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September 18, 2009

Jeffrey B. Fuge
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Via US Mail with Enclosure and Facsimile w/o Enclosure

Dear Mr. Fuge:

Greetings and I hope all is well.

As you already know, our firm represents Kraemer Mining and Materials. Kraemer is in the process of seeking permission to site a trap rock mine in the Town of Osceola and has recently submitted a revised Special Exception Permit ("SEP") Application to Polk County. With this in mind, please kindly know a matter has come to our attention which we wanted to advise your office of, in addition to the Zoning Administrator and Land Information Director.

As you may know, Bob Clark is a member of the Town of Osceola Planning Commission. A property owner in the Osceola area recently brought to our attention the fact that Mr. Clark has multiple anti quarry signs on his property as recent as September 16, 2009, which are publically displayed on State Trunk Highway 35, north of the Village of Dresser. We have provided color copies of the photos for your files.

As you may also know, the Town of Osceola is expected to provide an advisory recommendation to the County on Kraemer's SEP Application. The Town of Osceola Planning Commission has the SEP Application on their agenda for their meeting on September 21, 2009. We are very concerned that our application is not being given a fair and unbiased advisory recommendation from the Town of Osceola, when a member of the Planning Commission is known to be publicly displaying anti quarry signs during this process.

Kraemer expects a fair and unbiased process during the SEP Application process, and as the Regulatory Governmental Authority on land use decisions for our application, we wanted the County to be aware of this issue. In

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bringing this to your attention, we recognize that Mr. Clark and the Town Plan Commission do not sit as hearing officers in this matter; nonetheless, any written or oral submissions made by this body, representing as it does the municipality within which the proposed quarry will be situated, will potentially influence the Committee. Where a member of the Plan Commission openly

opposes the granting of the SEP by the County in a personal capacity, he harbors a conflict of interest which cannot be disregarded when considering the position taken by the body on which he sits. As it is stated in Marris v. Cedarburg, 176 Wis. 2d 14, 26 (1993):

Since biases may distort judgment, impartial decision-makers are needed to ensure both sound fact finding and rational decision-making as well as to ensure public confidence in the decision-making process.

Again, we recognize that Mr. Clark is not a decision maker but that does not mean that his bias will not affect the outcome of the proceedings, to the extent that it may be incorporated into recommendations of the Town Plan Commission to the County.¹ This line of thought is buttressed in Nova Services, Inc. v. Village of Saukville, 211 Wis. 2d 691, 697 (1997), in which it was held that the village attorney could not act as both an advocate for the zoning administrator and then turn around and advise the board during its deliberations on a zoning permit.

The risk that the village attorney would continue in the adversarial role during closed session is impermissibly high. Decision makers must be impartial and free from any chance of distorted judgment.

Thus, if Mr. Clark participates officially with regard to the Plan Commission's decision to issue a recommendation to the County, this creates a situation which, should the Committee rely upon the Commission's recommendation, would distort its judgment. Accordingly, we ask that you be alert to this matter and the potential that the Town Plan Commission will advocate denial of the Application in the course of the public hearing. In the event the Town Plan Commission does recommend the County vote no on Kraemer's Application, County decision makers should be advised by our office of the issue of bias and prejudice being imbedded in the Township's recommendation. Therefore, the weight given by the County to the Town's recommendation should be very little, or perhaps even be disregarded in its

¹ In Keen v. Dane County Board of Supervisors, 269 Wis. 2d 488 (2003), it was held that one member of a committee demonstrated undue bias by writing a letter to the county committee in his capacity as Chairman of the Town of Vienna favoring a permit. This caused the matter to be remanded to the committee for reconsideration. We submit that the Plan Commission process in relationship to the standard imposed under the County Zoning Code will be tainted by Mr. Clark's personal bias, should he participate in its decision regarding recommendation on this SEP.

Jeff Fuge
September 18, 2009
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totality. Although we understand any municipality has a voice in matters impacting citizens, in this situation, Mr. Clark's prejudgment and partiality may have already tainted the Town's forthcoming recommendation.

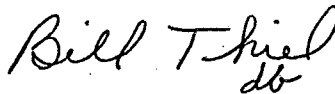
Thank you in advance for your consideration on this matter and please let us know if further discussions regarding the case law on this important matter are necessary.

