

Casey A. Furey
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
cfurey@crowleyfleck.com

November 21, 2018

Sent Via E-mail and U.S. Mail

Attn: Victor Shook
Darrell Nitschke
North Dakota Public Service Commission
600 East Boulevard Ave., Dept. 408
Bismarck, ND 58504-0480

**In re: PU-18-372 – Damage Prevention Enforcement
 Answer of Midcontinent Communications**

Gentlemen:

In response to the One-Call Complaint of Prairie View Excavating (“Prairie View”) dated October 31, 2018, in Case No. PU-18-372, Midcontinent Communications (“Midco”) responds as follows.

The Complaint at issue relates to North Dakota One-Call Ticket Number 18072364 for a dig site located at 3312 Promontory Dr. intersecting Powder Ridge Dr. Bismarck, North Dakota. Pursuant to the One-Call Ticket, which is attached hereto as Exhibit 1, Prairie View placed a locate request on June 28, 2018 for the front half of the lot identified in Exhibit 1, and on-site work was scheduled to begin on July 3, 2018.

Midco utilizes ELM Locating & Utility Services (“ELM”) to respond to and perform its locate requests. On July 2, 2018, ELM appeared on site and marked the location of Midco’s cable utility line across the dig site. ELM’s standard practice is to photograph the dig site once ELM has marked the location of Midco’s lines. Attached hereto as Exhibit 2, are copies of date stamped photographs taken by ELM of its locate markings that identified the approximate horizontal location of Midco’s underground line. *See* N.D.C.C. § 49-23-04(6) (requiring operator to provide the approximate horizontal location of underground facilities and defining “approximate horizontal location” of underground facilities as a strip of land two feet on either

side of the underground facilities). ELM's July 2nd locate markings properly marked the approximate location of Midco's line as required by regulation, and Midco denies Prairie View's assertions to the contrary.

On July 12, 2018, Prairie View struck and damaged Midco's line. Midco was notified of the damage and a technician arrived onsite to inspect and photograph the damage. Attached hereto as Exhibit 3, are copies of photographs taken by Midco of the July 12th damage caused by Prairie View.

Attached hereto as Exhibit 4, is a photograph that identifies Midco's marked cable line in relation to the markings of the other lines that were exposed in the photographs attached to Prairie View's Complaint. The Exhibits demonstrate that Midco did in fact mark its line, and that the markings for this line were adjacent to, and in close proximity with, the markings of the exposed natural gas and cable lines. Prairie View was on notice of the proximity of Midco's line to the other lines that were marked in the adjacent area.

In pictures attached to Prairie View's Complaint, it appears Prairie View attempts to measure the distance from the exposed natural gas cable to Midco's damaged line presumably in support of its allegation that Midco's line was not properly marked. However, Prairie View's method of measurement does not demonstrate a failure to properly mark on the behalf of Midco. The distance between the damaged line and the exposed natural gas line is irrelevant. Compliance with the two feet marking requirement is measured from the outer edges of a facility marking to the facility itself. Furthermore, *no* markings for *any* of the exposed underground lines are readily visible from the various pictures that document the damage. This suggests that Midco's markings were likely removed or covered.

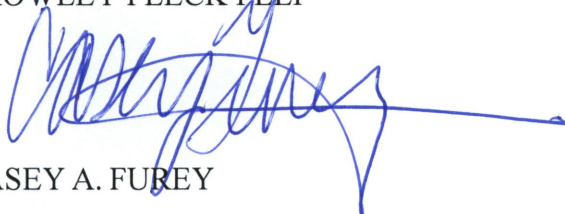
Prairie View had an obligation to conduct excavation in a careful and prudent manner and failed to do so. N.D.C.C. § 49-23-05(5) (defining "careful and prudent manner" as manually excavating within twenty-four inches of the outer edges of any underground facility on a horizontal plane as located and marked by the owner or operator."). Soil indentations and markings in pictures provided by both parties suggest that Prairie View did not manually excavate along the outer edges of the exposed lines, and instead used a mechanic excavator to dig mere inches from the exposed cable and natural lines. "To avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall [m]aintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment . . . to avoid damage to the facility." *Id.* at 49-23-05(1). Notwithstanding the fact that pictures from both parties demonstrate Prairie View's carelessness and violation of One-Call regulations, Prairie View has failed to sufficiently establish or demonstrate that Midco violated any of the provisions of N.D.C.C. ch. 49-23. Prairie View's Complaint lacks for sufficiency. *See* N.D. Admin. Code § 69-02-02-02 (dismissal warranted where complaint fails to state a prima facie case).

