STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

AMENDED VERIFIED PETITION

Index No.: 315-08

LEWIS FAMILY FARM, INC., sometimes referred to herein as Petitioner, by and through its undersigned counsel, alleges the following as and for its Amended Verified Petition pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR):

PRELIMINARY STATEMENT

1. This Special Proceeding seeks to annul and vacate a March 25, 2008 Determination issued by Respondent, Adirondack Park Agency (the "Agency" or the "Respondent"), by and through its members. The March 25, 2008 Determination (the "March 25 Determination") sought to be annulled in this Special Proceeding is attached hereto as **Exhibit "A"**.

2. As described more fully below, Petitioner seeks to annul the March 25 Determination insofar as it finds that the Agency has specific jurisdiction over Petitioner's farm buildings that were designed and built on the Lewis Farm for farm workers. The March 25 Determination is confusing, inconsistent, not supported by law, and Petitioner specifically seeks findings by this Court that:

a. the Agency "is proceeding or is about to proceed without or in excess of its jurisdiction" in asserting regulatory power over agricultural use structures in violation of CPLR § 7803(2);

b. the March 25 Determination was "affected by an error of law" in violation of CPLR § 7803(3) in finding that Respondent's legal authority reaches Petitioner's farm employee housing structures;

c. the March 25 Determination was entered in violation of lawful procedure for failure to be supported by an evidentiary record of an administrative hearing, in derogation of CPLR § 7803(3);

d. the March 25 Determination is not "supported by substantial evidence" in violation of CPLR § 7803(4); and

e. the March 25 Determination is an "abuse of discretion" in prescribing a penalty against Petitioner.

STATEMENT OF FACTS

3. In 1978, Salim B. Lewis and Barbara A. Lewis purchased a farmstead in the County of Essex. Over the years they acquired adjacent lands thus forming what is now a farm of approximately 1,200 acres. Their farmstead is known as The Lewis Family Farm.

4. Petitioner Lewis Family Farm, consisting of approximately 1,200 acres, is one of New York State's largest USDA Certified organic farms and a national leader in organic farming. (Lewis Aff., ¶¶ 2-3; Martens Aff., ¶ 4).

5. The Lewis Family Farm produces certified organic beef animals and raises cows, bulls, heifers and steers. Additionally, the farm produces a range of organic crops, which have

included hard white winter wheat; soy beans; alfalfa; mixed, cool-season grasses; corn; spelt and triticale.

6. The Lewis Family Farm is located within the Essex County Agricultural District No. 4, a county-adopted, state-certified agricultural district. (Privitera Reply Aff., Ex. A).

7. Over the years, the Lewis Family Farm has cleaned up its land and demolished at least fifteen (15) residences that were beyond repair. (Lewis Aff., ¶¶ 5-6; Martens Aff., ¶ 6).

8. The Lewis Family Farm also constructed at least fifteen (15) new farm buildings and other agricultural use structures, including bridges and a 60-foot grain bin, in support of the farm, all without Agency permits. (Lewis Aff., ¶ 7 and Ex. H).

9. As a successful large-scale organic farm, the Lewis Family Farm has a full-time manager, three full-time employees, and several interns and other farm workers working on the farm. (Lewis Aff., ¶¶ 8-10).

10. The Lewis Family Farm's employees require on-farm housing in order to monitor the barns, the barn yard and operate the farm. (Martens Aff., ¶ 12).

11. Suitable off-farm housing is not available for farm employees within the area of the Lewis Family Farm.

12. The Lewis Family Farm decided to provide quality housing for farm workers in an effort to recruit employees that will bring their families to the farm and become vested in the farm and the community.

13. In November 2006, the Lewis Family Farm commenced an employee housing project involving four new houses on the Farm, three of which are built in a cluster next to the barns on the footprint of buildings previously erected at the old Walker Farm. (See Lewis Aff., ¶¶ 12, 30).

14. The Lewis Family Farm obtained permits from the Town of Essex for the four farm employee houses, including the three-house cluster near the barns that is the subject of this proceeding. The Town granted local permits, determining that the buildings met all state building code requirements, had complied with all Town regulations, and that the water and septic systems were protective of human health and the environment and complied with state and local law.

