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March 16, 2001

FILED²
MAR 16 2001
Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
Governor State Office Building
Jefferson City, Missouri

E0-2001-491

HAND DELIVERY

RE: Third Territorial Agreement
The Empire District Electric Company and White River Valley Electric Cooperative

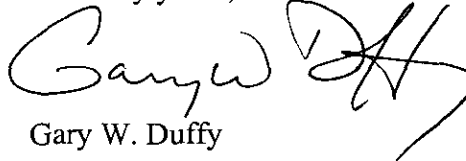
Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of a "Joint Application" by The Empire District Electric Company and White River Valley Electric Cooperative regarding the Third Territorial Agreement entered into between those parties.

Also please note that check no. 97186 from White River Valley Electric Cooperative in the amount of \$250 is enclosed for the filing fee.

If you have any questions, please give me a call.

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl:

Office of Public Counsel
Office of the General Counsel

cc w/o encl:

Rod Widger

EDEWR3rdteragcov/gdmydocs/wp8

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application)
of The Empire District Electric)
Company and White River Valley)
Electric Cooperative for Approval of)
a Written Territorial Agreement)
Designating the Boundaries of each)
Electric Service Supplier within the)
White Oaks Subdivision of the City)
Of Branson, Taney County, Missouri.)

Case No.

FILED²
MAR 16 2001
Missouri Public
Service Commission
EO-2001-491

JOINT APPLICATION

COME NOW The Empire District Electric Company ("Empire") and White River Valley Electric Cooperative ("White River"), hereinafter referred to collectively as "Applicants," by and through their respective counsel, and for their Joint Application to the Missouri Public Service Commission ("Commission"), pursuant to 4 CSR 240-2.060(1) and (13), 4 CSR 240-21.010, and section 394.312 RSMo (1994), for an order approving Applicants' Third Territorial Agreement, respectfully state as follows:

1. **The Applicants** - Empire is a corporation organized and existing under the laws of Kansas and has its principal office located in Joplin, Missouri. It is an electrical corporation subject to the jurisdiction of the Commission and is engaged in the sale and distribution of electricity in portions of Missouri, including the City of Branson in Taney County. Empire has no pending or final judgments or decisions against it from any state or federal agency or court which involve customer service or rates within the three years immediately preceding the filing of this Joint Application. Empire has no overdue Commission annual reports or assessment fees.

2. White River is a rural electric cooperative organized and existing under the laws of Missouri and has its principal office one East Highway 76, Branson, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within Taney and other Missouri Counties. White River has no pending

or final judgments or decisions against it from any state or federal agency or court which involve customer service or rates within the three years immediately preceding the filing of this Joint Application.

3. **Correspondence and Communication** - Correspondence, communications, and orders in regard to this Application should be directed to

For Empire

Mr. Gary W. Duffy
Brydon, Swearengen & England, P.C.
312 E. Capitol Avenue
PO Box 456
Jefferson City, MO 65102
573-635-7166
573-635-3847 (fax)

Mr. Glenn Blake
Director of Commercial Operations
The Empire District Electric
Company
2115 State Highway 14 East
Ozark, MO 65721

For White River

Mr. Rodric A. Widger
Andereck, Evans, Milne, Peace
& Johnson, L.L.C.
1111 S. Glenstone
PO Box 4929
Springfield, MO 65808
417-864-6401
417-864-4967 (fax)

Mr. Chris Hamon
Manager
White River Valley Electric
Cooperative, Inc.
East Highway 76
P.O. Box 969
Branson, MO 65615

4. **The Territorial Agreement** - Subject to the terms and conditions of an Agreement, known as the "Third Territorial Agreement" between Empire and White River, Applicants have specifically designated the boundaries of the exclusive electric service area of White River for service to new structures in the White Oaks Subdivision of Branson, Missouri, which is more particularly described in the Agreement. Applicants have attached a copy of the Agreement to this Application as **Appendix A**, which is incorporated by reference into this Application and made a part hereof for all purposes. A metes and bounds description of the exclusive service area and a map depicting the service area are a part of the Agreement and are incorporated by reference into this Application and made part hereof for all purposes. The Third Territorial Agreement only establishes an exclusive service territory for White River in a single subdivision. It does not require transfer of any facilities or customers between the Applicants, so

no list of all persons whose utility service would be changed by the agreement, as required by 4 CSR 240-2.060(13), is included.

