

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
SHANGHAI  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY

# Duane Morris®

FIRM and AFFILIATE OFFICES

MARK J. SILBERMAN  
DIRECT DIAL: +1 312 499 6713  
PERSONAL FAX: +1 312 277 6957  
E-MAIL: MJSilberman@duanemorris.com

[www.duanemorris.com](http://www.duanemorris.com)

ATLANTA  
BALTIMORE  
WILMINGTON  
MIAMI  
BOCA RATON  
PITTSBURGH  
NEWARK  
LAS VEGAS  
CHERRY HILL  
LAKE TAHOE  
MYANMAR  
OMAN

A GCC REPRESENTATIVE OFFICE  
OF DUANE MORRIS

MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO

SRI LANKA  
ALLIANCE WITH  
GOWERS INTERNATIONAL

**RECEIVED**

MAY 13 2015

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

May 12, 2015

## FEDERAL EXPRESS

Ms. Courtney Avery, Administrator  
**Health Facilities and Services Review Board**  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761

**Re: Public Comment Opposing Third Renewal Request for Project # 10-031,  
Pecatonica Pavilion**

Dear Ms. Avery:

Medina Nursing Center, Inc. ("Medina") and Alpine Fireside Health Center, Ltd. ("Alpine Fireside") object to the proposed **Third** Permit Renewal Request ("Third Renewal") related to Project # 10-031, Pecatonica Pavilion ("Project"). They respectfully request that the Health Facilities and Services Review Board ("HFSRB" or "Board") deny the renewal request.

There are four core issues with regard to the status of the Project:

1. The Project cannot exhibit the necessary due diligence because, as evinced by their own documentation, nothing has been achieved since the last permit renewal was granted;
2. There are substantial questions about the financing, including who is providing the financing and whether the Permit Holder has improperly altered the Project without Board approval;
3. It appears that over four years after approval, despite claiming to have spent over \$2,000,000, virtually nothing has been achieved regarding the establishment of the Project; and
4. There still is not a need for the Project – even less than when the Project was originally approved – which is why Medina and Alpine Fireside continue to voice their opposition to the Project.

The first issue is evident from a review of the documentation submitted by the Permit Holder, as well as the documentation not submitted. Despite being approved in March 2011, this Permit Holder has only submitted two annual reports. This is a violation of HFSRB regulations and, upon information and belief, it is our understanding that, in the interim, the Permit Holder both agreed to and failed to abide by the terms of the Consent Agreement with the Board regarding this conduct.

Regardless, even a cursory review of the two annual reports which have been filed (one in October 2013 and the other in March 2015) reveals the two documents to be virtually identical. The only new information contained in the 2015 annual report is information about the new financing arrangement the Permit Holder claims to have secured.<sup>1</sup> The 2015 report contains even less information about the costs incurred to date than does the 2013 report.

In 2013, the Permit Holder claimed to have spent nearly \$2,000,000, \$400,000 of which would be attributable to the Project. In 2015, the Permit Holder claims to only have obligated the funds necessary for the Project. The Permit Holder's own documentation calls into substantial question what, if anything, has been achieved over the last two years?

The March 2015 description of the status of the Project simply restates several of the items that were already identified as completed in the October 2013 documentation. Further, the Permit Holder is including "local public seminars and discussions about the status of the project" as progress that has been made. This is more akin to conduct that takes place prior to HFSRB approval than a status report regarding the construction of a skilled nursing facility.

### **There Are Substantial Questions About The Financing**

The status of the financing for the Project is, unusually, a secondary question (although relevant to obtaining a **third** permit renewal). The primary question is why the Permit Holder altered the Project by modifying the financing without obtaining approval from the Board?

### **Financing Timeline**

- The initial application was submitted on May 19, 2010 and proposed financing in the amount of \$18,595,253 through a "40 year nonrecourse HUD insured loan."
- The application was modified on October 18, 2014 and approved March 21, 2011 with \$16,315,713 in the form of a "HUD 30 year nonrecourse USDA loan."

---

<sup>1</sup> It is discussed more fully below that changing financing in this manner may constitute an improper alteration of the Permit.

- The Second Permit Renewal Request (“Second Renewal”) was submitted on September 27, 2013.

