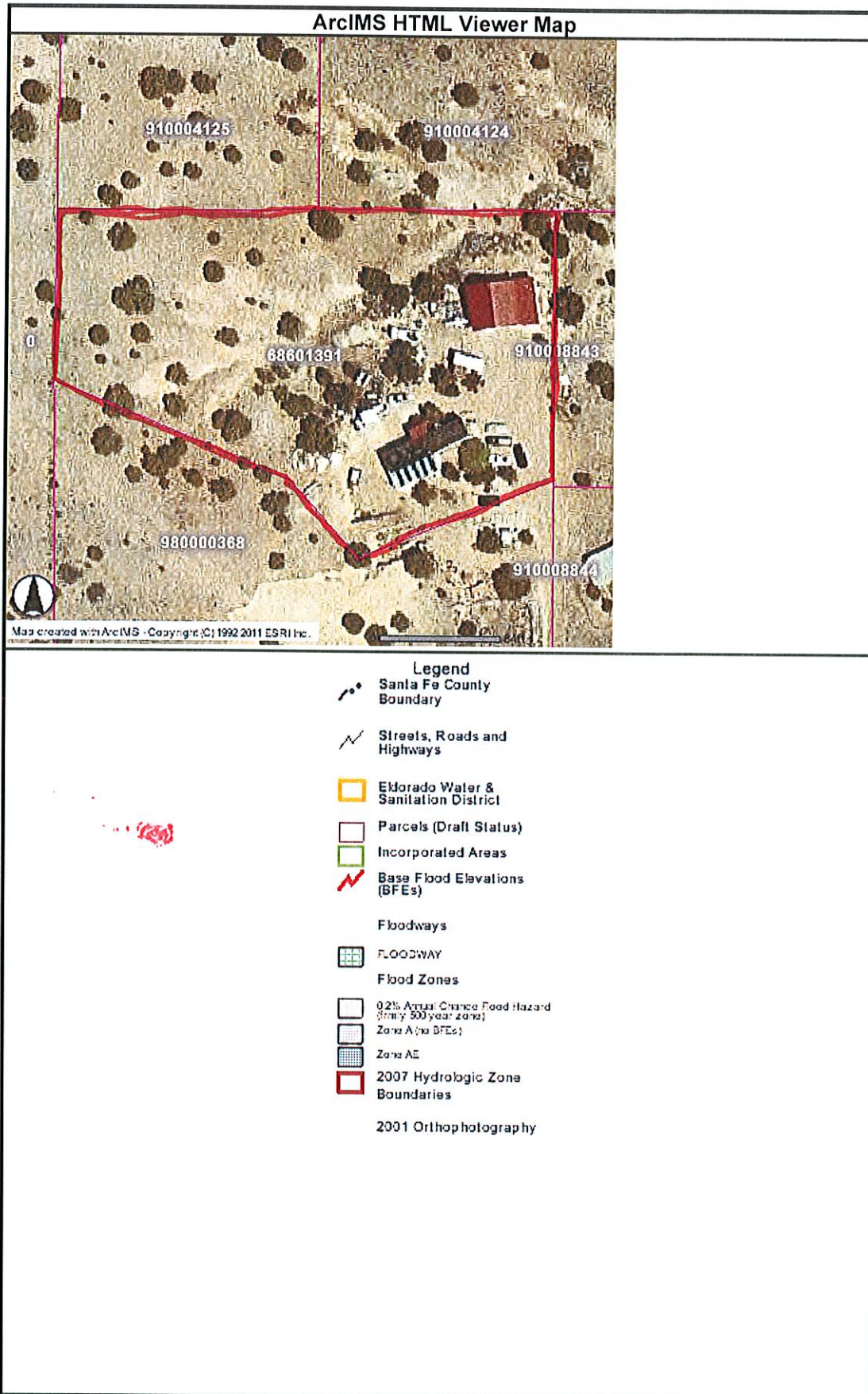
THANK YOU

Juan Lozoya





NBC-5






NBC-60

# Map of Property in Santa Fe County

## Legend

-  driveways
-  Minor Roads
-  Major Roads
-  Parcels
-  Section Lines

## 2008 FEMA Flood

-  500 Year
-  100 Year
-  1:720

1 inch represents 60 feet



WARNING  
This (2) inch data sets are  
NOT SUITABLE FOR ENGINEERING WORK.  
These data are appropriate for  
PLANNING PURPOSES ONLY  
Orthophoto from 2008

Contour Interval 2 Feet  
This information is for reference only.  
Santa Fe County assumes no liability for  
errors or omissions in this data.  
Users are solely responsible for  
confirming data accuracy.



October 18, 2010



NBC-7





LOZOYA APARTMENTS  
 LOT 1A @ LACIENGA  
 JUAN LOZOYA, (505) 690-5687.

DRAWING BY:  
 J.L.

CHECKED BY:  
 J.L.

SITE  
 PLAN

REV. DATE:  
 11/17/16

A

GENERAL NOTE :

ALL CONSTRUCTION SHALL MEET OR EXCEED  
 THE MINIMUM REQUIREMENTS OF THE 2006  
 INTERNATIONAL RESIDENTIAL CODE AND/  
 OR ALL GOVERNING LOCAL AND STATE  
 BUILDING CODES.

INDEX :

- A SITE PLAN
- A-1 FOUNDATION PLAN
- A-2 FLOOR PLAN
- A-3 FRAMING PLAN
- A-4 ELEVATIONS
- A-5 ROOF PLAN

38' ACCES AND UTILITY ESMT.  
 GRANTED FOR PUBLIC USE

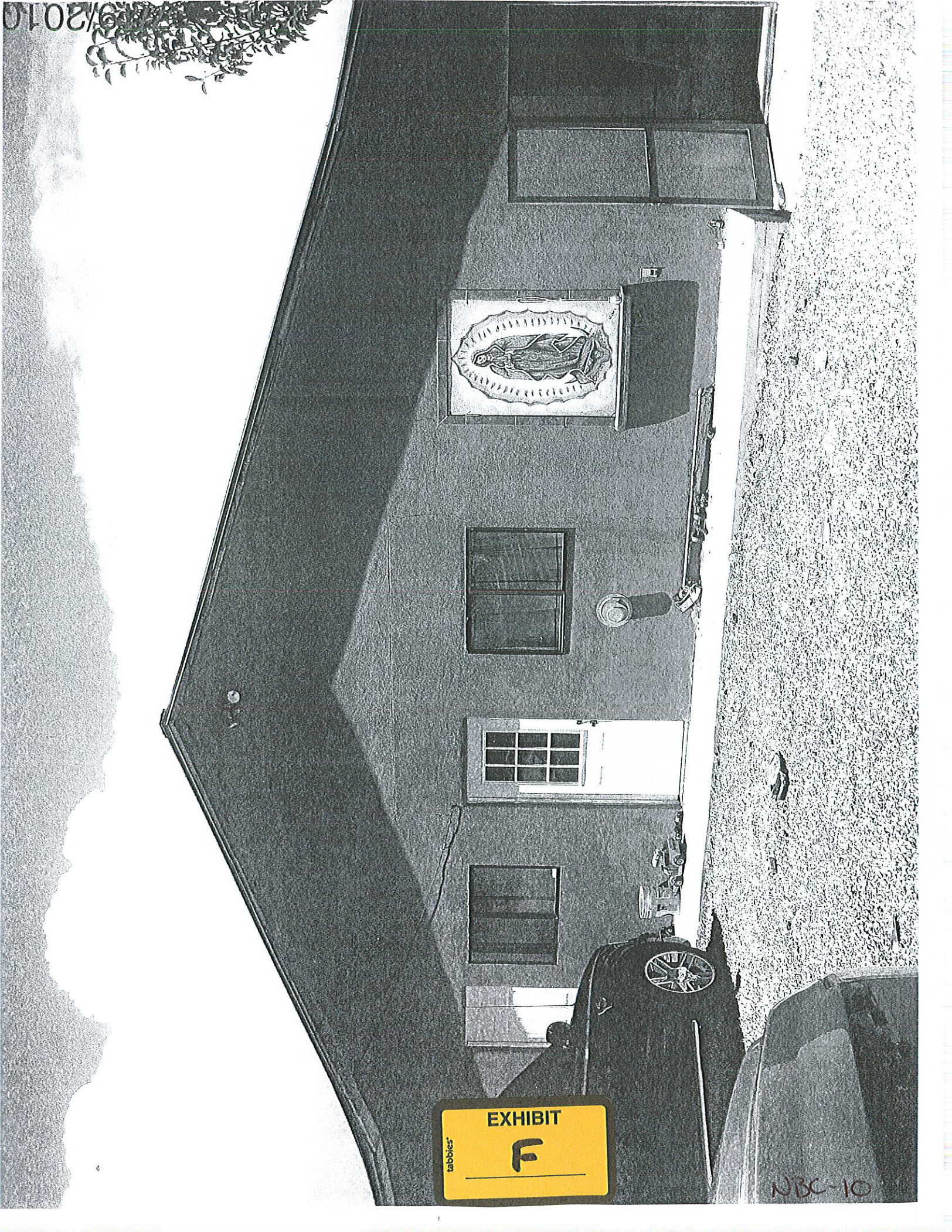
25' ENTRANCE EASEMENT  
 BK. 127, P.G. 039



SITE PLAN  
 ESC: 1" = 40'



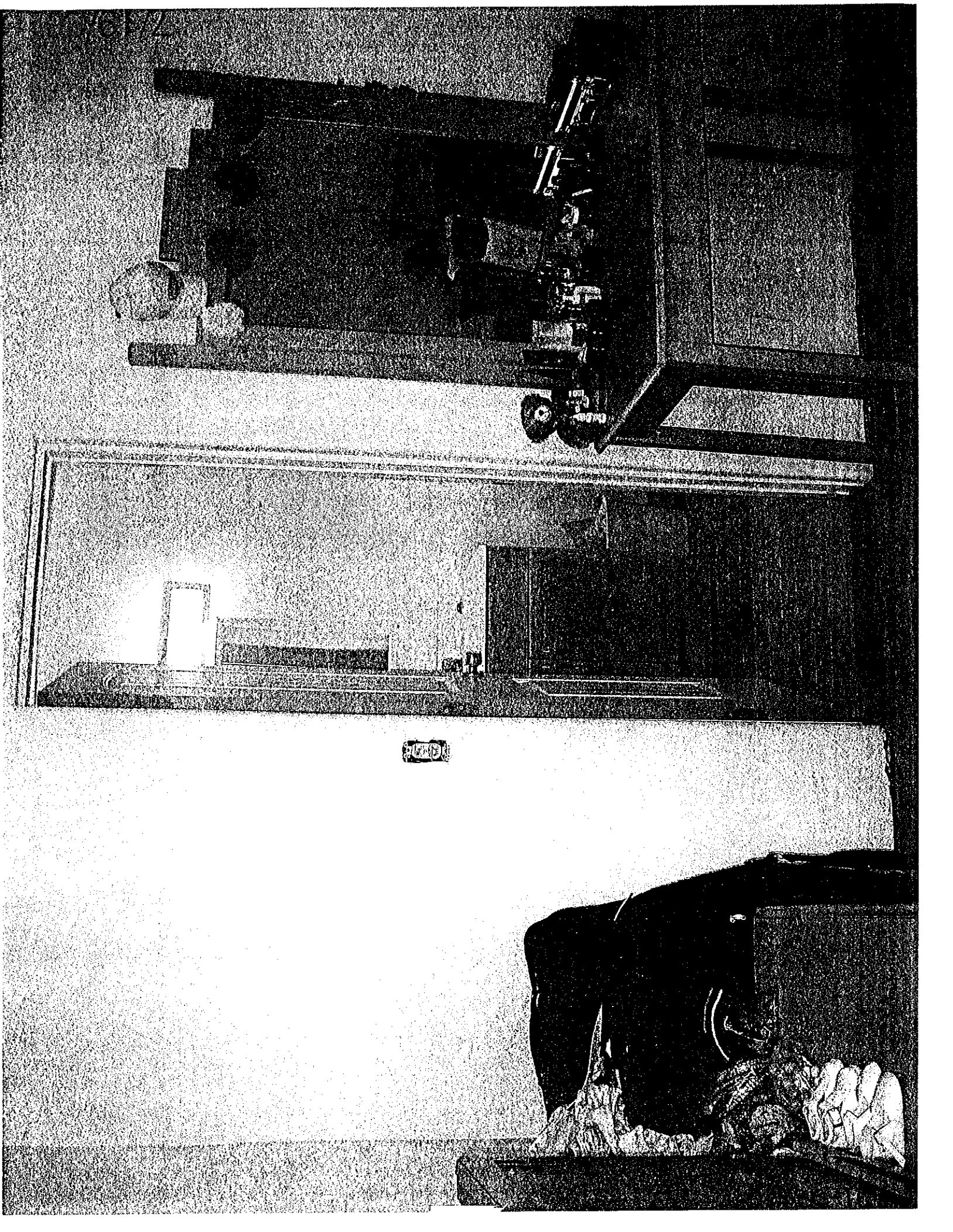
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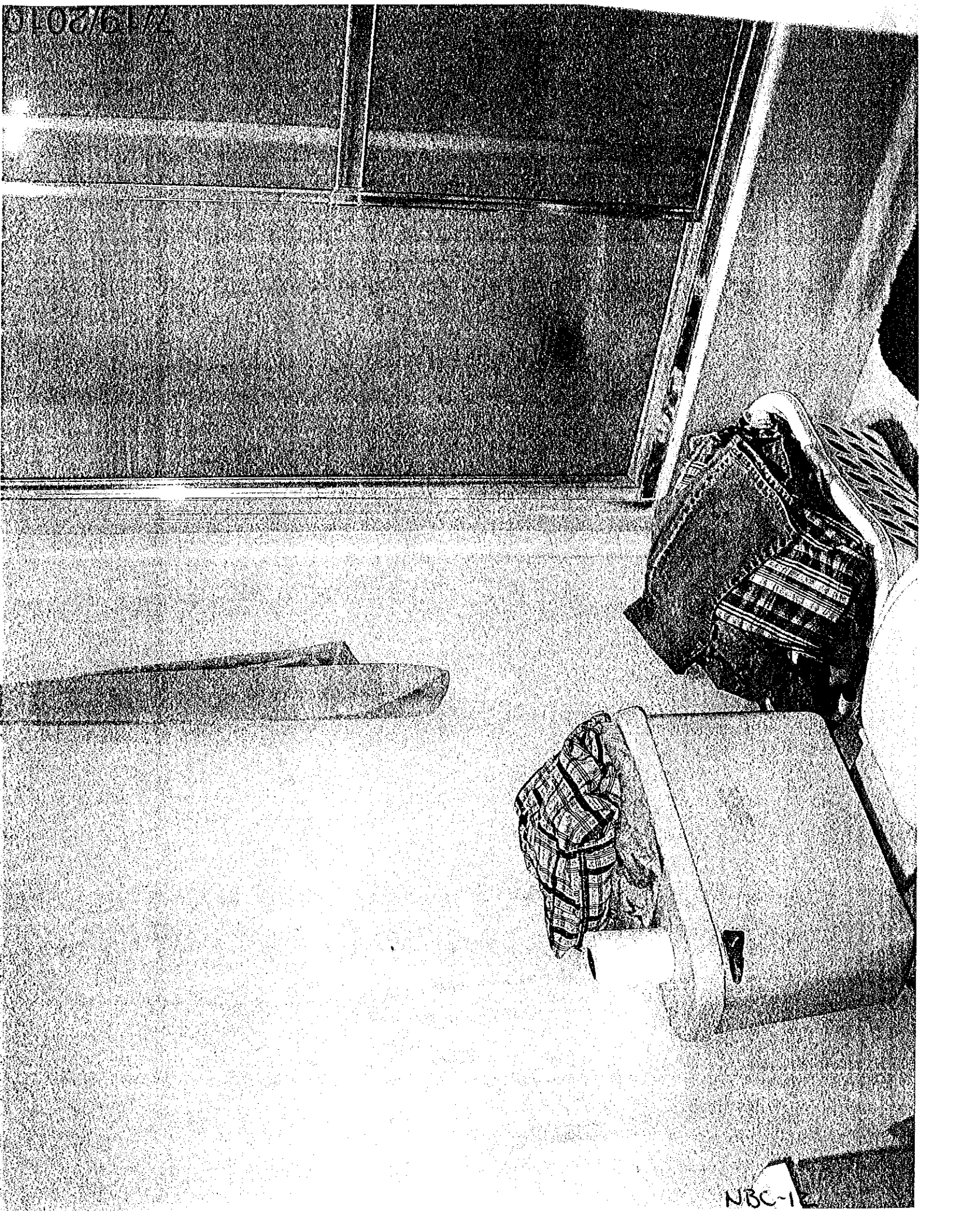


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EXHIBIT  
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NBC-10

