

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

## RECORD PACKET COPY

**TH12**

Staff: SMR-SF  
Staff Report: January 28, 2005  
Hearing Date: February 17, 2005

**FINDINGS FOR  
CEASE AND DESIST AND RESTORATION ORDERS**

**CEASE AND DESIST AND  
RESTORATION ORDERS:**

CCC-05-CD-01 and CCC-05-RO-01

**RELATED VIOLATION FILES:**

V-1-02-011

**PROPERTY LOCATION:**

865 New Navy Base Road,  
Fairhaven, Humboldt County  
**APN 401-141-03 (Exhibit 1)**

**DESCRIPTION OF PROPERTY:**

An approximately twelve-acre parcel on the Samoa peninsula (north spit) of Humboldt Bay, near the town of Fairhaven and west of the City of Eureka.

**PROPERTY OWNER:**

Dr. Laurence E. Badgley

**VIOLATION DESCRIPTION:**

Construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands.

**SUBSTANTIVE FILE DOCUMENTS:**

Cease and Desist and Restoration Order file Nos.  
CCC-05-CD-01 and CCC-05-RO-01  
Background Exhibits 1 through 20

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060 (c)(2) and (3),  
and Categorically Exempt (CG §§ 15061(b)(2), 15037,  
15038 and 15321)

## I. SUMMARY

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) directing Dr. Laurence E. Badgley ("Badgley") to remove unpermitted development at 865 New Navy Base Road ("subject property") and to restore the impacted area. The unpermitted development consists of the construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands (**Photo Exhibits 2a-2s**). Badgley is the owner of the subject property.

The subject property consists of an approximately twelve-acre parcel located in the Coastal Zone. The parcel contains areas of sandy fill, as well as forest, pond, beach, vegetated dunes, dune hollows, and wetland areas. The subject property is located almost entirely within Humboldt County's coastal permit jurisdiction, while a smaller portion of the property that borders on Humboldt Bay is in the Commission's retained coastal permit jurisdiction. Pursuant to Coastal Act Sections 30809, 30810 and 30811, the Humboldt County Community Development Services Department (HCCDS) formally requested assistance from the California Coastal Commission in a letter dated July 15, 2004, requesting that the Commission assume enforcement jurisdiction for the entire subject property and to order abatement of violations on the subject property.

Numerous unpermitted uses on the subject property, described above, are inconsistent with County zoning ordinances (which constitute the Implementation Plan portion of the certified Local Coastal Program or LCP) and are in violation of the certified LCP and resource protection policies of the Coastal Act. Under the County zoning ordinances, the subject property is zoned Coastal-Dependent Industrial (MC), with Archaeological Resources (A) and Coastal Wetlands (W) combining zones. The MC zone includes any coastal-dependent industrial use requiring a maintained navigable channel to function, including, for example: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, and aquaculture support facilities. County staff have visited the site and noted that existing unpermitted development on the subject property includes a wrecking and salvage yard (as defined in Humboldt County Code Section 313-158), which is neither a principally nor a conditionally permitted use in the MC zone. Three residences on the subject property (a primary single family residence and two smaller residential structures) pre-date the Coastal Act and County zoning and general plan designations. The County has determined that these three residences are legal non-conforming units.

Regarding non-conforming agricultural uses on the subject property, the County has indicated that Badgley must establish what, if any, agricultural uses have been continuous on the subject property since prior to the Coastal Act. County zoning provides that if any non-conforming use ceases for any reason for a continuous period of two years or more, the land previously devoted to the non-conforming use becomes subject to all the regulations as to use for the zone in which such land is located. The County has also repeatedly reminded Badgley that any existing non-

conforming agricultural uses cannot be expanded. The proposed Orders require Badgley to provide evidence of continuing use for all non-conforming agricultural development on the subject property. If no evidence is submitted and/or if the County does not determine specific, listed non-conforming agricultural uses on the subject property to be vested, such uses will be considered unpermitted development and will be treated as such under the terms of the proposed Restoration Order (i.e., they shall be removed).

The unpermitted development activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act. Humboldt County has formally requested that the Commission take this enforcement action.

As discussed more fully within the following report, the unpermitted development is also inconsistent with the California Coastal Act, including Sections 30231 (Biological productivity; water quality) Section 30232 (oil and hazardous substance spills) and 30240 (Environmentally Sensitive Habitat Areas) of the Public Resources Code. The unpermitted development is not consistent with the LCP Policies 30240, 30231 and 30232, Chapter 3.18 of the LCP, or with Humboldt County zoning codes, which constitute the Implementation Plan portion of the certified LCP. The unpermitted development has impacted the habitat values of the subject property, which includes environmentally sensitive dune hollow (coastal scrub shrub) and wetland habitat. The impacts from the unpermitted development remain at the subject property. Thus, the unpermitted development on the subject property is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations. Therefore, the Commission may issue a Restoration Order under Section 30811 of the Coastal Act.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

### **III. MOTIONS**

Staff recommends that the Commission adopt the following two motions:

#### **1.A. Motion**

*I move that the Commission issue Cease and Desist Order No. CCC-05-CD-01 pursuant to the staff recommendation.*

#### **1.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### **1.C. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order number CCC-05-CD-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

#### **2.A. Motion**

*I move that the Commission issue Restoration Order No. CCC-05-RO-01 pursuant to the staff recommendation.*

#### **2.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### **2.C. Resolution to Issue Restoration Order**

The Commission hereby issues Restoration Order number CCC-05-RO-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a

coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

#### **IV. PROPOSED FINDINGS**

##### **A. History of Violation**

Humboldt County planning division staff received a complaint about unpermitted development on the subject property in May 2002. In a letter dated May 25, 2002, Humboldt County Community Development Services Department (County) staff sent a certified letter to Badgley (**Exhibit 3**), in which staff listed various alleged unpermitted development on the property, including an addition to and remodeling of a residence without a building permit, filling of wetlands, construction and residential occupancy of a yurt, construction of a yurt and hot tub on the beach portion of the property, and the storage of hazardous materials. The letter from the County explained options for resolving the alleged violations, including voluntary abatement and/or seeking permits for allowable uses under the site's zoning designation. Badgley responded in a letter dated June 6, 2002, in which he stated that the County's informant gave false information (**Exhibit 4**). County staff responded in a letter dated June 10, 2002, noting that Badgley's response did not resolve the alleged violations and again explaining options for resolving them (**Exhibit 5**). County staff visited the subject property on June 20, 2002 and verified the unpermitted development at the site.

In a letter dated September 24, 2002 County staff sent another certified letter to Badgley and set a deadline of October 31, 2002 for Badgley to indicate how he would resolve the violations on the subject property (**Exhibit 6**). The county's second letter noted that in addition to previously noted unpermitted development, staff site visits found that additional unpermitted development had taken place, including the placement of large poles in the ground, the placement of a large yurt structure with detached kitchen and bathroom, conversion of a storage shed into an apparent medical lab, construction of a corral, grading (cut and fill) in wetlands, construction of a new hot tub and platform, installation of electrical services, and storage of dock facilities, all without benefit of permits (see **photo Exhibits 2a-2s**).

Badgley failed to respond by the October 31, 2002 deadline set by County staff, and therefore, in a certified letter dated October 31, 2002, County staff indicated that the matter would be referred to the County Code Enforcement Unit (**Exhibit 7**). County staff received a letter dated November 5, 2002, from Badgley's attorney, which assured the County that Badgley intended to submit a permit application and bring the site into compliance (**Exhibit 8**). In a letter dated January 3, 2003, County staff noted that they had received no indication that Badgley was making any progress toward satisfying County permit requirements, and that County would refer the matter to the County Code Enforcement Unit (**Exhibit 9**). Badgley subsequently met with County planning staff in February 2003 for an application assistance meeting. On June 23, 2003 Badgley submitted a coastal development permit application to the County, with a Plan of Operations that proposed approximately thirty uses on the twelve-acre property. The application included an incomplete site plan that shows some but not all of the existing development on the subject property (the site plan primarily depicts the existing pre-Coastal residence locations), and does not depict the location of all proposed uses or structures (**Exhibit 10**).

In a letter dated July 23, 2003, County staff deemed Badgley's permit application (CDP-02-113) incomplete (**Exhibit 11**). The County indicated that a Biological Assessment and Cultural Resources Survey were required in order to complete the application (in addition to a revised plan of operations and evidence of other required approvals), and set a deadline of September 23, 2003 for submittal of the Biological Assessment and Cultural Resources Survey. Badgley failed to meet this deadline, and to date the County has not received either of the reports and CDP-02-113 remains incomplete. County staff and Commission enforcement staff met with Badgley on the subject property on May 27, 2004 and County staff requested that Badgley inform the County in writing whether he would limit his permit application for the proposed activities on the site to a boat building operation. During this visit, the County informed Badgley that this was one of the few proposed uses that *may* be permissible on the subject property, given the Coastal-Dependent Industrial site zoning. In a letter dated July 20, 2004, Badgley stated that he was willing to withdraw only five of the approximately thirty proposed uses in his permit application Plan of Operations (**Exhibit 12**). In a letter dated July 23, 2004, County staff recommended that Badgley submit an amended Plan of Operation for his application, focusing solely on the proposed boat building aspects of the plan, and to submit a revised plot plan showing a) everything currently on the parcel, b) the items Badgley intended to remove, and c) a depiction of the proposed boat building facility including docks, buildings, materials to be used, and materials to be stored on-site accessory to the boat building. (**Exhibit 13**). This letter also reminded Badgley that his application would remain incomplete until he submitted a Biological Assessment and Cultural Resources Survey.

In a letter dated July 15, 2004, the Humboldt County Community Development Services Department (HCCDS) formally requested that the California Coastal Commission enforce on the County's behalf regarding the unpermitted development on the subject property (**Exhibit 14**). The County noted that few of Badgley's proposed uses are consistent with the current zoning that is incorporated as the Implementation Plan portion of the certified LCP for Humboldt County. The County also noted that only two of Badgley's proposed uses *may* be permissible and in addition, none of the existing unpermitted development on the subject property is permitted under the Coastal Act or LCP.

On December 15, 2004, the Commission sent a Notice of Intent (NOI) to Commence Cease and Desist Order and Restoration Order Proceedings to Badgley (**Exhibit 15**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's February 2005 hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

Commission enforcement staff spoke with Badgley's attorney on January 3, 2005, and received a letter from him dated January 3, 2005, requesting 1) a postponement of formal enforcement proceedings, 2) a deadline for submittal of a revised CDP application to the County, and 3) an extension of time for submittal of the Statement of Defense form (**Exhibit 16**). Staff discussed options with Badgley's attorney for resolving the violations on the property amicably and voluntarily. In a letter dated January 4, 2005, staff denied the extension request, and noted that Badgley had ample time to file a complete CDP application but had failed to do so (**Exhibit 17**) in over two and a half years since the County had first notified him (in May 2002) of the

violations on the subject property. Badgley's attorney submitted a Statement of Defense on January 5, 2005 (**Exhibit 18**). In a letter dated January 7, 2005 to Badgley's attorney, staff proposed draft language for a potential Consent Order for the voluntary resolution of the Coastal Act violations on the subject property (**Exhibit 19**). In this letter, staff also requested that the Biological Assessment be submitted by January 24, 2005, and that Badgley's attorney contact staff by January 24, 2005 to provide a response regarding the proposed Consent Order. The Biological Assessment was not provided to Commission staff by the requested January 24, 2005 deadline. Staff telephoned Badgley's attorney on January 25, 2005, and was informed that Badgley's assistant was still reviewing the Consent Order language. Badgley's attorney had no response when questioned about whether Badgley was at all likely to resolve the violations voluntarily. Staff informed Badgley's attorney that the Commission therefore would be proceeding with formal enforcement actions. In a letter dated January 27, 2005, Badgley's attorney asserted that nine structures on the property pre-date the Coastal Act, stated that the Biological Assessment is being prepared and will be forwarded as soon as received, and indicated that several deadlines proposed by Commission staff would work better if they were slightly longer (**Exhibit 20**). Staff spoke with Badgley's attorney on January 27, 2005, and indicated that staff was available to continue discussions regarding a possible Consent Order, but that due to the meeting schedule and the need to move toward a resolution of the violations at the subject property, staff was proceeding with its recommendations for issuance of formal enforcement orders at the Commission's February hearing. Staff indicated that if Badgley does not contest the issuance of the Orders and complies with the Orders, staff is always willing to discuss possible deadline extensions as is provided for in all enforcement orders.

**B. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist and Restoration Order, consists of the construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands.

**C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, which states, in relevant part:

*If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal plan or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:*



*1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*

The development activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600 and the LCP, and the County requested that the Commission take action and issue a Cease and Desist Order. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

#### **D. Basis for Issuance of Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that 1) the development has occurred without a coastal development permit from the commission, local government, or port governing body; 2) the development is inconsistent with this division; and 3) the development is causing continuing resource damage.*

##### **1. Development Has Occurred Without a Coastal Development Permit**

The unpermitted development activity that is the subject of this Restoration Order is included within the definition of "development" contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, unpermitted grading, placement and erection of structures, and solid waste disposal are "development" as defined by Section 30106.

Pursuant to Section 30600(a) of the Coastal Act, "development" requires a coastal development permit. In this case, no coastal development permit has been obtained for the subject unpermitted development.

##### **2. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development meets the definition of "development" which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in the LCP and Chapter 3 of the Coastal Act. The unpermitted development is not consistent with Sections 30107.5, 30231, and 30240 of the Coastal Act. The unpermitted development is not consistent with Policies 30240, 30231 and 30232 of the LCP, Chapter 3.18 of the LCP, and with Humboldt County zoning codes, which constitute the Implementation Plan portion of the certified LCP.



### **Environmentally Sensitive Habitat Area**

Section 30107.5 of the Coastal Act states:

*“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 3.30 B.1.a. of the Humboldt Bay Area Plan (LCP) specifically identifies environmentally sensitive habitats:

*Environmentally sensitive habitats within the Humboldt Bay Planning Area include: 1) wetlands and estuaries, including Humboldt Bay... 2) Vegetated dunes along the North Spit to the Mad River... 3) Rivers, creeks, gulches, sloughs and associated riparian habitats... and 4) Critical habitats for rare and endangered species listed on state or federal lists.*

Section 30240 of the Coastal Act and Policy 30240 of the LCP state:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

The subject property is directly adjacent to Humboldt Bay and contains wetlands and dunes that are mapped in the LCP. The unpermitted development clearly disrupts the wetland habitat value because any fill of a wetland (including placement of solid material on wetland areas) reduces its ability to function. Water is the main requirement for a functional wetland. If water is removed, or isn't present in the wetland for as long, then wetland function will be degraded. Therefore, wetland function could be degraded because of actions that 1) disrupts water supply through direct fill of a wetland, other sorts of covering of a wetland, diversion of water, or draining, 2) degrades water quality through chemical contamination or temperature modification, 3) results in removal of wetland vegetation through grading, grazing, or mowing. Degradation of function means that the same plants won't grow, the wetland won't provide the same water filtration, percolation, and stormwater runoff storage, and wildlife use of that feature could be reduced.

In addition to being mapped in the LCP, in many recent decisions, the Commission has considered entire dune areas to be ESHA. Dune systems are a relatively rare feature along the California coastline. In addition, dunes often support rare or threatened plant species and other plant species that are considered to have special value because of their role in supporting the

dune system. Because dune systems are dynamic and the extent and location of plant coverage can vary from year to year within the dune system, the Commission has considered entire dune areas to be ESHA, even those portions of the dunes that are not vegetated at any particular time. Because dunes migrate mainly as a result of changes in wind conditions, dunes are not particularly stable and can easily be disturbed by excavation and filling activities. Excavation in a dune can change wind patterns in a manner that can cause increased wind erosion of the remaining portions of the dunes. Placement of fill can act to anchor dunes in a way that interferes with the natural dynamic systems and cause changes in the extent and coverage of the dune area. Therefore, dunes such as those located on the subject property are environmentally sensitive habitat pursuant to Section 30107.5 of the Coastal Act as they are rare and of special value because of their unique nature or role in the ecosystem, and can be easily disturbed or degraded by human activities and developments.

High levels of groundwater and high rainfall on the subject property may all contribute to the leaching of toxic chemicals or compounds capable of degradation from the unpermitted development into the environment. The unpermitted development on the subject property includes creosote-soaked timbers and piles of tires, which contain toxic chemicals that could leach into the surrounding environment, contaminating wetlands, groundwater, and the adjacent bay and, in turn, potentially affecting fish, animals and water quality in the area. The unpermitted development includes numerous structures that appear to be located in wetland areas, covering the wetlands and therefore degrading their function.

Therefore, the unpermitted development is inconsistent with Sections 30107.5 and 30240 of the Coastal Act, and with the Humboldt County LCP.

#### **Biological productivity; water quality**

Section 30231 of the Coastal Act and Policy 30231 of the LCP state:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

As discussed above, the unpermitted development on the subject property includes creosote-soaked timbers and piles of tires, which contain toxic chemicals or compounds capable of degradation that could be leaching into the surrounding environment, contaminating wetlands, groundwater, and the adjacent bay and, in turn, potentially affecting fish, animals and water quality in the area. Therefore, the Commission finds that the unpermitted development does not maintain the biological productivity and quality of coastal waters and wetlands and is not consistent with Section 30231 of the Coastal Act and Policy 30231 of the LCP.

### **Oil and Hazardous Substance Spills**

Section 30232 of the Coastal Act and Policy 30232 of the LCP state:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.*

As discussed above, the unpermitted development on the subject property includes creosote-soaked timbers and piles of tires, which contain toxic chemicals or compounds capable of degradation that could be leaching into the surrounding environment, contaminating groundwater and the adjacent bay and, in turn, potentially affecting fish, animals and water quality in the area. Therefore, the Commission finds that the unpermitted development does not protect against spillage of hazardous substances and is not consistent with Section 30232 of the Coastal Act.

### **Archaeological and Paleontological Resources**

Chapter 3.18 of the LCP states:

*Where new development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The County specifically raised the issue of cultural and archaeological resources, and noted in their July 23, 2003 letter to Badgley (**Exhibit 11**) "the Wiyot Tribe has requested that a Cultural Survey be conducted by an independent, licensed archaeologist, and stated that the project site is located in a culturally significant area." In the July 23, 2003 letter to Badgley, the County informed Badgley that a Cultural Survey was required in order to complete his CDP application. Badgley has failed to submit such a report to the County. The unpermitted development may have impacted cultural resources on the subject property, and removal and restoration work (particularly any work that may require heavy equipment and could result in excavation of material) could also affect cultural resources on the subject property. All removal and restoration activities that are part of the proposed Orders require all work to be performed in accordance with County zoning regulations regarding archaeological resource areas outside Shelter Cove (Humboldt County Code Section 313-16.1).

### **3. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing continuing resource damage, as defined by Section 13190(c) of the Commission's regulations:

*'Continuing', when used to describe 'resource damage', means such damage, which continues to occur as of the date of issuance of the Restoration Order.*

The unpermitted development remains on the subject. As described below, the unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur

as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission's regulations defines the term "resource" as it is used in Section 30811 of the Coastal Act as follows:

*'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

The term "damage" in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

*'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.'*

In this case, the resource damage is the continuing degradation of environmentally sensitive habitat caused by the presence of the unpermitted solid waste, as well as potential chemical and physical degradation and movement through the environment of these materials. The unpermitted development is causing the ongoing adverse impacts to coastal resources that are described in subsection 2 above. As long as the unpermitted development and filled wetland areas remain on the subject property, continuing resource damage will continue to occur.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a Cease and Desist Order and Restoration order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**F. Allegations**

1. Dr. Laurence E. Badgley owns the property at 865 New Navy Base Road (APN 401-141-03).
2. Unpermitted grading (cut and fill in wetlands) and placement of development without permits have occurred on the subject property.
3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.

4. The unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act, including Sections 30231, 30232 and 30240.
5. The unpermitted development is inconsistent with Policies 30240, 30231 and 30232 of the LCP, Chapter 3.18 of the LCP, and with Humboldt County zoning codes, which constitute the Implementation Plan portion of the certified LCP.
6. The unpermitted development is causing continuing resource damage.

**G. Violators' Defenses and Commission's Response**

Badgley's attorney submitted a Statement of Defense form and attachments dated January 5, 2005 on behalf of Badgley, which is included as **Exhibit 18**. Page 1 of the submitted form states: "This answering Respondent denies, generally and specifically, each factual allegation contained on the Notice of Intent." The following paragraphs summarize the more specific defenses contained in the Statement of Defense, and set forth the Commission's response to each defense.

**Badgley's Defense:**

1. **"The Notice of Intent, dated December 15, 2004, is the first time most of these alleged violations have been specifically addressed by either the County or Coastal Commission. On June 20, 2002, Michael Richardson, of the County Planning Division, met with Badgley, at Badgley's request in response to allegations of violations. Dr Badgley offered to show Mr. Richardson anything and any location, residence, or building on the property. Mr. Richardson declined the offer stating that his job was only to help Badgley through the permit process in order for him to 'pursue the activities and projects' he had in mind. Mr. Richardson refused to view any alleged violations during his visit. Badgley, at this time, informed Mr. Richardson a number of applications had been made within the previous years without response and Mr. Richardson agreed to look into these."**

**Commission's Response:**

The Commission disagrees that the December 15, 2004 Notice of Intent is the first time most of the alleged violations have been raised. Beginning in 2002, certified letters from the County to Badgley, dated May 25, 2002, September 24, 2002, and October 31, 2002 clearly stated the nature of the alleged violations, which to date continue to exist on the subject property.

Regarding Badgley's assertion that he had attempted to get a coastal development permit for 'improvements' to the property, the September 24, 2002 letter from Humboldt County to Badgley (**Exhibit 6**) noted that no coastal development permit applications had been received by the County from Badgley. Badgley received an approval for a business license from the County on June 21, 2000, for a company called Samoa Maritime Industries. Badgley applied for but did not receive a building permit for the placement of a perimeter foundation under an existing structure. County records for the property also indicated that a 1986 building department permit

was issued for remodeling of an existing residence (this permit pre-dates Badgley's ownership of the subject property), which is not relevant to this enforcement matter.

The County has no other permit records on file for the subject property. Badgley has been given numerous deadlines to submit the information necessary for completion of his CDP application (including the Biological Assessment and Cultural Resources Survey) and has failed to comply.

**Badgley's Defense:**

2. **"Following additional discussion with Mr. Richardson, a complete and extensive Plan of Operations was submitted with an application to both the County and the Coastal Commission in mid 2003. Upon the County's request for both biological and cultural assessments, Badgley sought out the assistance of experts in these fields in order to complete the process.**

**In January 2004, Mad River Biologists completed the biological assessment. Tamara Gedik, in her report to Badgley, stated that she submitted their report to Alyson Hunter at HCCDS. See Mad River Biologists attached [the attachment consists of a title page of a biological constraints analysis prepared by Mad River Biologists, stamped and labeled 'DRAFT' and dated November 24, 2003, and one page of text from the draft report that discusses mitigation measures for proposed aquaculture activities on the subject property that would be "likely to have a significant impact on sensitive biological resources" including wetlands on the site and on adjacent Humboldt Bay. See Exhibit 18, pages 7 and 8].**

**Jaime Roscoe and Steven Gantham, MA, RPA were consulted regarding cultural assessment. It was determined that the existence of previous cultural assessments, most recently in the late 1980s, as well as the existing Army Corps of Engineers dredging reports showing past dredge fill being dumped on the property, that a new cultural study was not advised. This information was passed on to Alyson Hunter in a letter dated August 2003 to which she did not dispute.**

**Notice of Intent references archaeological and paleontological resources; however, previous studies of the property have not found these, and have in fact determined that much of the property is covered with a depth of bay dredge material."**

**Commission's Response:**

Despite the assertions above, enforcement staff has confirmed with Humboldt County that to date, no Biological Assessment has been submitted to County staff. The two pages of the Biological Assessment submitted with the Statement of Defense consist only of a title page of a biological constraints analysis prepared by Mad River Biologists, stamped and labeled 'DRAFT' and dated November 24, 2003, and one page (page 26 of 62) of text from the draft report that discusses mitigation measures for proposed aquaculture activities on the subject property that would be "likely to have a significant impact on sensitive biological resources" including wetlands on the site and on adjacent Humboldt Bay. The two pages of the draft Biological

Assessment provided in the Statement of Defense are incomplete and do not contain the required information, analysis and conclusions necessary for the completion of Badgley's CDP application (see **Exhibit 18, pages 7 and 8**).

Badgley has provided no evidence that the Biological Assessment has been finalized, and County staff confirmed that they have never received any copy, whether Draft or Final, of this report. Moreover, our January 7, 2005 letter (**Exhibit 19**) requested that Badgley submit the Biological Assessment to staff by January 24, 2005, but he has not submitted the report to either the County or Commission staff. In a letter dated January 27, 2005, Badgley's attorney stated that the Biological Assessment is being prepared and will be forwarded as soon as it is received (**Exhibit 20**).

No information was provided about the qualifications of the two individuals consulted regarding cultural resources, nor was any written report from them supplied to the County or Commission staff. Furthermore, the County specifically stated in their July 23, 2003 letter to Badgley (**Exhibit 11**) "the Wiyot Tribe has requested that a Cultural Survey be conducted by an independent, licensed archaeologist, and stated that the project site is located in a culturally significant area." The County clearly stated the requirement for a current cultural survey that meets the satisfaction of the Wiyot Tribe, and set a deadline for submittal of this report. No such report has been prepared or submitted to the County.

Enforcement staff confirmed with Alyson Hunter at Humboldt County that she never received a letter in August 2003 regarding cultural assessment for the subject property. No letter with this date exists in the County file, and Badgley has not provided a copy of such letter to Commission staff.

The subject property does contain areas of sandy fill from Humboldt Bay dredge disposal, but such fill does not cover the entire subject property. The property also contains areas of forest, pond, vegetated dunes, dune hollows, and beach. The presence of fill on a portion of the subject property does not in any way address or eliminate the requirement for a current cultural resources survey.

### **Badgley's Defense:**

3. "Research through the County Planning Division, conducted prior to the development of the Plan of Operations, listed the zoning of parcel in question only as Coastal-Dependent Marine Industrial. Notice of Intent states the 'property constitutes a wrecking and salvage yard.' The property very well could have been described as such during Elmer Newby's tenancy with the property's previous owner (see Newby attached). Badgley took great strides, through legal action and at his own expense, to clean the property of the enormous amounts of trash, wrecked heavy equipment, hazardous waste, scrap and various debris (see photos attached). Everything currently stationed on the property has great value to its use in the proposed boat building as detailed in the Plan of Operations."



**Commission's Response:**

Badgley acquired the property in December 1997 and was aware at this time of the "enormous amounts of trash" on the property. He also knew or should have known the property was not a licensed, permitted waste disposal site. Even if a previous owner deposited some of the unpermitted development on the subject property, Badgley is responsible for the current condition of the property. A property owner is liable for actions of previous owners who may have created the public nuisances on the subject property based on Civil Code 3483, which states:

*Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.*

In addition, in *(Leslie Salt Co. v. San Francisco Bay Conservation and Development Com. (1984) 153 Cal. App.3d 605, 622)*, the court held that:

*"whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question."*

Similarly, a property owner is liable under the Coastal Act for unpermitted development currently existing on their property even if a previous owner performed the unpermitted development. Regardless of the potential future value of existing material on the property for potential future activities, unpermitted storage of stockpiled building and other materials is not permitted under the Coastal Act, and the materials cannot be stockpiled pending the as yet unknown outcome of Badgley's incomplete permit application.

The photographs of the subject property that Badgley submitted with his Statement of Defense are undated and do not establish the condition of the subject property at any specified date, and do not reflect the current condition of the subject property. While Badgley may have removed some unpermitted development from the subject property, unpermitted development remains and it is apparent that Badgley has placed additional unpermitted development on the property since acquiring it in 1997.

Badgley's CDP application with the County remains incomplete. In a letter dated July 23, 2004, County staff requested that Badgley submit an amended Plan of Operation for his application, focusing solely on the proposed boat building aspects of the plan, and to submit a revised plot plan showing a) everything currently on the parcel, b) the items Badgley intended to remove, and c) a depiction of the proposed boat building facility including docks, buildings, materials to be used, and materials to be stored on-site accessory to the boat building (**Exhibit 13**). To date, the County has not received an amended plan from Badgley. Badgley may store any materials he wants to save at a licensed storage facility.