15. The Lewis Family Farm's employee housing cluster is located more than 150 feet from the mean high water mark of the Boquet River.

16. The Lewis Family Farm's employee housing cluster, which provides easy and energy efficient access to and surveillance of the adjacent barns, was specifically designed for use by farm employees only. (Lewis Aff., ¶ 14).

17. The Lewis Family Farm did not subdivide its land to build the employee houses. (Lewis Aff., ¶ 14)

18. The three residences in the Lewis Family Farm employee housing cluster, which were specifically designed as a farmer community, share a common well, driveway, septic system and leach field located around a common courtyard. (Lewis Aff., ¶ 14).

19. The Lewis Family Farm employee housing cluster is located on the edge of *or* within the Hamlet of Whallonsburg. (Privitera Aff., ¶ 13; Privitera Reply Aff., ¶ 5, Ex. B).[1]

20. The three farm worker housing structures on the Lewis Family Farm are necessary to the farm's operation.

21. Farm worker housing is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the

[1] The Hamlet of Whallonsburg seems to include the old Walker Farm, where the Lewis Family Farm employee housing cluster is located. Id. Housing in Hamlets is non-jurisdictional.

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

22. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation and is protected by the right to farm law under Section 305-a of the Agriculture and Markets Law.

23. Farm employee housing is a fundamentally sound agriculture practice that is crucial to the operation of the Lewis Family Farm. (Lewis Aff., ¶ 11; Martens Aff., 16).

24. On February 1, 2008, the Commissioner of the New York State Department of Agriculture and Markets made a formal, binding determination of fact and law under Section 305-a of the Agriculture and Markets Law, concluding that the Lewis Family Farm employee houses are agricultural buildings under the New York Right to Farm Law. The Commissioner's February 1, 2008 Determination is attached hereto as **Exhibit "B"**.

25. Thus, the Lewis Family Farm's use of its land for the three home housing cluster on the is agricultural in nature, as a matter of law.

26. Prior to the March 25 Determination, Agency staff proposed a "settlement agreement" demanding that the Lewis Family Farm waive the right to challenge Agency jurisdiction to regulate farming and submit to review by the Agency of all future farm buildings. (Lewis Aff., ¶ 22).

27. The Agency, created in the executive department by the Adirondack Park Agency Act (N.Y. Executive Law §§ 800 to 820), (the "Act"), was given responsibility for the

implementation of a land use and development plan inside the Park. N.Y. Exec. Law § 825. However, the Agency was not given jurisdiction to regulate farming or farming structures.

28. The Adirondack Park Agency acknowledges in its public literature that it lacks jurisdiction to regulate "agricultural use structures". (See Privitera Aff., ¶ 12, Ex. G).

The Agency's Enforcement Proceeding Against the Lewis Family Farm

29. Notwithstanding the facts and law set forth above, on or about September 5, 2007, Petitioner was served with a Notice of Apparent Violation ("NAV") by Agency staff, alleging that the Lewis Family Farm's employee housing structures were illegal unless it received a permit from Respondent. The formal NAV, in the form of an administrative complaint, sought an order by the Agency (i) determining that the Lewis Family Farm violated N.Y. Executive Law § 809 and 9 NYCRR Part 577 and (ii) directing the Lewis Family Farm to pay a substantial fine.

30. The Agency's enforcement proceeding was commenced nearly one year after construction of the farm worker houses was commenced.

31. Respondent's NAV alleged that the Lewis Family Farm committed the following violations by failing to obtain a permit:

(i) Subdivision of Resource Management lands into sites pursuant to N.Y. Executive Law §§ 809(2)(a) and 810(1)(e)(3);

(ii) Subdivision of Resource Management lands in a River Area into sites pursuant to 9 NYCRR § 577.5(c)(1);

(iii) Construction of single family dwellings on Resource Management lands pursuant to N.Y. Executive Law §§ 809(2)(a) and 810(2)(d)(1); and

(iv) Construction of single family dwellings on Resource Management lands in a River Area pursuant to 9 NYCRR § 577.5(c)(1).

