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GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAN PRUTEKSIÓN LINA'LA' GUÁHAN
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA E. TENORIO • LIEUTENANT GOVERNOR OF GUAM
MICHELLE C. R. LASTIMOZA • ADMINISTRATOR

Sun Brother's Construction
Contractor
PO Box# 4643
Hagatna, Guam 96932

Date: JAN 24 2024

RE: Notice of Violation / Compliance Order
Building Permit No. B21000686/GEPA 21-0212

Lin W. Sum
1/25/24
0926

Buenas yan Saluda: The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is "to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam." As described herein, the Guam Environmental Protection Agency (Guam EPA) finds that Sun Brother's Construction, CLB17-1328 ("Respondent") has violated the GSESCR and is ordered to undertake remedial action(s).

BACKGROUND

Respondent was permitted under Guam Department of Public Works (DPW) Building Permit No. B21000686 to construct a three (3) bedroom, three and a half (3 ½) bathroom single-family home on Lot No. 3431-1-7, in Chalan Pago, Guam, for owner Jon Michele Ilao. DPW Permit No. B21000686 was approved by Guam EPA with conditions by letter dated October 28, 2021.

According to the approved construction plans, sheet C-1, "Plot Plan", the proposed home was to have been built on a level pad below an approximately 5-foot high existing slope, located within and directly adjacent to the southern boundary of Lot 3431-1-7. The approved construction plans did not indicate any additional excavation or grading to the lot.

Once construction commenced at the site, additional excavation and grading was performed on Lot 3431-1-7 which greatly increased the height and steepness of the slope along the southern boundary of the lot. The owner and resident of the adjacent lot to the south, Lot 3431-1-R7, complained to both DPW and Guam EPA that the excavation had intruded into their property, and had created a hazard to both their safety and their property. The owner of Lot 3431-1-R7 provided photos purportedly taken during construction at Lot 3431-1-7, showing a high, steep cut directly adjacent to their property and home (See attached photos). Guam EPA staff inspected the site on December 15, 2023, and confirmed the neighbor's observations (See attached Guam EPA inspection photos).



GUAM EPA | 17-3304 Mariner Avenue Tiyan Barrigada, Guam 96913-1617 | Tel: (671) 300.4751/2 | Fax: (671) 300.4531 | epa.guam.gov
ALL LIVING THINGS OF THE EARTH ARE ONE • MANUNU TODU I MANIALA'LA'

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NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

1. 22 GAR §10104(d)(3) Permit Issuance and Denials: Permit Conditions. *The issuance of a grading permit shall constitute an authorization to do only that work which is described in the permit and in the plans and specifications approved by the Administrator.*

By deepening the home construction pad and steepening the southern slope, Respondent performed excavation and grading work which was not described in the plans and specifications approved by the Administrator, in violation of 22 GAR §10104(d)(3).

2. 22 GAR §10106(b)(6)(A)(ii) Erosion and Sediment Control Plans and Measures: Cut Slopes. *Under the following conditions, no cut may be steeper in slope than the ratio of its horizontal to its vertical distance as shown below: (aa) 2 horizontal to 1 vertical in unweathered rock or mudrock; (bb) 2 horizontal to 1 vertical in decomposed rock; or (cc) 2 horizontal to 1 vertical in soils of low plasticity for cuts of any height in highly plastic soils. The engineer's soils report shall include the recommended slope design, and design calculations necessary to demonstrate slope stability.*

Respondent performed unauthorized excavation and grading that created a cut slope greatly exceeding the maximum allowable ratio for any soil condition of 2 horizontal to 1 vertical, without a supporting engineer's soils report, in violation of 22 GAR §10106(b)(6)(A)(ii).

COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is **HEREBY ORDERED** to undertake the following remedial actions, each based on 22 GAR §10107, Special Requirements (emphasis added):

22 GAR §10107(a): Protection of adjoining properties. *Any person performing or causing to be performed any excavation or fill shall, at his own expense, provide the necessary means to prevent the movement of earth to the adjoining properties, and to maintain the existing natural grade of adjoining properties.*

22 GAR §10107(d): Safety precautions. *At any stage of the grading, grubbing, or stockpiling, if the Administrator finds that further work as authorized by an existing permit is likely to create soil erosion problems or to endanger life, limb or property, he may require safety precautions. These precautions may include but are not limited to: flattening exposed slopes; constructing additional silting or sediment*



basins, providing drainage facilities or benches; removing rocks, boulders, debris and other dangerous objects which, if dislodged, are likely to cause injury or damage; or constructing fences or other suitable protective barriers.

Within 270 calendar days of this order: Respondent shall stabilize the cut slope and mitigate the safety risk to their neighboring property and inhabitants by constructing the following improvements:

- a. **Construct a retaining wall** to prevent the movement of soil & rock, and to prevent the failure of the slope and potential damage to the neighboring property, pursuant to 22 GAR §10107 (a) and (d).
- b. **Construct a safety fence at the top of the retaining wall** to mitigate the risk of falls to the neighboring property inhabitants, pursuant to 22 GAR §10107(d).

Respondent shall be responsible for obtaining the required permits and engineering designs necessary to construct the required improvements.

2. **Within thirty (30) calendar days of this order:** Respondent shall respond to this Order, in writing, with a proposed schedule showing major milestones (e.g., complete engineering design, obtain building permit, start construction, finish construction) and proposed dates in order to meet the required deadline of 270 calendar days from the date of this order.

In recognition of the potential cost of the remedial actions, Guam EPA is not imposing a civil penalty at this time. However, this order does not prevent Guam EPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b), which may be up to Ten Thousand Dollars (\$10,000) per day per violation. If you fail to take the remedial actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

RIGHT TO APPEAL:

You may file within thirty days of the date of your receipt of this Notice of Violation/Compliance Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Compliance Order is hand delivered or mailed to Guam EPA within thirty days after the Notice of Violation/Compliance Order/Proposed Penalty Order was personally served on you or mailed to you, Guam EPA may proceed upon the Notice of Violation/Compliance Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:



Guam Environmental Protection Agency Board of Directors
C/o Administrator Guam Environmental Protection Agency
Building 17-3304 Mariner Avenue
Tiyan Barrigada, Guam 96913

If you file a Notice of Intent to Appeal/Notice of Defense, the Guam EPA Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation/Compliance Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

If you have any questions, please feel free to contact me at michelle.lastimoza@epa.guam.gov, or (671) 300-4751/52.

