SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

AFFIDAVIT OF SHAUN LALONDE

AD Docket No. 504696
Essex County
Index No. 498-07

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

AD Docket No. 504626
Essex County
Index No. 315-08

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

LEWIS FAMILY FARM, INC., SALIM B. LEWIS and BARBARA LEWIS,

Defendants.

AD Docket No.
Essex County
Index No. 332-08

STATE OF NEW YORK)
) ss:
COUNTY OF ESSEX)

Shaun LaLonde, having been duly sworn, deposes and says:

1. I am a Professional Engineer certified to practice in

the State of New York, and have been employed by the Adirondack Park Agency (the "APA"), an executive agency of the State of New York created pursuant to Executive Law § 803, at the APA's offices located in the Town of North Elba, Essex County, New York, in that capacity since 2002. Prior to this position, I was employed by the New York State Department of Environmental Conservation as an engineer from 1988 to 2002.

2. As part of my duties, I assist in the review of proposed development designated as a Class A or Class B project under the APA Act (the "APA Act") and proposed development designated as a Rivers project under the Wild, Scenic and Recreational River System Act (the "Rivers Act"), in an area that includes the Town of Essex, Essex County, to evaluate whether the development will comply with APA standards and guidelines.

3. I am familiar with the APA's file in the Matter of Lewis Family Farm, Inc. ("Lewis Farm"), and I provide this affidavit in support of the APA's Motion to Extend the Appellate Division's Stay of Occupancy of two of the new single-family dwellings at Lewis Farm.

4. I have reviewed all of the submissions of Lewis Farm relating to the on-site wastewater treatment system installed on the Farm property for use with the three newly constructed single-family dwellings, including a May 4, 2008, letter from Douglas R. Ferris, P.E. on behalf of Lewis Farm. See Exhibit A.

5. The information submitted by Lewis Farm is insufficient to allow the APA to determine whether the wastewater treatment system complies with the APA standards and guidelines implementing the APA Act and the Rivers Act. In addition, Lewis Farm has never submitted an evaluation by any engineer as to whether the wastewater treatment system complies with APA standards and guidelines.

6. Failure of an on-site wastewater treatment system to adhere to APA standards and guidelines could result in an undue adverse impact to water quality, groundwater, and other resources of the Adirondack Park and its designated river areas, including contamination of on-site or neighboring wells.

7. Section 809(10)(e) of the APA Act requires the APA to determine that a proposed project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park before issuing a permit. The APA's regulations establish the same requirement for the review of projects requiring a permit under the Rivers Act. 9 N.Y.C.R.R. § 577.8(b)(3). This determination must be made taking into account the development considerations outlined in Section 805(4) of the APA Act, including water quality, topography, geology, slopes, soil characteristics, and depth to groundwater.

8. The APA's regulations requires that all land use or development within a designated river area, such as the Boquet River Recreational River area where the dwellings are located, maintain or improve the existing water quality of the river. 9 N.Y.C.R.R. § 577.6(g)(2).

9. The APA has standards and guidelines to aid staff in determining whether a proposed project will result in an undue adverse impact on Adirondack Park and designated river resources. Standards for the installation of individual on-site wastewater treatment systems are listed in Appendix Q-4 of the APA's Rules and Regulations, attached hereto as Exhibit B. In addition, the APA's Board has adopted "Guidelines for On-Site Sewage Disposal Systems," dated March 25, 1991 and attached hereto as Exhibit C. APA staff has also developed a guidance document, titled "Minimum Requirements for Engineering Plans for On-Site Wastewater Treatment Systems," last revised March 2003 and attached hereto as Exhibit D. These documents help staff and applicants collect the information necessary for the APA to make an undue adverse impact determination related to a proposed wastewater treatment system.

10. 10 N.Y.C.R.R. Appendix 75-A establishes New York State Department of Health ("DOH") standards for on-site wastewater treatment system installations under the Public Health Law. As noted in Appendix 75-A.2(b), Appendix 75-A establishes the

minimum standards for wastewater treatment systems acceptable in New York State. This provision notes that, however, "other agencies, such as the Adirondack Park Agency or local health departments may establish more stringent standards," and that, "where such standards have been established, or approval by another agency is required, the more stringent standard shall apply."

11. The APA's standards for on-site wastewater treatment systems are more stringent than DOH standards. For example, under APA standards, new wastewater treatment systems must be installed in natural soils and must maintain greater vertical separation distances from seasonal high groundwater and bedrock and greater horizontal separation distances from waterbodies in areas with fast-percolating soils. See Exhibit B.

12. Initial design plans for the on-site wastewater treatment system planned to serve the three new single-family dwellings on the Lewis Farm property were included in Lewis Farm's submission to the APA. See Exhibit E.

13. Justice Stein's April 28, 2008 Order to Show Cause, by reference to "subparagraph 2(b)" of Supreme Court's order dated April 11, 2008, required Lewis Farm to submit an "as-built" plan for the wastewater treatment system for the three single-family dwellings, as well as an evaluation by a New York state licensed professional engineer as to whether the installed wastewater

treatment system complies with New York State DOH and APA standards and guidelines, by May 5, 2008. See Affirmation of Loretta Simon dated January 30, 2009, Exhibit B referencing Exhibit C.

14. On May 5, 2008, counsel for Lewis Farm submitted a letter, signed by an engineer and dated May 4, 2008, stating that the installed wastewater treatment system "meets the intent" of New York State DOH standards. Attached to this letter was an "as-built" plan for the wastewater treatment system. See Exhibit A.

15. The May 5, 2008 submittal did not contain an evaluation as to whether the installed wastewater treatment system complies with APA standards and guidelines.

16. On May 6, 2008, I submitted an affidavit to this Court explaining that the May 5 submittal was insufficient for me to perform my own analysis as to whether the installed wastewater treatment system complies with APA standards and guidelines. I included in this affidavit several of the areas of deficient or inconsistent information, all of which would normally be addressed during review of a project application and before any APA determination as to whether the project would result in an undue adverse impact to the resources of the Park. These deficiencies or inconsistencies include:

1) the initial design plans for the on-site wastewater treatment system, included as Exhibit E to Barbara Lewis' January 17, 2008, Affidavit, contain no topography or hydraulic profile;
2) the initial design plans are not drawn to scale;
3) the initial design plans do not contain information on the location of on-site wells, neighboring wells within 200 feet, or test pit or percolation test locations;
4) the as-built plan submitted on May 5 does not show the wastewater treatment system installed in the same location as the initial design plans, even though the letter dated May 4 states that the wastewater treatment system was installed "in substantial conformance" with the initial design plans;
5) the test pit information described in the as-built plan does not correlate with Essex County Soil Maps; and
6) the as-built plan does not account for on-site wastewater treatment for all three dwellings.

17. Without explanation of the missing and inconsistent information described in my May 6, 2008, affidavit, I believe that it would be impossible for any licensed professional engineer to evaluate whether the installed on-site wastewater treatment system complies with APA standards and guidelines.

18. On May 8, 2008, counsel for Lewis Farm submitted an affidavit to this Court stating that the Farm had "complied with the Order to Show Cause . . . by submitting proof that the Dormitory's septic system is operational and complies with New York State law." See Exhibit F, ¶ 5.

19. On May 9, 2008, counsel for Lewis Farm submitted an additional affidavit, with a letter dated May 9, 2008, of Mark Buckley, P.E. which states "It is my determination that the installation of the new system complies with Appendix 75-A, 9 NYCRR Part 75" (DOH standards). See Exhibit G. However,

there remains no evaluation as to whether the wastewater treatment system complies with APA standards and guidelines. In addition, Mr. Buckley's evaluation did not supply the information necessary for such an evaluation to occur.

20. Until additional information is provided, a professional evaluation as to whether the on-site wastewater treatment system complies with 9 NYCRR Appendix Q-4 and the APA's "Guidelines for On-Site Sewage Disposal Systems" cannot be made. As a result, the existing or proposed on-site wastewater treatment systems may have an adverse impact on the resources of the Adirondack Park.

