



California Regional Water Quality Control Board San Diego Region



RF

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Certified Mail No. 7008 0150 0003 7457 7554
(return receipt requested)

July 9, 2008

Dr. Bill Moritz
14272 Jerome Drive
Poway, CA 92064

In reply, refer to:
CWU: R9-2008-074:cmeans

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0074

Moritz Residence

**Site Location: 14272 Jerome Drive,
City Of Poway, San Diego County**

Dear Dr. Moritz:

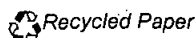
Enclosed is Cleanup and Abatement Order (CAO) No. R9-2008-0074 of the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning discharges of sediment and rock into an unnamed, ephemeral stream that is tributary to Rattlesnake Creek and ultimately Poway Creek, located on your property at 14272 Jerome Drive, Poway, San Diego County (Los Penasquitos Hydrologic Unit, HSA: 906.20).

The CAO is issued pursuant to California Water Code (CWC) Section 13304 and directs you to cleanup the waste (sediment, soil, and rock fill); remove the 24-inch diameter high density polyethylene (HDPE) drainage pipe, abate the potential for continued erosion and sediment discharges from the Project, and restore the site to pre-project conditions. Please note the deadlines contained within the CAO.

The CAO is effective immediately. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with CWC Section 13320 and Section 2050 of Title 23, California Code of Regulations. The State Board must receive the petition within 30 days of the date of the enclosed Order.

Any person affected by this action of the Regional Board may also request an evidentiary hearing before the Regional Board. To schedule a hearing at a Regional Board meeting, you must submit a written request to this office within 30 days of issuance of the CAO. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

California Environmental Protection Agency



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July 9, 2008

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I strongly urge a prompt and complete response to each directive in the CAO. Failure to comply with the CAO may result in further enforcement including: assessment of civil liability under CWC Sections 13261, 13268, 13350, and/or 13385; a Time Schedule Order under CWC Section 13308, referral to the State Attorney General for injunctive relief or monetary remedies; and referral to the District Attorney for criminal prosecution.

As indicated in the directives of the CAO and pursuant to CWC Section 13304, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred to investigate unauthorized discharges of waste and to oversee cleanup of such waste, or other remedial action required under this CAO. The Regional Board will be issuing periodic invoices for the oversight of cleanup efforts on your property at a later date.

Please contact Christopher Means at (858) 637-5581 or cmeans@waterboards.ca.gov if you have any questions regarding this matter.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:cc:cjm

Enclosure: Cleanup and Abatement Order No. R9-2008-0074

CIWQS Entries: *San Joaquin River Region*
Regulatory Measure: 347272
Place: 719044
Party: 472125

CIWQS project? *CIWQS*

cc:

Mr. Danis Bechter
Engineering Inspection Supervisor/NPDES Coordinator
City of Poway
13325 Civic Center Drive
Poway, CA 92064

Mr. Danis Bechter

RF

Mr. Robert Smith
U.S. Army Corps of Engineers
San Diego Field Office
16885 West Bernardo Drive
Suite 300A
San Diego, CA 92127

Ms. Kelly Fisher
California Department of Fish and Game
South Coast Region
Habitat Conservation Planning – South
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Elizabeth Goldmann
Wetlands Regulatory Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0074

FOR

**Dr. Bill Moritz
14272 Jerome Drive
Poway, CA**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Dr. Bill Moritz is the owner and resident of a single family residential home, with associated out-buildings located at 14272 Jerome Drive, in Poway, California (APN # 321-040-49). The property occupies an area of approximately 2.45 acres.
2. On or before February 7, 2008, Dr. Bill Moritz (hereinafter Dr. Moritz) discharged waste (from unknown locations) at 14272 Jerome Drive, Poway, CA (hereinafter referred to as Site) which consists of sand, silt, clay, or other earthen materials into an unnamed, ephemeral stream that is tributary to Poway Creek in violation of the California Water Code. Additionally, Dr. Moritz installed approximately 340 feet of 24-inch high density polyethylene (HDPE) pipe and associated structures to convey upstream drainage across his property. Attachment No. 1 includes a June 9, 2008 Regional Board Facility Inspection Report and photographs taken from various sources documenting site conditions and the discharge event, including described observation of the subject site.