32. Respondent's NAV stated that if there were facts in dispute, a hearing would be scheduled before an Administrative Law Judge to develop a record for the Agency's Enforcement Committee to consider.

33. On October 4, 2007, the Lewis Family Farm timely answered the NAV, denying that Respondent had jurisdiction over the farm employee housing structures. In addition, the Lewis Family Farm agreed to and specifically requested a hearing before an Administrative Law Judge.

34. Even though Respondent pleaded that a hearing would be held before an Administrative Law Judge and notwithstanding the fact that Petitioner also demanded a hearing, Respondent entered the March 25 Determination without a hearing before an Administrative Law Judge, a violation of law.

35. Petitioner's answer to the NAV contested the Agency's jurisdiction over the farm buildings and specifically contested the Agency's power to impose fines to Petitioner for having constructed them without the alleged required permit.

36. The March 25 Determination makes substantial findings that are unsupported by any evidence in the record. For example, Paragraphs 16 and 46 of the March 25 Determination are entirely not supported by any evidence in the record, and therefore not based on "substantial evidence" in violation of CPLR § 7803(4).

37. The March 25 Determination is inarticulate, confusing and inconsistent. The March 25 Determination is ***correct*** insofar as it appears to make a general determination that Respondent does not have general jurisdiction over "agricultural use structures". These findings are as follows:

> …In fact, most agricultural uses do not require Agency permits. In addition [the Adirondack Park Agency Act, Rivers Act and Freshwater Wetlands Act] provide

> special privileges for agricultural uses, including under the Adirondack Park Agency Act an exception to the application of the overall intensity guidelines for all farm structures including farm worker housing (§802[50][g]).
>
> (Exhibit A, Paragraph 40, pg. 10).

38. Pursuant to 9 NYCRR § 577.4(b)(3)(ii), an "agricultural use structure" would not require a Rivers' Permit, except that any such structure must adhere to the structure set back requirements for the recreational river areas (150 feet from the mean high water mark). (Exhibit A, Paragraph 34, pg. 8).

39. However, the March 25 Determination is contradictory arbitrary, capricious, contrary to law and reaches beyond the Respondent's jurisdiction in making the following unlawful determinations:

> 37. The Agency finds that under the Adirondack Park Agency Act, farm worker dwellings are "single family dwellings: (or possibly "multiple family dwellings" or "mobile homes," depending on the type of dwelling structure), and not "agricultural use structures." The types of structures specifically listed in the definition of "agricultural use structures" are accessory in nature and related to the storage of agricultural equipment, animals and products ("barn, stable, shed, silo, garage"), or the on-site accessory use sale of farm products ("fruit and vegetable stand"). The language "…or other building or structure directly and customarily associated with agriculture use" is intended to include other structures of an accessory nature only. This is also evident from the exceptions to jurisdiction in the Adirondack Park Agency Act which often include accessory structures. The definition of "agricultural use structures" does not include, and was not intended to include, the farm owners' or farm workers' dwellings. Rather, the owners' dwelling and farm workers' dwelling (for a single family) more precisely fit under the definition of "single family dwelling" or "mobile home."
>
> 38. Moreover, "single family dwelling" and "agricultural use structure" are treated as separate and distinct uses under the Adirondack Park Agency Act. This is evident upon inspection of §805(3) of the Act, which always lists "agricultural use structure" and "single family dwelling" as separate uses for compatibility and jurisdictional purposes under the Act. Similarly, §802(50)(g) lists these two types of uses separately for eligibility for special consideration under the Act regarding the application of the overall intensity guidelines.[1] "Single family dwelling: is a narrowly and specifically defined term and is a keystone of Agency jurisdiction. The term "agricultural use structure" is a broader term for certain agricultural structures, which for the purposes of jurisdiction does not include "single family

> dwelling." If the drafters of the Adirondack Park Agency had intended farm worker dwellings to be included within the definition of "agricultural use structure," it would not have needed to include the phrases "single family dwelling" or "mobile home" separately in either §805(3) or §802(50)(g) in addition to the phrase "agricultural use structure." While the Agency agrees that farm worker housing is important to the enhancement of farm operations, it is not an "agricultural use structure" under the Act, but either a "single family dwelling," "multiple family dwelling," or "mobile home," depending on the type of dwelling.

