

December 3, 2014

VIA FIRST CLASS AND CERTIFIED MAIL:

Town of Westhampton Massachusetts

Attention: Mr. Charles Miller

1 South Road

Westhampton MA 01027

RE: Violation of Zoning Enforcement Order

Dear Mr. Miller

As you are aware, this office represents the interests of Mr. Paul Silvernail of 245 Northwest Road, Westhampton, Massachusetts as well as the interests of Mr. Mark Challet and Mrs. Sarah Challet of 324 Northwest Road, Westhampton, Massachusetts. This letter is a follow up to our previous correspondence regarding the ongoing zoning violations at lot 5-15 Northwest Road, Westhampton Massachusetts (the "Property") and our request for action to correct such violations.

On November 6, 2014 our office sent a letter to your attention requesting that you enforce the cease and desist order issued to Mr. David Cotton and his businesses on May 30, 2012, ordering him to cease all commercial operations on the Property. See a copy of the November 6, 2014 letter attached hereto as Exhibit "A". I will note that the return receipt indicates that our letter was not signed for by your office until November 19, 2014, almost two weeks after it was mailed to the town. See copy of return receipt attached hereto as Exhibit "B".

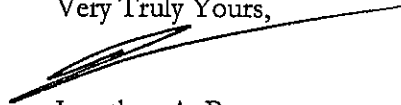
As of today's date, it has been fourteen (14) days since you received our letter and no action appears to have been taken to enforce the cease and desist order issued to Mr. Cotton, or to ensure that the Property is in compliance with the Town of Westhampton Zoning Bylaws. Similarly, we have not received any correspondence indicating that your office is declining to act on this matter. Pursuant to Mass. Gen. Laws. c. 40A §7 your office is required to notify us of any action, or refusal to act, within fourteen (14) days of our request for enforcement, specifically the statute states:

[i]f the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request. Mass. Gen. Laws. c. 40A §7(emphasis added).

As such, we respectfully request that you provide us with an update as to the status of our request for action in this matter by December 12, 2014, and that you take the necessary steps to enforce the cease and desist order and the Town of Westhampton Zoning Bylaws.

Thank you for your time and attention to this matter.

Very Truly Yours,



Jonathan A. Breton

cc: Paul Silvernail
Mark and Sarah Challet

EXHIBIT A

November 6, 2014

VIA CERTIFIED MAIL:

Town of Westhampton Massachusetts
Attention: Mr. Charles Miller
1 South Road
Westhampton MA 01027

RE: Violation of Zoning Enforcement Order

Dear Mr. Miller

This office represents the interests of Mr. Paul Silvernail, a resident of the town of Westhampton, Massachusetts. It has come to our attention that a Mr. David Cotton is has been operating a commercial operation at lot 5-15 Northwest Road, Westhampton Massachusetts (the "Property"), in direct violation of a lawful order from your office dated May 30, 2012, a copy of which is attached hereto as Exhibit "A".

Background

One May 30, 2012 your office issued a cease and desist order requiring Mr. Cotton, and his associated businesses, to cease all commercial operating at the property, specifically the "processing or storing of wood waste or logs" without a special permit. This order further required Mr. Cotton to "remove all evidence of the commercial operations" from the Property within thirty days of the order. Mr. Cotton failed to take such action and appealed your order to the Westhampton Zoning Board of Appeals ("ZBA"). A hearing on Mr. Cotton's appeal was held on August 14, 2012, at which the Board of Appeals unanimously voted to uphold your order and require Mr. Cotton to cease and desist all commercial activities at the Property, a copy of this decision is attached hereto as Exhibit "B".

Description of Violations and Applicable Regulations

Your order, as affirmed by the ZBA, gave Mr. Cotton until June 30, 2012 to cease all processing and storing of wood waste or logs at the Property and to remove all evidence of the commercial operations therefrom. To date, Mr. Cotton has failed to cease his commercial operations at the Property, or remove the evidence thereof; a violation which has existed for 856 days as of the date of this letter. *See* Affidavits of Mark and Sarah Challet attached hereto as Exhibit "C" and Photos of the Property attached hereto as Exhibit "D".

Under Section 5.473 of the Town of Westhampton Zoning Bylaws (the "Bylaws"), a person violating any provision of the Bylaws or any lawful order of the Zoning Enforcement Officer "shall be subject to a fine of not more than \$100 per offense." (emphasis added). The Bylaws indicate that each day that a violation exists shall be considered a separate offense.

Furthermore, Section 6.06(a) of the Bylaws states "[a]ny violation of the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decision rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense." This section goes on to permit the Building Inspector to enforce the Bylaws or any ZBA decision by filing a non-

criminal complaint pursuant to General Laws Chapter 40, Section 21D and further states that “[t]he fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be deemed a separate offense.”(emphasis added).

Request for Relief

Pursuant to Mass. Gen. Laws c. 40A § 7¹ your office is charged with enforcing the Bylaws and has authority to assess and levy fines on individuals who violate the Bylaws. Mr. Cotton’s continuing violation of the Bylaws and your cease and desist order over the past 856 days demonstrates blatant disregard for the Bylaws and those charged with enforcing them. As such, we ask that you assess the maximum fine of \$100 per day to Mr. Cotton for these continuing violations (\$85,600.00 to date) and pursue a non-criminal complaint against Mr. Cotton as permitted by Section 6.06 of the Bylaws.

Very Truly Yours,



Jonathan A. Breton

cc: Selectmen, Town of Westhampton
Zoning Board of Appeals, Westhampton
Mark and Sarah Challet

Enclosures

¹ If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request.

EXHIBIT A



Massachusetts

DEPARTMENT OF INSPECTION SERVICES
1 South Road
Westhampton, MA 01027



Cotton Tree Service, Inc.
248 Hatfield Street
Northampton, MA 01060

May 30, 2012

Re: Northwest Road Property across from 315 Northwest Road
also known as Parcel 5 - 15
also known as Dodge Maple Grove Farm

Mr. Cotton,

Pursuant to a complaint filed on 05-09-2012 concerning the use of lot 15 - 5 on Northwest Road. I have viewed the site and it appears that there is a stockpile of logs and wood chips. I have examined a copy of the "Notification Form for On-Site Wood Chipping" that you submitted April 30, 2012 stating the intended use of the land as on site storage and chipping. I have determined that the commercial use of the property in question owned by yourself is not an allowed use under Town of Westhampton Zoning Bylaws dated May 13, 1995 Section 3.01 and M.G.L. chapter 40A.

Based on my investigation, I hereby require that you or your associated businesses, Cotton Tree Service, Inc. located at 248 Hatfield Street in the City of Northampton or others refrain from processing or storing wood waste or logs at the Northwest road property stated above.

You are therefore required to remove all evidence of the commercial operations from this property.