3. As of the date of issuance of this order, the areal extent of grading and disturbed soil at the Site is unknown. If the area of land disturbance including the area of fill is 1-acre or more, the Federal Clean Water Act requires landowners to apply for, and obtain, coverage under, and comply with, the *Statewide Construction Activities Storm Water General Permit* Order No. 99-08-DWQ.¹
4. Failure to file a Notice of Intent to comply with the Statewide General Construction Permit or notice of non-applicability that specifies the basis for not needing to obtain coverage under an NPDES permit, may be subject the owner of the site to mandatory penalties prescribed in California Water Code section 13399.33.

¹ Information regarding the *Statewide Construction Activities Storm Water General Permit* Order No. 99-08-DWQ can be obtained from the State Board website at:

"1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited;"

"3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) is prohibited;" and

"14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited."

12. The Basin Plan designates beneficial uses of inland surface waters in the discharge area (hydrologic sub area 906.20) as including Agricultural Supply (AGR), Contact Water Recreation (REC 1), Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
13. Cleanup and abatement of the Site is necessary to ensure that discharges from the unauthorized discharge of waste cease to cause and/or threaten to cause conditions of pollution and to restore beneficial uses of water. Because cleanup and abatement activity will occur within the stream, best management practices (erosion and sediment controls) are necessary to prevent and reduce erosion from the Site and exacerbate the conditions that threaten beneficial uses of the water.
14. Pursuant to Water Code Section 13304, the Regional Board is entitled to, and may ~~seek reimbursement for, all reasonable costs it actually incurs to investigate~~ unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
15. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to Section 13304 of Division 7 of the California Water Code, Dr. Moritz shall:

1. Immediately, under the guidance of a qualified civil engineer or environmental consultant, implement interim site stabilization measures (sediment and erosion control best management practices) to prevent the discharge of waste off-site.
2. If the area of construction and soil disturbance is 1 acre or greater, Dr. Moritz shall immediately apply for coverage under, and comply with, the *Statewide Construction Activities Storm Water General Permit* Order No. 99-08-DWQ. As required by Order 99-08-DWQ, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared to address the stabilization of the site during the site cleanup and stream restoration activities. Documentation of coverage under Order No. 99-08-DWQ will be provided to the Regional Board within 5 days of obtaining coverage.
3. By **August 15, 2008** develop and begin implementation of a Stream Restoration Plan, prepared by a qualified professional with at least five years professional experience in stream restoration work, which addresses the actions that will be taken to restore the stream to its pre-project state and comply with the directives 4 & 5 of this order. The plan will be provided to the Regional Board prior to implementation, and if no comments are received from the Board within 2 weeks of receipt of the plan, begin implementation of the restoration plan no later than August 29, 2008.
4. By **October 24, 2008** cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste on your property by:
 - a. Removing the waste including sand, silt, clay, rock or other earthen materials previously discharged to waters of the State;
 - b. Restoring the elevations of the stream channel bottom and banks and floodplain to pre-discharge conditions;
 - c. Realignment of the stream channel to its pre-discharge location;
 - d. Revegetating the restored stream with native vegetation along the banks in a manner to mimic the diversity and distribution of streams in the vicinity of the affected area;
 - e. Removing the 24-inch HDPE drainage pipe and other associated structures; and
 - f. Removing the waste including sand, silt, clay, rock or other materials stored on land where it threatens to discharge to waters of the State.
5. All waste materials including sand, silt, clay, rock or other earthen materials that are removed from the Site (14272 Jerome Drive) shall be disposed of properly at facilities permitted to accept such waste in accordance with all relevant federal, state, and local laws, regulations, orders, resolutions, and ordinances.

6. By **December 19, 2008**, submit a Cleanup and Abatement Report that clearly documents that the required on-site cleanup and abatement actions have been taken and that the stream has been returned to pre-project conditions. The report shall include an estimation of the volume and aerial extent of the discharge and photographs of the remedial activities and completed cleanup conditions.

Reporting Requirements

1. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger(s) or by a duly authorized representative of the Discharger(s) and submitted to the Regional Board. *Duly Authorized Representative.* A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
2. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. **Electronic and Paper Media Reporting Requirements.** The Discharger shall submit both electronic and paper copies of all workplans, technical reports, and monitoring reports required under this Cleanup and Abatement Order. Electronic submission shall be in PDF format, and include the signed transmittal letter and professional certification.
4. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED MANAGEMENT PROGRAM

FACILITY INSPECTION REPORT

FACILITY: Moritz Residence

WDID/401 File #: none

INSPECTION DATE/Time: 6/9/08 2:25 pm

FACILITY: **Moritz Residence (APN # 321-040-49)**

REPRESENTATIVE(S) PRESENT DURING INSPECTION: Christopher Means (SDRWQCB), Danis Bechter (City of Poway), Kelly Fisher (CDFG)

