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

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

NOTICE OF MOTION FOR A STAY OR INJUNCTION PENDING APPEALS

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

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

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

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

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

Essex County
Index No. 332-08

PLEASE TAKE NOTICE that upon the annexed Affirmation with exhibits of Loretta Simon, Assistant Attorney General, dated January 30, 2009; the Affidavit with exhibits of Shaun LaLonde,

dated January 29, 2009; the Affidavit with exhibit of Sarah Reynolds dated January 29, 2009; and the Affidavit of Douglas Miller dated January 29, 2009, the undersigned will move this Court, at a Term thereof to be held at the Justice Building, Empire State Plaza, Albany, New York, on Monday, February 16, 2009, at 10:00 a.m., for an order extending the partial stay granted in this Court's Order dated May 19, 2008, preventing Lewis Farm's occupation of two of the three single-family dwellings, pending a determination on these appeals.

Pursuant to CPLR 2214(b), the State requests that any answering papers be submitted at least seven (7) days before this motion is noticed to be heard. This motion will be submitted on the papers, and personal appearances in opposition to the motion are neither required nor permitted.

Dated: Albany, New York
February 2, 2009

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Adirondack Park Agency

By: _____
LORETTA SIMON
Assistant Attorney General
The Capitol
Albany, New York 12224
Telephone: (518)402-2724

To: John J. Privitera, Esq.
Jacob F. Lamme, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York 12207

Simon Aff.

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

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

AMENDED NOTICE OF MOTION FOR A STAY OR INJUNCTION PENDING APPEALS

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

SUPREME COURT OF THE STATE OF NEW YORK
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dated January 29, 2009; the Affidavit with exhibit of Sarah Reynolds dated January 29, 2009; and the Affidavit of Douglas Miller dated January 29, 2009, the undersigned will move this Court, at a Term thereof to be held at the Justice Building, Empire State Plaza, Albany, New York, on Monday, February 23, 2009, at 10:00 a.m., for an order extending the partial stay granted in this Court's Order dated May 19, 2008, preventing Lewis Farm's occupation of two of the three single-family dwellings, pending a determination on these appeals. This notice supercedes a prior notice by changing the return date from February 16 to February 23, 2009.

Pursuant to CPLR 2214(b), the State requests that any answering papers be submitted at least seven (7) days before this motion is noticed to be heard. This motion will be submitted on the papers, and personal appearances in opposition to the motion are neither required nor permitted.

Dated: Albany, New York
February 2, 2009

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Adirondack Park Agency

By: _____
LORETTA SIMON
Assistant Attorney General
The Capitol
Albany, New York 12224
Telephone: (518)402-2724

To: John J. Privitera, Esq.
Jacob F. Lamme, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway, Albany, New York 12207

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

LEWIS FAMILY FARM, INC.,

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AFFIDAVIT OF SHAUN LALONDE

AD Docket No. 504696
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AD Docket No.
Essex County
Index No. 332-08

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

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

1. I am a Professional Engineer certified to practice in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shaun LaLonde

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

Notary Public

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

LALONDE AFF.
TABLE OF EXHIBITS

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

EXHIBIT A

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

ATTORNEYS AT LAW

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

May 5, 2008

VIA FACSIMILE (473-2534) AND US MAIL

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

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

Dear Ms. Simon:

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

Sincerely,

John J. Privitera

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

[M0155136.1]

ESE Earth Science Engineering, P.C.

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

May 4, 2008

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

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

Dear Mr. McKenna:

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

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

Respectfully submitted,

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

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

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

5/4/08
N.T.S.

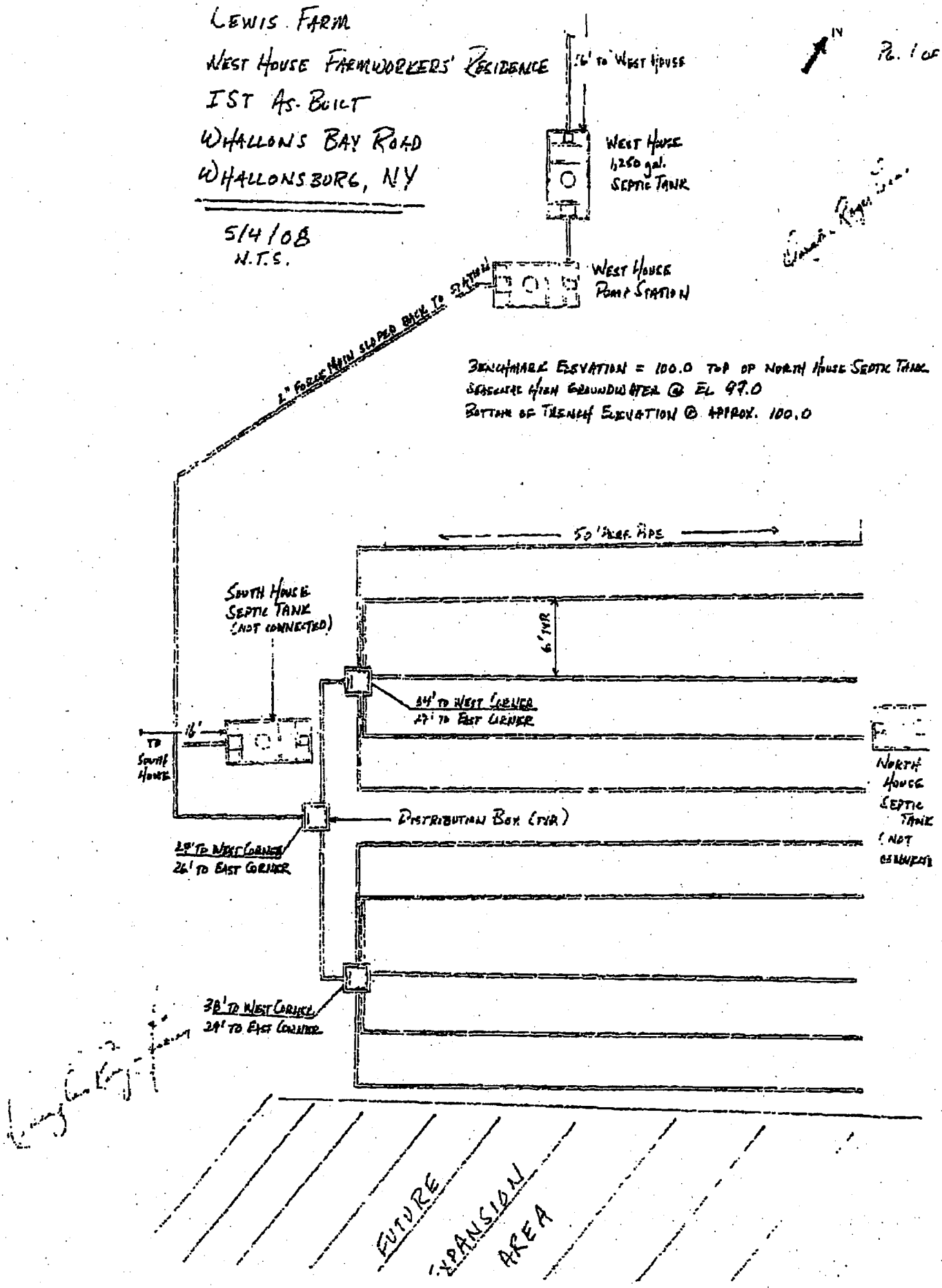


EXHIBIT B

APPENDIX Q-4

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

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

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

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

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

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

EXHIBIT C

ADIRONDACK PARK AGENCY

GUIDELINES FOR ON-SITE SEWAGE DISPOSAL SYSTEMS

March 25, 1991

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

LEGAL EFFECT OF THESE GUIDELINES

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

SITE EVALUATION AND RESOURCE REQUIREMENT'S

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

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

Flood Areas:

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

Horizontal Separation Distances:

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

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

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

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

Slope:

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

Soil Percolation Rate:

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

Note: Aquifer Protection in Fast Perc Soils

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

Soil Test Pit:

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

Soil Depth to Seasonal High Groundwater Table (SHGWT):

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

Soil Depth to Bedrock or Other Impervious Layer:

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

Filled Areas or Disturbed Sites:

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

DESIGN STANDARDS

Design Flow and Replacement Area:

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

System Extent:

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

Piping Distances:

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

Mounding Analysis:

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

Other:

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

ACCEPTABLE SEWAGE DISPOSAL SYSTEMS for New Development

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

Conventional Absorption Trenches and Beds:

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

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

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

Shallow Absorption Trenches

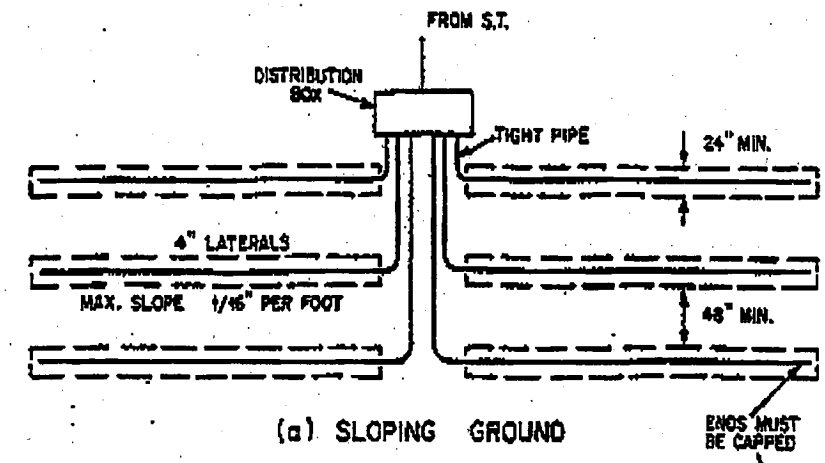
Shallow Absorption trenches are sewage disposal systems which may be used only with the following site conditions:

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

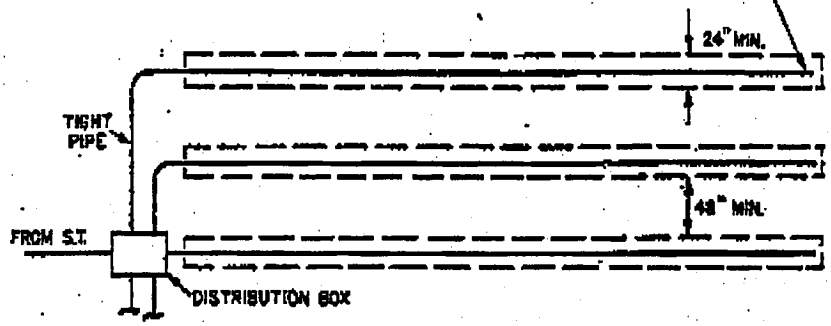
Such systems are constructed with the bottom of the system wholly within the existing native soil. Fill is required to grade over the sides and top of the system. The total height of the system above the original soil surface is 1 to 24 inches, depending on the system design, slope and depth to the seasonal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

PRE-EXISTING LOTS and FAILING SYSTEMS

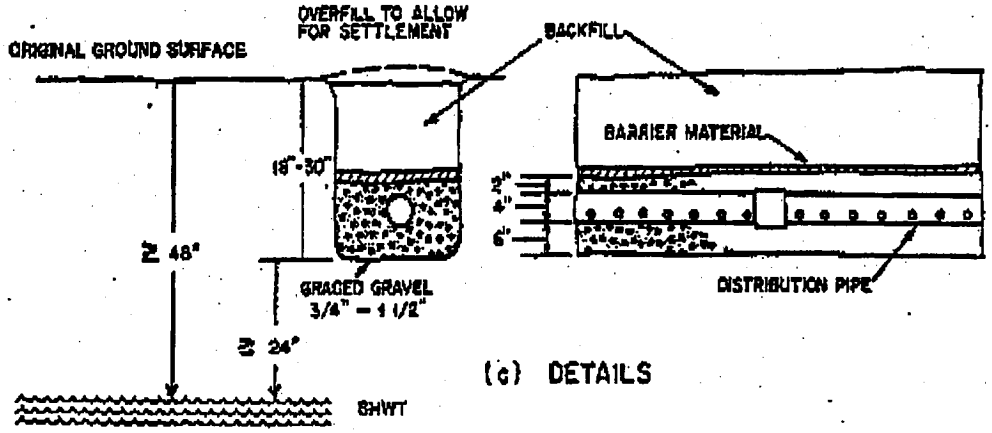
If a pre-existing lot does not meet the minimum site requirements in this document, Agency staff will consider, on a case-by-case basis, acceptability of alternative systems. If an existing on-site sewage disposal system is failing, Agency staff will consider proposals of demonstrated new technology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