In the Second Renewal, the Permit Holder informed the Board that in the prior days, the Permit Holder was at a point of having to consider withdrawing the Project. However, the Permit Holder then represented that it had “spent the past few days working with its lenders and equity supporters and **has obtained the necessary commitments to continue to fund the CCRC Development (and the Modified Project) through its conclusion.**” This language would seem to suggest that the Permit Holder was working with financing other than a “HUD 30 year nonrecourse USDA loan.” Regardless, the Board approved the Second Renewal.

- The Third Request was received on March 30, 2015.

The Third Request introduces an entirely new financing structure. For the first time, there is a discussion regarding delays caused, in part, by the United States Department of Homeland Security and its administration of the EB-5 component of the Immigrant Investor Program for financing the Modified Project.

### **Improper Alteration**

The Project was approved with a “HUD 30 year nonrecourse USDA loan.” If the Permit Holder has abandoned its original source of approved financing and is now pursuing alternative financing, this constitutes an alteration of the Project and requires either Board notice or Board approval. Depending on the structure of the financing and the interest being obtained (or how it is secured), it is possible that this new financing could invalidate the permit by introducing a necessary co-applicant that was not part of the Project as approved. To date, no information has been provided to the Board and made part of the public record to explain the new financing arrangements, nor has an application to alter the Project been submitted.

### **Overall Status of the Project**

The most relevant question is the status of the nursing home that is supposedly being built in Pecatonica? It has been over four years since the Project was approved. The Permit Holder continues to argue delay caused by the administrative review case, but it has been over two years since the case was argued in the Appellate Court.

A picture is worth a thousand words, so we have attached a series of pictures (Exhibit A) that show the site (as of mid-April 2015) upon which the Permit Holder claims to have spent \$2,000,000 developing a skilled nursing facility and continuing care retirement community. Additionally included is a Google Map aerial image of the intersection (Exhibit B) simply to illustrate that the photo depicting the corner of 7<sup>th</sup> and Grove is the same intersection as Sumner

Ms. Courtney Avery, Administrator  
May 12, 2015  
Page 4

and Grove where the proposed facility is to be located. We make no representation as to the timeframe reflected in the Google image.

This Project cannot evidence the due diligence necessary to warrant a permit renewal. The Permit Holder has failed to inform the Board about the status of its financing, failed to keep the Board informed about the status of the Project, and failed to take any meaningful steps towards the construction of the Project.

