

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
SH/S Dover Road, 9,100' NW of * ZONING COMMISSIONER
Butler Road, 4th District *
* OF
ESTATE OF BERTHA S. BRATHUHN, * BALTIMORE COUNTY
Petitioner *
84-284-X *

PETITIONERS' MEMORANDUM IN SUPPORT
OF PETITION FOR SPECIAL EXCEPTION

The Estate of Bertha S. Brathuhn and WTR/WGRX, by Newton A. Williams and Nolan, Plunhoff & Williams, Chartered, offer this Memorandum for the consideration of the Zoning Commissioner as requested.

STATEMENT OF THE CASE

Carroll County Broadcasting and Shamrock Communications, Inc, WGRX(FM), are the contract purchasers of the 32.12 acre southern portion of the Brathuhn Estate, R.C.2 property of just over 100 acres, located on the southwest side of Dover Road in the Fourth Election District of Baltimore County. See Petitioners' Exhibit 1, the CRU approved plan of April 19, 1984. The Petitioners are requesting a special exception for wireless transmitting and receiving structures, for a 720 foot steel tower with aerial, and an unattended transmitter building. The object of the request is for WGRX(FM) to better serve the metropolitan Baltimore Area, with studios at the World Trade Center. The special exception is filed pursuant to Sections 1A01.2.C.23 and 502.1 of the Baltimore County Zoning Regulations (1981 Ed.).

The facts, testimony and Exhibits of the case will be more fully

residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all. Anderson, 23 Md. App. at 624-25, 329 A.2d at 724 (citations omitted)."

We would apply this same reasoning to wireless transmitting and receiving structures in Baltimore County.

The Baltimore County Council has allowed radio and T.V. towers and facilities by special exception in all but the R.A.E.I and II zones. Furthermore, as in all uses allowed by special exception, the Council is presumed to have been cognizant of all of the ordinary attributes of such facilities and towers, namely; including of necessity, their often great height (which indeed is not limited under Section 300.1 of the Regulations); the requirements that such towers be painted in colors readily visible to aircraft; that they be marked with lights both day and night in many cases; that they may in some cases pose a peril to both aircraft and birds; and, finally, that such towers by their very purpose and nature emit radio, T.V. signals and other signals.

In judging these inherent factors of a particular special exception

discussed in the course of this Memorandum.

AREAS OF CONCERN RAISED BY THE ZONING COMMISSIONER

According to our hearing notes, at the conclusion of the third day of hearing on June 21, 1984, the Commissioner expressed three major areas of concern, namely:

1. The entire area of property values, and whether property values are required to be, or can be properly considered by the Commissioner, and if so, in what manner.

2. The effects upon the environment in the broadest sense, and if these effects are required to be considered, and if they are, how these effects should be properly evaluated.

3. The final question involves the entire area of effects upon historical districts and sites, and whether these historical effects, if any, are required to be, or can be properly considered, and if so, how.

Before addressing these specific areas in great detail, it is useful to first consider the relevant sections of the Baltimore County Zoning Regulations, and a little bit of their history. When the Baltimore County Zoning Regulations were revamped in 1955, Section 270, the Schedule of Special Exceptions indicated that "wireless transmitting and receiving structures" were to be permitted by special exception County wide in every zone from residential R.40 through industrial M1. Furthermore, Section 300.1, which places no height limitations upon radio or television aerials, among other structures was also included from the outset in the 1955 Regulations, and remains unchanged today in the 1981 edition. In the present Regulations, wireless transmitting and receiving structures are permitted in every zone by special exception except the R.A.E.I and II zones, which zones do, however, allow

use, the Court in Schultz, at page 15, stated the proper evaluation standard to be applied by the hearing officer is:

"These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect, and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

We would respectfully suggest that in no instance do the inherent effects of a radio tower on the Brathuhn property rise above the inherent effects of a radio tower in almost any other part of rural, northwestern Baltimore County. A number of witnesses acknowledged that the Brathuhn farm on Dover Road in terms of topography, cultivated areas, tree cover, and soil types is like hundreds of other farms in the northern County, including both appraisers, Mr. Gelston and Mr. Davis, as well as various protestants. See also Petitioner's Exhibit 3, the blue Baltimore County 500 scale aerial photos as to the common characteristics of numerous farm properties in this area.

PROPERTY VALUES

In at least one case that our office participated, property values were considered. See Creswell, Baltimore Aviation Service, Inc., 257

franchised cable television antennas as a matter of right on government property, under Section 200.2A.4A.

THE REQUESTED SPECIAL EXCEPTION UNDER
SECTION 502.1 OF THE ZONING REGULATIONS

In approaching the three areas of concern raised by the Commissioner, i.e., property values, environment in the broad sense and historical district points, the key governing statutory provision is Section 502.1 of the Regulations. To determine how these three areas might be covered under Section 502.1, it is useful to review the Section, and the areas contested hereunder, as well as those stipulated to, (with the lettering following the statutory points) as follows:

(a) "Be detrimental to the health, safety, or general welfare of the locality involved." This Section is the primary focus of the case as seen by both sides.

(b) That the proposed tower and facility will not "create congestion in roads, streets or alleys therein" has been stipulated to.

(c) It has been stipulated that the proposed tower and building will not create a potential hazard from fire, or panic, but "other dangers" is a contested area.

(d) It has been stipulated that the facility will not overcrowd land or cause undue concentration of population.

(e) It has been stipulated that the proposed tower will not interfere with public needs, and, in fact, according to Petitioners' Exhibit 6, Mr. Weldon Hale's letter of March 29, 1984, on behalf of the Baltimore County Department of Central Services, the tower could be shared by the County, and used for public and emergency communication uses, including a possible displacement of two costly towers of the three towers now proposed for the north County for public use.

Mt. 712, 714, 264 A.2d 838 (Md.1976). But, of course, Creswell must be read in conjunction with the "ordinary effects" standards announced in Schultz. As to property values, a number of points should be recalled.

First of all, the proposed tower location is not in any historic district, nor is there any historic structure on the site. The Worthington Valley Historic District is some 7/10ths of a mile or so to the south, with the district's northwestern boundary being the 500 to 400 foot wide cleared swath of the Gas and Electric Company right-of-way, with its two large, high, transmission tower power lines running within it. Further, Mr. Gelston cited numerous County areas such as Hampton, Park Heights Avenue, etc. with \$200,000 plus houses located much closer to towers, radios and in some cases multiple towers. Locations such as Hampton and Park Heights Avenue address the question of property values closer to the subject site as well.

Again, the presence of the Channel 67 tower in Glyndon, of similar height, greater width and within a mile of the south end of the Worthington Valley District, was not cited as an adverse factor when the Worthington Valley District, was created, and it did not prevent the District from being nominated and accepted.

Furthermore, even if the tower would depreciate close by properties which we do not agree, these effects were presumably considered by the Council. In Anderson at page 624, the Court of Special Appeals said that the inherent depressing effect of a funeral home, including adverse effects on property values had been considered, and on balance the Council had decided that the allowance of funeral homes in residential districts furthered the health, safety and general welfare, and formed a part of the comprehensive plan. We make the same point as to Council

(f) The facility has been stipulated not to interfere with adequate light and air.

(g) The proposed tower and building's consistency with the purpose of the property's R.C.2 zoning classification, and the overall spirit and intent of the Regulations was not covered by stipulation, and is contested.

(h) Finally, the tower's consistency with the impermeable surface and vegetative retention provisions of the Regulations was not stipulated to, but neither was it strongly contested. Recall that as shown on Petitioners' Exhibit 1, there will be a minimum of clearing in the woods for guy wires. The access road is a narrow one, and the areas in the safety zone of 730 feet in diameter, and the cultivatable portions of the 32 acres will all remain available for farming use under easements. See Petitioners' Exhibits 1, 7 and 8, the latter two the safety zone options.

THE SPECIAL EXCEPTION AS A MARYLAND ZONING TOOL

Perhaps the leading case in Maryland concerning special exceptions is Schultz v. Pritts, 291 Md. 1, 452 A.2d 1319 (1981), wherein the Court of Appeals stated at page 11, as follows:

"This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of general welfare, and therefore, valid."

The Court then went on at page 14 in Schultz to say:

"The presumption that the general welfare is promoted by allowing funeral homes in a

consideration of radio and T.V. towers in the R.C.2 zone, with but two lots per hundred acres, what better location could be found than these sparsely populated, open rural acres?

THE PROPOSED TOWER AND THE ENVIRONMENT

Initially it should be noted that the project meets the Development Regulations and received CRG approval. Further, as previously noted, no productive farm land will be taken out of production. In fact, the 730 radius safety zone will insure that buildings, such as houses cannot be built in these areas, thus increasing the likelihood of further, continued farming use.

Mr. Rackley's report of January 31, 1984, Petitioners' Exhibit 9, clearly shows that the non-ionizing F.M. radio waves generated here and measured at the tower use are only 1/67 of the OSHA standard, and 1/670 of the much tougher ANSI standard. At Dover Road the levels, of course, are much lower. As to the possible five fold increase of the ANSI standard, being considered by the EPA, as noted in the Sun article of June 7, 1984, Protestants' Exhibit 7, we note that the tower radiation levels would still be only 1/14th of the proposed new tightened standard. Thus, there is no real radiation danger to man or animals from the proposed tower. Also, recall Mr. Rackley's calculation that one hour in front of a correctly functioning microwave oven would require over 500 years of continuous exposure at this location for the same radiation levels to be of equal value.

As for effects upon birds, all tall and even not so tall structures occasionally are struck by birds. This particular tower would only be 42 to 60 inches in width, not a major obstacle to birds in the Atlantic flyway stretching from the Atlantic coast to the inland mountains - some

one hundred miles or more in width. Mr. Schneider testified that the present three WTR towers near Westminster are not marked by frequent or large numbers of bird collisions. Once again, the Council presumably considered the fact that there may be some collisions associated with any tall structure, including "church spires, belfries, cupolas, domes, radio or television aerials, drive-in theater screens, observation, transmission or radio towers, flagstaves, chimneys, etc.", but chose to permit unlimited height under Section 300.1. Presumably the public good from such structures was felt to outweigh various detriments, including some bird collisions.

IMPACT UPON THE HISTORIC DISTRICTS

No one makes the claim that either the Worthington Valley or the Western Run Valley are in the nature of such United States landmarks as the Grand Canyon, Niagara Falls or some other area noted specifically for their natural beauty and scenic vistas. Rather, much of the historic values of these areas consist of the historic homes, buildings and farms. Once again, the proposed tower is 7/10ths of a mile north of the Worthington Valley, and several miles west of the Western Run Valley District. The Channel 67 tower at Glyndon is closer to the Worthington Valley than the proposed tower to the Western Run district.

The project was given CRG approval, and was not referred to the Planning Board because the site does not contain any historic structures on the County Landmarks list, nor is it in a County historic district. See Section 22-5.1(a)(4) of the Baltimore County Code (Bill 56-82), popularly known as the Development Regulations. The Council could quite easily have said in Bill 56-82, the Development Regulations, as to CRG Planning Board referral, "is located near, or is visible from" such

historic sites but the Council did not do so. Further, there is little, if any, mention of historic sites or districts in the Zoning Regulations, and certainly no reference in Sections 502.1 or 300.

Further, we know of no County Law requiring that County governmental action take into account the presence of fairly remote historic register districts in considering zoning or subdivision approvals, similar to the Historic Preservation Act of 1966, 16 U.S.C.470, et seq., relating to federal actions. The National Historic Preservation Acts implementing regulations, 366.F.R.800, et seq., directs Federal agencies with direct or indirect jurisdiction over Federal undertakings upon properties included in, or eligible for inclusion in the National Register of Historic Places that such sites and areas be considered before taking federal action.

According to the testimony of several witnesses for the protestants, they did not believe that the Channel 67 tower at Glyndon (built before the 1976 nomination and acceptance of the Worthington Valley as a National Register District) had been mentioned at all in the districts' nomination form, much less mentioned as an adverse factor. The district's creation was primarily aimed at preventing wholesale smaller lot subdivision which has not occurred, and cannot occur under R.C.2 zoning, rather than excluding allowed special exceptions.

As to the effects of tower visibility upon historic structures either in or out of the district, see Wilson v. Block, 708 F.2d at 753 (documented values of historic ranch house not impacted by a ski-lift visible from the house). As to the effect of tall structures on a far more historic area, namely Gettysburg National Park by a large, wide and tall privately owned and operated observation tower, see Pennsylvania v.

CONCLUSION

For all of the enumerated reasons we would respectfully submit that the Petitioners have more than met their burden of proof, and that the requested special exception for wireless transmitting and receiving structure can be, and should be granted.

Respectfully submitted,

Newton A. Williams
 NEWTON A. WILLIAMS
Nolan, Plumhoff & Williams
 NOLAN, PLUMHOFF & WILLIAMS,
 Chartered
 204 West Pennsylvania Avenue
 Towson, Maryland 21204
 (301)823-7800

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 1984, a copy of the foregoing Petitioners' Memorandum in Support of Petition for Special Exception was mailed, postage prepaid, to George Neilson, Esquire, Piper & Marbury, 1100 Charles Center South, 36 South Charles Street, Baltimore, Maryland 21201, Phyllis C. Friedman, Esquire, Peoples' Counsel, Courthouse, Towson, Maryland 21204 and Peter Max Zimmerman, Esquire, Deputy Peoples' Counsel, Courthouse, Towson, Maryland 21204.

Newton A. Williams
 Newton A. Williams

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
 TO...Zoning Commissioners..... Date...April 19, 1984.....
 FROM...Norman E. Gerber, Director
 Office of Planning and Zoning.....
 SUBJECT...Estate of Bertha S. Brathuhn
 84-284-X.....

Please consider the minutes and comments of the CRG to be the position of this office.

Norman E. Gerber
 Norman E. Gerber, Director
 Office of Planning and Zoning

NEG/JGH/sf

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
 111 W. Chesapeake Ave.
 Towson, Maryland 21286

ooo
 Nicholas B. Commodari
 Chairman

MEMBERS
 Bureau of Engineering
 Department of Traffic Engineering
 State Roads Commission
 Bureau of Fire Prevention
 Health Department
 Project Planning
 Building Department
 Board of Education
 Zoning Administration
 Industrial Development

April 13, 1984

Newton A. Williams, Esquire
 Nolan, Plumhoff & Williams
 204 W. Pennsylvania Avenue
 Towson, Maryland 21204

RE: Case No. 84-284-X (Item No. 194)
 Petitioner - Estate of Bertha S. Brathuhn
 Special Exception Petition

Dear Mr. Williams:

The Zoning Plans Advisory Committee and the County Review Group (CRG) have both reviewed the plans submitted with the above referenced petition. The following comments from the CRG have been substituted for those of the Zoning Plans Advisory Committee. They are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
 NICHOLAS B. COMMODARI
 Chairman
 Zoning Plans Advisory Committee

NEC:moh

Enclosures

cc: Daft, McCune & Walker, Inc.
 530 E. Joppa Road
 Towson, Maryland 21204

COUNTY REVIEW GROUP MEETING MINUTE
 Thursday, March 8, 1984

WTR PROPERTY

COUNTY REVIEW GROUP - THOSE PRESENT*

Catherine L. Warfield, Chairman - Dept. of Public Works
 Eugene A. Bober, Co-Chairman - Office of Current Planning

Agency Representatives

Susan Carroll - Office of Planning
 Rob Powell - Health Dept.
 Harris Shalowitz - Developers Engineering Division

Developer's Representatives

Thomas Wm. Brathuhn - Owner
 J. W. Brathuhn - Owner
 Mary B. Lambert - Attorney for WTR

Alexander Schneider
 Ronald D. Rackley
 Kenneth C. Stevens
 Donald Neubauer

*Attachment - Interested Citizens

The meeting was called to order at 1:35 p.m. by Mrs. Catherine L. Warfield, Chairman of the County Review Group. Mrs. Warfield introduced the Committee and stated that this was a Continued Meeting from January 18, 1984.

Mr. Newton Williams, the developer's attorney, responded to issues in question at the original CRG Meeting of 1/18/84. Reports and substantiating data have been supplied to Baltimore County with regard to environmental effects of the tower on animals and humans, and the effects of the tower on electronic equipment in the area around the tower. Portions of the FAA and FCC permits were supplied.

Susan Carroll, Office of Planning, read the written comments submitted from Traffic Engineering, Developer's Engineering Division, Health, Planning and Zoning. A copy of these comments was given to the developer and developer's engineer, and the comments have also been made a part of these minutes.

Mr. George Neilson, representing many of the protestants, offered the comment that the proposal is inconsistent with the Baltimore County Master Plan; specifically Vol. 4 (scenic resources and historic district), and Vol. 1 (rural and agricultural issues). He suggests that the Plan must be referred to the Planning Board for approval. Mr. Neilson also noted that the Landmark Preservation Committee should comment on the proposal.

WTR PROPERTY

because of its proximity to existing agricultural preservation lands; and he requested that the complete FAA and FCC permits be supplied to him and to Baltimore County, and that the CRG approval be withheld until the permits are approved.

Mr. Bober summarized the information presented at the meeting. The applicant has responded satisfactorily to the original issues in question except for the method of security to control vandalism from a potentially attractive nuisance.

No further sections of the FAA and FCC permits are needed to address conditions in question before Baltimore County, and approval of the CRG Plan will not be withheld pending further information from those agencies.

The CRG meeting will be continued for the following reasons: 1) The questions raised by Mr. Neilson regarding inconsistencies with the Baltimore County Master Plan require some investigation by Baltimore County; 2) Mr. Bober will review the provisions of Title 22 Section 18 and Title 22 Section 59 relative to the Master Plan issue, and a copy of the Plan will be sent to the Landmark Preservation Committee for review and comments.

The authority of the County Review Group must be determined relative to a decision that this tower represents an unwarranted intrusion into the area. The Baltimore County Solicitor's Office will be asked for an opinion.

The following limitations will be imposed prior to approval of the tower:

1. The tower height must be equal to or less than the setback from any property line or house.
2. Strobe lights may be in use in daytime only, and then only with large shields.
3. The protection from electrical interference must be guaranteed for a minimum of a mile and one half from the tower.

Mrs. Dorsey advised that she will send a copy of the research prepared by her husband to the CRG on the effects of microwave transmissions on humans.

The applicant was asked to provide information on the effects of the radio waves and tower structure on the volunteer fire station and migrating birds, respectfully. A meeting to resolve this proposal will be scheduled within 45 days of the date of this meeting.

The meeting was adjourned at 2:40 p.m.

BALTIMORE COUNTY, MARYLAND
 SUBJECT: COUNTY REVIEW GROUP COMMENTS
 FROM: OFFICE OF PLANNING AND ZONING
 CONTINUED CRG
 DATE: March 7, 1984

PROJECT NAME: WTR Property PLAN: XXXXXXXXXXXXXXXX
 COUNCIL & ELECTION DISTRICT: IV-250 PLAN EXTENSION: _____
 REVISED PLAN: _____
 PLAT: _____

The Office of Planning and Zoning has reviewed the subject plan dated February 29, 1984 and has the following comments:

The additional data requested at the CRG meeting on January 18, 1984 was submitted by Mr. Newton A. Williams, attorney for WTR and by Mr. Edward J. Levin, attorney for Central Baltimore County Planning Association Inc. and Mr. and Mrs. Andre Brewster. Upon review of the material submitted, this office offers the following comments.

Sufficient lot area must be provided to accommodate the entire tower in the event it should fall like a pencil.

This office questions the area limitations of responding to complaints of interference. The maximum radius from the tower should be 2 miles.

The strobe light requirement is not clear. This office will not accept strobe lights for night time use; red lights must be utilized. Strobe lights would be acceptable only if it is an absolute requirement by the FAA.

This office has concluded that the 700' height as proposed is excessive. It would be an unwarranted intrusion into a rural setting, it would present an attractive nuisance relative to vandalism, and it would decrease property values. It is suggested that the height be lowered to a more reasonable scale.

Susan Carrell
 Susan Carrell

BALTIMORE COUNTY, MARYLAND
 SUBJECT: COUNTY REVIEW GROUP COMMENTS
 FROM: ZONING
 DATE: 2/20/84

PROJECT NAME: WTR PLAN: _____
 LOCATION: SW/S Dover Road DEVELOPMENT PLAN: _____
 DISTRICT: 4th Election District PLAT: _____

1. A special exception for wireless transmitting and receiving structure, Item No. 194, was filed on 1/23/84. Final approval of a building permit is contingent upon the outcome of the zoning hearing.
2. The revised CRG plan dated 2/29/84 complies with the comments made at the CRG meeting on January 18, 1984.

Diana Titter
 DIANA TITTER
 Zoning Associate III

DT:msh

7/22/84

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Brooks Stafford Date: January 17, 1984
 FROM: Stephanie Taylor
 SUBJECT: ENVIRONMENTAL EFFECTS REPORT WTR PROPERTY
 CRG MEETING JANUARY 18, 1984

PLAN REVIEW NOTES

1. Radio transmission tower with private driveway on 30.5 acres.
2. No water or sewage facilities proposed.
3. Not in reservoir watershed.
4. No development is proposed in wetland soils.
5. McGill Hun flows through property.
6. Stormwater management exemption has been requested.

RESPONSES

Environmental Effects Report is approved, subject to the following conditions:

1. The owner agrees in writing to comply with the following best management practices at this site:
 - A. All areas except that used for buildings, sidewalks and paved parking will be planted with vegetated cover and/or landscaped as soon as possible after final grading and maintained in such condition.
 - B. Filling will not occur in grassed or lined drainage ditches or swales.

ST:pms

COUNTY REVIEW GROUP
 COMMENTS ON PROPOSED SUBDIVISION PLANS
 BALTIMORE COUNTY DEPARTMENT OF HEALTH

March 7, 1984
 Date

WTR Property
 Subdivision Name, Section and/or Plat
 Estate of Bertha Brathuhn Def. McCune, Walker, Inc.
 Developer and/or Engineer

| | | | | |
|-----------------------|----------------------|---------------|-------|-------|
| Western Run Watershed | 100' x 100' | 74 | 100' | 100' |
| | No. of Lots or Units | Total Acreage | Water | Sewer |

COMMENTS ARE AS FOLLOWS:

- Soil percolation tests are required; a minimum of two tests are required within a designated 10,000 square foot sewage disposal reserve area. For further information regarding these requirements, contact this office at 494-2762.
- Soil percolation test have been conducted. Revised plans, _____ must be submitted prior to approval of plat. _____ are not required and the plat can be approved as submitted. Contact this office for more complete information, 494-2762.
- Public sewers _____, public water _____, must be utilized and/or extended to serve the property.
- A Hydrogeological Study and Environmental Effects Report for this subdivision, _____ must be submitted, _____ are not required, _____ is incomplete and must be revised, has/have been reviewed and approved.
- A Water Appropriation Permit Application, _____ must be submitted, _____ has been submitted. NOTE: Greater than 33 lots necessitates a public hearing with Water Resources Administration as part of the permit process.
- It is recommended the plan, _____ be approved as submitted, be approved as submitted subject to the following conditions noted: *see the attached memo dated January 17, 1984*
- It is recommended this plan not be approved at this time. See revisions and/or comments.

REVISIONS AND/OR COMMENTS:

1. The proposed radio transmission tower will not require the use of any public water or sanitary facilities, therefore a well and septic system are not required.

2. The subdivision of Tract B should not be water as "parcels" but rather Tracts.

3. The developer has stated the proposed structure will not receive and not transmit microwave radiation. In this fact, the proposed tower will not pose any health hazards to the surrounding community.

SS 783R

BALTIMORE COUNTY, MARYLAND

SUBJECT: SUBDIVISION REVIEW COMMENTS
 FROM: Edward A. McDonough, P.E., Chief
 Developers Engineering Division
 DATE: March 5, 1984

PROJECT NAME: WTR Property
 PROJECT NUMBER: 883235
 LOCATION: W/S of Dover Road, N. of Butler Road
 DISTRICT: 4C3

The Plan for the subject site, dated December 13, 1983 with the latest revision dated February 29, 1984, has been reviewed by the Developers Engineering Division and we comment as follows:

GENERAL COMMENTS:

All previous Engineering Comments still apply.

The Plan is approved, subject to all previous comments.

Edward A. McDonough
 EDWARD A. MCDONOUGH, P.E., Chief
 Developers Engineering Division

EAH:HNS:sa
 cc: File

DEPARTMENT OF TRAFFIC ENGINEERING
 BALTIMORE COUNTY, MARYLAND

TO: Mr. Robert A. Norton
 FROM: C. Richard Moore
 SUBJECT: C.R.G. COMMENTS
 DATE: March 7, 1984

PROJECT NAME: WTR Property C.R.G. PLAN: X
 PROJECT NUMBER & DISTRICT: 4C3 DEVELOPMENT PLAN: _____
 LOCATION: Dover Road W. of Butler Road RECORD PLAT: _____

The proposed driveway needs to be relocated to 75ft. north of the existing fence line near the south property line. This location is also 40' south of CAP pole #31.

The existing bank along Dover Road needs to be graded back between the existing tenant house and the proposed driveway.

C. Richard Moore
 C. RICHARD MOORE
 Acting Deputy Director
 Traffic Engineering

CRG/GM/ccm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: FILE Date: March 12, 1984
 FROM: Eugene A. Bober
 Chief, Current Planning and Development
 SUBJECT: WTR CRG Meeting

The CRG meeting of March 8, 1984, was continued for the following reasons:

1. George Neilson, representing many of the protestants suggested that the plan is inconsistent with the Baltimore County Master Plan. He indicated that Volume Four (scenic resources and historic districts) and Volume One (rural and agricultural uses) conflict with the proposals. Mr. Neilson suggested that a conflict with the Master Plan should be referred to the Planning Board. I intend to review the provisions of Title 22 Section 18 and Title 22 Section 59 with regard to the matter.
 2. Mr. Neilson suggested that the property is adjacent to a National Historic District and he requested that the Landmarks Preservation Committee be given an opportunity to comment on the plan. We will forward a copy of the plan to the Landmarks Preservation Committee.
 3. The authority of the County Review Group has to be determined if we should decide that this tower represents an unwarranted intrusion into this rural area. I will request an opinion from the County Attorney.
- Mr. Neilson also requested that the CRG be delayed until the FAA and the FCC applications are approved. Mrs. Warfield and I disagreed feeling that a "catch 22" situation would result.

There are issues that Mrs. Warfield and I have agreed on and if the tower is approved the following limitations will be imposed:

1. the tower height must be equal to or less than the setback from any property line or any house;
2. strobe lights will not be permitted except in the daytime and then only with large shields;
3. the protection from electrical interference must be a minimum of a mile and a half.

After the meeting, Mrs. Dorsey indicated that her husband has researched the effect of microwave transmissions on humans and she intends to forward that to the CRG.

In addition, someone else gave me a synopsis from the September 19, 1981, Natural History Magazine detailing the problems of the migratory birds and towers was also given to me at the end of the meeting and I have enclosed a copy.

Eugene A. Bober
 Eugene A. Bober, Chief
 Current Planning and Development

cc: Susan Carrell



BALTIMORE COUNTY
 FIRE DEPARTMENT
 TOWSON, MARYLAND 21204
 825-7310
 January 31, 1984
 PAUL H. REINCKE
 Chief

Mr. William Hammond
 Zoning Commissioner
 Office of Planning and Zoning
 Baltimore County Office Building
 Towson, Maryland 21204
 Attention: Nick Comandari, Chairman
 Zoning Plans Advisory Committee
 Re: Property Owner: Bertha S. Brathuhn
 Location: 9,100' SW/S Dover Road N/W Butler Road
 Item No.: 194 Zoning Agenda: January 31, 1984

Gentlemen:
 Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1974 Edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

Reviewed: *Paul H. Reincke* 1-31-84 Approved: *William Hammond*
 Planning Group Fire Prevention Bureau
 Special Inspection Division

/mb

TED ZALESKI, JR. DIRECTOR Mr. Arnold Jablon, Zoning Commissioner Office of Planning and Zoning County Office Building Towson, Maryland 21284

February 3, 1984

Dear Mr. Jablon: Comments on item # 19: Zoning Advisory Committee Meeting are as follows:

Property Owner: Estate of Bertha S. Brathuhn Location: SW/S Dover Road 9,100' N/W Butler Road R.C. 2 Existing Zoning: Special exception for wireless transmitting and receiving structures and facilities as principal uses in R.C. 2 zone.

Acres: 32.119 District: 4th.

The items checked below are applicable:

- A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 State of Maryland Code for the Handicapped and Age; and other applicable Codes. B. A building/other miscellaneous permit shall be required before beginning construction. C. Residential: Three sets of construction drawings are required to file a permit application. D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application. E. An exterior wall erected within 6'0 for Commercial uses or 3'0 for One & Two Family use groups of an adjacent lot line shall be of one hour fire resistive construction. F. Requested variance appears to conflict with the Baltimore County Building Code. G. A change of occupancy shall be applied for, along with an alteration permit application. H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 401. I. Comments - Data Sheets and Drawings for tower construction shall be signed and sealed by a registered in Maryland Professional Engineer in the Structural Field.

NOTE: These comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours, Charles E. Burnham, Chief Plans Review

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent Towson, Maryland - 21204

Date: January 27, 1984

Mr. Arnold Jablon Zoning Commissioner Baltimore County Office Building 1111 West Chesapeake Avenue Towson, Maryland 21204

Z.A.C. Meeting of: January 31, 1984

RE: Item No: 192, 193, & 194. Property Owner: Location: Present Zoning: Proposed Zoning:

District: No. Acres:

Dear Mr. Jablon:

The above items have no bearing on student population.