(a) SLOPING GROUND

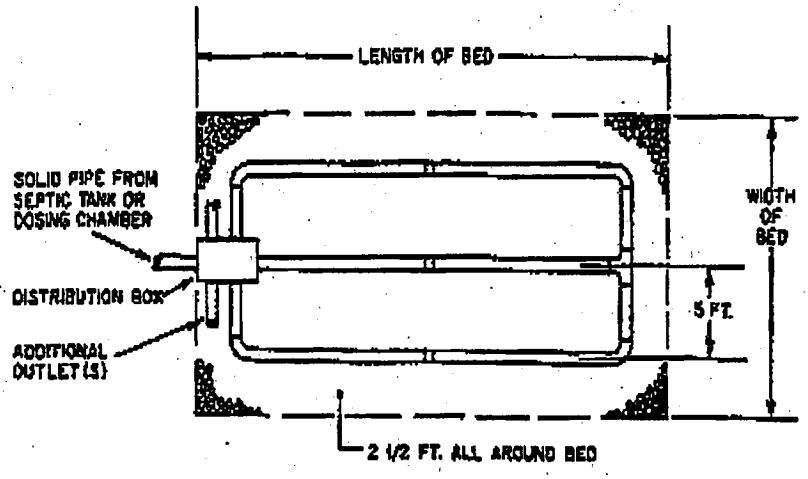


(b) LEVEL GROUND

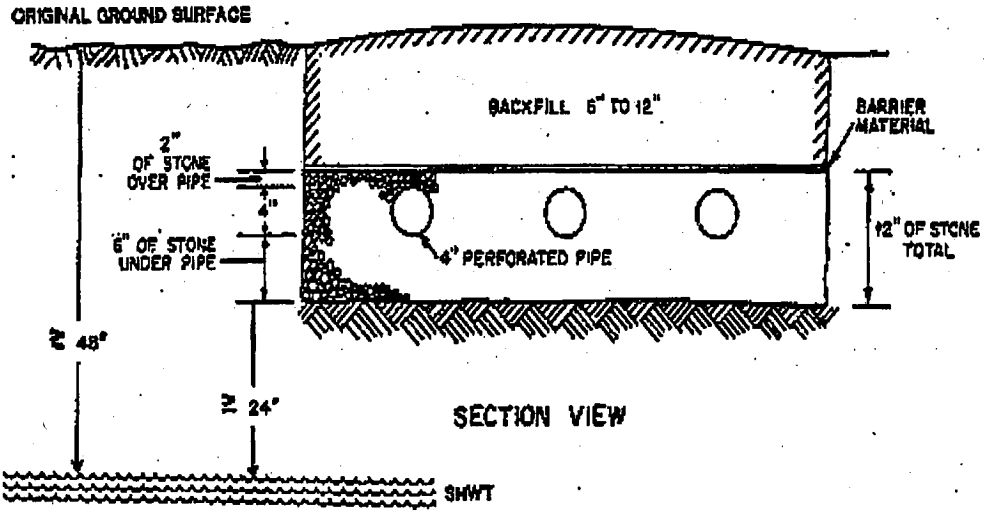


(c) DETAILS

APPENDIX A CONVENTIONAL ABSORPTION TRENCH

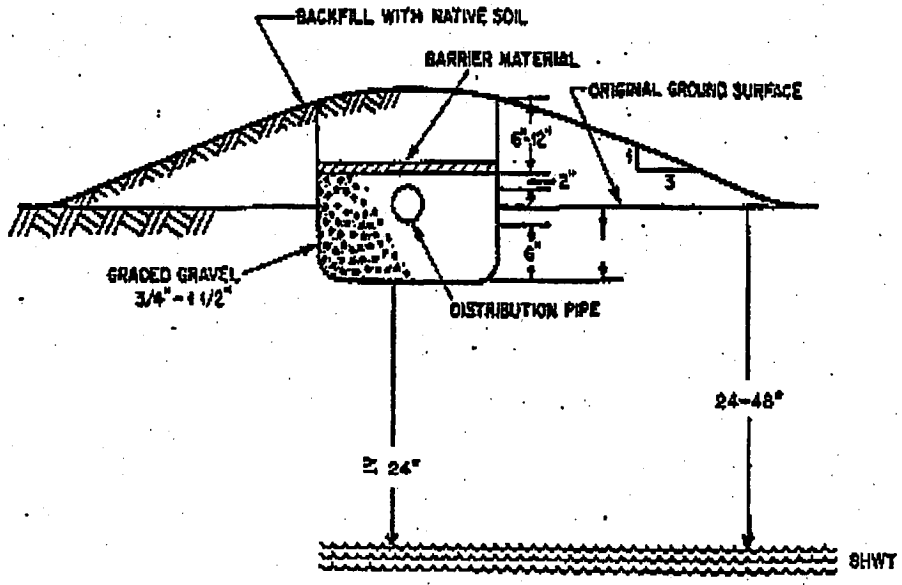


PLAN VIEW



SECTION VIEW

APPENDIX B CONVENTIONAL ABSORPTION BED



SECTION VIEW

APPENDIX C SHALLOW ABSORPTION TRENCH

EXHIBIT D

Rev. 03/2003

Adirondack parkagency

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

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

FORMAT

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

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

CONTENTS

A) Vicinity Plan or Map

B) Site Plan

C) Engineering Report/Basis of Design

D) Hydraulic Profile/Topography

E) Details/Cross Sections

F) Material and Construction Specifications

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

A. Vicinity Plan or Map

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

B. Site Plan Contents

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

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

C. Engineering Report/Basis of Design

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

D. Hydraulic Profile/Topography

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

E. Details/Cross Sections

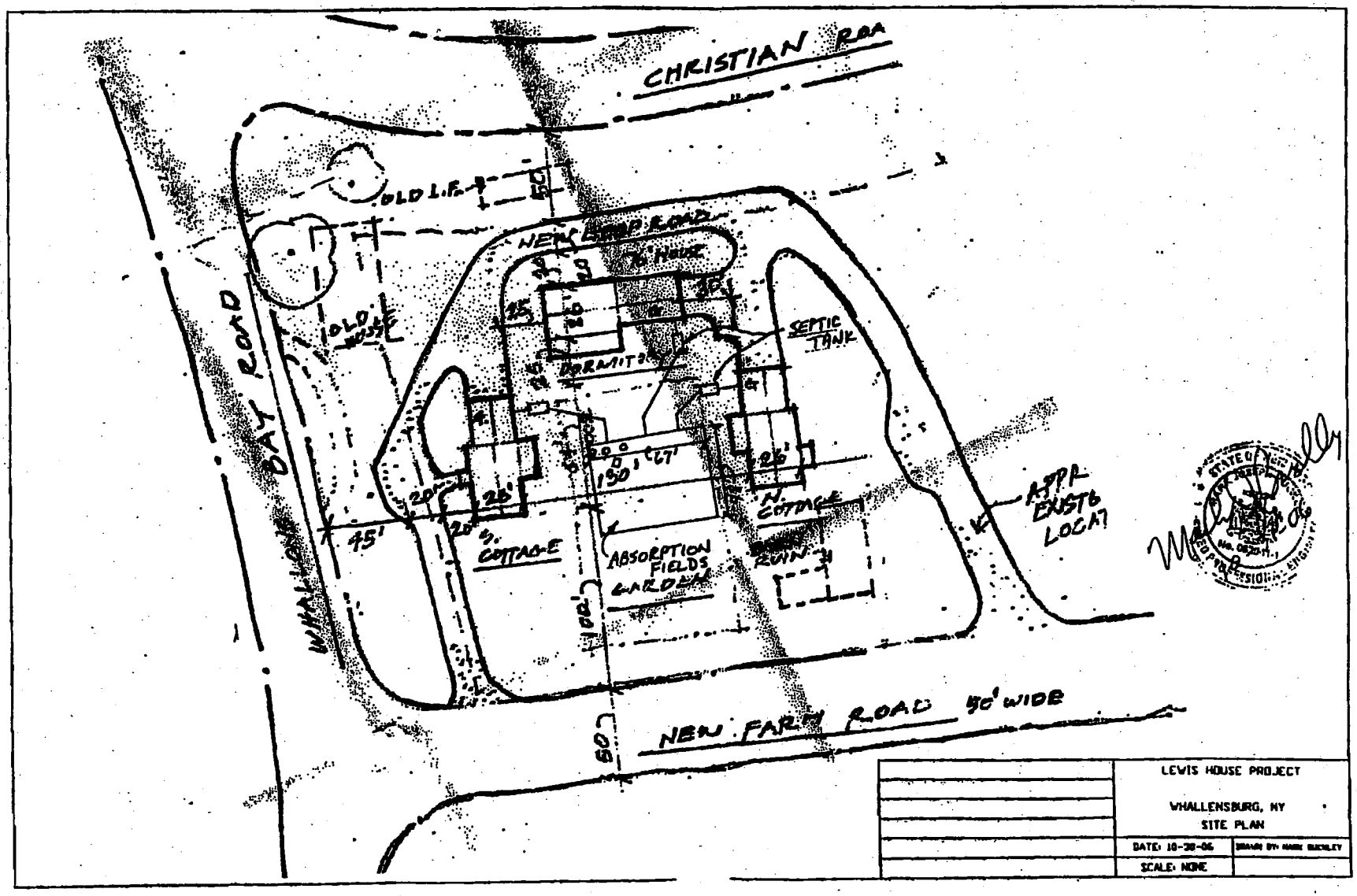
A detail for each system component shall be provided. This includes septic tank, distribution box, pump station or dosing siphon. A section and longitudinal view shall be provided for an absorption trench or shallow absorption trench. A section view shall be provided for an absorption bed or any other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

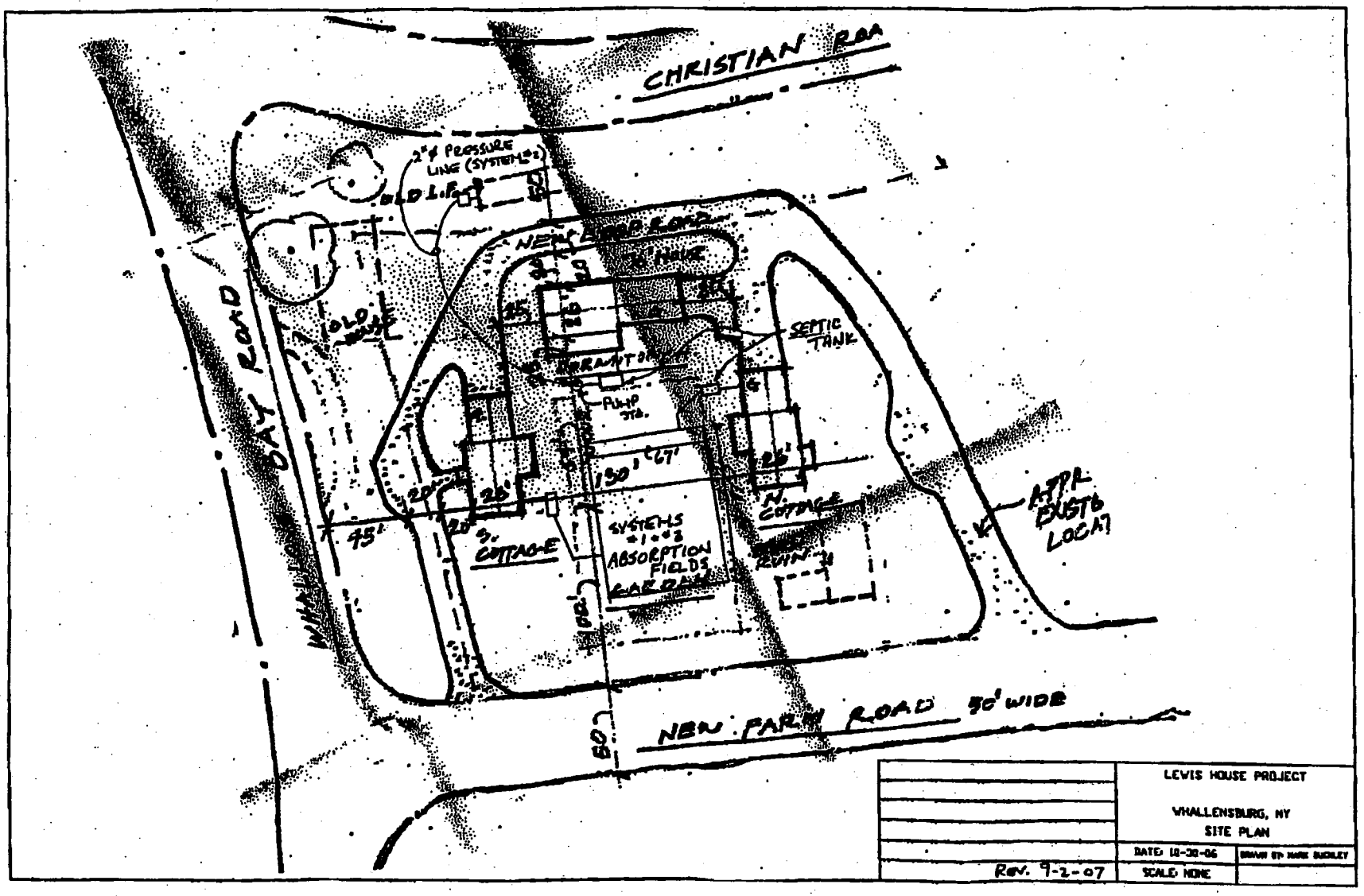
F. Material and Construction Specifications