5. **Articles of Incorporation** - Empire's documents of incorporation have been previously filed with the Commission in its Case No. EF-94-39 and said documents are incorporated herein by reference, collectively, and made a part hereof for all purposes in accordance with 4 CSR 240-2.060(2)(E). Said documents are incorporated herein by reference and made a part hereof for all purposes. A certified copy of Cooperative's Articles of Incorporation and Certificate of Incorporation from the Secretary of State have been supplied in previous proceedings before the Commission and are likewise incorporated by reference and made a part hereof for all purposes.

6. **Authority to Serve in Proposed Areas** - Empire has a certificate of public convenience and necessity to provide utility service in Branson and Taney County. White River has statutory franchise authority in the areas it proposes to serve.

7. **Other Electric Suppliers** - To Applicants' knowledge and belief there are no other electric suppliers serving in the area covered by this Third Territorial Agreement.

8. **Agreement Is in the Public Interest** - The Third Territorial Agreement is in the public interest because it establishes exclusive service obligations for new structures as between the Joint Applicants in the described area. The establishment of exclusive service territories will prevent future duplication of electric service facilities and will also allow electric service customers within the area to know with certainty the supplier of their electric service.

9. Each Applicant will continue to have service responsibilities beyond the boundaries of the Agreement unaffected by the terms of the Agreement. Empire requires a finding of the Commission that the territorial agreement will not impair the Company's certificates of public convenience and necessity except as specifically limited by the Agreement. No change in Empire's tariff is necessary as a result of this application, so no illustrative tariff is included.

10. **Application Fee** - The Commission's fee required by 4 CSR 240-21.010 is submitted herewith.

WHEREFORE, Applicants respectfully request that the Public Service Commission of Missouri issue its order:

(a) Finding that the designation of electric service area is not detrimental to the public interest and approving the Applicants' Third Territorial Agreement;

(b) Authorizing Applicants to perform in accordance with the terms and conditions of the Agreement, Appendix A to the Joint Application;

(c) Finding that this Agreement shall not impair the Company's certificates of convenience and necessity except as specifically limited by the Agreement.

BRYDON, SWEARENGEN &
ENGLAND, P.C.

By Gary W. Duffy by Rodric A. Widger
Mr. Gary W. Duffy 24905
312 East Capitol Avenue
PO Box 456
Jefferson City, MO 65102-0456
573-635-7166
573-635-3847 (fax)
Email: Duffy@Brydonlaw.com

ATTORNEYS FOR THE
EMPIRE DISTRICT ELECTRIC
COMPANY COOPERATIVE

Respectfully submitted,
ANDERECK, EVANS, MILNE, PEACE
& JOHNSON, LLC

By Rodric A. Widger
Rodric A. Widger, 31458
1111 S. Glenstone
PO Box 4929
Springfield, MO 65808
417-864-6401
417-864-4967 (fax)
Email: rwidger@aempb.com

ATTORNEYS FOR WHITE
RIVER VALLEY ELECTRIC

Certificate of Service

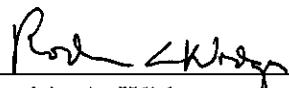
The undersigned certifies that a true and correct copy of the foregoing application was served by hand delivery this 16th day of March, 2001 upon the Office of the Public Counsel and the Office of the General Counsel.

Rodric A. Widger

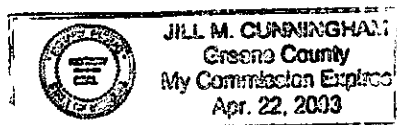
VERIFICATION

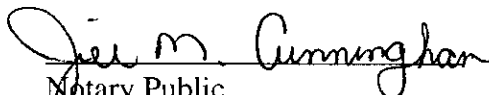
STATE OF MISSOURI)
) SS
COUNTY OF GREENE)

On the 13th day of March, 2001, before me appeared Rodric A. Widger, to me personally known, who being by me first duly sworn, states that he is the attorney for White River Valley Electric Cooperative and is authorized to file this application with the Missouri Public Service Commission and to execute the Application and this Verification on White River Valley Electric Cooperative's behalf, and acknowledged that he has read the Joint Application of The Empire District Electric Company and White River Valley Electric Cooperative for Approval of a Third Territorial Agreement and that the facts stated therein are true and correct to the best of his knowledge, information and belief.


Rodric A. Widger

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.

