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October 6, 2021

Town of Wilton
Zoning Board of Adjustment
42 Main Street, P O Box 83
Wilton, NH 03086

RE: Application for a Variance of Isaac Frye Holdings, LLC for variance to remove 35,000 yards of gravel from Tax Map F, Lot 3-2, Case: 5/11/21-1

Dear Members of the Board:

Please accept this letter as supplementary to and not in lieu of comments that have previously been made concerning this application and comments to be made concerning this application to the Wilton Zoning Board of Adjustment for a variance to remove approximately 35,000 cubic yards of gravel on Lot F-3-2. I suggest the Board step back and consider the whole of the application in the first instance as opposed to going through the five (5) different criteria set forth in the statute. The perspective of the whole of the application is important in assaying the reasonableness of the application. The statute allowing variances refers to a reasonable use. One of the definitions of "reasonable," and the one applicable here is, "not excessive or extreme; fair; moderate." The American Heritage Dictionary of the English Language. If the honest goal of the applicant was to create a house site on this lot, then 35,000 cubic yards do not need to be removed. One could bench into the side of the slope to provide access on a driveway using material from the cut into the slope

to fill out on the downslope side. That technique of road construction is commonly used in areas where a road moves along the contour on a steep slope. Ex. 1. Wilton has one readily such cut/fill available to observe in the Route 101 bypass constructed in the 1950's where Route 101 was relocated from what is Elm Street in Milford and Main Street in Wilton to the south side of the Souhegan River. In Wilton on Badger Farm Road and in Milford on Ponemah Hill Road are examples of driveways located on steep slopes to give access to a building area. The first four (4) photographs are from 369 Ponemah Hill Road in Milford for a house which recently sold for \$871,000.00. The next two (2) photographs are of Badger Farm Road, and the final photograph is for 102 Center Road in Wilton near the proposed gravel operation. Ex. 2. There are other examples more far flung, including the terracing of steep hillsides in China and India to allow agricultural use, even rice paddies. Ex. 3. The Incas in South America similarly terraced steep hillsides in the Andes for agricultural purposes involving the same technique of a cut into the slope creating a bench with the fill material removed on the downslope side. Ex. 4. One needs also consider in terms of the "not excessive or extreme; fair; moderate" meaning of reasonable that houses are commonly built into steep slopes without the vast amount of material proposed by the applicant to be removed from the site. Again, a cut and fill creating a bench on which the house is erected is one method. Ex. 5, Houses on East side of Granite Street, Peterborough, NH. A second method is to excavate into the side of the hill with the result that the side of the house on the uphill slope is two stories above ground and the side on the downhill of the slope is three stories above ground, i.e., a walkout basement. Ex. 6. The applicant does not present these alternatives which would accomplish the objective of putting a house on the lot, but would not accomplish the applicant's objective of removing gravel for use elsewhere from this lot. Attached to this letter are photographs grabbed on a simple Google search showing terracing on steep slopes and houses constructed on steep slopes.

In summation, this application is not for a “not excessive or extreme; fair; moderate” use which is otherwise not allowed under the zoning ordinance. This application is in every sense excessive, extreme, unbalanced, and proves the asserted purpose of a residential house on this lot is a beard for a gravel removal operation.

The Zoning Board is required by statute to consider five (5) criteria before a variance can be granted. New Hampshire Revised Statutes Annotated Chapter 674, Section 33, I (a)(2). Those five (5) criteria in the statute are stated to be as follows:

- A. The variance will not be contrary to the public interest.
- B. The spirit of the ordinance is observed.
- C. Substantial justice is done.
- D. Values of surrounding property are not diminished, and
- E. Literal enforcement of the ordinance results in an unnecessary hardship.

The statute further defines unnecessary hardship meaning that owing to special conditions of the property that distinguish it from other properties in the area no fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property and the proposed use is a reasonable one. The statute goes on to allow that where the criteria just expressed as to unnecessary hardship are not established, then an unnecessary hardship under the second test exists if and only if owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and that a variance therefore necessary to enable a reasonable use of it. The relevant use of reasonable is important.

This letter addresses each of those criteria and respectfully submits to the Board that the

applicant fails to meet each of the criteria necessary to receive this variance. The Board is reminded in reviewing these criteria of the definition of “reasonable” and the very real possibilities of development of the site for residential use which does not require the removal of 35,000 cubic yards of gravel for a single family house.

- I. The variance is contrary to the public interest. The grant of the variance will cause harm and is against the public interest. Isaac Frye Highway has a steep descent to Route 101 leaving the site to the south (left) and a sharp ascent to the north (leaving the site to the right.) Further, any gravel truck going up north on Isaac Frye Highway will pass through Wilton Center, which has been spared heavy truck traffic since the relocation of Route 101 south of Wilton Center in the 1950's. The application for a variance ignores the clear expression of the Town of Wilton as to where gravel operations are permitted in the Town of Wilton. The gravel operations are expressly prohibited on this property. The grant of the variance will alter the essential character of the neighborhood, Wilton Center, and the condition of Isaac Frye Highway renders the operation of 80,000 to 100,000 pound dump trucks a threat to the health, safety and general welfare of the public. As such, this application is unduly and to a marked degree a violation of the basic zoning objectives of the zoning ordinance. Chester Rod & Gun Club, Inc. v. Town of Chester, 152 NH 577 (2005).
- II. Spirit of the Ordinance is not observed. The Town of Wilton voted very clearly in 2006 to restrict gravel operations and to restrict and limit the haul routes of material being removed. The ordinance contains a specific restriction against this particular activity on this lot. Respectfully, the Board in granting the variance would violate both the spirit and the intent of the ordinance by allowing that activity. As noted by the New Hampshire Office of

Strategic Initiatives in its discussion, The Zoning Board of Adjustment in New Hampshire; a Handbook for Local Officials (2002), if an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be of doubtful legality. The Board cannot change the ordinance. At II-12. Any favorable decision on this application violates basic zoning objectives as the proposed gravel removal operation threatens the public health, safety and welfare of the users of Isaac Frye Highway and the immediate neighbors to the lot. Malachy Glen Associates, Inc. v. Town of Chichester, 155 NH 102 (2007). To continue with the analysis in Malachy Glen Associates, the grant of the variance here violates basic zoning objectives which in Wilton were to permit gravel removal in a designated area of town with a designated haul route for the truck traffic generated by the gravel removal.