**Badgley's Defense:**

4. **"The creosote-soaked pilings have been in existence on the property for at least 25 years (see Newby Letter, attached). County has known of their existence and has not noted as a violation until now. Pilings are to be utilized in the boat building operation as detailed in the Plan of Operations. They will be stored until use [sic] in a manner that will not violate the Coastal Act."**

**Commission's Response:**

There is no evidence that the creosote-soaked pilings are being stored appropriately with the environmental controls necessary to prevent leaching of toxic chemicals into the surrounding environment and avoid environmental damage (**Exhibit 2a**). This is of particular concern with materials such as creosote-soaked pilings. The County has noted a wide variety of unpermitted materials on the subject property. This resource damage is continuing and needs to be addressed. Badgley may store any materials he wants to save at a licensed storage facility.

This defense raises similar issues as Defense #3. See Commission Response to Defense #3 above.

**Badgley's Defense:**

5. **"A large number of tires were left on the property after Badgley had purchased it with the agreement that they would be removed by the previous owner's tenant, Elmer Newby. Badgley has disposed of the majority of these tires, the few that remain are to be used as bumpers for an existing barge. Tires are intended for marine industrial use, if their temporary storage is unacceptable then other storage arrangements can be made."**

**Commission's Response:**

This defense raises the same issues as Defense #3 and #4. See Commission Response above.

**Badgley's Defense:**

6. **"All operational vehicles on the property are for business needs are currently used [sic]. The County has never made a complaint to Badgley regarding these vehicles. There are only two inoperable vehicles at the property, one is an antique collectible and the other is the caretaker's which he has been repairing."**

**Commission's Response:**

Photographs of the subject property indicate that there are numerous vehicles on the subject property, not all of which appear to be used for "business needs" (see **Exhibit 2o and 2p**, which depict a recreational vehicle and a parking meter monitoring vehicle) and some of which appear

to be non-operational (see **Exhibit 2j**, which shows a truck and a vehicle with what appears to be an open hood parked behind stacks of stored materials).

The proposed Orders require Badgley to provide evidence of operability for all vehicles on the subject property or to remove them. The antique collectible vehicle and the caretaker's vehicle that is being repaired may be excluded from the removal order, under the terms of the Order itself (See Restoration Order paragraph A5).

**Badgley's Defense:**

7. Regarding steel and metal piles, including wire, and axels: **"Much of these predate purchase of the property by Badgley with the agreement that they would be removed by the previous owner's tenant, Elmer Newby. Badgley removed a vast amount of metal scrap at his own expense. Materials currently present will be used in the boat building as presented in the Plan of Operations. There have been no complaints to his knowledge until now.**

**The axels in question are railroad car axels (four of them) that are unique items which were purchased at the rare times they were offered for sale. They are necessary for the construction of the proposed marine railway as described in the Plan of Operations (which the County has already verbally stated is acceptable use of the property)."**

**Commission's Response:**

Badgley has proposed approximately thirty different uses for the subject property, but has failed to complete his CDP application for even one proposed use, and has not obtained the required CDPs from the County or Commission, nor any of the other required approvals from other regulatory bodies (Harbor Commission, Department of Fish and Game, and NOAA Fisheries) that have been requested since 2002. Badgley has no permit waiver for unpermitted storage of materials that may or may not be needed for operations for which he has obtained no permits. The County has repeatedly raised the issue of the various unpermitted materials at the subject property. Badgley may store any materials he wants to save at a licensed storage facility.

This defense raises similar issues as Defenses #3. See Commission Response above.

**Badgley's Defense:**

8. Regarding yurts and sheds: **"Only a single portable 17 foot diameter tent structure exists unoccupied and used for storage. Sheds measuring no more than 120 square feet interior floor are not held to permit requirements as long as they meet set back limits and are used for storage only."**

**Commission's Response:**

Badgley has asserted, but has provided no evidence that yurt structures on the subject property are not occupied. In fact, the original violation report from the County indicated that at least one

yurt with a detached kitchen and bathroom was occupied as a residence on the subject property (**Exhibit 6**). In addition, Badgley has provided no information that unpermitted structures have not been placed in wetland areas, or that they are set back from wetland areas.

Regarding exemptions for accessory structures, the Uniform Building Code (UBC) notes that a one-story accessory structure, storage shed, or other similar use does not require a permit if it is less than 120 square feet. This exemption applies to one accessory structure of no more than 120 square feet total. Badgley indicates that the yurt is seventeen feet in diameter, which if it is roughly circular means it covers approximately 227 square feet. This yurt alone exceeds the size limit for permit exemptions and there are multiple unpermitted sheds, yurts, and structures on the subject property. Moreover, we note that this UBC exemption is intended to apply to accessory structures, and yet there is no permitted primary structure that could serve as a basis for an exempt accessory structure.

**Badgley's Defense:**

9. Regarding platforms: **"Two 'platforms' exist. Badgley, based on his former business manager's reported research was led to believe they did not require permits as neither 'platform' pierces the ground and both are portable."**

**Commission's Response:**

Badgley provides no evidence regarding what constituted his "former business manager's reported research." The Coastal Act and Local Coastal Program govern the subject property, which define development as "the placement or erection of any solid material or structure..." Structures clearly do not have to "pierce the ground" nor be immobile to be development, and therefore require a CDP under the Coastal Act and LCP.

**Badgley's Defense:**

10. Regarding grading: **"Some of the already existing road and parking area potholes have been filled. Since this was maintenance on an already road/parking, the fill was done with the understanding that it did not require permitting for repair. A degraded area pointed out in the biological assessment will be allowed to recover naturally as recommended by Mad River Biologists (see Mad River Biologists attached)."**

**Commission's Response:**

The Commission regulations regarding repair and maintenance activities that require a permit provide that a CDP is required for "Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area..." (CCR Section 13252a(3)). Areas of this site mapped as wetland in the certified LCP are directly adjacent to portions of the road on the subject property, and Commission and County site visits verified the presence of wetland areas adjacent to the road (**Exhibit 2s**). Wetland areas on the subject property, which are

environmentally sensitive habitat areas, are clearly within 50 feet of portions of the road, and maintenance activities for the road would therefore not be exempt and would require a CDP.

In addition to possible fill of wetlands that may be associated with grading of the adjacent road on the subject property, some of the unpermitted development (sheds, stacks of rusting pipes, building materials, etc) may have been placed in wetland areas (**Exhibit 2a-2s**). Placement of any solid material or structure in a wetland constitutes unpermitted fill of wetlands. Any unpermitted fill in wetland areas on the subject property would be removed (and, if necessary, the wetland areas would be restored) under the terms of the proposed Orders.

The one page of draft text from the Biological Assessment that Badgley attached to his Statement of Defense does not contain complete information about where wetlands are located on the property, which wetland areas have been filled or otherwise impacted, and which wetland areas require active restoration. Accordingly, a final, complete Biological Assessment is required as part of the proposed Orders, and shall be incorporated into any recommendations regarding restoration in the Removal and Restoration Plan that is to be submitted for the Commission's review and approval (See Restoration Order paragraph A10).

#### **Badgley's Defense:**

11. Regarding corrals: **"The property has historically been used agriculturally for both crops and animals with corrals in continued existence. Initial meetings with County Planner, Robert Wall, indicated the property was historically used agriculturally, that it has continued to be used agriculturally and that the County would like to see more land returned to agricultural use. He stated that he and the other planners would find this to be a continued acceptable use for the property (see Memo for the Record). More recently, a letter from Alyson Hunter, dated January 2003 (see attached), stated 'the Department can consider the agricultural uses as legally nonconforming' and 'will support the introduction of an appropriate number of horses and/or goats onto the parcel'."**

#### **Commission's Response:**

The County has indicated that Badgley must establish what, if any, agricultural uses have been continuous on the subject property since prior to the Coastal Act. County zoning provides that if any non-conforming use ceases for any reason for a continuous period of two years or more, the land previously devoted to the non-conforming use becomes subject to all the regulations as to use for the zone in which such land is located (Humboldt County Code Section A314.25, Non-conforming Uses and Structures). The County has also reminded Badgley that any existing use cannot be expanded (**Exhibits 11 and 13**). To date, Badgley has not provided evidence of continuous use; therefore, he has not established any vested agricultural uses on the site and has not demonstrated that he has not expanded any agricultural uses on the site. However, in an attempt to accommodate Badgley, and include the County's input on this issue, we have specifically addressed this issue in the proposed Restoration Order (see Restoration Order paragraph A4).

**Badgley's Defense:**

12. "Notice of Intent relies on Sections 13196(e) of the Commission's regulations, stating 'restoring the property affected by the violation to the condition it was in before the violation occurred.' Please see attached photographs depicting property condition prior to Badgley's acquirement. It is strongly urged that this request be reconsidered."

**Commission's Response:**

This defense states an apparent misunderstanding of what restoration would require. Restoration would seek to restore the site to the condition that existed prior to the placement of any unpermitted development on the property, not to the conditions that existed when Badgley acquired the property in 1997. It is clear that unpermitted development existed on the property when Badgley acquired it, and as explained in Commission Response to Defense #3, Badgley is responsible for the current condition of the property and is liable for actions of previous owners who may have created the public nuisances on the subject property.

The photographs of the subject property that Badgley submitted with his Statement of Defense are undated and do not establish the condition of the subject property at any specified date, and in fact do not reflect the current condition of the subject property. While Badgley may have removed some unpermitted development from the subject property, unpermitted development remains and it is apparent that Badgley has also placed additional unpermitted development on the property since acquiring it in 1997.

**Badgley's Defense:**

13. "Section 30810(a) of the Coastal Act authorizes issuance of Cease and Desist only after a public hearing. There is no evidence that a public hearing has taken place regarding this property. Section 30811 of the Coastal Act authorizes restoration only after a public hearing, if it has occurred without a coastal development permit, is inconsistent with this division, and is causing continuing resource damage. It is not apparent that all four of these criteria have been met."

**Commission's Response:**

This defense states an apparent misunderstanding of statements contained in the Notice of Intent letter. The NOI explains the Coastal Act authority and outlines the formal enforcement process, including requirements for issuance of enforcement orders. The NOI explains that staff is scheduling a public hearing regarding this matter, not that one has already occurred. The public hearing is to be held on February 17, 2005.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

### **CEASE AND DESIST ORDER CCC-05-CD-01**

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes Dr. Laurence E. Badgley, his agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to cease and desist from engaging in any further development on the subject property, unless authorized pursuant to the Coastal Act, and to remove unpermitted development as set forth below.

### **RESTORATION ORDER CCC-05-RO-01**

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes the Respondents to restore the subject property as described below.

Three residences on the subject property (a primary single family residence and two smaller residential structures) have been determined to pre-date the Coastal Act and County zoning and general plan designations. The County has determined that the three residences are legal non-conforming units. All other development on the subject property, however, is considered unpermitted under the Coastal Act, and shall be removed. Accordingly, the Coastal Commission hereby authorizes and orders the following:

- A. Within 60 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Removal and Restoration Plan ("Plan"). Respondents shall at the same time submit a second copy of this Plan to the attention of the Humboldt County Community Development Services Department (HCCDS). The Plan shall outline the excavation and removal of all unpermitted development on the subject property. The Plan shall include and discuss the following elements:
  1. A copy of the Biological Assessment (including wetlands delineation) that was apparently being prepared for Badgley's 2002 Coastal Development Permit application with Humboldt County (CDP-02-113).
  2. A current, scaled site plan depicting all existing development on the subject property.
  3. A list of the unpermitted development items, linked to the scaled site plan. Designate as (W) on the list those items that are located in delineated wetland areas, designate as (R) on the list those items that are not located in wetland areas and that require no excavation for removal, and designate as (E) on the list those items that are not located in wetland areas but that will require excavation for removal.
  4. Regarding agricultural uses on the subject property, submit to HCCDS sufficient evidence of continuing use for all non-conforming agricultural development on the subject property. If no or insufficient evidence is submitted and/or if the County does not determine specific, listed non-conforming agricultural uses on the subject property



to be vested, such uses will be considered unpermitted development and will be treated as such under the terms of this Order (i.e., they shall be removed).

5. Regarding vehicles, both operable and inoperable, on the subject property, provide evidence of current registration status, operability, and existing use of all vehicles on the subject property. As noted Commission Response to Defense #6, the two inoperable vehicles noted in Badgley's Statement of Defense are exempt from this removal order if these vehicles are described and listed as noted above. If no or insufficient evidence is submitted regarding vehicles on the subject property, they will be considered unpermitted development and will be treated as such under the terms of this Order (i.e., they shall be removed).
6. Photographs of all existing development on the subject property, linked to the scaled site plan.
7. A description of all equipment that will be used for removal of the unpermitted development (for example- how will inoperable vehicles be removed?).
8. Removal and restoration work (particularly any work that may require heavy equipment and could result in excavation of material) could affect cultural resources on the subject property. All removal and restoration activities that will be carried out as part of the proposed Orders shall be performed in accordance with County zoning regulations regarding archaeological resource areas outside Shelter Cove (Humboldt County Code Section 313-16.1). Archaeological monitors, including representatives from the Wiyot Tribe, shall be present during all removal and restoration activities. The Plan should acknowledge this and the proposed schedule should include this.
9. A section detailing removal of unpermitted development in areas outside of wetland areas. This section would include all R and E items on the list of unpermitted development.
10. A section detailing removal of fill or other unpermitted development in wetland areas on the subject property and restoration of these areas. This section would include all W items on the list of unpermitted development. A qualified biologist or wetland restoration specialist shall prepare this section of the Plan, shall incorporate information contained in the Biological Assessment, and shall include appropriate measures to restore and monitor affected wetland areas on the subject property.
11. A description including name and location of an appropriate, licensed disposal site (or, if usable materials are being stored for future use, an appropriate storage facility) located outside of the Coastal Zone where the unpermitted development will be taken. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required.
12. A schedule for performance of the work and a proposed series of dates and times for performing the removal work. Respondents will finalize a work schedule after

contacting County planning staff and the Wiyot Tribe, to ensure work is performed on dates when County staff and archaeological resource monitors can be present at the subject property to monitor the removal work. Provide notice of the removal work schedule to the Coastal Commission.

13. A provision that all work to be performed under this Order shall be done in compliance with all applicable laws.

14. Addresses for report submittals:

California Coastal Commission, Attn: Sheila Ryan  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Humboldt County Community Development Services, Planning Division  
Attn: Alyson Hunter  
3015 H Street  
Eureka CA 95501

- B. Within 90 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:

1. Remove the unpermitted development from non-wetland areas of the subject property.
2. Remove unpermitted fill and unpermitted development from any affected wetland areas on the subject property and restore the affected wetland areas according to approved plans and the schedule contained therein.
3. Remove all unpermitted development to an appropriate, licensed disposal site (or if usable materials are being stored for future use, to an appropriate storage facility) located outside of the Coastal Zone. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required.
4. Within 60 days of completion of the removal activities described in paragraph B submit to the Executive Director of the Commission and to the Humboldt County Community Development Services Department a report documenting the restoration of the subject property. This report shall include a summary of dates when work was performed and photographs that show the removal of the unpermitted development on the subject property, as well as photographs of the subject property after removal of all unpermitted development. Respondents shall submit this report to the Commission and Humboldt County **no later than October 31, 2005.**
5. Perform any ongoing, long-term monitoring that is required as part of any wetland restoration on the subject property, according to approved plans.

### **I. Persons Subject to the Orders**

Dr. Laurence E. Badgley, and his agents, contractors and employees, and any persons acting in concert with any of the foregoing.

### **II. Identification of the Property**

The property that is subject to the orders is described as follows:

865 New Navy Base Road, on the Samoa Spit near Fairhaven, Humboldt County, Assessor's Parcel Number 401-141-03.

### **III. Description of Unpermitted Development**

The development that is the subject of the Cease and Desist and Restoration Orders includes, but is not limited to: creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands.

### **IV. Effective Date and Terms of the Orders**

The effective date of the Orders is the date of their approval by the Commission. The Orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

### **V. Findings**

The Orders are issued on the basis of the findings adopted by the Commission at the February 2005 hearing, as set forth in the attached document entitled "Findings for Cease and Desist Order CCC-05-CD-01 and Restoration Order CCC-05-RO-01".

### **VI. Compliance Obligation**

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

## **VII. Deadlines**

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

## **VIII. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the orders are issued may file a petition with the Superior Court for a stay of this order.

Executed in \_\_\_\_\_ on \_\_\_\_\_,

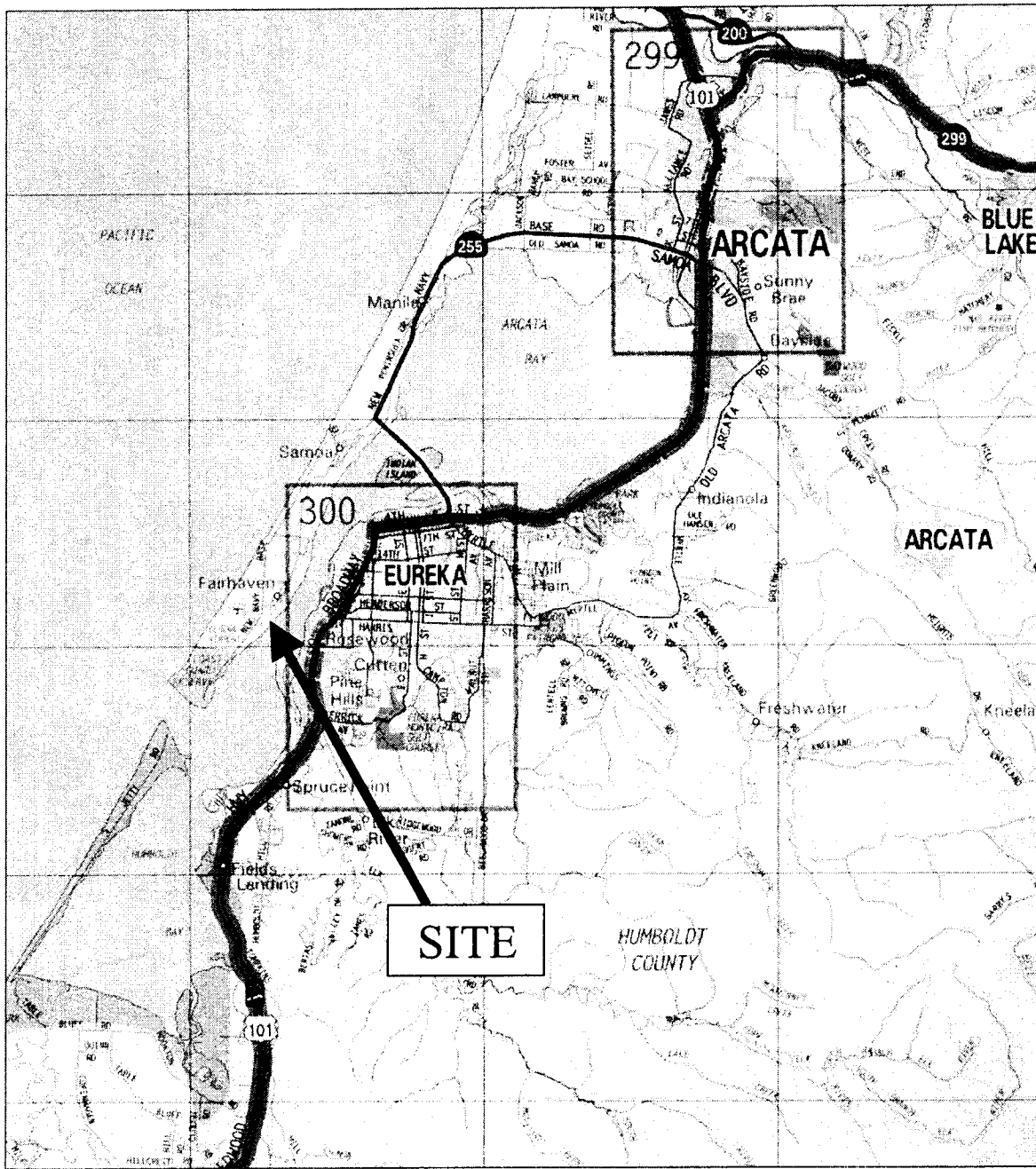
on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## **Exhibits**

1. Site Map and Location.
2. Site photographs.
3. Certified complaint letter dated May 25, 2002 from Humboldt County Community Development Services Department (County) to Badgley.
4. Letter dated June 6, 2002 from Badgley to County.
5. Letter dated June 10, 2003 from County to Badgley.
6. Certified complaint letter dated September 24, 2002 from County to Badgley.
7. Certified complaint letter dated October 31, 2002, from County to Badgley.
8. Letter dated November 5, 2002, from Badgley's attorney to County.
9. Letter dated January 3, 2003, from County to Badgley.
10. Site plan submitted with Badgley's June 23, 2003 application (CDP-02-113) to County.
11. Letter dated July 23, 2003 from County to Badgley, deeming application CDP-02-113 incomplete and setting deadline of September 23, 2003 for submittal of Biological Assessment and Cultural Resources Survey.
12. Letter dated July 20, 2004 from Badgley to County.
13. Letter dated letter dated July 23, 2004 from County to Badgley.
14. Letter dated July 15, 2004, from County to California Coastal Commission (Commission), formally requesting that the Commission enforce on the County's behalf regarding unpermitted development on the subject property.
15. Notice of Intent (NOI) letter dated December 15, 2004 from Commission staff to Badgley.
16. Letter dated January 3, 2005 from Badgley's attorney to Commission staff.
17. Letter dated January 4, 2005 from Commission staff to Badgley's attorney.
18. Statement of Defense with cover letter and attachments dated January 5, 2005.
19. Letter dated January 7, 2005 from Commission staff to Badgley's attorney.
20. Letter dated January 27, 2005 from Badgley's attorney to Commission staff.

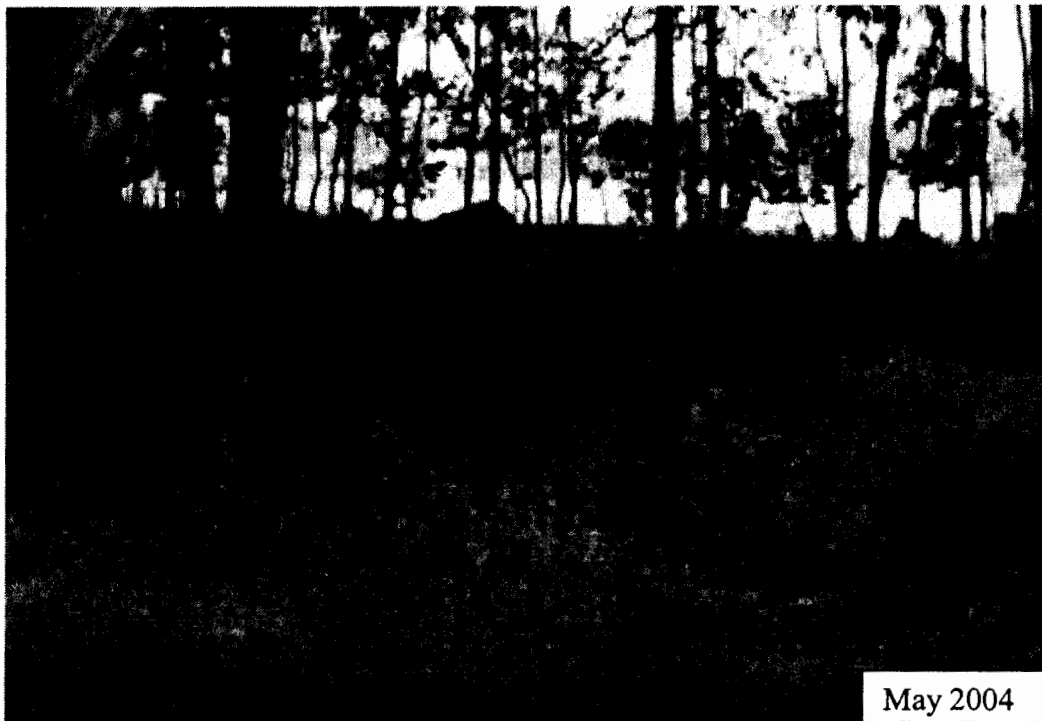




COPYRIGHT 2000 Thomas Bros. Maps

**Exhibit 1.** Area location map for subject property, Samoa peninsula, Humboldt County.

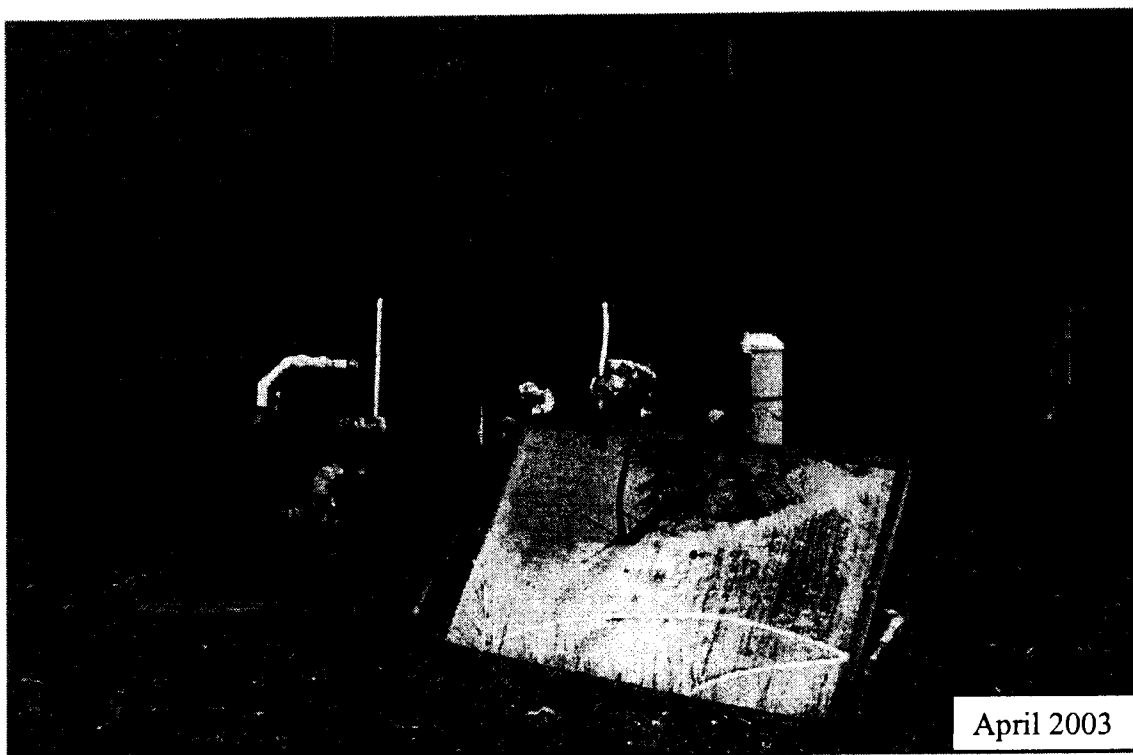




**Exhibit 2a.** Stack of creosote-soaked logs on subject property.



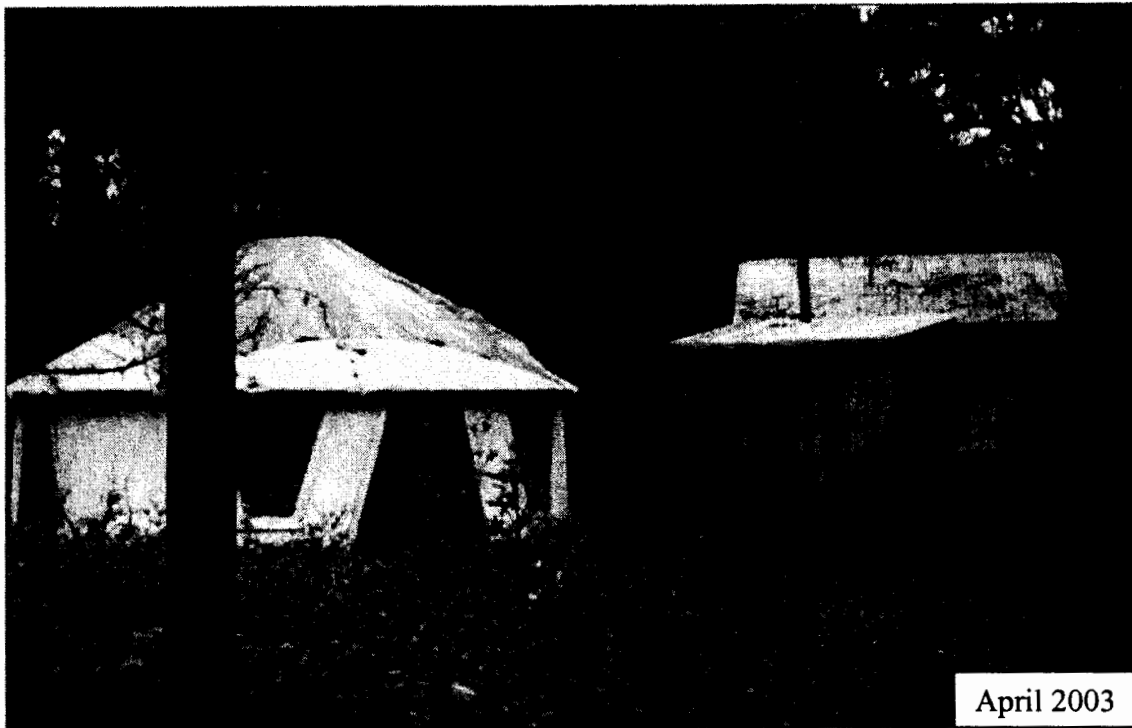
**Exhibit 2b.** Stacks of wood pallets and concrete blocks on subject property.