Dr. Bill Moritz

(858) 472-0251

NAME OF OWNER, PARTY RESPONSIBLE FOR DISCHARGE

OWNER CONTACT NAME AND PHONE #

FACILITY OR DEVELOPER NAME (if different from owner)

FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

14272 Jerome Drive

Poway, CA 92064

FACILITY STREET ADDRESS

FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE (Check One)

- A1 ___ "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1 ___ "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02 ___ Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.
- 03 ___ Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.
- 04 X ___ Complaint--Inspection made in response to a complaint.
- 05 ___ Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06 ___ No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07 ___ Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).
- 08 ___ Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

Yes Were violations noted during this inspection? (Yes/No/Pending Sample Results)

I. COMPLIANCE HISTORY:

- 2/7/08 City of Poway issues Stop Work Notice for import of fill onto site in conflict with City grading ordinance.
- 2/8/08 City of Poway issues 2nd Stop Work Notice for grading into an ephemeral stream and import of fill.
- 3/21/08 City staff confirms conversation via memo with Dr. Moritz to stop grading and filling and meet with city to discuss violation of regulations including RWQCB & CDFG codes.
- 4/24/08 City of Poway issues 3rd Stop Work Notice which requires restoration of stream to pre-construction topography.
- 5/8/08 City of Poway refers complaint to SDRWQCB Central Watershed Protection Unit.
- 6/9/08 Regional Board with Fish & Game & Poway staff inspect site (from road and adjacent property) and attend a meeting with Dr. Moritz's representative at City Hall.

FACILITY: Moritz Residence WDID/401 File #: none INSPECTION DATE/Time: 6/9/08

II. FINDINGS (See attached photos)

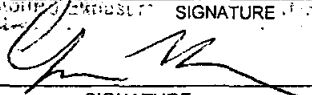
- An in-house review of aerial photos obtained from the internet (see photo 1-2), historical photos taken by CDFG staff in April 2005 (photo 3), and a review of topographic maps at the June 9, 2008 meeting established the existence of a vegetated ephemeral drainage on the Moritz property, which connects to a blue line stream on the adjacent property tributary to Rattlesnake Creek, and ultimately Poway Creek (HSA 906.20). The ephemeral stream generally ran in a North to South direction just west of a horse riding ring on his property.
- As detailed in the February 7, 2008 Stop Work Notice provided by the City of Poway, Dr. Moritz began importing an unknown number of truckloads of earthen material onto his property, as well as cutting into a slope on at the north western end of his property to fill in the creek and raise the topography of the area approximately 5-feet (judging from the southern edge of his property). The source of the imported fill material is unknown.
- Additionally, Dr. Moritz installed a 24-inch HDPE pipe to convey upstream drainage across his property. The outlet of the pipe has been placed out of line with where the creek continued onto the adjacent property, and threatens to cause a condition of erosion, and nuisance to the adjacent property owned by Sean Marsden. (see photo 4)
- At the time of the inspection the entire area of fill remained in a disturbed condition, and no sediment or erosion control BMPs (except some silt fencing along the perimeter) were in place.
- City of Poway Staff confirmed that Dr. Moritz has not obtained any grading permits to do the work. CDFG staff confirmed that Dr. Moritz has submitted an application for a Section 1602 Streambed Alteration Agreement, but it was after the work had been completed.
- No Application for 401 certification or Waste Discharge Requirements has been received by the Regional Board.
- It is unknown at this time whether the area of disturbance is over an acre, and would therefore be required to obtain coverage under the Statewide General Construction Stormwater Permit. Regardless of the area of disturbance, best management practices (erosion and sediment controls) must be implemented.
- After the field visit, Regional Board, City of Poway and CDFG staff met with Mr. Stuart J. Sandrock who was acting as Dr. Moritz's representative. The various violations that have resulted from Dr. Moritz's unauthorized activity were discussed. Mr. Sandrock was alerted to the intention of the Regional Board to initiate an enforcement action to the restore the creek to its original topography and configuration. It was suggested strongly by myself and others in attendance that Dr. Moritz enlist the services of a qualified Civil Engineer, and an Environmental Consultant who has expertise in stream restoration.

III. RECOMMENDATIONS AND ADDITIONAL COMMENTS

- Site needs to be stabilized immediately. Erosion and sediment controls should be implemented
- Consistent with previous instances of unauthorized fill in the City of Poway, a Cleanup and Abatement Order should be prepared requiring removal of fill and restoration of the creek.