Included with this response are affidavits affirming the information contained herein. The attached Exhibits support and demonstrate that Midco's line was properly marked. Additionally, Prairie View has failed to establish that Midco's markings were not located within two feet of

Midco's underground facility. Furthermore, Midco has no history of One-Call violations. For these reasons, Midco respectfully requests the Commission forego assessing any fines against Midco and dismiss Prairie View's Complaint in its entirety.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in blue ink, appearing to read 'Casey A. Furey', with a long horizontal stroke extending to the right.

CASEY A. FUREY

CAF:DH

Enclosures

cc: Allison Carlson (*w/enc.; via certified mail*)
Victor Schock (*w/enc.; via email*)

North Dakota One Call

Ticket No: 18072364

LORQ MODIFY

18055114

Update of: 06/28/18 04:24 pm

Op: webusr5

Original Call Date: 07/03/18 12:01 am

Op: webusr5

CALLER INFORMATION

Company Name: PRAIRIE VIEW EXCAVATING

Fax Phone:

Contact Name: ALLISON CARLSON

Phone: 701-250-0000

Alt Contact: LOGAN THOMPSON

Alt. Phone: 701-319-0144

Caller Address: 1103 136TH AVE NE BALDWIN, ND 58521

Email Address: allison@pvl-nd.com

DIG SITE INFORMATION

Type of Work: INSTALLING WATER AND SEWER LINES

Work Being Done For: PRESTIGE BUILDERS

Depth: 9FT

Explosives: N

Tunneling/Boring: N

White Lining: OTHER

DIG SITE LOCATION

County: BURLEIGH

Place: BISMARCK

City Limits: Y

Address: 3312

Street: PROMONTORY DR

Intersecting Street: POWDER RIDGE DR

MARK THE FRONT HALF OF THE LOT

Location of Work:

Remarks:

Map Twp: 139N

Rng: 81W

Sect-Qt: 24-SE

Map Coord NW Lat: 46.8422151

Lon: -100.8356442

SE Lat: 46.8418279

Lon: -100.8345365

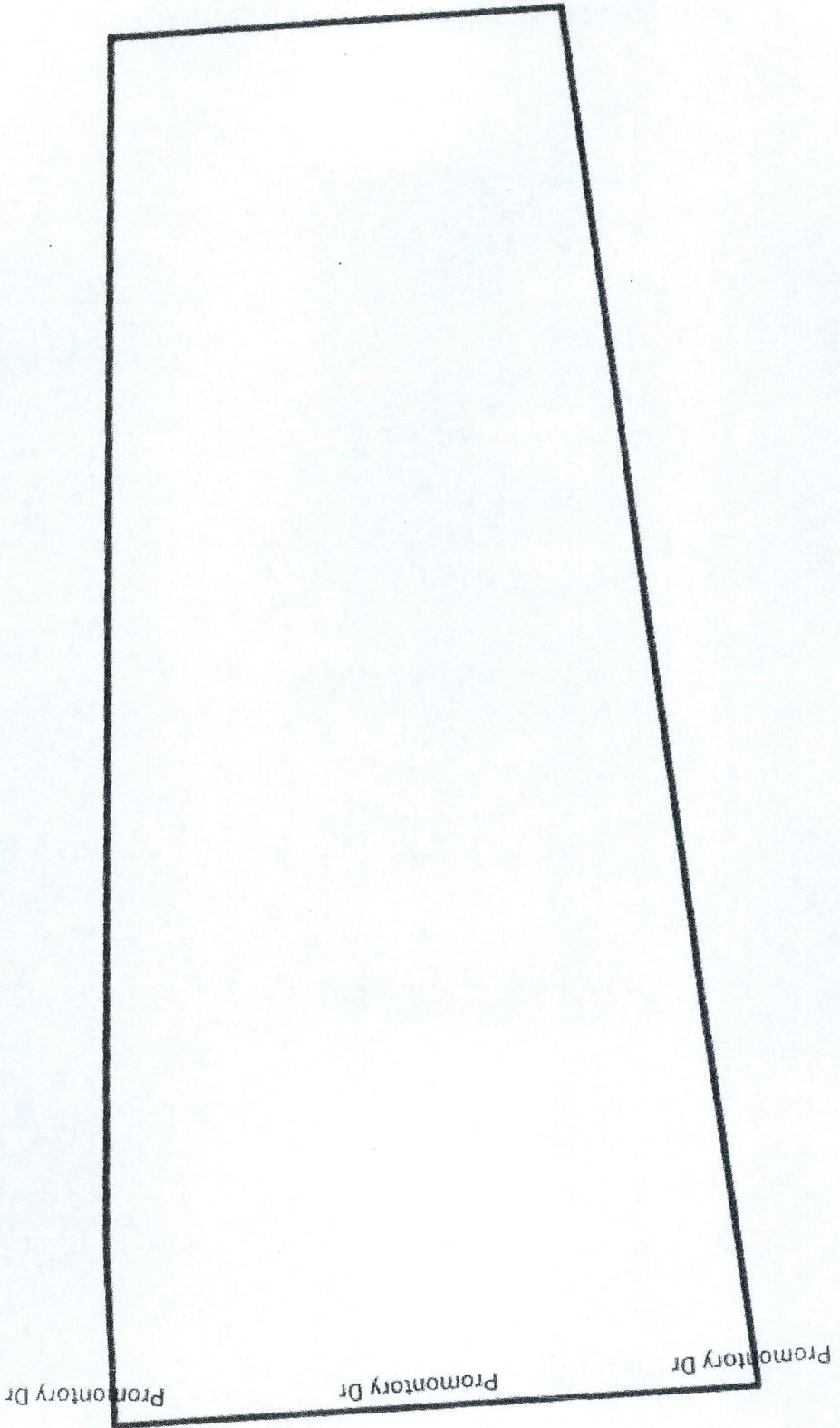
MEMBERS NOTIFIED

District	Company Name	Marking Concerns	Status
BISELE01	CITY OF BISMARCK ELECTRIC	701-391-1698	Marked
BISMARCK01	CITY OF BISMARCK WATER SEWER	701-220-6440	Clear/No conflict
BURH2001	SOUTH CENTRAL REG. WTR DISTR	701-258-8710	Clear/No conflict
CAPITL01	CAPITAL ELECTRIC CO-OP, INC.	406-207-3178	Marked
CTLIND01	CTLQL-CENTURYLINK	800-283-4237	Marked
MDU09	MONTANA DAKOTA UTILITIES	406-728-9343	Marked
MIDCON90	MIDCONTINENT CABLE	406-728-9343	Marked