Shaun LaLonde

Sworn to before me this
29 **day of January, 2009.**

Notary Public

JILL LAWRENCE
Notary Public - State of New York
Qualified in Franklin County
No. 01LA6175330
Commission Expires Oct. 9, 20 11

LALONDE AFF.
TABLE OF EXHIBITS

Exhibit A	Letters dated May 5, 2008 and May 4, 2008 from John J. Privitera and Douglas R. Ferris, P.E. respectively
Exhibit B	Appendix Q-4, 9 NYCRR
Exhibit C	APA Guidelines for On-Site Sewage Disposal Systems dated March 25, 1991
Exhibit D	Minimum Requirements for Engineering Plans for On-Site Wastewater Treatment Systems
Exhibit E	Design plans of Mark Buckley, P.E. for Lewis Farm
Exhibit F	Affidavit dated May 8, 2008, Counsel for Lewis Farm
Exhibit G	Letter dated May 9, 2008 of Mark Buckley to Lewis Farm

EXHIBIT A

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

JOHN J. PRIVITERA
Direct Dial
(518) 447-3337
Direct Fax
(518) 447-3368
privitera@mltw.com

May 5, 2008

VIA FACSIMILE (473-2534) AND US MAIL

Loretta Simon, Esq.
Assistant Attorney General
State of New York
Office of the Attorney General
Environmental Protection Bureau
146 State Street, 2nd Floor
Albany, New York 12224

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index No. 315-08 (Appellate Division, Third Department)
Order of April 29, 2008

Dear Ms. Simon:

Enclosed please find proof that the as-built plan for the septic system at the dwelling known as the "dormitory" complies with State law, as directed by the third "ordered" paragraph of Judge Stein's Decision in the referenced matter.

Sincerely,

John J. Privitera

JJP/mak
Enclosure
cc: Jacob F. Lamme, Esq. (w/enc)
Lewis Family Farm, Inc. (w/enc)

[M0155136.1]

ESE Earth Science Engineering, P.C.

• Civil • Geotechnical • Environmental • Zebra Mussel Controls •
A Design-Build Affiliate of ZEBRA-TECH, LLC

May 4, 2008

The Lewis Farm
c/o Mr. Mark McKenna, Project Manager
Middle Road
Willsboro, NY 12996

Re: Letter of Completed Works
Farmworkers' Residence IST
Whallons Bay Road
Whallonsburg, NY

Dear Mr. McKenna:

This letter verifies the referenced project was reviewed by Earth Science Engineering, P.C. from May 1 through May 3, 2008, whereby absorption trenches were installed and pump station discharge re-directed thereto in substantial conformance with a 9/2/07 design prepared by Mr. Mark J. Buckley, P.E. The construction of the IST meets the intent of Appendix 75A of Part 75 of the Administrative Rules and Regulations contained in Chapter 11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Please contact me if you have any questions or if I can be of further assistance. Thank you.

Respectfully submitted,

Earth Science Engineering, P.C.
Douglas R. Ferris, P.E.

3922 NYS Route 22 • P.O. Box 398 • Willsboro, NY 12996 • Telephone: 518-963-8555 • Fax: 518-963-7480
www.zebratechllc.com

LEWIS FARM
WEST HOUSE FARMWORKERS' RESIDENCE
1ST AS-BUILT
WHALLONS BAY ROAD
WHALLONSBURG, NY

5/4/08
N.T.S.

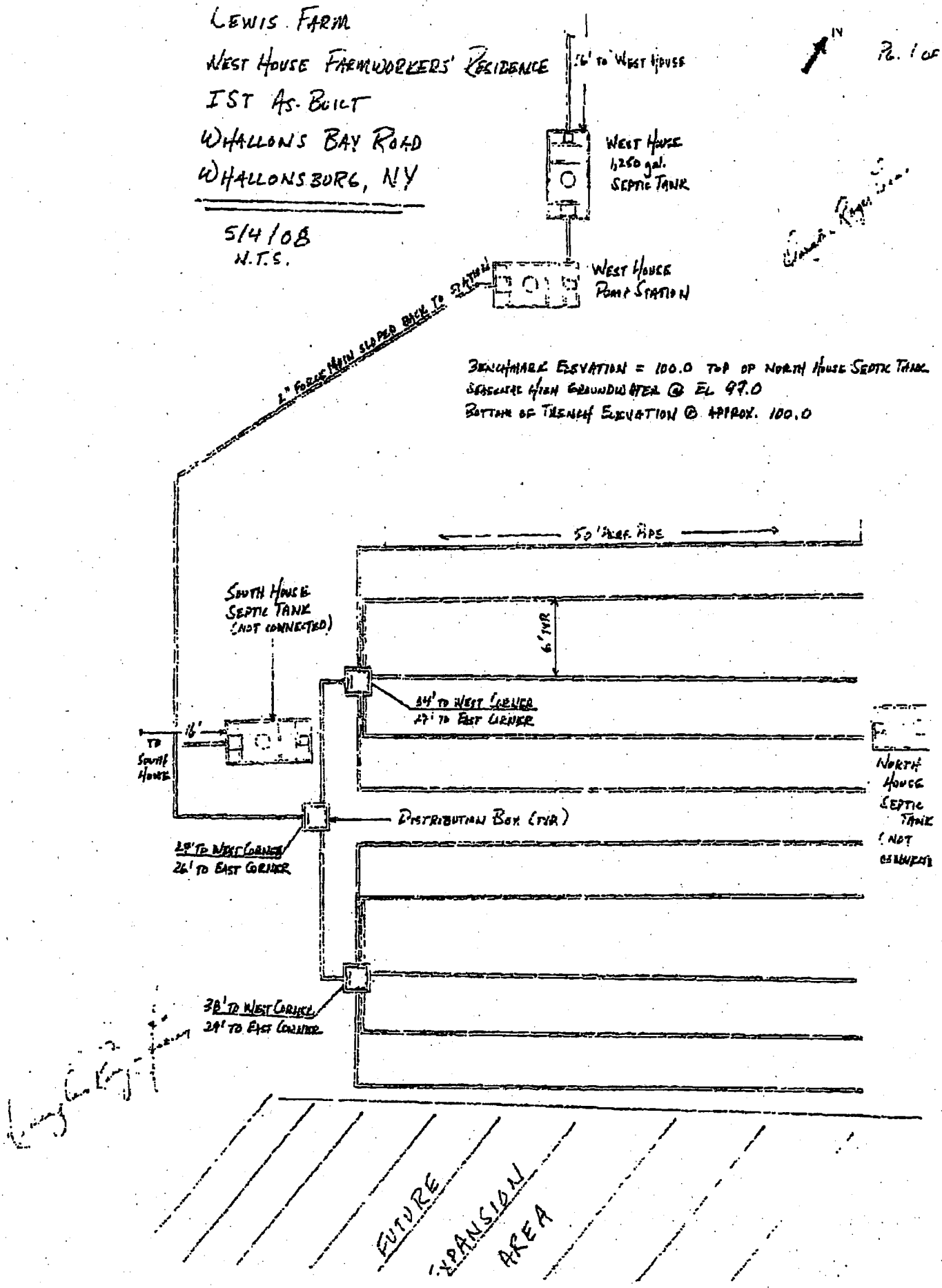


EXHIBIT B

APPENDIX Q-4

ADDITIONAL STANDARDS FOR THE INSTALLATION OF INDIVIDUAL ON-SITE SEWAGE DISPOSAL SYSTEMS

This appendix sets forth the standards employed by the agency in the review of the type and manner of installation of onsite sewage disposal systems associated with a project subject to its jurisdiction.

These standards are applied in addition to those standards set forth in the New York State Department of Health publication *Waste Treatment Facilities - Individual Household Systems,* filed as Appendix 75-A to Volume 10(Health [A]) of NYCRR.

1. The natural ground intended for the leaching facility shall have a minimum depth of four feet of usable soil above bedrock, impervious material, or maximum high seasonal groundwater. When fractured bedrock is encountered, the usable soil depth shall be at least six feet.

2. Within 200 feet of the shoreline of a lake, pond, river or stream: if the percolation rate is 0 to 3 minutes per inch, a leaching facility will not be permitted.

3. Precatory or hortatory language such as "should" in the Department of Health publication referred to above shall be deemed to be mandatory: provided that the agency may approve modifications in the course of its review of individual projects.

EXHIBIT C

ADIRONDACK PARK AGENCY

GUIDELINES FOR ON-SITE SEWAGE DISPOSAL SYSTEMS

March 25, 1991

This document sets forth guidelines for the design and installation of on-site sewage disposal systems for projects requiring a permit from the Adirondack Park Agency. These guidelines apply to pre-existing lots and lots on which a system is being replaced, but, in these cases, alternative systems may be allowed (see Pre-Existing Lots and Failing Systems, p. 6). These guidelines supersede Chapter 22 (Sewage Disposal) of the Adirondack Park Agency publication Development in the Adirondack Park, 1977. These guidelines deal with site evaluation, design specifications and installation requirements for both individual and small multi-family on-site sewage disposal systems with a flow rate of less than 1000 gallons per day.

LEGAL EFFECT OF THESE GUIDELINES

These are guidelines, not rules. Failure to meet them will not automatically result in disapproval of an application. Each application will be judged on its particular merits, including all other aspects of its impact on the resources of the Adirondack Park and mitigation measures or offsets proposed. If these guidelines are not met, the Project Review Officer assigned to the application will consult with the Agency's technical staff, and may, depending on the individual case, recommend that a public hearing be held to further examine sewage disposal methods.