Very truly yours, Wm. Nick Petrovich, Assistant Department of Planning

WNP/lh

IN RE: PETITION SPECIAL EXCEPTION SW/S of Dover Road, 9,100' NW of Butler Road - 4th Election District Estate of Bertha S. Brathuhn, Petitioner BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 84-264-X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception for a wireless transmitting and receiving facility as a principal use, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, by its Contract Purchaser, Carroll County Broadcasting Corporation, appeared and was represented by Counsel. Appearing on its behalf were Kenneth Stevens, Vice President and General Manager of Carroll County Broadcasting Corporation; Matthew J. Vlassides, a registered structural engineer specializing in the building of towers; Ronald Rackley, a registered professional electrical engineer and consultant; Edmund Halle, a registered civil engineer and landscape surveyor; Alexander Schneider, Chief Engineer for the radio station; Elizabeth Dahlberg, a registered engineer and consulting radio engineer; and Hugh Gelston, a real estate appraiser and broker.

Protestants appeared and testified. See Protestants' Exhibit 12. Counsel represented the Valleys Planning Council, Inc. and the Central Baltimore County Planning Association, Inc., as well as various individual Protestants. Ned Esquire, a resident of the area, represented himself as a Protestant. Testifying for the Protestants were Herbert Davis, a realtor with 25 years of experience; Richard Plunkett, a consultant who specializes in the study of bird collisions with manmade objects; Robert Beckett, Executive Director of the Maryland Environmental Trust; Judy Baer, Executive Director of the Valleys Planning Council; and many residents of the area.

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Testimony indicated that the Contract Purchaser purchased 32 acres from the Petitioner for the express purpose of constructing a radio tower. The R.C.2 zoned site, located in a rural setting in northern Baltimore County, is primarily wooded and somewhat steep. The Contract Purchaser, hereinafter referred to as WGRX, is the owner of AM and FM radio stations emanating from Westminster in Carroll County. The FM station also has a studio in Baltimore City. WGRX presently has its tower in Westminster but needs a larger tower in order to expand its FM listening area. The tower proposed to be constructed, 720 feet high with aerial and 42 to 60 inches in width, would be open steel gridwork. The 20' x 30' unattended transmitter building would house only the basic equipment to transmit. No employees would be on the site except an employee who would make weekly visits to inspect for existing problems or prevent potential problems from developing. A monitoring system would be established from the studio, and a fence would be placed by and around the access road to prevent illegal entrance. Also, the base of the tower and the building would be fenced and a burglar alarm installed. The guy wires anchoring the tower will also be fenced. To further insure safety, a 1,460-foot-wide safety zone would be created around the tower for protection in case of collapse. Expert testimony indicated that the tower, as proposed to be constructed, would not topple but instead would collapse straight down in stages. The tower would enable WGRX to provide full Class B service as approved by the FCC and enable its listening audience to double. Only its FM signal would originate from the new site; the AM signal will still originate from Carroll County. The programming provided by the FM station would be divided between its studios in Westminster and Baltimore. Two microwave dishes would be located on the tower which would receive signals from the two studios. WGRX previously requested permission to construct the tower in Carroll County but was denied.

Mr. Vlassides testified that he has about 20 years experience in tower design and has been involved with about 2,000 towers. He stated that the tower would be built to withstand wind levels of up to 120 miles per hour. (The highest level recorded in the Baltimore area has been 80 miles per hour and is considered a gust). Wind would have to reach 120 miles per hour over a sustained period of time for damage to occur. Even if the tower should collapse, it would fall within an area equal to 30% of its total height. The designated safety area provided would be more than sufficient for protection if such should occur. He further testified that he has reviewed the proposed plans, and they meet all of the applicable engineering standards and, based on his personal experience, such a tower would never fall. Any ice forming on the tower would either slide down the tower itself or fall directly underneath it. Therefore, it was his opinion that the proposed tower would not pose any threat to the public health, safety, or welfare of the community.

Mr. Rackley, an expert in radio engineering, testified that the microwave radiation would be less than what an ordinary microwave oven puts forth in a kitchen. The electromagnetic radiation emanating from the site would have no adverse effect on people or animals.

Mr. Gelston testified that, after 53 years of appraising real estate and with his familiarity of the area, he felt the tower would have no adverse impact on either improved or unimproved land values. He investigated two other tower sites (WCAO and WLIF) and examined sales of properties within 1/2 mile of the tower and found that the values of such properties had risen comparably to property values elsewhere. He concluded that the existence of a tower had no effect on property values.

Mr. Davis contradicted Mr. Gelston. Mr. Davis lives in the vicinity of the proposed tower and believes that such a tower would indeed cause property values

to decline. He argued that the tower would present a negative visual impact to potential purchasers and that property values would decline. He further testified that the tower would adversely affect the quality of life of the nearby residents as it would be a constant reminder of the commercial intrusion associated with an urban setting into this last preservation of rural life in Baltimore County. He argued that the tower would be inconsistent with the property's zoning classification. The latter points were stressed repeatedly by the Protestants' other witnesses.

A. Herman Stump, who lives within 1/2 mile of the site, was concerned about ice forming on the tower and causing it to fall and damage properties and animals nearby. This was disputed by Mr. Vlassides and by Mr. Schneider. The proposed site is 1,500 feet from Dover Road and only the service building at the tower's base would be within 1,300 feet of the site.

Marian Brown and G. H. Cassels-Smith, area residents, testified that they feared interference from the tower with their telephone service and television reception. They surveyed residents living near the tower in Westminster (see Protestants' Exhibit 10) and found that while WGRX has made efforts to correct interference from its tower, there were still problems not completely resolved. Mr. Schneider, on behalf of the station, promised that the station would correct any and all reception problems caused by the tower.

While the Protestants did not present expert testimony to contradict Mr. Vlassides or Mr. Rackley, they did present evidence that the tower would create an adverse impact on the health, safety, and welfare of the community. Mr. Plunkett was with the Audubon Society for 17 years, was an editor of a publication specializing in birds, and is presently a consultant specializing in bird collisions with manmade objects. He testified that all tall towers create problems for birds when passing in the Spring and Fall and projects serious

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mortality rates for birds coming into contact with the tower. This particular tower would be a tremendous hazard to the Canadian Geese who spend the Winter in this area. The abundance of food, numerous ponds, light hunting pressure that exists in the northern County area, and the natural flight path across the ridge bisecting the area proposed for the tower all add to the attractiveness of this particular region for those species of birds using the air space. Mr. Plunkett believes that the tower would present severe danger to the birds. Additionally, the lights which would be attached to the tower would further attract the birds, thereby causing injury.

Robert Beckett testified that, in the opinion of the Maryland Environmental Trust, a State agency, the tower would adversely affect about ten properties within the protection of the Trust. The rural, scenic, and historic values of these properties would be adversely impacted. See Protestants' Exhibit 2. The Trust acquires open space easements throughout the State for the express purpose of retaining such land for agricultural and/or single-family residential uses. The greatest concentration of acreage and easements in the State is in the area surrounding the proposed tower site. Although the tower site itself is not a designated area, there are two such areas nearby which would be adversely affected. The construction of the tower would be detrimental to the scenic and environmental qualities that made that acreage appropriate for the easements to be accepted by the Trust. Thus, it is the opinion of Mr. Beckett that the tower should be rejected in order to protect these properties and to preserve the objectives established by the creation of the Trust.

Other witnesses pointed out the potential damage that would be caused by the tower to the Worthington Valley and Western Run-Belfast Road Historic Districts, which are on the National Register of Historic Places. The testimony uniformly and consistently underscored not only the importance of these historic districts

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to the emotional and financial value of their properties but to the County as a whole. The construction of a 700-foot tower, painted orange and white with warning lights and guy wires, would adversely affect the very value of the districts and negate the reasons the areas were designated as historic districts in the first place.

The Petitioner seeks relief from Section 1401.2.C.23, pursuant to Section 502.1, Baltimore County Zoning Regulations (BCZR).

It is clear that the BCZR permit a wireless transmitting and receiving structure in an R.C.2 Zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary residential and agricultural uses in the vicinity of the proposed tower. There is, of course, a strong presumption of the correctness of the original zoning and of the comprehensive zoning. See Howard County v. Dorsey 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. See Johnson & Wales College v. District, 448 A.2d 1271 (R.I., 1982). The County has deemed it necessary to legislate permitted uses, either as a matter of right or by special exception, in particular zones in the County, and one of those uses permitted by special exception in an R.C.2 Zone is the right to have a wireless transmitting and receiving structure.

Special exception uses are provided as part of the comprehensive zoning plan and therefore, such uses share "the presumption that...it is in the interest of the general welfare and...valid." Turner v. Hammond, 310 A.2d 543 (1973). Such uses are presumptively permissible. Montgomery County v. Merlands Club, Inc., 96 A.2d 261 (1953). By permitting a tower as a special exception, the Baltimore County Council had obviously determined that such a use was to be permitted as a general matter. Anderson v. Sawyer, 329 A.2d 716 (1974); Miller v. Kwanis Club of Loch Raven, Inc., 347 A.2d 572 (1975). There is no

inconsistency in permitting a tower in an R.C.2 Zone provided the conditions delineated in Section 502.1 are satisfied.

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates... a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given... are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Schultz v. Pritts, 432 A.2d 1319 (1981).

WGRX had the burden of adducing testimony which would show that the tower meets those prescribed standards found in Section 502.1. The requisites are diverse but each must be satisfied. Both the Petitioner and the Protestants presented numerous witnesses and extensive testimony, and interestingly, each side presented testimony and evidence that was uncontroverted by the other with the exception of the effect of the tower on property values.

The opinions or conclusions of witnesses must be measured by the soundness of their underlying reasons or facts. Surkovich v. Doub, 265 A.2d 447 (1970). The explanations provided by the witnesses as bases for their opinions were both substantial and strong. Coppolino v. County Bd. of Appeals of Balto. County, 228 A.2d 55 (1974).

testimony of Mr. Vlissides and Mr. Rackley was uncontradicted (notwithstanding the concerns raised by Dr. Dorsey). Each presented opinions founded solely on fact; i.e., the tower will not fall and radiation will not pose a danger. The testimony of Mr. Plunkett and Mr. Beckett also was uncontroverted, and each was equally based on unique experience and knowledge; i.e., the tower will be a danger to wildlife and will adversely impact on the historic districts.

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Although Mr. Gelston contradicted Mr. Davis regarding property values and Mr. Huddles asserted that he would not have purchased his property if there had been a tower in existence, it would appear that property values would not be adversely affected. Mr. Gelston's survey of property values surrounding similar towers support his conclusion that the proposed tower would not depreciate property values in the area.

The special exception here cannot be decided on any of these issues but must be decided by whether the proposed tower would satisfy the spirit and intent of the BCZR and whether there is an adverse impact on the general welfare of the community. Based on all of the testimony and evidence presented and on the Baltimore County Code and BCZR, the tower would not satisfy that condition required by Section 502.1. Therefore, the special exception for a wireless transmitting and receiving facility should not be granted.

It is particularly relevant to consider the environmental impacts of a use prior to granting an application for such use, and there must be cognizance of the general welfare and environmental protection. Where the record shows that undesirable environmental impacts could be produced by the requested use, a special exception should be denied. Bd. of Appeals v. Boyle, 349 NE.2d 373 (Mass., 1976). The construction of the tower at the instant site poses an actual threat to various bird species, and it is in the public interest and furtherance of the general welfare of the community to prevent such from occurring. The potential for a serious bird kill if the tower were to be built is a very real threat, and the testimony of Mr. Plunkett clearly establishes the threat to be beyond any normal and customary impact the tower would otherwise have on the area. See Ex. Inc. v. City of Frederick, 375 A.2d 35 (1979). The impact from the proposed tower in that particular location would be much greater than the impact which would result from the tower being constructed elsewhere. Bd. of Supervisors v. Ford, 283 A.2d 731 (Pa., 1971). The existence of the flight path and

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the conditions enumerated by Mr. Plunkett in his testimony and listed above make this particular location more attractive to the various species of birds than other locations, and the resultant intrusion of the tower would create a greater degree of danger than otherwise expected from a tower.

There is, of course, the question of how much of an environmental impact was intended by the general standards of "public health...general welfare" to justify the denial of a special exception. Every land use permitted as a matter of right or by special exception gives rise to some impact upon the environment. Whether it is a single-family dwelling standing alone on an acre of land which consumes electricity for light and oil for heat, changes the land by removal of rocks and trees, adds to traffic and school population, burdens the water supply, and/or possibly pollutes the ground water in its use of an individual sewage disposal system, or a tower stretching 700 feet into the air, the County Council, in permitting a particular use, must have considered that these uses, as with all uses, would necessarily result in certain impacts. All would have some normal impacts upon the surroundings in which they are placed whether permitted as a matter of right or by special exception.

The proposed tower here would create danger to the general welfare, i.e., the projected large bird kill, that would far exceed any such normal expectation considered by the County Council.

The evidence established that the tower, in an area characterized by an unusually heavy concentration of scenic easement properties conveyed to the Maryland Environmental Trust, would violate this precept as well. The uncontradicted testimony of the Executive Director of the Trust that these properties, possessing unusual and substantial scenic and environmental qualities, would be impaired and adversely effected by the construction of the tower, coupled with the testimony of Mr. Plunkett that such construction poses an unusually large

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threat to various species of birds, is sufficient to support the contention that the general welfare of the locality involved would be adversely effected.

The health, safety, and welfare standard for evaluating special exceptions is obviously a broadly construed criterion which logically encompasses other standards contained in zoning enactments such as conformity to the spirit and intent of the BCZR and the Baltimore County Master Plan. See Van Sicken v. Browne, 92 Cal. Rptr. 786 (1971), where the denial of a use permit for a service station was upheld based on the nonconformity to objectives of the Master Plan. Whether the tower is in fact consistent with the Master Plan and the spirit and intent of the BCZR would be a good indication of the nature and extent of its impact upon surrounding properties and the general community.

Areas noted for their archeological or historical significance are also worthy of protection. New development...near historic sites should be compatible with their historic character...The County should encourage educational institutions and other organizations to acquire, manage and operate conservation sites...County elected officials...should encourage State and Federal acquisition of conservation areas readily accessible to the urban population.

Baltimore County Master Plan, Open Space and Recreation Plan, Volume 1, p. 2 and 3.

The spirit and intent of the BCZR is encapsulated in the Master Plan, adopted by Resolution No. 71-7, in November, 1979, which sets forth the comprehensive objectives, policies, and standards to serve as a guide for the development of the County. The BCZR are "intended to provide broad regulation of the use and management of use of land, in accordance with comprehensive plans." Section 100-1A.1, BCZR.

The law in Baltimore County is clear; i.e., there is a statutory direction to preserve and protect structures and places of historical value, and certainly, it is for the general welfare of the people of Baltimore County that such consideration must be given. The spirit and intent of the BCZR can only be

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satisfied by compliance with the overall intent of the comprehensive plan for the County.

It has long been recognized that the police power may rightly be exercised to preserve an area which is generally regarded by the public to be pleasing to the eye or historically or architecturally significant.

Mayor & City Council of Balto. v. Mano Swartz, 268 Md. 79 (1973); Donnelly Advertising Corp. v. City of Balto., 370 A.2d 1127 (1977).

The location of the historic districting in such close proximity to the site of the proposed tower is cause for concern. The intrusion of the proposed tower would in fact be contrary to the general welfare and in violation of the spirit and intent of the BCZR. The impact on surrounding properties and community would be adverse if the tower were permitted. The very nature of the tower would be anathema to the preservation and protection of the historic districts. Indeed, the construction of a tower in this area would not only diminish the aesthetic value of the historic districts but violate the very objectives for their establishment.

The tower would not be consistent with the Master Plan and, therefore, not consistent with the spirit and intent of the BCZR. Thus, it would be in contradiction to the general welfare of the locality involved. Although the Master Plan is advisory and not binding, the BCZR, specifically Section 502.1, require the guidance provided therein to be considered to insure consistency with the comprehensive plan for the area in which the tower is proposed.

The preservation of the historic districts, the preservation of the kinds of properties donated to the Trust for its scenic easement program, and the protection of wildlife are in furtherance of the general welfare. To the extent that the proposed use of the property would have an adverse impact on such scenic easement land and that it would pose an unusual danger to wildlife, there would be a deleterious effect on the general welfare of the locality.

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Pursuant to the advertisement, posting of the property, and public hearing held, and it appearing that by reason of the requirements of Section 502.1 not having been met and the health, safety, and general welfare of the community being adversely affected, the special exception should not be granted. Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 14th day of August, 1984, that the Petition for Special Exception for a wireless transmitting and receiving facility as a principal use be and is hereby DENIED.

[Signature]
Zoning Commissioner of Baltimore County

AJ/srl
cc: Newton A. Williams, Esquire
George A. Nilson, Esquire
Ned Halle, Esquire
People's Counsel

ORDER RECEIVED FOR FILING
DATE August 14, 1984
BY [Signature]

PETITION FOR SPECIAL EXCEPTION

4th Election District

ZONING: Petition for Special Exception
LOCATION: Southwest side Dover Road, 9,100 ft. Northwest of Butler Road
DATE & TIME: Thursday, April 26, 1984 at 9:30 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

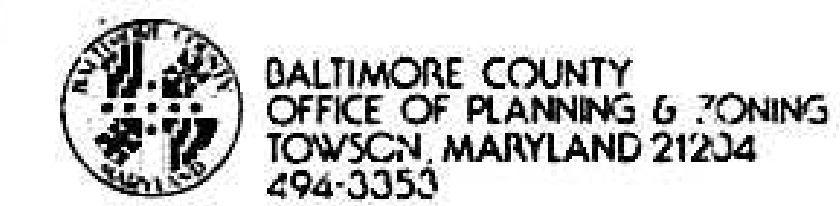
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Exception for wireless transmitting and receiving structures and facilities as principal uses in an R. C. 2 zone

Being the property of Estate of Bertha S. Brathuhn, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY



ARNOLD JABLON
ZONING COMMISSIONER
June 12, 1984

The Honorable Clarence D. Long
Congress of the United States
200 Post Office Building
Chesapeake and Washington Avenues
Towson, Maryland 21204

RE: Case No. 84-284-X
Estate of Bertha S. Brathuhn,
Petitioner

Dear Congressman Long:

I am in receipt of your letter of June 8, 1984 concerning a radio tower on Dover Road.

Please be advised that the matter to which Mr. Molnar refers is in hearing. It is not my practice now or in the future to respond to outside stimuli when matters are in quasi-judicial proceedings. I am sure you can understand that I cannot comment on matters pending under such circumstances. Upon conclusion, I will forward a copy of my decision to you.

Sincerely,
[Signature]
ARNOLD JABLON
Zoning Commissioner

AJ/srl

CLARENCE D. LONG
 20 DISTRICT, MARYLAND
 COMMITTEE ON APPROPRIATIONS
 CONGRESS OF THE UNITED STATES
 HOUSE OF REPRESENTATIVES
 WASHINGTON, D.C. 20515
 June 8, 1984

Handwritten: 94-1337, Rwd 5.2.84, 84-1615, 6/18/84

ESTATE OF BERTHA S. BARATHUHN
 By
 94-284-X


Mr. Arnold Jablon
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21204

Dear Mr. Jablon:

Please refer to my letter of April 30, 1984, at which time I wrote on behalf of Mr. George J. Molnar, (copy attached).

As of this date, I have not received a reply to my inquiry. I should appreciate learning the status of your investigation into this matter.

I look forward to hearing from you.

Warm regards,

 CLARENCE D. LONG

CDL/mg/tk
 Enclosure

June 11, 1984

Dear Congressman Long:

Please be advised that the matter to which Mr. Molnar refers is in hearing. It is not my practice now or in the future to respond to outside stimuli when matters are in quasi-judicial proceedings. I am sure you understand that I cannot comment on matters pending under such circumstances. Upon conclusion, I will forward a copy of my decision to you.

ARNOLD JABLON
 Zoning Commissioner

AJ/srl

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

CLARENCE D. LONG
 20 DISTRICT, MARYLAND
 COMMITTEE ON APPROPRIATIONS
 CONGRESS OF THE UNITED STATES
 HOUSE OF REPRESENTATIVES
 WASHINGTON, D.C. 20515
 April 30, 1984

Reply to DIRECTOR OFFICE
 200 POST OFFICE BUILDING
 COUNTY OFFICE BUILDING
 TOWSON, MARYLAND 21204
 (301) 286-0816
 OFFICE ON WHEELS


Mr. Arnold Jablon
 Zoning Commission
 County Office Building
 Towson, Maryland 21204

Dear Mr. Jablon:

I am writing on behalf of Mr. George J. Molnar, president of Molnar Business Forms, Inc., P.O. Box 35, Butler, Maryland 21023.

Mr. Molnar has been in touch with me concerning the proposal to place a 710 foot radio tower on Dover Road, one mile north of Butler Road. For various reasons indicated in the enclosed correspondence, Mr. Molnar feels the radio tower should not be installed. Therefore, he is requesting that an investigation be conducted into this matter and that he be advised of the findings.

I should appreciate your consideration of this matter and letting me know of any information or assistance you can offer.

Sincerely,

 CLARENCE D. LONG

CDL/mg
 Enclosure

cc: Mr. Molnar

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

Maryland Historical Trust
 April 12, 1984

Mr. Nicholas Commodari, Chairman
 Zoning Advisory Committee
 County Office Building
 Towson, Maryland 21204

RE: Proposed WTR/WGRX Radio Broadcasting Tower
 ESTATE OF BERTHA S. BARATHUHN
 94-284-X

Mr. Nicholas Commodari, Chairman
 Zoning Advisory Committee
 County Office Building
 Towson, Maryland 21204

The following is the official position of the Maryland Historical Trust, which functions as the State Historic Preservation Office for Maryland, regarding the above-referenced action. We respectfully request that this letter be read into the official record at the April 26, 1984 meeting of the Baltimore County Zoning Commission.

The Maryland Historical Trust strongly opposes the construction of a 700' tall radio transmission tower by Radio Station WTR/WGRX, because of the adverse visual effects such construction would have on two Baltimore County rural historic districts, listed on the National Register of Historic Places. The Worthington Valley and the Western Run-Belfast Road districts were listed on the Register in December 12, 1976 and January 23, 1979, respectively, because of significant scenic and architectural values important to Baltimore County and the State of Maryland. The proposed construction would seriously damage those values, as the tower represents the addition of an element adjacent to the boundaries which is clearly out of keeping with the qualities inherent within those areas.


Secondly, our office understands that the Maryland Environmental Trust holds a number of large easements on properties within these two districts. Construction of such a facility would irreparably harm these areas, and ultimately reduce the value of such easements, which were donated to the MET for the safekeeping and enjoyment of the public.

As you will see in the enclosed letter, our office has raised the very real issue of Federal Communications Commission noncompliance with Section 106 of the National Historic Preservation Act of 1966. Although the FCC has had the Carroll County Broadcasting Corporation's request for approval to amend or a previously approved construction permit (the latter for Carroll County) since September, 1983, the FCC and FAA have made no attempt to comply with 36 CFR Part 800, the federal regulations which implement this law. Specifically, the FCC has not yet

Shaw House, 21 State Circle, Annapolis, Maryland 21401 (301) 269-2212, 26' x 2438
 Department of Economic and Community Development

Mr. Arnold Jablon
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I appreciate the opportunity to testify in opposition to the radio tower and am prepared to provide you with additional information at your request.

Sincerely,

 Robert Beckett

RB/jh
 cc: John Murphy

MARYLAND ENVIRONMENTAL TRUST
 Environment the Trust... Man the Trustee

PROTESTANT EXHIBIT 9

June 21, 1984

Mr. Arnold Jablon
 Baltimore County Zoning Commissioner
 111 W. Chesapeake Avenue
 Towson, MD 21204

re: Case No. 84-284-X (Estate of Bertha S. Barathuhn)

Dear Commissioner Jablon:

The Maryland Environmental Trust is a quasi-public organization created by the General Assembly in 1967 to conserve, improve and perpetuate the State's natural, scenic and cultural qualities. The Trust is governed by a Board of twelve volunteer citizens and three ex-officio members: the Governor, the President of the Senate, and the Speaker of the House.

For more than ten years the Trust's major program has been the protection of open lands throughout the State which fulfill recognized public conservation purposes. The method used to protect open land has been the conservation easement, a legal document specifying the environmental values embodied in a property and preventing the development of the property in perpetuity. To date, the Trust has negotiated the donation of 85 conservation easements covering 17,500 acres of land statewide. Open areas protected include waterfront properties, marshes, woodland, farmland, wildlife habitat, scenic views, educational and recreational properties, and areas of archeological and historical significance.

The Trust holds title to 25 easements in Baltimore County, encompassing some 2,900 acres of land. In both number and acreage, Baltimore outdistances all other counties. It is also the only County in which easements are concentrated in discreet geographical areas which intentionally coincide with noteworthy historic districts.

In the Trust's opinion, ten easement properties (1,100 acres) would be adversely affected visually by the construction of the proposed radio tower. All but one of the ten properties are situated within the Worthington Valley Historic District, a National Register District.

It is the position of the Trust that the Special Exception for the radio tower should not be granted and the tower should not be built at the site in question for the following reasons:

John C. Murphy Chairman
 Brice M. Clagett Vice Chairman
 Herbert D. Morrison Secretary
 Ajax Eastman Treasurer
 Robert Beckett Executive Director

ESTABLISHED BY THE GENERAL ASSEMBLY IN 1967

Mr. Arnold Jablon
 Page Two
 June 21, 1984

- The rural-conservation purposes of the R-C(2) zoning district are most appropriately represented by the landscape, cultural features and ambiance of the Worthington Valley National Register Historic District. This valley and three other Baltimore County National Register districts are unique examples of scenic rural history in the shadow of metropolitan expansion.
- Through outreach and landowner cooperation, the Trust has assembled a grouping of conservation easement properties in the Worthington Valley which has not been duplicated elsewhere in the State.
- The Trust's conservation interest in this area is high precisely because of its open rural beauty, its historic heritage and its proximity to (and threat from) urban development.
- The potential for negotiating additional easement sights near and around the existing Worthington Valley easement assembly is perhaps better than anywhere else in the State.
- The Trust's interest in holding easements in the Worthington Valley is to protect forever the historic county landscape and atmosphere of the area. The concern is one of rural scenic integrity. Clearly, the interruption of panoramic views across easement properties by a near distant radio tower would be aesthetically detrimental to the viewing experience. A tower is neither rural nor historic, but rather epitomizes the urban condition from which the Worthington Valley Historic District is to be isolated.
- The power lines in the Valley, constructed through the eminent domain process in the mid-1940's and early 1950's, should not be construed as evidence suggesting the granting of a Special Exception for the radio tower. The impact of land uses is progressive and additive. Whatever negative visual effects the power lines bring to the Valley, the antenna will certainly make worse. Having the one does not imply the other should follow, but rather suggests the tower should not be built in the area at all.

The Worthington Valley is a unique County treasure in its relatively undisturbed condition. It possesses intrinsic public value as a National Register Historic District, and offers a variety of scenic opportunities to the traveler and area resident alike. The Maryland Environmental Trust believes the proposed radio tower would be grossly incompatible with the special rural-historic character of the Worthington Valley, and urges denial of the Special Exception request.

DAFT-McCUNE-WALKER, INC.
 530 East Joopa Road
 Towson, MD 21204
 Telephone 301-286-3333
 Land Planning Consultants
 Landscape Architects
 Engineers

Description for Zoning Purposes
 32.119 Acres +/-
 Dover Road
 Baltimore County, Maryland

Beginning for the same at a railroad spike set in Dover Road, which point is 9,100 feet +/- northwest of Butler Road and is the easternmost point of the property of Bertha S. Barathuhn as recorded among the land records of Baltimore County in Liber CUB 1093 folio 49 and running the following courses and distances:

- South 75 degrees 00 minutes 28 seconds West 594.00 feet;
- South 01 degrees 01 minutes 10 seconds East 272.25 feet;
- South 75 degrees 18 minutes 16 seconds West, 1,689.23 feet;
- North 03 degrees 38 minutes 06 seconds East 810.55 feet;
- North 25 degrees 25 minutes 34 seconds West 270.00 feet;
- North 66 degrees 48 minutes 03 seconds East 297.60 feet;
- South 80 degrees 26 minutes 00 seconds West 722.04 feet;
- South 64 degrees 46 minutes 25 seconds East 363.66 feet;
- North 01 degrees 25 minutes 44 seconds East 422.72 feet;
- South 37 degrees 36 minutes 28 seconds East 149.98 feet;
- North 75 degrees 00 minutes 28 seconds East 610.00 feet; and
- South 27 degrees 31 minutes 30 seconds East 102.44 feet +/- to the point of beginning and containing 32.119 acres +/-.

