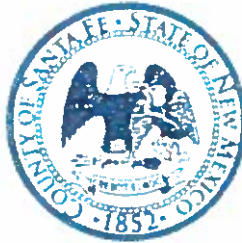


Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

**DATE:** May 26, 2015

**TO:** Board of County Commissioners

**FROM:** John Lovato, Development Review Specialist Sr.

**VIA:** Katherine Miller, County Manager  
Penny Ellis-Green, Growth Management Director *PEG*  
Vicki Lucero, Building and Development Services Manager *VL*  
Wayne Dalton, Building and Development Services Supervisor *WD*

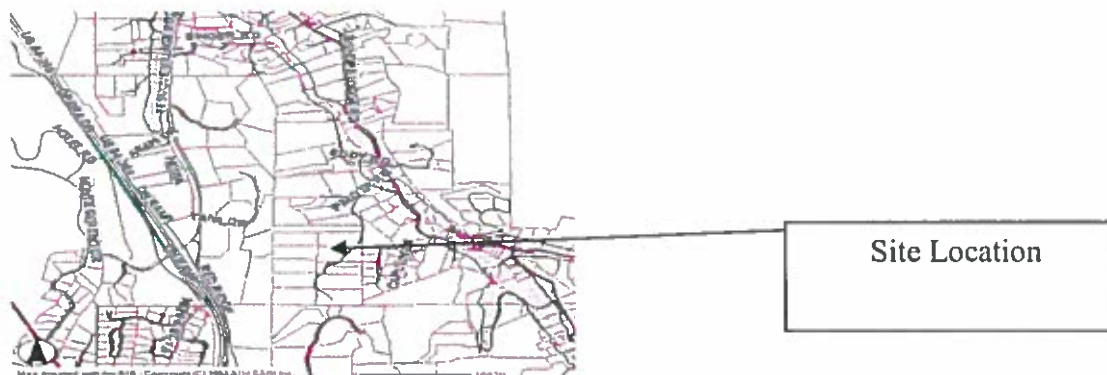
**FILE REF.:** CDRC CASE # V 14-5310 Patrick Lysaght Variance (For deliberation and vote only).

**ISSUE:**

Patrick Lysaght, Applicant, requests a variance of Article VII, Section 3.4.1.c.1.c (No Build Areas) of the Land Development Code, to allow the construction of an accessory structure on slopes greater than 30%, a variance of Article VII, Section 3.4.1.d.6 (Development Site), to allow the finished floor of a structure to exceed (5') above natural grade, and a variance of Article III, Section 2.3.6.b.1 (Height Restrictions) of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District to allow the accessory structure to exceed the 18' height limitations for structures on a 15% slope or greater.

The Property Is Located At 11 Via Vecino In The Traditional Community of Tesuque, Within Section 31, Township 18 North, Range 10 East, (Commission District 1).

**Vicinity Map:**



### **SUMMARY:**

On May 12, 2015, the BCC met and acted on this case. Commissioner Roybal made a motion for denial of the requested variance and the motion was seconded by Commissioner Stefanics. The decision of the BCC ended in a tie vote with Commissioners Roybal and Stephanics voting in favor of the motion for denial and Commissioners Chavez and Anaya voting in favor of the requested variance. Under Commission Rules of Order the Application is automatically tabled until the next meeting at which a greater number of members are present. **This case is now coming before the BCC for deliberation and vote only.**

### **EXHIBITS:**

1. May 15, 2015 BCC Minutes
2. May 15, 2015 BCC Report with Exhibits

2. The Applicant must obtain a Development Permit from the Building and Development Services Division for second dwelling unit within ninety (90) days of recording the final order granting the variance. (As per Article II, Section 2). The placement of additional dwelling units of Division of Land is prohibited on the property. (As per Ordinance No. 2002-9, Section 6.4) (Zoning Density).
3. All Junk Vehicles must be removed from the property within ninety (90) days of recording the final order granting the variance. (As per Ordinance 1993-6).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application. (As per 1997 Fire Code and NFPA Life Safety Code).
5. These conditions are precedent to granting of the variance. If the Applicant fails to comply with any conditions set forth above within the time periods provided, the variance shall be denied.

MR. ROMERO: I stand for any questions.

CHAIR ANAYA: Mr. Romero, I have a question to start off. On the vote of the CDRC was to approve the variance 6-0 with all staff conditions?

MR. ROMERO: Mr. Chair, that is correct.

CHAIR ANAYA: Does anybody else have any questions of staff? Seeing none, is the applicant present? Mr. Duran, is there anything that you would like to add?

[Duly sworn, Victor Duran testified as follows]

VICTOR DURAN: My name is Victor Duran. I reside at 18 Calle Lisa in La Cieneguilla. I was going to say I've been talking with Mr. Romero and he made me aware of the conditions I have to agree to in order to get this variance enacted, and I'm agreeable on those terms.

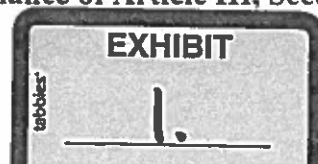
CHAIR ANAYA: Okay. Any questions of the applicant? Seeing none, thank you, Mr. Duran. This is a public hearing. We'll open up the public hearing. Is there anybody here that would like to speak in favor of or in opposition to this application? Is there anyone here who would like to speak in favor or in opposition to this application? Seeing none, I close the public hearing and I'd move for approval with staff conditions.

COMMISSIONER CHAVEZ: Second.

CHAIR ANAYA: I made a motion, Commissioner Chavez seconds. Is there any further discussion? Seeing none.

**The motion passed by unanimous [5-0] voice vote.**

- X. A. 3. **CDRC CASE # V 14-5310 Patrick ght Variance. Patrick Lysaght, Applicant, Requests a Variance of Article VII, Section 3.4.1.c.1.c (No-Build Areas) of the Land Development Code, to Allow the Construction of an Accessory Structure on Slopes Greater than 30 percent, a Variance of Article VII, Section 3.4.1.d.6 (Development Site), to Allow the Finished Floor of a Structure to Exceed (5') Above Natural Grade, and a Variance of Article III, Section 2.3.6.b.1 (Height Restrictions)**



**of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District to Allow the Accessory Structure to Exceed the 18' Height Limitations for Structures on a 15 percent Slope or Greater. The Property is Located at 11 Via Vecino in the Traditional Community of Tesuque, Within Section 31, Township 18 North Range, 10 East (Commission District 1)[Exhibit 8: Material from Applicant; Exhibit 9: Material in Opposition]**

JOHN LOVATO (Case Manager): Thank you, Mr. Chair, Commissioners. Patrick Lysaght, Applicant, requests a variance of Article VII, Section 3.4.1.c.1.c, No-Build Areas of the Land Development Code to allow the construction of an accessory structure on slopes greater than 30 percent, a variance of Article VII, Section 3.4.1.d.6, Development Site, to allow the finished floor of a structure to exceed five feet above natural grade, and a variance of Article III, Section 2.3.6.b.1, Height Restrictions, of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13, Tesuque Zoning District to allow the accessory structure to exceed the 18-foot height limitations for structures on a 15 percent slope or greater. The property is located at 11 Via Vecino in the Traditional Community of Tesuque, Within Section 31, Township 18 North, Range 10 East, Commission District 1.

On March 19, 2015 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the variance requests by a 4-2 vote.

The subject lot was created in 1981 and is recognized as a legal lot of record. Currently, there is a 4,300 square foot residence on the property which is a legal non-conforming residence. In 1998, the previous property owner was granted a variance to allow the disturbance of 30 percent slopes and greater for a 549 square foot addition to the existing residence. A permit for the addition was issued in 1999.

On July 17, 2014, Building and Development Services received a complaint regarding unpermitted development on the subject property. On July 21, 2014, Code Enforcement conducted an inspection on the property and issued a Notice of Violation for unpermitted development and disturbing slopes in excess of 30 percent. A stop-work order was placed on the construction and no further work has been done.

After further review of the applicant's request, staff determined that the accessory structure also required a variance to allow the structure to exceed the 18-foot height limitation on slopes 15 percent and greater and a variance to allow the finish floor to be more than 5 feet above natural grade. The unpermitted 600 square foot accessory structure sits on slopes greater than 30 percent and is raised on 6"x 6" posts and contains no plumbing. The structure is 23'10" high, and the finish floor of the structure is seven feet above natural grade. A structural engineer determined that the structure is in compliance with all applicable State Building Codes and is structurally sound for required loads.

The applicant states the variance is needed to provide an area for dry storage, a seasonal workshop for hobbies, and reduce noise and dust that routinely accompany

stone and woodcarving hobbies. The applicant further states that the only other location on the property that meets code criteria is located on a ridgetop and is inaccessible. Staff has conducted a site visit to confirm there are no other locations on the property to place the accessory structure. The site contains slopes of 30 percent and greater and has limited area less than 30 percent that are inaccessible.

Growth Management staff has reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation: Denial of variances from Article VII, Section 3.4.1.c.1.c, No-Build Areas, to allow the construction of a 600 square foot accessory structure which disturbs slopes in excess of 30 percent; a variance of Article VII, Section 3.4.1.d.6, Development Site, to allow the finished floor of the structure to exceed (5') above natural grade; and a variance of Article III, Section 2.3.6.b.1 and of Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District, Height Restrictions, to allow the accessory structure to exceed the 18-foot height limitation for structures on a 15 percent slope or greater

At the March 19, 2015 County Development Review Committee meeting, the decision of the CDRC was to recommend approval with the following conditions. Mr. Chair, may I enter those conditions into the record?

CHAIR ANAYA: Yes, sir.

1. Water use shall be restricted to 0.25 acre-feet per year. A water meter shall be installed for the residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office at the time of Development Permit (As per Article III, Section 10.2.2 and Ordinance No. 2002-13)
2. The Applicant must obtain a Development Permit from the Building and Development Services Department for construction of the Accessory Structure. (As per Article II, Section 2).
3. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

CHAIR ANAYA: Is the applicant present? Sir, if you'd come forward and please be sworn.

[Duly sworn, Patrick Lysaght testified as follows]

PATRICK LYSAGHT: My name is Patrick Lysaght. I live at 11 Via Vecino in Tesuque. Mr. Chair, Commissioners, I'd like permission to distribute a handout that can provide some background and context.

CHAIR ANAYA: Sure. You can give it to John and he can give it to us.

MR. LYSAGHT: What I'm distributing here is a few pages that include a summary statement, the request for variances, three of which I'll deal with individually, and there's an appendix that includes three emails that I've sent to our local members of the road association explaining our situation and our willingness to comply with all of their concerns as well as notes from adjacent property owners that have indicated no

issues with our proposed project.

So I'd like to just simply start by saying that I made a big mistake. I was in fact building with a permit and the way this evolved was everything on the property, the driveway included and the house, everything is built on a very steep slope. All of it is that way. There's a deck on the back of the property that we purchased in November of 2011 that's on a much steeper slope and it's on posts just like this building in question. So I was a little naïve but I thought, it's not living space, there's no plumbing, there's no heating, and I did get a permit for power and I had it stubbed up. PNM approved a second meter because my distribution panel was completely full. So we went through all of this but it's just stubbed up so I can run extension cords for when I work there.

So right now I need that storage and I'd just like to say that when we purchased the property, on page 2 there, our decision to purchase the property was based on the declaration of protective covenants and building restrictions, originated in 1980 and amended in 1987. It says that in addition to one single-family dwelling there may be constructed on each tract customary outbuildings, garages – plural, car port, servants quarters, studio and/or one guesthouse and gatehouse, a stable and/or corral. That's the contract that I signed when I purchased the property.

So all of these things, where I needed the storage, we've got a two-car garage but it's completely full of art supplies and sculpture materials and so forth. We have two vehicles that we park outside and I've had two vehicles that we've had at the south end of town in storage since we purchased the property 42 months ago, because there's no place to put it. There's no flat land. I can bring those vehicles. It's cost me \$5,500 so far just in storage of vehicles. So you can see I need to get stuff out of the garage. I need to have it in dry storage. I don't need anything fancy; it's not living space.

So there was some issues associated with when we got the stop-work order it was very unfortunate because the project looked rather unsightly. It's on posts, on a slope and there's a lot of exposed cross-bracing that's not going to be visible when the rest of this project can be completed. It's about 60 percent done. So stopping a project right there, everybody was a little concerned about what's going on and this is an eyesore, but I can tell you that the whole plan was to be unobtrusive and to make this very discreet. In fact this building site is in front of my house and below it. The roof of this structure is below the foundation of my house. It's below the driveway grade level. We're trying to get everything down so it's unobtrusive and blends in. In fact we just planted 20 mature aspen, because 25 and 30 feet tall in that area that would be watered from harvesting on the roof. But even the roof of the building is a metal roof and it was designed with minimum pitch because of a concern of glare that might be bothersome to some neighbors.

The whole approach was to be a good neighbor and just try to get – but I did make that mistake of going ahead and building this. So that's where I stand. We have 9.5 acres. There's no level spot. We seem to have been given a set of restrictive covenants that I thought would be valid and the original owners applied for a variance on this same property that was much more severe than what I'm – they put an addition on a rooftop, or a hilltop, that built, cut into a hill in part and it was above the hills. So it was really something that would be more noticeable to neighbors and so forth. And that was 16 years ago and that was approved.

6.

We have worked pretty tirelessly since I retired two years ago on trying to preserve the land. We're good stewards of the land. We've been putting in – trying to preserve the driveway with stone retaining walls on the hill. We're using the seeds from plants on our property to try to also mitigate erosion. We had a major downpour in September and some of our neighbors that have been in the area for over 30 years said this was the most extreme.

Well, interestingly, the only part of my property that wasn't impacted by this disastrous weather condition was the region underneath my building. I've also inquired about does it make sense for me, in terms of disturbing the land, to just have the posts. It's a total of 36 square feet of area on the slope where I've got posts that have been disturbed. But if you look at the full 600 square foot roof area, the slope underneath that, it's still less than two tenths of one percent of our land. So it's not like we're being haphazard about the land.

We also inquired about would it make sense to put a retaining wall underneath the structure. Two things could happen. The floor height now that's five feet, it says from the natural grade. So what happens if I put in a retaining wall and fill that? The floor would be – and the maximum height would also be within restriction.

So I think these things have to be determined case by case. So there's no real way of knowing whether it's better for the environment to excavate completely and built on level ground, or put in a retaining wall, or just build on a slope with the posts. So I don't even know today what the right answer is.

So our building, as John Lovato pointed out, as is, stopped in mid-construction, was inspected on site by a professional engineer from Hands Engineering. They approved everything the way it is now. They also approved my drawings for completion of the project. So as far as the structural integrity of what our plan is, it's very simple and it's also apparently robust enough in terms of engineering concerns.

As far as the aesthetic concerns I know that some neighbors that I've communicated with have indicated – I had Hardie board siding, for example, and they were recommending stucco – I've agreed. I'll just take that off if I can go forward with this project. I don't want to have any adversarial relationship with neighbors. If I could turn the clock back, I would. But here I am and I'm just trying to cooperate with everybody as best I can to move forward with this, knowing that it's going to blend in. It's not going to be obtrusive whatsoever. It's going to be completely functional from my planned use, and I'll also be able to bring my vehicles back to my property. Those are the kinds of things that provide a little context for this.

I think that in the appendix there's three emails that begin in November to our road association members. It's included here for completeness in terms of how I have tried to encourage everybody to voice their concerns so that we could cooperate and so that there's no animosity. There's nobody thinking I'm operating outside the law, or aesthetically doing something. There's no way that I'm going to do anything in that property that's going to adversely affect real estate property in the area and everybody that has communicated with me is convinced that that's the case. So they're not worried.

Also, we did get a notice that we sent out, certified mail, to all adjacent properties announcing the schedule for these meetings and so forth. There's 11 properties that are

adjacent to ours. Three of them are owned by the Santa Fe Institute. The president of the Santa Fe Institute, Jeremy Sabloff, he wrote a letter saying he's not opposed to this and another letter that I got from another property owner, Henry Carey. Some of you may know him. Chairman and founder of the Forest Reserve Company. I'll just give you a quote about how he defines his business. "Using a structured process we help clients define a management strategy for their property that maximizes the value and beauty of their land." That's what he fights for. He has a letter saying he's unopposed to what I'm doing. Thank you very much for your time.

