

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

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**REPLY AFFIDAVIT**

Agency File: E2007-041

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF ALBANY            )

**John J. Privitera**, being duly sworn, deposes and states as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a principal with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for respondent Lewis Family Farm, Inc. (hereafter "Lewis Family Farm"). As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I make this reply affidavit in further support of the Lewis Family Farm's request for dismissal of this enforcement proceeding and annulment of the cease and desist order.

3. On January 9, 2008, I requested an opinion on behalf of the Lewis Family Farm pursuant to the Right to Farm Law, Section 308(4) of the Agriculture and Markets Law, as to whether the Lewis Family Farm's construction of farm employee housing at issue in this proceeding is "agricultural in nature."

4. On February 1, 2008, Commissioner Patrick Hooker of the Department of Agriculture and Markets issued a formal written opinion pursuant to Section 308(4) of the Agriculture and Markets Law whereby he conclusively determined that the Lewis Family Farm's use of land for the employee houses at issue in this case is undoubtedly agriculture in nature. A

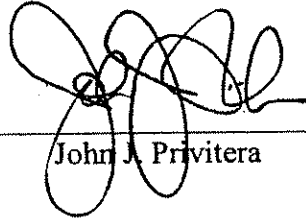
copy of Commissioner Hooker's February 1, 2008 Opinion Letter is attached hereto as **Exhibit "A"**.

5. New York State provides a real property tax exemption for certain agricultural buildings. Form RP-483 of the New York State Board of Real Property Services is a tax exemption application for agricultural structures that a farm owner files with her local assessor. The official Instructions (Form RP-483-Ins) specifically provide that "[t]he exemption applies to buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in farming operations." A copy of Form RP-483-Ins, which is referenced in Commissioner Hooker's November 26, 2007 letter to Chairman Stiles (Privitera Aff., Ex. B; Staff's Reply Aff., Ex. A), is attached hereto as **Exhibit "B"**. This reference to "immediate families" is the precise phrase in the Adirondack Park Agency Act that excludes farm worker housing from the intensity guidelines. NY Exec. Law § 805(50).

6. On January 24, 2008, pursuant to an oral request under the Freedom of Information Law, the Town of Essex Code Enforcement Officer provided a copy of the Town of Essex Land Use Map – Zoning Districts, whereby it appears that the portion of the Lewis Family Farm upon which the employee houses are built is included inside the Hamlet of Whallonsburg. A copy of the Town of Essex Land Use Map and an enlarged version thereof are attached as **Exhibit "C"**.

7. On January 28, 2008, *The Legislative Gazette* published an article by Associated Press writer Michael Virtanen entitled "New Effort Against Illegal Adirondack Subdivisions." A copy of the article is attached hereto as **Exhibit "D"**.

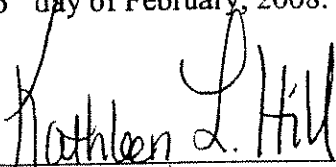
8. For the reasons set forth herein, and for the reasons set forth in the accompanying reply memorandum of law submitted herewith, the Lewis Family Farm respectfully requests that the Agency dismiss this proceeding in its entirety and annul the cease and desist order.



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John J. Privitera

Sworn to before me this  
26<sup>th</sup> day of February, 2008.



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Notary Public

KATHLEEN L. HILL  
Notary Public, State of New York  
No. 01HI6029213  
Qualified in Web Co.  
Commission Expires Aug. 9, 2007

**REPLY AFFIDAVIT OF JOHN PRIVITERA  
SWORN TO FEBRUARY 26, 2008**

**EXHIBIT A**



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
108 Airline Drive, Albany, New York 12235  
518-457-8878 Fax 518-457-3087  
www.agrnkt.state.ny.us

Eliot Spitzer  
Governor

Patrick Hooker  
Commissioner

February 1, 2008

Sandy and Barbara Lewis  
The Lewis Family Farm, Inc.  
1212 Whallons Bay Road  
Essex, New York 12936

**RE: Section 308, subd. 4 Opinion Concerning Farm Worker Housing**

Dear Mr. and Mrs. Lewis:

On January 9, 2008, the Department received an e-mail from your attorney, John J. Privitera, requesting, on your behalf, an opinion pursuant to Agriculture and Markets Law (AML) §308, subdivision 4 as to whether land used for the siting and construction of farm worker housing is considered "agricultural in nature." The evaluation of land uses under this provision is conducted on a case-by-case basis upon information submitted and in consultation with the Advisory Council on Agriculture.

