



4. It is my legal opinion that the New York State Constitution, Agriculture and Markets Law, and Adirondack Park Agency Act, Rivers Act and applicable regulations all require that farm employee housing be exempt from regulation by the Adirondack Park Agency.

5. On November 26, 2007, Commissioner Patrick Hooker of the New York State Department of Agriculture and Markets sent a letter to Chairman Curt Stiles of the Adirondack Park Agency stating that State agriculture policy protects farm worker housing as exempt from regulation by the Adirondack Park Agency. A copy of the November 26, 2007 Letter from Commissioner Hooker is attached as **Exhibit "B"**.

6. Commissioner Hooker's letter reinforces the New York State Department of Agriculture and Markets' official position on farm worker housing as evidenced in the Department's Guidelines for Review of Local Laws Affecting Farm Worker Housing, which were published on August 27, 2003. A copy of the Guidelines is attached as **Exhibit "C"**.

7. As set forth in the accompanying memorandum of law, the Adirondack Park Agency has a constitutional and statutory duty to formulate policy that encourages the development of farming. I have studied all publicly available material concerning this issue and have concluded that the Adirondack Park Agency does not have a published policy that encourages farming or protects the open space and development of farms in the Park. A record of policies listed on the Agency's website is attached as **Exhibit "D"**. It does not include an agricultural policy.

8. Because the Adirondack Park Agency lacks the requisite pro-farm development policy, the Agency must defer to Commissioner Hooker's findings, which represents the state farm policy, as determined by the New York State Department of Agriculture and Markets.

9. Following this general policy of encouraging farming and exempting farm employee housing from Agency regulation would not only comport with the Agency's

constitutional and statutory duties, but it would also aid in combating one of the most pressing issues facing the residents of the Park – affordable housing. The 2006 Annual Report of the Adirondack Park Agency considers reasonably priced housing as one of the three most "important issues for the region's long-term economic viability." (2006 Annual Report, pg. 27). A copy of the relevant excerpts of the 2006 Annual Report is attached as **Exhibit "E"**.

10. The Adirondack Park Agency's enforcement policy provides that cease and desist orders will be issued only in cases "where there is on-going environmental damage." (See Agency's General Enforcement Guidelines, pg. 3). A copy of the Agency's General Enforcement Guidelines is attached as **Exhibit "F"**.

11. Thus, the Agency violated its policy in this case by issuing a cease and desist order to the Lewis Family Farm since there is no on-going environmental damage. Indeed, Agency Staff have sworn that the farm employee housing at issue in this case can stay where it is currently located.

12. The Adirondack Park Agency's website contains the "APA Jurisdictional Table", which serves as a guide to the requirements of the Adirondack Park Agency Act and Wild, Scenic and Recreational Rivers System Act. Interestingly, the APA Jurisdictional Table states that **all agricultural use structures are non-jurisdictional throughout the Park**, including in resource management areas, while forestry use structures are deemed "Class B" projects in resource management areas, but are non-jurisdictional throughout the remainder of the Park. A copy of the APA Jurisdictional Table is attached as **Exhibit "G"**. See page 6.

13. The two farm employee houses at issue in this proceeding are located near the intersection of Whallons Bay Road and Christian Road – less than 200 feet east of the possible eastern edge of the Hamlet of Whallonsburg in the Town of Essex, New York. A map showing the Agency's Land Use Classification in the Town of Essex is attached as **Exhibit "H"**, but this

is a very general color map that does not prove the precise edge of the Hamlet of Whallonsburg. Respondent reserves the right to examine this issue in this proceeding, because Exhibit H suggests Christian Road may be closer to the Hamlet. (See also Affidavit of Douglas Miller, Exhibits B & C). The Lewis Family Farm has clustered its nine barns and three farm employee houses on the edge of the Hamlet of Whallonsburg, which ought to be commended not penalized.

14. Indeed, the Agency really should embrace the Lewis Family Farm for having created much more open space than the Act envisions. The Lewis Family Farm consists of 1200 acres, which is about two square miles. Under the intensity guidelines, if the Lewis Family Farm is destroyed and rendered bankrupt, as is apparently intended by Staff here, it will lay the groundwork for 30 individually owned, scattered houses. However, the careful planning of Barbara Lewis for these 1200 acres puts most of the development at the edges. Moreover, there are only six houses on the Lewis Family Farm, four of which are agricultural use structures.

15. The Lewis Farm employee housing cluster at the corner of Christian Road and Whallons Bay Road, is well planned as essentially part of the Hamlet of Whallonsburg, just as it is well-situated adjacent to Barn Plaza on the Lewis Family Farm. See **Exhibit "I"**.

16. The value of agricultural production is of extreme importance in New York State. Governor Eliot Spitzer recently appointed the New York State Council on Food Policy, which issued a report on December 1, 2007. A copy of the New York State Council on Food Policy is attached as **Exhibit "J"**. The primary goal of the Policy is to "expand agricultural production, including locally grown and organically grown food." Policy, pg. 6. This enforcement proceeding, unfounded in policy or law, which seeks to penalize a sound agricultural practice designed to build sustainable efficiency and profitability, is directly contrary to emerging State farm policy, as identified by the New York State Council on Food Policy.

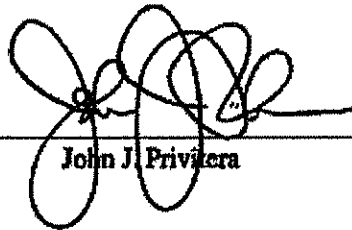
17. As the Governor stated in his first "State of Upstate Address" in Buffalo on January 16, 2008, two executive initiatives are on the horizon which relate directly to the Lewis farm employee housing project. First, a \$100 million "Housing Opportunity Fund" will be created that will assist in building needed upstate housing "that form the building blocks of a sustainable community." In addition, an "Upstate Agribusiness Fund" will be created because, "Agriculture not only matters to us – we are looking to it to become one of the main forces behind upstate's economic revitalization." As the Governor stated:

Agriculture is not just an important part of our economy – it's a way of life in our communities. By supporting our farmers, by giving them the tools they need to access new markets, we will preserve this way of life in New York, and leave stronger farms – and a stronger state – to our children and grandchildren.

See Exhibit "K".

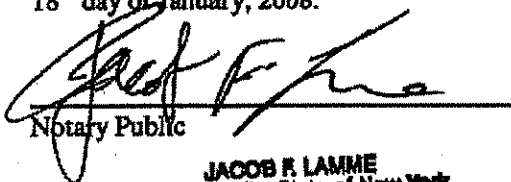
The Agency must breathe life into the Governor's words. There will be no farming "way of life" if farm families cannot live on farms in the Adirondacks.

18. For the reasons set forth herein, and for the reasons set forth in the accompanying affidavits and memorandum of law submitted herewith, the Lewis Family Farm respectfully requests that the Agency dismiss this proceeding in its entirety and annul the cease and desist order.



John J. Privitera

Sworn to before me this  
18<sup>th</sup> day of January, 2008.

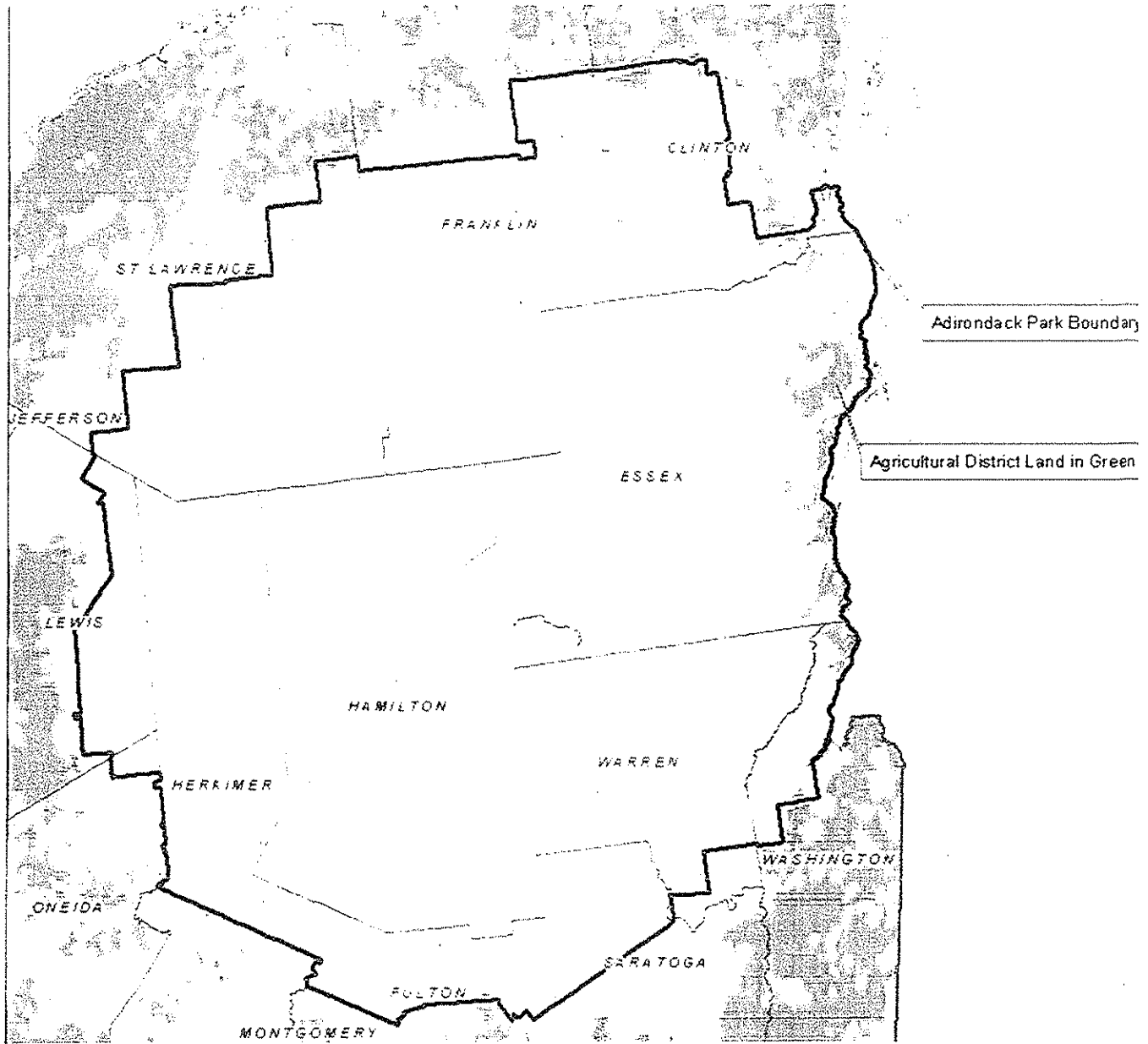


Notary Public

**JACOB F. LAMME**  
Notary Public, State of New York  
Qualified in Albany County  
No. 02LAG150759  
Commission Expires Aug. 7, 2010

AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008

EXHIBIT A



**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT B**





STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
10B Airline Drive, Albany, New York 12235  
518-457-8876 Fax 518-457-3087  
www.agmkt.state.ny.us

Eliot Spitzer  
Governor

Patrick Hooker  
Commissioner

November 26, 2007

Curt Stiles, Chairman  
Adirondack Park Agency  
PO Box 99  
NYS Route 86  
Ray Brook, NY 12977

Dear Mr. Stiles:

Congratulations on your recent appointment to Chairman of the Adirondack Park Agency. In that capacity, I am seeking your assistance in trying to resolve an issue between Sandy and Barbara Lewis, Town of Essex, Essex County and the Adirondack Park Agency. Mr. and Mrs. Lewis own and operate one of the State's largest certified organic farms. They have vastly improved their landholdings and have removed many of the older homes on the various farms that have been purchased to make up their landholdings. The Lewis' are in the process of constructing farm worker housing on the farm and were of the belief that such housing is exempt from the APA permitting process. The Department of Agriculture and Markets supports the Lewis' efforts in their attempt to provide modern, energy efficient housing for their employees. The Lewis farm is located within Essex County Agricultural District No. 4, a county adopted, State certified, agricultural district.

On August 8, 2007 one of my staff, Robert Somers, Manager of the Department's Farmland Protection Program, met with Mark Sengenberger, John Banta, Anita Deming and others to discuss the APA's treatment of farm worker housing and temporary greenhouses under State Law. Dr. Somers informs me that the APA maintains that the Lewis' must obtain a permit from that agency prior to constructing such housing even though the Agricultural Districts Law is clear that under certain circumstances farm worker housing is an agricultural structure and part of a "farm operation".

AML §301, subd. 11, defines a "farm operation", in part, as "...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section and "timber processing" as

Curt Stiles, Chairman (cont.)  
Adirondack Park Agency  
Page 2

defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other."

Farm worker housing, including mobile homes (also known as "manufactured homes"), modular or stick built structures, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or modular homes for farm worker housing is a common farm practice. Manufactured, modular and stick built homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation.