You will have thirty days to comply with this decision or face penalties per section 5.473 of the Westhampton Zoning Bylaws dated May 13, 1995.

All zoning decisions may be appealed to the Westhampton Zoning Board of Appeals.

Respectfully submitted,

Charles Miller

Town of Westhampton
Inspector of Buildings
(413) 336-7875

www.townofwesthampton.com

CC: Selectmen, Town of Westhampton
CC: Zoning Board of Appeals, Westhampton
CC: Mr. Mark Challet
CC: File

EXHIBIT B

Report of Public Hearing on Application 192, an appeal of Zoning Officer's ruling

At their regular meeting on August 14, 2012, the Zoning Board of Appeals held a public hearing to hear an appeal of the Zoning Enforcement Officer's ruling to Cotton Tree Service, dba Dodge Maple Grove Farm, LLC, to cease and desist from stump and wood grinding at their property on Northwest Road because they lacked a permit to do that work.

Because of the large number attending it was moved by Kelsey and seconded by Wolf to move the hearing to the main Town Hall from the Annex Building. The motion carried unanimously, and we adjourned to the Town Hall.

The hearing was called to order by Chairperson Leo Aloisi at 7:35 pm with all five members of the board present, Chairperson Aloisi, Suzanne Wolf, Wayne Parks, John Kelsey, and Richard W. Tracy. There were 38 citizens present and we received two letters of comment.

Mr. Aloisi called on Pat Melnik, attorney for David Cotton, to give his presentation. Mr. Melnik made a point of order that the business under discussion was the Dodge Maple Grove Farm and not the Cotton Tree Service, although both are operated by David Cotton. Mr. Melnik stated that David Cotton had been using that property since 1987 although he had just purchased it from Walter and Mary Challet a year ago. He said it had always been a farm with no other uses for several generations of Mary Challet's family. There is a maple sugaring operation ongoing, cattle on site, and a USDA service plan being developed, and the farm is a member of Farm Bureau. Mr. Cotton is chipping stumps and over 50% of the stumps come from on the farm. It is DEP approved. Mr. Melnik stated that Westhampton is a "Right to Farm Community" and that our bylaws allow agricultural and horticultural operations. He said this is a Chapter 128-1A forest operation, and under Chapter 40A- sec. 3 allows for only 25% of materials to be from on site to produce a minimum living income. He stated that this operation should be allowed to continue.

Mr. David Cotton then spoke saying he had been working with the Challets for 25 years, and had been in business for 40 years. He stated they had previously been using the access to the property, further down the road, but that Mark and Sarah Challet had control over that access and had closed it. Now they are using the access of the former Dodge Road. They have built up the road to good condition and built a stone retaining wall. They want to rebuild the sugar house at that location, reclaim the open gravel banks and have a nice little farm. David stated he didn't know where the complaint came from but the first he knew about it was when he met with Tom Martin and Josh Matthew, of the Board of Health, to view the site. He felt Tom was antagonistic. David then presented the Board with a letter from David Loven, and expressed his opinion on the value of small communities such as Westhampton and how he has worked with them.

Wayne Parks then asked Mr. Cotton to explain the meaning of a letter which the Board has received a copy of, calling for a cease and desist of dumping stumps at that location. David Cotton replied it was a low value issue, and only that he needed to get a permit from the town. It came from a visit from Charlie Klein of the DEP.

Wayne also asked about a letter we had received from one member of the Board of Assessors questioning the accuracy of how the land was listed under Chapter 61.

Mr. Melnik inserted that he had written the application and that he wasn't sure of the different categories and if it was wrong it was his fault.

Walter Morrey, chair of the Assessors, inserted that the letter was from one assessor to avoid a possible conflict of interest, because the other two members happened to be abutters of the property in question. He stated that some of Mr. Cotton's land was under chapter 61B and 61C, but that none was under 61A.

Mr. Aloisi then called for other speakers in support of the appeal. Richard Shaw, Claude DuPont, Walter and Mary Challet, Ernest Paradee, Louis Purrington, Jim Meehan, and Tom Janik all spoke in support of the plan and of Mr. Cotton's character. Some from the position of employees and some from other working associations.

Mr. Aloisi then called for speakers opposed to the appeal. Tom Martin from the Board of Health spoke saying that they had received a notice from Charlie Klein, of the DEP, and when that happens the Board is obligated to look into the question. He was sorry if Mr. Cotton mistook his intentions, but his questions were all rhetorical and he was in a neutral position. He explained that stump dump regulations are the responsibility of the Board of Health when stumps are brought in from other areas. Also all chipping operations must notify the DEP and the local Board of Health, and comply with local bylaws. The State has notified Cotton to develop a future plan.

Mr. Tracy, from the ZBA, asked Tom how large an area had stumps buried as he had not been on the site. Mr. Martin said an area roughly 100 feet square and 30 feet deep.

Ginny Curtis asked how we had gotten to this place? Mr. Parks explained the appeal process.

Sarah Challet of 324 Northwest Road said their home is surrounded by the Cotton property. They had allowed the Cotton trucks to use their right of way but their lifestyle was not respected so the road was closed. Trucks were coming early morning and late at night. She questioned some of Cotton's statements and said logs and stumps came from away. The chipper has been there once.

Mr. Parks asked, You have seen trucks coming in? She answered, Oh yes.

Bill Seney, of 310 Northwest Road, said he has been an abutter for 23 years, and has had a good relationship with Mr. Cotton, and Mr. Cotton has helped him in the past. However, when he asked David if there was going to be tub grinders and other noisy equipment, David said he wouldn't do that. Now he has to question the real intent for the future. Mr. Seney says he is away at work 11 1/2 hours a day and deserves to be able to rest when he gets home. He is concerned about that noise.

Leslie Morrey, of 322 Northwest Road, an abutter, is neutral, but wants to know what regulations can be applied. She asked about, fencing, leaking equipment, fire stops, ground pollution, etc.?

Chairperson Aloisi asked if there were any new positions which hadn't been heard, if not we should close public input, and consider the question. Tracy moved to close the

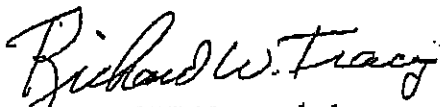
public portion of the hearing. It was seconded by Parks, and voted in the affirmative unanimously.

Most of the public stayed in the room as the Board discussed the issue. The Board considered all the input, and reviewed the bylaws and the Commonwealth Zoning Act. The analysis was that Mr. Cotton has already made application to the Planning Board for a special permit, and can pursue the issue as far as he desires, but the core question for this Board is the "cease and desist order" from the Zoning Officer. That order was based on Mr. Cotton not having the necessary permits.

