

STATE OF NEW YORK SUPREME COURT  
ESSEX COUNTY

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LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK  
PARK AGENCY,

Defendant.

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AFFIDAVIT

Index No. 000498-07  
R.J.I. No. 15-1-2007-  
0153

DOUGLAS MILLER, being duly sworn, deposes and says:

1. I am an Enforcement Officer for the Adirondack Park Agency (the "Agency"), an executive agency of the State of New York created pursuant to Executive Law § 803, with offices located in the Town of North Elba, Essex County, New York. I have served in this position since 2005.

2. In the course of my duties, I am responsible for investigating alleged violations of the Adirondack Park Agency Act, Adirondack Park Agency Rules and Regulations, the New York State Freshwater Wetlands Act, and the New York State Wild, Scenic and Recreational Rivers Act in an area that includes the Town of Essex, Essex County.

3. I am familiar with the Lewis Family Farm ("Lewis Farm") and the Agency file in this matter and am the Enforcement Officer who undertook Agency staff's investigation into this matter. I make this affidavit in support of the Agency's Motion to Dismiss the complaint against the Agency brought by the Lewis Family Farm.

4. On or about March 28, 2007 I personally observed three new single family dwellings under construction on the lands of the Lewis Farm, in the Town of Essex, Essex County.

5. The property on which these three dwellings are being constructed is owned by the Lewis Farm and is described as Tax Map Parcel #49.3-2-27. Tax Map Parcel #49.3-2-27 is shown on Exhibit A attached hereto.

6. The Lewis Farm property comprises approximately 1111 acres and is designated as Resource Management, Rural Use, and Hamlet on the Adirondack Park Land Use and Development Plan Map (the "Plan Map"). An excerpt from the Plan Map showing the property of the Farm is attached hereto as Exhibit B.

7. The portion of the Lewis Farm on which the three new single family dwellings are being constructed is designated as Resource Management on the Plan Map. An

annotated excerpt from the Plan Map showing the approximate location of the three new single family dwellings is attached hereto as Exhibit C.

8. In a letter dated March 23, 2007 I notified S.B. and Barbara Lewis of the Lewis Family Farm that I had been directed to investigate a possible violation of the Adirondack Park Agency Act at their Farm. See Exhibit D.

9. Thereafter, in response to a Potential Violation Report submitted by Agency staff member John Quinn, I visited the Lewis Farm on March 28, 2007, and observed what appeared to be the foundations of three new single family dwellings located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the property. Photographs that I took of these three houses during this March 28, 2007, visit are attached hereto as Exhibit E.

10. Based on subsequent investigation, I determined that these three new dwellings are located on Resource Management lands within the designated Boquet River Recreational River area.

11. After additional investigation and conversations with Barbara Lewis, I determined that a pre-existing dwelling located in the immediate vicinity of one of the

three new foundations established to the north and east of the intersection of Whallons Bay Road and Christian Road was planned for removal upon completion of the new modular dwelling.

12. The Lewis Farm has not obtained a permit from the Agency for its construction of two new single family dwellings. The third single family dwelling does not require a permit because it is intended to be a replacement, however, by constructing the three new single family dwellings, the Lewis Farm has also created a subdivision without a permit consisting of three new sites in the area to the north and east of the intersection of Whallons Bay Road and Christian Road on the Farm property.

13. On June 1, 2007, Agency Enforcement Attorney Sarah Reynolds and I met with Barbara Lewis and David Cook, an attorney for Nixon Peabody LLP and counsel for the Lewis Family Farm, Inc. to discuss an administrative settlement of the alleged violations.

14. During the meeting on June 1, 2007, Sarah Reynolds and I informed Barbara Lewis and David Cook that Agency staff was prepared to review the single family dwellings through the Agency's after-the-fact permit

review process, provided that the Farm agree to pay a civil penalty of \$10,000 or contribute a comparable amount of money toward an appropriate environmental benefit project.

15. On June 27, 2007, I was informed that Agency Counsel had received a call from the Supervisor of the Town of Essex, who stated that he had been told that construction on the three new single family dwellings had recommenced at the Lewis Farm. See Affidavit of John Banta.

16. In response to this call, I traveled to the Lewis Farm on the afternoon of June 27, 2007, in an attempt to halt construction of the homes with a Cease and Desist Order signed by Mark Sengenberger, the Agency's Acting Executive Director.

17. Upon arrival at the Lewis Farm on June 27, 2007, I determined that two of the modular homes had already been set on their foundations and the third modular home had been partially set on its foundation. Copies of photographs that I took upon arrival at the property are attached hereto as Exhibit F.

18. I immediately attempted to serve the Cease and Desist Order on Mark McKenna who upon information and

belief was the project manager at the site. Mr. McKenna told me that he did not have the authority to accept the Order and directed me to give the papers to Barbara Lewis at her home. Mr. McKenna gave me approximate directions to the home of Mrs. Lewis.

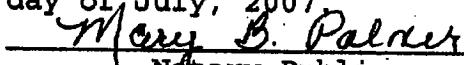
19. I then traveled to the Lewis home and served the Cease and Desist Order on Barbara Lewis in person. See Exhibit G.

20. I returned to the Lewis Farm on July 2, 2007, where I observed that, in direct violation of the Cease and Desist Order, the third modular dwelling had been completely installed on its foundation. Copies of the photographs that I took during this visit to the property are attached hereto as Exhibit H.

21. I returned to the Lewis Farm again on July 6, 2007. At that time, workers were securing a tarp on the roof of one of the three houses. The other two houses appeared to be already secured against the weather. A copy of the photograph that I took during this visit to the property is attached hereto as Exhibit I.

  
DOUGLAS MILLER

Sworn to before me this 20<sup>th</sup>  
day of July, 2007.

  
Notary Public

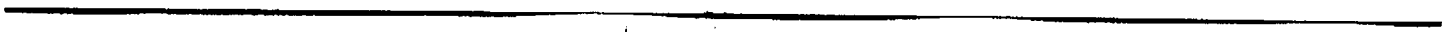
MARY B. PALMER  
Notary Public, State of New York  
# 01PA6128439  
Commission Expires June 18, 20 09

**MILLER AFFIDAVIT**

**TABLE OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
Exhibit A	Tax Map
Exhibit B	APA Plan Map
Exhibit C	Annotated Plan Map
Exhibit D	March 23, 2007 Letter from Miller to Lewis Family Farm
Exhibit E	March 28, 2007 Photos
Exhibit F	June 27, 2007 Photos
Exhibit G	Cease and Desist Order
Exhibit H	July 2, 2007 Photos
Exhibit I	July 5, 2007 Photo

# EXHIBIT A







**TOWN OF ESSEX**  
**ESSEX COUNTY, NEW YORK**

DATE: 04/11/2011  
 TIME: 10:00 AM  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

NO.	DESCRIPTION	AREA (AC)	AREA (SQ FT)
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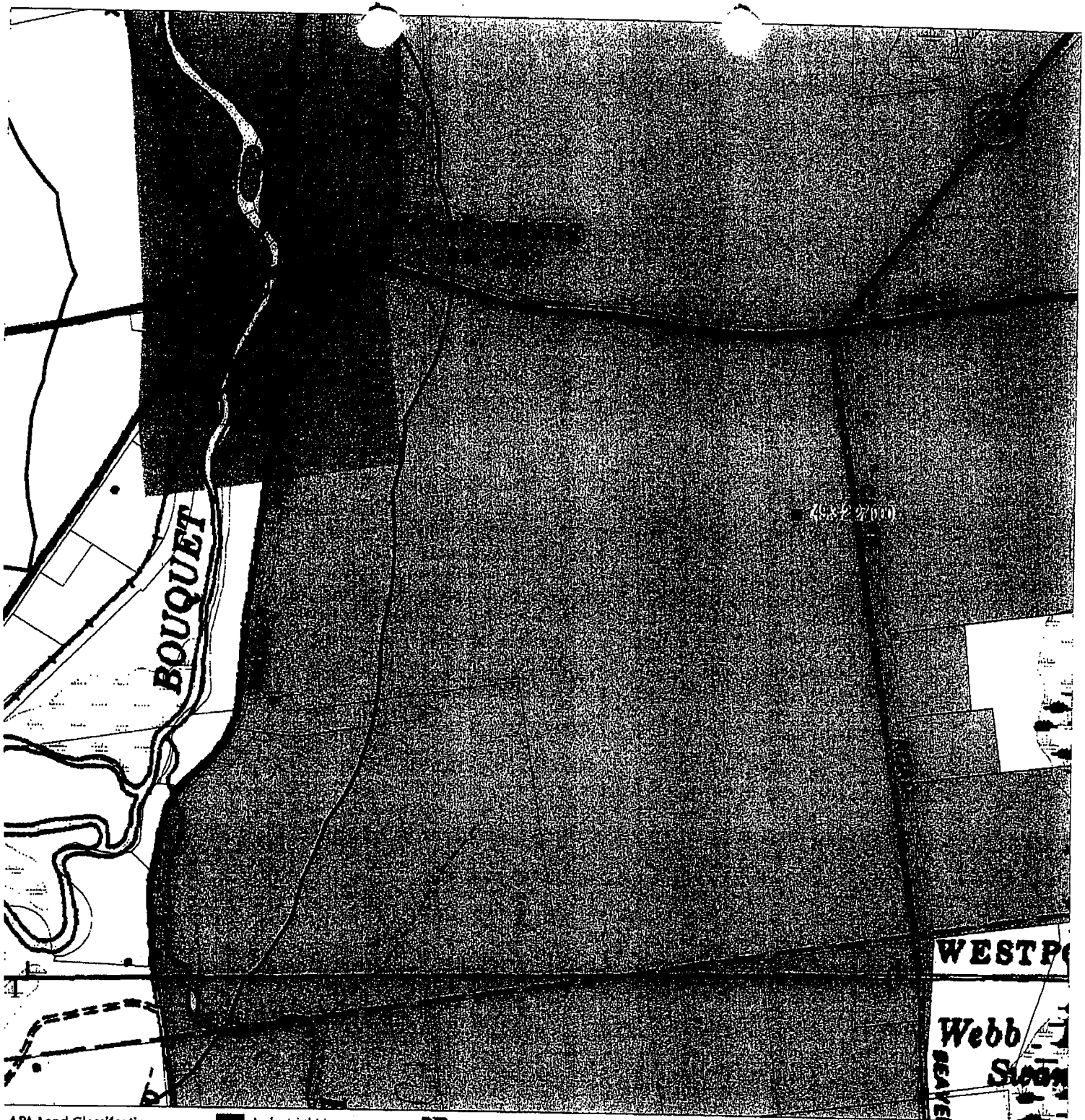
**SPECIAL DISTRICTS**