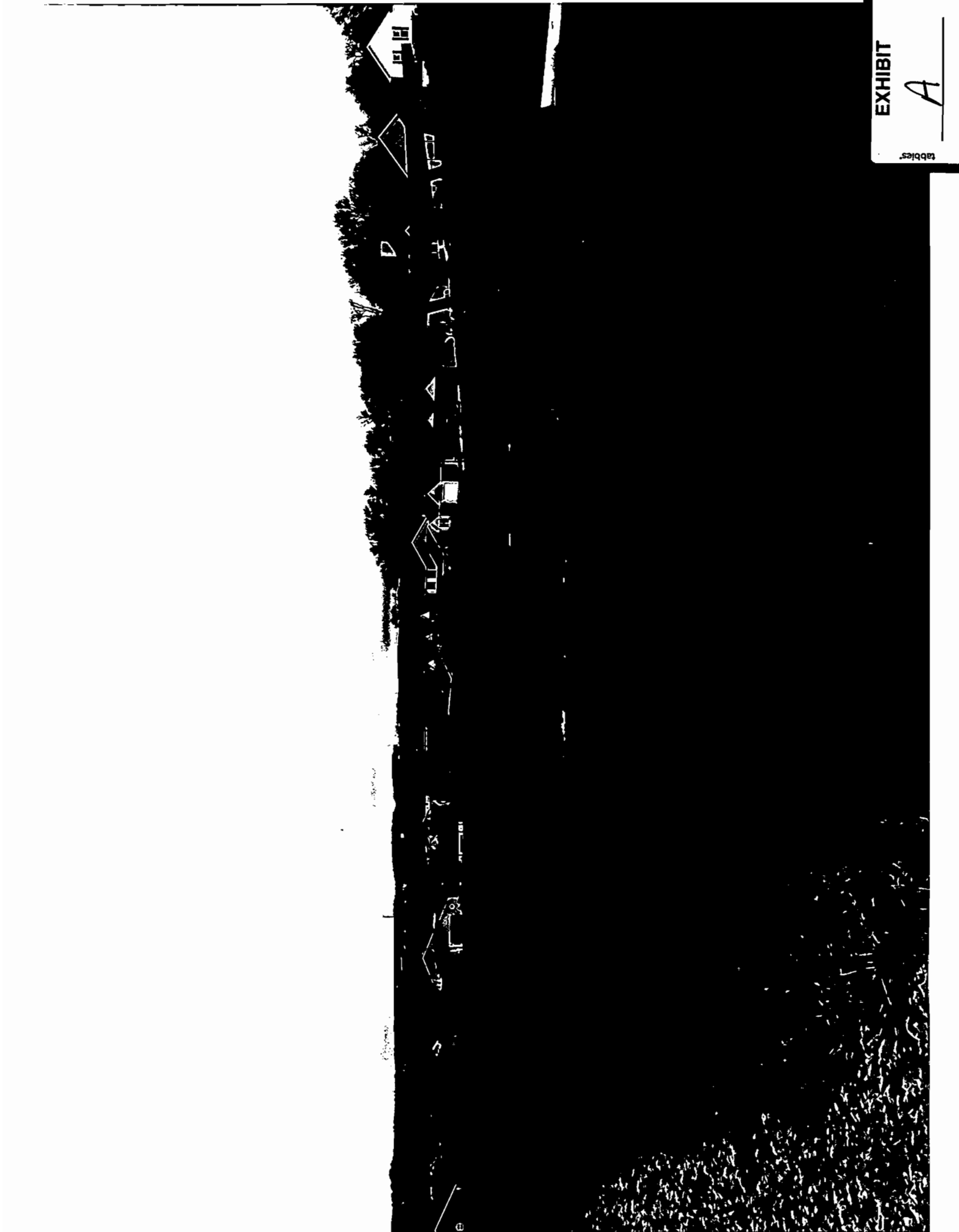
We would respectfully ask the Board to **deny the Third Permit Renewal Request** for Pecatonica Pavilion.

Best regards,

A handwritten signature in black ink, appearing to read 'Mark J. Silberman', with a large, stylized flourish at the end.