40. The Agency's March 25 Determination is arbitrary, capricious, an error of law and in exceedance of the Agency's jurisdiction because it finds that the Agency can regulate farm employee housing structures as "single family dwellings" rather than treating them as "agricultural use structures."

The Agency Lacks Jurisdiction Over The Farm Employee Housing Under the Act

41. The Act defines "agricultural use structure" to include "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building ***or structure directly and customarily associated with agricultural use***." N.Y. Exec. Law § 802(8) (emphasis supplied).

42. Since the term "structure" is defined separately in the Act, its definition must necessarily be incorporated into the definition of "agricultural use structure" by reference. See Friedman v. Connecticut Gen. Life Ins. Co., 9 N.Y.3d 105, 115 (2007) ("A court must consider a statute as a whole, reading and construing all parts of an act together to determine legislative intent, and…[give] effect and meaning…to the entire statute and every part and word thereof") (internal citations omitted).

43. The Act defines "structure" to include "…buildings, sheds, ***single family dwellings***, mobile homes, signs, tanks, fences and poles and any fixtures, additions and alterations thereto." N.Y. Exec. Law § 802(62) (emphasis supplied).

44. Therefore, a "single family dwelling" that is directly or customarily associated with agricultural use, such as a farm worker's house, is necessarily an "agricultural use structure" under the Act. See N.Y. Exec. Law § 802(8).

45. The Lewis Family Farm conclusively established by uncontested affidavits that (i) the buildings at issue in this proceeding are farm employee houses; and (ii) on-farm employee housing is a sound agricultural practice directly and customarily associated with agricultural use that provides the foundation for any self-sustaining farm. (See Lewis Aff., ¶¶ 11-12; Martens Aff., ¶ 16; Privitera Aff. ¶¶ 5-6, Ex. C and D).

46. Moreover, the Commissioner of the New York State Department of Agriculture & Markets investigated the Lewis Family Farm employee housing and issued a formal opinion under New York State's Right to Farm Law that the farm employee houses at issue in this proceeding are agricultural use structures as a matter of law.

47. On February 1, 2008, the Commissioner of the New York State Department of Agriculture and Markets issued a written opinion pursuant to Section 308(4) of the Agriculture and Markets Law, whereby he proclaimed that:

> Farm worker housing [is] an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long work day, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of such homes for farm worker housing is a common farm practice. On-farm housing provides a practical and cost effective means for farmers to meet their farm labor housing and recruitment needs.

(See Ex. B, Commissioner Hooker's February 1, 2008 Opinion, pg. 2)

48. After reviewing the facts in this case, the Commissioner issued this formal opinion under the Right to Farm Law, finding that farm worker housing is warranted at the

Lewis Family Farm, and that the use of land for the employee houses in this case is undoubtedly "**agricultural in nature**." (Id. at 3) (emphasis added).

49. Although Commissioner Hooker's formal opinion was in the record, the Agency intentionally ignored it and made no reference to it in its determination.

50. Thus, the Agency improperly determined that the Lewis Family Farm employee houses are not structures that are "directly and customarily associated with agricultural use," which would render them non-jurisdictional "agricultural use structures."

The Agency Also Lacks Jurisdiction Because Petitioner Did Not Subdivide Its Land

51. The Act defines "subdivision of land" as a "division of land into two or more lots, parcels or sites" for "separate ownership or occupancy". N.Y. Exec. Law § 802(63).

52. The Lewis Family Farm constructed housing for its employees without changing the use or description of its land in real property terms.

53. The Lewis Family Farm did not divide its land, create lots, or impose new ownerships or leaseholds. The Lewis Family Farm owns and occupies each building on the farm.

54. Indeed, the farm employee housing cluster cannot be divided since it was specifically designed as a farmer community. The agricultural use structures share a common well, driveway, septic system and leach field located around a common courtyard. (Lewis Aff., ¶ 14).