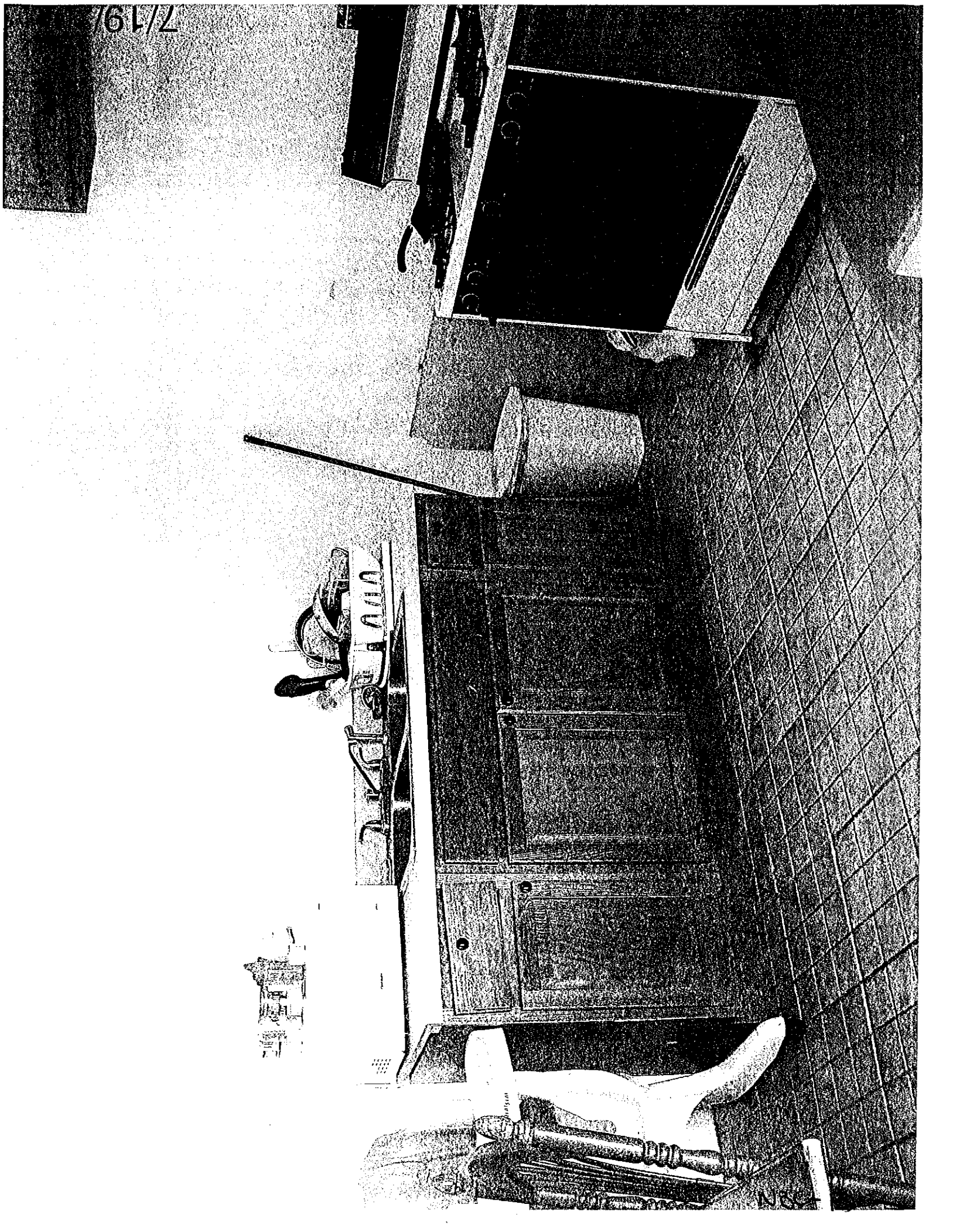
9/2010

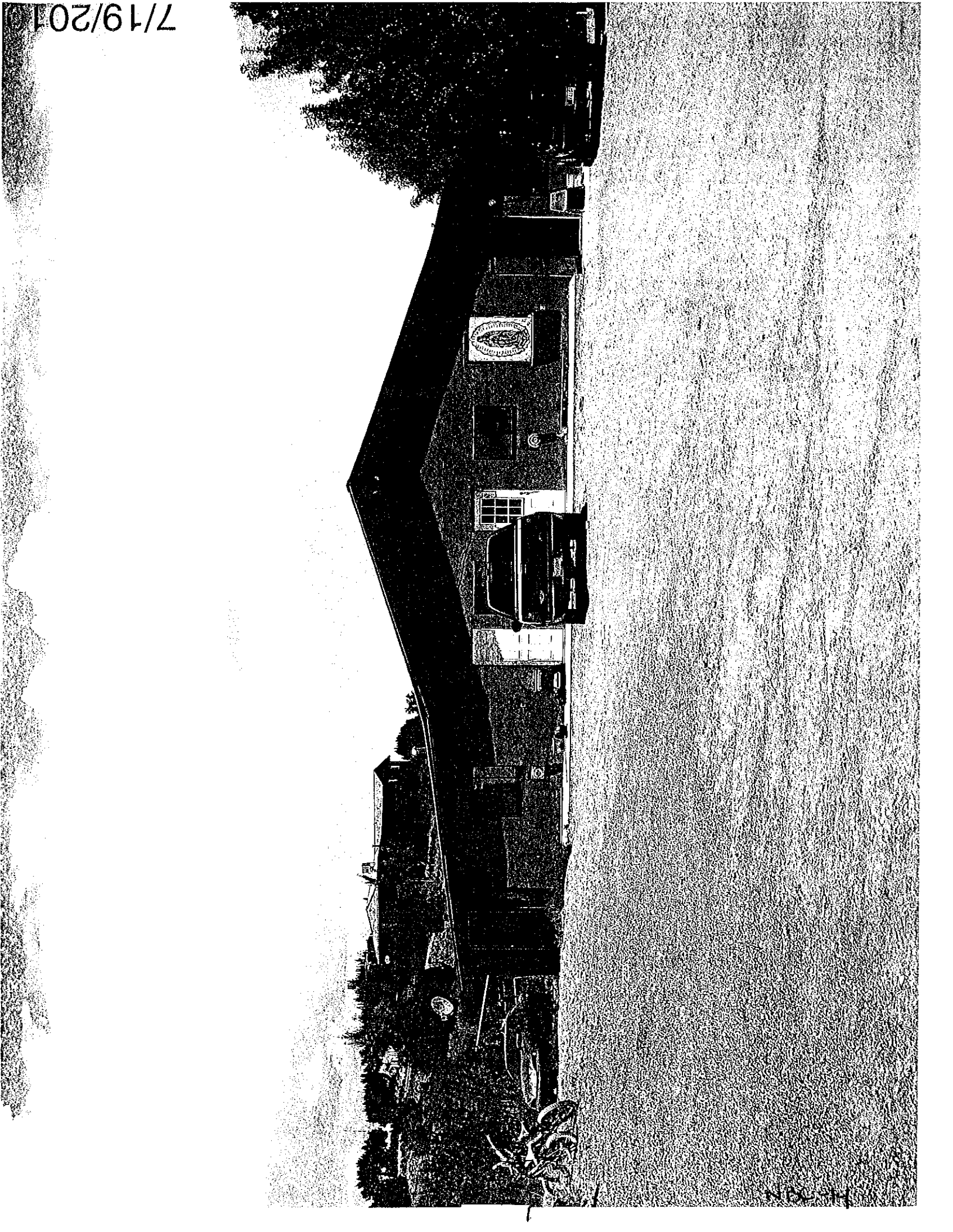




7/19/2010

NBC-12

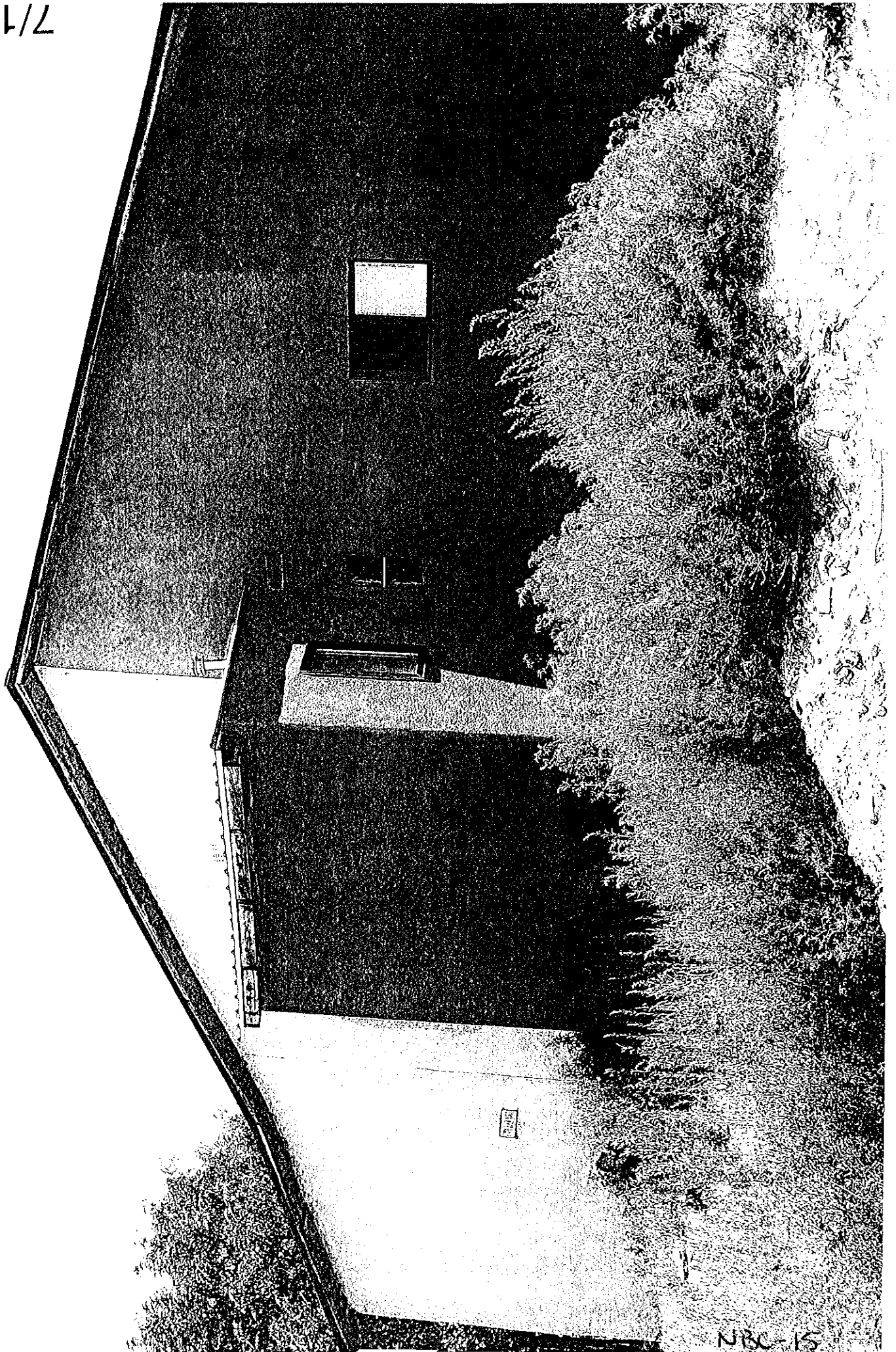




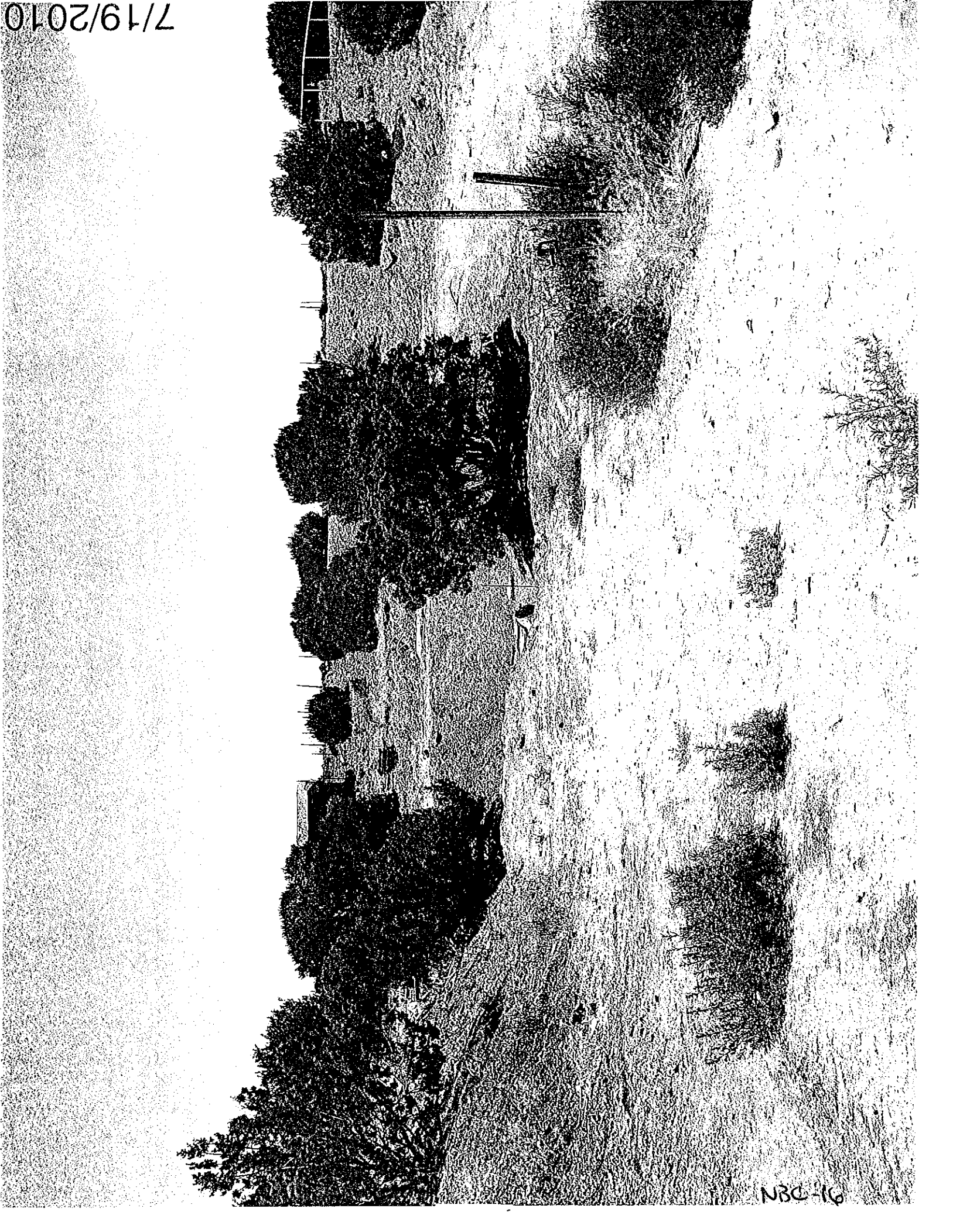
THE GREAT EASTERN LIFE INSURANCE COMPANY