Dangkolu na si Yu'us ma'ase'.

Senseramente,


MICHELLE C.R. LASTIMOZA
Administrator

Attachments: Notice of Defense Form

cc: Office of the Attorney General



Lin Hyson Perez
Pago Bay/Chalan Pago
Date: Dec. 15, 2023 Time: 9:00 am

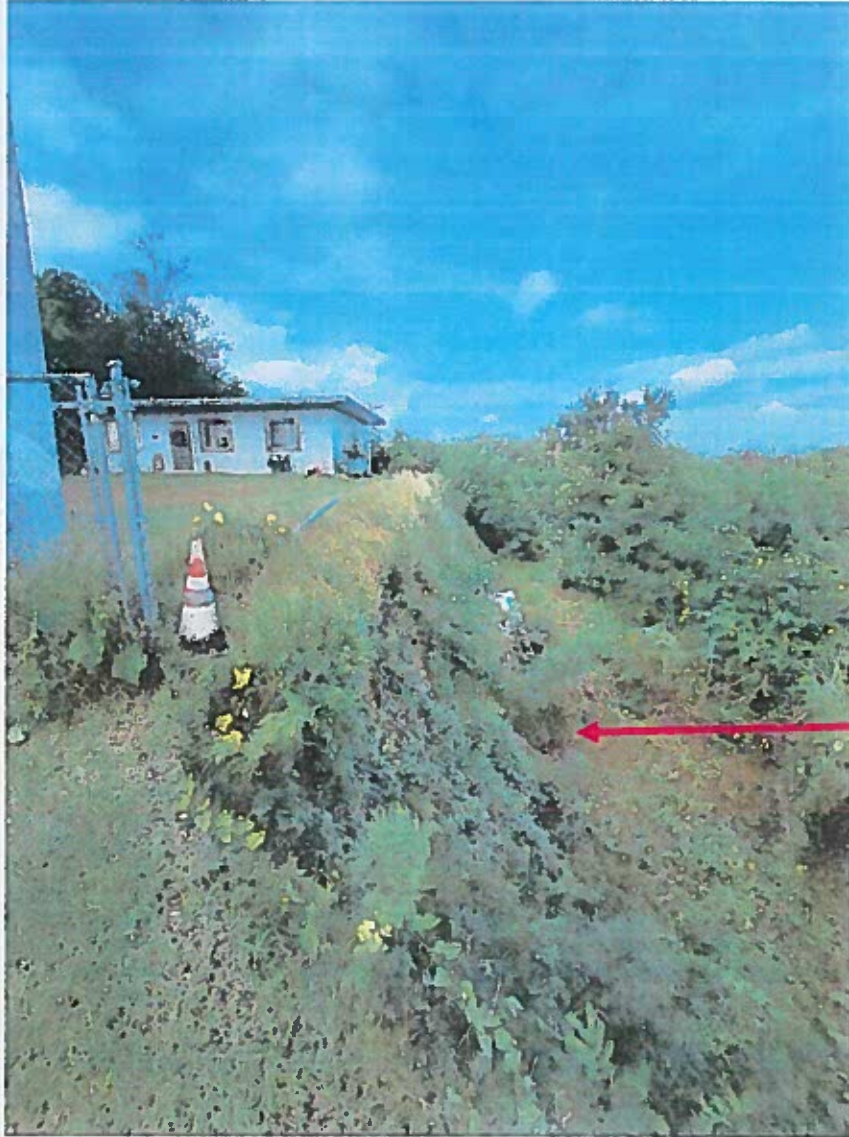