III. Substantial justice is not done. In considering whether substantial justice is achieved by the grant of this variance requested by Isaac Frye Holdings, LLC, the Board must consider the actions of Isaac Frye Holdings, LLC prior to its application. No substantial justice is achieved where the grant of the variance will reward a scofflaw approach to very clear instructions, appearing at the Registry of Deeds, as to whether any gravel could be removed from the site. This case is not about a property owner who acted in ignorance of some small detail in the land use control laws. Rather, this case is about an applicant who disregarded clear notice at the Registry of Deeds in its chain of title that gravel operations are not permitted without approval of the Wilton Planning Board. In no way can this Board find that substantial justice is achieved. There is no loss to the individual. Reference is made to the discussion of the “reasonable” development of the parcel for single family housing above.

Further, the general public is ill served if this Board in light of the scofflaw approach and the flagrant disregard of the restrictions of record in the applicant's chain of title allow this application to be granted. By allowing such grant, this Board rewards the unlawful behavior of the applicant. Clearly there is a substantial gain to the general public by the denial of this variance. There is a consequent disastrous loss to the general public if the variance is granted.

- IV. The values of surrounding properties are diminished. Wilton Center has retained the charm of its long history in the land uses and development that has occurred in that immediate vicinity. Gravel removal operation depends upon the market for the gravel or other earth materials. There is no assurance that the operation will abate within any reasonable period of time. Any suggestions by the applicant that this is a temporary imposition on the abutters and the neighborhood at Wilton Center is not supported by the history of gravel operations. Accordingly, there is no assurance that the site will ever be developed as a single family house lot as again the construction of new single family housing is dependant upon market conditions. The attendant cacophony to the gravel operations diminishes the pastoral and tranquil nature of the residences adjacent and near to the operation. In addition to the noise from the operations in the area being excavated, one has the constant truck traffic that will be generated, regardless of whether the haul route is north through Wilton Center or south to Route 101. These factors depress the value of the houses and will continue to depress the value of the properties until such time as the operation ceases and further, the scar left by the excavation will depress the adjacent properties until the lot is reclaimed and a single family house is constructed.

V. Literal enforcement of the zoning ordinance does not result in any unnecessary hardship to the applicant. As discussed at the beginning of this presentation to the Zoning Board of Adjustment, there are accepted construction methods that permit the development of the lot without the gravel removal proposed by the applicant. Those construction methods are many thousands of years old and were accomplished with hand labor to make areas of steep slopes usable for human occupation in an agrarian society. This application ignores the time-tested alteration of terrain using terracing, benching, and compensating cut and fills. With the machinery available in 2021, the applicant could accomplish in a day what the Inca and Chinese societies took many hundreds of years to achieve. The amount of material required to be removed from the site using the methods of terracing, benching, and compensating cuts and fills is far less than the 35,000 cubic yards the applicant proposes. In fact, no material may be required to be removed on this method of terracing, benching and compensating cuts and fills. Given this method for development of steep slopes, there is not unnecessary hardship to the requirement imposed by the zoning ordinance that allows no gravel removal on this lot. The removal of earth materials is not necessary to the development of a house site and certainly the removal of material in the magnitude of 35,000 cubic yards is not necessary if one exercises some creative thinking and planning (as did the Incas and Chinese) with the objective that a house site is the purpose for the development as opposed to removal of gravel being the purpose of the development. This application is driven by the purpose of removing earth materials. This application has nothing to do with the development of the site for a single family residence. Were the true objection of the use of this property to be the development of the site for a house, then a creative engineering approach using standard

civil engineering principles would permit a house to be constructed on the site with minimal disturbance of existing topography and certainly with no requirement of removal of the material sought by the applicant. The Board is urged to return again to the definition of "reasonable" - not excessive or extreme; fair; moderate. Everything in this application is excessive, extreme, unbalanced and immoderate.

On a final note, the applicant does not address other issues raised by the proposal to remove gravel for commercial purposes from Tax Map F, Lot 3-2. These are provisions in the zoning ordinance which, unless a variance is granted, would not permit the proposed activity. Article 6, General Residence and Agricultural District - Permitted Uses - Section 6.1 does not allow gravel removal or commercial use in the District. Article 9B, Gravel Excavation District, has a panoply of regulations from which the applicant has not sought a variance. For instance, the 300-foot setback line is not shown on the applicant's plans to this Board and there is no information on the plans that addresses reclamation and final slopes.

Very truly yours,

Fernald, Taft, Falby & Little
Professional Association

By:



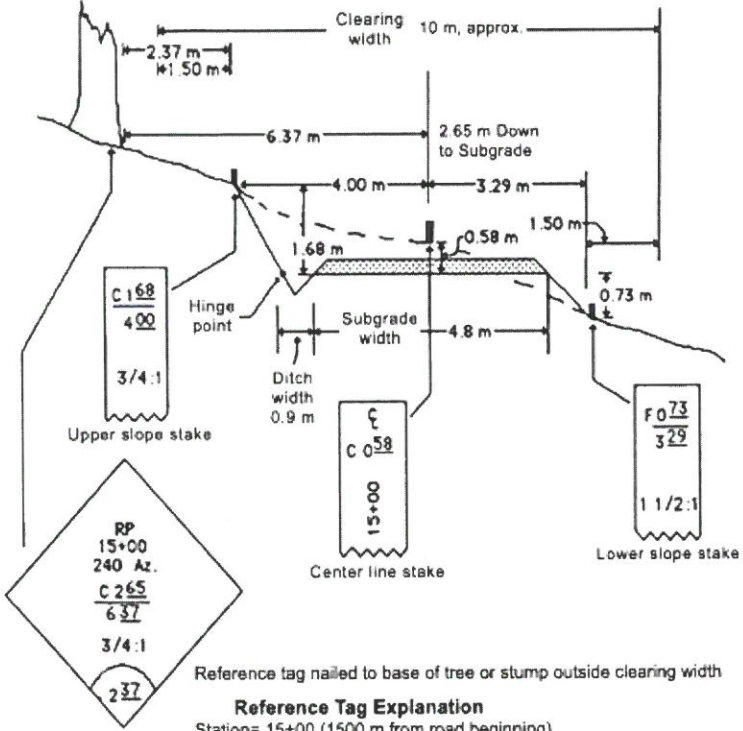
Silas Little

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sl/djh

cc: Roy Tilsley, Esq. (via email)
Mr. Andrew Burns (via email)
Ms. Shannon Linn (via email)

