

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Wallace Nolen, Complainant

v.

Capitol Plaza Corporation &
City of Montpelier, Respondents

)
)
) HRC Complaint No. PA14-0023
)
)

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

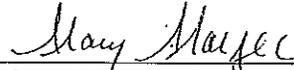
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Capitol Plaza Corporation & City of Montpelier; the Respondents, illegally discriminated against Wallace Nolen, the Complainant, in violation of Vermont's Fair Housing and Public Accommodations Act on the grounds of disability.

Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Chuck Kletecka	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mercedes Mack	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>

Entry: Reasonable Grounds Motion failed

Dated at Barre, Vermont, this 4th, day of December 2014.

BY: HUMAN RIGHTS COMMISSION



Mary Marzec-Gerrior, Chair



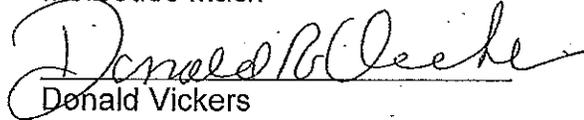
Nathan Besio



Mary Brodsky



Mercedes Mack



Donald Vickers



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Wallace Nolen,
Complainant

V.

VHRC Case PA14-0023

Capitol Plaza Corporation &
City of Montpelier,
Respondents

Investigative Determination

Statements of Parties

On May 1, 2014, the Vermont Human Rights Commission (VHRC) received a notarized complaint from Mr. Wallace Nolen alleging that the Capitol Plaza Corporation (Plaza) and the City of Montpelier (City) discriminated against him, a person with ambulatory and visual disabilities, in the following manner:

1. After and/or during snowfalls on February 18 and 19, 2014 snow was plowed into accessible parking spaces leased by the City from the Plaza, rendering the accessible spaces unusable until the snow was removed on or about February 25, 2014.¹
2. Mr. Nolen was unable to use the accessible spaces because of accumulated snow plowed into the parking spaces.

¹ Mr. Nolen speculated in his complaint that much of the snow in the accessible parking spaces was removed from other areas of the parking lot and deposited in the accessible spaces. Mr. Nolen provided pictures taken at approximately 4:45 PM on 2/22/14, which show the snow piles referenced in his complaint.

In addition to his initial statement set forth in his VHRC Complaint, this investigation asked Mr. Nolen if he attempted to use the parking spaces that are depicted in his photos and if those parking spaces were the only ones available for his use on that day. His response was:

It was my intent on the date/time in question to use the ATM machine at the Northside [sic] Savings Bank. I needed cash and I felt that it would be the most convenient even though I might have had to pay a small service fee. The only space I could find was not a handicapped space. . . . Other than the handicapped spaces filled with snow, the one closest to the ATM was occupied by a vehicle that did not have any handicapped placard or plate on it. Given the number of passes I made by going around the building to Taylor Street right onto State St and right again back into the parking lot together with the high level of traffic, it was much longer than the time that supposedly is to be limited in the parking spaces immediately in front of the ATM. The space where I parked was on the side nearest the church/fence

On May 14, 2014, VHRC received a response from Brian Cain for the Plaza.² In his response³, he stated:

1. The Plaza is the owner of the building and grounds at 100 State Street. (The address of the parking spaces that are the subject of this complaint).
2. The City is the operator of the lot and is responsible for salting and sanding the lot while the Plaza is responsible for plowing the lot.
3. Accumulated snow only exists in the back section of the parking lot, adjacent to the railroad tracks.
4. The private company that the Plaza hires to plow snow, Green Mountain Paving, told him that their policy is to

² The letter does not indicate what Mr. Cain's position is at the Capitol Plaza.

³ On May 21, 2014, attorney Heather Hammond, also submitted a response for the Plaza. The response written by her was in accord with the response submitted a week earlier by Mr. Cain.

always "back-drag" all snow from the accessible parking spaces and remove the snow completely from the parking area to the back of the lot.

5. On February 18, 19, and 20, 2014 Green Mountain plowed the parking lot, including the accessible parking spaces in accordance with its regular procedures - - that is all of the snow in the lot was "back dragged" and moved to snow piles at the back of the lot.
6. After receiving a complaint⁴ from Mr. Nolen, Plaza officials inspected the accessible space and observed "only a small snow-covered space that would not have prevented anyone from parking there and safely exiting a vehicle."
7. In a timeline provided by Mr. Cain, he stated that in the afternoon on February 22, 2014, a staff member drove past the accessible space closest to the fence (see appendix for photos) and noticed that there was minimal snow in the actual space and not enough to block anyone from using the space.