Photo #1: Shows the cut of the property area made by Sun Brothers. 12/15/2023



Photo #2: Shows the property marker of Lin Perez. 12/15/2023

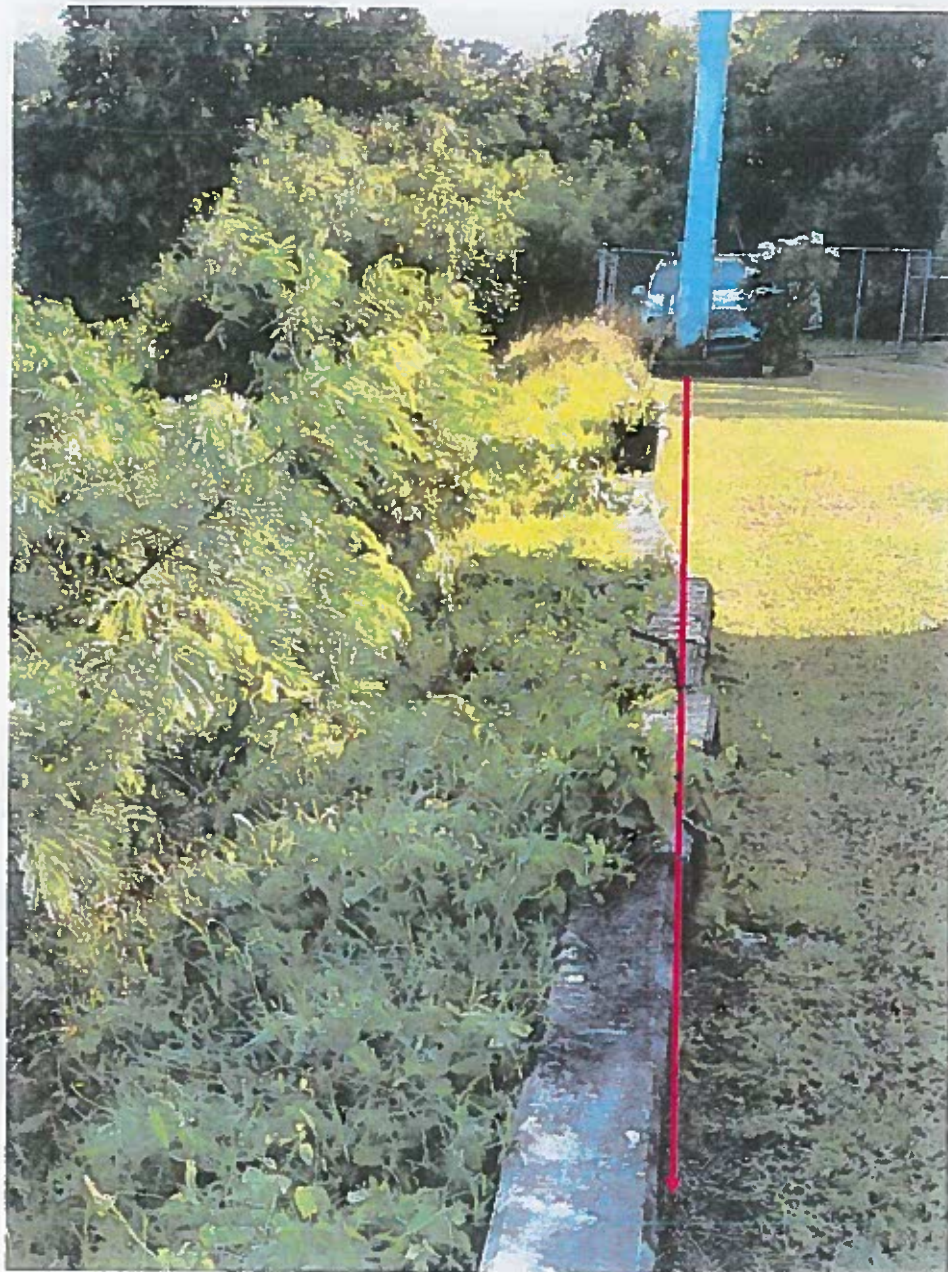
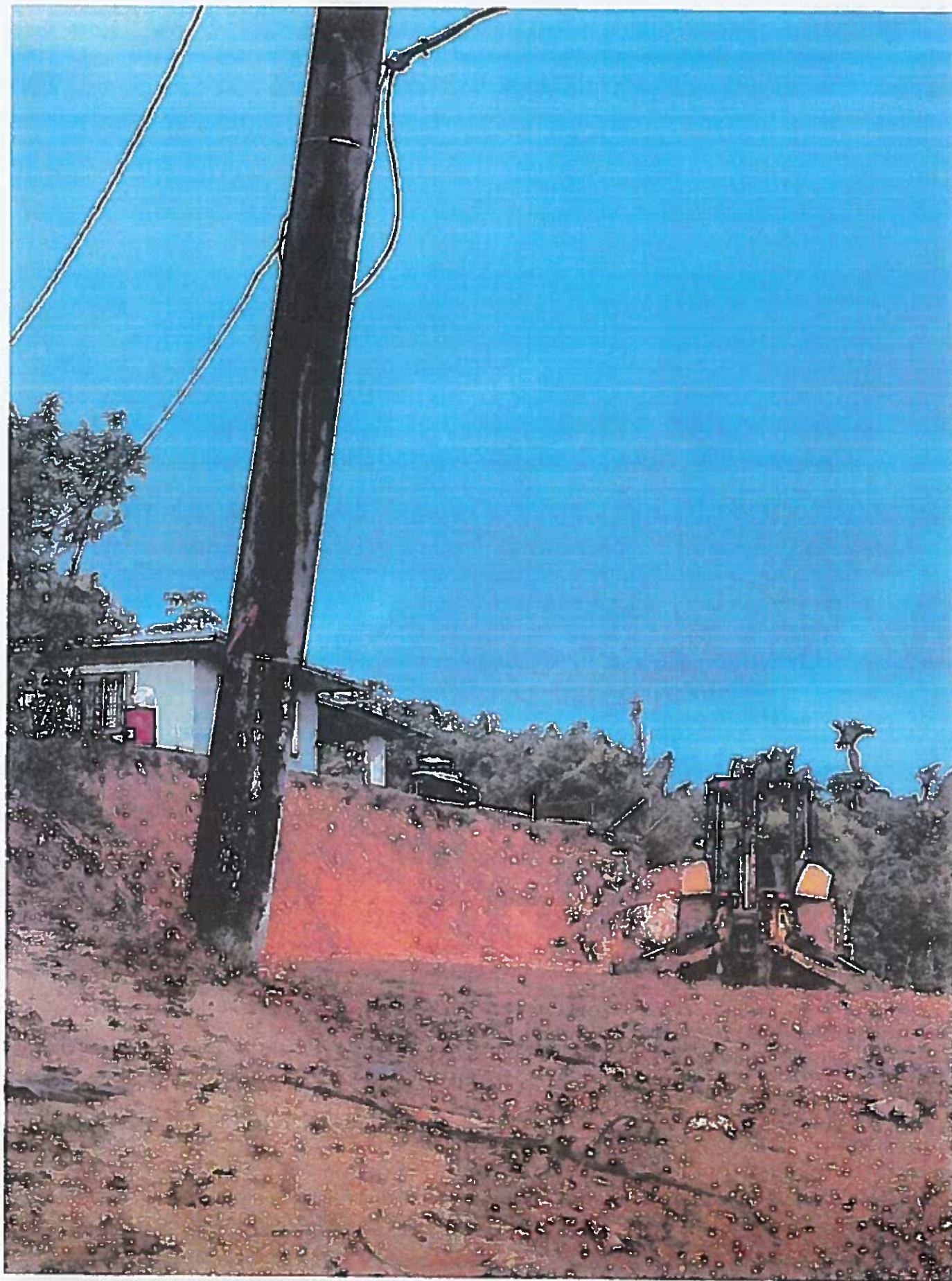
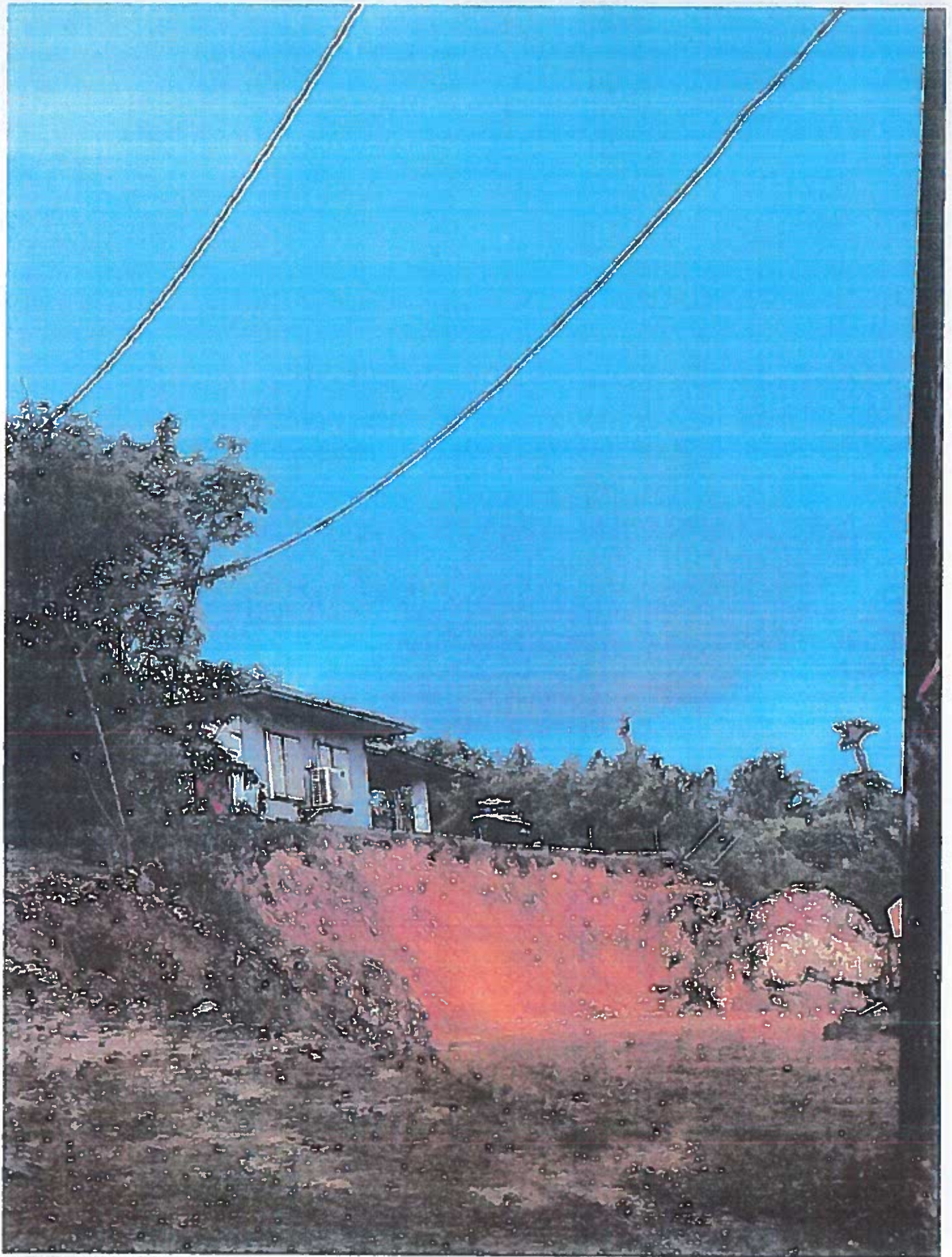