The Department's *Guidelines for Review of Local Laws Affecting Farm Worker Housing* (copy enclosed) provides that the term "on-farm buildings" includes housing used as a residence for permanent and seasonal employees. Generally, in evaluating the use of farm labor housing under the AML, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; whether the housing is provided by the farm operator (i.e., the farmer must own the housing); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation (and their family) to be protected under AML §305-a. The Department has interpreted a seasonal employee to mean migrant workers or workers employed during the season of a crop; i.e., from cultivation to harvest. The Department has not considered part-time employees to be "full-time or seasonal."

Although the Department considers farm worker housing to be part of a farm operation for the purposes of administering AML §305-a, the Department has found that local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Building Code [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code § 102.1(5)] and Health Department requirements for potable water and sewage disposal, are not unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

State Building Code §101.2(2) provides an exemption from the Building Code for "[a]gricultural buildings used solely in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation." State Building Code §202 defines an agricultural building as "[a] structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This

Curt Stiles, Chairman (cont.)  
Adirondack Park Agency  
Page 3


structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public." Therefore, a farm operator must obtain a local building permit for farm worker housing and the housing is subject to the requirements of the State Building Code. It is my understanding that the Lewis farm has obtained the necessary permits from the Town to construct such housing.

The Office of Real Property Services also agrees with the Department's position that housing for farm workers is an agricultural structure. Farm worker housing may qualify for a 10-year real property tax exemption by filing with the local assessor RPT Form RP-483. This is a tax exemption that is applied to newly constructed agricultural and horticultural buildings and structures. I have enclosed the instructions page for the exemption which clearly states that under certain circumstances, farm worker housing is considered an agricultural building.

The Department's position on farm worker housing has been supported by the State's Court of Appeals (Town of Lysander v. Hafner, 98 N.Y.2d 558 [2001]) and pursuant to AML §305, subd. 3, "...it shall be the policy of all State agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end..."

I would like to discuss this issue with you further. Please contact me at your earliest convenience.

Sincerely,



Patrick Hooker  
Commissioner of the New York Department  
of Agriculture and Markets

Enclosures

AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008

EXHIBIT C

## **Guidelines for Review of Local Laws Affecting Farm Worker Housing**

Farm worker housing, including mobile homes (also known as "manufactured homes"), is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or mobile homes for farm worker housing is a common farm practice. Manufactured or mobile homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. The term "on-farm buildings" includes farm labor housing, including manufactured housing, used for the on-farm housing of permanent and seasonal employees, and is therefore subject to the protection of Agriculture and Markets Law (AML) §305-a.<sup>1</sup>

Generally, in evaluating the use of farm labor housing under §305-a, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); whether the employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The Department does not consider the primary residence of the owner or partner of the farm operation to be protected under §305-a.

The degree of regulation of farm worker housing that is considered unreasonable depends on the number of units, size of the structure(s) and the complexity of the housing to be provided. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and complexity of the structure(s) to be built or the number of units to be sited on a farm, a site plan review requirement may be reasonable. The Department urges local governments to take into account the size, complexity and number of units of housing required by the farm operation when setting and administering such requirements. For example, the Department has not considered the need to undergo site plan review, where more than two mobile homes are sited on the same farm complex, unreasonable. However, conditions placed upon the issuance of a permit and/or the cost and time involved to complete site plan review requirements may be unreasonable.

In some cases farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under a local law or area variances, before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. Local laws which the Department has found not to be unreasonably restrictive include those which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code ("Uniform Code") [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

---

<sup>1</sup> The Department's interpretation was upheld in *Town of Lysander v. Hafner*, New York Court of Appeals, 96 N.Y.2d 558 (October 18, 2001).

Some municipalities have developed reasonable requirements to ensure that farm labor housing is used only for legitimate farm employees; is removed if it is not used for its intended purpose; and is periodically reviewed for compliance.

The following are some of the specific matters that the Department considers when reviewing a local law that affects farm worker housing:

A. Minimum Dimensions

Establishing minimum square foot dimensions and/or floor space has been determined to be unreasonably restrictive in certain instances. Many mobile homes used for farm labor housing have outside dimensions of 14 feet by 70 feet (i.e., 980 square feet). Older model manufactured housing may have lesser square foot dimensions, however. To address this concern, a municipality may elect to not establish a minimum square foot requirement for farm worker housing on a farm operation within a State certified agricultural district.

B. Lot Size

Requiring a minimum lot size exceeding 10,000 to 15,000 square feet may be unreasonably restrictive. A farmer may be unable to meet such a minimum lot size due to the configuration of the land used for production or lying fallow as part of a conservation reserve program. The need to be proximate to a water supply, sewage disposal and other utilities is also essential. Farm worker housing is usually located on the same property which supports other farm structures. Siting farm labor housing very near other farm structures, such as a barn or milking parlor, is important for ease of access and for security purposes. Presumably, minimum lot size requirements are adopted to prevent over concentration of residences and to assure an adequate area to install a properly engineered well and waste disposal system. Farm worker housing should be allowed to be sited on the same lot as other agricultural use structures subject to the provision of adequate water and sewage disposal facilities and meeting minimum setbacks between structures.

C. Setbacks

Minimum setbacks from front, back and side yards have not been viewed as unreasonable unless a setback distance is unusually long. Setbacks that coincide with those required for other residential structures have, in general, been viewed as reasonable.

D. Screening

A requirement to screen farm labor housing from view has been found by the Department to be unreasonable. Screening requirements suggest that farm worker housing is, in some way, objectionable or different from other forms of residential housing that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless screening is required to address a threat to the public health or safety or is shown to be necessary due to special local conditions.

E. Compliance with HUD Standards

A requirement that mobile homes constructed before June 1976 comply with HUD construction and safety standards may be unreasonably restrictive. Manufactured homes do not need to meet current HUD standards to be safe and fit for human occupancy. The adoption of the federal standards does not mean that manufactured homes constructed prior to their

**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT D**



NEW YORK STATE

# Adirondack parkagency

[Home](#) > [Documents](#) > Policies

[contents](#)

[Forms](#)

[Documents](#)

[Press Room](#)

[Regulations](#)

[Public Input](#)

[State Land](#)

[Maps/GIS](#)

[FAQ's](#)

[About the Park](#)

[About the Agency](#)

[Visitor Centers](#)

[Current Activities](#)

[Contact Us](#)

[Access to Records](#)

[Home](#)

## Policies

The following Adirondack Park Agency policies provide the Agency and its staff documents that promote consistent execution of responsibilities, insure adherence to law and rule, and reflect a commonly agreed upon way of doing business.

(Some documents require Adobe Acrobat Reader. These documents are labeled with the PDF file name and file size.)

[Agency Minutes Policy](#) -- (Agency3\_minutes.pdf 17kb)

[Agency Policy, Procedures & Guidance System](#) -- (agency1.pdf 15kb)

[Agency Public Comment Policy](#) (revised August 10, 2007) (public\_comment\_policy.pdf 31kb)

[General Enforcement Guidelines](#) -- LEGAL - 1 Policy (GeneralEnforcementGuidelines.pdf 119kb)

[Memorandum Of Understanding Between The Adirondack Park Agency And The Department Of Environmental Conservation Concerning Implementation Of The State Land Master Plan For The Adirondack Park](#) (APA-DEC\_MOU\_State\_Lands.pdf 51kb)

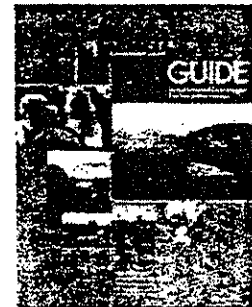
[Review of Proposed Amendments to Agency-Approved Local Land Use Programs](#) -- (agency5.pdf 27kb)

[Review of Variances Referred to the Agency from Agency-Approved Local Land Use Programs](#) -- local\_services.pdf 23kb)

[Telecommunication Towers and Tall Structures Policy](#) -- (telecom\_towers\_tall\_structures.pdf 19kb)

## Fast Facts

If you're not sure where to start, start with the [Citizen's Guide](#). It should answer many questions or direct you to sources that will.



Other sources of information from New York State include: the [State Library](#) the [State Museum](#) the [State Archives](#) the [Department of Environmental Conservation](#)



The following documents commonly meet many needs.

[Citizen's Guide](#) -- (CitizensGuide.pdf 370kb)

[Adirondack Park Agency Act](#) -- (294kb)

[Rules and Regulations](#) -- (670kb)

[Adirondack Park State Land Master Plan](#) -- (635kb)

[Home](#) [About the Park](#) [About the Agency](#) [Visitor Centers](#) [What's New](#) [Privacy Policy](#) [Contact Us](#)  
Adirondack Park Agency - Webmaster

**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT E**



New York State

# Adirondack Park Agency

2006

ANNUAL REPORT

Eliot Spitzer, Governor

Protecting the open-space character and environmental quality of the Adirondack Park and helping to build a sustainable economy in Park communities are compatible goals for the Adirondack Park Agency. Working through the Agency's Economic Affairs Committee and its staff-level Economic Services unit, quality-of-life improvements are pursued with stakeholders, including local governments.

In 2006, the Economic Affairs Committee focused its attention on three important issues for the region's long-term economic viability: community housing or housing that is available for residents of the Park at a reasonable price; broadband; and challenges facing the paper-making industry and the forests that have traditionally been the source of wood fiber for the region's mills.

During 2006, there were new local and Parkwide initiatives to address housing needs, including the Adirondack Regional Housing Trust funded through grant monies secured by State Senator Elizabeth O'C. Little. The Agency has been considering specific ways that it can be of support to these initiatives consistent with the statutes it administers.

There is also increasing recognition of the importance of broadband service in building a sustainable economy for the Adirondack Park. During the year, the Agency closely monitored a range of new broadband planning initiatives and ensured, through designated liaisons, that any questions regarding permit jurisdiction or the permitting process are quickly answered.

Regarding paper making, the Agency has been building its understanding of global trade issues that are affecting the long-term future of this important Adirondack industry. The Board and staff recognize the important relationship of viable regional wood product firms and the long-term maintenance of vast areas of private, forested open space in the Adirondack Park. Active research into the potential for and impacts of alternative uses for Adirondack timber is being followed.

## Economic Services

The Economic Services unit provides expertise in real estate and financial feasibility analysis, economic and fiscal impact analysis and economic development planning. It also provides general public guidance on development sites and assists project sponsors, economic developers and planners in the evaluation of specific business development sites.



Frank Mezzano, *Chair Economic Affairs*  
Stephen M. Erman, *Special Assistant-Economic Affairs*

Stephen M. Erman, Special Assistant for Economic Affairs (far left), stands next to Tom Amidon, Professor and Faculty Chair, Paper Science and Engineering at SUNY/ESF; Dennis Gingles, Regional Forest Products Procurement Coordinator for International Paper; and Chris Mallon, Mill Manager for the Ticonderoga International Paper Mill. This photo was taken after their Economic Affairs Committee presentation to the Agency Board on paper making and its economic impacts to the Adirondack region.

The Economic Services unit also assisted economic development planning in the Park by working with entrepreneurs needing Agency permits to establish or expand their businesses. Economic staff provided expertise on economic and fiscal issues to the Regulatory Programs Division and other Agency divisions on an as-needed basis and assisted in the 9th annual Local Government Day conference in March 2006.

The Agency is proud of its increased attention to community and economic issues and the quest for a more vibrant and sustainable economic future for the Park.



**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT F**

<b>Adirondack Park Agency Policy, Procedures &amp; Guidance System</b>	<b>LEGAL - 1</b>
<b>Topic: General Enforcement Guidelines</b>	
<b>Cecil Wray, Chairman, Enforcement Committee</b>	<b>Effective Date: January, 2003</b>

## I. Purpose and Applicability

These General Enforcement Guidelines establish the Agency's objectives and approach for the investigation and resolution of violations of the Adirondack Park Agency Act (APA Act), the Wild, Scenic and Recreational Rivers System Act (Rivers Act) and the Freshwater Wetlands Act (FWA). Failure to obtain necessary Agency permits under these laws, or to undertake a project pursuant to the terms and conditions of an issued permit, would constitute violations to which these guidelines apply.

These Guidelines are the first in a series of guidelines intended to address issues relating to the Agency's enforcement program. Other specific enforcement guidelines may be adopted such as:

- a. Substantive Standards for Settlements
- b. Civil Penalty Guidelines;
- c. Environmental Benefit Project Guidelines;
- d. Permit Compliance Guidelines.

## II. Statutory and Regulatory Enforcement Authority

### Adirondack Park Agency Act

The APA Act establishes land use controls for the private lands within the six-million-acre Park. The purpose of the APA Act is to "insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park."

Executive Law, Section 813(1) provides that any "person"<sup>1</sup> who violates the APA Act or Agency regulation or permit or order issued by the Agency is liable for a civil penalty up to \$500 per day for each day the violation continues. Penalties are recoverable in an action by the Attorney General.

