



BOARD OF COUNTY COMMISSIONERS

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DISTRICT 5
JUAN R. VIGIL, COUNTY MANAGER

County of Bernalillo

State of New Mexico

LEGAL DEPARTMENT

(505) 768-4073

FAX (505) 768-4245

OFFICE LOCATION:

Bernalillo County Courthouse
415 Tijeras, N.W. - 3rd Floor
Albuquerque, New Mexico 87102

MAILING ADDRESS:

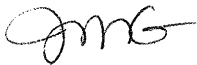
One Civic Plaza, N.W. - 10th Floor
Albuquerque, New Mexico 87102

DAVID K. ANDERSON, ASSESSOR
JUDY D. WOODWARD, CLERK
THOMAS J. MESSALL, PROBATE JUDGE
JOE BOWDICH, SHERIFF
H. R. FINE, TREASURER

MEMORANDUM

DATE: March 29, 1996

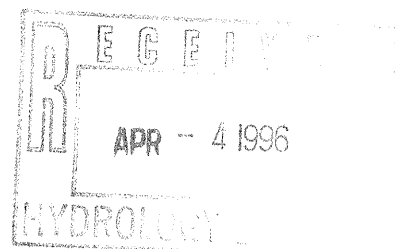
TO: Susan Calonge, Flood Administrator
Hydrology

FROM: Juanita M. Gurule 
Legal Assistant

RE: County of Bernalillo v. Pete Vigil, et al.
No. CV 96-02722

Enclosed for your information is an endorsed copy of the Preliminary Injunction and Restraining Order filed with the Court in the above matter.

Enclosure



ENDORSED
FILED IN MY OFFICE THIS

MAR 29 1996

Shirley R. King
CLERK DISTRICT COURT

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

COUNTY OF BERNALILLO,

Plaintiff,

vs.

Case No. 96-02722

PETE VIGIL, SANDRA VIGIL, DC
LIMITED PARTNERSHIP and PETE'S
LANDSCAPING,

Defendants,

PRELIMINARY INJUNCTION AND RESTRAINING ORDER

THIS MATTER coming before the Court on March 18, 1996 on Plaintiff's Application for Temporary Restraining Order and on March 29, 1996 on the request for Preliminary Injunction.

The Court having considered the Application, attached Affidavits, and testimony at the hearings on Restraining Order on March 18, 1996 and on March 29, 1996; the Plaintiff, County of Bernalillo, appeared and was represented by its attorney, Deborah S. Seligman, and Defendants, were served and failed to appear at the Hearing for the Temporary Restraining Order and for a Preliminary Injunction; and the Court after reviewing the Application, the record, reviewing the exhibits and hearing the testimony of the witnesses and being otherwise fully advised in the premises;

FINDS that immediate and irreparable injury will result to Plaintiffs if Defendants are not restrained and ordered to perform as follows:

1. To immediately cease and desist from any and all conduct in violation of Bernalillo Ordinances 90-6, 85-29 and 88-46;

2. To immediately cease and desist from transporting, placing or dumping any material of any nature into the Tijeras Arroyo;

3. To immediately cease and desist from any and all site preparation and/or alteration of the property described in Exhibit "A" or the transportation in or onto the property of any material of any nature;

4. To comply with the terms and conditions of Bernalillo Ordinances 90-6, 85-29 and 88-46 which require the application for and granting of permits prior to engaging in any conduct specified herein;

5. To immediately remove any and all fill material of any nature whatsoever from the Tijeras Arroyo placed therein by Defendants individually and/or collectively in violation of Ordinances 90-6, 88-46 and 85-29 and in doing such removal to comply with all applicable local, state and federal laws, rules and ordinances;

6. To remove any and all fill material from the property described in Exhibit "A" exceeding 500 cubic yards and in doing such removal to comply with all applicable local, state and federal laws, rules and ordinances;

7. To restore the flood plain and the Tijeras

Arroyo to its condition prior to the placing of any fill therein by Defendants, individually and/or collectively, in compliance with all applicable local, state and federal laws, rules and ordinances;

8. To restore the property described in Exhibit "A" to its condition prior to the placing of any fill material on such property exceeding 500 cubic yards in compliance with all applicable local, state and federal laws, rules and ordinances;

9. To order Defendants, individually and/or collectively, to remove any and all fill material of any nature which Defendants, individually and/or collectively, placed into the Tijeras Arroyo which has been transported downstream to downstream properties and to dispose of such fill material in compliance with all local, state and federal laws, rules and ordinances;

10. A Preliminary Injunction is warranted in this case.

DEFENDANTS ARE HEREBY ORDERED:

1. To immediately cease and desist from any and all conduct in violation of Bernalillo Ordinances 90-6, 85-29 and 88-46;

2. To immediately cease and desist from transporting, placing or dumping any material of any nature into the Tijeras Arroyo;

3. To immediately cease and desist from any and all

site preparation and/or alteration of the property described in Exhibit "A" or the transportation in or onto the property of any material of any nature;

4. To comply with the terms and conditions of Bernalillo Ordinances 90-6, 85-29 and 88-46 which require the application for and granting of permits prior to engaging in any conduct specified herein;

5. To immediately remove any and all fill material of any nature whatsoever from the Tijeras Arroyo placed therein by Defendants individually and/or collectively in violation of Ordinances 90-6, 88-46 and 85-29 and in doing such removal to comply with all applicable local, state and federal laws, rules and ordinances;

6. To remove any and all fill material from the property described in Exhibit "A" exceeding 500 cubic yards and in doing such removal to comply with all applicable local, state and federal laws, rules and ordinances;

7. To restore the flood plain and the Tijeras Arroyo to its condition prior to the placing of any fill therein by Defendants, individually and/or collectively, in compliance with all applicable local, state and federal laws, rules and ordinances;

8. To restore the property described in Exhibit "A" to its condition prior to the placing of any fill material on such property exceeding 500 cubic yards in compliance with all applicable local, state and federal laws, rules and

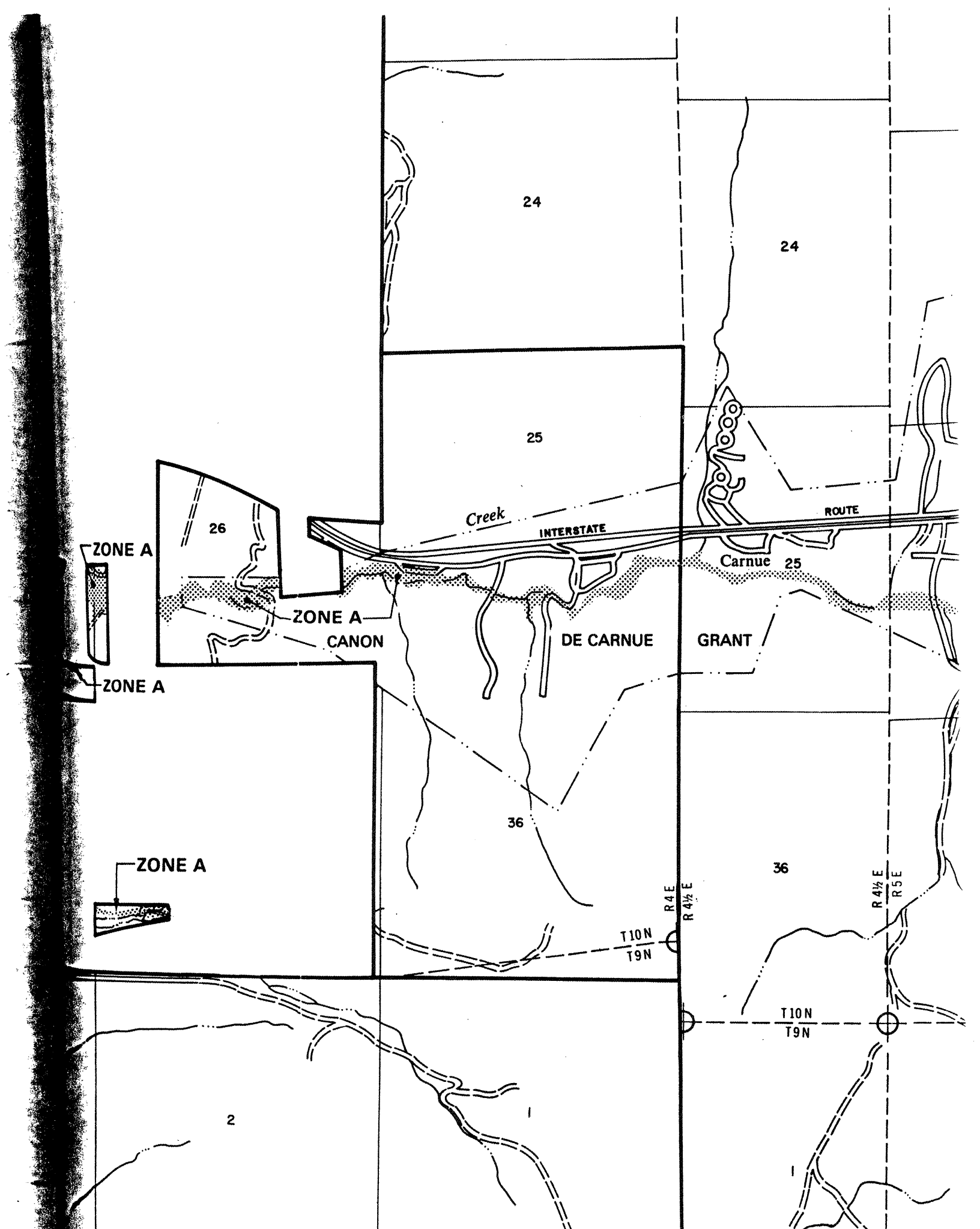
ordinances;

9. To remove any and all fill material of any nature which Defendants, individually and/or collectively, placed into the Tijeras Arroyo which has been transported downstream to downstream properties and to dispose of such fill material in compliance with all local, state and federal laws, rules and ordinances.