CHAIR ANAYA: Thank you, Mr. Lysaght. Are there any questions of the applicant from the Commission? Seeing none, this is a public hearing. Is there anyone here that would like to speak in favor of or against this case? Mr. Sommer.

KARL SOMMER: Members of the Commission, my name is Karl Sommer. My mailing address is Post Office Box 2476, Santa Fe, New Mexico. Mr. Chair, may I approach the bench. Members of the Commission, I'm here on behalf of the Tesuque Valley Community Association. They have hundreds of members. They have spent thousands of hours in showing their undying dedication to the preservation of their community, and to upholding, enhancing, and preserving the principles that you have in your code. And you all know that from the many presentations that have come in front of you. I'm here tonight on behalf of the association and its planning committee to oppose and vehemently oppose the granting of the variance in this case.

What this case is about is in lieu of asking for your permission the applicant is here asking for your forgiveness and mercy. He says to you, I made a mistake. Well, let's talk about that mistake. The mistake is he didn't use a permit and he didn't follow any of your regulations at all. And what he's asking you to do is to say, hey, compound my mistake by making it legal. We all know what needs to be done. The mistake needs to be corrected and I intend to show you tonight that the code prohibits this construction. The applicant has not and cannot demonstrate a hardship and this application should be denied.

What I've given you is stuff I've found off the web today and they are photographs of this house when Mr. Lysaght and his wife, Doctor – I don't know how to pronounce her last name – bought this million dollar house, and if you look at that first page it is a 4,850 square foot house with five bathrooms and five bedrooms and a two-car garage, according to this sheet on the MLS. The bought it on November 23, 2011. That's the date shown on that webpage. So we're not talking about a hovel. We're not talking about a small house where you have lots of people crammed in there and you have this need. We're talking about two people living in about 5,000 square feet on the top of a hill as I'll demonstrate to you.

If you go to the next page you'll see that Mr. Lysaght's webpage says what he's doing. He says here tonight he's retired. I don't know one way or the other whether he's retired, but if you look at his webpage, in 2001 he started incorporating woodcarving, stone-carving and metal sculpture into his work. And do you know what he wants to do on this property? Woodcarving, metal work, and he calls it a hobby. What we've got here is a potential home occupation. If he had come to you and said, I want a home occupation for these uses your answer would have been no because he doesn't meet any of your



criteria.

On the next page that view is the view from their house. That's what they see. In other words, if you look down there that's what all the people looking up see. All those people see this house. That's just one of the views. The next page is the view of this house. And if you would look at this right here. This is this 4,850 square foot house, and you see that hole right in front of the house there that everybody can see from the valley? That's where he wants – that's where this building is going to go. He told you here tonight, he said you know what? This is neatly tucked, the top of this is neatly tucked below the driveway. Guess who doesn't see it. Guess whose unspoiled view of the valley is maintained. The applicant's. Guess whose view is not maintained. Everybody else in the community.

I submit to you that the claim that this was placed to preserve the view from elsewhere was simply there to preserve the view from his house. I pulled off Google Earth a photograph of this property from 2011. You see the long driveway? As you all know, there's a reason why people have very long driveways, because if the property is steep, in order to maintain a grade you have to have a very long driveway to get up to the top there. This is steep slopes, fragile slopes and very, very difficult terrain to build in. The only building site on this property was on the top of that ridge that you see there.

Go to the next page, it's the same photographs, and what I've done is is shown you what the view is like from down below in yellow, and all the red is the area where you have fragile 30 percent slopes. The one closest to the house is where this building is proposed to go. I submit to you that the purposes and the policies behind prohibiting 30 percent grades, heights, are all aimed at two things. One is to limit the damage to fragile slopes and the other is to prohibit the person from spoiling the view along steep and difficult terrain in areas just like those. Those are the purposes behind the code. You all know that because you've been enforcing the code for a long, long time. Those purposes would be absolutely nullified by granting this request.

It is not a matter of hardship when somebody wants a dry storage. That's a matter of preference. In a 4,850 square foot house with a two-car garage, this person wants dry storage for his art materials, and his art equipment. That's not a matter of hardship; that's a matter of preference. This person wants – he doesn't want the reasonable use and enjoyment of the property, he just wants more, and he wants it at the expense of your code and at the expense of his neighbors in the community.

Mr. Lysaght said he doesn't know what the solution is here. He told you that. He doesn't know whether there's – we know what the solution is: correct the mistake if that's what it was. It's very simple. Correct the mistake. There is no grounds. You should enforce the regulations as you have them. This is not a matter of hardship; this is simply a matter of preference. And I'll say to this. He told you, well, I've got cars stored off-site. My garage is chuck full of stuff. I've got to get it out of there. Did he own the cars when he bought the house? Did he own the equipment when he bought the house? Did he know what he was getting into when he bought a million dollar house on the side of the hill? That it didn't accommodate his cars and it didn't accommodate his equipment? Yes. He knew that. And he's here asking you to correct what was a mistake in the first place, if that's what it was.

I submit to you it wasn't a mistake. We're here because he wants more, not because there's a hardship. Please, on behalf of the association, we beg of you, enforce your code. The thousands of hours spent by hundreds of people enforcing the regulations deserve your consideration. Mr. Chair, thank you very much for your presentation. I know it's been a long night.

CHAIR ANAYA: Thank you, Mr. Sommer. Are there any other questions? Anybody else here that would like to provide feedback either for or against this. Applicant, you have an opportunity to make comments pertaining to some of the comments he made.

MR. LYSAGHT: I'd just like to clarify this a little bit. I think mostly what he said is pretty accurate. That is the place that I live. He seems to have – Mr. Sommer seems to have some sort of selective hearing because he wouldn't have made the accusations that he did about me if he simply paid attention when I explained about what the restrictive covenants include.

CHAIR ANAYA: Mr. Lysaght, do me a favor. I'm going to give you an opportunity to respond but if you could just cut right to the issues that you want to respond to and leave out the he can't hear. Comments, like that. Just cut right to the comments as to what your refuting if you could.

MR. LYSAGHT: Okay. I don't want to pick this apart, I don't know what's the point of showing my website that I haven't update since 2000. I've been working as a woodworker and a stone-carver since 1980 so I do have a fair amount of equipment that doesn't fit in a library or a kitchen in my house or any other bedroom or anything like that. It's in the garage because it needs to have a shop. I expected to be able to have a shop on the property. That was the condition under which I purchased the property. So it's not like the previous speaker seemed to think that there's something personally that I'm doing personally to violate the community. And I just don't see it that way. In fact I've reached out to everybody. I'm just not used to if somebody had a question about what I was doing why they wouldn't come and talk to me before filing a formal complaint or coming after me with a lawyer, which is has also been a threat that I've received from another person in the community.

So I don't really – I don't understand the approach. Okay, so let's work this out. Here's an existing condition; let's find a solution that everybody can live with. That's the way I go about it and try to keep it not personal. So I'm just a little bit frustrated and at a loss when people deal with me that way because it's so unnecessary. I don't claim that there's a hardship. I claim that I bought a property that I fully expected to be able to continue with my hobbies. So that now seems like something I either can get with this project or I'm going to have to come back time and time again to try to get what I need on that property. It seems like it was – I won't say guaranteed but it was in my restrictive covenants as what I can do on my land and now I'm just trying to go about doing that as best I can from this point forward.

CHAIR ANAYA: Okay. Thank you, Mr. Lysaght. Are there any other members of the public that would like to speak in favor of or against this applicant? Seeing none, the public hearing is closed. We'll go to my Commissioners for questions. I have one question for you sir, or maybe staff. In the – you made a comment about the

outside surface of the structure and that you're willing to stucco it.

MR. LYSAGHT: One neighbor said I should make it stucco so it matches the house. I hadn't plan to do that. It's Hardie board, so it's a concrete product that would not be affected by weather over time, and I was going to paint it the color of the house. But I agreed. I'll take the Hardie board off and I'll stucco it, because I'm just trying to cooperate and that was a request.

CHAIR ANAYA: Okay. That's the only question I have. So Mr. Lovato, that wasn't included in any condition that the CDRC provided.

MR. LOVATO: Mr. Chair, you're right. That wasn't included in any condition but it is included within the ordinance that they do earth tone colors and conform to the ordinance.

CHAIR ANAYA: Okay. So earth tone colors but not necessarily a plastered or stuccoed finish, but that's something that we can keep in mind whatever the determination of the Commission is.

MR. LOVATO: Mr. Chair, that's correct.

COMMISSIONER CHAVEZ: Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, there is a staff recommendation and I want to ask the applicant if he had a chance to look at the staff recommendations.

MR. LYSAGHT: Can you be specific please?

COMMISSIONER CHAVEZ: Well, there was one staff recommendation that I'll focus on and then maybe staff can share the other recommendations with you but water use shall be restricted to 0.5 acre-feet per year. A water meter shall be installed for the residence and annual water meters shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office at the time of development permit.

MR. LYSAGHT: On the water use, there's no water, there's no plumbing at this spot. If it's required that I have to have a sprinkler system, then I'll have water for that, but right now the only water associated with this is catchment. I have three 60-gallon storage barrels and that's going to be supplemented by a 3,000-gallon cistern.

COMMISSIONER CHAVEZ: I don't discourage that, sir but I'll read the recommendation again. Water use shall be restricted to 0.5 acre-feet per year. A water meter shall be installed for the residence. That's the residence that you're living in.

MR. LYSAGHT: That's all fine. We have our water monitored and we're on a well that we share with two other residences there, so we're well within the restrictions. In fact we're not at – it's just my wife and I that live there full time and we're only there really about seven months of the year. So we don't really use – we don't irrigate at all, so other than what we get from catchment. So our water use is extremely low.

COMMISSIONER CHAVEZ: Well, I'm going to read again. A water meter shall be installed for the residents. Annual water meters shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded.

MR. LYSAGHT: We have a record of them. Our neighbor, Sam Burford, who has been paying for the power for the pump as well as monitoring the water meter,

so we just get a bill from him annually, but I can get that usage number if that's what you're concerned with. We have that in place for the residence.

CHAIR ANAYA: If we could, on that point, Commissioner. Mr. Shaffer, just a thought. Commissioner Chavez brings up a good point. For this case or any other case if we impose a water restriction and it's on a shared well, how could we legally bind the other parties to the shared well agreement? Or could we? Could we bind one of three parties in this case to water restrictions? Since it doesn't have anything to do with this case.

MR. SHAFFER: Mr. Chair, I don't read the condition as impacting the usage by the other property owners that have an interest in the well. Rather, I read this condition as being specific to the use by the property owner in front of you.

CHAIR ANAYA: How do you do that? How do you do that if you have three property owners and let's say they can use three acre-feet? How do you decipher? Are we saying the meter's not on the well but on the line to his house? Is that what we're saying? Because we can do it that way. We could say that a well meter be installed at the trunk line into his yard, I suppose. But we couldn't put one on the well itself because that serves to other people. So I guess I answered my own question.

MR. SHAFFER: I think that's correct, Mr. Chair. I would defer to Land Use staff but the condition states a water meter shall be installed for the residence so I read that as somehow just monitoring the use of the residence as opposed to the entire well

CHAIR ANAYA: Got you. Vicki, do you have something you want to add?

VICKI LUCERO (Building & Development): Mr. Chair, I just wanted to clarify the water restriction on this – the condition requiring the water restriction is actually .25 acre-feet. I think it was read into the record as .5. So it's a quarter acre-foot that we're recommending.

CHAIR ANAYA: Okay. Thank you. So Commissioners, this is District 1 I believe. Commissioner Roybal, any thoughts?

COMMISSIONER ROYBAL: I appreciate the fact that he did take ownership of the mistake he made but it is something that I would think most people would understand is common sense to check with your local county and make sure that you need to get these building permits or at least find out what the rules and regulations are before you start building.

MR. LYSAGHT: I actually wasn't that naïve. I did get the permit for power, and I misinterpreted the explanation about the 15 percent slope. I thought it was 15 degree from the horizontal. So if you go out 30 feet and you drop down nine it's a 30 percent slope but it's only a 17 degree angle. So I was within – I wasn't building on something that was greater than a 15 degree angle from the horizontal, and that was what I was guilty of, and I thought, it not being living space, no plumbing, no electricity inside of that kind of thing, no heating or anything, I thought I was okay. And I thought the slope was okay when I went ahead with it.

COMMISSIONER ROYBAL: I understand and I feel for your situation,

but in this situation I'd have to go with what staff recommends and it would be the denial. So I'd like to make a motion as what staff has recommended is a denial for this.

COMMISSIONER STEFANICS: I'll second.

CHAIR ANAYA: There's a motion to deny from Commissioner Roybal with a second from Commissioner Stefanics. I have a question, I guess a logistical question. So a motion to deny gets approved then is the rectified situation him tearing the structure down?

MR. LOVATO: Mr. Chair, Commissioners, that would be the actual next step if the motion is denied in the approval.

CHAIR ANAYA: So just following that same vein. Is there a legal way, if the structure is torn down, obviously, that another structure could be erected on this property somewhere else?

MR. LOVATO: Mr. Chair, Commissioners, he would have to apply for a variance, just due to the nature of the topography on the property.

CHAIR ANAYA: No matter where a structure is built, he would have to get a variance.

MR. LOVATO: Mr. Chair, I would have to get a slope analysis to determine whether there's any other feasible area for this but judging from the property and slope that I pulled from our topography department there's really no other place to build on this property.

CHAIR ANAYA: Okay. Other questions from the Commission?

COMMISSIONER CHAVEZ: Just a comment, Mr. Chair. I know that this is an after the fact request. The structure is already there. It's after the fact. This is not the first time that a case like this has come before us. I think maybe in some cases people might have done it intentionally. Maybe it was an oversight. Maybe it was a mistake. But it's happened, and it's happened more than once in different parts of the county. So I don't know that having this torn down to be placed possibly somewhere else on the property would be a solution. If the applicant has agreed to certain conditions and agreed to change the color and the finish of the structure to help it blend in more I think that that would go a long way but I'm just not sure that having this individual tear that structure down is a solution. But those are just my comments right now and I guess it's unfortunate that when someone is in a situation like this it's very tenuous and unfortunate so I guess I'm kind of feeling for the applicant at this time. But that's all I'll say at this time, Mr. Chair. Thank you.

CHAIR ANAYA: Commissioner Roybal and Commissioner Stefanics –

COMMISSIONER STEFANICS: Call for the question.

CHAIR ANAYA: Well, I guess what I was trying to alleviate was maybe a split vote. Okay.

**The motion to deny tied 2-2 with Commissioner Roybal and Commissioner Stefanics voting for denial and Commissioner Anaya and Commissioner Chavez voting against. [Commissioner Holian was not present for this action.]**

CHAIR ANAYA: It's two to two so we'll have to deliberate just the question at the next meeting. Is that correct, Greg?

MR. SHAFFER: That's correct, Mr. Chair, under the Board's rules of order. If a motion results in a tie and a member is absent, other than due to voluntary recusal the item is tabled until the next meeting at which a greater number is present.

CHAIR ANAYA: I guess what I was going to say before the vote is if there was any alternative that would fulfill concerns of the neighbors as well as not affording it to be torn down. I guess that's what I was going to say. Is there any work that the applicant can do with the neighbors or Mr. Sommer or others that's in between tearing the structure down, by maybe making modifications to the structure.

COMMISSIONER ROYBAL: I'd like to say something.

CHAIR ANAYA: Commissioner Roybal.

COMMISSIONER ROYBAL: I do agree with that. It's hard to make a decision like that and I really feel like you are an honorable individual and it seems like you would like to work towards a resolution so I would like to afford that opportunity for you also to meet with Karl Sommer and the people that are opposed at this time as well. If it's something that we can find a resolution to I would also be okay with that.

CHAIR ANAYA: Thank you, Commissioner Roybal. And Commissioner Stefanics, I didn't hear you call the question. My apologies.

MR. LYSAGHT: Thank you all very much for your time and for your recommendations.