On or about May 20, 2014, the City, by its attorney responded to Mr. Nolen's complaint stating:

1. The City leases 50 spaces from the Plaza in the eastern corner of the parking lot at 100 State Street including the designated accessible parking spaces.
2. The Plaza is responsible for snowplowing and the City salts, sands and occasionally removes accumulated snow.
3. On February 21, 2014, Mr. Nolen contacted the City stating that snow had been pushed into the accessible parking space. Mr. Nolen was told snow removal⁵ had been delayed due to the snowstorm.
4. The Plaza manager was informed of snow being plowed into the accessible parking spaces. The manager stated that he would talk to his contractor. The snow was removed by 6 AM on February, 24, 2014.

⁴ The Plaza does not state the dates of Mr. Nolen's complaint referred to here or when they inspected the parking space, except as indicated in section, #7 of its response.

⁵ Snow removal means hauling away excess snow piles that have accumulated.

VHRC Investigation⁶

PHOTOS - Mr. Nolen provided this investigation with photos taken on February 22, 1024 (see appendix.) This investigation visited the site this fall and took photos to help determine, by comparison, how much snow was actually in the accessible parking space during the February 2014 time period that is the subject of this complaint (see appendix.)

WEATHER - The weather during the time period from February 18 - 24, 2014 included some snowfall. The actual amount of snow is somewhat unclear as can be seen in the chart below. However, it is certain that there was snowfall during the time period related to this complaint.⁷

Source of information	2/18	2/19	2/20	2/21	2/22	2/23	2/24
Public works work order	2"	4"	3"			0	<1"
US Climate data (web site) ⁸	.28"	.10	trace	.50	0	0	0
AccuWeather Forecasts (web site)	2.8"	1.5"	0	.50 (Rain)	0	0	0

⁶ Some of the responses by the respondents and some of the documentation provided by both parties are related to an alleged slip and fall by Mr. Nolen on February 22, 2014. This investigation is not investigating that matter and does not address it.

⁷ This investigation does not believe that the actual amount or the actual day the snow fell impacts the legal analysis in this situation. This information is provided in this report because both respondents presented information about the snowfall and suggested that the weather conditions affected the time it took to remove the snow.

⁸ These are inches in precipitation not necessarily snowfall.

PARKING SPACES –

This investigation measured the parking spaces involved in this complaint. The spaces meet the ADA required width of 8' for the parking space and an adjacent 5' aisle. There appears to be no length requirement under the ADA. However, an internet search found that the normal length of a parking space is 20 - 22 feet. This space was only 18feet deep. This is relevant because it means that any snow accumulation at the front of this parking space would further minimize the usable space for parking.

PLOWING PRACTICE –

Based on documentation submitted to this investigation the Plaza is responsible for the initial snow plowing that is needed because of a snow event. The City is responsible for the removal (hauling) of excess snow piles created by regular plowing events. The documents indicate that hauling would be used for snow that accumulates at the back of the parking lot adjacent to the railroad tracks. If the Plaza's private snow plowing company always plowed in the manner stated (back dragging), there never would be an accumulation that needed to be removed from the accessible space unless someone other than the Plaza's plow person was responsible for creating the snow pile.⁹

⁹ The Plaza's attorney made the following statement to this investigation regarding the snow accumulation in the accessible space, "There are a variety of ways that the snow could have gotten into that space – it could have been the plow company that plows that lot, but it also could have been put there by the City employees who were plowing the sidewalk just outside of that space. As we discussed, sometimes the City would push snow from the sidewalk against that railing."

Legal Analysis

Title 9 VSA § 4500. Legislative intent

- (a) The provisions of this chapter establishing legal standards, duties and requirements with respect to persons with disabilities in places of public accommodation as defined herein, except those provisions relating to remedies, **are intended to implement and to be construed so as to be consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.** and rules adopted thereunder, and are not intended to impose additional or higher standards, duties or requirements than that act. (emphasis added)

Title 9 VSA § 4502. Public accommodations

c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

(1) A public accommodation shall provide an individual with a disability the opportunity to participate in its services, facilities, privileges, advantages, benefits, and accommodations. It is discriminatory to offer an individual an unequal opportunity or separate benefit; however it is permissible to provide a separate benefit if that benefit is necessary to provide an individual or class of individuals an opportunity that is as effective as that provided to others.