IV. SIGNATURE SECTION

Inspection Report received by :

FACILITY REPRESENTATIVE		TITLE
Christopher Means	SIGNATURE	6/9/08
STAFF INSPECTOR	SIGNATURE	INSPECTION DATE

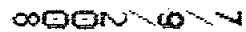
VI. (For internal use only)

Reviewed by Supervisor: _____ Date _____

cc: Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____

s: north watershed unit/forms/inspection form.doc (vrs. 11/22/00)

CIWQS:
 Regulatory Measure ID: 347272
 Place ID: 719044
 Party ID: 472125

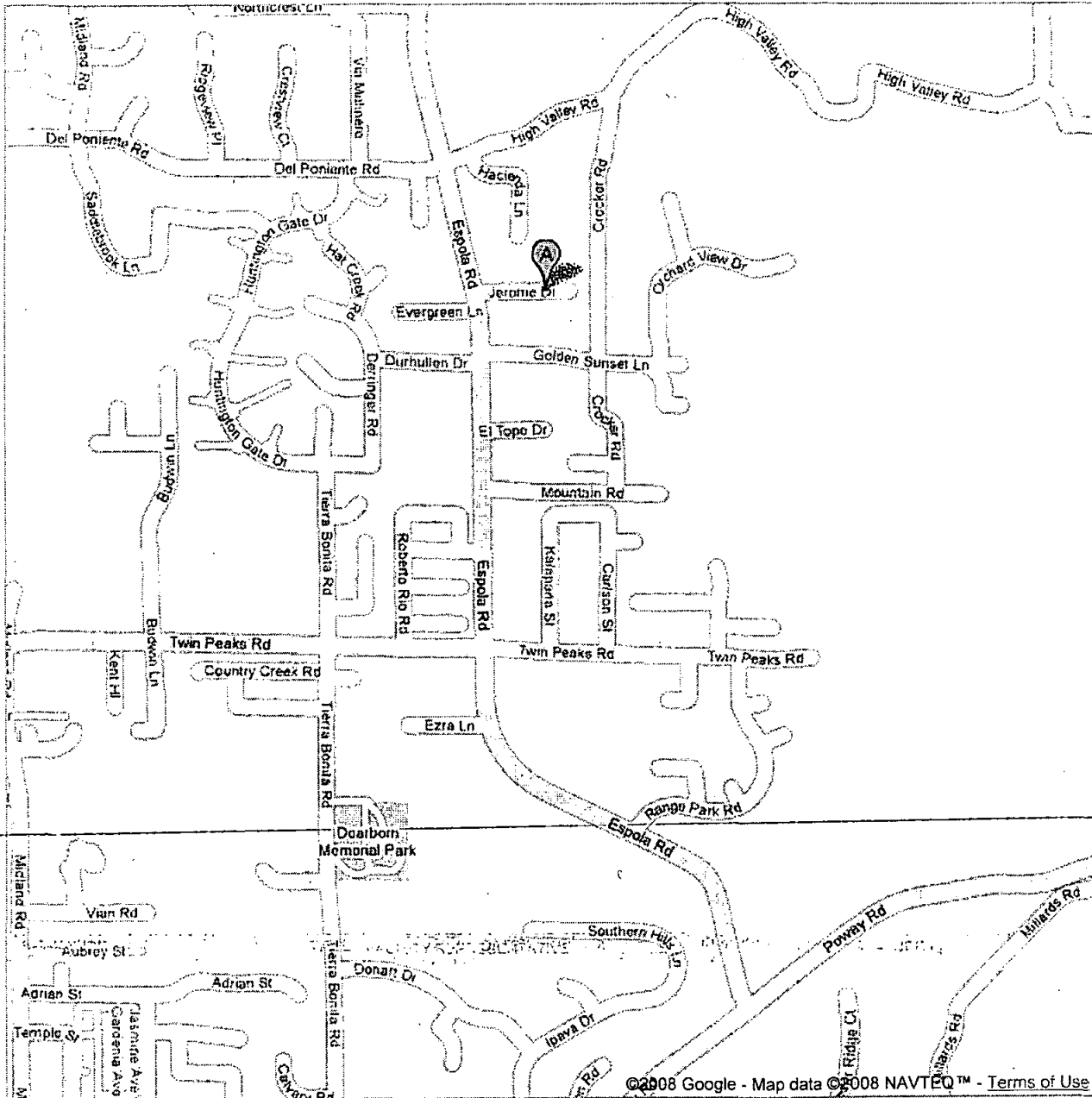


VICINITY MAP



Address **14272 Jerome Dr**
Poway, CA 92064

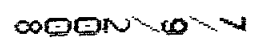
Get Google Maps on your phone
Text the word "GMAPS" to 466453