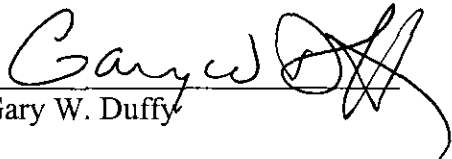



Notary Public

VERIFICATION

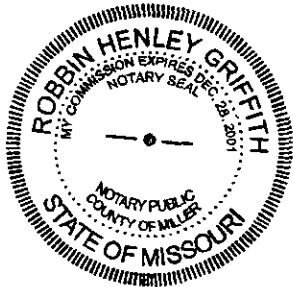
STATE OF MISSOURI)
) SS
COUNTY OF COLE)

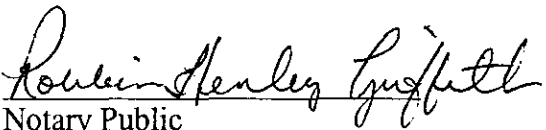
On the 21st day of February, 2001, before me appeared Gary W. Duffy, to me personally known, who being by me first duly sworn, states that he is the attorney for The Empire District Electric Company and is authorized to file this application with the Missouri Public Service Commission and to execute the Application and this Verification on The Empire District Electric Company's behalf, and acknowledged that he has read the Joint Application of The Empire District Electric Company and White River Valley Electric Cooperative for Approval of a Third Territorial Agreement and that the facts stated therein are true and correct to the best of his knowledge, information and belief.



Gary W. Duffy

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.





Notary Public
12-28-01

THIRD TERRITORIAL AGREEMENT

THIS AGREEMENT, made and entered into as of this 21st day of February, 2001, by and between The Empire District Electric Company, a Kansas corporation, with its principal office located in Joplin, Missouri ("Empire") and White River Valley Electric Cooperative, a Missouri rural electric co-operative organized and existing pursuant to Chapter 394, RSMo, with its offices located on East Highway 76, Branson, Missouri ("White River").

WITNESSETH:

WHEREAS, Empire and White River are authorized by law to provide electric service within certain areas of Missouri, including Taney County; and

WHEREAS, Section 394.312, RSMo.1994, provides that competition to provide retail electrical service as between rural electric cooperatives such as White River and electrical corporations such as Empire may be displaced by written territorial agreements; and

WHEREAS, Empire and White River entered into a Territorial Agreement dated February 19, 1993, involving a subdivision in Taney County known as "The Falls," which was approved by the Missouri Public Service Commission ("Commission") by order dated June 11, 1993; and

WHEREAS, Empire and White River entered into a Second Territorial Agreement dated April 11, 1995, involving several parcels in Taney County, which was approved by the Commission by order dated March 8, 1995; and

WHEREAS, Empire and White River desire 1) to promote the orderly development of retail electrical service within another portion of Taney County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to assist in minimizing territorial disputes;

NOW, THEREFORE, Empire and White River, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected.

A. This Agreement pertains only to the subdivision in Taney County, Missouri, known as "White Oak Estates Subdivision" which is particularly described as follows: All of the White Oak Estates Subdivision located in the Northeast quarter of the Northwest quarter of Section 7, Township 22 North, Range 21 West, Taney County, Missouri, said subdivision being a replat of Lot 1 of Camp White Oak as recorded in Cabinet B, Slide 421 in

the Taney County Recorder's Office, the perimeter of said White Oak Estates subdivision being more particularly described as follows: Beginning at the Northeast Corner of said Lot 1 of Camp White Oak at a set iron pin located .30 feet West of the waterline of Lake Taneycomo, thence N 89 degrees, 57 minutes, 00 seconds West 718.22 feet to a set iron pin; thence South 01 degrees, 24 minutes, 00 seconds East a distance of 308.57 to a set iron pin, thence South 89 degrees, 41 minutes, 14 seconds East 753.61 feet to the waterline of Lake Taneycomo, thence in a Northwesterly direction along said waterline a distance of 314 feet, more or less, to the point and place of beginning.

B. A copy of a plat map depicting White Oak Estates Subdivision is attached as **Exhibit A**.

C. This Agreement shall have no effect whatsoever upon service by White River or Empire in any area other than White Oak Estates Subdivision.

D. White Oak Estates Subdivision is located within the corporate limits of the City of Branson, Missouri, and thus is not a "rural area."

2. Definitions

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the Service Area described herein.

B. The term "permanent service" shall have the same meaning as the definition of "permanent service" found in Sections 393.106 and 394.315 RSMo, in effect at the relevant time. If no such statutory definitions exist, the term shall be defined as it appeared in section 393.106 RSMo 1994, and shall be liberally construed to give effect to the expressed intent of this Agreement.