Our decision is: That it is our determination the current situation at Mr. Cotton's property on Northwest Road does not comply with the Westhampton Bylaws, without a special permit. Therefore, we find that the Zoning Enforcement Officer's decision is correct at this time. It was moved by Tracy and seconded by Parks and voted in the affirmative unanimously, 5 in favor, and none opposed.

It was then moved by Kelsey and seconded by Wolf to adjourn the meeting at 9:35pm. That motion carried and the meeting was adjourned.

Respectfully submitted,



Richard W. Tracy, clerk
Westhampton Zoning Board of Appeals

EXHIBIT C

AFFIDAVIT

I, Sarah A. Challet of 324 Northwest Road, Westhampton, Massachusetts hereby state under oath as follows:

- 1) I am an abutter to the property know as 5-15 Northwest Road, Westhampton Massachusetts (the "Property").
- 2) Since May 30, 2012, and before such time, I have observed Mr. David Cotton running commercial operations on the Property, specifically, among other things, the processing and storing of wood waste and logs.
- 3) Mr. Cotton is currently storing logs, debris, trailers, and assorted equipment on the Property which are visible from my property.

Signed under the pains and penalties of perjury this 4th day of November, 2014.

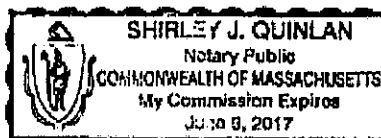
Sarah A. Challet
Sarah A. Challet

COMMONWEALTH OF MASSACHUSETTS

Hampshire
~~Hampden~~, ss.

On this 4th day of November 2014, before me, the undersigned notary public, personally appeared Sarah A. Challet, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Shirley J. Quinlan
Notary Public
My commission expires: June 9, 2017




AFFIDAVIT

I, Mark E. Challet of 324 Northwest Road, Westhampton, Massachusetts hereby state under oath as follows:

- 1) I am an abutter to the property know as 5-15 Northwest Road, Westhampton Massachusetts (the "Property").
- 2) Since May 30, 2012, and before such time, I have observed Mr. David Cotton running commercial operations on the Property, specifically, among other things, the processing and storing of wood waste and logs.
- 3) Mr. Cotton is currently storing logs, debris, trailers, and assorted equipment on the Property which are visible from my property.

Signed under the pains and penalties of perjury this 4th day of November, 2014.

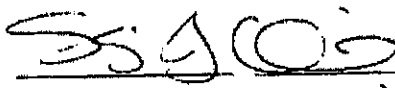


 Mark E. Challet

COMMONWEALTH OF MASSACHUSETTS

~~Hampshire~~
Hampden, ss.

On this 4th day of November 2014, before me, the undersigned notary public, personally appeared Mark E. Challet, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.


 _____, Notary Public
 My commission expires: June 9, 2017

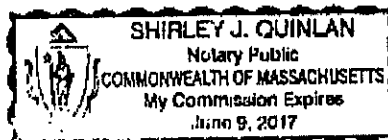
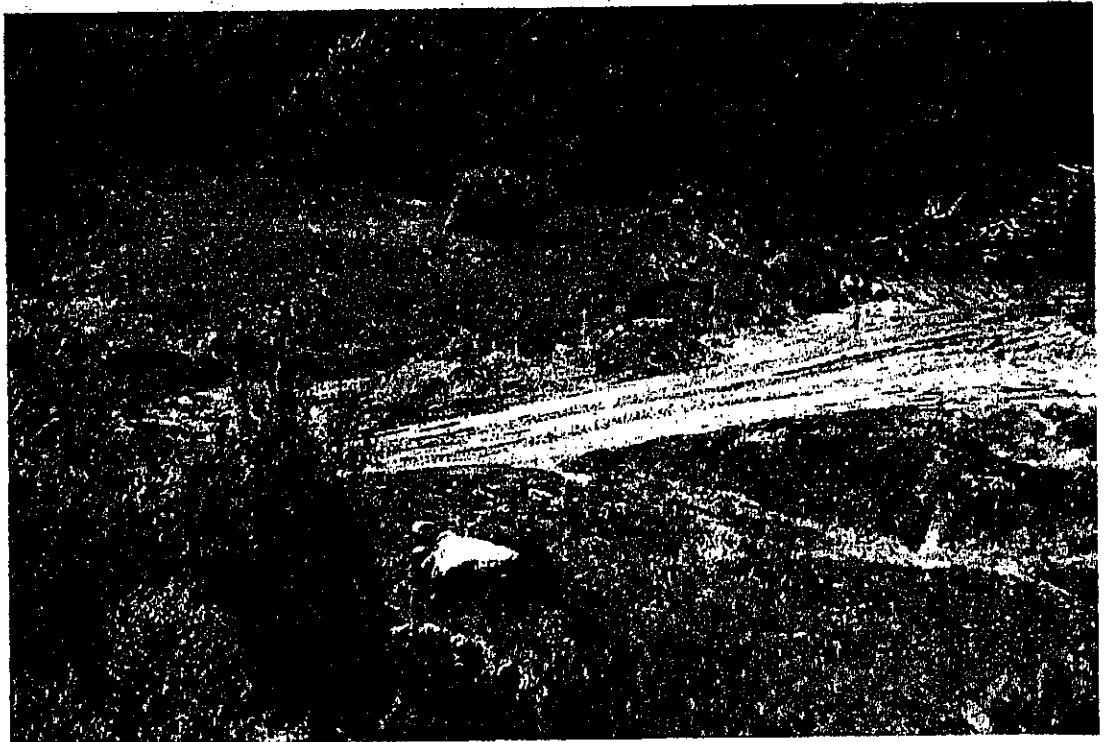
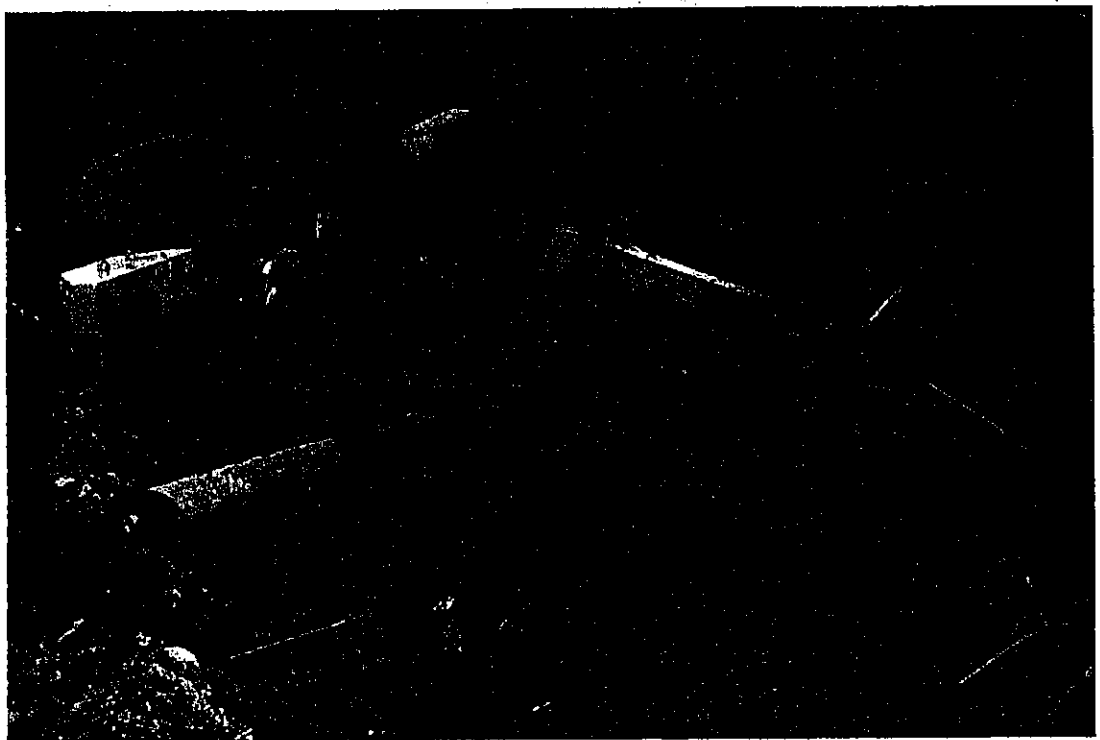
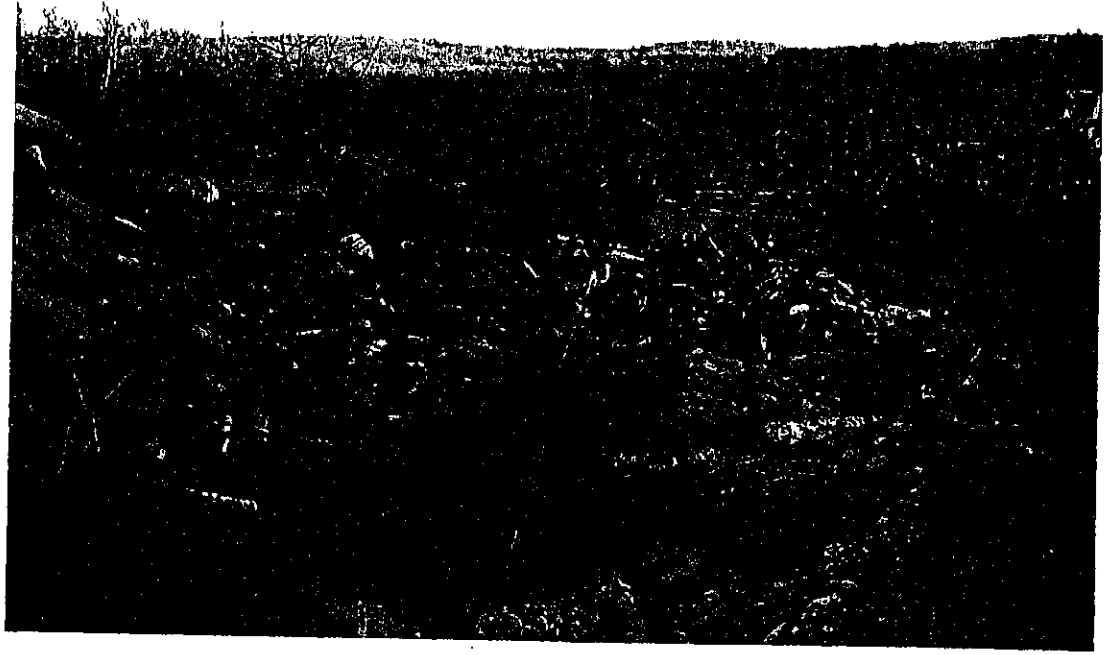