SITE EVALUATION AND RESOURCE REQUIREMENT'S

The soil and slope factors listed here are described in detail in the Adirondack Park Agency Soils Handbook (August 1990). To ensure the information provided to the Agency is consistent, the Handbook prescribes standard methods for performing percolation tests and for describing soils.

All applications for new development and subdivisions requiring a permit from the Adirondack Park Agency and subject to these guidelines must demonstrate that each proposed building lot meets these minimum site requirements.

Flood Areas:

No on-site sewage disposal systems shall be allowed in areas within a 10-year flood plain.

Horizontal Separation Distances:

The table below sets forth the minimum horizontal separation distances required, measured from the finished graded edge of the sewage disposal area (see System Extent p. 4) to each listed feature:

Minimum Horizontal Separation Distances	
Individual Drilled Well	100 feet
Community Drilled Well	200 feet
Dug Well	150 feet
Wetland	100 feet*
Lake George	200 feet
Other waterbodies	100 feet**
Property line	25 feet
Dwellings	20 feet
Soil Depth to: Bedrock ≤ 48"	25 feet
Impervious Layer ≤ 48"	25 feet
SEASONAL HIGH GROUNDWATER TABLE ≤ 24"	25 feet***
25 % Slopes	25 feet

* May require a greater separation distance where low nutrient bop are present.
** The shoreline setback requirement includes both:
1. Intermittent streams with a defined bed and bank, regardless of navigability (9 NYCRR 575.1 [c]).
2. Within 200 feet of the shoreline of a lake, pond, river or stream: if the percolation rate is 0 to 3 minutes per inch, a leaching facility will not be permitted (9 NYCRR Appendix Q4).
***Seasonal High Ground Water Table.

For features not listed in the above table, use Table 2 in the Design Standards for Wastewater Treatment Works 1988, NYS Department of Environmental Conservation, 1980, revised 1988.

Slope:

Conventional in-ground absorption trenches shall only be permitted on natural slopes of 15% or less. All other acceptable on-site sewage disposal systems shall only be permitted on natural slopes of 8% or less. For the purpose of these guidelines, the slope is measured as the ratio of the maximum vertical rise or fall of the land in 50 feet of horizontal distance and is expressed as a percentage.

Soil Percolation Rate:

In order to be approved for conventional in-ground absorption trenches or beds or for shallow absorption trenches, soil percolation rates shall be between 1 to 60 minutes per inch. No on-site sewage disposal systems shall be allowed in soils where the percolation rate is less than 1 minute per inch or exceeds 60 minutes per inch. Also, within 200 feet of the shoreline of a lake, pond, river or stream: if the percolation rate is 0 to 3 minutes per inch, a leaching facility will not be permitted (9 NYCRR Appendix Q-4).

Note: Aquifer Protection in Fast Perc Soils

In areas with percolation rates faster than 10 minutes per inch that overlie aquifers designated by New York State as Principal Aquifers, or other aquifers that meet the criteria defined in NYS Department of Environmental Conservation, Division of Water Technical and Operational Guidance Series 2.13, Primary and Principal Aquifer Determinations, April 1, 1987, additional protection will be required to prevent degradation of groundwater quality. In such cases, the absorption system design shall be modified to provide enhanced treatment of the wastewater by the soil system, or additional treatment provided prior to subsurface discharge. The Agency staff should be consulted before substantial sums are spent on design.

Soil Test Pit:

A soil test pit is required to examine the soil to a depth of at least 7 feet or 5 feet below the bottom of the proposed system, whichever is deeper. Soil test pits must be described by a qualified soil scientist as defined by the New York Department of Agriculture and Markets Rules and Regulations (1 NYCRR 370.2 [v]).

Soil Depth to Seasonal High Groundwater Table (SHGWT):

The depth of the undisturbed and natural soil measured from the soil surface (minus the surface organic forest floor layers) to the top of the seasonal high water table must be 24 inches or more. This depth shall also be determined by a qualified soil scientist.

Soil Depth to Bedrock or Other Impervious Layer:

The depth of the undisturbed and natural soil measured from the soil surface (minus the surface organic forest floor layers) to the top of bedrock or other impervious layer must be 48 inches or more (72 inches if the bedrock is fractured). In addition, the bottom of any sewage disposal system shall be at least four feet above bedrock or impervious strata. An impervious strata is defined as any layer with a percolation rate of slower than 60 minutes per inch.

Filled Areas or Disturbed Sites:

Sewage disposal systems are generally not allowed on sites where the natural soil materials have been disturbed by excavation, removed or covered by more than 12 inches of fill. Where proposed on such sites, intensive sub-surface investigation win be required. The Agency staff should be consulted prior to conducting such an investigation.

DESIGN STANDARDS

Design Flow and Replacement Area:

All proposed lots for new subdivisions subject to these guidelines are required to have an area of suitable site conditions large enough to accommodate a sewage system designed for a minimum of 500 gallons per day flow rate (4 bedroom house) and a reserve area capable of installing a 100 percent replacement system according to the specifications in this document.

System Extent:

The sewage disposal area includes the area of the leaching facilities and, if required by the design, the area covered by fill used to grade around the system and the up-slope diversion ditch (curtain drain). This area is the finished graded edge of the sewage disposal system used for the measurement of horizontal separation distances.

Piping Distances:

In general the piping of sewage to an on-site sewage disposal system serving one or two single family dwellings a distance of 250 feet or more or across wetlands, waterbodies, right-of-ways, property lines or a soil with any limiting feature, is not allowed. Review of such proposals will be on a case-by-case basis and alternative lot configurations will likely be suggested.

Mounding Analysis:

Where site conditions are marginal, an analysis will be required to predict the extent of groundwater mounding that will occur when the system is in operation and how this discharge will affect groundwater levels downgradient.

Other:

All other standard design features are the same as in Sewage Standards for Wastewater Treatment Works 1988, DEC, revised 1988, unless otherwise noted herein.

ACCEPTABLE SEWAGE DISPOSAL SYSTEMS for New Development

The sewage disposal systems defined herein are the same systems used in Sewage Standards for Wastewater Treatment Works 1988 DEC, revised 1988, and are described in further detail by that publication. The design standards in that publication are applicable, but the site conditions used herein may in some instances be more restrictive, and represent the minimum site conditions necessary in order to recommend the approval of a lot for new development without a public hearing.

Conventional Absorption Trenches and Beds:

Conventional Absorption Trenches and Beds are in-ground sewage disposal systems which may be used only with the following site conditions:

Percolation rate:	1 to 60 minutes/inch
Slope:	$\leq$ 15% for Trenches
	$\leq$ 8% for Beds
Depth to SHGWT:	$\geq$ 48 inches
Depth to Bedrock:	$\geq$ 72 inches

Such systems are constructed wholly within the existing native soil, yet are able to maintain a 24 inch vertical separation distance between the bottom of the system and the top of the seasonal high water table, and 48 inches to bedrock. Conventional absorption beds differ from trenches in that they are up to 15 feet wide, while trenches are generally 2 feet wide. Cross-sections for trenches and beds are from the 1988 DEC publication set forth in Appendix A and Appendix B.

Shallow Absorption Trenches

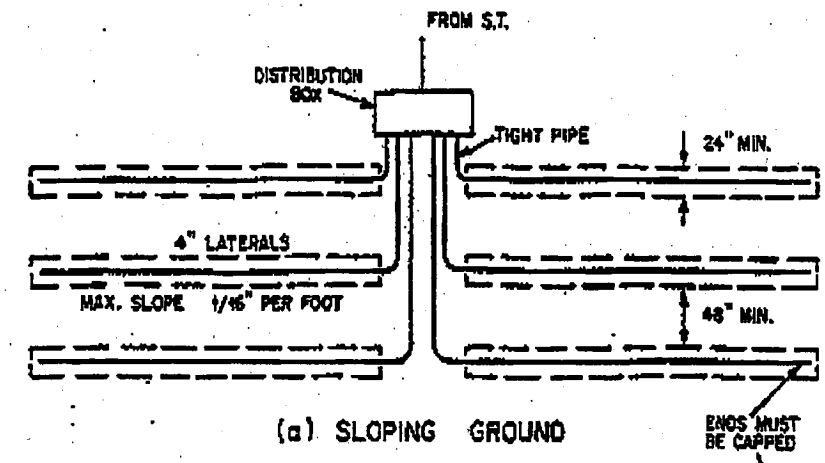
Shallow Absorption trenches are sewage disposal systems which may be used only with the following site conditions:

Percolation rate:	1 to 60 minutes/inch
Slope:	$\leq$ 8%
Depth to SHGWT:	24 to 48 inches
Depth to Bedrock:	$\geq$ 48 inches

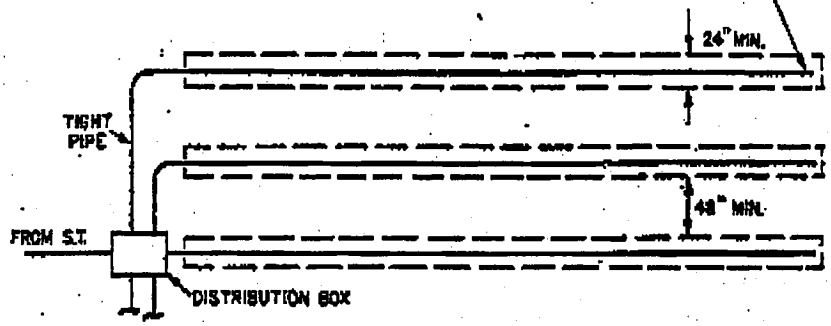
Such systems are constructed with the bottom of the system wholly within the existing native soil. Fill is required to grade over the sides and top of the system. The total height of the system above the original soil surface is 1 to 24 inches, depending on the system design, slope and depth to the seasonal high water table. A cross-section from the 1988 DEC publication is set forth in Appendix C. All shallow absorption trenches shall be designed and certified as to their proper installation by a licensed Professional Engineer.