Mark J. Silberman

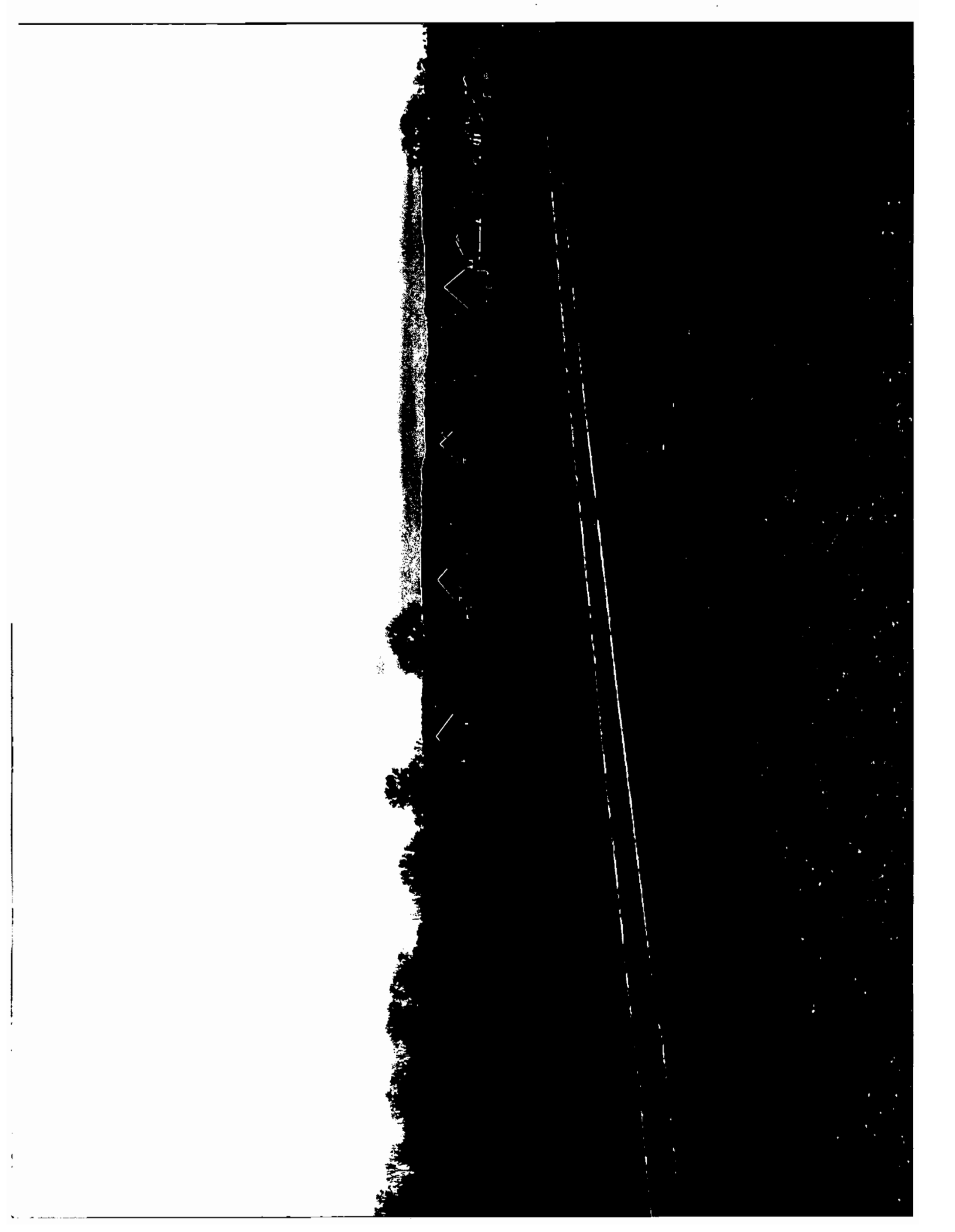
MJS