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

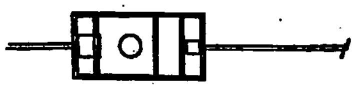
NOTE: DO NOT INCLUDE DETAILS, SECTIONS OR SPECIFICATIONS FOR WASTEWATER TREATMENT SYSTEM COMPONENTS THAT ARE NOT PROPOSED FOR YOUR PROJECT.

EXHIBIT E

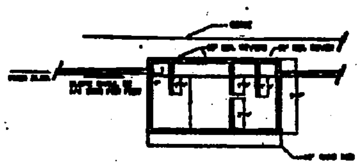

CHRISTIAN RD
OLD L.F.
NEW FARM ROAD
MAIN HOUSE
OLD HOUSE
SEPTIC TANK
DORMITORY
BAY ROAD
150'
67'
25'
20'
45'
S. COTTAGE
ABSORPTION FIELDS
GARDEN
RUIN
N. COTTAGE
APPX EXIST'G LOCAT
60'
NEW FARM ROAD 50' WIDE
LEWIS HOUSE PROJECT
WHALLENSBURG, NY
SITE PLAN
DATE: 10-30-06
SCALE: NONE


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

REQUIRED LENGTH OF ABSORPTION TRENCH				
PERC. RATE	FLOW RATE (GALS./DAY)			
MIN./INCH	2 BDRM (300)	3 BDRM (330)	4 BDRM (440)	
13			270	
SEPTIC TANK SIZE (GAL)			1,250	



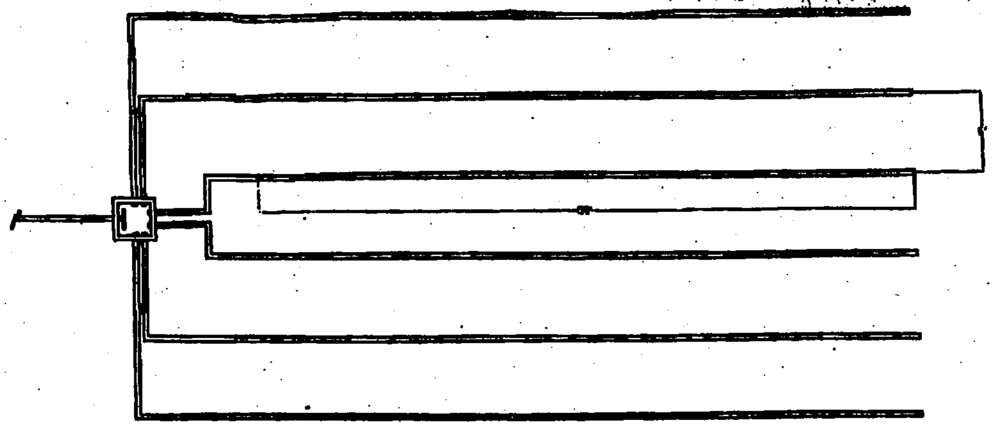
1,250 GAL. SEPTIC TANK
(TYP.)



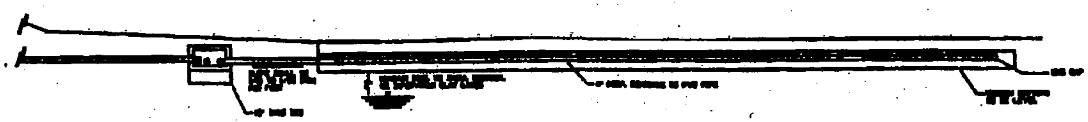
1,250 GAL. SEPTIC TANK
(TYP.)

DEEP HOLE TESTS				
TEST HOLE	DEPTH	SHGW	BEDROCK	NOTES
TP 1	93"	34"	>93"	[illegible]