The Attorney General may also institute an action to prevent, restrain, enjoin or correct any violation, and may join in the action any appropriate person or the person responsible for the violation to take such affirmative actions as are necessary to correct the violation (Executive Law, Section 813[2]).

Any civil penalty may be released or compromised by the Agency before referral to the Attorney General, or after referral, by the Attorney General with the consent of the Agency (Executive Law, Section 813[3]).

#### New York State Freshwater Wetlands Act

The Agency implements the FWA within the Adirondack Park (Environmental Conservation Law, Articles 24 and 71). The purpose of the FWA is to preserve, protect and conserve freshwater wetlands and their benefits, consistent with the general welfare and beneficial development (ECL Section 24-0103). Any loss of wetlands causes a loss of important wetland benefits, such as protection of surface and ground water, flood control, wildlife habitat, recreation, open space and aesthetic appreciation, and other values (ECL Section 24-0105).

Pursuant to ECL Section 71-2303, the Agency can impose penalties up to \$3,000 for each violation of the FWA after notice and opportunity for hearing, and can order remediation and restoration of wetlands by the violator after a hearing.

#### New York State Wild, Scenic and Recreational Rivers System Act

The Legislature has determined that certain of the State's rivers and their environs possess outstanding natural, scenic, historic, ecological and recreational values, and enacted the Rivers Act so that the designated rivers would be preserved in their free-flowing condition for the benefit and enjoyment of present and future generations (Environmental Conservation Law, Article 15, Title 27). For private lands in the Park, the Rivers Act is implemented by the Agency.

Section 15-2723 of the Rivers Act provides that any person who violates any provision of or order issued pursuant to the Rivers Act may be compelled to comply and shall pay a civil penalty of not less than \$100 and not more than \$1,000 per day for each day of the violation.

---

<sup>1</sup> "Person" includes individuals, businesses or other private entities, and municipalities, but not the State or State agency.



### Agency Enforcement Regulations

Agency regulations (9 NYCRR Part 581) effective January, 2003, provide the process for implementation of the Agency's enforcement authority under the APA Act, FWA, and the Rivers Act. The regulations provide for issuance of administrative cease and desist orders, requests to redress damage to environmental resources, opportunity to resolve violations by agreement, and an administrative process to be implemented when a Notice of Apparent Violation has been issued by staff. For violations of the FWA, the Agency may impose penalties after notice and opportunity for hearing, and can order remediation and restoration of wetlands after a hearing. In all cases involving permit violations, the Agency may, after an opportunity for a hearing, revoke, suspend or modify the permit. The Agency will not process an application for a permit or variance for property involved in a violation. An unresolved case may be referred to the Attorney General for civil action.

### III. Agency Enforcement Objectives

The Agency regulates land use and development on private lands within the Adirondack Park through a permitting program. Effective enforcement of the Agency's laws, regulations, permits and orders is fundamental to the meaningful regulation of land use and development in the Park and to the fulfillment of the Agency's statutory mandate to protect the natural resources of the Park.

In any case where there is on-going environmental damage, the Agency will seek cessation of the on-going actions and immediate remediation of the damage.

The primary objective of the Enforcement Program is to obtain compliance with regulatory environmental requirements. The Agency will require actions to ensure that the environmental damage created by violations will be eliminated or minimized for the long term.

A further objective of the program is to deter additional violations, either by that landowner or other landowners, or the public. The consistently applied requirement that properties in violation be brought into compliance with regulatory environmental standards has a significant deterrent effect. The imposition of civil penalties in appropriate cases also creates a significant deterrent effect. Violators should not profit from the undertaking of a violation. To that end, the Agency will seek actions that eliminate the economic benefit derived from violations. Where intentional or knowing violations occur, the Agency's objective will be to make the cost of noncompliance greater than the cost of compliance would have been.

Agency enforcement efforts will be calculated to encourage prompt, voluntary cooperation resulting in the firm, but fair resolution of violations. It is the Agency's intention to generally provide an incentive to violators who voluntarily and promptly agree to a binding obligation to achieve resolution of the violation, both with respect to remediation and the payment of any civil penalties. Prompt and voluntary remediation is

far more effective to environmental protection than adjudication. Prompt resolution also contributes to the Agency's efforts to address other violations by allowing staff to use its time on other cases.

Finally, the Agency's enforcement process should be efficient, fair, and consistent, taking into account particular facts and circumstances and the need to ensure environmental protection.

#### **IV. Preventive Measures**

The most effective enforcement tool is the prevention of violations before they occur. Voluntary compliance by the people who live, work or recreate in the Park is the key to the future of the Park and the protection of its resources. In order for the people of the Park to both appreciate the basis for and comply with Agency regulations, relevant information must be readily available.

Therefore, the Agency will promote public awareness and understanding of the value of the Park resources and of proper design and technique in executing development projects.

The Agency will make every effort to prevent violations by continuing to provide assistance to the public in jurisdictional matters, and by ensuring that the project review process is timely and permitting requirements are clear, based on specific and accurate development plans. The Agency will continue to establish and participate in various outreach and training programs, and to enhance communications and the sharing of information between the Agency and local governments. All these actions are designed to apprise the public and local officials of the potential for Agency jurisdiction, perhaps preventing some violations.

The Agency has for thirty years been the subject of considerable public scrutiny and press coverage. Therefore, the Agency expects that landowners, developers, attorneys, purchasers, real estate agents and local government officials are aware of the potential for Agency jurisdiction. The Agency has, since its inception, maintained staff available to answer questions relating to its jurisdiction, the permit process, and other Agency matters.

Hence, the Agency anticipates that the public and professionals practicing in the Park will take advantage of the service offered and ascertain the legal status of a parcel or whether there is Agency jurisdiction over a proposed action prior to purchase or action.

#### **V. Enforcement Procedures**

##### Investigation

The Agency receives complaints about possible violations from the public and staff. Complaints will be investigated by staff and no determination of violation will be made unless and until there is sufficient proof. Investigations will be prioritized according to the potential for significant environmental damage and the need for prompt action.

Agency enforcement officers will undertake the investigation of the alleged violations assigned to them, including obtaining information to determine the legal and factual history of the site and its use, whether a violation has in fact occurred, and options for resolution. A staff attorney is assigned to each case to ensure legal guidance. Agency project review and resource analysis staff are consulted on issues which require more expertise. Once all the necessary legal and factual information has been obtained, and if a violation has been demonstrated, the enforcement officer and assigned attorney will prepare a recommendation for resolution of the violation.

#### Administrative Resolution of Violations by Staff

The Executive Director or his designee will make all reasonable efforts to resolve violations with the voluntary cooperation and/or consent of the violator(s) and landowners. Almost all violations should be resolved at this level of the enforcement process to ensure the most efficient use of staff resources, and timely compliance and/or remediation of environmental damage. In developing proposed resolutions, input from appropriate executive, legal, technical, and project review staff must be obtained. Resolutions of violations should generally be consistent in similar cases, while also taking into account the specific facts and circumstances of each case. When applicable, proposed resolutions should be consistent with guidelines subsequently developed in this enforcement guideline series.

Settlement agreements entered into to resolve a violation are not permits and are not a means to bypass or circumvent the legal process and protections created by the permit system. Enforcement staff does not have the benefit of the statutory requirement that a project applicant provide all necessary information; they cannot compel production of the detailed information and plans usually required for a project to be evaluated for approval. Moreover, enforcement staff will not have the benefit of the public comment provided for in the project review process. The resolution of many violations will therefore include a requirement that the individuals involved apply for a permit for the project which has already been undertaken. However, the referral of a violation to the after-the-fact permit process will not be allowed unless or until all necessary site stabilization and restoration has occurred and the appropriate civil penalty has been paid.

When violations cannot be resolved at the staff level, they may be referred to the Enforcement Committee for resolution or, in the case of violations of the Freshwater Wetlands Act or of an Agency permit, to the Agency for a determination and order.

#### Administrative Resolution of Violations by the Enforcement Committee

The Enforcement Committee shall consider violations of the APA Act or the Rivers Act upon staff referral or at its request. The Agency may consider such violations instead of the Enforcement Committee upon a referral by the Committee or a request by a majority of Agency members. A determination shall be made as to whether a violation has occurred and include an appropriate disposition of the matter. Such disposition may

include a proposal to resolve the violation administratively, referral of the violation to the Attorney General, or adjournment of the matter. Where contested factual issues exist, the Enforcement Committee or the Agency may request that a fact-finding hearing be held before making its determination. The Enforcement Committee or the Agency, in reaching a determination based on the relevant facts and circumstances of the matter, will also take into account staff efforts to resolve a violation with the voluntary cooperation and/or consent of the individuals involved.

#### Agency Determinations in Freshwater Wetlands Act or Permit Suspension, Modification or Revocation Proceedings

The Agency may make a determination and order in matters involving violations of the FWA Act or permit violations requiring suspension, modification or revocation of an Agency permit. The Agency's decision will be based on a record after an opportunity for an adjudicatory hearing, and will also take into account any Enforcement Committee recommendation concerning the matter. Proceedings leading to a determination and order in such matters will generally only occur after staff have made a reasonable effort to resolve the violations(s) with the voluntary cooperation and/or consent of the individuals involved.

#### Civil Action by the Attorney General on behalf of the Agency

Where violations cannot be resolved at the administrative level, or where judicial involvement is appropriate to obtain access to property, cooperation in the investigation process, or the immediate cessation of ongoing environmental damage, the Attorney General may be asked to initiate appropriate civil action on behalf of the Agency. In such cases, all prior settlement offers and negotiations shall be inadmissible as evidence in such proceedings consistent with the Civil Procedure Law and Rules.

#### VI. Legal Effect

The guidance and procedures set out in this document are intended solely for the use of Agency staff. They are not intended to create any substantive or procedural rights, enforceable by any party in administrative or judicial litigation with the State of New York. The Agency reserves the right to act at variance with these guidelines and each case will be evaluated as to its particular facts and circumstances.

**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT G**

## SUMMARY OF ADIRONDACK PARK AGENCY AUTHORITY OVER LAND USE AND DEVELOPMENT AND SUBDIVISIONS

THIS CHART IS INTENDED AS A GENERAL GUIDE TO THE REQUIREMENTS OF THE ADIRONDACK PARK AGENCY ACT, WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM ACT, AND FRESHWATER WETLANDS ACT. WHILE IT IS A GENERAL SUMMARY OF THEM, IT DOES NOT INCLUDE ALL THE PROVISIONS OF THESE LAWS.

PERSONS CONTEMPLATING A NEW LAND USE OR DEVELOPMENT OR SUBDIVISION, OR AN EXPANSION OF 25% OR MORE OF AN EXISTING USE ARE URGED TO CONTACT THE AGENCY (P.O. BOX 99, RAY BROOK, NY 12977 [518-891-4050]) WHICH WILL PROMPTLY ISSUE A FORMAL, BINDING DETERMINATION AS TO WHETHER AN AGENCY PERMIT OR VARIANCE IS NECESSARY.

IN CHECKING WHETHER APA AUTHORITY MAY APPLY TO A PROPOSED ACTIVITY, EACH SECTION OF THE CHART SHOULD BE REVIEWED.

### SHORELINE RESTRICTIONS

THESE RESTRICTIONS APPLY TO ALL NEW (POST AUGUST 1, 1973) LAND USE AND DEVELOPMENT AND SUBDIVISION ON SHORELINES, WHETHER OR NOT A PERMIT IS ALSO NECESSARY. THE AGENCY IS AUTHORIZED TO ISSUE VARIANCES TO THEM UPON A SHOWING OF "PRACTICAL DIFFICULTY."

		APA ACT LAND USE AREAS					
		HAMLET	MODERATE INTENSITY USE	LOW INTENSITY USE	RURAL USE	RESOURCE MGMT.	INDUSTRIAL USE
Minimum Setback from Mean high water mark (m.h.w.m.).	Building (for navigable waterways)	50 Ft.	50	75	75	100	None
	Septic System (for navigable & non-navigable waterways)	100 Ft.	100	100	100	100	100
Minimum Lot Width		50 Ft.	100	125	150	200	None
Minimum Frontage For Deeded or Contractual	5-20 lots	100 Ft.	100	100	100	100	100
	21-100 lots	100 Feet plus 3 Ft. for each lot exceeding 20					
	101-150 lots	340 Feet plus 9 Ft. for each lot exceeding 100					

**WITHIN 100 FEET OF ONE.**

1. Fishing, hunting, trapping, ricing, berrying, shell-fishing, aquaculture;
2. Grazing or watering livestock;
3. Making reasonable use of water resources;
4. Harvesting natural products;
5. Selectively cutting timber and constructing skid trails without using fill; and
6. Draining for growing agricultural products.

**PROJECTS WITHIN ¼ MILE OF WILD, SCENIC OR RECREATIONAL RIVERS**

SPECIAL PERMIT REQUIREMENTS AND OTHER REGULATIONS APPLY, OUTSIDE OF HAMLET AND MODERATE INTENSITY USE AREAS, WITHIN ONE-QUARTER MILE OF THE FOLLOWING RIVERS. PLEASE CONTACT THE AGENCY IF YOU ARE PLANNING LAND USE, DEVELOPMENT, OR SUBDIVISION IN THESE AREAS.

