

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 22, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Enforcement Action Regarding Violations on Unencumbered Public Lands, Unauthorized Land Clearing, Construction of Housing Structures and Removal of Ohia Timber by The Village Green Society/Hawaii's Volcano Circus, Kehena, Puna, Hawaii; TMK (3) 1-2-009:015 portion.

PURPOSE:

Enforcement action regarding violation of Hawaii Revised Statutes and Hawaii Administrative Rules relating to unencumbered public lands, unauthorized land clearing, construction of housing structures and removal of ohia timber by The Village Green Society Ltd./Hawaii's Volcano Circus Ltd. and/or agents acting on their behalf occurring on State unencumbered lands adjacent to the Kalapana Seaview Estates Subdivision, further identified by tax map key (3) 1-2-009:015 and shown as Exhibit A.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes (HRS), as amended
Section 13-221-28 & -46, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

In May 1997 Mr. Graham Ellis, on behalf of the Hawaii's Volcano Circus (HVC), a Hawaii non-profit corporation, contacted the Hawaii District Land Office (HDLO) to inquire about leasing unencumbered State land identified by TMK: (3) 1-2-009: 015 (Parcel 15) for educational and recreational purposes. HVC prepared and published its Final Environmental Assessment for the proposed use of State lands in the Environmental Reporter in October 1998 with a Finding of

no Significant Impact. HVC submitted its application materials to HDLO in November 1998. A memo dated December 29, 1998 transmitted a draft Land Board submittal for the proposed lease to HVC. For reasons that are not clear from the file, the request for a lease was never taken to the Board.

In 2010, HVC submitted another request for a direct lease of same parcel of State land but for a revised use.¹ However, during the intervening years, HVC or persons acting on their behalf constructed several unpermitted structures on Parcel 15. Site inspections conducted in February and October 2010 showed these small bungalow-type structures were built along footpaths extending from property owned by The Village Green Society Ltd. (VGS), a Hawaii nonprofit corporation whose purpose is to hold title to land, collect income therefrom and turn over funds to the HVC. The roadways and foot trails within the VGS parcel, designated as Tax Map Key: (3) 1-2-009:034 (Parcel 34), loop through the abutting portion of Parcel 15, and terminate again in the VGS parcel 34. Based on materials HVC submitted to the County Planning Department in conjunction with their Special Permit Application, it appears that other structures were built in the setback area and/or encroach onto Parcel 15. At the time of the inspection, HDLO staff advised Mr. Ellis that the structures would need to be removed, and that VGS being the adjacent landowner, would be required to apply for a right-of-entry from the State before conducting any demolition activity.

On November 18, 2010, a right-of-entry authorized VGS to enter onto the adjacent unencumbered State lands for the purpose of removing all illegal structures. The right-of-entry provided VGS until December 31, 2010 to remove the buildings and structures. In January 2011, Mr. Ellis informed staff that the structures had been removed. During the subsequent inspection on January 18, 2011, Mr. Ellis pointed out several locations where structures had been removed and assured staff that all the structures on State land were gone.

In April 2014, an investigation of continued encroachment onto State lands was initiated by the Division of Conservation and Resource Enforcement (DOCARE) East Hawaii District Branch as a result of complaints of continued possible encroachment on State land adjacent to the VGS property within the Kalapana Sea View Estates Subdivision.

A more comprehensive site inspection of the property was conducted on May 19, 2014 by DOCARE and Land Division staff. This inspection confirms the report of continued unauthorized activities by the VGS/HVC. The inspection revealed at least eight (8) housing structures within the unencumbered State land (Map and Photos attached as Exhibit B). The investigation report from DOCARE indicated that the housing units were being rented out by Mr. Ellis. In addition to the housing structures, a large area of Ohia forest was cleared out for a makeshift corral.

¹ A revised draft Environmental Assessment was submitted. However, it contained material from the previous DEA and was determined to be outdated. The draft EA sent back to the applicant for revision.

Section 13-221-28(d), Hawaii Administrative Rules (HAR), states: "No person shall destroy, dig, remove, or possess any tree, shrub or other plant, except for noxious weeds, as defined in Chapter 4-6B, HAR, within the premises." The cutting and removal of ohia timber within the State property is considered a violation of this administrative rule.

Further, Section 13-221-46² prohibits commercial activities on State land without authorization. The alleged renting out of the housing structures is considered a violation of this administrative rule.

As a result of the initial inspection revealing the existence of unauthorized structures on State land and the ensuing right-of-entry for their removal, along with the subsequent inspection showing not only these structures still present, but possible additional structures, there appears to be a blatant disregard for compliance with State laws and regulations by the Hawaii's Volcano Circus and Mr. Graham Ellis. As such, staff is recommending the Board issue fines in the amount of five thousand dollars (\$5,000) as allowed under §171-6 of the Hawaii Revised Statutes for each structure, roadway and the corral area on or encroaching onto State land. Also, staff is recommending the Board require HVC to reimburse the department for administrative costs and expenses incurred as allowed under §171-6(15), HRS.

In addition, staff is recommending the removal of all unauthorized structures and restoration of all State lands including structure sights, paths, roadways and corrals.