PERCOLATION TEST RATES			
TEST HOLE	DEPTH	PERC. RATE (MIN/IN)	DATE
SP 1	15"	13	8-31-07
SP 2	10"	10	8-31-07

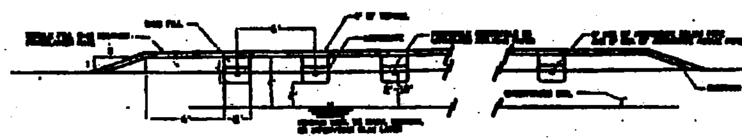


ABSORPTION FIELD PLAN VIEW
LATERALS SHOULD BE OF EQUAL LENGTH AND 50 FT. OR LESS IN LENGTH



ABSORPTION FIELD SECTION

DIST. BOX



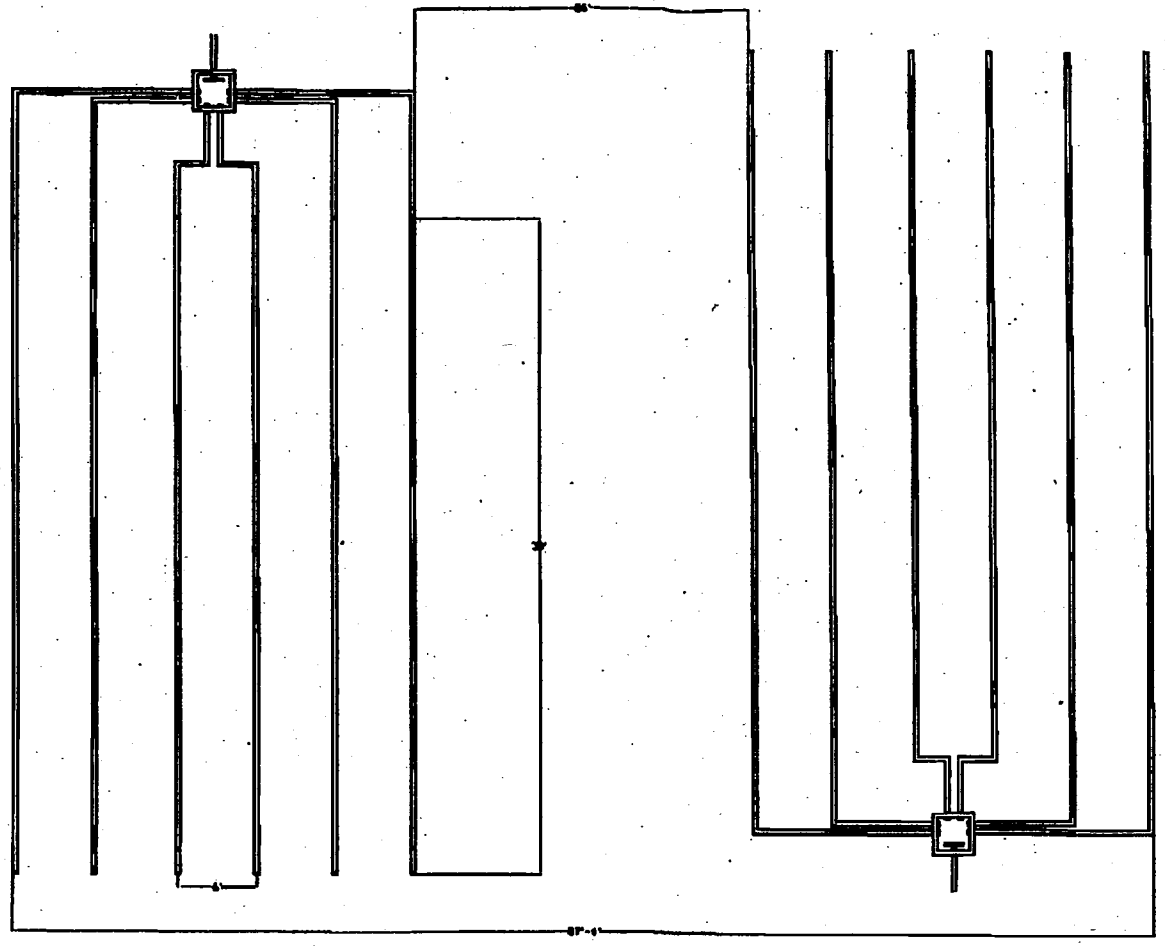
ABSORPTION FIELD SECTION

GENERAL NOTES:

[illegible]

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

396



ABSORPTION FIELD PLAN VIEW
(TYP.)

LEVIS HOUSE PROJECT
WHALLONS BAY ROAD
WHALLONSBURG, NY
ABSORPTION FIELD

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

07

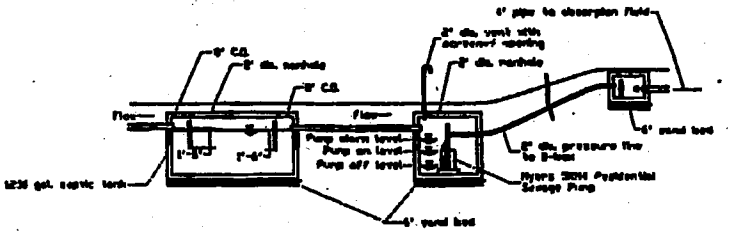
DESIGNED LENGTH OF ABSORPTION TRENCH

NOTES:

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

REQIRED SEPARATION DISTANCES FROM VASTEVATER SYSTEM COMPONENTS (FEET)

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



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

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

EXHIBIT F

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

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

A.D. Docket No. 504626

Essex County Index No. 315-08

JOHN J. PRIVITERA, an attorney at law duly admitted to practice in the courts of the State of New York, swears and affirms under penalty of perjury as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a principal with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for Petitioner Lewis Family Farm, Inc. (hereafter "Lewis Family Farm"). As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I make this reply affirmation in further support of the Lewis Family Farm's motion for leave to review for the purpose of modifying and affirming the April 11, 2008 Decision and Order of the Essex County Supreme Court (Hon. Richard B. Meyer) (hereafter "April 11 Decision and Order") pursuant to CPLR § 5701(c) in order to implement a full stay of Petitioner's obligation to abide by Respondent Adirondack Park Agency's Enforcement Committee Decision of March 25, 2008 (hereafter "March 25 Determination") until a final judgment is rendered in the Article 78 proceeding and any appeals thereto.

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

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

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

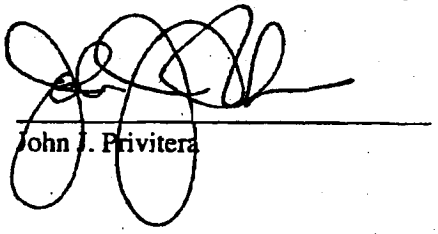
5. The Lewis Family Farm has complied with the Order to Show Cause executed by Hon. Leslie E. Stein on April 28, 2008 by submitting proof that the Dormitory's septic system is operational and complies with New York State law. A copy of the Lewis Family Farm's submission is attached hereto as **Exhibit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

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

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

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

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



John J. Privitera

ESE Earth Science Engineering, P.C.

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

May 4, 2008

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

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

Dear Mr. McKenna:

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

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

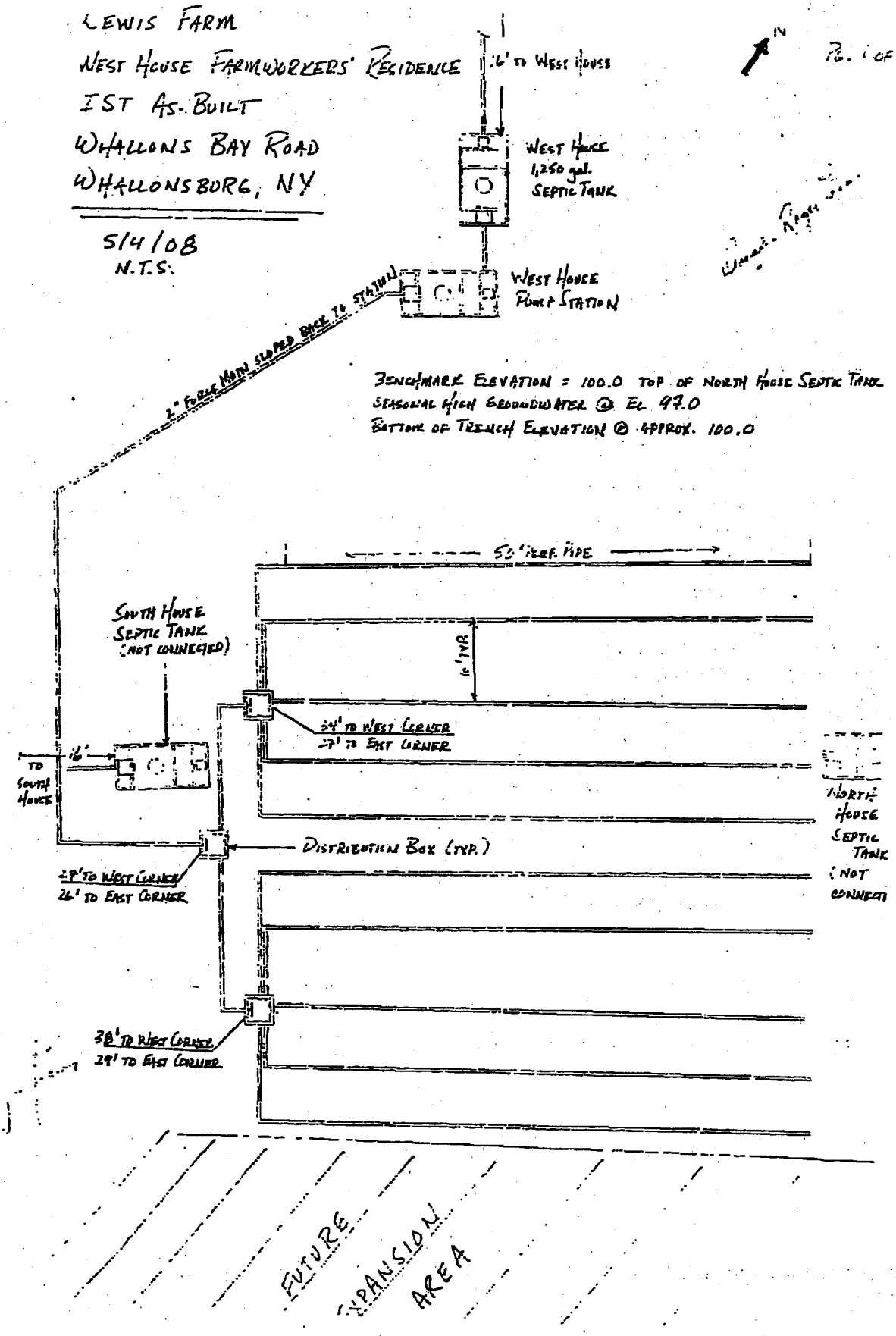
Respectfully submitted,

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

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

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

5/14/08
N.T.S.