PRE-EXISTING LOTS and FAILING SYSTEMS

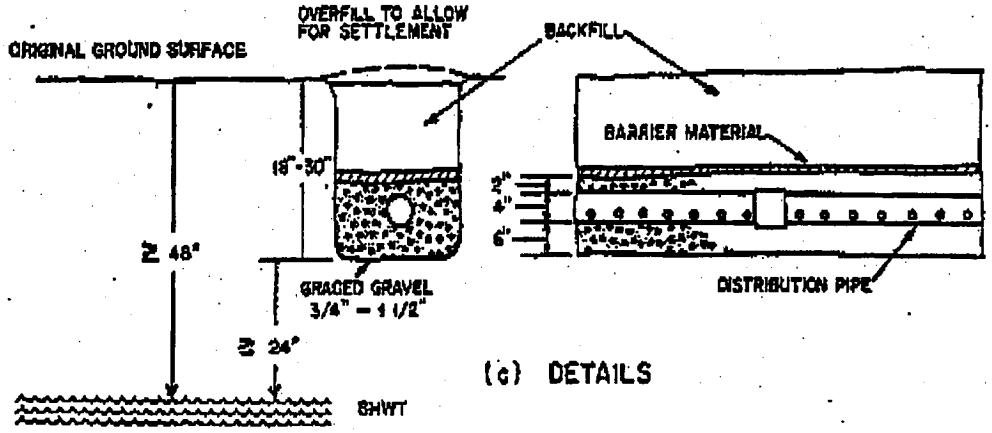
If a pre-existing lot does not meet the minimum site requirements in this document, Agency staff will consider, on a case-by-case basis, acceptability of alternative systems. If an existing on-site sewage disposal system is failing, Agency staff will consider proposals of demonstrated new technology or alternative systems, such as, but not limited to mounds or non-waterborne systems, as designed by a licensed Professional Engineer. Holding tanks will not be allowed for year-round usage on a permanent basis, however.



(a) SLOPING GROUND

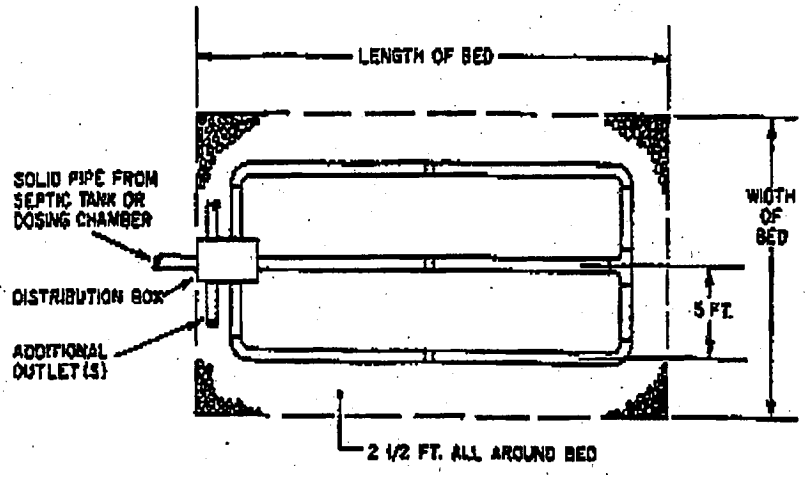


(b) LEVEL GROUND

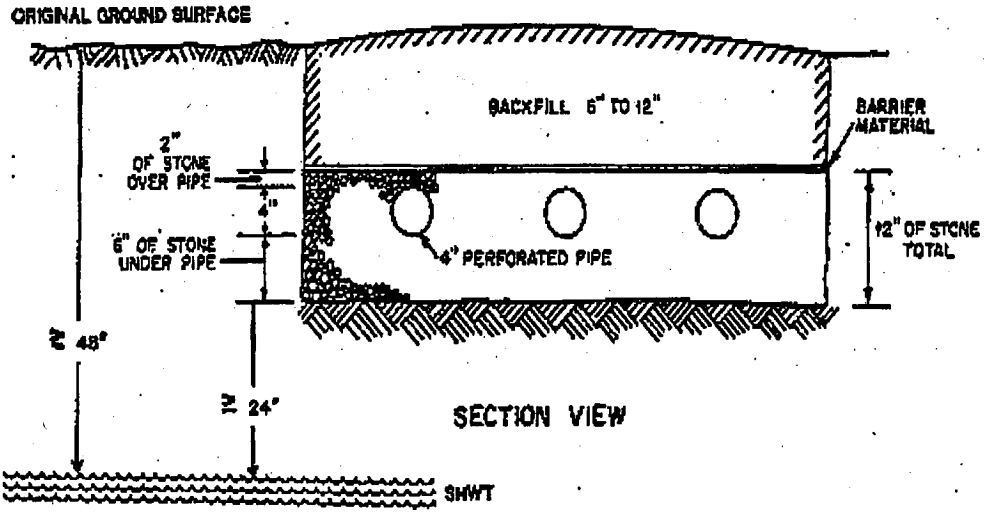


(c) DETAILS

APPENDIX A CONVENTIONAL ABSORPTION TRENCH

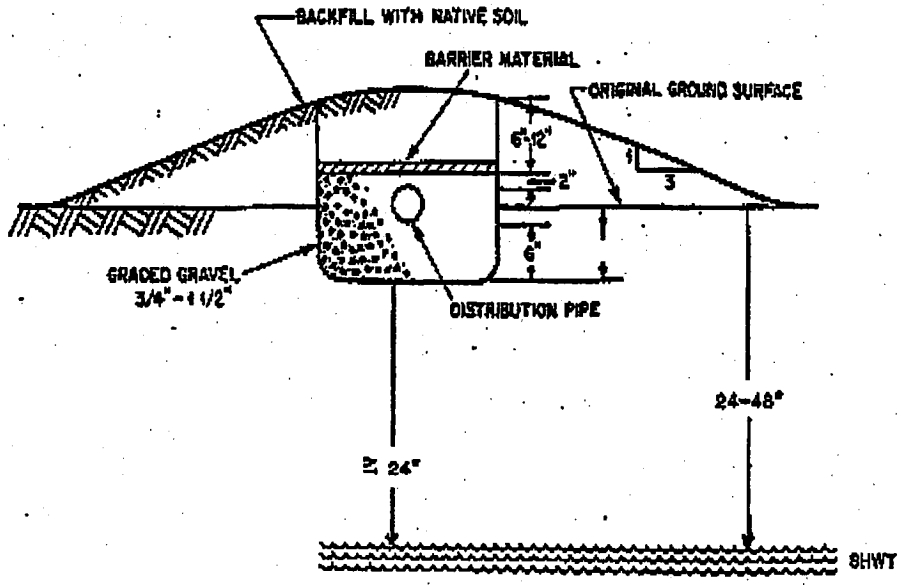


PLAN VIEW



SECTION VIEW

APPENDIX B CONVENTIONAL ABSORPTION BED



SECTION VIEW

APPENDIX C SHALLOW ABSORPTION TRENCH

EXHIBIT D

Rev. 03/2003

Adirondack parkagency

MINIMUM REQUIREMENTS FOR ENGINEERING PLANS FOR ON-SITE WASTEWATER TREATMENT SYSTEMS

Engineering plans for on-site wastewater treatment system(s) submitted to the Adirondack Park Agency as part of an application for a permit or pursuant to a permit condition must be of construction level quality and meet the following minimum requirements for format and content. Any plans submitted which do not meet these requirements will not be reviewed for technical merit and will be returned with a form indicating which information is missing.