RECOMMENDATION:

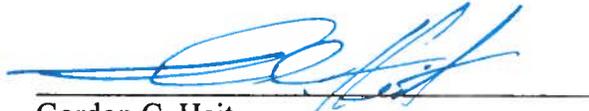
That the Board:

1. Find the Village Green Society/Hawaii's Volcano Circus (VGS/HVC) violated Sections 13-221-28(d) and 13-228-46, Hawaii Administrative Rules;
2. Issue fines to VGS/HVC in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00), (\$5,000 for each of the eight unauthorized structures, the corral and roadway within the State unencumbered lands) pursuant to HRS § 171-6(15)(A);
3. Find VGS/HVC liable for administrative costs and expenses in the amount of \$3,743.00 incurred by the department pursuant to HRS § 171-6(15)(D);

² §13-221-46 HAR Business operations. "No person shall solicit any business except in accordance with a permit, contract, license, lease, concession, or other written agreement with the Board or its authorized representative".

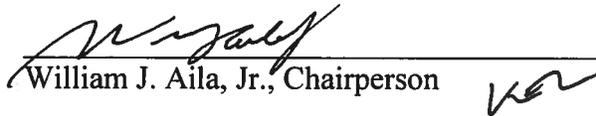
4. Require VGS/HVC to remove any and all structures on State property and restore the land to the satisfaction of the department within 90 days from the date of this Board action; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



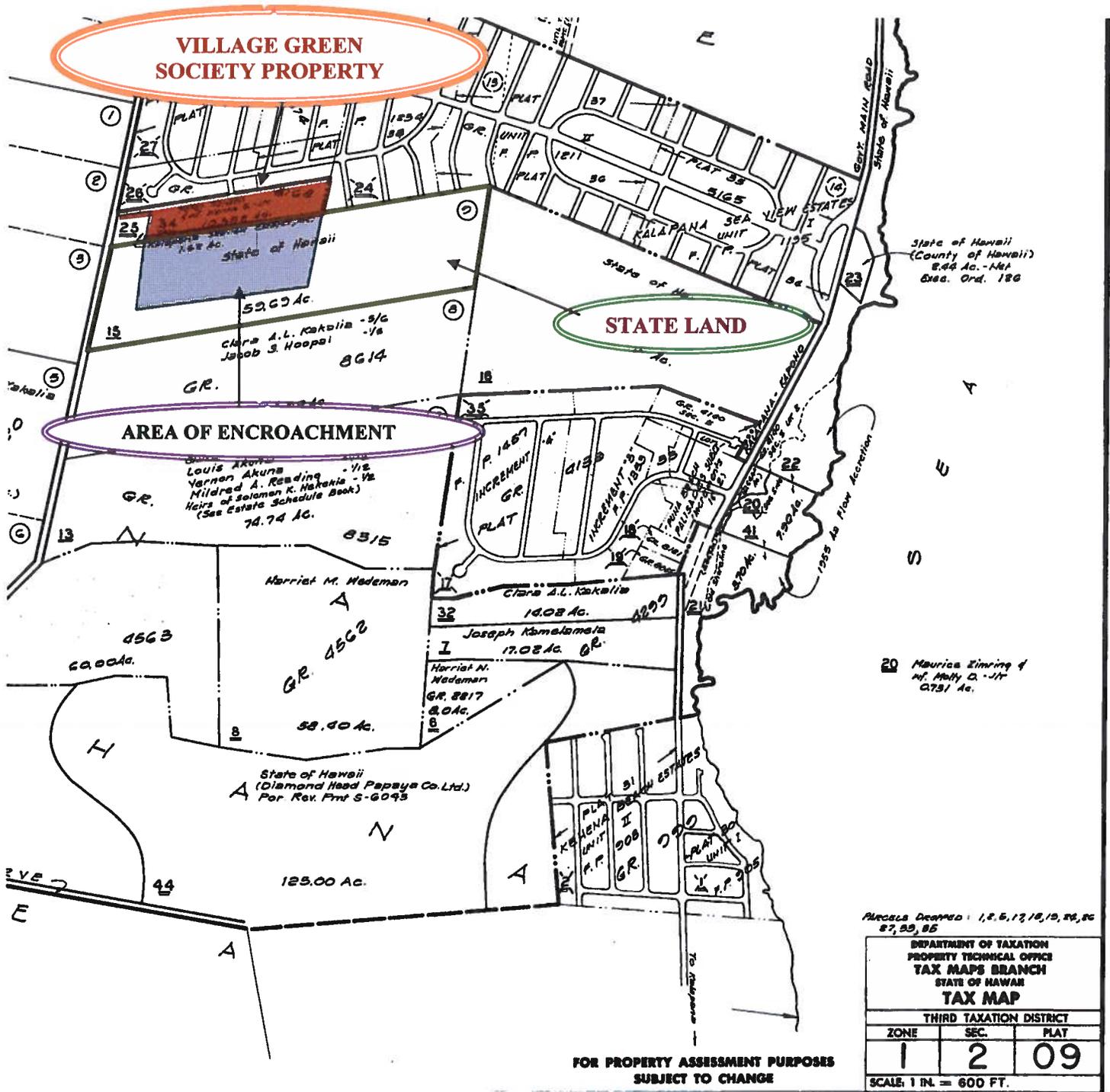
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