55. Moreover, the Agency's regulations clarify that the construction of farm employee housing does not automatically create a subdivision because "subdivision into sites" only occurs when an additional principal building is constructed. 9 NYCRR § 570.3(ah)(3).

56. The Agency counts the number of principal buildings for intensity purposes as follows:

> [A]ll agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a ***single principal building***.

N.Y. Exec. Law § 802(50)(g) (emphasis supplied).

57. Thus, the Agency erroneously determined that the Lewis Family Farm subdivided its land when it did not actually subdivide the land and did not construct any additional principal buildings, as that term is defined and used under the Act.

The Agency Has Failed To Discharge Its Constitutional And Statutory Duties

58. Article 14 of the New York State Constitution, which was adopted as part of the "Conservation Bill of Rights", imposes a mandatory duty upon the Agency to encourage improvement of farms, not penalize farm development. Specifically, Section 4 of Article 14 states as follows:

> The policy of the state shall be to conserve and protect its natural resources and scenic beauty and ***encourage the development and improvement of its agricultural lands*** for the production of food and other agricultural products.

N.Y. CONSTITUTION, Article 14, § 4 (McKinney 2006) (emphasis supplied).

59. The Agency does not have an agriculture policy at all.

60. The Agency has violated its constitutional duty in this enforcement case by seeking to penalize the Lewis Family Farm for constructing locally permitted, statutorily-exempt farm buildings.

61. New York State's Constitution is unquestionably the supreme law of the State. See Dalton v. Pataki, 5 N.Y.3d 243, 296 (2005). Thus, the Agency failed to obey the New York

State Constitution by developing a policy of encouraging the development and improvement of agricultural lands. Accordingly, the Agency's determination, which unduly attempts to regulate the Lewis Family Farm without the Agency having a written pro-farm development policy, is unconstitutional and clearly "affected by an error of law".

62. Moreover, Section 305 of the New York State Agriculture and Markets Law requires all New York State agencies (including the Respondent) to create and/or modify policy to support the development of farming within the State:

> 3. Policy of state agencies. *It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts* ***and their administrative regulations and procedures shall be modified to this end…***

N.Y. Agric. & Mkts. Law § 305 (McKinney 2004) (emphasis supplied).

63. The Lewis Family Farm is located in such an agricultural district, so it is entitled to the benefit of this statutory protection.

64. The Agency has yet to implement these statutorily-mandated regulation and procedure modifications, which is evident since the Agency has issued a determination attempting to penalize the Lewis Family Farm for constructing locally permitted, statutorily-exempt farm buildings.

65. On March 4, 2008, the Adirondack Park Local Government Review Board, which was created under the Adirondack Park Agency Act to advise and assist the Agency in carrying out its functions, powers and duties (see N.Y. Exec. Law § 803-a), issued a Resolution declaring:

> "WHEREAS, the Board finds that the pending enforcement proceeding by the Agency against the Lewis Family Farm, Agency File E2007-041, is in conflict with the terms of the Plan, which provide that agricultural use structures are non-jurisdictional; and
>
> WHEREAS, the Board finds that the Agency has constitutional and statutory duties to develop and implement a farm policy that encourages farming in the Adirondack Park; and

> WHEREAS, the Board finds that the Agency has not discharged its constitutional duty or its statutory duty to develop a farm policy."

(Adirondack Park Local Government Review Board's March 4, 2008 Resolution, attached hereto as **Exhibit "C"**.)

66. The Agency failed to consider the March 4, 2008 Resolution in making its March 25 Determination.

67. For these foregoing reasons, the Agency lacks regulatory power over farm employee housing structures under the Rivers Act or the Adirondack Park Agency Act.

AS AND FOR A FIRST CAUSE OF ACTION

68. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 67 above, with the same force and effect as if set forth in full herein.

69. Respondent's March 25 Determination is affected by an error of law because the Agency has not fulfilled its constitutional duty to encourage the development and improvement of agricultural lands pursuant to Section 4 of Article 14 of the New York State Constitution.