January 18, 1984
 Our File No. 83112
 Tract B, Parcel 2

REVISED PLANS

 EDWARD J. HARRIS
 P.E. SUPERVISOR

PETITION FOR SPECIAL EXCEPTION

4th Election District

ZONING: Petition for Special Exception
LOCATION: Southwest side Dover Road, 9,100 ft. Northwest of Butler Road
DATE & TIME: Thursday, April 26, 1984 at 9:30 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Exception for wireless transmitting and receiving structures and facilities as principal uses in an R.C. 2 zone

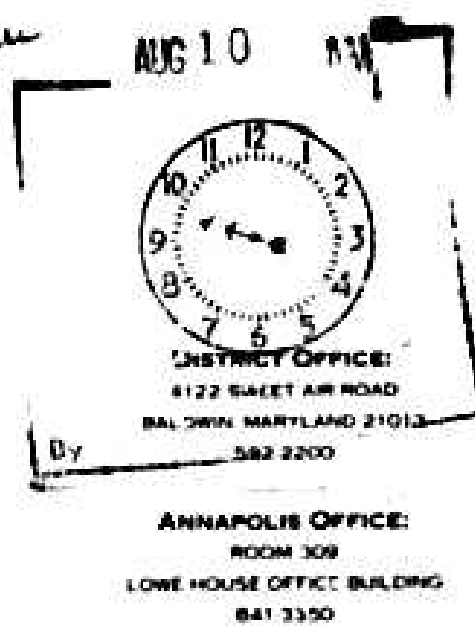
Being the property of Estate of Bertha S. Brathuhn, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain a request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

ELLEN R SAUERBNEY
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
COMMITTEE
ECONOMIC MATTERS

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991



August 7, 1984

Mr. Arnold Jablon
Zoning Commission, Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

As a follow up to the telephone contact from my office I would like to request a copy of your ruling on the zoning exception requested for the radio tower on Dover Road. I was informed that you are in the process of issuing that report at this time.

Thank you for your courtesy and cooperation.

Sincerely,

Ellen R. Sauerbney

Ellen R. Sauerbney

ERS/fa

Best copy of Order
8/13/84 xl

March 29, 1984

Newton A. Williams, Esquire
204 W. Pennsylvania Avenue
Towson, Maryland 21204

NOTICE OF HEARING

Re: Petition for Special Exception
SW/S Dover Rd., 9,100' NW of Butler Rd.
Estate of Bertha S. Brathuhn - Petitioner
Case No. 84-284-X

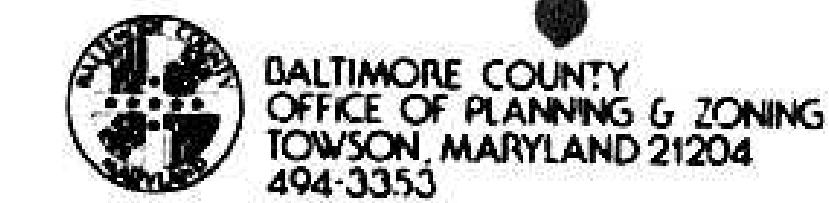
TIME: 9:30 A.M.
DATE: Thursday, April 26, 1984
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: Mr. & Mrs. Daniel Colburn
16301 Trenton Church Road
Upperco, Maryland 21155

Mrs. Janie Sivert
503 Byerly Road
Upperco, Maryland 21155

Arnold Jablon
Zoning Commissioner
Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 124078
DATE: 4/23/84 ACCOUNT: P-01-615-000
AMOUNT: \$47.30
RECEIVED FROM: Steve Adams
FOR: Eligible for 710' tower 4/15/84



ARNOLD JABLON
ZONING COMMISSIONER

April 17, 1984

Newton A. Williams, Esquire
204 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition for Special Exception
SW/S Dover Rd., 9,100' NW of Butler Rd.
Estate of Bertha S. Brathuhn - Petitioner
Case No. 84-284-X

Dear Mr. Williams:

This is to advise you that \$47.30 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

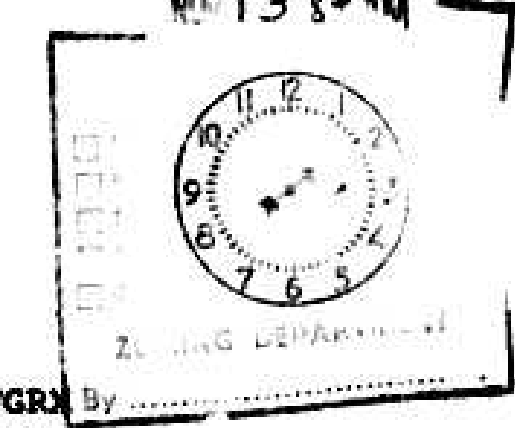
Arnold Jablon
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130250
DATE: 4/24/84 ACCOUNT: B-01-615-000
AMOUNT: \$47.30
RECEIVED FROM: Nelson, Plumhoff & Williams
FOR: Advertising & Posting Case #84-284-X (Estate of Bertha S. Brathuhn)

15/11/88
copy - Check file

10/13/84
to get file

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800
November 8, 1984



Honorable William T. Hackett, Chairman
County Board of Appeals
Court House
Towson, Maryland 21204

Re: Dismissal of Appeal in Special Exception Case No. 84-284-X. A Request by Radio Station WTR/WGRX for a Special Exception for Wireless Transmitting Facilities on the Brathuhn Property on Dover Road

Dear Chairman Hackett:

As the Board may be aware, the Council recently enacted Bill 117-84 concerning radio towers and facilities in proximity to historic districts.

Unfortunately, the Bill, as enacted, completely prevents the construction of the tower which was approved in a CRG earlier this year.

In view of this legislative obstacle, we are hereby dismissing, without prejudice, our appeal from the Opinion and Order of Zoning Commissioner Jablon in the above-entitled case dated August 14, 1984.

As the Board's file will reveal, we were successful in obtaining CRG approval, and we presume that based upon our dismissal of the requested Special Exception, that Mr. Nilson and other parties involved will take steps to dismiss their appeal from our approved CRG.

Thanking the Board and all involved for their attention to this dismissal, I am

Respectfully,
Newton A. Williams

cc: George Nilson, Esq.
Phyllis C. Friedman, Esq.
Mrs. Catherine Warfield
Hon. Arnold Jablon
Mr. Kenneth Stevens

Edward A. Halle, Jr., Esq.
Peter M. Zimmerman, Esq.
Mr. Eugene Bober
Robert G. Carr, Esq.

April 19, 1984

George A. Nilson, Esquire
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

RE: Case No. 84-284-X
Estate of Bertha S. Brathuhn
(WTR/WGRX FM)
Petitioner

Dear Mr. Nilson:

I am in receipt of your letter dated April 13, 1984.

Please be advised that your appearance will be entered into the above case. If you would like copies of the petition and supporting documents, you are welcome to review the case file here and have copies made at 50 cents per page.

As to your scheduling conflict on April 26th, I will apprise Deputy Zoning Commissioner Jeanne M.H. Jung, who will be hearing the case.

I would point out that there is no legal requirement that approval by the County Review Group (CRG) must occur before a special exception can be granted. The choice is for the Petitioner to make. Of course, your legal arguments may be made at the time of hearing and Commissioner Jung will rule on them. Unless the Petitioner also wishes a postponement, the hearing hearing scheduled for April 26th will not be postponed. After reviewing arguments on that date, Commissioner Jung may determine that the hearing ought to be continued.

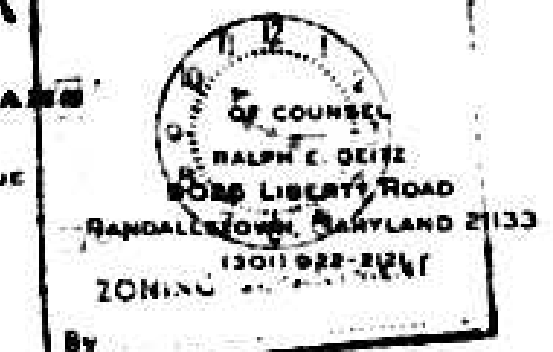
Sincerely,

Arnold Jablon
Zoning Commissioner

AJ/arl
cc: Newton A. Williams, Esquire
Deputy Zoning Commissioner Jean H.H. Jung

74-750

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800
April 3, 1984



Mr. Robert A. Morton, Chief
Mrs. Catherine L. Warfield
Bureau of Public Services
Department of Public Works
County Office Building
Towson, Maryland 21204

Mr. Eugene A. Bober, Chief
Current Planning Division
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

The Honorable Arnold Jablon
Zoning Commissioner
The Honorable Jean M. H. Jung
Deputy Zoning Commissioner
Mr. Nicholas Commodari
Zoning Advisory Committee Chairman
Zoning Commissioner's Office
County Office Building
Towson, Maryland 21204

Re: Letter report of consulting radio engineers in support of proposed 710 foot tower height required for proper signal for WTR/WGRX FM

Dear Ladies and Gentlemen:

Supplementing my letters of March 14th, 20th and 23rd, please find enclosed herewith a letter, dated March 22, 1984 from Robert D. Culver, consulting radio engineer of the Washington, D.C. firm of Lohnes and Culver, addressed to Mr. Alex Schneider of radio station WGRX.

This letter report clearly speaks for itself in demonstrating that the proposed 710 foot tower is the optimum tower height for proper signal coverage of the broadcast area served by WGRX.

Also attached is a photocopy of Federal Communications Commission Rule - Part 73, and more particularly, 73.315 entitled Transmitter Location. You will note that among other factors it

April 3, 1984
Page 2

is stated "In providing the best degree of service to an area, it is usually preferable to use a high antenna rather than a lower antenna with increased transmitter power." Once again, this Federal Communication Rule speaks for itself, and again is supportive of, and demonstrates why the 710 foot height chosen is the correct height for broadcasting needs of the public.

We look forward to the continued, and promised final CRG meeting for this project, as well as the proposed hearing before the Zoning Commissioner, which has been scheduled definitely now for 9:30 a.m. on Thursday, April 26, 1984. Of course, if any Baltimore County agency has any questions or comments, we will be glad to respond. Finally, we would appreciate being advised if the revised Daft-McCune-Walker plat of March 20, 1984 as revised is acceptable as noted in our letter of March 23, 1984, as well as the number of copies desired by Baltimore County.

Respectfully submitted,
Newton A. Williams

NAW:ylm
Enclosures

cc: Edward J. Levin, Esquire
George Nilson, Esquire
Mr. David Osborn
Robert G. Carr, Esquire
Mr. Kenneth Stevens
Mr. Alex Schneider
Mr. William R. Lynett
Daniel J. Houlihan, Esquire
Edmund Halls, P.E.
Ms. Mary Lambert
Mr. Thomas Brathuhn
Mr. Wilson Brathuhn
Mr. Frank G. Lappas
Robert B. McKenna, Jr., Esquire
Mr. Robert D. Culver
Mr. William Ramsey
Mr. James F. Hardee
Mr. Matthew Vlissides
Ronald D. Rackley, P.E.
Robert K. Parker, Esquire
Mr. Bernard Semon
Mr. Donald J. Neubauer

CLARENCE D. LONG
30 DISTRICT MARYLAND
COMMITTEE ON APPROPRIATIONS
CHAIRMAN
SUBCOMMITTEE ON FOREIGN OPERATIONS
MEMBER
SUBCOMMITTEE ON MILITARY CONSTRUCTION
TREASURY POSTAL SERVICE
GENERAL GOVERNMENT

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 27, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

I am writing on behalf of Mrs. Janie Sivert, 5010 Byerley Road Upperco, Maryland 21155.

Mrs. Sivert has been in touch with me concerning a matter which she believes should be brought to your attention. In the enclosed correspondence, she details her concerns regarding a radio tower which may be erected on Dover Road. Mrs. Sivert believes the tower should not be constructed in her neighborhood since it is a residential area.

I should appreciate your looking into this matter and letting me know what information or assistance can be provided.

Sincerely,

Clarence D. Long
CLARENCE D. LONG

CDL/cmj
Enclosure

cc: Mrs. Janie Sivert

4/26/84 9:40

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBER

DAFT-McCUNE-WALKER INC.
530 East Jodge Road
Towson, MD 21286
Telephone: 301-296-3333

Land Planning Consultants
Landscape Architects
Engineers

Description for Zoning Purposes
32.119 Acres +/-
Dover Road
Baltimore County, Maryland

Beginning for the same at a railroad spike set in Dover Road, which point is 9,100 feet +/- northwest of Butler Road and is the easternmost point of the property of Bertha S. Brathuhn as recorded among the land records of Baltimore County in Liber CMB 1093 folio 49 and running the following courses and distances:

- (1) South 75 degrees 00 minutes 28 seconds West 594.00 feet;
- (2) South 01 degree 01 minutes 10 seconds East 272.25 feet;
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- (6) North 66 degrees 48 minutes 03 seconds East 297.60 feet;
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- (8) South 64 degrees 46 minutes 25 seconds East 363.68 feet;
- (9) North 81 degrees 25 minutes 44 seconds East 422.72 feet;
- (10) South 37 degrees 36 minutes 28 seconds East 149.98 feet;
- (11) North 75 degrees 00 minutes 28 seconds East 410.00 feet; and
- (12) South 27 degrees 31 minutes 30 seconds East 102.44 feet +/- to the point of beginning and containing 32.119 acres +/-.

January 18, 1984
Our File No. 83112
Tract B, Parcel 2



24739
To AG -
PG-NBE

LAW OFFICES OF
PIPER & MARBURY
100 CHARLES CENTER SOUTH
30 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201

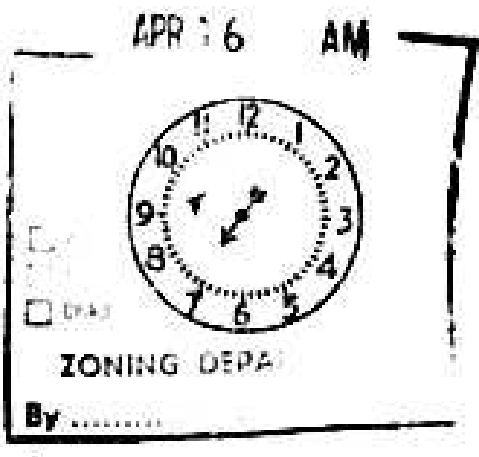
TELEPHONE 301-930-3930
CABLE PIPERMAR BAL
TELEX 908054

600 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-785-0800

GEORGE A. NILSON
DIRECT DIAL NUMBER
301-976-1768

April 13, 1984

The Honorable Arnold Jablon
Zoning Commissioner
The Honorable Jean M. H. Jung
Deputy Zoning Commissioner
Mr. Nicholas Commodari
Zoning Advisory Committee Chairman
Zoning Commissioner's Office
County Office Building
Towson, Maryland 21204



Re: Special Exception Application of
WTRR/WGRX FM

Dear Ms. Jung and Gentlemen:

I am representing several community associations and nearby property owners in connection with the proposal to construct a 700 foot radio tower on the Brathuhn property on Dover Road. That matter has been under CRG review, with a CRG meeting presently scheduled for April 18, 1984. I am advised that a Petition has been filed for a Special Exception for this project and that a tentative hearing date has been scheduled on that Petition by your office on April 26, 1984. I am further advised that Mr. Newton Williams, who is representing the Petitioner, has suggested that the entire day be set aside for that hearing.

I am writing this letter primarily to enter my appearance in this matter on behalf of three groups (Clear Horizons, The Valleys Planning Council, Inc., and Central Baltimore County Planning Association, Inc.), and certain individual property owners (A. Herman Stump, Jr., Richard B. Howard, Mary B. Gaines, and Mr. and Mrs. Andre W. Brewster).

I would appreciate it if you could furnish to me a copy of the Petition and any supporting written documentation that may have been filed (apart from plats, maps and the like).

I also write to advise of a minor scheduling conflict that I presently have and that will require me to leave Towson at about 3:30 or 3:45 p.m. on April 26. I would hope that your office would

MAR 26 1984

5010 Byerley Road
Upperco, MD 21155
March 23, 1984

The Honorable Clarence D. Long
Chesapeake and Washington Avenues
Towson, MD 21204

Dear Congressman Long:

My husband and I are both upset about the possibility of WTRR Radio placing a 700 foot tower on Dover Road - which is a few miles from our home.

We would like to fight against this tower and would like to know what steps we should take to prevent it. We understand it is not safe for health reasons and also will effect our television reception.

Any help you can give us will be appreciated.

Thank you!

Janie Sivert
Janie Sivert
(Mrs. Paul M. Sivert)

April 13, 1984
Page Two

PIPER & MARBURY

be agreeable to continuing the hearing on another date, if it is not concluded by that time.

I wish to preliminarily express reservations as to whether the Special Exception proceedings should commence at all on April 26, 1984. As you know from prior correspondence from Mr. Williams, no final CRG action has yet been taken. While it is indeed possible that the CRG will approve this project at its April 18, 1984 meeting, if it does then I think no purpose is served by proceeding at this time with a Special Exception hearing. Moreover, the applicant has applied for appropriate permits and authorizations from the Federal Aviation Administration and the Federal Communications Commission, but despite its earlier confident predictions of speedy approvals, those applications have not yet been acted upon. Under applicable Federal law, we believe that those applications must be reviewed by the Advisory Council on Historic Preservation and other governmental agencies for the purpose of considering the impact of the proposed tower on nearby significant historic districts. One of the factors that must be considered in that Federal review process is possible alteration of the project so as to reduce or mitigate its impact on these historically significant areas. Thus, there remains a distinct possibility not only that the project could be disapproved by either one of these agencies but that its scope and character could be altered as a part of the historic impact review process. For these reasons, I seriously question whether it is appropriate to proceed with the Special Exception at this time. I intend to write further following next week's CRG meeting and action. I would also respectfully suggest that if your office were to agree that the hearing and consideration of this matter should be deferred, it would be in everybody's interest for that decision to be made, if at all possible, prior to April 26, rather than on that date.

Finally, I would point out that Resolution No. 25-84 of the Baltimore County Council, passed by a vote of 6 to 0 on March 5, 1984, requests Planning Board consideration of amendments to the Zoning Regulations restricting the height and location of radio and television towers and other similar facilities located in proximity to historic buildings or lands. Especially when there are other reasons justifying a deferral of the matter, I would think it inappropriate to proceed with undue haste to act on a Petition of this character when the County Council has already expressed its concern about this kind of project and amendments to the Zoning Regulations are under active consideration.

Very truly yours,

George A. Nilson

George A. Nilson

GAN/nah

cc: Newton A. Williams, Esquire
Phillip W. Worrall

Mr. Robert A. Morton, Chief
Mrs. Catherine L. Warfield
Bureau of Public Services
Department of Public Works
County Office Building
Towson, Maryland 21204

Mr. Eugene A. Bober, Chief
Current Planning Division
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

The Honorable Arnold Jablon
Zoning Commissioner
The Honorable Jean M. H. Jung
Deputy Zoning Commissioner
Mr. Nicholas Commodari
Zoning Advisory Committee Chairman
Zoning Commissioner's Office
County Office Building
Towson, Maryland 21204

Item No. 194
STATE OF MARYNA S. BRATHUHN

Re: Requested rescheduling of WTRR CRG
within 45 days from March 8, 1984,
and early, subsequent scheduling
of Zoning Commissioner's Special
Exception Hearing

Dear Ladies and Gentlemen:

Our letter of March 14, 1984, addresses the various points raised at the continued CRG of March 8, 1984 and accordingly, we are respectfully requesting rescheduling of the CRG within 45 days from March 8th, which according to our calculations will expire on Monday, April 23, 1984.

Accordingly, we understand that the latest CRG dates available prior to the 23rd would be either Wednesday, April 18th or Thursday, April 19th. Needless to say, we would welcome a continued CRG being set before you, but due to the fifteen (15) notification rule, we are doubtful whether this can be done. Accordingly, we are asking that the CRG be continued no later than April 18th or 19th.

LAW OFFICES
NOLAN, PLIMOFF & WILLIAMS
CHARTERS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 931-7800

March 20, 1984

check to AC at 11:00 AM
this is the
MR 20

March 20, 1984
Page 2

Secondly, we are enclosing herewith seven (7) revised descriptions covering the 32+ Brathuhn property, for Mr. Commodari's use. We would respectfully ask that the Special Exception Hearing be set as soon after the continued CRG hearing as possible, and it is our understanding that no hearings will be scheduled the week of Monday, April 16th.

Accordingly, assuming that the CRG meeting can be continued and concluded by not later than April 19th, we are asking that the Special Exception case be set for sometime during the week beginning April 23rd.

We would respectfully ask that we be given at least an entire afternoon, and preferably an entire hearing day. It is our present plan to produce on the order of seven (7) or more witnesses, at least five (5) of whom will be expert witnesses.

Again, we are sure that a number of neighbors will wish to testify, and Mr. Nilson, may also wish to produce one (1) or more expert witnesses. It is our belief that the case can be finished in one (1) day, but we are sure that it will take the better part of a hearing day.

Looking forward to continuing and concluding the CRG hearing before April 23rd, as well as concluding the Zoning Commissioner's Special Exception Hearing soon thereafter, I am

Respectfully,
Newton A. Williams
Newton A. Williams

NAW:ylm

Enclosure to:
Department of Public Works
Zoning Commissioner's Office
Current Planning

cc: Edward J. Levin, Esq.
George A. Nilson, Esq.
Mr. David Osborn
Robert C. Carr, Esq.
Mr. William R. Lynett
Daniel J. Houlihan, Esq.
Edmund Haile, P.E.
Ms. Mary Lambert
Mr. Thomas Brathuhn
Mr. Wilson Brathuhn

Mr. Frank G. Lapps
Robert B. McFenna, Jr., Esq.
Mr. Robert D. Culver
Mr. William Ramsey
Mr. James P. Hardee
Mr. Donald J. Neubauer
Ronald D. Rackley, P.E.
Robert K. Parker, Esq.

24739
To AG -
all state - file
cy

LAW OFFICES OF
PIPER & MARBURY
100 CHARLES CENTER SOUTH
30 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201

TELEPHONE 301-930-3930
CABLE PIPERMAR BAL
TELEX 908054

600 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-785-0800

GEORGE A. NILSON
DIRECT DIAL NUMBER
301-976-1768

April 13, 1984

The Honorable Arnold Jablon
Zoning Commissioner
The Honorable Jean M. H. Jung
Deputy Zoning Commissioner
Mr. Nicholas Commodari
Zoning Advisory Committee Chairman
Zoning Commissioner's Office
County Office Building
Towson, Maryland 21204



Re: Special Exception Application of
WTRR/WGRX FM

Dear Ms. Jung and Gentlemen:

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I would appreciate it if you could furnish to me a copy of the Petition and any supporting written documentation that may have been filed (apart from plats, maps and the like).

I also write to advise of a minor scheduling conflict that I presently have and that will require me to leave Towson at about 3:30 or 3:45 p.m. on April 26. I would hope that your office would

be agreeable to continuing the hearing on another date, if it is not concluded by that time.

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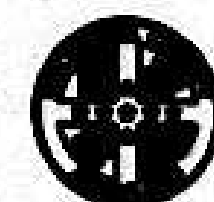
Very truly yours,

George A. Nilson

George A. Nilson

GAN/nah

cc: Newton A. Williams, Esquire
Phillip W. Morris



County Board of Appeals of Baltimore County

Room 208 Court House
Towson, Maryland 21284
(301) 484-3100

November 14, 1984

Newton A. Williams, Esquire
204 W. Pennsylvania Avenue
Towson, MD 21204

Re: Case No. 84-284-X
Estate of Bertha S. Brathuhn

Dear Mr. Williams:

Enclosed herewith is a copy of the Order of Dismissal passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eizenhart
Edith T. Eizenhart, Adm. Secretary

Encl.

cc: George A. Nilson, Esquire
Edward A. Halle, Jr., Esquire
Daniel Calhoun, et ux
Mrs. Jamie Sivert
W. M. DeWibias
Mrs. M. Elwood Ensor
Phyllis Cole Friedman
M. E. Gerber
James G. Howell
Arnold Jablon
Jean M. H. Jung
James E. Dyer

IN RE: PETITION FOR SPECIAL EXCEPTION

SW/S Dover Rd., 9,100' NW of Butler Road - 4th Election Dis.

Estate of Bertha S. Brathuhn,

Petitioner:

* BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
* Case No. 84-284-X

Entry of Appearance

Please enter my appearance as a party in the above captioned matter, pursuant to Section 501.6, B.C.Z.R., and I hereby request that any and all notices be forwarded to my office, including but not limited to hearing dates and/or preliminary or final Orders.

Arnold Jablon
Arnold Jablon
Zoning Commissioner of Baltimore County
Room 109 - 111 West Chesapeake Avenue
Towson, Maryland 21204
494-3353

Certificate of Mailing

IT IS HEREBY CERTIFIED that on this 24th day of September, 1984, copies of the foregoing Entry of Appearance were mailed, postage prepaid, by first class delivery to the County Attorney of Baltimore County, People's Counsel for Baltimore County, Petitioner(s) and/or Protestant(s) in the above captioned matter.

Arnold Jablon
Arnold Jablon

98/11/85
Case file
7-1/1/84
8

LAW OFFICES OF
PIPER & MARBURY
100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
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GEORGE A. NILSON
DIRECT DIAL NUMBER
301 878 1700

608 SIXTEENTH STREET, N.W.
WASHINGTON, D. C. 20008
TELEPHONE 202-726-0800

July 23, 1984

DELIVERED BY HAND

The Honorable Arnold Jablon
Zoning Commissioner
Zoning Commissioner's Office
County Office Building
Towson, MD 21204

RE: WTR/WGRX FM

Dear Commissioner Jablon:

Enclosed is our Post-Hearing Memorandum in opposition to the WTR/WGRX FM radio tower Special Exception application.

Very truly yours,

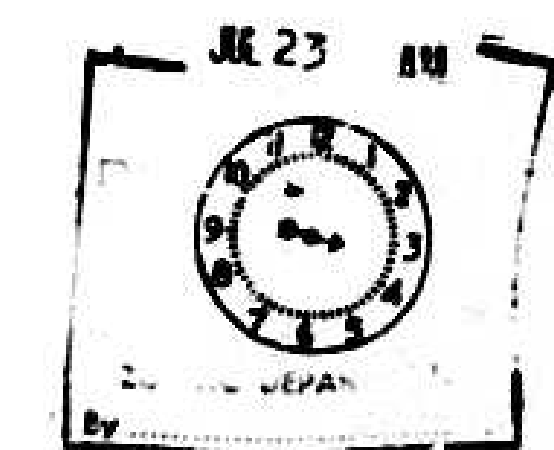
George A. Nilson

George A. Nilson

GAN/nah

Enclosure

cc: Newton A. Williams, Esquire



IN RE * BEFORE THE BALTIMORE COUNTY
PETITION OF THE * ZONING COMMISSIONER
ESTATE OF *
BERTHA S. BRATHUHN * Case No. 84-284-X
AND WTR/WGRX FM FOR A *
SPECIAL EXCEPTION FOR *
A WIRELESS TRANSMITTING *
AND RECEIVING STRUCTURE *
IN AN EC 2 ZONE *

POST-HEARING MEMORANDUM

I. INTRODUCTION

Petitioners seek a Special Exception to erect a 700 foot tall orange and white steel tower for the purpose of expanding the listening audience of radio station WGRX FM, a station licensed to broadcast from Westminster, Maryland in Carroll County (with a new second studio located on the top floor of the World Trade Center in downtown Baltimore City). The latest site chosen for this tower is an approximately 100 acre parcel of land owned by the estate of Bertha Brathuhn and located just north of the Worthington Valley Historic District on Dover Road in an EC 2 Zone.

The Petitioners have secured CRG approval for the site, and that approval has been appealed to the Baltimore County Board of Appeals. The tower, which was originally

proposed for a site in Carroll County (where a conditional use zoning request was denied by the Board of Zoning Appeals), is still awaiting FCC approval of the site location change as requested in September of 1983. Extensive hearings were held before the Zoning Commissioner and evidence adduced both by the Petitioners and the Protestants on a number of different issues. At the conclusion of the last hearing on June 21, 1984, the Commissioner asked the parties to submit simultaneous briefs on the following questions:

1. In light of the evidence introduced with respect to the impact of the proposed tower on the nearby Historic Districts, can or should the Special Exception be granted?;
2. In light of the evidence adduced with respect to the impact of the proposed tower on property values, can or should the Special Exception be granted?;
3. In light of the evidenced adduced with respect to the environmental impact of the proposed tower (on environmentally or scenically significant land and on wildlife), can or should the Special Exception be granted?

In requesting the parties to brief these three issues, the Commissioner raised the question of whether aesthetic objections alone would be a sufficient basis for the denial of the Special Exception, and also made specific reference to the question of whether the proposed facility would be consistent

or inconsistent with the "spirit and intent" of the Zoning Regulations.

We respectfully submit that the evidence adduced at the hearings on the Special Exception clearly establishes the following:

1. The construction of the proposed 700 foot tower at the Dover Road site in the Worthington Valley area will have a significant adverse effect on the value of a number of properties in the area -- with the greater effect being on properties closest to the tower site and on properties whose orientation or predominant view is towards the tower site. The expert testimony of Herb Davis, and the lay testimony of William Huddles and other property owners, establishes the unassailable fact that a significant element in the value of property in the Worthington Valley area is its unspoiled, rural setting and the absence of large visual and other intrusions symptomatic of commercial development. While Mr. Davis did not undertake to precisely quantify the extent of the adverse effect on property values, he did clearly state that it would be substantial with respect to a number of properties -- and greater in this particular part of the County than would be the case at many other locations. Mr. Huddles, who only recently purchased his property, testified that the tower site would be directly in his property's predominant view and that he would not have purchased the property had he known of the tower

proposal (or at least that he certainly would not have purchased it for anywhere near the same price). Petitioners called Hugh Gelston who testified about what he claimed to be the absence of any adverse effect of transmission towers on residential property values in more urbanized areas of Baltimore County. We respectfully submit that his testimony should be given little if any weight both because of the many obvious flaws in his "comparables" and because of his ready admission that he had not made a study or analysis of the properties in the area around the Dover Road tower site. Petitioners have failed to establish that the proposed tower will not adversely affect property values in the area (and protestants have established that it will).

