STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,
Petitioner,

-against-

Index No. 315-08
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,
Respondent.

ADIRONDACK PARK AGENCY,
Plaintiff,

-against-

Index No. 221-08
Hon. Richard B. Meyer

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

BRIEF OF *AMICUS CURIAE* NEW YORK FARM BUREAU, INC.

Date: May 29, 2008

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AMICUS CURIAE'S INTEREST

New York Farm Bureau, Inc. ("Farm Bureau"), a non-governmental voluntary general farm organization, was incorporated in 1953 to serve a two-fold purpose: to promote, protect, and represent the economic, social, and educational interests of New York farmers and to encourage the development and preservation of agricultural areas within the state. With a statewide membership of approximately 30,000 families in 52 counties, including Essex County, Farm Bureau supports, preserves, and seeks to strengthen legislation recognizing the unique nature of the agricultural industry. As here, it also strives to ensure adherence to state policies regarding agriculture. This *amicus curiae* brief discusses the integral role on-farm worker housing plays in farm operations and endeavors to illuminate the broader impact of an erroneous determination of the Adirondack Park Agency that contravenes the long-standing state policy to promote agriculture.

QUESTION PRESENTED

Is on-farm worker housing as closely associated with agricultural uses as a barn, a shed or a silo, where the Commissioner of Agriculture and Markets ("Commissioner of Agriculture") and the Court of Appeals have held that such housing is integral to farm operations? The Adirondack Park Agency held that it is not. Farm Bureau submits that it is.

SUMMARY OF THE CASE

A remarkable farm in Essex County that epitomizes the mutual goals of the Adirondack Park Act and the Agriculture and Markets Law – protecting a healthy ecology and economy and allowing open spaces and agriculture to flourish – is being thwarted because the Adirondack Park Agency has chosen to disregard decades of law and policy and to ignore a simple truth: on-farm worker housing is as much a part of the fabric of farm operations as a barn, a shed or a silo. The State Constitution commands that lands in the Adirondack Park, which is so rich in natural resources, must not be exploited and destroyed. The Constitution also declares that agriculture, which is so crucial to our economy, must be encouraged.

The issues of how to preserve the unique character of the Adirondack Park and to promote agriculture throughout the state were addressed by the legislature in 1971. At that time, the Adirondack Park Act ("Park Act") was enacted, and "bona fide management of land for agriculture" was exempted from regulation. Subsequently, agricultural use structures, including barns, sheds, silos, and other farm structures, were excluded from the regulatory reach of the Adirondack Park Agency ("Park Agency"). Further, agriculture was found to be a primary use of the land in resource management areas of the Adirondack Park, where vast investments in agricultural buildings are vital to the economy. Also in 1971, the Agriculture and

Markets Law ("Agriculture Law") was amended to create Agricultural Districts in order to protect the right to farm. Today the Agriculture Law cautions that our state's farms are in jeopardy of being lost for agricultural purposes and declares farms to be essential to the state's economy. The law mandates that ***all*** state agencies must encourage viable farms in Agricultural Districts and modify their regulations accordingly, and it gives an expansive definition to "farm operations."

The question here is whether, in light of the mandate that the Park Agency must encourage viable farms in Agriculture Districts within the Park, a farm worker house on farm premises should be considered a "building or structure directly and customarily associated with agricultural use." The answer is yes. On-farm housing is an integral aspect of farm operations because of the unique features of farm life, which make it unlike perhaps any other occupation. There are long work days, seasonal housing needs, a shortage of available rentals for workers, and a need for workers to stay near barns for access to operations. For all of these reasons, farm worker housing is undeniably "directly and customarily associated with agriculture use." This Court need not rely upon Farm Bureau expertise to understand the role of farm worker housing. There is vast legal authority for that proposition: the Agriculture Law, Guidelines promulgated by the Department of Agriculture and Markets ("Agriculture Department"), and Court of Appeals precedent, relying on

the Commissioner of Agriculture because of his special expertise. In this case, the Commissioner examined the farm worker housing built near barns on the Lewis Farm – a farm located in an Agricultural District and a resource management area. The Commissioner found that the housing is integral to the farm's operations.