**LEGEND**

**DATE OF THIS MAP: 04/11/2011**  
**TIME OF THIS MAP: 10:00 AM**  
**PROJECT: [Name]**  
**DRAWN BY: [Name]**  
**CHECKED BY: [Name]**  
**SCALE: 1" = 110'**

# EXHIBIT B

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**APA Land Classification**

- Hamlet
- Moderate
- Low Intensity Rural Use
- Resource Mgmt.

- Industrial Use
- Wilderness
- Canoe Area
- Primitive
- Wild Forest
- Intensive Use

- Historic
- State Administrative Pending Class.
- Open Water
- Regulatory Wetlands**
- EPA Wetland Covertypes**

**NWI Wetland Covertypes**

- Wetland
- Linear Wetland
- Tax Map**
- Parcel Boundary

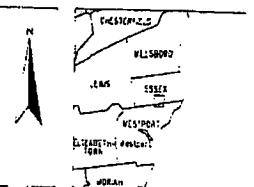
**Designated River**

- Corridor Boundary

New York State  
Adirondack  
Park  
Agency  
Geographic  
Information  
System

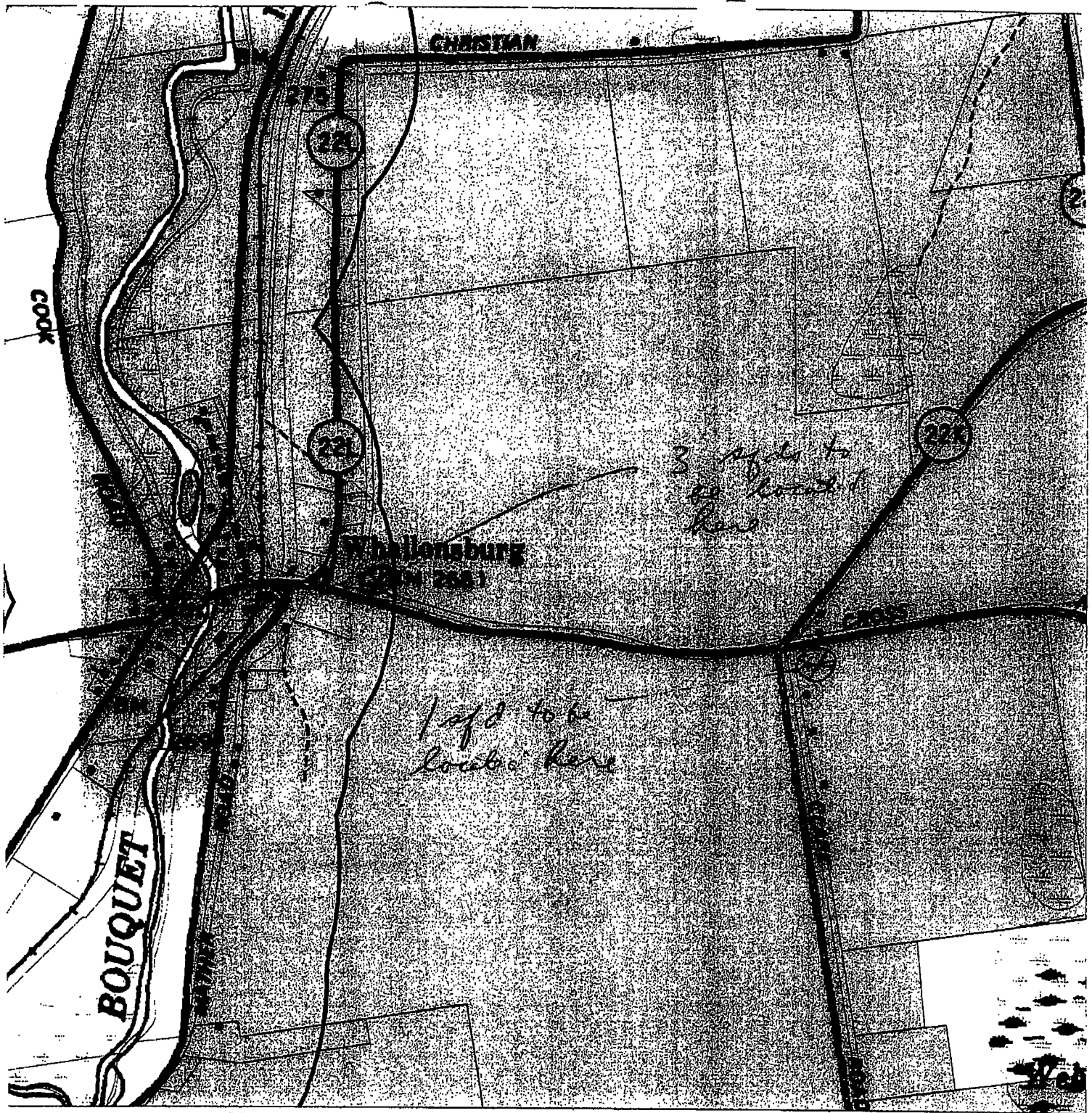
■ Parcel Search Results:  
Country: ESSEX  
Town/Village: Essex  
Tax Parcel #: 49.3-2-27.000  
2005 Owner: LEWIS FAMILY FARM INC

22cur repshp131506.apa 05/11/07 Scale 1:12000



# EXHIBIT C

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**APA Land Classification**

- Hamlet
- Moderate
- Low Intensity
- Rural Use
- Resource Mgmt.

**Industrial Use**

- Wilderness
- Canoe Area
- Primitive
- Wild Forest
- Intensive Use

**Historic**

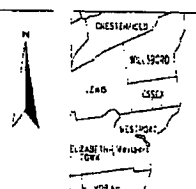
- State Administrative
  - Pending Class.
  - Open Water
- Regulatory Wetlands**
- EPA Wetland Covertypes**

**NWI Wetland Covertypes**

- Wetland
  - Linear Wetland
- Tax Map**
- Parcel Boundary

**Designated River**

- Corridor Boundary



# EXHIBIT D

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March 23, 2007

S.B. and Barbara Lewis  
1212 Whallons Bay Rd.  
Essex, NY 12936

Re: Case E2007-041  
Lands of Lewis Family Farm Inc.  
Tax Map Designation: 49.3-2-27  
Town of Essex, Essex County

Dear Mr. and Mrs. Lewis:

My office has directed me to investigate a possible violation of the Adirondack Park Agency Act and/or Rules and Regulations on the above-mentioned property as follows:

Construction of a single family dwelling in an area classified as Resource Management with obtaining an Agency permit.

If construction of any single family dwelling is occurring on this property the Agency would request that you voluntarily cease any construction activity until we can resolve this issue. In order for me to quickly learn the relevant facts, please contact me as soon as possible but not later than March 30, 2007. I would also like to meet with you or your agent at the property. I can be reached at Agency offices at the number listed below, or you may leave a message after hours at extension 301.

Your anticipated cooperation is appreciated.