- |                             |                              |                               |
|-----------------------------|------------------------------|-------------------------------|
| Ampersand Brook             | Hudson River                 | Sacandaga River (East Br.)    |
| Ausable River (East Branch) | Independence River           | Sacandaga River (Main Br.)    |
| Ausable River (Main Branch) | Indian River                 | Sacandaga River (West Br.)    |
| Ausable River (West Branch) | Jordan River                 | St. Regis River (East Br.)    |
| Black River                 | Kunjamuk River               | St. Regis River (Main Br.)    |
| Blue Mountain Stream        | Long Pond Outlet             | St. Regis River (West Br.)    |
| Bog River                   | Marian River                 | Salmon River                  |
| Boquet River                | Moose River (Middle, North   | Saranac River (Main Br.)      |
| Boreas River                | South and Main Branches)     | Schroon River                 |
| Cedar River                 | Opalescent River             | West Canada Creek             |
| Cold River                  | Oswegatchie River (Main Br.) | West Canada Creek (South Br.) |
| Deer River                  | Oswegatchie River (Mid. Br.) | West Stony Creek              |
| East Canada Creek           | Oswegatchie River (West Br.) |                               |
| Grasse River (Middle Br.)   | Otter Brook                  |                               |
| Grasse River (North Br.)    | Piseco Lake Outlet           |                               |
| Grasse River (South Br.)    | Raquette River               |                               |
|                             | Red River                    |                               |
|                             | Rock River                   |                               |
|                             | Round Lake Outlet            |                               |

**REGIONAL PROJECTS**

		APA ACT LAND USE AREAS				
		HAMLET	MODERATE INTENSIT Y USE	LOW INTENSIT Y USE	RUR A L USE	RESOURC E MGMT.
M0128629.11	Principal Buildings per		500	200	75	15

Over 150  
lots

440 Feet plus 1 Ft. for each lot exceeding 150

### **Vegetative Cutting Restrictions**

Within 35 feet of m.h.w.m., not more than 30% of the trees over 6" DBH during any 10 year period.  
Within 6 feet of m.h.w.m., up to 30% of the shorefront may be clear of vegetation on any lot.

### **FRESHWATER WETLANDS PROJECTS**

PERMITS ARE REQUIRED FOR A WIDE VARIETY OF ACTIVITIES IN FRESHWATER WETLANDS. WETLANDS INCLUDE ANY LAND ANNUALLY SUBJECT TO PERIODIC OR CONTINUED INUNDATION AND COMMONLY CALLED BOGS, SWAMPS, OR MARSHES, AS WELL AS OPEN WATERS IMMEDIATELY ADJACENT THERETO OR SURROUNDED THEREBY IF ESSENTIAL TO THEIR PRESERVATION THEY ALSO INCLUDE SOME OTHER TYPES OF LAND THAT MOST PEOPLE WOULD NOT CONSIDER WETLANDS, SUCH AS "SPRUCE SWAMPS" AND ARTIFICIAL MUDFLATS EXPOSED BY RESERVOIR DRAWDOWNS. WETLANDS ARE REGULATED IF THEY EXCEED ONE ACRE IN SIZE OR, REGARDLESS OF SIZE, IF THEY ARE ADJACENT TO AND HAVE A FREE INTERCHANGE OF SURFACE WATER WITH A LAKE, POND, RIVER OR STREAM. THE AGENCY WILL, UPON REQUEST OF ANY PERSON CONTEMPLATING LAND USE, DEVELOPMENT, SUBDIVISION OR OTHER ACTIVITY WHICH MIGHT INVOLVE A WETLAND, DETERMINE WHETHER WETLANDS ARE PRESENT AND THE EXACT LOCATION OF THEIR BOUNDARIES.

PERMITS ARE NEEDED FOR THE FOLLOWING IF WITHIN A WETLAND:

1. Land use and development or subdivision;
2. Draining, dredging, excavation, removing soil, peat, mud, sand, shells, or gravel;
3. Dumping or filling soil, stones, sand, gravel, mud, rubbish or fill of any kind.

PERMITS ARE NEEDED FOR THE INSTALLATION OF ON-SITE SEWAGE DRAINAGE FIELDS OR SEEPAGE PITS, OR SEWER OUTFALLS, IN A WETLAND OR WITHIN 100 FEET OF ONE.

PERMITS ARE NEEDED FOR THE FOLLOWING WHETHER OR NOT THEY OCCUR WITHIN A WETLAND:

1. Any forms of pollution, including installation of septic tanks and sewer outfalls, or discharge of sewage effluent or other liquid waste into or so as to drain into the wetland; and
2. Any other activity which harms the wetland

PROVIDED THERE IS NO FILLING OR OTHER MATERIAL DISTURBANCE, PERMITS ARE NOT NEEDED FOR:



**REVIEW AUTHORITY BY TYPE OF LAND USE AND DEVELOPMENT**

**Residential Uses and Subdivisions**

1. Single Family	NJ	NJ	NJ	NJ	B	IC-B
2. Individual	NJ	B 15-74 lots or 2-14 lots if any shoreline lot less than 25,000 sq. ft. or inland lot less than 40,000 sq.ft.	B 10-34 lots or 2-9 lots if any shoreline lot less than 50,000 sq. ft. or inland lot less than 120,000 sq.ft.	B 5-19 lots or 2-4 lots if any shoreline lot less than 80,000 sq. ft. or inland lot less than 320,000 sq.ft.	B	IC-B
3. Residential Subdivision	NJ 2 to 99 lots				A 100 or more lots	A 75 or more lots
	Or if any lot does not conform to the shoreline lot width requirements.					
	4. Mobile Home Court	NJ	B	B	B	IC-B
A 100 or more lots		A 75 or more lots	A 35 or more lots	A 20 or more lots		
	NJ	B	B	B		
	A 100 or more lots	A 75 or more lots	A 35 or more lots	A 20 or more lots		
6. Open Space Recreation	NJ	NJ	NJ	NJ	NJ	NJ

	Principal		500	200	75	15	
	Average Lot		1.3	3.2	8.5	42.7	
		"NI"	"A"	"B"	"IC-R"		
		NJ	A	B	IC-B		
	Wetlands						
	Within 1/4	NJ					NJ
	Elevation of	NJ					NJ
	Within 1/8	NJ					NJ
	Within 150ft of	NJ	NJ	NJ			NJ
	Within 300ft of	NJ	NJ	NJ	NJ		NJ
	1 Single Family	NJ	NJ	NJ	NJ	B	IC-B
	9 Individual	NJ	NJ	NJ	NJ	B	IC-B
		NJ 2 to 99 lots	NJ 2-14 lots	NJ 2-9 lots	NJ 2-4 lots		

Public/Open Space/Forestry/Agriculture	Fishing Cabin, Private Club Structure					B 500 sq.ft. or more	
	12. Game Preserve, Private Park	NJ	NJ	NJ	NJ	NJ	IC-B
	13. Private Road	NJ	NJ	NJ	NJ	NJ	NJ
	14. Cemetery	NJ	NJ	NJ	NJ	IC-B	IC-B
	15. Private Sand-Gravel Extraction	NJ	NJ	NJ	NJ	NJ	NJ
	16. Public Utility Use	NJ	NJ	NJ	NJ	NJ	NJ
	17. Public/Semi- Public Building	NJ	B	B	B	IC-B	B
	18. Municipal Road	NJ	B	B	B	B	B
Commercial/Industrial/Recreational	19. Agricultural Service Use	NJ	B	B	B	A	B
			A 10,000 sq.ft. or more	A 5,000 sq.ft. or more	A 2,500 sq.ft. or more		
	20. Commercial Use	NJ	B	B	B	IC-B	B
			A 10,000 sq.ft. or more	A 5,000 sq.ft. or more	A 2,500 sq.ft. or more		
	21. Tourist Accommodation	NJ	B	B	A	IC-B	IC-B
		A if 100 or more units				A if Ski Center	
	22. Tourist Attraction	NJ	A	A	IC-B	IC-B	IC-B
23. Marina, Boat Launching Site	NJ	B	B	B	IC-B	IC-B	
24. Golf Course	NJ	B	B	B	B	IC-B	

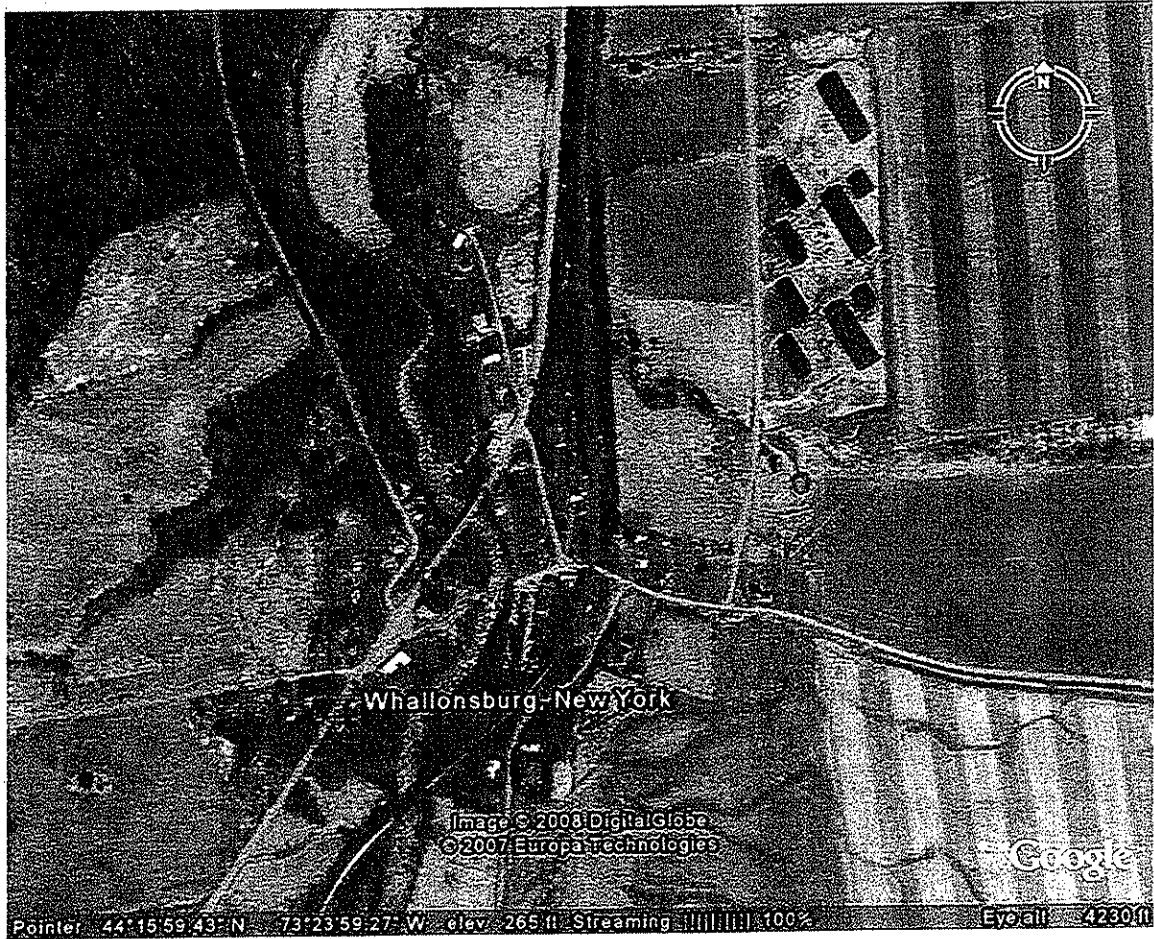
**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT H**



**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT I**



The location of the Lewis Family Farm employee housing cluster is marked by the green arrow.

Note the location of the houses in relation to the Hamlet of Whallonsburg and the Lewis Family Farm's Barn Plaza.