FORMAT

1. Engineering plans must have a minimum size of 11 inches x 17 inches and a maximum size of 24 inches x 36 inches.

2. The cover sheet must include the APA project number, applicant's name, sheet index, legend of symbols and the engineer's name, address, signature, date of signature and seal. If a cover sheet is not provided, then all of this information except for the sheet index must be provided on each sheet of the plans.

CONTENTS

A) Vicinity Plan or Map

B) Site Plan

C) Engineering Report/Basis of Design

D) Hydraulic Profile/Topography

E) Details/Cross Sections

F) Material and Construction Specifications

P.O. Box 99 • NYS Route 86 • Ray Brook, NY 12977 • 518 891-4050 • 518 891-3938 fax • www.state.ny.us

A. Vicinity Plan or Map

A plan or map relating the project location to its environmental setting must be included at a minimum scale of 1:24,000. Such a map must be included on the cover sheet or, if no cover sheet is provided, on the first page of the plans.

B. Site Plan Contents

The site plan should be drawn to a scale of between 1 inch = 10 ft. and 1 inch = 50 ft. and contain the following.

- scale
- north arrow
- house
- on-site well
- neighboring wells within 200 feet of the proposed absorption field
- driveway
- house sewer
- septic tank
- pump station (if applicable)
- dosing siphon (if applicable)
- distribution box
- soil absorption system and reserve area for system replacement
- property lines
- test pits (locations and results)
- percolation tests (locations and results)
- streams (intermittent and permanent)
- wetlands
- mean high water mark of streams, lakes and ponds
- bed rock outcrops
- survey benchmarks

C. Engineering Report/Basis of Design

The basis of design for the wastewater treatment system shall be shown on the plans in an appropriately titled section or provided in a separate engineering report on 8 1/2 x 11 inch paper. All calculations regarding the design of all wastewater treatment system components shall be provided.

D. Hydraulic Profile/Topography

Site topography should be indicated on the site plan by contours at intervals of no more than two feet. The requirement for site topography may be waived depending upon the location of the house with respect to the wastewater treatment system and type of system employed. In general, site topography and/or a hydraulic profile through the system will be required.

E. Details/Cross Sections

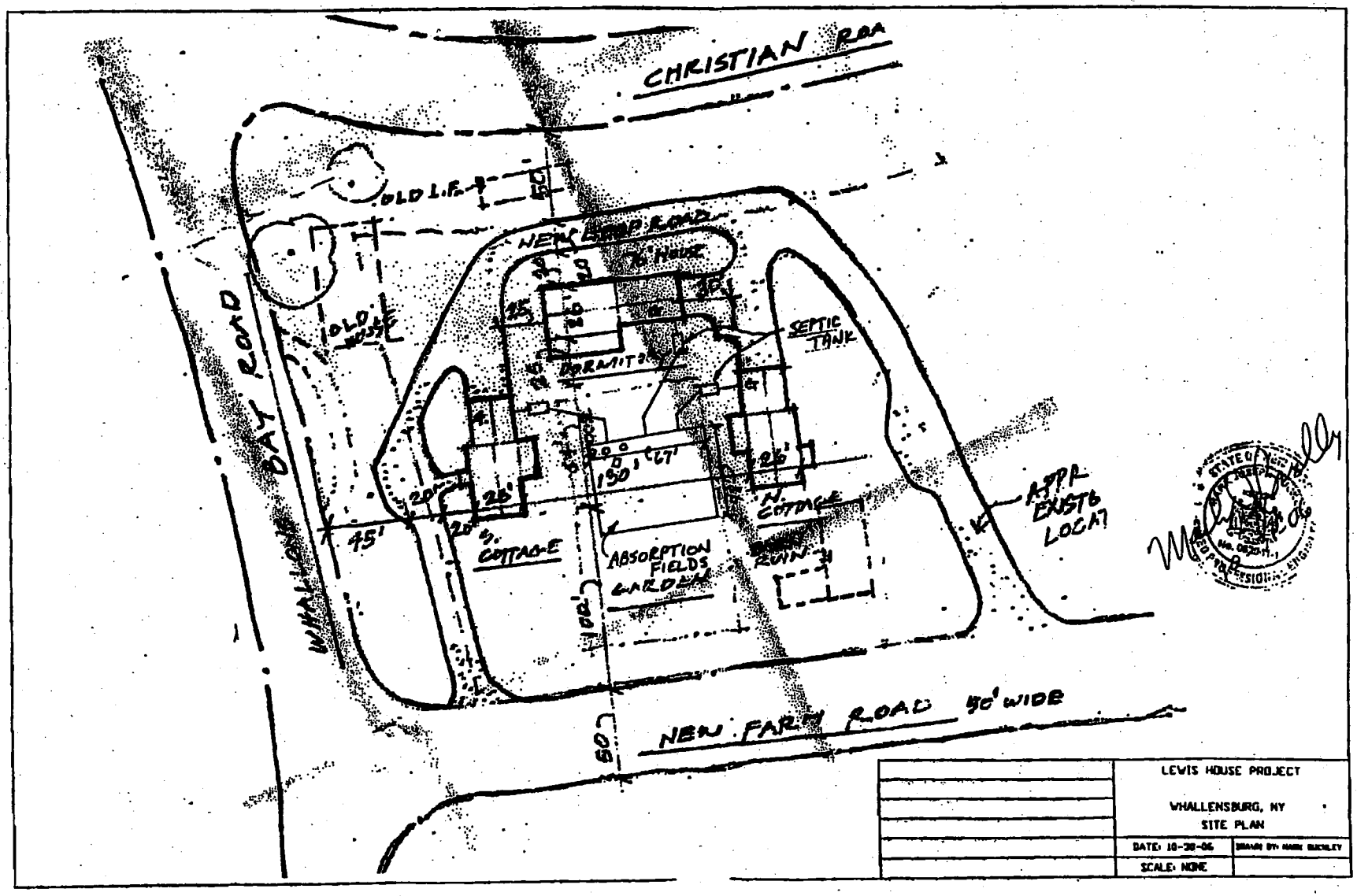
A detail for each system component shall be provided. This includes septic tank, distribution box, pump station or dosing siphon. A section and longitudinal view shall be provided for an absorption trench or shallow absorption trench. A section view shall be provided for an absorption bed or any other type of absorption system.

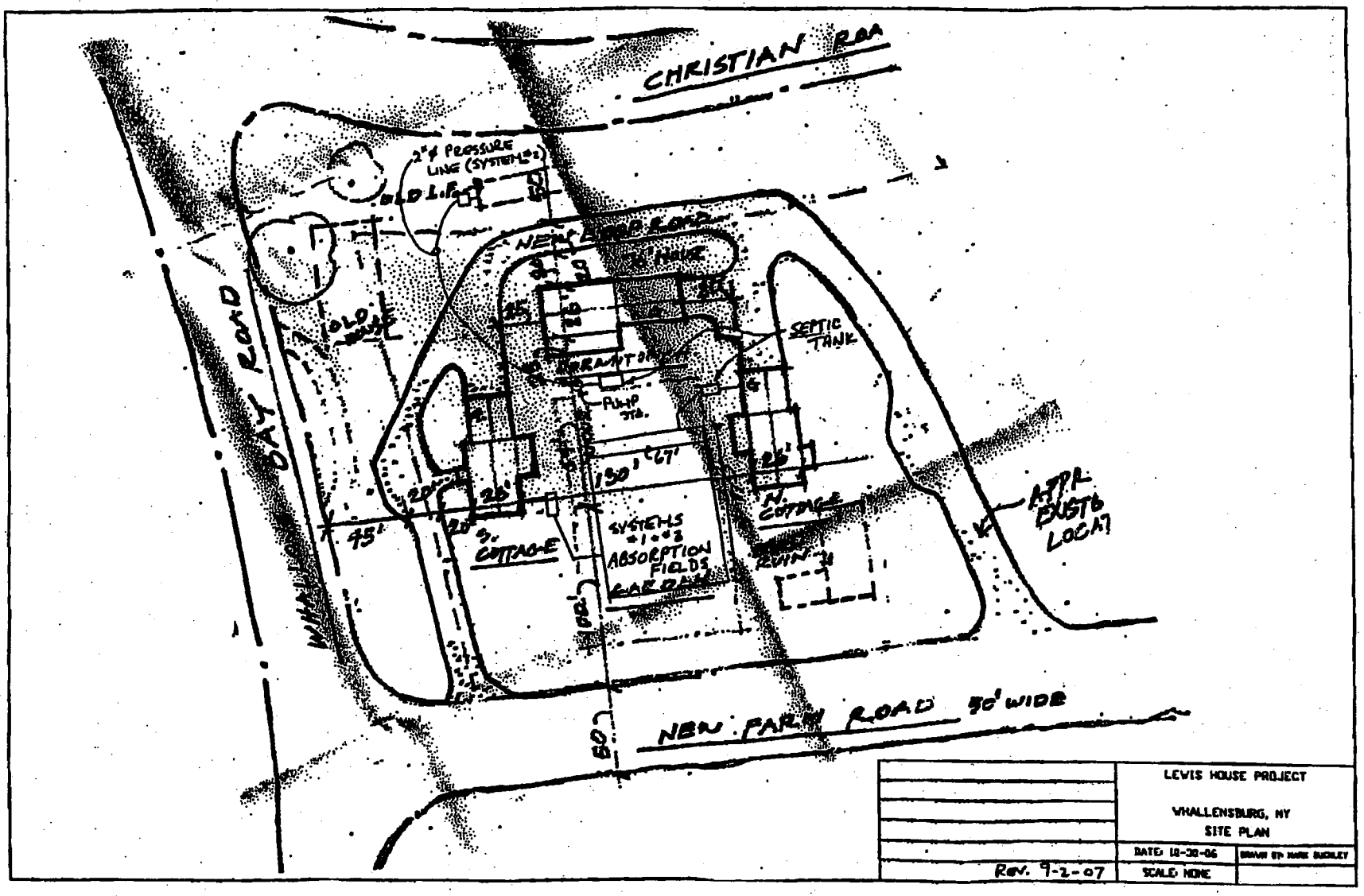
F. Material and Construction Specifications