Very truly yours,

WELD, RILEY, PRENN & RICCI, S.C.

A handwritten signature in dark ink, appearing to be "JR Behling" with a stylized flourish.

John Robert Behling

A handwritten signature in dark ink, appearing to be "Bill Thiel" with a stylized flourish.

Bill Thiel

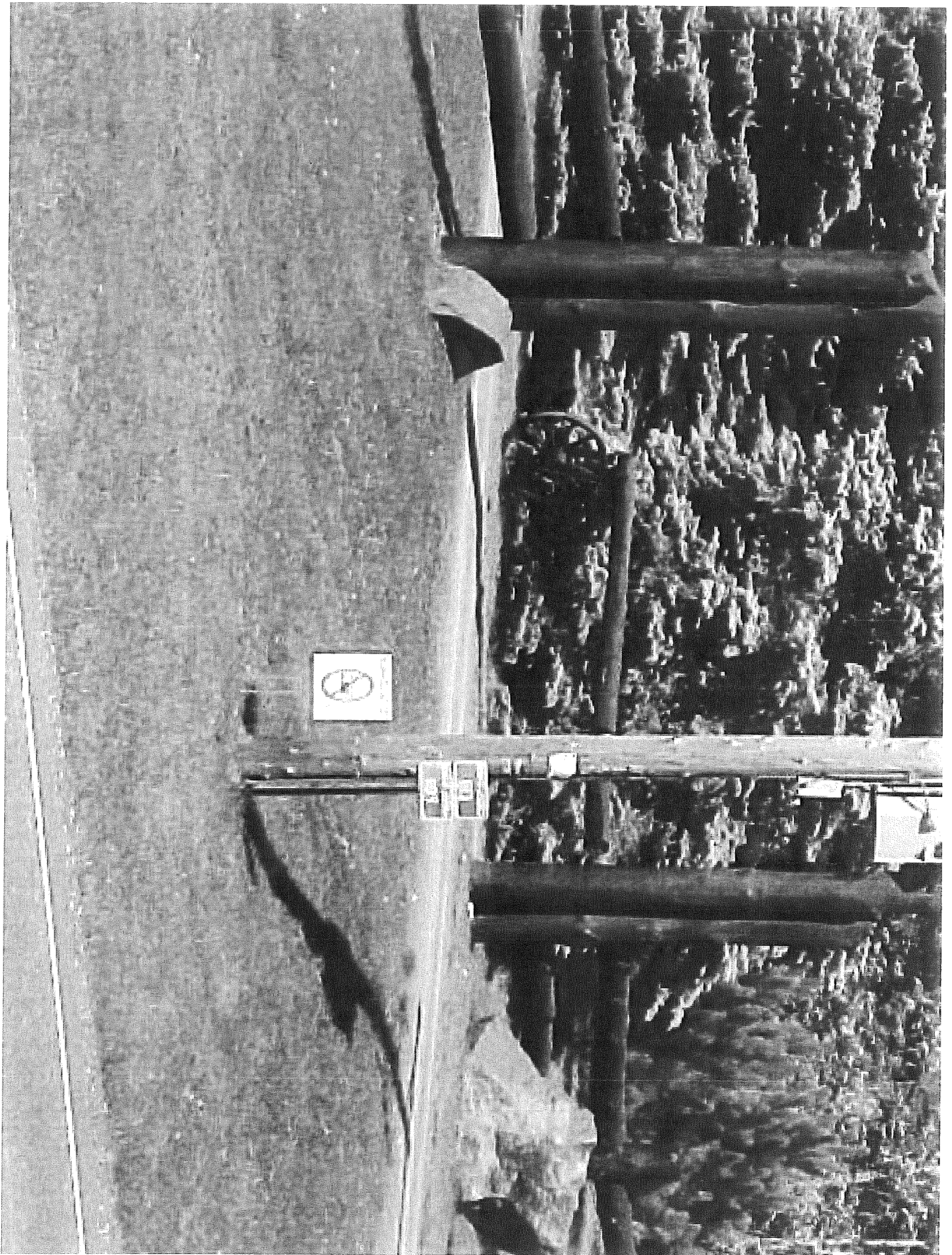
Enclosures

Cc: Polk County Land Information Committee Via US Mail
Gary Spanel, Polk County Zoning Administrator &
Sara McCurdy, Land Information Director Via Facsimile and US Mail