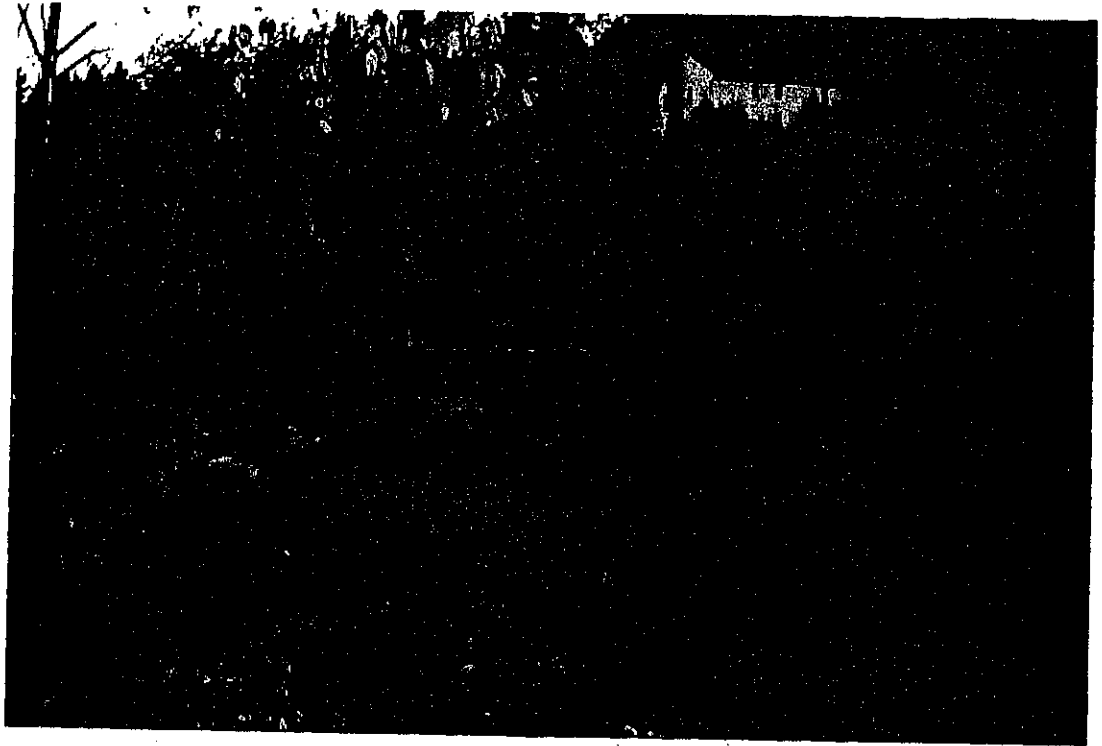
EXHIBIT D

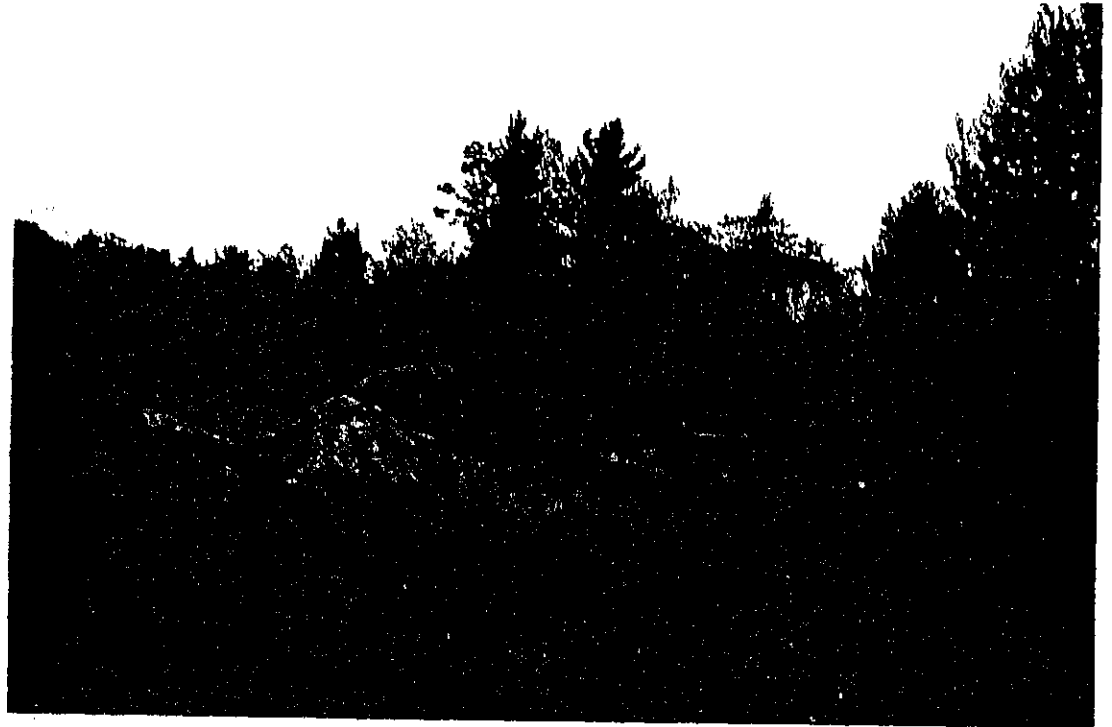