**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT J**



# NEW YORK STATE COUNCIL ON FOOD POLICY

---

December 1, 2007

o o o oo o ooo cOnnecting the dOtS o o o ooo o o oo

## **NEW YORK STATE COUNCIL ON FOOD POLICY**

---

**December 1, 2007**

### Council Chairperson

**Patrick Hooker**, Commissioner of the New York State Department of Agriculture and Markets

### Council Members

**Mindy Bockstein**, Chairperson of the New York State Consumer Protection Board

**Linda Bopp**, Executive Director of the Nutrition Consortium of New York State

**Bruce Both**, President of the United Food and Commercial Workers Union; Local 1500

**Michael Burgess**, Director of the New York State Office for the Aging

**Mary Warr Cowans, RD, CDN**, Associate Director of the Division of Nutrition at the New York State Department of Health

**Dr. Richard Daines**, Commissioner of the New York State Department of Health

**Raymond Denniston**, Food Service Director of the Johnson City Central School District; Co-Chairperson of the New York State Farm to School Coordinating Committee

**Diane Eggert**, Executive Director of the Farmers Market Federation of New York

**John Evers**, Executive Director of the Food Bank Association of New York State

**Daniel Gundersen**, Upstate Chairperson of Empire State Development Corporation

**David Hansell**, Commissioner of the Office of Temporary and Disability Assistance

**Dr. Susan Henry**, Dean of the New York State College of Agriculture and Life Sciences at Cornell University

**Richard Mills**, Commissioner of the State Education Department

**Cathryn Mizbani**, Senior Extension Administrator; WIC Program Coordinator of the Cornell University Cooperative Extension of Schenectady County

**Liz Neumark**, Chief Executive Officer of Great Performances; Sylvia Center

**William Rapfogel**, Executive Director and Chief Executive Officer of Metropolitan Council on Jewish Poverty

**Irwin Simon**, Founder, Chairperson, President and Chief Executive Officer of the Hain Celestial Group, Inc

**Julie Suarez**, Director of Public Policy for the New York Farm Bureau

**Eleanor Wilson, MS, RN, CDN**, Corporate Dietitian for Price Chopper Supermarkets, Inc

**Catharine Young**, New York State Senator, 57th District; Chairperson of the Senate Agriculture Committee

## **Executive Summary**

The New York State Council on Food Policy was created in May of 2007 by Governor Eliot Spitzer's Executive Order No. 13, in which it is recognized that a need exists to support the State's agricultural industry as well as to ensure that all New Yorkers have access to safe, affordable, nutritious food. The twenty-one members of the Council on Food Policy were appointed in September of 2007 after a rigorous and thoughtful selection process. The Council members include seven state agency heads and 14 members from the public and non-profit sectors. Together they represent nearly all aspects of the food system. At the time of appointment, Governor Spitzer charged the members of the Council with the tasks of helping the State coordinate its food-related policies and promote healthier communities.

In October of 2007, the Council on Food Policy held its first meeting in Albany, NY. This meeting was open to the public and well attended. The meeting consisted of short overviews of: State demographics, some of the existing food security and nutrition related programs operating in the State, and the food industry in the State. A discussion period followed in which Council members expressed their food policy priorities and offered suggestions for key issue areas to focus upon in the coming year. Many members of the public seized the opportunity to contribute their food policy related comments and concerns to the Council members.

As a result of information shared at the Council meeting, individual expertise, and consideration of public comments, Council members identified four (4) key food policy issue areas for more in-depth examination in the coming year.

Maximization of collaboration potential along agency, public and private sector lines within these key issue areas contributed to the discourse. Health concerns, such as the need to combat diet-related diseases such as obesity, diabetes and heart disease strongly influence all priorities presented.

Key Issue Areas identified by the Council on Food Policy are as follows:

- 1) Maximize participation in food and nutrition assistance programs;
- 2) Strengthen the connection between local food products and consumers;
- 3) Support efficient and profitable agricultural food production and food retail infrastructure; and
- 4) Increase consumer awareness and knowledge about healthy eating and improve access to safe and nutritious foods

Researching and evaluating the efficacy of the Key Issue Areas and associated priorities to meet the objectives of Executive Order No. 13 will be the basis for Council activities in the coming year. The Council proposes to develop and recommend a specific food policy for the State that will ensure the availability of an adequate supply of affordable, fresh and nutritious food to its residents, and expand agricultural production. Additionally, the Council proposes to develop and recommend a strategic plan for implementation of the State food policy, including benchmarks and criteria for measuring progress. Further, the Council intends on offering comments on State regulations, legislation and budget proposals in the area of food policy.

Being highly sensitive to the value of stakeholder input to gain accurate perspective on the issues, the Council members are preparing to hold numerous public forums around the State. The next scheduled meetings for the Council are in May and October of 2008 or as business requires.

# NEW YORK STATE COUNCIL ON FOOD POLICY

December 1, 2007

## TABLE OF CONTENTS

	<u>Page</u>
Executive Summary	
<b>I. Introduction</b>	1
<b>II. History</b> Review of the 1984 New York State Council on Food and Nutrition Policy's "Five Year Food & Nutrition Plan 1988-1992" (1987)	1
<b>III. Activities of the Council on Food Policy in 2007</b>	3
a. Executive Order No. 13 Issued	
b. Council Members Appointed	
c. Agriculture and Markets to Chair Council	
d. First Meeting of the Council	
e. "Key Issue Areas" Identified by Council	
<b>IV. Activities Proposed for the Council on Food Policy in 2008</b>	9
 <b>Appendix</b>	
A. Executive Order No13: Establishing the New York State Council on Food Policy; Governor's Press Release: Governor Signs Executive Order Creating Council On Food Policy	
B. Updated "Recommendations" from "Five Year Food & Nutrition Plan 1988-1992" (1987)	
C. Updated data tables from "Five Year Food & Nutrition Plan 1988-1992" (1987)	

Enclosed: New York State Council on Food and Nutrition Policy: "Five Year Food & Nutrition  
Plan 1988-1992" (1987)

# NEW YORK STATE COUNCIL ON FOOD POLICY

December 1, 2007

## I. Introduction

Governor Eliot Spitzer created the New York State Council on Food Policy by Executive Order No. 13 that was delivered on May 18, 2007 (Appendix A). In this document, Governor Spitzer specifies that:

5. The Council shall: (a) develop and recommend a food policy for the State which recognizes that it is in the best interests of the State to ensure the availability of an adequate supply of affordable, fresh, nutritious food to its residents; (b) develop and recommend State policies to expand agricultural production, including locally-grown and organically-grown food; (c) develop and recommend a strategic plan for implementation of the State food policy, including benchmarks and criteria for measuring progress in achieving State food policy objectives; and (d) offer comments on State regulations, legislation and budget proposals in the area of food policy, to ensure a coordinated and comprehensive inter-agency approach to food policy issues.

The ensuing report is in response to directives of Executive Order No. 13 that mandating, among other things, that:

6. The Council shall issue a written report on the first day of December each year on: (a) the activities of the Council during the preceding year; (b) recommended food policies for the State; (c) recommended changes to the strategic plan; (d) an account of the progress made in achieving the goals of the Council; and (e) actions which are necessary to implement the recommendations of the Council and effectuate the purposes of this Order.

## II. History: 1984 New York State Council on Food and Nutrition Policy

Based on the *New York State Five Year Food and Nutrition Plan 1988-1992 (1987)*

In 1984 evidence indicated that a substantial number of New Yorkers were "neither adequately fed nor nourished... despite state and federal initiatives to

improve peoples' access to an adequate diet and promote public understanding of ... good nutrition". At that time Governor Mario Cuomo established the New York State Council on Food and Nutrition Policy "to address and access this problem, and to propose ways to correct it" in the form of a Five-Year Plan. Seven heads of state agencies involved in food and nutrition programs were appointed by the Governor with the Commissioner of Health serving as Chairperson. A twenty-two member advisory committee to the Council included representatives from agricultural, nutrition, food production and consumer interests.

The four purposes for the plan were to:

- 1) Promote good health and prevent food and diet-related diseases;
- 2) Alleviate and ultimately prevent hunger through increased access to food and resources;
- 3) Support food production in NYS while preserving environmental resources and jobs; and
- 4) Promote the development and economic viability of the state's food processing, marketing, and distribution industries.

In 1987, after reviewing available data, evaluating existing state programs and soliciting comments from interested parties at public meetings, the Council on Food and Nutrition Policy produced the *New York State Five Year Food and Nutrition Plan 1988-1992*. The basic goal of the recommended Food and Nutrition Policy as outlined in the *Plan* was "not only to provide adequate nutrition in an accessible and affordable manner, but to strive to achieve efficient growth in agricultural production, job generation, food security and expanded markets for goods".

As stated in the document, the 1984 Council on Food and Nutrition Policy concluded that:

- Nutrition programs are failing, often to a very significant degree, to reach or meet all the needs of their target population;

- New York State should press federal officials for more money and more state control of these initiatives; and
- Further erosion of New York's agricultural industry would not be in the state's interest if it is to achieve its goal of nutritional adequacy for all its citizens.

To correct the inadequacies found; to promote new initiatives; and to improve effectiveness of programs, twenty recommendations were proposed for food and nutrition policy in New York State. A comprehensive set of goals, objectives and recommended actions followed. A recap of the "Recommendations" from the *New York State Five Year Food and Nutrition Plan 1988-1992* with current (2007) status reports from the respective state agencies that the original recommendation was directed to is located in Appendix B.

Data tables from the *New York State Five Year Food and Nutrition Plan 1988-1992* have been updated with recent data results to parallel the 1987 data. When available, new programs and /or relevant data have been included that illustrates the state's response to meet a specific demand in the food and nutrition arena (Appendix C).

### III. Activities of the New York State Council on Food Policy in 2007

**A. Executive Order No. 13 Issued** On May 20, 2007, Governor Eliot Spitzer issued Executive Order No. 13 announcing the creation of the Council on Food Policy (Appendix A). At that time, Governor Spitzer said:

"Ensuring that all New Yorkers have access to safe, fresh and nutritious food is a top priority that the Council on Food Policy will be addressing head-on" ... and that ... "The Council will bring the public, producers and government together to explore ways in which we can improve our existing food production and delivery systems, expand capacity, and in particular, address the critical needs of children and low-income New Yorkers. Additionally, by expanding the sale of locally grown products, we can help struggling farmers, and expand the local agriculture and state economy."



In Executive Order No. 13, Governor Spitzer recognizes that hunger in New York is a serious problem and further, that access to affordable, fresh, nutritious food, including fresh fruit and vegetables, especially for children, is a serious problem facing many families. Food insecurity is defined by USDA as a condition that arises from lack of money and other resources to acquire food. Research supports the link between food insecurity and health, nutrition and children's development. It is further noted that one in five low-income households buy no fruits or vegetables (fresh or processed) on a weekly basis (USDA 2005, ERR-29. USDA Agriculture Info Bulletin 792-5 2004). According to The Food Bank Association of New York State, approximately 2.1 million New Yorkers currently utilize Emergency Feeding Programs (EFP) to meet their food security need.

**B. Council Members Appointed** After a thorough consideration of the great number of qualified candidates drawn from state, local, private and non-profit entities interested in serving on the Council on Food Policy, Governor Spitzer appointed the members of the Council on September 19, 2007 (Governor's Press Release/0919072). At that time Governor Spitzer said: "The members of this Council will bring new and diverse expertise to this important policy area." The Council has been designed so that advocates and representatives from all areas of food system are embedded in the structure of the Council proper. This structure is significant in that it affords uninterrupted opportunities for not just comprehensive inter-agency collaborative efforts but system wide collaboration efforts.

Council members include State agency heads from the Department of Agriculture and Markets; Department of Health; Office of Temporary and Disability Assistance; Department of Economic Development; Office for the Aging; State Education Department; and the Consumer Production Board. The Council will also benefit from the expertise and insight contributed by the Dean of the New York State College of Agriculture and Life Sciences at Cornell University; an anti-

hunger advocate; two food assistance organization representatives; a nutritionist; a school food administrator; a farm organization; and three representatives from the food industry (producers, distributors, processors, retailers) one of which is involved in organic production; and members with food policy related experience recommended by the Majority and Minority Leaders from both houses of the Legislature.

**C. Agriculture and Markets to Chair** The Commissioner of Agriculture and Markets serves as the Chairperson of the New York State Council on Food Policy. Governor Spitzer recognizes that agriculture is a critically important industry to the State of New York and that there are significant environmental, health and economic benefits to the State and its residents from expanding agricultural production, including locally-grown and organically-grown food ([Governor's Press Release/0919072](#)).

The mission of the New York State Department of Agriculture and Markets is to foster a competitive food and agriculture industry that benefits producers and consumers alike. Agriculture makes up one-quarter of the State's land area and contributes immensely to the quality of life in New York State by generating economic activity and producing wholesome products to nourish our families. The Department works diligently to promote a viable agricultural industry, foster agricultural environmental stewardship, and safeguard our food supply (<http://www.agmkt.state.ny.us/TheDepartment.html>).

**D. First Meeting of the Council** The first meeting of the New York State Council on Food Policy was held on Monday, October 15, 2007 from 10:00 a.m. to 2:00 p.m. in Room 250 of the New York State Capitol Building. This meeting was open to the public.

After introductions and reviewing the objectives of the Governor's Executive Order No. 13, the Council members heard short presentations about New York

State demographics and the variety of federal and state food and nutrition programs currently in place. Presentations were delivered from representatives from the NYS Education Department, Department of Health, Office of Temporary and Disability Assistance, Office for the Aging, Department of Agriculture and Markets, Food Bank of NYS and Smart Growth.

Approximately twenty-five members of the public were in attendance. During an open-microphone session members of the public shared their comments and concerns with the Council members. The Council also received, and continues to receive public comments in writing.