It is further ordered that the provisions of this Order shall stay in effect until further order of this Court.



DIANE DAL SANTO
DISTRICT COURT JUDGE



ALAN MERSON

LAWYER

VALLEY PLAZA, P.O. BOX 1885
MORIARTY, NM 87035

Telephone: (505) 832-6363
Fax: (505) 832-2206

August 30, 1996

Pete and Sandra Vigil
Pete's Top Quality Landscaping
9300 Holly Avenue N.E.
Albuquerque, NM 87122

Re: Bernalillo County Case Number CV-96-02722

Dear Pete and Sandra:

Based upon your failure to follow through with the commitments made to Bernalillo County with respect to the emergency interim grading plan submitted on August 9, 1996, and your obvious unwillingness to cooperate with the county in developing a permanent grading and drainage plan in concert with your engineer, Jeff Mortensen, Dennis K. Wallin, P.C., and I must regretfully withdraw from any further representation of your interests.

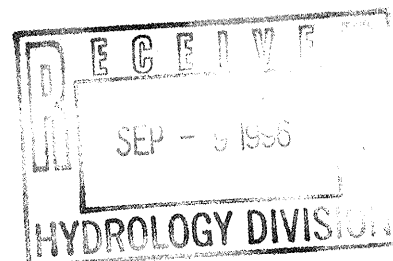
I urge you to seek immediate legal representation in connection with the subject litigation since it is my understanding that Bernalillo County intends to proceed forthwith in enforcing its court order.

Sincerely,



Alan Merson

cc: Deborah Seligman
Roger Paul
Jeff Mortensen
Susan Calongne



BERNALILLO COUNTY PUBLIC WORKS DEPARTMENT
CASE FILE COMMENTS

CASE NO: PWD-96-139

ZONE MAP NO.: L-24

REFERENCE CASES:

STREET ADDRESS: HERRERA RD SE

LEGAL DESCRIPTION: TR WITHIN CANON DE CARNUE GRANT

COMMENTS OF:

09-AUG-96 DRAN: The Floodplain Administrator has completed review of this case and comments are as follows:

Based on the information provided on the interim grading plan, with the engineer's seal dated 08-09-96, the plan appears to be acceptable.



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BARBARA J. SEWARD, MEMBER
DISTRICT 4

LES HOUSTON, MEMBER
DISTRICT 5

JUAN R. VIGIL, COUNTY MANAGER

County of Bernalillo

State of New Mexico

2400 BROADWAY, S.E.
ALBUQUERQUE, NEW MEXICO 87102
PUBLIC WORKS (505) 848-1500

DAVID K. ANDERSON, ASSESSOR

JUDY D. WOODWARD, CLERK

THOMAS J. MESCALL, PROBATE JUDGE

JOE BOWDICH, SHERIFF

H. R. FINE, TREASURER

August 12, 1996

Jeff Mortensen
Jeff Mortensen & Associates
6010B Midway Park Blvd NE
Albuquerque, New Mexico

RE: GRADING PLAN FOR PETE'S LANDSCAPING, CARNUEL SITE (L24/D3)(PWD 96-139) SUBMITTED FOR GRADING PERMIT APPROVAL, ENGINEER'S STAMP DATED AUGUST 9, 1996.

Dear Mr. Mortensen:

Based on the information provided, the emergency interim grading plan outlined in the letter of August 9, 1996 for the stabilization of the above referenced site is approved for release of the Grading Permit. The grading within the Tijeras Arroyo will be allowed as long as all work conforms to this plan.

As you noted, the emergency work will commence as soon as possible. We anticipate that the grading and drainage plan for the site will be submitted in September as agreed.

If you should have any questions, or if we may be of further assistance to you, please call me at 768-2666 or Roger Paul at the County.

Sincerely,

A handwritten signature in cursive script, reading "Susan Calongne".

Susan M. Calongne, P.E.

City/County Floodplain Administrator

c: Roger Paul, County Public Works
Kurt Browning, AMAFCA
Pete and Sandra Vigil, Owners
File



JEFF MORTENSEN & ASSOCIATES, INC. □ ENGINEERS & SURVEYORS □ (505) 345-4250
6010-B MIDWAY PARK BLVD. N.E. □ ALBUQUERQUE □ NEW MEXICO 87109 □ FAX (505) 345-4254

960781

August 29, 1996

Pete and Sandra Vigil
Pete's Top Quality Landscaping
9300 Holly Avenue N.E.
Albuquerque, NM 87122

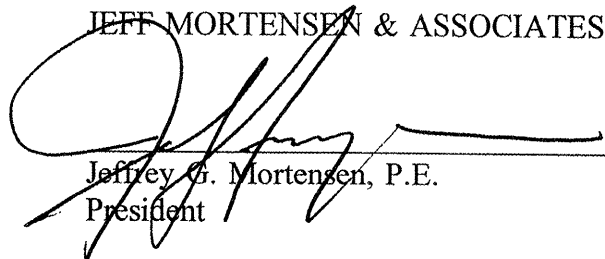
Re: Pete's Landscaping - Carnuel Site

Dear Mr. and Mrs. Vigil:

Effective immediately, we are officially stopping work on the above referenced project. This notification is due to lack of payment and follow-through by you and/or your Contractor on the implementation of the Interim Plan which was approved by the County.

Sincerely,

JEFF MORTENSEN & ASSOCIATES, INC.



Jeffrey G. Mortensen, P.E.
President

JGM:dsj

xc: Roger Paul
Susan Calongne
Kurt Browning



JEFF MORTENSEN & ASSOCIATES, INC. □ ENGINEERS & SURVEYORS □ (505) 345-4250
6010-B MIDWAY PARK BLVD. N.E. □ ALBUQUERQUE □ NEW MEXICO 87109 □ FAX (505) 345-4254

960781

August 9, 1996

Mr. Roger A. Paul
Drainage Engineer
Bernalillo County
Public Works Department
2400 Broadway S.E.
Albuquerque, NM 87102

Re: Pete's Landscaping - Carnuel Site

Dear Roger:

The plan incorporated herein is presented to satisfy the initial requirements as set forth and agreed upon at our August 1, 1996 meeting. In attendance were Deborah Seligman, Attorney for Bernalillo County Public Works Division, Mr. Alan Merson, Attorney, representing Pete's Landscaping, Mr. Pete Vigil, land owner/developer, Mr. Roger Paul, Bernalillo County Public Works Division, Mr. Hoss Foster, Bernalillo County Public Works Division, Ms. Susan Calongne, City/County Floodplain Administrator, and Jeff Mortensen, Jeff Mortensen & Associates, Inc., consultant for Pete's Landscaping. During the meeting, it was stated that there are numerous violations on the site regarding the placement of fill material.

A follow-up meeting was conducted on the morning of August 2, 1996 at the project site. In attendance were the following: Mr. Roger Paul, Bernalillo County Public Works Division, Mr. Hoss Foster, Bernalillo County Public Works Division, Mr. Grady Cashwell, Bernalillo County Public Works Division, Mr. Chris Gonzales, Bernalillo County Environmental Health Field Office, Ms. Susan Calongne, City/County Floodplain Administrator, Mr. Kurt Browning, AMAFCA, Mr. Pete Vigil, Land Owner/Developer, A representative of Chava Trucking, (Grading Contractor), Jeffrey G. Mortensen, Jeff Mortensen & Associates, Inc. (the Engineer). The purpose of the second meeting was to visually observe the filling above the arroyo and the erosion of the arroyo. It appears that there was as much as eight feet of water flow depth in the arroyo as evidenced by debris (weeds, grass) deposited on the south bank in the wire-tied rip-rap slope protection. Further discussions were conducted relative to both existing and proposed conditions.

A portion of the fill material has eroded from the site into the Tijeras Arroyo and has been transported downstream. In an effort to mitigate this condition, emergency interim grading is proposed. The plan presented herein is intended to address that grading only. Subsequently, an in-depth drainage study will be prepared and final recommendations made. That information will be transmitted to the County under separate cover at a later date. A schedule for completing the drainage study and final plans will also be submitted at a later date.