X. A. 4. **CDRC CASE # V/ZA/S 10-5352 Rio Santa Fe Business Park**  
**Peña Blanca Partnership, Applicant, Jim Siebert, Agent,**  
**Request a Master Plan Zoning Amendment to an Existing**  
**Zoning Approval and Preliminary and Final Plat and**  
**Development Plan Approval to Create Four (4) Commercial**  
**Lots on a 31.44 + Acre Parcel to be Utilized as a**  
**Commercial/Industrial Use. The Applicant Also Requests a**  
**Variance to Allow a Cul-de-Sac (Dead-End Road) to Exceed**  
**500 Feet in Length. The Property is Located at 54 Colony**  
**Drive, North West of N.M. 599, North of Paseo de River,**  
**Within Section 10, Township 16 North, Range 8 East,**  
**(Commission District 20) [Exhibit 10: Baca Appeal on Rio Santa**  
**Fe Business Park; Exhibit 11: Baca Appeal on PNM Solar Center]**

JOSE LARRAÑAGA (Case Manager): Thank you, Mr. Chair. Peña Blanca Partnership, Applicant, Jim Siebert, agent, request a master plan zoning amendment to an existing zoning approval and preliminary and final plat and development plan approval to create four commercial lots on a 31.44-acre Parcel for commercial/industrial use. The applicant also requests a variance to allow a cul-de-sac to exceed 500 feet in length. The property is located at 54 Colony Drive, northwest of NM 599, north of Paseo de River, within Section 10, Township 16 North, Range 8 East.

On February 19, 2015 the County Development Review Committee met and acted

Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

**DATE:** April 28, 2015

**TO:** Board of County Commissioners

**FROM:** John Lovato, Development Review Specialist Sr.

**VIA:** Katherine Miller, County Manager  
Penny Ellis-Green, Growth Management Director  
Vicki Lucero, Building and Development Services Manager  
Wayne Dalton, Building and Development Services Supervisor

**FILE REF.:** CDRC CASE # V 14-5310 Patrick Lysaght Variance

**ISSUE:**

Patrick Lysaght, Applicant, requests a variance of Article VII, Section 3.4.1.c.1.c (No Build Areas) of the Land Development Code, to allow the construction of an accessory structure on slopes greater than 30%, a variance of Article VII, Section 3.4.1.d.6 (Development Site), to allow the finished floor of a structure to exceed (5') above natural grade, and a variance of Article III, Section 2.3.6.b.1 (Height Restrictions) of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District to allow the accessory structure to exceed the 18' height limitations for structures on a 15% slope or greater.

The Property Is Located At 11 Via Vecino In The Traditional Community of Tesuque, Within Section 31, Township 18 North, Range 10 East, (Commission District 1).

**Vicinity Map:**



Site Location

## REQUEST SUMMARY:

On March 19, 2015 the CDRC met and acted on this case. The Decision of the CDRC was to recommend approval of the variance requests by a 4-2 vote.

4,800 sq ft? The subject lot was created in 1981, and is recognized as a legal lot of record. Currently, there is a 4,300 square foot residence on the property which is a legal non-conforming residence. In 1998, the previous property owner was granted a variance to allow the disturbance of 30% slopes and greater for a 549 square foot addition to the existing residence. A permit for the addition was issued in 1999.

On July 17, 2014, Building and Development Services received a complaint regarding unpermitted development on the subject property. On July 21, 2014, Code Enforcement conducted an inspection on the property and issued a Notice of Violation for unpermitted development and disturbing slopes in excess of 30%. A stop work order was placed on the construction and no further work has been done.

After further review of the Applicant's request, staff determined that the accessory structure also required a variance to allow the structure to exceed the 18' height limitation on slopes 15% and greater and a variance to allow the finish floor to be more than 5' above natural grade. The unpermitted 600 square foot accessory structure sits on slopes greater than 30% and is raised on 6"x6" posts and contains no plumbing. The structure is 23'-10" high, and the finish floor of the structure is 7' above natural grade. A structural engineer determined that the structure is in compliance with all applicable State Building Codes and is structurally sound for required loads.

The Applicant states the variance is needed to provide an area for dry storage, a seasonal workshop for hobbies, and reduce noise and dust that routinely accompany stone and wood carving hobbies. The Applicant further states that the only other location on the property that meets code criteria is located on a ridgetop and is inaccessible. Staff has conducted a site visit to confirm there are no other locations on the property to place the accessory structure. The site contains slopes of 30% and greater and has limited area less than 30% that are inaccessible.

The owners of the Property, Patrick S. Lysaght and Dianne M. Parrotte, acquired the Property by warranty deed recorded as Instrument # 1652127 in the Santa Fe County Clerk's records dated November 23, 2011. (Exhibit 2)

Notice requirements were met as per Article II § 2.4.2, of the Land Development Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on February 25, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on February 26, 2014, as evidence by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners. (Exhibit 6)



The planning committee for the Tesuque Land Use Plan, George and Anita Ogard, J. Russel Bellamy, and John N. Patterson an Attorney representing Sam Burford, submitted a letter opposing the request for variances based on the fact that the request did not meet Code requirements.

Jeremy A. Sabloff submitted a letter of support for the requested variance.

The Applicant was proposing to install a stone retaining wall to address his concerns about erosion control. Although, they observed that after heavy rainfall no erosion was detectable. Therefore, the Applicant is no longer proposing a retaining wall, and a retaining wall is not required by County Code.

This Application was submitted on August 8, 2014. After review of the Application, it was determined that a slope analysis would be required. This requirement took some time by the Applicant to hire a Surveyor.

Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request.

**APPROVAL SOUGHT:**

Approval of a variance of Article VII, § 3.4.1.c.1.c (No Build Areas), to allow the after the fact construction of a 600 square foot accessory structure which disturbs slopes in excess of 30%, a variance of Article VII, Section 3.4.1.d.6 (Development Site), to allow the finished floor of a structure to exceed (5') above natural grade, and a variance of Article III, Section 2.3.6.b.1 of the Land Development Code and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District (Height Restrictions), to allow the accessory structure to exceed the 18' height limitation for structures on 15% slopes or greater, on a parcel containing 9.47 acres.

**VARIANCES:**

Article VII, § 3.4.1.c.1.c (No Build Areas) of the Land Development Code states: "The Following areas shall be set aside from use for development." (Natural slopes of 30% or greater).

Article VII, Section 3.4.1d.6 (Development Site) of the County Code states: Buildings shall be constructed only within development sites. For a structure built on a natural slope of over twenty percent (20%), the finished floor elevation at any point shall not exceed five feet (5') above the natural grade below that point.

Article III, Section 2.3.6b. of the Land Development Code and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District (Height Restrictions), States: The height of any dwelling or residential accessory structure located on land which has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18'). The vertical distance between the highest point of a building and the lowest point of a building at natural grade or finished cut grade, whichever is lower, shall not exceed thirty feet (30'). The Code Administrator may waive this requirement if the portion of the structure located on land over 15% slope is incidental to the entire site.

Article II, § 3 (Variances) of the County Code states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified". The variance criterion does not consider financial or medical reasons as extraordinary hardships.

When seeking an administrative approval to build on natural slopes of thirty percent (30%) or greater, the Applicant must demonstrate that crossing such slopes has minimal impact to terrain or to visual quality and otherwise would conform to the purposes and standards set forth in Article III, Section 2.3 and Article VII, Section 3.4. (The Code, Article VII, Section 3.4.1(c)(1)(c)(iv).

The Code in Article VII, Section 3.4.1(d)(8), provides for individuals with a legal lot of record created prior to April 30, 1996, that has no buildable area to seek a variance to the buildable area requirements. The Code is silent on the right to seek a variance to Section 3.4.1(d) for other reasons.

Article III, Section 2.3.6b(1) provides that the Code Administrator may waive the height restriction where only

an incidental portion of the structure is to be placed on slopes of more than fifteen percent (15%). In this case the entire structure is on slopes of more than thirty percent (30%) so the Administrator lacked authority to approve the height variance.

**GROWTH MANAGEMENT AREA:** El Norte, SDA-2

**HYDROLOGIC ZONE:** Tesuque Traditional Historic /Basin Fringe Hydrologic Zone, minimum lot size per Code is 50 acres per dwelling. Lot size can be reduced to 12.5 acres per dwelling with signed and recorded water restrictions of 0.25 acre feet. The Applicants property is 9.50 acres and is a legal lot of record.

**ACCESS:** Via Vecino.

**FIRE PROTECTION:** Tesuque Fire District.

**WATER SUPPLY:** Domestic Well

**LIQUID WASTE:** Conventional Septic System

<b>AGENCY REVIEW:</b>	<u>Agency</u>	<u>Recommendation</u>
	County Fire	No Comments

**STAFF RECOMMENDATION:** Denial of variances from Article VII, § 3.4.1.c.1.c (No Build Areas), to allow the construction of a 600 square foot accessory structure which disturbs slopes in excess of 30%, a variance of Article VII, Section 3.4.1.d.6 (Development Site), to allow the finished floor of the structure to exceed (5') above natural grade, and a variance of Article III, Section 2.3.6.b.1 and of Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District (Height Restrictions), to allow the accessory structure to exceed the 18' height limitation for structures on a 15% slope or greater

At the March 19, 2015 County Development Review Committee meeting, the decision of the CDRC was to recommend approval with the following conditions.

1. Water use shall be restricted to 0.25 acre feet per year. A water meter shall be installed for the residence. Annual water meter readings shall be submitted to the

Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office at the time of Development Permit (As per Article III, § 10.2.2 and Ordinance No. 2002-13)

2. The Applicant must obtain a Development Permit from the Building and Development Services Department for construction of the Accessory Structure. (As per Article II, § 2).
3. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

#### **EXHIBITS:**

1. March 19, 2014 CDRC Meeting Minutes
2. Letter of request
3. Warranty deed
4. Letter of opposition
5. Article VII, § 3.4.1.c.1.c (No Build Areas)
6. Article VII, § 3.4.1.d.6 (Development Site)
7. Article III, § 2.3.6.b.1 (Height Restrictions)
8. Ordinance 2000-13, § 3.8.2.d
9. Article II, § 3 (Variances)
10. Noticing
11. Applicants Plans and Engineer's Report
12. Site Photograph
13. Aerial of Site and Surrounding Area

Duly sworn. Linda Hassemer stated she is the closest property owner to that lot and she is on the water board. She indicated 24 houses will be served by this phase and the plan is to eventually connect all of Glorieta to a deep well for the entire community. At that point the various components will be interconnected and the height will be needed. She noted everyone in the community supports the project. The current system is in violation and they need to come into compliance and have a secure water supply.

Ms. Hassemer pointed out that there are surrounding ponderosa pines that are that tall so it will be largely shielded. She said she understood the tank held 40,000 gallons.

There was no one else wishing to offer input.

Ms. Lucero said a letter from NMED says it holds 35,000 to 38,000 gallons.

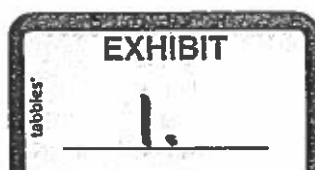
Member Martin moved to approve CDRC Case #Z/P&DP/V 14-5470, Ernest Luna Water Tower with all conditions. Member Anaya seconded and the motion carried by unanimous voice vote.

- D. CDRC CASE # V 14-5310 Patrick Lysaght Variance. Patrick Lysaght, Applicant, Requests a Variance of Article VII, Section 3.4.1.c.1.c (No-Build Areas) of the Land Development Code, to Allow the Construction of an Accessory Structure on Slopes Greater Than 30 percent, a Variance of Article VII, Section 3.4.1.d.6 (Development Site), to Allow the Finished Floor of a Structure to Exceed (5') Above Natural Grade, and a Variance of Article III, Section 2.3.6.b.1 (Height Restrictions) of the Land Development Code, and Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District to Allow the Accessory Structure to Exceed the 18' Height Limitations for Structures on a 15 percent Slope or Greater. The Property is Located At 11 Via Vecino within the Traditional Community of Tesuque, within Section 31, Township 18 North Range, 10 East, (Commission District 1)

Mr. Dalton read the case caption and gave the following staff report:

"The subject lot was created in 1981, and is recognized as a legal lot of record. Currently, there is a 4,300 square foot residence on the property which is a legal non-conforming residence. In 1998, the previous property owner was granted a variance to allow the disturbance of 30 percent slopes and greater for a 549 square foot addition to the existing residence. A permit for the addition was issued in 1999.

"On July 17, 2014, Building and Development Services received a complaint regarding unpermitted development on the subject property. On July 21, 2014, Code Enforcement conducted an inspection on the property and issued a Notice of Violation for unpermitted development and disturbing slopes in excess of 30 percent. A stop work order was placed on the construction and no further work has been done.



"After further review of the Applicant's request, staff determined that the accessory structure also requires a variance to allow the structure to exceed the 18' height limitation on slopes 15 percent and greater and a variance to allow the finish floor to be more than 5 feet above natural grade. The unpermitted 600 square foot accessory structure sits on slopes greater than 30 percent and is raised on 6"x6" posts and contains no plumbing. The structure is 23' 10" high, and the finish floor of the structure is 7" above natural grade. A structural engineer determined that the structure is in compliance with all applicable State Building Codes and is structurally sound for required loads.

"The Applicant states the variance is needed to provide an area for dry storage, a seasonal workshop for hobbies, and reduce noise and dust that routinely accompany stone and wood carving hobbies. The Applicant further states that the only other location on the property that meets code criteria is located on a ridgetop and is inaccessible. Staff has conducted a site visit to confirm there are no other locations on the property to place the accessory structure. The site contains slopes of 30 percent and greater and has limited area less than 30 percent that are inaccessible.

"The planning committee for the Tesuque Land Use Plan submitted a letter opposing the request for variances based on the fact that the request did not meet Code requirements.

"Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request."

Mr. Dalton said staff recommended denial of variances from Article VII, § 3.4.1.c.1.c (No-Build Areas), to allow the construction of a 600 square foot accessory structure which disturbs slopes in excess of 30 percent, a variance of Article VII, Section 3.4.1.d.6 (Development Site), to allow the finished floor of the structure to exceed 5 feet above natural grade, and a variance of Article III, Section 2.3.6.b.1 and of Section 3.8.2.d of Ordinance 2000-13 Tesuque Zoning District, to allow the accessory structure to exceed the 18' height limitation for structures on a 15 percent slope or greater.

If the decision of the CDRC is to recommend approval of the Applicant's request for variances, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-feet per year. A water meter shall be installed for the residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office at the time of Development Permit (As per Article III, § 10.2.2 and Ordinance No. 2002-13)
2. The Applicant must obtain a Development Permit from the Building and Development Services Department for construction of the Accessory Structure. (As per Article II, § 2).

3. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

Member Martin asked if the members of the Tesuque planning committee who signed the letter in the packet constitute everyone on that committee.

Duly sworn, Jeanne Boyles, a member of the Tesuque Planning Committee said the six signatures represent all the committee members.

Under oath, Patrick Lysaght distributed a handout to the committee members providing context to the case. He apologized to the community for his inability to communicate his intentions effectively. He said he understood there were three problems: code violations stemming from the steepness of the slopes, that the structure is an "eyesore" and his perceived disregard for the law.

He conceded the structure violates slope regulations, however, the disturbance constitutes a very small fraction of the 9.5-acre lot. When the property was purchased there was a great deal of erosion and damage to the property and driveway. The previous owners had been granted a variance for an addition on that side of the house. This request is less extreme than the variance approved in 1999. No views will be blocked. He has been doing masonry to shore up eroded areas. He said he loves the land and there are no other places on the property to build. The land is so steep there is no place to park cars. The part that is too high is just one corner. The structure is below the level of the house.

He pointed out this is mid-construction which accounts for it looking like an eyesore. He says he is willing to work with the neighbors and has agreed to stucco the building and add water harvesting. They have worked hard to minimize disturbance to neighbors and there will be screening with coyote fencing and plants. He added two houses in the area have sold recently so local real estate has not been adversely affected.

The building plans have been approved by a professional engineer. He emphasized that he does not have disregard for the regulations. Agreements specify that this property can be divided in two or have "customary outbuildings, garages, carport, servants' quarters, studio and/or guesthouse and gatehouse, stable and/or corral." However, the remainder of the property is designated no-build. A deck on the north side of the house is also build on posts so this structure did not seem to be out of line. PNM approved a second meter on the property.