Sincerely,

Douglas W. Miller  
Enforcement Officer

DWM:mlr

cc: David Lansing, Town of Essex, Code Enforcement Officer

# EXHIBIT E

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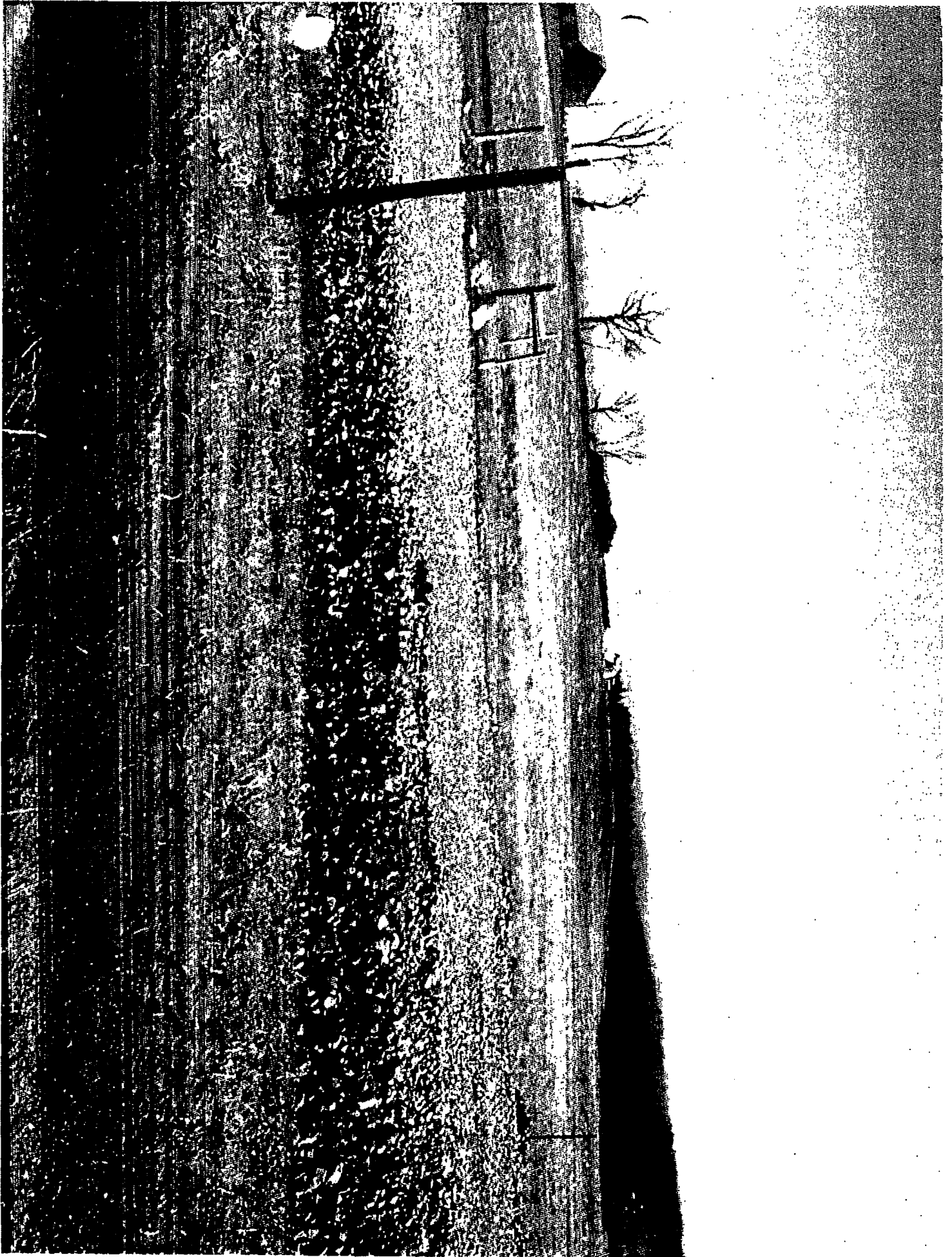
**MAR 28 2007**