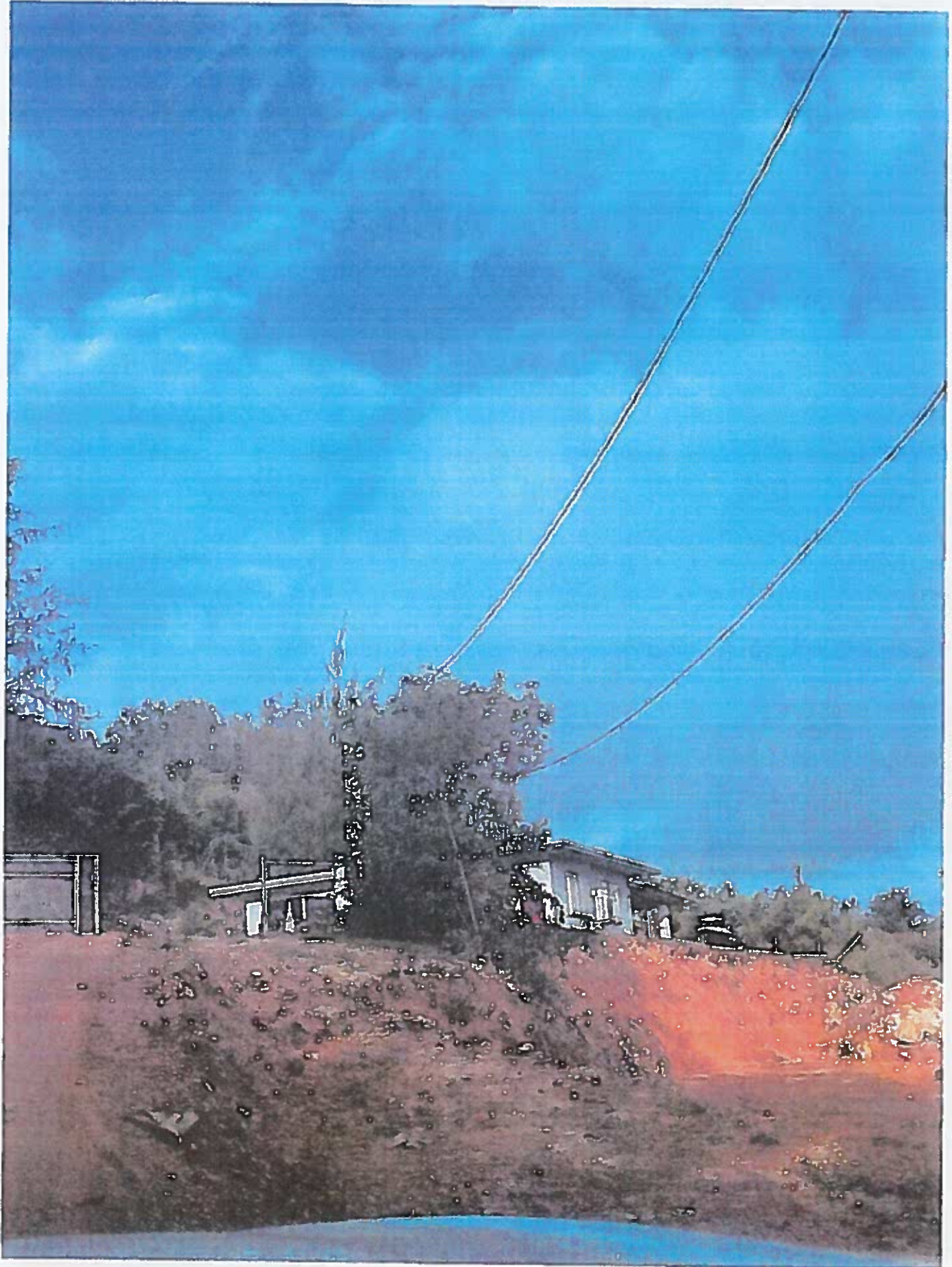
Photo #3: Lin Perez's property from the boundary maker. 12/15/2023