2. Extensive testimony and other evidence has been presented establishing that the erection of the proposed tower in this unique part of Baltimore County will adversely affect the Worthington Valley and Western Run-Belfast Road Historic Districts (both of which were officially nominated to and placed on the National Register of Historic Places approximately ten years ago). This evidence plainly establishes that the rural and unspoiled character of those Districts is a vital element of their historic value, and that the desecration of that character by a 700 foot tall orange and white structure complete with warning lights and an array of guy wires would significantly impair the very values that justified their

establishment as historic districts. The testimony of Phillip Worrall, Herb Davis, Judy Baer, Robert Beckett, and others, as well as the written comments of the Maryland Historical Trust and the Baltimore County Landmarks Preservation Commission, clearly establish the certainty that the proposed tower will adversely affect the two historic districts. This evidence is entirely un rebutted by any substantive testimony introduced by petitioners. Petitioners' only response to the clear evidence of adverse impact was to suggest through Mr. Williams' questions that the historic districts had already been subjected to overhead transmission lines and the Channel 67 tower to the south of the Worthington Valley District and that "a little more adverse impact shouldn't hurt."

3. The construction of the tower will adversely impact extensive environmentally significant acreage in the immediate area that has been the subject of scenic easement grants to the Maryland Environmental Trust, and is likely to result in the death of an unusually large number of Canada Geese and other bird species. The area around the tower site contains the largest assemblage of scenic easement acreage in the State and, according to the testimony of Robert Beckett, the Executive Director of the Maryland Environmental Trust, the proposed tower would have a significant adverse effect on the scenic and environmental qualities that made that acreage appropriate for scenic easements. In addition, the testimony

of Richard L. Plunkett clearly established the likelihood of a substantial bird kill effect of the tower that he predicted would be significantly greater at the Dover Road site than it might be elsewhere.

These three effects or impacts of the proposed tower are substantial - both individually and collectively. Any one of them alone would be enough to require that the special exception be denied. The balance of this memorandum explains why, under the Zoning Regulations and applicable case law, that is so.

II. BURDEN OF PROOF

Section 502.1 of the Baltimore County Zoning Regulations provides that

"Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations."

It is clear both on the face of Section 502.1 and from the applicable case law that the petitioner seeking the special exception bears the burden of proving the required elements. In other words, it is not up to the protestants to prove a

detrimental effect on the health, safety or general welfare of the locality, but it is up to petitioners to establish by responsible and credible evidence sufficient to overcome the evidence to the contrary that there will not be any such detrimental effects.

The Appellate Courts of Maryland have repeatedly held that in Baltimore County (as well as in other jurisdictions) the applicant has the burden of demonstrating that his proposed use satisfies the requirements of the special exception regulation - including the requirement that that use not be detrimental to the health, safety or welfare of the locality. Quisler v. Board of Zoning Appeals, 204 Md. 397, 104 A.2d 568, 570 (1954); Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716, 720 (1974); and Miller v. Kiwanis Club Loch Raven, Inc. 29 Md. App. 285, 347 A.2d 572, 575 (1975).

III. PETITIONERS HAVE FAILED TO PROVE THAT THE PROPOSED 700 FOOT TOWER WILL NOT DETRIMENTALLY AFFECT THE HEALTH, SAFETY OR GENERAL WELFARE OF THE LOCALITY INVOLVED.

While there was testimony at the hearings pertaining to the likelihood of significant interference problems resulting from the proposed construction of the tower and pertaining to various health and safety dangers posed by such a

facility, the Commissioner has asked us to confine ourselves in this memorandum to the evidence of adverse impact on the historic districts, on property values and on the environment. Without waiving our claims of other impacts, we turn our attention to the three specified by the Commissioner.

(a) Adverse Effect on Nearby Historic Districts.

The Baltimore County Master Plan adopted in 1979 provides as follows:

"Areas noted for their archeological or historical significance are also worthy of protection. New development and redevelopment near historic sites should be compatible with their historic character."

We have already summarized the general nature and extent of the evidence establishing the adverse effect of this intrusive 700 foot high orange and white steel tower on the Worthington Valley and Western Run-Belfast Road Historic Districts. There can be no serious contention that an adverse effect on a substantial historic district that has been nominated to and placed upon the National Register of Historic Places is the equivalent of an adverse impact on the general welfare. The importance and value of preserving to the greatest extent possible historically significant properties and areas has been fully recognized in the National Historic Preservation Act of 1966 and the regulations adopted thereunder (36 CFR, Part 800) and in the State legislation establishing

the Maryland Historical Trust. In addition, Section 22-142, et seq. of the Baltimore County Code confirms the policy embodied in the Master Plan - that the preservation of structures and places of historical value "is deemed to be for the educational, cultural, economic, and general welfare" of the County.

The legitimacy of preserving and protecting historically significant areas is, ironically, confirmed in the very case that tells us that Maryland does not allow aesthetics alone to be the basis for an exercise of the police power. In Mayor and City Council of Baltimore v. Mano Schwartz, 268 Md. 79, 299 A.2d 828 (Md. 1973), the Court of Appeals held that a Baltimore City ordinance proscribing certain projecting signs was an impermissible use of the police power because the ordinance stated on its face that its only purpose was to enhance the aesthetics of the area. In doing so, the Court hastened to reaffirm an important and well-established principle:

"We do not wish to be understood as saying that aesthetic considerations cannot play a proper role in the zoning process, because they do. It has long been recognized that the police power may rightly be exercised to preserve an area which is generally regarded by the public to be pleasing to the eye or historically or architecturally significant." 268 Md. at 81.

In the Mano Schwartz case there was no finding that the purpose of the ordinance was to preserve the character of historically significant areas of the City, or that it was

designed to preserve and protect property values. All the Court held was that pure aesthetic considerations, unsupported by anything else, would not be a sufficient basis to restrict the use of property by exercise of the police power. But in doing so, the Court made it clear that the preservation of historically significant areas is a permissible basis for the exercise of the police power. And when it was later confronted with a sign control ordinance applicable in the historically significant Oldtown renewal area, the Court reaffirmed this principle and upheld the ordinance as a measure designed to preserve and protect the "architectural and urbanistic qualities" of architecturally and historically significant buildings. Donnelly Advertising Corp. v. City of Baltimore, 279 Md. 660, 370 A.2d 1127 (1977).

There is no question here but that the preservation of the Worthington Valley and Western Run-Belfast Road Historic Districts will enhance the general welfare, and that conversely their desecration as a result of the intrusion of the proposed incompatible 700 foot tower would be contrary to the general welfare. Especially in the absence of any compensating benefit to the general welfare "of the locality involved", it seems clear that the scales are tipped, and in fact heavily weighted, against the petitioners.

(b) Adverse Effects on Property Values

As generally described above, the evidence establishes that the proposed tower will have an adverse effect on property values in the vicinity, especially given the nature and character of the area and the scenic and rural features that figure so prominently in the value of property. As in the case of the unique historic districts that are located nearby, the threat to property values in this particular area is substantially greater than would be the case, for example, in residential areas along the Baltimore Beltway or even in other parts of the County.

There is no question but that a significant diminution in the value of real property in the area is detrimental to the general welfare of the locality. The Court of Appeals has held, in Crowther Inc. v. Johnson, 225 Md. 379, 170 A.2d 768 (1961) that the denial of a special exception on the grounds that its granting would be detrimental to the general welfare should be upheld where it is based upon a finding of inconsistency with a comprehensive plan in the area and a finding that the grant of this special exception "would adversely affect property values in the vicinity." 225 Md. at 385. This holding that a diminution in property values can constitute the basis for a determination that a proposed

development would be detrimental to the general welfare is in no way unique to Maryland - and has been affirmed in other cases besides Crowther. See, e.g., Dorsey Enterprises, Inc. v. Shpak, 219 Md. 16, 147 A.2d 853 (1959), where the Court of Appeals upheld the denial by the Board of Zoning Appeals of a special permit sought by an automobile junkyard operator where all of the evidence of the protestants came down to their claim that the proposed facility would have a "depreciating effect on the value of nearby property."

The failure to prove the absence of an adverse effect on property values would by itself require denial of the special exception here. When the protestants have established that which common sense tells us - that property values in the area of the proposed 700 foot tower will be adversely affected - and when the evidence indicates an adverse effect on the historic districts and other adverse impacts, and when there is no compensating benefit to the affected locality*, then it is

* The belated and speculative suggestion that the tower could be utilized by some possible County emergency communications system should be disregarded, or at least substantially discounted. The tower has not been designed to accommodate such equipment and there is no clear indication that the proposed County system will ever become a reality. Even if it should and even if it could utilize a tower at Dover Road, that "benefit" would not outweigh the detriments.

clear that the petitioners have failed to meet their burden of proof and have failed to satisfy the requirements of Section 502.1 of the Zoning Regulations.

(c) Adverse Environmental Effects

The evidence establishes that the proposed tower is in an area characterized by an unusually heavy concentration of scenic easement properties conveyed to the Maryland Environmental Trust. The Executive Director of that state agency testified without contradiction that those scenic easement properties possessed unusual and substantial scenic and environmental qualities (justifying their original inclusion in the scenic easement program) that would be impaired and adversely effected by the construction of the proposed tower. He said that in his testimony and he said that in a letter submitted on behalf of the Maryland Environmental Trust.

In addition to the adverse impact on the scenic and environmental qualities of these unique properties, there was testimony, entirely unrebutted, to the effect that construction of the tower at this particular site poses an unusually large bird kill threat to various bird species.

It cannot be seriously contended that preservation of the kinds of properties involved in the Maryland Environmental

Trust scenic easement program is not in the public interest and in furtherance of the general welfare, nor can it be contended that the protection of significant species of wildlife is not in furtherance of the general welfare. Conversely, where the proposed use of property would have an adverse effect on such scenic easement lands and would pose an unusual danger to wildlife, then to that extent it will clearly have a detrimental effect on the general welfare of the locality.

IV. THE REQUESTED SPECIAL EXCEPTION IN THIS PARTICULAR LOCATION WOULD BE INCONSISTENT WITH THE PURPOSES, SPIRIT AND INTENT OF THE ZONING REGULATIONS

The Baltimore County Zoning Regulations provide that radio transmission towers, as well as a number of other uses, may be permitted by special exception in a large number of zoning districts. This is true because it is often difficult to predict where these facilities may be proposed, and because under certain circumstances, they may be compatible with existing land uses in a number of different areas. However, it must be emphasized that the underlying purpose of zoning is to insure to the greatest extent possible that adjoining or nearby uses are compatible with one another. In order to evaluate

this or any other special exception application in that context, it is necessary to look at the particular use proposed and to attempt to determine whether it will adversely affect its particular neighbors. If the answer is yes, then in essence zoning officials are confronted with an incompatible use that will adversely affect the existing neighboring uses and should deny the requested special exception. The Courts have told us that in allowing particular uses by special exception in certain zones the legislative body has determined that the special exception use is not necessarily or inherently incompatible with land uses permitted as of right in those zones. Accordingly, in evaluating incompatibility or adverse effects, the courts have told us that we should confine ourselves to incompatibilities or adverse impacts that are either qualitatively or quantitatively different from what one would ordinarily expect in the particular kind of zoning district. We respectfully submit that the substantial, unique features of the area around the Dover Road Tower site are what make the proposed 700 foot structure (which is larger and more highly visible than "usual") so antithetical to the general welfare and so contrary to the purposes, spirit and intent of the zoning regulations.

The Zoning Regulations and their application are to be guided by the Master Plan of Baltimore County. Page 61 of the Master Plan (adopted in 1979) specifically provides that:

"Areas noted for their archeological or historical significance are also worthy of protection. New development and redevelopment near historic sites should be compatible with their historic character."

On that very same page of the Master Plan, under the Section headed "Scenic Open Space", it is stated that:

"Our scenic resources are constantly sacrificed to inadequately planned urban development. . . . Both location and design of structures such as power lines, sewer lines and roads can mar scenic views and skylines. . . .

Public funds are not sufficient to keep all scenic areas within the public domain, but selective use of long-term easements, purchase of development rights, and zoning and subdivision regulations will help to preserve the environment for long-term public enjoyment.

The County should preserve scenic open space by encouraging high quality locational and design standards for both public improvements and private development that insure compatibility with the natural surroundings. . . .

To the same effect, see Volume 4 of the Master Plan at page 2. See also, Volume 1 at page 16 where it is stated that one of the goals for Rural and Agricultural Areas (such as the area here in question) is "to limit development in these areas essentially to agriculture and agriculturally-related uses." That purpose is echoed in Section 1A01 of the Zoning Regulations applicable to RC 2 Zones, beginning with the declaration of findings and statement of purposes. It is also specifically reflected in the provision requiring utility lines

to be underground, limiting CATV antennas, and only allowing accessory radio antennas up to 100 feet in height.

However helpful it may be to an enlargement of WGRX FM's listening audience and to its ability to serve the perceived market for "soft, male-oriented adult Rock", the construction of a 700 foot tall orange and white steel tower adorned with warning lights and held in place by an imposing array of guy wires has no place as a neighbor of the two National Register historic districts, the substantial Maryland Environmental Trust scenic easement areas, and the residents of the Dover Road area. Such a structure might stand as a tribute to the technological progress of the 20th Century, but it would substantially undercut rather than enhance, protect or preserve the historical character of the nearby districts by virtue of its obvious incompatibility with the very features that give the districts their special value. The same features of rural, unspoiled countryside also give property generally in the area special values that would be destroyed by the intrusion of the tower. To allow this to occur would be contrary to the purposes, intent and spirit of the RC 2 Zone, the Master Plan and the Zoning Regulations. The special exception process should not be permitted to allow such an obviously incompatible use to be constructed in such an area, where the guiding principles of the Master Plan would be so plainly violated and the negative effect on historically and environmentally

significant lands and property values in general so plainly evident.

V. CONCLUSION

For all of the foregoing reasons, as well as on the evidence of other adverse effects adduced at the hearings, we respectfully submit that the Zoning Commissioner should deny the special exception requested here, leaving it to the petitioners to seek a more appropriate and compatible site without the special and unique features that are threatened here.

Respectfully submitted,

George A. Nilson
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201
(301) 539-2530

Edward H. Halle, Jr.
Lord, Whip, Coughlin & Green
7th Floor
Central Savings Bank Bldg.
Charles & Lexington Streets
Baltimore, Maryland 21201
(301) 539-5881

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 23rd day of July, 1984, a copy of the foregoing Post-Hearing Memorandum was mailed to Newton A. Williams, Esquire, 204 W. Pennsylvania Avenue, Towson, Maryland 21204.

George A. Nilson

84-652

3/23/84
to file
file

LAW OFFICES
NEWTON A. WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800
March 23, 1984

Mr. Robert A. Morton, Chief
Mrs. Catherine L. Warfield
Bureau of Public Services
Department of Public Works
County Office Building
Towson, Maryland 21204

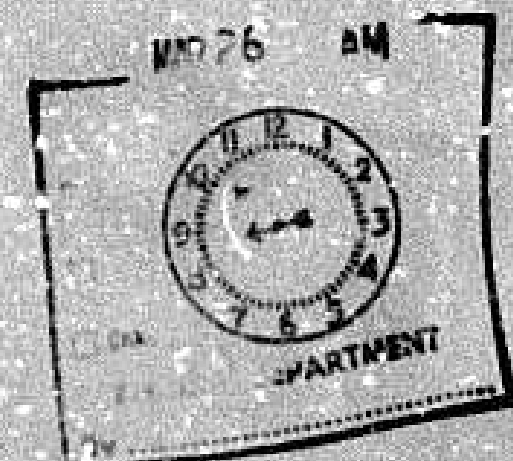
The Honorable Arnold Jablon
Zoning Commissioner
The Honorable Jean M. H. Jung
Deputy Zoning Commissioner
Mr. Nicholas Commodari
Zoning Advisory Committee Chairman
County Office Building
Towson, Maryland 21204

Re: Initial WTR, FCC and FAA filing
for Carroll County site and
revised plat

Dear Ladies and Gentlemen:

Supplementing my letter of March 20, 1984 please find enclosed the following:

- 1. The initial complete FCC filing by Carroll County Broadcasting covering the Carroll County proposed tower and transmitter site, with 11 exhibits attached thereto.
- 2. You will note that one of the exhibits attached is the initial FAA Notice of Proposed Construction or Alteration.
- 3. Finally, we are enclosing a Daft-McCune-Walker plat as revised March 20, 1984 showing a gate and fence on the Dover Road across road frontage and indicating by dimension, but not by scale, the movement of the driveway 75 feet from the south property line as requested.



Only one copy of the revised plat is being provided, initially to Mr. Bober's office for comment, and if it is acceptable as to the revisions, we are asking that it be shown to Mrs. Warfield and her staff as well.

We trust that with these materials there should be no obstacle to the rescheduling of the continued CRG, and we understand that Wednesday, April 18, 1984 may be the date chosen. Assuming that the CRG is concluded at the next meeting, we are then in a position to go forward with the Special Exception Hearing before the Zoning Commissioner and we understand that the Zoning Commissioner may be allocating a full day during the week of April 23rd, and tentatively Thursday, April 26th, which full day scheduling is greatly appreciated.

We await word as to the acceptability of the revised plat, and the number of revised plats then to be furnished, as well as confirmation of the CRG date and the Zoning Commissioner's date.

Respectfully submitted,
Newton A. Williams
Newton A. Williams

MAN:ylm
Enclosure

- cc: Edward J. Levin, Esq.
- George Wilson, Esq.
- Mr. David Osborn
- Robert G. Carr, Esq.
- Mr. William R. Lynett
- Daniel J. Houlihan, Esq.
- Edmund Haile, P.E.
- Ms. Mary Lambert
- Mr. Thomas Brathuhn
- Mr. Wilson Brathuhn
- Mr. Frank G. Lappas
- Robert B. McKenna, Jr., Esq.
- Mr. Robert D. Culver
- Mr. William Ramsey
- Mr. James F. Hardee
- Mr. Donald J. Neubauer
- Ronald D. Rackley, P.E.
- Robert K. Parker, Esq.

square miles. The gain area (932 square miles) far exceeds the loss area (287 square miles). The proposed change is also entirely consistent with the agreement to which both WTR-FM and WJMC are signators. We submit that it is also consistent with the Commission's policy regarding the use of maximum facilities by short spaced FM stations in existence prior to 1964.

Wherefore, it is respectfully requested that Section 73.213 of the Commission's Rules be waived, and that the application of Carroll County Broadcasting Corp. be granted.

Respectfully submitted,
CARROLL COUNTY BROADCASTING CORP.

Leon T. Knauer
By: Leon T. Knauer
Robert B. McKenna
By: Robert B. McKenna

WILKINSON, CRAIG & BANKER
1735 New York Avenue, N.W.
Washington, D.C. 20006

Date: April 16, 1981

1/ 1970 Census figures showed the population served by WTR-FM with its current facilities as 840,853. This figure was reported in the application to change power from 20 kilowatts to 50 kilowatts.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Application of
CARROLL COUNTY BROADCASTING CORP.)
for a Construction Permit to)
Change Transmitter Location and)
Effective Radiated Power of FM)
Station WTR-FM, Westminster,)
Maryland)

To: Chief, Broadcast Bureau

Request for Waiver of
Section 73.213 of Commission Rules

Comes now Carroll County Broadcasting Corp., licensee of FM broadcast station WTR-FM, Westminster, Maryland ("WTR-FM"), and requests that Section 73.213 of the Commission's Rules be waived and that WTR-FM be permitted to change its transmitter power output, effective radiated power, height above average terrain, antenna type and transmitter location. In support hereof, the following is submitted.

1. As is set forth in the attached Application for Construction Permit, WTR-FM requests authority to move its transmitter to a site approximately 5.2 miles east of its present location, increase height above average terrain to

905 feet, and decrease effective radiated power to 15.67 kilowatts. This change will greatly increase the area to be served by WTR-FM.

2. WTR-FM operates on FM channel 264. It was first licensed on December 31, 1959, and is short spaced with a number of FM stations in accordance with the Commission's Fourth Report and Order in Docket No. 14185, 40 FCC 868 (1964). The attached engineering report demonstrates that five existing short spacings will be affected by the requested facilities change. Of these five, one will be eliminated, (WMDK, Washington, D.C.), one will be decreased (WQFO, Harrisonburg, VA), and two are consistent with Section 73.213 of the Commission's Rules (WNCB, Lancaster, PA, and WFME, Allentown, PA). However, WTR-FM proposes to decrease the mileage between it and WCMC (co-channel) Wildwood, New Jersey, from 125.11 miles to 120.32 miles while continuing to operate with an effective radiated power of 50 kilowatts. Hence, the instant waiver request is in order.

3. On November 30, 1970, WTR-FM entered into an agreement with four other mutually short-spaced FM stations which had been short spaced under the Fourth Report and Order, supra, (including WJMC and WFME), whereby it was agreed among the parties that they would not oppose each other's applications for improvement of facilities within certain limitations. It was agreed that each station could increase power to 500 feet

HAAT and 50 kilowatts ERP, or its equivalent, and could move its transmitter site so long as the move did not decrease any existing mileage separation by more than five miles. A copy of this agreement is attached as Exhibit A.

4. WTR-FM's proposed facilities change is consistent with this agreement.

5. At the time this agreement was signed, WTR-FM operated with an effective radiated power of 20 kilowatts. This was the maximum facility permissible under Section 73.213 of the Commission's Rules due to its 108.07 mile separation from co-channel station WFME, Allentown, PA. On February 6, 1974, WTR-FM filed an application to increase its power to 50 kilowatts ERP (BPH 8829). The November 30, 1970 Agreement was necessary for this change and was filed as part of this application, and the application was granted on March 19, 1974. Accordingly, the Agreement has been found to be in the public interest in accordance with the Commission's Public Notice on Agreements Between Short-Spaced FM Stations, FCC 75-1347, 35 R.R. 2d 1069 (1975).

6. We submit that the public interest will be served by grant of this application. With the requested improvement of its facilities, WTR-FM will be able to serve an area of 3,232 square miles containing a population of 1,436,191 persons with a 1mv/m signal. This represents an increase of 570

AGREEMENT

THIS AGREEMENT, made this 30 day of November, 1970, by and between Highland Broadcasting Corp. (herein "Highland"), Peekskill, New York; Maranatha Broadcasting Corp. (herein "Maranatha"), Allentown, Pennsylvania; Carroll County Broadcasting Corp. (herein "Carroll"), Westminster, Maryland; Jersey Cape Broadcasting Corp. (herein "Jersey"), Wildwood, New Jersey; and Central Connecticut Broadcasting Co. (herein "Central"), New Britain, Connecticut.

RECITALS:

Highland is the licensee of FM Broadcast Station WLNA-FM which presently operates at Peekskill, New York, on 100.7 mcs (Channel 264), effective radiated power of 20 kw, and antenna height above average terrain of 500 feet; Maranatha is the licensee of FM Broadcast Station WFME(FM) which is authorized to operate at Allentown, Pennsylvania, on 100.7 mcs (Channel 264), effective radiated power of 4.8 kw and antenna height above average terrain of 840 feet; Carroll is the licensee of FM Broadcast Station WTR-FM which is authorized to operate at Westminster, Maryland, on 100.7 mcs (Channel 264), effective radiated power of 20 kw and antenna height above average terrain of 350 feet; Jersey is the licensee of FM

Broadcast Station WCMC-FM which is authorized to operate on 100.7 mcs (Channel 264), effective radiated power of 3.5 kw and antenna height above average terrain of 98 feet; Central is the licensee of FM Broadcast Station WRCH-FM which is authorized to operate at New Britain, Connecticut, on 100.5 mcs (Channel 263), effective radiated power of 10 kw, and antenna height above average terrain of 400 feet.

Under Section 73.207 of the Rules and Regulations of the Federal Communications Commission (herein "Commission"), Stations WLNA-FM, WFME(FM) and WRCH-FM, and WFME(FM), WTR-FM and WCMC-FM are "short spaced" with respect to one another. The increased and improved use of the frequencies on which these five stations operate may not, therefore, be accomplished without waiver of the Commission's Rules.

The Commission has stated that it will consider requests for improvements of facilities by "short spaced" FM stations greater than permitted by the Rules where there is, inter alia, an agreement between the stations and a showing that the public interest would be served. Highland, Maranatha, Carroll, Jersey and Central desire to improve the services and the facilities of their respective stations in the public interest, and to that end each is willing to consent to an application by the others for an improvement in facilities, subject to and in accordance with the terms and provisions of this Agreement.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements contained herein, the parties hereto mutually agree as follows:

1. The parties hereto will not oppose the respective applications of each other for improved FM facilities on the grounds of insufficient mileage separation under the present Rules and Regulations of the Commission, provided:

(a) That the combination of antenna height and power specified in the applications shall not be in excess of 500 feet HAAT and 50 kw ERP, or the equivalent thereof; and that for antenna heights in excess of 500 feet HAAT, the ERP will be reduced in accordance with the method prescribed by Section 73.211(b)(2) of the Rules and Regulations of the Commission.

(b) That if an application proposes directionalization of radiation, the signal toward the other party, in the arc between the bearings tangential to such other party's 1 mv/m contour, shall not exceed that which would be produced by a non-directional 50 kw/500 operation at the proposed sites.

EXHIBIT A

(c) That the application does not involve a plan to reduce the present mileage separation between any of the transmitter sites of Stations WLNA-FM, WFMZ(FM), WTRR-FM, WCMC-FM and WRCH-FM by more than five miles.

2. Copies of this Agreement may be filed with the Commission as deemed appropriate by the respective parties. This Agreement and the rights and obligations of the parties shall be subject to the terms and provisions of the Communications Act of 1934, as amended, and the Rules of the Commission, as the same may from time to time be amended.

3. It is agreed that each party to this Agreement will accept such interference as may be caused during the period in which the other station or stations may be operating with improved facilities as contemplated by this Agreement.

4. Parties agree to accept such reasonable conditions the Commission may find necessary in the public interest and which would look toward the effectuation of this Agreement.

5. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns.

6. As used in this Agreement, the Terms "HAAT", "ERP", "50 kw/500 operation" and the references to the WLNA-FM, WFMZ(FM),

WTRR-FM, WCMC-FM and WRCH-FM 1 mv/m contours shall have the following meaning:

(a) "HAAT" means height of antenna radiation center above average terrain.

(b) "ERP" means effective radiated power.

(c) "50 kw/500 operation" means operation with a non-directional antenna at an HAAT of 500 feet and with an effective radiated power of 50 kw, or the equivalent thereof as prescribed by and determined in accordance with the Rules and Regulations of the Commission.

(d) All references to the WLNA-FM, WFMZ(FM), WTRR-FM, WCMC-FM and WRCH-FM 1 mv/m contours means the calculated 1 mv/m contour that would result from the equivalent of a 50 kw/500 operation at the present sites of the WLNA-FM, WFMZ(FM), WTRR-FM, WCMC-FM and WRCH-FM antennas, as the case may be.

7. The Agreement sets forth the entire understanding of the parties with respect to its subject matter and may not be modified or terminated except by a writing signed by all parties.

This Agreement may be executed in one or more counterparts, any one of which shall have the same force and effect as the original.

IN WITNESS WHEREOF, This Agreement has been duly executed by Highland Broadcasting Corp., Maranatha Broadcasting Corp., Carroll County Broadcasting Corp., Jersey Cape Broadcasting Corp., and Central Connecticut Broadcasting Co. as of the date first written above by a duly authorized corporate officer of each party.

ATTEST: [Signature] Secretary
 HIGHLAND BROADCASTING CORP.

ATTEST: [Signature] Secretary
 MARANATHA BROADCASTING CORP.

ATTEST: [Signature] Secretary
 CARROLL COUNTY BROADCASTING CORP.

ATTEST: [Signature] Secretary
 JERSEY CAPE BROADCASTING CORP.

ATTEST: [Signature] Secretary
 CENTRAL CONNECTICUT BROADCASTING CO.

FCC Form 101
 Section I
 FEDERAL COMMUNICATIONS COMMISSION
 Application for Authority to Construct a New Broadcast Station or Make Changes in an Existing Broadcast Station

INSTRUCTIONS

1. Name of applicant (See instruction 2)
 CARROLL COUNTY BROADCASTING CORP.

2. Street Address
 Box 828
 Westminster Md. ZIP Code 21157

3. State and address of person to whom communications should be sent, if different from item 1

4. Purpose of application (See "INSTRUCTIONS" on page 2)
 New Station
 Major change in existing station facilities
 Minor change in existing station facilities

5. Type of station (See Broadcast, FM, Television)

| Frequency | Call No. | Channel No. | Power in kilowatts | Minimum hours operation daily |
|-----------|----------|-------------|--------------------|-------------------------------|
| 100.7 MHz | WTRR | FM 264 | 15.7 | 18 |

6. Hours of operation
 Limited N.A.

7. City
 Westminster Maryland

8. File or Form No. and Date
 WTRR (FM)
 BLN-6322

FCC Form 301
 Section I, Page 2

THE APPLICANT hereby waives any claim to the use of any particular frequency or of the FCC as against the regulatory power of the United States because of the previous use of the same, whether by him or otherwise, and requests authorization in accordance with this application. (See Section 316 of the Communications Act of 1934.)