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Reference tag nailed to base of tree or stump outside clearing width

Reference Tag Explanation

- Station= 15+00 (1500 m from road beginning)
- = Planned centerline is 2.65 m below this point
- = Centerline is 6.37 m horizontal distance away
- 3/4:1 = Cutslope steepness
- = 2.37 m to point where cutslope begins
- 240 Az. = Compass direction from RP to centerline stake

Figure 103. The effect of improperly starting the cut as marked by the slope stake. Starting the cut too high results in excess excavation and side cast. Starting the cut too low leaves an overstepped cut bank.

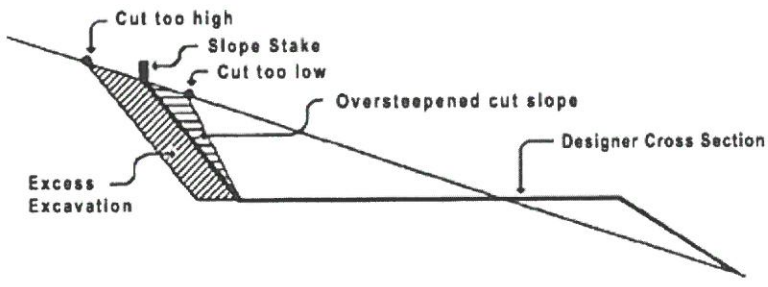
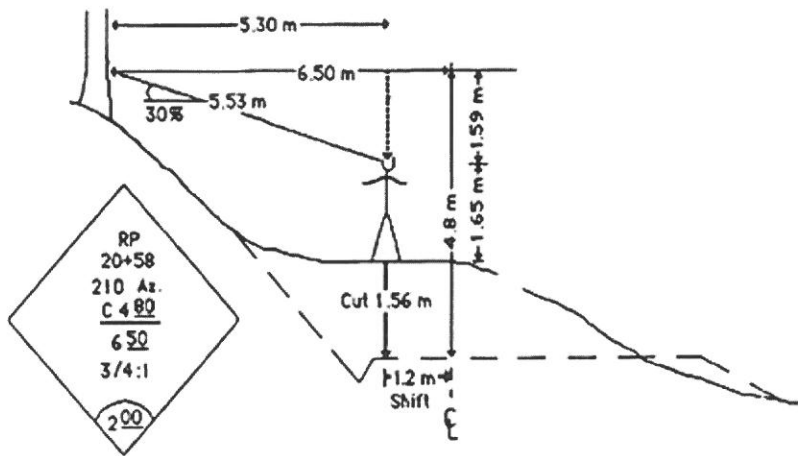


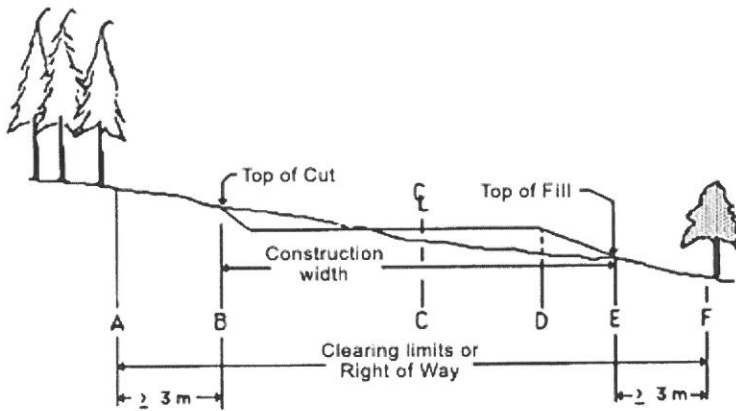
Figure 104. Construction grade check. Engineer stands on center of construction grade and sights to RP tag. Measured distance and slope allow for determination of additional cut.



6.1.2. Clearing and Grubbing of the Road Construction Area

Preparing the road right-of-way or construction area is referred to as clearing and grubbing. During the clearing phase, trees are felled. Grubbing refers to the clearing and removal of stumps and organic debris. Trees should be felled and cleared a minimum of 1 to 3 m from the top of the cut or toe of the fill (Figure 105). The logs can be decked outside the construction area (Figure 105, B to E) or skidded away.

Figure 105. Clearing limits in relation to road bed widths. Significant quantities of organic materials are removed between B and E. Stumps are removed between B and D. Stumps may be left between D and E. Organic debris and removed stumps are placed in windrows at F to serve as filter strips (see Section 6.3.1).



This additional width between construction width and forest edge ensures that space is available to deposit organic debris outside the road construction width and that there is no overlap between forest edge and construction area.

A good construction practice to follow is to remove stumps that are within the construction width (Figure 105, B to E). Trees should be felled to leave a stump 0.8 to 1.2 m high. This helps bulldozers in stump removal by providing added leverage.

Organic overburden or topsoil typically has to be removed over the full construction width (Figure 105, B to D). This is especially true where organic layers are deep or considerable sidecast embankment or fills are planned. Organic material will decompose and result in uneven settlement and potential sidecast failure. Organic material should be deposited at the lower edge of the road (Figure 105, E to F). This material can serve as a sediment filter strip and catch wall (see Section 6.3.1), however care should be taken that this material is not incorporated into the base of the fill. Past road failures show that fill slope failures have been much more frequent than cut slope failures (70 percent and 30 percent, respectively). In most cases, poorly constructed fills over organic side cast debris was the reason for the failures.