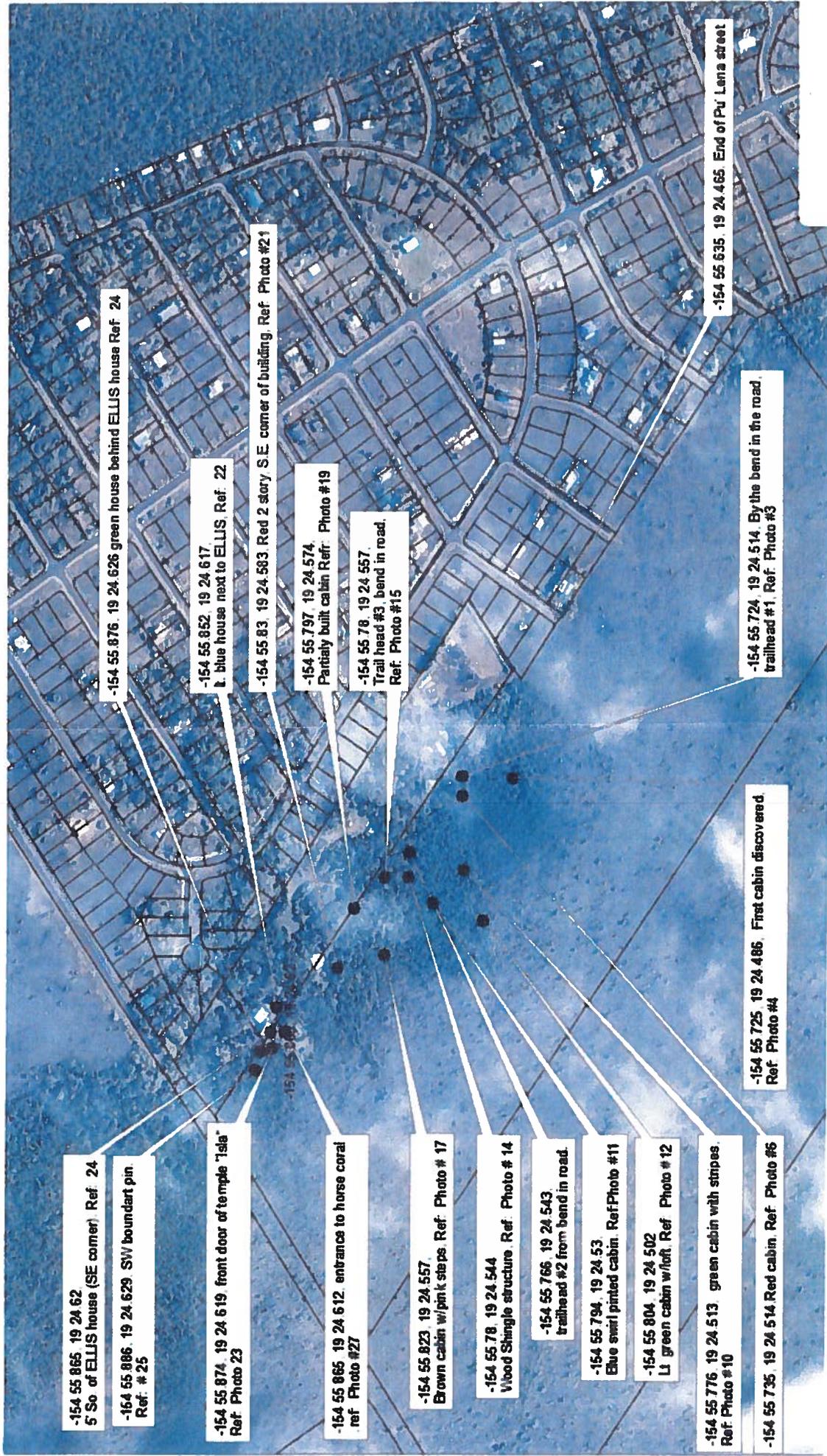
William J. Aila, Jr., Chairperson

TMK: 3RD/1-2-09:15



KALAPANA SEA VIEW ESTATES

EXHIBIT A



-154 55 865 19 24 62
5' So of ELLIS house (SE corner) Ref. 24

-154 55 886 19 24 629 SW boundart pin
Ref. # 25

-154 55 874 19 24 619 front door of temple "Isia"
Ref. Photo 23

-154 55 965 19 24 612 entrances to horse coral
ref. Photo #27

-154 55 823 19 24 557
Brown cabin w/pink steps. Ref. Photo # 17

-154 55 78 19 24 544
Wood Shingle structure. Ref. Photo # 14

-154 55 766 19 24 543
trailhead #2 from bend in road.