Unlike the Commissioner of Agriculture, the Park Agency has no expertise in farming. However, rather than consulting relevant law and policy regarding agriculture, the Park Agency has espoused a radical definition of agricultural use structure that excludes farm worker housing and ignores the realities of farm life. According to the Park Agency, such housing is no different from a single family dwelling in suburbia far away from crops or cows; and a cluster of farm worker houses nestled by barns and sharing a driveway and utilities is akin to a residential subdivision. Rather than liberally interpreting laws impacting agriculture to encourage viable farms, the Park Agency has acted to discourage viable farms – by imposing a draconian fine on a thriving farm to punish it for making capital investments and providing high quality onsite shelter for its workers. This determination must not stand, since it contravenes state laws to promote agriculture throughout the state – including within the Adirondack Park – and it could have a profound impact on agriculture.

STATEMENT OF FACTS

In 1978, Salim and Barbara Lewis ("the Lewises") purchased a farmstead in the County of Essex, and over the years, they acquired adjacent lands and formed petitioner Lewis Family Farm ("Lewis Farm"), a 1,200-acre farm that is one of the state's largest USDA-certified organic farms and is a national leader in organic farming (Amended Verified Petition, ¶¶ 3-4).[1] The Lewis Farm, which produces a variety of livestock and organic crops, sits in a state-certified Agricultural District (¶ 6). Over the years, 15 buildings in disrepair were torn down and replaced with new farm buildings (¶ 8). As a large-scale operation, the Lewis Farm requires multiple farm workers, and because suitable off-farm housing is not available, worker housing on the premises is crucial to the Lewis Farm (¶¶ 9-11, 20). Lack of suitable and sufficient local rental housing is a common problem for farms.

The Lewis Farm wanted to provide high quality housing to recruit and retain employees (¶ 12). A farm's provision of housing is a common component of farm worker agreements and is even required for some farm worker recruitment programs. In November 2006, construction began on three farm worker houses in a cluster next to the barns, after all necessary permits were obtained from the Town

[1]All references in the Statement of Facts are to paragraphs or exhibits in the Amended Verified Article 78 Petition.

of Essex (¶¶ 13-14). The land was not divided into lots, and in fact, the cluster of homes shared a well, driveway, septic system, and leach field, all located around a common courtyard (¶¶ 18, 54). On February 1, 2008, in response to a request from petitioner's attorney, the Commissioner of Agriculture rendered an advisory opinion (Exh B). At issue was whether the land used for construction of the farm worker housing was agricultural in nature.

The Commissioner of Agriculture stated that examination of the definition of "farm operation" found in Agriculture Law § 301 was helpful in determining whether a particular land use was agricultural in nature. Farm worker housing is an integral part of the operations of numerous farms, the Commissioner stated, noting that farmers commonly provide such housing on their farms to accommodate the long work day, meet seasonal housing needs, and address the shortage of nearby rental housing in rural areas. Such on-farm housing provides a practical, cost-effective way to meet farm labor housing and recruitment needs, the Commissioner of Agriculture explained in his advisory opinion (Petition, Exh B). Dr. Robert Somers, Manager of the Agriculture Department's Agricultural Protection Unit, visited the Lewis Farm and confirmed that farm worker housing was needed, that existing residential structures had been removed, except for the home of the landowner and a guest house, and that the clustered farm worker houses could not

be easily separated or subdivided, due to the shared driveway, septic leach field, and electrical connection to the grid and water supply. The opinion concluded that the use of the land to build farm worker housing was agricultural in nature.