AS AND FOR A SECOND CAUSE OF ACTION

70. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 69 above, with the same force and effect as if set forth in full herein.

71. Respondent's March 25 Determination is affected by an error of law because the Agency has not fulfilled its statutory duty to modify its administrative procedures and regulations to encourage the maintenance of viable farming in agricultural districts pursuant to Section 305 of the Agriculture and Markets Law.

AS AND FOR A THIRD CAUSE OF ACTION

72. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 71 above, with the same force and effect as if set forth in full herein.

73. Respondent's March 25 Determination is affected by an error of law because the Agency violated Section 305-a of the Agriculture and Markets Law, and the teachings of Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001), by unreasonably restricting and/or regulating farm operations within agricultural districts.

AS AND FOR A FOURTH CAUSE OF ACTION

74. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 73 above, with the same force and effect as if set forth in full herein.

75. Respondent's March 25 Determination is affected by an error of law because the Agency was obliged to defer to the policy of the Department of Agriculture and Markets and the February 1, 2008 formal opinion of Commissioner Patrick Hooker, which was issued pursuant to the right to farm law under Section 308 of the Agriculture and Markets Law.

AS AND FOR A FIFTH CAUSE OF ACTION

76. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 75 above, with the same force and effect as if set forth in full herein.

77. Respondent's March 25 Determination is ultra vires and beyond the Agency's jurisdiction because the Agency has no delegated authority to regulate agriculture under the Adirondack Park Agency Act.

AS AND FOR A SIXTH CAUSE OF ACTION

78. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 77 above, with the same force and effect as if set forth in full herein.

79. Respondent's March 25 Determination is ultra vires and beyond the Agency's jurisdiction because the Agency has no delegated authority to regulate farm worker housing and other agriculture use structures under the Adirondack Park Agency Act.

AS AND FOR A SEVENTH CAUSE OF ACTION

80. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 79 above, with the same force and effect as if set forth in full herein.

81. Respondent's March 25 Determination is ultra vires and beyond the Agency's jurisdiction because the Lewis Family Farm did not subdivide its land under the Adirondack Park Agency Act by constructing farm worker housing.

AS AND FOR A EIGHTH CAUSE OF ACTION

82. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 81 above, with the same force and effect as if set forth in full herein.

83. Respondent's March 25 Determination is ultra vires and beyond the Agency's jurisdiction because the Agency has no delegated authority to regulate agriculture under the Wild, Scenic and Recreational River System Act.

AS AND FOR A NINTH CAUSE OF ACTION

84. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 83 above, with the same force and effect as if set forth in full herein.

85. Respondent's March 25 Determination is ultra vires and beyond the Agency's jurisdiction because the Agency has no delegated authority to regulate farm worker housing and

other agriculture use structures on Resource Management lands that are more than 150 feet from the mean high water mark of a recreational river under the Wild, Scenic and Recreational River System Act.

AS AND FOR A TENTH CAUSE OF ACTION

86. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 85 above, with the same force and effect as if set forth in full herein.

87. Respondent's March 25 Determination is ultra vires and beyond the Agency's jurisdiction because the Lewis Family Farm did not subdivide its land under the Wild, Scenic and Recreational River System Act by constructing farm worker housing.

AS AND FOR A ELEVENTH CAUSE OF ACTION

88. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 87 above, with the same force and effect as if set forth in full herein.

89. Respondent's March 25 Determination is affected by an error of law because it failed to consider the March 4, 2008 Resolution of the Adirondack Park Local Government Review Board.

AS AND FOR A TWELFTH CAUSE OF ACTION

90. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 89 above, with the same force and effect as if set forth in full herein.

91. The March 25 Determination found that the Lewis Family Farm had "actual notice" that a permit was required for farm worker housing. March 25 Determination Finding ¶ 16. There is no substantial evidence in support of this finding. Respondent's March 25 Determination found that all three farm employee houses in the horseshoe cluster on the Lewis

Farm violate the law. Determination ¶ 46. There is no substantial evidence in support of this finding.

92. Respondent's March 25 Determination was entered in violation of lawful procedure by failing to be supported by substantial evidence.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

93. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 92 above, with the same force and effect as if set forth in full herein.