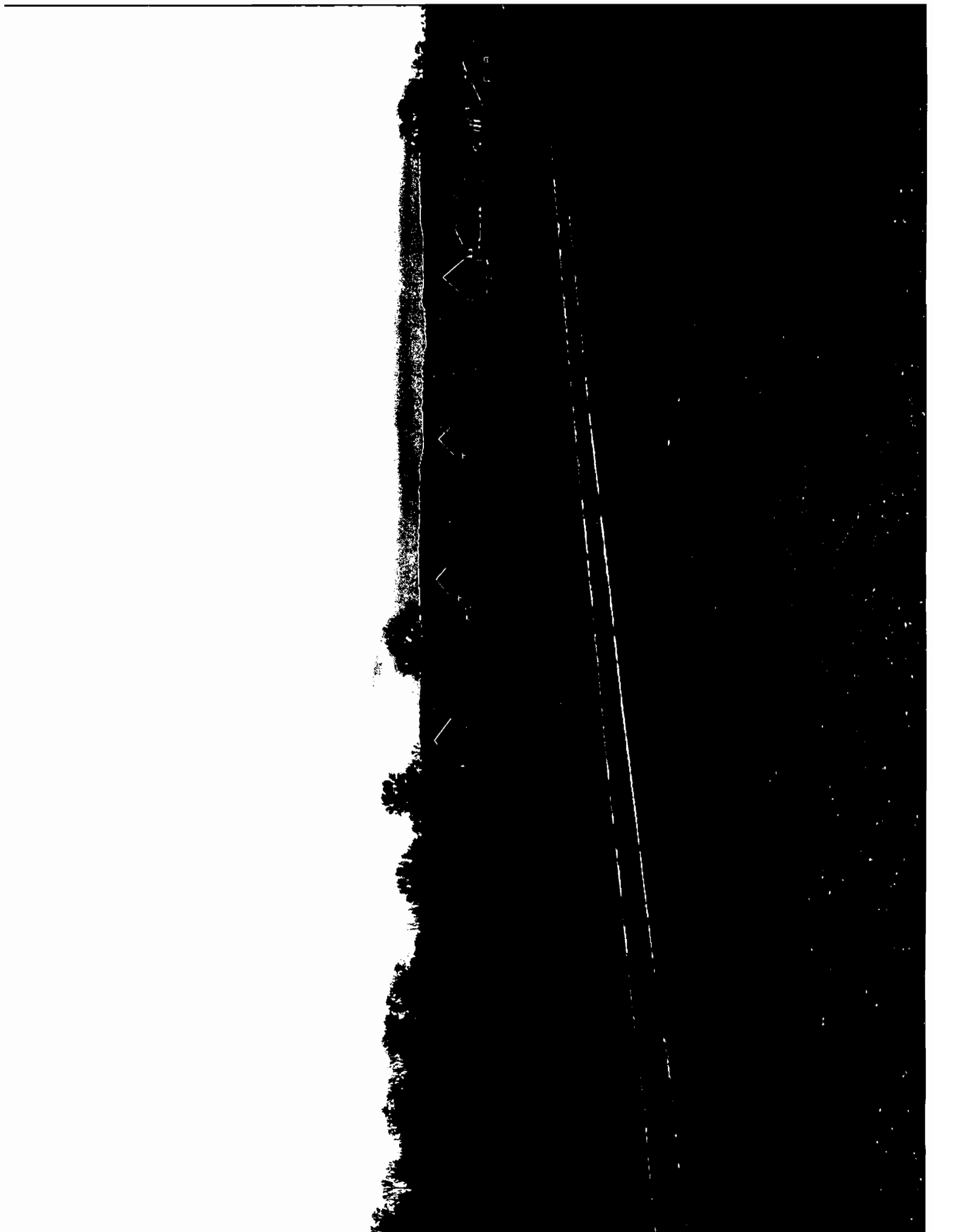


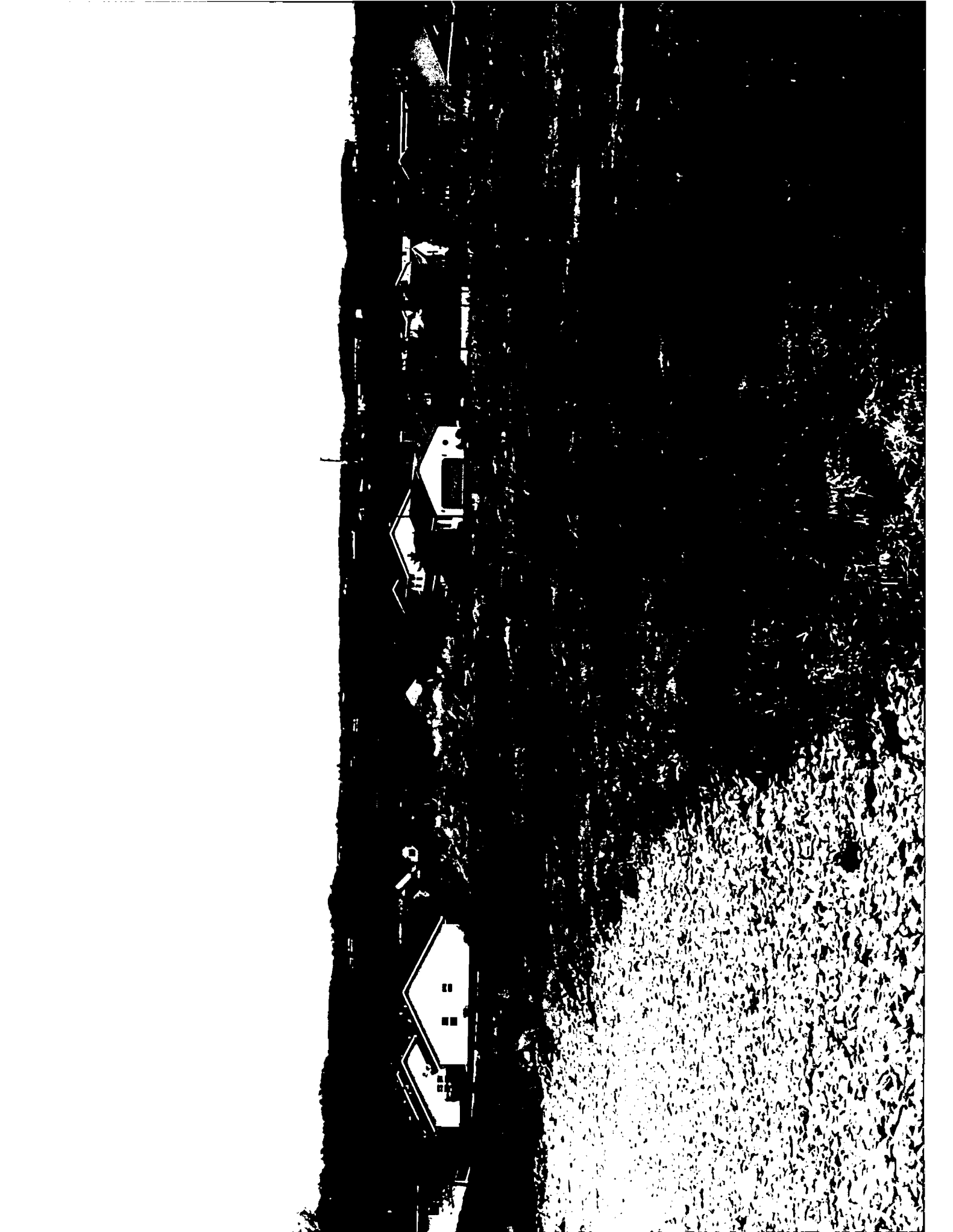