Yet astonishingly, on September 5, 2007, the Park Agency served a notice of apparent violation, charging that the Lewis Farm was required to obtain a permit for its alleged subdivision of lands and construction of single family dwellings (¶¶ 29-31). The Lewis Farm denied that the Agency had jurisdiction over its farm worker housing (¶ 33). Without holding a hearing, the Park Agency rendered a final determination on March 25, 2008, acknowledging that "agricultural use structures" were exempt from regulation, but finding that the subject farm worker houses did not constitute such structures and that the Lewis Farm had subdivided its land.

The Park Agency demanded that the Farm apply for a permit and pay a $50,000 fine (Exh A). The Park Agency ignored not only the determination of the Commissioner of Agriculture, but also a March 4, 2008 Resolution of the Adirondack Park Local Government Review Board declaring that the enforcement proceeding against the Lewis Farm was in conflict with the terms of the Park Plan (Exh C). Petitioner initiated a CPLR Article 78 proceeding to vacate and annul the determination of the Park Agency insofar as it finds that it has jurisdiction over farm worker housing. The Park Agency thereupon commenced a parallel action.

ARGUMENT

ON-FARM WORKER HOUSING SHOULD BE FOUND TO BE AS CLOSELY ASSOCIATED WITH AGRICULTURAL USES AS A BARN, A SHED OR A SILO, WHERE THE COMMISSIONER OF AGRICULTURE AND THE COURT OF APPEALS HAVE HELD THAT SUCH HOUSING IS INTEGRAL AND ESSENTIAL TO FARM OPERATIONS; AND THE PARK AGENCY'S DETERMINATION MUST THEREFORE BE VACATED AND ANNULLED.

The Adirondacks: the Park and the Agency

To preserve the Adirondack area from exploitation and destruction by a contemporary generation in disregard of the generations to come, the State Constitution was amended in 1894 to declare: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands." *See*, NY Const, Art XIV, § 1; NY Const of 1894, Art VII, § 7; 3 Lincoln, Const. History of NY, at 391-454, cited in *Wambat Realty Corp. v. State*, 41 NY2d 490, 494 (1997). In 1971, Article 27 was added to the Executive Law, creating the Park Agency and empowering it to regulate development in the Adirondack Park. *See* L 1971, c 706, § 1. From its inception,

the Park Act has exalted two things – the unique natural resources of the Adirondack Park and the vital role of agriculture. The latter role was protected by exempting "bona fide management of land for agriculture, livestock raising, horticulture and orchards" from provisions of Article 27 allowing for regulation by the Park Agency. Two years later, the Park Act was amended to declare that the Adirondack Park's "open space character" was of state, national, and international importance. L 1973, c 348, §1.

The statement of legislative findings and purposes explains that the Adirondack Park region has been singled out for special protection because of its unique environmental significance, the abundant natural resources, and the cherished open space found in six million acres comprising 40% forest preserve and 60% private land. The statement warns of the threat of unregulated development of private lands to the basic purpose of the Park Act: the protection of ecological resources and open space in the Adirondack Park, balanced with nourishment of a strong economic base needed for the survival of New Yorkers living in the Adirondack Park. *See*, Exec Law § 801.

In 1973, the amendments to the Park Act also adopted a land use plan and an official plan map delineating land area boundaries; land was classified by character; and regulations for use and density were set forth, based on objectives to be

achieved in each area. *See* Exec Law § 805 (L 1973, c 348, § 1). The six land use area classifications are resource management, hamlet, low intensity use, moderate intensity use, rural use, and industrial use. *See* subdivision (3).[2] Primary uses – those generally considered compatible with a land use area's character, purposes, policies, and objectives – are permitted, if in keeping with the intensity guidelines.

The amended Park Act reaffirms the protected role of agriculture in several ways. Agricultural use structures are deemed a compatible use everywhere in the Park, except in hamlets. *See* Exec Law § 805 (3) (d) - (h). Further, such structures are outside the jurisdiction of the Park Agency. The agency may review only development projects classified as class A and class B regional projects, which do not include agricultural use structures. *See* Exec Law § 810 (1) (c) (1) (f), § 810 (2) (d). In resource management areas, the need to protect agricultural and open space resources is of paramount importance. *See* Exec Law § 805 (3) (g) (1).