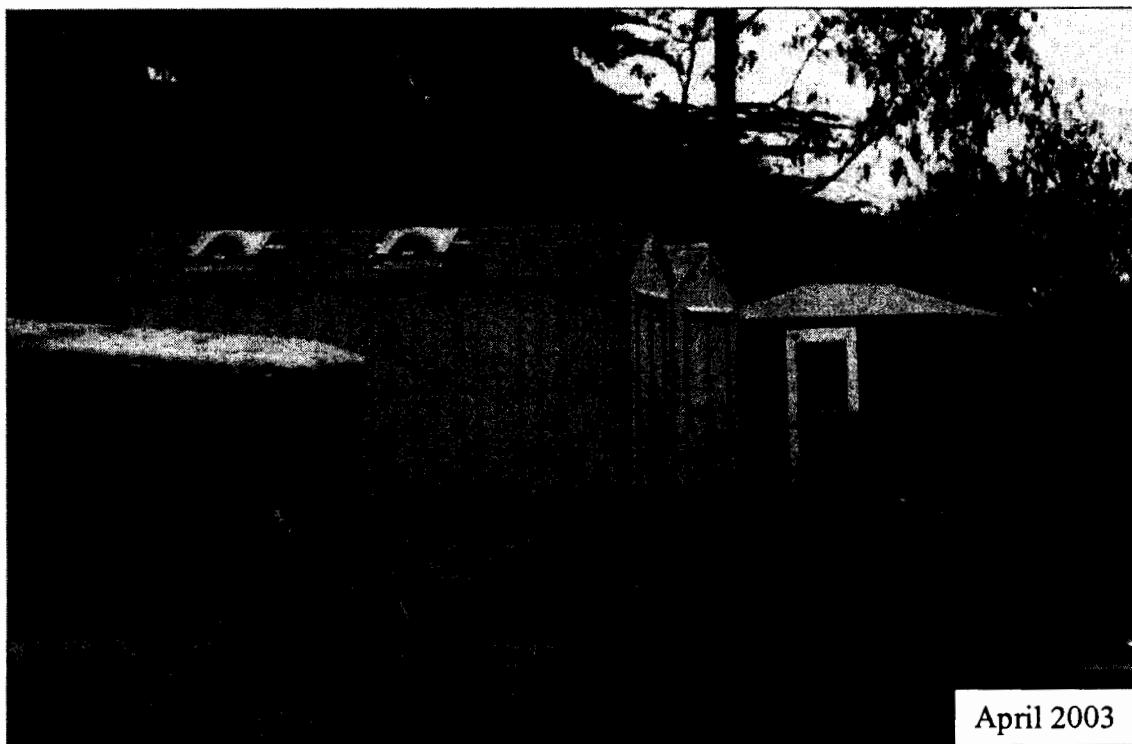
**Exhibit 2c.** Hot tub and deck on subject property.



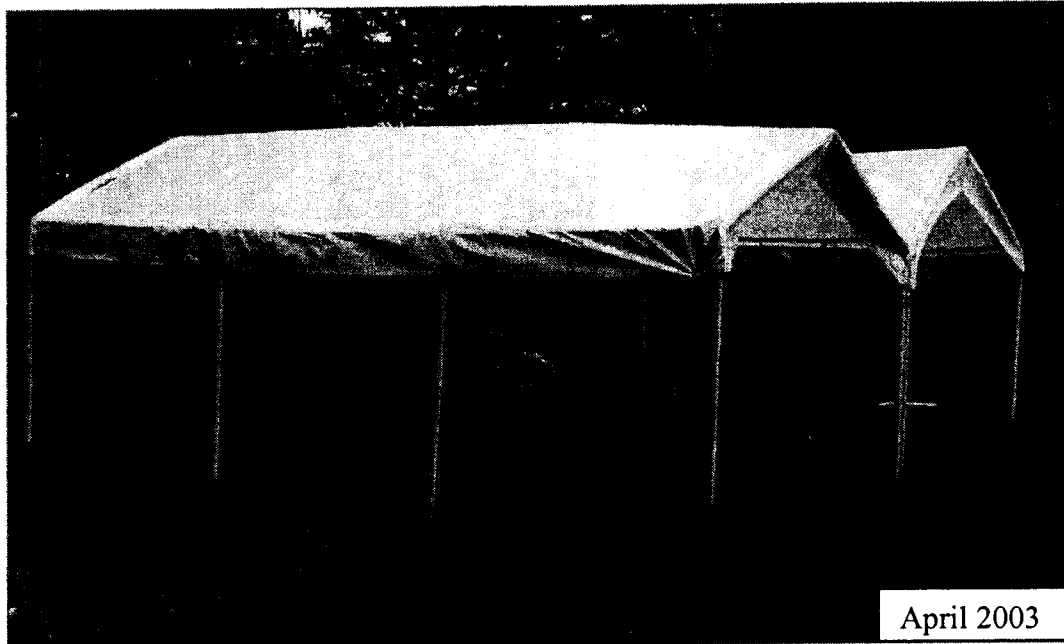
**Exhibit 2d.** Stacks of rusting pipes on subject property.



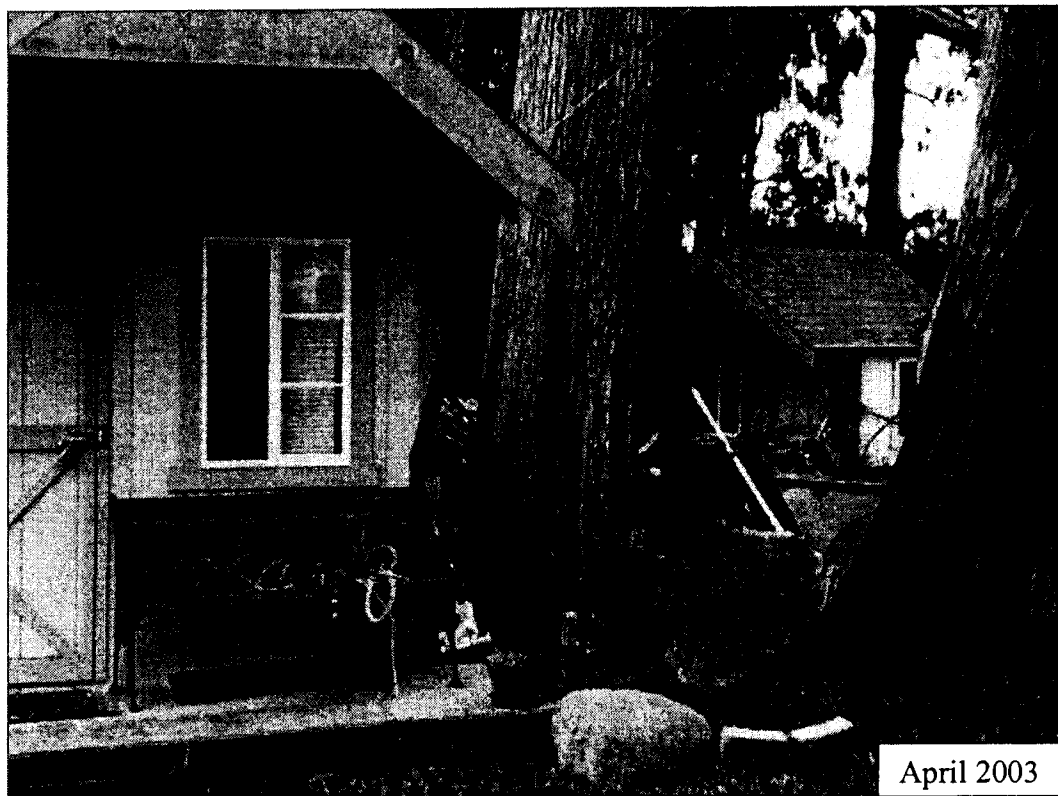
**Exhibit 2e.** Yurt and sheds on subject property.



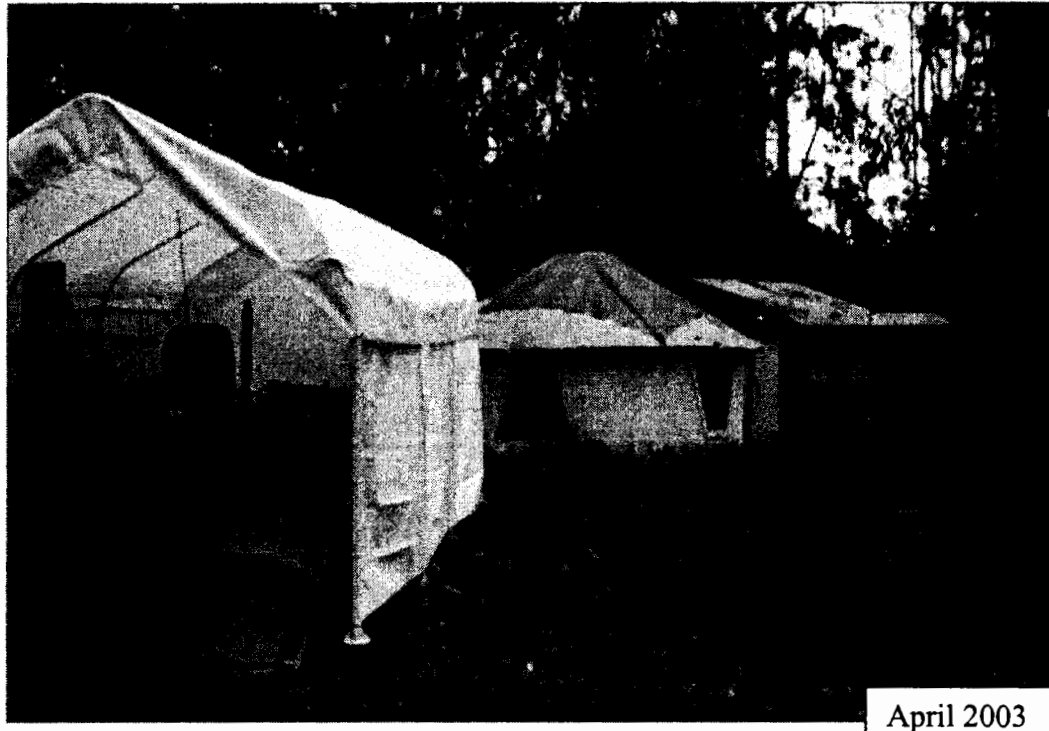
**Exhibit 2f.** Sheds and trailer on subject property.



**Exhibit 2f.** Tented storage area on subject property.



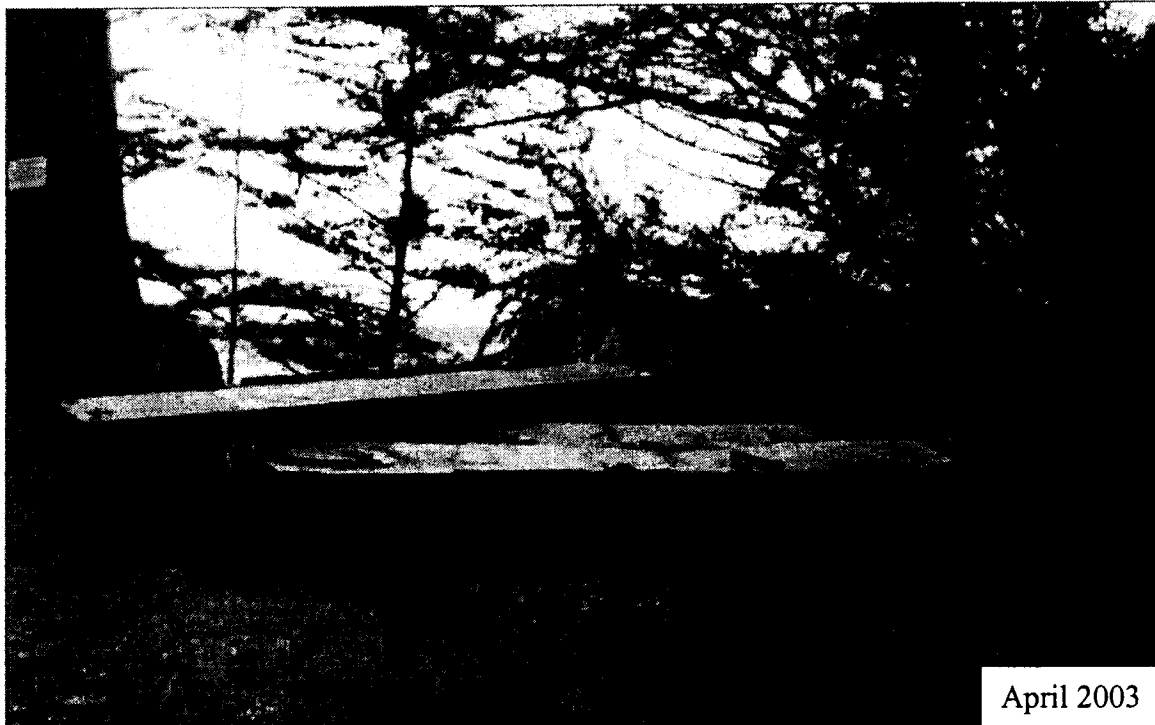
**Exhibit 2g.** Sheds on subject property.



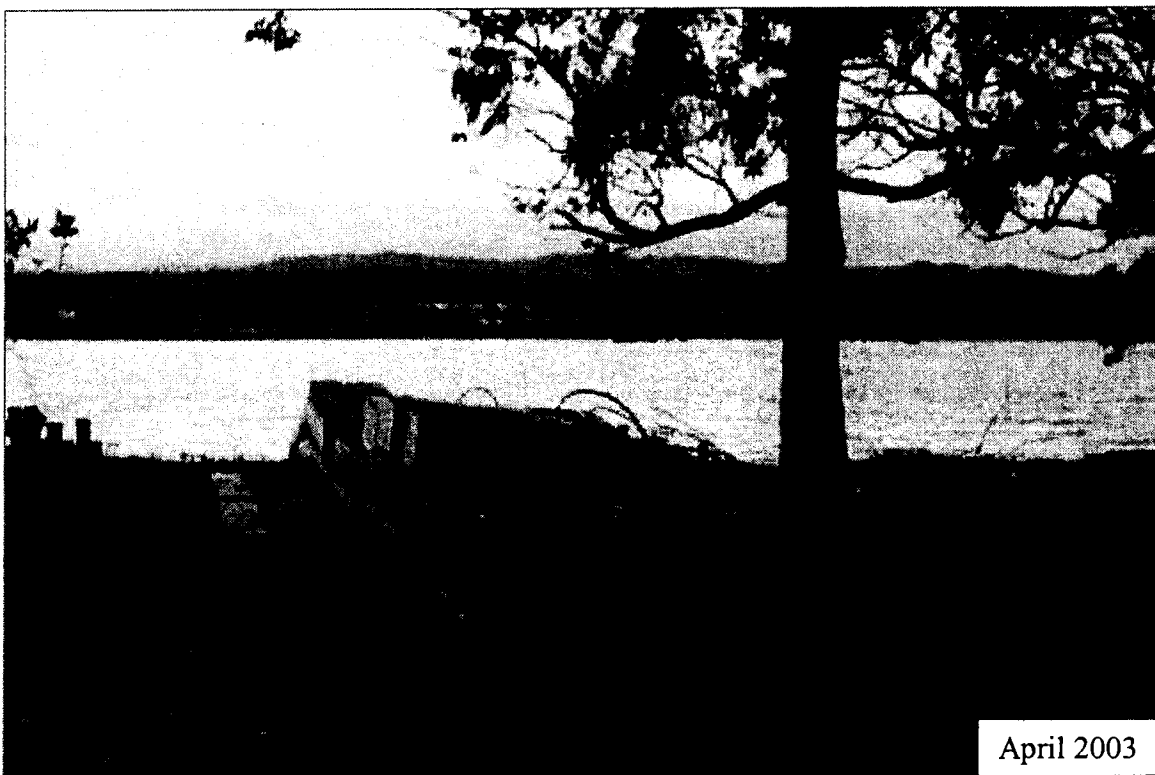
**Exhibit 2i.** Yurt, sheds, and tented storage area on subject property.



**Exhibit 2j.** Materials stored under tarps on subject property.  
Arrows are pointing at two vehicles in background.



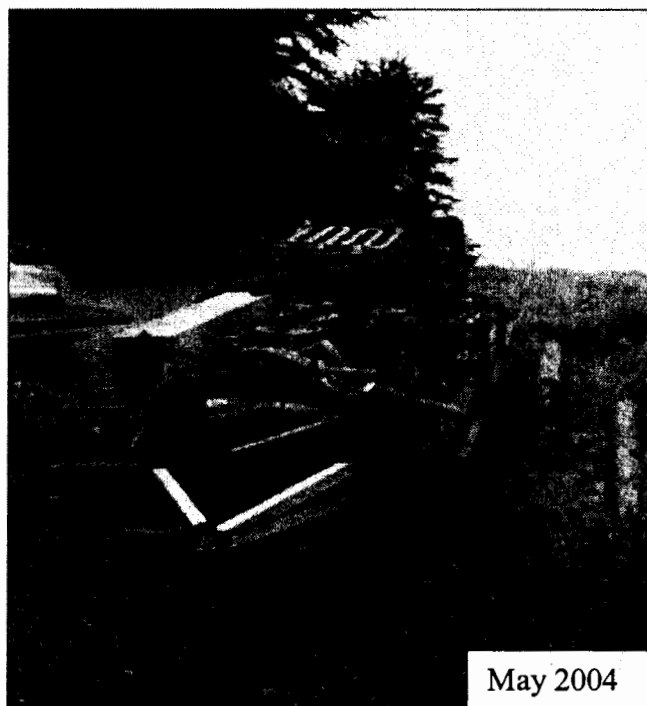
**Exhibit 2k.** Stored dock materials on subject property.



**Exhibit 2l.** Stored dock materials on subject property.



**Exhibit 2m.** Metal pipes, vehicles, trailers, stacks of tires, and heavy equipment on subject property.



**Exhibit 2n.** Trailer stacked with metal pipes and other materials on subject property.

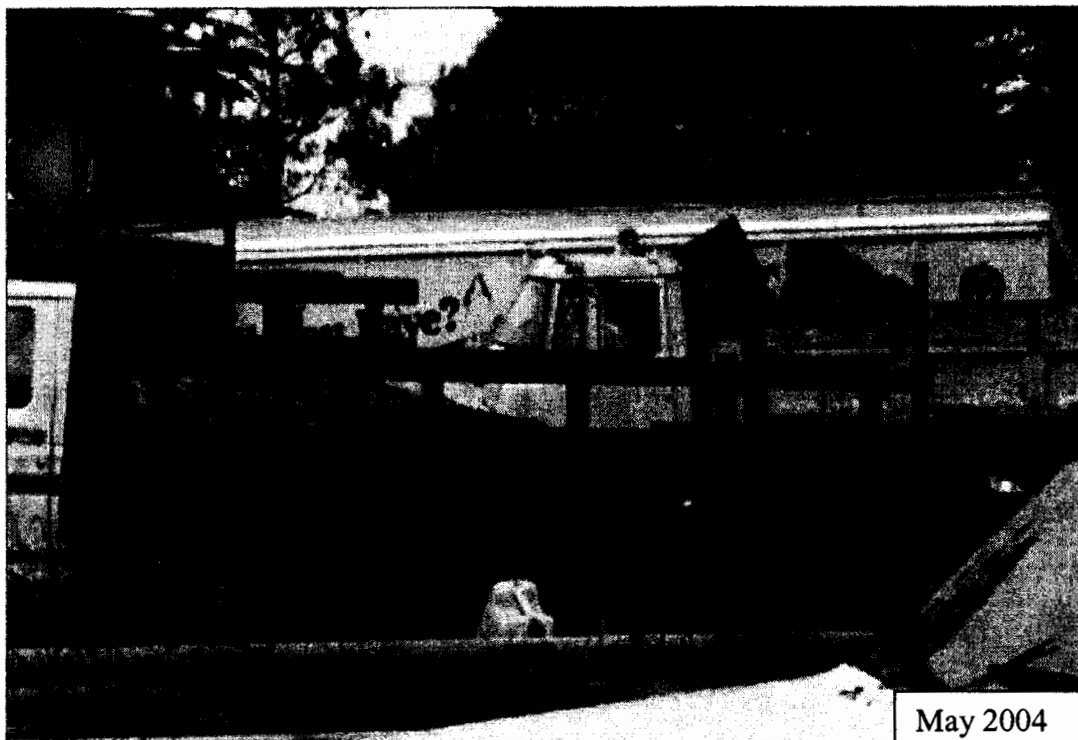




**Exhibit 2o.** Rusting pipes, crane, and recreational vehicle on subject property.



**Exhibit 2p.** Roofed storage/parking area and stockpiled materials on subject property.



**Exhibit 2q.** Trucks, metal pipes, and large shed/trailer on subject property.



**Exhibit 2r.** Stacked tires and stored heavy equipment on subject property.



standing water  
(wetland area)



April 2003

**Exhibit 2s.** Wetland adjacent to road on subject property.



**PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
COUNTY OF HUMBOLDT  
3015 H STREET EUREKA, CA 95501-4484  
PHONE (707) 445-7541 FAX (707) 445-7446**

Date 5/25/02

Laurence Badgley  
422 First Street STE D  
Eureka CA 95501

Subject: Complaint(s) Regarding Alleged Non Permitted Use  
Assessor's Parcel Number 401-141-03  
Property Zoning: MC/A,W (Industrial / Coastal Dependent)

Dear Property Owner,

The Planning Department has received complaint(s) regarding the maintenance of the alleged Non permitted use on the above referenced parcel. The complaint states there area several non-permitted structures and uses occurring on the property which include an addition and remodeling to a residence without a building permit, the construction of a commercial oil extraction facility, commercial agricultural use including raising animals and crops, construction and operation of a medical research laboratory, construction and residential occupancy of a yurt, filling of Wetlands, construction of a yurt and hot tub on the beach, construction of a dock and boat launching facility, and the storage of hazardous materials.

If you believe the complaint is not valid, we would appreciate your help in responding to the person who is complaining.

If the complaint is valid, your activity is in violation of the Humboldt County Zoning Regulations (Title III, Division I of the Humboldt County Code), in particluar, Sections 311-10; 312-3; 312-51.5; 313-139; 313-3.4 of Humboldt County Code. There are several options for resolving violations which include:

1. Voluntary abatement of the activity;
2. Secure the permits necessary to conduct the activity (if an allowable use under the subject zoning); or
3. Submit information establishing the complaint is not valid. (Note: a physical inspection of the property may be needed to verify this information.)

We would like to help resolve this complaint and you may contact me in writing or by phone at (707) 268-3723 to discuss the matter. I am generally available between 8:30 a.m. and 5:00 p.m. Monday through Friday. However, if we do not hear from you in **writing** within fifteen working days of the above date we will begin formal enforcement proceedings in accordance with Section 312-51 of the Humboldt County Code. Please note that enforcement of County Code violations, in addition to various civil, administrative and criminal remedies may include abatement of the violation at your expense.

Thank you for your immediate attention to this matter.

Sincerely,  
Planning Division of the Humboldt County Community Development Services Department

Handwritten signature of Michael Richardson.

Michael Richardson

cc. Complainant

Enclosures: Description of the Zoning

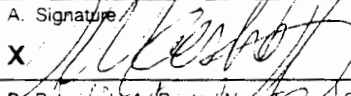
**SENDER: COMPLETE THIS SECTION**

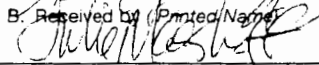
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LAURENCE BAO  
422 FRANK ST  
EVERETT CA 95501  
2002  
USPS

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  ☐ Agent  
☒ Addressee

B. Received by (Printed Name)  C. Date of Delivery 5/31/02

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes2. Article Number 7001 1140 0000 1281 9562  
(Transfer from service label)

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

mjr

VIO-01-254 401-141-03

June 6, 2002

Michael Richardson  
Planning Division  
Humboldt County Community Development Service  
3015 H Street, Eureka, CA 95501-4484  
707/ 445-7541  
Fax 707/ 445-7446

RECEIVED

JUN 10 2002

HUMBOLDT COUNTY  
PLANNING COMMUNITY

Re: Complaint(s) Regarding Alleged Non Permitted Use  
Assessor's Parcel Number 401-141-03

Dear Mr. Richardson:

I have received your letter of May 25, 2002. Your informant has given false information. Please provide me with the name and writings of the person(s) who has made these injurious complaints.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Badgley", with a long horizontal flourish extending to the right.

Laurence E Badgley, MD



PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
**COUNTY OF HUMBOLDT**  
3015 H STREET  
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

Date June 10, 2002

Laurence Badgley  
422 First Street STE D  
Eureka CA 95501

Subject: Complaint(s) Regarding Alleged Non Permitted Use  
Assessor's Parcel Number 401-141-03  
Property Zoning: MC/A,W (Industrial / Coastal Dependent)

Dear Laurence Badgley,

Thank you for your letter dated June 6, 2002. The person filing the complaint noted above has asked to remain confidential, so our Department's policy is to not divulge the name of the complainant unless required by a judge in the form of a subpoena.

You state in your letter the informant has given us false information. However, you do not directly state that there are no unpermitted structures or uses occurring on the property. Accordingly, I am not able to close our violation file on the property.

To refresh your memory, the complaint documents several non-permitted structures and uses occurring on the property which include an addition and remodeling to a residence without a building permit, the construction of a commercial oil extraction facility, commercial agricultural use including raising animals and crops, construction and operation of a medical research laboratory, construction and residential occupancy of a yurt, filling of wetlands, construction of a yurt and hot tub on the beach, construction of a dock and boat launching facility, and the storage of hazardous materials.

As I stated previously, there are several options for resolving violations which include:

1. Voluntary abatement of the activity;
2. Secure the permits necessary to conduct the activity (if an allowable use under the subject zoning); or
3. Submit information establishing the complaint is not valid. (Note: a physical inspection of the property may be needed to verify this information.)

We would like to help resolve this complaint and you may contact me in writing or by phone at (707) 268-3723 to discuss the matter. I am generally available between 8:30 a.m. and 5:00 p.m. Monday through Friday. However, if we do not hear from you again **in writing** within fifteen working days of the above date we will begin formal enforcement proceedings in accordance with Section 312-51 of the Humboldt County Code.

Thank you for your immediate attention to this matter.

Sincerely,

Planning Division of the Humboldt County Community Development Services Department

Michael Richardson

cc. Complainant, Building Department, Health Department



*File Copy.*

**PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
COUNTY OF HUMBOLDT  
3015 H STREET EUREKA, CA 95501-4484  
PHONE (707) 445-7541 FAX (707) 445-7446**

September 24, 2002

Laurence Badgley  
422 First Street STE D  
Eureka CA 95501

Subject: Complaint(s) Regarding Alleged Non Permitted Use  
Assessor's Parcel Number 401-141-03  
Property Zoning: MC/A, W (Industrial / Coastal-Dependent)

Dear Property Owner,

By certified letter of 05/22/02, you were advised of an apparent violation of the Humboldt County Code on your property, and were asked to contact our Department. You responded by phone and requested I come visit you at the site, which I did on June 20, 2002. I appreciate your willingness to meet me on the site and your invitation to look at the property.

During our conversation, you told me of your attempts to get a coastal development permit and building permits for the improvements you were in the process of making to your property. You stated you had received mixed signals from our office on whether or not permits were required. I responded by saying I would investigate our records and get back to you with our permit requirements, if any.

Our records indicate you have a business license for a boat building business (Samoa Maritime Industries), which was approved by our office on June 21, 2000. You also applied for an information request, which we responded to on June 19, 2001 identifying whether or not you could rebuild the residences on your property should they burn down. The Building Inspection Division also shows in their records that you applied for but did not receive a building permit for the placement of a perimeter foundation under an existing structure. There was also a record of a permit issued by the Building Division in 1986 for remodeling of an existing residence.