Complete material and construction specification shall be clearly provided for all wastewater treatment system components. Sufficient detail must be provided to enable a contractor to know what materials are required and how they are to be installed/constructed. This can be done using the details/cross sections previously discussed, by listing them on a section of the plans or both. Specifications may also be provided in a separate document on 8 1/2 x 11 inch paper.

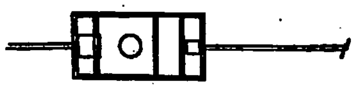
NOTE: DO NOT INCLUDE DETAILS, SECTIONS OR SPECIFICATIONS FOR WASTEWATER TREATMENT SYSTEM COMPONENTS THAT ARE NOT PROPOSED FOR YOUR PROJECT.

EXHIBIT E

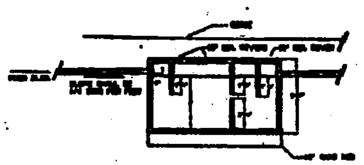

CHRISTIAN RD
OLD L.F.
NEW FARM ROAD
MAIN HOUSE
OLD HOUSE
SEPTIC TANK
DORMITORY
BAY ROAD
150'
67'
25'
20'
45'
S. COTTAGE
ABSORPTION FIELDS
GARDEN
RUIN
N. COTTAGE
APPX EXIST'G LOCAT
60'
NEW FARM ROAD 50' WIDE
LEWIS HOUSE PROJECT
WHALLENSBURG, NY
SITE PLAN
DATE: 10-30-06
SCALE: NONE


CHRISTIAN RD
2" PRESSURE LINE (SYSTEMS 1&2)
NEW FARM ROAD
BAY ROAD
OLD HOUSE
TANK
SEPTIC TANK
PUMP STA.
130'
67'
45'
20'
26'
S. COTTAGE
SYSTEMS #1 & #2 ABSORPTION FIELDS
N. COTTAGE
ATPL EXIST'G LOCAT
NEW FARM ROAD 50' WIDE
LEWIS HOUSE PROJECT
WHALLENSBURG, NY
SITE PLAN
DATE: 12-20-06
SCALE: NONE
Rev. 9-2-07

REQUIRED LENGTH OF ABSORPTION TRENCH				
PERC. RATE	FLOW RATE (GALS./DAY)			
[illegible]	[illegible]	[illegible]	[illegible]	
13			870	
SEPTIC TANK SIZE (GAL)			[illegible]	



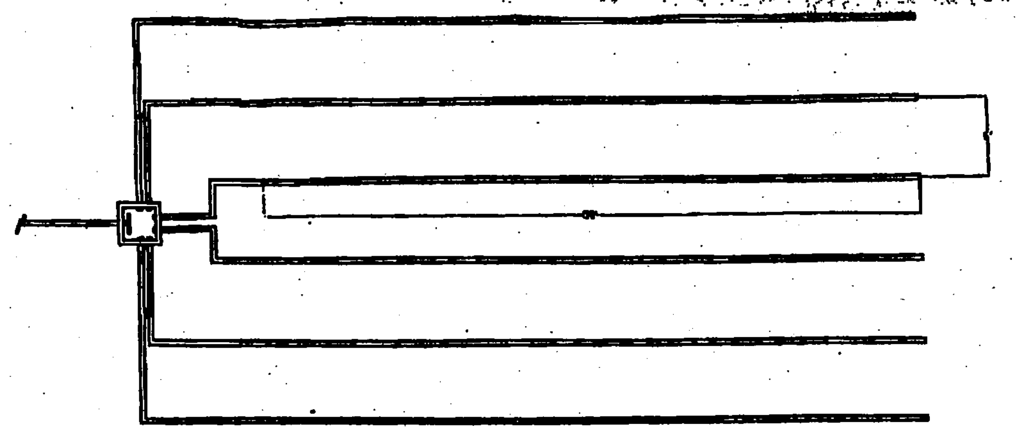
1,250 GAL. SEPTIC TANK
(TYP.)



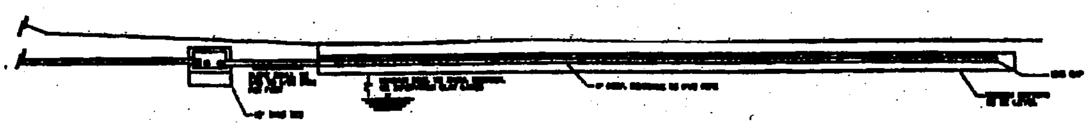
1,250 GAL. SEPTIC TANK
(TYP.)

DEEP HOLE TESTS				
TEST HOLE	DEPTH	[illegible]	[illegible]	NOTES
TP 1	93"	34"	>93"	[illegible] CLAY, [illegible]