The emergency interim grading plan consists of the following:

1. Segregate all surfacing material (gravel and millings) prior to any grading activities. No millings shall be allowed in subsequent fill operations.
2. Regrade and compact all fill slopes at a slope ratio not to exceed 3:1. The new toe of slope will be established at the treeline apparent just above the existing north bank of the arroyo on the arroyo side. Respect the existing treeline at the north bank of the arroyo as the corrective toe of fill slope. This new toe will result in an approximate 10 feet wide level area from the top of the existing cut bank. Establish a new toe of slope on the east side of the site at four (4) feet west of the railroad tie retaining wall. A four (4) feet wide level area should be provided between the railroad ties and the new toe of slope.
3. Preserve all trees as much as possible. This may require hand work as necessary. The hand work will also reveal the existing grade at each tree.
4. All material removed from the slope will be stockpiled onsite. All contaminated materials, if any, will be immediately removed from the site and deposited in an approved landfill. Receipt for such transport and deposition must be provided by Mr. Vigil.
5. All construction debris and materials other than "clean" fill must be segregated onsite for observation by the Engineer and the County.
6. The top of slope shall be graded such that runoff is not directed over the slope which would result in rill and/or gully erosion. Rill and/or gully erosion will contribute further sediment into the Tijeras Arroyo.
7. Remove large boulders from center of arroyo and place at north toe of slope of the "natural" arroyo.
8. All loose material previously placed within NMSHTD right-of-way will be carefully removed in the manner set forth above. Approval for this work must be obtained from the NMSHTD by Mr. Vigil.
9. Contact Anthony Lopez for all coordination with NMSHTD.
10. Verify what contributes to the existing NMSHTD culvert which discharges onto or toward the property. Check NMSHTD as-builts for culvert beneath "Old 66". Need to determine location size and contributing area.
11. All of the above work will be monitored by the Engineer, retained by the Vigil's, or his representative, and by Hoss Foster, representing the Bernalillo County Public Works Division, and/or other representatives of Bernalillo County, and Mr. Chris Gonzales representing Bernalillo County Environmental Health Department.

960781

August 9, 1996

Page 3

12. All of the above work must meet the mutual concurrence and approval of the Engineer and County representatives.
13. A photographic log will be maintained for documentation and future reference.
14. All of the above work will be accomplished by Mr. Vigil at his expense. Tentatively, work will commence on August 10, 1996 and be completed not later than August 15, 1996. Chava Trucking will be doing the grading work.

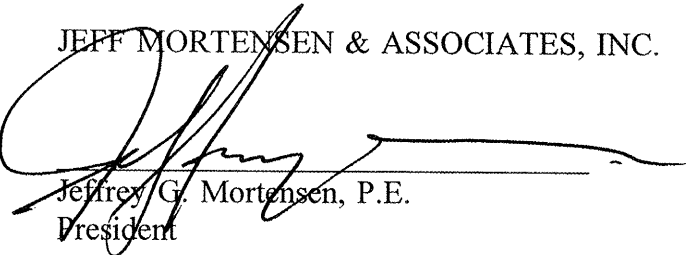
The above represents the first formal submittal for this project. As clearly stated above, subsequent submittals and bi-weekly progress meetings will be necessary in order to establish a final solution to the grading of this property. Concurrent with the emergency interim grading outlined above, a schedule for initiating and completing the final study will be submitted for County review.

If you should have any questions or comments concerning this plan, please do not hesitate to call.

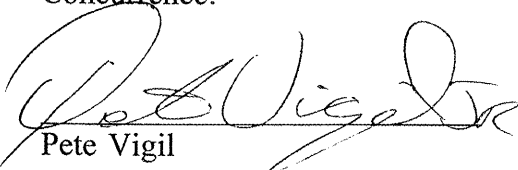


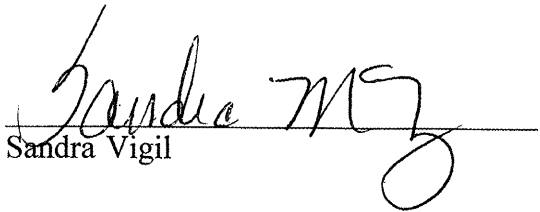
Sincerely,

JEFF MORTENSEN & ASSOCIATES, INC.


Jeffrey G. Mortensen, P.E.
President

Concurrence:


Pete Vigil


Sandra Vigil

"Exhibit A"

A certain tract of land within the Canon de Carnue Grant, Bernalillo County, New Mexico, and being more particularly described by metes as follows:

BEGINNING at the Northeast corner of the tract herein described, said Northeast corner being a point on the Southerly right-of-way line of U.S. Highway No 66 (New Mexico State Highway Department 5-Rail right of Way marker, station 480+00 bears N. $78^{\circ}37'10''$ E., 27.60 feet distance whence M.C. Corner No. 5 on the North Boundary of the Canon de Carnue Grant bears N. $17^{\circ}59'08''$ E., 1042.97 feet distant; THENCE,

S. $07^{\circ}27'10''$ W., 307.81 feet distant to the Southeast corner of the tract herein described: THENCE,

N. $72^{\circ}01'40''$ W., 232.79 feet distant to an angel point; THENCE,
S. $78^{\circ}37'10''$ W., 11.87 feet distant to a point of curvature on the Northeasterly right of way line of the On Ramp of I-40; THENCE

Northwesterly, 157.90 feet distant along the arc of a curve bearing to the right and having a chord which bears N. $54^{\circ}16'12''$ W., 157.86 feet and a central angel of $04^{\circ}07'12''$ and a radius of 2,195.83 feet, continueing along said right of way line to a point of compound curve: THENCE,

Northwesterly, 50.71 feet distant along with arc of a curve bearing to the right and having a chord which bears N. $23^{\circ}09'13''$ W., 48.57 feet and a central angal of $58^{\circ}06'46''$ and a radius of 50.00 feet, continue along said right of way line to a point of tangency: THENCE,

N. $05^{\circ}54'10''$ E., 14.67 feet distant, continuing along said right of way line of the On Ramp of I-40 to the Southerly right of way line of said U.S. Highway No 66: THENCE,

N. $78^{\circ}37'10''$ E., 427.12 feet distant along said right of way line to the place of beginning and containing 1.7821 acres, more or less.

VICINITY MAP



LEGAL DESCRIPTION
T 10 N
R 4 E
SEC. 25

UNIFORM PROPERTY CODE
1-024-058

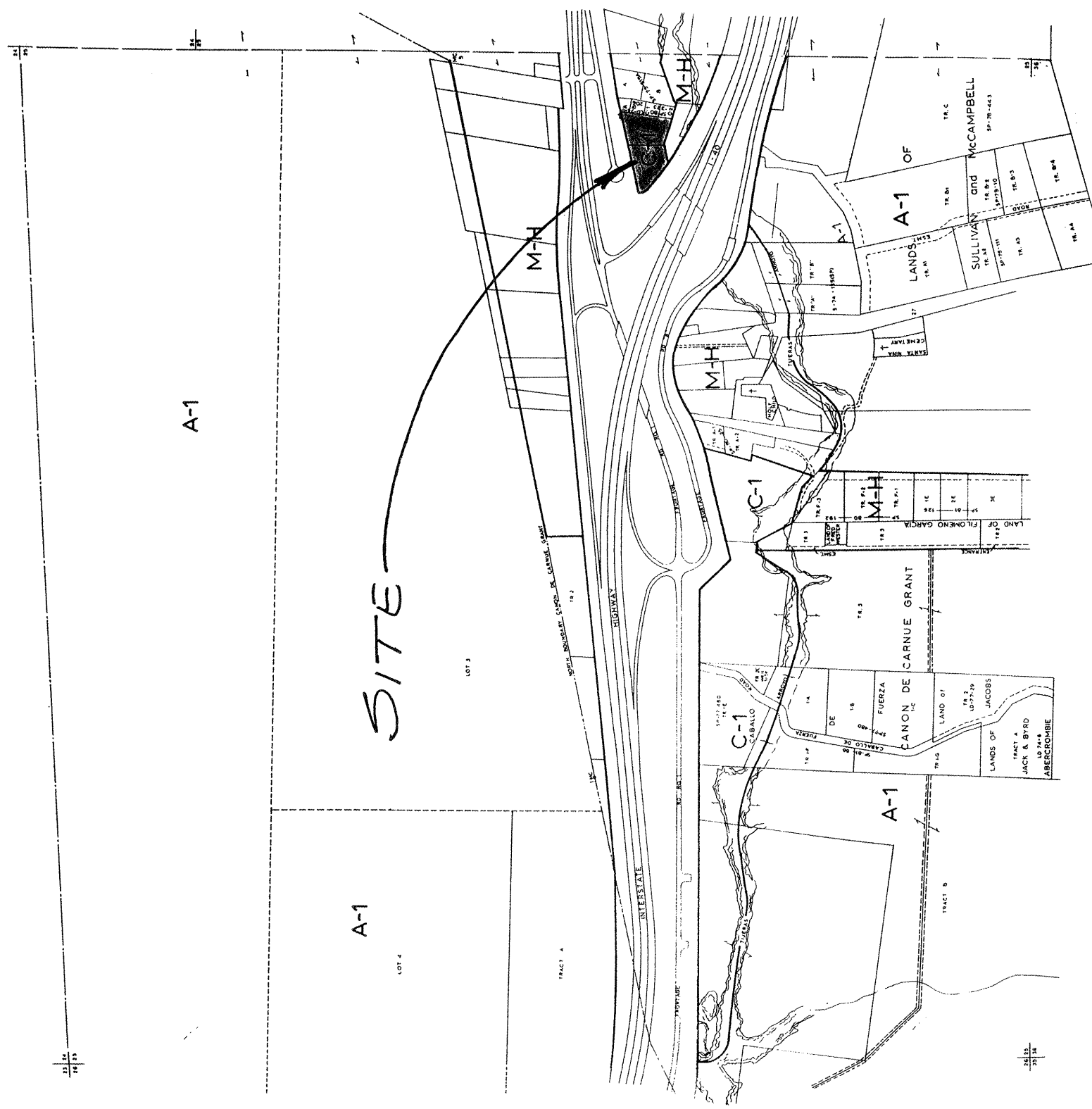
ORD. NO. 213

COUNTY ZONING MAP

ADOPTED 4-17-73
Robert L. Davis
COUNTY COMMISSION CHAIRMAN

MAP AMENDED THROUGH
JANUARY 1962

L-24-Z



C. Any delay would immediately cause irreparable harm to Plaintiff since the improper conduct would continue and the longer the delay the more advanced the violations will become.