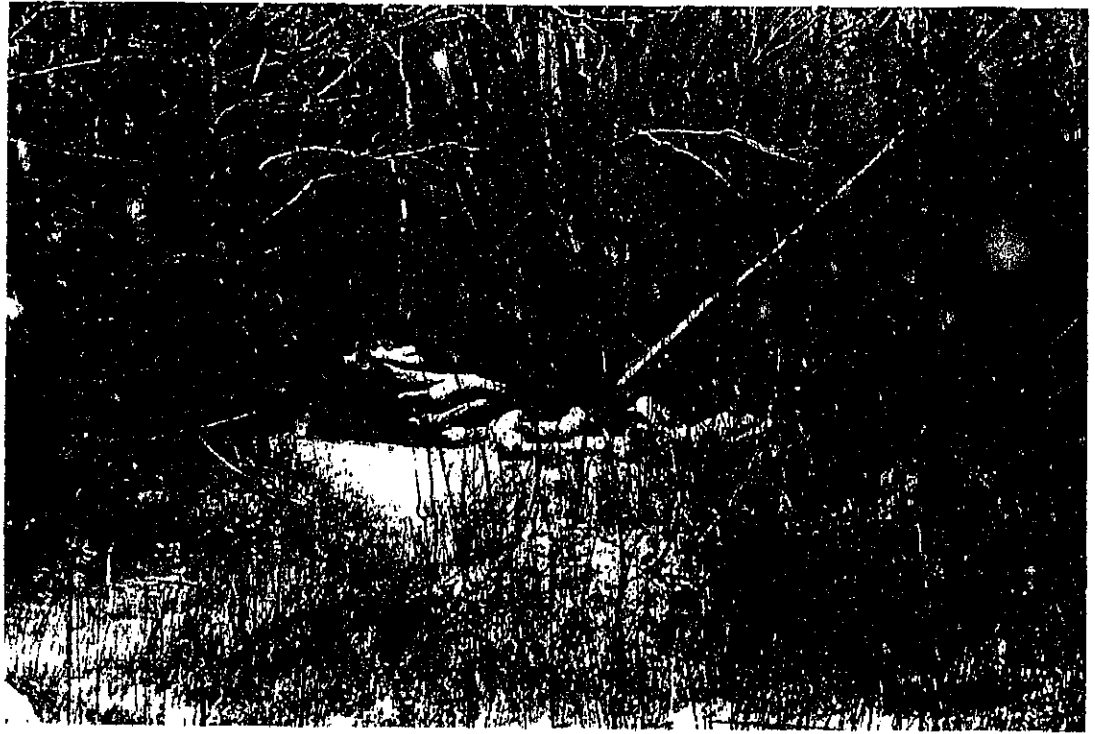






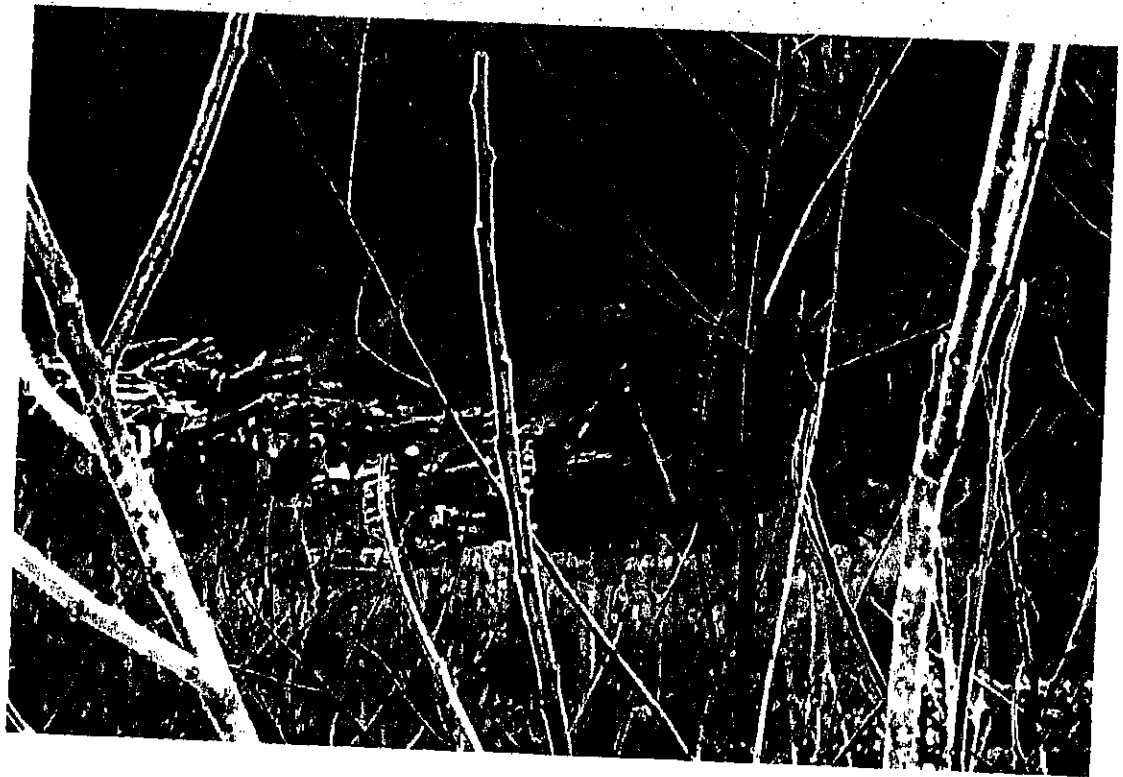