Mr. Lysaght said he moved forward in his need for storage without building somewhere that would block his neighbors' views. He wants to cooperate as much as possible.

Referring to packet Exhibit 11, Member Anaya said it appears the project is unfinished. He asked if there were certified plans. Mr. Lysaght said the plans were

approved by Hands Engineering, attesting to its integrity. He said it is designed to be unobtrusive.

Sam Burford, under oath, stated he owns the house directly below the property in question. He showed before and after photographs of the area taken from his driveway. He objects to the variances on the grounds of fire danger, instability, and visual incompatibility. He noted that one of the major purposes of the Tesuque Community Plan adopted in 2013 was to preserve the historic rural nature of Tesuque. He said he thought it impossible that the structure could be changed sufficiently to make it acceptable.

Member Anaya asked what it would take to make the structure acceptable. Mr. Burford said he didn't think any cosmetic changes would work. Member Anaya said the project would have to be inspected by the Fire Marshal and many issues have yet to be addressed. Mr. Burford said stuccoing would make the neighborhood happier.

Chair Katz asked if Mr. Lysaght's house is the highest and was told it was.

Ms. Boyles, previously sworn, stated people often build in Tesuque without permit and then ask for approval after the fact. She said this is what the planning committee objects to.

Member Anaya asked when people in Tesuque started complaining. Ms. Boyles said it looked odd, but it was difficult to see from Bishop's Lodge Road due to all the fences and walls. After it was brought to the committee's attention they met and objected. Member Anaya asked about the specifics of Tesuque and the planning process. She said the association goes by the rules and they hope to have a new ordinance in place by the end of the summer. To approve a project like this compounds the problem of inappropriate building on slopes. Erosion becomes a problem.

There was no one else from the public wishing to speak.

In rebuttal, Mr. Lysaght indicated things are always disturbing when new. He added Mr. Burford shows no respect for the engineering approval. He said the structure can be blended in successfully. He added there are approximately 2,000 people in Tesuque. He has encouraged the neighbors to speak to him.

Member Anaya moved to approve CDRC Case #V 14-5310 with staff conditions. Member Booth seconded.

Chair Katz explained why he intended to vote against approval: staff and the neighbors are in opposition; there was no permit; terrain management regulations are important, something conceded by the applicant; and the applicant's seeming insensitivity to his neighbors. He should not be rewarded for having proceeded without a permit. Member Martin agreed, saying the entire Planning Committee for the Tesuque land use plan opposed the variance in accordance with policies of the County Sustainable Growth Management Plan (SGMP).



Member Anaya said he was in favor of approval given the applicant's willingness to do what is required. He said he can see the possibilities, although he understand the neighbors' point of view as well. Member Booth noted they just approved a case that did not have prior permits. She said she was swayed by the fact there was nowhere else to build on this lot.

The motion carried by majority [4-2] voice vote with Members Anaya, Booth, Lopez and Gonzales voting in favor and Chair Katz and Member Martin voting against.

- B. CDRC CASE # V 14-5330 Francisco and Arlene Tercero. Francisco and Arlene Tercero, Applicants and the Amarante Romero Trust (Arlene Tercero, Trustee), Applicant, Requests a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.6 (Density and Dimensional Standards) to Allow a Small Lot Family Transfer of 1.53 Acres (Frank and Arlene Tercero Parcel) into Two Lots, Each Consisting of 0.75 Acres More or Less and Approval of an Additional Small Lot Family Transfer on an Adjacent 2.549-Acre Lot (Amarante and Emma Romero Parcel) to Create two Lots, Each Consisting of 1.25 Acres More or Less. The Applicants Also Request a Variance of Article V, Section 8.2.1c (Local Roads) and Article III, Section 2.4.2b 3 (a)(1) (Roads and Access) of the Land Development Code to Serve the Four Proposed Lots and one Existing Lot, for a Total of Five Lots. The Road that Services the Properties (Calle de Quiquido) Does Not Meet the Specifications of Local Lane, Place or Cul-de-Sac Roads Being That the Road is Too Narrow and Does Not Have Adequate Drainage Control Necessary to Insure Adequate Access for Emergency Vehicles. The Properties Are Located At 1443 and 1645 Calle de Quiquido, within Section 32, Township 17 North, Range 9 East (Commission District 2)

Mr. Romero read the caption and the following report:

"The subject lot was created in 1985, via Division of Land, and is recognized as a legal lot of record. Currently there is a residence on the property which was permitted by Santa Fe County, Permit# 99-1369, that the Applicant's son and his family reside in.

"The Applicants request a variance of Ordinance No. 2007-2, Section 10.6 to allow a Family Transfer of 1.53 acres into two lots; both lots consisting of 0.75 acres +/- . The Applicants state a variance is needed in order to leave their children with a piece of property of their own. The minimum lot size in this area is 2.5 acres with 0.25 acre-foot water restrictions as per Ordinance No. 2007-2 Village of Agua Fria Zoning District, Section 10.6, Density and Dimensional Standards.

## Variance Request – Letter of Intent

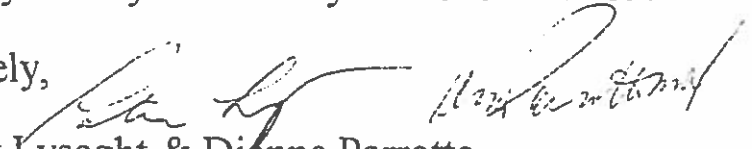
This request for variance regarding building permit application for Patrick S. Lysaght and Dianne M. Parrotte (on Tract 1, within section 31, T. 18 N., R. 10 E., N.M.P.M. Santa Fe County, New Mexico, 11 Via Vecino, 87506) is for *i*) the slope of the property at the proposed building site, *ii*) to allow finished floor to be 5' above natural grade on slopes 20% and greater and *iii*) to allow the height of the finished building to exceed 18' maximum on slope greater than 15%.

At the building site the slope is greater than 30% and no available location on the property meets the slope requirements other than inaccessible hill top areas. The proposed structure is to serve a threefold purpose; *i*) to provide needed dry storage, *ii*) to enable a seasonal work shop area for stone and wood carving hobby activities, and *iii*) to greatly reduce the awareness and impact on neighbors to both noise and dust that routinely accompany stone and wood carving activities.

Additionally, the proposed structure will readily comply with all neighbor expressed aesthetic concerns of unobtrusiveness by blending in with the natural terrain, i.e. painting to match existing house color, screening with natural plantings, coyote fencing, etc. as appropriate. It is anticipated that the construction phase will be completed within 4-6 weeks from the resumption of works date.

Thank you very much for your consideration.

Sincerely,

  
Patrick Lysaght & Dianne Parrotte

11 Via Vecino, Santa Fe, NM 87506 ph: 512.364.3600



## WARRANTY DEED

William A. MacGillivray and Susan MacGillivray, Trustees of the William and Susan MacGillivray Living Trust dated May 12, 1997, and any amendments thereto, for consideration paid, grant to Patrick S. Lysaght, a single man and Dianne M. Parrotte, a single woman, as tenants in common, whose address is 11 Via Vecino, Santa Fe, NM 87506 the following described real estate in Santa Fe County, New Mexico:

Tract 1, as shown and delineated on plat of survey entitled "Boundary Survey Plat for Patrick S. Lysaght and Dianne M. Parrotte Tract 1, Within Section 31, T. 18 N., R. 10 E., NMPM...", recorded November 23, 2011 in Plat Book 739, Page 029, # 1652068, records of Santa Fe County, New Mexico.

SUBJECT TO: taxes and assessments for 2011 and subsequent years.

SUBJECT TO: matters as described in Exhibit "A" attached hereto.

with warranty covenants.

Witness our hands this 19 day of November, 2011.

WILLIAM AND SUSAN MacGILLIVRAY  
LIVING TRUST dated May 12, 1997, and  
any amendments thereto

William A. MacGillivray  
William A. MacGillivray, Trustee

Susan MacGillivray  
Susan MacGillivray, Trustee

## ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF CALIFORNIA

COUNTY OF San Diego

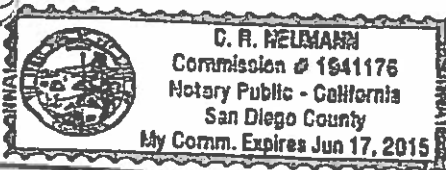
This instrument was acknowledged before me on November 19th, 2011 by William A. MacGillivray and Susan MacGillivray, Trustees of the William and Susan MacGillivray Living Trust dated May 12, 1997.

Commission Expires: Jun 17, 2015

CR New  
Notary Public



RECORDED  
11/23/11



COUNTY OF SANTA FE  
STATE OF NEW MEXICO

WARRANTY DEED  
PAGES: 2

EXHIBIT

3.

That This Instrument Was Filed for  
RD Day Of November, 2011 at 02:17:35 PM  
rded as Instrument # 1652127  
Santa Fe County

EXHIBIT "A"

Reservations and exceptions contained in United States Patents recorded in Book B, Page 443 and Book Q-1, Page 210, records of Santa Fe County, New Mexico.

Easement in favor of Public Service Company of New Mexico, recorded in Book V, Page 592 and Book 692, Page 489, records of Santa Fe County, New Mexico.

Easements as provided for in Warranty Deed, and rights incident thereto, recorded in Book 397, Page 871, records of Santa Fe County, New Mexico.

Terms, conditions, stipulations, obligations and easements in Well Sharing and Easement Agreement, recorded in Book 596, Page 128, records of Santa Fe County, New Mexico.

Terms, conditions, stipulations, obligations and easements in Road Maintenance and Easement Agreement, recorded in Book 596, Page 140, records of Santa Fe County, New Mexico.

Restrictive covenants, recorded in Book 596, Page 147 and Book 652, Page 436, records of Santa Fe County, New Mexico.

Terms, conditions, stipulations and obligations in Utility Agreement & Easement, recorded in Book 596, Page 154, records of Santa Fe County, New Mexico.

Roadway and utility easement as shown on plat of survey filed in Plat Book 92, page 27 and amended in Book 109, page 5, records of Santa Fe County, New Mexico.

Covenants and Restrictions recorded September 13, 2011 as Instrument #1645107, records of Santa Fe County, New Mexico.

Terms conditions contained in Encroachment Easement Declaration recorded 11-23-, 2011 as Instrument # 1652126, records of Santa Fe County, New Mexico.

Rights of others in and to Foot Path together with notes, easements and rights incident thereto as shown and delineated on plat of survey entitled "Boundary Survey Plat for Patrick S. Lysaght and Dianne M. Parrotte Tract 1, Within Section 31, T. 18 N., R. 10 E., NMPM...", recorded November 23, 2011 in Plat Book 739, Page 029, # 1652068, records of Santa Fe County, New Mexico.

REC  
CLERK  
RECORDED  
11-23-2011

October 27, 2014

Mr. John Lovato  
Development Review Specialist  
PO Box 276  
Santa Fe, NM 87504-0276

RE: Case # 14-5310

Dear Mr. Lovato,

We are members of the planning committee for the Tesuque Land Use Plan. We have reviewed the variance request made by Mr. Patrick Lysaght regarding his property at 11 Via Vecino in Tesuque.

We oppose the request for the variances for constructing in a slope in excess of 30%, building at a height greater than 18 feet above the natural grade and the construction of the addition to his residence. We fully support staff's recommendation of denial.

Mr. Lysaght and his contractor have already constructed the addition, apparently without a permit or any consideration of the rules and laws that apply to all of us. We do not feel it is appropriate to plead innocence after the fact. We see no hardship created by his own actions.

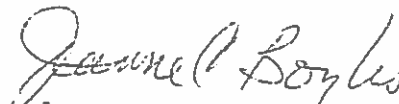
Respectfully,

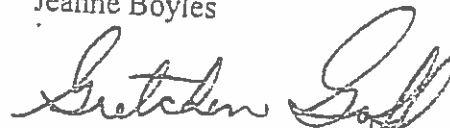
Tesuque Planning Committee Members

  
Margo Cutler, Chairperson

  
Wm. David Dougherty

  
Sue Barnum

  
Jeanne Boyles

  
Gretchen Goff

  
Cam Duncan

cc: Manuel Roybal, CDRC District 1



SANTA FE INSTITUTE



November 6, 2014

County Land Use Administration Office  
P.O. Box 276  
Santa Fe, NM 87504-0276

Subject: CDRC Case # V 14-5310

Dear County Land Use Administrator,

We have no objection to Patrick Lysaght's petition for variance, per the above-referenced case.

Sincerely,

A handwritten signature in cursive script that reads "Jeremy A. Sabloff".

Jeremy A. Sabloff  
President

JAS/rkbv

January 25, 2015

J. Russell Bellamy  
68 Palo Duro Road  
Santa Fe, NM 87506

John Lovato, Case Manager  
Land Use Department  
County of Santa Fe  
P.O.Box 276  
Santa Fe, NM 87504

Re: CDRC Case # 14-5310, Lysaght, 10 Via Vecino

Dear Mr. Lovato,

My house is on Palo Duro Road past where it intersects with Via Vecino Road. I object to the granting of any variance which the applicant has requested in this case. The current structure on this property is an eyesore to say the least.

The applicant has ignored County Land Use Code requirements and has ignored the private restrictive covenants which govern the use of his property. There seems no justification in granting a request for variance in this case.

Sincerely,

  
J. Russell Bellamy

MARK K. ADAMS  
BRUCE HALL  
JOHN P. SALAZAR  
JOHN P. BURTON  
CATHERINE T. GOLDBERG  
EDWARD RICO  
W. MARK MOWERY  
PATRICK M. SHAY  
ELLEN T. SGRAG  
HENRY M. BOHNHOFF  
CHARLES K. PURCELL  
ANDREW G. SCHULTZ  
SCOTT D. GORDON  
NELSON FRANSE  
THERESA W. PARROSH  
PAUL R. KOLLER  
CHARLES J. VIGIL  
THOMAS L. STONE  
DAVID W. BURTING  
LESLIE MCCARTHY APODACA  
JEFFREY M. CROASDELL  
SUNNY J. NIXON  
JEFFREY L. LOWRY  
R. TRACY SPROULS  
DONALD B. MONHEIMER  
ALAN HALL  
THOMAS A. CUTLER  
SETH L. SPARKS  
USA CHAVEZ ORTEGA  
JOCELYN C. DRENNAN  
MICHAEL J. BRESCIA

AARON C. VIETS  
KURT B. GILBERT  
RICK BEITLER  
JUSTIN A. KORMITZ  
SANDRA L. BEERLE  
JENNIFER L. STONE  
VALERIE REIGHARD DENTON  
BRENDA M. SAIZ  
BRIAN P. BRACK  
TODD E. RINER  
CHARLES R. HUGHSON  
JOSE R. BLANTON  
CRISTINA A. ADAMS  
MICHAEL E. KAEMPER  
MARGOT A. HEFLICK  
CRYSTLE A. THOMAS  
GLENN A. BEARD  
ROBERT L. LUCERO  
TYLER M. CUFF  
KEVIN J. BANVILLE  
DENISE M. CHANEZ  
ROBERT J. SANCHEZ  
KELANIE B. STAMBAUGH  
JENNIFER L. HOLLANDER  
STEPHEN R. MARSHALL  
SHANNON M. SHERRELL  
RICHARD E. HATCH  
JESSICA R. TERRAZAS  
TARA L. EDGEMAN  
MATTHEW M. BECK

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.