You indicate that Lewis Family Farm, Inc. is a USDA certified organic farm located in the Town of Essex, Essex County. Farm Manager Dr. Marco Turco reports that the farm encompasses approximately 1,200 acres and includes 828 cultivated acres, pastures, a sugar-bush, and a deciduous and conifer forest. The farm produces certified organic beef animals and raises cows, bulls, heifers and steers. Additionally, the farm produces a range of crops, which have included hard white winter wheat; soybeans; alfalfa; mixed, cool-season grasses; corn; spelt and triticale. Department staff confirmed that the land in question is located within Essex County Agricultural District No. 4, a county adopted, State certified agricultural district.

Dr. Robert Somers, Manager of the Department's Agricultural Protection Unit, visited the farm on January 9, 2008. Dr. Somers observed that four modular farm worker houses have been constructed on the property. Three of the farm worker houses are clustered in a U-shaped pattern at the corner of Christian and Whallons Bay Roads. You indicated that two of the four homes are complete; the other two homes have completed exteriors but are unfinished inside. You explained that one is occupied by the farm manager and the other, by a person working on the farm. You indicated that these three homes replaced an existing home and barn complex that were removed prior to construction. You indicated that the three homes share a common

Barbara Lewis  
§308(4) Opinion  
Page 2

driveway, septic leach field and water source (well). The fourth farm worker house is located off of Whallons Bay Road at the crest of a hill. You explained that the farm manager occupies this home because it has a strategic view of most of the farm, including the barns and the three new farm homes. You stated that all four of the modular homes were placed on poured concrete foundations with basements.

You indicate that the farm housing which was located on the property when it was purchased was old, energy inefficient and contaminated with mold. You stated that you decided to remove those structures and construct new homes for your farm workers and that suitable off-farm housing is not available within the area. You also indicate that it is your intent to provide quality housing for your workers in an effort to recruit employees that will bring their families to the farm and become vested in the farm and the community; and you hope that the housing will help recruit the most qualified workers to your state-of-the-art farm.

In considering whether a particular land use is agricultural in nature, the Department takes into account the definition of "farm operation" contained in AML §301. A land use does not need to fall within the meaning of that term in order to be "agricultural in nature." Examination of the definition is helpful, however, in considering the nature of a land use since it relates to agricultural activities. Included within the definition of "farm operation" (AML §301, subd. 11) are "[t]he 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...."

Farm worker housing, including mobile, modular or stick-built homes, 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 work day, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of such homes for farm worker housing is a common farm practice. On-farm housing provides a practical and cost effective means for farmers to meet their farm labor housing and recruitment needs.

In evaluating the use of farm labor housing, the Department considers whether the housing is used for seasonal and/or full-time employees; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); 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 to be part of a "farm operation" as defined in AML §301, subd. 11. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation and is protected by AML §305-a.

Dr. Somers, during his visit to the farm, confirmed that farm worker housing was needed on the farm; existing residential structures had been removed, except for the

Barbara Lewis  
§308(4) Opinion  
Page 3

home of the landowner and a guest house; and that the three clustered farm worker houses could not be readily separated or easily subdivided due to the shared driveway, septic leach field, and electrical connection to the grid and water supply.

Based upon the information provided by you and Dr. Marco Turco, the Department's farm visit, and upon consultation with the Advisory Council on Agriculture, it is my opinion that use of the land in question for the siting and construction of farm worker housing is agricultural in nature.

Sincerely,



Patrick Hooker  
Commissioner

cc: Advisory Council on Agriculture  
Essex County Agricultural and Farmland Protection Board

Pursuant to Agriculture and Markets Law §23,  
I hereby certify that this document, consisting  
of 3 pages, is a true copy of the original  
thereof on file with the Department of  
Agriculture and Markets.

Signature Paul P. Moore Date 2/4/08  
Title: Counsel

**REPLY AFFIDAVIT OF JOHN PRIVITERA  
SWORN TO FEBRUARY 26, 2008**

**EXHIBIT B**



**NYS BOARD OF REAL PROPERTY SERVICES****INSTRUCTIONS FOR APPLICATION FOR  
TAX EXEMPTION OF AGRICULTURAL AND HORTICULTURAL  
BUILDINGS AND STRUCTURES****Place of filing application.**

This application for exemption must be filed with the city or town assessor. Do not file this form with the State Board of Real Property Services. If a facility is located in a village which assesses, a copy of the application must also be submitted to the village assessor. In Nassau County, applications for exemption from county, town or school district taxes should be filed with the Nassau County Board of Assessors. In Tompkins County, applications should be filed with the Tompkins County Division of Assessment.