ENDORSED
FILED IN MY OFFICE THIS

MAR 18 1996

Shirley King
CLERK DISTRICT COURT

ERIN NOEL BENNETT HUM

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

COUNTY OF BERNALILLO,

Plaintiffs,

vs.

Case No. CV- '96 -02722

PETE VIGIL, SANDRA VIGIL, DC LIMITED
PARTNERSHIP, a New Mexico Limited
Partnership and PETE'S LANDSCAPING,

Defendants,

APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND INJUNCTION

Plaintiff, County of Bernalillo (hereinafter referred to as "County"), by and through its attorney, Deborah S. Seligman, pursuant to S.C.R.A. 1-066, N.M.S.A.1978 respectfully requests the Court to issue a Temporary Restraining Order and other injunctive relief and a subsequent hearing against Defendants, Pete Vigil, Sandra Vigil, DC Limited Partnership, and Pete's Landscaping (hereinafter referred to as "Defendants");

1. The County of Bernalillo is a political subdivision of the State of New Mexico;

2. Upon information and belief, Defendants Pete Vigil and Sandra Vigil are husband and wife, residents of Bernalillo County, New Mexico and/or do and transact business as Defendant Pete's Landscaping and/or are the owners of Defendant Pete's Landscaping, and/or have an interest in or are the owners of Defendant DC Limited Partnership;

COPY

3. Upon information and belief, Defendant DC Limited Partnership is a New Mexico Partnership and is the owner of certain real property which is the subject matter of this action and is more fully described on Exhibit "A" attached hereto and incorporated herein which is page L-24-Z of the Bernalillo County Zoning Map with such property highlighted thereon and is located just north of the Interstate 40 westbound off-ramp to Carnuel off Herrera Road in Bernalillo County, New Mexico;

4. Defendant Pete's Landscaping does and transacts business in Bernalillo County, New Mexico;

5. Upon information and belief Defendants Pete Vigil and Sandra Vigil are the owners of or control Defendant Pete's Landscaping and/or Defendant DC Limited Partnership and at all material times either or both Defendants Pete Vigil and/or Sandra Vigil directed the operation of Defendant Pete's Landscaping and Defendant DC Limited Partnership and the actions giving rise to this matter;

6. On or about December 6, 1995 Defendants, individually and/or collectively, were observed to be illegally transporting, placing and dumping improper material into the Tijeras Arroyo which is south and west of the subject property and moving over 500 cubic yards of material on the subject property contrary to Bernalillo County Ordinance No.

90-6. (A copy of which is hereto attached and incorporated as Exhibit "B");

7. This activity was observed by employees and/or contractors of Bernalillo County. (A copy of the photographs of such improper activity are hereto attached and incorporated as Exhibit "C");

8. The County issued Defendant, Pete's Landscaping, a Final Notice of Violation (or red tag) on December 6, 1995 notifying Defendant to cease all conduct in violation of Ordinance 90-6. (A copy of the Final Notice of Violation is hereto attached and incorporated as Exhibit "D");

9. Defendant, Pete's Landscaping failed and refused to cease such conduct;

10. Defendants, individually and/or collectively, were again observed on January 3, 1996 engaging in the same improper activity as set forth above. (A copy of the photographs taken of such improper conduct are hereto attached and incorporated as Exhibit "E");

11. As a result of such conduct, Defendants were again issued a Final Notice of Violation (red tag) on January 3, 1996. (A copy of the Final Notice of Violation is hereto attached and incorporated as Exhibit "F");

12. Defendants failed and refused to cease the improper activity;

13. On January 5, 1996 Defendants individually and/or collectively, were again observed engaging in the same type of improper activity specified above. (A copy of the photographs taken of such improper activity are hereto attached and incorporated as Exhibit "G");

14. The County issued Defendants a third Final Notice of Violation (red tag) on January 5, 1996 to cease and desist from such conduct. (A copy of the Final Notice of Violation is hereto and attached and incorporated as Exhibit "H");

15. Defendants individually and/or collectively failed and refused and continue to fail and refuse to cease and desist from this illegal and improper conduct;

16. On or about February 6, 1996, Defendants were again observed to be engaged in the same improper conduct as specified hereinabove. (A copy of the photographs taken of such are hereto attached and incorporated as Exhibit "I");

17. On or about February 15, 1996, Defendant's were again observed to be engaged in the same improper conduct as specified hereinabove. Photographs of such improper conduct were taken, but were not available to be attached hereto. However, such photographs will be introduced into open Court;

18. Defendant's conduct, individually and/or collectively, has been flagrant in the violation and disregard of several Ordinances of Bernalillo County as specified herein;

19. Defendants, individually and/or collectively, are in violation of Bernalillo County Ordinance 90-6, Section 11 B(3) for failure to obtain a grading permit. Section 11(B)(3) states in pertinent part:

"Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one (1.0) acre or more, or any grading which will adversely affect other properties, arroyos, watercourses or easement shall conform to drainage control, flood control and erosion control policies and to standards, criteria and procedures established by the County Engineer with respect to drainage, flood control and erosion control. A grading permit, issued by the County Engineer, shall be required for projects involving more than 500 cubic yards of material or one (1.0) acre or more in area. . ."

20. As a prerequisite to obtaining a grading permit a drainage plan pursuant to Sections 11(I)(2) and 11(J) of Bernalillo County Ordinance 90-6 must be prepared under the direction of and signed by a registered professional engineer competent in surface hydrology and drainage among other requirements which Defendants, individually and/or collectively, failed to do;

21. Bernalillo County Ordinance 88-46 (a copy of which is hereto attached and incorporated as Exhibit "J") was adopted to promote the public health, safety and general welfare and/or minimize public and private losses due to flooding in flood hazard areas;

22. Section 6(A) and (B) of Bernalillo County Ordinance 8-46 provides in part:

" A. A development permit shall be obtained before construction of development begins within any area of special flood hazard as shown on the Flood Insurance Rate Map.

B. An application for a development permit (same as Building Permit) shall be made to the Bernalillo County Building Section. The applicants shall submit to the County Administrator plans drawn to scale showing the nature, location, dimensions and elevations of the area to be developed, existing and/or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. . ."

23. Defendants, individually and/or collectively, are in violation of Bernalillo County Ordinance No. 88-46 - Section 6(A) and (B) in that they failed to apply for and obtain a development permit as required for the subject proper (as set forth on Exhibit "A");

24. Section (7)(E)(1) of Bernalillo County Ordinance 88-46 states in pertinent part:

"Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other developments unless certification by a registered professional engineer is

provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. . ."

25. Defendants individually and collectively are in violation of Section 6(E)(1) of Bernalillo County Ordinance 88-46 in that they have encroached into the Tijeras Arroyo, a flood way, and have not provided a certification as specified above acceptable to the City/County Flood Plain Administrator responsible for the administration of Ordinance 88-46 as required;

26. Bernalillo County Ordinance 85-29 - Bernalillo County Fill Material Ordinance (hereto attached and incorporated as Exhibit "K") - Section 4(A) provides:

"Any person intending to fill private and/or public property with fill-material must obtain a permit from the authority prior to the placement of the fill-material."

27. Defendants, individually and collectively are in violation of Section 4(A) of Bernalillo County Ordinance 85-29 in that they failed to obtain a permit from the Bernalillo County Environmental Health Director of the County of Bernalillo or his or her designated representative prior to the placement of fill material on the property described in Exhibit "A" and in the Tijeras Arroyo as set forth herein;

28. Defendants, individually and collectively, are further in violation of Section 5 of Bernalillo County Ordinance 85-29 in that even if Defendants had obtained a

permit under Section 4 of such Ordinance, they are prevented by Section 5(C) thereof from placing fill material consisting of large amounts of rock, minerals, stone, or concrete within 100 feet of a watercourse unless such fill material formation is controlled from motion by a concrete retaining wall, rip-rap and/or other material acceptable to the authority.

29. Defendants have placed such improper material within 100 feet of a watercourse, the Tijeras Arroyo, without the required controls in violation of Bernalillo County Ordinance 85-29.