PERCOLATION TEST RATES			
TEST HOLE	DEPTH	PERC. RATE [illegible]	DATE
SP 1	15"	13	8-31-07
SP 2	10"	10	8-31-07

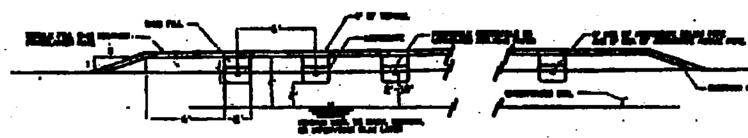


ABSORPTION FIELD PLAN VIEW
LATERALS SHOULD BE OF EQUAL LENGTH AND 50 FT. OR LESS IN LENGTH



ABSORPTION FIELD SECTION

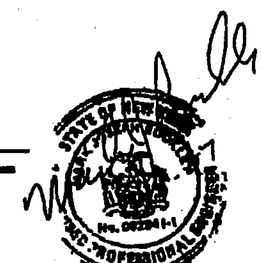
DIST. BOX



ABSORPTION FIELD SECTION

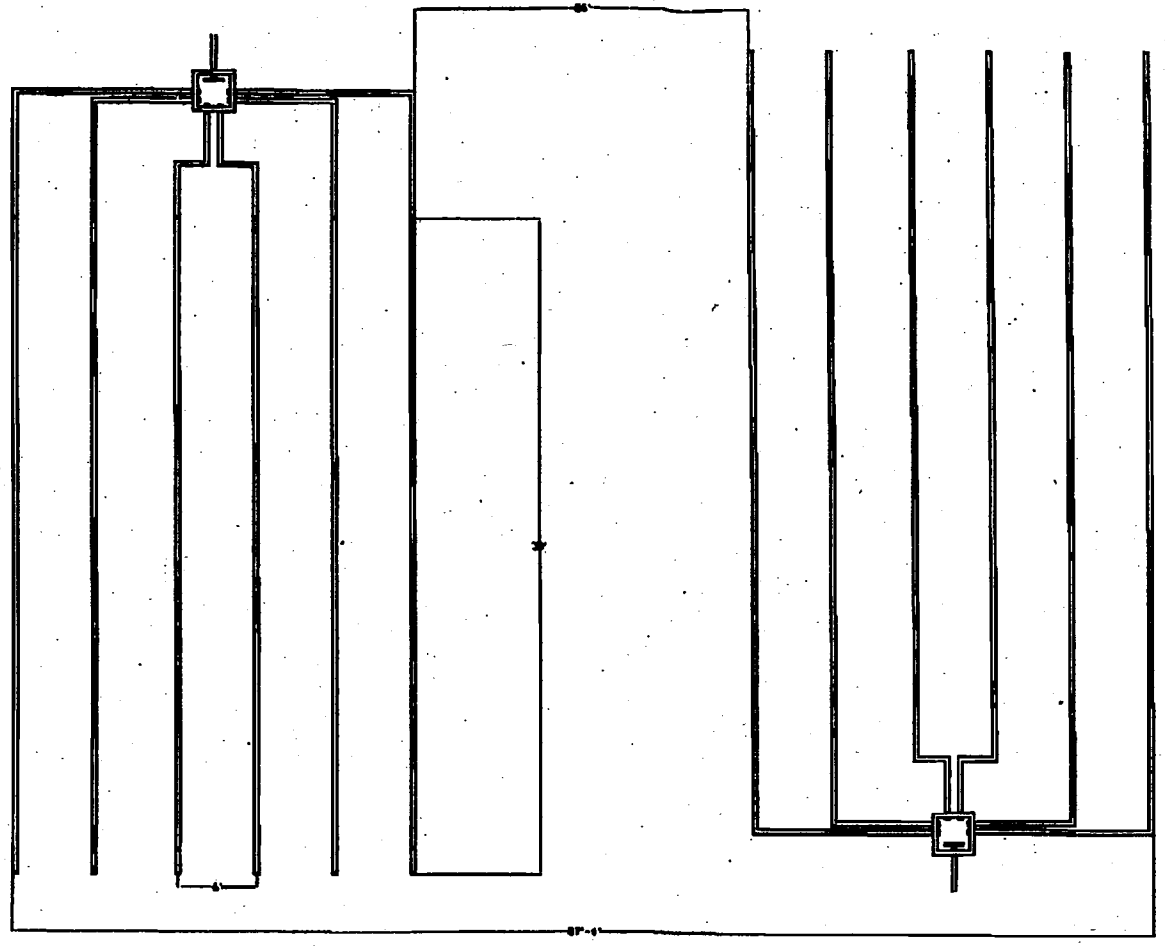
GENERAL NOTES

[illegible]



REVISED 7-2-07	DATE: 10-30-06	LEWIS HOUSE PROJECT WHALLONS BAY ROAD WHALLONSBURG, NY SEPTIC SYSTEM
REVISED 8-17-07	SCALE: NONE	DRAWN BY: [illegible]

396



ABSORPTION FIELD PLAN VIEW
(TYP.)

LEVIS HOUSE PROJECT
WHALLONS BAY ROAD
WHALLONSBURG, NY
ABSORPTION FIELD

REVISED 9-2-07	DATE: 10-30-06	DRAWN BY: [illegible]
REVISED 8-17-07	SCALE: NONE	

07

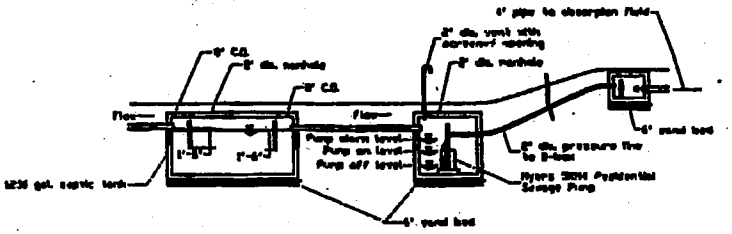
DESIGNED LENGTH OF ABSORPTION TRENCH

NOTES:

1) Min. 12" cover over septic tank, pump station and dist. box.
2) Septic tank baffles to have one inch clear on top.
3) Slope on all non-perforated gravity pipe to be 1/8" per L.F. unless otherwise noted.
4) All tanks, pump stations, and boxes to be concrete (3000 psi). Size and specifications to conform to NYSDOH Design Handbook for Individual Residential Wastewater Treatment Systems dated 1996.
5) All tanks, pump stations and boxes to be water tight.
6) Pump Stations to be supplied with:
   a) Union for disconnection of press. line.
   b) Moisture resistant junction box.
7) All solid pipe to be schedule 40 PVC.
8) Alarm panel for pump station to be located in dwelling. Electrical service to have separate GFI breaker.
9) Inlet on septic tank and D-box to be 2" higher than outlet.
10) Dose capacity of pump station should be set at 75% to 85% of the pipe network volumn.
11) Pump Sta. tank to hold one days capacity between pump high level alarm and inlet from septic tank.
12) Instaall pump station only if absorption field can not be fed by gravity

REQIRED SEPARATION DISTANCES FROM VASTEVATER SYSTEM COMPONENTS (FEET)

SYSTEM COMPONENT	WELL OR SUCTION LINE	WATERCOURSE OR WETLAND	BUILDING	PROPERTY LINE	SWIMMING POOL
HOUSE SEWER	50	25	3	10	-
SEPTIC TANK	50	50	10	10	10
EFFLUENT LINE TO DISTRIBUTION BOX	50	50	10	10	10
DISTRIBUTION BOX	100	100	20	10	20
ABSORPTION FIELD	100	100	20	10	20
SEEPAGE PIT	150	100	20	10	20
DRY WELL, GREY AND PERIMETER	50	25	20	10	10
RAISED OR MOUND SYSTEM	100	100	20	10	20



SEPTIC TANK, PUMP STATION AND DIST. BOX X-SECTION

	LEWIS HOUSE PROJECT WHALLONS BAY ROAD WHALLONSBURG, NY SITE PLAN
	DATE: 9-2-07
	SCALE: NONE

EXHIBIT F

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

REPLY AFFIRMATION IN SUPPORT OF A FULL STAY OF RESPONDENT'S DETERMINATION

A.D. Docket No. 504626

Essex County Index No. 315-08

JOHN J. PRIVITERA, an attorney at law duly admitted to practice in the courts of the State of New York, swears and affirms under penalty of perjury 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 Petitioner 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 affirmation in further support of the Lewis Family Farm's motion for leave to review for the purpose of modifying and affirming the April 11, 2008 Decision and Order of the Essex County Supreme Court (Hon. Richard B. Meyer) (hereafter "April 11 Decision and Order") pursuant to CPLR § 5701(c) in order to implement a full stay of Petitioner's obligation to abide by Respondent Adirondack Park Agency's Enforcement Committee Decision of March 25, 2008 (hereafter "March 25 Determination") until a final judgment is rendered in the Article 78 proceeding and any appeals thereto.

3. This dispute involves a cluster of three farm worker houses on the Lewis Family Farm. The Agency attempts to cloud the issues on this appeal by claiming that the Lewis Family

Farm misrepresented facts surrounding the septic system currently in place for one of the farm worker houses known as the "Dormitory" (also known as "West House Farmworkers' Residence" or "Structure I"). (See Agency's Memorandum of Law in Opposition, dated May 5, 2008, pp. 20-21). This is not true.

4. The Lewis Family Farm has never represented that the common septic system designed for the three-building farm worker housing cluster is fully installed and operational. It is only operational and compliant for the Dormitory. The fact that the Dormitory is currently connected to portions of a pre-existing septic system is further proof that the Dormitory is a replacement dwelling and therefore, deemed "legal" by the Agency. See Affidavit of Douglas Miller, Agency's Enforcement Officer, sworn to July 20, 2007, paragraph 12, Exhibit "M" to Privitera Affirmation dated April 28, 2008.

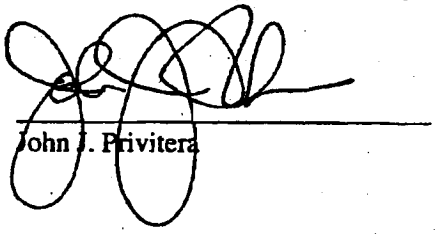
5. The Lewis Family Farm has complied with the Order to Show Cause executed by Hon. Leslie E. Stein on April 28, 2008 by submitting proof that the Dormitory's septic system is operational and complies with New York State law. A copy of the Lewis Family Farm's submission is attached hereto as **Exhibit "A"**.

6. Moreover, the Lewis Family Farm has complied with the Order to Show Cause executed by Hon. Leslie E. Stein on April 28, 2008 by paying the sum of $50,000 to the Essex County Treasurer's Office pursuant to CPLR 5519(a)(2). Copies of the Lewis Family Farm's check to the County of Essex and the accompanying receipt are attached hereto as **Exhibit "B"**.

7. Accordingly, this Court should make permanent the temporary relief granted by Judge Stein in the Order to Show Cause so as to implement a stay of the Agency's March 25 Determination that maintains the status quo by allowing the use of the Dormitory for the farm workers pending a final judgment of this Article 78 proceeding, and any appeals thereto.