These appear to be the only records our office has on file for this property. The plot plan submitted for the information requests identifies the structures on the property at that time. It includes a proposed metal shed. This metal shed requires a coastal development permit and building permit. And based on the photos submitted with the violation complaint, there is apparently new construction that has taken place since 2001 that also requires a coastal development permit and building permits, including the following:

- 1) The placement of large poles in the ground,
- 2) Placement of a yurt structure along with a detached kitchen and bathroom,
- 3) Conversion of a storage shed into what looks to be a medical lab,
- 4) Construction of a corral,
- 5) Grading and fill in a possible wetland area,
- 6) Construction of a new hot tub and platform,
- 7) Installation of electrical services, and
- 8) Storage of dock facilities.



Although I was able to confirm the presence of a yurt on the property, I did not confirm any of these other alleged violations exist. I am willing to schedule another site inspection to confirm or deny the presence of these other improvements. However, through the plot plan and my site inspection I was able to confirm there has been development on the property that requires a coastal development permit, so you may want to simply move forward with an application for all the unpermitted improvements.

Please let me know no later than October 31, 2002 how you wish to proceed on this matter

Sincerely,

Planning Division of the Humboldt County Community Development Services Department

A handwritten signature in black ink, appearing to read "Michael Richardson", followed by a long horizontal flourish.

Michael Richardson

cc. Complainant

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LAURENCE BADGLEY  
422 FIRST ST STE D  
EMERICA CA 95501

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X L. Badgley ☐ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

9-27-02

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7002 0460 0002 3431 3704

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-2509

cn

vio

401-141-03

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

**OFFICIAL USE**

Postage

\$

Certified Fee

Return Receipt Fee  
(Endorsement Required)

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees

\$

Postmark  
Here

Sent To

LAURENCE BADGLEY

Street, Apt. No.,  
or PO Box No.

277 Ramona

City, State, ZIP+4

cn no

401-141-03

PS Form 3800, January 2001

See Reverse for Instructions

Exhibit 6

CCC-05-CD-01 and CCC-05-RO-01

(Badgley) Page 3 of 3



PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
**COUNTY OF HUMBOLDT**  
3015 H STREET  
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

10/31/02

Laurence Badgley  
422 First Street Suite D  
Eureka, CA 95501

Re: Violations of Humboldt County Code Sections 311-10, 312-3, 212-51.5, 313-139, 313-50.1.4.3, 313-139, 313-3.4. Addition to and remodeling of a residence, construction of commercial facilities, conducting commercial agriculture uses including raising of animals and crops, construction and operation of a medical research laboratory, construction of a yurt and hot tub, filling of wetlands and excavation.  
Site Location: 865 New Navy Base Rd., Arcata, CA 95501  
APN 401-141-03 Property Zoned: MC/A (Industrial/Coastal Dependent)

Dear Property owner,

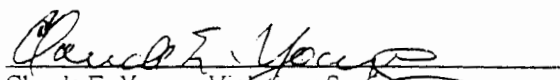
By multiple notices you have been informed of violations of County Codes on your property noted above. On 5/22/02 the Planning Division noticed you that it had received reports and complaints regarding your use of the property. You responded to that notice by phone and expressed a willingness to meet on the site and inspect the property. On June 20, 2002 you meet with Mr., Michael Richardson of this office and there was conducted an inspection of the site and a discussion concerning the permits required for your improvement of the property and the abatement of the existing nuisances.

You did not respond to this visit with positive action and on September 24, 2002 the Planning Division wrote you again, reviewed the previous visit and discussion and noted further violations that were appearing on your property. You were requested to respond in an appropriate manner by 10/31/02. This you have failed to do. On October 28, 2002 this office received further complaints alleging additional and continuing violations as noted above, all without the required Coastal Development or Building Department permits. Perhaps more drastic measures are called for to enable us to remedy any continuing violations.

It is your disregard of these notices that require these more drastic actions to abate a public nuisance. Under guidelines set forth in Humboldt County Code Section 2131, the Code Enforcement Unit, in addition to the issuance of a formal Notice of Nuisance, may issue an Order Imposing Administrative Penalty and record a Lis Pendens against your property to insure payment of any monetary awards which may be awarded after proper hearing. It should be noted that under these Administrative Penalty Ordinance, each day of violation subjects the property owner to a separate penalty of between of between \$100 and \$10,000.

Please be advised that this will be the last notice to you before this matter is referred to the District Attorney Investigator for further proceedings. However, we would like to resolve this violation and you may contact me in writing or by phone at (707) 268-3702 no later than November 20, 2002 and avoid further enforcement action.

Thank you for your attention to this matter.

  
Claude E. Young, Violations Section  
Planning Division, Community Development

cc: Building Department Code Enforcement Unit Complainants

j:\planning\current\violatio\40114103.v\_3 Certified & Regular Mail 7001 1140 0000

Exhibit 7

CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 1 of 2

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LAURENCE BADGLEY  
422 First St, STD  
EUREKA CA 95501

2. Article Number

(Transfer from service label)

7001 1140 0000 1281 1146

PS Form 3811, August 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *[Signature]*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

*SULLIVAN MASHORE*

C. Date of Delivery

*11/12/02*

D. Is delivery address different from item

If YES, enter delivery address below.

☐ Yes

☐ No

**RECEIVED**

NOV 13 2002

3. Service Type

☐ Certified Mail

☐ Registered

☐ Insured Mail

☐ Express Mail

☐ Return Receipt for Merchandise

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

HUMBOLDT COUNTY

PLANNING COMMISSION

Domestic Return Receipt

102595-01-M-2509

DAVID H. DUN  
(dhd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**  
ATTORNEYS AT LAW  
2313 I STREET  
EUREKA, CALIFORNIA 95501  
TELEPHONE: (707) 442-3791  
FACSIMILE: (707) 442-9251

MAILING ADDRESS  
P.O. BOX 1266  
EUREKA, CALIFORNIA 95502

LEGAL ASSISTANTS

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

ALISHIA J. PHILLIPS  
(ajp@dunmartinek.com)

FAX COVER SHEET

PLEASE TRANSMIT TO FAX NUMBER: 445-7446

PLEASE DELIVER THESE PAGES (INCLUDES COVER PAGE): 2

TO: Michael Richardson

FROM: David E. Martinek

DATE: November 5, 2002

MESSAGE:

Notice

This facsimile contains CONFIDENTIAL INFORMATION which may also be LEGALLY PRIVILEGED and which is intended only for the use of the individual or entity named above. If the reader of the facsimile is not the intended recipient, you are hereby on notice that you are in possession of confidential and privileged information. Any dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone (collect) and return the original facsimile to the sender at the above address via U.S. Mail.

\_\_\_ Original will not follow.

xx Original will follow by: xx First Class Mail  
\_\_\_ Certified Mail  
\_\_\_ Express Mail  
\_\_\_ Federal Express  
\_\_\_ Other

IF ANY PROBLEMS OCCUR IN THE TRANSMISSION OF THE ABOVE AND REPLACEMENT PAGES ARE NECESSARY, PLEASE CALL:

DUN & MARTINEK LLP  
(707) 442-3791

DAVID H. DUN  
(dhd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**  
ATTORNEYS AT LAW  
2313 I STREET  
EUREKA, CALIFORNIA 95501  
TELEPHONE: (707) 442-3791  
FACSIMILE: (707) 442-9251

MAILING ADDRESS  
P.O. BOX 1266  
EUREKA, CALIFORNIA 95502

LEGAL ASSISTANTS

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

ALISHIA J. PHILLIPS  
(ajp@dunmartinek.com)

November 5, 2002

Via fax 445-7446

Michael Richardson  
Humboldt County Planning Department  
3015 H St.  
Eureka, CA 95501-4484

Re: Badgley Property  
APN 401-141-03

Dear Mr. Richardson:

I have been consulted by Dr. Laurence Badgley regarding the situation concerning his Samoa property. Primarily, Dr. Badgley is concerned that due to the press of his professional business distracting him over the last 2-3 months, he may have given you the impression that he does not intend to cooperate in correcting any permit problems on the property.

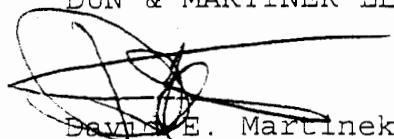
Dr. Badgley would like you to come out to the site any morning at your convenience to tour the site and tell him exactly what needs to be done in order to be in full compliance with any permit requirements. Please call him at 443-2293 to set up the meeting, or page him at 268-4781.

Please be assured that Dr. Badgley intends to do everything to the letter and spirit of the law. To that end, he intends to provide permit applications to you within two weeks from the date of your site visit.

If there is anything to do at my end in order to help, please do not hesitate to contact me.

Very truly yours,

DUN & MARTINEK LLP

  
David E. Martinek

RECEIVED  
NOV 06 2002  
HUMBOLDT COUNTY  
PLANNING COMMISSION

DAVID H. DUN  
(dhd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**

ATTORNEYS AT LAW  
2313 I STREET

EUREKA, CALIFORNIA 95501

TELEPHONE: (707) 442-3791

FACSIMILE: (707) 442-9251

**MAILING ADDRESS**

P.O. BOX 1266

EUREKA, CALIFORNIA 95502

**LEGAL ASSISTANTS**

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

ALISHA J. PHILLIPS  
(ajp@dunmartinek.com)

November 5, 2002

Via fax 445-7446

Michael Richardson  
Humboldt County Planning Department  
3015 H St.  
Eureka, CA 95501-4484

Re: Badgley Property  
APN 401-141-03

Dear Mr. Richardson:

I have been consulted by Dr. Laurence Badgley regarding the situation concerning his Samoa property. Primarily, Dr. Badgley is concerned that due to the press of his professional business distracting him over the last 2-3 months, he may have given you the impression that he does not intend to cooperate in correcting any permit problems on the property.

Dr. Badgley would like you to come out to the site any morning at your convenience to tour the site and tell him exactly what needs to be done in order to be in full compliance with any permit requirements. Please call him at 443-2293 to set up the meeting, or page him at 268-4781.

Please be assured that Dr. Badgley intends to do everything to the letter and spirit of the law. To that end, he intends to provide permit applications to you within two weeks from the date of your site visit.

If there is anything to do at my end in order to help, please do not hesitate to contact me.

Very truly yours,

DUN & MARTINEK LLP

  
David E. Martinek

Exhibit 8  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 3 of 3



PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES

**COUNTY OF HUMBOLDT**

3015 H STREET

EUREKA, CALIF. 95501-7400

PHONE (707) 445-7541

**RECEIVED**

01/03/03

IAN 07 2003

Laurence Badgley  
422 First Street Suite D  
Eureka, CA 95501

CALIFORNIA  
COASTAL COMMISSION

Re: Violations of Humboldt County Code Sections 311-10, 312-3, 212-51.5, 313-139, 313-50.1.4.3, 313-139, 313-3.4. Addition to and remodeling of a residence, construction of commercial facilities, conducting commercial agriculture uses including raising of animals and crops, construction and operation of a medical research laboratory, construction of a yurt and hot tub, filling of wetlands and excavation.  
Site Location: 865 New Navy Base Rd., Arcata, CA 95501  
APN 401-141-03 Property Zoned: MC/A (Industrial/Coastal Dependent)

Dear Property owner,

By multiple notices you have been informed of violations of County Codes on your property noted above. On 11/8/02 I spoke with you on the phone, and reiterated the coastal development permit requirements of our office.

You stated in our phone conversation your intent to set up an application assistance meeting with one of the planners in our office. As of this date, I have no information that you carried through with that, and on December 17, 2002, I received a copy of a letter you wrote to Tiffany Tauber with the Coastal Commission identifying numerous other proposed projects that would require coastal development permits from our office.

A considerable amount of time (3 months) has lapsed since I first informed you of the coastal permit requirements from our office, and I have no knowledge of any progress you have made toward satisfying these requirements. Accordingly, you are hereby advised that should you fail to submit a completed coastal development permit to our office for those uses identified above by March 1, 2003, our office intends to reinstate enforcement proceedings to gain compliance with County and State laws.

Thank you for your attention to this matter,

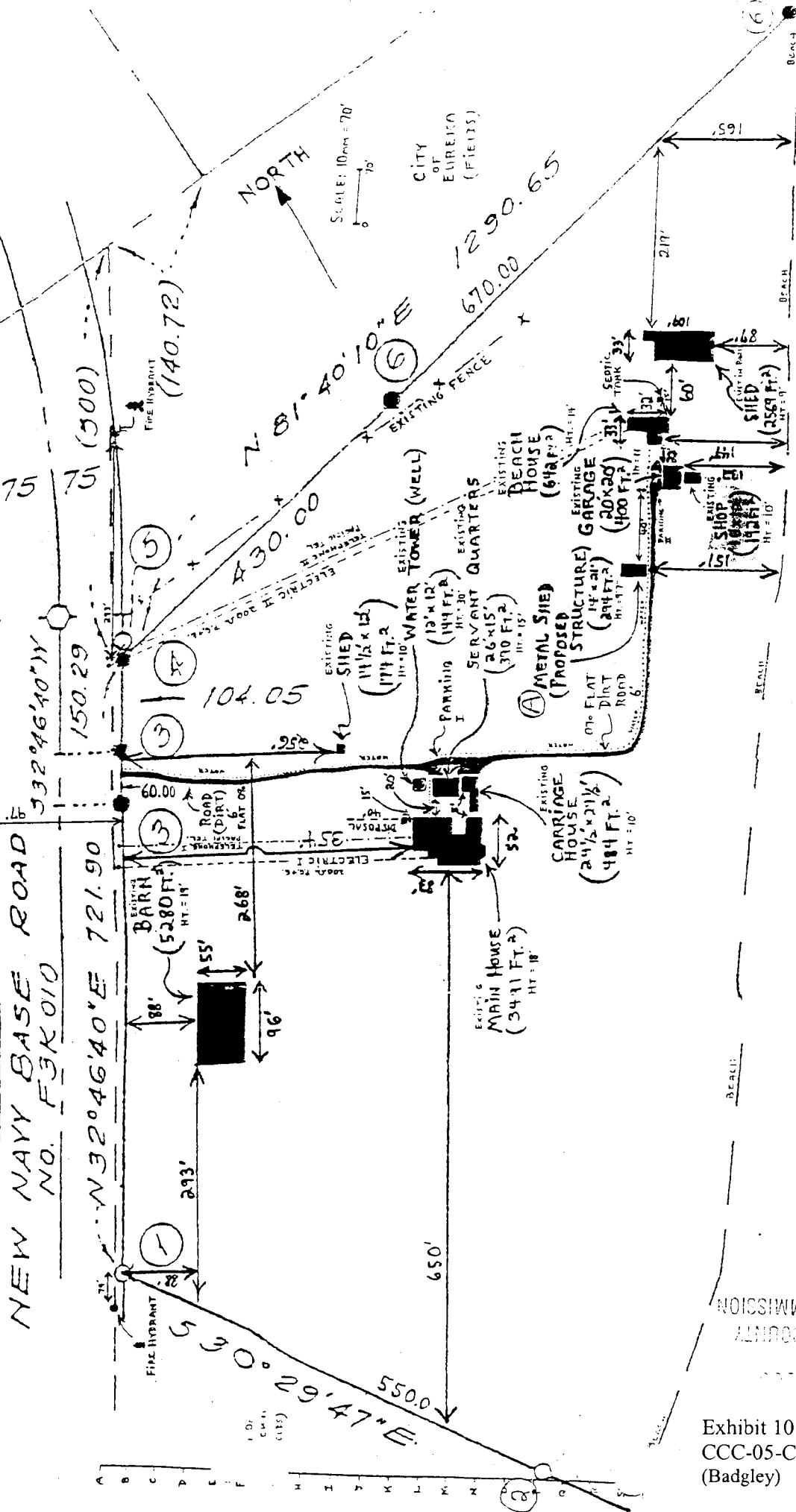
Michael Richardson  
Planning Division, Community Development Services

cc: Building Department Code Enforcement Unit Complainants Coastal Commission



NEAREST REAL PROPERTY  
(CITY OF EUREKA, AS  
AIRPORT/DRAG STRIP)

NEW NAVY BASE ROAD  
NO. F3K010



JUNE 11, 2009

APN 401-141-03  
KATHERINE BADSLEY  
422 FIRST STREET #D  
EUREKA, CA 94949-1489  
SCALE 10mm = 70'

HUMBOLDT BAY





PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
**COUNTY OF HUMBOLDT**  
3015 H STREET  
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

July 23, 2003

Laurence Badgley, M.D.  
Samoa Maritime Industries, Inc.  
422 First Street, Suite D  
Eureka, CA 95501

Applicants:	Samoa Maritime Industries	File No:	APN 401-141-03
Application Date:	June 23, 2003	Case No:	CDP-02-113 et al

Dear Dr. Badgley:

The Planning Division has completed a preliminary review of the application submitted by you on behalf of Samoa Maritime Industries, Inc. on June 23rd of this year for the multi-use development of your property in the Samoa area. The application has been deemed incomplete for processing for the following reasons:

1. An initial study is required under the California Environmental Quality Act (CEQA) in order to determine the type of environmental document necessary to process the permit. In order for staff to prepare an initial study, a **Biological Assessment** performed by an accredited biologist is required to determine the possible environmental affects resulting from the proposed aquaculture development (salt water ponds and portable aquaculture units), the dock and boat launch slipway and the wind generation facility. A **wetlands delineation** must be included in the biological assessment to illustrate the proposed development in relation to the wetlands/wet areas located on site. The biologist should refer to the Streamside Management Area Ordinance (SMAO) within the County's Grading Ordinance for items to include in the Biological Assessment at [www.co.humboldt.ca.us/planning](http://www.co.humboldt.ca.us/planning).
2. The Wiyot Tribe has requested that a **Cultural Survey (Phase I Archeological Report)** be conducted by an independent, licensed archaeologist. The tribal planner stated in the referral that the project site is located in a culturally significant area. Please note that the referral from the North Coast Information Center (NCIC), which performs archaeological records searches for discretionary permits, has not been received to date.

Once this information has been submitted, staff will circulate the biological report to the resource agencies for review and comment. Based upon the information in the report and the comments received by the referral agencies, staff will determine if an Environmental Impact Report (EIR) must be prepared in order to continue the processing of your application. The decision to prepare an EIR will be made by the Planning Director. You will be notified by mail of the Planning Director's decision. If you disagree with this decision, you may appeal the decision to the Planning Commission.

F:\HOME\ALYSON\CURRENT\CDP\BADGLE30.DOC

Exhibit 11

CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 1 of 2

>0: #2: PAGE 2

Community Development

445-7446

P. 2

Referrals went out to a variety of agencies on 7/02/03. At this time, Planning has received comments from the following agencies: the Building Division, County Counsel, the Natural Resources Division of Public Works, the Wiyot Tribe and the Samoa/Fairhaven Fire Protection District. These agencies have recommended approval, conditional approval or had no comment. These comments have been included herein for your convenience.

Referral comments from responsible agencies (those agencies that will also be permitting for the project) must be received prior to conducting the initial study. Comments still outstanding include those from the Department of Environmental Health (DEH), the Department of Public Works (P/W), the Coastal Commission, the Department of Fish and Game (DFG), Caltrans, RWQCB, the Harbor District, NCIC, USFWS and National Marine Fisheries (NMFS). As more referral comments arrive, we will update you as to their recommendations and requirements.

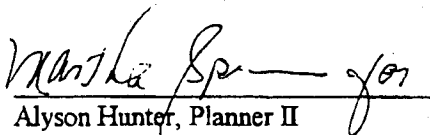
Also, please be aware that some of the uses proposed cannot be approved under the existing zone and plan designations. These include the proposed agricultural uses (barn remodel, new corrals, new storage shed and barns, construction of the greenhouse and the Eucalyptus oil extraction) and the commercial recreational uses (retreat center and accessory uses including the hot tub, water point and bath trailer, arts and crafts buildings, and amphitheater).

The property is currently zoned and planned for Coastal Dependent Industrial (MC). Agricultural uses are not permitted either as a principally or conditionally permitted use in the MC Zone. Commercial Recreational uses are permitted as a conditional use; however, these uses include only visitor serving recreational facilities that require channel access (such as marinas, fishing piers and boat launches). At this time your options include either revising your current application by removing these proposed uses or submitting the necessary application and fees for a plan amendment and zone reclassification in order to support these use types. A plan amendment would entail amending the Local Coastal Plan through the State Coastal Commission.

If the required items (the Biological Assessment and the Cultural Survey) are not received by the Planning Department by September 23, 2003 (60 days from the writing of this letter), the abatement proceedings put on hold up to this point will be reinstated.

If you have any questions or concerns regarding your application, please contact me between 8:30 A.M. and 5:00 p.m., Monday through Friday at (707) 268-3731.

Sincerely,

  
Alyson Hunter, Planner II

Planning Division, Community Development Services

F:\HOME\ALYSON\CURRENT\CDP\BADGLE30.DOC

Exhibit 11

CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 2 of 2

**SMI**, INC.**RECEIVED**

JUL 22 2004

HUMBOLDT COUNTY  
PLANNING COMMISSIONEUREKA OFFICE  
422 FIRST ST, STE D, EUREKA, CA 95501

July 20, 2004

TO:

Alyson Hunter, Planner  
County Planning Division

Dear Ms. Hunter,

This letter is my response to your request for a Modified Plan Application (Samoa Maritime Industries, ODP-02-113, APN 401-141-03), and which you requested at your visit to the property in recent weeks; along with representatives from the Coastal Commission and Environmental Health. It was at this visit that you commented that the horse corral could be conditionally permitted with the present number of horses, that the rose garden was acceptable, and that the vehicles and heavy equipment were unappealing. Please be advised that all the trucks and heavy equipment are, despite their worn appearance, operational and intended to be used in the boat building operation.

Following is a list of those projects which I am willing to withdraw and which are listed in my original Plan of Operations Report (the number in parentheses is the number of the commercial activity presented in my Plan of Operations Report):

1. Salt Water Pond (4)
2. Beach Side Amphitheater (16)
3. Retreat Center (17)
4. Eucalyptus Oil Extraction (19)
5. Portable Aqua Culture Troughs (20)

I request a reconsideration of your decision that the barn should be let deteriorated to ruin. I had hoped to save this historic structure if only for storage use.

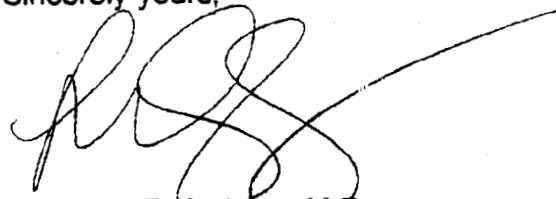
Please inform me of the process for subdividing the property into two approximately 6 acre portions with the northernmost to remain as it is as a boat building operation and the southernmost as a Coastal Recreation zone; so that the projects 2. and 3. above might be acceptable. The bayside location, the terrain, and preservation of the natural beauty of the land would certainly be well served by the coastal recreation activities I describe in the present application as #16, Beach Side Amphitheater, and #17, Retreat Center.

During your visit, I told you that one of your divisions, as a response to my application, informed me that an improved road would be necessary for the total length of the property, i.e., the course of the present dirt road. I was gratified to hear your comment that this was incorrect and that only the entrance part of the road next to the entrance gate would need to be improved. Indeed, an improved road would change a significant area of the surface of the property, interfere with natural surface water distribution, and place petroleum asphalt material over the sand and the freshwater subsurface reservoir. The present hard-pack dirt road is more than adequate for the minimal traffic activity that is intended and would better serve the tracked equipment that will be used in the boat building operation.

During the past many months, my receipt of telephone calls from the Calpine representative with an offer to buy me out, and the public announcement that Calpine made that they would be buying me out, dampened my enthusiasm for my intended projects. Now that Calpine has left the area, my plans have reverted to what I originally intended. I offer to cancel some of my proposed projects in keeping with your request to simplify the Application and in keeping with what you informed me will be unacceptable.

The Biological Survey report has been done and will be forwarded soon.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Badgley', with a long horizontal line extending to the right.

Laurence E. Badgley, M.D.



PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
**COUNTY OF HUMBOLDT**  
3015 H STREET  
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

Dr. Laurence Badgley  
422 First Street, Suite D  
Eureka, CA 95501

July 23, 2004

Re: Case No. CDP-02-113/CUP-02-40/SP-02-116; APN 401-141-03

Dear Dr. Badgley:

Thank you for the letter dated July 20<sup>th</sup>. It is good to know that you are still trying to work with the County in abating the current situation on your parcel in Samoa. It is a good idea to remove the items listed in your most recent letter and focus on the boat building use which is permitted in the Industrial/Coastal Dependent (MC) zone.

You've inquired about subdividing your 12-acre parcel so that you could accommodate the visitor serving uses of "recreat center" and "beach side amphitheatre" on one parcel and the boat building on the other. This subdivision would also require changing the zoning and the general plan to Commercial Recreation (CR). Since your parcel is in the Coastal Zone, a rezone and general plan amendment would require the State's approval of an amendment to the County's Local Coastal Plan (LCP). This is a time-consuming and potentially costly process unless it could be undertaken concurrently with the County's LCP update currently underway.

Since the County has continuously maintained the importance of industrial sites within the bay, it is not terribly likely that the Planning Division would support a change of this nature to the Board of Supervisors and, finally, the State Coastal Commission. This is a reiteration of the information supplied to you by letter from this Department dated July 23, 2003. If you would like to pursue this avenue, please contact Martha Spencer of the Planning Division who is currently working on the LCP update (445-7541).

Please note that more than a year has passed since you submitted your application to remedy a land use violation that was first brought to the attention of this Department more than a year prior to that. It has been determined by the Community Development Director that it is in the County's best interest to request the assistance of the State in reaching a satisfactory end to this permitting situation.

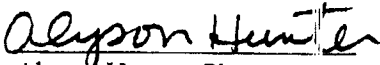
In the interim, it would be helpful to your application if you could submit a new Plan of Operation that deals *only* with the boat building aspect of the project along with a revised plot plan that shows: a) everything currently on the parcel, b) the items that you intend to remove in order to reach a satisfactory end to the abatement (i.e., old derelict platforms, structures, equipment; piles of tires, metal, building materials, etc.) and c) your proposed boat building facility including docks, buildings, materials to be used, materials to be stored on-site accessory to the boat building, etc.

With regards to the barn, it is *possible* that the barn may be able to be restored, but it will not be able to be used as an agricultural building since, as you know, agricultural uses are not allowed in the MC zone.

Please do forward a copy of the Biological Report to the Planning Division as well as a copy of the Cultural Survey (Phase I) report that was also requested in this Department's letter to you last July by the Wiyot Tribe. Please contact Marnie Atkins of the Wiyot Tribe for more information on this at 733-5055. We will not proceed with permitting until we have both of these documents.

Thank you for your correspondence and we look forward to continuing the process so that your goals for your property can be attained with the approval of local and State authorities.

Sincerely,



Alyson Hunter, Planner II

Humboldt County Community Development Services - Planning Division

Cc: Stephanie Weigel, Coastal Commission - Eureka office





PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES  
**COUNTY OF HUMBOLDT**  
3015 H STREET  
EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

July 15, 2004

Nancy Cave  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: Badgley, Laurence; File No: APN 401-141-03  
Case Nos: CDP-02-113/CUP-02-40/SP-02-116

Dear Nancy:

The Humboldt County Community Development Services Department (HCCDS) would like to extend our thanks to you and the Coastal Commission for your interest in assisting the County in the abatement and enforcement of the above-mentioned property in the Samoa area, west of the City of Eureka. The 12 acre property is zoned Coastal Dependent Industrial (MC) with the same land use designation. The parcel is also encumbered with the Archaeological Resources (A) and Coastal Wetlands (W) combining zones.

For the following reasons, HCCDS is formally requesting assistance from the State Coastal Commission to enforce on the County's behalf pursuant to Sections 30809, 30810 and 30811 of Chapter 9 of the Coastal Act. The bay shore portions of the subject parcel are located within the State's permitting jurisdiction and will require permitting from the State should the applicant act on the abatement procedures.

The following is a synopsis of events to date:

- The Planning Division received a complaint filed in May of 2002 regarding potential violations on the parcel including, but not limited to: unpermitted structures, unpermitted agricultural uses, commercial uses, etc. Complainant included many photos;
- HCCDS sent first certified complaint letter to property owner, Dr. Laurence Badgley, on May 22, 2002;
- HCCDS sent second certified complaint letter to property owner on September 24, 2002;
- HCCDS sent third and last certified complaint letter to property owner on October 31, 2002 citing that the case will be turned over to the Humboldt County Code Enforcement Unit (CEU) which, under HCC §2131, may issue an Order Imposing Administrative Penalty and record a Lis Pendens against the property;
- The owner made an Application Assistance meeting with Staff Planner, Alyson Hunter, in February of 2003 to discuss permitting options and the most appropriate ways to abate the existing violation(s);
- A CDP/CUP/SP application was submitted on June 23, 2003 with a Plan of Operations that filled an  $\pm$  3 inch binder and included a majority of structures and uses that are not permitted, neither principally nor conditionally in the zoning district;
- An "incomplete" letter was sent to the applicant on July 23, 2003, describing items needed to proceed with permitting; a Biological Report (including a wetland delineation) and a Cultural Survey that meets with the satisfaction of the Wiyot Tribe. Included in the letter was the statement that the project as proposed *may* require an EIR and would require a zone reclassification/general plan amendment to accommodate the proposed uses since very few of them are either principally or conditionally allowed in the zoning district.