[redacted] Exhibit B [redacted]

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

1-8-210

6251

5-3-08
Date

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

FIFTY THOUSAND dollars

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

for

⑆021000089⑆ 020108 35⑈ 6251

ESSEX COUNTY CLERK'S OFFICE

ELIZABETHTOWN, N.Y. 12932

CASH RECEIPT

This is Not a Bill

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

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

CLERK

EXHIBIT G

Mark L Buckley, P.E.

P.O. Box 401
Willsboro, NY 12996

Phone (518)963-4467

May 9, 2008

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

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

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

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

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

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

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

Sincerely,

Mark L. Buckley, P.E.

Miller Aff.

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

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

AFFIDAVIT OF DOUGLAS MILLER

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

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

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

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

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

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

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

Douglas Miller, having been duly sworn, deposes and says:

1. I am an Enforcement Officer for the Adirondack Park Agency (the "APA"), an executive agency of the State of New York created pursuant to Executive Law § 803, with offices located in the Town of North Elba, Essex County, New York, and have served in this position since 2005.

2. In the course of my duties, I am responsible for investigating alleged violations of the Adirondack Park Agency Act, Adirondack Park Agency Rules and Regulations, the New York State Freshwater Wetlands Act, and the New York State Wild, Scenic and Recreational River System Act in an area that includes the Town of Essex, Essex County.

3. I am familiar with the file of the APA in the matter of Lewis Family Farm, Inc. ("Lewis Farm") and have been to Lewis Farm during the course of my duties. I submit this affidavit in support of the APA's Motion to Extend the Appellate Division's Stay of Occupancy of two of the new single-family dwellings at Lewis Farm.

4. Upon information and belief, on or about February 19, 2008, The Town of Essex issued a Certificate of Occupancy for a "single-family home" on Christian Road on the Lewis Farm. This Certificate of Occupancy was issued for the "westerly building" on Christian Road, which is the dwelling referred to by Petitioner Lewis Farm as the "dormitory."

5. On January 15, 2009, I spoke with the Code Enforcement

Officer for the Town of Essex, who informed me that the Town had not issued any other Certificates of Occupancy for the new single-family dwellings on Lewis Farm since February 19, 2008.

DOUGLAS MILLER

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

Notary Public

JILL LAWRENCE
Notary Public - State of New York
Qualified in Franklin County
No. 01LA6175330
Commission Expires Oct. 9, 2011

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

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

AFFIDAVIT OF SARAH REYNOLDS

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

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

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

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

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

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

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

Sarah Reynolds, having been duly sworn, deposes and says:

1. I am an attorney for the Adirondack Park Agency (the "APA") and work in the APA's Enforcement division. In this role, I am responsible for administrative enforcement of the APA's laws and regulations, including in the Town of Essex, Essex County. I am familiar with the facts of the matter based on my review of APA files and my settlement discussions and exchange of settlement correspondence with Lewis Family Farm, Inc. ("Lewis Farm") and its attorneys.

2. I submit this affidavit in support of the APA's Motion to Extend the Appellate Division's Stay of Occupancy of two of the new single-family dwellings at Lewis Farm.

3. On January 21, 2009, John Quinn, an Environmental Program Specialist 3 with the APA, forwarded to me four photographs that he had taken that morning of the three newly-constructed single-family dwellings on the Lewis Farm property. Copies of these photographs are attached hereto as Exhibit A.