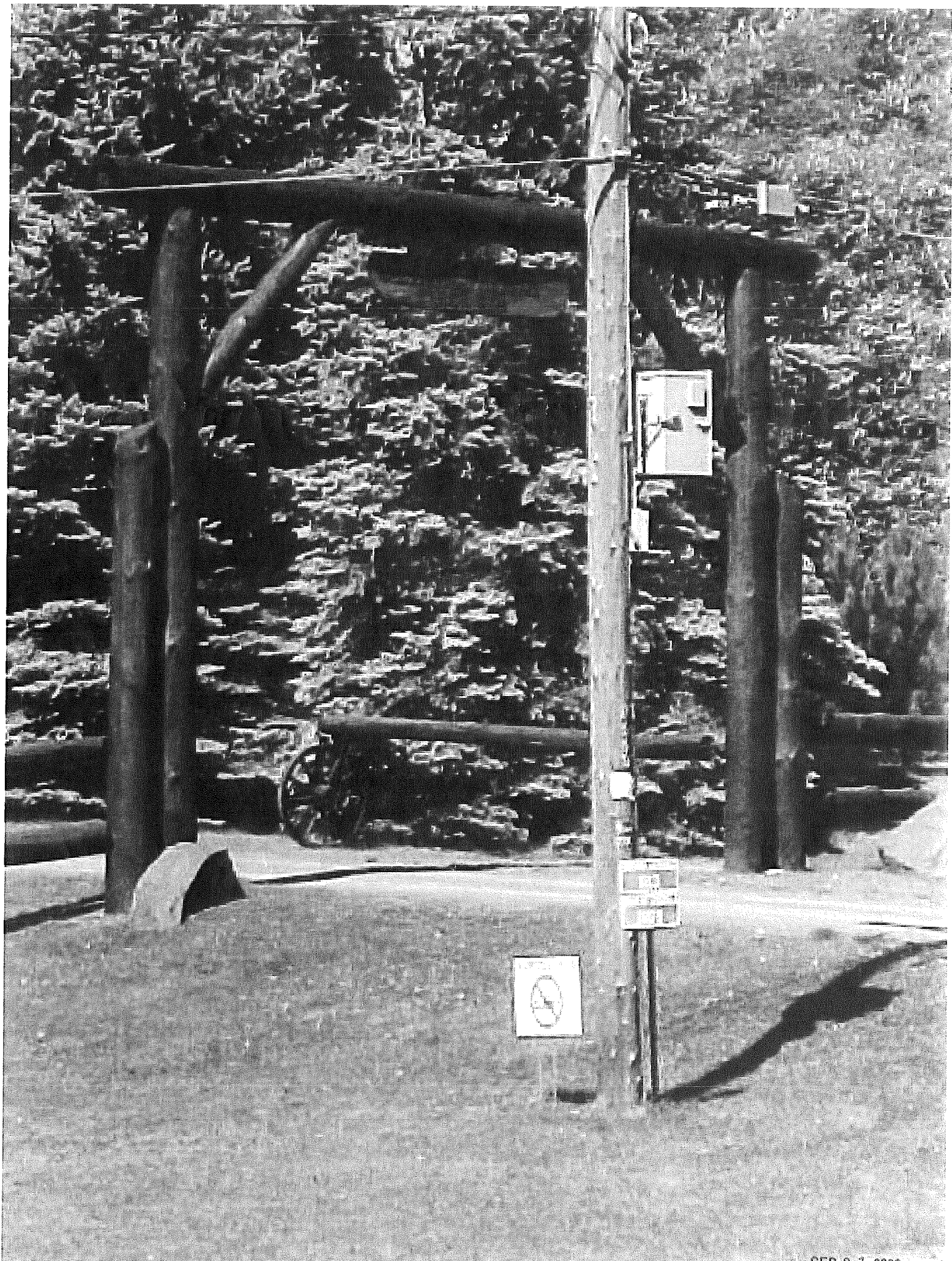
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