30. Plaintiff, Bernalillo County and the citizens thereof will suffer irreparable injury if Defendants are not immediately ordered to cease and desist from any and all conduct in violation of Bernalillo County Ordinances No. 90-6, 88-46 and 85-29 and are further ordered to remove any and all improper fill and/or material from the Tijeras Arroyo and the property described in Exhibit "A", and further ordered to strictly comply with the terms and conditions of the above specified Ordinances, which injuries include but are not limited to:

A. The health, safety and welfare of the citizens of Bernalillo County will be adversely effected if the Ordinances passed by their duly elected representatives are not obeyed and can be flagrantly ignored and violated;

B. Upstream and adjoining property owners may be adversely impacted by possible increased elevation of flood waters through the Tijeras Arroyo;

C. Downstream property owners may be adversely affected by the erosion of the fill slope into the Tijeras Arroyo and subsequent sedimentation of the eroded material;

D. The exposure of the illegal material in the fill slope may pose a hazard to the ground water aquifer, both upstream and downstream property owners, and other residents of Bernalillo County;

E. The transport of hazardous materials in the fill slope may adversely affect downstream property owners through the redeposition of the eroded material on downstream users' property;

F. The movement of 500 cubic yards or more of material may adversely impact adjacent property owners in that it may alter the historic drainage pattern as well as increase drainage problems for the adjacent property owners;

31. Any requirement for the furnishing security should be waived since Defendants will not suffer any material monetary damage and it was Defendants conduct in flagrantly violating and breaching Ordinances of the County of Bernalillo that has necessitated this action;

32. Any notice requirement should be waived since Defendants have been notified on at least three occasions in

writing of their continued violation of Bernalillo County Ordinances and have engaged in conduct that any reasonable person would know to be hazardous with respect to the Tijeras Arroyo, and despite the prior notification, Defendants have continued their activities and there is no reason to believe that notification of this action would change their conduct.

WHEREFORE, Plaintiffs pray the Court for a Temporary Restraining Order and subsequent preliminary and permanent injunctions against Defendants, individually and/or collectively, ordering them:

1. To immediately cease and desist from any and all conduct in violation of Bernalillo Ordinances 90-6, 85-29 and 88-46;

2. To immediately cease and desist from transporting, placing or dumping any material of any nature into the Tijeras Arroyo;

3. To immediately cease and desist from any and all site preparation and/or alteration of the property described in Exhibit "A" or the transportation in or onto the property of any material of any nature;

4. To comply with the terms and conditions of Bernalillo Ordinances 90-6, 85-29 and 88-46 which require the application for and granting of permits prior to engaging in any conduct specified herein;

5. To immediately remove any and all fill material of any nature whatsoever from the Tijeras Arroyo placed therein by Defendants individually and/or collectively in violation of Ordinances 90-6, 88-46 and 85-29 and in doing such removal to comply with all applicable local, state and federal laws, rules and ordinances;

6. To remove any and all fill material from the property described in Exhibit "A" exceeding 500 cubic yards and in doing such removal to comply with all applicable local, state and federal laws, rules and ordinances;

7. To restore the flood plain and the Tijeras Arroyo to its condition prior to the placing of any fill therein by Defendants, individually and/or collectively, in compliance with all applicable local, state and federal laws, rules and ordinances;

8. To restore the property described in Exhibit "A" to its condition prior to the placing of any fill material on such property exceeding 500 cubic yards in compliance with all applicable local, state and federal laws, rules and ordinances;

9. To order Defendants to remove any and all fill material of any nature which Defendants, individually and/or collectively, placed into the Tijeras Arroyo which has been transported downstream to downstream properties and to dispose

of such fill material in compliance with all local, state and federal laws, rules and ordinances;

10. To order Defendants, in the alternative, to permit the County of Bernalillo to remove any and all fill material from the Tijeras Arroyo, the property described in Exhibit "A" and other downstream properties improperly placed thereby Defendants or transported thereto as a result of Defendants' conduct, and to restore such arroyo and properties to their condition prior to the improper placement of any improper or illegal fill material therein or thereon, at the cost of Defendants, individually and/or collectively, and to permit Plaintiff to place a lien on the property of any and all Defendants for repayment of such expense to Bernalillo County in addition to any other remedies available to Bernalillo County for the collection thereof;

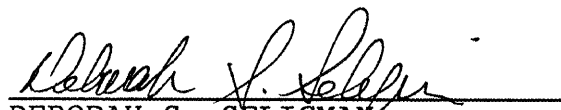
11. To waive any bond or security requirement;

12. To waive any notice requirement;

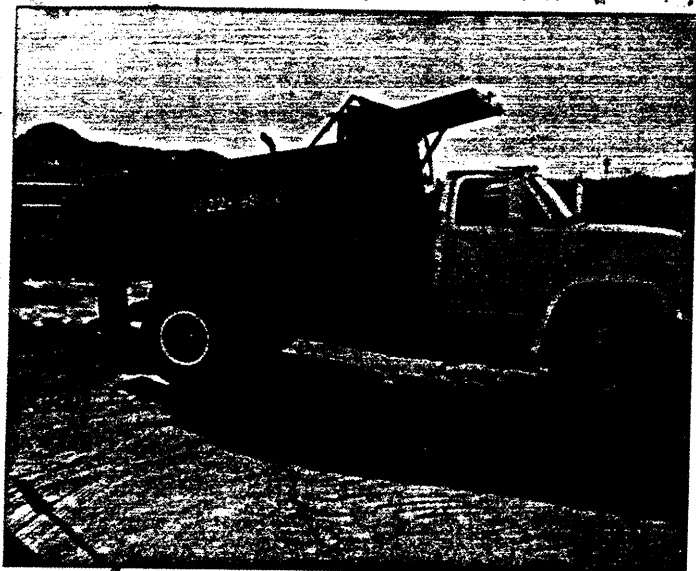
13. To award Plaintiff its costs and attorney's fees; and

14. For such other and further relief as the Court deems necessary and proper.

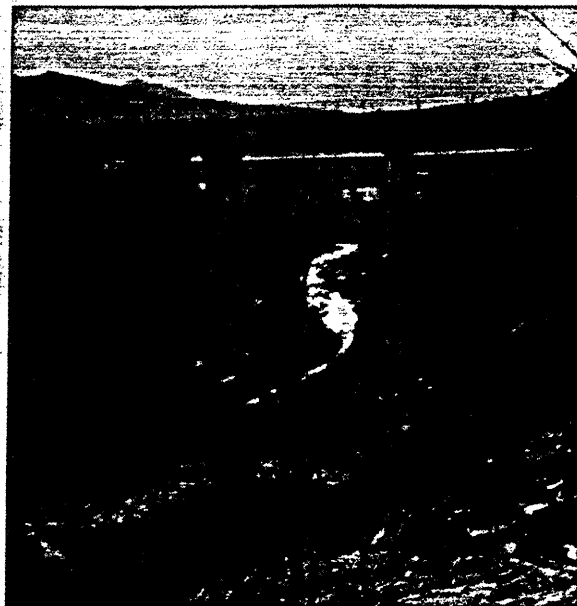
Respectfully submitted,



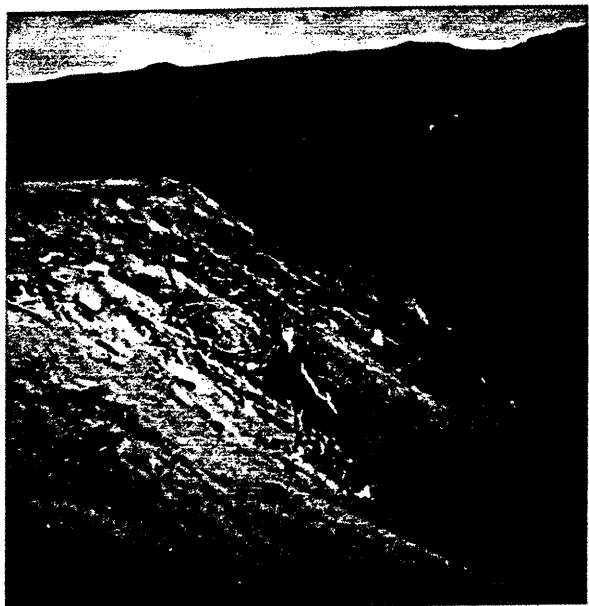
DEBORAH S. SELIGMAN
Attorney for Plaintiffs
P.O. Box 7806
Albuquerque, NM 87194
(505) 247-3030



12/06/95 - 145 mi. Herrera
Lic # 705 - HRC
Red Top No. 6/10 Plon.



12.6.95 2:20pm Herrera Rd
Dumping - Red Tag.



12.6.95 2:20pm Herrera Rd
Dumping - Red Tag.



12.6.95 2:20pm Herrera Rd
Dumping - Red Tag.