7/19/201

7/19/2010



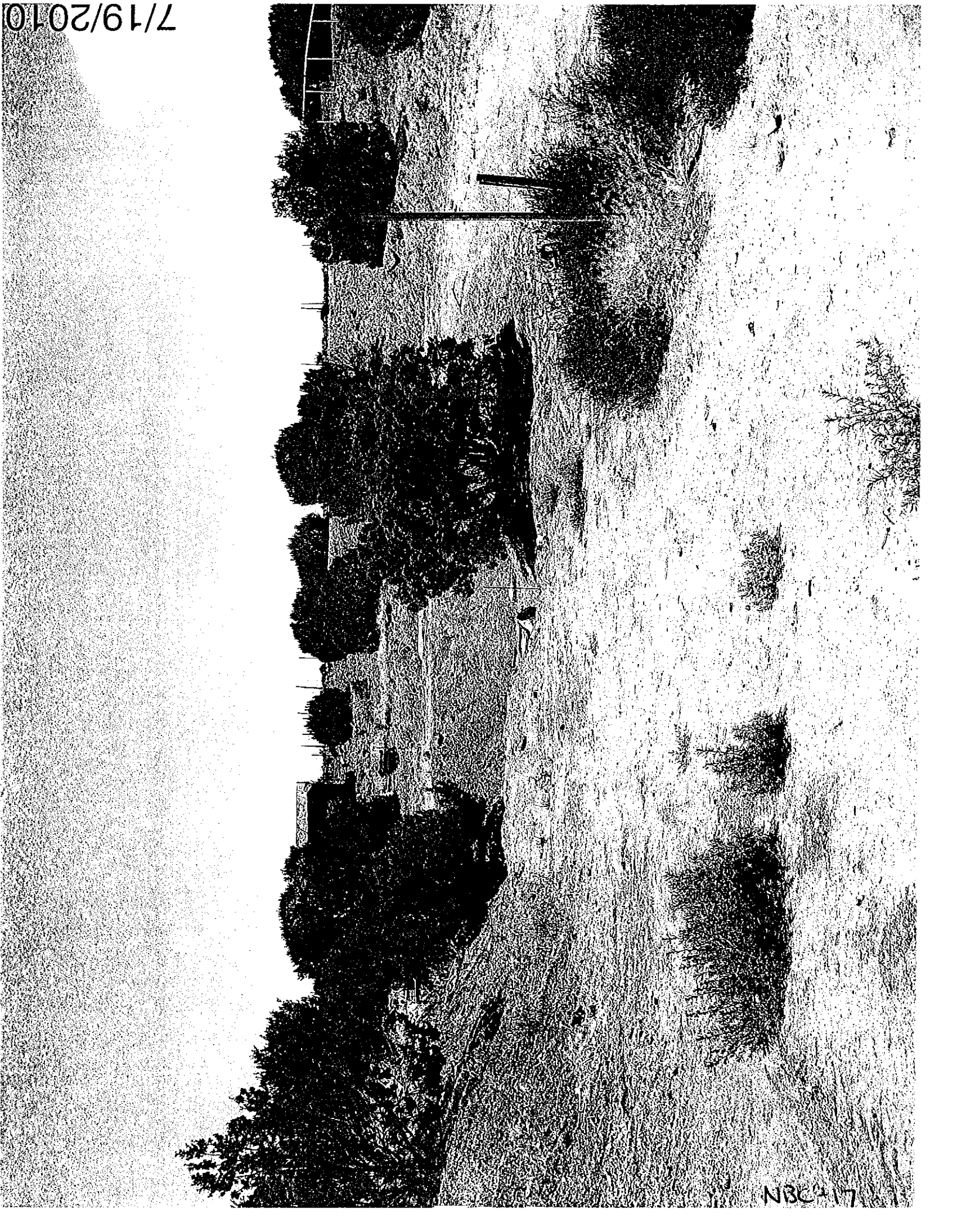
NBC-15



NBC-16

7/19/2010

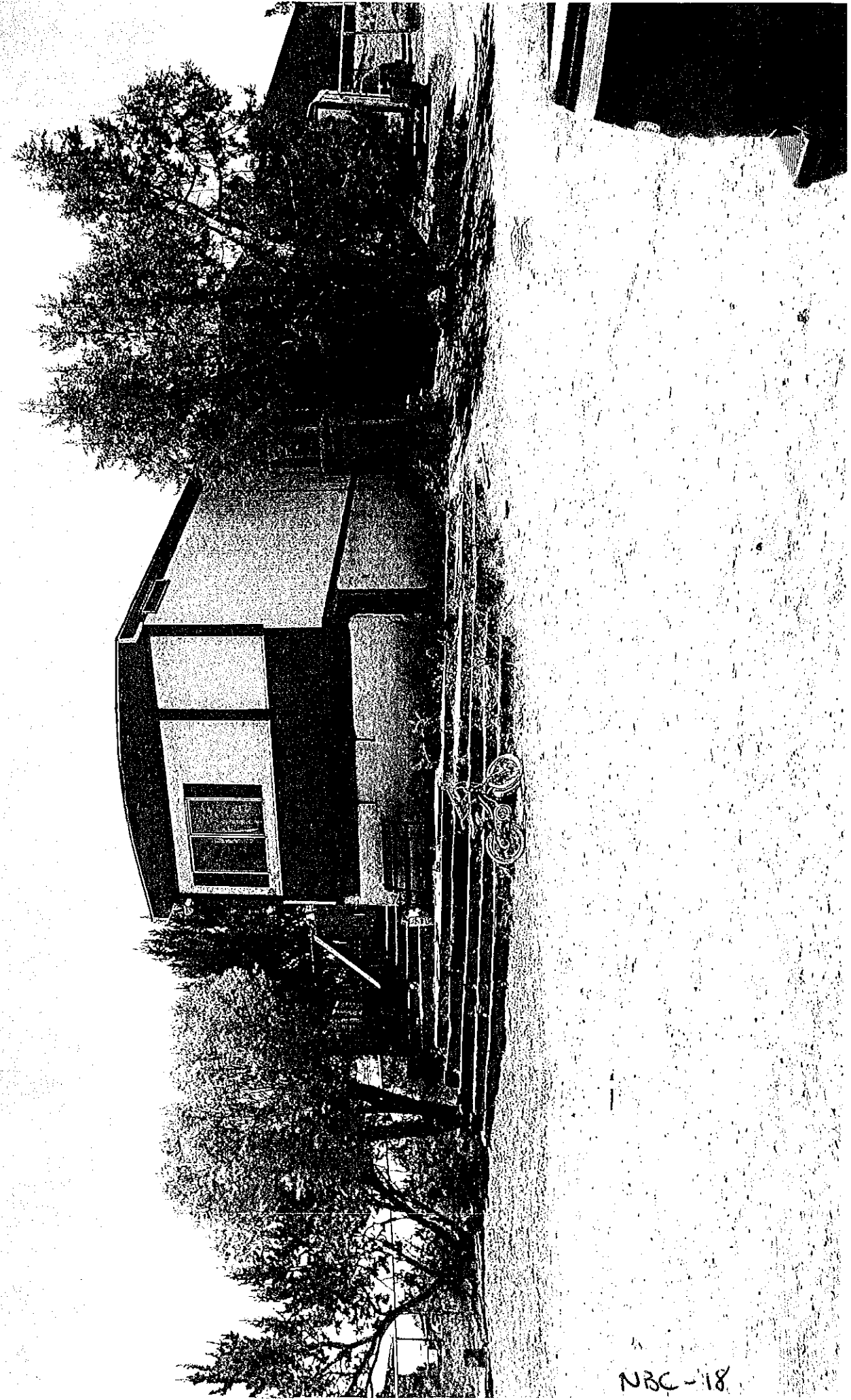




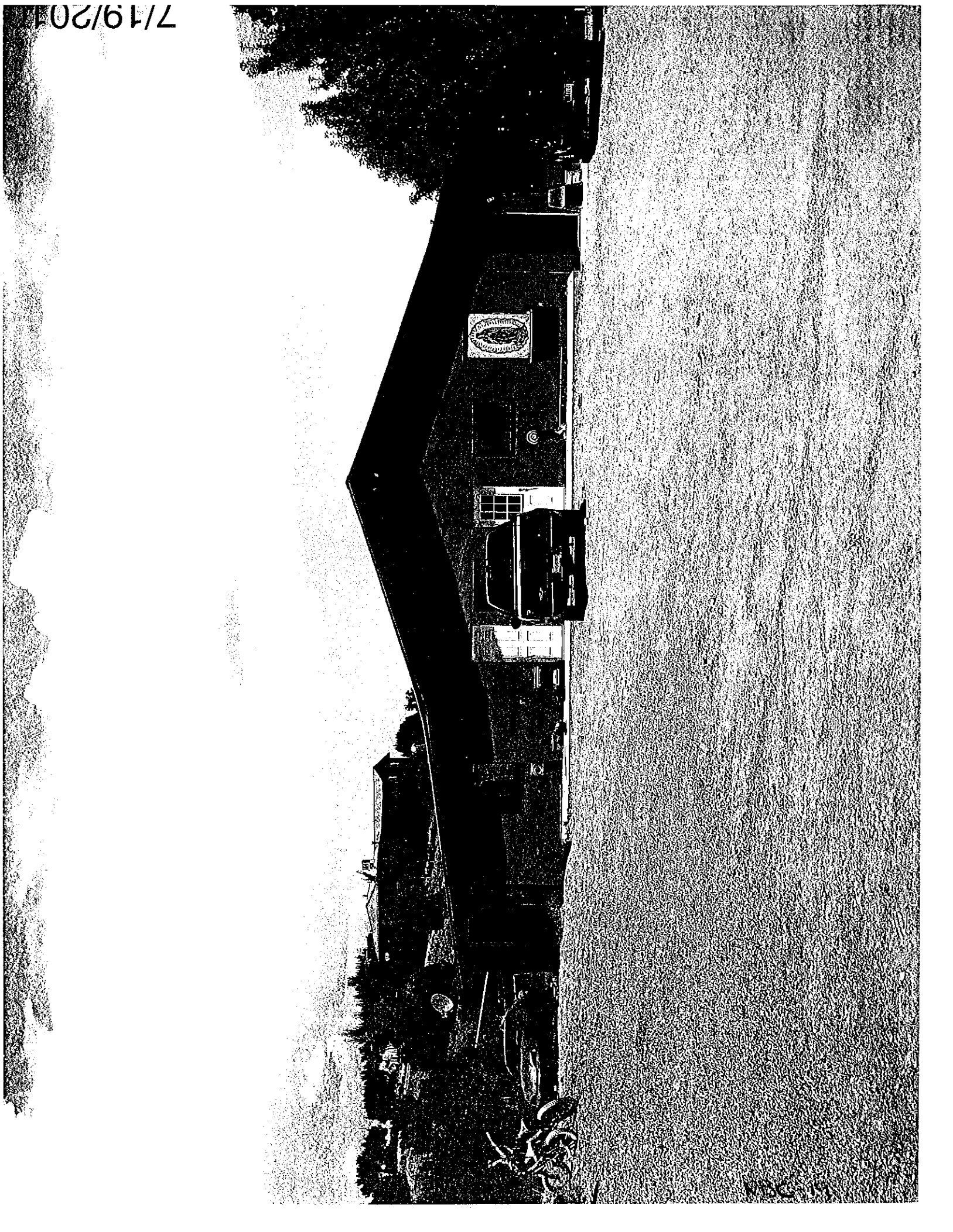
NBC-17

7/19/2010

7/19/2010



NBC-18



7/19/2014

Sent Cart  
7/21/10



NOTICE OF VIOLATION

THIS BUILDING AND OR PROPERTY HAS BEEN INSPECTED AND IS IN VIOLATION OF SANTA FE COUNTY ORDINANCE:

LAND DEVELOPMENT CODE

- UNPERMITTED DEVELOPMENT  
1996-10 ART. 2 SEC. 2
- JUNK VEHICLES  
1993-6 ART. 2 SEC 2
- ANTI-LITTER  
1993-11
- TERRAIN MANAGEMENT  
1996-10 ART. 7 SEC. 3

OTHER Exceeding Density  
1996- Art 2 Sec 10

- BUSINESS REGISTRATION  
1992-3
- LIGHTING ORDINANCE  
1996-10 ART. 3 SEC. 4
- RV ORDINANCE  
1996-11
- PUBLIC NUISANCE  
2009-11
- OTHER

YOU HAVE (5) FIVE WORKING DAYS TO CONTACT THE COUNTY AND MAKE ARRANGEMENTS TO CORRECT THE VIOLATION OR LEGAL ACTION WILL BE NECESSARY.  STOP WORK ORDER

PERSON/LOCATION: Juan Lopez 31-Cerro Del Alamo

COMMENTS: PROPERTY OWNER CANNOT CONVERT GARAGE INTO A  
3 APARTMENT COMPLEX - PROPERTY IS ZONED FOR A  
SINGLE FAMILY RESIDENCE - CONTACT ME ASAP.

DATE: 7/21/10

INSPECTOR: Frank Lopez



TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History: 1980 Comp. 1980-6. Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

**SECTION 10 - LOT SIZE REQUIREMENTS**

**10.1 Relationship of Lot Sizes to Water Policies**

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

#### 10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure on the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units, devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report. See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres



For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

- BASIN ZONE: 1 acre
- BASIN FRINGE ZONE: 2.5 acres
- MOUNTAIN ZONE: 5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:

14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:

1 acre - Where community water or community liquid waste disposal systems are utilized.

.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

**SECTION 11 - IMPORTING OF WATER**

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.

## 11.2 Criteria

The following criteria may be used to determine the density of a development which imports water:

- 11.2.1 Traffic Generation. The amount of traffic generated by the proposed activity shall not at any time impede traffic flow, cause a public road to operate at over capacity, nor contribute to excessive air pollution. The Code Administrator may refer an application to the New Mexico Environmental Improvement Division for their comments on the impact of additional development upon air quality.
- 11.2.2 Energy Consumption. Proposed development which is not near employment or shopping facilities shall serve to minimize commuting and shopping trips by such methods as reducing density, provision of employment and shopping in the proposed development, and provision of mass transit facilities.
- 11.2.3 Provision by Local Government of Public Facilities and Services. The proposed development shall not cause undue burden to the local government in the provision of public facilities and services.
- 11.2.4 Compatibility with Adjoining Residences. The proposed development shall be of a character and density that will not be intrusive to the adjoining residential areas as they now exist or may develop as permitted by the Development Code. The development:
  - a. Shall correlate with the residential life style of adjoining residences as expressed in intensity of use and size of structures;
  - b. Shall provide a sense of the open space of rural areas that corresponds to adjoining locations; and
  - c. Shall generate corresponding amounts of vehicular traffic.

### 2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

### 2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

### 2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

## SECTION 3 - VARIANCES

### 3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

### 3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

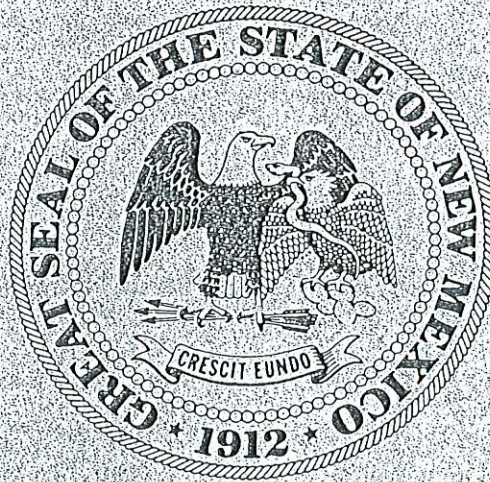
### 3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

### 3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the



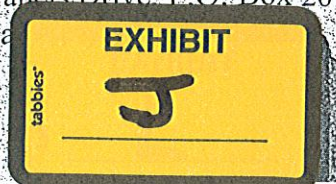


Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC  
Liquid Waste Treatment and Disposal Fees Regulations, 20.7.11 NMAC  
Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to 74-1-16  
Department of Environment Act, NMSA 1978, Sections 9-7A-1 to 9-7A-15

April, 2007

New Mexico Environmental Improvement Board  
1190 St. Francis Drive, P.O. Box 26110

Sa



NBC-29

A. The requirements of this section apply to all conventional treatment systems that discharge to the soil. Compliance with the requirements of this section shall be based on the total design flow for the lot. Water conservation devices or demonstrated actual flows shall not be used to reduce the requirements of this section. For the purposes of 20.7.3 NMAC, lot sizes shall be calculated to the nearest hundredth (0.01) acre.

B. The date of record for a lot shall be considered to be either:

- (1) the date of legal recording in the county clerk's office or validation by other means associated with the most recent change in lot size or boundaries; or
- (2) for those lots in subdivisions having received final approval from governments having jurisdiction therein prior to February 1, 1990, such date of record shall be two and one-half (2 1/2) years from the date of final government approval or July 1, 1992, whichever occurs first.

C. A conventional treatment system shall not be installed on a lot sized smaller than 0.75 acre, where there is not an established on-site liquid waste system, except as otherwise provided in Subsection F of 20.7.3.301 NMAC. The size of a lot shall be the total area of the lot less any area that is subject to a roadway, roadway easement and liquid waste disposal easements granted to or by another lot. The design flow for a conventional treatment system shall not exceed 500 gallons per day per acre. For total design flows that exceed the allowable flow or for lots that do not meet the minimum lot size, the total nitrogen discharged to the lot shall be reduced in accordance with Subsection B of 20.7.3.603 NMAC.

D. On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the lot size requirements of the regulations in effect at the time of their initial installation or if there has been a permitted modification, the regulations in effect at the time of the most recent prior permitted modification.

E. Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems for lots with a date of record of February 1, 1990 or later.

Table 301.1

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE (acres)
375 or less	0.75
450	0.90
600	1.20
750	1.50
1125	2.25
1500	3.00
1875	3.75
2000	4.00

- 3 - bedrooms  
 - 4 bedrooms  
 - 5 bedrooms  
 - 6  
 - 7  
 - 8  
 - 9  
 - 10

F. On-site liquid waste systems installed after the effective date of these regulations, on lots with dates of record prior to February 1, 1990, without established on-site liquid waste systems, shall conform to the following:

- (1) for lots less than 0.5 acre, no conventional systems shall be authorized;
- (2) for lots 0.5 acre to 0.75 acre and 100 feet or less to groundwater or within a 200 foot radius of a public water supply well, no conventional systems shall be authorized;
- (3) for lots 0.5 acre to 0.75 acre with a private well, not within a 200 foot radius of a public supply well and 101 feet to 600 feet to groundwater, the total design flow shall not exceed 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater, for 3 years after the effective date of these regulations;
- (4) for lots 0.5 acre to 0.75 acre on a public water system, not within a 200 foot radius of a public supply well and 101 feet to 600 feet to groundwater, the total design flow shall not exceed 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater, for 5 years after the effective date of these regulations;
- (5) for lots 0.5 acre or larger and greater than 600 feet to groundwater, 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater is allowed; and
- (6) once the extended time periods in Paragraphs (3) and (4) of this subsection have expired, then the lot size/flow limitation in Subsection C of 20.7.3.301. NMAC shall apply to new installations.

**La Cienega Valley Association**  
PO Box 23947  
Santa Fe, New Mexico 87502  
**Preserving Our Rural Way of Life**

January 18, 2011

Santa Fe County Development Review Committee  
Land Use Department  
102 Grant Avenue  
Santa Fe, New Mexico 87501

Dear CDRC Members,

The La Cienega Valley Association (LCVA) is aware of a variance request by Juan Lozoya regarding minimum lot size requirements of Article III, Section 10 of the Land Development Code at 31 Cerro de Alamo in La Cienega, to allow four lots or dwelling units on 1.25 acres of a land.

The LCVA opposes the variance request. The request enormously exceeds the minimum lot size of 2.5 acres per dwelling unit in the basin zone of our community and is therefore in conflict with our existing ordinances. The variance request does not consider that the legally required water limitation for the proposed variance would limit available water for each dwelling unit to .06 acre feet or 20,300 gallons per year, in accordance with a previously approved family transfer on this property. The request also shows a lack of understanding of the complications and probable environmental repercussions of effluent discharge from the equivalent of four septic tanks in such a small confined area.

The LCVA does not oppose family lot splits that conform to established ordinances and requirements, as happened previously on the property in question, allowing it to be half the size of a minimum lot. This variance request is not of that nature, but instead is asking to greatly reduce minimum lot standards for the purpose of allowing for apartments in an area that is not zoned for that use.

Granting this variance request would set a precedence that would have long-term, adverse effects on our community's responsible planning efforts and existing ordinances, as well as having a detrimental impact on the adjoining properties who are respecting county ordinances.

The LCVA respectfully asks that you deny the variance request.

Thank you.

Carl Dickens, President  
La Cienega Valley Association



NBC-31

## John M. Salazar

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**From:** Lorrie O [lorrie\_o@yahoo.com]  
**Sent:** Wednesday, February 09, 2011 1:38 PM  
**To:** John M. Salazar  
**Cc:** Paula Sanchez  
**Subject:** Att Land Use Admin: John Salazar: #v10-5560

To John<

**I am resending this letter of complaint against my neighbors proposition for code variance #v10-5560 to add 4 individual housing units to his 1.25 lot behind my house. Again, his lot shares a well with 4 existing lots -including my lot- and is zoned for only one home on his lot. Please read the letter below explaining the problem. I will be at the Co Commission meeting 2-17-11 4:00 for this issue. Thank you,**  
**Lorrie Ogren MA, LPCC**  
**33 Cerro del Alamo,**  
**Santa Fe, NM 87507**

**From:** Lorrie O <lorrie\_o@yahoo.com>  
**To:** JMSalazar@SantaFeCounty.org  
**Cc:** Paulasan@co.santa-fe.nm.us  
**Sent:** Wed, January 12, 2011 10:31:39 AM  
**Subject:** Att: Land Use Admin Via John Salazar

To John Salazar and whom it may concern,

In reference to # v10-5560 and our phone conversation on 1-12-2011, I am writing to protest the proposed building request of my neighbor Juan Lazoya at 31 Cerro del Alamo, Santa Fe, NM 87507 to gain permission for four additional (existing) individual housing units on his property, which are all only accessible by driving through an easement on the eastern side of my property at 33 Cerro del Alamo, Santa Fe, NM 87507.

I am in absolute opposition to Mr Lazoya using the land for the additional 4 housing units for the following reasons:

- 1) He has apparently already done the proposed building of converted an existing garage into many apartment living units and rented them out as I have seen the traffic/ noise levelson my easement greatly increase these last years. This began after Mr Lazoya did extensive remodeling when he first purchased the land. There are clearly many more people beyond one family living there, with many more trucks and cars.
- 2) The well on his property is legally shared by 4 lots: his lot, my lot, and two other neighbors. His lot is zoned for water use for a single family unit only, as is mine and all of those who share the well. Im sure that so many people living on his one lot far exceeds the capacity and legal use of the well and probably the septic systems as well.
- 3) I live in that area for peace and quiet; there is now heavy traffic on my easement at all hours of the day and night with cars blasting thumping bass music at odd hours, the additional dust, continual beer cans and trash thrown out of cars driving through my property. In addition there are frequent disturbances coming from these apartments: My other neighbors and I have had to call the sheriff out to these apatments many times this last year, including 3 weeks ago due a loud domestic dispute, (late night screaming, fighting), an a incident- apparent drug bust- with multiple police cars last year in which people were arrested, frequent yelling and blasting loud music waking up the neighborhood at all hours- during the warm months they often set up loud speakers in the yard blasting music for parties till very late at night on the lot in question. All this is disturbance is coming from



Mr Lazoyas property since he apparently started renting out these apartment units.

Mr Lazoyas proposal to request 4 additional individual housing units is a mute point as he has already (apparently) built and rented them out; These apartments are already having a very negative effect on safety and peace of the whole neighborhood. I request that Mr Lazoyas be required to dismantle these apartment units as they are illegal, disrespectful to the safety and peace of the neighborhood, and against all neighborhood codes.