-154 55 794 19 24 53
Blue swirl panted cabin. Ref. Photo #11

-154 55 804 19 24 502
LI green cabin w/loft Ref. Photo #12

-154 55 776 19 24 513 green cabin with stripes.
Ref. Photo #10

-154 55 735 19 24 514 Red cabin. Ref. Photo #6

-154 55 876 19 24 626 green house behind ELLIS house Ref. 24

-154 55 852 19 24 617
I. blue house next to ELLIS Ref. 22

-154 55 83 19 24 583 Red 2 story S.E. corner of building. Ref. Photo #21

-154 55 797 19 24 574
Partially built cabin Refr. Photo #19

-154 55 78 19 24 557
Trail head #3 bend in road.
Ref. Photo #15

-154 55 724 19 24 514. By the bend in the road.
trailhead #1. Ref. Photo #3

-154 55 725 19 24 486. First cabin discovered.
Ref. Photo #4

-154 55 635 19 24 465. End of Pul Lena street

EXHIBIT B



EXHIBIT B

Photo #: 3



EXHIBIT B

Photo #: 4



EXHIBIT B

Photo #: 6



EXHIBIT B

Photo #: /0

EXHIBIT B

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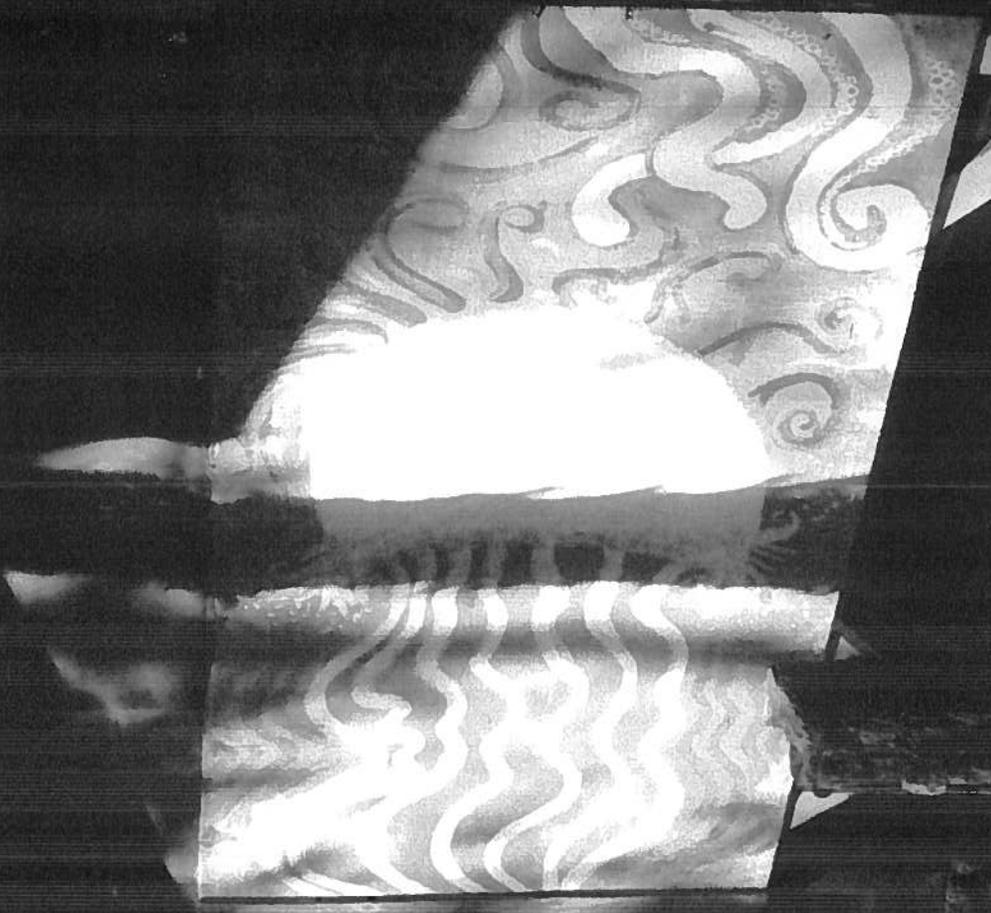