Because Vermont's public accommodation laws are construed consistent with the Americans with Disabilities Act (ADA), this investigation referred to the ADA's guidelines, regulations and case law regarding snow removal. The only information regarding snow removal this investigation found in any ADA documents (including the statute, the regulations, technical support, case law and many internet searches) is that the snow removal must be done in a reasonable amount of time. This is just a one-sentence statement made in some

of the discussions regarding snow removal. This investigation then contacted the ADA Technical Support Hotline and was told that the "ADA does not deal with snow removal," except that it must be done in a reasonable time.

At first blush, it might appear that the issue in this investigation is whether the snow removal on or around February 18 to 24, 2014 was done in a "reasonable amount of time." However, this investigation believes additional questions are also appropriate in analyzing in this complaint.

- 1) Is it **ever** reasonable to plow and/or leave snow in an accessible parking space making the accessible space unavailable for use by persons with mobility disabilities?
- 2) Did the amount of snow in the parking space that is the subject of this complaint render the parking space unusable by persons with mobility disabilities?

This investigation believes it is **never reasonable** or acceptable to plow snow in a manner that leaves a snow pile in accessible parking spaces rendering them unusable by persons with disabilities. It seems particularly unreasonable in this situation because, based on the pictures from February 22, 2014, the snow was clearly there for several days. Both respondents in this complaint have responsibilities to address the snow in this parking lot. The picture on the 22nd shows snow that is not new. The respondents stated that this snow was removed on February 24th.

Based on the case-by-case approach to analyzing accessibility discrimination complaints, this investigation has several reasons for its conclusion:

1. This is a very large fifty (50) space parking area (plus adjacent to this parking lot and sharing accessible parking

spaces is an even larger Plaza parking lot for hotel guests.) The parking area also includes space to deposit excess snow at the back of the lot. If any extra space is needed to handle the amount of snow, the numerous regular parking spaces, rather than one of the few accessible ones, could have been used.

- 2.** Persons without disability plates or placards are prohibited from parking their vehicles in accessible spaces; no exceptions not even in snowstorms. If it is illegal for a vehicle without proper disability identification to occupy an accessible space, by analogy it is also never acceptable to deliberately place snow into an accessible parking space rendering it unavailable to persons with mobility disabilities. An exception could occur briefly while in the process of actively plowing a parking lot.
- 3.** The snow that is in the February 22, 2014 photos is clearly not new snow - - meaning it had been there for more than a brief period of time and should have been removed before February 22, 2014. It was not removed until February 24, 2014.
- 4.** This investigation believes it is more likely than not, if the plow company used by the Plaza, had followed its own plowing procedures--- back dragging rather than pushing forward--- there would not have been an accumulation of snow in this parking space.

This investigation believes based on its examination of the photos taken by Mr. Nolen on February 22, 2014, and its own site visit (captured in the photos in the appendix) that at least one and probably two accessible spaces were rendered unusable because of the

snow accumulation in those parking spaces. This situation resulted in persons with disabilities, including Mr. Nolen, being excluded from participation in and/or being denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, of that parking lot on the basis of disability.

Preliminary Recommendation

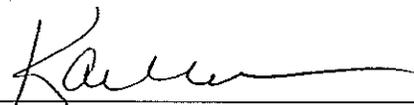
Based on the above information this investigation recommends that there are **reasonable grounds** to believe that both respondents, the City and the Plaza, violated Vermont's Public Accommodation statute because their actions or inaction caused accessible parking spaces to be unusable and this condition existed for an unreasonable amount of time.