*Thank you,  
Lorrie Ogren MA, LPCC  
Owner of lot # 33 Cerro Del Alamo, Santa Fe, NM 87507  
505-795-0468*

----- Forwarded Message -----

**From:** Suzanne <suzanne@galleriesantafe.com>  
**To:** Lorrie O <lorrie\_o@yahoo.com>  
**Sent:** Tue, February 8, 2011 5:46:53 PM  
**Subject:** RE: neighbor

Bob called the county land use manager and they are only looking at the variance for amount of people living in the compound. The county manager was surprised to learn that there is a shared well -- as well. He wanted info on that before the meeting... here is his email if you would like to chime in...jmsalazar@santafecounty.org Bob is busy composing a letter... he is a legislative representative for the Bernalillo AKC people so he is accustomed to the lingo needed. See you at the meeting...

- -----Original Message-----

**From:** Lorrie O [mailto:lorrie\_o@yahoo.com]  
**Sent:** Monday, February 07, 2011 8:00 PM  
**To:** Suzanne  
**Subject:** Re: neighbor

Suzanne,

I dont know where the owner lives, and have not met him. guess we'll met him at the land use meeting ....an unfortunate way to meet ones neighbor.

~Lorrie

**From:** Suzanne <suzanne@galleriesantafe.com>  
**To:** lorrie\_o@yahoo.com  
**Sent:** Sun, February 6, 2011 9:51:35 AM  
**Subject:** RE:

We went up yesterday but only found one young man to talk to. I don't speak enough Spanish to communicate with him so we could not get anywhere. Does the owner actually live close by? Sure is an interesting compound up there...

-----Original Message-----

**From:** lorrie\_o@yahoo.com [mailto:lorrie\_o@yahoo.com]  
**Sent:** Friday, February 04, 2011 9:24 PM  
**To:** Suzanne  
**Subject:** Re:

Thanks for checking in, I appreciate that. Looks like its running again. Hope to See you at land use meeting. How are you liking your new house?

Sent from my BlackBerry® smartphone, powered by CREDO Mobile.

**From:** "Suzanne" <suzanne@gallerysantafe.com>  
**Date:** Fri, 4 Feb 2011 20:11:41 -0700  
**To:** <lorrie\_o@yahoo.com>  
**Subject:**

Hi Lorrie,

Greetings neighbor! Thought I would drop you an email in case you hear any news about our water. Bob decided to wait until the morning to investigate...  
407-1036 or 690-1160

Warm regards,  
Suzanne and Bob

Don't be flakey. [Get Yahoo! Mail for Mobile](#) and [always stay connected](#) to friends.

## John M. Salazar

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**From:** Suzanne [suzanne@gallerysantafe.com]  
**Sent:** Tuesday, February 15, 2011 8:44 PM  
**To:** John M. Salazar  
**Subject:** CDRC case #V10-5567

Dear CDRC members,

As the property owner of 35 Cerro Del Alamo, I am concerned about the subject case as relates to 31 Cerro Del Alamo. While I am a strong proponent of an individual's rights relative to property use, I believe it should be in harmony with adjacent and neighboring properties. The proposed variance to allow 4 dwelling units at 31 Cerro Del Alamo is not in keeping with appropriate property use. Having just purchased this property in October, I was assured that there were three families sharing the well under the care of Juan Lozoya. This included myself, our neighbor at 33 Cerro Del Alamo and Mr. Lozoya. It has come to my attention that this is not the case and the property at 31 Cerro Del Alamo currently has 4 dwelling units, bringing the number of families on the shared well to 6. Obviously, I have concerns about the condition and the viability of the shared well and the impact of septic waste and basic over use of limited resources. On this basis, I respectfully request the CDRC reject this zoning variance and require Mr. Lozoya to return the property to its original approved usage. Thank you for your time and consideration.

Warm Regards,

Suzanne Chavez  
35 Cerro Del Alamo  
La Cienega, NM 87507

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR TRACT**

THIS DECLARATION is made in Santa Fe, New Mexico, this 18th day of July, 1997 by Elaine Gilmartin hereinafter for convenience referred to as the "Owner(s)".

WITNESSED THAT:

WHEREAS, Elaine Gilmartin is the owner of real property in Santa Fe County, New Mexico, which property includes Lot 1A containing 1.25 acres and Lot 1B containing 1.79 acres, more or less, according to the Plat of Survey entitled Elaine Gilmartin referred to hereinafter at Article I; and

WHEREAS, the Owners desire to provide for certain water conserving covenants and measures to preserve and maintain the single-family residential character and value of the property; and

WHEREAS, the Owners desire and intend that the owners, tenants, mortgagees, occupants and other persons hereinafter acquiring any interest in said property shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan for the proper and beneficial use of the property.

NOW THEREFORE, the Owners declare, covenant, and agree as follows:

**ARTICLE I**

**Property Subject to this Declaration**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is legally described as Lots 1A and 1B containing a combined total of 3.04 acres, more or less, in Section 28, Township 16 North, Range 8 East, N.M.P.M., Santa Fe County, New Mexico, according to the Plat of Survey for Elaine Gilmartin by Rick Chatroop, N.M.L.S. #11011, dated April 1, 1997, recorded Aug. 13, 1997, under reception No. 993,161, Plat Book 369, Page 9-10, in the records of Santa Fe County, New Mexico (the "Plat").

**ARTICLE II**

**Water Restrictive Covenants**

The following water restrictive covenants shall apply to the use and occupancy of Lots 1A and 1B on the plat.

(A) Domestic water use is restricted to .25 acre-feet per year for Lots 1A and 1B as required by the Santa Fe County Land Development Code.

(B) Water conserving appliances shall be installed and used at the time of construction or replacement of appliances.

(C) Toilets shall be of a type designed for use of no more than 1.6 gallons per flush.

(D) Bathtubs and lavatory fixtures shall be fitted with faucets with a maximum capacity of 2.5 gallons per minute. Shower heads shall have a capacity of no more than 2.5 gallons per minute.

(E) Hot water pipes shall be insulated.

(F) Evaporative coolers must circulate bleed-off water.

(G) No more than one automatic dishwasher per dwelling may be used, provided it is a model designed to use no more than 13 gallons per cycle and it has a cycle adjustment which allows reduced amounts of water to be used for reduced loads.

(H) No more than one automatic clothes washing machine per dwelling unit may be used, provided it is a model which uses no more than 43 gallons per cycle and which has a cycle or water level adjustments which permits reduced amounts of water to be used for reduced loads.

(I) Low water use landscaping techniques applying the principles of xeriscaping shall be utilized. Drip irrigation is encouraged whenever possible. Low water use grasses, trees and shrubs may be watered as needed during the first and second years of their growth to become established. Thereafter, such vegetation shall receive only minimal water as needed by each species.

(J) Lawns of non-native grasses shall not exceed 800 square feet per parcel and shall only be watered with rain water collected by means confined to the property or with recycled household gray water. Gray water systems shall meet the requirements of the New Mexico Construction Industries Division and the Uniform Plumbing Code.

(K) Swimming pools, of a permanent or temporary nature, are not permitted. Temporary wading pools of a diameter not to exceed eight feet and a depth not to exceed one foot and covered spas are acceptable at each dwelling unit.

(L) All wells on the property shall be metered with a Santa Fe County approved meter. Meter readings shall be recorded by the property owner annually within two weeks of January 1st. Meter readings shall be provided to Santa Fe County at their request. Proof of meter installation must be submitted with a Santa Fe County Development Building Permit application.

### ARTICLE III

#### General Provisions

3.1 Duration; Covenants Running with the Land. The covenants of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

3.2 Enforcement. Enforcement of these covenants and restrictions shall be by any owner of property as shown on the Plat in any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction or to restrain any such violation. Any failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If an owner prevails in any action against any person or persons to enforce any provision hereof, the prevailing owner shall be entitled to recover from such person or persons his costs and reasonable attorneys fees.

3.3 Severability. The invalidity or unenforceability of any covenant, restriction, term or other provision hereof as determined by a court of competent jurisdiction shall not impair or adversely affect the validity or enforceability of any other covenant, restriction, term or provision hereof, which shall be and remain valid and enforceable to the fullest extent permitted by law.

3.4 Miscellaneous. This Declaration shall be governed by and interpreted under the laws of the State of New Mexico. This Declaration shall be binding upon each tract owner, his successors and assigns.



Daniel "Danny" Mayfield  
Commissioner, District 1

Virginia Vigil  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

~~Aggressively seek denial of your variance~~

## MEMORANDUM

**DATE:** March 17, 2011

**TO:** County Development Review Committee

**FROM:** John M. Salazar, Development Review Team Leader *JMS*

**VIA:** Jack Kolkmeier, Land Use Administrator *JK*  
Shelley Cobau, Building and Development Services Manager *SC*  
Wayne Dalton, Building and Development Services Supervisor *WD*

**FILE REF.:** CDRC CASE # V10-5560 Juan Lozoya Variance

### ISSUE:

Juan Lozoya, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow four dwelling units on 1.25 acres.

The property is located at 31 Cerro del Alamo, within Section 28, Township 16 North, Range 8 East, (Commission District 3).

### SUMMARY:

The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow four dwelling units on 1.25 acres (Exhibit "L"). The Applicant received a Notice of Violation from County Code Enforcement on July 21, 2010 on a received complaint for exceeding density and unpermitted development.

The subject property was created through a small lot family transfer and is under a .25-acre foot per year water restriction. Per Code the .25-acre foot per year water restriction is sufficient for a family of four and could not sustain three additional dwelling units. No meter readings have been submitted to the Land Use Administrator since the lot was created so it is uncertain at this time how much water is actually being used on the property.

The Applicant states that he bought the property in its current state with a three unit apartment building and a single wide mobile home. All four units are currently rented and the Applicant states that he needs the income at this time. Staff has researched the property and found that it

was originally owned by the Applicant's brother. The prior owner applied for, and received a development permit for a garage in 1998. The permitted garage has since been remodeled into a three unit apartment building consisting of a one bedroom unit and two (2), two bedroom units. All three units have a kitchen, a single bathroom and share a laundry facility accessed from the outside. All facilities are currently served by a single conventional septic system.

The minimum lot size required for a conventional septic system is 0.75 acres for a three bedroom home, the lot size minimum increases with each additional bedroom (Exhibit "J"). The State Environment Department (NMED) has specific regulation regarding maximum design flow based on parcel size; NMED staff has indicated that the maximum number of bedrooms that could be allowed on a 1.25 acre parcel is five. More than five bedrooms might not be permitted by the NMED, and the Applicant is herein advised that an advanced liquid waste treatment system might be required, dependant on the number of bedrooms present, and the number proposed. Permitting of the liquid waste disposal systems is through the NMED, and must be addressed prior to application for a County Development Permit.

Article III, Section 10 states the maximum allowable lot size within the Basin Hydrologic Zone is 2.5 acres per dwelling unit. The subject property is currently 1.25 acres because of a small lot family transfer that took place in August of 1997. Additionally, the property does not meet NMED standards to sustain four separate septic systems, and the Applicant has not provided current documentation from the NMED regarding the existing system.

Article II Section 3 (Variances) of the County Code states that "where in the case of proposed development it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This section goes on to state, "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified."

**REQUIRED ACTION:**

The CDRC should review the attached material and consider the recommendation of staff; take action to approve, deny, and approve with conditions or table for further analysis of this request.

**RECOMMENDATION:**

Staff recommends that the request for a variance be denied; Article III, Section 10 states that the minimum lot size in this area is 2.5 acres per dwelling unit. The lot size was reduced to 1.25 acres via the Small Lot Family Transfer process in August of 1997 (Exhibit D). The subject property is currently restricted to a .25 acre foot per year water restriction which cannot sustain four dwelling units and does not contain enough acreage to sustain septic systems for each dwelling unit. The parcel is outside any commercial node that would allow rezoning as an apartment; rezoning would also require a variance which would not be supported by staff.



**ATTACHMENTS:**

- Exhibit "A" - Letter of Request for Variance
- Exhibit "B" - Vicinity Map
- Exhibit "C" - Aerial Photo of Property
- Exhibit "D" - Plat of Record
- Exhibit "E" - Site Plan
- Exhibit "F" - Photos of Property
- Exhibit "G" - Notice of Violations
- Exhibit "H" - Article III, Section 10
- Exhibit "I" - Article II, Section 3
- Exhibit "J" - NMED Criteria for Septic Systems
- Exhibit "K" - Letter of Opposition

LA CIENEGA COMMUNITY

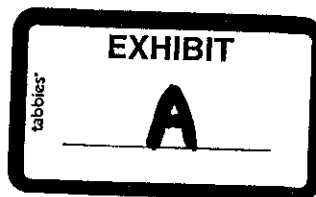
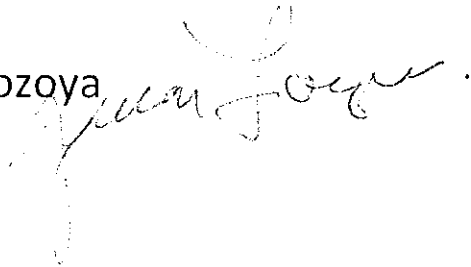
To whom it may concern

The purpose of this letter is to petition the apartment located At 31 Cerro Del Alamo (lot 31A) Santa Fe NM 87507. At the time when I purchase the property the lot in mention was already built.

At this time the location is being rented, the income is In great need at this time. I hope this letter helps with the approval and authorization of the location mention above.

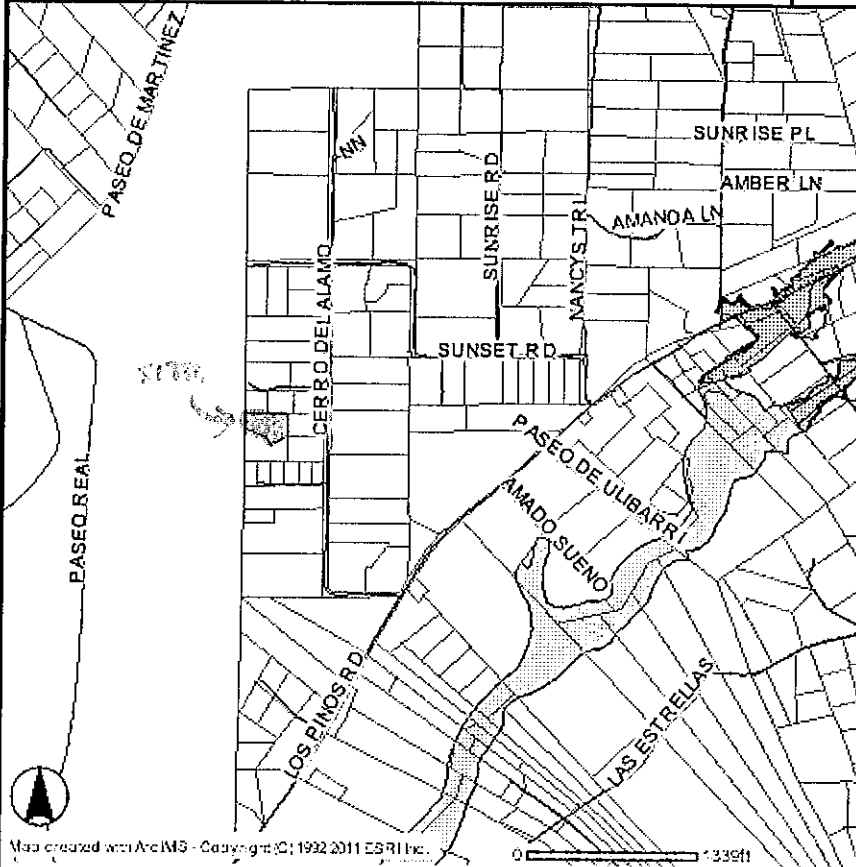
THANK YOU

Juan Lozoya



NBC-4

### ArcIMS HTML Viewer Map

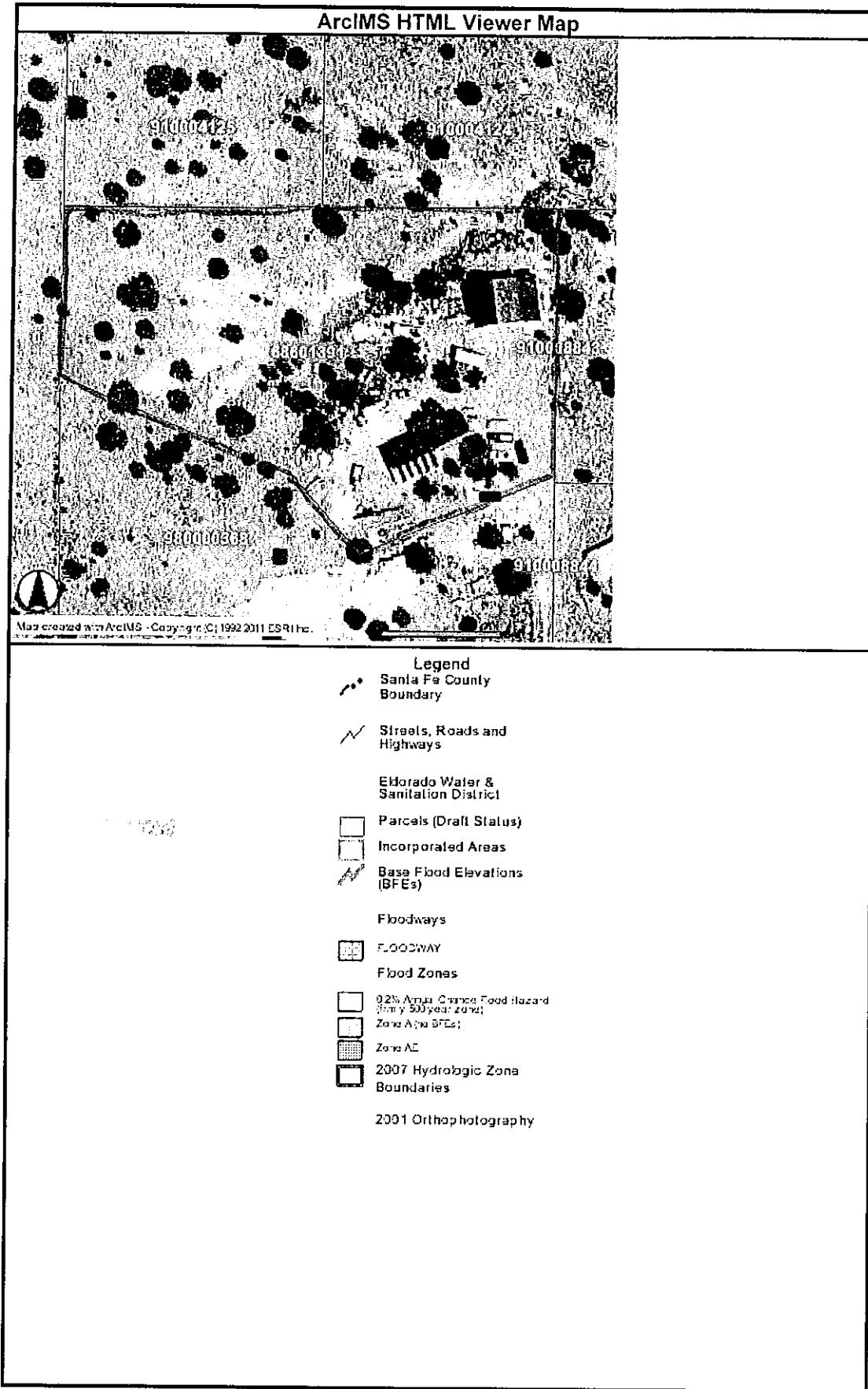


#### Legend

- Towns and Villages
- Santa Fe County Boundary
- Streets, Roads and Highways
- Eldorado Water & Sanitation District
- Parcels (Draft Status)
- Incorporated Areas
- Flood Zones
- 0.2% Annual Chance Flood Hazard (Only 500 year zone)
- Zone A (a DFE)
- Zone AE
- 2007 Hydrologic Zone Boundaries








NBC-5






NBC-6

# Map of Property in Santa Fe County

## Legend

-  driveways
-  Minor Roads
-  Major Roads
-  Parcels
-  Section Lines

## 2008 FEMA Flood

-  500 Year
-  100 Year
-  1:720

1 inch represents 60 feet



**WARNING**  
This data was prepared by the Santa Fe County Planning Department. These data are appropriate for PLANNING PURPOSES ONLY.  
Orthophoto from 2005

Contour Interval: 2 Feet  
This information is for reference only. Santa Fe County assumes no liability for errors or omissions in this data. Users are advised to confirm data accuracy.