Legend:  locate Polygon

Lat/Lon

46.842061 -100.834203



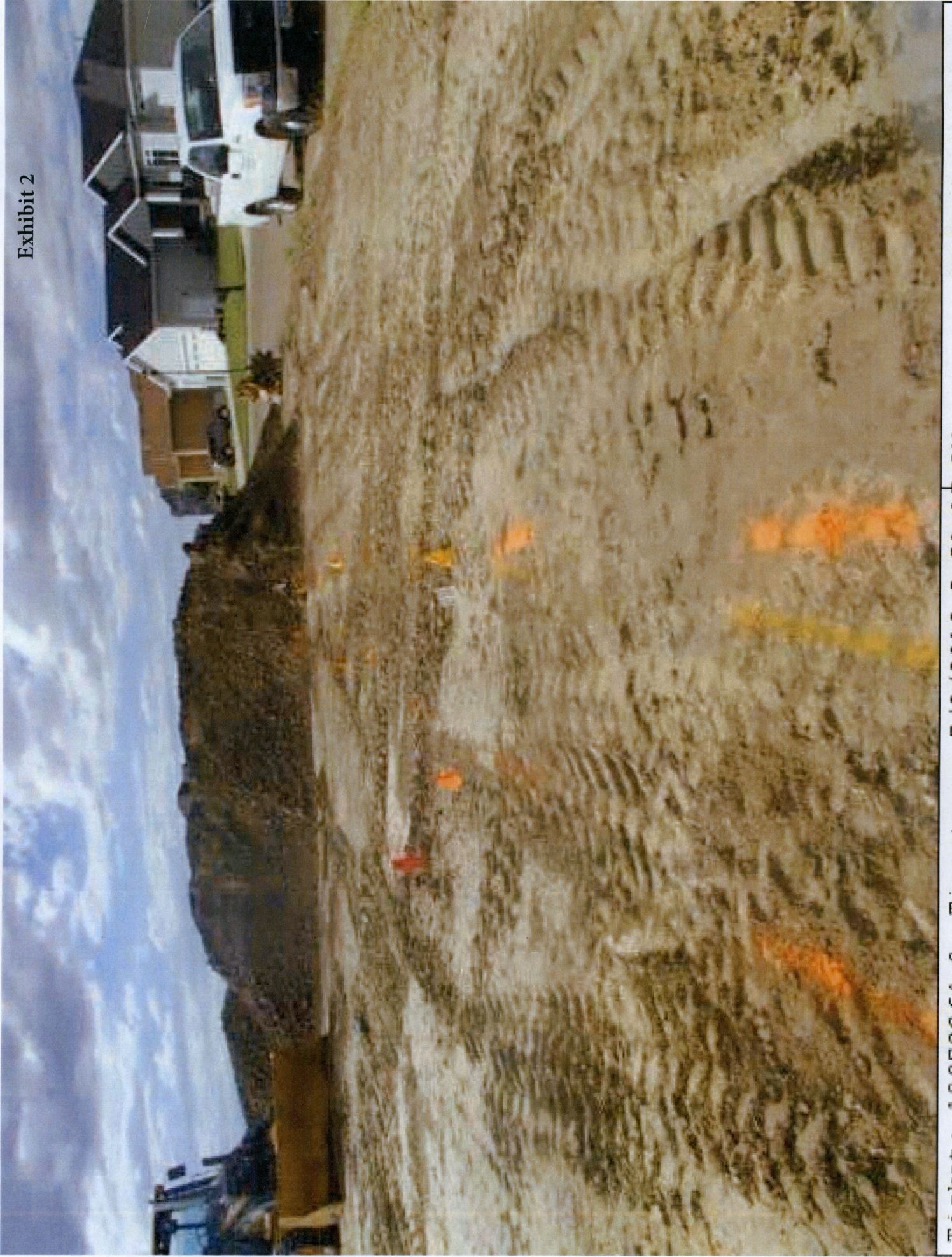
Google

5 m

Map | Report a map error

Exhibit 1

Exhibit 2