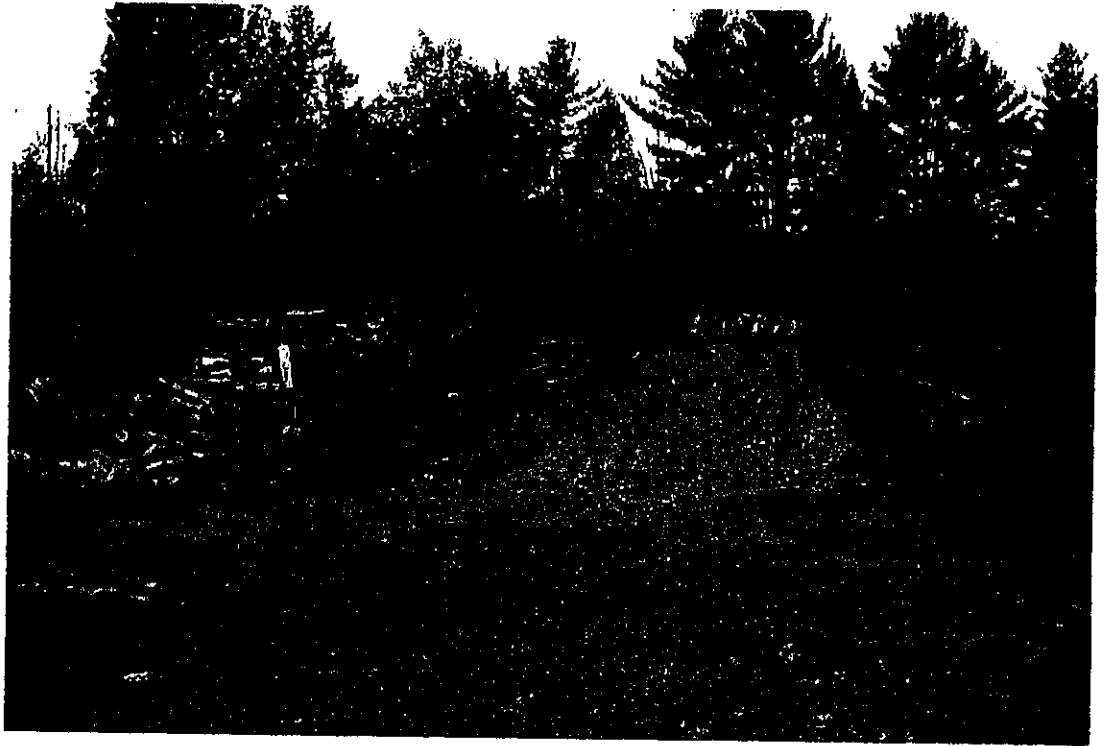


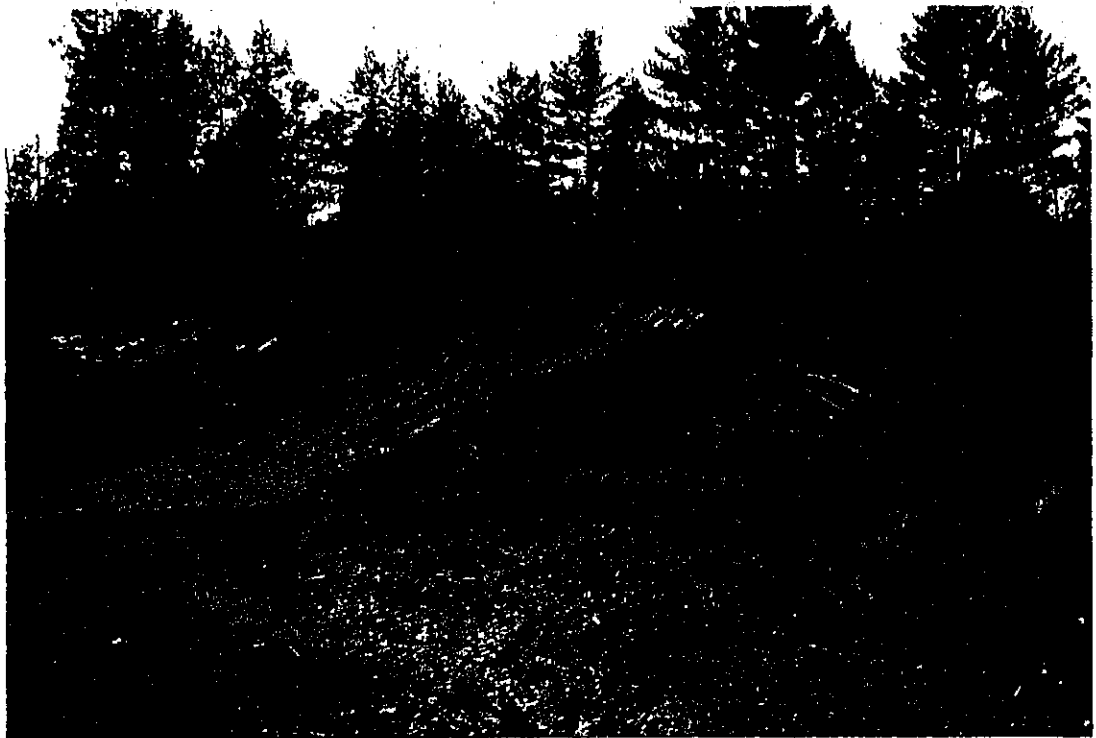


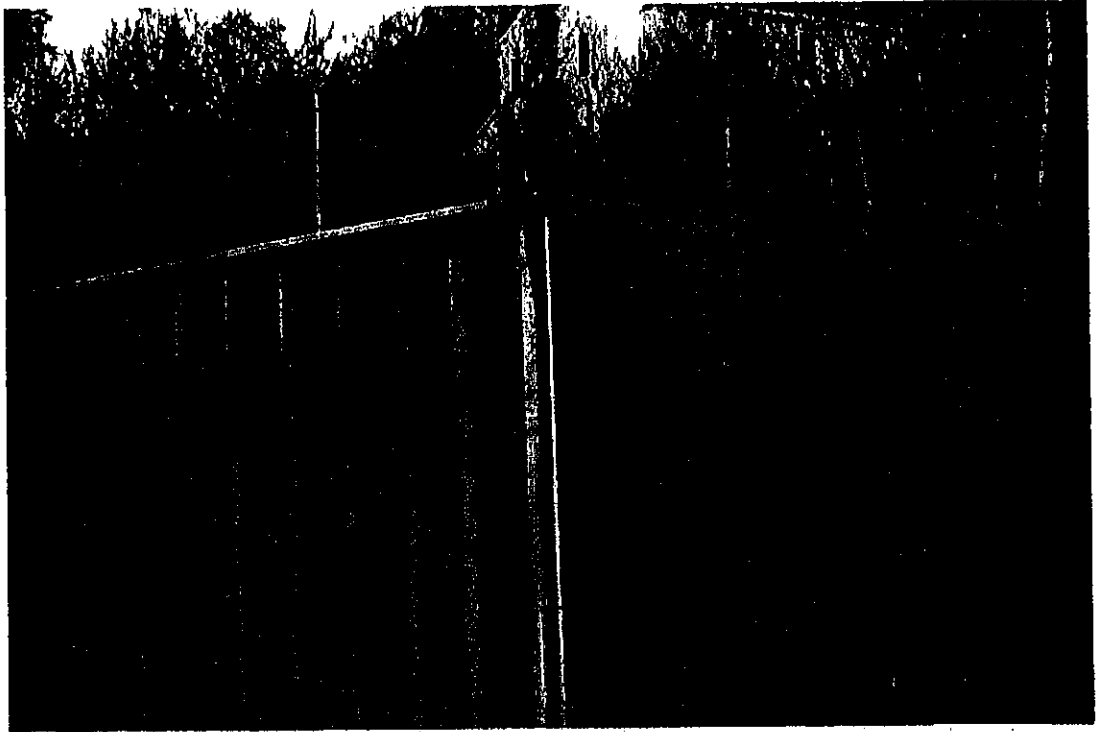