Coastal Commission staff member, Stephanie Weigel, met with myself, two members of the County's Environmental Health Department (DEH) and Dr. Badgley on the property during the last week of May, 2004, to discuss how to proceed since nothing had been received in support of his project other than a letter from SHN dated August 25, 2003 suggesting that the owner attempt a zone reclassification/general plan amendment.


At this point, we still have not received anything from the applicant suggesting that he intends to remedy the existing violations and permit the existing and proposed uses. In addition to the land use violations cited above, County Planning staff found the parcel to be a "wrecking and salvage yard", defined in §313-158, HCC. This use is neither principally nor conditionally permitted in the MC zone.

Given the proximity of the "salvage yard" to the waters of Humboldt Bay and the potential wetland and archaeological resources in the immediate vicinity, the County would like assistance to enforce clean-up measures to rid the parcel of inoperable vehicles, creosote-soaked timbers, piles of tires, piles of steel and other metals (wire, truck axles, etc.), stacks of building materials (concrete, etc.), dilapidated unpermitted structures (yurts, sheds, platforms, etc.), removal of stored vehicles (bus, RV) and various other items that the owner claims were on-site when he bought the parcel thus inheriting the land use violation.

The only uses that the applicant has applied for that *may* be permitted are the boat building and aquaculture. During the site visit, Dr. Badgley intimated that he was likely going to drop the aquaculture aspect due to difficulties with Fish and Game with regards to discharges into the bay. The County hopes to use the nexus between permitting a new use and cleaning up an existing violation to bring the property into compliance with local and State regulations.

We sincerely hope that we can count on the State's assistance in this matter and look forward to supplying Coastal Commission staff with any further information that may be required. If you have any questions regarding this situation, please contact Alyson Hunter, Planner, between 8:30 A.M. and 5:00 p.m., Monday through Friday at (707) 268-3731.

Sincerely,

  
Kirk A. Girard, Director  
Humboldt County Community Development Services

Copy: Bob Merrill, North Coast office  
Stephanie Weigel, Coastal Commission Code Enforcement, North Coast office  
Claude Young, County Code Enforcement  
Carolyn Ruth, Deputy County Counsel

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**VIA CERTIFIED and REGULAR MAIL**

December 15, 2004

Dr. Laurence E. Badgley  
422 First Street, Suite D  
Eureka, CA 95501

Subject: **Notice of Intent to Commence Cease and Desist Order and  
Restoration Order Proceedings**

Violation No.: V-1-02-011

Location: 865 New Navy Base Road near Fairhaven, Humboldt County  
(APN 401-141-03)

Violation Description: Construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, and grading (cut and fill) in wetlands.

Dear Dr. Badgley:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development consists of the construction, placement and maintenance of unpermitted

development, including (but not limited to): creosote-soaked timbers, piles of tires, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, and grading (cut and fill) in wetlands. This unpermitted development is located on property you own at 865 New Navy Base Road near Fairhaven, Humboldt County, APN 401-141-03 ("subject property").

The subject property covers approximately twelve acres and is located on the Samoa peninsula of Humboldt Bay, near the town of Fairhaven and west of the City of Eureka. The subject property is located almost entirely within Humboldt County's coastal permit jurisdiction, while a smaller portion of the property that borders on Humboldt Bay is in the Commission's retained coastal permit jurisdiction. Beginning in May 2002, the Humboldt County Community Development Services Department (HCCDS) repeatedly requested that you resolve the violations on your property. You submitted an incomplete permit application to HCCDS in June 2003, seeking after-the-fact authorization for existing development and uses on the subject property and proposing a variety of additional uses. To date, your permit application with the County remains incomplete, including key elements such as a biological report showing the location of wetlands and cultural survey report that are required to file the permit application. This letter is sent in a further attempt to address the long-standing violations on the subject property, and to address the ongoing resource impact issues that are raised by the Coastal Act violations noted above. Enforcement staff spoke with you on December 14, 2004 regarding this case and the Commission's pending enforcement action.

Pursuant to Coastal Act Sections 30809, 30810 and 30811, HCCDS formally requested assistance from the California Coastal Commission in a letter dated July 15, 2004, requesting that the Commission assume enforcement jurisdiction for the entire subject property and to order abatement of violations on the subject property. Numerous unpermitted uses on the subject property, described above, are inconsistent with County zoning ordinances, Local Coastal Program policies, and are in violation of the resource protection policies of the Coastal Act.

The subject property is zoned Coastal-Dependent Industrial (MC), with Archaeological Resources (A) and Coastal Wetlands (W) combining zones. The MC zone includes any coastal-dependent industrial use requiring a maintained navigable channel to function, including, for example: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, and aquaculture support facilities. County staff have visited the site and noted that existing unpermitted development on the subject property constitutes a wrecking and salvage yard (as defined in Humboldt County Code Section 313-158), which is neither a principally nor a conditionally permitted use in the MC zone.

"Development" is defined in Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other

division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

The unpermitted development on the subject property, described above, constitutes development under the Coastal Act, and as such is subject to Coastal Act permit requirements.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the proposed Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development on the subject property and will compel the removal of unpermitted development and restoration of areas impacted by the unpermitted development. The proposed Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

### **Cease and Desist Order**

Section 30810(a) of the Coastal Act authorizes the Commission to issue Cease and Desist Orders in the following terms:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances: (1) the local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings because unpermitted development has occurred and is being maintained at the subject property. This unpermitted development includes (but is not limited to): creosote-soaked timbers, piles of tires, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, and grading (cut and fill) in wetlands. The Cease and Desist Order would order you to cease and desist from performing or maintaining any unpermitted development on the subject property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance

with the Coastal Act, including immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms to ensure complete removal of all unpermitted development on the subject property, with a schedule for removing the unpermitted development.

### **Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

Commission staff has determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Construction, placement and maintenance of development without a permit, including (but not limited to): creosote-soaked timbers, piles of tires, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, and grading (cut and fill) in wetlands has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including Section 30231 (biological productivity and water quality), Section 30232 (oil and hazardous substance spills) and Section 30240 (environmentally sensitive habitat areas).

The unpermitted development on the subject property, which is located along Humboldt Bay, includes creosote-soaked timbers, which may have leaked hazardous chemicals into the surrounding environment, thereby adversely affecting biological productivity and water quality (Sections 30231 and 30232). The fill of wetlands on the subject property constitutes a disturbance and negative impact to the quality of the environmentally sensitive dune habitat (Section 30240).

- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted environmentally sensitive wetland areas on the subject property. Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The unpermitted development includes fill in wetland areas and creosote-soaked timbers that may be affecting water quality and biological productivity in the surrounding environment. The unpermitted development continues to

exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have determined it is necessary to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require complete removal of all unpermitted development on the subject property and restorative grading and revegetation of the impacted wetland areas.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any Cease and Desist and Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

### **Local Coastal Program**

The unpermitted development on the subject property is inconsistent with policies of the certified Local Coastal Program (LCP), including Section 3.18 regarding prevention of adverse impacts to archaeological and paleontological resources, and Section 3.30 (Natural resource protection policies and standards) policies 30231, 30232, and 30240, which are adapted from and reflect the Coastal Act resource protection policies discussed above.

### **Additional Procedures**

In addition to the procedures for proposing and issuing enforcement orders that are discussed in this letter, Section 30812 of the Coastal Act allows the Executive Director, after providing notice and opportunity for a hearing, to record a Notice of Violation of the Coastal Act against your property. The Commission staff will send you a subsequent notice if it intends to proceed with recordation of a Notice of Violation in this matter.

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.



In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than January 5, 2005.**

The Commission staff is tentatively scheduling the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for February 16-18, 2005 in Monterey. If you have any questions regarding this letter or if you wish to further discuss options regarding timely, complete and voluntary resolution of the Coastal Act violations on the subject property, contact Sheila Ryan at 415-597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,

  
Peter Douglas  
Executive Director

cc: David E. Martinek, Esq., attorney for Dr. Badgley  
Sheila Ryan, Headquarters Enforcement Officer  
Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Nancy Cave, Northern California Enforcement Supervisor  
Bob Merrill, North Coast District Deputy Director  
Kirk Gerard, Director, Humboldt County Community Development Services  
Martha Spencer, Senior Planner, Humboldt County Community Development Services  
Stephanie Weigel, Planner, Humboldt County Community Development Services

Encl.: Statement of Defense

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dr. Laurence E. Badgley  
422 First Street, Suite D  
Eureka, CA 95501

2. Article Number  
(Transfer from service label)

7004 1160

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  ☒ Agent ☐ Addressee

B. Received by (Printed Name) Amber Jackson C. Date of Delivery 12/21/04

D. Is delivery address different from item 1? ☐ Yes ☒ No  
If YES, enter delivery address below:

3. Service Type  
☒ Certified Mail ☐ Express Mail

Exhibit 15  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 6 of 9

**U.S. Postal Service™  
CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.gov](http://www.usps.gov)

**OFFICIAL U.S. MAIL**

Postage	\$ .83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88

Sent To Dr. Laurence E. Badgley

Street, Apt. No.,  
or PO Box No. 422 First Street Suite D

City, State, ZIP+4 Eureka, CA 95501



## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation that (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **January 5, 2005** to the Commission's enforcement staff at the following address:

Sheila Ryan  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

---

---

---

---

---

2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

---

---

---

---

---

---

---

---

5. Any other information, statement, etc. that you want to offer or make:

---

---

---

---

---

---

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

---

---

---

---

DAVID H. DUN  
(dhd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H. DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**

ATTORNEYS AT LAW

2313 I STREET

EUREKA, CALIFORNIA 95501

TELEPHONE: (707) 442-3791

FACSIMILE: (707) 442-9251

## MAILING ADDRESS

P.O. BOX 1266

EUREKA, CALIFORNIA 95502

## LEGAL ASSISTANTS

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

KYRIE M. COFFELT  
(kmc@dunmartinek.com)

## FAX COVER SHEET

PLEASE TRANSMIT TO FAX NUMBER: (415) 904-5235

PLEASE DELIVER THESE PAGES (INCLUDES COVER PAGE): 3

TO: Sheila Ryan  
FROM: David E. Martinek  
DATE: January 3, 2005

MESSAGE:Notice

This facsimile contains CONFIDENTIAL INFORMATION which may also be LEGALLY PRIVILEGED and which is intended only for the use of the individual or entity named above. If the reader of the facsimile is not the intended recipient, you are hereby on notice that you are in possession of confidential and privileged information. Any dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone (collect) and return the original facsimile to the sender at the above address via U.S. Mail.

xx Original will not follow.

\_\_\_\_ Original will follow by: \_\_\_\_\_ First Class Mail  
\_\_\_\_\_ Certified Mail  
\_\_\_\_\_ Express Mail  
\_\_\_\_\_ Federal Express  
\_\_\_\_\_ Other

IF ANY PROBLEMS OCCUR IN THE TRANSMISSION OF THE ABOVE AND REPLACEMENT PAGES ARE NECESSARY, PLEASE CALL:

DUN & MARTINEK LLP  
(707) 442-3791

DAVID H. DUN  
(dhdd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**  
**ATTORNEYS AT LAW**  
**2313 I STREET**  
**EUREKA, CALIFORNIA 95501**  
**TELEPHONE: (707) 442-3791**  
**FACSIMILE: (707) 442-9251**

**MAILING ADDRESS**  
**P.O. BOX 1266**  
**EUREKA, CALIFORNIA 95502**

**LEGAL ASSISTANTS**

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

KYRIE M. COMPELT  
(kmc@dunmartinek.com)

January 3, 2005

Via fax (415) 904-5235

Sheila Ryan  
California Coastal Commission  
45 fremont St., Suite 2000  
San Francisco, CA 94105

Re: Notice of Intent (Badgley)  
Violation No. V-1-02-011  
865 New Navy Base Rd.  
Humboldt County

Dear Ms. Ryan:

I represent Dr. Badgley. He and I have met to discuss your pending Notice of Intent.

Dr. Badgley understands the concern of the Coastal Commission and is willing to work towards a solution. Dr. Badgley was told by his biologist that the Biological Report had been submitted to Humboldt County. A cultural survey was performed as part of an EIR by a previous owner. In addition, Dr. Badgley has been informed by a consultant that the property is covered in fill and cultural surveys are not performed on fill.

When Dr. Badgley purchased the property, it was a junkyard. We can provide pictures of the property from that time. The property has been considerably improved and we recognize that more improvement needs to be done. Some of the materials on site are adjunct to the proposed boat building operation, which we understand the County of Humboldt does not object to. Other eyesores are the subject of ongoing remediation. For example, since Dr. Badgley purchased the property, over 70,000 pounds of inoperable vehicles have been removed.

Sheila Ryan  
January 3, 2005  
Page 2

I can only emphasize to you Dr. Badgley's total willingness to do things right.

Rather than proceed down an adversarial path, we suggest it may be more fruitful to put these proceedings on hold and give Dr. Badgley a deadline to submit his amended and revised coastal development permit application to the county.

Pending the outcome of our request I would appreciate an extension of time to respond with the Statement of Defense form.

We would be willing to abide by whatever timeline or course of action you deem to be fair.

Thank you very much for taking the time to return my call. Please call me at your earliest convenience with your response to my requests.

Very truly yours,

DUN & MARTINEK LLP

David E. Martinek

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



## VIA TELECOPY and REGULAR MAIL

January 4, 2005

David E. Martinek  
Dun & Martinek LLP  
P.O. Box 1266  
Eureka, CA 95502

Subject: Extension request for submittal of Statement of Defense

Violation No.: V-1-02-011

Location: 865 New Navy Base Road near Fairhaven, Humboldt County  
(APN 401-141-03)

Violation Description: Construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, and grading (cut and fill) in wetlands.

Dear Mr. Martinek:

I am in receipt of your letter dated January 3, 2005, requesting: 1) a postponement of formal enforcement proceedings regarding the above-referenced Coastal Act violation, 2) a deadline for submittal of a revised Coastal Development Permit application to Humboldt County, and 3) an extension of time for submittal of the Statement of Defense form. Commission staff appreciates your statements that Dr. Badgley is willing to work towards an amicable solution.

As I explained during our telephone conversation yesterday, however, we are unable to postpone the enforcement proceeding and cannot grant your extension request regarding the Statement of Defense. We discussed options regarding resolution of the violation through a Consent Order, and I will remain in contact with you regarding the possibility for voluntary abatement of the Coastal Act violations on the subject property. As I said, we are very interested in getting this situation resolved as quickly as possible, and getting the unpermitted development removed from Dr. Badgley's property. Therefore, Commission staff is still tentatively scheduling the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is

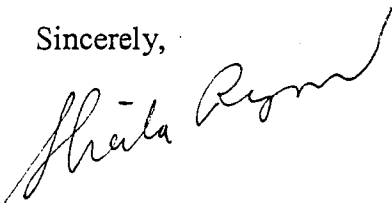
scheduled for February 16-18, 2005 in Monterey. You indicated that you would submit the Statement of Defense form by the January 5, 2005 deadline. If we were to convert this enforcement matter to a Consent Order, we would need to move very quickly, and would need to discuss all elements of a settlement to resolve the numerous violations at the site, including an appropriate penalty. If you are interested, please contact me by January 6, 2005.

Regarding a deadline for completion of the pending County application, Commission staff notes that Dr. Badgley is certainly able to amend his project description and complete the application at any time, as he has been at any time over the last year and a half, since the County first informed him in June 2003 of the outstanding requirements for filing the application. In a letter dated July 23, 2004, County planning staff reminded Dr. Badgley that his permit application could not be filed as complete until a Biological Assessment and Cultural Survey were submitted. However, we need to be clear that the pending Commission enforcement action is not linked to completion of the pending County permit application; rather, the Commission is acting to resolve the Coastal Act violations regarding all unpermitted development on the subject property.

You note in your letter that a previous owner of the subject property performed a cultural survey as part of an EIR. While cultural survey information for the subject property may already exist, we understand Dr. Badgley has not made this information available to County staff for review as part of his permit application. County staff also notes that in the time since this survey was performed in the early 1980s, the review process has changed substantially because the Wiyot Tribe is now involved in all such review activity, and it is not clear whether the prior survey information would be sufficient to meet the Wiyot Tribe's review specifications. Regarding your statement that "the property is covered in fill and cultural surveys are not performed on fill," it is apparent that some portions of the subject property contain sandy fill, but other portions consist of forest, vegetated dunes, dune hollows, and wetland areas. A current cultural survey is required to complete the pending application for the subject property, and the County has provided Dr. Badgley with contact information for the Wiyot Tribe. Again, this is not directly related to the Commission's enforcement action, but we wanted to make sure you had all available information regarding the status of your client's application to the County.

If you have any questions regarding this letter please feel free to call me at 415-597-5894.

Sincerely,



Sheila Ryan  
Headquarters Enforcement Officer

cc: Dr. Laurence Badgley, property owner  
Lisa Haage, Chief of Enforcement  
Alyson Hunter, Planner, Humboldt County Community Development Services  
Stephanie Weigel, Planner, Humboldt County Community Development Services



DAVID H. DUN  
(dhd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**  
ATTORNEYS AT LAW  
2313 I STREET  
EUREKA, CALIFORNIA 95501  
TELEPHONE: (707) 442-3791  
FACSIMILE: (707) 442-9251

MAILING ADDRESS  
P.O. BOX 1266  
EUREKA, CALIFORNIA 95502

LEGAL ASSISTANTS

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

KYRIE M. COFFELT  
(kmc@dunmartinek.com)

January 5, 2005

Via fax (415) 904-5235  
and FedEx

Sheila Ryan  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

Re: Violation V-1-02-011 (Badgley)

Dear Ms. Ryan:

Faxed herewith and sent via FedEx today, please find our response to the notice of violation.


Our presentation includes 30 pages of photographs depicting the property as purchased. I don't believe these photos will fax well, so they will be only in the FedEx packet and not in the fax. If you wish them to be faxed today, please let me know.

By any measure, I believe it can be seen that the property was in extremely poor condition when it was acquired, and Dr. Badgley has performed a great deal of remediation.

I appreciate your willingness to keep discussing this matter. I look forward to receiving your suggestions for a voluntary abatement agreement.

Very truly yours,

DUN & MARTINEK LLP

  
David E. Martinek

enc. as noted

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation that (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **January 5, 2005** to the Commission's enforcement staff at the following address:

Sheila Ryan  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

This answering Respondent denies, generally and specifically,  
each factual allegation contained in the Notice of Intent.

For more information, please see the attached.

**2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):**

Please see attached.

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):**

Please see attached.

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

Please see attached.

5. Any other information, statement, etc. that you want to offer or make:

Please see attached.

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

Please see attached.

## RESPONSE TO PARAGRAPH II IN NOTICE OF INTENT

DENY

The Notice of Intent, dated December 15, 2004, is the first time most of these alleged violations have been specifically addressed by either the County or Coastal Commission. On June 20, 2002, Michael Richardson, of the County Planning Division, met with Dr. Badgley, at Dr. Badgley's request in response to allegations of violations. Dr. Badgley offered to show Mr. Richardson anything and any location, residence, or building on the property. Mr. Richardson declined the offer stating that his job was only to help Dr. Badgley through the permit process in order for him to "pursue the activities and projects" he had in mind. Mr. Richardson refused to view any alleged violations during his visit. Dr. Badgley, at this time, informed Mr. Richardson a number of applications had been made within the previous years without response and Mr. Richardson agreed to look into these.

Following additional discussions with Mr. Richardson, a complete and extensive Plan of Operations was submitted with an application to both the County and the Coastal Commission in mid 2003. Upon the County's request for both biological and cultural assessments, Dr. Badgley sought out the assistance of experts in these fields in order to complete the process.

In January 2004, Mad River Biologists completed the biological assessment. Tamara Gedik, in her report to Dr. Badgley, stated that she submitted their report to Alyson Hunter at HCCDS. See Mad River Biologists attached.

Jaime Roscoe and Steven Gantham, MA, RPA were consulted regarding cultural assessment. It was determined that the existence of previous cultural assessments, most recently in the late 1980s, as well as the existing Army Corp of Engineers dredging reports showing past dredge fill being dumped on the property, that a new cultural study was not advised. This information was passed on to Alyson Hunter in a letter dated August 2003 to which she did not dispute.

## RESPONSE TO PARAGRAPH IV IN NOTICE OF INTENT

DENY

Research through the County Planning Division, conducted prior to the development of the Plan of Operations, listed the zoning of parcel in question only as Coastal-Dependent Marine Industrial.

Notice of Intent states the "property constitutes a wrecking and salvage yard." The property very well could have been described as such during Elmer Newby's tenancy with the property's previous owner (see Newby attached). Dr. Badgley took great strides, through legal action and at his own expense, to clean the property of the enormous amounts of trash, wrecked heavy equipment, hazardous waste, scrap and various debris (see photos attached). Everything currently stationed on the property has great value to its use in the proposed boat building as detailed in the Plan of Operations.

## RESPONSE TO SECTION CEASE AND DESIST ORDER, PARAGRAPH I IN NOTICE OF INTENT

NO PERSONAL KNOWLEDGE

Section 30810(a) of the Coastal Act authorizes issuance of Cease and Desist only after a public hearing. There is no evidence that a public hearing has taken place regarding this property.

## RESPONSE TO SECTION RESTORATION ORDER, PARAGRAPH I IN NOTICE OF INTENT

NO PERSONAL KNOWLEDGE

Section 30811 of the Coastal Act authorizes restoration only after a public hearing, if it has occurred without a coastal development permit, is inconsistent with this division, and is causing continuing resource damage. It is not apparent that all four of these criteria have been met.

## RESPONSE TO SECTION RESTORATION ORDER, PARAGRAPH II IN NOTICE OF INTENT

DENY

Please see attached table for explanation.

RESPONSE TO SECTION RESTORATION ORDER, PARAGRAPH IV IN NOTICE OF INTENT

Notice of Intent relies on Sections 13196(e) of the Commission's regulations, stating "restoring the property affected by the violation to the condition it was in before the violation occurred." Please see attached photographs depicting property condition prior to Dr. Badgley's acquirement. It is strongly urged that this request be reconsidered.

RESPONSE TO SECTION LOCAL COASTAL PROGRAM, PARAGRAPH I IN NOTICE OF INTENT  
NO PERSONAL KNOWLEDGE

Notice of Intent references archaeological and paleontological resources; however, previous studies of the property have not found these, and have in fact determined that much of the property is covered with a depth of bay dredge material.



1497 Central Avenue • McKinleyville CA • 95519  
Voice: 707/839-0900 • Fax: 707/839-0867 • [www.madriverbio.com](http://www.madriverbio.com)

## Biological Constraints Analysis And Wetland Delineation

For Samoa Maritime Industries, Inc.  
Proposed multi-use developments at the northern portion of  
A.P.N. 401-141-03, at 855-865 New Navy Base Road, Samoa

Submitted to: Samoa Maritime Industries, Inc.  
422 First Street, Suite D  
Attn: Laurence E. Badgley, President  
707/268-4781  
Fax: 707/268-8153

Cc: Alyson Hunter, Planner II  
Humboldt County Community Development Services  
3015 H Street  
Eureka CA 95501  
707/268-3731  
Email: [ahunter@co.humboldt.ca.us](mailto:ahunter@co.humboldt.ca.us)

Prepared by: Tamara Gedik, Staff Biologist  
E-mail: [tamara@madriverbio.com](mailto:tamara@madriverbio.com)  
1497 Central Ave.  
McKinleyville CA 95519

Submitted: November 24, 2003

By:

Draft Copy - Tarkenton

2. *Maintaining existing or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps;*
3. *In wetland areas only, entrance channels for new or expanded boating facilities;*
4. *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities;*
5. *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines;*
6. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas;*
7. *Restoration purposes;*
8. *Nature study, aquaculture, or similar resource dependent activities.*

In addition to Section 30233 regulations for activities occurring in wetlands is a similar regulation for activities occurring in ESHAs. Section 30240 restricts activities occurring in ESHAs to those that are dependent upon the resources present. Furthermore, activities adjacent to ESHAs should be designed to prevent impacts that would significantly degrade or interfere with the habitat of these areas.

The current project design is likely to have a significant impact on sensitive biological resources. These impacts may be avoided or minimized by the following changes to project design:

- Move the Current Proposed Location for an Aquaculture Pond (proposed Activity # 4). Currently, the proposed location of the aquaculture pond occurs within a 2-3- parameter wetland. If the location is moved to the south, it can be placed out of the wetland area, but will have a reduced setback to wetlands. Other similar alternate locations may be considered that might allow for required setbacks without reduction.

Because the aquaculture pond will have different wetland functions than the existing natural wetland, and will require ongoing maintenance, it is not considered acceptable to replace the natural wetland with the aquaculture pond. Natural wetland areas should not be managed or otherwise impacted without prior permitted authorization from appropriate agencies. It is recommended that current management activities at this wetland site should cease, and the wetland allowed to recover naturally.

- Change the Design and Method of Wastewater Discharge for Aquaculture Activities. The current project specifications propose discharging waste from aquaculture activities into Humboldt Bay. Discharge of waste into Humboldt Bay is not an authorized activity of the Clean Water Act under the jurisdiction of the Regional Water Quality Control Board. Furthermore, concentrations of ammonium and nitrogen resulting from localized discharge of animal waste may significantly alter fish habitat and the natural ecosystem in Humboldt Bay. Industrial operations in the area typically discharge waste into the ocean, which is a costly and impractical alternative for the SMI site. Project alternatives may include discharging waste into a separate septic system, or creating a wastewater treatment pond to process aquaculture waste. Similar systems have been created on a larger scale by Winzler & Kelly for the Manila Community Services District, and by SHN.



Mr. Elmer Newby  
PO Box 2003  
Eureka, CA 95502

November 20, 1997

Dear Mr. Newby,

I have contacted you several times by telephone over the last couple of months, concerning the removal of your equipment from the property located on New Navy Base Road, where it is being stored. As I mentioned several times, this property is under contract and will soon be sold. The new owner does not wish to provide storage for your equipment and has directed us to contact you and request again that you kindly find another place to store your equipment.

Should your equipment still remain on the property after December 3rd 1997, we will assume that you have abandoned this equipment and we will take steps to have it removed.

It is our wish that you comply with our request, so that we do not have to pursue this course of action.

Sincerely,

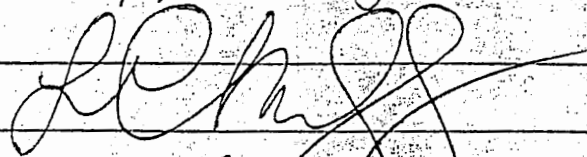
John Duncan  
Broker/Owner  
Pacific Bay Realty

27 July 1999

Mr. Elmer Newby / Sea Knot Construction

2560 Union St, Eureka, CA. DEMAND  
95501

Remove all your equipment and waste from 855/865  
New Navy Base Rd. immediately, and remit \$5,400 in Rental  
Due from 1/1/98 to 7/99 @ 300. p/mo. as agreed.

  
L. B. Badgley

TO: Elmer Newby, Jr./Seaknot Construction  
2560 Union St.  
Eureka, CA 95501

March 20, 2001

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

When you vacated the premises at 855 New Navy Base Road in Samoa, and after having been told to remove all your property, you allowed certain personal property to remain (see attachment entitled "Newby Property" for a list of the property).

You may claim this property at 855 New Navy Base Road in Samoa. In order to take possession of the property, you must pay the reasonable cost of storage for all the property at the formerly agreed upon storage fee of \$300 per month for all the months from January 1, 1998 to the present time. You have never paid any of these storage fees. You must pay the fee and take possession before April 7, 2001, that is to say, before 18 days from the date on this letter, which date is the date of the depositing and mailing of this letter.

If you fail to reclaim the property it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money.

Property which is not sold will be removed, the cost of removal will be documented, and you will be sued in small claims court for the costs of removal. As you know there are toxic waste concerns for some of your property.

You are not allowed to enter the property and remove your property without first paying the storage fee.

March 20, 2001

  
Landlord: Laurence E. Badgley

Telephone: 707-443-2293 office; day  
Pager: 707-268-4781  
422 First Street, Suite D  
Eureka, CA 95501

Ad placed in Eureka Times-  
Standard. Run on Sunday  
4/15 and Wednesday 4/18/01.