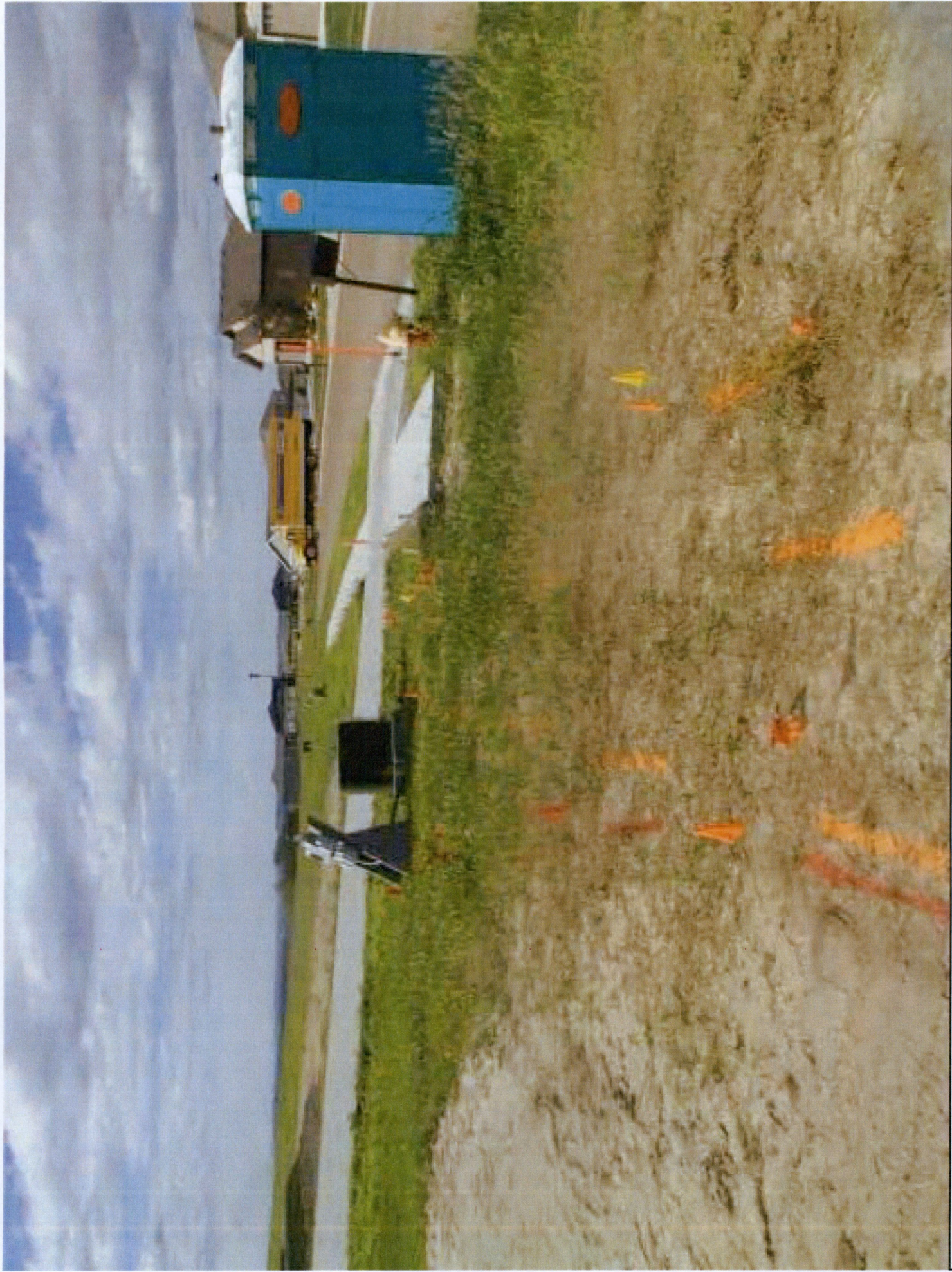
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Ticket: 18072364.0 Timestamp: 7/2/2018 5:51:27 AM 2143448.41990397