EXHIBIT

A

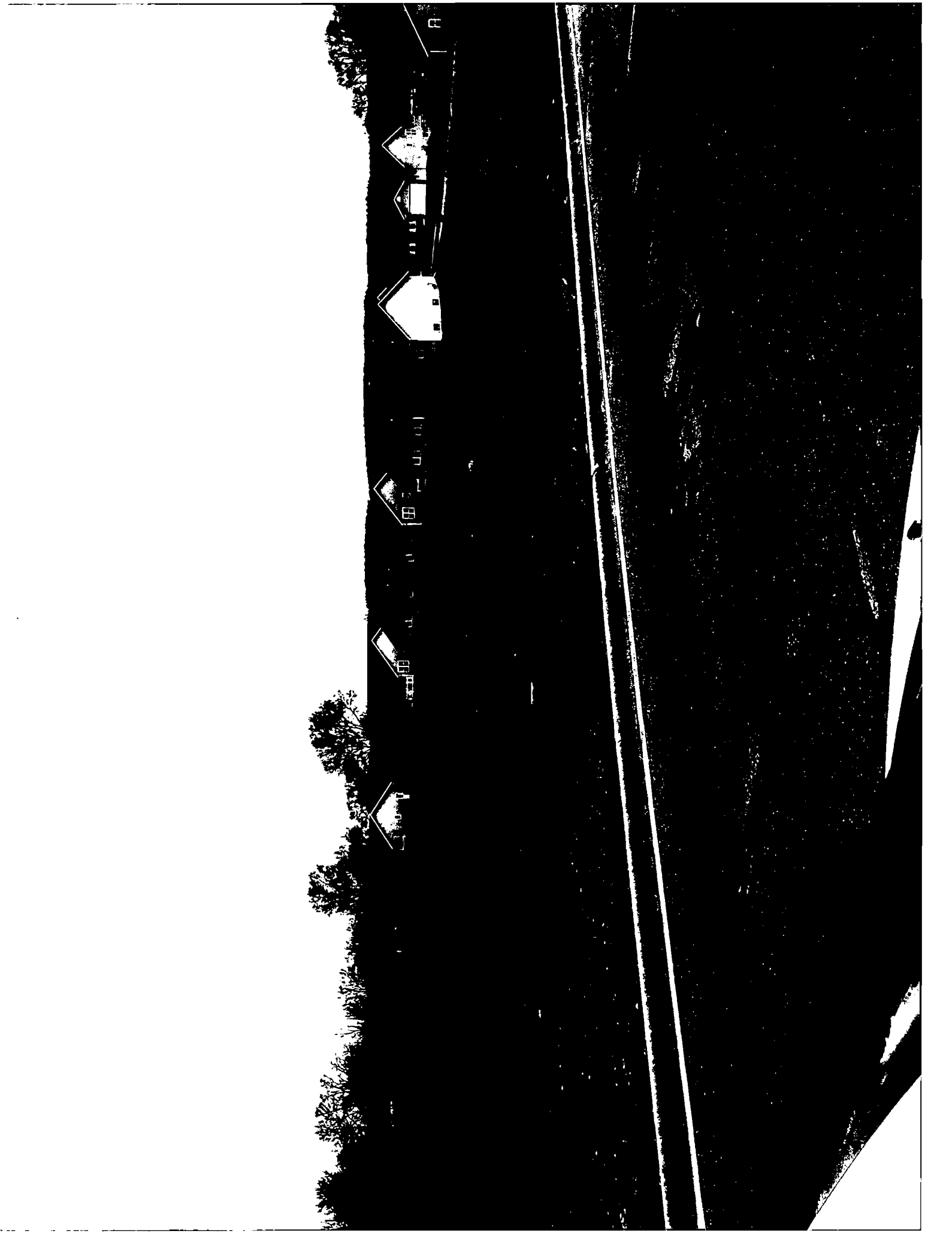