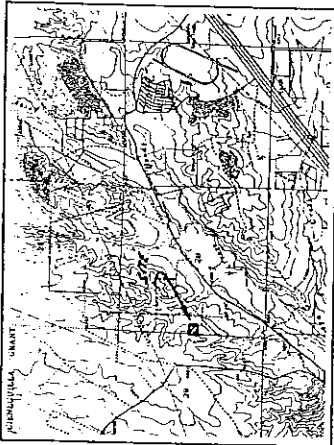


October 10, 2010



tabbles  
**EXHIBIT**  
**C**

NRC- 7



**VICINITY MAP**

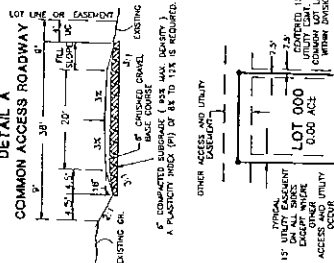
**DESCRIPTIONS**

A PARCEL OF LAND LYING WITHIN SECTION 28, T18N, R18E, N.M.P.M., PARTICULARLY DESCRIBED AS FOLLOWS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

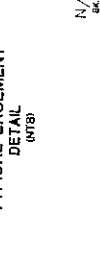
COMMENCING AT THE NORTHWEST CORNER OF THE SAID SECTION DESCRIBED FROM WHENCE THE COMPLETE CORNER COUNTY TO SECTIONS 28, 29, 30 AND 31 OF THE SAID SECTION 28, T18N, R18E, N.M.P.M. BEING THE PLACE OF BEGINNING; THENCE S 77° 00' 00" E 113.50 FT. TO A POINT CONTAINING 1.25 ACRES MORE OR LESS; AND AS MORE FULLY SHOWN AS LOT 1A HEREON.

A PARCEL OF LAND LYING WITHIN SECTION 28, T18N, R18E, N.M.P.M., PARTICULARLY DESCRIBED AS FOLLOWS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST BOUNDARY OF THE PARCEL DESCRIBED AS ABOVE; THENCE S 77° 00' 00" E 113.50 FT. TO A POINT CONTAINING 1.25 ACRES MORE OR LESS; THENCE S 77° 00' 00" E 113.50 FT. TO A POINT CONTAINING 1.79 ACRES MORE OR LESS; AND AS MORE FULLY SHOWN AS LOT 1B HEREON.



**TYPICAL EASEMENT DETAIL (HTB)**



**DEDICATION AND AFFIDAVIT**

I, the undersigned, do hereby dedicate to the public use of the City and County of Santa Fe, New Mexico, the easements and utility easements shown on the plat hereon, and I do hereby agree to execute all necessary documents to carry out the intent of this dedication.

WITNESSED BY ME IN THE PRESENCE OF TWO COMPETENT WITNESSES, AND TWO MEMBERS OF THE CITY AND COUNTY OF SANTA FE, NEW MEXICO.

*Elaine Gilmartin*  
 COUNTY CLERK

**LEGEND AND NOTES**

1. BOUNDARY POINT FROM PLAT DATED 11/21/1978, PART OF SURVEY 18, AND PLAT IN THE OFFICE OF THE SANTA FE COUNTY CLERK IN SA. DATA IS FROM PLAT OF 11/21/1978, PART OF SURVEY 18, AND DOCUMENTS OF RECORD.

2. BOUNDARY POINT FROM PLAT DATED 11/21/1978, PART OF SURVEY 18, AND PLAT IN THE OFFICE OF THE SANTA FE COUNTY CLERK IN SA. DATA IS FROM PLAT OF 11/21/1978, PART OF SURVEY 18, AND DOCUMENTS OF RECORD.

3. BOUNDARY POINT FROM PLAT DATED 11/21/1978, PART OF SURVEY 18, AND PLAT IN THE OFFICE OF THE SANTA FE COUNTY CLERK IN SA. DATA IS FROM PLAT OF 11/21/1978, PART OF SURVEY 18, AND DOCUMENTS OF RECORD.

4. BOUNDARY POINT FROM PLAT DATED 11/21/1978, PART OF SURVEY 18, AND PLAT IN THE OFFICE OF THE SANTA FE COUNTY CLERK IN SA. DATA IS FROM PLAT OF 11/21/1978, PART OF SURVEY 18, AND DOCUMENTS OF RECORD.

**SANTA FE COUNTY APPROVAL, NOTES AND CONDITIONS**

1. MAINTENANCE OF PRIVATE ACCESS ROADS TO BE RESPONSIBILITY OF TRACT OWNER.

2. FLOOD PLAIN AS SHOWN ON F.A.M. PLAT, RECORD NO. 2789, WITHIN 1/8" SCALE, SUBJECT TO FLOOD ZONE WHERE SHOWN.

3. MAINTENANCE OF PRIVATE ACCESS ROADS TO BE RESPONSIBILITY OF TRACT OWNER.

4. RECORD IN BOOK 1359, PAGE 685-687.

5. DOCUMENT NO. 293, 162.

6. RECORD TO THE SANTA FE COUNTY LAND DEVELOPMENT CODE, WHICH IS A PART OF THE COUNTY ORDINANCES, AS BEING MADE PUBLIC RECORD, AND THE TRACT OWNER SHALL MAKE SURE THAT THE TRACT OWNER'S INTERESTS IN THIS PROPERTY SHOULD BE PROTECTED BY AN ALTERNATIVE SYSTEM IS REQUIRED.

7. THE CONSTRUCTION OF THE PROPOSED PLAT DOES NOT INCLUDE THE CONSTRUCTION OF SANITARY PRIVATE EASEMENTS OR ROADS, IF PROVIDED BY THE TRACT OWNER'S PLAT FOR AND THEN APPROVED BY THE SANTA FE COUNTY LAND DEVELOPMENT CODE.

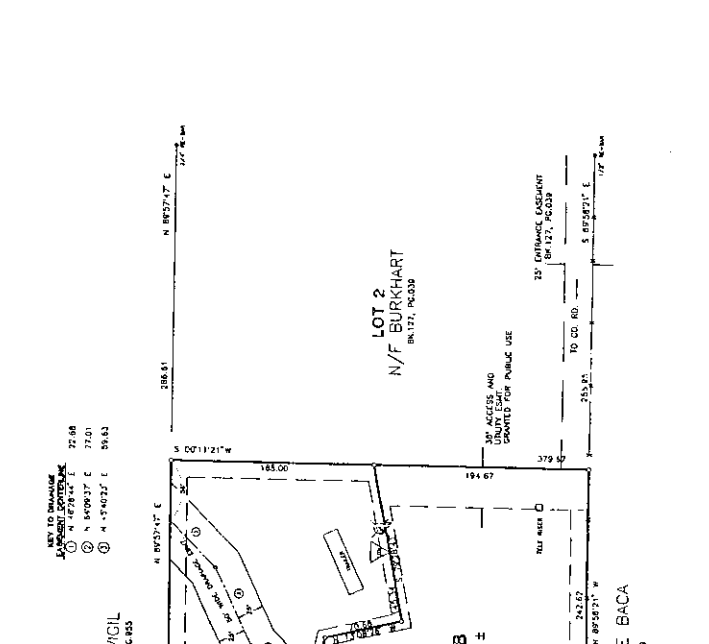
8. NEW DRIVEWAYS/ROAD ACCESS FROM CO. RD. IS SUBJECT TO APPROVAL FOR LOCATION AND INSTALLATION OF A CLARITY PLANT FOR CONSTRUCTION.

9. THE APPROVAL OF THIS PLAT DOES NOT CONSTITUTE THE BUILDING PERMITS, WHICH DEVELOPMENT INCLUDING:

10. THE PARTIALLY UNPLATTED SECTION MAY BE SUBJECT TO THE CITY AND COUNTY OF SANTA FE ORDINANCES AS ADOPTED BY SANTA FE COUNTY.

11. ON SITE SANITARY SEWER SERVICE SHALL BE THE RESPONSIBILITY OF THE TRACT OWNER AND MUST BE PERMITTED AND APPROVED BY NEW MEXICO DEPARTMENT OF HEALTH.

12. TENANT MANUFACTURE REGULATIONS (ARTICLE VI, SECTION 12, OF THE COUNTY LAND DEVELOPMENT CODE) SHALL BE COMPLIED WITH AT THE TIME OF BUILDING PERMIT APPLICATION FOR EACH LOT.



**LA CIENEGA WATERSHED CONDITIONS**

1. CONSTRUCTION OF SANITARY SEWER LINES SHALL BE THE RESPONSIBILITY OF THE TRACT OWNER AND MUST BE PERMITTED AND APPROVED BY NEW MEXICO DEPARTMENT OF HEALTH.

2. THE CONSTRUCTION OF THE PROPOSED PLAT DOES NOT INCLUDE THE CONSTRUCTION OF SANITARY PRIVATE EASEMENTS OR ROADS, IF PROVIDED BY THE TRACT OWNER'S PLAT FOR AND THEN APPROVED BY THE SANTA FE COUNTY LAND DEVELOPMENT CODE.

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7. TENANT MANUFACTURE REGULATIONS (ARTICLE VI, SECTION 12, OF THE COUNTY LAND DEVELOPMENT CODE) SHALL BE COMPLIED WITH AT THE TIME OF BUILDING PERMIT APPLICATION FOR EACH LOT.

**FAMILY TRANSFER LAND DIVISION FOR ELAINE GILMARTIN**

AS LAST FILED IN BK.177, PG.039, SANTA FE CO. CLERK LYING WITHIN SECTION 28, T18N, R18E, N.M.P.M., SANTA FE COUNTY, NEW MEXICO.

**RICK CHATROOP**  
 PROFESSIONAL LAND SURVEYOR  
 NEW MEXICO REGISTRATION NO. 11011  
 (505) 470-9837  
 RT. 1 BOX 944  
 FARMER, NM 87532

RECEIVED INFORMATION FROM THE COUNTY CLERK  
 COUNTY CLERK  
 LOCATION LYING WITHIN SECTION 28, T18N, R18E, N.M.P.M., SANTA FE CO., N.M.

**EXHIBIT D**

tabbles

SCALE 1" = 50'

DATE: 6-12-97

DATE: 6-17-97

DATE: 6-17-97

**GENERAL NOTE:**

ALL CONSTRUCTION SHALL MEET OR EXCEED THE MINIMUM REQUIREMENTS OF THE 2006 INTERNATIONAL RESIDENTIAL CODE AND/ OR ALL COVERING LOCAL AND STATE BUILDING CODES.

**INDEX:**

- A SITE PLAN
- A-1 FOUNDATION PLAN
- A-2 FLOOR PLAN
- A-3 FRAMING PLAN
- A-4 ELEVATIONS
- A-5 ROOF PLAN

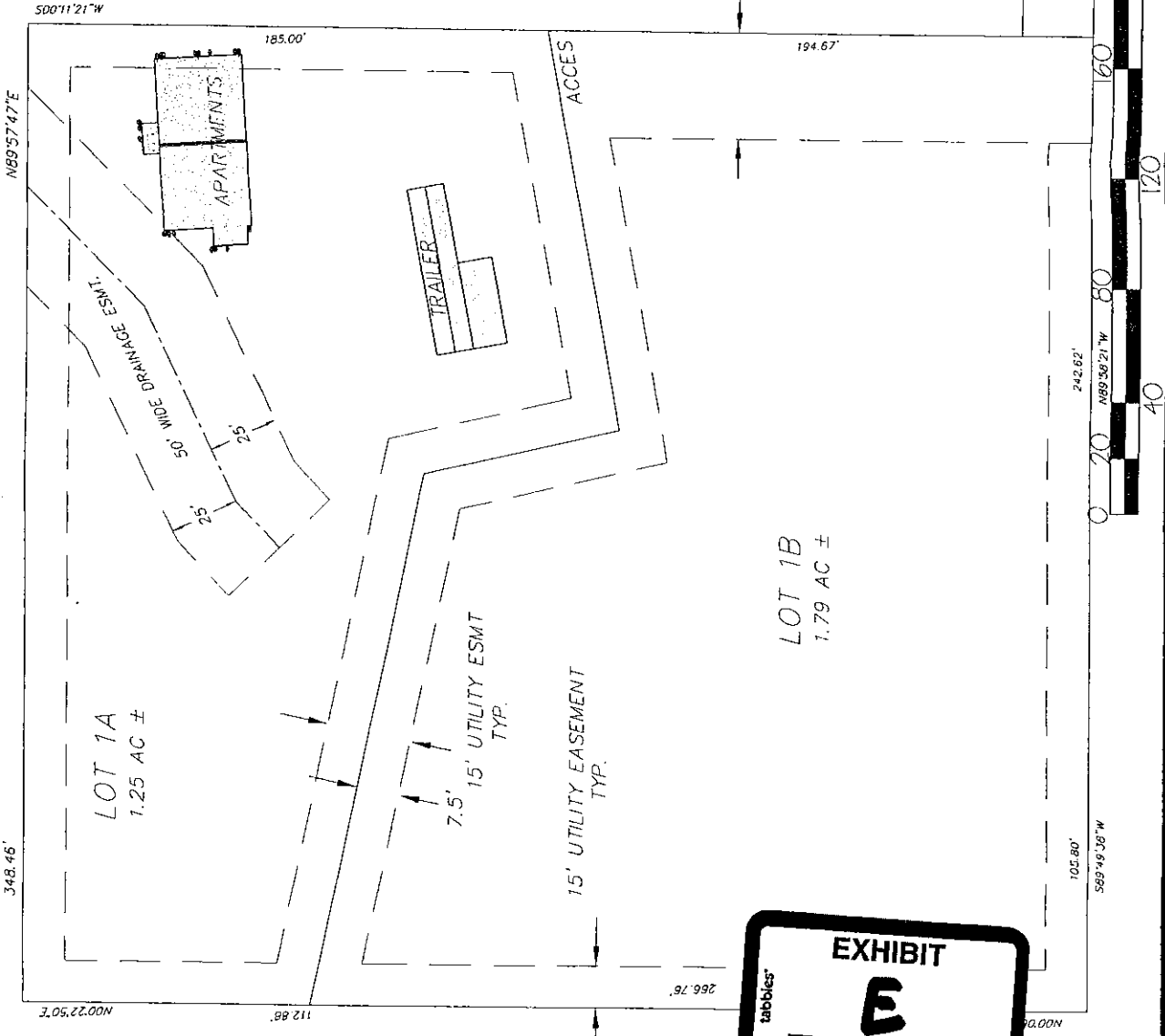
LOZOYA APARTMENTS  
LOT 1A @ LACIENGA  
JUAN LOZOYA, (505) 690-5687

DRAWING BY:  
J.L.

CHECKED BY:  
J.L.