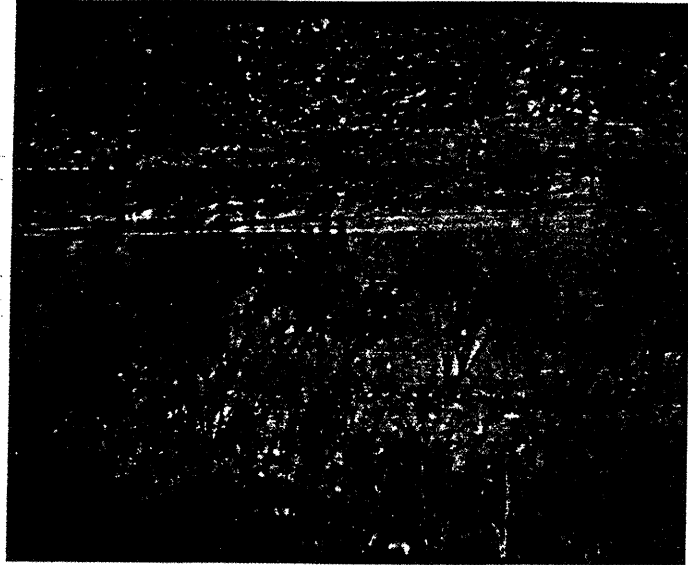


5/5



11/3/96 1320 Ln. 175

Carnal Exit 170 North
Petes land seading Dumping



2/5



3/5



4/5

12/06/95
14
FINAL NOTICE OF VIOLATION

DATE ISSUED

FILE NO. 120695-41

This is to advise you that the Bernalillo County Public Works Ordinance(s) (Ord. 90-6) are

being violated at Hess Rd Canal Pete's Landscaping
for the reason that heral land + moving over 500 yd

If construction is in progress it shall stop. Please contact the Public Works Engineering Division at 2400 Broadway SE, Albuquerque New Mexico. Phone ~~843-1523~~ 848-1523

Prior to 12/16/95

1st

INSPECTOR

Hess Rd

12/06/95

FINAL NOTICE OF VIOLATION

1050

1/13/95
DATE ISSUED

FILE NO.

This is to advise you that the Bernalillo County Public Works Ordinance(s) (Ord. 90-6) are

being violated at Herrera Rd.
for the reason that Fill in. Exceeds over 500 Cys Dirt.
with out a Grading & Drainage Plan.

If construction is in progress it shall stop. Please contact the Public Works Engineering Division at 2400 Broadway SE, Albuquerque New Mexico. Phone 843-6000-318-1523

Hoss Foster PRIOR TO 1 8 96
INSPECTOR 1st 12/6/85



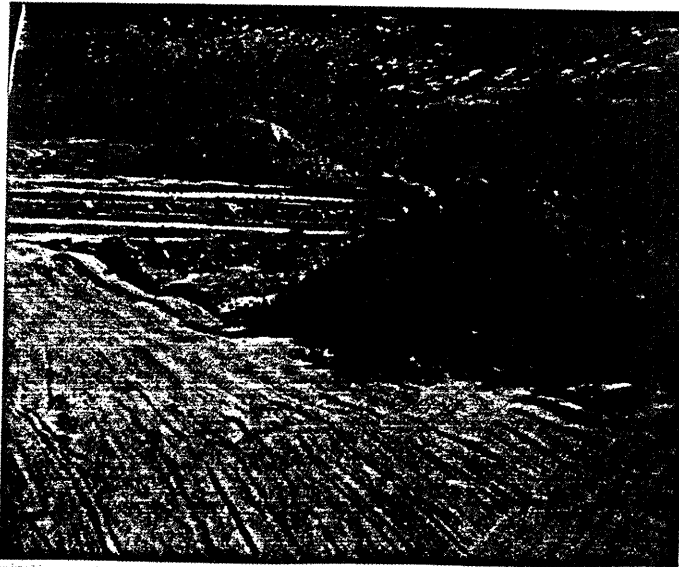
1/7 1/05/96 1250 Ro.



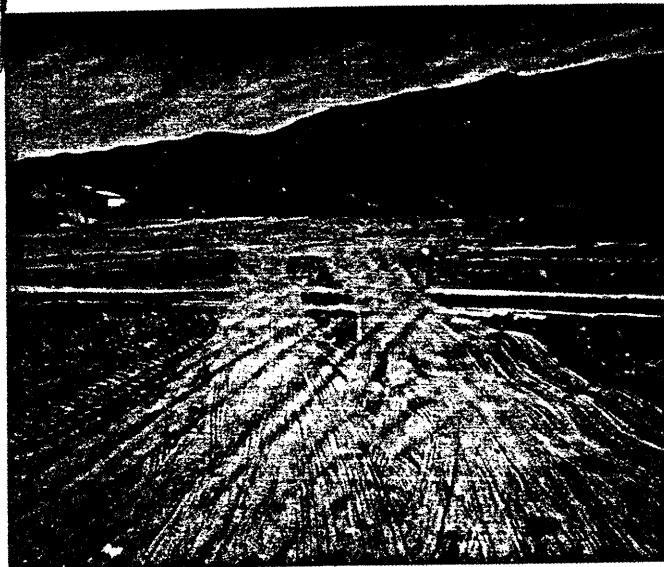
2/7



3/7



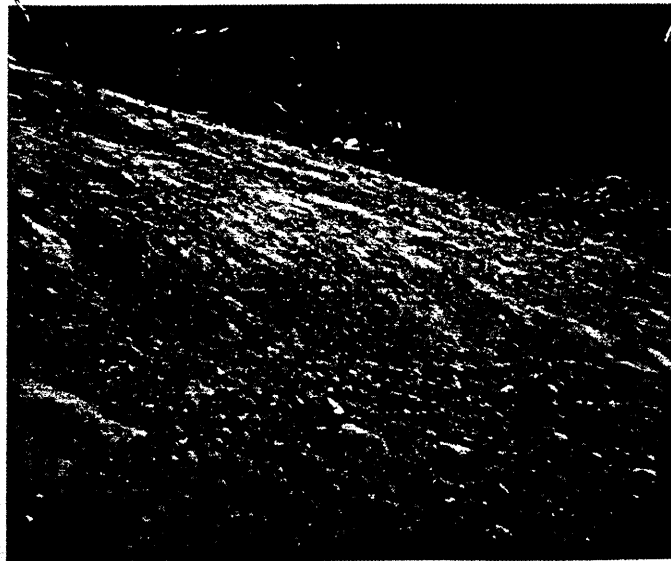
4/7



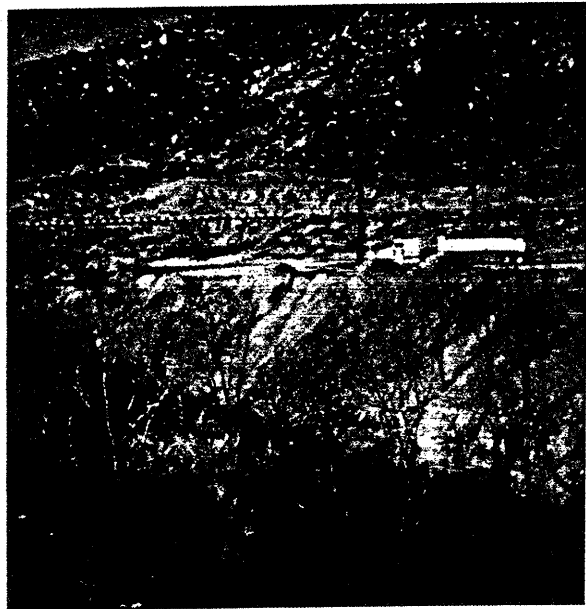
5/7



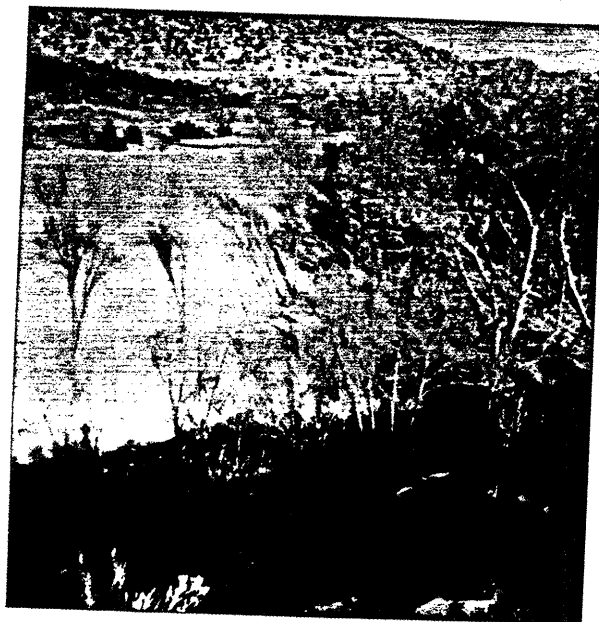
6/7



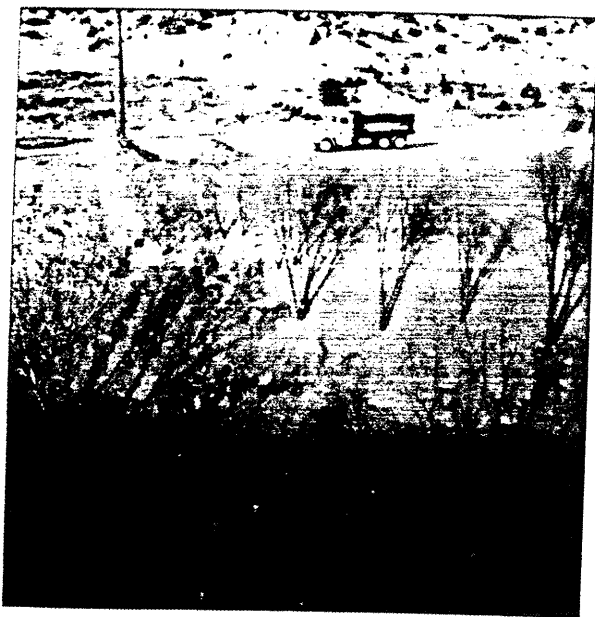
7/7



1.5.96 3pm Herrera Rd
from I-40W



1.5.96 3pm Herrera Rd
from I-40W



1.5.96 3pm Herrera Rd
from I-40W

FINAL NOTICE OF VIOLATION 1250 # 3rd. CD

1/05/95
DATE ISSUED

FILE NO.
111

This is to advise you that the Bernalillo County Public Works Ordinance(s) (Ord. 90-6

being violated at C-1 Property Herrera Rd.) are
for the reason that Dumping Over 500 Cyd on Property