EXHIBIT B

Photo #: /入

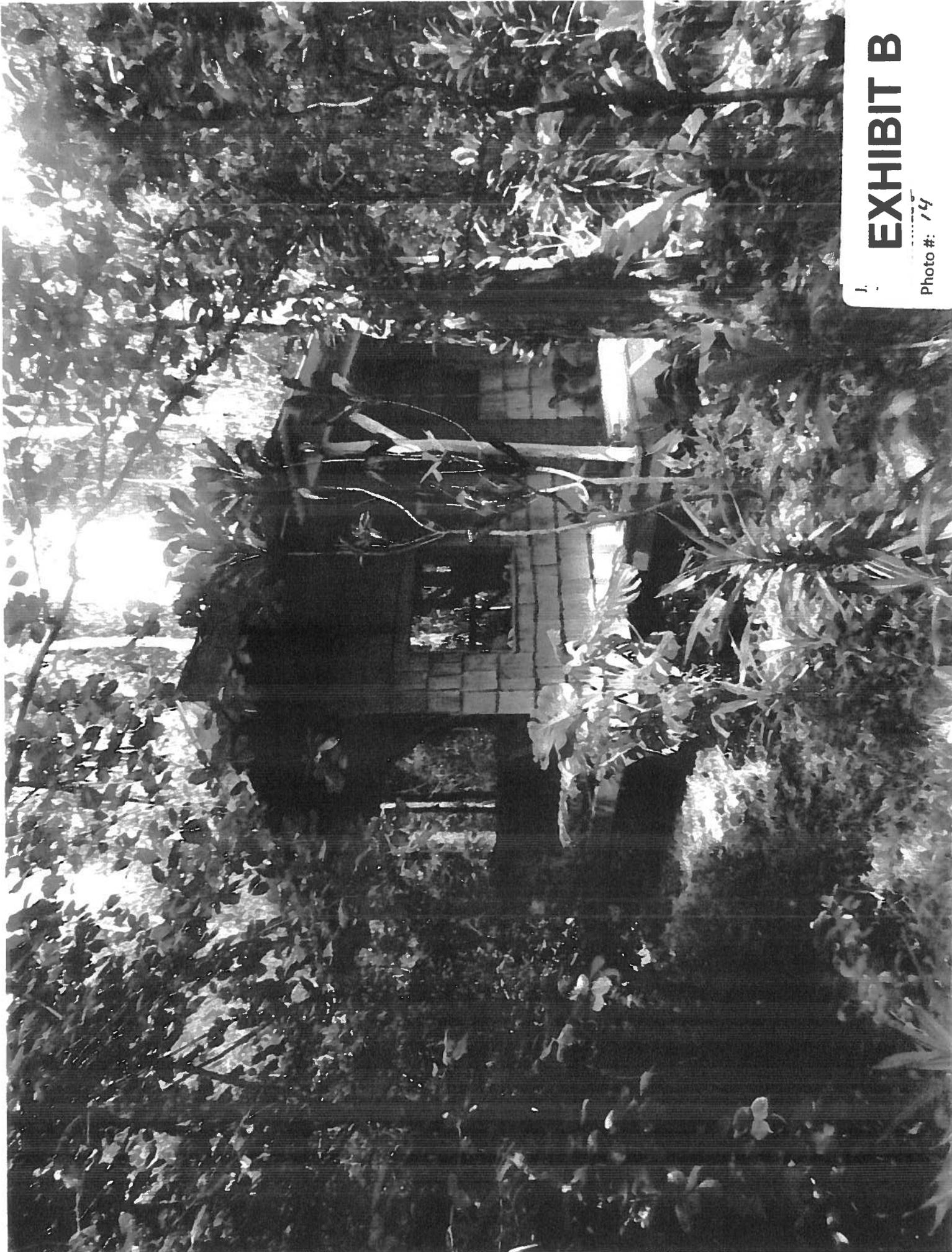


EXHIBIT B

Photo #: 74

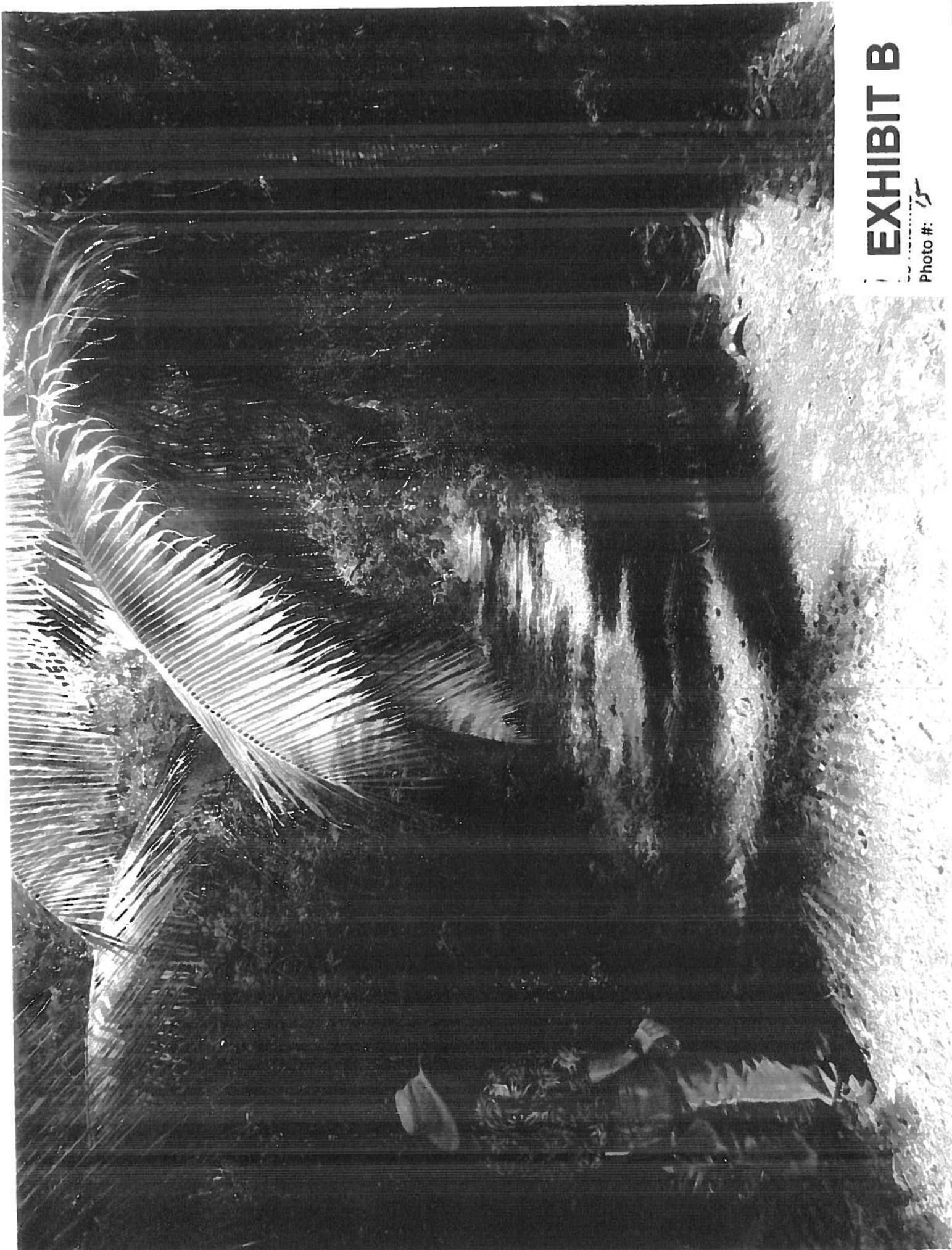