Crucial, viable agricultural areas lie in such areas, and many farms exhibit "a high level of capital investment for agricultural buildings and equipment." *See id.*

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[2] In Essex County, virtually all of the land is classified as a resource management or rural use area, and of the 8,170 resource management acres, 3,525 are agricultural vacant land (productive), according to 2005 Park Agency figures. *See* www.apa.state.ny.us. Essex County is located in the northern part of the state in the Adirondack Mountains bordering Lake Champlain. In 2003, there were 235 farms in the county, averaging 234 acres per farm, for a total of 55,000 acres in farm land – a 21,000-acre decrease in farm land since 1969, according to the New York Agricultural Statistics Services. *See* www.nass.usda.gov/ny.

In such areas, the Park Act also seeks to prevent strip development along major travel corridors and to allow for residential development in carefully selected, well-designed sites. *See* Exec Law § 805 (3) (g) (2). To provide freedom to farms to flourish in resource management areas, the Park Act provides that, while there may be only 15 principal buildings per square mile (*see* § 805 [3] [g] [3]), a single principal building encompasses all agricultural use structures on a farm, as well as all dwellings for the farmer and his employees. *See* Exec Law § 802 (50) (g).

The Central Dispute and the Agriculture Law

The central question in the instant dispute is whether permanent on-farm worker housing built in a resource management area is an agricultural use structure, defined as "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use." *See* Exec Law § 802 (8). Whether farm worker housing is encompassed in the definition of "agricultural use structure" is a question of first impression for the courts.[3] The Agriculture Law, constituting the main body of statutes dealing with agricultural enterprises, should be deemed the primary authority on issues

[3] In an August 16, 2007 decision in an earlier, related action, *Lewis Family Farm, Inc. v. New York State Adirondack Park Agency* (Sup Ct Essex County), Hon. Kevin Ryan found that the matter of the Park Agency's attempts to regulate the farm worker housing was "not ripe for judicial intervention." Therefore, any discussion in that decision relating to substantive issues constitutes dicta that is not binding here. *See D'Amato v. Access Mfg., Inc.*, 305 AD2d 447 (2nd Dept 2003) (issue not necessarily resolved on merits is not binding as law of case).

concerning farming in Agricultural Districts, including what structures and buildings are associated with agricultural use. *See generally* Chapter 69 of Consolidated Laws of NY.

The Agriculture Law, enacted long before the Park Act (*see* L 1922, c 48), declares that the agricultural industry is basic to the life of our state and that it is the policy and the duty of the state to promote, foster, and encourage the agricultural industry. *See* AML § 3. Accordingly, ***all*** state laws that concern the agricultural industry should receive a liberal interpretation and application in furtherance of the policy and purpose of promoting, fostering, and encouraging the agricultural industry. *See id.* The Commissioner of Agriculture, appointed by the Governor, is charged with enforcing the Agriculture Law. *See*, AML §§ 4-5. The opinion of the Commissioner of Agriculture as to what constitutes farm operations is entitled to deference, since the interpretation of statutory terms on such subject involves his special knowledge and understanding of farm operations and practices. *See Town of Lysander v. Hafner*, 96 NY2d 558, 565 (2001). Thus, on the matter of what structures are associated with agricultural use, the Commissioner's opinion is entitled to great weight, as set forth more fully below.

When the Park Act was enacted after decades of existence of the Agriculture Law, the legislature could be assumed to have been aware of the primacy of the

Agriculture Law in all matters of agriculture. Indeed, the premier status of agricultural lands within the Adirondack Park is reflected in the initial total exemption of such lands from the Park Agency control, the enduring exclusion of agricultural use structures from the Agency's reach, and the compatibility of farming with all land uses except for hamlets (*see* Executive Law § 805 [3]).