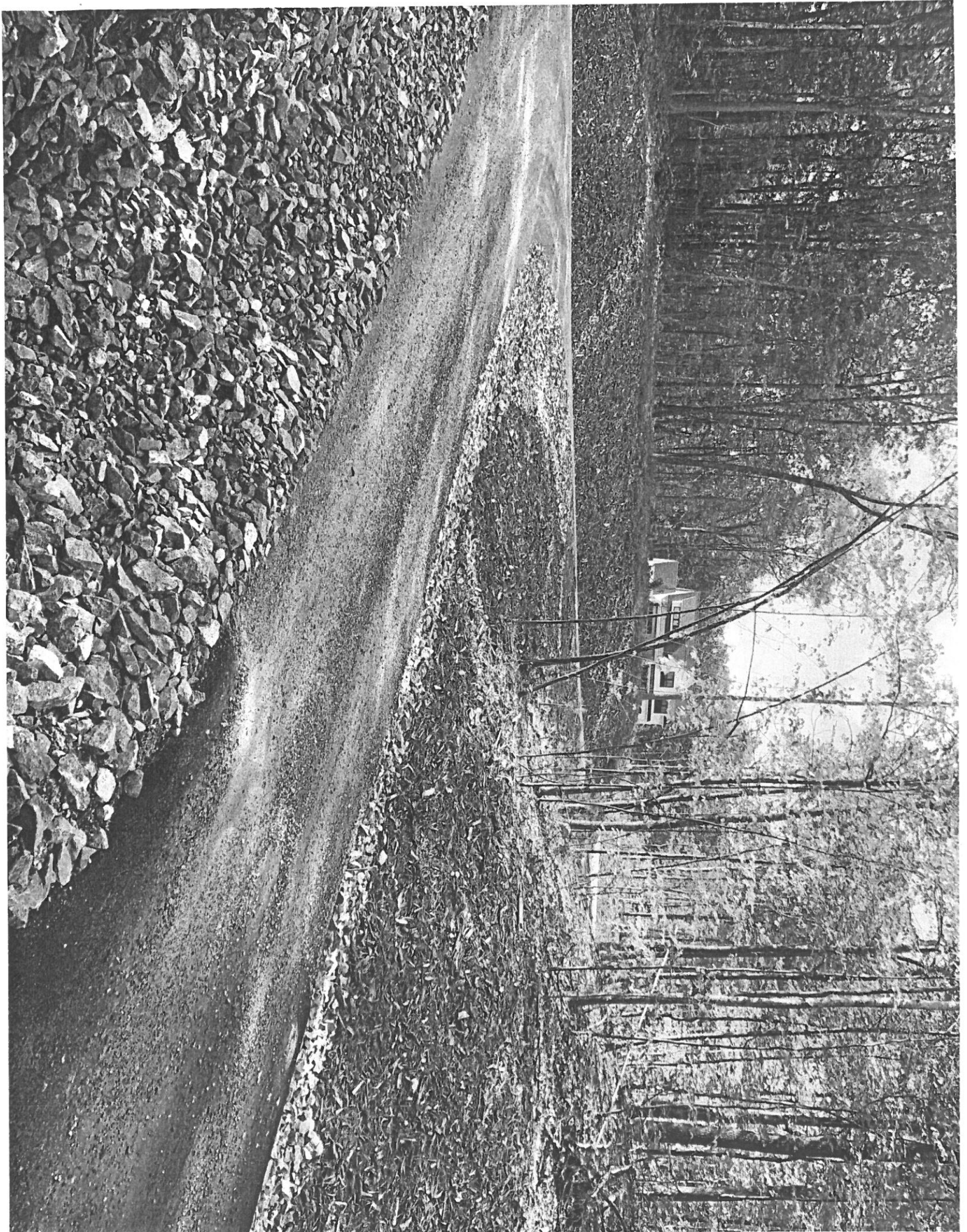
During the grubbing phase, or preparation phase, a pioneer road is often constructed to facilitate equipment access, logging equipment movement, and delivery of construction materials, such as culverts. This is often the case when construction activities are under way at several locations. If pioneer roads are constructed, they are often built at the top of the construction width and are usually nothing more than a bull dozer trail. When considerable side hill fill construction is planned, however, the dozer trail should be located at the toe or base of the proposed fill. The trail will serve as a bench and