**Timing of filing application.**

The application must be filed on or before the taxable status date of the city, town or village whose taxes are involved. The taxable status date in most towns is March 1. In towns in Erie County, the taxable status date is May 1. In towns in Westchester County the taxable status date is June 1. In Nassau County, taxable status date is January 2. In cities, taxable status date is determined from charter provisions so the city assessor's office should be consulted for the specific date. For most villages which are assessing units, taxable status date is January 1, but the village clerk should be consulted to ascertain whether the village uses a different date.

**Amount and term of exemption; penalty for conversion.**

The increase in assessed value attributable to qualified new construction or reconstruction shall be exempt from taxation for a period of ten years. In the event the land or structures or buildings are converted to non-agricultural use during the exemption period, the property becomes subject to roll-back taxes for the period during which the exemption was operative.

**Completion of the application form. (Numbers correspond to the numbers on the application.)**

1 - 4. Self-explanatory

5. The exemption applies to newly constructed or reconstructed structures or buildings (or portions thereof) used directly and exclusively in the raising and production for sale of agricultural and horticultural commodities including structures or buildings used for the storage of honey bees. Therefore, the building or structure (or portion thereof) for which the exemption is sought must be identified with particularity and its current use described as fully possible. If not currently used, set forth the proposed use.

6. The construction or reconstruction must be completed on or before the appropriate taxable status date and application for exemption must be made within one year from the date of completion of the improvement.

7. Self-explanatory.

8. The exemption generally does not apply to a building or structure (or portion thereof) used for the processing of agricultural or horticultural commodities, but a building or structure (or portion thereof) used in the production of maple syrup, honey or beeswax may be eligible for exemption. The exemption also does not apply to a building or structure (or portion thereof) used for the retail merchandising of such commodities. A building is used for processing whenever the principal activity occurring therein is the preparation of farm commodities for market as distinguished from the raising, producing or storing of such farm commodities. A building is not disqualified if processing activities are merely incidental to exempt activities. A building or structure (or portion thereof) is used for retail merchandising when it is used for the sale of a farm commodity to the ultimate customer. The exemption does not apply to silos, farm feed grain storage bins, commodity sheds, manure storage and handling facilities or bulk milk tanks and coolers used to hold milk awaiting shipment to market as those types of structures are exempt from taxation pursuant to Real Property Tax Law, section 483-a (request RP-483-a from your assessor).

9. The exemption applies to buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in farming operations. It does not apply, however, to buildings occupied as a residence by the owner and his immediate family.

10. The exemption applies to buildings or structures essential to the operation of lands consisting of not less than five acres actually used in an agricultural or horticultural operation carried on for profit. An eligible building or structure may include an indoor exercise arena used exclusively by a farmer or a commercial horse boarding operation to train and exercise horses. Such an arena does not qualify for tax exemption when used by a riding academy or a dude ranch.

**REAL PROPERTY TAX LAW SECTION 483****Exemption from taxation of structures and buildings essential to the operation of agricultural and horticultural lands.**