SITE PLAN  
REV. DATE:  
11/11/10

A



SITE PLAN  
ESC: 1" = 40'



tabbles  
**EXHIBIT E**

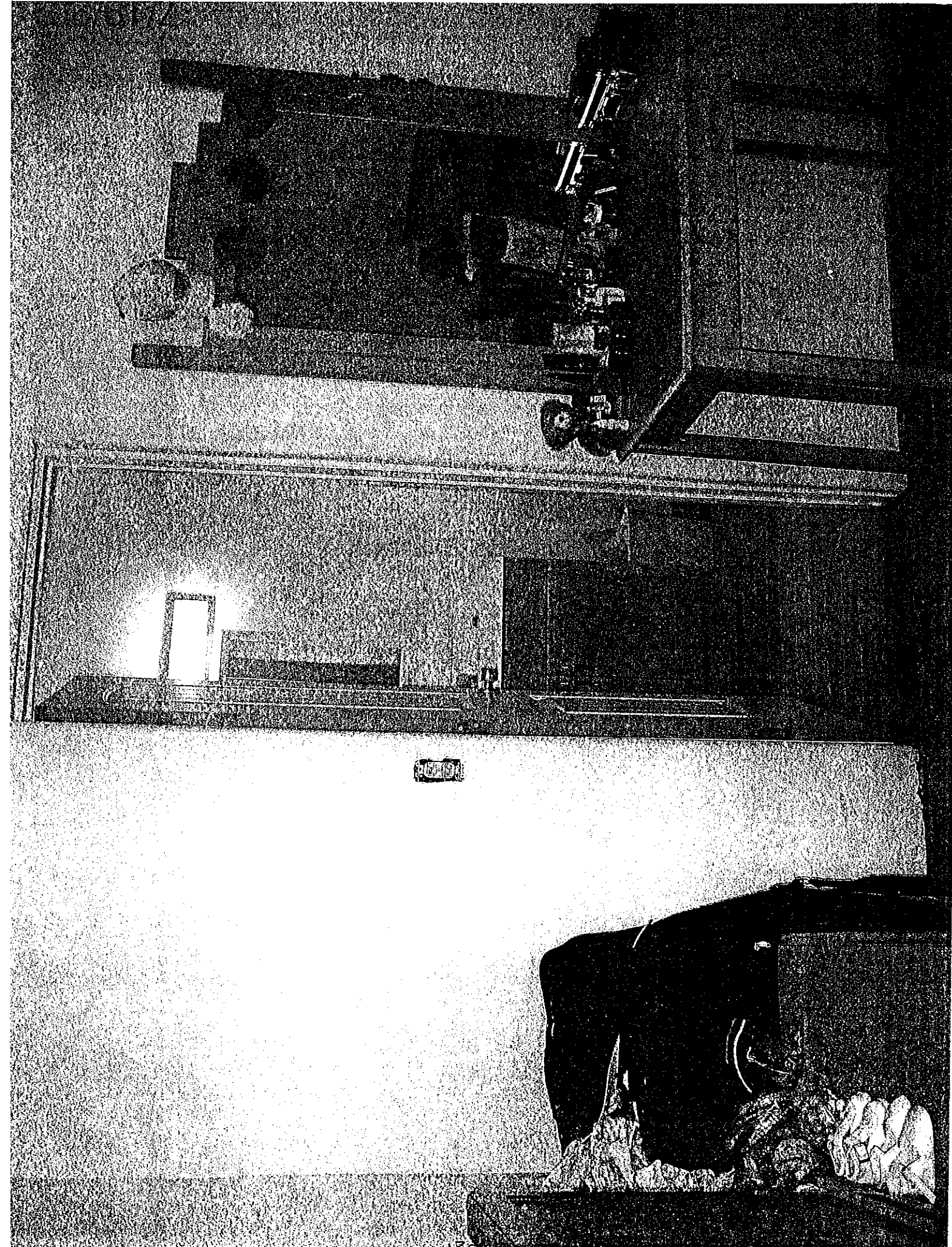
NRC-9

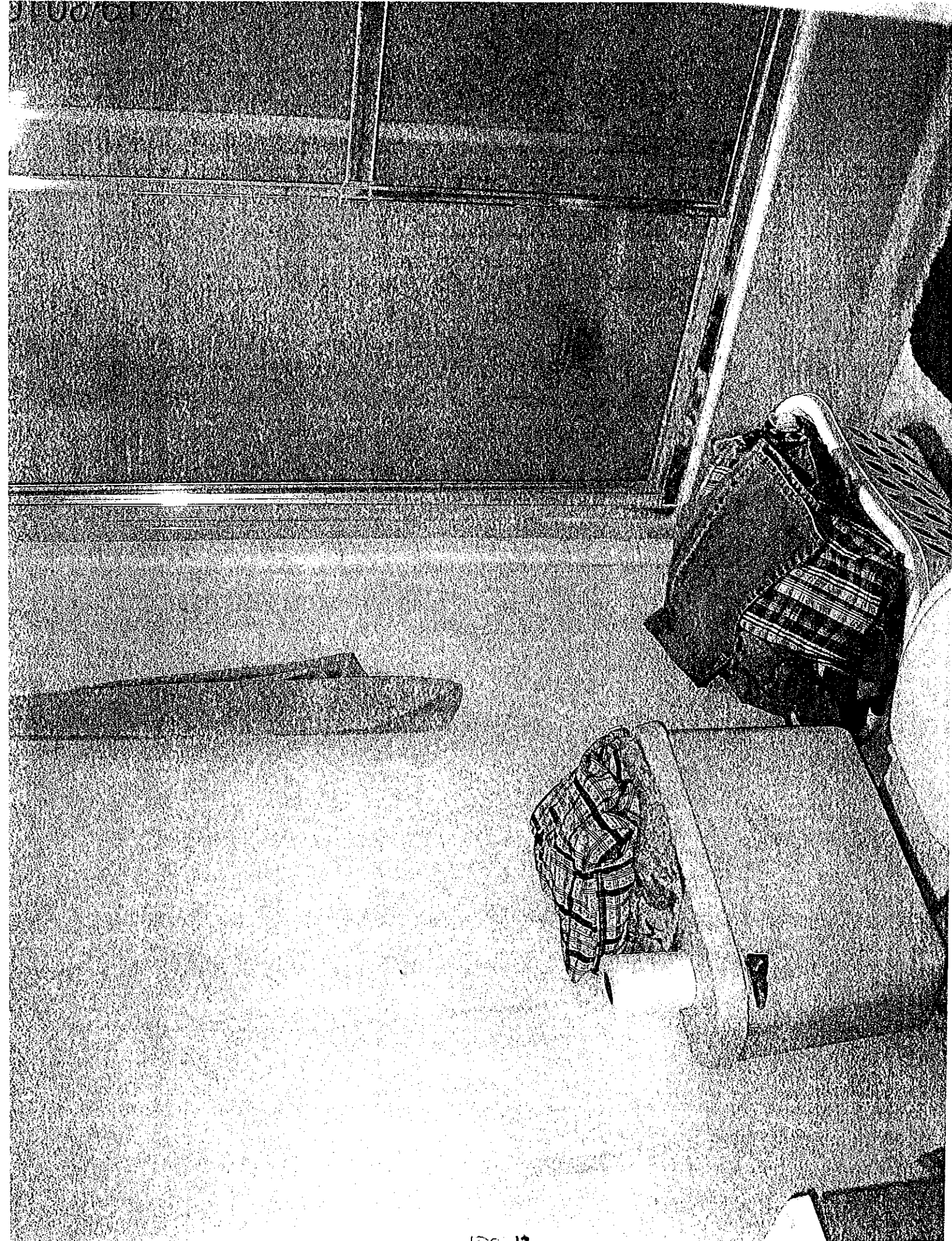
7106/6



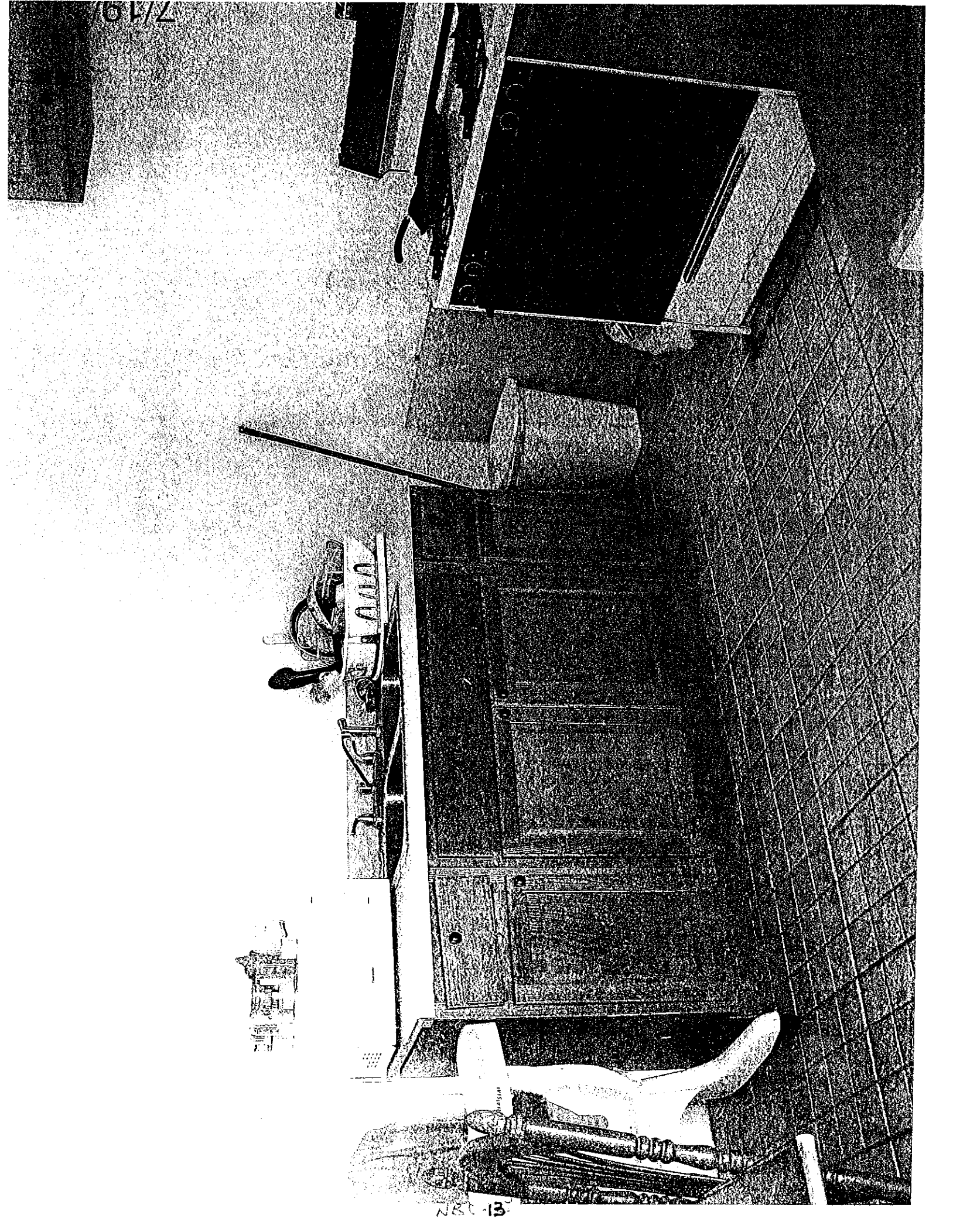
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**EXHIBIT**  
**F**