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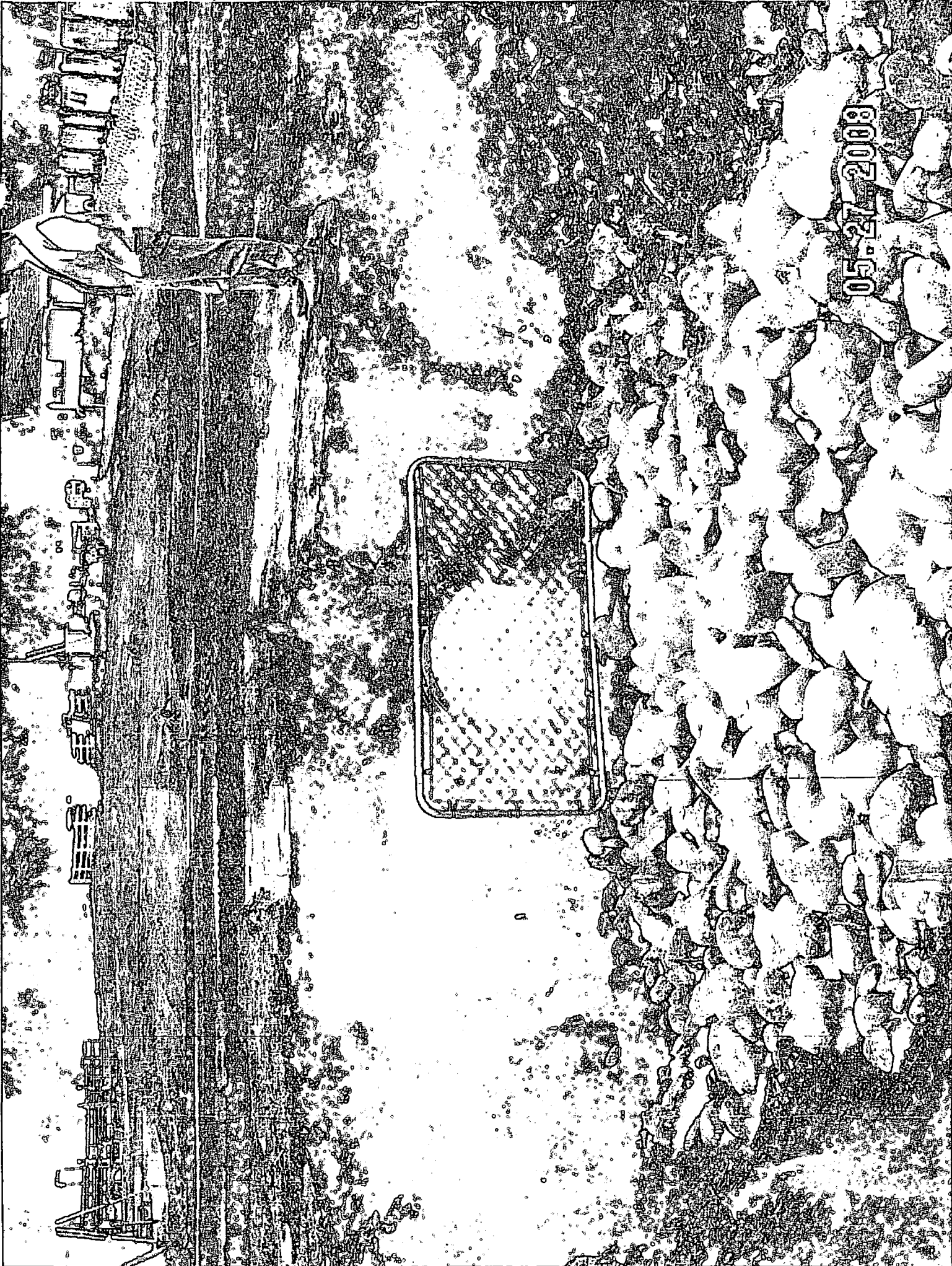
For the best possible print results, click the printer icon on the Live Search Maps page.



This photo was taken April 11, 2005 from the adjacent parcel, looking downstream onto the Moritz property.



Photo provided by Kelly Fisher of CDEG



05-27-2008