3. Exclusive Service Area. White River under this Third Territorial Agreement shall be entitled to provide permanent service to all structures now or in the future located within the "White Oak Estates Subdivision" ("the Subdivision") referred to above and therefore the Subdivision, as described above, shall be considered the exclusive Service Area of White River, as between Empire and White River. Empire shall not be allowed to serve any structures within the Subdivision. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent - Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission, with such approval being satisfactory in form and content to Empire and White River. If neither party notifies the other in writing within thirty (30) days after the effective date of a final order of the Commission approving this Agreement, it

shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement. There are structures located within the Subdivision on the date of this Agreement which are being, or have been, served with permanent service by White River. There are no structures within the Subdivision currently being served with electricity by Empire. It is the understanding of the parties that permanent service to all existing structures is in accordance with the exclusive Service Area established herein so that no customer at an existing structure will be required to change suppliers to be in compliance with this Agreement.

6. New Structures After Approval of this Agreement.

A. After the date of approval of this Agreement by the Commission, White River shall have the exclusive right to provide permanent service to structures within the Subdivision.

B. Boundary Structures. Notwithstanding the provision in paragraph 6.A., Empire and White River may subsequently agree in writing, on a case by case basis, to allow any new structure in the Subdivision to receive service from Empire even though the structure is served, or required to be served, by White River, when the interests of both parties and the owner of the structure are advanced thereby. Such situations shall be dealt with on a case by case basis, and shall not be deemed to be precedent for any future situations even if the facts may be similar.

i. Each such agreement shall be treated as an Addendum to this Agreement and a copy thereof shall be submitted to the Staff of the Commission, directed to the Utility Services Division director, and a copy submitted to the Office of the Public Counsel.

ii. There will be no filing fee for the submission of such Addendums.

iii. The Addendums subject to this process apply to New Structures only, and not to structures receiving service on the effective date of the Commission's order approving the Agreement.

iv. Each Addendum shall be accompanied by a notarized statement indicating that the two affected electric service providers support the Addendum.

v. Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Commission, and shall indicate the customer's consent to be served by the service provider contemplated by the Addendum.

vi. Each Addendum shall include, or be accompanied by an explanation of the justification that electric service should be provided in the agreed manner.

vii. If the Staff of the Commission, or the Office of the Public Counsel, or the Commission on its own motion, does not submit a pleading objecting to the Addendum within sixty (60) days of the filing thereof, the Addendum shall be deemed approved by the Commission. If such a pleading is filed, then the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved.

viii. Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in section 393.106 RSMo., until the Commission

approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of a final and non-appealable order of the Commission or a court regarding the removal of same.

C. During the interim period between the date of execution of this Agreement and the date it is approved by the Commission pursuant to Section 394.312, RSMo, the parties shall not be bound by the territorial division provisions of this Agreement and may provide service to any customer seeking service if the supplier can lawfully provide such service in the particular location. Pending the issuance of a decision either approving or denying approval of this agreement by the Commission, however, Empire shall not construct primary or secondary electric facilities within the territory assigned exclusively White River pursuant to this Agreement, unless ordered to do so by the Commission or a court of competent jurisdiction. If in the interim before this Agreement is approved by the Commission a new customer should locate on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and the party has the existing right to provide such service, the parties agree to submit the matter to the Commission for determination in the case set up for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which will have the exclusive right to serve the customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the customer in the interim.

7. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described area. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering service outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

8. Term. The initial term of this Agreement shall be thirty-five (35) years from and after the effective date of an order of the Commission approving this Agreement ("initial term"). Thereafter, this Agreement shall be renewed for successive five (5) year terms ("renewal terms") unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Executive Secretary of the Commission and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of suppliers to any structure in the other's service area hereunder, unless such a change is otherwise permitted by law.

9. Cooperation. Empire and White River agree to undertake all actions reasonably necessary to implement this Agreement. Empire and White River will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. White River shall pay all the costs assessed by the Commission for seeking administrative

approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

10. General Terms

A. Land Descriptions: The land descriptions utilized in this Agreement are assumed by the parties to be accurate and reliable and to match the plats or diagrams; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver: No failure of Empire or White River to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this Agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, or if the Condition Precedent is not fulfilled, or if this Agreement is terminated pursuant to its terms, this Agreement shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the service area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, replatting, subdividing, resubdividing, or renaming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of Empire or White River established by this Agreement.

11. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under sections 393.106 and 394.315 RSMo 1994, which allows an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time contemplates not only the physical provision of conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in

Missouri is changed during the term of this Agreement to provide that the provider of the electrical facilities (i.e. conductors) within the Subdivision is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit Empire from providing electrical power and energy to structures within the Subdivision under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if sections 393.106 and 394.315, or section 394.312 RSMo are repealed and not reenacted in a form substantially equivalent to their status on the date this Agreement is approved by the Commission, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of sections 393.160 and 394.315, or section 394.312, as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 21st day of February, 2001.

THE EMPIRE DISTRICT
ELECTRIC COMPANY

By: William L. Lypson

Attest: Janet Sutton

(seal)

WHITE RIVER VALLEY
ELECTRIC COOPERATIVE

By: [Signature]

Attest: Debie Jorgensen

(seal)

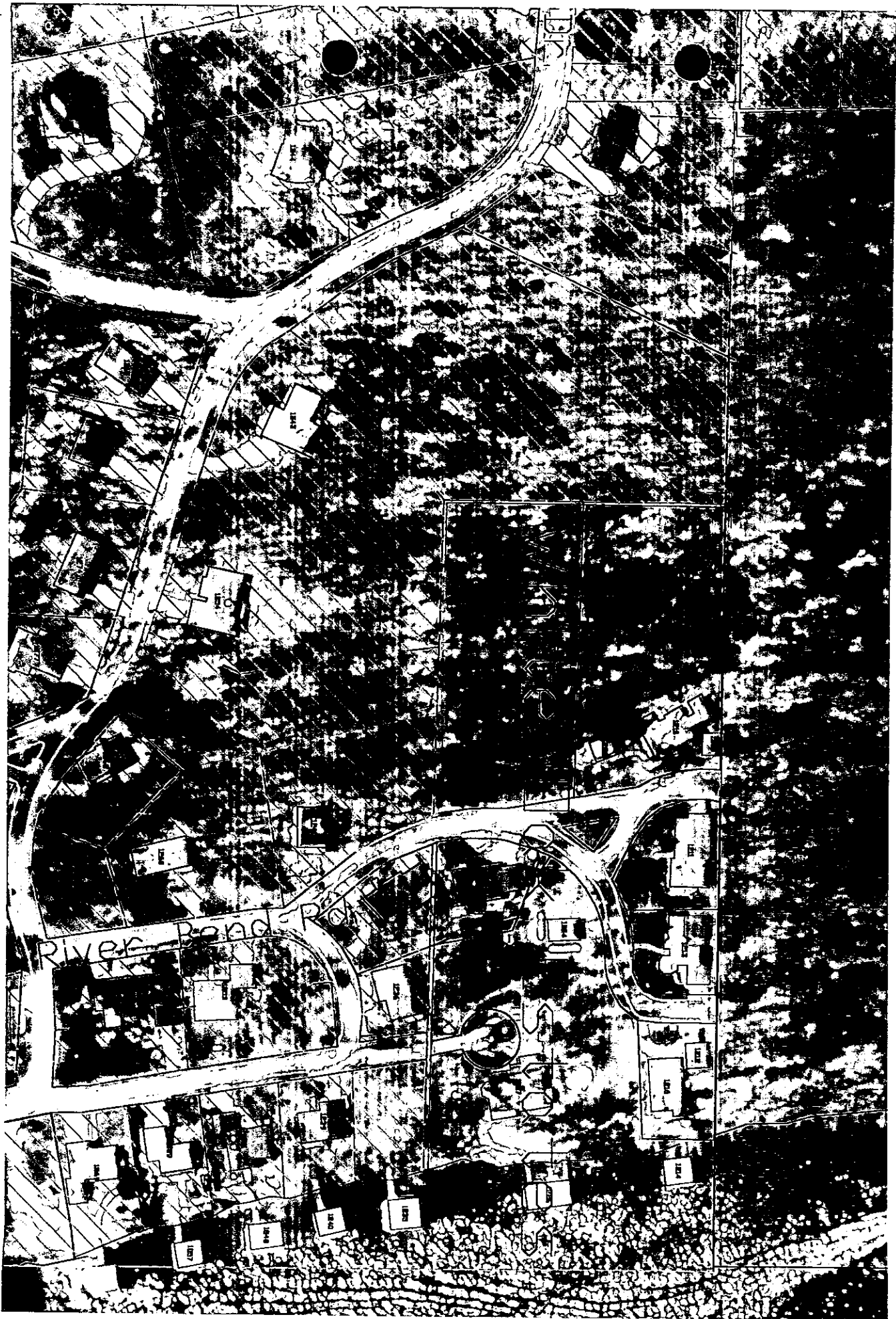


EXHIBIT A