3/28/07 10:00 AM



MAR 28







MAR 28 2007

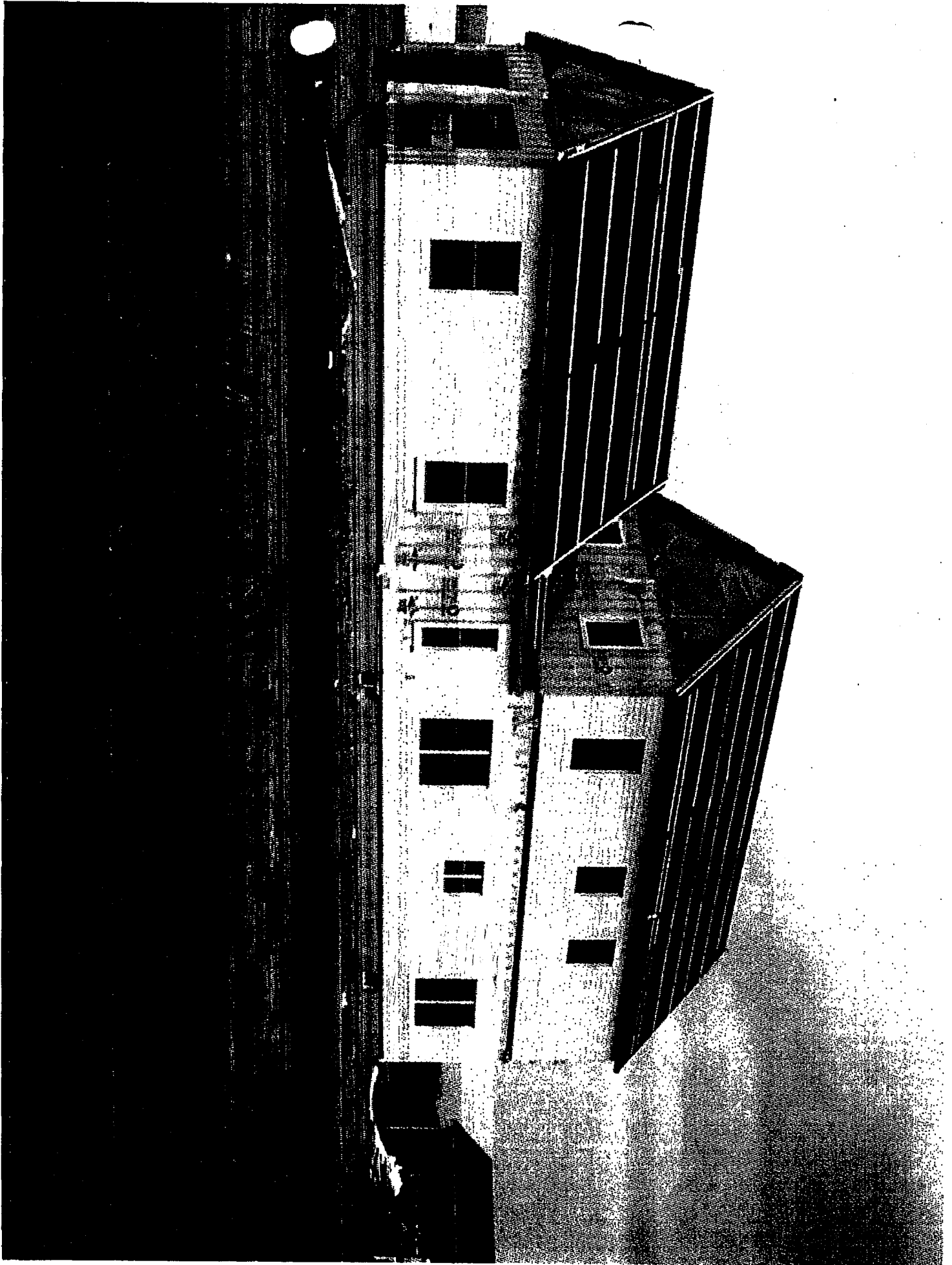


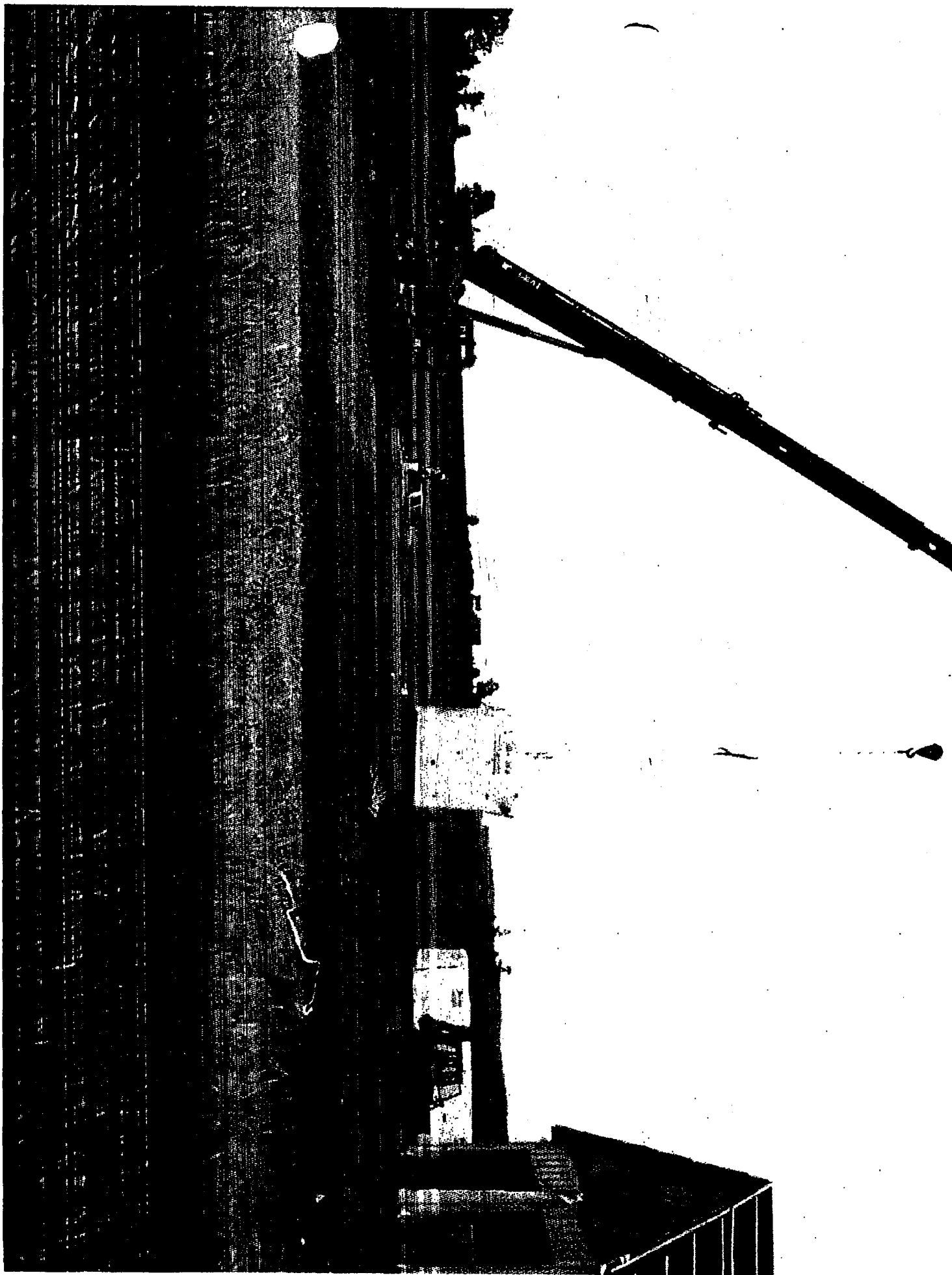
# EXHIBIT F

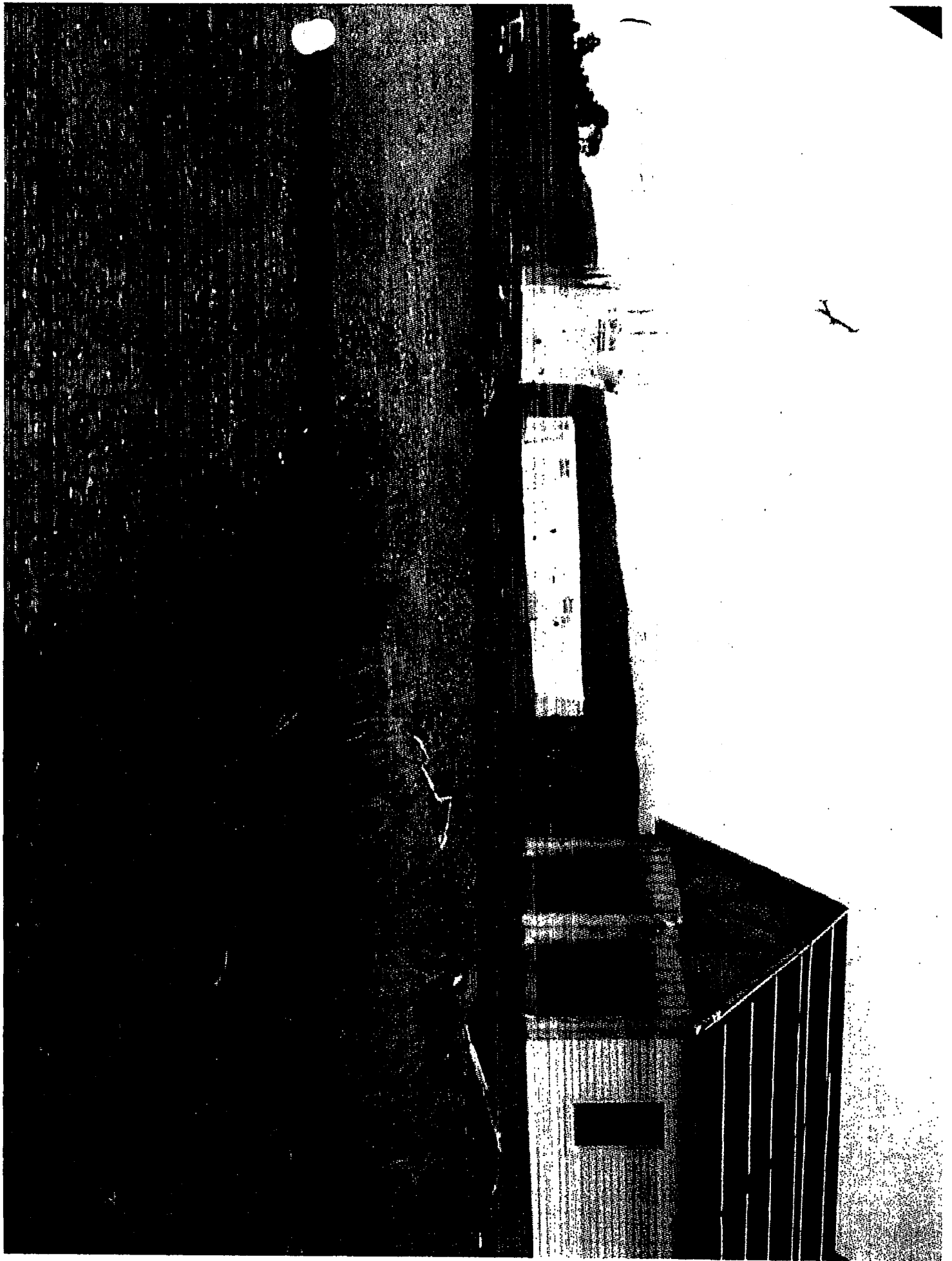
JUN 27 2007

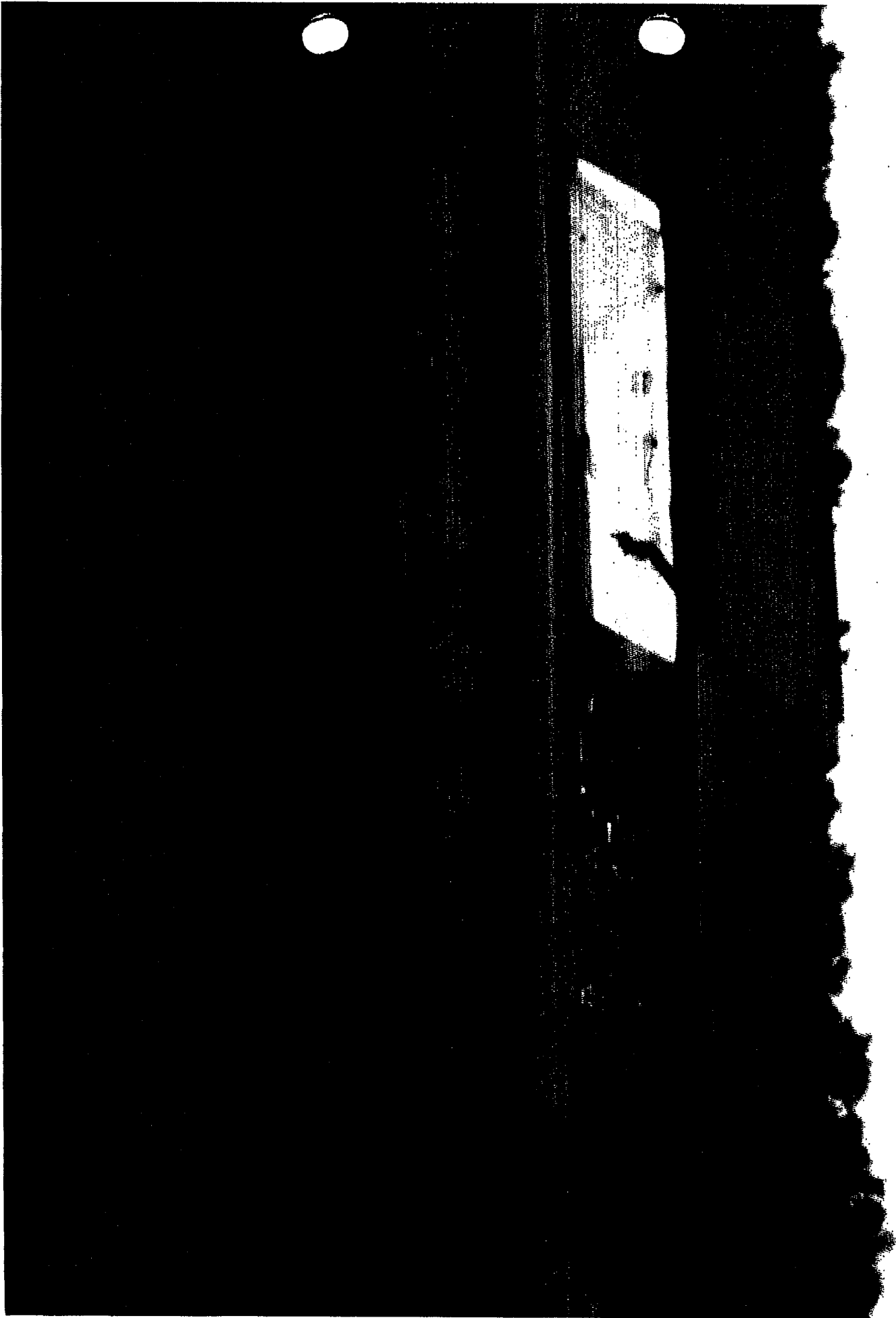






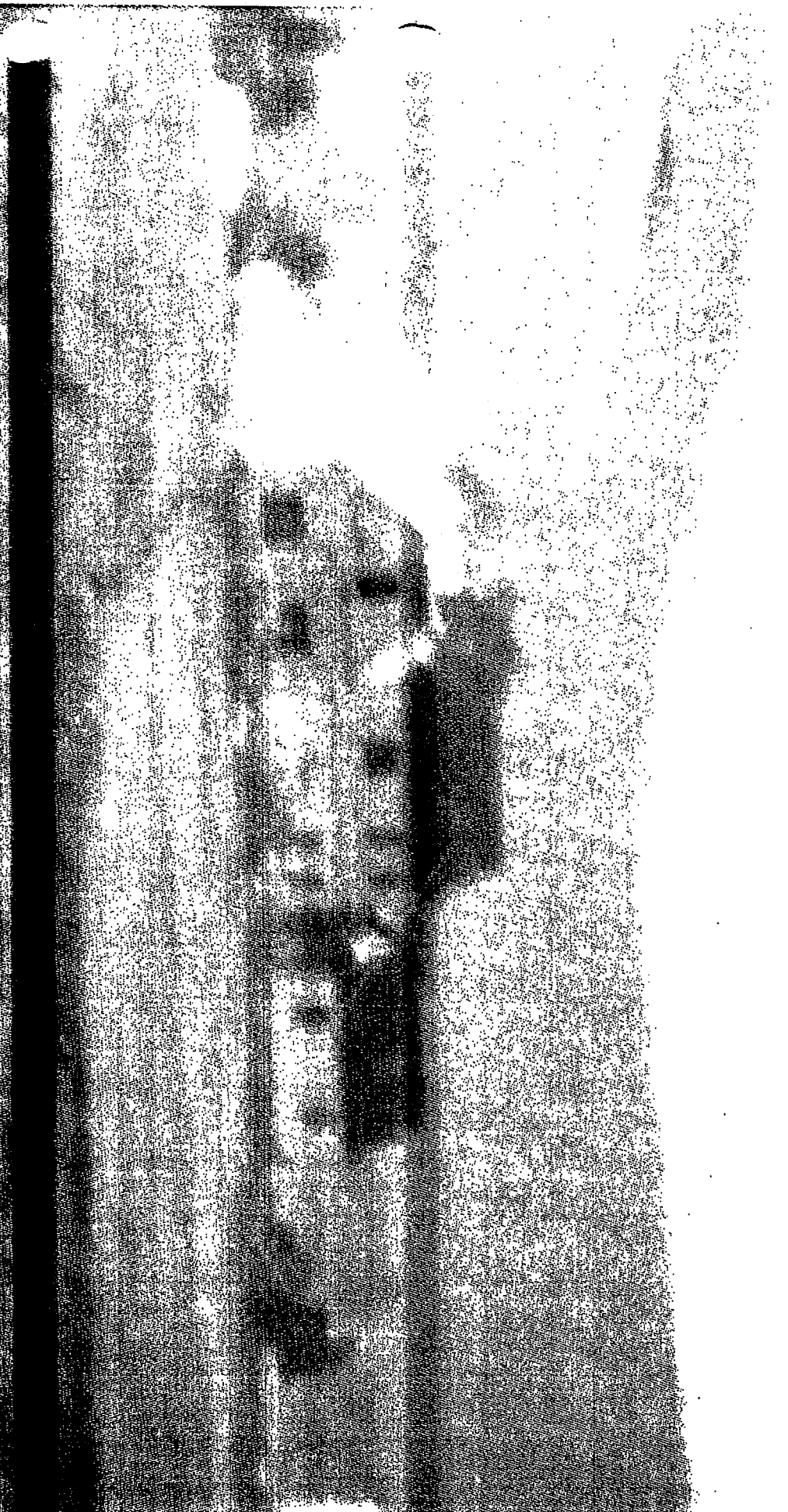