In the afternoon, Council members shared what they believed to be some of the key issue areas to explore more in depth over the coming year. From these comments and subsequent statements from the Council members, a document was produced that outlined the "Key Issue Areas" that the Council members plan to explore in the next year. Health concerns, such as the need to combat diet-related diseases such as obesity, diabetes and heart disease strongly influence all priorities and actions proposed. Ultimately, the Council members agreed to seek avenues where collaboration can be maximized to meet the expressed needs of our communities and our State.

**E. Key Issue Areas Identified** The Council on Food Policy is charged with developing a food policy for the State to ensure an adequate supply of affordable, fresh, nutritious food to its residents and to expand agricultural production, including locally-grown and organically-grown food. While New York farmers produce an abundance of milk and dairy products, vegetables, fruits, meat and poultry products; and New York State offers a vast array of food assistance programs, some of our most vulnerable residents have little or no access to fresh, affordable, nutritious food. At the same time, some food assistance programs are not meeting their full potential and local farmers are having difficulty marketing their goods.

The recurring Key Issue Areas emerging from the October 15, 2007 Council meeting and follow-up statements from the Council members fall under four broad categories. These categories are as follows:

- 1) Maximize participation in food and nutrition assistance programs;
- 2) Strengthen the connection between local food products and consumers;
- 3) Support efficient and profitable agricultural food production and food retail infrastructure; and
- 4) Increase consumer awareness healthy eating and improve access to safe and nutritious food.

Council members identified a number of specific priorities to be explored within each Key Issue Area as described below.

**1) Maximize participation in food and nutrition assistance programs**

- a) Increase education about assistance programs and benefits using traditional and non-traditional outreach strategies such as in job placement offices, places of worship, schools, drug stores, and farmer's markets;
- b) Encourage increased collaboration among State agencies administering the programs by co-enrolling participants for benefits and/or making enrollment more user friendly;
- c) Create incentives to purchase nutritious food with food stamps;
- d) Explore options for ensuring that food assistance programs have adequate quality and stable quantities of resources needed to meet demands;
- e) Increase number of markets / outlets that are capable of receiving food stamps; and
- f) Perform an assessment of methods to ease program participation in food and nutrition assistance programs and identify strategies to address the challenges.

**2) Strengthen the connection between local food products and consumers**

- a) Support initiatives in schools for healthy food choices: look to change consumption behavior of youth as well as introduce youth to food system dynamics (explore potential to incorporate farm and/or food related topics and experiences in curriculum);
- b) Create avenues for local farmers to produce for state institutions and other food service programs (schools, universities, nursing homes);
- c) Address volume requirements on buying- promote aggregate selling / buying of produce;
- d) Research the feasibility of expanding local / community food security initiatives to the state level (such as examples taken from "Regional Community Food Projects", farmer's market incentives, Veggie Vans, CSAs and wholesale markets); and
- e) Consider culture, age and geographic region of all consumers to best serve their needs.

**3) Support efficient and profitable agricultural food production and food retail infrastructure**

- a) Encourage local products procurement preference when possible;
- b) Foster partnerships with grocers to drive local preference;
- c) Improve marketing, promotion of nutritious products- research models of market development and behavioral economics;
- d) Perform an assessment of obstacles and methods for easing business development in NY;
- e) Address obstacles of marketing retail food products in target areas (urban and rural) such as transportation / delivery issues and lack of access to grocery stores / supermarkets
- f) Explore possibilities to increase regional food processing infrastructure; and
- g) Seek opportunities to maximize utilization of incubator programs and cooperatives.

**4) Increase consumer awareness and knowledge about healthy eating; and improve access to safe and nutritious foods**

- a) Increase awareness of obesity and diet related diseases- focus on professionally recommended, data-driven prevention initiatives;
- b) Increase consumer awareness of food ingredients, nutritional value, processing and allergens through labeling and other forms of consumer outreach;
- c) Provide farmer / producer education opportunities about "best practices"; and
- d) Continue to educate consumers of where their food comes from and nutritional value thereof.

**IV. Activities Proposed for the New York State Council on Food Policy in 2008**

**Plan for Year 2008** The Council members have acknowledged the importance of implementing evidence-based best practices that will obtain measurable results. The Council members are also highly sensitive to the value of stakeholder input to gain accurate statewide perspectives on the issues. Therefore, in order to adequately assess the "Key Issue Areas" outlined, the Council members identified some supporting steps that need to be taken. Supporting steps include:

- 1) Researching successful food security initiatives, local and national, that may be applicable to New York State's agenda;
- 2) Reviewing and reconsidering the "Recommendations" from the New York State Council on Food and Nutrition Policy's *Five Year Food and Nutrition Plan 1988-1992*;
- 3) Organizing / facilitating a communication avenue for the members (such as videoconferences and a website); and

- 4) Planning a listening tour of up to six sites that embody a food-related policy area. This listening tour should begin early next year.

The next full meetings of the Council on Food Policy are to be scheduled for the Spring and Fall of 2008. During those times, the Council members will develop and solidify specific action items, benchmarks and / or recommendations for a State food policy. Throughout the year the Council members will actively explore the potential of pursuing specific priorities of the Key Issue Areas.

**AFFIDAVIT OF JOHN J. PRIVITERA  
SWORN TO JANUARY 18, 2008**

**EXHIBIT K**



Text Spitzer state of upstate speech delivered January 16 at SUNY Buffalo.

Text of January 16 Spitzer press release.

#### State of Upstate Address

Rockwell Hall  
Buffalo State College  
Buffalo, NY  
January 16, 2008

[As prepared for delivery]

To the people of Buffalo and Upstate New York, and to all my fellow New Yorkers: thank you for joining us on this historic day.

To my partners in State government—Lieutenant Governor Paterson, Speaker Shelly Silver and Leader Malcolm Smith—thank you for joining us. Let me also thank our partners who could not join us today: Leader Joe Bruno, Leader Jim Tedisco, Attorney General Andrew Cuomo and Comptroller Tom DiNapoli.

To the members of the Western New York delegation who are here—Francine DelMonte, Michael Cole, Dennis Gabryszak, Joe Giglio, James Hayes, Sam Hoyt, George Maziarz, Bill Parment, Crystal Peoples, Jack Quinn, Mary Lou Rath, Robin Schimminger, Mark Schroeder, Bill Stachowski, Antoine Thompson and Dale Volker—thank you for hosting us.

To all of our partners in local government—including our host, Mayor Byron Brown—thank you for joining us.

And to the many business leaders, labor leaders and civic leaders from across Upstate who have gathered here, thank you for all you do for your communities and for being here with us today in Buffalo.

Let us begin by recognizing our fellow New Yorkers who serve and protect us here at home and around the world.

Joining us today are four soldiers from the New York Army National Guard: Captain Matthew Ryan, Staff Sergeant Robert Waters, Sergeant Jason Wiechec and Sergeant Aaron Spallina. These soldiers serve with the 2nd Squadron, 101st Cavalry, which is based here in Buffalo. They have been deployed once before, to Iraq. Now, they are preparing to deploy to Afghanistan.

To Captain Ryan, Staff Sergeant Waters, Sergeant Wiechec and Sergeant Spallina—and to the thousands of men and women in our nation's military who are part of our New York family—you represent the very best New York has to offer. Today—and every day—we thank you for your bravery, your courage, your sacrifice and your service.

\* \* \*

I am deeply honored to stand before you this morning to deliver the first State of Upstate Address in New York's history.

The vision I will outline today is one we all share: to make Upstate New York the best place in the world to live, work, raise a family and run a business.

To realize this vision, we must focus with a singular purpose on an agenda for economic growth and opportunity. We need a world-class education system from Pre-K through graduate school. We need an affordable health care system that's available to all. We need lower taxes, strong infrastructure, great places to live, and, above all, good jobs. And, we need all of these things throughout New York—upstate and down, from Western New York to Westchester, from the Adirondacks to Long Island.

While this vision remains the same, we are here today because we recognize that the economic challenges facing Upstate are so numerous, significant, particular, and urgent that the traditional State of the State Address alone is not sufficient to hold us accountable for meeting them.

Making the State of Upstate an annual event will force us each year to monitor our progress, take stock of what remains undone, engage in a public debate about how to move forward, and, if necessary, recalibrate our efforts in response to conditions on the ground. This will create the accountability that Upstate New Yorkers demand and deserve.

That is why FDR's advice resonates so strongly. "It is common sense," he said, "to take a method and try it. If it fails, admit it frankly and try another. But above all, try something."

We all realize that many past methods have not adequately met the challenges before us. We know this because we continue to see our young people leaving for opportunity someplace else.

That is why we must talk plainly about the hurdles that stand in our way and why we need real cooperation to make the tough choices to move forward.

Yet, as daunting as the challenge may seem, I have reason for hope, because we still have our strongest competitive advantage: our people. I know it because I've seen it.

Almost one year ago, the snow began falling in Oswego County, and it didn't stop. It didn't stop the following day, or even the day after that. Seven days later, the region was buried under nearly 10 feet of snow.

At a break in the storm, Senator Schumer and I traveled to the town of Parish to monitor the progress of relief efforts.

There I met plow operators who worked 16-hour days clearing the roads and then—the moment they finished their double shift—went back outside to dig out their neighbors.

I met volunteer firefighters who worked non-stop, rescuing those who were stranded, and opening their fire halls to those who lost heat.

And I met hundreds of ordinary New Yorkers who spent long hours helping their neighbors clear their roofs and their driveways; who walked through the streets giving a push to motorists stuck in the snow; who checked in on the elderly to make sure they had enough food.

The way the people of Oswego County responded was watched and admired by the entire nation.

But when I offered words of praise for their remarkable community spirit, they said: "That's the way it always is. When there's a storm, everyone pitches in to help."

The storm we face today is not natural; it is economic. But if we put that same strength, that same resiliency, and that same community-mindedness to work—if we summon the will to work together to achieve the reforms and make the investments I will lay out today—we can overcome this storm and return growth and prosperity to Upstate New York. We can make Upstate open for business; we can attract young people and keep them here; and we can truly become the best place in the world to live, work, raise a family and start a business.

That is our vision. Now, this is our agenda.

#### Our Strategy

Our first year was about laying the foundation for growth.

Our second year will be about building on that foundation with a major infusion of strategic funding and programmatic initiatives to revitalize Upstate.

First, let me discuss the foundation we laid last year.

Our foundation consisted of four major components:

First, broad-based reforms to make Upstate more competitive by lowering the cost of doing business and lowering taxes;  
Second, breaking gridlock on regionally- and locally-specific projects to build the infrastructure for economic

growth;

Third, retooling State government so it is built to zero in on Upstate's unique economic challenges; and, Fourth, changing the way we approach economic development by incorporating local and regional stakeholders into everything we do.

Last year, we made progress on each of these fronts.

To lower costs, we cut workers' comp premiums by over 20 percent—a cost savings to New York businesses of \$1.2 billion dollars. We also held the line on taxes. In fact, we actually cut taxes—reducing business taxes and providing additional property tax relief to middle-class New Yorkers.

To break gridlock on key projects, we implemented "City by City" plans focused on jump-starting important projects in our Upstate cities. As a result, projects like Buffalo's waterfront, the Connective Corridor in Syracuse and the Midtown Plaza redevelopment in Rochester are now moving forward.

To retool government to zero in on Upstate's unique challenges, we created a powerful economic development agency focused squarely on the needs of Upstate—and put its headquarters right here in Buffalo, with regional offices throughout Upstate.

Upstate ESDC is already responsible for securing private-sector pledges to create 8,000 new jobs and preserve 24,000 jobs all across Upstate.

Five hundred new jobs from Carestream Health that we brought to Rochester. 300 new R&D jobs at Corning. 500 new GE Energy jobs that will re-establish Schenectady as a GE headquarters. 289 jobs at Bitzer Scroll in East Syracuse. In Western New York, 500 jobs at Data Listing Services in Cattaraugus County.

And just yesterday, at the northeastern corner of our state—where New York, Vermont and Canada intersect—we announced that Akrimax Pharmaceuticals, with our assistance, purchased the Wyeth plant in Rouses Point, preserving 1,200 jobs in the North Country.

To incorporate local input, we held Regional Blueprint Meetings in every Upstate region. Dan Gundersen, our chair of Upstate ESDC, put 35,000 miles on his Jeep last year alone visiting every Upstate county. Everywhere Dan stopped, he sat down for an audience with the best economic development consultants of all: local business leaders, who know their economies best, but whose views were rarely engaged in the past.

Of everything we did last year, I believe this was the most important.

Why? Because government money and government programs alone cannot turn our economy around. There must be a true partnership between government and the private sector. That's because, in the end, it's the people on the ground who must translate this funding and these programs into economic growth.

In sum, now that we have begun to lower the costs of doing business; now that we have broken gridlock on key projects; now that we have created an entire agency devoted to the task of bringing Upstate back; and now that we have incorporated the advice of hundreds of Upstate New Yorkers into our strategy, we are ready to take the next step.

We are ready to build upon this foundation with a major infusion of funding and programmatic initiatives to revitalize the Upstate economy.