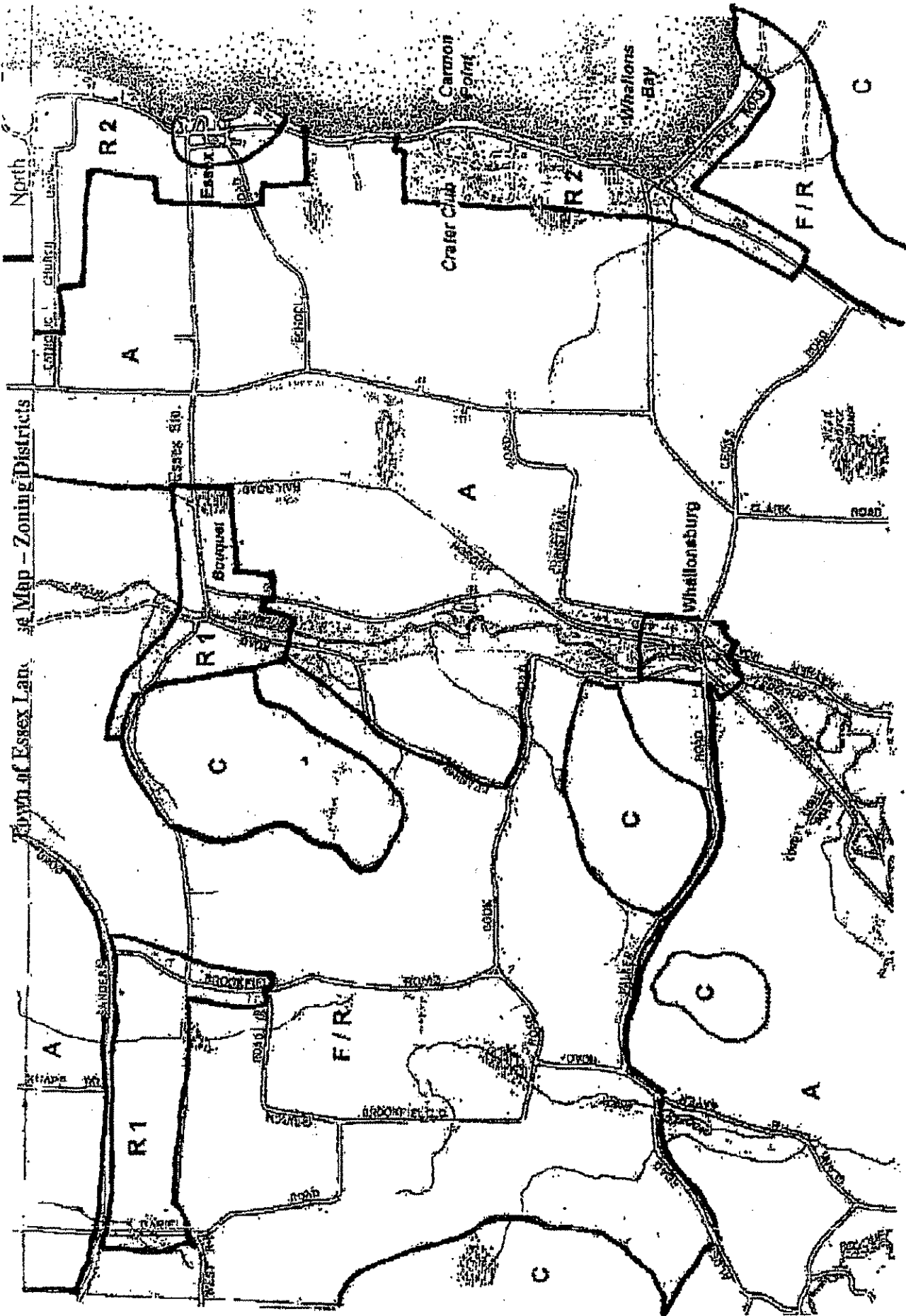
1. Structures and buildings essential to the operation of lands actively devoted to agricultural or horticultural use and actually used and occupied to carry out such operation which are constructed or reconstructed subsequent to January 1, 1969 and prior to January 1, 2009 shall be exempt from taxation to the extent of any increase in value thereof by reason of such construction or reconstruction for a period of ten years.
2. The term "structures and buildings" shall include: (a) structures and buildings or portions thereof used directly and exclusively in the raising and production for sale of agricultural and horticultural commodities or necessary for the storage thereof, but not structures and buildings or portions thereof used for the processing of agricultural and horticultural commodities other than maple syrup, honey or beeswax, or the retail merchandising of such commodities; (b) structures and buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in connection with the operation of lands actively devoted to agricultural and horticultural use, but not including structures and buildings occupied as a residence by the applicant and his immediate family; and (c) structures and buildings used as indoor exercise arenas exclusively for training and exercising horses in connection with the raising and production for sale of agricultural and horticultural commodities or in connection with a commercial horse boarding operation as defined in section three hundred one of the agriculture and markets law. For purposes of this section, the term "indoor exercise arenas" shall not include riding academies or dude ranches. The term "structures and buildings" shall not include silos, bulk milk tanks or coolers, or manure storage and handling facilities as such terms are used in section four hundred eighty three-a of this title.
3. The term "lands actively devoted to agricultural and horticultural use" shall mean lands not less than five acres in area actually used in bona fide agricultural and horticultural production and operation and carried on for profit.
4. Such exemption from taxation shall be granted only upon an application by the owner of the building or structure on a form prescribed by the State Board. The applicant shall furnish such information as such board shall require. Such application shall be filed with the assessor of the city, town, village or county having the power to assess property for taxation on or before the appropriate taxable status date of such city, town, village or county and within one year from the date of such construction or reconstruction.
5. If the assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he shall approve the application. Such structures or buildings shall be exempt from taxation as herein provided.
6. The assessed value of any exemption granted pursuant to this section shall be entered by the assessor on the portion of the assessment roll provided for property exempt from taxation. An exemption granted pursuant to this section shall continue only while the buildings and structures are actually used and occupied as provided herein, but in no event for more than ten years.
7. In the event that land or buildings or structures in agricultural or horticultural use are converted to non-agricultural or non-horticultural use during the period of an exemption granted pursuant to this section, the structures or buildings upon which the exemption was granted shall be subject to roll-back taxes for the period during which the exemption was operative. Structures and buildings subject to roll-back taxes shall be taxed as provided herein.
  - (a) Notwithstanding any limitations contained in section 550 of this chapter, the assessor of the appropriate assessing unit shall enter on the taxable portion of the assessment roll of the current year the assessed valuation or valuations of the structures or buildings on which exemption was granted in any prior year or years at the assessed valuation or valuations as set forth on the exemption portion of the assessment roll or rolls.
  - (b) The amount of roll-back taxes shall be computed by the appropriate tax levying body by applying the applicable tax rate for each such prior year to the assessed valuation, as set forth on the exempt portion of the assessment roll, for such structures or buildings for each such prior year during such period of exemption.
  - (c) Such roll-back taxes shall be levied and collected in the same manner and at the same time as other taxes are imposed and levied on such roll.
8. As used in this section, the term "agricultural and horticultural" shall include the activity of raising, breeding and boarding of livestock, including commercial horse boarding operations.