ATTORNEYS AT LAW  
SANTA FE OFFICE

119 EAST MARCY STREET, SUITE 200  
SANTA FE, NEW MEXICO 87501-2034

P.O. BOX 1357

SANTA FE, NEW MEXICO 87504-1357

WWW.RODEY.COM

TELEPHONE (505) 954-3900

FACSIMILE (505) 954-3942

OF COUNSEL  
ROBERT M. ST. JOHN  
RICHARD C. MINZNER  
JO SAXTON BRAYER  
DEWITT M. MORGAN  
JULIE P. NEERKEN  
CHARLES A. SEBERT III  
CYNTHIA A. LOEHR  
PERRY E. BENDICKSEN III  
JOHN N. PATTERSON  
DAVID P. BUCHHEITZ

BERNARD S. RODEY (1856-1927)  
PEARCE C. RODEY (1889-1958)  
DON L. DICKASON (1906-1999)  
WILLIAM A. SLOAN (1910-1993)  
JACKSON G. AKIN (1918-2010)  
JOHN D. ROBB (1924-2014)

ALBUQUERQUE OFFICE  
201 THIRD STREET NW, SUITE 2200  
ALBUQUERQUE, NEW MEXICO 87102  
P.O. BOX 1688  
ALBUQUERQUE, NEW MEXICO 87103  
TELEPHONE (505) 765-5900  
FACSIMILE (505) 768-7395

WRITER'S DIRECT NUMBER  
(505) 854-3821

JPATTERSON@RODEY.COM

January 7, 2015

John Lovato, Case Manager  
Land Use Department  
County of Santa Fe  
P.O. Box 276  
Santa Fe, NM 87504

Re: CDRC Case #14-5310, Lysaght, 10 Via Vecino

Dear Mr. Lovato:

I represent Mr. & Mrs. Sam Burford, owners of the lot adjoining the applicant's lot to the east. The Burfords have instructed me to inform the Committee that they object in the most strenuous terms to the granting of any variance which the applicant has requested.

The applicant has ignored County Land Use Code requirements just as he has ignored the private restrictive covenants which govern the use of his property. There is no circumstance in this case which would justify the granting of a variance.

Sincerely,

  
John N. Patterson



b. Buildable Areas. Each lot shall have a Buildable Area which shall meet the following criteria:

- 1) The natural slope is less than thirty percent (30%);
- 2) New lots shall contain an area suitable for building, including areas suitable for access corridor and utility sites and corridors which can be developed in accordance with these terrain management regulations and other requirements of the Code.
- 3) Meet all required setback standards for ridgetops, drainage ways, etc.
- 4) Contain a site with slope of less than fifteen percent (15%) and soils adequate by type and thickness in order for installation of a septic tank with leach field to be approved. In all other cases, alternative liquid waste disposal will be required.

c. No Build Areas

- 1) The following areas shall be set aside from use for development:
  - a) areas of rock outcropping, wetlands, arroyos and natural drainage ways;
  - b) A minimum of twenty-five feet (25') set back is required from the natural edge of streams, waterways, drainage ways or arroyos that may convey a discharge ("Q") of one hundred cubic feet per second (100 cfs) or more, generated by a design storm (100 year recurrence, 24 hour duration); the required setback may be increased if the Code Administrator determines that a clear hazard exists because of slope stability and hydrologic/hydraulic conditions. In evaluating the need to increase the setback, the Code Administrator shall consider property and channel slope, velocity of channel flow, hydraulic radius, roughness coefficient and sectional area of the particular drainage way. A requirement for increased setback imposed by the County shall not be interpreted to be an engineered development plan for development or encroachment to any FEMA designated 100 year floodplain or significant tributary thereof.
- c) Natural slopes of thirty percent (30%) or greater. Exceptions may be approved by the Code Administrator for :
  - i. access corridors, utility corridors and landscape areas proposed on natural slopes in excess of thirty percent (30%) that disturb no more than three (3) separate areas of no more than one thousand (1000) square feet each, provided the applicant demonstrates that no alternative development location is available; and
  - ii. arroyo crossings may be approved which disturb more than one thousand (1000) square feet in each instance provided that slope stability and hydrologic/hydraulic conditions are not changed from pre-development values; and
  - iii. siting of structures to preserve remaining traditional agricultural lands and uses.
  - iv. The applicant shall demonstrate that crossing such slopes has minimal impact to terrain or to visual quality and otherwise would conform to the purposes and standards set forth in Article III, Section 2.3 and Article VII, Section 3.4. See the Guidelines for Site Planning and Development in Santa Fe County.
- 2) No Build Areas may be used as part of the dedicated open space or may be included in lots as conservation easements or may be platted as common area within a subdivision or land division.



d. Development Site

- 1) Development of lots for buildings, access, utilities and required landscaping shall occur only within approved development sites within the Buildable Area. (see Article X, Definitions). (Note: if soils are not suited for septic tanks, alternative liquid waste disposal systems or treatment methods shall be proposed. see Article VII, Section 3.4.2, Soils).
- 2) Only land within approved development sites shall be graded, paved or built upon.
- 3) Excavation, grading and cut-and-fill for the purposes of site development shall be limited to approved development sites and kept to a minimum to maintain existing land forms and contours (See Article VII, Sections 3.4.3. and 3.4.5 for grading and vegetation performance standards);
- 4) The development site on a ridgetop must be set back from the shoulder toward the crest of a hill or ridge. The shoulder is defined as the line where the profile of the upper slope of an elevation (hill, ridge, mountain, escarpment, etc.) changes from thirty percent (30%) or greater slope to less than thirty percent (30%) slope.
  - a) All buildings shall be setback horizontally from the shoulder in order to accomplish the following purposes:
    - (1) protection of slope stability where soil conditions are prone to severe erosion; and
    - (2) siting of structures so that existing vegetation is used to screen visual impacts of development or to preserve native trees from disturbance or removal; and
    - (3) siting of structures so that their form does not dominate prominent skylines or disrupt significant views or unique landforms which have been identified by the County for protection; and
    - (4) siting of structures to preserve remaining traditional agricultural lands and uses. See the Guidelines for Site Planning and Development in Santa Fe County.
  - b) Temporary fences or construction barriers shall be erected during construction in order to prevent disturbance and protect the shoulder and slope from erosion or failure.
  - c) Subsection Reserved for future set back requirements due to wildfire hazards.
- 5) Roads, driveways and utilities shall be constructed only within approved development sites;
- 6) Buildings shall be constructed only within development sites. For a structure built on a natural slope of over twenty percent (20%), the finished floor elevation at any point shall not exceed five feet (5') above the natural grade below that point;
- 7) Density transfers are encouraged to take advantage of naturally occurring development sites below ridgetops and to set aside ridgetop areas for open space.
- 8) Any legal nonconforming lot, that is, a legal lot of record which was created before April 30, 1996 (Ordinance N. 1996-3 adopted March 12, 1996) and which does not contain a Buildable Area as defined in Article VII, Section 3.4.1.b of the Code, is eligible for application for a variance to the Buildable Area standard. See Article I, Section 3, Variances.

3.4.2 Soils

- a. Proposed developments must demonstrate the suitability of soils for all proposed land uses, including but not limited to: building foundations, fill, road construction, liquid waste disposal, underground utilities, and drainage control measures pursuant to the applicable Soil And Water Conservation District and New Mexico Environment Department requirements.

EXHIBIT

6.

2.3.4b Any development site on a ridgetop must be set back from the shoulder toward the crest of a hill or ridge pursuant to Article VII, Section 3.4.1 d. Performance Standards for Development Site.

2.3.5 Shared points of ingress and egress to adjacent development sites is encouraged, unless it can be demonstrated that additional or separate access is necessary. Design standards and submittal requirements as set forth in Article III, Section 4.4.3a, for Driveway Access, and Article VII, Section 3.4.4, Roads and Driveways shall be applied.

2.3.6 Height Restrictions for Dwellings or Residential Accessory Structures

2.3.6a. For the purpose of this Section, height means the vertical distance from any point on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point.

2.3.6b. The height of any dwelling or residential accessory structure shall not exceed twenty-four feet (24'). The vertical depth of fill materials from the natural grade, with or without retaining walls, shall be considered as a component of the building or structure; this depth shall be included in the determination of building height. Chimneys may extend three feet (3') beyond the height limitation. In addition:

1. The height of any dwelling or residential accessory structure located on land which has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18'). The vertical distance between the highest point of a building and the lowest point of a building at natural grade or finished cut grade, whichever is lower, shall not exceed thirty feet (30'). The Code Administrator may waive this requirement if the portion of the structure located on land over 15 % slope is incidental to the entire site.
2. On ridgetops as defined in Article X of the Code, only one story buildings are allowed. On ridgetops, the height of any dwelling or residential accessory structure shall not exceed fourteen feet (14'), except one story pitched roof style buildings may be allowed a maximum height of eighteen feet (18') provided such roof can be screened from a public way and pursuant to a site visit and approval of the Code Administrator.
3. Structures for agricultural purposes shall meet the requirements of Article III, Section 1.

2.3.6c. Requests for residential accessory structures such as windmills and radio antennas to exceed the maximum height restrictions shall be reviewed for approval by the County Development Review Committee. When an exception to the height restrictions is desired, the applicant shall submit plans for the installation and operation of the accessory structure with a report explaining why the requested height of the structure is necessary for proper function. The County Development Review Committee shall consider: whether the requested structure is reasonably necessary to be on the proposed site; whether the applicant has demonstrated that the requested height is the minimum height necessary for the proposed structure to function properly, not to exceed a maximum height of forty-five feet (45'); and the size of the lot and impact on neighboring properties.

2.3.7 Terrain Management

All development of a lot, tract, or parcel shall be done in accordance with the Santa Fe County Land Development Code, Article VII, Section 3. Terrain Management.



data is unavailable, compliance will be determined by a comparison of samples for which data is available.

3) For all new buildings and additions to existing structures which are located on development sites where any portion of land has a natural slope prior to development of fifteen percent (15%) or greater and on ridgetops, window and door glazing shall be limited to no more than thirty percent (30%) of a facade and shall be non-mirrored and the LRV shall be less than twenty (20), except:

i. glazing shall be limited to no more than fifty percent (50%) under portals eight feet (8') or deeper, or

ii. this subsection shall not apply to glazing on a south-facing facade where incorporated into a documented, design solar heating application equivalent to one for which the annual "Solar Saving Fraction (SSF)" exceeds sixty percent (60%). See for example "Passive Solar Design Handbook", Balcomb et al., DOE/Los Alamos National Laboratories, 1984.

d. Height on slopes and on Ridgetops

1) On ridgetops as defined in this Section, only one story buildings are allowed and the height of any structure shall not exceed fourteen feet (14'). Chimneys may extend three feet (3') beyond the height limitation.

2) The height of any dwelling or residential accessory structure located on land which has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18'). The vertical distance between the highest point of a building and the lowest point of a building at natural grade or finished cut grade, whichever is lower, shall not exceed thirty feet (30'). The Code Administrator may waive this requirement if the portion of the structure located on land over 15 % slope is incidental to the entire site.

e. Landscaping

1). Indigenous evergreen trees at least five feet (5') tall and approximating the original density and type existing on the site prior to disturbance shall be used for screening and buffering of structures and cuts and fills, where required, in order to maintain year round screening.

2). Cut slopes with a slope or retaining wall closer than six feet (6') from the edge of a road or driveway, where the planting area for trees is limited, may be screened with a trellis supporting planted vegetation or some other similar means which creates a natural screened effect.

3.8.3. Administrative approval

The Code Administrator may approve siting or design of a structure which minimally deviates from strict compliance with terrain management standards or architectural and appearance standards upon a finding that the proposed deviation results in a decrease of the visual or environmental impact of the development or reduces site grading. In making this finding, the Administrator shall consider existing topography, effects on native vegetation, soils and erosion potential, location of infrastructure, proposed site improvements and other proposed changes that would protect the public interest and further the intent of terrain management standards and appearance standards.



### 2.5 Zoning

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

### 2.6 Subdivisions

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

### 2.7 Other Requirements

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

## SECTION 3 - VARIANCES

### 3.1 Proposed Development

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

### 3.2 Variation or Modification

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

### 3.3 Granting Variances and Modifications

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

### 3.4 Height Variance in Airport Zones

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

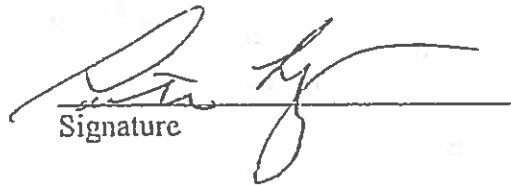


**CERTIFICATION OF POSTING**

I hereby certify that the public notice posting regarding Land Development

Case # 11-14-5310 was posted for 21 days on the property beginning

The 25 day of February  
\*\*

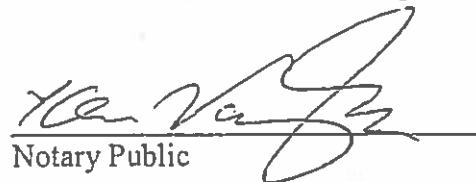
  
Signature

\*Photo of posting must be provided with certification

**\*\*PLEASE NOTE:** Public notice is to be posted on the most visible part of the property. Improper legal notice will result in re-posting for an additional 21 days. It is the applicant's responsibility to ensure that the notice is on the property for the full 21 days.

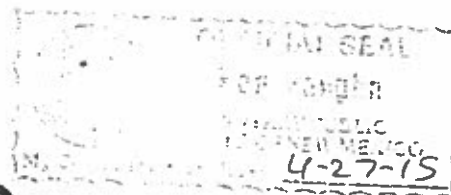
STATE OF NEW MEXICO }  
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of February, 2015, By Patrick Smith Lysaght.

  
Notary Public

My Commission Expires:

April 27, 2015



From: Patrick Lysaght <cationxyz@gmail.com>

To: me2thedoc <me2thedoc@aol.com>

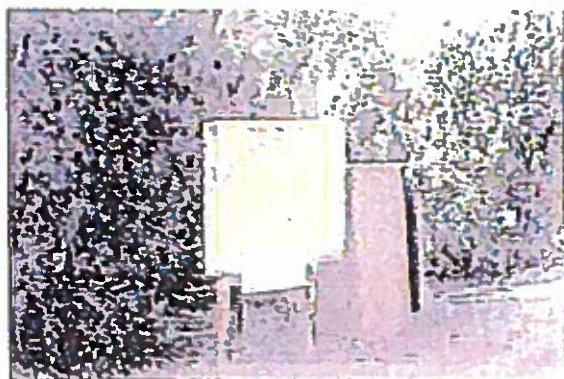
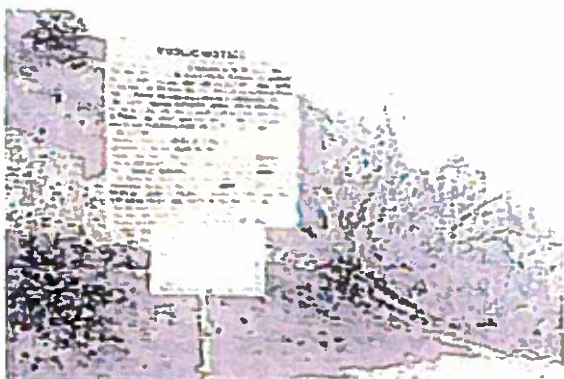
Subject: posting

Date: Wed, Feb 25, 2015 2:25 pm

Attachments: 138.JPG (8132K), 139.JPG (9387K)

---

2 Attached Images



From: Patrick Lysaght <cationxyz@gmail.com>

To: me2thadoc <me2thadoc@aol.com>

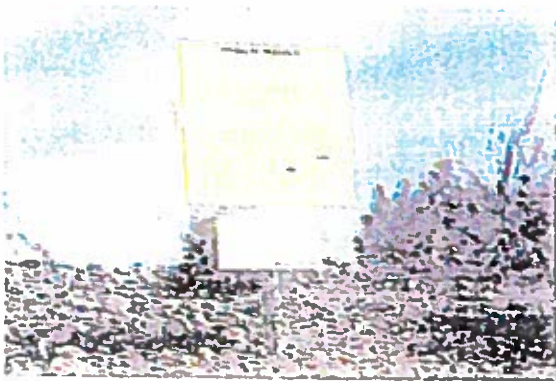
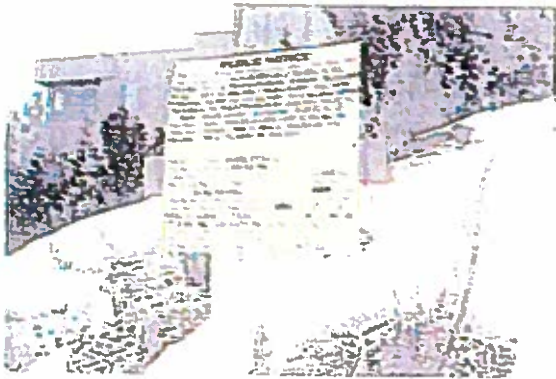
Subject: posting photos

Date: Wed, Feb 25, 2015 2:24 pm

Attachments: 135.JPG (7017K), 137.JPG (7402K)

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2 Attached Images





The newspapers of New Mexico make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web ([www.PublicNoticeAds.com](http://www.PublicNoticeAds.com)), not scattered among thousands of government web pages.