EXHIBIT

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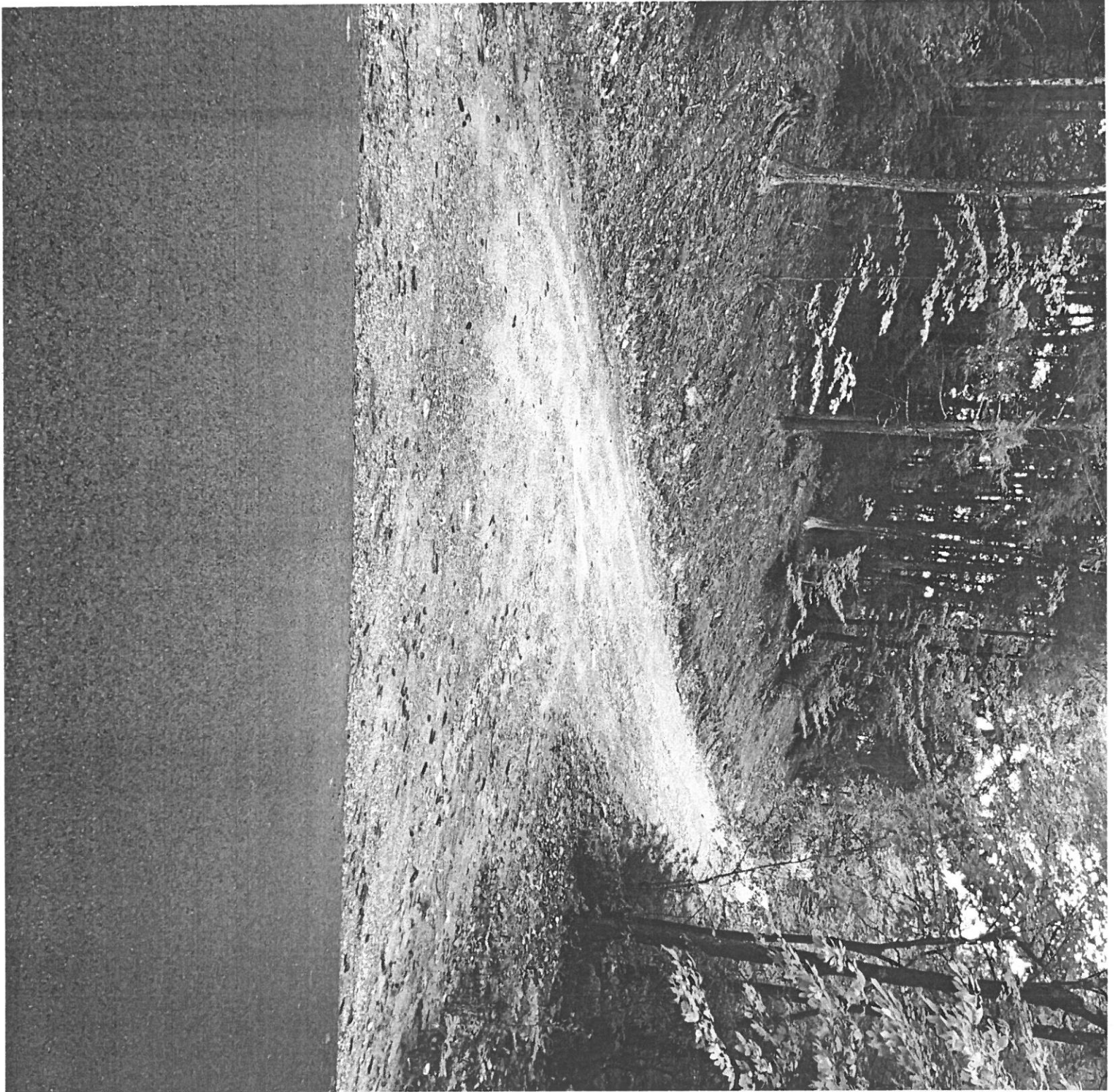














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China's 5 Most Beautiful Rice Terraces

By *Kelly Pang* Updated Oct. 1, 2021

Rice terraces are hilly or mountainous slopes claimed from nature for cultivation, usually by minority peoples. Some are hundreds (or even thousands) of years old. They make **spectacular places for hiking and photography**. We have listed, according to popularity,

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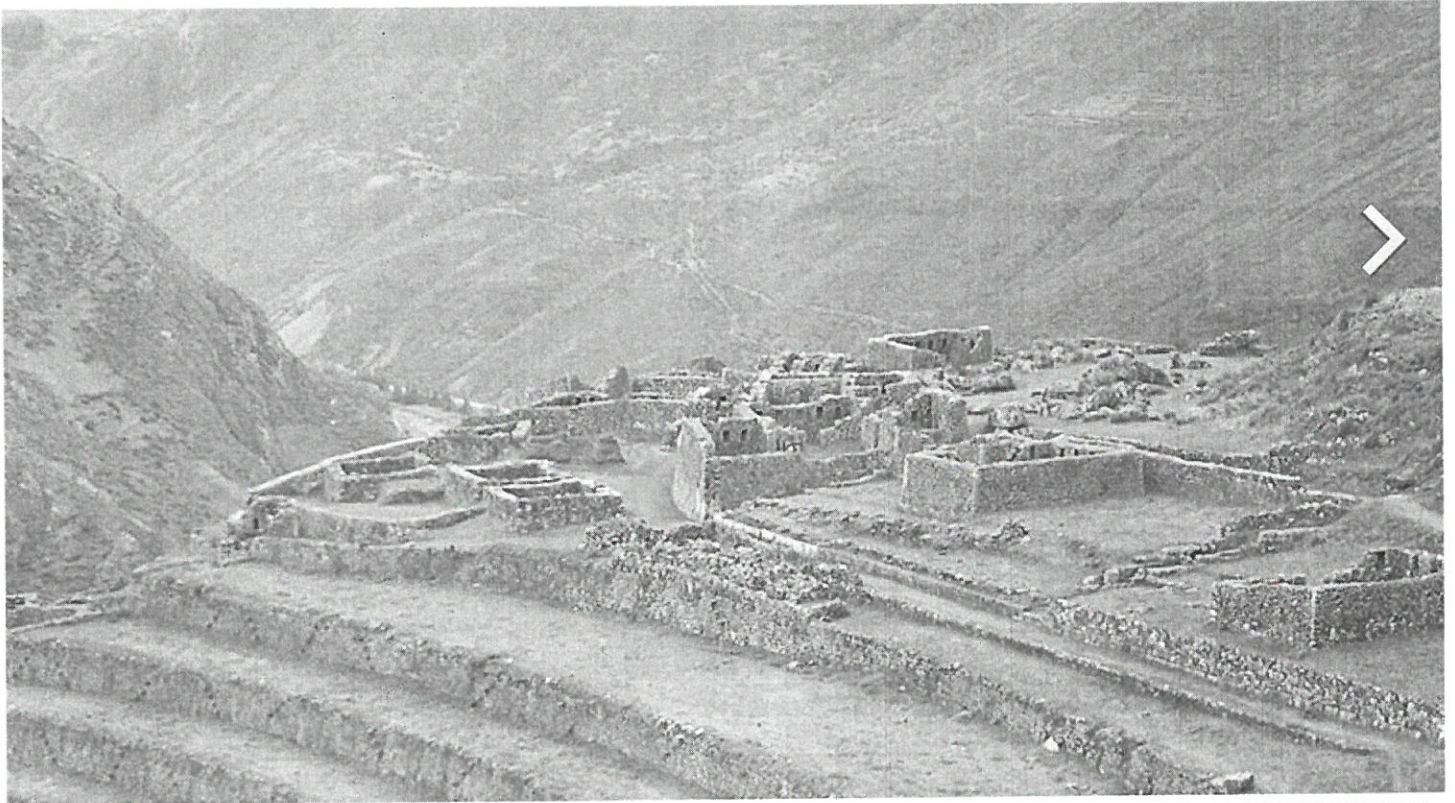


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Andenes in the Sacred Valley at Pisac, Peru

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Pisac Inca ruins.