Ellen Maxon, Administrative Law Examiner

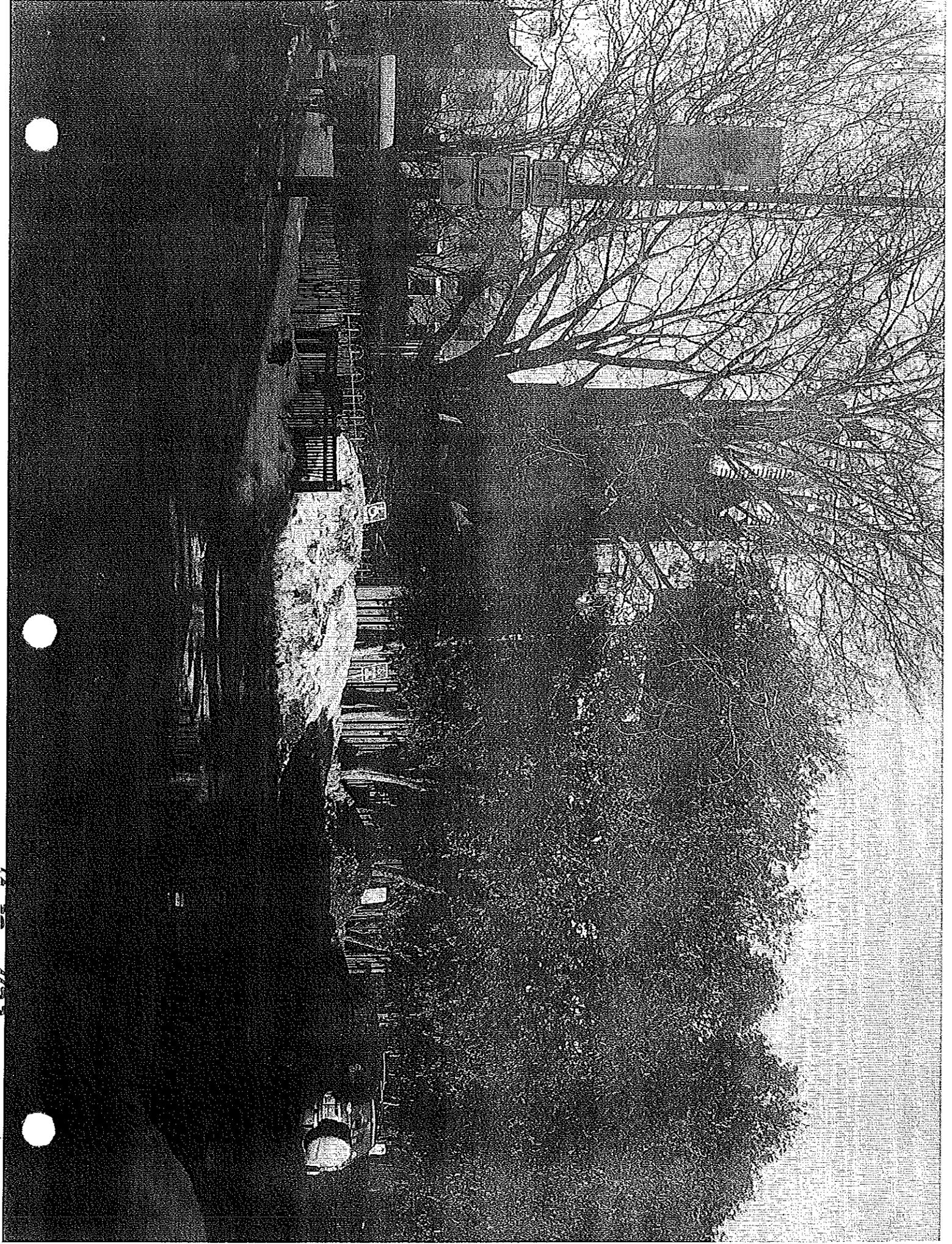