**520**  
**Auctions**  
**AUCTION: ELMER NEWBY**  
**PROPERTY: 4/21/01**  
Abandoned property at  
auction: CASE 980B R3349  
front bucket caterpillar tractor,  
blue Crane Mobile 61 Bay  
City diesel engine flat bed  
truck 15 sq. ft. blue metal  
box; 3 Longbow T1383 metal  
buckets; Cummings 193369  
diesel engine; used tires;  
short & long creosote poles &  
wood pieces; metal anchor;  
metal cables; metal poles;  
metal troughs; metal dredging  
tubes; concrete sewage  
boxes; piles of fractured  
concrete slabs; misc. wood;  
metal shutes; metal railings;  
waste cans; containers;  
wrecked front end of car; E-2  
gravel scoop. Auction  
Saturday 4/21/01 9A.M.-  
11A.M. 855 Old Navy Road.  
Across from Eureka/Samoa  
airport in Samoa.

# ELMER NEWBY PROPERTY AUCTION LIST

April 21, 2001

1. CASE 980B R3349 front bucket caterpillar tractor
2. blue Crane Mobile 61 Bay City diesel engine flat bed truck
3. 15 sq. ft. blue metal box
4. (3) Longbowl T1383 metal bucket
5. Cummings 193369 diesel engine
6. used tires
7. creosote poles and wood pieces
8. metal anchor
9. metal cables
10. metal poles
11. metal troughs
12. metal dredging tubes
13. concrete sewage boxes
14. piles of fractured concrete slabs
15. misc. wood
16. metal shutes
17. metal railings
18. waste cans
19. containers
20. front end of car
21. E-2 gravel scoop

**ALL ITEMS ARE SOLD AS IS**

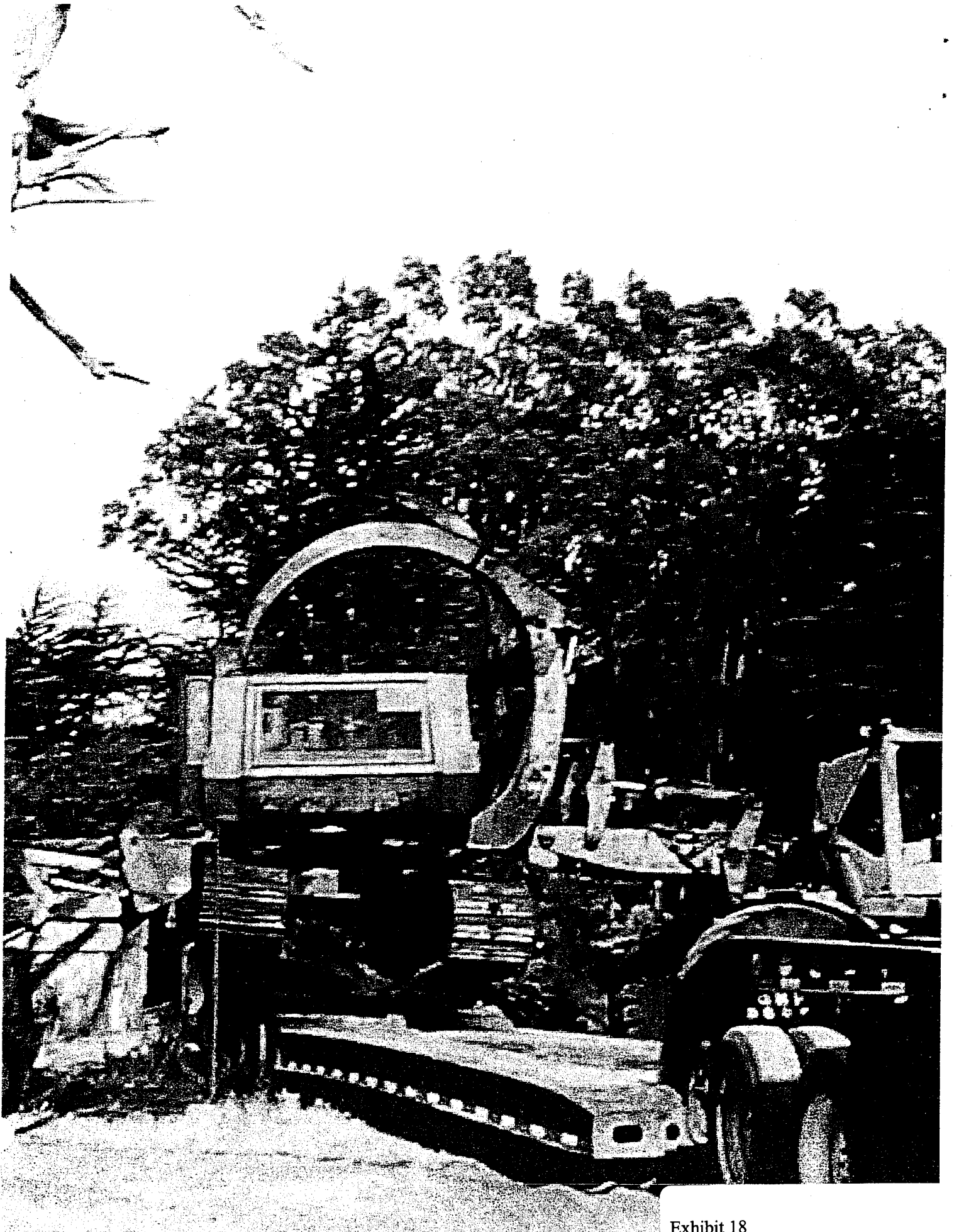


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 14 of 47

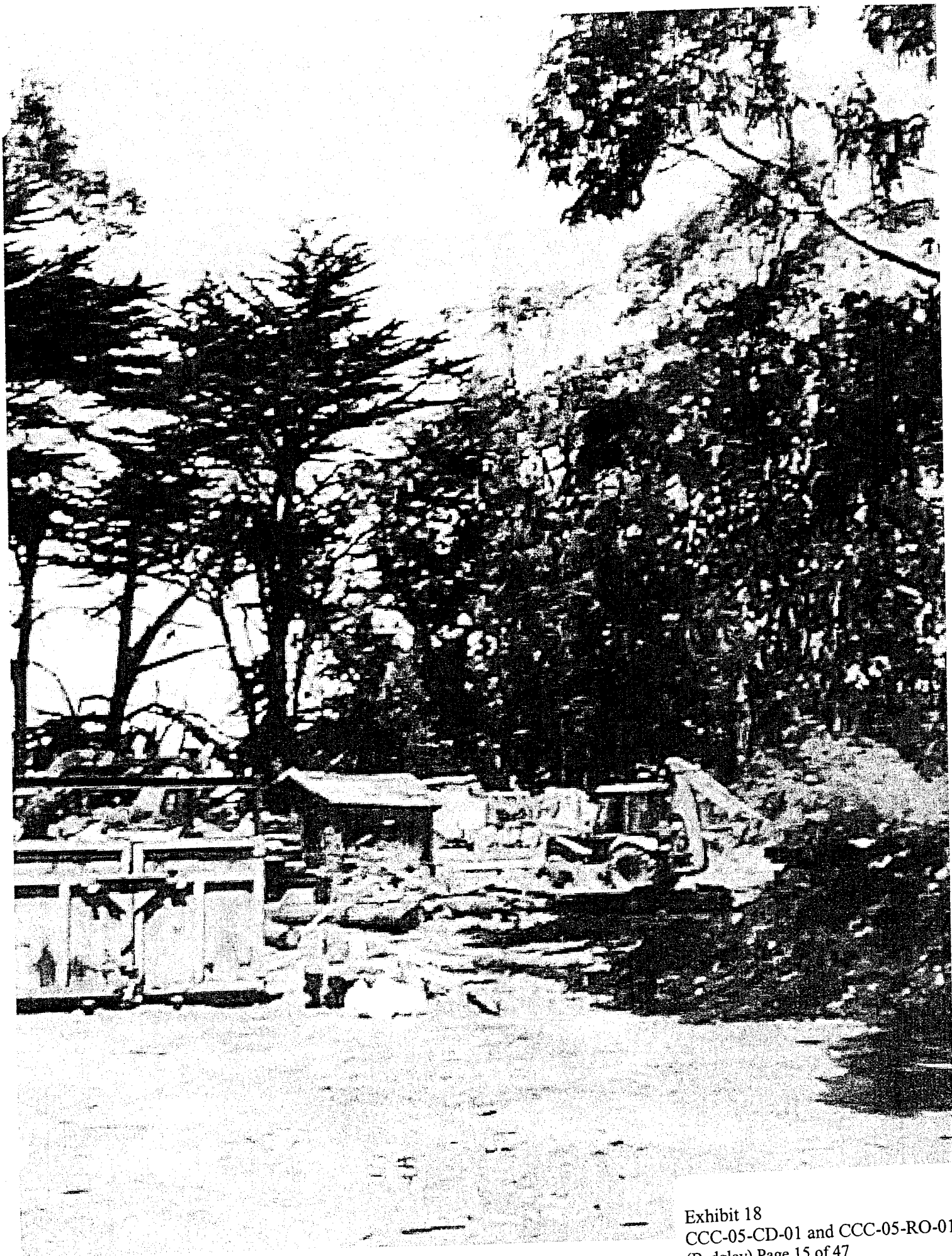


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 15 of 47





Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 16 of 47



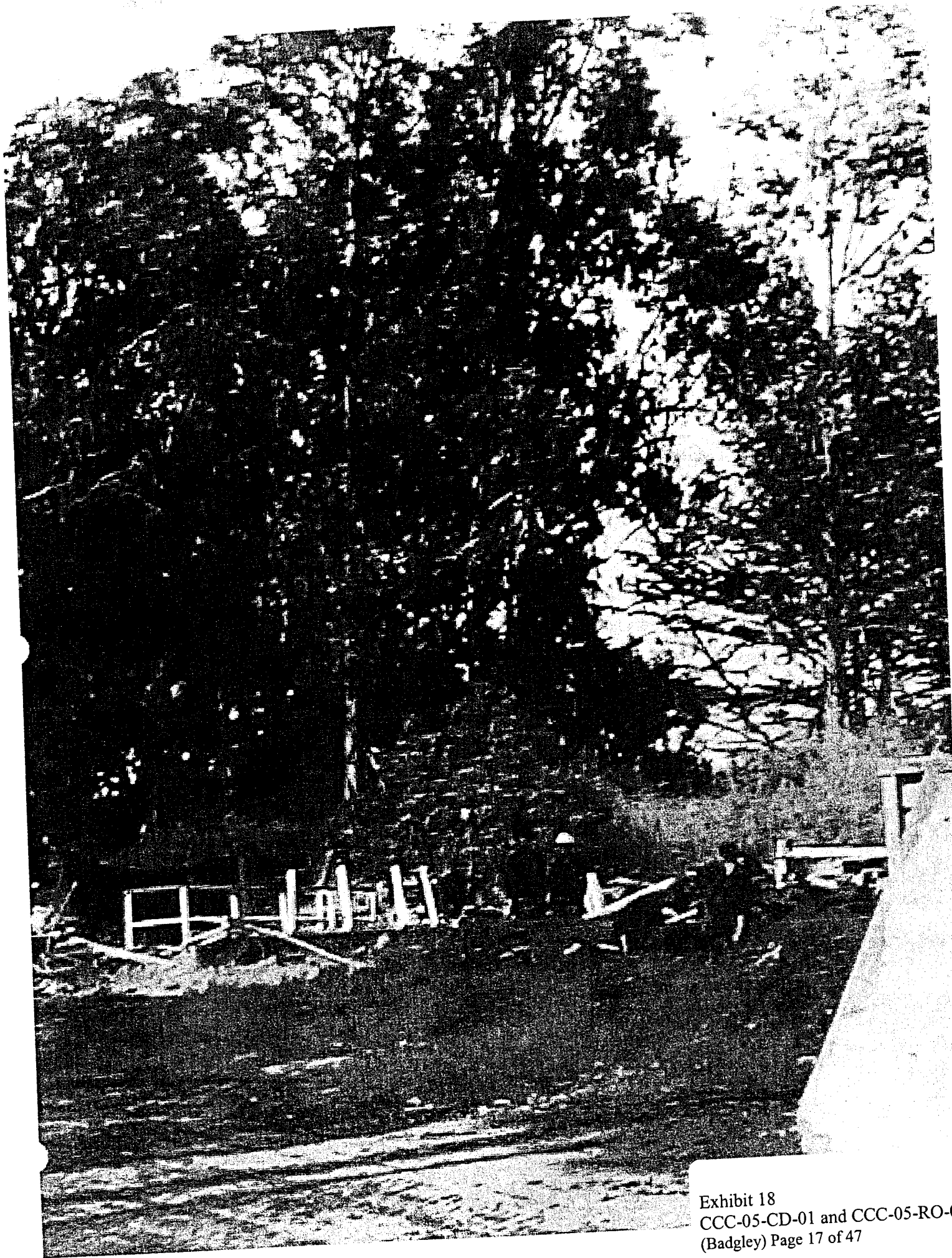


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-0  
(Badgley) Page 17 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 18 of 47

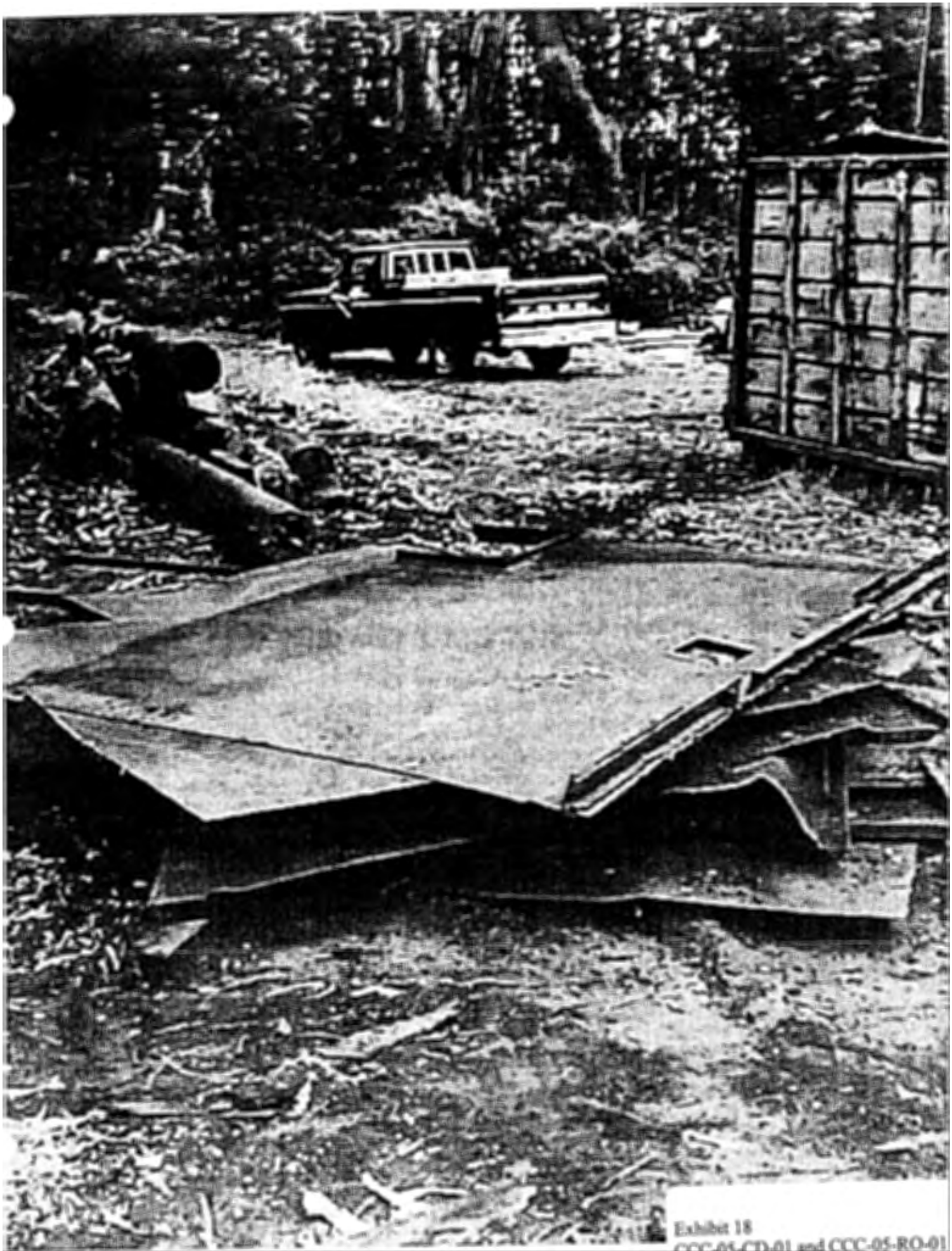


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 19 of 47



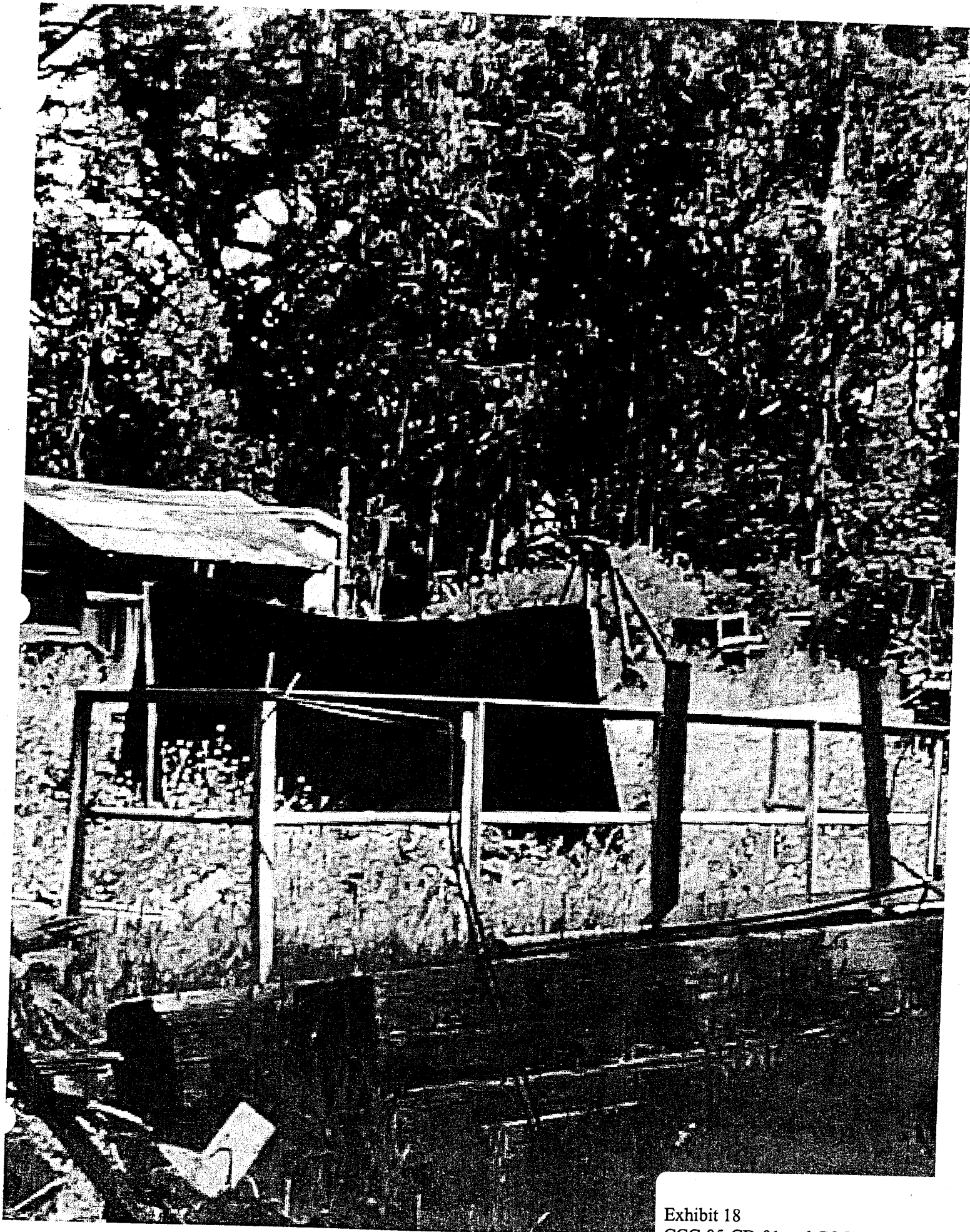


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 20 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 21 of 47