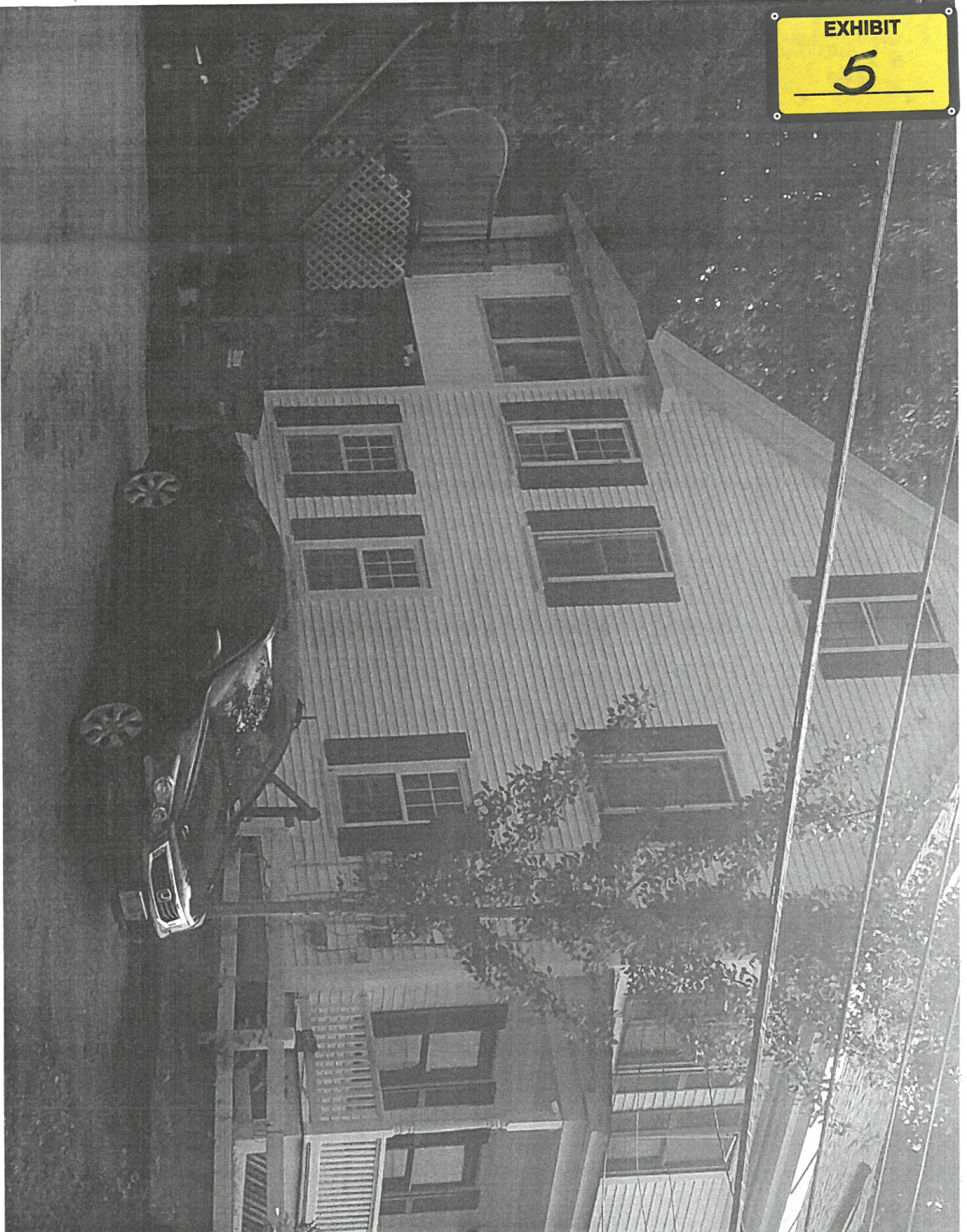
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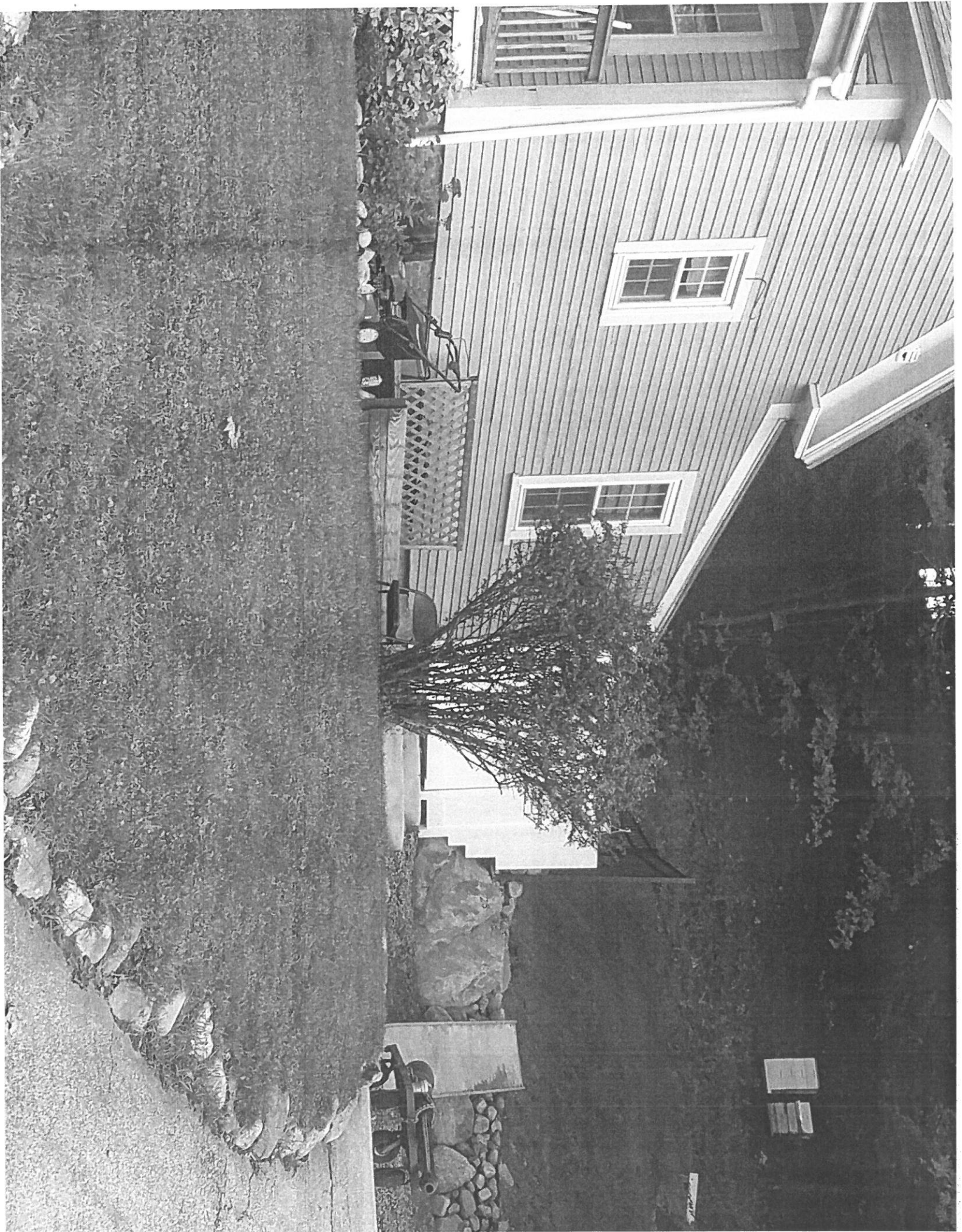
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EXHIBIT