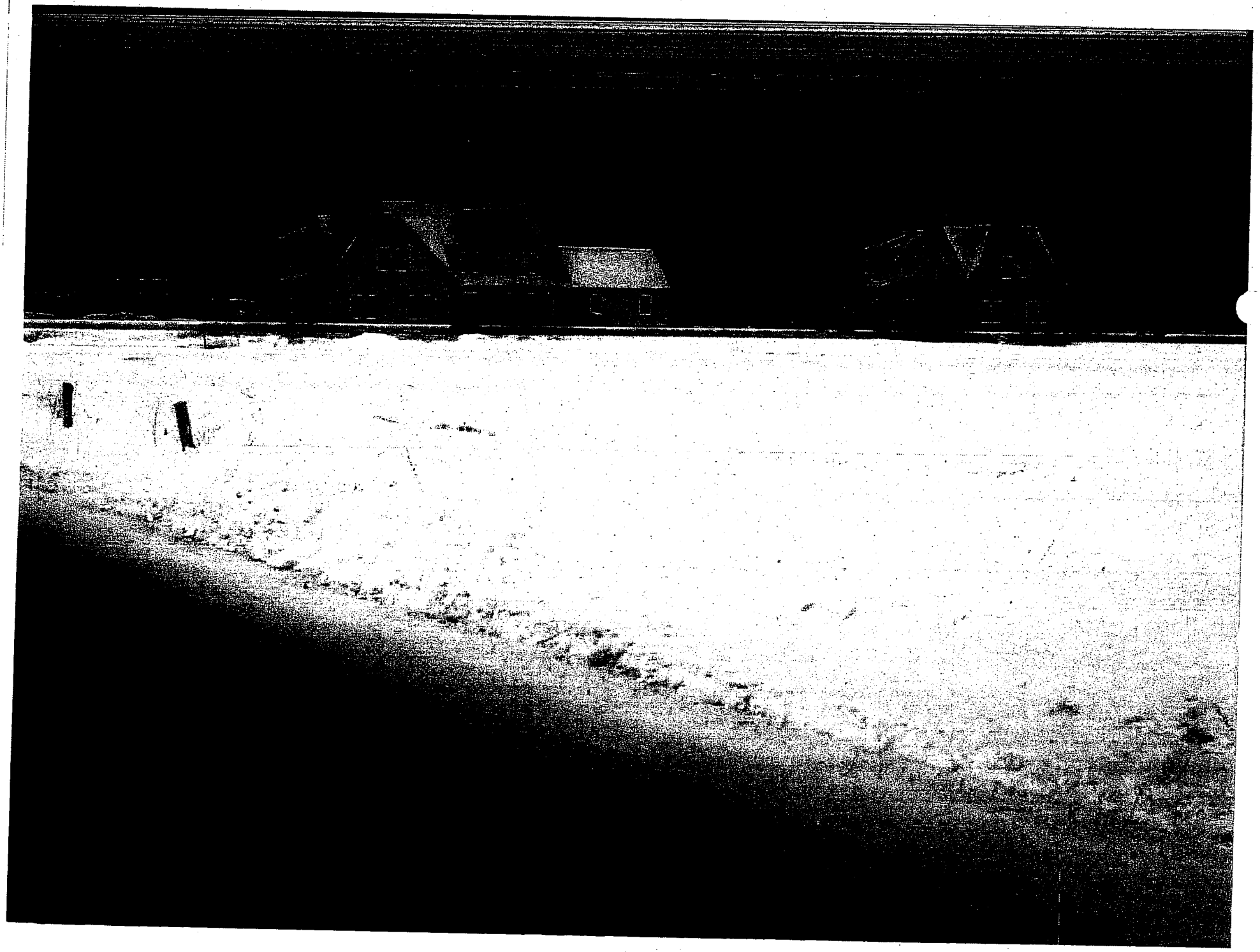
SARAH REYNOLDS

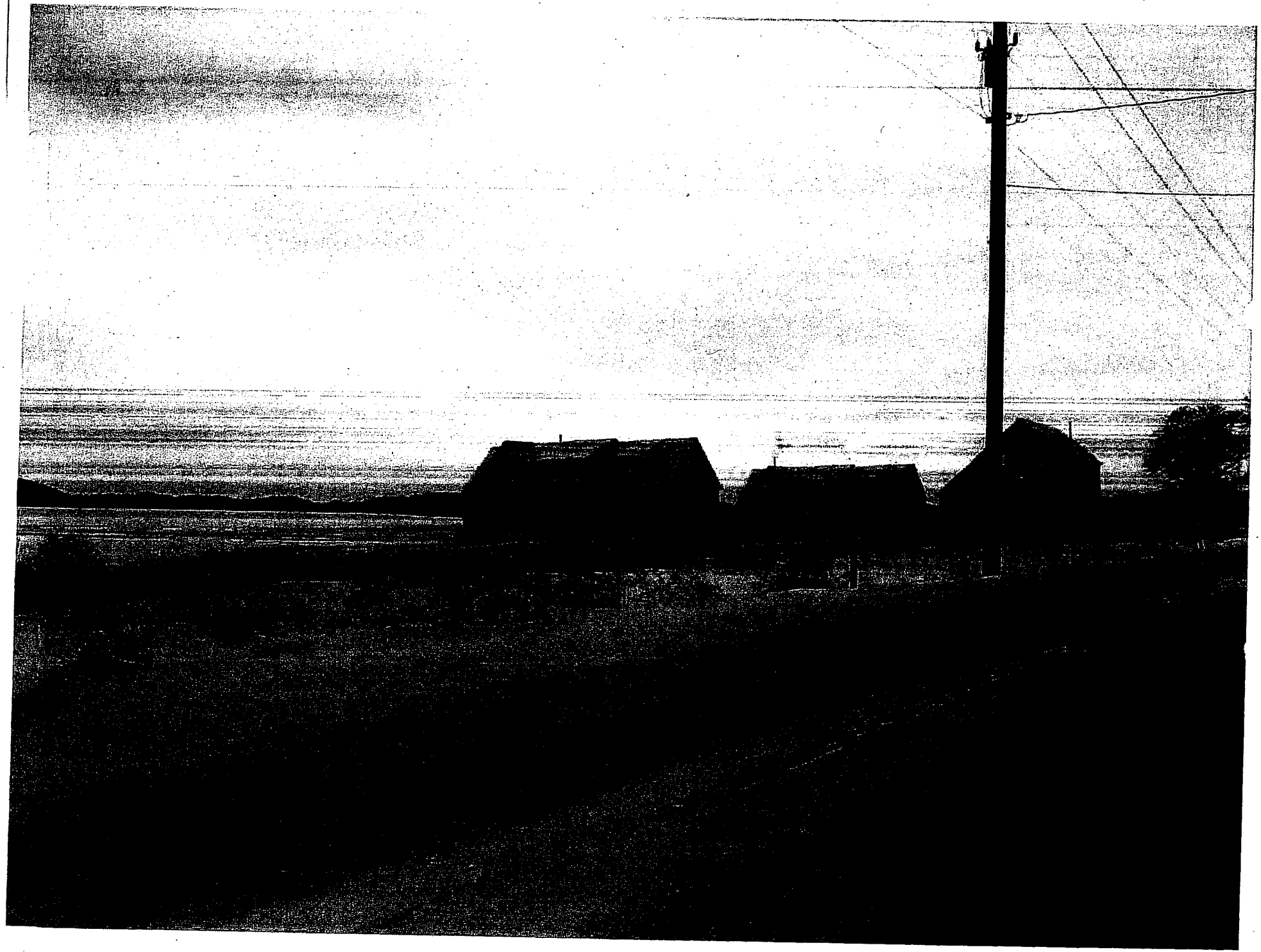
Sworn to before me this
29th day of January, 2009.

Notary Public

JILL LAWRENCE
Notary Public - State of New York
Qualified in Franklin County
No. 01LA6175330
Commission Expires Oct. 9, 2011

EXHIBIT A





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

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

AFFIRMATION IN SUPPORT OF MOTION FOR A STAY OR INJUNCTION PENDING APPEALS

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

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

LEWIS FAMILY FARM, INC.,

Petitioner-Respondent,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent-Appellant.

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

ADIRONDACK PARK AGENCY,

Plaintiff-Respondent,

v.

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

Defendants-Appellants.

Essex County
Index No. 332-08

Pursuant to CPLR § 2106, Loretta Simon, an attorney duly admitted to practice in the courts of the State of New York,

hereby affirms the following under penalty of perjury:

1. I serve as an Assistant Attorney General in the Environmental Protection Bureau of the Office of the New York State Attorney General and am counsel to the Adirondack Park Agency ("the APA") in Lewis Family Farm, Inc. v. NYS Adirondack Park Agency, (Sup. Ct., Essex Co. Index No. 498-07) ("Lewis Farm I") and in the subsequent CPLR article 78 proceeding, in Matter of Lewis Family Farm, Inc. v. APA, (Sup. Ct., Essex Co. Index No. 315-08) ("Lewis Farm II"). I also represent the APA in its enforcement action, APA v. Lewis Family Farm, Inc., Salim B. Lewis and Barbara Lewis, (Sup. Ct., Essex Co. Index No. 332-08) ("Lewis Farm III"), which was consolidated below with Lewis Farm II. Accordingly, I am familiar with the underlying facts and the litigation among the parties.

2. In its January 15, 2009 Decision and Order this Court consolidated three pending appeals in these cases. See Exhibit A. The three consolidated appeals are: (1) Lewis Family Farm, Inc.'s ("Lewis Farm") appeal of the Decision and Order dated August 16, 2007 in Lewis Farm I (Ryan, Acting J.S.C.) (AD Docket No. 504696); (2) the APA's appeal of the Decision and Order dated November 19, 2008 and the Judgment dated November 21, 2008 in Lewis Farm II and III (Meyer, Acting J.S.C.) (AD Docket No. 504626); and (3) the APA's appeal of the Decision and Order dated July 2, 2008 in Lewis Farm III (Meyer, Acting J.S.C.).

3. I submit this affirmation in support of the APA'S motion to extend the partial stay granted in this Court's May 19,

2008 order issued in Lewis Farm's interlocutory appeal in Lewis Farm II and III to the extent that it prevents Lewis Farm's occupancy of two of the three single-family dwellings, pending a final determination of these consolidated appeals.

4. These cases arise from Lewis Farm's construction of three single-family dwellings in the Adirondack Park, within 1/4 mile of the Bouquet River on lands designated "Resource Management" under the Adirondack Park Agency Act (Executive Law § 801 et. seq.,"APA Act") and the Wild, Scenic and Recreational Rivers System Act (Environmental Conservation Law ["ECL"] § 15-2701 et. seq. "Rivers Act"). The APA Act makes protection of "Resource Management" areas of "paramount importance." See Executive Law § 805(3)(g)(1).

5. To protect these environmentally sensitive areas, the APA is vested with permitting authority over certain kinds of projects, including the construction of "single-family dwellings." See Executive Law § 802(58) (definition of single-family dwelling); § 809(2)(a)(permit requirement); § 810(2)(d)(1) (single-family dwelling in Resource Management area); 9 N.Y.C.R.R. §§ 577.4(a), 577.5(c)(1)(Rivers Act projects require permit). Because agricultural use is generally considered compatible with resource management objectives, the APA Act excludes from APA's permitting authority "agricultural use structures" that are more than 150 feet from a protected recreational river. See 9 N.Y.C.R.R. §§ 577.4(b), 577.6(b)(3).

Lewis Farm claims the three single-family dwellings are exempt from APA's permitting authority because they will be used to house "farm workers" and are therefore "agricultural use structures" excluded from APA's permitting jurisdiction.

5. On March 25, 2008, the APA issued an administrative determination finding Lewis Farm in violation of the APA Act and the Rivers Act because it built the dwellings without obtaining a permit. See Exhibit B, ¶¶ 1-7 (excerpt of determination). The APA ordered, among other things, that: "Lewis Farm or its employees shall not occupy the three new dwellings . . . unless and until an Agency permit is issued and the civil penalty paid." See Exhibit B, p. 3, ¶ 5.

6. In Lewis Farm II, by interlocutory order dated April 11, 2008, Supreme Court granted a limited stay of the APA's administrative determination, but denied Lewis Farm's request to enjoin the APA from prohibiting occupancy of the three single-family dwellings. See Exhibit B, p. 5.

7. Lewis Farm brought an order to show cause for permission to appeal the interim April 11, 2008 order denying its request for an injunction. On April 28, 2008, this Court (Stein, J.) granted a limited stay of APA's determination, allowing the occupancy of one single-family dwelling on the condition that Lewis Farm provide certain information on the residences' septic system pursuant to CPLR § 5519(a)(2). See Exhibit C.[1] To date,

[1]Justice Stein further ordered that the $50,000 civil penalty be placed in escrow with the Essex County Treasurer's

Lewis Farm has submitted only some of the septic system information required by this Court's Order. See Exhibit B, ¶ 2(b); see also Affidavit of Shawn LaLonde ("LaLonde Aff.") dated January 29, 2009, ¶¶ 4-5, 15-17.