EXHIBIT B

Photo #: 7

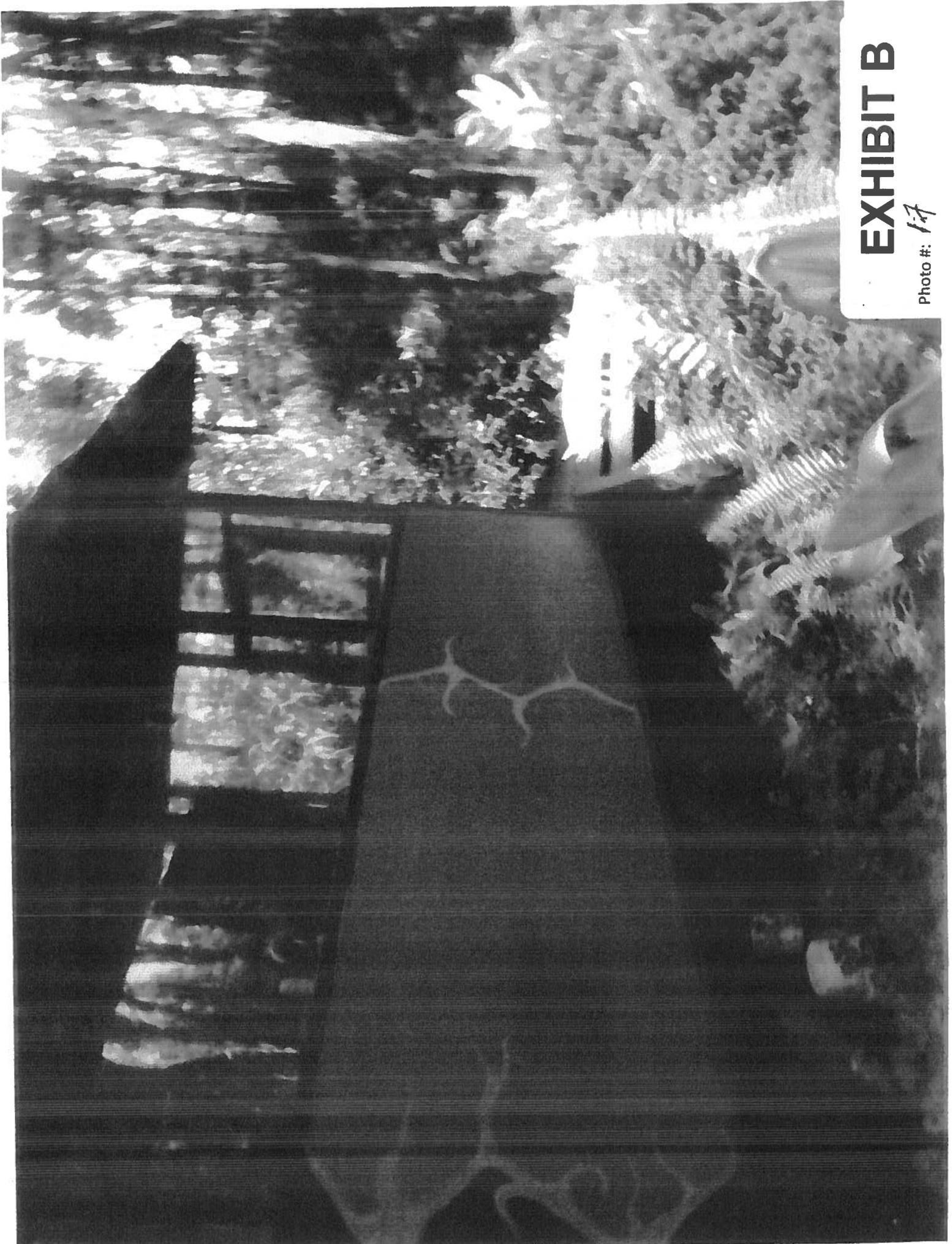


EXHIBIT B

Photo #: *17*



EXHIBIT B

Photo #: 19