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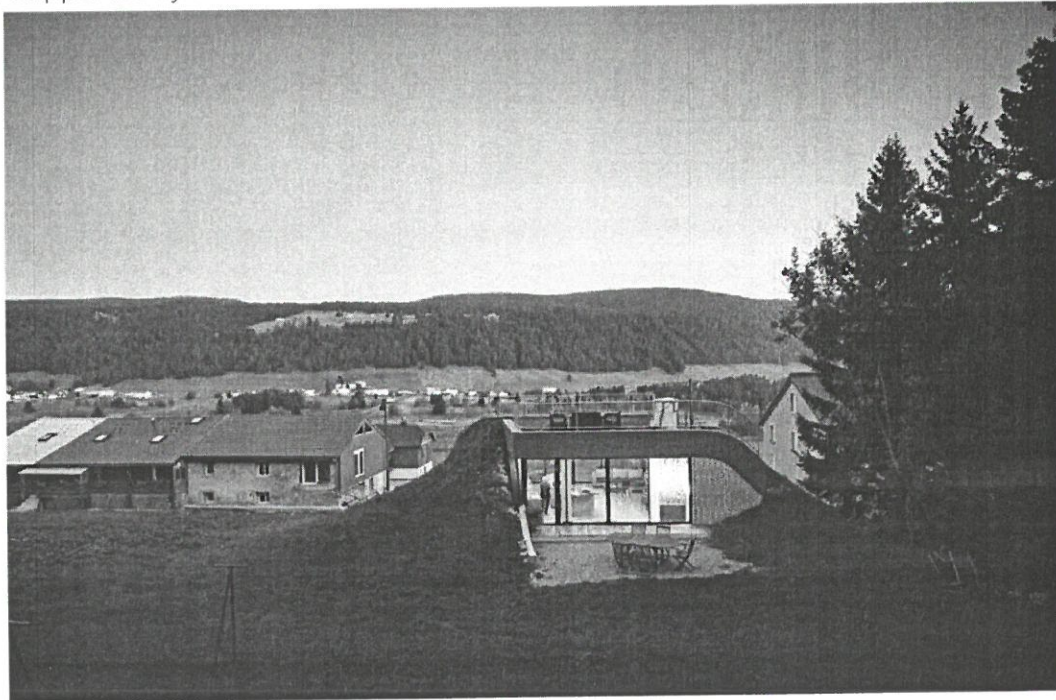