Ticket: 18072364.0 Timestamp: 7/2/2018 5:51:25 AM 2143448.41990397



Ticket: 18072364.0

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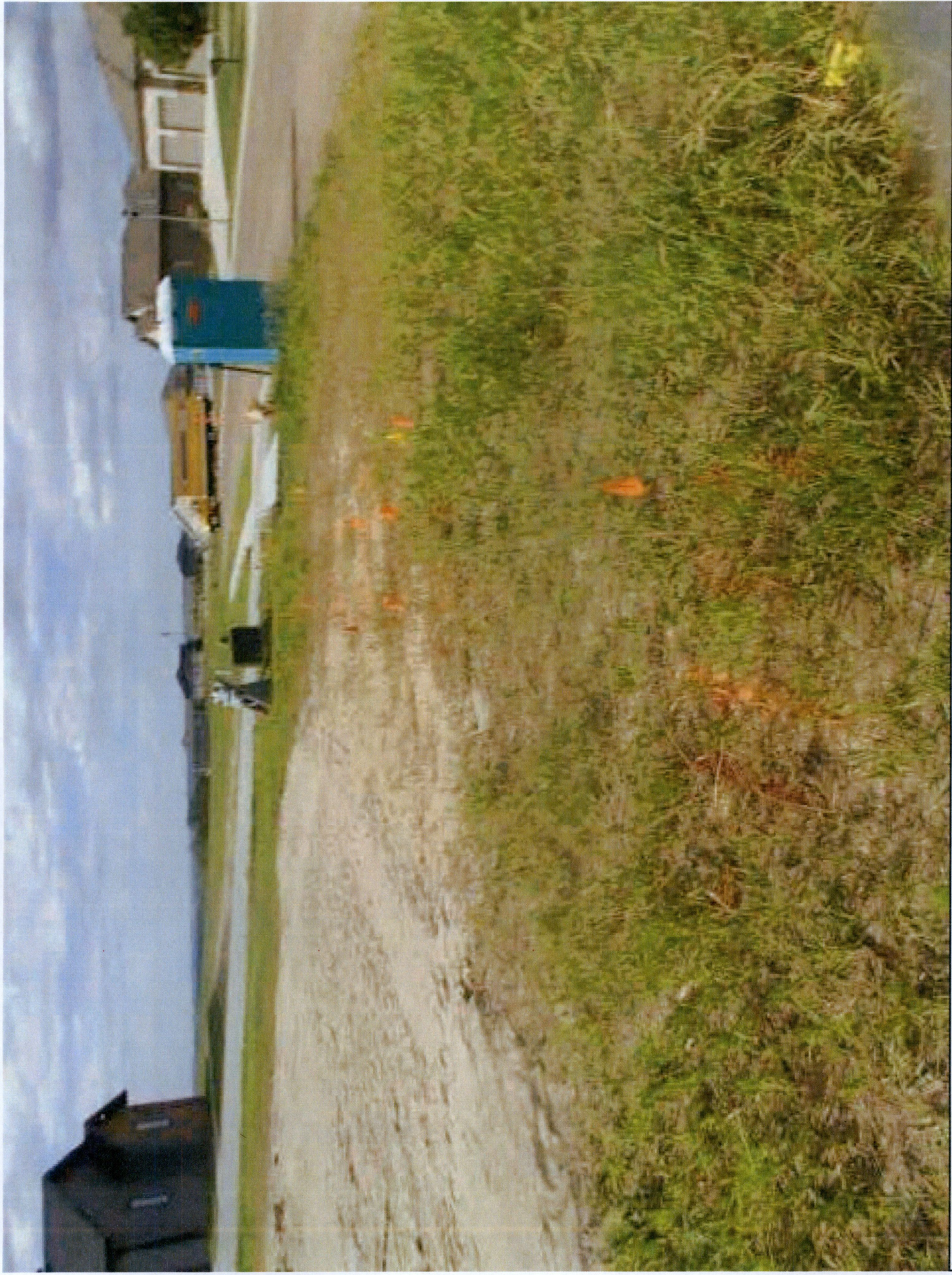
2143448.41990397