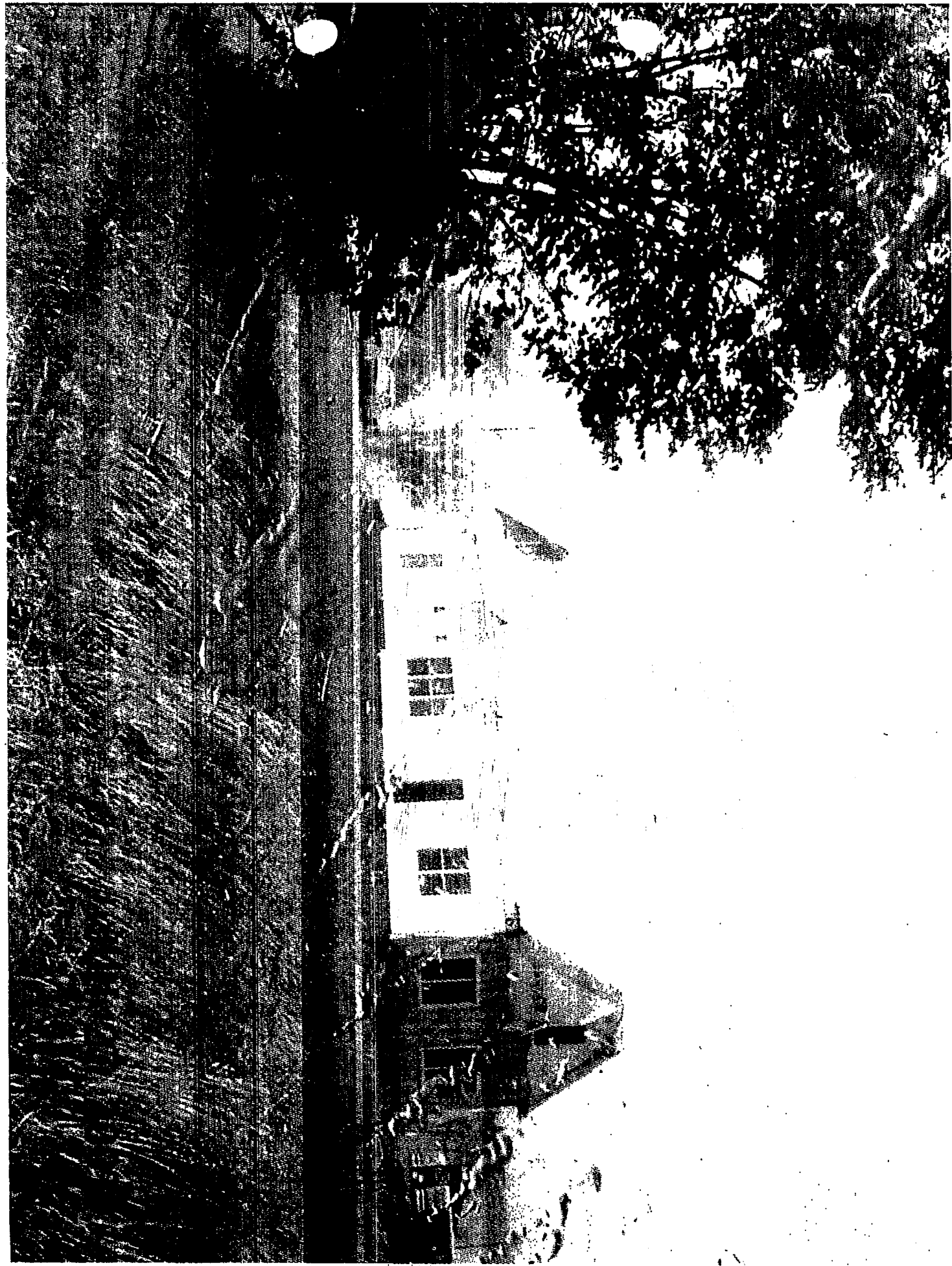




JUN 27 2007



JUN 27 2007





# Exhibit G

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STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X  
In the matter of the apparent  
violations of § 809(2)(a) of  
the Adirondack Park Agency Act  
by:

LEWIS FAMILY FARM, INC.