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION
 I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this 10th day of April, 1981
 (This Section should not be signed and dated until all the following Sections and Exhibits have been prepared and attached.)
 (This Section should not be signed and dated until all the following Sections and Exhibits have been prepared and attached.)

CARROLL COUNTY BROADCASTING CORP.
 (NAME OF APPLICANT)
[Signature]
 Vice-President

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U. S. CODE, TITLE 18, SECTION 1001.

If applicant is represented by legal or engineering counsel, state name and post office address: RALPH E. EVANS ASSOC., 216 N. Green Bay Rd., Thiensville, Wisc 53092

The collection of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit required is consistent with the public interest.

The staff, consisting entirely of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, amended, or withdrawn for hearing.

If all the information requested is not provided, the application may be returned without action being taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information.

THE PERSONS NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-502, DECEMBER 31, 1974, 5 U. S. C. 552(a)(7).

EXHIBITS furnished as required by this form:

| Exhibit No. | Section and Para. No. of Form | Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which) | Official title |
|-------------|-------------------------------|--|----------------|
| Engr. | | RALPH E. EVANS ASSOCIATES | |

FCC Form 301
 FEDERAL COMMUNICATIONS COMMISSION
 Section III

FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT
 NAME OF APPLICANT
 CARROLL COUNTY BROADCASTING CORP.

The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.

IF CONTEMPLATED EXPENDITURES ARE LESS THAN \$5,000 COMPLETE PARAGRAPH 1 OF SECTION III ONLY.

1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile and STL equipment, non-technical studio furnishings, etc., should be included under "Other Items" below, and itemized.

| | COLUMN I (IF ONLY WHEN ITEMIZING) | COLUMN II (TOTAL) |
|---|---|----------------------|
| Antenna System: (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting.) | \$ | \$ 103,900 |
| RF Generating Equipment: (including transmitter, tubes, filters, duplexer, remote control equipment, and automatic logger.) | | |
| Monitoring and Test Equipment: (including frequency monitor, phase monitor, modulation monitor, oscilloscope, dummy load, vectorscope, video monitors.) | | |
| Program Origination Equipment: (including control console, film, news, camera, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment.) | | |
| Acquiring Lease: | | 100,000 |
| Acquiring, Remodeling or Constructing Buildings: | | 15,000 |
| Other Items: (Itemize Below) | | |
| Legal Costs: | 2,000 | |
| Engineering Costs: | 2,000 | |
| Installation Costs: | 20,000 | |
| Other Miscellaneous: | | |
| Total Other Items: | | |
| Total Construction Costs: (See Attachment re explanation of construction) | | 242,900 |
| Add Estimated Cost of Operation for First Year financing) | | |
| Total First Year Costs To Be Met By Applicant: | | |
| Estimated Revenue For First Year: | | |

STATEMENT OF EXPLANATION ON FINANCING

All of the stock of Carroll County Broadcasting Corp. has been purchased by Shamrock Communications, Inc., subject to pending approval by the Federal Communications Commission (BTC 810202 GM). This construction will take place after closing on this transaction, approval of which is anticipated in the near future. Shamrock's financial situation is on file with the transfer application.

ENGINEERING EXHIBIT
 APPLICATION FOR CONSTRUCTION PERMIT
 WTRR, FM
 WESTMINSTER, MD.
 MARCH 1981

ENGINEERING STATEMENT OF RALPH E. EVANS III, OF RALPH E. EVANS ASSOCIATES CONSULTING TELECOMMUNICATIONS ENGINEERS IN THINNSVILLE, WISCONSIN, IN CONNECTION WITH AN APPLICATION BY CARROLL COUNTY BROADCASTING CORPORATION, LICENSEE OF RADIO STATION WTRR-FM IN WESTMINSTER, MARYLAND, TO CHANGE TRANSMITTER POWER OUTPUT, EFFECTIVE RADIATED POWER, HEIGHT ABOVE AVERAGE TERRAIN, ANTENNA TYPE AND TRANSMITTER LOCATION.

WTRR FM presently operates on FM channel 264 (100.7 MHz.), with 50 KW ERP at 350' HAAT. By this application, WTRR proposes to move its transmitter to a site approximately 5.2 miles east of its present location, increase HAAT to 905 feet, and decrease ERP to 15.67 kilowatts. This last figure is in line with FCC interim policy maintaining the 60 db coverage contour for Class B stations at a distance of 32.6 miles when the height of the antenna radiation center exceeds 500' HAAT.

The proposed FM facility will easily place a 70 db signal over the entire Westminster area, and will provide improved coverage of the outlying rural areas (see Figure 2, attached). An area of 3,232 square miles will be served with a 1 mW/m signal or better, containing 1,436,191 persons. Inasmuch as the area presently served is 2,662 square miles, this application contemplates service to a new area of 932 square miles and a loss to an area of 267 square miles. The net change in service area is therefore 45%, and is therefore classified as a "minor change" under FCC Rules and Regulations.

ALLOCATIONS

A frequency search conducted by this office reveals that no new short-spaced situations will develop as a result of the proposed move, and that the short-space

condition which exists with respect to WDC in Washington, D.C., will be eliminated. The four other existing short-spaced stations, as tabulated below, will be variously affected by the proposed change in the WTRR site:

Table with columns: CALL, CHANNEL, LOCATION, PRESENT DIST, PROP DIST, REQ DIST. Lists stations WQPO, WDC, WICE, WPHZ, and WMC.

It is the understanding of this affiant that there is an agreement in place between WTRR and WPHZ, and WMC, which permits the indicated decreases in mileages listed above.

REMOTE CONTROL AUTHORITY REQUESTED

The transmitter will be remotely controlled from the present studio site, which is the same location as the present transmitter.

CALCULATIONS

The average elevations used in the calculations of distances to contours, as well as HAAT calculations, were determined by constructing 2-10 mile elevation profiles at 45 degree increments using USGS topographic maps (see Figure 3 & 4, attached).

Areas were determined through the use of a polar planimeter, and the population count was determined by transferring the 1 mW/m contour to a map of minor civil divisions, and tabulating the divisions and fractional portions thereof.

ENVIRONMENTAL STATEMENT

The proposed construction contemplates a tower to be erected on high ground, at 840' elevation, with an antenna mounted at 785' AGL. The tower will be located in a rural area, 5.2 miles east of the present site. A transmitter house, approximately 30' x 40', will be constructed adjacent to the tower, to contain the transmitter and associated equipment.

The proposed construction is outside the city limits of Westminster, and would be located on a vacant plot of ground. No adverse reaction to the proposed construction has been received.

No permanent changes will be made to the site except for the excavations necessitated by the construction of the tower and transmitter building.

The proposed project does not effect recreational areas, nor will it obstruct residential utilization. It will have no effect on drainage, as it will change no run-off patterns (hilltop location), and no streams or shoreline patterns will be altered by the proposed construction.

No effect on air quality will result from the proposed construction, and the installation of the facilities will not increase the area noise level.

The transmitter house will have a washroom facility installed for occasional use. This will not generate appreciable quantities of sewage as it will not be available for public use. The installation will not use potentially hazardous chemicals so that no disposal problems will exist.

There is no geologic hazard known to exist at the proposed site that does not exist at the present location. The construction will not disturb the area fauna as the equipment will be remotely controlled, and will be visited only for occasional maintenance.

The impact upon utilities and services will be minimal as an electric power line exists on the adjacent road, west of the proposed site.

There will be no significant effect on the extraction or conservation of natural resources known at this time. The proposed installation will not be located in an area of historical significance.

There will be no effect on the health and safety of the area's population. The project will result in no agricultural land loss, and will not result in a loss of soil capability. The project will have a minimal effect of the development of the area.

STATE OF WISCONSIN)
COUNTY OF MILWAUKEE)

Ralph E. Evans III, being duly sworn, upon his oath deposes and says the foregoing statement and attached figures are true and accurate to his best knowledge and belief.

Signature of Ralph E. Evans III

Subscribed and sworn to before me this 30th day of March, 1981

Signature of Notary Public, Milwaukee County, Wisconsin. My Commission expires Oct 1984

ENGINEERING DATA form with sections 1-10 covering purpose of authorization, facilities requested, transmitter location, antenna location, and antenna data.

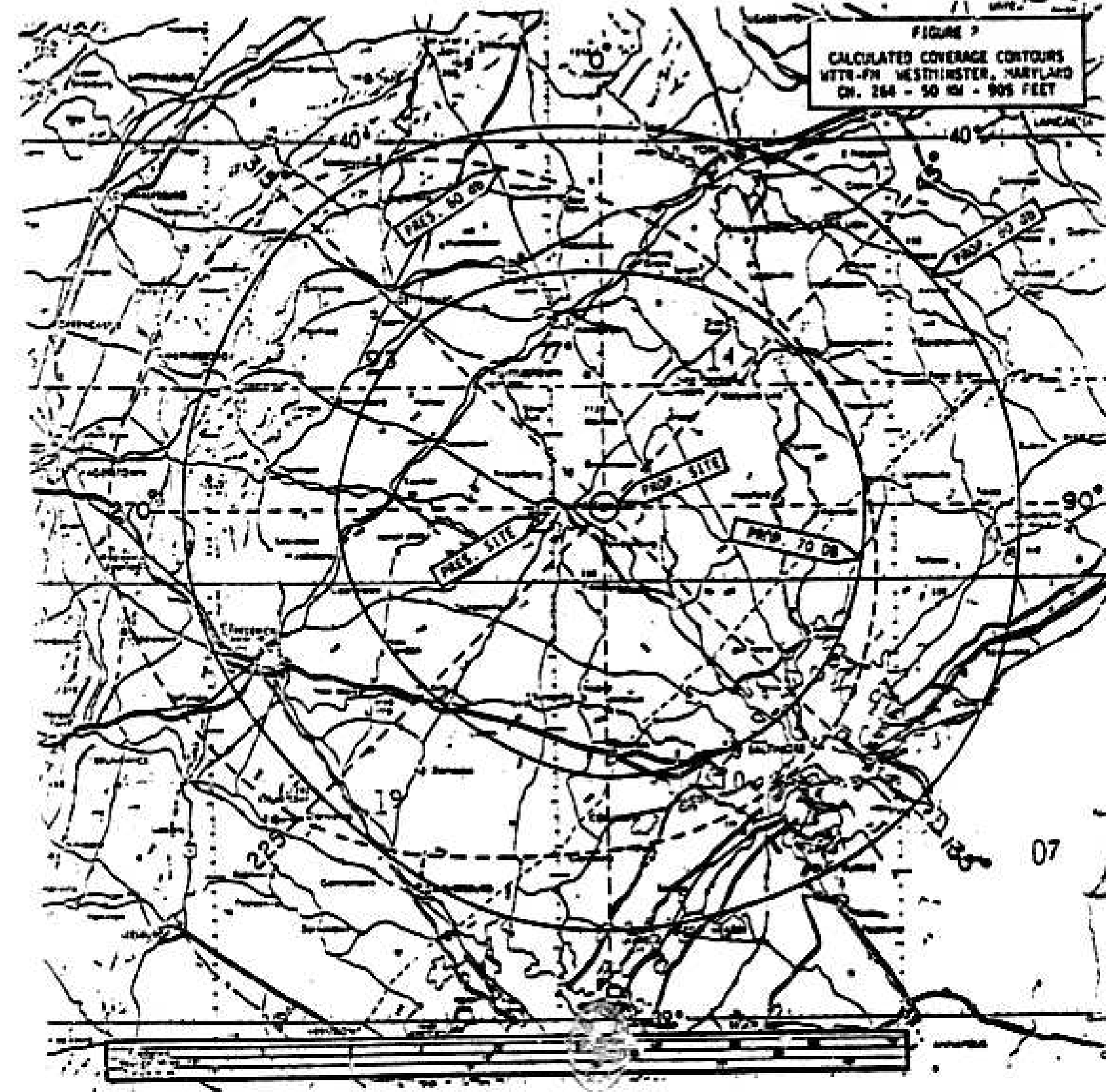
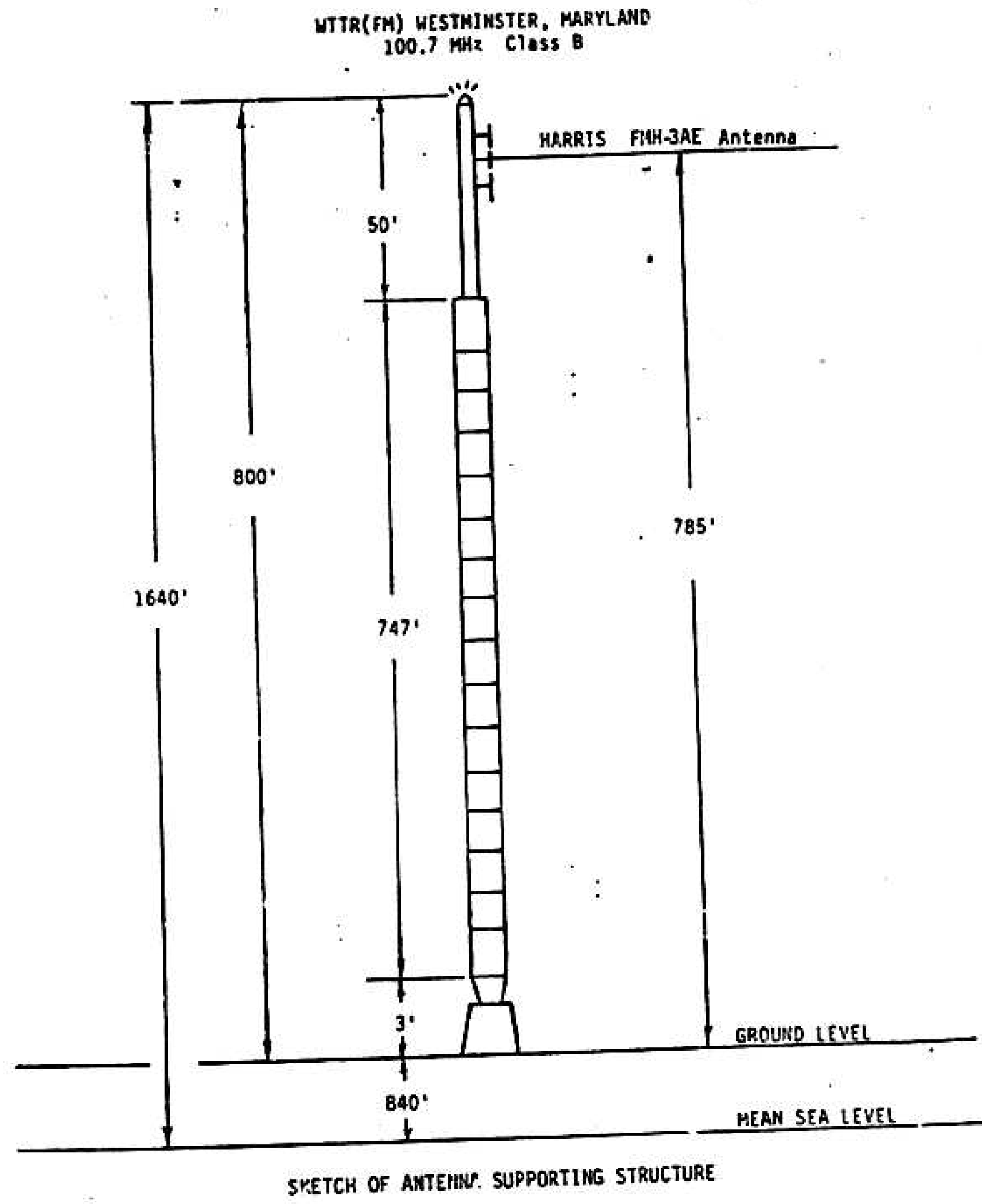
Table with columns: Name, Type No., Description, Size, Length, Height, etc. Includes sections for proposed operation and profile graphs.

FCC Form 301 FM BROADCAST ENGINEERING DATA Section V-B, Page 3. Includes environmental statement and signature of Ralph E. Evans, III dated March 30, 1981.

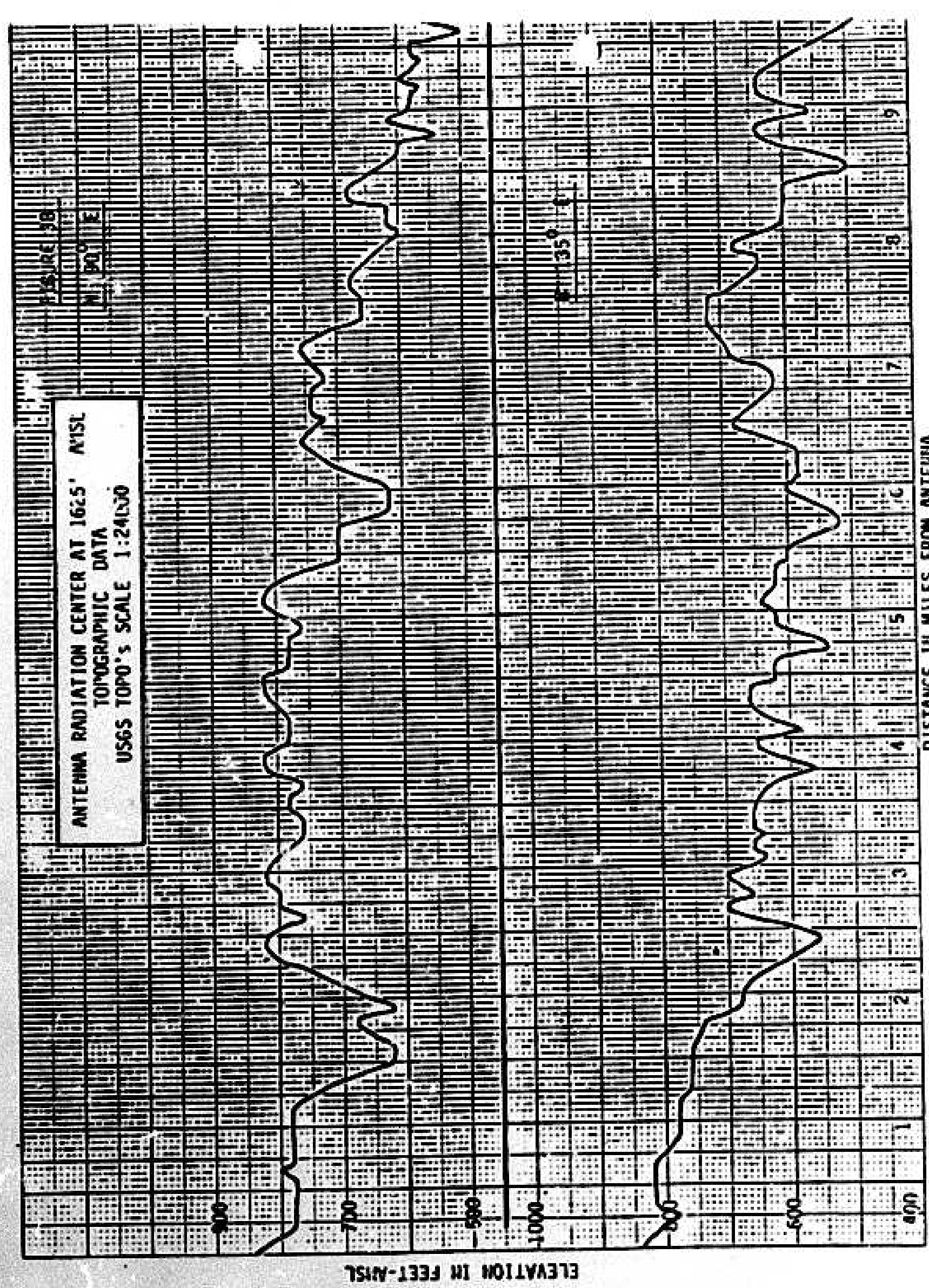
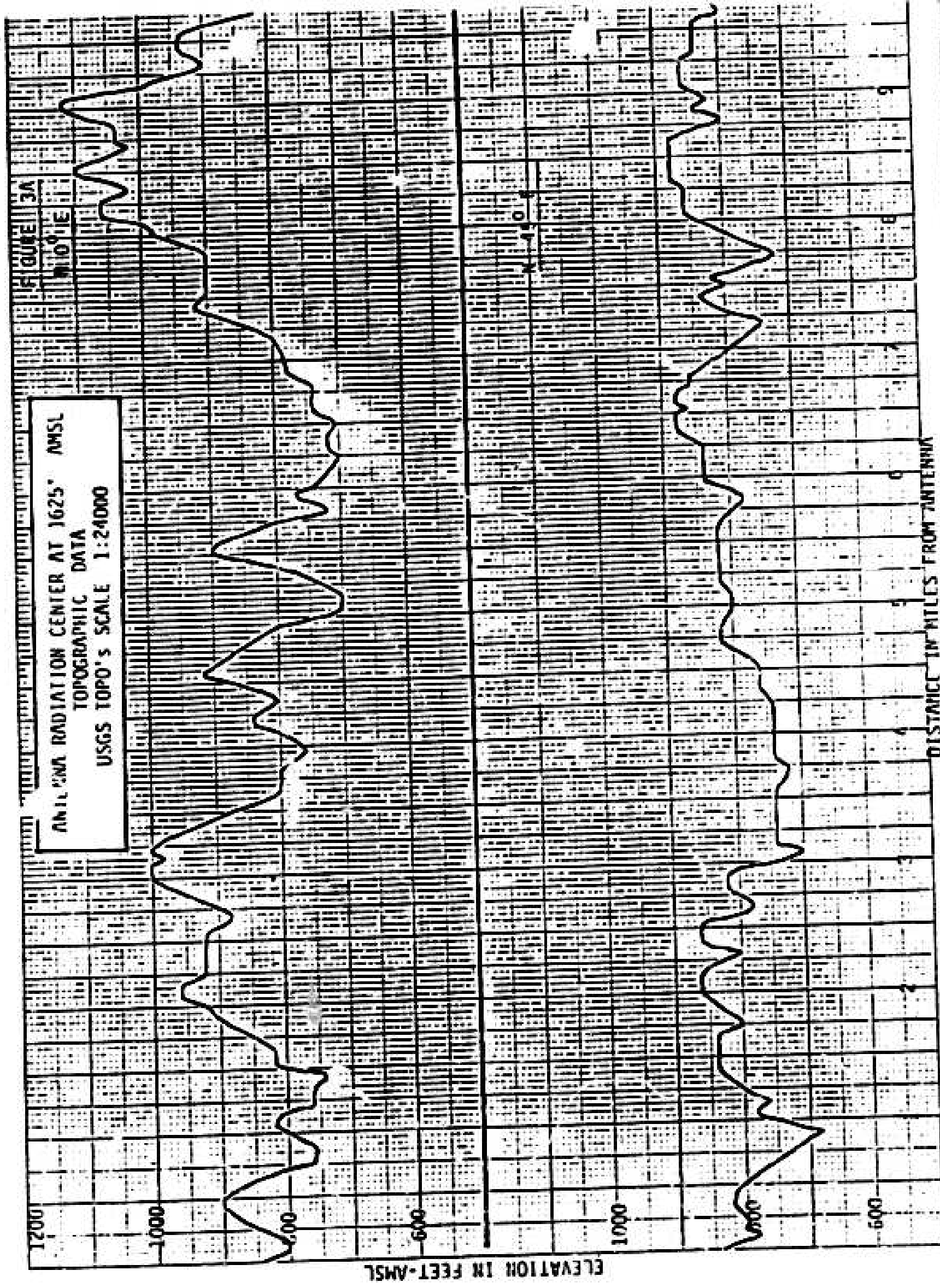
ANNUAL LICENSE RENEWAL FORM for Class B Station WTRR-FM, Westminster, Maryland. Includes details on transmitter location, antenna location, and technical data.

ATTACHED FIGURES

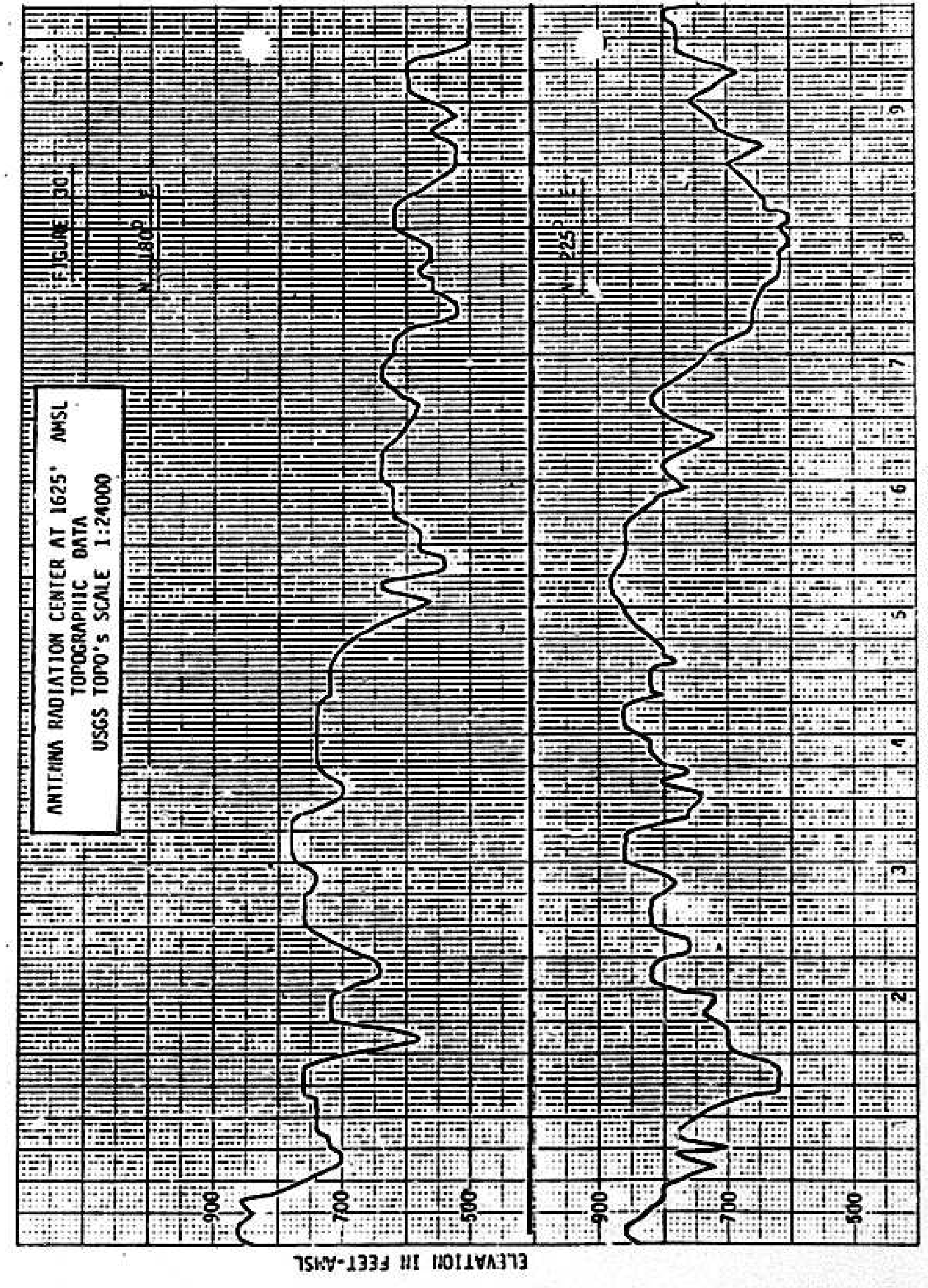
- Figure 1---TOWER SKETCH
- Figure 2---MAP SHOWING CALCULATED COVERAGE CONTOURS
- Figure 3---TOPOGRAPHIC PROFILES
- Figure 4---TOPOGRAPHIC MAPS
- Figure 5---ALLOCATION STUDY
- Figure 6---FAA NOTICE OF PROPOSED CONSTRUCTION