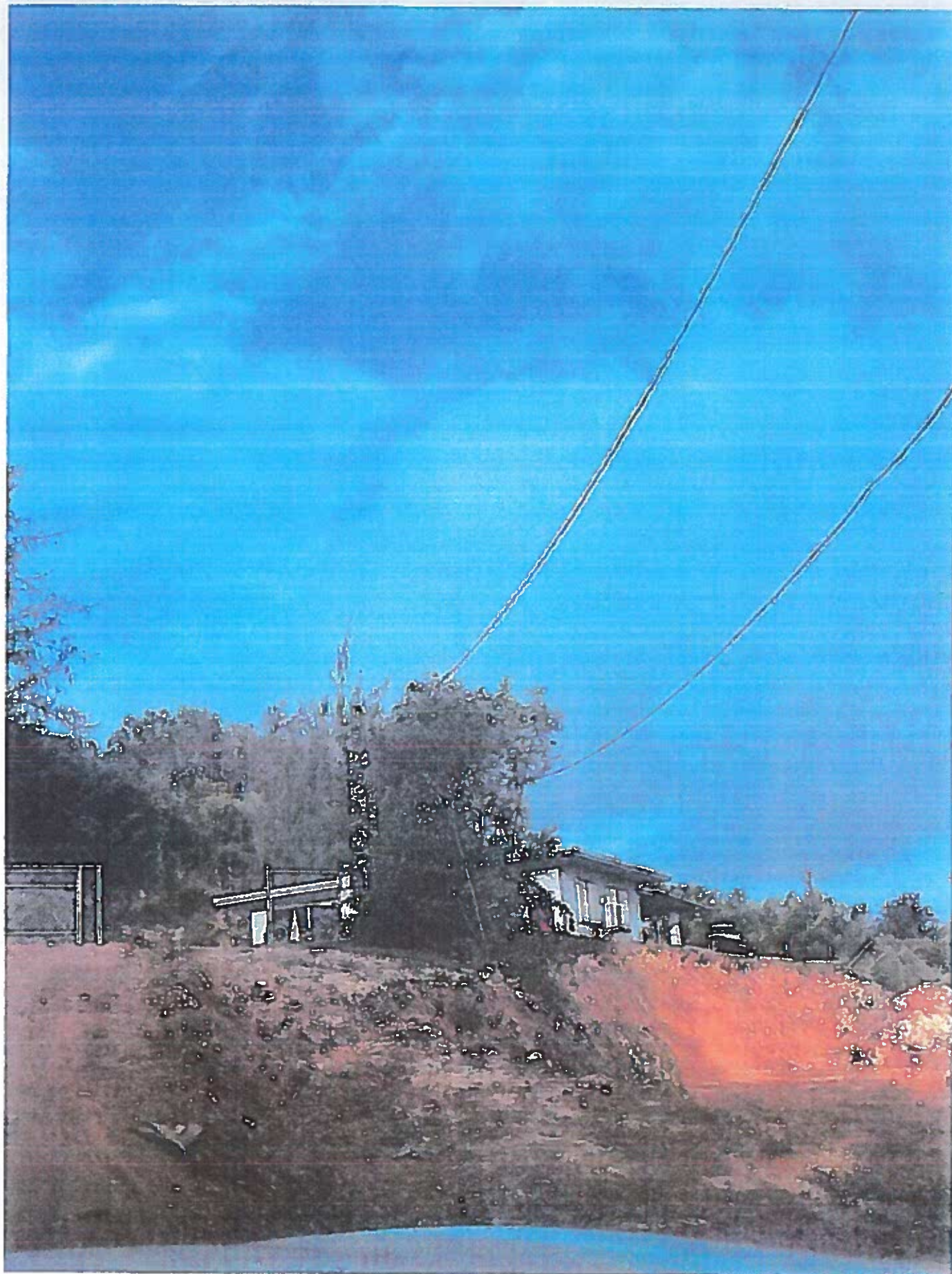
Guam EPA Staff: Verony Charfauros and Helen Gumataotao, WPC Inspector's