CEASE AND DESIST ORDER  
Agency File #E2007-041

Respondent, on lands situated in  
the Town of Essex, Essex County  
(Tax Map Parcel 49.3-2-27)  
LUA: Resource Management/Hamlet/Rural Use

-----X  
NOTICE: YOU ARE HEREBY ORDERED, PURSUANT TO 9 NYCRR §581-2.4, TO  
CEASE AND DESIST ANY AND ALL LAND USE AND DEVELOPMENT RELATED TO  
THE CONSTRUCTION OF THE SINGLE FAMILY DWELLINGS ON THE SUBJECT  
PROPERTY AS DESCRIBED IN PARAGRAPHS 3 AND 4 BELOW. ANY SUCH  
CONSTRUCTION ACTIVITY IS PROHIBITED UNTIL THIS MATTER IS  
RESOLVED, THE ENFORCEMENT CASE IS CONCLUDED, AND/OR AN AGENCY  
PERMIT AUTHORIZING SUCH LAND USE AND DEVELOPMENT IS ISSUED AND  
RECORDED. YOUR FAILURE TO ABIDE BY THIS ORDER MAY RESULT IN THE  
IMMEDIATE REFERRAL OF THE APPARENT VIOLATIONS IN THIS MATTER TO  
THE ATTORNEY GENERAL FOR CIVIL PROSECUTION.

WHEREAS:

1. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.
2. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands in the Adirondack Park.
3. Agency investigation reveals that Respondent is undertaking the construction of two post-1973 single family dwellings on Tax Map Parcel 49.3-2-27. These dwellings are located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the subject property. No permit was obtained from the Agency prior to the undertaking of the construction of these two single family dwellings.

4. Agency investigation reveals that Respondent is undertaking a subdivision into sites of the subject property pursuant to the construction of the two post-1973 single family dwellings described in Paragraph 3 above, as well as the construction of a third, proposed replacement single family dwelling also located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road. No permit was obtained from the Agency prior to the undertaking of this subdivision into sites of the subject property.

**NOW, THEREFORE, IT IS ORDERED:**

- I. Pursuant to 9 NYCRR §581-2.4, Respondent and its agents shall cease and desist from any and all land use and development related to the construction of the single family dwellings described in Paragraphs 3 and 4 above until this matter is resolved and the enforcement case is concluded.
- II. This order shall bind Respondent, its agents, successors and assigns.
- III. Respondent may address any and all communications with the Agency concerning this matter to Enforcement Attorney Sarah Reynolds at the Agency's headquarters.

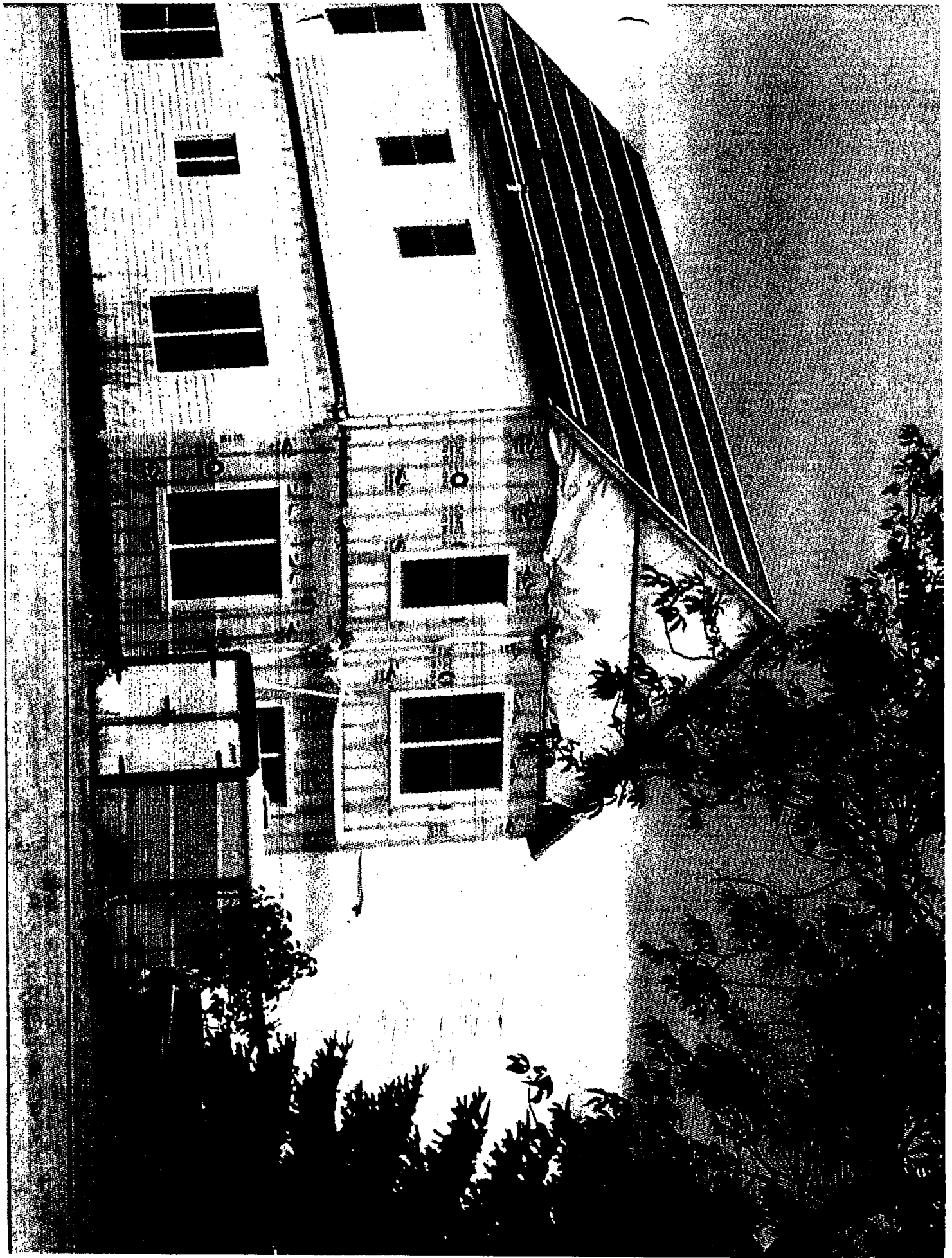
Dated: June 27, 2007  
Ray Brook, New York