8. Finally, in the papers opposing this motion, the Agency also mischaracterizes the procedural history of this dispute. (See Affirmation of Loretta Simon, dated May 5, 2008, ¶ 12; Respondent's Memorandum of Law in Opposition dated May 5, 2008, pp. 4-5). The Agency did not commence its enforcement proceeding until it served a Notice of Apparent Violation on September 5, 2007. See 9 NYCRR § 581-2.6 (declaring that an Agency enforcement proceeding is deemed commenced upon service of the notice of apparent violation). The Agency remains unable to explain why it waited nearly one year after the Lewis Family Farm received a Town of Essex permit and began construction on the farm worker housing before the Agency decided to commence its enforcement proceeding, as noted by Justice Meyer below in granting a partial stay and in finding that the Lewis Family Farm is likely to prevail on the merits of the Article 78 proceeding pending below. (See April 11, 2008 Decision and Order, Ex. A to Privitera Aff. dated April 28, 2008).

I hereby swear and affirm the above under penalty of perjury this 8th day of May, 2008.



John J. Privitera

ESE Earth Science Engineering, P.C.

• Civil • Geotechnical • Environmental • Zebra Mussel Controls •
A Design-Build Affiliate of ZEBRA-TECH, LLC

May 4, 2008

The Lewis Farm
c/o Mr. Mark McKenna, Project Manager
Middle Road
Willsboro, NY 12996

Re: Letter of Completed Works
Farmworkers' Residence IST
Whallons Bay Road
Whallonsburg, NY

Dear Mr. McKenna:

This letter verifies the referenced project was reviewed by Earth Science Engineering, P.C. from May 1 through May 3, 2008, whereby absorption trenches were installed and pump station discharge re-directed thereto in substantial conformance with a 9/2/07 design prepared by Mr. Mark J. Buckley, P.E. The construction of the IST meets the intent of Appendix 75A of Part 75 of the Administrative Rules and Regulations contained in Chapter 11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Please contact me if you have any questions or if I can be of further assistance. Thank you.

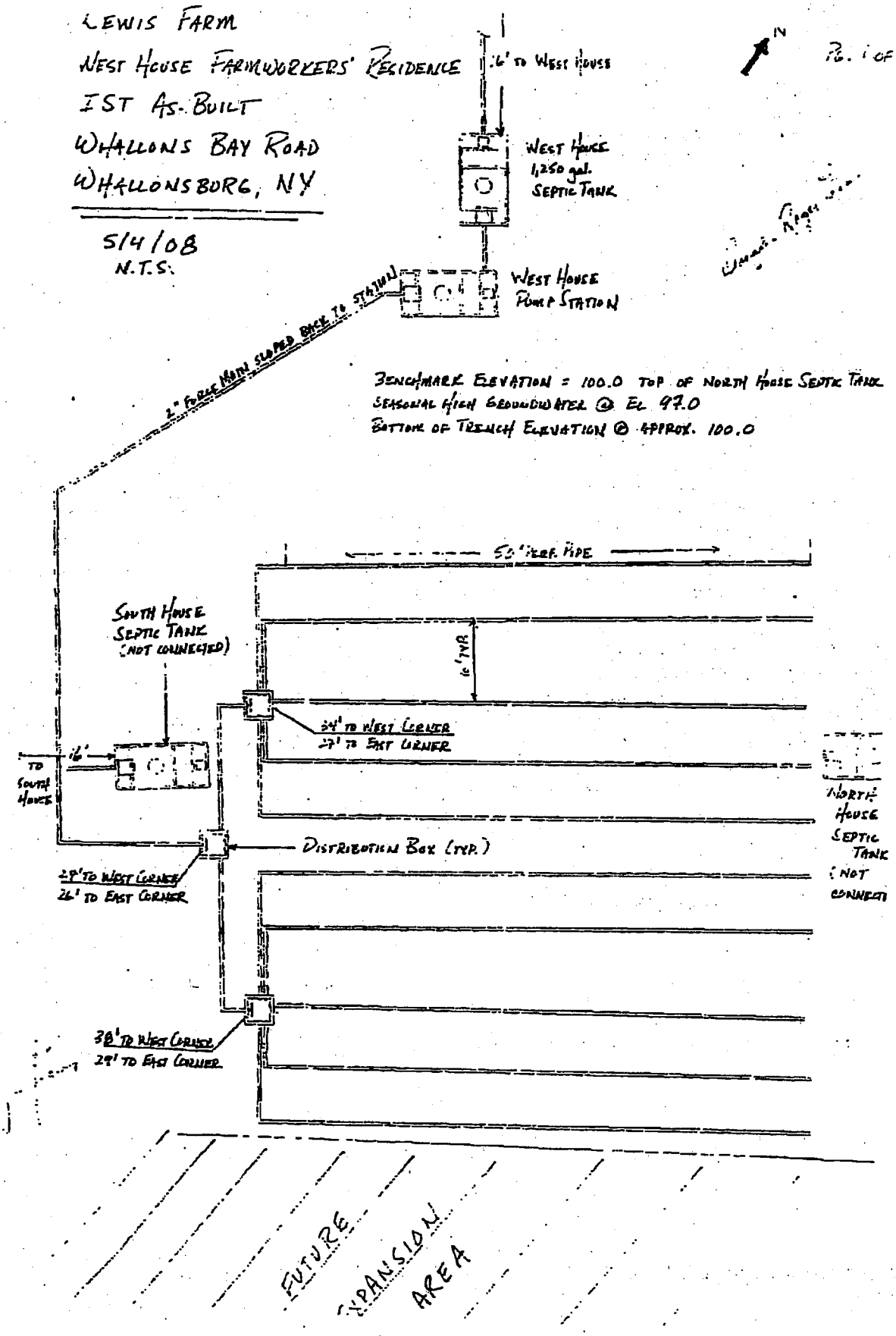
Respectfully submitted,

Earth Science Engineering, P.C.
Douglas R. Ferris, P.E.

3922 NYS Route 22 • P.O. Box 398 • Willsboro, NY 12996 • Telephone: 518-963-8555 • Fax: 518-963-7490
www.zebratechllc.com

LEWIS FARM
WEST HOUSE FARMWORKERS' RESIDENCE
1ST AS-BUILT
WHALLONS BAY ROAD
WHALLONSBURG, NY

5/14/08
N.T.S.



[redacted] Exhibit B [redacted]

LEWIS FAMILY FARM, INC.
1212 WHALLONS BAY ROAD
ESSEX, NY 12936
518-963-4206

1-8-210

6251

5-3-08
Date

Pay to the Order of COUNTY of ESSEX $50,000.

FIFTY THOUSAND dollars

citibank
CITIBANK, N.A. BR. #414
EZ CHECKING
NEW YORK, NY

for

⑆021000089⑆ 020108 35⑈ 6251

ESSEX COUNTY CLERK'S OFFICE

ELIZABETHTOWN, N.Y. 12932

CASH RECEIPT

This is Not a Bill

Rec'd From Lewis Family Farm Inc. Date 5/5/08

PARTIES	TRANSACTION	AMOUNT	
498-2007			
Lewis family farm			
VS.			
A P A.			
Pay Amount into		50,000	.00
Court and Trust.			
Rec'd Payment			
Essex Co. Clerk.			
BY CK # 6251 SD	TOTAL	50,000	00

CLERK

EXHIBIT G

Mark L Buckley, P.E.

P.O. Box 401
Willsboro, NY 12996

Phone (518)963-4467

May 9, 2008

Lewis Family Farm, Inc.
Attention: Barbara A. Lewis
1212 Whallons Bay Road
Essex, New York 12936

Re: Affidavit Index No. 315-08 by Shaun Lalonde

I have read the affidavit of Shaun Lalonde dated May 6, 2008. I am the New York State Licensed Professional Engineer referenced in Paragraph 3 and 5 of that affidavit. I designed the septic system for the three house farm worker housing cluster on Whallons Bay Road on the Lewis Farm.

I have studied the certified as-built drawing of the current system in place at this location, certified by Mr. Douglas Ferris by letter and drawing of May 4, 2008. I also visited the site during the installation of the new system. It is my determination that the installation of the new system complies with Appendix 75-A, 9 NYCRR Part 75. It is also my observation that the as-built drawing shows the necessary measurements and elevations to determine the system conforms to the aforementioned NYCRR. There are no wells within 100 feet of the new septic system.

The design plans as submitted are typical for this size system and do not require topography or a hydraulic profile. Prior to the Lalonde affidavit no request was made by the Adirondack Park Agency for those items. The site plan map is drawn to scale and the new system is installed in the location shown on the site plan map.

As far as the Essex County Soil Maps are concerned they can only be used as a general guide until an actual soil investigation is performed. Soils where glaciations once occurred vary widely and change rapidly over a small area.

Should you have any questions please do not hesitate to contact me.

Sincerely,

Mark L. Buckley, P.E.

Miller Aff.