tabbles



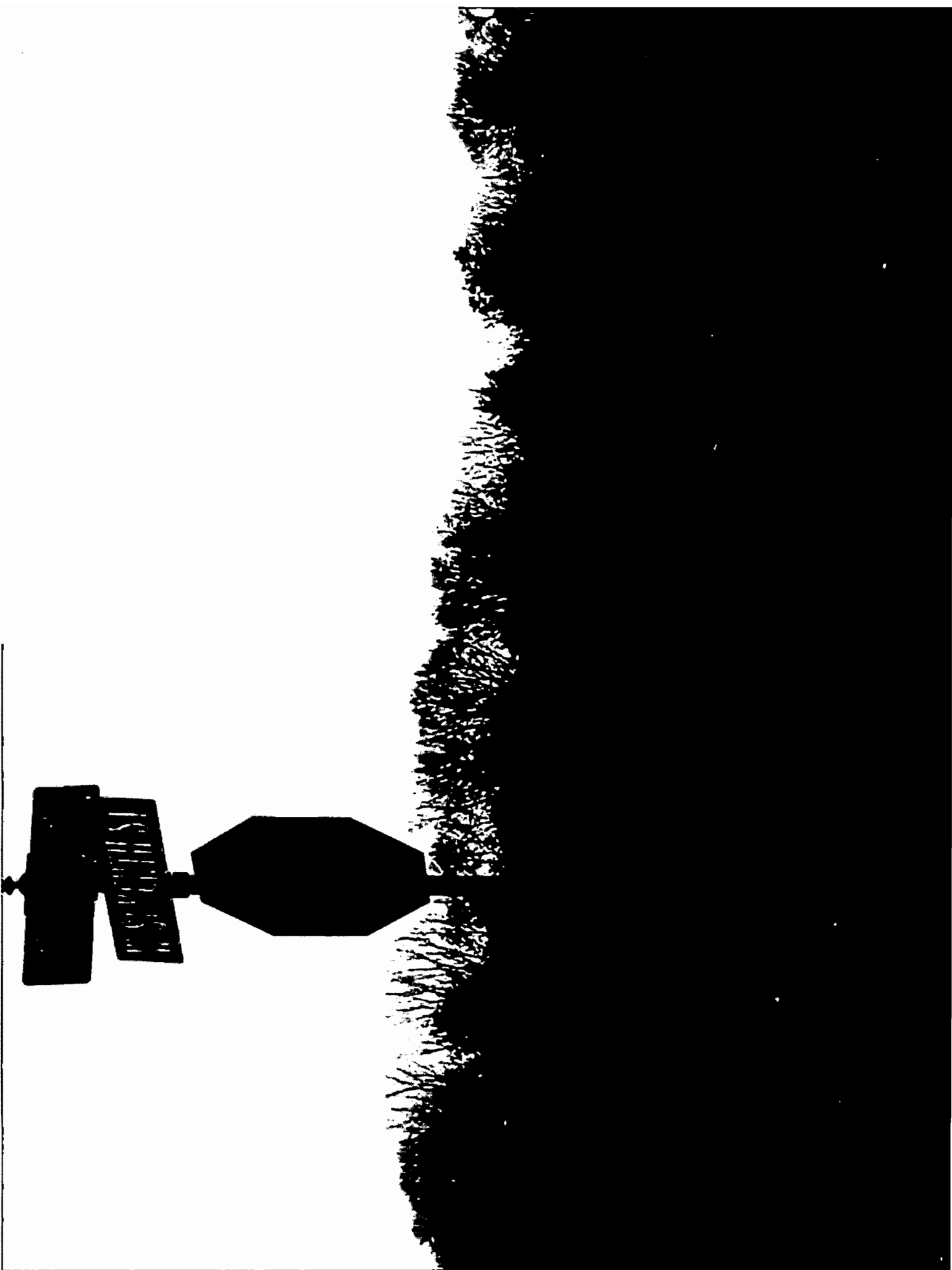