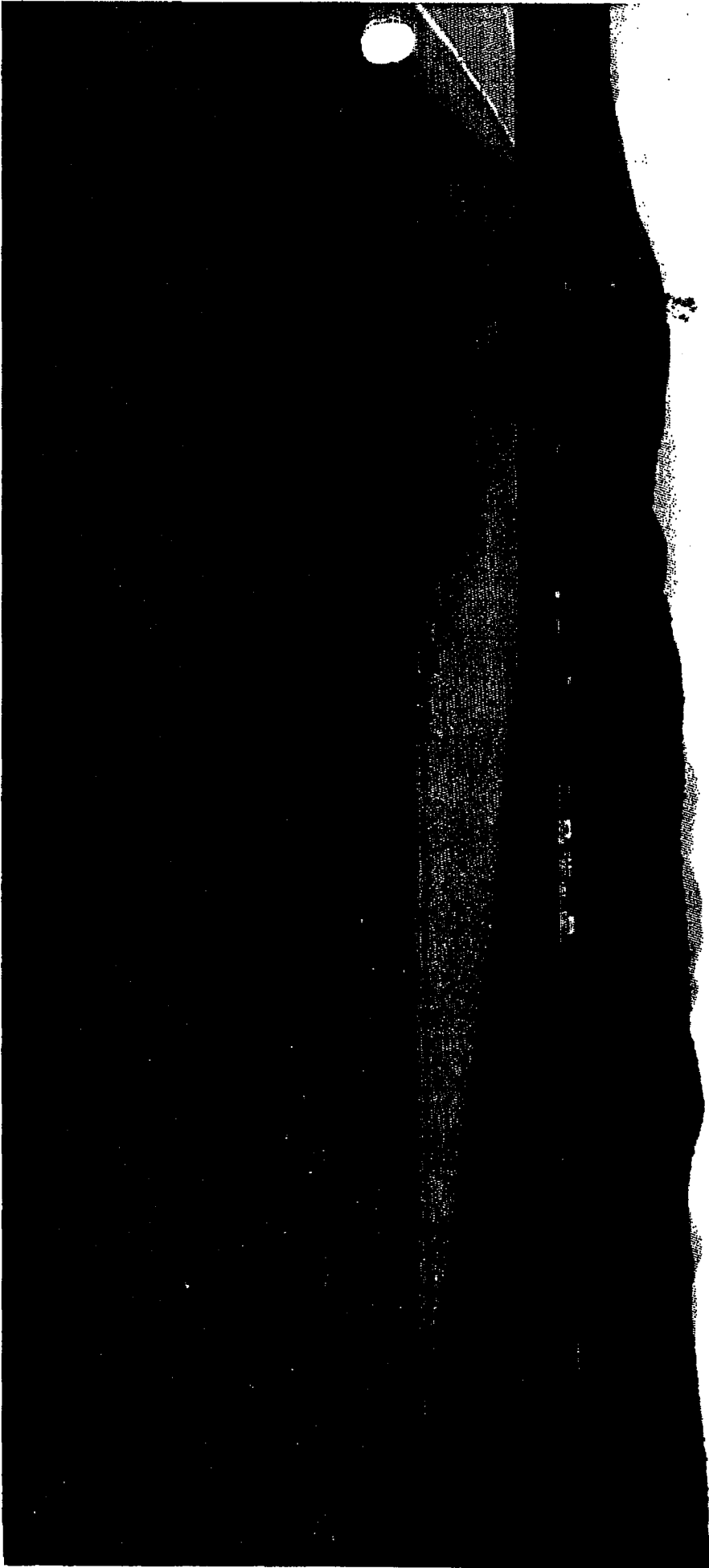
**ADIRONDACK PARK AGENCY**

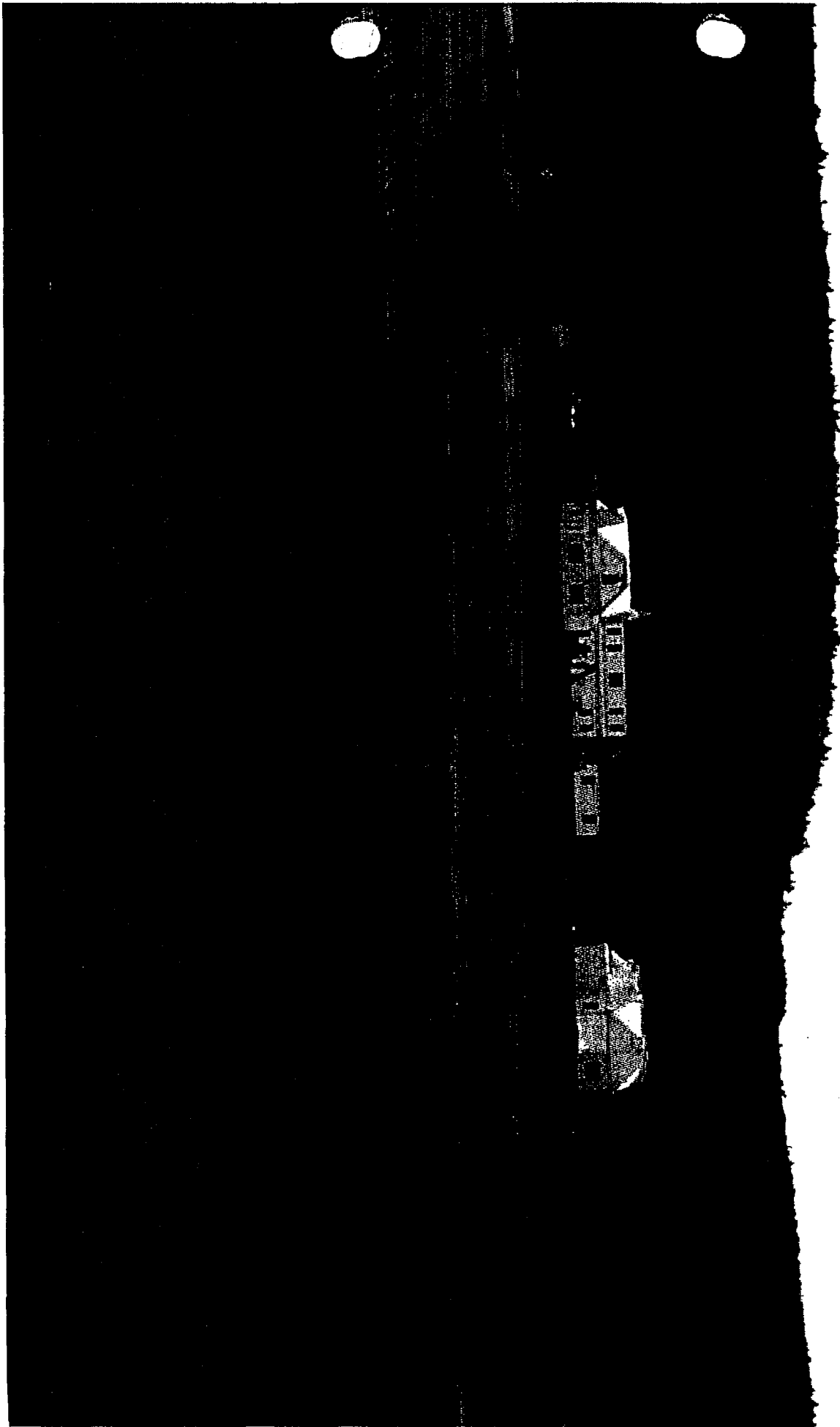
BY: Mark Sengenberger  
Mark Sengenberger  
Acting Executive Director

To: David Cook, Esq. (via fax and mail)