**County:** Santa Fe

**Printed In:** Santa Fe New Mexican

**Printed On:** 2015/02/26

LEGAL # 98033

CDRC CASE # V 14-5310

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held to consider a request by Patrick Lysaght, Applicant, for a variance of Article VII, Section 3..4.c.1.c (No Build areas) to allow disturbance of 30% slopes to construct an accessory structure, a variance of Article VII, Section 3.4.1.d.6 (Development Site), to allow the finished floor of a structure to exceed (5') above natural grade, and a variance of Article III, Section 2.3.6.b.1 (Height Restrictions), to allow the structure to exceed the 18' height limitation for buildings on 15% slope or greater. The property is located 11 Via Vecino in the Traditional Community of Tesuque, within Section 31, Township 18 North Range 10 East, (Commission District 1).

A public hearing will be held in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico on the 19th day of March 2015, at 4 p.m. on a petition to the County Development Review Committee, and on the 12th day of May 2015, at 5 p.m. on a petition to the Board of County Commissioners.

Please forward all comments and questions to the County Land Use Administration Office at 986-6225.

All interested parties will be heard at the Public Hearing prior to the Commission taking action. All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276; or presented in person at the hearing.

Published in The Santa Fe New Mexican on February 26, 2015

Public Notice ID: 22213960

Patrick Lysaght and Dianne Parrotte  
11 Via Vecino  
Santa Fe, NM 87506  
512.364.3600  
cationxyz@gmail.com

The proposed building project, 14374, seasonal workshop and dry storage - consists of concrete-base and post construction for the foundation on sloped terrain. Each concrete base is dug at least 3' into virgin soil with steel wire tied  $\frac{1}{2}$ " rebar box steel structural (concrete) reinforcement with  $\frac{1}{2}$ " vertical steel rod as a pin connection 15" into both the center of 6x8" posts and the concrete base for structural integrity.

There are 16 concrete base / post assemblies which disturb the natural terrain ~ 2.25 square feet each.

**Total Terrain Disturbance:**

$1.5 \times 1.5 \text{ ft} \times 16 = 36 \text{ square ft total.}$

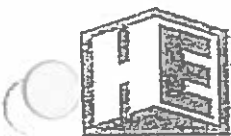
It has been proposed to add a stone retaining wall on the high elevation side of the south load bearing set of concrete/post assemblies to assure erosion control. However, following the September 20 extreme rainfall it has been observed that there is no evidence of terrain erosion on the slope due to masking of rainfall by the building structure itself.

I will readily comply with the recommendations of the panel regarding inclusion or omission of the proposed stone retaining wall on the slope. If a retaining wall is recommended, it will be constructed as follows:

2-3' high and 32' long X 1.5' wide => approximately 48 square feet terrain disturbance

For completeness, I have included photos of the construction (taken after the strong rainfall) indicating the degree of slope disturbance due to the concrete-post construction (36 sqft total).





# Hands Engineering, Inc.

September 12, 2014

Mr. Patrick Lysaght  
11 Via Vecino  
Santa Fe, NM 87506

**RE: LYSAGHT RESEDENCE**  
**11 VIA VECINO**  
**SANTA FE, NEW MEXICO**  
**Hands Engineering Project No. 2014-4351**

Dear Mr. Lysaght:

Per your request, Hands Engineering, Inc. was employed to perform a site visit to the referenced site. On August 21, 2014, James Hands visited the site to gather the data necessary for our analysis. The purpose of the site visit was to evaluate the structural condition of the newly constructed dry storage and exterior deck.

Please note that the evaluation was a visual observation and plans were later made available to our office. The report and drawings provided to our office are also enclosed.

I have analyzed the drawings for the following members and design criteria listed:

- 1) Roof framing members.
- 2) Floor framing members.
- 3) Foundation sizes based on assumed soils conditions.
- 4) Details of roof framing structural connections.
- 5) Lateral restraint system provided by shear walls and wood cross bracing.
- 6) Retaining walls for erosion control.

## Seismic Design

- 1) Factor  
 $I=1.0$   
 $SDS=0.480$   
 $S_s=$   
 $SD1=0.229$   
 $S1=$   
SITE CLASS: D
- 2) Seismic Design Category: D
- 3) Seismic Resisting System: Per ASCE 7-05 Table 12.2-1: Part 13
- 4) Seismic Response Coefficient:  $C_s=0.1$
- 5) Response Modification Factor (S), R: 6.5
- 6) Analysis Procedure: Equivalent Lateral Force

### Building Codes and Standards:

- A) 2009 International Building Code
- B) 2009 International Residential Code
- C) American Institute of Concrete Institute 318 "Building Code Requirements for Reinforced Concrete"
- D) ANCI/NF&PA NDS "National Design Standard for Wood Construction"
- E) American Institute of Timber Construction: "Timber Construction Manual"

### Design Loads: Occupancy Category: II

- A) Live Loads: (Live Load Reduction Per IBC 1607.9.2)
  - 1) Roof: 30 PSF
  - 2) Floors: 75 PSF
- B) Snow Loads:
  - 1) Flat Roof Snow Load  $P_f$ : 30 PSF
  - 2) Factors:
    - $C_e$  1.0
    - $C_t$  1.0
    - $I$  1.2
- C) Ground Snow Load:  $P_g=43$  PSF
- D) Wind Load:
  - 1) Basic Wind Speed: 3 Second Gust 90 MPH
  - 2) Factors:
    - $I=1.0$
    - $GCP_i=\pm 1.8$
    - Exposure C
  - 3) Components and Cladding (Effective Area = 10 Sq. Ft.)
    - Zone 1 10.0/-17.7 (Interior)
    - Zone 2 10.0/-29.6 (Edges)
    - Zone 3 10.0/-44.6 (Corners)

My conclusion for the structural construction of this wood framed building to be used as dry storage are in compliance with the codes listed above and are structurally sound for the loads required.

The drawings produced by the owner are approved per my analysis and review of the attached documents.

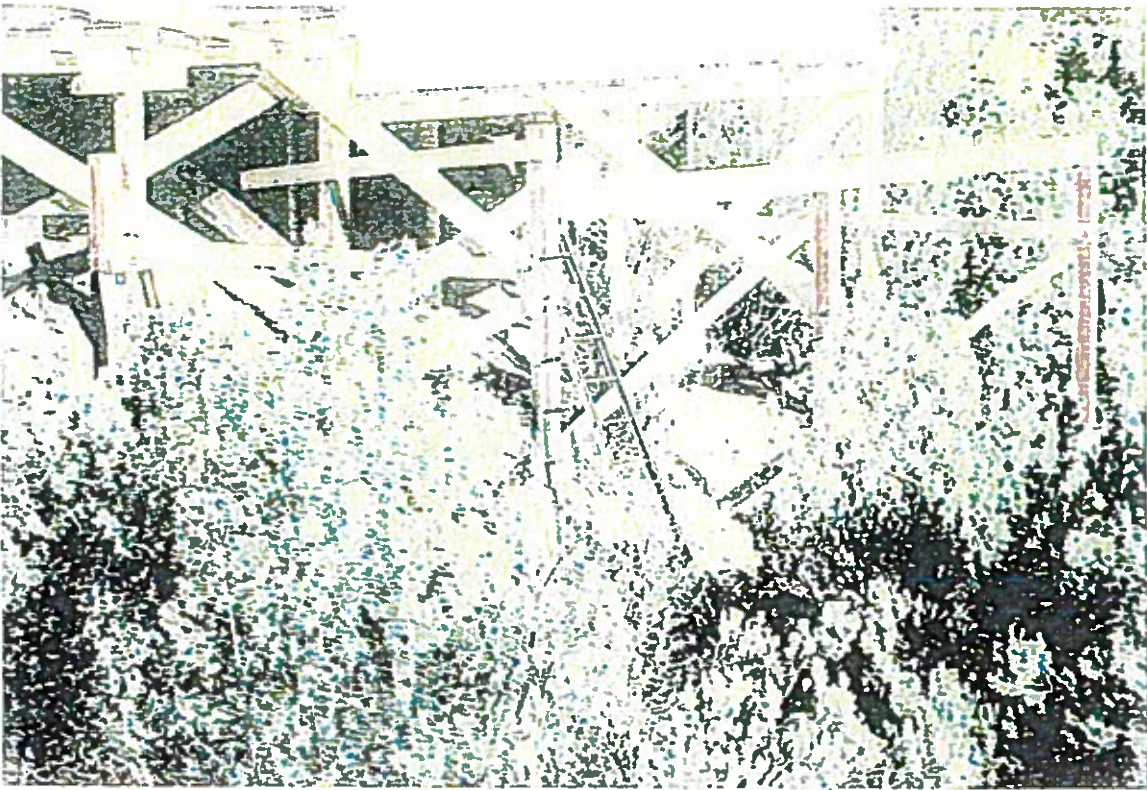
Please do not hesitate to contact our office should you have any questions or if we can be of further assistance.

James A. Hands, PE  
President

Encl: Report, Drawings







CONCRETE + POST CONSTRUCTION ON SLOPE WITH CROSS BRACING  
LADDERS SHOWN LEANING AGAINST POSTS (SOUTH SIDE) TO ADD  
STRUCTURAL INTEGRITY - WIDER FOOT PRINT WITH VERY LITTLE ADDED WEIGHT



OPTIONAL RETAINING WALL WOULD PREVENT SOIL EROSION AROUND  
CONCRETE BASE SECTIONS, HOWEVER - NO EVIDENCE OF EROSION HAS  
BEEN DETECTED FOLLOWING HARD RAINFALL SEPT 20. THEREFORE  
RETAINING WALL IS LIKELY NOT NECESSARY. WILL ADD OR OMIT  
WALL AS PER PANEL RECOMMENDATION.





TWO ADDITIONAL VIEWS OF SLOPE TERRAIN WITH CONCRETE  
PADS + POSTS. VISUAL CONCERNS WILL BE ADDRESSED AS PER  
NEIGHBORHOOD FEEDBACK I.E. PLANTING OF TREES,  
LATILLAS ADDED TO MASK CONSTRUCTION CROSS BRACING, ETC.



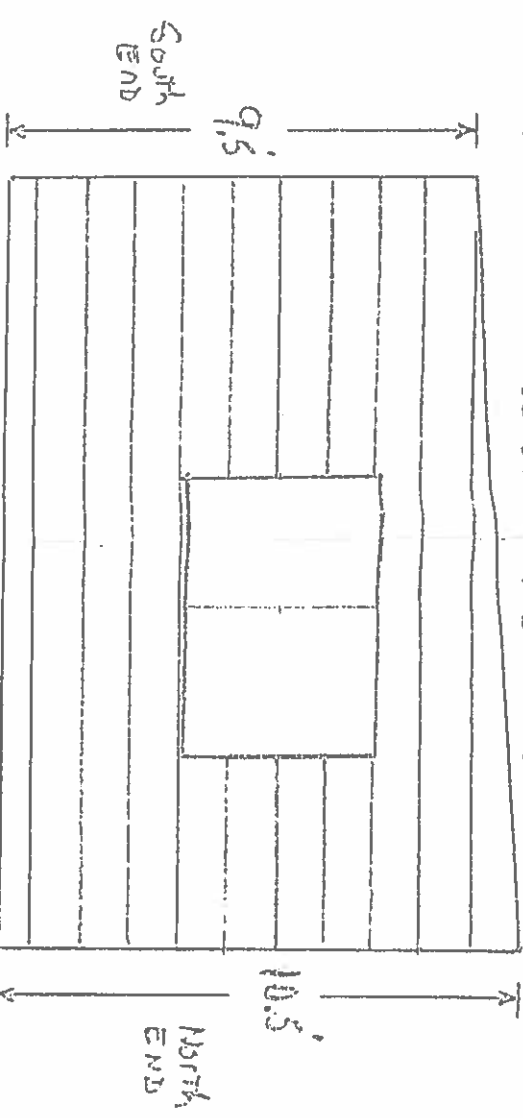
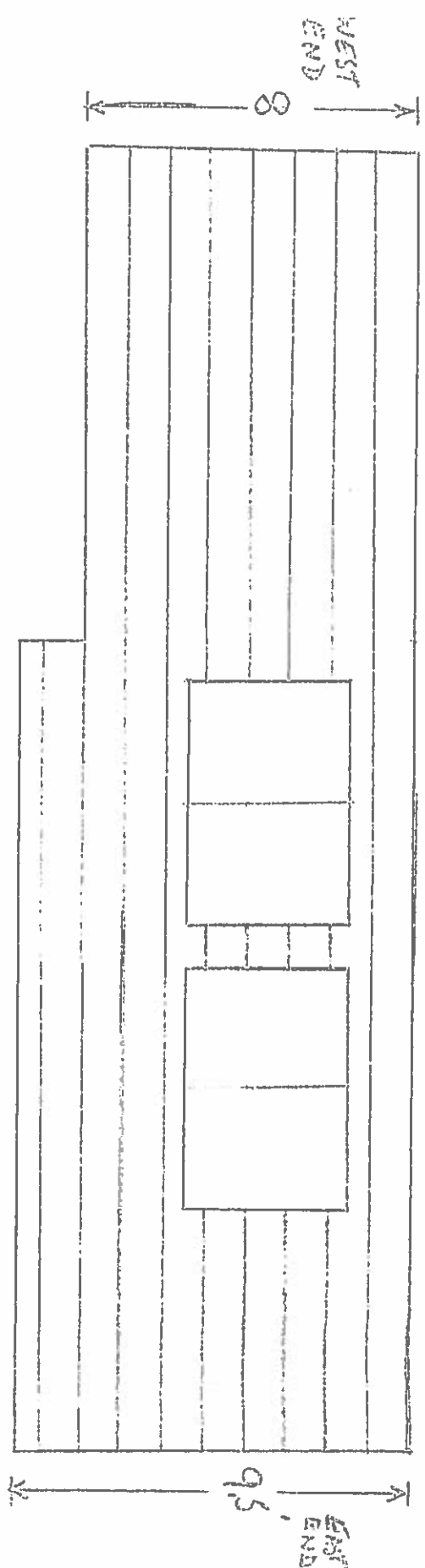


1 inch = 4 feet

Wall sections with windows

South Wall Shown from Outside

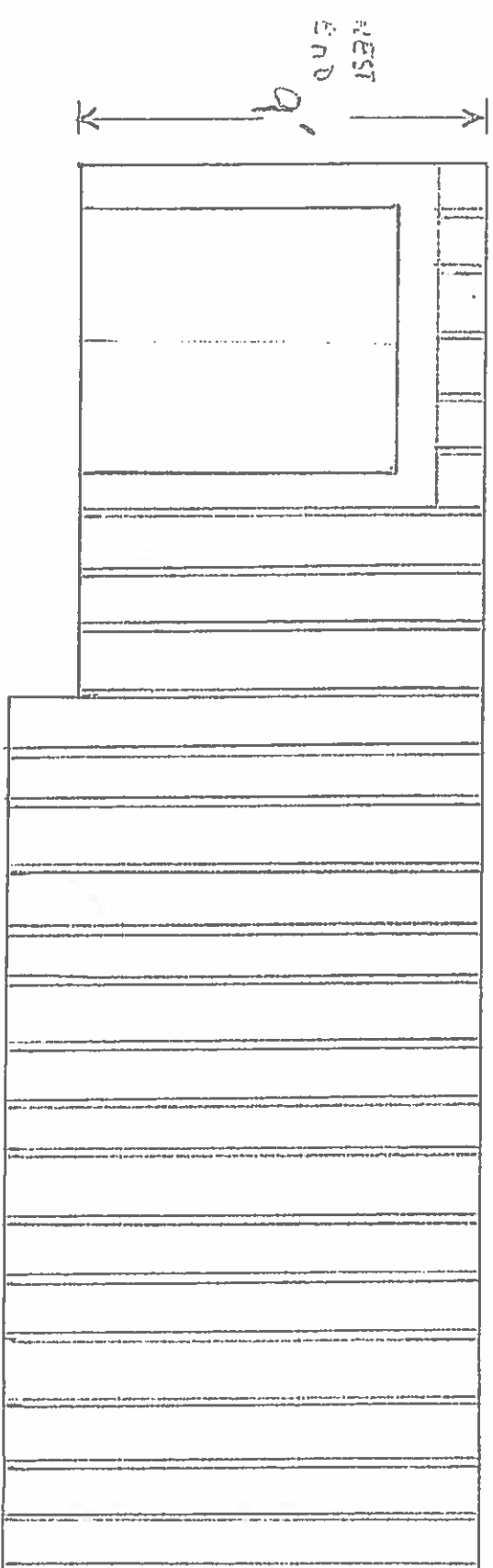
All 4 windows are operable sliders 4'x6' Framing: 2x6 16" o.c. for load bearing North and South wall sections 2x4 16" o.c. for non-load bearing East and West wall sections