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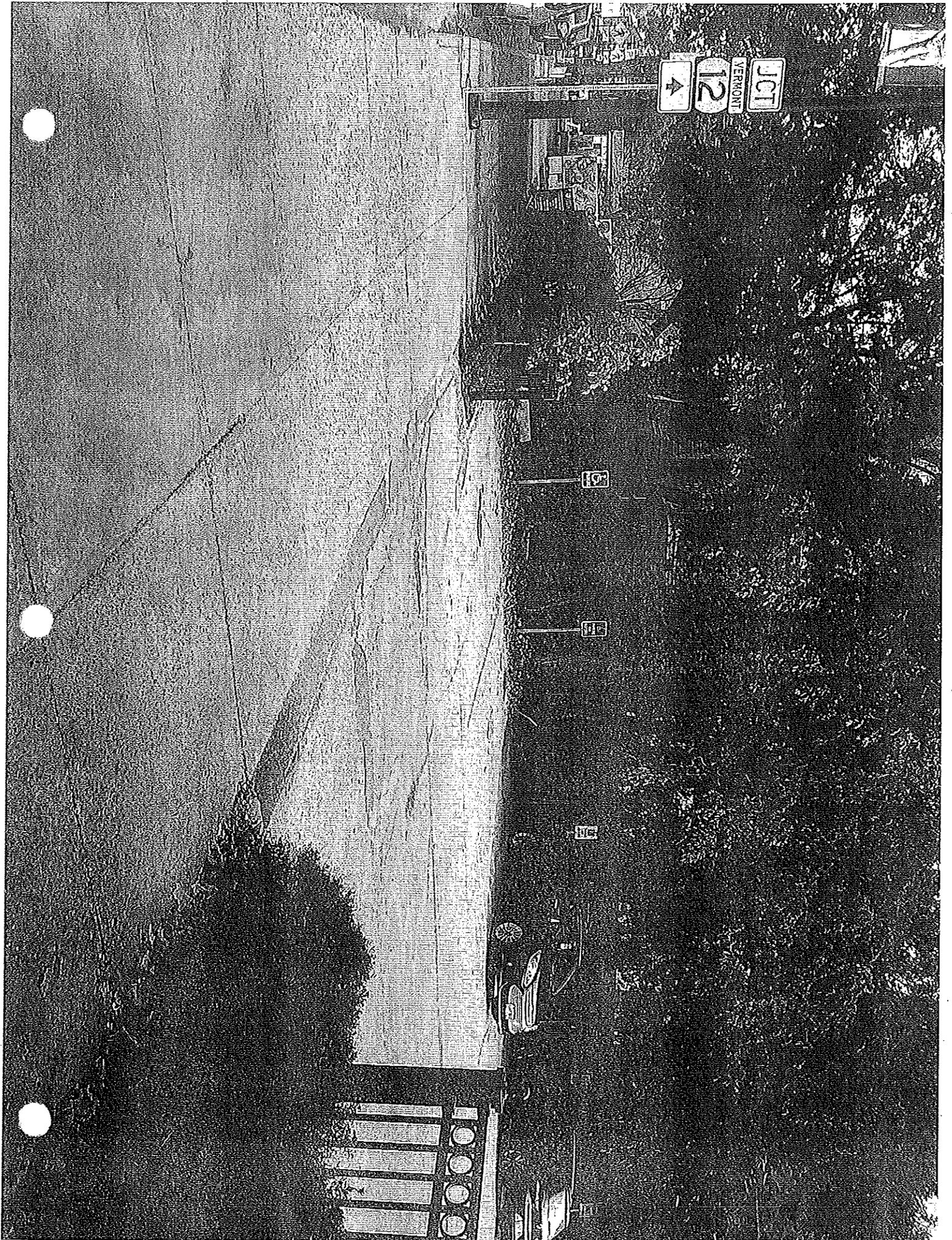