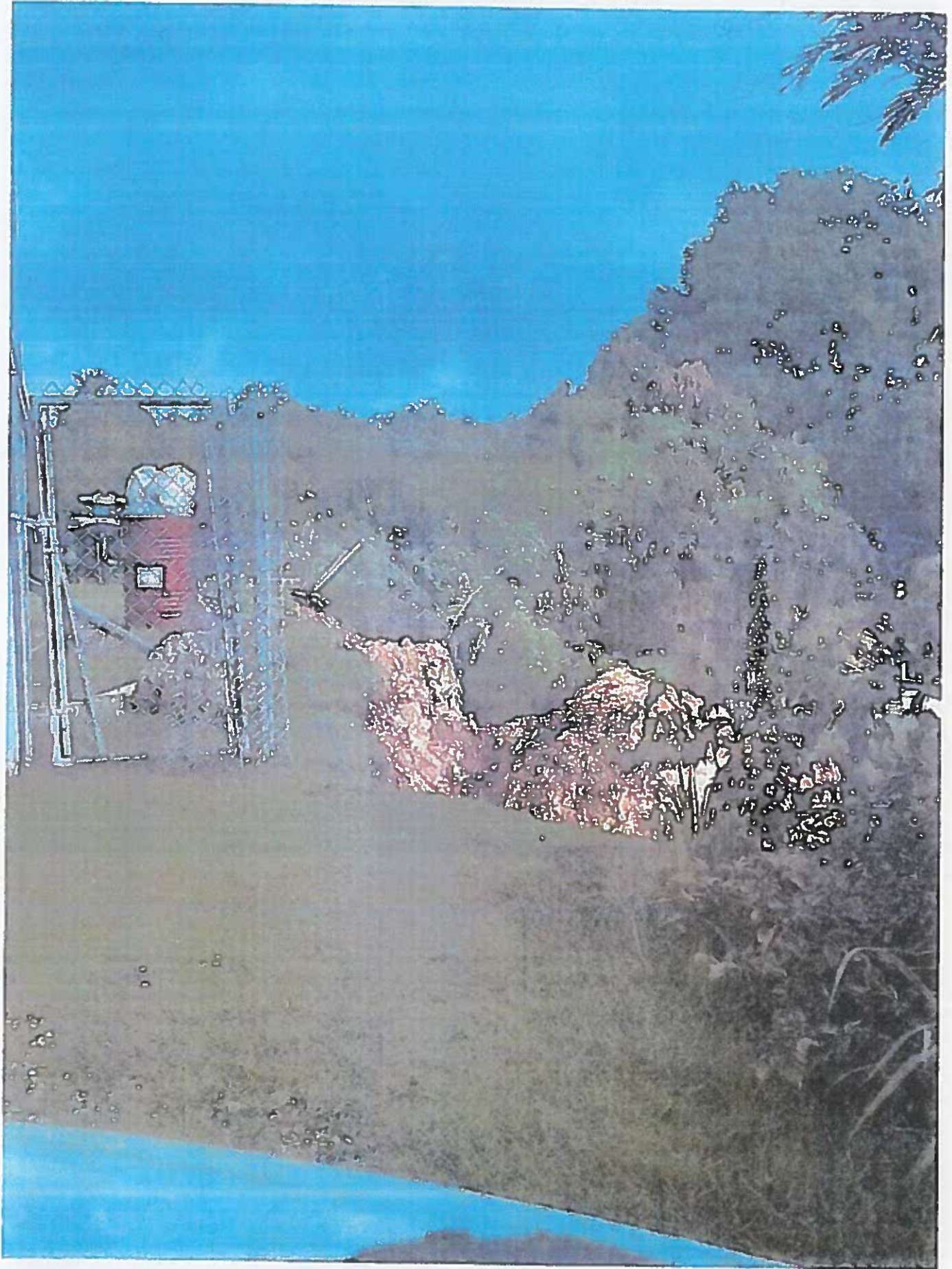




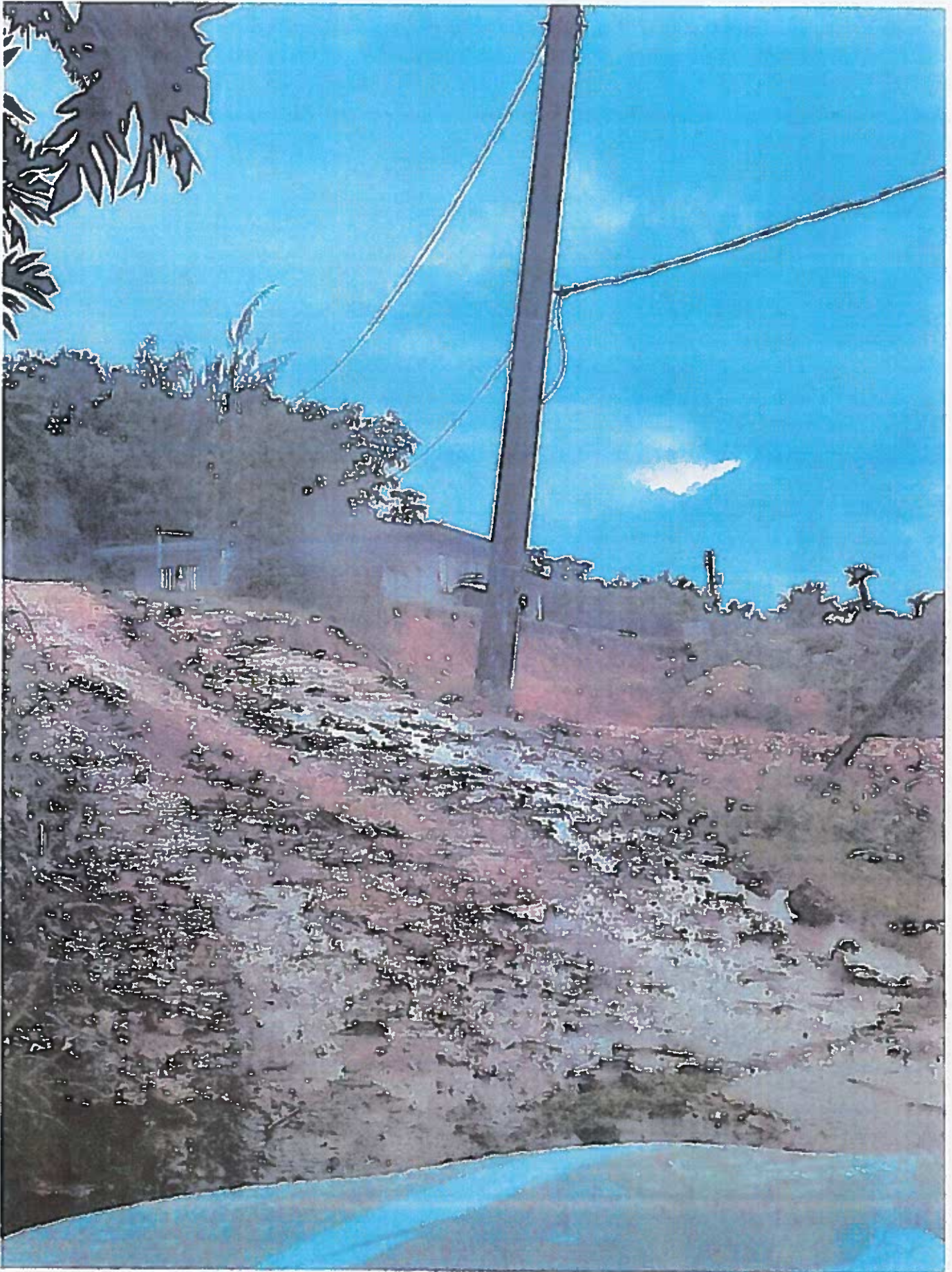


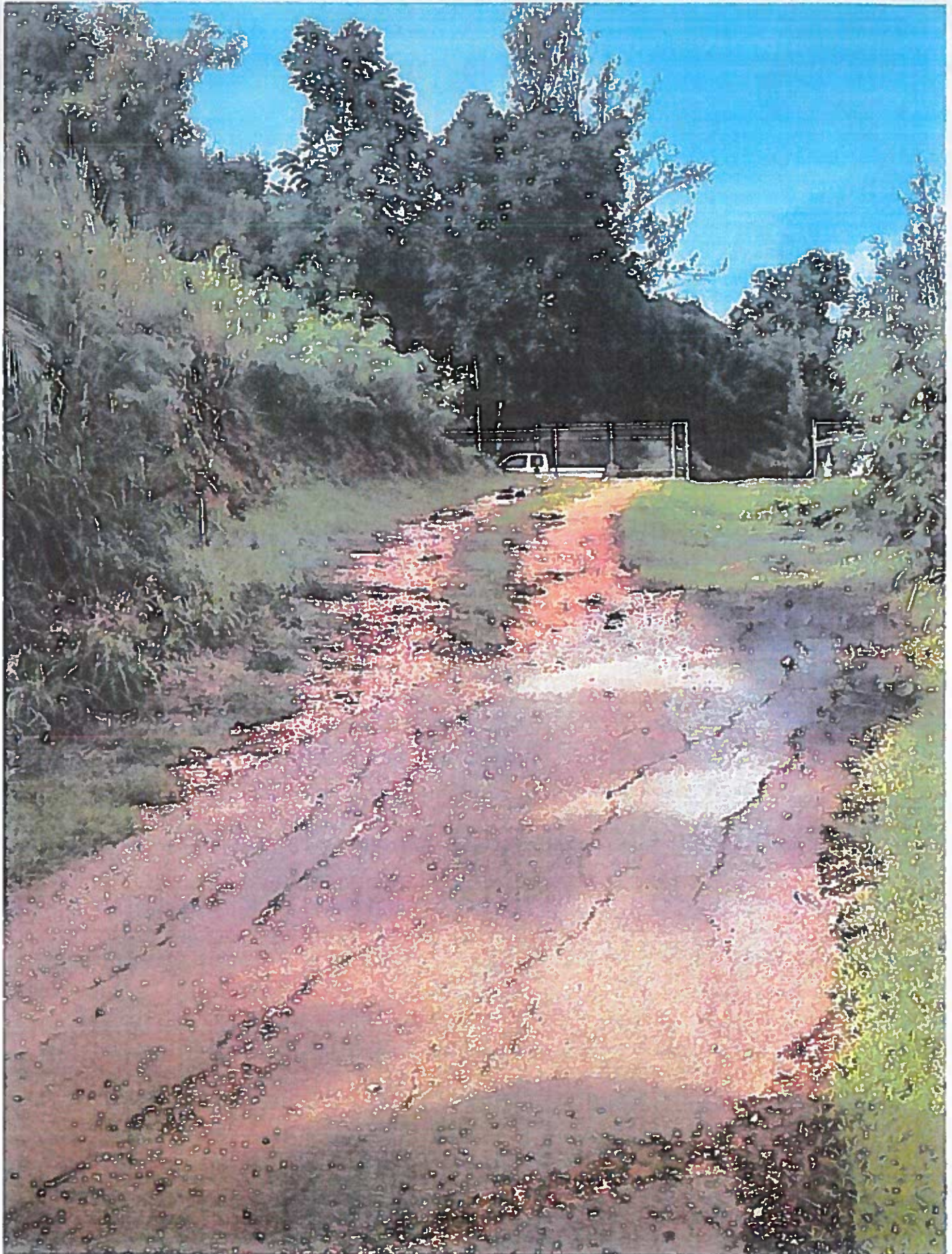












**BUILDING INSPECTION & PERMITS SECTION
APPLICATION FOR PERMIT**

IMPORTANT: Applicant must complete all items in sections I, II, III, IV

Application Number: HEP-21-550

Permit Number: B21000686

CFD 21-0343

I. LOCATION OF BUILDING

Location: LOT 3431-1-7 CHALAN PASO Zoning District: A
Between: _____ and _____
(Cross Street) Lot # _____ (Cross Street)
Subdivision: _____ Block: _____ Lot Size: 4

II. TYPE AND COST OF BUILDING

A. Type of Building

☒ New Building ☐ Retaining Wall ☐ Repair
☐ Foundation Only ☐ Other: _____ ☐ Demolished
☐ Shell Only ☐ Add ☐ Reconstructed
☐ Fence Wall ☐ Alter ☐ Relocated

52'8" x 32'8" x 12'6"
Dimension of Building

B. Ownership

☐ Private (individual, corporation, non-profit institution, etc.) ☐ Public (Federal, State, or Local Government)