# EXHIBIT H

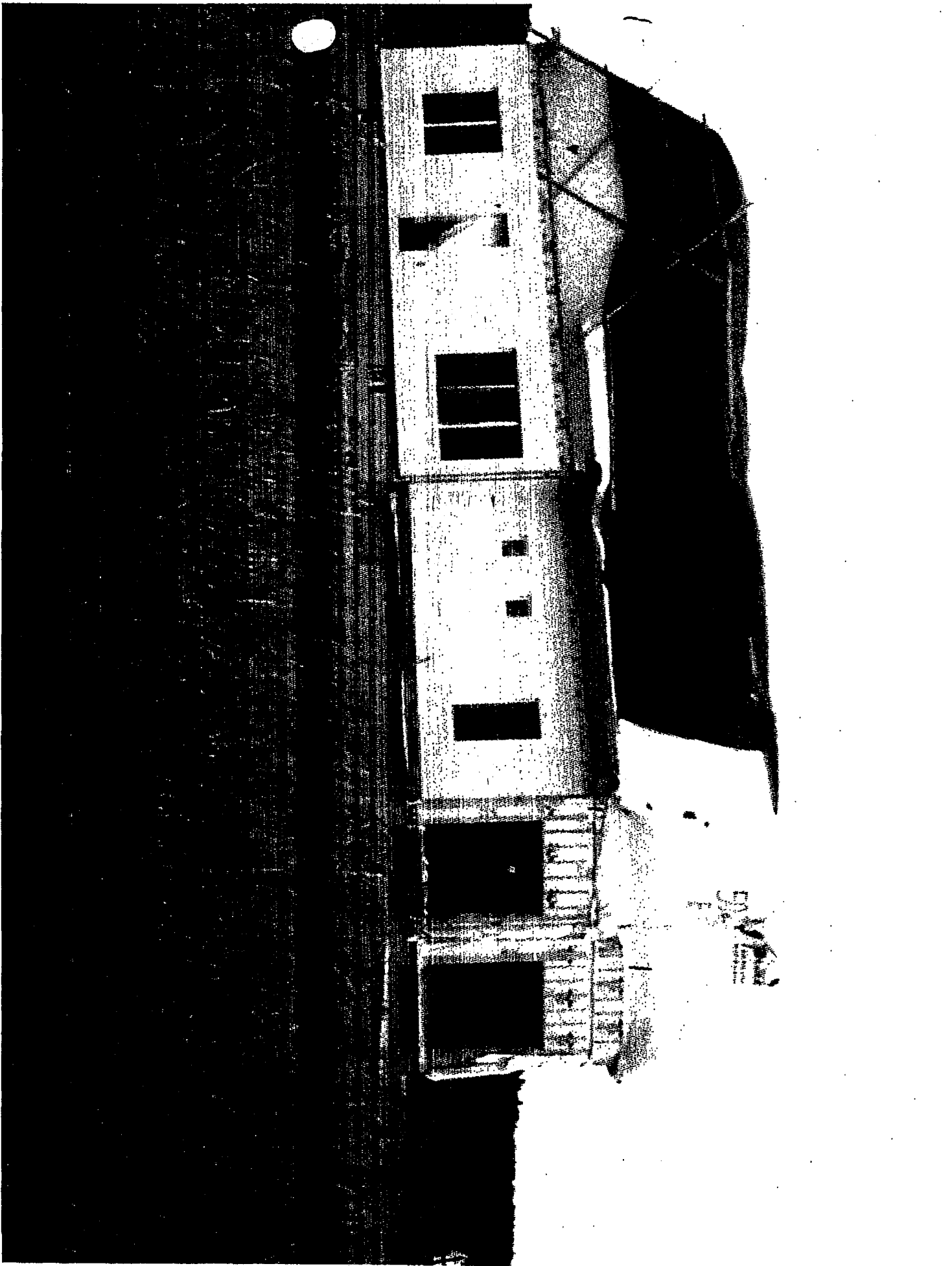


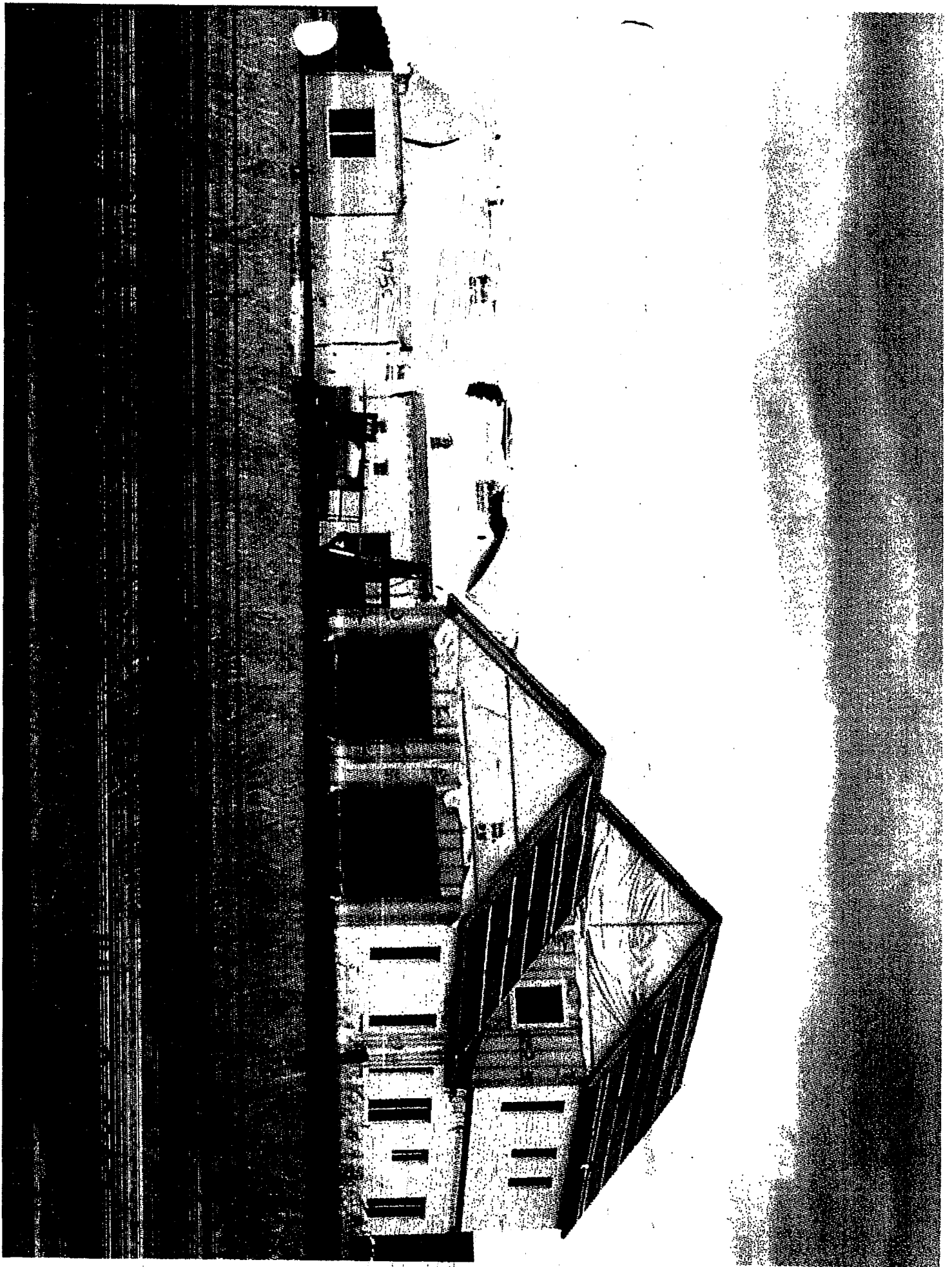






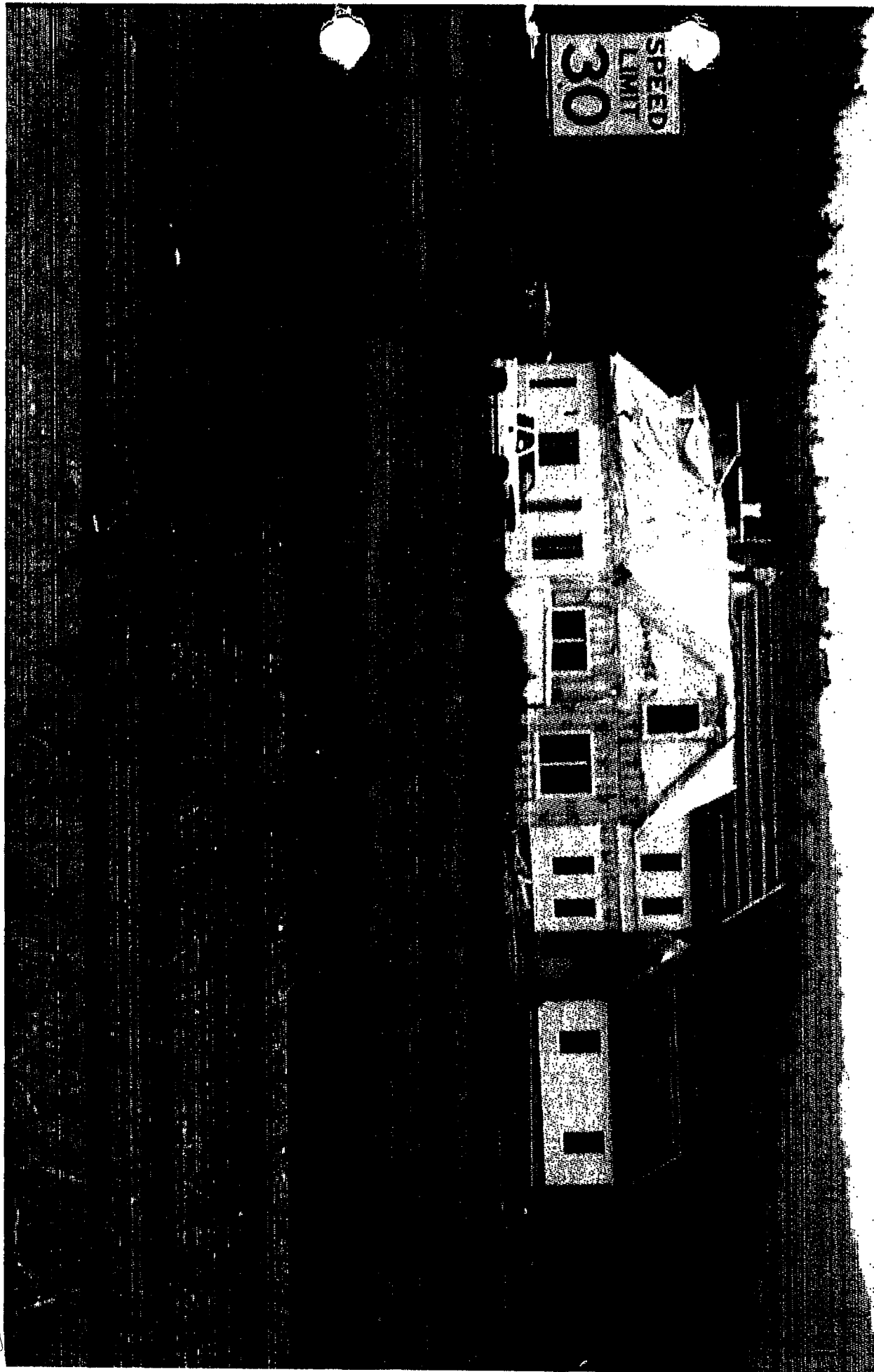








# EXHIBIT I



Sir/Madam:

07 AUG 29 AM 9:11

Take notice that the within is a copy of ELIZABETH ... 12932

the ... duly Filed and

entered in the office of the Clerk of

County on the ... of

ANDREW M. CUOMO

Attorney for Defendant

Office and Post Office Address  
The Capitol  
Albany, New York 12224

FILINGS

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

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Defendant.

Index No. 000498-07

RJI No. 15-1-2007-0153

NOTICE OF MOTION TO DISMISS

ANDREW M. CUOMO

Attorney General

By: Loretta Simon

Assistant Attorney General

Attorney for Defendant

OFFICE AND POST OFFICE ADDRESS

New York State Dept. of Law

The Capitol

Albany, New York 12224

Telephone: (518) 402-2724