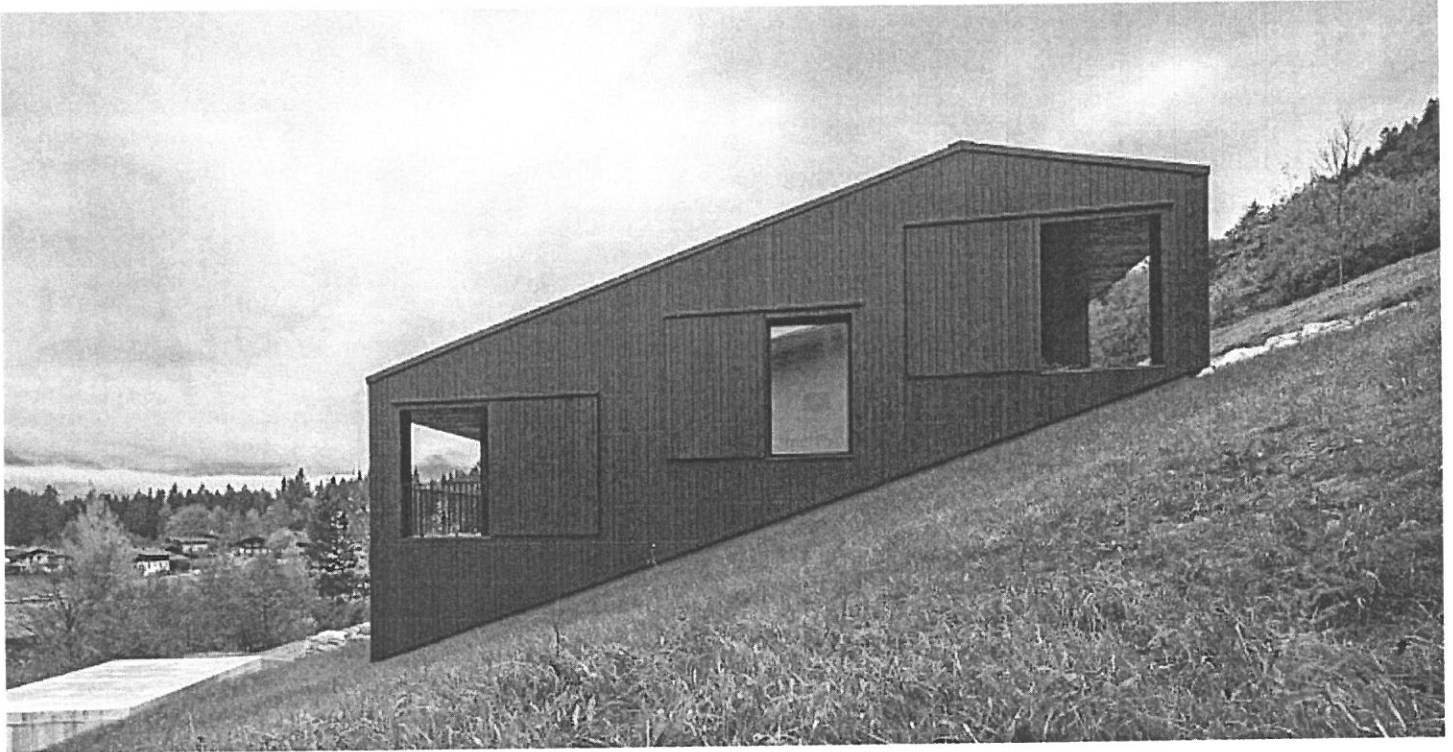






The house is supported by a forest covered hill, and faces the valley for pleasant perspectives.





LPARKITEKTUR.AT

The asymmetrical roof of the EFH Groth house follows the gradient of the slope, enhancing the sense that the house might slide down the hill at any moment. The austere black timber cladding is relieved by large cut-outs and windows.

The design team says the loggias at the front and rear of the house form an interface with the surrounding environment, allowing the interior to flow effortlessly to the outdoors.

READ MORE

- * [Grand Designs cliff-hanger prototype](#)
- * [Owners' blog of a new build on steep site](#)

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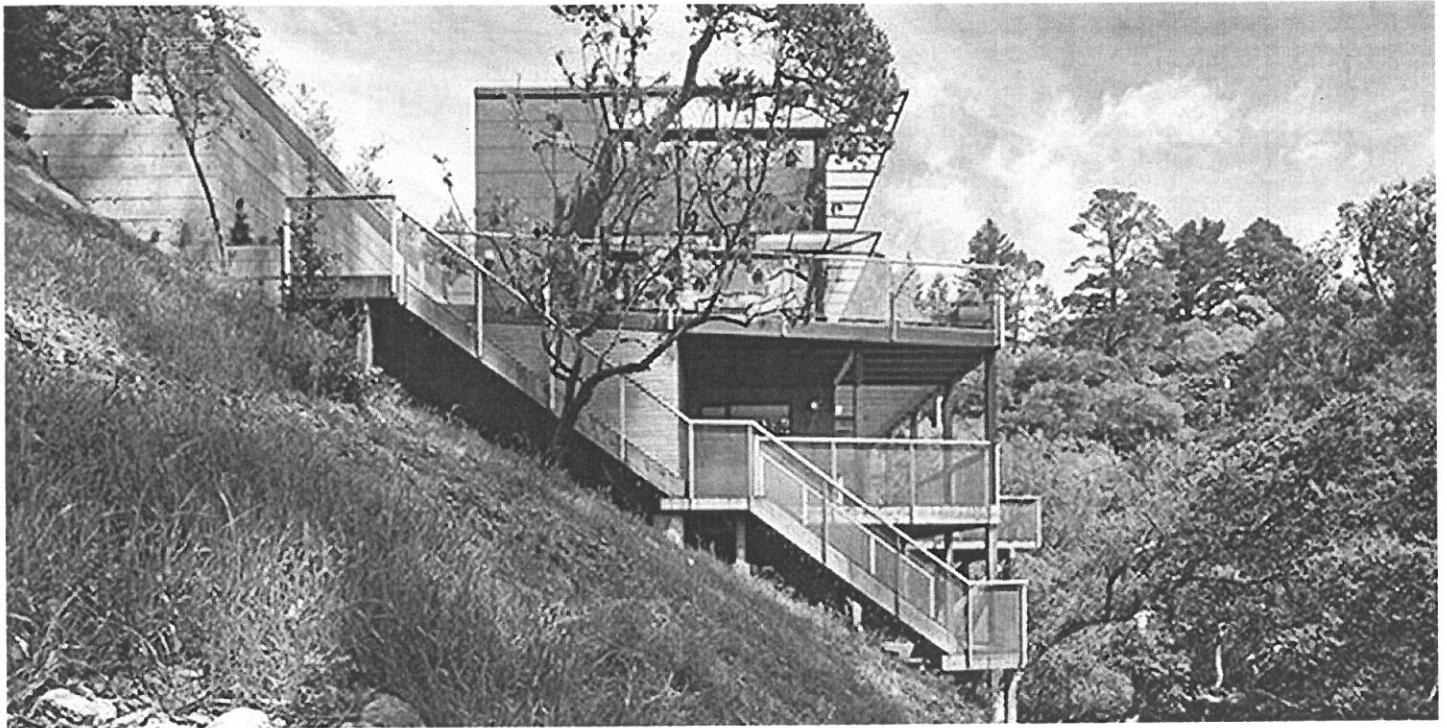


Image: Bruce Damonte

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