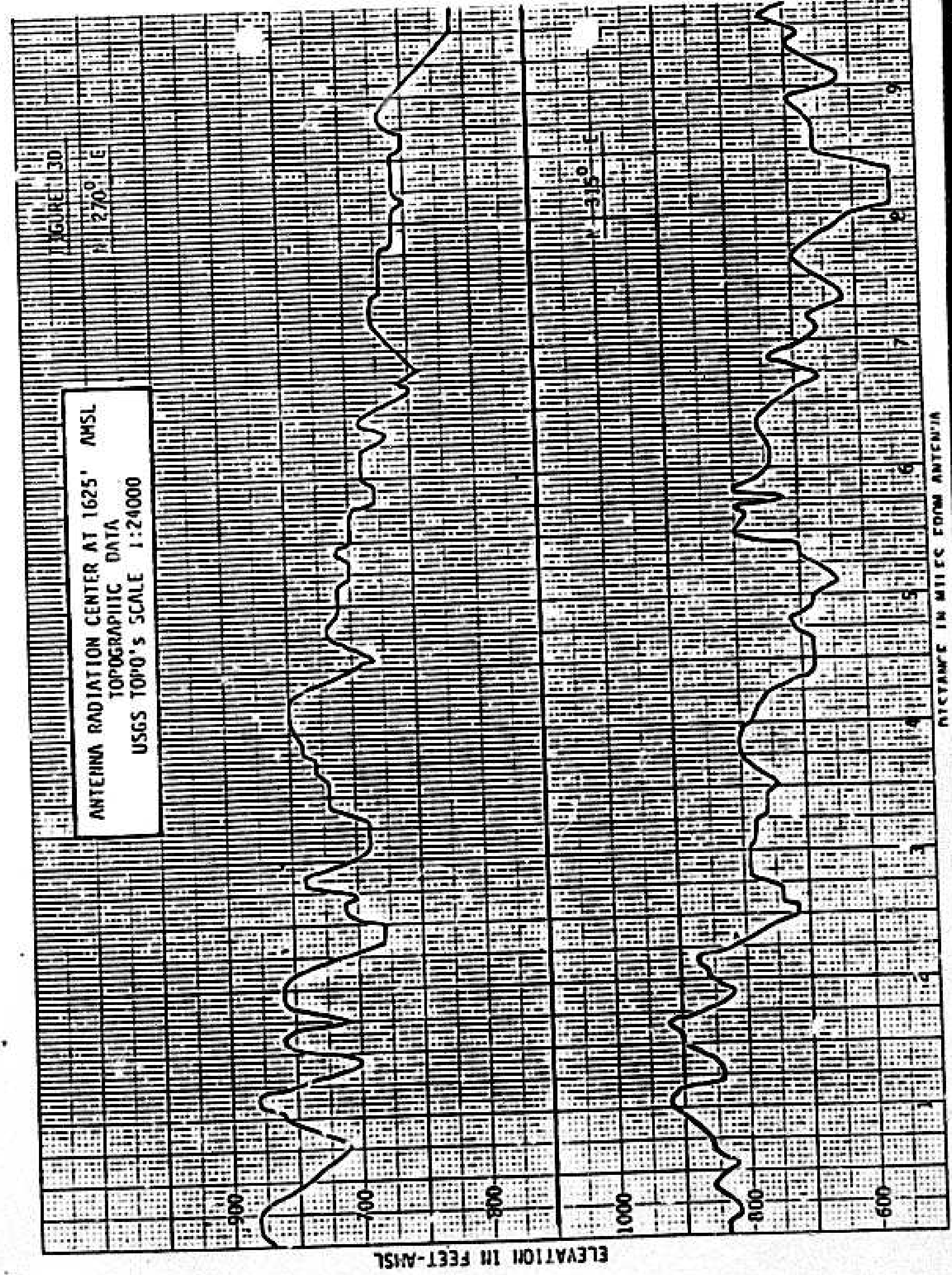
46 1240



46 1240



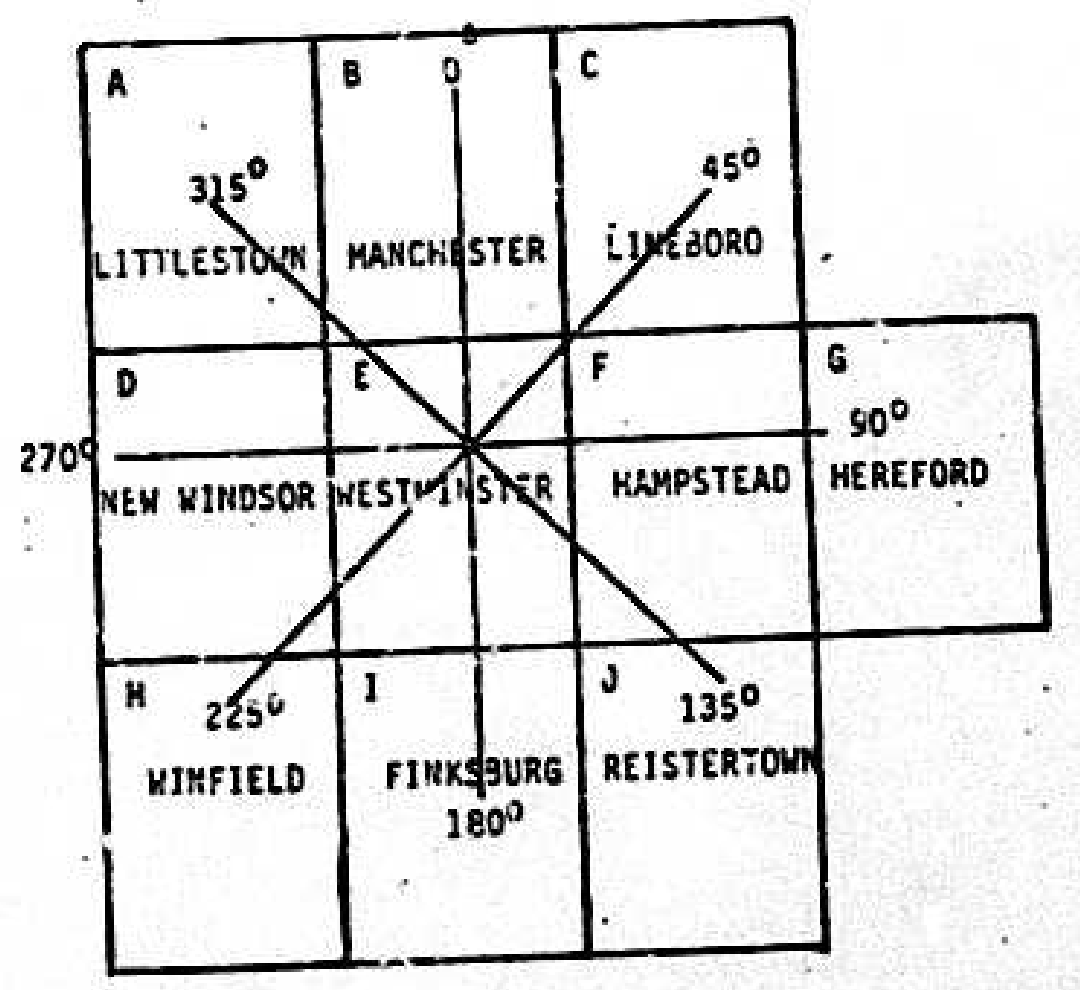
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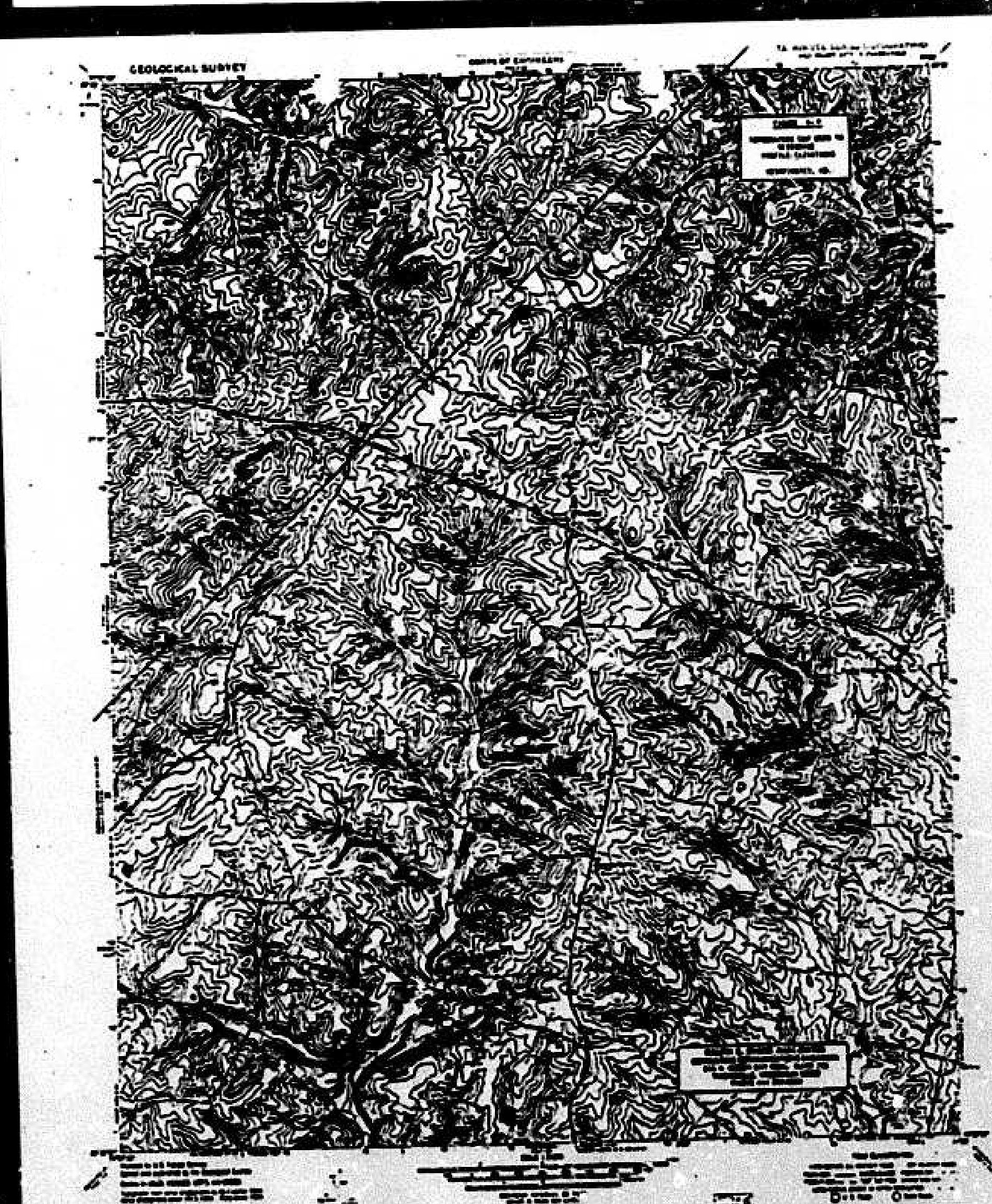
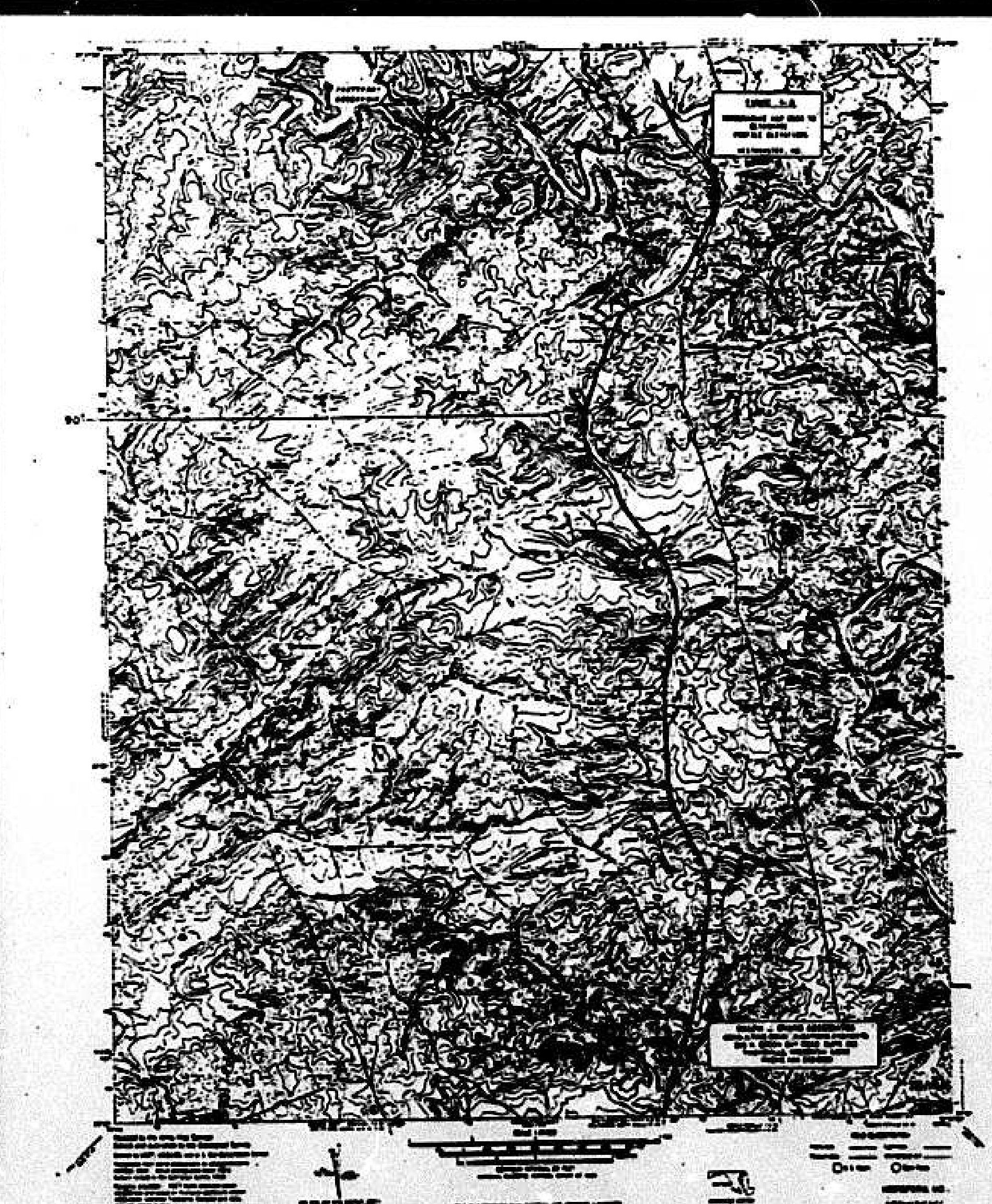
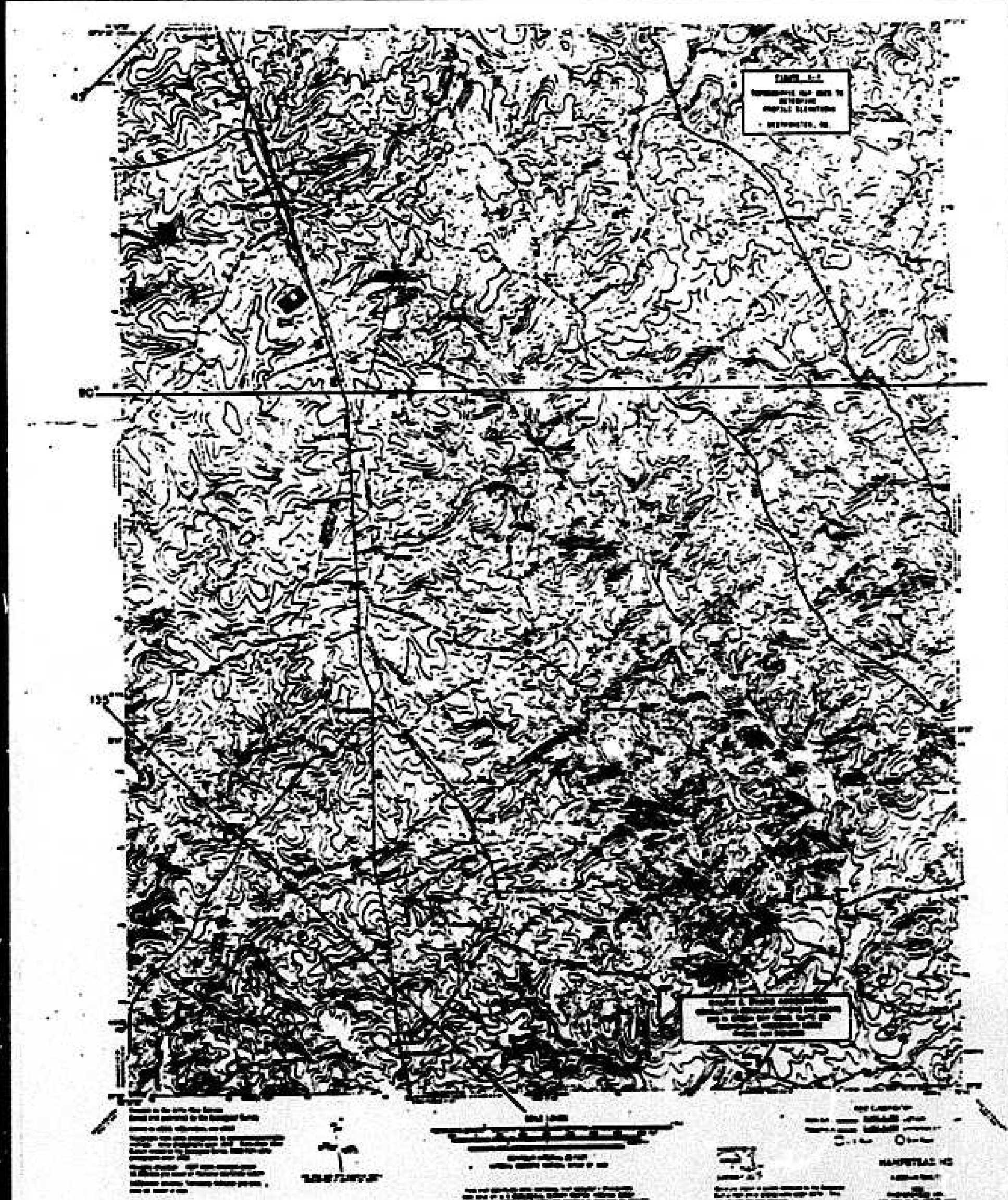
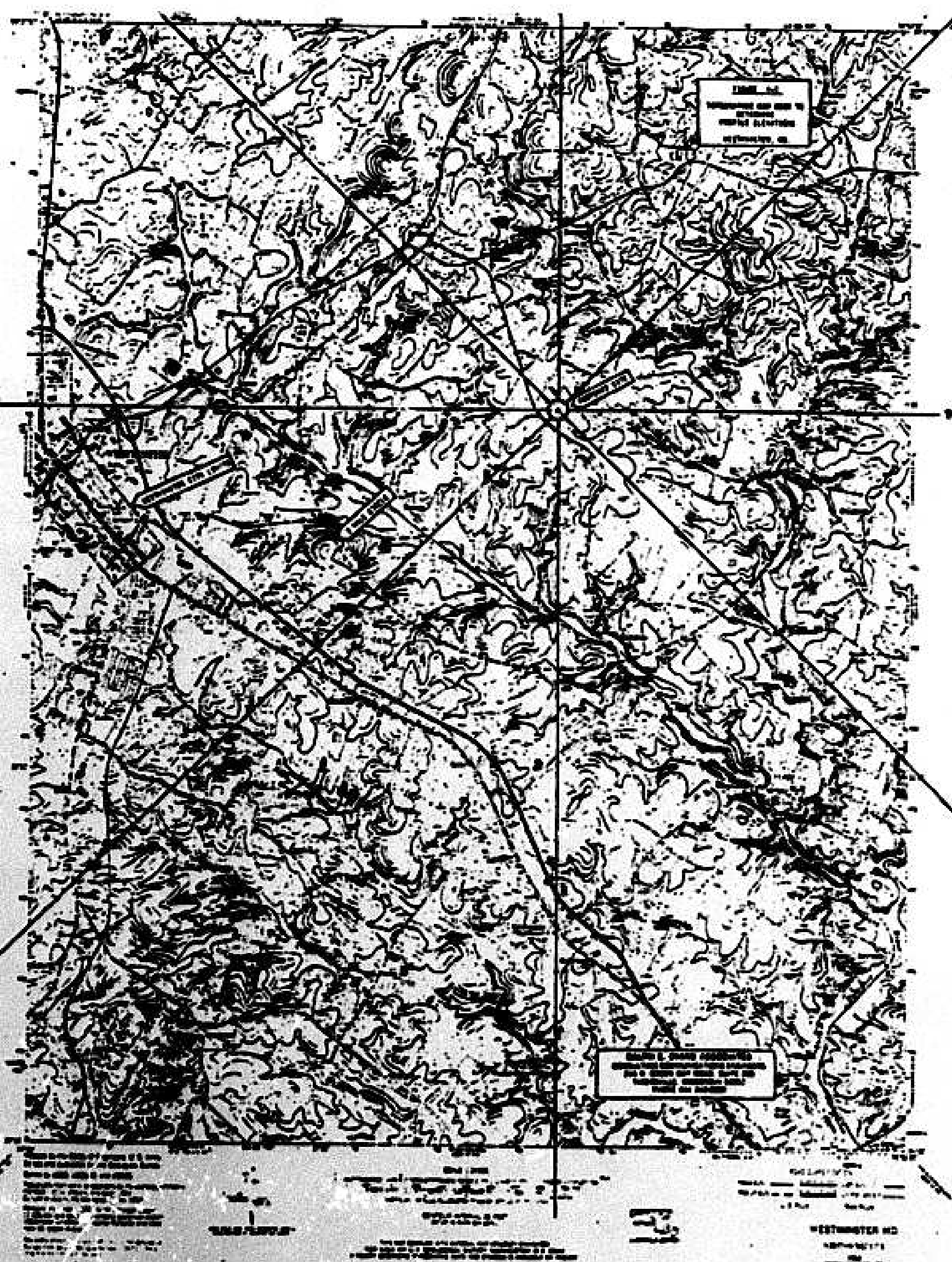
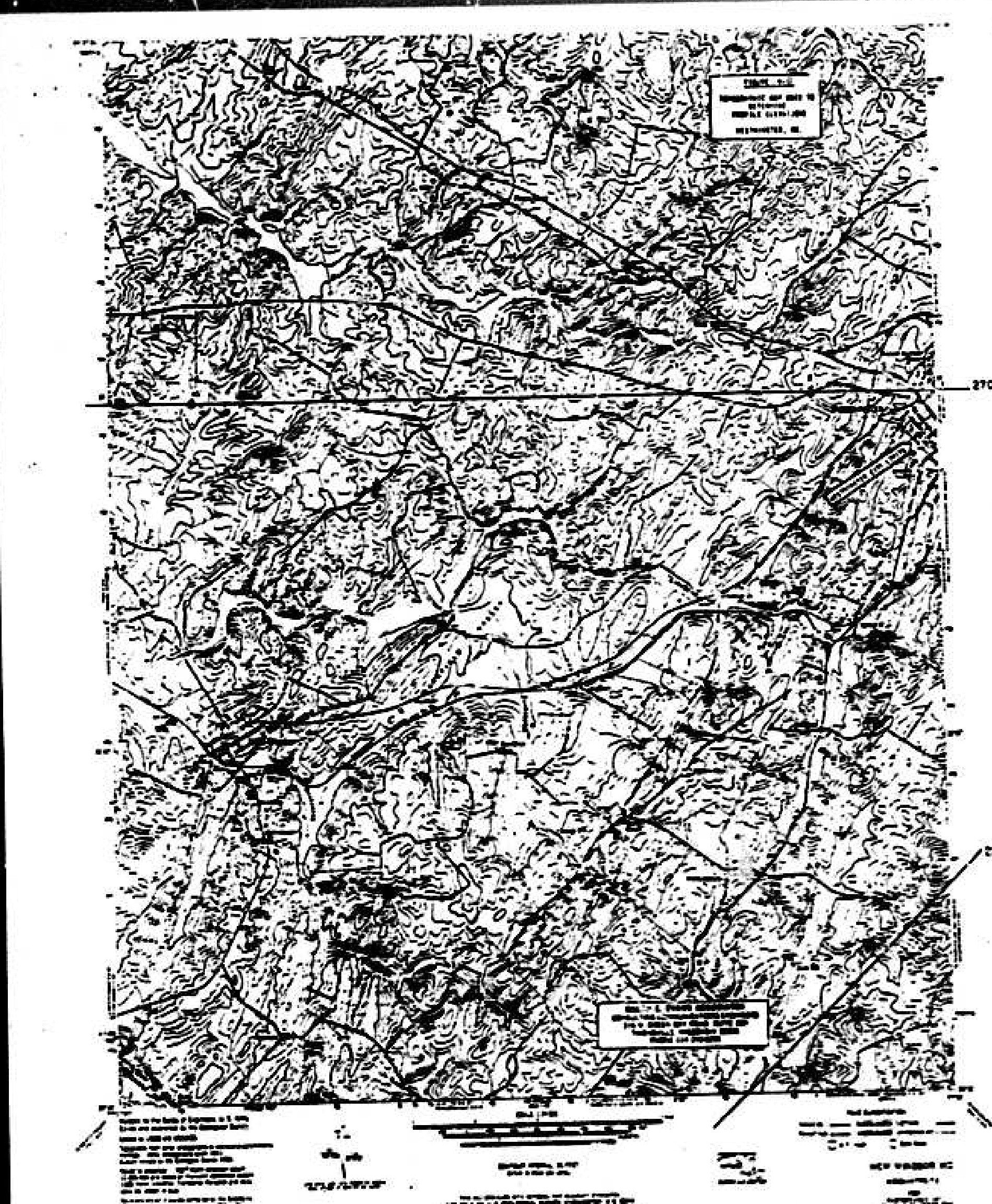
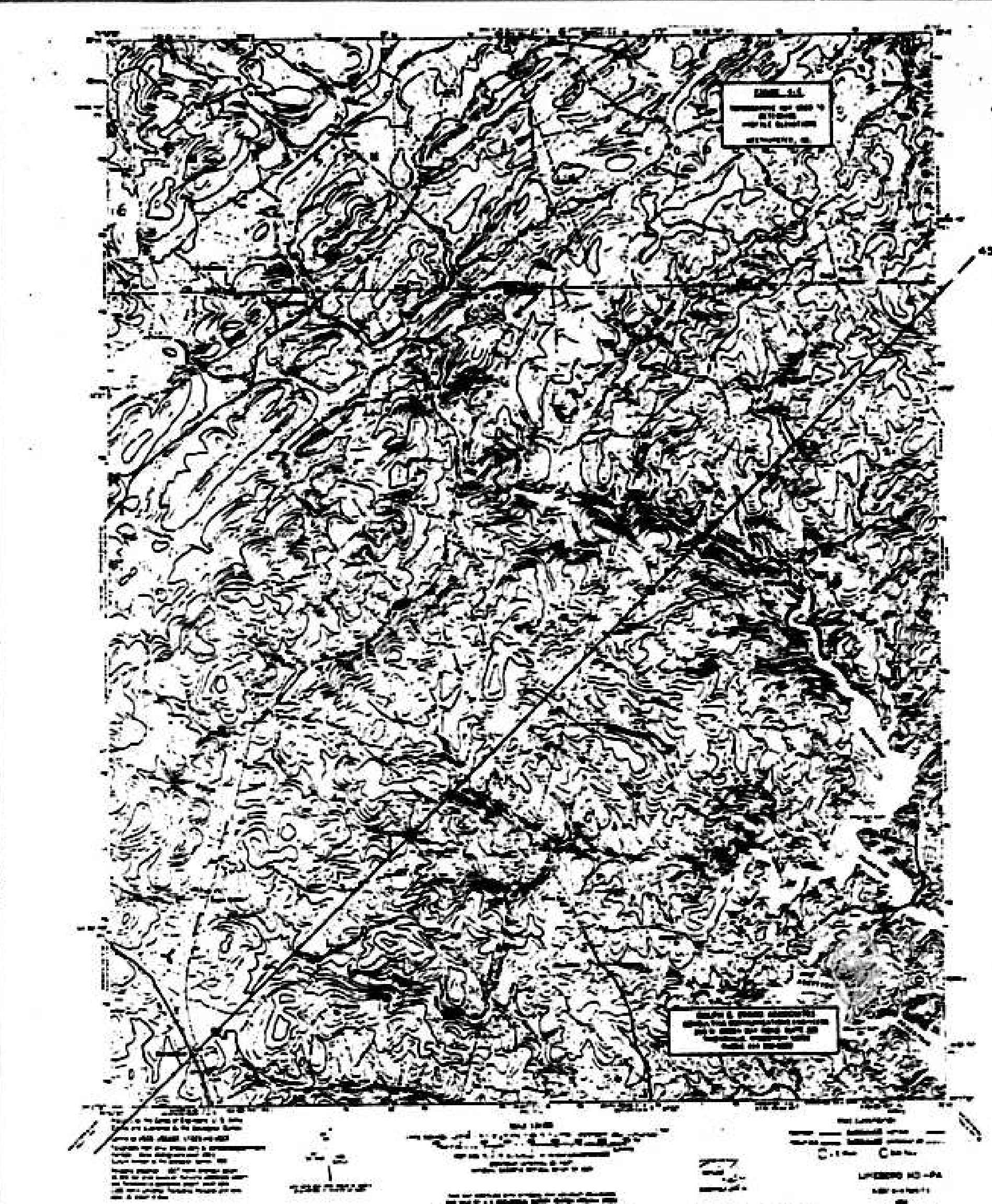
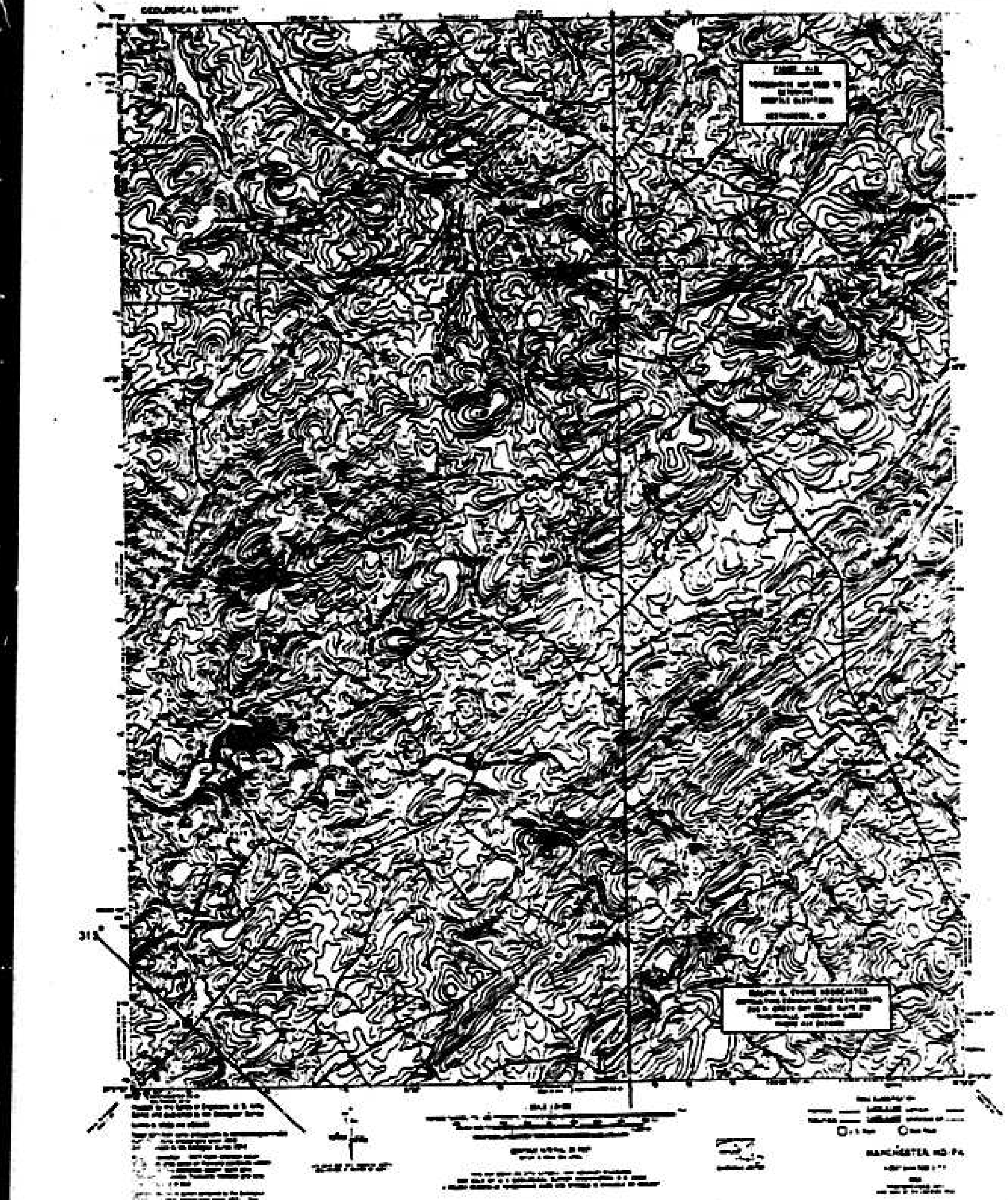
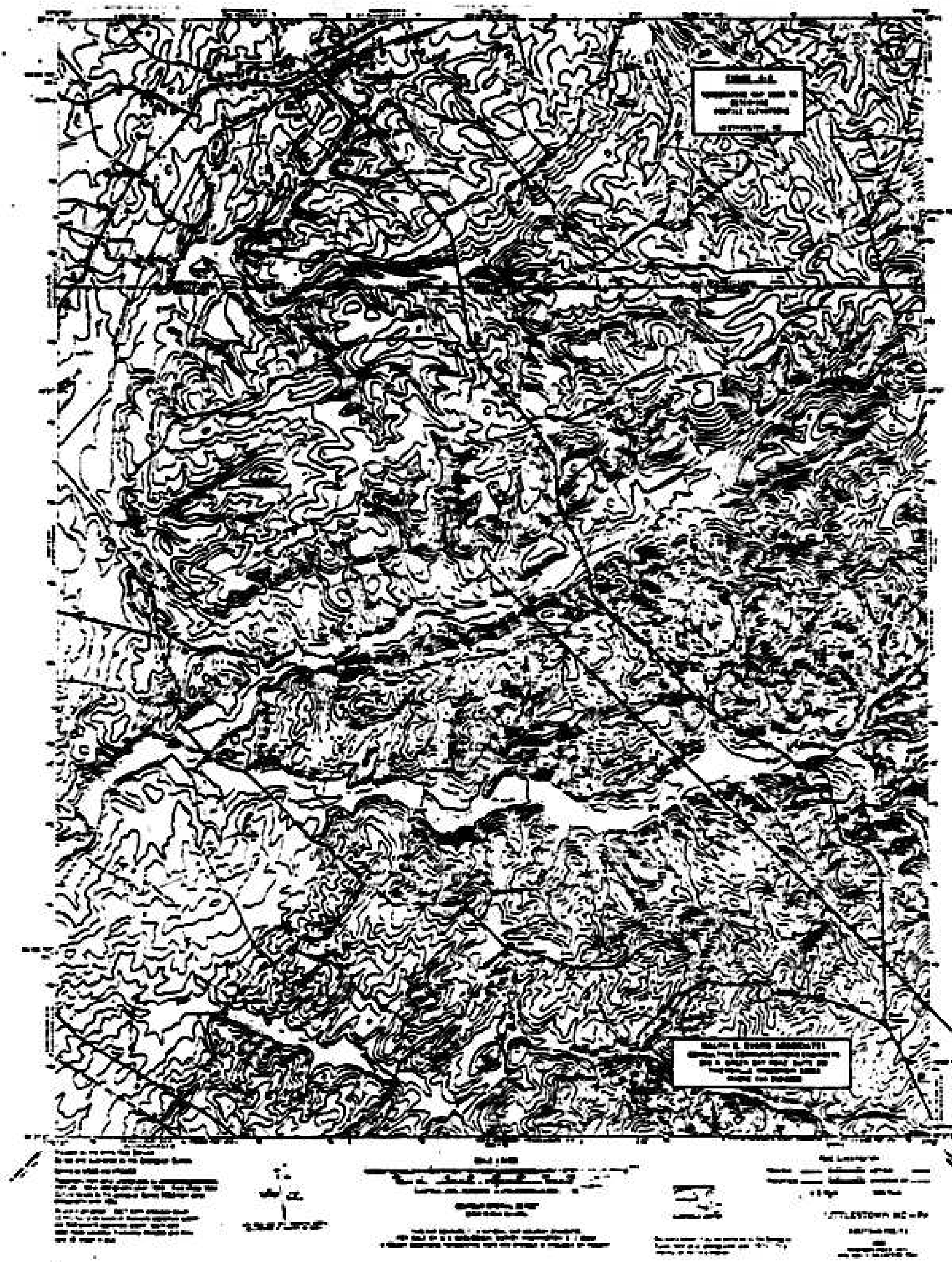