#### The \$1 Billion Upstate Revitalization Fund

That is why, in my Executive Budget, I will propose a \$1 billion Upstate Revitalization Fund.

In my State of the State Address last week, I sketched out this concept in broad strokes. Today, I would like to describe what I mean in greater detail.

#### \$350 million Regional Blueprint Fund

A few moments ago, I talked about the Regional Blueprint Meetings that Dan Gundersen held in every region—and how, on these trips, he sat down with the regional stakeholders who know the Upstate economy best.

The result of that outreach is the first component of our proposed \$1 billion Fund: the \$350 million Regional

Blueprint Fund.

Everything in this fund flows from the conversations we had on the ground. Let me give you some examples.

In every single Regional Blueprint session, we heard that our infrastructure for economic development is inadequate. We heard that, in many cases, the problem is not that businesses don't want to locate here; the problem is that there are often no suitable sites where they can locate.

For example, of the 960,000 acres that make up Herkimer County, only 50 of those 960,000 million acres are truly development-ready.

We cannot create the jobs our communities need until we create the development-ready sites our businesses need. So, working together, that is what we must do.

Our proposed \$350 million Regional Blueprint Fund will contain a significant amount of capital for the construction of development-ready sites and industrial parks, and for bringing existing sites up to the standards businesses are seeking today. That means everything from water, sewer and drainage systems; clearing and site development costs; and even support for planning and engineering.

These dollars could support pivotal projects like the completion of the Marcy Nanotech site in the Mohawk Valley—a cutting-edge technology park championed by Assemblywoman RoAnn Destito that is poised for growth but lacks the financial resources to move to development-ready status.

To fully address the shortage of development-ready land Upstate, we must also face the hard reality that New York's Brownfields cleanup program is failing.

This program was enacted in 2003 to provide incentives to remediate contaminated land for new development. However, the program's formula is broken, and—as a result—it too often provides massive taxpayer subsidies for development that would have happened anyway. For example, we don't need to be using millions of taxpayer dollars to underwrite a luxury condominium project in Westchester while 3,000 acres of brownfields in Rochester await investment.

Therefore, this year, we will submit new and improved legislation to reform our Brownfields program so it can fulfill its original purpose of creating development-ready sites where they are needed most, while also protecting our environment.

On our trips Upstate, we also learned of another major need: we learned that small businesses often lack the capital they need to expand, innovate and thrive.

Don't forget: Kodak, GE and IBM were all once small businesses in Upstate New York. But today, the future Kodaks, GEs and IBMs of Upstate tell us that they cannot grow here because New York doesn't have investment programs to help small companies—while other states do.

We must change that. As Assemblyman Joe Morelle points out, we must provide small businesses with the programs and tools that can result in large-scale job creation down the road.

That is why our proposed \$350 million Regional Blueprint Fund will include the nation's best small business loan programs for machinery, equipment, real estate and other needs. Our small businesses deserve the best opportunities in America—and we propose to give them just that.

On our trips, we also learned about what must be done to strengthen the Innovation Economy Upstate.

We made significant progress on this front in our first year. Thanks, in large part, to the efforts of Lieutenant Governor David Paterson, we enacted the Stem Cell Research Fund. Not only is stem cell research a moral imperative, it is also an engine for creating jobs.

Just last week, the first round of stem cell grants were released, making New York's fund the fastest in the country to go from green light to grant-making. And our Upstate research institutions were major beneficiaries—receiving a total of over \$2.4 million dollars in research funding. Here in Buffalo, UB received a \$600,000 dollar grant, and Roswell Park received \$420,000 dollars. In Rochester, the U of R Medical School received a \$1 million dollar grant. This funding will catalyze groundbreaking medical research and job creation at the same time.

However, stem cell research is only part of the picture. New York still faces significant obstacles in its effort to adapt to the Innovation Economy.

The good news is that everywhere you turn—in our colleges and universities, in companies large and small—Upstate New Yorkers are developing groundbreaking ideas. The problem is that we lack the programs to help translate these ideas—especially from our institutions of higher education—into jobs.

Here's just one example. SUNY-Binghamton has thousands of students who are enrolled in some of the nation's most prestigious graduate programs. But when we visited, we learned that they don't have a single incubator where spin-off companies can commercialize that research and harness its potential for job creation.

That is why our proposed \$350 million Regional Blueprint Fund will finance the kind of programs, tools and facilities we need to link idea creation to job creation. Our Fund will also include a \$10 million Venture Capital Fund—a pilot program to provide seed capital tied to accountability measures for 10 to 15 small companies that have the potential to expand into major employers, much in the same way Comptroller Tom DiNapoli successfully invests part of the State Pension Fund in promising upstarts throughout New York.

These funding streams and programs will make it possible for innovative companies to grow and create jobs on a larger scale.

Finally, on our trips Upstate, we learned that too little was being done to attract international investment.

The fact that we share hundreds of miles of border with Canada, and that we are so close to Montreal and Toronto, is one of our greatest opportunities. We should be marketing Upstate aggressively in Canada—especially now, when exchange rates favor foreign investment.

That is why our Budget will include funding for new efforts that tap international markets, including the creation of a new international marketing office within Upstate ESDC. These efforts will help our Upstate communities—especially our border communities like Plattsburgh, Ogdensburg, Niagara Falls and Buffalo—realize their potential for greater international investment.

The components I just discussed—building development-ready sites, investing in small businesses, connecting innovation to job creation, and increasing our international marketing footprint—are some examples of how our proposed \$350 million Regional Blueprint Fund will address the issues many of you in this very auditorium raised with us last year.

Taken together, by meeting the needs of businesses today—from small-scale loans and venture capital for small businesses, to development-ready sites for large industries—our Regional Blueprint Fund will help Upstate New York become a magnet for innovation and job creation in the twenty-first century economy.

#### New Round of City by City Projects

But our Regional Blueprint Fund is just one piece of our proposed \$1 billion Fund.

Our effort to attract businesses here will be complemented if we can restore greater vitality to our Upstate cities—which have such incredible potential, but which need help to free themselves from a cycle of decline.

Let me take this opportunity to acknowledge three of our Upstate Mayors: Mayor Bob Duffy of Rochester, Mayor Matt Driscoll of Syracuse and Mayor Brian Stratton of Schenectady. These Mayors—and all the other hard-working Mayors who are here—are working vigorously to turn our cities around. We on the State level must do all we can to support their efforts.

To do so, this year, we announced our City by City Plans—strategies tailor-made for each city to jump-start key projects that have the potential to catalyze significant economic growth. And—from downtown Niagara Falls, to the Charles Street Business Park in Binghamton, to the Bresee's Building in Oneonta, to the Plattsburgh International Airport—we are getting these projects moving.

Today, I want to announce our latest City by City project—one that dovetails with our discussion a moment ago about translating cutting-edge research into job creation.

We are proud to announce the creation of a major research center at the University of Rochester that will spur economic growth in the region for decades. Along with Speaker Silver and our partners in the Assembly, we will commit \$50 million dollars toward the construction of a 150,000-square-foot state-of-the-art building, which will be the home of the University's Clinical and Translational Science Institute. While this facility will create 40 to 50 new research jobs immediately, we expect the real benefit to be in the long term. We expect that the world-class research that is done at CTSI will lead to significant commercial applications, and that within five years, CTSI activities will create hundreds—if not thousands—of new jobs in Rochester. Let me thank Speaker Silver and Assembly members David Gantt, Susan John, Joe Morelle and David Koon for helping to make this project a reality.

But our proposed \$1 billion dollar Fund will not only provide support for the dozens of City by City projects we have already announced. Our proposed Fund will provide full funding for a new, second round of City by City projects across Upstate—this year. Importantly, this second installment of projects will reach beyond our large Upstate cities and jump-start key projects in our smaller cities, which play such a central role in our economic future.

#### Housing Opportunity Fund

The third major component of our Fund will be \$100 million for Upstate housing and community development, which is part of our proposal to create a Housing Opportunity Fund.

Our Upstate communities have a range of housing needs. Some communities need new affordable housing. Most Upstate communities, however, need funding for housing rehabilitation.

Yet, whether we're talking about building workforce housing or rehabilitating existing housing, our investments need to be strategic. By that, I mean they must always be designed in ways that catalyze further development.

What we've done in Watertown is a good example of this strategy. Working with our partners in Congress and at the local level, Lieutenant Governor Paterson and I waged a successful campaign to bring a new maneuver enhancement brigade—1,500 new troops—to Fort Drum. We won the new brigade because we were the only State to go to the Army with a comprehensive economic development package articulating the specific steps we would take to accommodate the additional soldiers. The centerpiece of that package was \$10 million dollars in funding to ease the affordable housing crunch in Watertown.

Another example of a strategic housing investment can be found on the Near West Side of Syracuse, a project that has long been supported by Assemblyman Bill Magnarelli, where we are not only building low-income housing and lofts for the city's growing community of artists; we are connecting it to the jobs, shopping, recreation, education and cultural facilities that form the building blocks of a sustainable community.

This is the kind of model we need to replicate across Upstate, which is why our Fund contains a \$100 million Upstate housing commitment to provide significant new funding to meet all of these needs, and to build vibrant neighborhoods, and sustainable communities, for the next generation of New Yorkers. We estimate that our funding will result in about 10,000 units of new or rehabilitated housing for our Upstate communities.

#### Upstate Agribusiness Fund

I have often talked about how New York's future depends on strategic industries. Now, let me discuss one in particular that is not always discussed in the same breath as biotech, nanotech, photonics and aerospace—but it should be.

Our Upstate Revitalization Fund will infuse significant capital into our agricultural sector, which forms the bedrock of so many local economies throughout Upstate.

Last year—inspired in part by the strong voices for farmers in Albany, including the chairs of the Agriculture Committees, Assemblyman Bill Magee and Senator Catherine Young, as well as other strong advocates for our farmers, such as Senator David Valesky and Assemblyman Darrel Aubertine—we fundamentally changed the way New York approaches agricultural policy.

For years, agriculture was seen as a dying industry. That has changed. Today, agriculture not only matters to us—we are looking to it to become one of the main forces behind Upstate's economic revitalization.

This year, our budget will infuse new capital into our agricultural sector with a \$50 million Upstate Agribusiness Fund. Investments will support access to markets; new and expanded food processing centers; and development of alternative fuels like the innovative efforts at the Fulton ethanol plant.

To implement this new Agribusiness Fund, we will hire New York's first Director of Agriculture Development. With these efforts, we believe the "Pride of New York" logo can become the most recognized symbol of food quality in the world.

And this is only the beginning.

In 2008, we will break ground on the Pride of New York Wholesale Farmers' Market in New York City to connect Upstate growers with Downstate consumers. And we will continue to support research at Morrisville College, the Geneva Experiment Station and Cornell University—efforts to which Assemblywoman Barbara Lifton has contributed so much.

Agriculture is not just an important part of our economy—it's a way of life in our communities. By supporting our farmers, by giving them the tools they need to access new markets, we will preserve this way of life in New York, and leave stronger farms—and a stronger state—to our children and grandchildren.

#### Universal Broadband

We must also address another critically important issue for New Yorkers in rural areas—the lack of access to broadband.

It is unacceptable that only 25 percent of New Yorkers who live in rural areas have access to affordable, high-speed broadband Internet. And the lack of broadband access is an equally serious problem in our inner cities. In a digital age, businesses, families and individuals who lack broadband access find their economic and educational opportunities limited.

Our proposed Fund will respond to this need by tripling State investment in our universal broadband effort to \$15 million. This investment will move us closer to the day when we can close the digital divide in New York and offer everyone in our rural areas, and inner cities, access to high speed, affordable broadband Internet.

#### Transportation

And just as affordable, high-speed Internet has now become a critical component of infrastructure in the Innovation Economy, we must continue to invest in our traditional infrastructure—our roads, bridges and highways. That is why our Fund will include \$100 million to support critical maintenance of the Upstate network of State and local bridges.

#### Parks

Finally, our proposed \$1 billion Fund will include a significant investment in New York's State Parks—a major asset when it comes to attracting business.

However, for New York, this tool is not what it should be because, over the years, our parks have fallen into disrepair. That is why our proposed Fund will include \$80 million dollars—out of \$100 million dollars in statewide funding—to restore Upstate's parks.

As the centerpiece of our restoration, we will return Niagara Falls State Park, the oldest state park in the nation, to its former glory—a goal that has long been championed by Assemblywoman Francine DelMonte. And as part of our \$5.5 million dollar restoration for the park, we propose to rebuild and fully reopen the Goat Island Bridge; so thousands more visitors can experience the unspoiled natural wonder of the American side of Niagara Falls.

Those are the major elements of our proposed \$1 billion Fund.

While I realize that this is a large amount of money in tough fiscal times, I also know that it's at these very moments when investment matters most; when the urgency is so great that we simply cannot afford to wait.

These are not piecemeal programs or halfway investments. Rather, these are the programs and investments that came out of the hundreds of conversations we had with regional stakeholders over the past year. Simply put, this

is the funding, and these are the programs, you told us that you need to create good jobs in your communities.