The State Constitution declares: "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." *See*, NY Const, Art XIV, § 4. The "agricultural protection" provision was adopted in 1969 and became effective in 1970. The parallels in the missions of the two agencies were advanced in the Laws of 1971, when the state legislature enacted the Park Act, as well as Article 25-AA of the Agriculture Law providing for the creation of Agricultural Districts to preserve agricultural land for agricultural use. *See* AML §§ 303, 305 (L 1971, c 479).[4] To further promote agriculture, Real Property Tax Law § 483 provides an exemption from real property taxation for structures and buildings essential to the operation of agricultural and horticultural lands, and such term encompasses structures and buildings used to

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[4] As of 2002, there were 341 Agricultural Districts containing approximately 21,500 farms and constituting about 30 percent of the State's total land area. *See* ww.agmkt.state.ny.us.

provide housing for employees and their families who operate lands used for agricultural and horticultural purposes. *See* subdivisions (1) and (2).

The Article 25-AA declaration of legislative findings and intent warns that many of the agricultural lands in New York are in jeopardy of being lost for agricultural purposes.[5] *See* AML § 300. Because agriculture is essential to the state economy, it is the policy of the state to encourage the development of agricultural land for agricultural purposes. *See id.* Further, in land classified as Agricultural Districts, it shall be the policy of ***all*** state agencies to encourage viable farming, and they must modify their administrative regulations and procedures to meet that end. *See* AML § 305 (3). In the instant case, the Lewis Farm lies in doubly sacred agricultural territory: it is in an Agricultural District pursuant to Agriculture Law, and it is in a resource management area, according to the Park Act's classification.

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[5]The concern is substantiated by a December 2001 Report of the Department of Applied Economics and Management at Cornell University's College of Agriculture and Life Sciences, "Agriculture-Based Economic Development: Trends and Prospects for New York," found at www.aem.cornell.edu. From 1950 to the late 1990s, farm land in the state shrunk from 16 million to 7 million acres (p 17, fig. 14). Much of the acreage was apparently idled. Some land was abandoned by farmers and reverted to natural forest cover, while other land was converted to residential, commercial, and transportation uses (p 16). Despite such shrinkage, farming remains an essential component of the prosperity and rural landscapes of the upstate region. Because of increased productivity, the acreage losses have not translated into output decreases (p 16). As of the date of the report, state poultry and egg farm sector generated nearly $90 million in annual cash receipts, while the sale of animal meats yielded more than $1.5 billion per year (p 18, fig 17; p 19, fig 18). Each new dollar of farm and food output is estimated to bring additional production valued at nearly $1 (p 13). Further, expanded food manufacturing output brings significant employment benefits in industries linked to food manufacturing (p 14).

To strengthen the protection of agricultural lands, the Agriculture Law prohibits local governments from unreasonably restricting and regulating farming in Agricultural Districts. *See*, AML § 305-a. As originally enacted, Agriculture Law Article 25-AA prohibited only the enactment of local laws and ordinances that unduly infringed upon farming operations. *See* L 1971, c 479, § 1. The statute was amended in 1992 and 1997 to include prohibitions against administering local laws in a manner that would restrict farming. *See* L 1997, c 357, §§ 9, 11; L 1992, c 534, § 3. Such modifications were intended to strengthen protections against unreasonably restrictive local laws and ordinances. Finally, under the Agriculture Law, all buildings on the farm are considered part of a "farm operation" if they contribute to the production of crops, livestock, and livestock products as a commercial enterprise. *See* AML § 301 (11).