**PENALTY FOR FALSE STATEMENT**

A person making false statements on an application for exemption is guilty of an offense punishable by law.

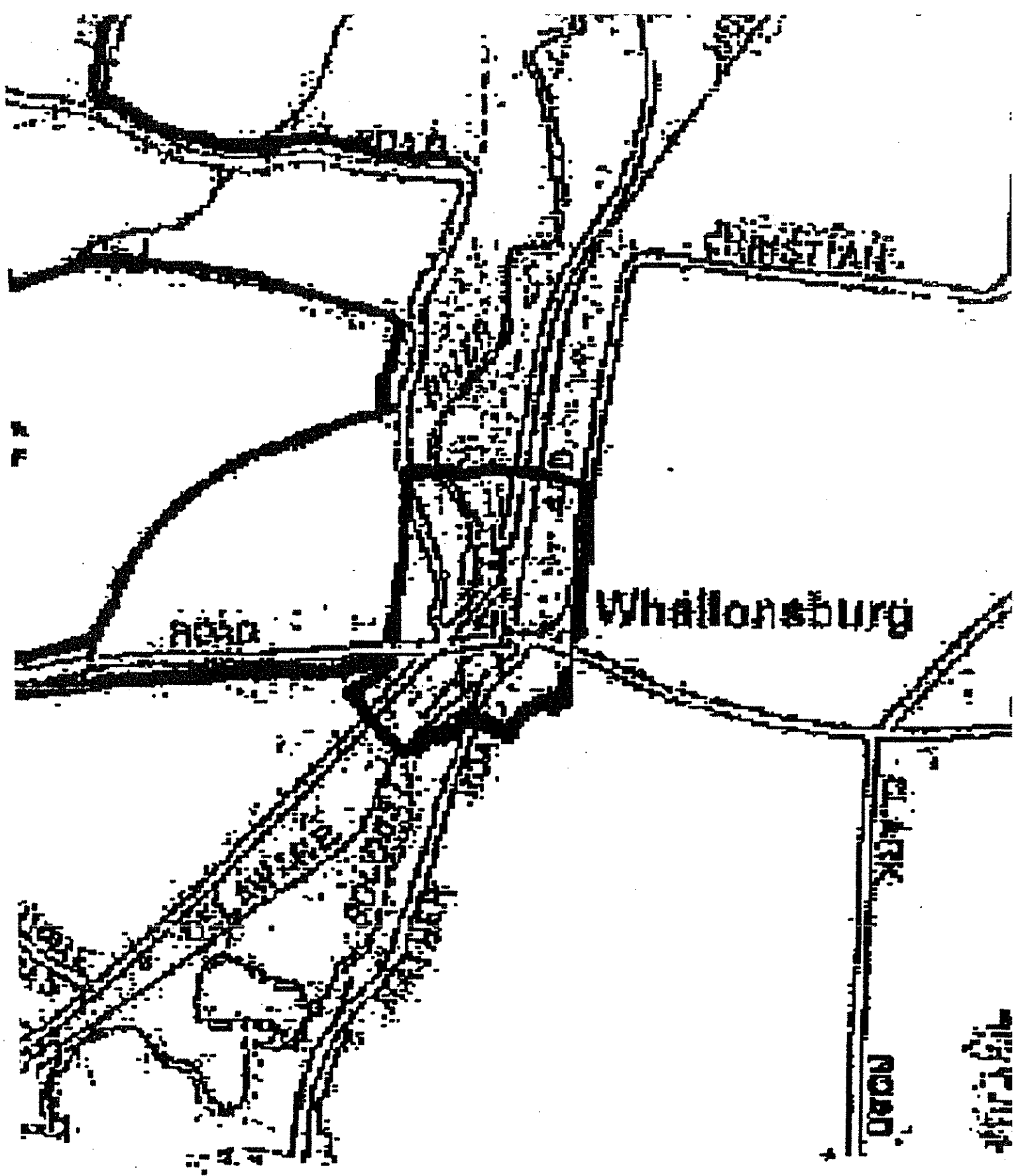
**REPLY AFFIDAVIT OF JOHN PRIVITERA  
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**EXHIBIT C**