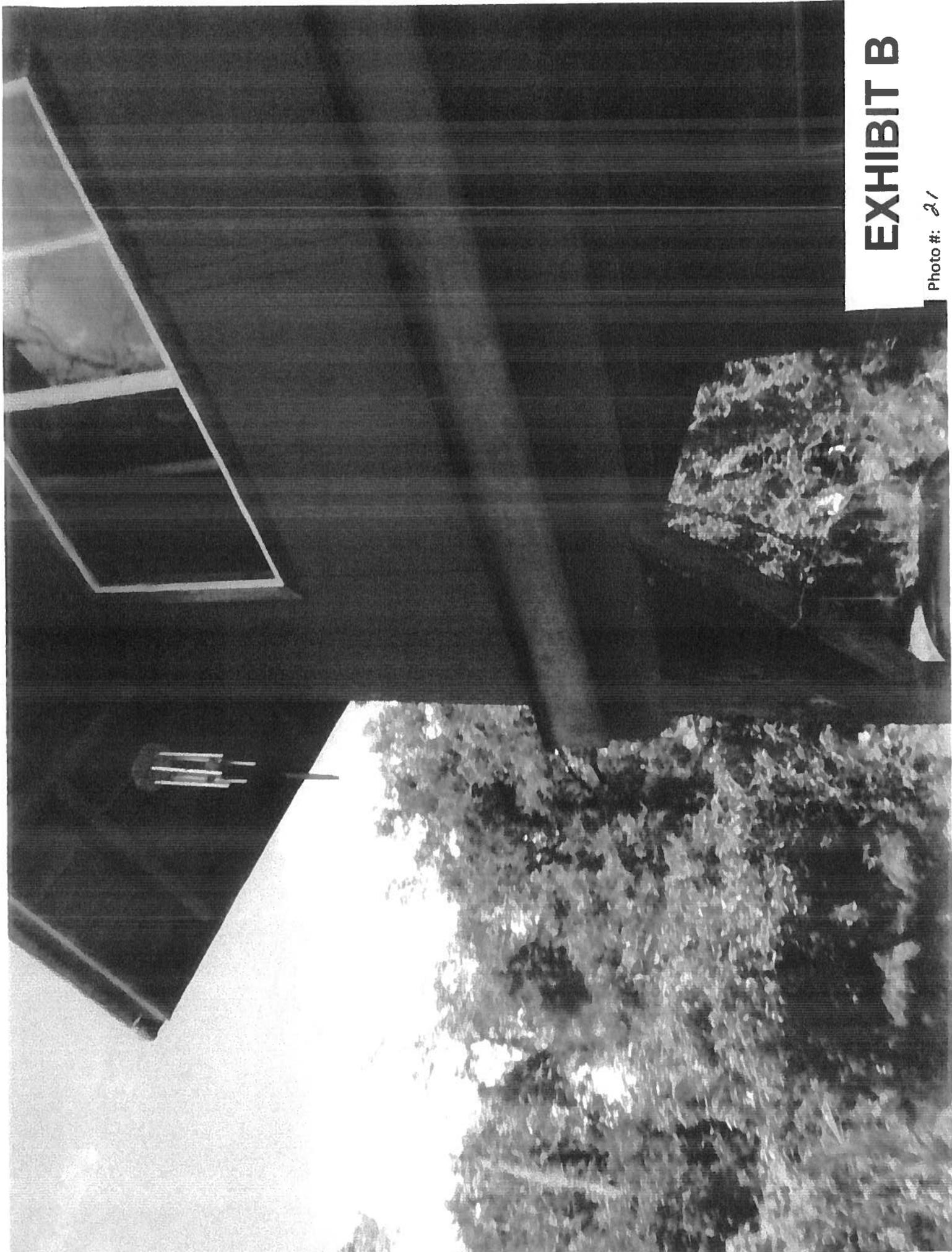


EXHIBIT B

Photo #: 21



EXHIBIT B

Photo #: 22

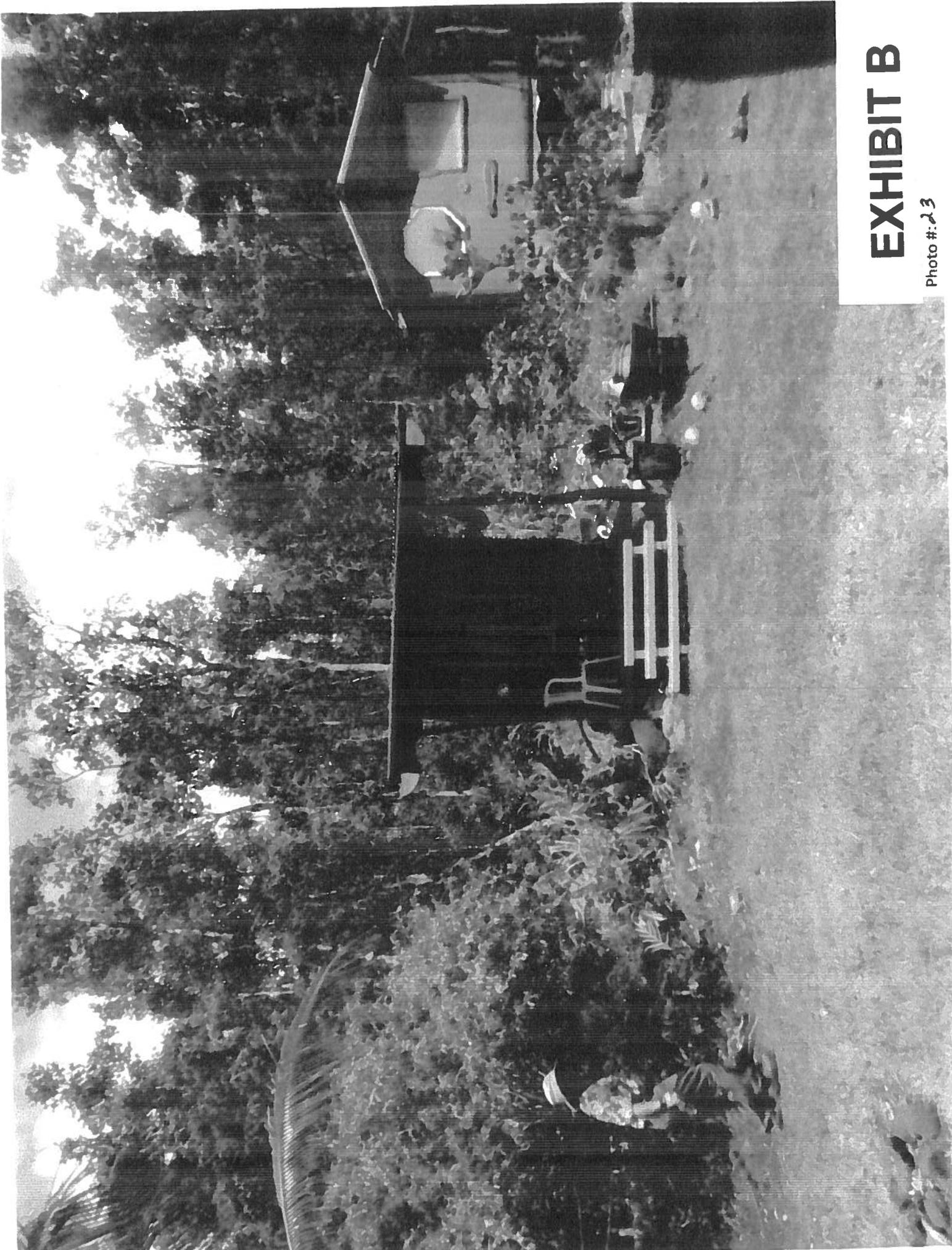


EXHIBIT B