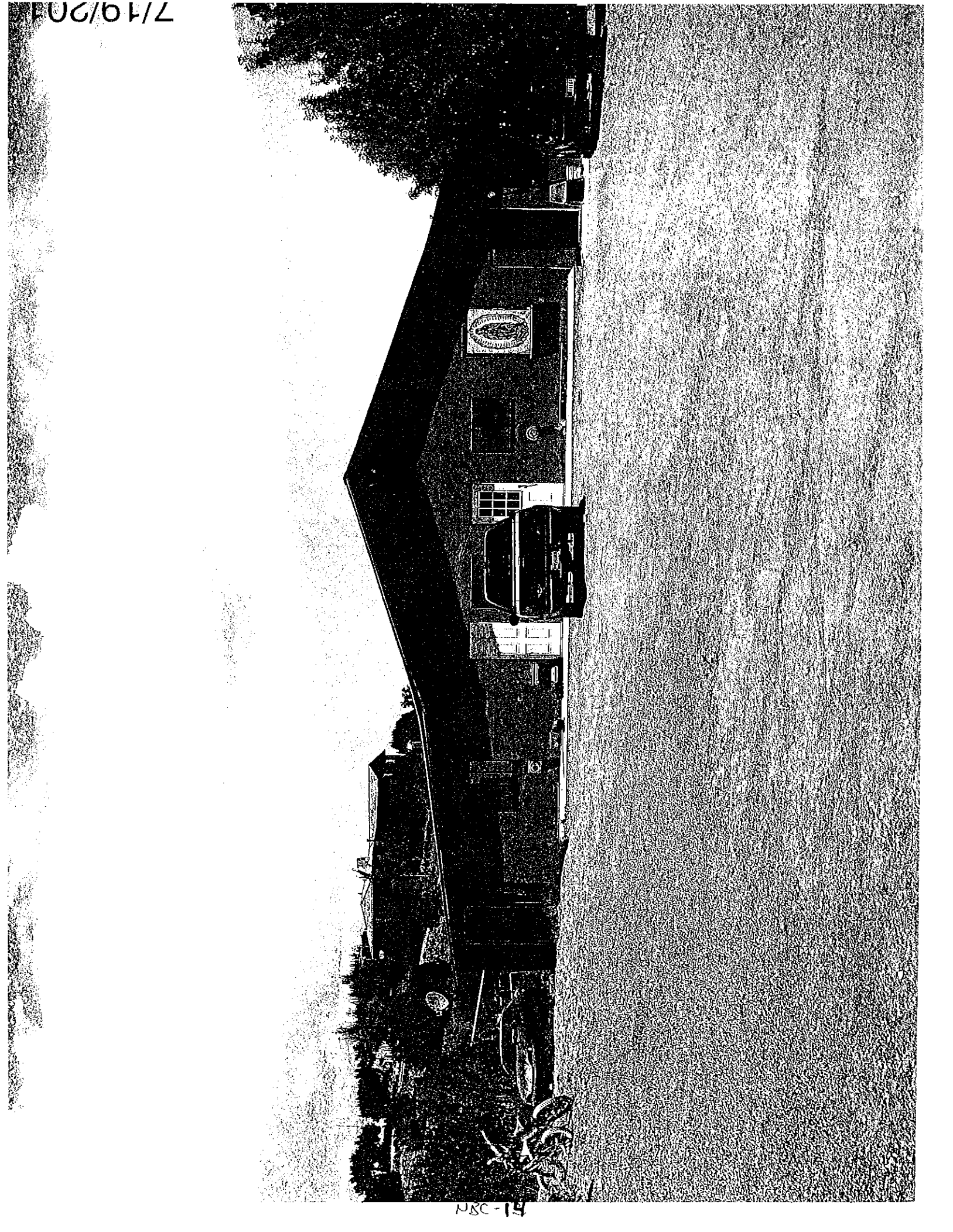


NBC-12



7/19

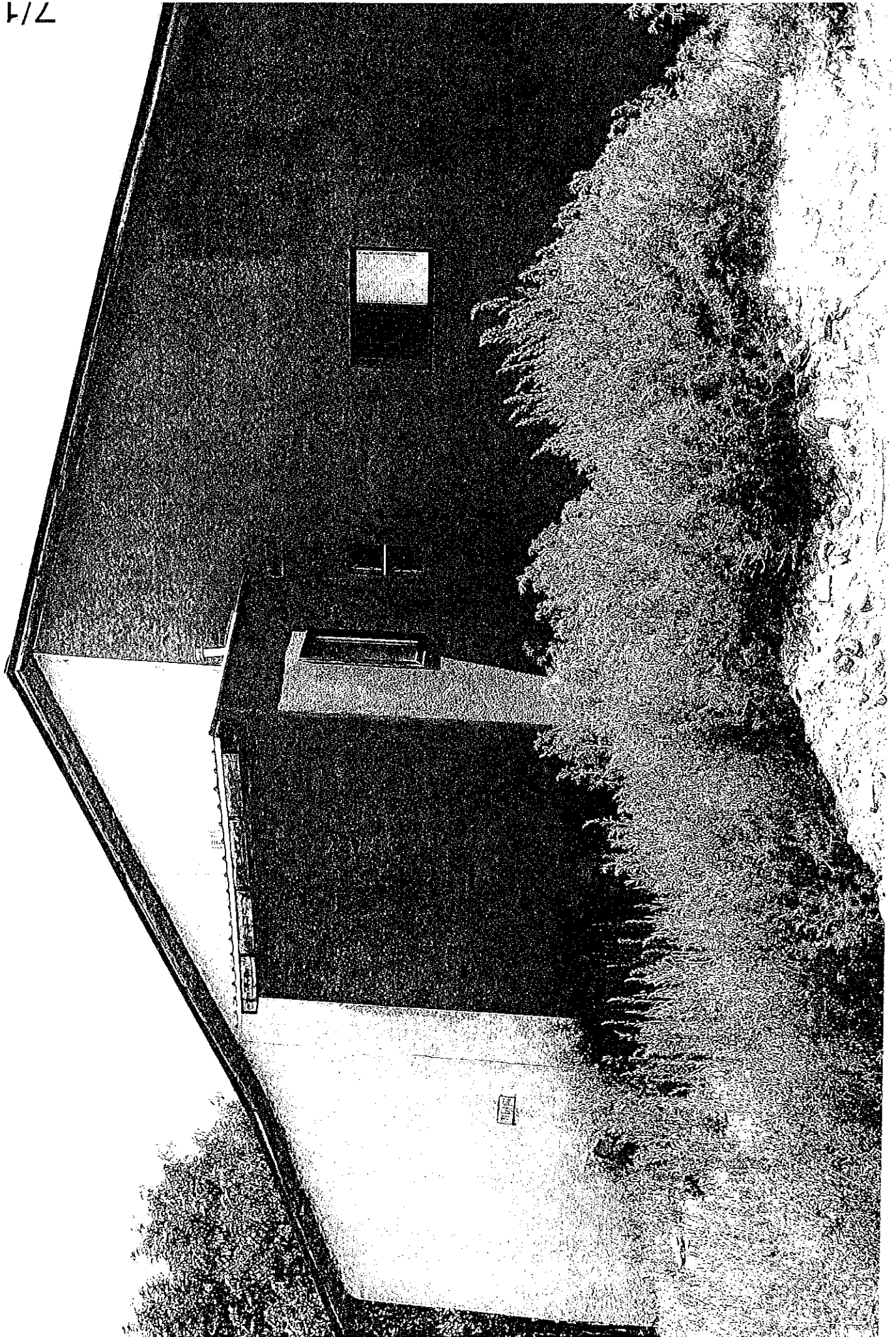
NBC-13



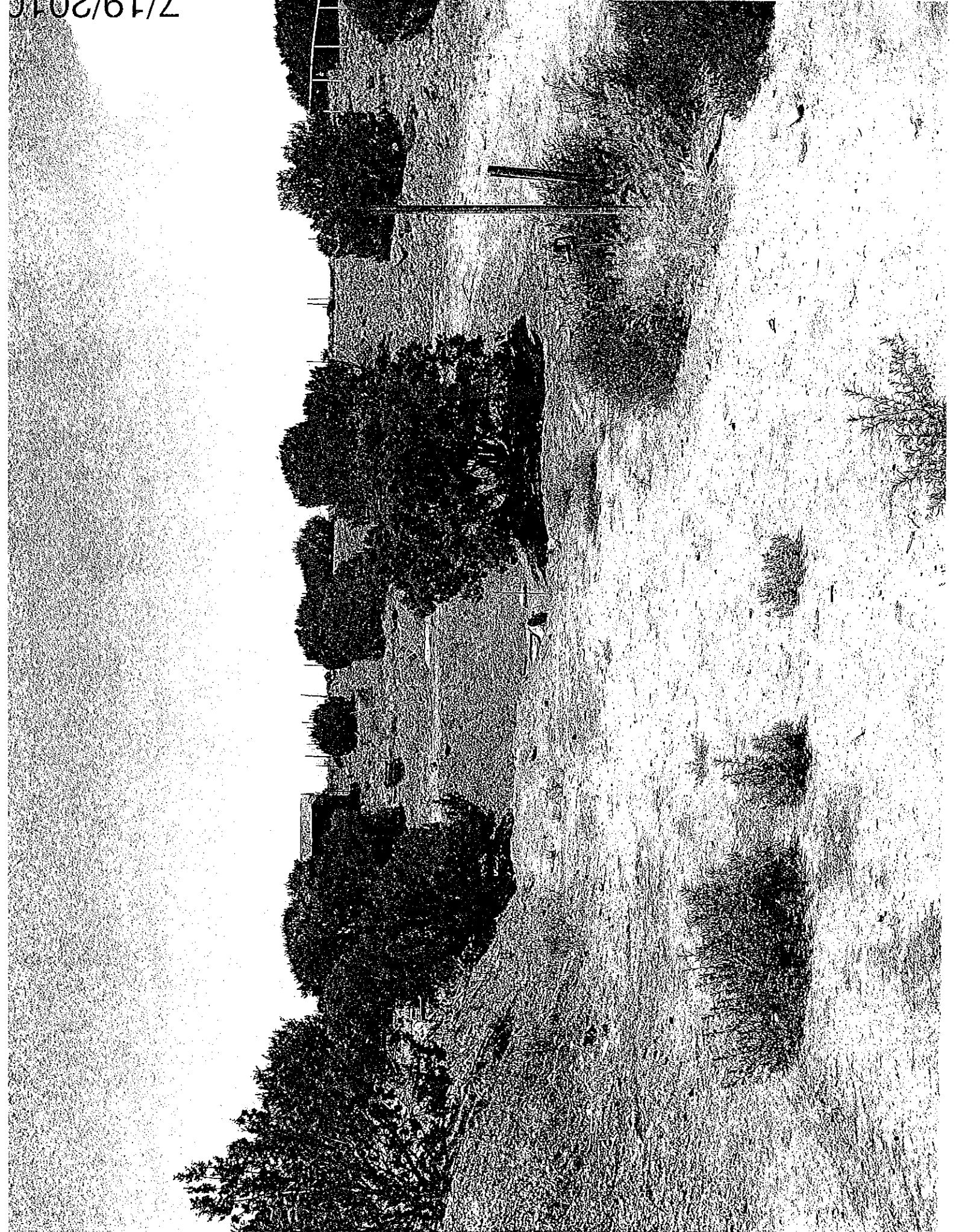
7/19/2017

NBC-19

7/19/2010



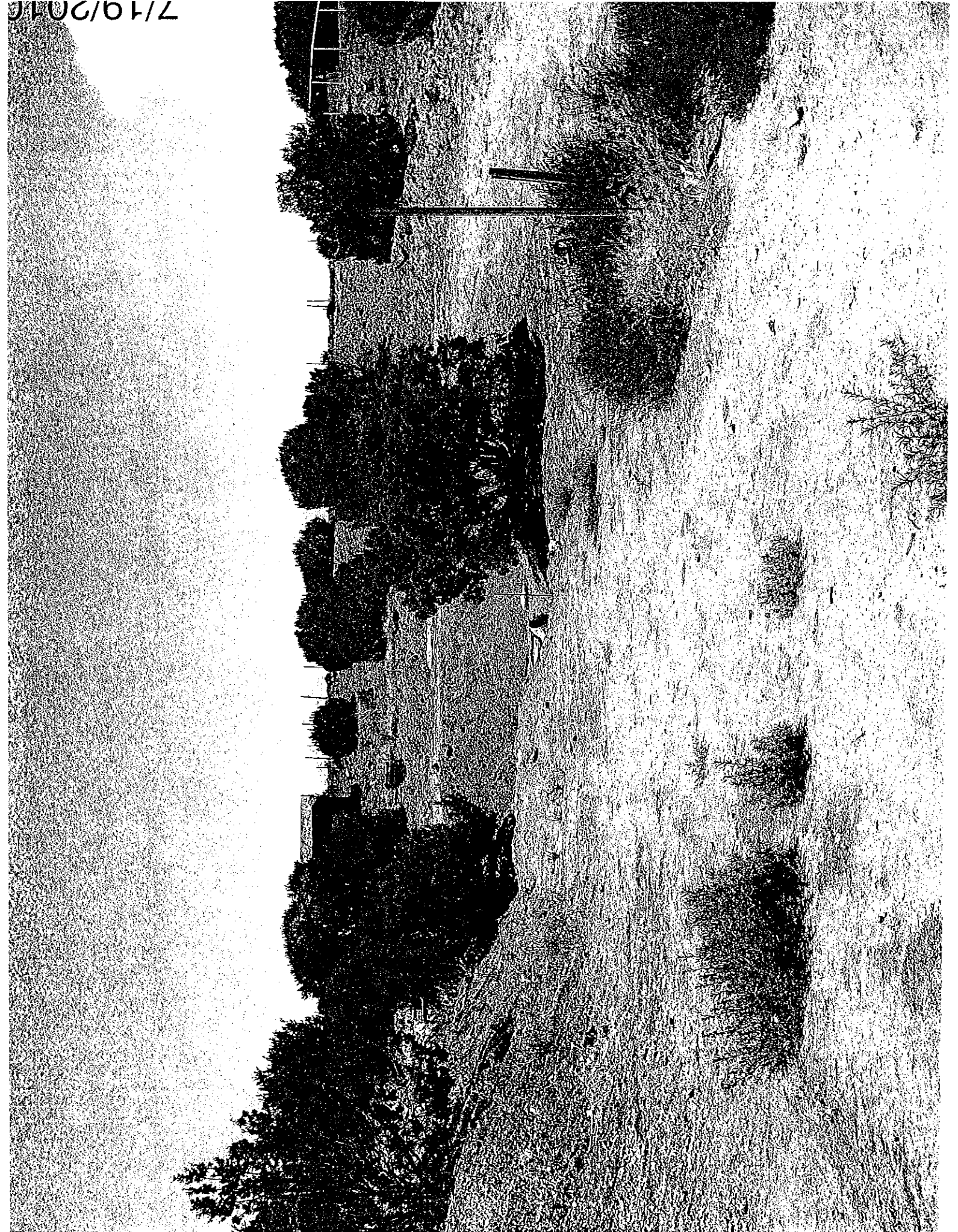
NBC-15



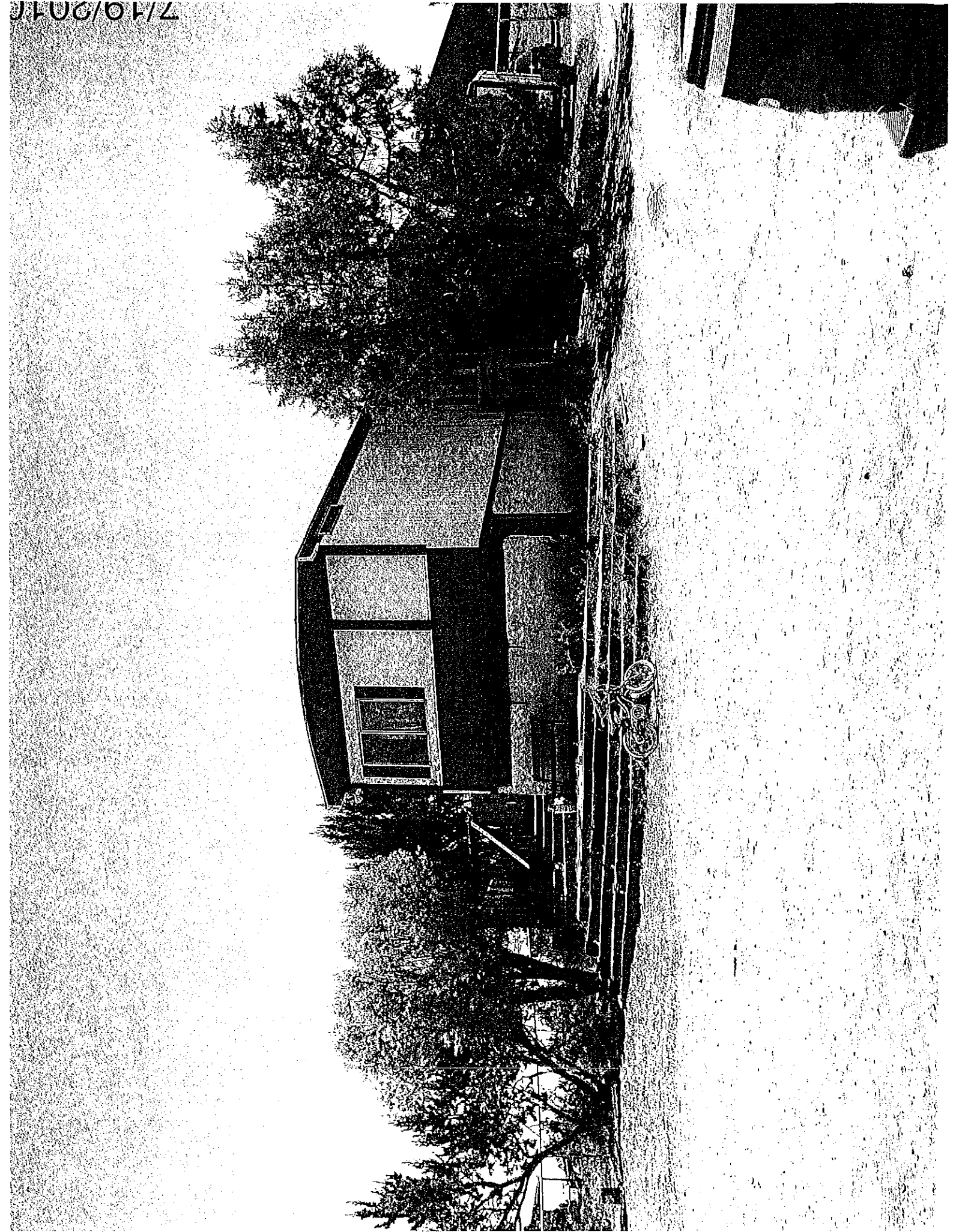
NBC-18

7/19/2016

7/19/2016



7/10/2017



NBC-18





7/4/04/2

180-19



NBC-20

Sent Cart  
7/21/10



NOTICE OF VIOLATION

THIS BUILDING AND OR PROPERTY HAS BEEN INSPECTED AND IS IN VIOLATION OF SANTA FE COUNTY ORDINANCE:

LAND DEVELOPMENT CODE

UNPERMITTED DEVELOPMENT  
1996-10 ART. 2 SEC. 2

JUNK VEHICLES  
1993-6 ART. 2 SEC 2

ANTI-LITTER  
1993-11

TERRAIN MANAGEMENT  
1996-10 ART. 7 SEC. 3

OTHER Exceeding Density  
1996-10 Art 2 Sec 10

BUSINESS REGISTRATION  
1992-3

LIGHTING ORDINANCE  
1996-10 ART. 3 SEC. 4

RV ORDINANCE  
1996-11

PUBLIC NUISANCE  
2009-11

OTHER

YOU HAVE (5) FIVE WORKING DAYS TO CONTACT THE COUNTY AND MAKE ARRANGEMENTS TO CORRECT THE VIOLATION OR LEGAL ACTION WILL BE NECESSARY.  STOP WORK ORDER

PERSON/LOCATION: Juan Lopez. 31-Cerro Del Alamo

COMMENTS: PROPERTY OWNER CANNOT CONVERT GARAGE INTO A 3 APARTMENT COMPLEX - PROPERTY IS ZONED FOR A SINGLE FAMILY RESIDENCE - CONTACT ME ASAP!

DATE: 7/21/10

INSPECTOR: Rick Lopez 9186 6072

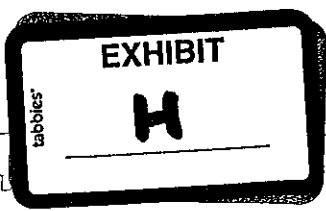
TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
  - 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
  - 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.
- History: 1980 Comp. 1980-6. Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

**SECTION 10 - LOT SIZE REQUIREMENTS**

**10.1 Relationship of Lot Sizes to Water Policies**

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Ycar) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

#### 10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure of the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units; devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report. See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:  
14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:  
1 acre - Where community water or community liquid waste disposal systems are utilized.  
.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

## SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.



## 11.2 Criteria

The following criteria may be used to determine the density of a development which imports water:

- 11.2.1 Traffic Generation. The amount of traffic generated by the proposed activity shall not at any time impede traffic flow, cause a public road to operate at over capacity, nor contribute to excessive air pollution. The Code Administrator may refer an application to the New Mexico Environmental Improvement Division for their comments on the impact of additional development upon air quality.
- 11.2.2 Energy Consumption. Proposed development which is not near employment or shopping facilities shall serve to minimize commuting and shopping trips by such methods as reducing density, provision of employment and shopping in the proposed development, and provision of mass transit facilities.
- 11.2.3 Provision by Local Government of Public Facilities and Services. The proposed development shall not cause undue burden to the local government in the provision of public facilities and services.
- 11.2.4 Compatibility with Adjoining Residences. The proposed development shall be of a character and density that will not be intrusive to the adjoining residential areas as they now exist or may develop as permitted by the Development Code. The development:
- a. Shall correlate with the residential life style of adjoining residences as expressed in intensity of use and size of structures;
  - b. Shall provide a sense of the open space of rural areas that corresponds to adjoining locations; and
  - c. Shall generate corresponding amounts of vehicular traffic.

### 2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

### 2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

### 2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

## SECTION 3 - VARIANCES

### 3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

### 3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

### 3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

### 3.4 Height Variance in Airport Zones

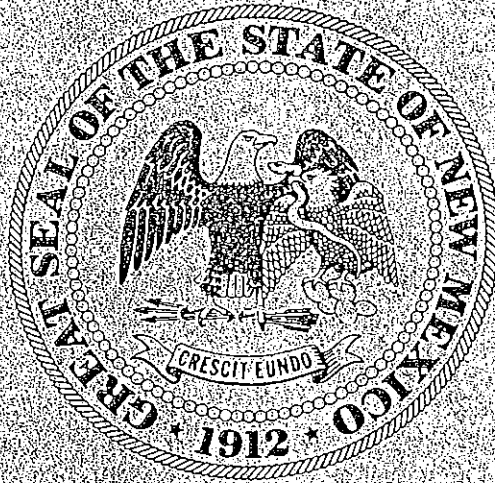
All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the

EXHIBIT

I

NRC 428

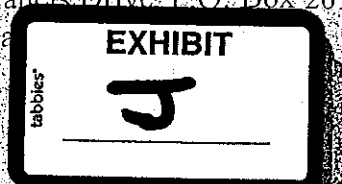
II - 9



Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC  
Liquid Waste Treatment and Disposal Fees Regulations, 20.7.11 NMAC  
Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to 74-1-16  
Department of Environment Act, NMSA 1978, Sections 9-7A-1 to 9-7A-15

April, 2007

New Mexico Environmental Improvement Board  
1190 St. Francis Drive, P.O. Box 26110  
Santa Fe, NM 87505



NBC 28

A. The requirements of this section apply to all conventional treatment systems that discharge to the soil. Compliance with the requirements of this section shall be based on the total design flow for the lot. Water conservation devices or demonstrated actual flows shall not be used to reduce the requirements of this section. For the purposes of 20.7.3 NMAC, lot sizes shall be calculated to the nearest hundredth (0.01) acre.

B. The date of record for a lot shall be considered to be either:

(1) the date of legal recording in the county clerk's office or validation by other means associated with the most recent change in lot size or boundaries; or

(2) for those lots in subdivisions having received final approval from governments having jurisdiction therein prior to February 1, 1990, such date of record shall be two and one-half (2 1/2) years from the date of final government approval or July 1, 1992, whichever occurs first.

C. A conventional treatment system shall not be installed on a lot sized smaller than 0.75 acre, where there is not an established on-site liquid waste system, except as otherwise provided in Subsection F of 20.7.3.301 NMAC. The size of a lot shall be the total area of the lot less any area that is subject to a roadway, roadway easement and liquid waste disposal easements granted to or by another lot. The design flow for a conventional treatment system shall not exceed 500 gallons per day per acre. For total design flows that exceed the allowable flow or for lots that do not meet the minimum lot size, the total nitrogen discharged to the lot shall be reduced in accordance with Subsection B of 20.7.3.603 NMAC.

D. On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the lot size requirements of the regulations in effect at the time of their initial installation or if there has been a permitted modification, the regulations in effect at the time of the most recent prior permitted modification.

E. Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems for lots with a date of record of February 1, 1990 or later.

Table 301.1

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE (acres)
375 or less	0.75
450	0.90
600	1.20
750	1.50
1125	2.25
1500	3.00
1875	3.75
2000	4.00

→ 3 - bedrooms  
 → 4 bedrooms  
 → 5 bedrooms  
 → 6  
 → 7  
 → 8  
 → 9  
 → 10

F. On-site liquid waste systems installed after the effective date of these regulations, on lots with dates of record prior to February 1, 1990, without established on-site liquid waste systems, shall conform to the following:

(1) for lots less than 0.5 acre, no conventional systems shall be authorized;

(2) for lots 0.5 acre to 0.75 acre and 100 feet or less to groundwater or within a 200 foot radius of a public water supply well, no conventional systems shall be authorized;

(3) for lots 0.5 acre to 0.75 acre with a private well, not within a 200 foot radius of a public supply well and 101 feet to 600 feet to groundwater, the total design flow shall not exceed 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater, for 3 years after the effective date of these regulations;

(4) for lots 0.5 acre to 0.75 acre on a public water system, not within a 200 foot radius of a public supply well and 101 feet to 600 feet to groundwater, the total design flow shall not exceed 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater, for 5 years after the effective date of these regulations;

(5) for lots 0.5 acre or larger and greater than 600 feet to groundwater, 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater is allowed; and

(6) once the extended time periods in Paragraphs (3) and (4) of this subsection have expired, then the lot size/flow limitation in Subsection C of 20.7.3.301 NMAC shall apply to new installations.

**La Cienega Valley Association**  
PO Box 23947  
Santa Fe, New Mexico 87502  
**Preserving Our Rural Way of Life**

January 18, 2011

Santa Fe County Development Review Committee  
Land Use Department  
102 Grant Avenue  
Santa Fe, New Mexico 87501

Dear CDRC Members,

The La Cienega Valley Association (LCVA) is aware of a variance request by Juan Lozoya regarding minimum lot size requirements of Article III, Section 10 of the Land Development Code at 31 Cerro de Alamo in La Cienega, to allow four lots or dwelling units on 1.25 acres of a land.

The LCVA opposes the variance request. The request enormously exceeds the minimum lot size of 2.5 acres per dwelling unit in the basin zone of our community and is therefore in conflict with our existing ordinances. The variance request does not consider that the legally required water limitation for the proposed variance would limit available water for each dwelling unit to .06 acre feet or 20,300 gallons per year, in accordance with a previously approved family transfer on this property. The request also shows a lack of understanding of the complications and probable environmental repercussions of effluent discharge from the equivalent of four septic tanks in such a small confined area.

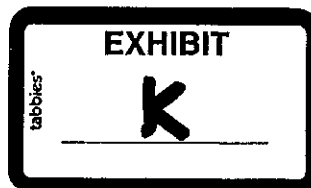
The LCVA does not oppose family lot splits that conform to established ordinances and requirements, as happened previously on the property in question, allowing it to be half the size of a minimum lot. This variance request is not of that nature, but instead is asking to greatly reduce minimum lot standards for the purpose of allowing for apartments in an area that is not zoned for that use.

Granting this variance request would set a precedence that would have long-term, adverse effects on our community's responsible planning efforts and existing ordinances, as well as having a detrimental impact on the adjoining properties who are respecting county ordinances.