Lysander: The Role of Farm Worker Housing

And Deference to the Commissioner of Agriculture

A seminal case, *Town of Lysander v. Hafner*, *supra*, explores the role of farm worker housing in farm operations and dictates a result in favor of the Lewis Farm. When a municipality refused to grant a permit to install several mobile homes to house migrant farm workers on a farm in an Agricultural District, the

Commissioner of Agriculture appeared *amicus curiae* on the farm owner's behalf and concluded that the mobile homes used for farm worker residences were protected on-farm buildings. *See id.* The Commissioner of Agriculture explained that farmers frequently rely on mobile homes as shelter for their farm laborers in order to accommodate the long work day, seasonal housing needs, and a shortage of rental housing local areas. Thus, restricting the use of such homes could significantly impair the viability of farm operations. *See id.*, at 564.

While Supreme Court and the Appellate Division found that the use of mobile homes on farm premises to house migrant farm workers did not fall within the definition of farm operation, the Court of Appeals adopted the Commissioner of Agriculture's interpretation. His views on farming and farm worker housing were entitled to deference, given his special competence.[6] *See id.*; *see also Matter of Village of Lacona v. New York State Dept. of Agriculture and Markets*, ___ AD3d ___ (3rd Dept May 22, 2008); *Matter of Inter-Lakes Health, Inc. v. Town of*

[6] Because of farm worker housing needs nationwide, the Farm Labor Housing Program provides funding for construction of farm labor housing. *See* Housing Assistance Council Report: "USDA Section 514/516 Farmworker Housing: Existing Stock and Changing Needs" (October 2006) at www.ruralhome.org. The State also has a Farm Worker Housing Program, administered by the Division of Housing and Community Renewal. *See* www.dhcr.state.ny.us. As of this year, the number of hired workers on the nation's farms reached 778,000, according to the National Agricultural Statistics Service of the U.S. Department of Agriculture. *See* www.agmkt.state.ny.us. The strict standards for farm worker housing are governed by the State Department of Health State Sanitary Code and the U.S. Department of Labor Occupational Safety and Health Administration and its Employment and Health Administration.

Ticonderoga Town Board, 13 AD3d 846, 848 (3rd Dept 2004).

Agriculture Department Guidelines for Review of Local Laws Affecting Farm Worker Housing ("Guidelines") echo *Lysander's* holding that farm worker housing is an integral part of farm operations because of the unique and central role it plays. Under the Guidelines, it is relevant that the employee using the housing is engaged in the production functions of the farm operation. The Guidelines note that farm worker housing is usually located on the same property which supports farm structures and that building farm labor housing near other farm structures, such as a barn, is important for ease of access and security purposes.

In the case at bar, the *Lysander* analysis should have guided the Park Agency's actions. Yet the Park Agency implicitly found that the farm worker housing at the Lewis Farm is not encompassed within the Court of Appeals holding. If there were any doubt about whether *Lysander* controlled in the instant dispute, it should have been dispelled when the Commissioner of Agriculture, in consultation with the state advisory council on agriculture, issued an advisory opinion concluding that the farmer worker housing built by the Lewises was integral to their farm operations and could not be subdivided. *See generally* AML § 308 (4).

After all, to subdivide means to create separate lots for separate ownership or occupancy with separate roads and utilities. *See* Exec Law § 802 (63). Such

division obviously does not exist here, where the subject houses are located as a cluster by the barns and share a driveway, water supply, septic system, and electrical connection. In disregarding the Commissioner's view and the purpose and language of other pertinent statutes dealing with farm operations and worker housing, the Park Agency has dishonored traditional precepts of statutory construction. The basic consideration in interpreting statutes is the general spirit and purpose underlying their enactment; and a construction is to be preferred that furthers such spirit and purpose. *See* McKinney's Statutes, § 96.

In this case, the policy is clear: the Park Act seeks to advance ecology and economy, open spaces and agriculture. Further, the public policy of the State as expressed in other, relevant statutes should be consulted. *See* McKinney's Statutes, § 126. Agriculture – including farm worker housing needed for farm operations – is strongly protected in the Agriculture Law, as well as the Real Property Tax Law; and these policies must inform the interpretation of the salient provisions of the Park Act. Moreover, Agriculture Law § 3 mandates that ***all*** state laws concerning agriculture must be liberally construed to promote agriculture; and § 305 (3) commands ***all*** state agencies – including the Park Agency – to encourage viable farms and to modify their regulations and procedures accordingly.