And just as we developed this Fund together, now, let us work together to pass it.

I look forward to working with Economic Development Committee chairs Robin Schimminger and James Alesi in that spirit.

#### Reducing New York's High Costs

However, even if we are successful, we must continue our efforts to address New York's "perfect storm of unaffordability." To return growth and prosperity to New York—to make our state the best place to live, work, raise a family and start a business—we must hold the line on costs for both families and businesses.

Last year, we made progress.

Working with our partners in the Legislature, and in the business and labor communities, we finally addressed our broken workers' compensation system and unlocked \$1.2 billion in savings for New York's businesses.

This year, we will continue realizing those savings, but we will also work more aggressively to lower taxes and energy costs.

#### No New Taxes

Lowering costs does not end with the issue of taxes, but it certainly begins there.

Last year, we held the line. We promised no new taxes, and we delivered no new taxes. In fact, we went one better and cut business taxes.

This year—despite the considerable fiscal challenges we face—we can hold the line again. I intend to submit a budget that makes tough choices. But it will protect the critical services of the State, make the investments we need for growth, and it will not raise taxes.

#### Reducing Property Taxes

This year, however, we will go even further. We will finally get real about our property tax crisis.

Last year, we enacted historic property tax relief, and we targeted it to the middle-class taxpayers who needed it most. This year, we will commit to another round of rebates and again target those rebates to the New Yorkers who need them most.

We will also continue working with local governments to streamline the 4,200 taxing jurisdictions across the state. My Commission on Local Government Efficiency and Competitiveness—led by our former Lieutenant Governor and Mayor of Jamestown, Stan Lundine—has already advanced 150 locally-generated proposals. For the first time, these proposals were advanced from the ground level up, instead of imposed down from Albany—giving us real hope that consolidation and shared services will become a reality. And in April, this Commission will release their final report.

Yet, for all our efforts, property taxes just keep going up. We've heard the message loud and clear from all New Yorkers. And, as I said last week, we will take action.

That is why I will create a bipartisan commission, with Moreland Act powers, to examine the root causes of high property taxes; identify ways to make our relief system fairer; and develop a fair and effective school property tax cap to hold the line on property taxes once and for all—a mechanism that will not only relieve the burden on our working families, but on businesses as well.

#### Reducing Energy Costs

We must also do what we can to lower Upstate's energy costs.

In the State of the State, I announced that we will once again introduce new legislation to fast-track the building of cleaner power plants to get more power into the grid. Today, I would like to announce legislation on an issue



especially critical to Upstate revitalization: low-cost power.

Last year, we passed a one-year extender for the State's Power for Jobs and Energy Cost Savings Benefit programs, which provide discounted power to over 500 companies that employ more than 300,000 people across the State.

This year, we will submit legislation to provide those companies—especially energy-intensive businesses throughout the State—the additional certainty necessary to allow them to grow and invest.

The legislation will provide an opportunity for eligible companies to receive contracts up to 7 years in length, so that such businesses and even new businesses will be able to count on lower electricity rates for years to come. We will also reform the system to build in stronger job and investment criteria, and reach our goal of reducing our electricity consumption 15 percent by 2015.

#### Making our Higher Education System an Economic Engine for Growth

As we continue reducing costs, we must make sure our education system—from Pre-K through graduate school—is second to none. Education is an essential building block for keeping Upstate open for business and attracting and retaining our young people. Human capital is the currency of the Innovation Economy and our people and businesses cannot thrive without a world-class education system.

Last year, we made a historic commitment to Pre-K through 12 education. Our formula was simple: investment plus accountability equals excellence. As a result of the commitment we made together with our partners in the Legislature, more children are spending more time in the classroom than ever before. They're learning in smaller classes than ever before. And they're learning from teachers who are starting to get the training and support they need.

Because of the Contracts for Excellence, in Buffalo's 16 most struggling schools, students will spend an extra hour in class each day and an extra 20 days over the school year. That does not just mean more time; it means more quality time, because each school has shrunk their class sizes to just 10 students for those who are furthest behind.

This year, we will implement the next phase of our accountability agenda. But, as we do, we must also set our higher education system on a similar path.

The good news is, we already have a roadmap, one that will only improve as the Legislature and the public have a chance to weigh in.

As the Commission on Higher Education recommended, over the next five years, we need to hire 2,000 more full-time faculty members for SUNY and CUNY, create an Innovation Fund for cutting-edge research at New York's public and private colleges and re-think the way we use and invest in our community colleges.

We know what these investments can mean because we already know how important our colleges and universities are to our Upstate communities.

Our host today, Buffalo State College, epitomizes that connection—educating the vast majority of teachers in Buffalo.

Nearby, at UB, our multi-year commitment to UB's "2020" expansion plan will serve as a model for integrating our SUNY system with our downtowns. We estimate that UB's full expansion will pump an extra \$1 billion into the economy of Western New York each year.

In our State of the State, we talked about what this could mean for revitalizing Buffalo. Just yesterday, we saw some early evidence.

As part of our second round of RESTORE New York grants—which were created because of the leadership of Speaker Silver and the Assembly—we announced a major renovation project at the former Trico factory adjacent to UB's downtown campus. We will provide \$4.5 million dollars to transform part of a former windshield wiper factory into office and lab space for growing biotech companies. What could be a better metaphor than this for Buffalo's transition to the Innovation Economy?

At Geneseo State, new full-time faculty will allow that school to continue its march toward national pre-eminence in liberal arts education, and continue combating the brain drain, as it was recently named the best educational value for out-of-state students in the nation.

And an Innovation Fund can have a tremendous effect on our colleges, our communities and our SUNY faculty. Supercharging the cutting-edge research that is happening at places like Albany Nanotech will supercharge our economy. With the help of Senator Tom Libous and others in the Legislature, these investments can propel research universities like SUNY-Binghamton to new heights. And I know how important our private colleges and universities are as well, which is why we are making investments like the one I just announced at the University of Rochester.

We also cannot overlook the power of a strong community college system. Look at Jefferson Community College in the North Country, where military personnel stationed at Fort Drum and their families make up 30 percent of the student body. Or look at schools like Monroe Community College, which is a regional leader in workforce training.

Of course, none of these investments will be possible without figuring out a way to pay for them, which is why I propose unlocking some of the value in our Lottery system to create a \$4 billion Higher Education Endowment. This will create a stable, long-term revenue stream—about \$200 million per year—that will fuel excellence in our higher education system for generations to come.

No one has more at stake in seeing this plan through than Upstate New York, which has more colleges and universities per capita than anywhere in the country. Together, we must transform our higher education system into an economic engine that will power growth throughout all of Upstate.

#### Building Livable Communities

Let me conclude this agenda by talking about the importance of building livable communities, because—while low costs, strong infrastructure and a world-class higher education system will attract businesses and people to Upstate New York—livable communities are what will keep them here.

I have already touched on the need for more housing and better schools, but our comprehensive approach also includes historic aid to our most distressed communities; a focused strategy to reduce crime; making sure every rural town and inner city has access to a family doctor; and ensuring that, as we grow, we protect our environment for future generations.

#### Increasing Aid to Distressed Communities

Last year, we made a four-year commitment to increase local aid by \$200 million to our most distressed cities and towns through the Aid and Incentives to Municipalities program.

We know this aid works, especially when it's tied to the accountability measures we implemented last year. For example, the AIM increase received by the City of Niagara Falls helped it actually cut property taxes by almost \$1 million—over 3 percent from the previous year.

I know there have been whispers that, because of the fiscal storm clouds overhead, we will pull back on our AIM commitment. Let me put those rumors to rest even ahead of our Executive Budget. Six days from now, I will propose a budget that delivers \$50 million more in AIM funding to our most economically struggling cities and towns than was included in last year's budget.

#### Reducing Crime

Besides affordability, the single most important building block for livable communities is public safety. While overall crime is down Upstate, too many of our Upstate cities are struggling with pockets of violence.

Last year, to address the communities that were hardest hit, we invested in Operation IMPACT, which provided grants to local law enforcement officials to implement state-of-the-art crimefighting tools.

In my State of the State Address, I announced that this year we will match that data with the redeployment of 200 State Troopers to those areas experiencing the most intense violence.

But I did not mention another initiative that will be especially meaningful Upstate. As we support local law enforcement through Operation IMPACT, and increase the number of police on the streets through trooper redeployment, we will also build new Crime Analysis Centers. These facilities will include a comprehensive array of world-class crime fighting tools that we can bring to bear in our Upstate cities.

My Executive Budget will include funding to open Crime Analysis Centers in Buffalo, Rochester, Syracuse and Albany this year.

#### Access to a Family Doctor

Building strong, livable communities also means increasing access to health care.

In my State of the State Address, I proposed the creation of "Doctors Across New York," which will offer grants to help repay education loans and provide other ways to encourage and assist doctors to move to our state's medically underserved areas.

From Franklin County in the North Country to Wyoming County in Western New York, this new initiative will improve health care for thousands of New Yorkers who live in our rural communities and inner cities.

#### Protecting the Environment

We also must do all we can to protect Upstate's environment, so we can pass on cleaner air, cleaner water and beautiful landscapes to our children and grandchildren.

When it comes to the environment, there are so many priorities, so let me just outline one. In recent years, many New Yorkers near the Great Lakes have been troubled to hear that water levels have been dropping. This poses a threat to shipping, to our fisheries, and to our ecosystems—in other words, to the economy and quality of life in Great Lakes communities.

That's why, today, I call upon the Legislature to pass the Great Lakes Compact, so we can join a multi-state effort to regulate water levels and maintain a strong, sustainable Great Lakes ecosystem and economy.

#### The "I Live New York" Initiative

No discussion of building livable communities could be complete without talking about the "I Live New York" Initiative, which focuses on attracting and retaining the next generation of New Yorkers.

This year, with Silda's leadership, we convened a remarkably successful summit in Cortland that attracted 600 New Yorkers. Next month, based on the ideas that were shared at the summit, the first-ever "I Live New York Report" will be published. This report will take the ideas from the Summit and translate them into real change.

We are also proud to announce that, next year, the second I Live New York Summit will be held on September 16th right here in Buffalo—which, incidentally, is the birthplace of brainstorming. That's right—the inventor of the concept known as "brainstorming," Alex Osborn, lived and worked right here in Buffalo, New York.

To build on that legacy, this year, Silda will convene the first-of-its-kind Young Leaders Congress. The Young Leaders Congress will enable young New Yorkers themselves to play a central role in our effort to attract and retain the next generation—and build lasting vitality in our Upstate communities.

\* \* \*

So that is our agenda for bringing back Upstate, and for making it—like all New York—the best place in the world to live, work, raise a family and run a business.

Our agenda is centered on a \$1 billion infusion of funding and programs targeted to our greatest needs; on lowering the cost of doing business; on a higher education system that will be a major engine of Upstate economic growth; and on a comprehensive effort to build livable communities, so we can not only attract the next generation of companies, jobs and entrepreneurs—we can keep them here.

Join me in good faith and I will meet you with an open hand, an open door and open mind. For we will realize this opportunity only if we work together in a spirit of cooperation.

\* \* \*

Now, ever since we announced we were doing this speech, some people have said to us: "You always talk about how we are One New York: one state, with one future. Doesn't a speech focusing only on one part of the State run counter to the very idea of One New York?"

It's a fair question. But the answer should be clear.

We are not giving this speech in spite of the fact that we're one state with one future.

We're giving this speech—and we've put the concerns of Upstate front and center on the agenda—precisely because we are one state with one future.

We are One New York, and we rise and fall together. When part of our State is struggling, it affects all of us. Because when a young family leaves the State, everyone has to pay for the cost of decline—the higher taxes, increased health care costs and shrinking national voice in Washington.

The truth is that we will never grow again; we will never prosper again; we will never become a beacon of hope and opportunity again if part of our state is thriving and another part is falling behind. So we must come together and channel all of the passion, energy and determination that is within us toward one goal: restoring growth and prosperity to Upstate New York.

We need only look to our own history for an example of success in a similar endeavor.

It was just a few short decades ago—in the late 1970s—when New York City was in crisis. Its social fabric was torn; its economy was in trouble; it was all but bankrupt; and it was desperate for help.

Yet when the people of New York City asked for help, the people of Upstate did not look the other way. Rather, you said to the people of New York City: "Your struggles are our struggles. Your future is our future. When there's a storm, everyone pitches in to help. So tell us what we can do." And working together, we did what many thought was impossible; we brought New York City back to life.

We are here today because we know it is time—indeed, it is long past time—to do the same for Upstate. To create jobs; to build livable, sustainable communities; and to attract and retain the next generation of New Yorkers who will call Upstate home. And just as we did back then, we will do it by working together. Because we must have your buy-in, your best efforts, your grit and your will if we are to succeed.

That is the spirit behind today's speech. And that is the vision that will guide us until the job is done.

Thank you.

[\[Back to Top\]](#)