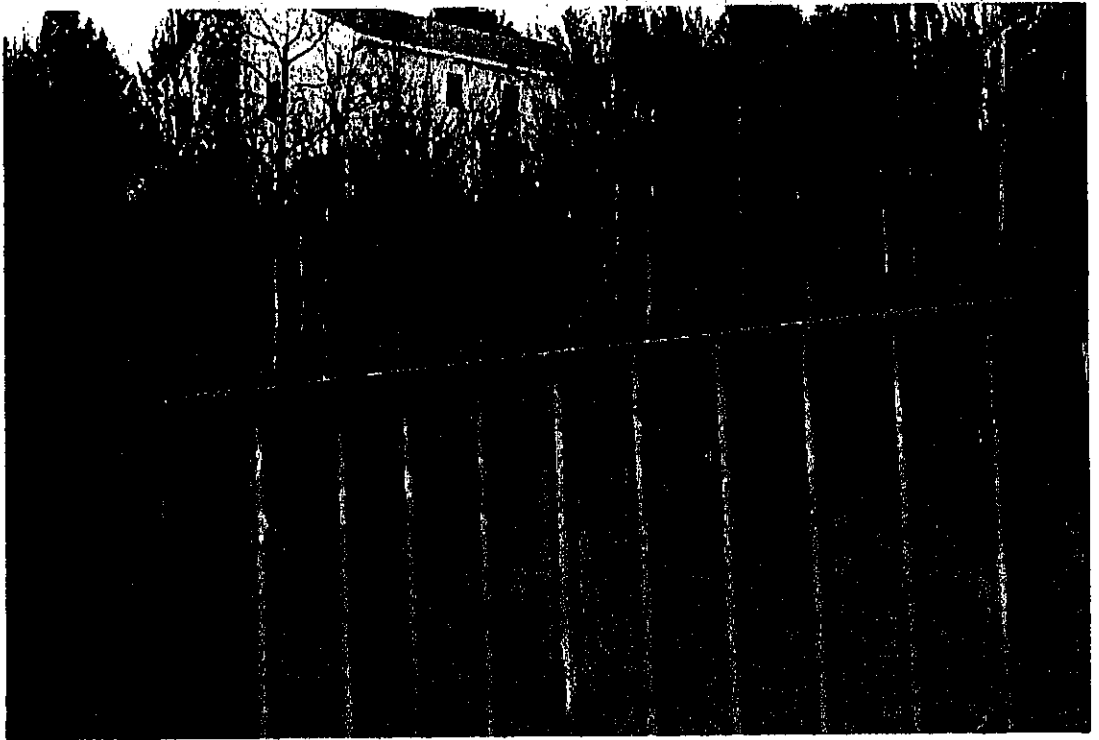
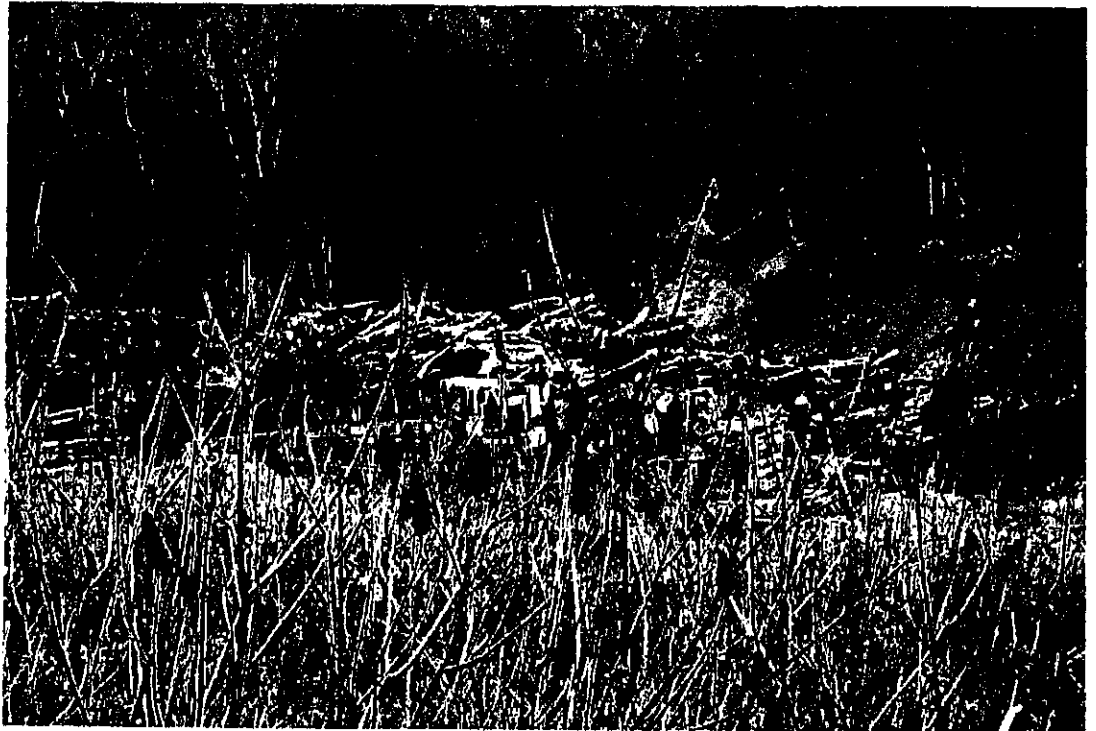