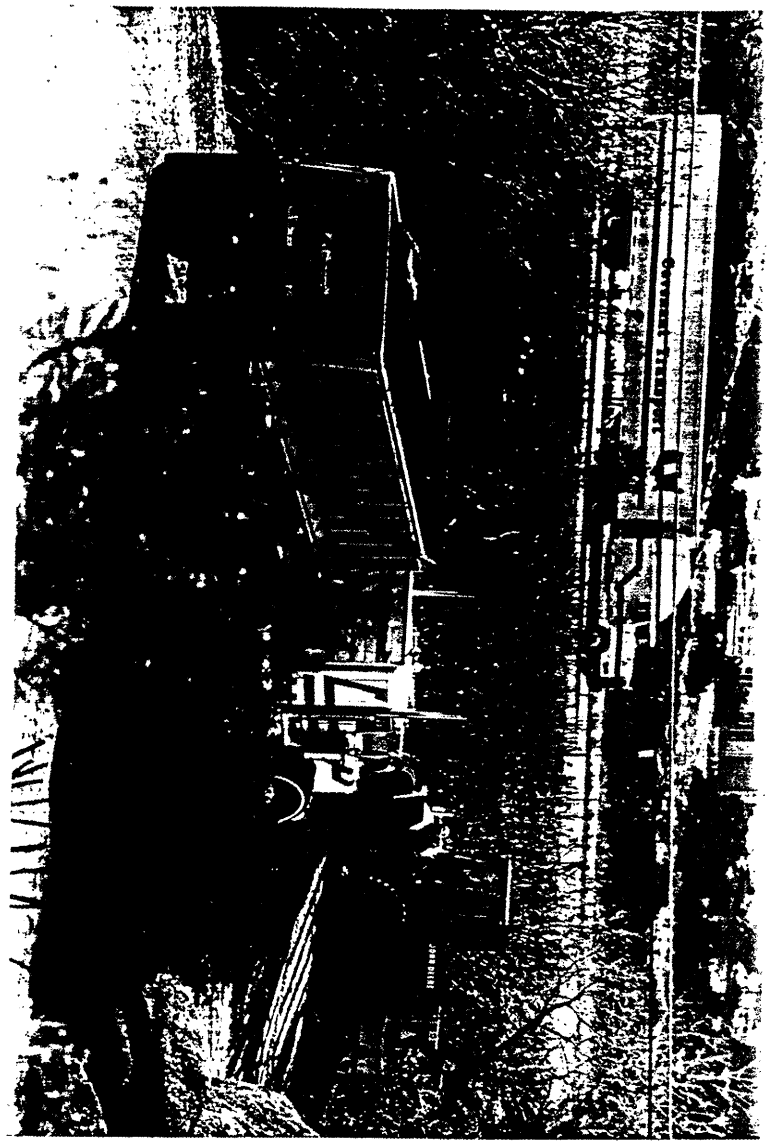
If construction is in progress it shall stop. Please contact the Public Works Engineering Division at 2400 Broadway SE, Albuquerque New Mexico. Phone 843-6120 848-5223

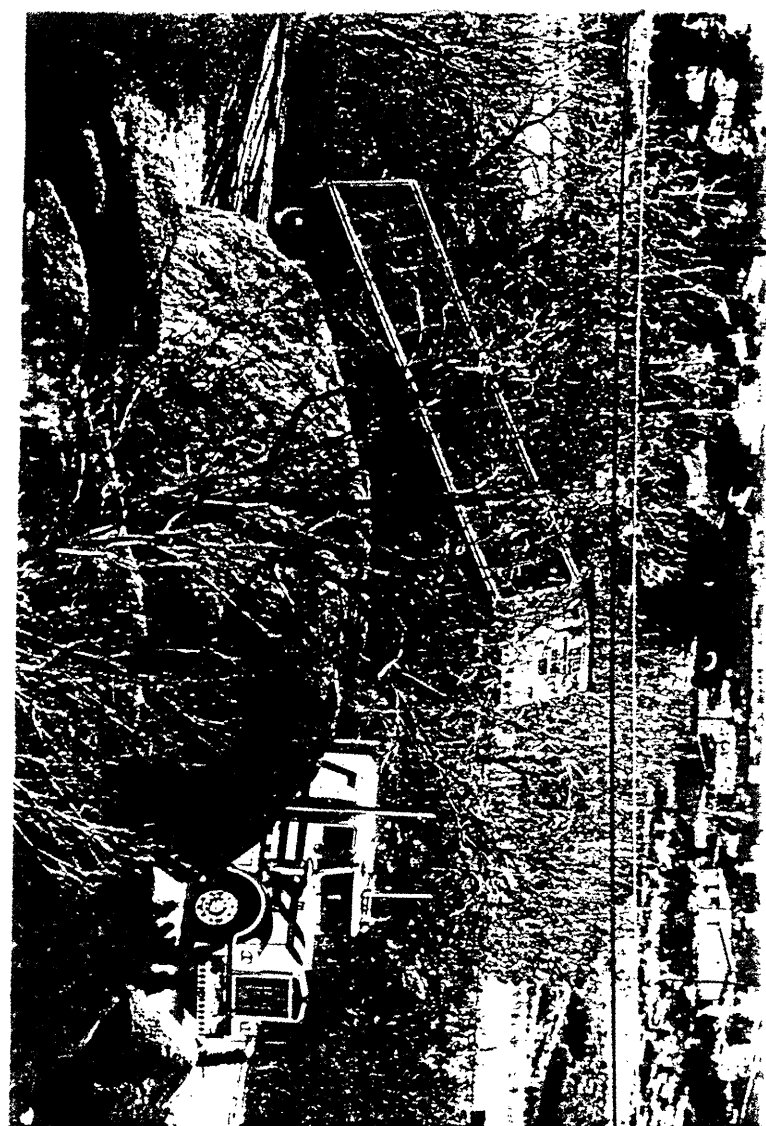
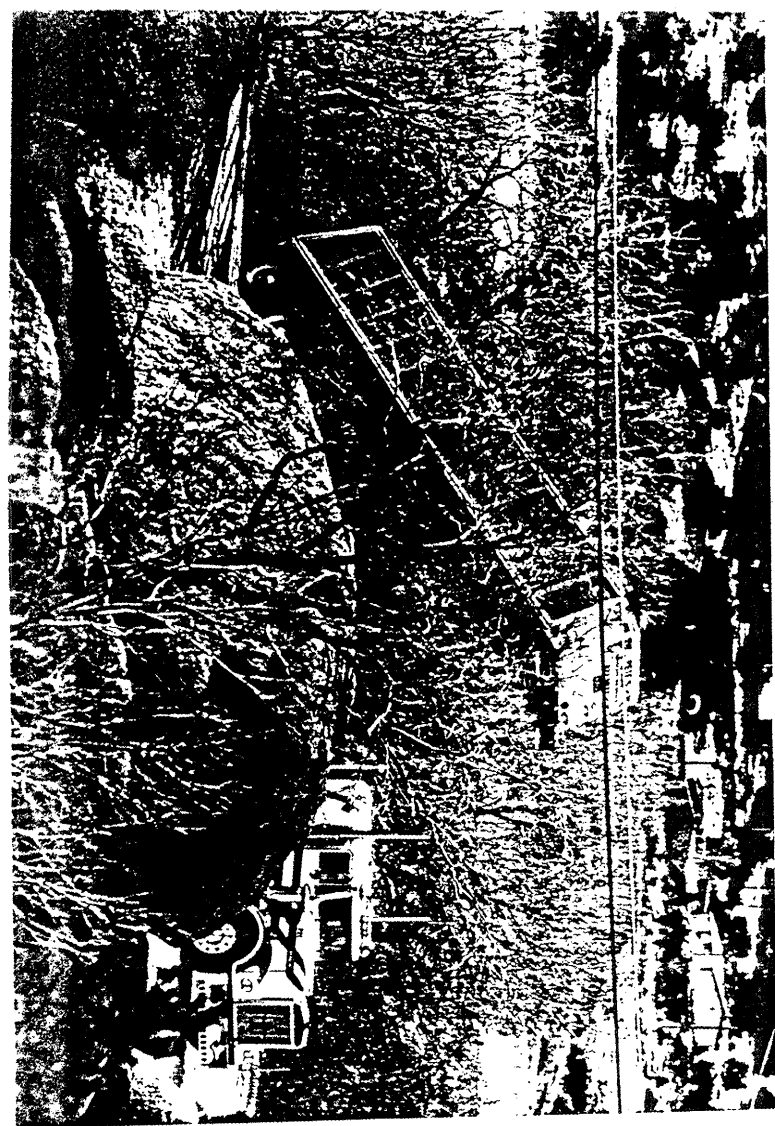
Hoss Foster
INSPECTOR