C. COST

Cost of Improvements: _____
electrical: _____
plumbing: _____
heating, air conditioning: _____
other (elevator, etc.): _____

SCOPE OF WORK

PROPOSED 3 BEDROOM 3 1/2 BATH ROOM ONE
CARPORT 1 STORY SINGLE FAMILY HOME

TOTAL COST OF IMPROVEMENT \$ 300000.00

D. PROPOSED USE

Residential

☒ One family
☐ Two or more families
Enter No. of Units: _____
☐ Transient hotel, motel,
or dormitory
Enter No. of Units: _____

☐ Garage
☐ Carport
☐ Old or (specify): _____

Non-Residential

☐ Amusement, Recreational
☐ Church, other religious
☐ Industrial
☐ Parking garage
☐ Service station, repair garage
☐ Hospital, institutional

☐ Office, bank, professional
☐ Public utility
☐ School, library, other educational
☐ Stores, mercantile
☐ Tanks, towers
☐ Other (specify): _____

III. SELECT CHARACTERISTICS OF BUILDING

E. Principal Type of Frame

☒ Masonry (wall bearing) ☐ Reinforced concrete
☐ Wood frame ☐ Other (specify): _____
☐ Structural steel

F. Type of Sewage Disposal

☐ Public Sewer
☐ Private (septic tank, etc.)

G. Type of Mechanical

☐ Yes ☒ No Central Air Conditioning
☐ Yes ☒ No Will there be an elevator?

H. Type of Water Supply

☒ Public Supply
☐ Private (well, cistern)

Total square feet of floor area,
all floors, based on
exterior dimensions:
2051 SQ FT

**J. Number of
Parking Spaces**

Enclosed: _____
Outdoors: _____

K. Residential Buildings Only

Number of bedrooms: 3
Number of Bathrooms: 3 1/2
Full: 2
Partial: 2

IV. IDENTIFICATION

	Print Name / Signature	Mailing Address - Number, street, city and state	ZIP Code	Telephone
1. Owner or Lessee	<u>ILAO JOY MICHEL C</u>	<u>106 BOQUE CT BARRIGADA</u>	<u>96913</u>	<u>488-7630</u>
2. Contractor	<u>SUN BROTHERS CONSTRUCTION</u> <u>License # 21817-1528</u>	<u>P.O. Box 4443 HAGATNA</u>	<u>96922</u>	<u>988-9728</u> <u>888-6987</u>
3. Architect or Engineer SEAL NO	<u>FRANCISCO DAMAZON</u> <u>320</u>	<u>P.O. Box 4739 HAGATNA</u>	<u>96932</u>	<u>777-5002</u>

The owner of this building and the undersigned agree to conform to all applicable laws of this jurisdiction.

Owner/Agent: ILAO JOY MICHEL C Current Address: 106 BOQUE CT BARRIGADA Application Date: 08/20/21

**BUILDING INSPECTION & PERMITS SECTION
APPLICATION FOR PERMIT**

Application Number: _____
Permit Number: 621000686

TO BE FILLED OUT BY BUILDING STAFF ONLY

V. PLAN REVIEW

Review Required	Date Plans Started	Date Plans Approved	Print Name Signature	Comments
Architectural				
Structural				
Mechanical/Plumbing				
Flood Control				
Electrical				
HPCC				
Hydraulics/Civil				
Highway Encroachment				
Rights of Way				
Traffic Engineering				

VI. ZONING EXAMINATION TO BE DONE BY DLM

District: Chalan Pago - A
Use: SFD
Front Yard: 15'
Side Yard: 16' 2" Side Yard: 15'
Rear Yard: 15' 9"
Ownership of Property: Jon McIlao DOC: 937059 Map: 3477195
If not owner, is there a lease or authorization to the property?
Did this project receive TLUC approval? What are the conditions?

VII. COMMENTS BY OTHER AGENCIES (Route as Indicated)

Agency	Date	Print Name Signature	Comments
✓ Land Management, Zone	<u>cd</u> <u>8/29/21</u>	<u>Sonny Garcia</u>	<u>Approved</u>
✓ Contractor's License Board	<u>8/25/2021</u>	<u>Nida A. Bailey</u> <u>Jordan Bailey</u>	<u>lic. valid until 6/30/2022</u>
Public Health			
✓ E.P.A.	<u>cd</u>		
✓ GWA	<u>cd</u>		
✓ Guam Power Authority			
✓ Fire Prevention Bureau	<u>cd</u> <u>7-8-21</u>	<u>Elizabeth Lopez</u>	<u>As per PIA P.I.E. Grants</u>
✓ Peals Board	<u>9/10/2021</u>	<u>Nolan M. Isaac</u> <u>SL</u>	<u>Valid Registration</u>
✓ Parks & Rec.	<u>cd</u>		
✓ Dept. of Agriculture	<u>cd</u>		

VIII. VALIDATION

Building Permit Number _____
Building Permit Issued _____ 20 _____
Approved By _____
Title _____ Date _____

Approved Valuation: \$300,000.00
Plan Checking Fee: \$473.75 pd. 08/20/21
Building Permit Fee: \$947.50
Total: \$1,421.25



Guam Environmental Protection Agency
P.O. Box 22439, GMF,
Barrigada, Guam 96921



NOTICE OF INTENT TO APPEAL (AKA NOTICE OF DEFENSE)

I, _____, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated _____, charging me for violations and/or imposing penalties and/or other orders, and I wish to:
(Please check appropriate sections)

☐ A. Request for a hearing and

- ☐ 1. Object to the accusation on the ground that it does not state acts or omissions upon which the Agency can proceed.
- ☐ 2. Object to the form of the accusation on the ground that it is so indefinite or ambiguous that I cannot identify the infraction or prepare my defense.
- ☐ 3. Wish to prepare new matter in my defense.
- ☐ 4. Admit to the accusation in part.

☐ B. Admit to the accusation in whole.

My mailing address is:

SIGNATURE

DATE

GUAM EPA CASE NO.: _____