Photo #: 23

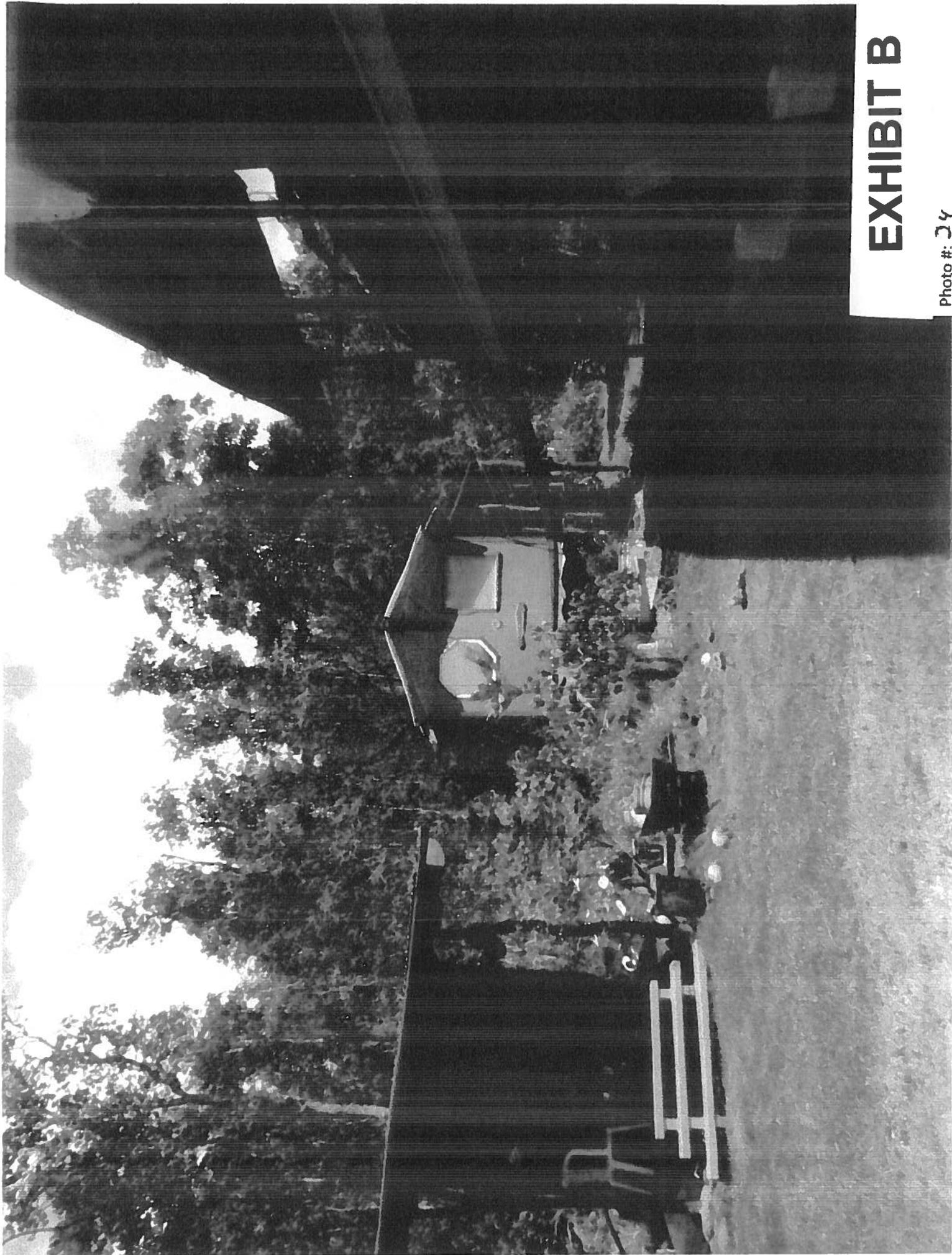


EXHIBIT B

Photo #: 34



EXHIBIT B

Photo #: 25



EXHIBIT B

Photo #: 27