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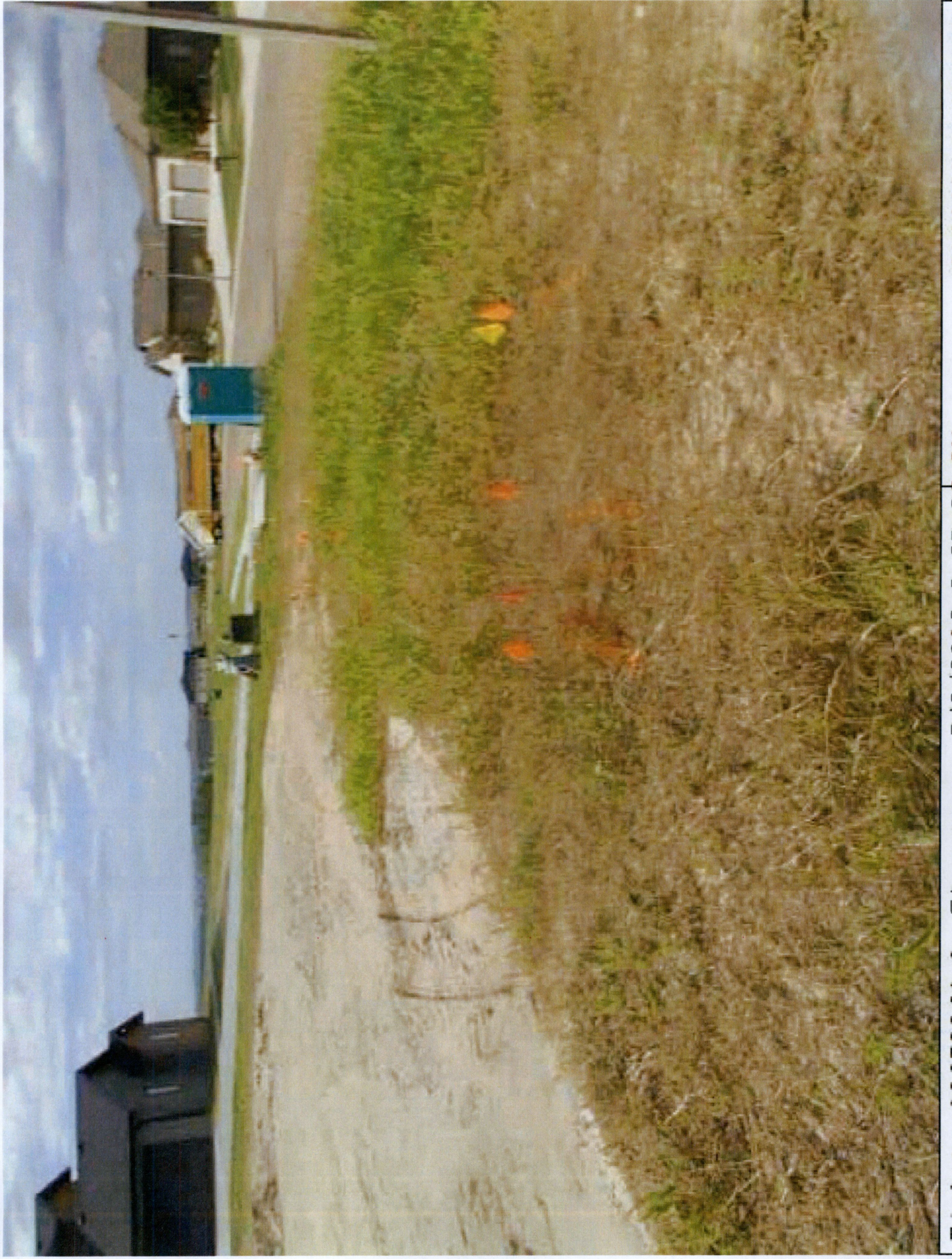
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Ticket: 18072364.0 Timestamp: 7/2/2018 5:57:57 AM 2143448.41990397