Map - Zoning Districts

KEY	USE	DENSITY	AREA
A	Agriculture	42.7 acres	Resource Management
F/R	Forest/Recreation	8.5 acres	Rural Life
R-1	Residential I	3.2 acres	Low Intensity
R-2	Residential II	1.3 acres	Moderate Intensity
H	Hamlet	.5 acres	No Density
C	Critical	---	---



DENSITY

APA

42.7 acres

(Green)

Resource A

**REPLY AFFIDAVIT OF JOHN PRIVITERA  
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**EXHIBIT D**

Classified Advertising

press release.

# New effort against illegal Adirondack subdivisions

By MICHAEL VIRTANEN  
*The Associated Press*

The Adirondack Park Agency has launched a new computerized enforcement initiative against illegal subdivisions that identified 55 probable violators last year, the agency said.

Charged with regulating development of the 6-million-acre park, about half of it privately owned, the APA added two officers and an attorney in 2007 for an enforcement staff of eight, more than double its manpower less than a decade earlier.

The computer program checks real-estate transaction data, required to show new subdivisions, against land-use restrictions to determine whether an APA permit was required and issued. Enforcement officers plan to check property transactions monthly.

"This approach allows staff to identify potential subdivision violations before any inappropriate development is

undertaken," APA Chairman Curtis Stiles said. The agency said it will promptly pursue potential violators to prevent environmental harm.

A settlement typically will require the land-buyer and seller to undo the subdivision by merging the new lots back into one, according to a memo from APA enforcement staff.

The program showed 173 new subdivisions in the park last year, 55 with potential violations ranging from lot size to wetlands encroachment, the agency said. All 55 landowners are getting letters.

In the past, APA staff often learned about problems only when an innocent buyer queried them before trying to resell. At that point, the previous owner and violator was gone. The agency said it has about 600 older cases, including 400 closed administratively and now inactive.

Roughly half the private land in the Adirondacks, 1.54 million acres,

is classified "resource management" by the APA, where most development requires a permit, an average lot size of 42.7 acres and only 15 principal buildings within a square mile. "Rural use" accounts for another 1 million acres, requiring average lot size of 8.5 acres.

Only 53,730 acres are classified as hamlet, another 12,567 acres industrial, both without APA restrictions on lot size or building density. In between is land categorized moderate and low intensity use, 371,558 acres requiring average lots of 1.3 or 3.2 acres.

Municipal zoning rules also apply. The state holds conservation easements generally prohibiting development on another 553,166 acres of the privately owned land in the park, much of it timberlands. The Department of Environmental Conservation is working to complete easements on another 89,891 acres, agency spokeswoman Maureen Wren said.

# Classified Advertising