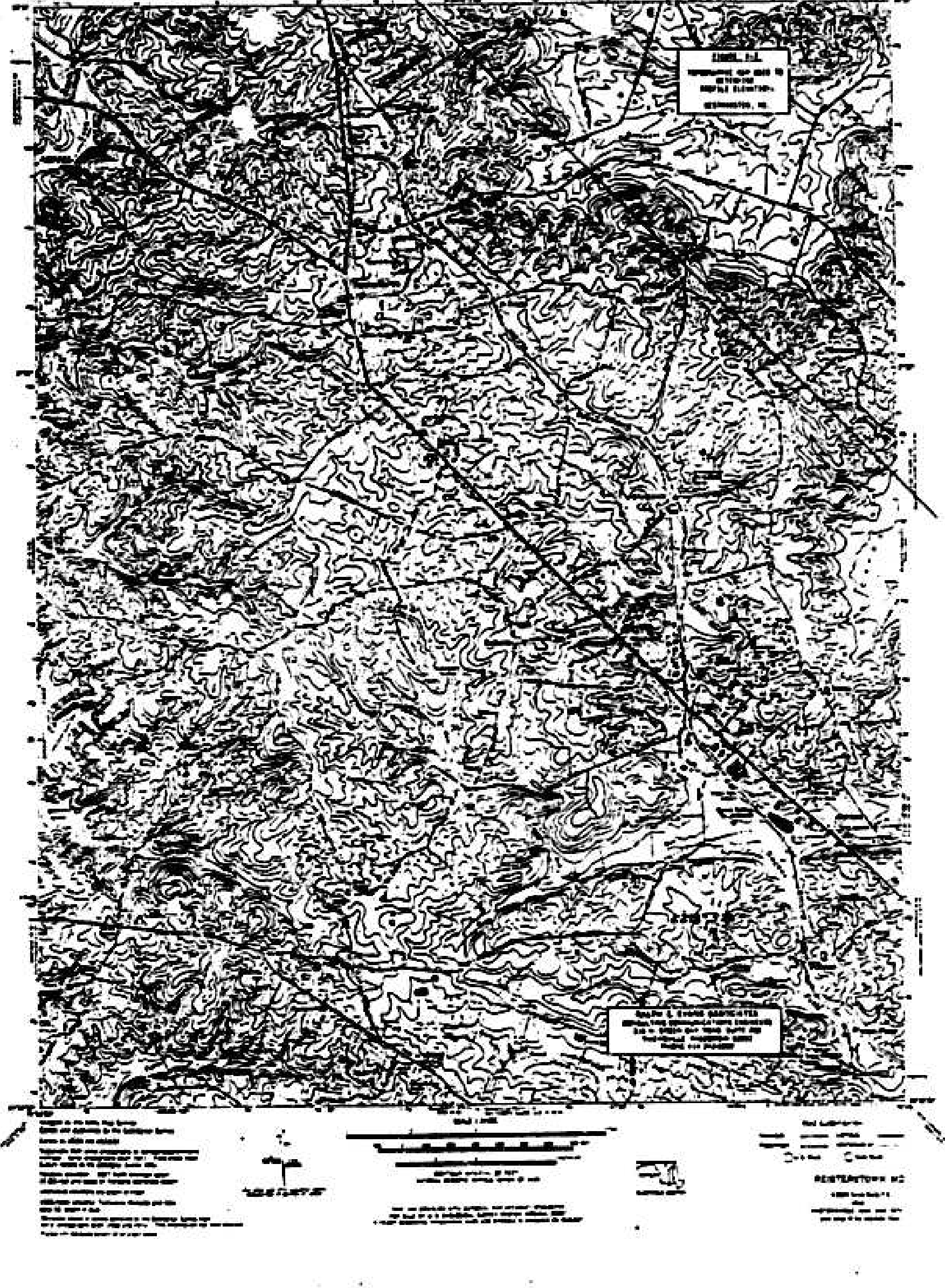
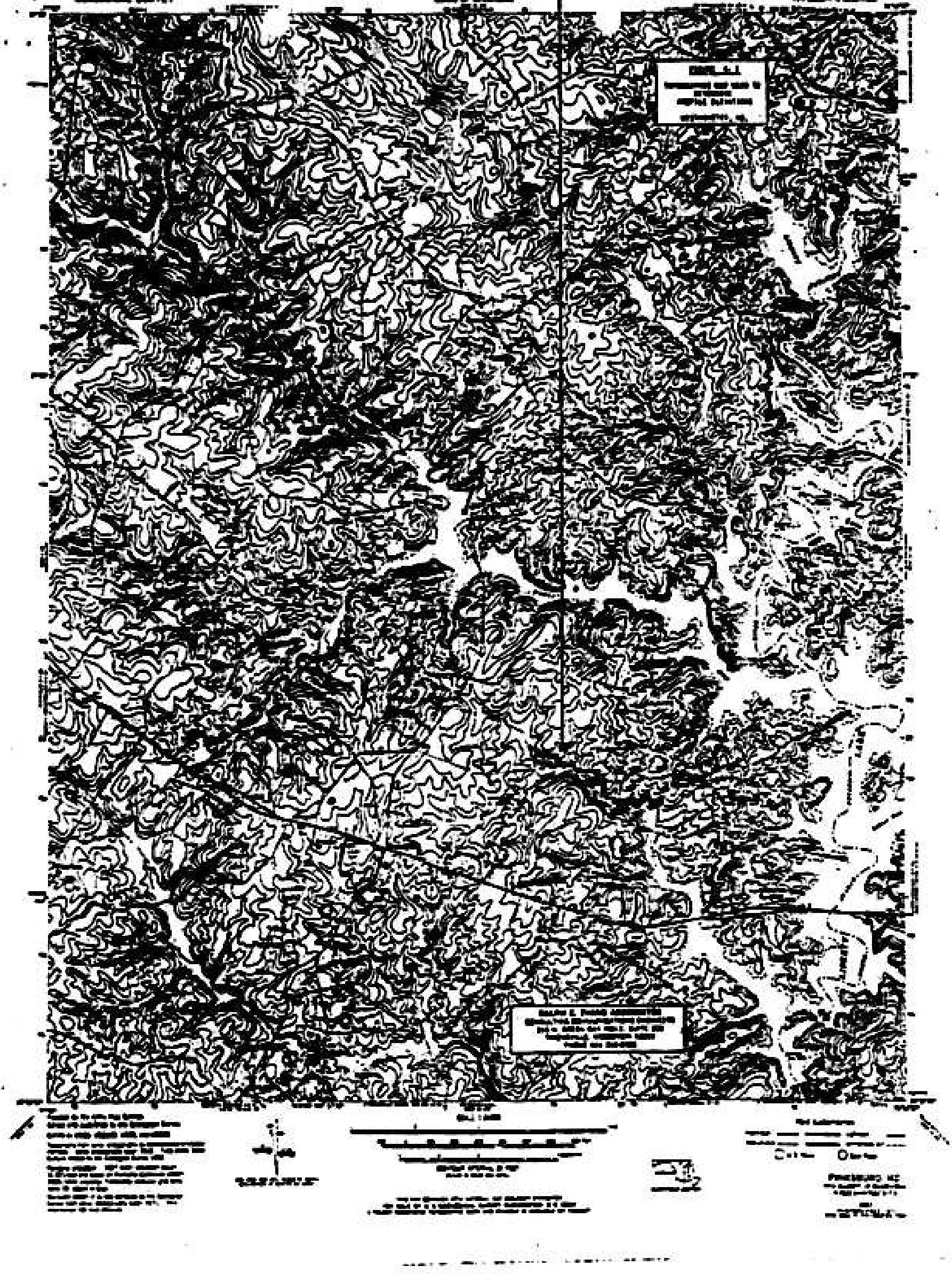
Tele Communications Engineers

FIGURE 4

MAP INDEX
TOPOGRAPHIC MAPS
FOR
PROFILE ELEVATIONS







Tele Communications Engineers
FIGURE 5
Page 1

GREAT CIRCLE DISTANCE AND BEARING CALCULATIONS

WTTR WESTMIN MD CHANGE SITE

| Distance | Bearing | TO: |
|---------------------------|----------|--|
| 132.06 MI 132.21 (Fcc) | 234.34 ° | 39 34 56 ; 76 55 32 TO: MOPO 264B 150 HI REG |
| 169.74 MI 170.07 (Fcc) | 295.25 ° | 39 34 56 ; 76 55 32 TO: MHUF 264B 150 HI REG |
| 200.24 MI 200.50 (Fcc) | 51.73 ° | 39 34 56 ; 76 55 32 TO: MHUH 264B 150 HI REG |
| 89.58 MI 89.77 (Fcc) | 291.25 ° | 39 34 56 ; 76 55 32 TO: MAHM 265A 65 HI REG |
| 95.06 MI 94.94 (Fcc) | 5.50 ° | 39 34 56 ; 76 55 32 TO: MOEZ 265A 65 HI REG |
| 97.84 MI 97.71 (Fcc) | 1.65 ° | 39 34 56 ; 76 55 32 TO: MOEZ 265A LP 65 HI REG |
| 113.56 MI 113.38 (Fcc) | 175.21 ° | 39 34 56 ; 76 55 32 TO: MHHT 265A 65 HI REG |
| 40.82 MI 40.77 (Fcc) | 190.02 ° | 39 34 56 ; 76 55 32 TO: MWDC 266B 40 HI REG |
| 54.92 MI 55.12 (Fcc) | 69.92 ° | 39 34 56 ; 76 55 32 TO: NDVE 266B 40 HI REG |
| 107.68 MI 107.64 (Fcc) | 329.43 ° | 39 34 56 ; 76 55 32 TO: MGRH 266B 40 HI REG |
| 37.24 MI 35.22 (Fcc) | 27.38 ° | 39 34 56 ; 76 55 32 TO: MHCE 267E 40 HI REG |
| 23.82 MI 23.88 (Fcc) | 286.95 ° | 39 34 56 ; 76 55 32 TO: WHTB 210A 10 HI REG |
| 42.94 MI 42.92 (Fcc) | 148.97 ° | 39 34 56 ; 76 55 32 TO: WACC 210A 10 HI REG |
| 56.55 MI 56.69 (Fcc) | 88.90 ° | 39 34 56 ; 76 55 32 TO: MOEL 218 10 HI REG |
| 45.54 MI 45.48 (Fcc) | 191.36 ° | 39 34 56 ; 76 55 32 TO: MGTB 211E 15 HI REG |
| 59.17 MI 59.13 (Fcc) | 24.55 ° | 39 34 56 ; 76 55 32 TO: MHUF 261A 40 HI REG |
| 100.37 MI 100.47 (Fcc) | 309.40 ° | 39 34 56 ; 76 55 32 TO: MVRM 261A 40 HI REG |
| 43.56 MI 43.49 (Fcc) | 185.60 ° | 39 34 56 ; 76 55 32 TO: MOPO 262B 40 HI REG |

RALPH E. EVANS ASSOCIATES
Tele Communications Engineers
FIGURE 5
Page 2

GREAT CIRCLE DISTANCE AND BEARING CALCULATIONS

WTTR WESTMIN MD CHANGE SITE

| Distance | Bearing | TO: |
|---------------------------|----------|--|
| 45.54 MI 45.48 (Fcc) | 191.36 ° | 39 34 56 ; 76 55 32 TO: APP(MOOK) 262B 40 HI REG |
| 50.27 MI 50.21 (Fcc) | 197.16 ° | 39 34 56 ; 76 55 32 TO: APP(MOOK) 262B 40 HI REG |
| 77.98 MI 76.15 (Fcc) | 72.37 ° | 39 34 56 ; 76 55 32 TO: 39 34 56 ; 76 55 32 TO: NEW 262B 40 HI REG |
| 194.18 MI 192.88 (Fcc) | 168.19 ° | 39 34 56 ; 76 55 32 TO: 36 49 44 ; 76 12 26 WCHS 263F 105 HI REG |
| 5.18 MI 5.15 (Fcc) | 265.99 ° | 39 34 56 ; 76 55 32 TO: 39 34 57 ; 77 1 21 PRES HTTR |
| 103.80 MI 103.89 (Fcc) | 48.67 ° | 39 34 56 ; 76 55 32 TO: 40 33 54 ; 75 26 26 WFHZ 264B 150 HI REG |
| 120.07 MI 120.32 (Fcc) | 109.16 ° | 39 34 56 ; 76 55 32 TO: 38 59 33 ; 74 48 48 WCHC 264E 150 HI REG |
| 127.69 MI 127.62 (Fcc) | 233.06 ° | 39 34 37 ; 77 1 21 TO: 38 27 3 ; 76 54 31 MOPO 264B 150 HI REG |
| 39.89 MI 39.80 (Fcc) | 182.72 ° | 39 34 37 ; 77 1 21 TO: 39 0 1 ; 77 3 28 MWDC 266B 40 HI REG |
| 38.19 MI 38.18 (Fcc) | 33.96 ° | 39 34 37 ; 77 1 21 TO: 40 2 5 ; 76 37 9 MHCE 267E 40 HI REG |
| 107.96 MI 108.07 (Fcc) | 50.27 ° | 39 34 37 ; 77 1 21 TO: 40 33 54 ; 75 26 26 WFHZ 264B 150 HI REG |
| 124.85 MI 125.11 (Fcc) | 108.17 ° | 39 34 37 ; 77 1 21 TO: 38 59 33 ; 74 48 48 WCHC 264E 150 HI REG |

RALPH E. EVANS ASSOCIATES
Tele Communications Engineers
FIGURE 6

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

1. NAME OF STRUCTURE
Shamrock Communications, Inc.
149 Penn Avenue
Scranton, PA 18501
Attn: William R. Lynett, Vice-President

2. COMPLETE DESCRIPTION OF STRUCTURE
800 foot guyed tower with FAA code painting and lighting. Tower will support FM antenna and transmission line. Antenna will transmit on 100.7 mcs. (Channel 264) with an effective radiated power of 50,000 watts.

3. LOCATION OF STRUCTURE
Westminster, Maryland

4. ELEVATION OF SITE ABOVE MEAN SEA LEVEL: 840'

5. CONSTRUCTION SCHEDULE
12/24/80

6. SIGNATURE
William R. Lynett
Vice-President

FEDERAL COMMUNICATIONS COMMISSION
Form 301
Series III

FINANCIAL QUALIFICATION OF BROADCAST APPLICANT
NAME OF APPLICANT: CARROLL COUNTY BROADCASTING CORP.

STATEMENT OF EXPLANATION ON FINANCING
All of the stock of Carroll County Broadcasting Corp. has been purchased by Shamrock Communications, Inc., subject to pending approval by the Federal Communications Commission (BTC 810202 GM). This construction will take place after closing on this transaction, approval of which is anticipated in the near future. Shamrock's financial situation is on file with the transfer application.

| ITEM | COLUMN I (USE ONLY WHEN ITEMIZING) | COLUMN II (TOTAL) |
|---|------------------------------------|-------------------|
| Antenna System: (Including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting.) | \$ | \$ 103,900 |
| RF Generating Equipment: (Including transmitter, tubes, filters, diplexers, remote control equipment, and automatic logger.) | | |
| Monitoring and Test Equipment: (Including frequency monitor, phase monitor, modulation monitor, oscilloscope, dummy load, vectorscope, video monitors.) | | |
| Program Origination Equipment: (Including control console, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment.) | | |
| Acquiring Land: | | 100,000 |
| Acquiring, Remodeling or Constructing Buildings: | | 15,000 |
| Other Items: (Itemize Below) | 2,000 | |
| Legal Costs: | | |
| Engineering Costs: | 2,000 | |
| Installation Costs: | 20,000 | |
| Other Miscellaneous: | | |
| Total Construction Costs: (See Attachment re explanation of construction) | | 242,900 |
| Add Estimated Cost of Operation for First Year: (financing) | | |
| Total First Year Costs To Be Met By Applicant: | | |
| Estimated Revenue For First Year: | | |

Petition of the estate of Bertha S. Brathuhn and WTRR for CRG approval, and Special Exception for wireless transmitting and receiving structures in an RC 2 zone.

PETITIONERS' MEMORANDUM IN SUPPORT OF CRG SUBMISSION AND SPECIAL EXCEPTION FILING

The Estate of Bertha S. Brathuhn and Carroll County Broadcasting, Inc., (WTRR or Carroll) by Newton A. Williams and Nolan, Plumhoff & Williams, Chartered respectfully submits this memorandum in support of CRG processing and Special Exception for wireless transmitting and receiving structures in an RC 2 zone.

Statement of the Facts

The estate of Bertha S. Brathuhn is the owner of a 100.2 acre, agriculturally used, and RC 2 zoned tract on the south west side of Dover Road in the Boring, Fourth Election District of Baltimore County. The property is improved by a farm house, an implement shed, and a separate out parcel to one of the heirs, namely Thomas Brathuhn, which is improved by a brick home and garage. The Brathuhn property has approximately 1,700 feet of road frontage along Dover Road, a two lane Baltimore County public road. The property is of irregular shape, and varies in elevation from approximately 580 feet at the north corner, 660 feet at the east corner, to 480 feet in the lower part of the property which

includes a running stream known as M. Gill's Run. Approximately the upper-half is open and is in cultivation, while the more southerly and westerly portions are wooded.

WTTR, a Baltimore area AM and FM Station, is applying for CRG approval to construct certain wireless transmitting and receiving structures on the property, namely an unattended, concrete block building on the order of 25 feet x 20 feet, as well as a 720 foot open steel, grid work tower, for FM broadcasting purposes. The tower in question is proposed to have two micro-wave dishes mounted on the tower to receive low powered micro-wave transmissions from studios in Baltimore City and Westminster respectively.

The tower would be approximately 40 to 46 inches in cross section, of triangular shape, and would be lighted in accordance with FAA Regulations. WTTR is attempting to have the tower marked only by red and white painting and red lights at night, although there is a possibility that white, blinking, strobe lights would be required during the day light hours, as well as possibly at night. WTTR is making every effort to eliminate the strobe lights, or in the alternative to use shielded, strobe lights during the day light hours and red lights at night.

The subject site and area is largely open and agricultural in nature, and is zoned RC 2. There are scattered homes

and farms along both sides of Dover Road, with a concentration of homes just above the property and a concentration of homes approximately one quarter to one half mile to the south below the property.

If WTTR is permitted to sever and subdivide a tract of approximately 30 to 32 acres, indicated as tract B on the CRG and Special Exception plat of December 13, 1983, then that severance and subdivision would constitute the subdivision of parcel 1 of 74 acres. Tract A of 24 acres in the rear would be allowed one more subdivision, and a means of access to tract A has been shown along the northwest side of the property by a 20 foot right of way.

The tower in question would be guyed by three guy wires positioned at 120° intervals around the tower, all on the 30 to 32 acre parcel. Access to the parcel would be provided by a 12 foot road to be brought in from Dover Road, and the site would be visited approximately once per week by an engineer. No studio facilities or other building of any kind are proposed, and the existing woods would be maintained except to the limited extent required to allow the placement of the guy wires.

At it's closest point, Dover road is more than 1,500 feet away, that is in excess of a quarter mile, and more than

twice the distance of the total height of the tower. There are no existing or proposed buildings, residences or concentrations of population within 700 feet of the tower, and at its closest point to a boundary line, the base of the tower is more than 545 feet away from the southerly property line.

The balance of the Brathuhn property would be continued in an RC 2 agricultural use, and, in fact, a portion of the 30 to 32 acres which is in open fields would be continued to be farmed pursuant to a farming easement.

As to the location of the tower, WTTR has applied for and is in the process of receiving FAA and FCC permission to erect this tower, and the FCC dictates the area where the tower can be placed. In fact, the proposed location on Dover Road is located toward the southeasterly end of the allowable, triangular shaped locational criteria under the FCC rules. The locational criteria is dictated by the distance from other FM stations broadcasting on basically the same FM frequency, namely approximately 99 1/2 miles from a Pennsylvania Station, WPMZ, 39 1/2 miles, the absolute minimum from a Washington FM station, WWDC, and 103.1 miles from a Virginia area FM station, WFHZ and finally 109.3 miles from a FM station in Wildwood New Jersey. Also, the FAA requires that such towers not be located near airports and heavily traveled airport lanes, or airplanes, and the proposed location is

not near any such airport. Finally, the height of the tower is dictated in large part by the need to cover the allowable 30 mile radius upon which most American FM stations broadcast based upon maximum allowable power.

Statement of the Case

On January 18, 1984, the first CRG meeting was held, which was attended by representatives of the petitioners, as well as by various interested area residents. Speaking on behalf of the CRG group, Mr. Eugene Bober has asked for an analysis of the statutory criteria for such a proposal. Mr. Bober particularly asked that Counsel address themselves to the question of property values and aesthetics, under the applicable regulations.

Discussion of Applicable Statutory Standards

The applicable statutory standards governing this CRG and Special Exception application would certainly include the following:

- 1) Applicable FAA regulations, which are generally beyond the scope of this discussion;
- 2) Applicable FCC regulations, which are generally beyond the scope of this discussion;
- 3) The Baltimore County Development Regulations as embodied in Bill 56-82, of which more particular sections will be mentioned later in this discussion;
- 4) Section 502.1 of the Baltimore County Zoning Regulations relating to the criteria for the granting of Special Exceptions.

First of all, pursuant to the request of the CRG committee, copies of the FAA and FCC applications will be furnished to the CRG Committee, but, in general, these two areas of regulation and law are the province of the Federal Communications Commission and Federal Aviation Authority respectively. However, certain aspects of these applications do have some bearing on this request, and will be discussed in the body herein.

As to the RC 2 zone, this agricultural zone is governed by Section 1A01 of the Baltimore County Zoning Regulations, and Section 1A01.2 covers those uses permitted as a matter of right and by Special Exception. Clearly, the existing farm uses and residential uses are uses permitted as a matter of right under subsection B thereof. Furthermore, wireless transmitting or receiving facilities as principal uses are permitted by Special Exception in the RC 2 zone under subsection C.23. of Section 1A01.2.

It is also interesting to note, and important to note, that wireless transmitting and receiving structures as principal uses are allowed in every residential, commercial and manufacturing zone in Baltimore County, with all of these zones requiring a Special Exception. This allowance of wireless transmitting and receiving structures in every Baltimore County zone by Special Exception traces itself back, at least to the 1955 Regulations, upon which the present Regulations are

based. That is, no zone in Baltimore County has been declared out of bounds for such structures, and, in fact, due to the necessity of locating such structures based upon FCC and FAA requirements, all of Baltimore County is available for such placement subject to the applicable statutory standards which will be discussed hereinafter.

Section 502.1 of the Baltimore County Zoning Regulations provides

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- f. Interfere with adequate light and air."

More will be said of these specific statutory requirements in the course of this memorandum.

In April of 1982, the Baltimore County Council enacted the new Development Regulations, which are embodied in Bill 56-82.

These Development Regulations are supplemented by various development manuals, the majority of which have been in fact developed and adopted by the Council in the intervening months. The purposes for which the Development Regulations have been adopted are set out in Section 22-38, and once again they will be discussed hereinafter in this memorandum.