While the policies at play here are clear, the phrase "building or structure

directly and customarily associated with agricultural use," requires special attention and analysis, since such language implicates a knowledge and understanding of farm operations and practice. On this matter, the Park Agency obviously has no special competence or expertise, and thus its views are entitled to no deference from this Court. *See Kurcsics v. Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 (1980); *Matter of Judd v. Constantine*, 153 AD2d 270, 272-273 (3rd Dept 1990); 5 Davis, Admin Law § 29:27, at 458 (2nd ed). As the Court of Appeals held in *Lysander*, however, the views of the Commissioner of Agriculture are entitled to deference because of his special expertise.

The doctrine of *ejusdem generis* is applicable in the case at bar. It dictates that a general term is known by the company it keeps: where words of specific purport are followed by words of general import, the application of the last phrase is generally confined to the subject matter disclosed in the phrases with which it is connected. *See* McKinney's Statutes, § 239; *Bath & Hammondsport R.R. Co. v. New York State Dept. of Environ. Conservation*, 73 NY2d 434, 437-438 (1989); *Schulman v. People*, 10 NY2d 249, 256 (1961). The question here is thus whether, like a barn, shed or silo, farm worker housing is "directly and customarily associated with agricultural use." Just as other statutes must be considered to understand the state policies underlying the promotion of agriculture, so they must

also be consulted in discerning the meaning of specific terms. Different statutes that refer to the same subject matter must be construed together, unless a contrary legislative intent is evident. *See Matter of Plato's Cave Corp. v. State Liquor Auth.*, 68 NY2d 791, 793 (1986); *Matter of Lower Manhattan Loft Tenants v. New York City Loft Board*, 66 NY2d 298, 304 (1985).

Such rules apply with peculiar force to statutes passed at the same legislative session, as in the 1971 session which saw enactment of the Park Act, with its exemption of agriculture from regulation, as well as provisions in the Agriculture Law to create Agricultural Districts and protect farm operations therein. *See* McKinney's Statutes § 221. Moreover, consideration may be given to usage and custom of a trade, business or occupation. *See id.*, at § 127. Words of special meaning are construed according to their technical sense, in the absence of anything to indicate a contrary legislative intent. *See* McKinney's Statutes, § 233. The Agriculture Law and Real Property Tax Law clearly indicate that farm worker housing is integral and essential to farming. Such housing is as much a part of farm life as a barn, a shed or a silo. These truths were ignored by the Park Agency.

In sum, the challenged Park Agency determination is in derogation of state policy, as embedded in the State Constitution, the Park Act, and the Agriculture Law, and as set forth by the Court of Appeals and the Commissioner of Agriculture.

The narrow definition given to "agricultural use structures" is divorced from the reality of farm life. Sustaining the determination could have a devastating impact. It could embolden the Park Agency to seek to improperly control a wide variety of structures essential to agriculture.

Moreover, confirming the determination could result in depriving farms of an adequate labor force and put affected farms in jeopardy, since farms with an insufficient number of workers cannot care for livestock or cultivate or harvest crops. The loss of workers translates into the loss of farms and farm lands, thus defeating a central purpose and intent of the Park Act and the Agriculture Law. The fragile balance our state laws seek to protect – the unique beauty of the Adirondack Park and the vital role of agriculture to nourish New Yorkers and a struggling rural economy – would be upset. The Park Agency's determination is arbitrary, capricious, and irrational and must not stand.

CONCLUSION

For the reasons stated above, the Farm Bureau respectfully requests that this Court vacate and annul the March 25, 2008 determination of the Park Agency.

Dated: May 29, 2008

Respectfully submitted,

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