The LCVA respectfully asks that you deny the variance request.

Thank you.

Carl Dickens, President  
La Cienega Valley Association



NBC-31

**John M. Salazar**

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**From:** Lorrie O [lorrie\_o@yahoo.com]  
**Sent:** Wednesday, February 09, 2011 1:38 PM  
**To:** John M. Salazar  
**Cc:** Paula Sanchez  
**Subject:** Att Land Use Admin: John Salazar: #v10-5560

To John<

**I am resending this letter of complaint against my neighbors proposition for code variance #v10-5560 to add 4 individual housing units to his 1.25 lot behind my house. Again, his lot shares a well with 4 existing lots -including my lot- and is zoned for only one home on his lot. Please read the letter below explaining the problem. I will be at the Co Commission meeting 2-17-11 4:00 for this issue. Thank you,**

**Lorrie Ogren MA, LPCC  
33 Cerro del Alamo,  
Santa Fe, NM 87507**

**From:** Lorrie O <lorrie\_o@yahoo.com>  
**To:** JMSalazar@SantaFeCounty.org  
**Cc:** Paulasan@co.santa-fe.nm.us  
**Sent:** Wed, January 12, 2011 10:31:39 AM  
**Subject:** Att: Land Use Admin Via John Salazar

To John Salazar and whom it may concern,

In reference to # v10-5560 and our phone conversation on 1-12-2011,  
I am writing to protest the proposed building request of my neighbor  
Juan Lazoya at 31 Cerro del Alamo, Santa Fe, NM 87507

to gain permission for four additional (existing) individual housing units on his property, which are all only accessible by driving through an easement on the eastern side of my property at 33 Cerro del Alamo, Santa Fe, NM 87507.

I am in absolute opposition to Mr Lazoya using the land for the additional 4 housing units for the following reasons:

- 1) He has apparently already done the proposed building of converted an existing garage into many apartment living units and rented them out as I have seen the traffic/ noise levelson my easement greatly increase these last years. This began after Mr Lazoya did extensive remodeling when he first purchased the land. There are clearly many more people beyond one family living there, with many more trucks and cars.
- 2) The well on his property is legally shared by 4 lots: his lot, my lot, and two other neighbors. His lot is zoned for water use for a single family unit only, as is mine and all of those who share the well. Im sure that so many people living on his one lot far exceeds the capacity and legal use of the well and probably the septic systems as well.
- 3) I live in that area for peace and quiet; there is now heavy traffic on my easement at all hours of the day and night with cars blasting thumping bass music at odd hours, the additional dust, continual beer cans and trash thrown out of cars driving through my property. In addition there are frequent disturbances coming from these apartments: My other neighbors and I have had to call the sheriff out to these apatments many times this last year, including 3 weeks ago due a loud domestic dispute, (late night screaming, fighting), an a incident-apparent drug bust- with multiple police cars last year in which people were arrested, frequent yelling and blasting loud music waking up the neighborhood at all hours- during the warm months they often set up loud speakers in the yard blasting music for parties till very late at night on the lot in question. All this is disturbance is coming from

Mr Lazoyas property since he apparently started renting out these apartment units.

Mr Lazoyas proposal to request 4 additional individual housing units is a mute point as he has already (apparently) built and rented them out; These apartments are already having a very negative effect on safety and peace of the whole neighborhood. I request that Mr Lazoyas be required to dismantle these apartment units as they are illegal, disrespectful to the safety and peace of the neighborhood, and against all neighborhood codes.

*Thank you,*

*Lorrie Ogren MA, LPCC*

*Owner of lot # 33 Cerro Del Alamo, Santa Fe, NM 87507*

*505-795-0468*

----- Forwarded Message -----

**From:** Suzanne <suzanne@gallerysantafe.com>

**To:** Lorrie O <lorrie\_o@yahoo.com>

**Sent:** Tue, February 8, 2011 5:46:53 PM

**Subject:** RE: neighbor

Bob called the county land use manager and they are only looking at the variance for amount of people living in the compound. The county manager was surprised to learn that there is a shared well – as well. He wanted info on that before the meeting... here is his email if you would like to chime in...jmsalazar@santafecounty.org Bob is busy composing a letter... he is a legislative representative for the Bernalillo AKC people so he is accustomed to the lingo needed. See you at the meeting...

- -----Original Message-----

**From:** Lorrie O [mailto:lorrie\_o@yahoo.com]

**Sent:** Monday, February 07, 2011 8:00 PM

**To:** Suzanne

**Subject:** Re: neighbor

Suzanne,

I dont know where the owner lives, and have not met him. guess we'll met him at the land use meeting ...an unfortunate way to meet ones neighbor.

~Lorrie

**From:** Suzanne <suzanne@gallerysantafe.com>

**To:** lorrie\_o@yahoo.com

**Sent:** Sun, February 6, 2011 9:51:35 AM

**Subject:** RE:

We went up yesterday but only found one young man to talk to. I don't speak enough Spanish to communicate with him so we could not get anywhere. Does the owner actually live close by? Sure is an interesting compound up there...

-----Original Message-----

**From:** lorrie\_o@yahoo.com [mailto:lorrie\_o@yahoo.com]

**Sent:** Friday, February 04, 2011 9:24 PM

**To:** Suzanne

**Subject:** Re:

Thanks for checking in, I appreciate that. Looks like its running again. Hope to See you at land use meeting. How are you liking your new house?

Sent from my BlackBerry® smartphone, powered by CREDO Mobile.

**From:** "Suzanne" <suzanne@galleriesantafe.com>

**Date:** Fri, 4 Feb 2011 20:11:41 -0700

**To:** <lorrie\_o@yahoo.com>

**Subject:**

Hi Lorrie,

Greetings neighbor! Thought I would drop you an email in case you hear any news about our water. Bob decided to wait until the morning to investigate...  
407-1036 or 690-1160

Warm regards,  
Suzanne and Bob

Don't be flakey. Get Yahoo! Mail for Mobile and always stay connected to friends.

NBC-34



John M. Salazar

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From: Suzanne [suzanne@gallerysantafe.com]  
Sent: Tuesday, February 15, 2011 8:44 PM  
To: John M. Salazar  
Subject: CDRC case #V10-5567

Dear CDRC members,

As the property owner of 35 Cerro Del Alamo, I am concerned about the subject case as relates to 31 Cerro Del Alamo. While I am a strong proponent of an individual's rights relative to property use, I believe it should be in harmony with adjacent and neighboring properties. The proposed variance to allow 4 dwelling units at 31 Cerro Del Alamo is not in keeping with appropriate property use. Having just purchased this property in October, I was assured that there were three families sharing the well under the care of Juan Lozoya. This included myself, our neighbor at 33 Cerro Del Alamo and Mr. Lozoya. It has come to my attention that this is not the case and the property at 31 Cerro Del Alamo currently has 4 dwelling units, bringing the number of families on the shared well to 6. Obviously, I have concerns about the condition and the viability of the shared well and the impact of septic waste and basic over use of limited resources. On this basis, I respectfully request the CDRC reject this zoning variance and require Mr. Lozoya to return the property to its original approved usage. Thank you for your time and consideration.

Warm Regards,

Suzanne Chavez  
35 Cerro Del Alamo  
La Cienega, NM 87507

NBC-25

V. APPROVAL OF MINUTES

**February 17, 2011 - Special Meeting**

Upon motion by Member Gonzales and second by Member Martin, the minutes of the February 17, 2011 special meeting were unanimously approved.

**February 17, 2011 - Regular Meeting**

Member Pato moved to approve the minute as presented. Member Martin seconded, and the minutes of the February 17, 2011 regular meeting were unanimously approved.

The applicant for the only case on the agenda was not yet present. John Michael Salazar, case manager, said he talked to the applicant earlier and advised him that if he did not appear, his case would be removed from the agenda and the County would proceed with court action. Awaiting his arrival, the Committee recessed for 10 minutes.

VI. NEW BUSINESS

- C. CDRC CASE # V 10-5560 Juan Lozoya Variance. Juan Lozoya, Applicant, requests a variance of Article III, Section 10 (Lot size Requirements) of the Land Development Code to allow four dwelling units on 1.24 acres. The property is located at 31 Cerro del Alamo, within Section 28, Township 16 North, Range 8 East

John Michael Salazar, case manager, read the caption and staff report as follows:

“The Applicant received a Notice of Violation from County Code Enforcement on July 21, 2010 on a received complaint for exceeding density and unpermitted development.

“The subject property was created through a small-lot family transfer and is under a .25 acre-foot per year water restriction which is sufficient for a family of four and could not sustain three additional dwelling units. No meter readings have been submitted to the Land Use Administrator since the lot was created so it is uncertain at this time how much water is actually being used on the property. Code Enforcement checked and this no water meter on the property.

“The Applicant states that he bought the property in its current state with a three-unit apartment building and a single-wide mobile home. All four units are currently rented and the Applicant states that he needs the income at this time. Staff has researched the property and found that it was originally owned by the Applicant’s brother. The prior owner applied for and received a development permit for a garage in 1998. The permitted garage has since been remodeled into a three-unit apartment building consisting of one one-bedroom unit and two two-bedroom units. All three units have a kitchen, a bathroom and share a laundry facility accessed from the outside. All facilities are currently served by a single conventional septic system. Code Enforcement has been working with NMED because the septic system has become saturated.



“The minimum lot size required for a conventional septic system is 0.75 acres for a three-bedroom home. The lot size minimum increases with each additional bedroom. The State Environment Department has specific regulations regarding maximum design flow based on parcel size; NMED has indicated that the maximum number of bedrooms that could be allowed on a 1.25-acre parcel is five. More than five bedrooms might not be permitted by the NMED, and the Applicant is herein advised that an advanced liquid waste treatment system might be required, dependant on the number of bedrooms present, and the number proposed. Permitting of the liquid waste disposal is through NMED and must be addressed prior to application for a County Development Permit.”

Mr. Salazar reviewed Code Article III, Section 10, addressing maximum allowable lot size within the Basin Hydrologic Zone which is 2.5 acres per dwelling. The 1997 small-lot family transfer permitted the 1.25-acre lot. Article II, Section 3 regarding variances was outlined by Mr. Salazar indicating that in no event shall a variance, modification or waiver be recommended by a DRC if by doing so the purpose of the Code is nullified.

Mr. Salazar said County staff is recommending denial of this case based on lot size: the subject property is restricted to .25 acre-feet per year which cannot sustain four dwelling units, and there is not enough acreage to sustain septic systems that are required for each dwelling unit. He noted that this property is not within a commercial node and cannot be rezoned for apartments.

Mr. Salazar confirmed that the property was zoned residential.

Member Pato asked whether the conversion from garage to living unit underwent inspections, i.e., electrical, plumbing, structural. Mr. Salazar said the State CID inspected the structure as a garage. Plumbing and electric were not inspected by CID or County staff. He explained that with only three code enforcement officers, the County usually learns of unpermitted development when a complaint is filed.

Member Pato said the health and safety issues within this unpermitted development caused him concern.

There were no further questions and the applicant was invited forward.

Duly sworn, Juan Lozoya, 31 Cerro del Alamo, Santa Fe, stood for questions.

Member Katz asked when the garage was converted into apartments, whom he purchased the property from and whether he assisted in converting the garage. Mr. Lozoya estimated the conversion occurred three years ago, more than two years before he purchased the property from his brother and that he did not participate in the conversion. He offered that his brother was unable to take care of the property so he purchased it from his brother who has diabetes.

Duly sworn, Lorrie Ogan, 33 Cerro del Alamo, said she lives kitty-corner to Mr. Lozoya's property and is one of four lots that share a well with Mr. Lozoya. Per the well agreement, each lot is allowed one family unit to share in the well. She pointed out that the applicant has four units using his one share of the well.

Ms. Ogan said she knew the applicant's brother and apologized for having to refute the Applicant's statement but the conversion were made after the Applicant purchased the property. She said all traffic to the Applicant's property must cross her easement and that has caused a great deal of noise and trash. The police have been called four times in the past year because of loud music.

Ms. Ogan said the septic system is uphill from her lot and this concerns her. She indicated that her neighborhood is not conducive to an apartment complex. "It's a very quiet and very peaceful La Cienega neighborhood."

Under oath, Susan Chavez, a resident of 35 Cerro del Alamo said her property is situated below the Applicant and she was concerned about the saturated septic system. She identified herself as one of the four lots sharing a well and that situation greatly concerned her.

Ms. Chavez said she was concerned about the health and safety of the people living in the unpermitted structure. Acknowledging it is hard to find housing, Ms. Chavez said granting this variance would set a precedent for the entire area to place four units on 1.25 acres. She urged the CDRC to oppose the request.

Bob Young, duly sworn, also a resident of 35 Cerro del Alamo said the density, septic system, and condition of the shared well are of great concern to him. Recognizing there are appropriate times to ask for forgiveness rather than permission, Mr. Young said this is not one of those times.

Duly sworn, David Watson, 2 Caminito Vigil, stated that in the past three years since the Applicant has had the property there has been an increase in noise. He mentioned a party of 150 people and rumor of a drug bust on the property.

Mr. Watson pointed out that that the Applicant has been making money on these illegal apartments for the past three years and "it has to stop...The authority needs to do what it needs to do to make this right."

Chair DeAnda invited the Applicant to make closing comments, he declined and the public input was concluded.

**Member Pato moved to deny case #V 10-5560. His motion was seconded by Member Martin.**

Member Anaya asked how many people were residing in the apartments. Mr. Salazar said he didn't have a count but including the three-bedroom trailer there are eight bedrooms on the property.

The motion to deny the application passed by unanimous [7-0] voice vote.

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR TRACT**

THIS DECLARATION is made in Santa Fe, New Mexico, this 18th day of July, 1997 by Elaine Gilmartin hereinafter for convenience referred to as the "Owner(s)".

WITNESSED THAT:

WHEREAS, Elaine Gilmartin is the owner of real property in Santa Fe County, New Mexico, which property includes Lot 1A containing 1.25 acres and Lot 1B containing 1.79 acres, more or less, according to the Plat of Survey entitled Elaine Gilmartin referred to hereinafter at Article I; and

WHEREAS, the Owners desire to provide for certain water conserving covenants and measures to preserve and maintain the single-family residential character and value of the property; and

WHEREAS, the Owners desire and intend that the owners, tenants, mortgagees, occupants and other persons hereinafter acquiring any interest in said property shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan for the proper and beneficial use of the property.

NOW THEREFORE, the Owners declare, covenant, and agree as follows:

**ARTICLE I**

**Property Subject to this Declaration**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is legally described as Lots 1A and 1B containing a combined total of 3.04 acres, more or less, in Section 28, Township 16 North, Range 8 East, N.M.P.M., Santa Fe County, New Mexico, according to the Plat of Survey for Elaine Gilmartin by Rick Chatoop, N.M.L.S. #11011, dated April 1, 1997, recorded Aug. 13, 1997, under reception No. 993, 161, Plat Book 369, Page 9-10, in the records of Santa Fe County, New Mexico (the "Plat").

**ARTICLE II**

**Water Restrictive Covenants**

The following water restrictive covenants shall apply to the use and occupancy of Lots 1A and 1B on the plat.

(A) Domestic water use is restricted to .25 acre-feet per year for Lots 1A and 1B as required by the Santa Fe County Land Development Code.

(B) Water conserving appliances shall be installed and used at the time of construction or replacement of appliances.

(C) Toilets shall be of a type designed for use of no more than 1.6 gallons per flush.

(D) Bathtubs and lavatory fixtures shall be fitted with faucets with a maximum capacity of 2.5 gallons per minute. Shower heads shall have a capacity of no more than 2.5 gallons per minute.

(E) Hot water pipes shall be insulated.



(F) Evaporative coolers must circulate bleed-off water.

(G) No more than one automatic dishwasher per dwelling may be used, provided it is a model designed to use no more than 13 gallons per cycle and it has a cycle adjustment which allows reduced amounts of water to be used for reduced loads.

(H) No more than one automatic clothes washing machine per dwelling unit may be used, provided it is a model which uses no more than 43 gallons per cycle and which has a cycle or water level adjustments which permits reduced amounts of water to be used for reduced loads.

(I) Low water use landscaping techniques applying the principles of xeriscaping shall be utilized. Drip irrigation is encouraged whenever possible. Low water use grasses, trees and shrubs may be watered as needed during the first and second years of their growth to become established. Thereafter, such vegetation shall receive only minimal water as needed by each species.

(J) Lawns of non-native grasses shall not exceed 800 square feet per parcel and shall only be watered with rain water collected by means confined to the property or with recycled household gray water. Gray water systems shall meet the requirements of the New Mexico Construction Industries Division and the Uniform Plumbing Code.

(K) Swimming pools, of a permanent or temporary nature, are not permitted. Temporary wading pools of a diameter not to exceed eight feet and a depth not to exceed one foot and covered spas are acceptable at each dwelling unit.

(L) All wells on the property shall be metered with a Santa Fe County approved meter. Meter readings shall be recorded by the property owner annually within two weeks of January 1st. Meter readings shall be provided to Santa Fe County at their request. Proof of meter installation must be submitted with a Santa Fe County Development Building Permit application.

### **ARTICLE III**

#### **General Provisions**

3.1 Duration, Covenants Running with the Land. The covenants of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

3.2 Enforcement. Enforcement of these covenants and restrictions shall be by any owner of property as shown on the Plat in any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction or to restrain any such violation. Any failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If an owner prevails in any action against any person or persons to enforce any provision hereof, the prevailing owner shall be entitled to recover from such person or persons his costs and reasonable attorneys fees.

3.3 Severability. The invalidity or unenforceability of any covenant, restriction, term or other provision hereof as determined by a court of competent jurisdiction shall not impair or adversely affect the validity or enforceability of any other covenant, restriction, term or provision hereof, which shall be and remain valid and enforceable to the fullest extent permitted by law.

3.4 Miscellaneous. This Declaration shall be governed by and interpreted under the laws of the State of New Mexico. This Declaration shall be binding upon each tract owner, his successors and assigns.

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IN WITNESS WHEREOF, the Owners have caused this Declaration to be signed as of the date first above written.

*Elaine Gilmarin*

Elaine Gilmarin

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

On this 13<sup>th</sup> day of August, 19 97, the foregoing instrument was acknowledged before me by the person(s) whose name(s) appear above.



*Marta D. Chavez*  
Notary Public

My commission expires: 12/15/97

APPROVED BY COUNTY CODE ADMINISTRATOR

*Vincent Quijano*  
VINCENT QUIJANO



993.. 162  
COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.  
I hereby certify that this instrument was filed for record on the 13 day of Aug, A.D. 19 97 at 1:12 o'clock P.m. and was duly recorded in book 1359 page 685 of the records of Santa Fe County.  
687 Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, NM  
*Rebecca Bustamante*