If CRG approval and a Special Exception are both granted, the actual construction of the tower will be governed by the 1981 BOCA Basic Building Code as varied and modified by Bill 4-82, as well as by the 1981 BOCA Basic Mechanical Code, and the Life Safety Codes, promulgated and administered by the Baltimore County Fire Department. All three of these Codes address themselves very thoroughly to the question of tower safety and structural soundness.

The initial concerns expressed by various area residents, a number of which live two miles or more from the proposed tower location according to our notes included the following:

1. Possible interference with TV, radio, microcomputer and CB radio channels.
2. Any adverse effects associated with FM radio transmissions and microwaves transmissions.
3. The appearance of the tower itself, including any microwave dishes of which only two are proposed, and the lighting and painting configurations of the tower.

At the present time, WTTR is compiling information as to the effects of FM radio transmissions and microwave transmissions on human beings, and animals, as well as upon FM, AM and TV reception in the area. Also, WTTR will address itself to any effects on microcomputers, and solid state controls, although no such effects have ever been noticed in Carroll County, which is much more densely populated around the tower location than at this location.

Section 502.1 Criteria for Special Exceptions

Before discussing some of the legal discussions which have construed the standards to be applied to Special Exceptions, WTTR would compare the proposed project to the following Section 502.1 standards as follows:

1. As to health, safety and general welfare, no health hazard has been anticipated by the Health Department, and no well or septic facilities are proposed. WTTR is presently compiling information on the effects of FM transmissions and microwave transmissions, but virtually every area of Baltimore County and indeed of the Metropolitan region has been subjected to such transmissions for years, and there are no known cases of any problems. As to safety, the proposed tower will be built and located on a 30 to 32 acre parcel, more than a quarter of a mile from the nearest road, and will be built pursuant to the applicable BOCA code, mechanical code and fire code provisions. It is will be inspected on a weekly and monthly basis by an experienced engineer, and will be maintained in a proper and safe condition. Again on safety, the tower will be painted red and white and will be properly lighted to warn planes and other aircraft of its presence.

Again, it is not located near any airports or heavily traveled airplanes, and, in fact, is in a lightly traveled area of Baltimore County. Finally, as to safety, it is not near any dwellings, and as to the 74 acre parcel of which it is a part, no further subdivision can be allowed. Only one subdivision of the rear 26 acre parcel is allowed, and at only two lots for one hundred acres, the surrounding area will be very, very sparsely populated in the future, as it is now. Finally, WTRR will be addressing itself to the structural soundness of the tower. As to general welfare, the tower in question is a pencil thin structure only 40 to 48 inches in cross section, of an open steel grid work, and such towers readily blend into their surroundings. In fact, there is virtually hardly any area of Baltimore County from which one or more towers is not visible.

2. As to congestion in roads, streets and alleys, this structure will be an unattended tower, and will be visited only once weekly or so by a single automobile or four wheel drive vehicle, and will not create any significant increase in traffic. In fact, if this 74 acre parcel were subdivided for a house, or a new farming operation, it would produce on the average of 10 to 15 trips daily, versus 2 trips per week or less.
3. As to fire, panic or other dangers, the subject structures will be of steel and masonry construction and will not present any fire hazards. As to other dangers, the tower will be built to the BOCA code mechanical code requirements, and will be inspected on a regular basis. Once again, it is located in a very sparsely populated RC 2 area, more than one quarter of a mile from the public road, and on its own 30 to 32 acre parcel.
4. As to overcrowding of land and causing undue concentration of population, only one small building, not visible from the road, and the tower itself will occupy this property, and there will be a small access road which will be properly secured by a gate and fence. In contrast, this property could have been subdivided for another house and/or farming operation with much more intensive activity on the property.

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5. As to interference with any public facilities, no such public facilities are noted in the CRG, and in fact the proposed facility will not interfere with any such public facilities.
6. As to interference with adequate light and air, the subject structure is a pencil thin structure, it will be located more than one quarter of mile from the road, and will not cast a shadow, or in any way interfere with nearby properties.

Applicable Special Exception Standards and Decisions

WTRR is a Baltimore Area Station, which is attempting to improve its broadcasting capabilities in the FM mode. Almost everyone in the Baltimore area, and indeed in most areas of the United States, listens to AM and FM radio stations on a daily basis. In fact, according to statistics, we spend more time listening to radios than we do watching television, and in fact while this memorandum was being dictated, there was an FM station playing in the background.

The Baltimore County Council has affirmatively indicated on repeated occasions that wireless transmitting and receiving structures, namely towers and small transmitter buildings are appropriate uses in every zone in Baltimore County, and are not excluded from any zone from the least dense agricultural or residential zone, through the heaviest manufacturing zone. In part this has been done because of aeronautical and broadcasting criteria, such facilities must, of necessity, be located in areas away from airports, and at elevations that can reach the broadcast public for which they were intended. Baltimore County has

-1-

repeatedly reaffirmed the appropriateness of wireless transmitting and receiving structures by Special Exceptions in all the zones, and in fact such provisions are contained in the 1955, 1964, 1969, 1971, 1976 and the latest Baltimore County Zoning Regulations.

As to the standards to be applied by the Zoning Commission and the Board of Appeals in granting or denying a Special Exception, the case of Schultz vs. Pritts, (1981), 291 Md. 1, is particularly appropriate. In the Schultz case, the Court of Appeals considered that it was important to clarify the applicable standards in Special Exception cases.

The Schultz case involved a Funeral Home application in Carroll County, and at page 22 of the Opinion, the Court of Appeals announced the applicable standard, saying:

"We now hold that the appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone." (Emphasis supplied)

In support of this statement, the Court cited the Turner case, 270 Md. at pages 54 & 55, the Deen case, at 240 Md. at pages 330-331, and, finally, a Baltimore County funeral home Special Exception case, the Anderson case, at 23 Md. App. at pages 617 and 18, and 624-625.

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Furthermore, at page 21 of the Schultz case, the Court specifically said:

"This Court has frequently expressed the applicable standards for judicial review of the grant or denial of the Special Exception use. The Special Exception use is a part of the Comprehensive Zoning Plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Special Exception use is a valid zoning mechanism that delegates to an Administrative Board a limited authority to allow enumerated uses which the Legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood were adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." (Emphasis supplied)

The Court then continues at the same page:

"Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be of benefit to the community." (Emphasis supplied)

Thus, WTRR and the Estate of Bertha S. Brathuhn respectfully submit that the burden is upon those who would deny a tower at this location to show that the proposed tower will have adverse effects beyond those ordinarily associated with the use due to the particular location. Again, we would respectfully submit that the location in question, more than one quarter of a mile from the public road, screened by a wooded area to remain, with no homes or occupied dwellings around it, and in the middle of cultivated fields, is an excellent location for such a facility.

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When the County Council allowed such structures by Special Exception, they surely took into account the fact that by necessity a tower which seeks to reach by direct line of sight contact its broadcasting public, is by necessity somewhat of a visual intrusion into any area. However, the good to the community of allowing radio and TV transmissions, and other types of transmissions, outweighs this minor intrusion, absent some other special factor being present. In fact, from the corner of my yard, I can very clearly see the 1,300 foot candelabra tower on Television Hill in Baltimore, including its flashing strobe lights, and indeed, the area around Television Hill is very heavily populated.

The Proposed WTRR facility and the Baltimore County Development Regulations

Initially, it should be noted that the revised WTRR CRG plan and Special Exception plan, meets the Baltimore County Development Regulations in all respects where specific standards are imposed.

However, WTRR feels that it would be of benefit to compare the proposed tower and transmitting building to the purposes enumerated for the Development Regulations in Section 22-37 of Bill 56-82. First of all, under subsection (A), there are no health and safety threats, for the reasons previously enumerated. Furthermore, WTRR will furnish appropriate experts' reports con-

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cerning the fact that FM and low level microwave transmissions have no adverse effects on human beings, wildlife or domesticated farm animals. As to general welfare, the discussion concerning the need for tower and broadcasting facilities previously noted under section 502.1 is applicable.

Under subsection (B), the proposed tower is to foster the future growth of the Baltimore County area, by enhancing the FM broadcasting facilities available to it. Furthermore, there is no conflict with the adopted master plan. As to subsection (C), there is no interference with adequate light, air or privacy, and safety and fire consideration, as well as structural considerations, are fully addressed by the BOCA code, The Fire and Life Safety Codes and the mechanical code. Neither is there any overcrowding of land and undue congestion of population, since no farm or new residence is proposed here. As to subsection (D), the character, social and economic stability of all parts of the County, and the encouragement of orderly and beneficial development, we believe that Baltimore County and its Council have already addressed this question by saying that wireless transmitting and receiving structures are permitted by Special Exceptions in all zones in Baltimore County. Furthermore, the proposed tower will be two miles or more from many of the persons who appeared to question the tower, and will be barely visible if visible at all. As to subsection (E), the protection and conservation of the value of prop-

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erty throughout the County, once again the tower and building will be set on a 32 acre parcel, more than one quarter mile from the public road, and such towers have been placed throughout the Baltimore County and Baltimore City area without damage to property values. Indeed, the prestigious Community of Hampton, is located approximately the same distance from the double or triple towers of WLIP, WTOW, and other stations at the end of Hart Road, and this has not impeded Hampton's development, nor the preservation of excellent development values and property values in the Hampton and surrounding areas. As to subsection (F), it will not interfere with adequate transportation, water, sewerage, drainage, schools, parks, streets and sidewalks, open space tracks, playgrounds, and other recreational or public facilities.

As to subsection (G), it will not create any traffic congestion, and in fact, while producing at most two to four trips per week, as against ten to twenty trips daily for a rural residence or farm. As to subsection (H), it will not interfere with the orderly layout and use of land, and will meet the uniform CRG, zoning, and building code requirements. As to subsection (I), it will not require the removal of the wooded area, and it will have a minimum impact upon the integrity, stability and beauty of the community and the value of property, since we are only speaking about a pencil thin 40 to 48 inch, open, grid work tower. To verify

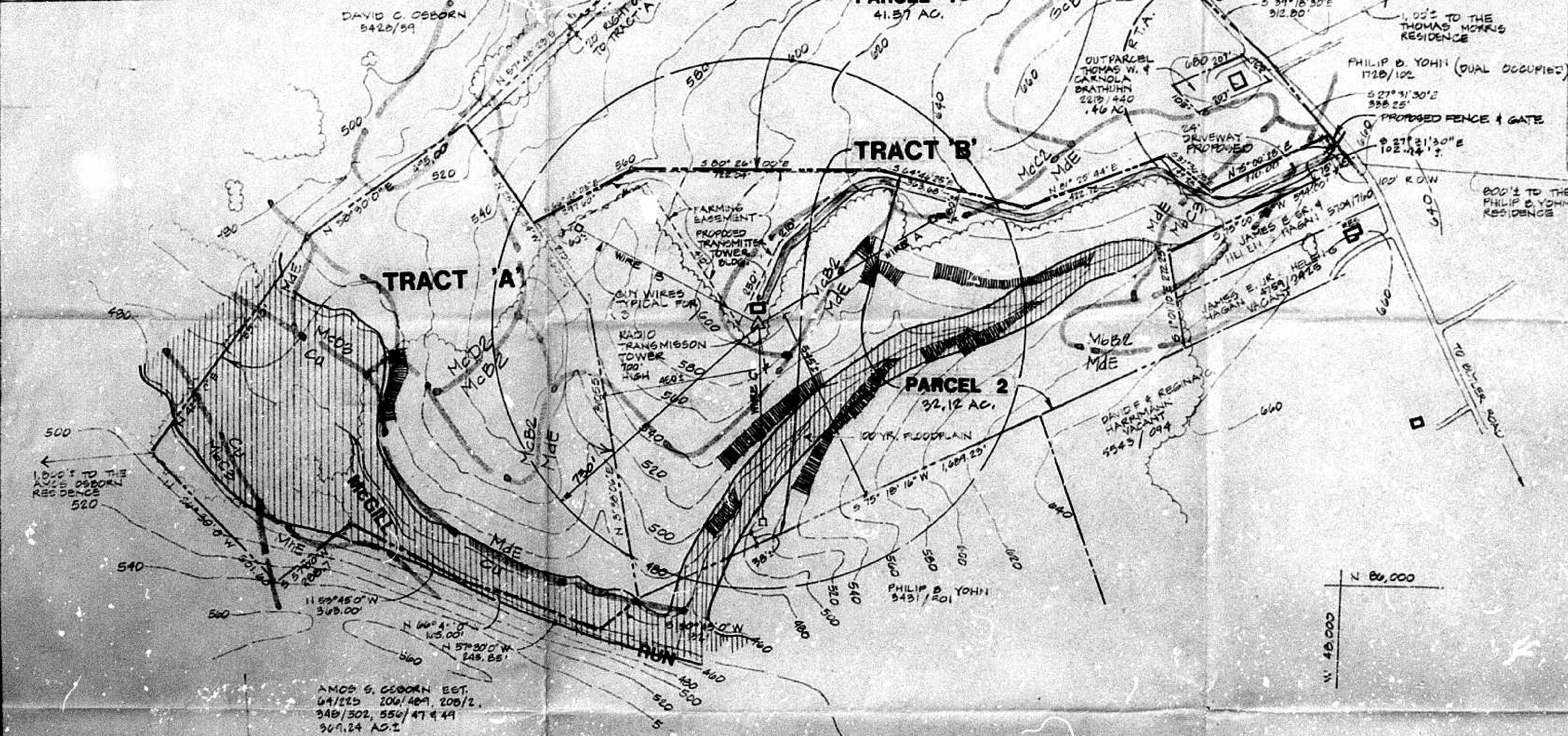
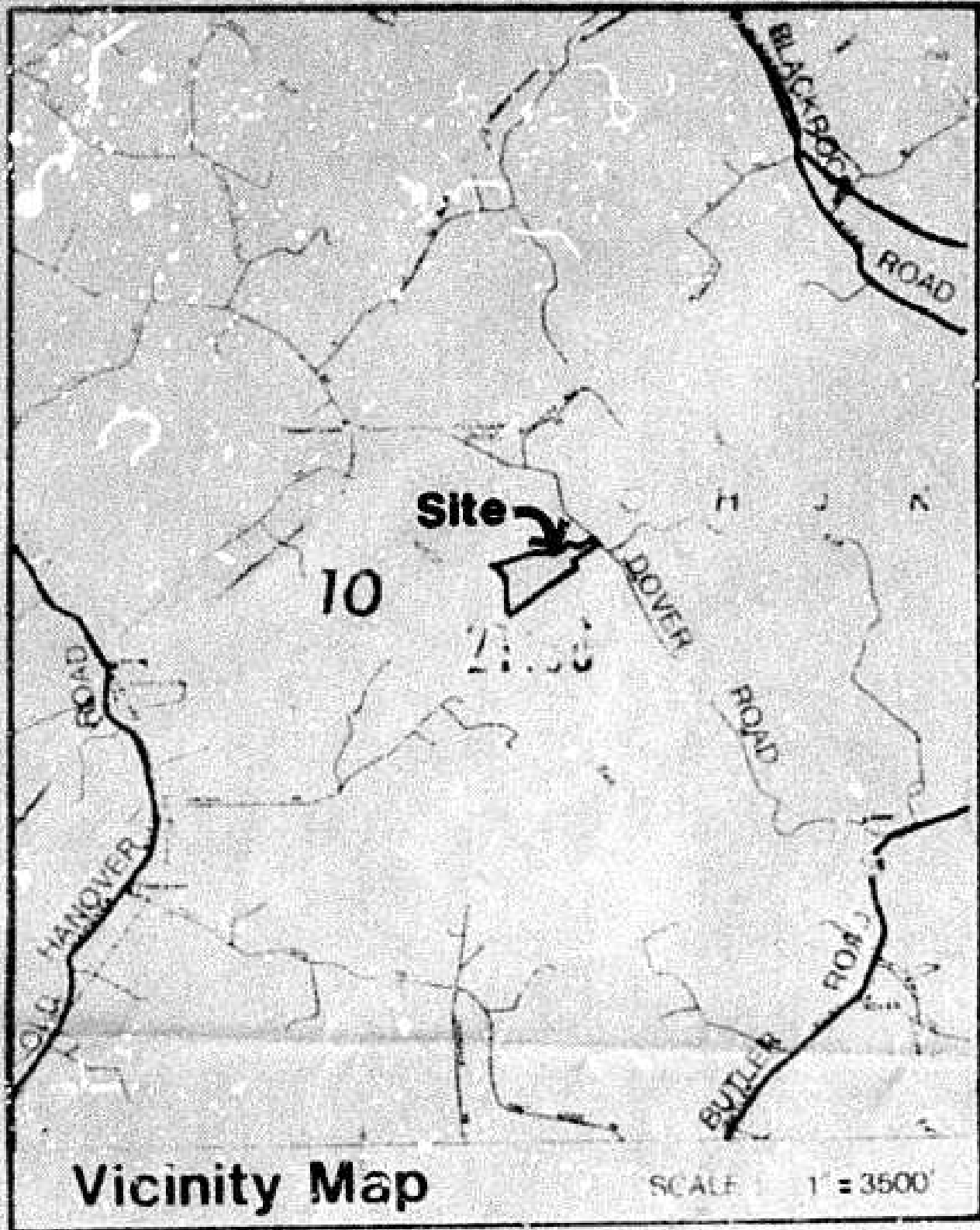
-16-

the correctness of this statement, it is recommended that interested parties go a few miles to the south to Reisterstown, and view the channel 67 tower which is of similar height, and which is more than two to three times the thickness of this proposed tower. As to subsection (J), the preservation of natural beauty and topography, the wooded area will remain, we are talking about a pencil thin tower, and the topography will not be significantly changed or interfered with.

As to subsection (K), 30 to 32 acres will be preserved in open wooded space, with a portion of it used for agricultural uses, and this 32 acres will not be further developed. Finally, as to subsection (L), the devotion of this 30 to 32 acres to tower purposes, with the woods to remain, and the agricultural use to continue will not interfere with the adequate supply of land suitable for development.

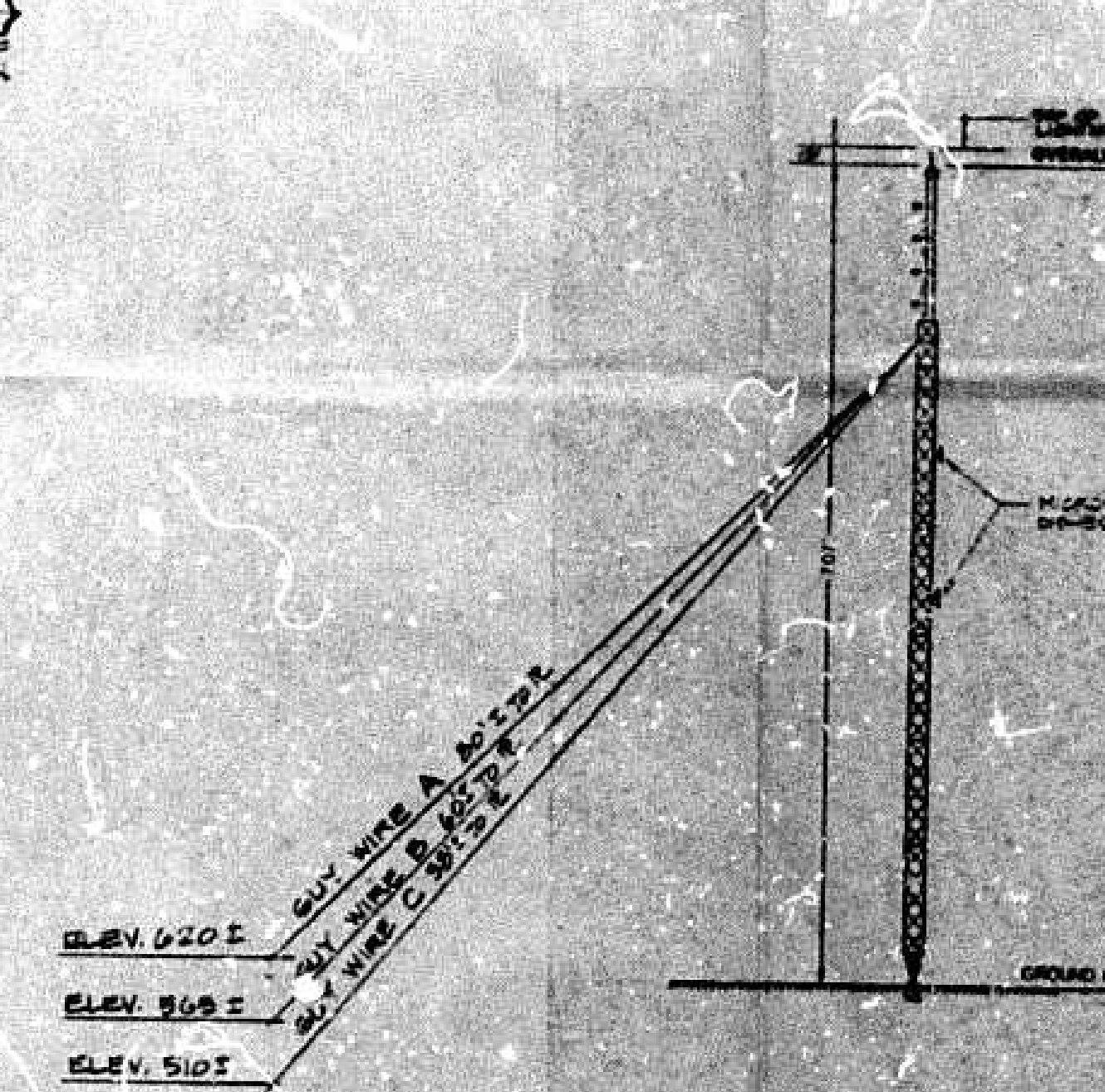
At the CRG meeting, we were asked to discuss the effect upon property values and aesthetics, and we believe that the Baltimore County Council has already addressed this question by saying that wireless transmitting and receiving structures are permissible by Special Exception in all zones in Baltimore County. Indeed, one is hard put to think of a better location for a tower facility, than a very lightly settled and open RC 2 area of northern Baltimore County. This area is away from area airplanes, it is more than a quarter mile from the nearest road, it is approximately

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- GENERAL NOTES**
- Applicant: Kenneth Stevens, General Manager
F. O. Box 208
101 WTR Lane
Westminister, Maryland 21157
(301) 848-5311
 - Election District - 4; Councilmanic District - 3;
Census Tract - 4047.
 - Watershed - 72; Subwatershed - 31.
 - Site Acreage: Tract A 26.2 +/- acres, Tract B 74.00 +/- acres
Net 26.2 +/- acres, Permitted Density 2, Proposed Density 2
 - There is no requirement for open space or parking in an RC-2 zone.
 - Each existing residence on Tract B has a well and septic tank which will not be disturbed as a result of this work.
 - There are no fire hydrants in the vicinity of the site.
 - Soils: Homes with Basements, Homes without Basements, Streets and Parking Lots

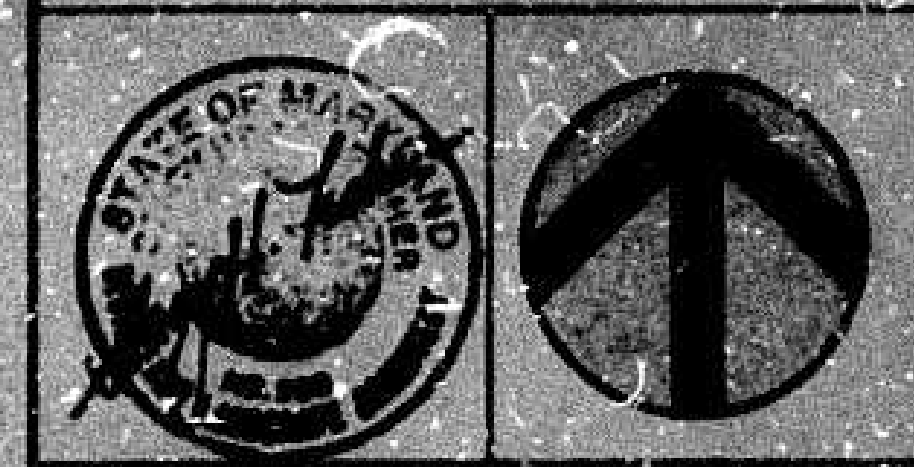
- Vegetation will only be removed as required to clear guy wires.
- There are no historic buildings within the site. All existing structures are to remain.
- Current Zoning, on-site and off-site, is R.C.2.
- Owner: Sertha S. Brathuhn
15221 Old Hanover Road
Upperco, Maryland 21155
Tract A 659/582; 04/0402066351
Tract B 1093/49; 04/0402066350, 04/0402066700.
- The proposed structure will be exempt from setback regulations as stated in Section 300.1.3 of the Baltimore County Zoning Regulations, and will be visually unobscured.
- The proposed driveway will be 12' wide surfaced with crushed rock, and will be maintained by the owner, and the grade profile may be altered to 2:36 grade and 10:1 slope.
- Estimated average daily trips (ADT's) = 2.
- There will be no sewer, water or storm drain connections.
- There are no wetlands, critical areas, archaeological sites, endangered species habitats, or hazardous waste material sites within the site.
- A special exception plan is being filed with Baltimore County Office of Zoning.
- There is no proposed grading on the site with the exception of the access road.
- A stormwater management exemption is being requested.
- Guy anchor points, building, and tower location subject to adjustment based upon field conditions.



PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION FOR WIRELESS TRANSMITTING AND RECEIVING STRUCTURES AND ORG PROCESSING

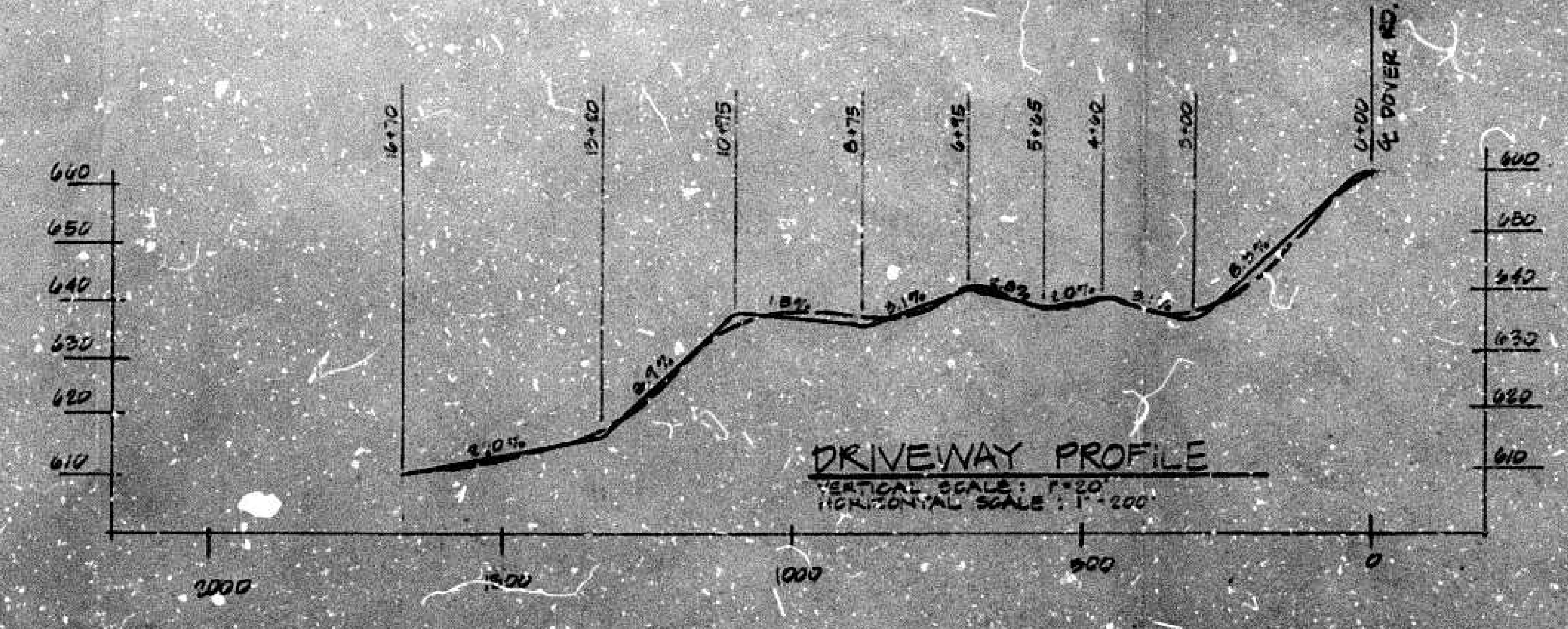
DAFI-McCUNE-WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
10000 WOODBURN ROAD
POTOMAC, MD 20854
(301) 251-2500

WTRR PROPERTY



| DATE | REVISIONS |
|----------|----------------------------------|
| 12-28-83 | Review Comments (Administrative) |
| 1-16-84 | Pre-CRG Comments |
| 6-23-84 | CRG Comments - Elevations |
| 3-15-84 | Body 1048 |
| 3-20-84 | Guy, Fence, 75' from R. |
| 4-17-84 | 75' R Circle |

SCALE: 1" = 20'
JOB ORDER NO. 83-12
ISSUE DATE: 12-18-83



Board of Appeals
County of Howard
Towson, Md. 21286

PETITIONER'S EXHIBIT