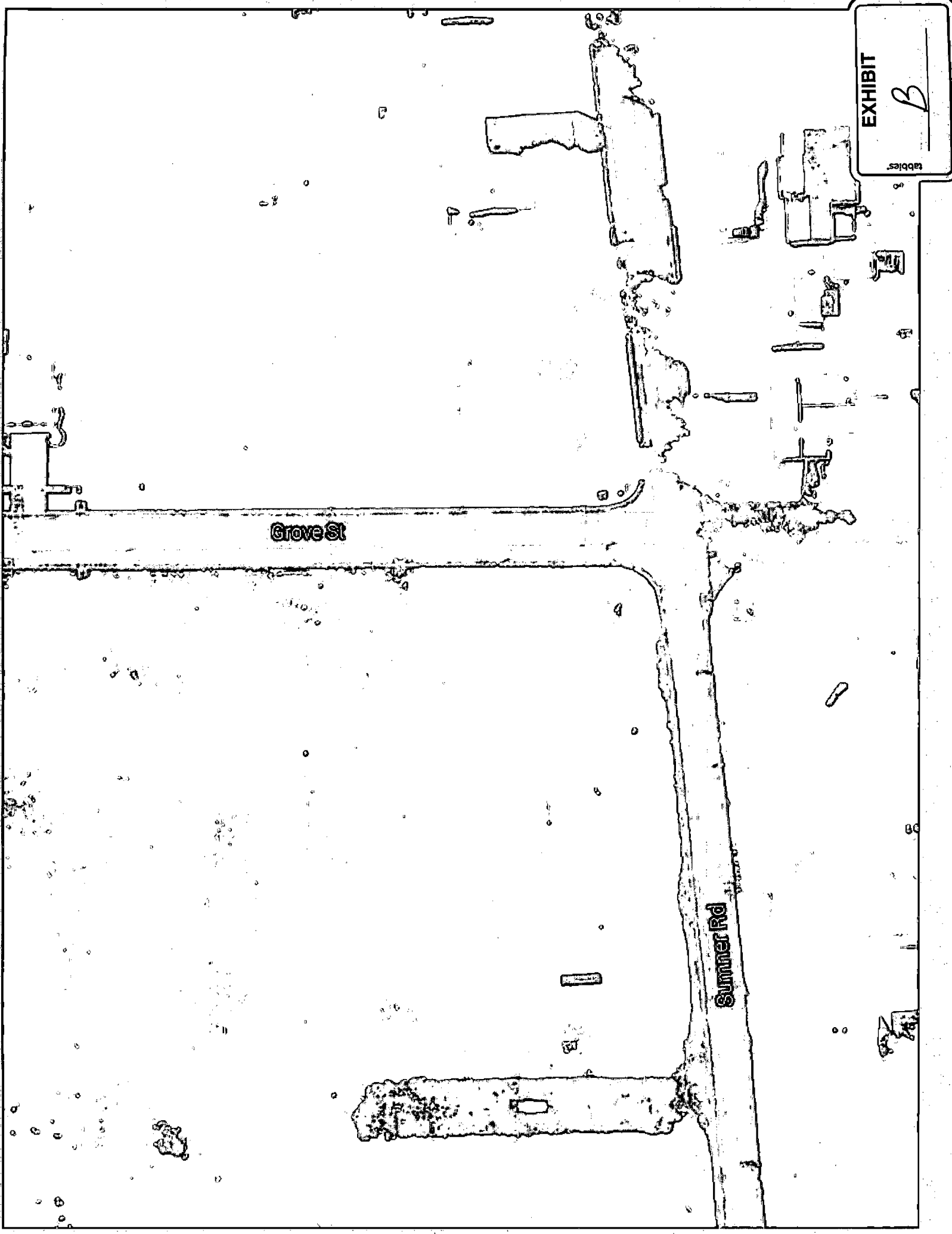












EXHIBIT

B

tabbles