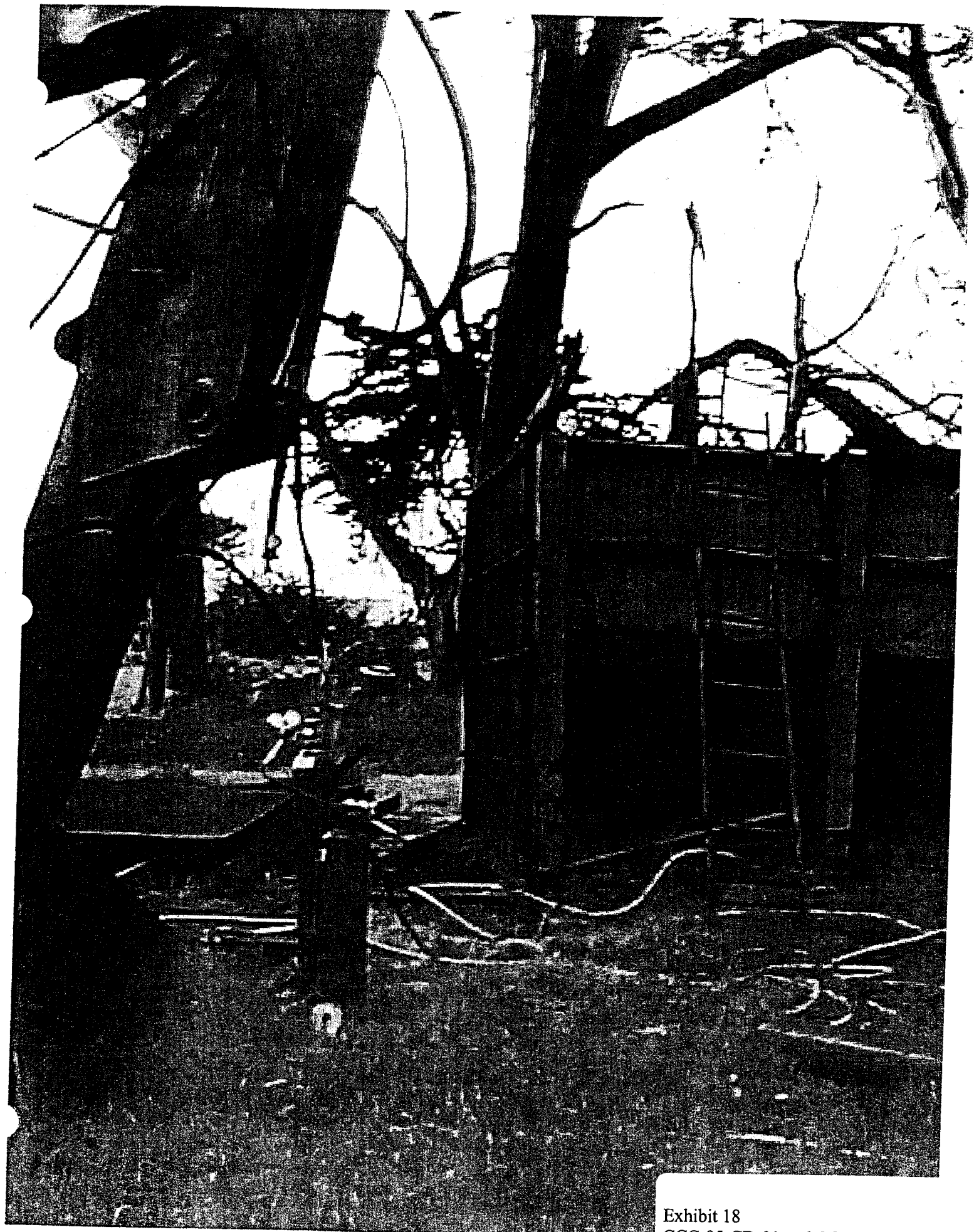


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 22 of 47





Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 23 of 47

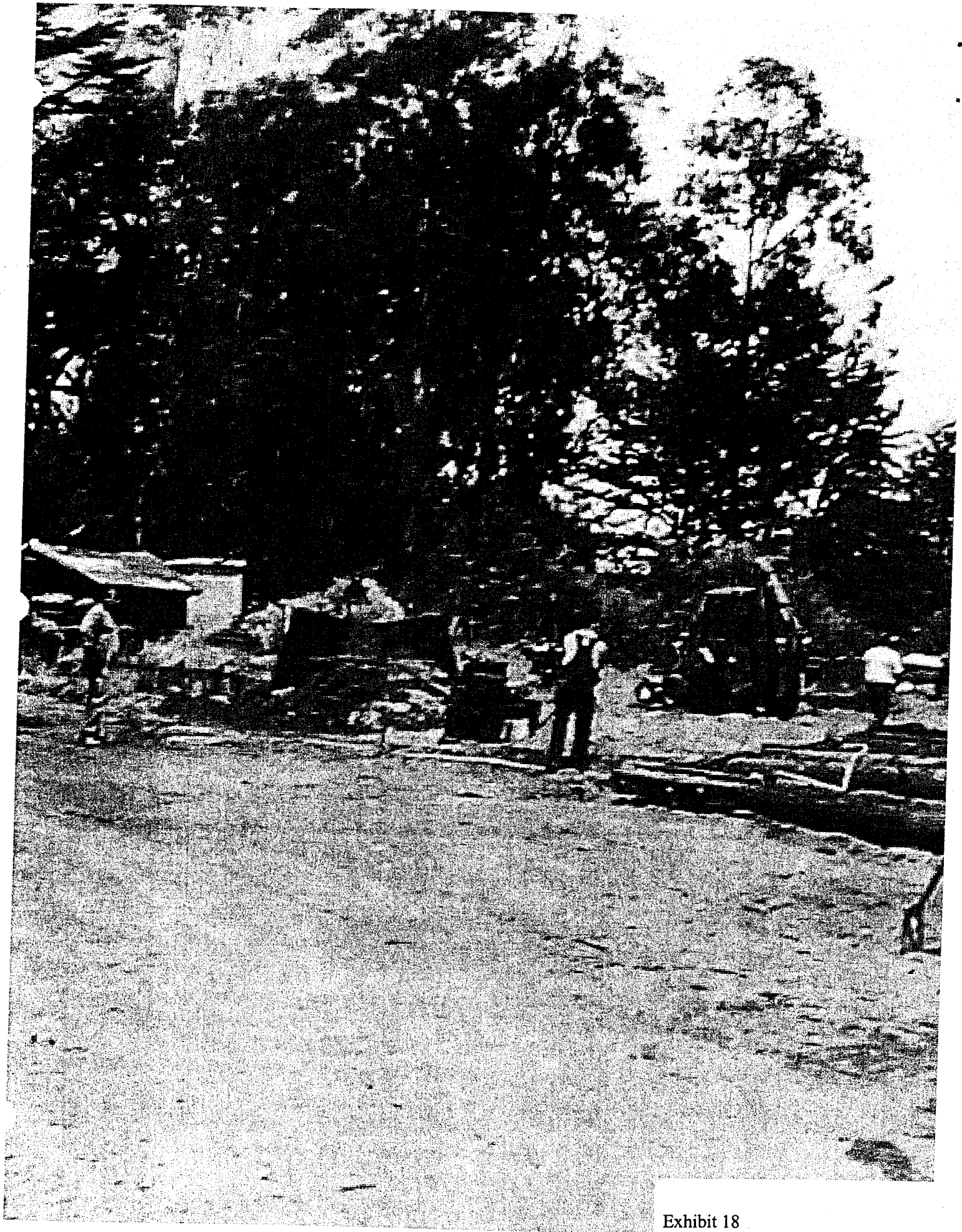


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 24 of 47



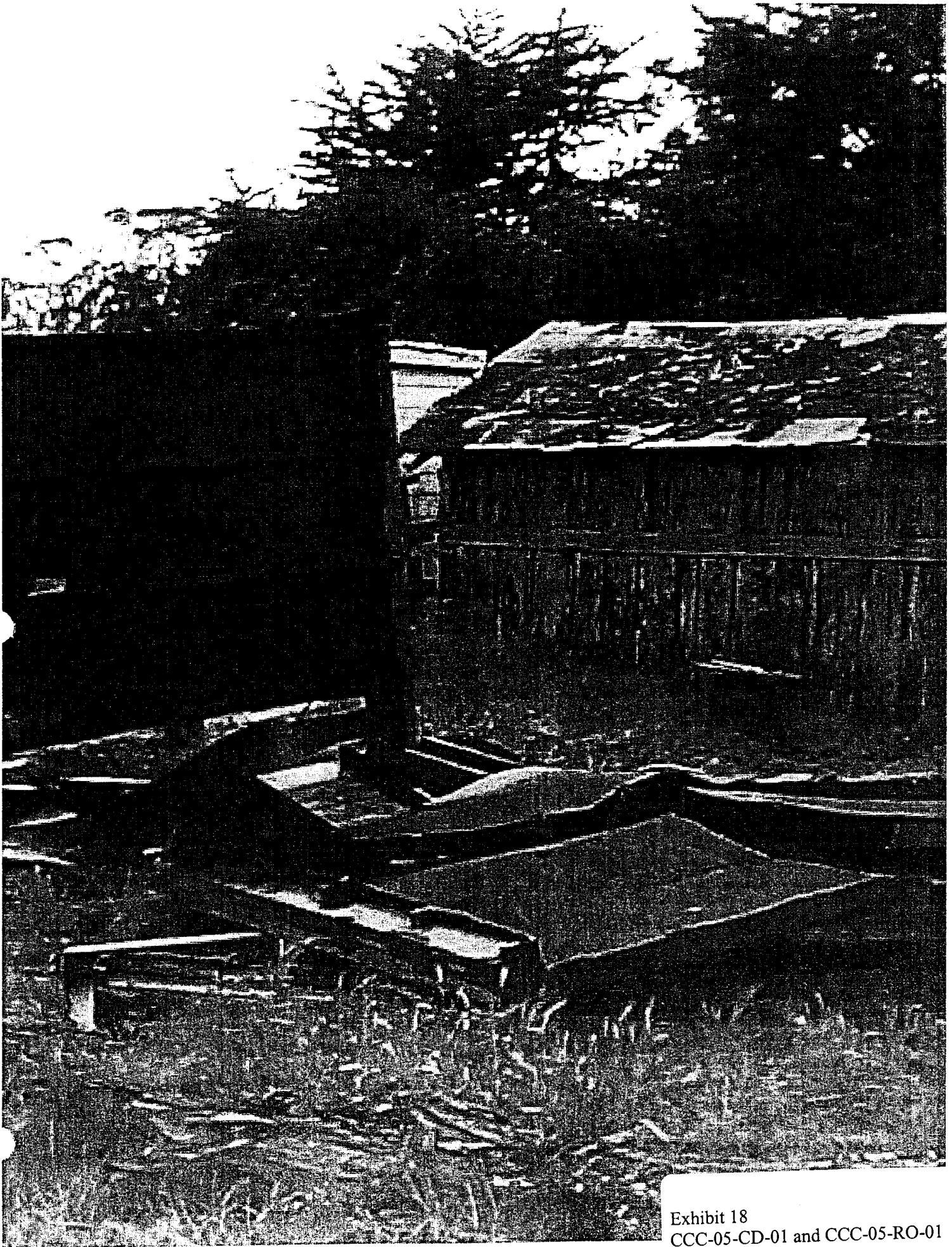


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 25 of 47

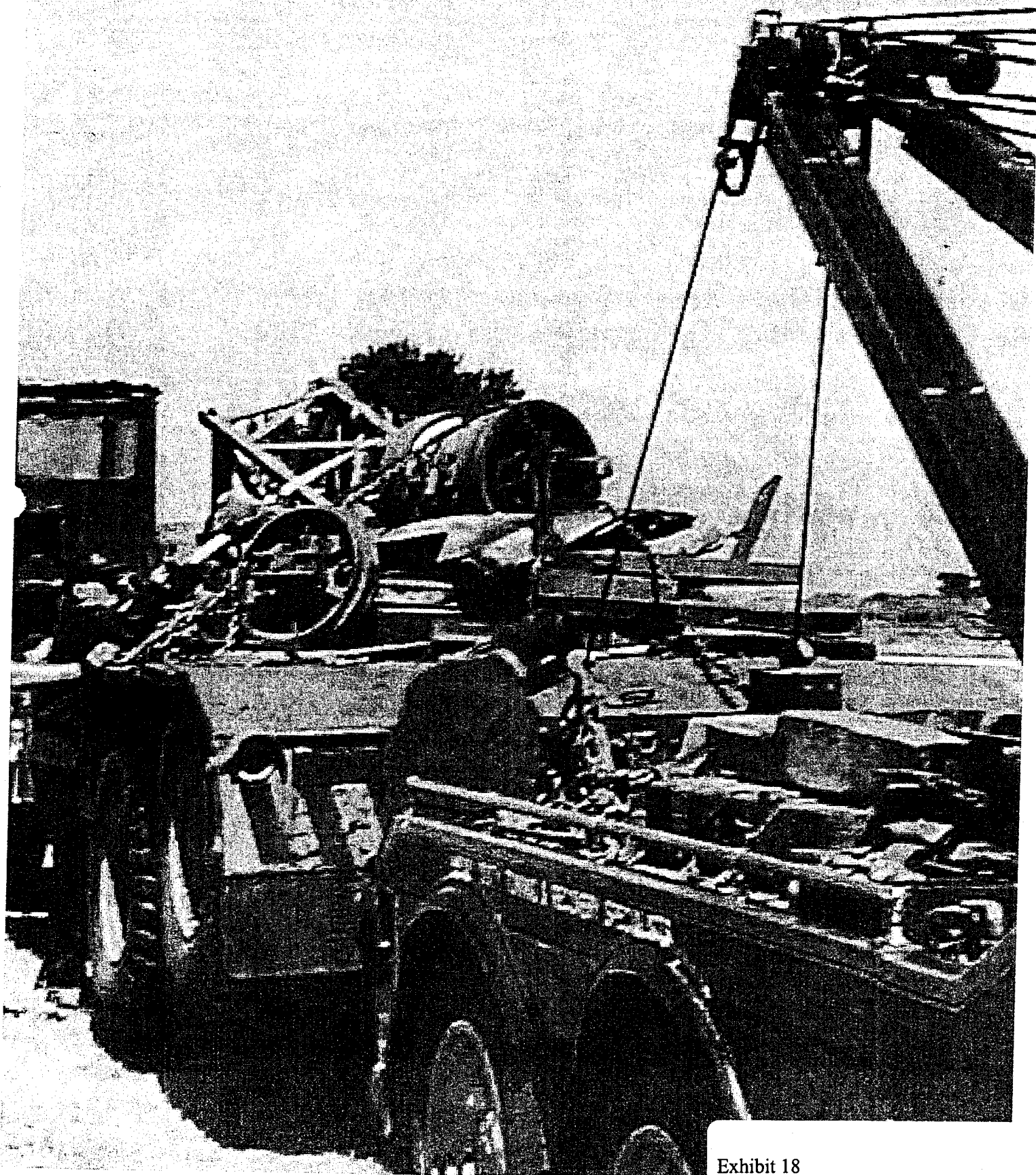
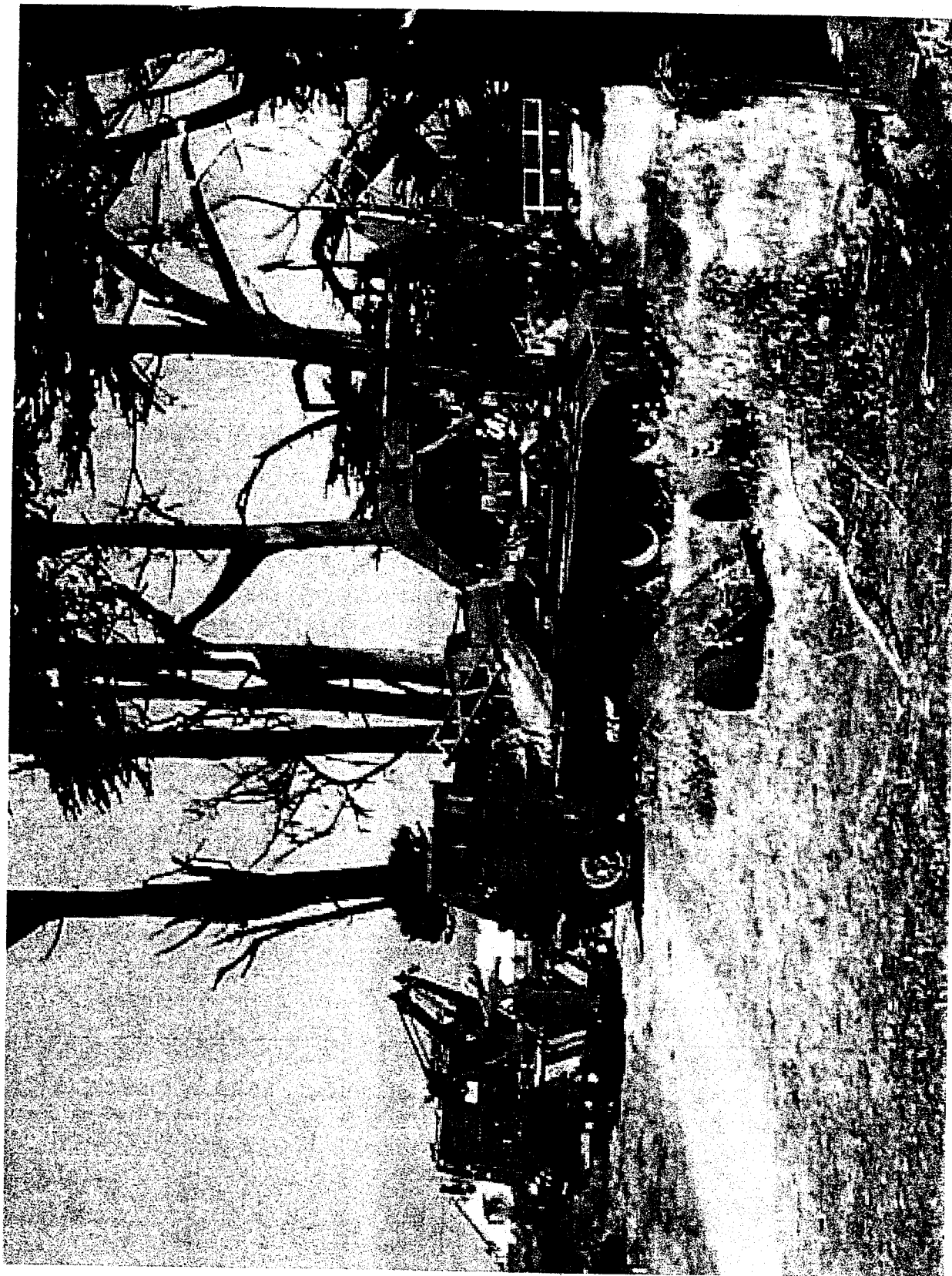


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 26 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 27 of 47



6070

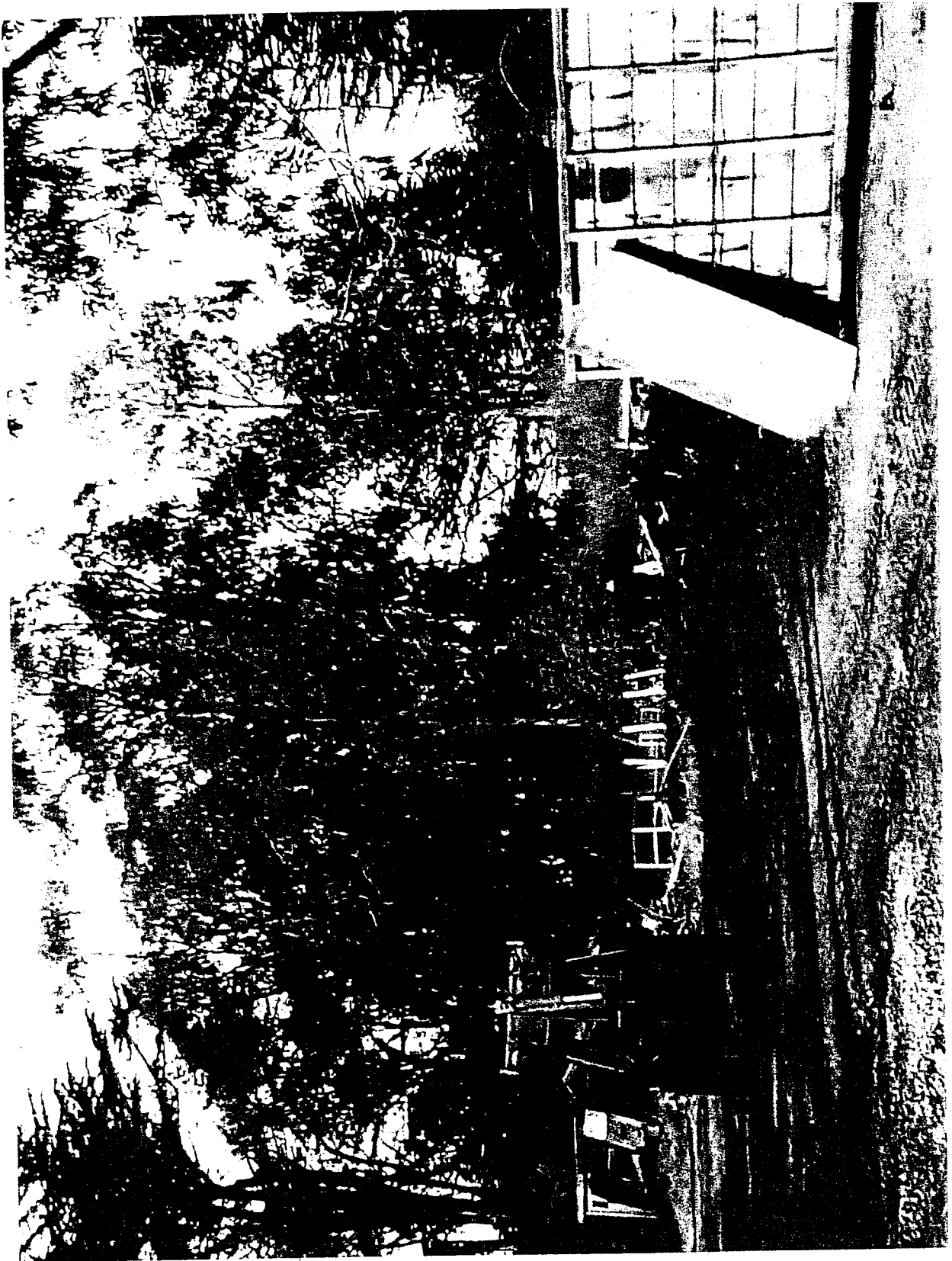


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 29 of 47



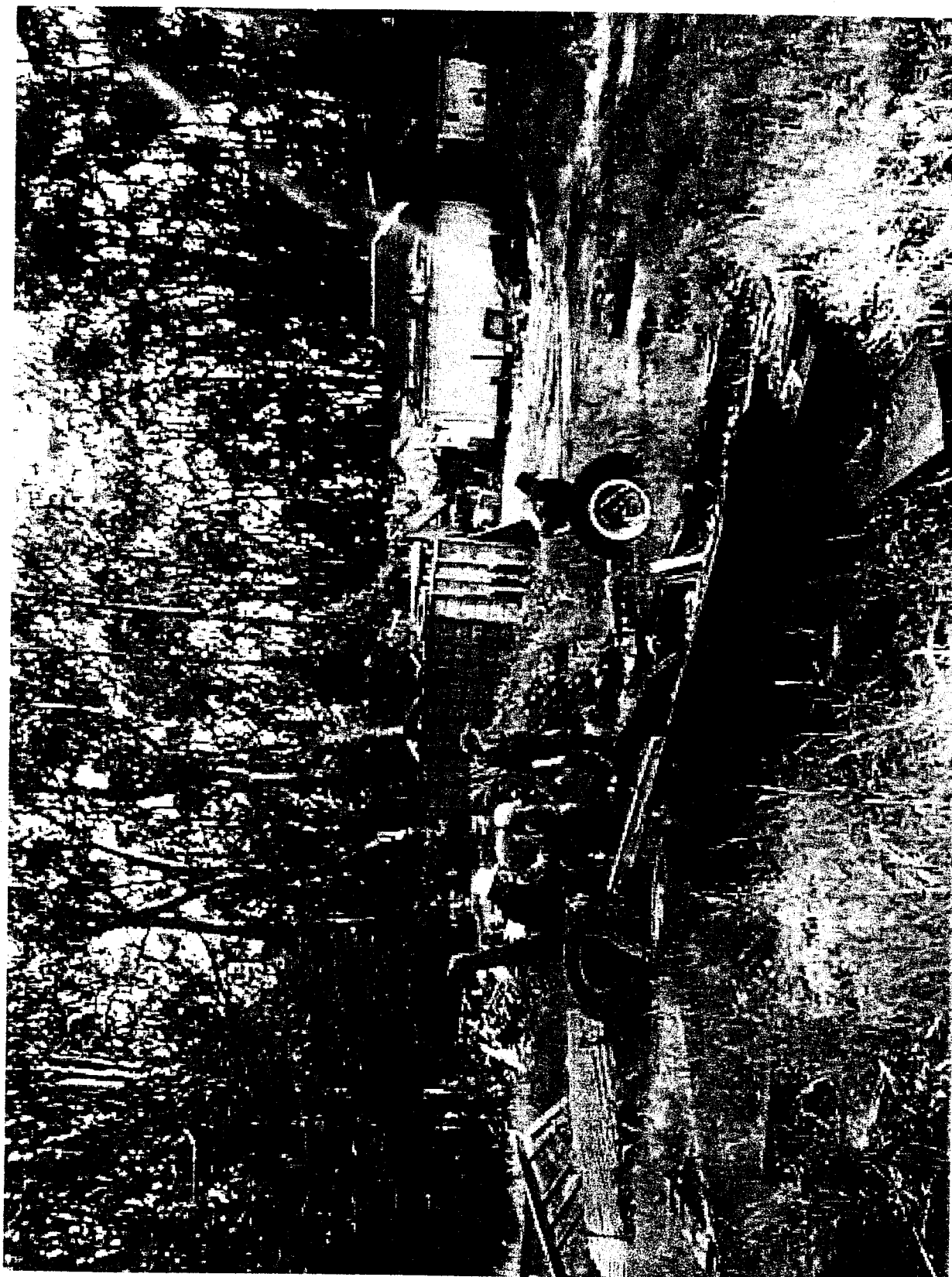


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 30 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 31 of 47

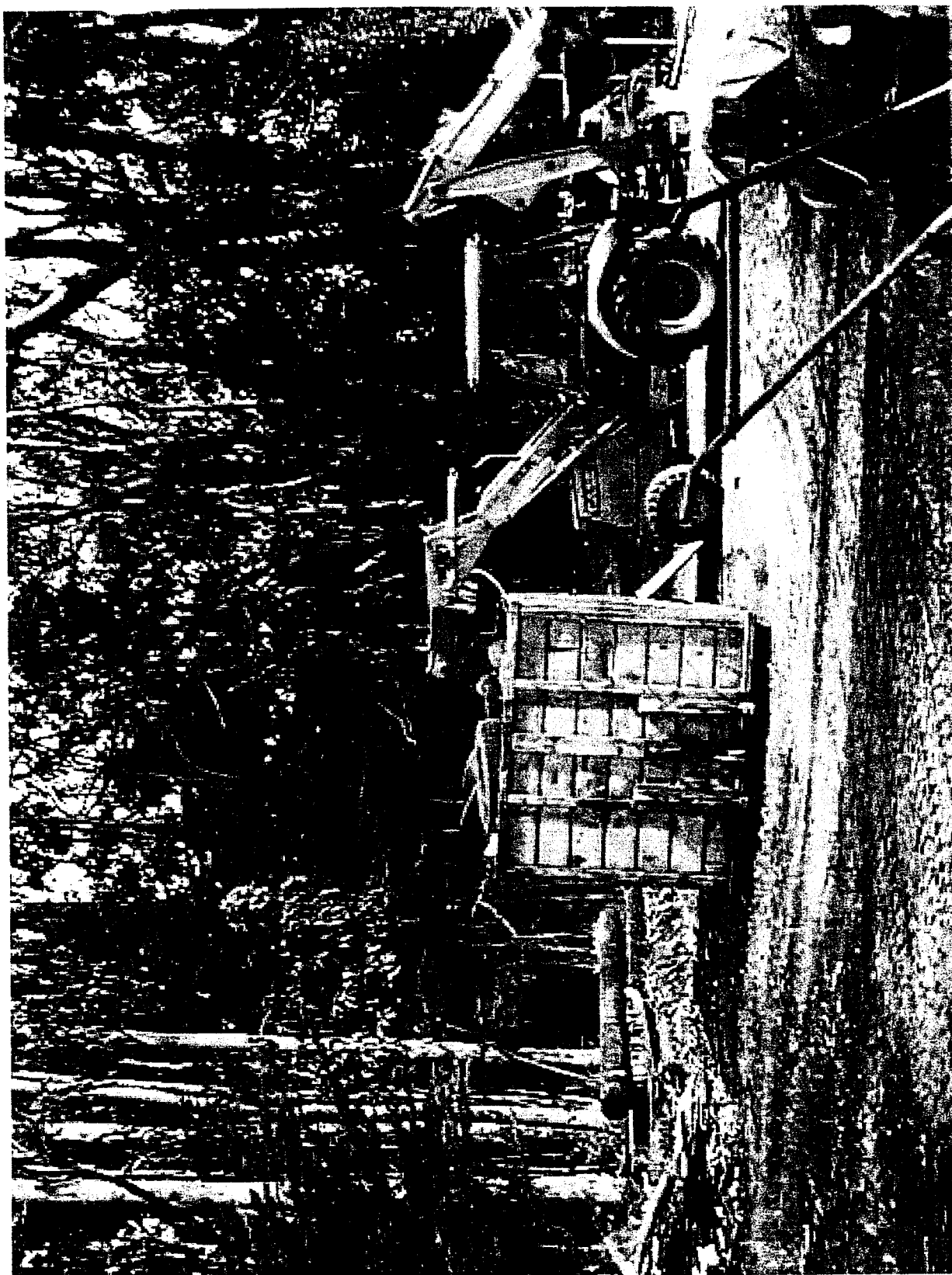


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 32 of 47



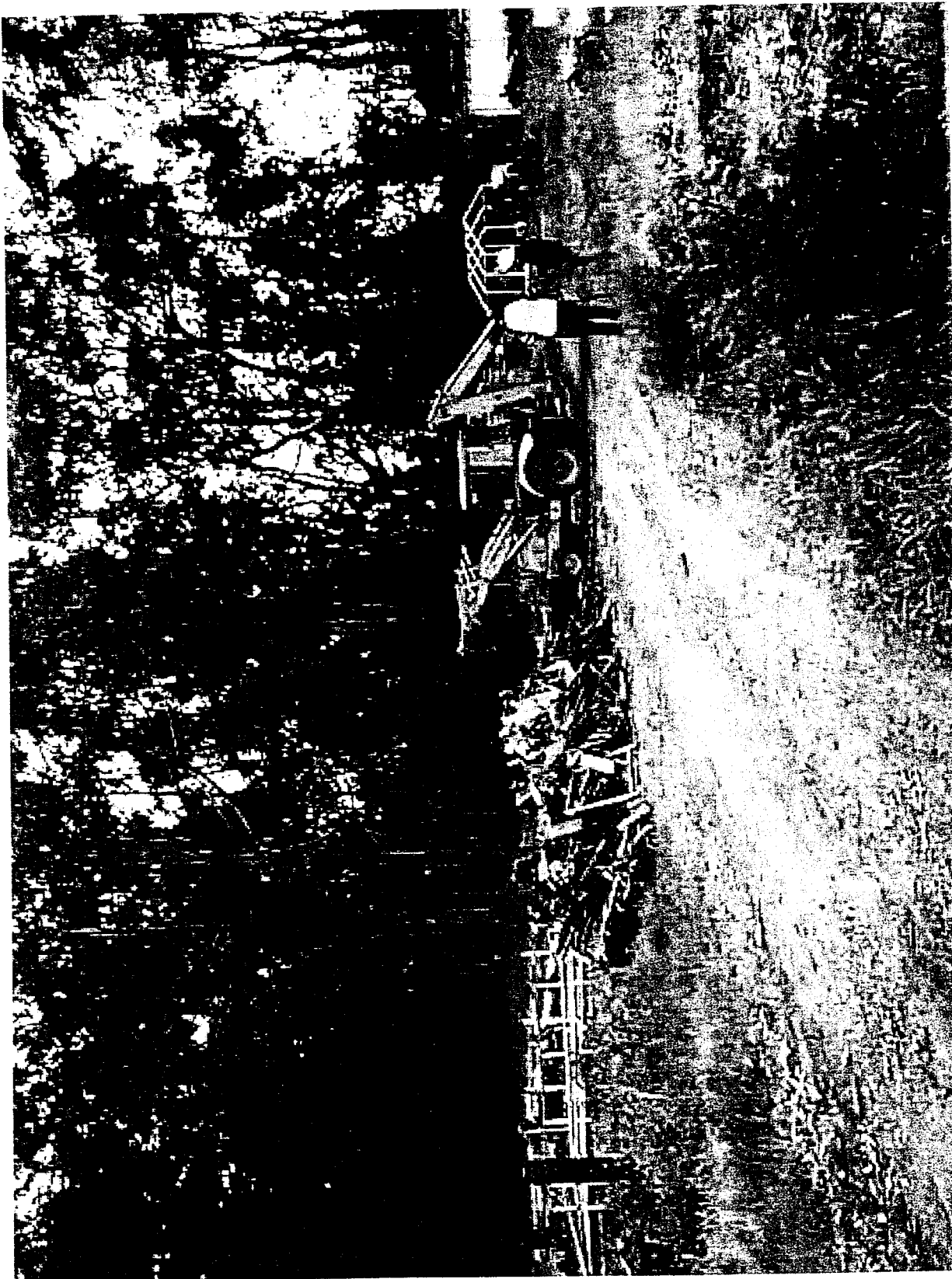


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 33 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 34 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 35 of 47

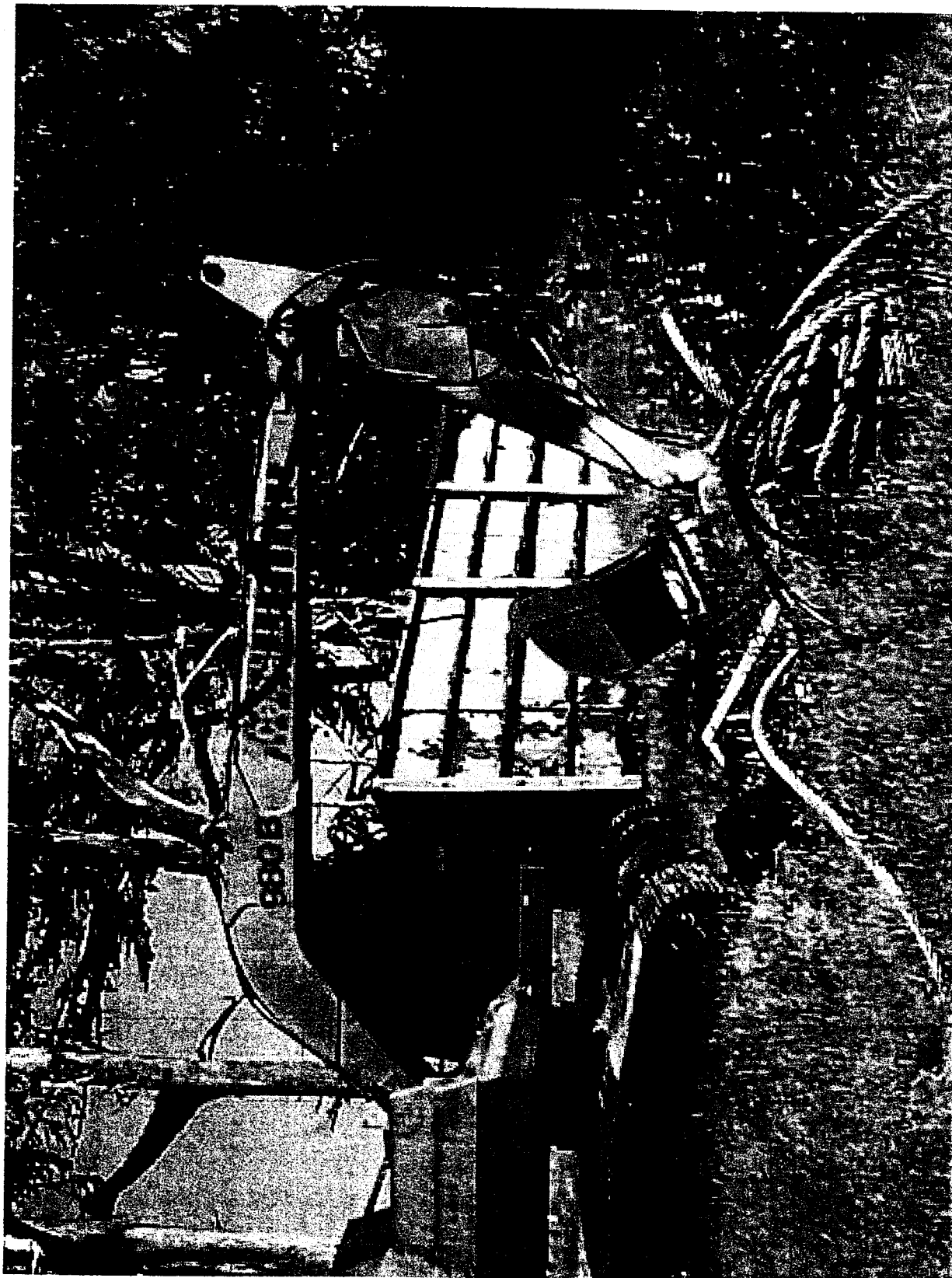


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 36 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 37 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 38 of 47



Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 39 of 47

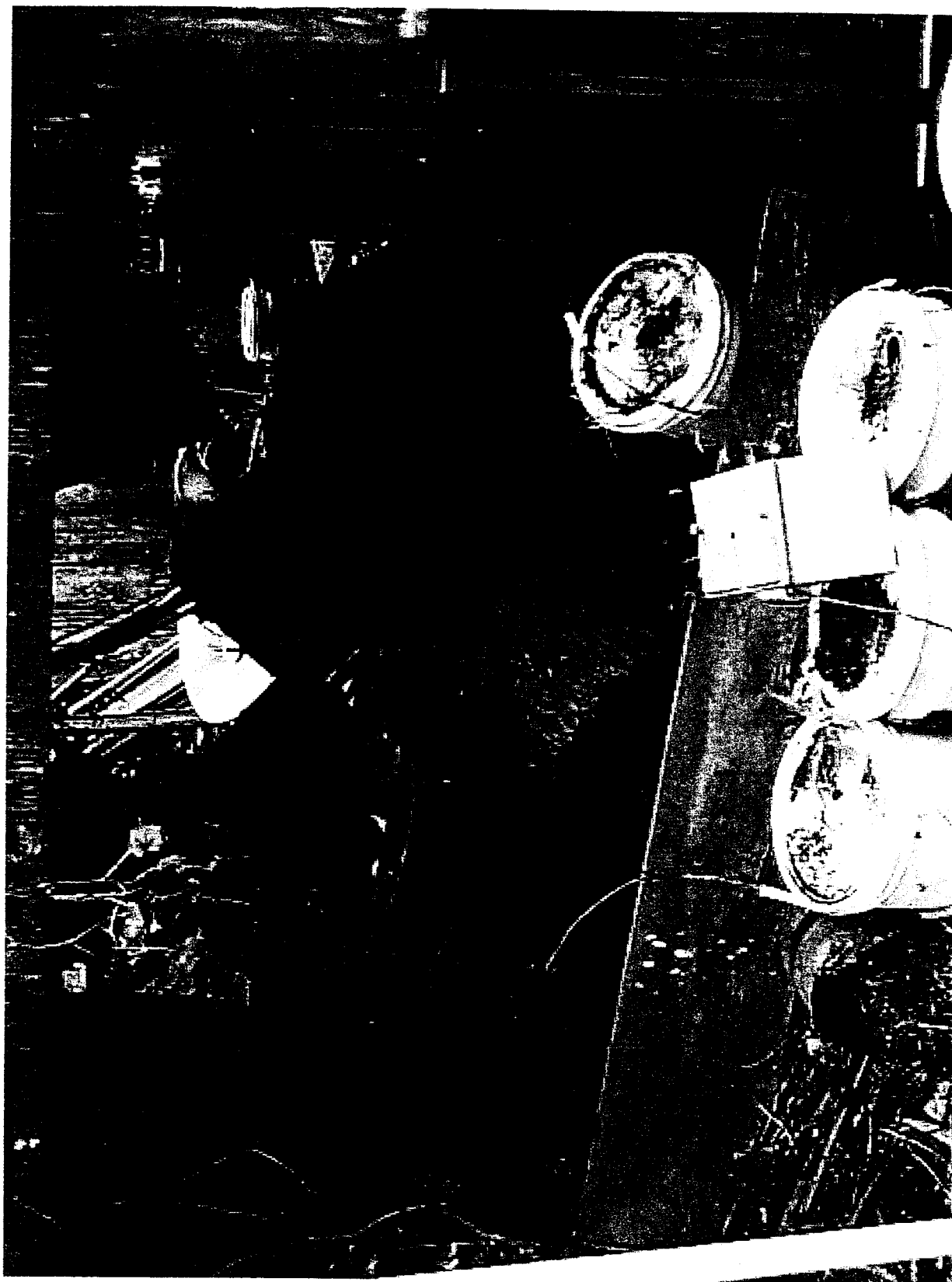


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 40 of 47



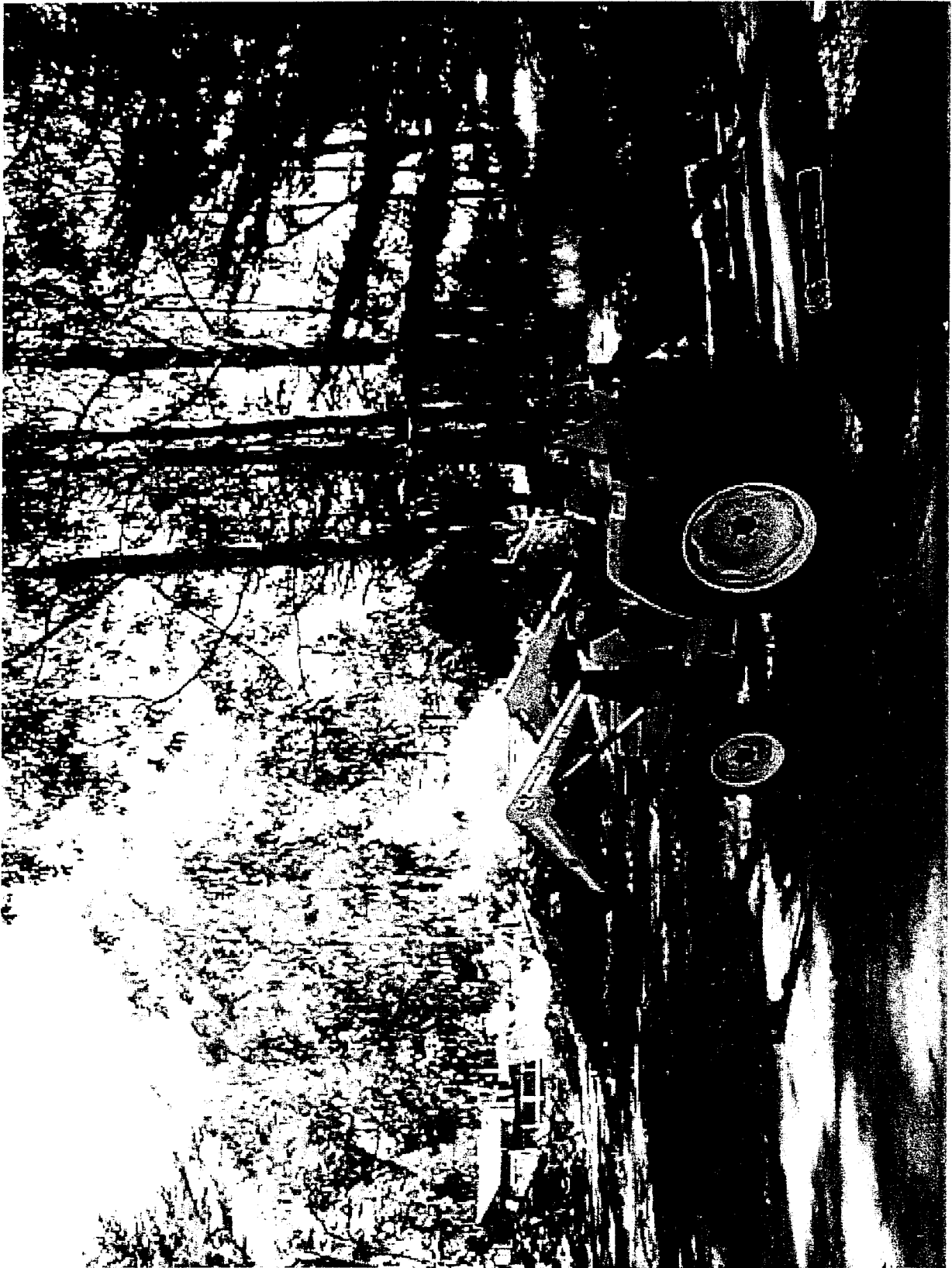


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 41 of 47

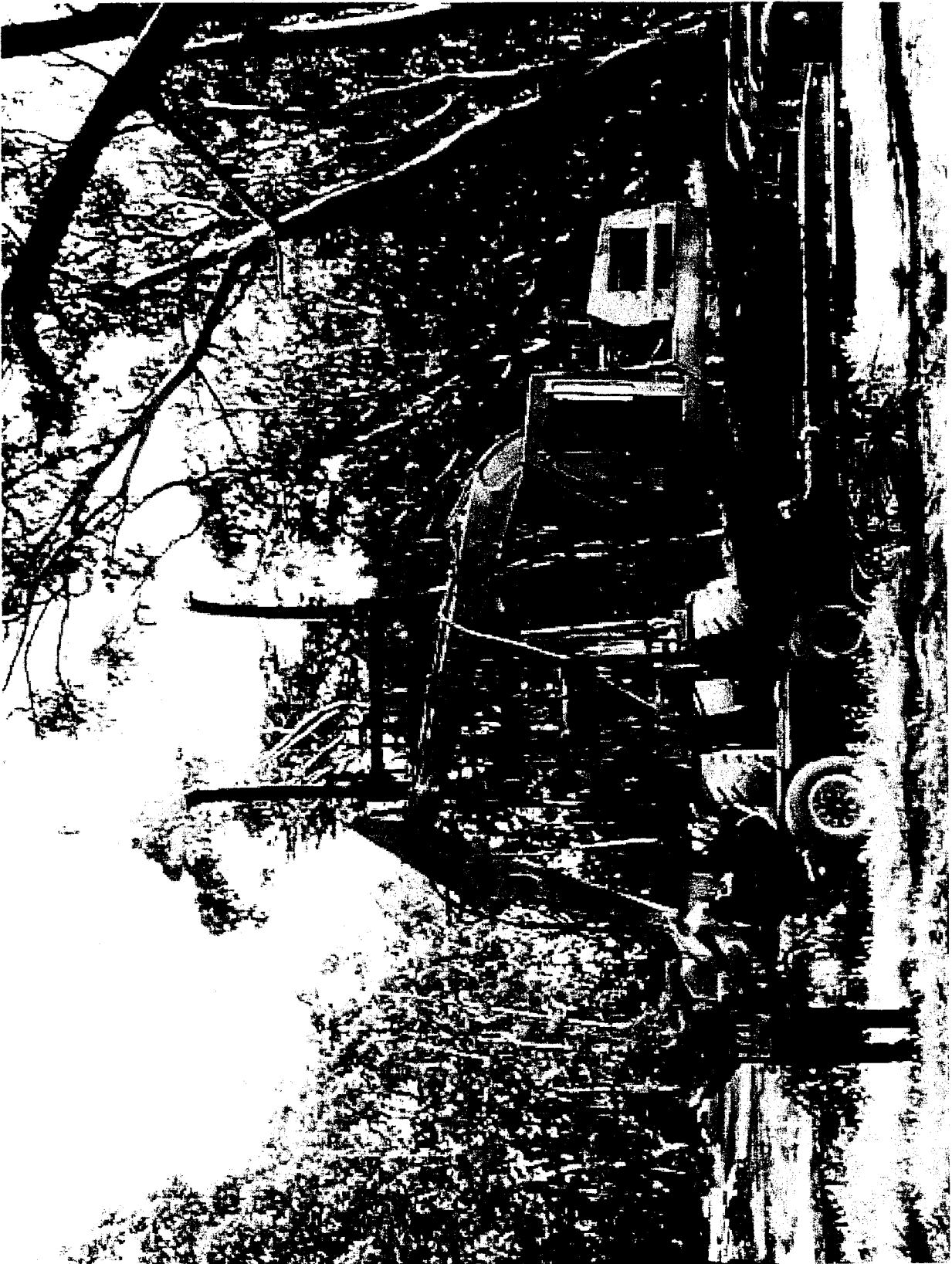


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 42 of 47

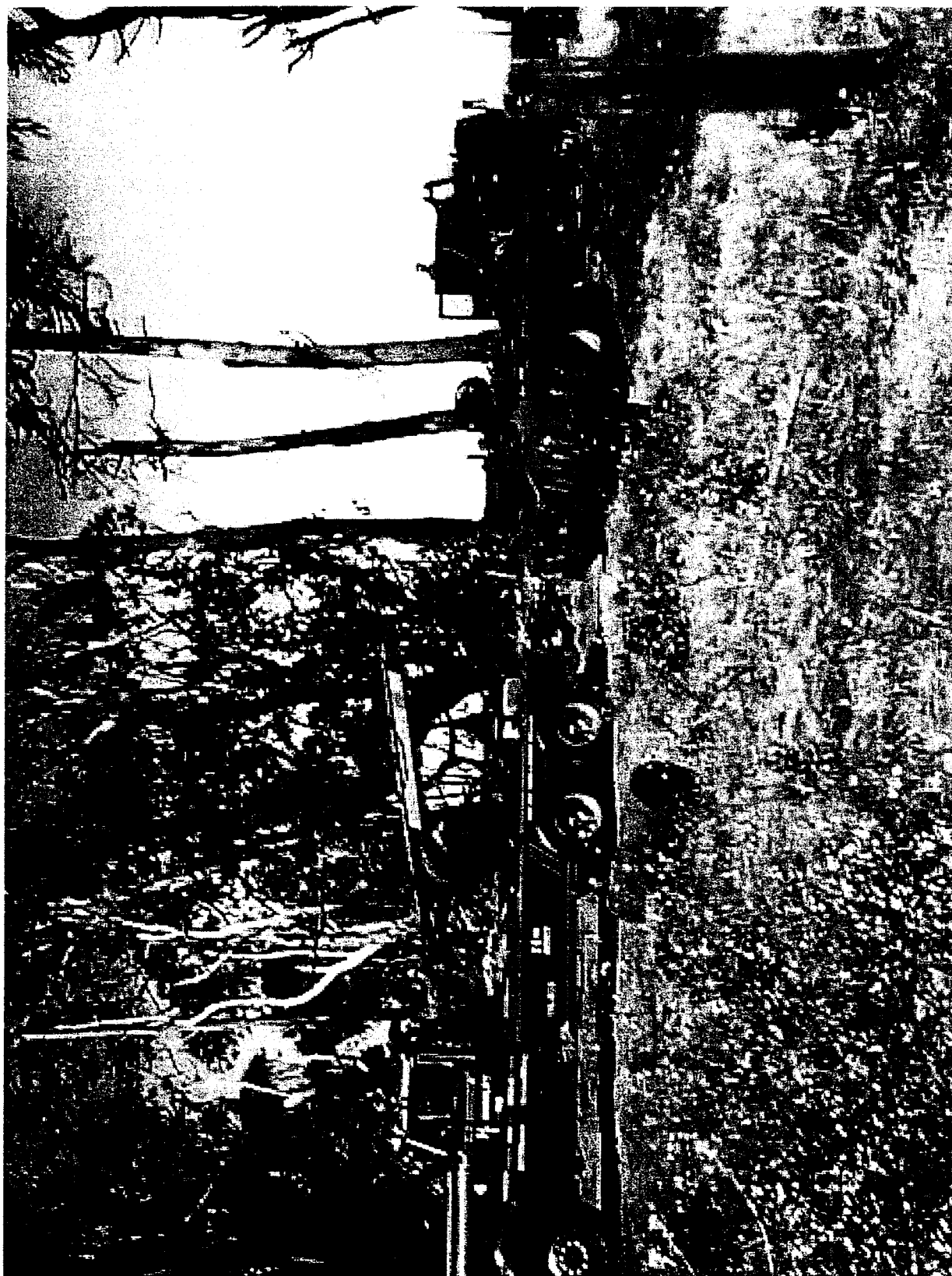


Exhibit 18  
CCC-05-CD-01 and CCC-05-RO-01  
(Badgley) Page 43 of 47

**TABLE**

Allegation	Explanation	Plan
Creosote-Soaked Pilings	The creosote-soaked pilings have been in existence on the property for at least 25 years (see Newby Letter, attached). County has known of their existence and has not noted as a violation until now.	Pilings are to be utilized in the boat building operation as detailed in the Plan of Operations. They will be stored until use in a manner that will not violate the Coastal Act.
Tires	A large number of tires were left on the property after Dr. Badgley had purchased it with the agreement that they would be removed by the previous owner's tenant, Elmer Newby. Dr. Badgley has disposed of the majority of these tires, the few that remain are to be used as bumpers for an existing barge.	Tires are intended for marine industrial use, if their temporary storage on the property is unacceptable then other storage arrangements can be made.
Operational Vehicles	All operational vehicles on the property are for business needs are currently used. The county has never made a complaint to Dr. Badgley regarding these vehicles.	If it is unlawful to keep vehicles in use at one's property then Dr. Badgley, upon written request, will make arrangements to move them.
Inoperable Vehicles	There are only two inoperable vehicles at the property, one is an antique collectable and the other is the caretaker's which he has been repairing.	Dr. Badgley was unaware that these constituted a violation. If this is the case, he will move them elsewhere.
Steel and Metal Piles, Including Wire	Much of these predate purchase of the property by Dr. Badgley with the agreement that they would be removed by the previous owner's tenant, Elmer Newby. Dr. Badgley removed a vast amount of metal scrap at his own expense. Materials currently present will be used in the boat building as presented in the Plan of Operations. There have been no complaints to his knowledge until now.	If these materials must be stored elsewhere pending final approval of the boat building operation (which the County has already verbally stated is acceptable use of the property) it will be burdensome. If required to do so by written request, then Dr. Badgley will take the necessary steps.
Axels	The axels in question are railroad car axels (four of them) that are unique items which were purchased at the rare times they were offered for sale. They are necessary for the construction of the proposed marine railway as described in the Plan of Operations (which the County has already verbally stated is acceptable use of the property).	Removal of these items is possible but expensive and burdensome. The boat building operation has already been deemed as an acceptable use of the property and the axels are being stored pending finalization of the permit. It is hoped these items will be reconsidered and allowed to remain.
Yurt	Only a single portable 17 foot diameter tent structure exists unoccupied and used for storage.	This will be removed if necessary.
Sheds	Sheds measuring no more than 120 square feet interior floor are not held to permit requirements as long as they meet set back limits and are used for storage only.	It is requested that they be reconsidered for remaining. They can be moved to meet set backs if they are in fact in violation of such.
Platforms	Two "platforms" exist. Dr. Badgley, based on his former business manager's reported research was led to believe they did not require permits as neither "platform" pierces the ground and both are portable.	These can be removed if necessary.
Corrals	The property has historically been used agriculturally for both crops and animals with corrals in continued existence. Initial meetings with County Planner, Robert Wall, indicated the property was historically used agriculturally, that it has continued to be used agriculturally and that the county would like to see more land returned to agricultural use. He stated that he and the other planners would find this to be a continued acceptable use for the property (see Memo for the Record). More recently, a letter from Alyson Hunter, dated January 2003 (see attached), stated "the Department can consider the agricultural uses as legally nonconforming" and "will support the introduction of an appropriate number of horses and/ or goats onto the parcel."	Dr. Badgley asks to be allowed to continue with the agriculture use as is currently in place.
Grading	Some of the already existing road and parking area potholes have been filled. Since this was maintenance on an already road/ parking, the fill was done with the understanding that it did not require permitting for repair.	A degraded area pointed out in the biological assessment will be allowed to recover naturally as recommended by Mad River Biologists (see Mad River Biologists attached).

**ELMER W. NEWBY, JR**

P.O. BOX 2003  
Eureka, CA. 95502

Phone 707 443-6047  
Fax 707 443-8547

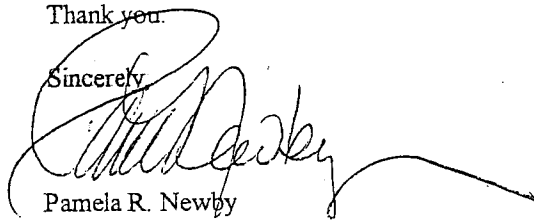
June 12, 2000

Laurence Badgley  
422 First Street #D  
Eureka, CA 95501

To the best of my knowledge, the pilings that are on your Samoa premises are at least 20 years and older.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Pamela R. Newby', with a long horizontal flourish extending to the right.

Pamela R. Newby

APPLICATION FOR COASTAL DEVELOPMENT PERMIT FOR  
SAMOA MARITIME INDUSTRIES, INC.

MEMO FOR THE RECORD

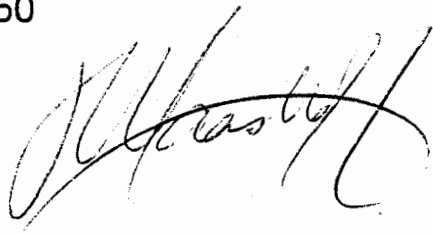
On Wednesday, June 5, 2002, I spoke to Robert Wall about APN 401-141-03 and he advised me (1-2) that:

1. The property could properly be considered for non conforming partial use for agricultural and animal husbandry and the rearing of goats and horses in keeping with historical uses.

2. A letter be sent to Steve Werener, Director, Planning Department of Humboldt County requesting consideration of non conforming partial use of the property for agricultural and animal husbandry.

Aerial photographs back to 1941 depict the ongoing agricultural use of the barn, animal sheds and hayfields; away from the wetlands (APPENDIX 30).

Julie Maashoff  
707-599-7850

A handwritten signature in dark ink, appearing to read 'Julie Maashoff', is written over the typed name and phone number.



PLANNING DIVISION  
COMMUNITY DEVELOPMENT SERVICES

**COUNTY OF HUMBOLDT**

3015 H STREET

EUREKA, CALIF. 95501-4484 PHONE (707) 445-7541

SMI Eureka Office  
422 First St., Suite D  
Eureka, CA 95501

January 7, 2003

Re: IR-02-71 / 401-141-03; Fairhaven area

Dear Ms. Maashoff:

The parcel in question is zoned Industrial/Coastal Dependent with Wetlands and Archaeological combining zones (MC/A,W) . This zoning principally allows Minor utilities and coastal dependent uses such as described in §313-45.1 of the Humboldt County Code (HCC), a copy of which is attached herein. This zoning does not allow any agricultural uses. This Department understands that there are several existing residences and other buildings that have been deemed legal nonconforming per our letter dated June 2001 (IR-00-105).

In the most recent letter from you, you stated that aerial photos show agricultural uses on the parcel dating back to 1941. Nonconforming uses, per §313-131.3 HCC, must not have ceased for more than two (2) years in order to maintain the legal nonconforming status. If the agricultural uses historically found on the property are currently active without any gaps of over two years, this Department can consider the agricultural uses as legally nonconforming.

Our maps show the parcel to be  $\pm$  15 acres in size. Please refer to the County's Animal Keeping regulations, §313-43.3 HCC, (enclosed herein) to determine how many animals you can have given the parcel's size and setbacks to existing structures.

Assuming that some agricultural uses have had a constant presence on the parcel, this Department will support the introduction of an appropriate number of horses and/or goats onto the parcel. *This letter does not give the property owner permission to construct any temporary or permanent structures on the parcel in relation to the proposed new animals' presence.* Any new construction will require separate review by this Department, Building Permits and, most likely, Coastal Development Permits.

You may be interested to know that the County is undergoing an update of the General Plan which includes the coastal portions of the County. Your parcel, and those immediately adjacent to yours which are also zoned MC, may be eligible for a rezone to a more appropriate designation since the original use for which that area was zoned never came to fruition. For more information on the General Plan update, please contact Kirk Gothier, Assistant Director, at 268-3725 during regular business hours.

If you have any questions regarding this information, please contact me at 268-3731.

Sincerely yours,

Alyson Hunter

Alyson Hunter, Planner II  
Planning Division, Community Development Services

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



## VIA TELECOPY and REGULAR MAIL

January 7, 2005

David E. Martinek  
Dun & Martinek LLP  
P.O. Box 1266  
Eureka, CA 95502

Subject: Draft language for possible Consent Order with Dr. Badgley

Violation No.: V-1-02-011

Location: 865 New Navy Base Road near Fairhaven, Humboldt County  
(APN 401-141-03)

Violation Description: Construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, and grading (cut and fill) in wetlands.

Dear Mr. Martinek:

As we discussed, I am attaching draft language for your review, regarding a potential Consent Order with Dr. Badgley for the resolution of the Coastal Act violations on his property. Staff would be happy to continue discussions with you regarding the possibility for an amicable resolution and look forward to talking with you further.

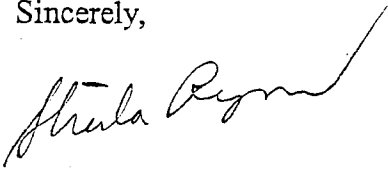
We would like to review a copy of the Biological Assessment, in order to determine what areas of the property require more detailed attention for restoration work, and which areas of the



property could be dealt with more easily for removal of unpermitted development. Please forward a copy of the Biological Assessment to my attention by January 24, 2005, so that we can include this information in our discussions.

I will be out of the office until January 24, 2005, and look forward to speaking with you that afternoon to discuss your response regarding a proposed Consent Order. If you have any questions during my absence, please feel free to call Lisa Haage (Chief of Enforcement) at 415-904-5220.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila Ryan", written in dark ink.

Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement

JAN-27-2005 10:07 From:DUN&MARTINEK

7074429251

To:0

P.2/3

DAVID H. DUN  
(dhd@dunmartinek.com)

DAVID E. MARTINEK  
(dem@dunmartinek.com)

PAMELA GIOVANNETTI  
(pam@dunmartinek.com)

RANDALL H DAVIS  
(rhd@dunmartinek.com)

SHELLEY C. ADDISON  
(sca@dunmartinek.com)

**DUN & MARTINEK LLP**  
**ATTORNEYS AT LAW**  
**2313 I STREET**  
**EUREKA, CALIFORNIA 95501**  
**TELEPHONE: (707) 442-3791**  
**FACSIMILE: (707) 442-9251**

**MAILING ADDRESS**  
**P.O. BOX 1266**  
**EUREKA, CALIFORNIA 95502**

**LEGAL ASSISTANTS**

JO-ANNE STEVENS  
(jaf@dunmartinek.com)

RUTH A. JOHNSON  
(raj@dunmartinek.com)

KYRIE M. CORTELT  
(kmc@dunmartinek.com)

January 27, 2005

Via fax (415) 904-5235

Sheila Ryan  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

Re: Violation V-1-02-011 (Badgley)

Dear Ms. Ryan:

Submitted herewith are our preliminary comments to your draft Consent Agreement.

My client informs me that there are actually nine structures on the property that pre-date the Coastal Act: the three mentioned in the Agreement, plus the following: beach house garage, beach house shed, animal shelter opposite the main house, animal shelter adjacent to beach house, barn and watertower.

The Biological Assessment is being prepared by Mad River Biologists and will be forwarded as soon as it is received.

We would suggest 90 days for submission of a Removal and Restoration Plan. In that regard, it would be helpful if each claimed violation could be specified.

We would suggest 90 days for completion, after approval by the Executive Director. In the same vein, we would suggest 60 days for submission of the restoration report.

▲ JAN-27-2005 10:08 From:DUN&MARTINEK

7074429251

To:0

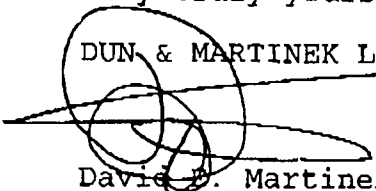
P.3/3

Sheila Ryan  
January 27, 2005  
Page 2

I appreciate your willingness to discuss this matter. Until we spoke last Tuesday upon your return from vacation, I had not realized that you had an internal deadline date of today. My client is currently out of the state and it is very difficult to communicate with him regarding this matter at present. I have advised him to appear before the Coastal Commission in February in order to address any questions or concerns the Commission may have.

Very truly yours,

DUN & MARTINEK LLP

  
David P. Martinek

cc: Client