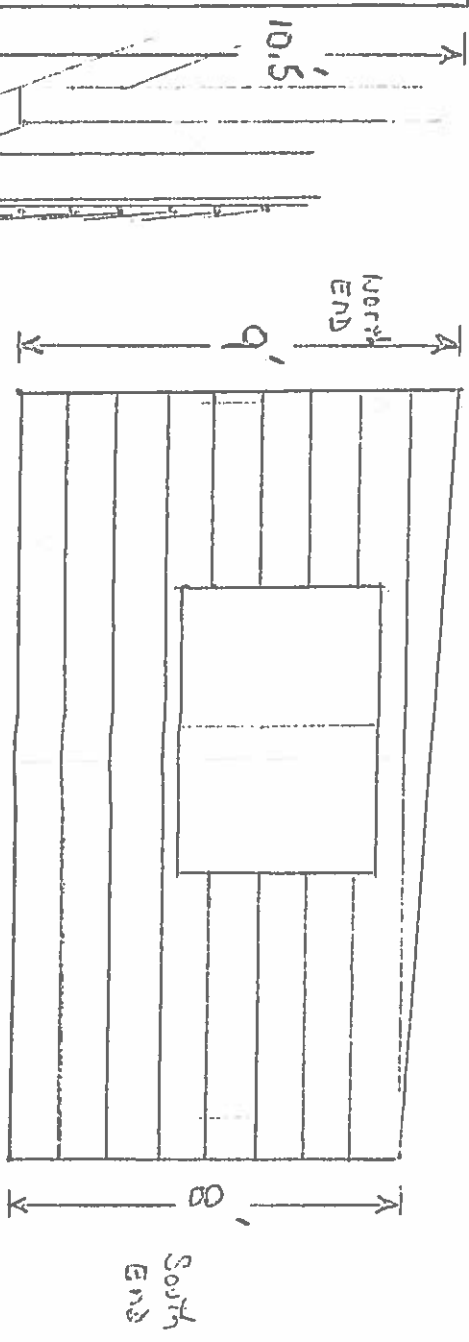
East wall shown from outside

North wall Shown from inside

Hardie board will be painted to match light sand color of main house



West wall shown from outside



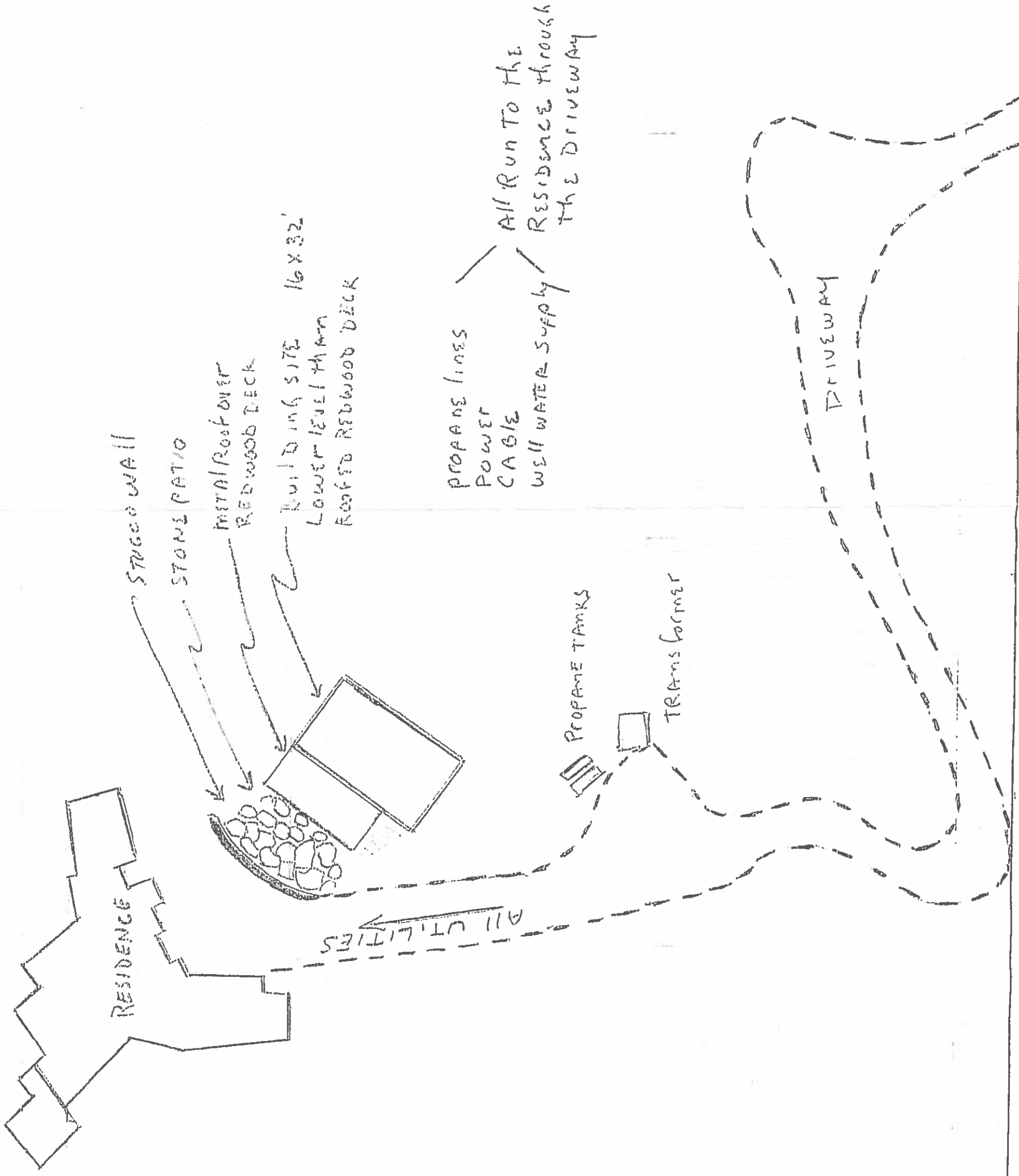
Double door: 2 each 3x7' custom doors

Exterior of all framed walls is wrapped with Tyvek moisture barrier and covered with Hardie clappers consists sections to drain

At this time no wiring, plumbing or insulation is planned

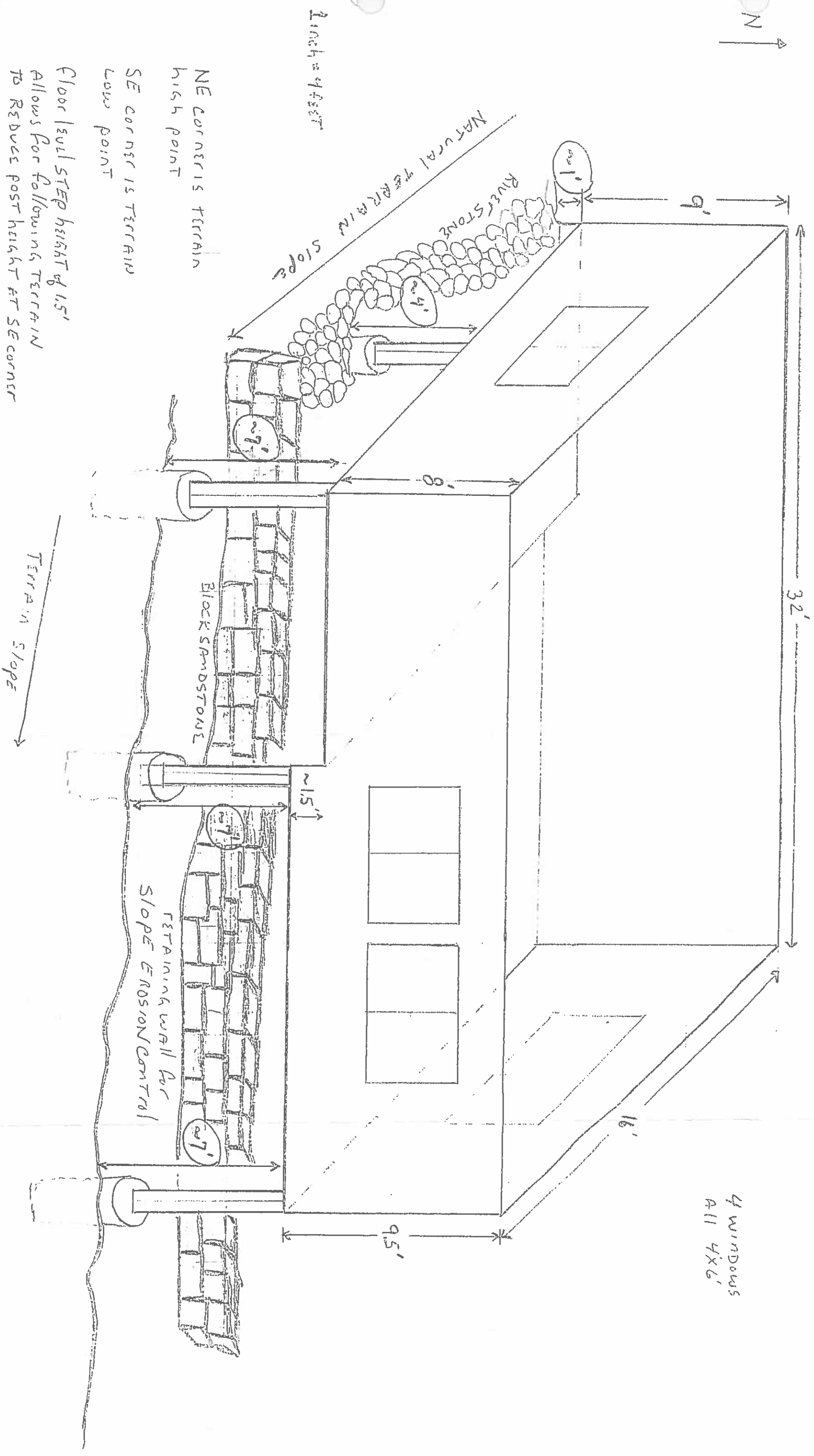
Hardie board  
Tyvek  
2x6 16" o.c.

PATRICK LYSAK  
11 VIA VECINO 87506  
512.364.3600



PATRICK WYBAGHT  
11 VIA VERINA 87506  
512.364.3600

WY SITUATION FOUNDATION SHOWN WITHOUT SOUTH & EAST SIDE DECK SUPPORT STRUCTURE

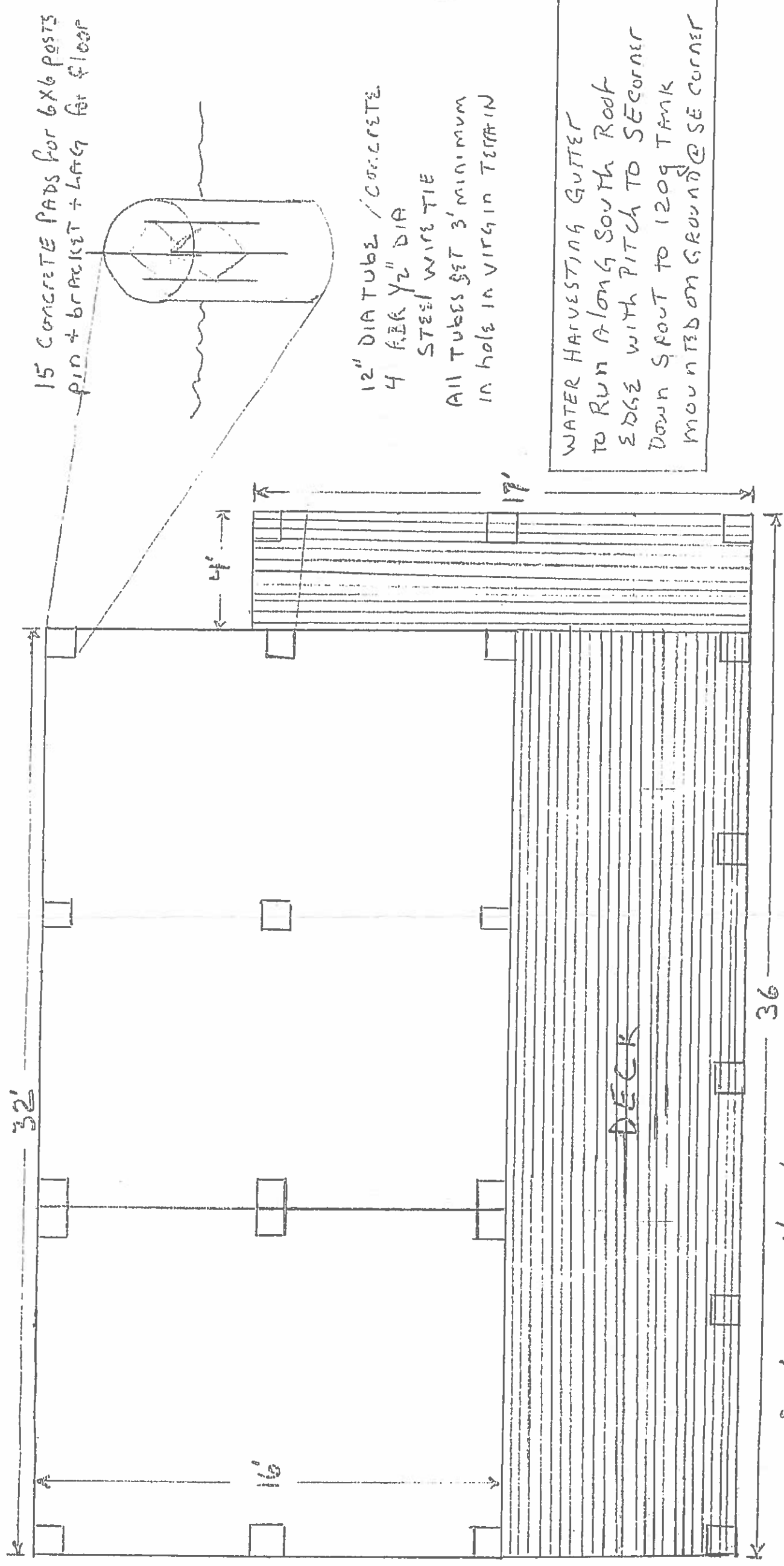


PATRICK LYSAGHT  
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# DRY STORAGE BUILDING FOUNDATION PLAN 32' X 16' WITH SUPPORT DECK ON SOUTH + EAST SIDE