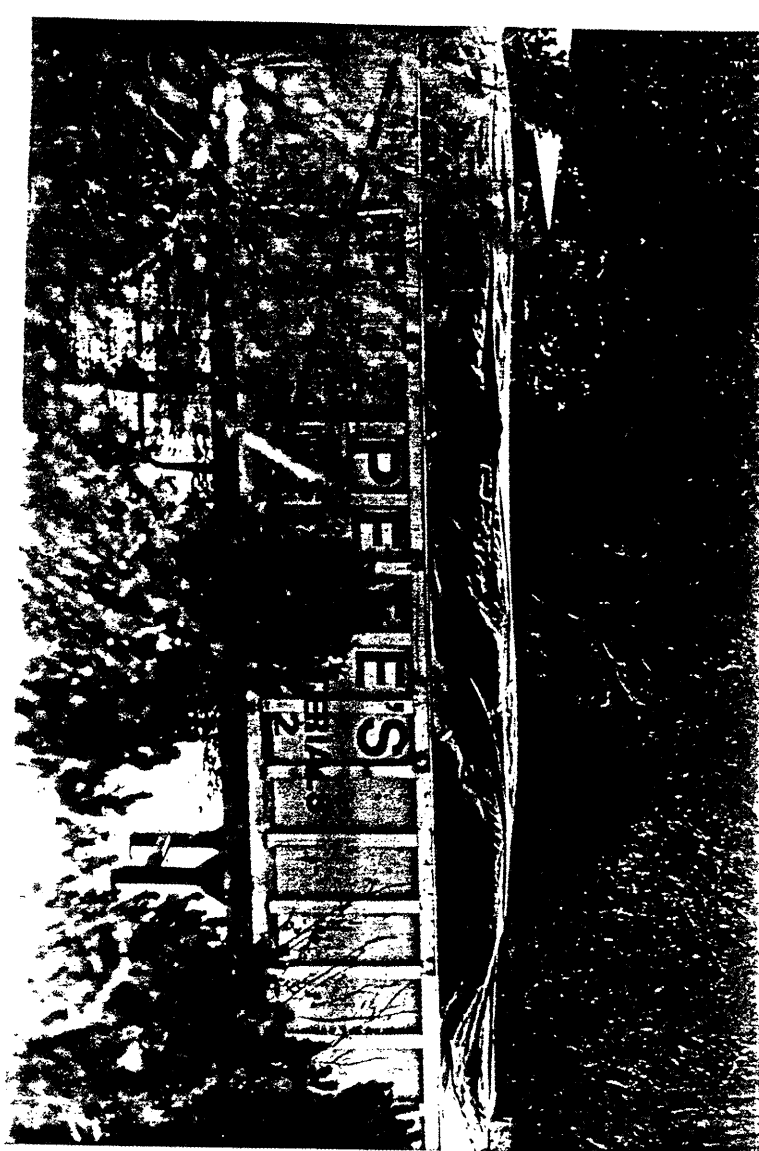
PRIOR TO 1/18/96
1st 12/6/95

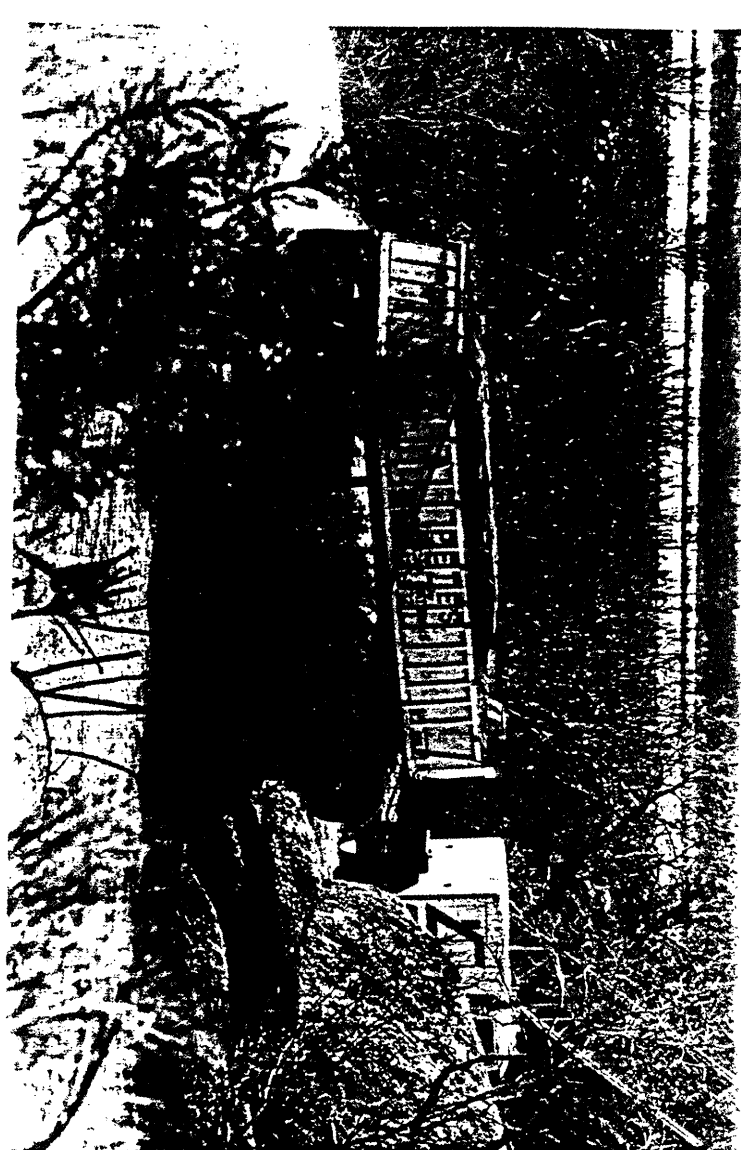


EXHIBIT I







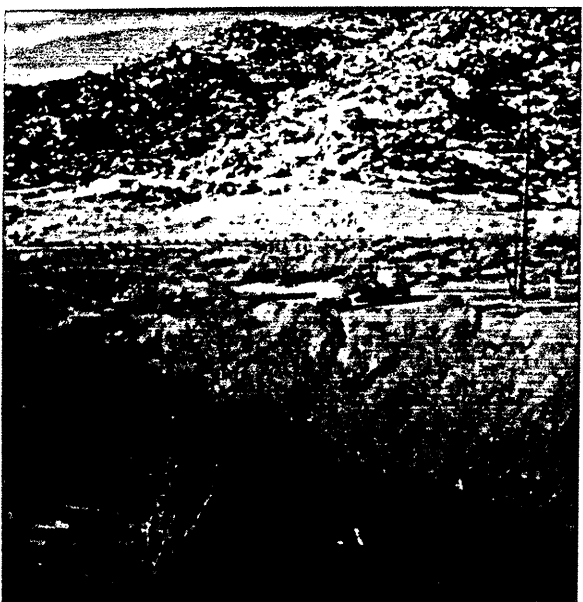




1.5.96 3 pm Herrera Rd
from I-40 W



1.5.96 3 pm Herrera Rd.
from I-40 W



1.5.96 3 pm Herrera Rd
from I-40 W

~~ROGER ALAN PAUL~~


SUBSCRIBED AND SWORN TO before me this 18 day of March,
1996, by ROGER ALAN PAUL.

Barbara L. Day
NOTARY PUBLIC

My Commission Expires:

9-27-97

SUBSCRIBED AND SWORN TO before me this 18 day of March,
1996, by SUSAN M. CALONGNE.



NOTARY PUBLIC

My Commission Expires:

9-27-97

A. Kyle Harwood
A. KYLE HARWOOD

SUBSCRIBED AND SWORN TO before me this 18 day of March,
1996, by A. Kyle Harwood.



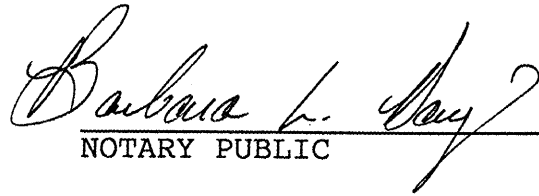
NOTARY PUBLIC

My Commission Expires:

9-27-97

G. J. FOSTER

SUBSCRIBED AND SWORN TO before me this 18 day of March,
1996, by G.J. FOSTER.



NOTARY PUBLIC

My Commission Expires:

9-27-97