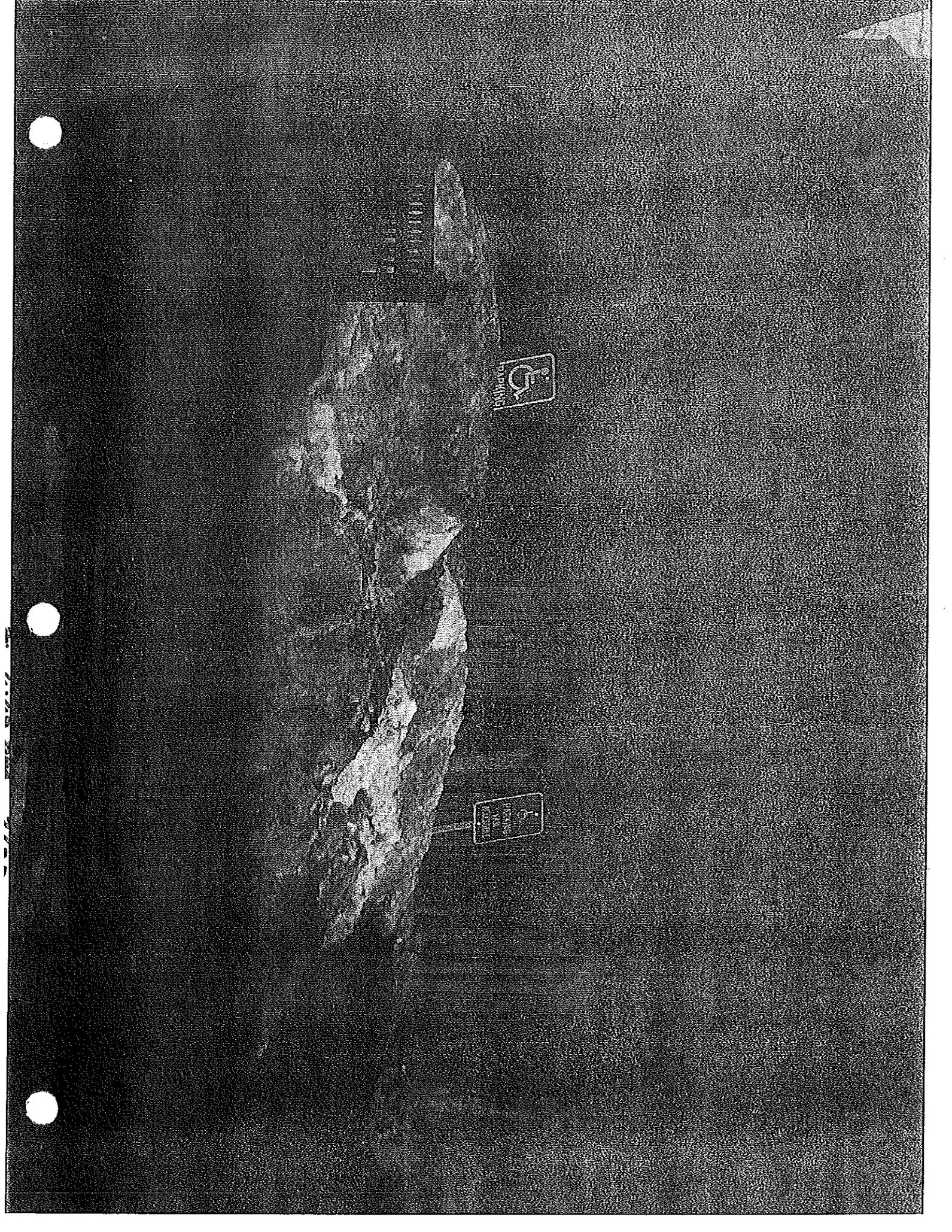
Karen Richards, Executive Director

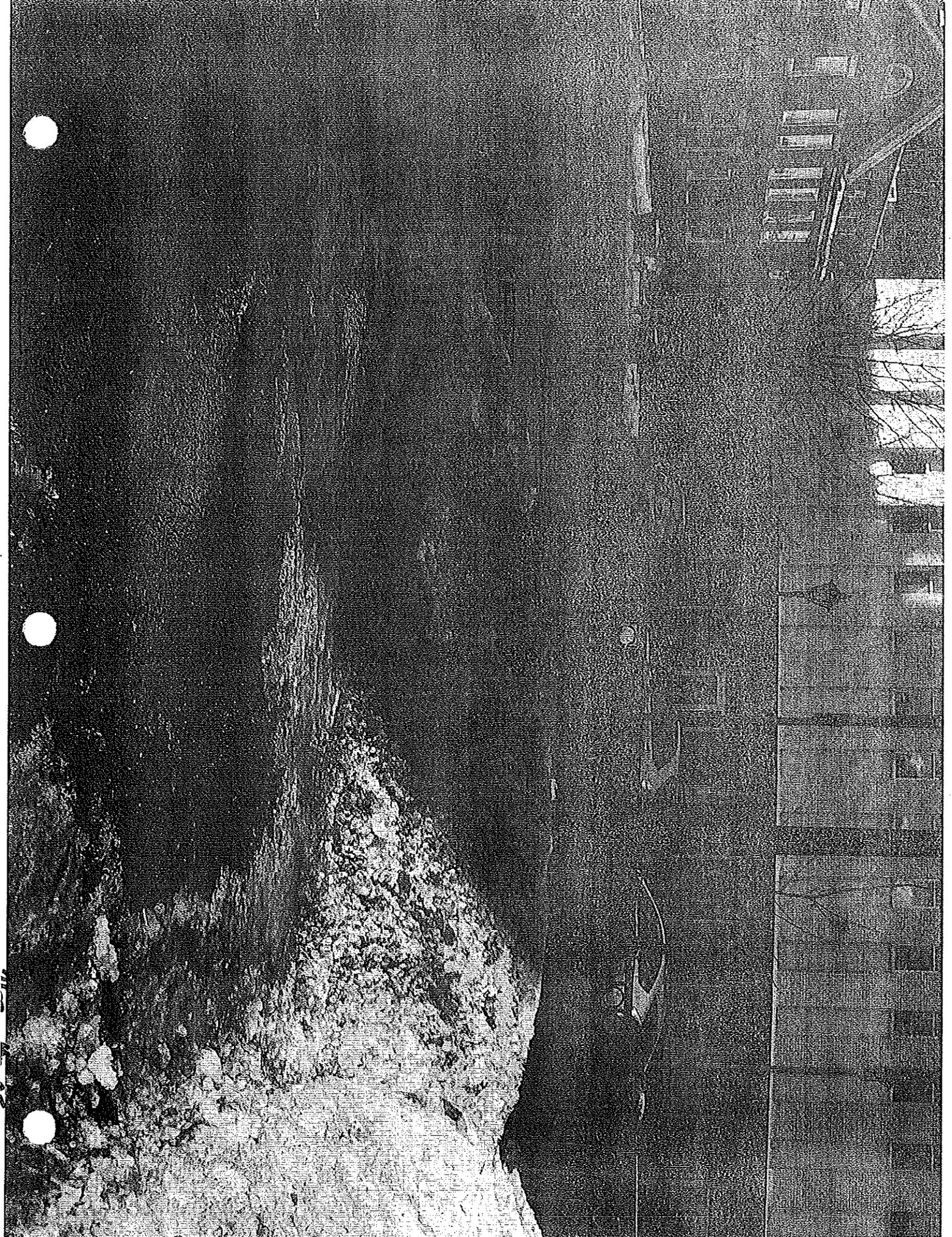