1 inch = 4 feet

N ↑



12" DIA TUBES w/ RIGID  
+ CONCRETE INCLUDE  
1/2" X 12" PIN INTO  
6X6 POST AND  
FASTENING BRACKETS

POSTS ARE NOTCHED  
TO ACCEPT 2X12"  
LEDGER BOARDS  
FASTENED WITH 1/4"  
BOLTS/SCREWS

16' LONG 6X8 TIMBERS  
AS FLOOR BEAMS  
SPACED 4' O.C.  
RUN N-S

2X6 BLOCKING  
2' O.C.  
5/8" plywood floor

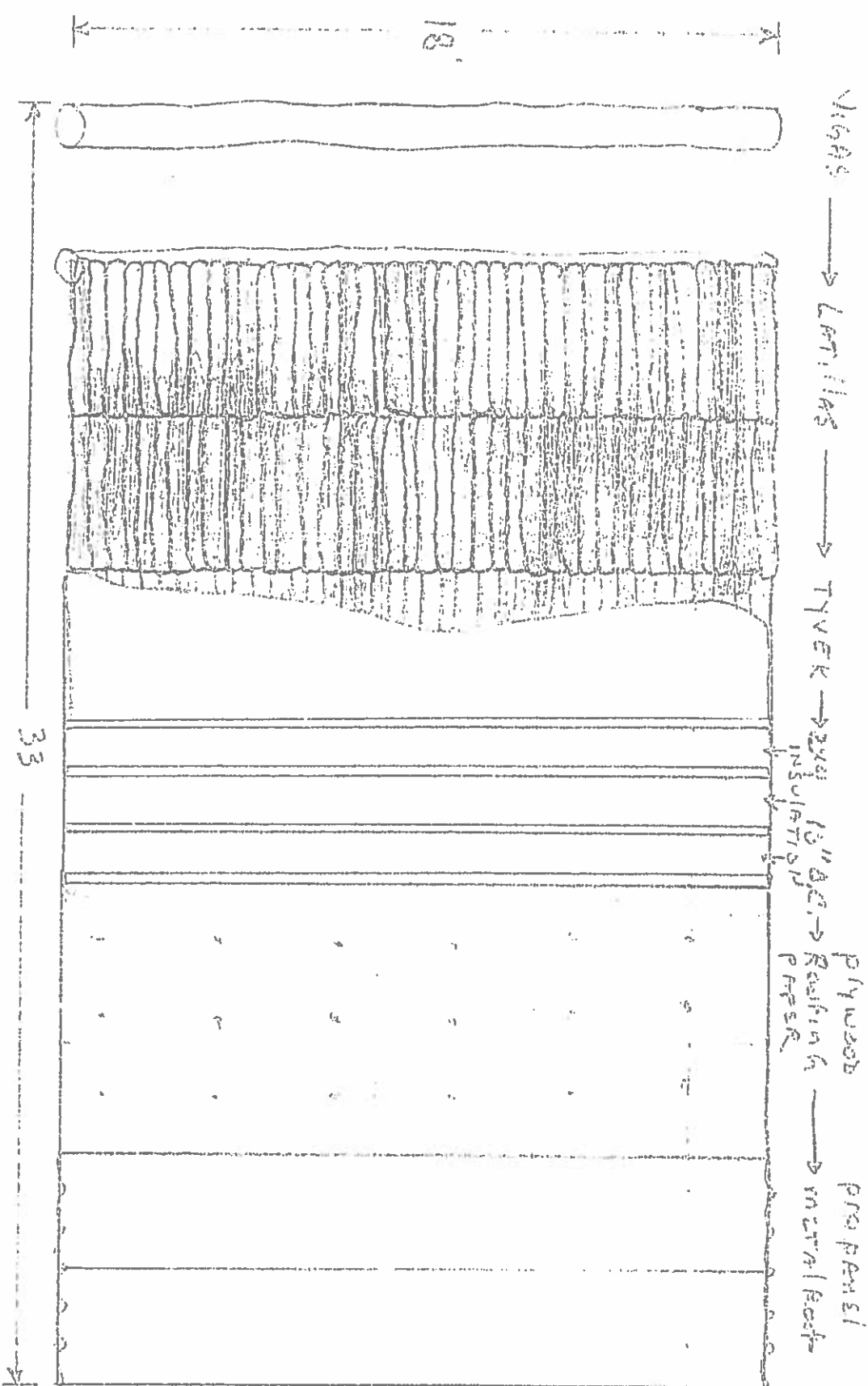
WATER HARVESTING GUTTER  
TO RUN ALONG SOUTH ROOF  
EDGE WITH PITCH TO SE CORNER  
DOWN SPOUT TO 120G TANK  
MOUNTED ON GROUND @ SE CORNER

DECK STRUCTURE SERVES AS OUTRIGGER FOR DRY STORAGE BUILDING

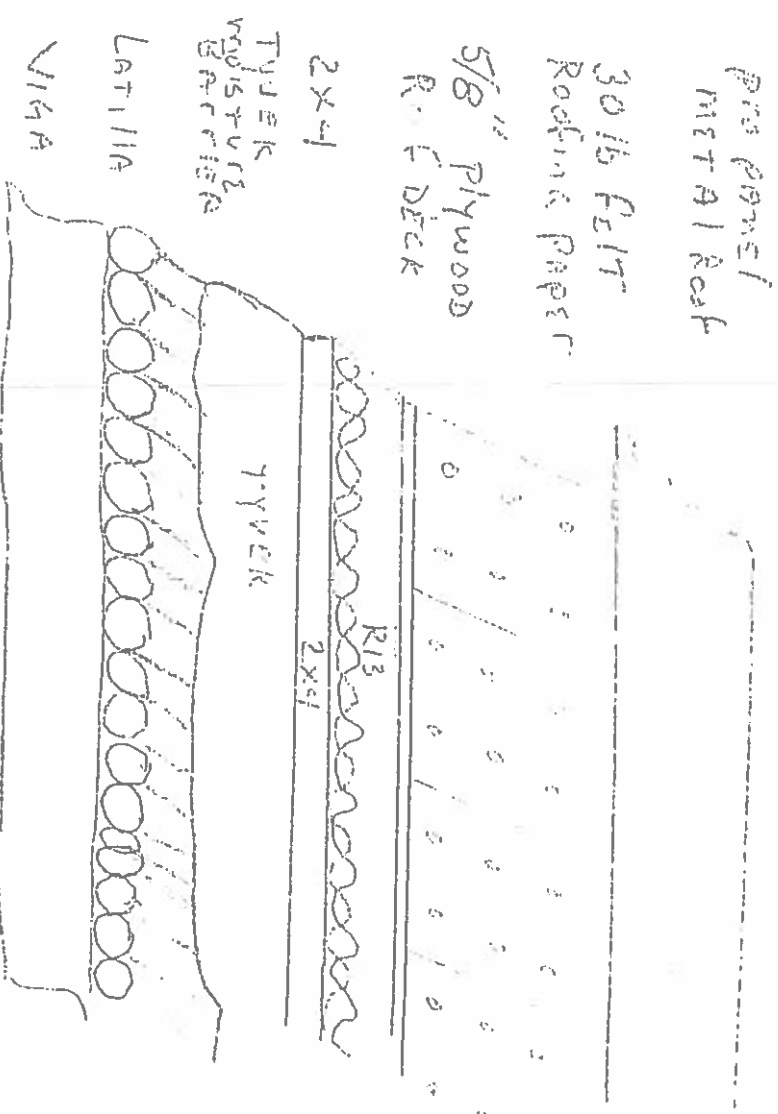
SOUTH DECK 8' X 32'  
EAST DECK 4' X 16'

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# Dry Storage Roof Plan



9 VIGAS 18' long, 10' DIA SPACED 4' O.C.  
 LATILLAS COVER SPAN BETWEEN VIGAS  
 TYVEK MOISTURE BARRIER OVER LATILLAS  
 2X4 20' LONG 16" OC PROVIDES OVERHANG  
 R13 BATT INSULATION 11 2X4 BRAMMING  
 5/8" THICK 4'X8' PLYWOOD DECK OVER BRAMMING  
 30 LB ROLLS ROOFING FELT PAPER OVER PLYWOOD  
 PROPOSED METAL ROOFING



1 inch = 14 FEET

PATRICK LYSHAGHT  
 11 VIA VERDE 87506  
 512.364.3600







EXHIBIT

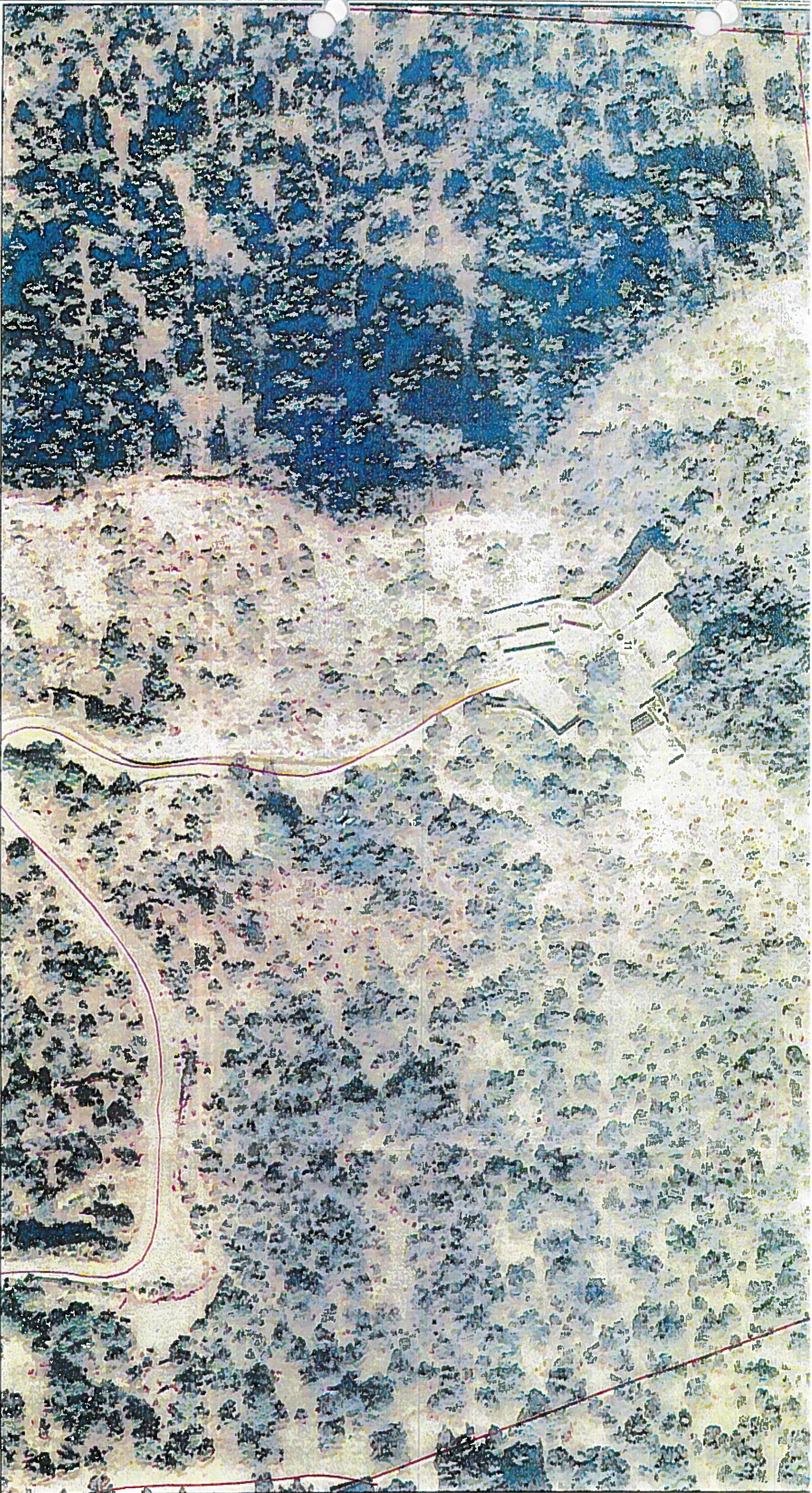
12.

39.









# Legend

— ROADS

— DRIVEWAYS

PARCELS

1:600

1 inch represents 50 feet



2008 Imagery  
2 FOOT CONTOURS

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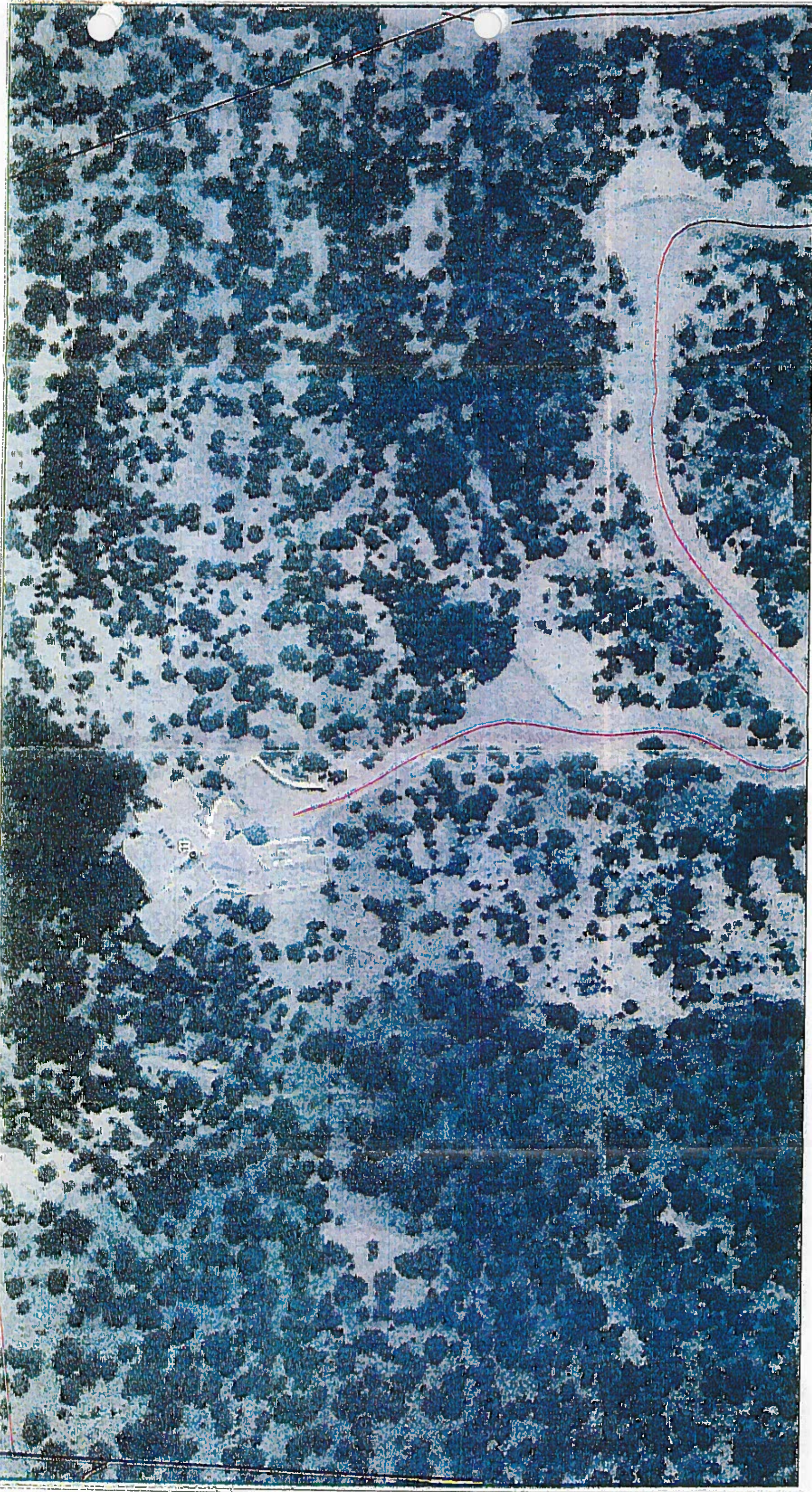
March 11, 2015

EXHIBIT

13.

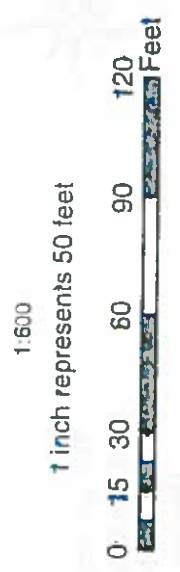






**Legend**

- ROADS
- DRIVEWAYS
- PARCELS



1982 Imagery  
2 FOOT CONTOURS

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March 11, 2015