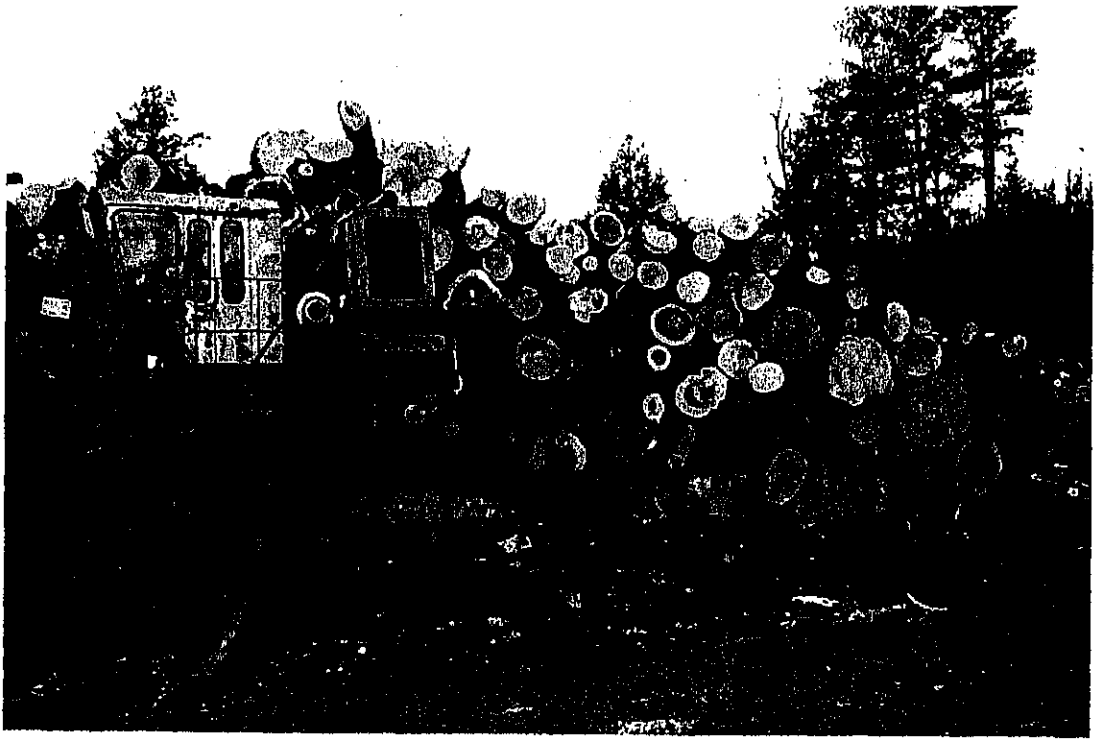












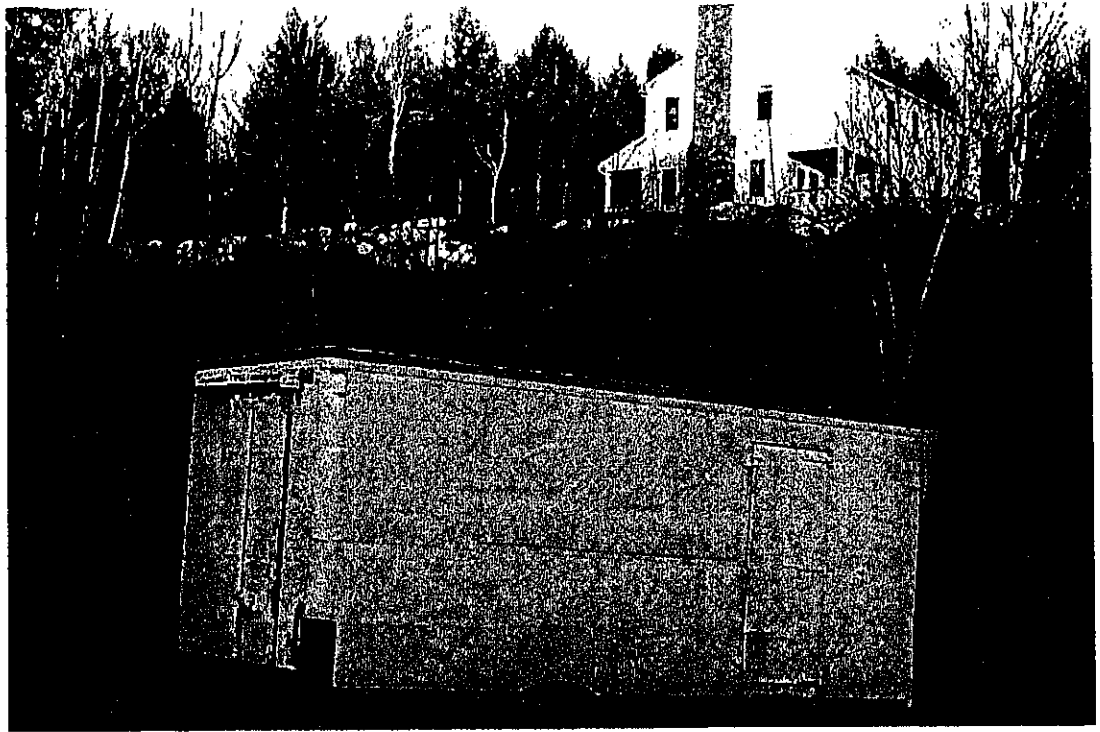


EXHIBIT B

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Cheryl A. Prorost</i>	
1. Article Addressed to: <i>Town of Westhampton Attn: Charles Miller 1 South Road Westhampton, MA 01027</i>	B. Received by (Printed Name): <i>Cheryl A. Prorost</i>	C. Date of Delivery: <i>11-19</i>
2. Article Number: (Transfer from s)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

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