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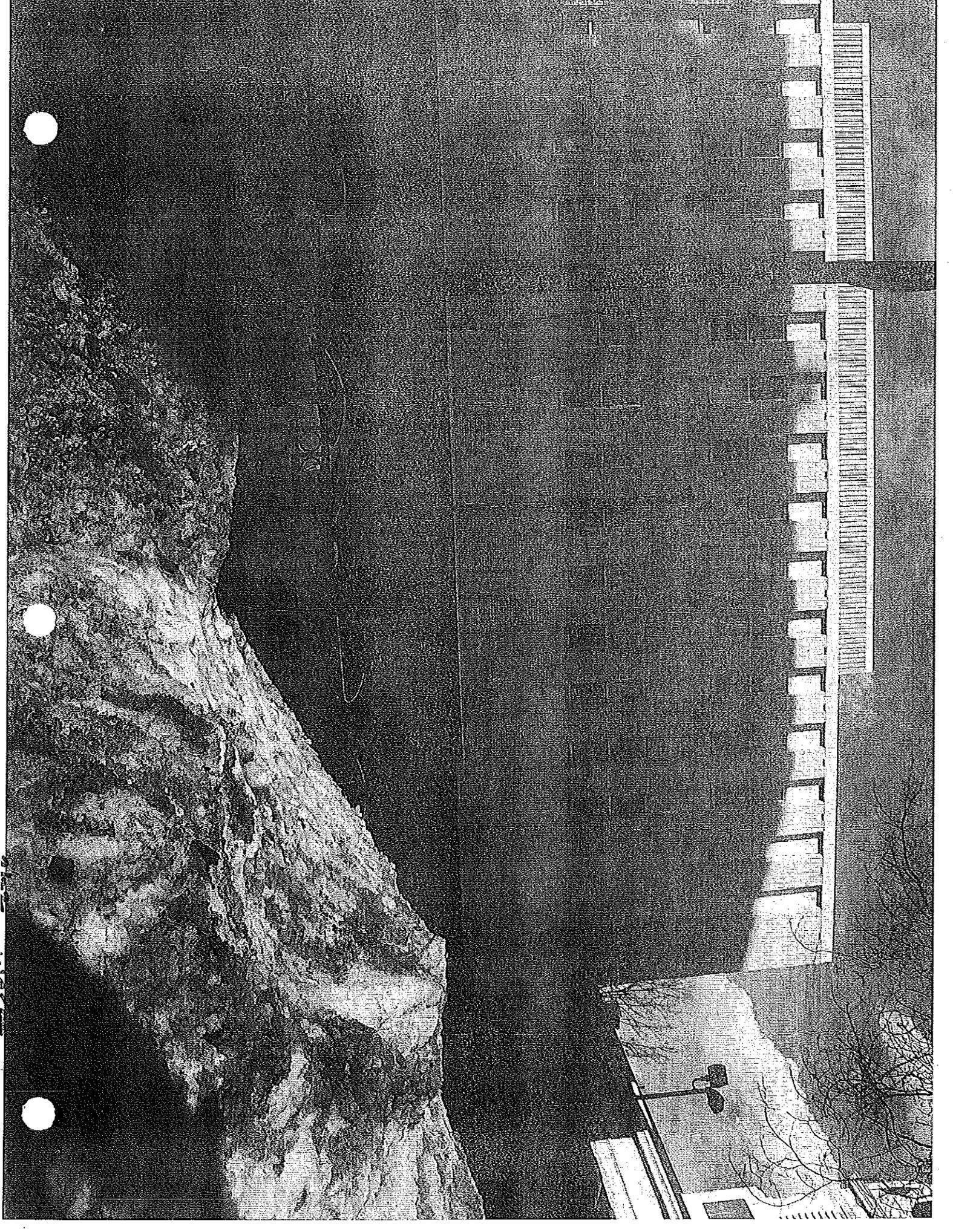