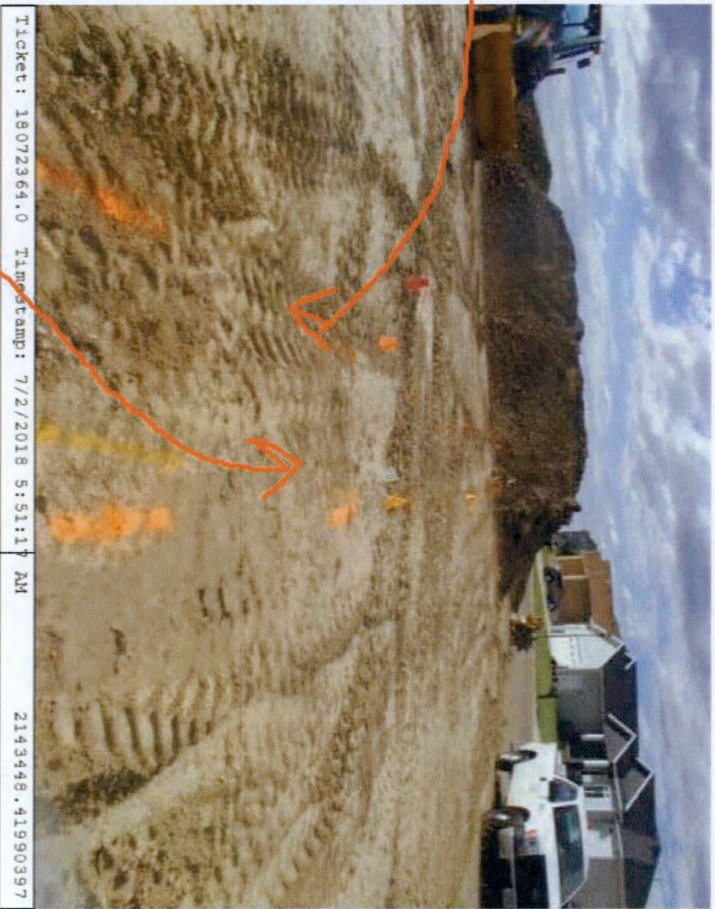
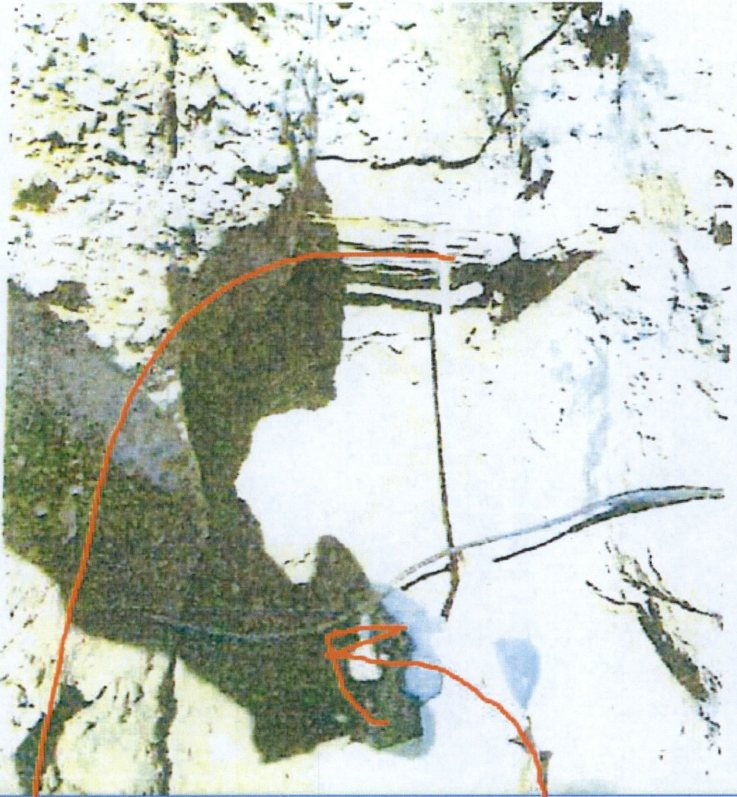


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Ticket: 18072364.0 Timestamp: 7/2/2018 5:51:17 AM 2143448.4190397

EXHIBIT 4

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications
North Dakota One-Call Complaint
PU-18-372 – Damage Prevention Enforcement

AFFIDAVIT OF MAILING

I hereby certify that on November 21, 2018, the following document:

Answer of Midcontinent Communications (with Exhibits 1-4)
and Affidavit of Casey Furey

was served via certified mail upon the following:

Attn: Allison Carlson
Prairie View Excavating
1103 136 Ave. NE
Baldwin, ND 58521

Dated this 21st day of November, 2018.

CROWLEY FLECK PLLP
Attorneys for Midcontinent Communications
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, North Dakota 58502
(701) 224-7552

By 
CASEY A. FUREY (#08035)

Midcontinent Communications
North Dakota One-Call Complaint