94. Respondent's March 25 Determination was entered in violation of due process because the Agency failed to hold a hearing before an Administrative Law Judge in violation of the State Administrative Procedure Act.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

95. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 94 above, with the same force and effect as if set forth in full herein.

96. Respondent's March 25 Determination was ultra vires and beyond the Agency's jurisdiction because the Agency lacks the authority to order that dwellings remain unoccupied.

AS AND FOR A FIFTEENTH CAUSE OF ACTION

97. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 95 above, with the same force and effect as if set forth in full herein.

98. Respondent's March 25 Determination violated due process and the Lewis Family Farm suffered actual prejudice because of the Agency's delay in commencing its enforcement proceeding.

AS AND FOR A SIXTEENTH CAUSE OF ACTION

99. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 98 above, with the same force and effect as if set forth in full herein.

100. Respondent's March 25 Determination violated due process because it ordered the payment of a fine before a final judicial determination could be had.

WHEREFORE, Petitioner Lewis Family Farm, Inc. respectfully prays that an Order of this Court be entered vacating and annulling the March 25, 2008 Decision of Respondent Adirondack Park Agency because:

a. the March 25 Determination was "affected by an error of law" in violation of CPLR § 7803(3) by the Agency's failure to fulfill its constitutional duty pursuant to Section 4 of Article 14 of the New York State Constitution;

b. the March 25 Determination was "affected by an error of law" in violation of CPLR § 7803(3) by the Agency's failure to fulfill its statutory duty pursuant to Section 305 of the Agriculture and Markets Law;

c. the March 25 Determination was "affected by an error of law" in violation of CPLR § 7803(3) because the Agency unreasonably restricted and/or regulated farm operations in violation of Section 305-a of the Agriculture and Markets Law;

d. the March 25 Determination was "affected by an error of law" in violation of CPLR § 7803(3) because the Agency failed to defer to the policy of the Department of Agriculture and Markets and the Commissioner's February 1, 2008 formal opinion issued under the right to farm law of Section 308 of the Agriculture and Markets Law;

e. the Agency "is proceeding or is about to proceed without or in excess of its jurisdiction" in asserting regulatory power over agriculture in violation of CPLR § 7803(2);

f. the Agency "is proceeding or is about to proceed without or in excess of its jurisdiction" in asserting regulatory power over farm worker housing in violation of CPLR § 7803(2);

g. the Agency "is proceeding or is about to proceed without or in excess of its jurisdiction" in violation of CPLR § 7803(2) because the Lewis Family Farm did not subdivide its land by constructing farm worker housing;

h. the March 25 Determination was "affected by an error of law" in violation of CPLR § 7803(3) because the Agency's failed to consider the March 4, 2008 Resolution of the Adirondack Park Local Government Review Board;

i. the March 25 Determination was not "supported by substantial evidence" in violation of CPLR § 7803(4);

j. the March 25 Determination violates due process because the Agency failed to hold a hearing in violation of the State Administrative Procedure Act;

k. the Agency "is proceeding or is about to proceed without or in excess of its jurisdiction" in violation of CPLR § 7803(2) by ordering that the Lewis Family Farm's farm worker houses stand unoccupied;

l. the March 25 Determination is an "abuse of discretion" by prescribing a penalty against Petitioner; and

m. the March 25 Determination violated due process because of the Agency's delay in commencing its enforcement proceeding.

And for costs of this special proceeding and for further relief as the Court may deem just and appropriate.

Dated: April 14, 2008
Albany, New York

Respectfully submitted,

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

By: *__/s/ John J. Privitera__*
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VERIFICATION

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

JOHN J. PRIVITERA, being duly sworn, states that he is the attorney for petitioner, LEWIS FAMILY FARM, INC., in this action; that he believes the matters set forth herein to be true; and that the reason why this verification is not made by petitioner is that petitioner does not have an office in the County of Albany wherein your deponent maintains his office.

/s/ John J. Privitera
John J. Privitera

Sworn to before me this
14th day of April, 2008

/s/ Notary Public
Notary Public