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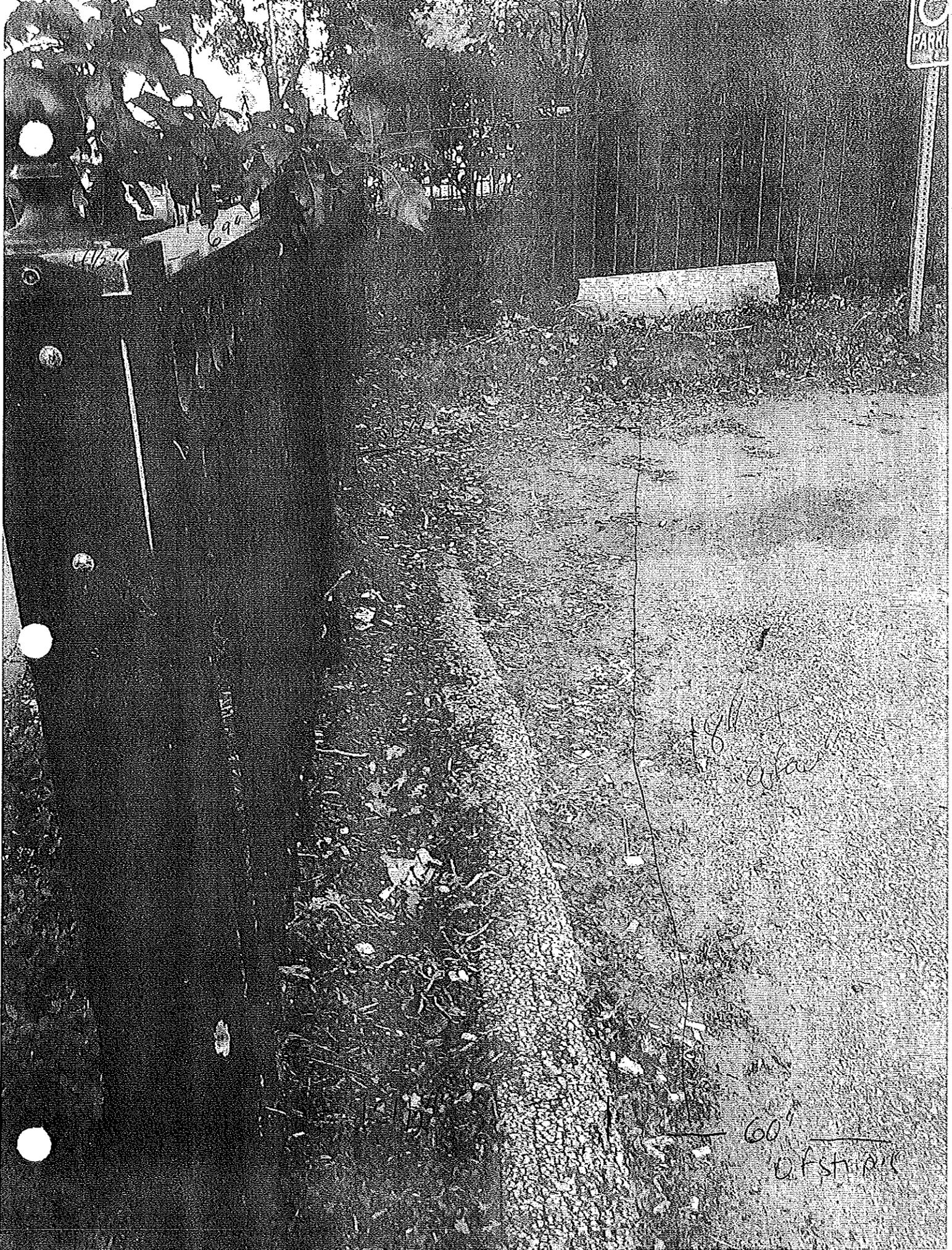








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