8. This Court issued an Order on May 19, 2008, granting permission for Lewis Farm to appeal Supreme Court's April 11, 2008 order, and enjoining the APA from enforcing its determination prohibiting occupancy of one of the three dwellings referred to as the "Dormitory" pending Lewis Farm's appeal. See Exhibit F; see also Exhibit B, ¶¶ 5-6. Lewis Farm's appeal from the April 11, 2008 interlocutory order is not one of these three consolidated appeals.

9. The APA now seeks an order extending this Court's May 19, 2008 order to continue the status quo by allowing occupancy of only one of the three single-family dwellings until these consolidated appeals are finally determined. The APA seeks this order because it has had no opportunity to ensure protection of the Bouquet River and Resource Management lands from potential harm or adverse environmental impacts, particularly harm from the dwellings' septic system or systems. Moreover as of January 15, 2009 the Town of Essex has issued a Certificate of Occupancy to

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Office pending Lewis Farm's interlocutory appeal. Accordingly, Lewis Farm placed $50,000 in escrow with the Essex County Treasurer's Office. See Exhibit D. On or about November 21, 2008, immediately following Supreme Court's final judgment in Lewis Farm II and III, Lewis Farm sought and obtained release of the escrowed $50,000 penalty over the APA's objection. See Exhibit E. The APA, by this motion, is not seeking interim relief with respect to the $50,000 penalty.

only one of the three single-family dwellings. See Affidavit of Douglas Miller dated January 29, 2009 ("Miller Aff.") ¶¶ 4,5.

10. Based on the limited information provided by Lewis Farm to date, the APA cannot certify that the septic system or systems serving the three dwellings are properly installed and meet APA's rigorous standards for protection of the Bouquet River and Adirondack Park Resource Management lands. See LaLonde Aff., ¶¶ 4-9.

11. To the extent the Court considers this motion for an extension of the relief granted in the May 19, 2008 order as a request for injunctive relief, the Court should grant the APA's request because it meets the traditional prerequisites for a preliminary injunction.

12. The APA has a strong likelihood of success on the merits in these appeals. As the Supreme Court in Lewis Farm I (Ryan, Acting J.S.C.) held, the APA has jurisdiction over these three single-family dwellings pursuant to both the APA Act and the Rivers Act. See Exhibit G (Decision and Order dated August 16, 2007, Ryan, Acting J.S.C.) pp. 4-6. The conclusion of Supreme Court in Lewis Farm II and III (Meyer, Acting J.S.C.) to the contrary is incorrect for the reasons set forth in Lewis Farm I which are further elucidated in the attached relevant excerpts of the APA's memorandum of law to the court below in Lewis Farm II and III. See Exhibit H (excerpt of APA's memorandum of law, Lewis Farm II and III); see also Exhibit I (Decision and Order dated November 19, 2008 [Meyer J.S.C.]).

13. Moreover, where the State is seeking relief to prevent ongoing violations of environmental laws, the irreparable injury element need not be shown independently of establishing the statutory violation. See New York v. Sour Mtn. Realty, Inc., 276 A.D.2d 8, 15-16 (2d Dep't 2000) (violation of State Endangered Species Act sufficient to show irreparable harm in favor of the State); New York v. Brookhaven Aggregates, 121 A.D.2d 440, 442 (2d Dep't 1986) (where the ECL authorizes injunctive relief for violation of the statute, "[s]uch a statutory provision requires no showing of special damage or injury to the public . . . as a condition to injunctive relief, commission of the prohibited acts being sufficient") (citations omitted); cf. Adirondack Park Agency v. Hunt Bros. Contractors, Inc., 234 A.D.2d 737, 738 (3d Dep't 1996) (recognizing APA's mission to benefit all of the people of the State and its statutory authorization to seek injunctive relief pursuant to Executive Law § 813(2) against violations without showing special injury to the public, and rejecting trial court's conclusion that the equities were evenly divided between the parties).

14. Here, it is undisputed that Lewis Farm constructed three single-family dwellings in a Resource Management area of the Adirondack Park, all within 1/4 mile of the Bouquet River protected by the Rivers Act. See Affidavit of Sarah Reynolds, dated January 29, 2009, Exhibit A (photographs); see also Exhibit B, p. 2-3. The APA has a statutory obligation pursuant to the APA Act and the Rivers Act to protect the Adirondack Park lands

designated "Resource Management" and lands within 1/4 mile of the Bouquet River. The APA cannot certify that the dwellings' septic system(s) meet Agency standards and are protective of the River and Resource Management lands. See LaLonde Aff. ¶¶ 4-5. Lewis Farm's representation in correspondence of May 2008 that the septic system for one of the dwellings meets State Department of Health standards does not demonstrate compliance with APA standards, which are stricter and more protective of sensitive environmental areas. See LaLonde Aff. ¶ 10 -11, 14-19, Exhibits A, B, F ¶5.

15. Furthermore, counsel for Lewis Farm affirmed to this Court in relation to the Court's May 19, 2008 order, that Lewis Farm sought a stay "pending a final judgment of this Article 78, and any appeals thereto." See Affirmation of John J. Privitera dated May 8, 2008, ¶ 7(attached as Exhibit F to the Affidavit of Shaun LaLonde submitted with this motion). This Court however, granted the stay pending that appeal only. See Exhibit F to this affirmation. Now that the APA has appealed Supreme Court's final judgment, the relief this Court granted in its May 19, 2008 order should be extended to remain in effect until these consolidated appeals are resolved.

16. Accordingly, the APA requests an order to maintain the

status quo, allowing occupancy of only one of the three dwellings as provided for in this Court's May 19, 2008 order, until a final determination of these consolidated appeals.

Dated: Albany, New York
January 30, 2009

LORETTA SIMON
Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224-0341
(518) 402-2724

SIMON AFFIRMATION
TABLE OF EXHIBITS

Exhibit A	Decision and Order on Motion dated January 15, 2009 Appellate Division, Third Department
Exhibit B	Decision and Order on Motion dated April 11, 2008 Supreme Court, Essex County (Meyer, Acting J.S.C.)
Exhibit C	Order to Show Cause dated April 28, 2008 Appellate Division, Third Department
Exhibit D	Essex County Clerk and Treasurer receipt of $50,000 civil penalty dated May 5, 2008
Exhibit E	Letter dated November 20, 2008 from Loretta Simon to Hon. Meyer; Letter dated November 21, 2008 from Hon. Meyer to John Privitera, Loretta Simon and Cynthia Feathers; Judgment dated November 21, 2008 Supreme Court, Essex County (Meyer, Acting J.S.C.)
Exhibit F	Decision and Order on Motion dated May 19, 2008 Appellate Division, Third Department
Exhibit G	Decision and Order dated August 16, 2007 Supreme Court, Essex County (Ryan, Acting J.S.C.) (Lewis Farm I)
Exhibit H	APA Memorandum of Law Lewis Farm II and III dated July 30, 2008 (excerpt)
Exhibit I	Decision and Order dated November 19, 2008 Supreme Court, Essex County (Meyer, Acting J.S.C.) (Lewis Farm II and III)

SIMON AFFIRMATION
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Exhibit I	Decision and Order dated November 19, 2008 Supreme Court, Essex County (Meyer, Acting J.S.C.) (Lewis Farm II and III)

EXHIBIT A

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 15, 2009

Case # 504626
504696

In the Matter of LEWIS FAMILY FARM, INC., Appellant,
v

NEW YORK STATE ADIRONDACK PARK AGENCY, Respondent.
(Case No. 1.)

In the Matter of LEWIS FAMILY FARM, INC., Respondent,
v
ADIRONDACK PARK AGENCY, Appellant.
(Case No. 2.)

ADIRONDACK PARK AGENCY, Appellant,
v
LEWIS FAMILY FARM, INC., et al., Respondents.
(Case No. 3.)

DECISION AND ORDER ON MOTION

Motion, pursuant to 22 NYCRR 800.9 (e), to designate Adirondack Park Agency as appellant, to consolidate appeals, and for extension of time to perfect appeal taken by Lewis Family Farm, Inc.

Upon the papers filed in support of the motion and the papers filed in opposition and in response thereto, it is

ORDERED that the motion to designate Adirondack Park Agency as appellant is granted, without costs, and it is further

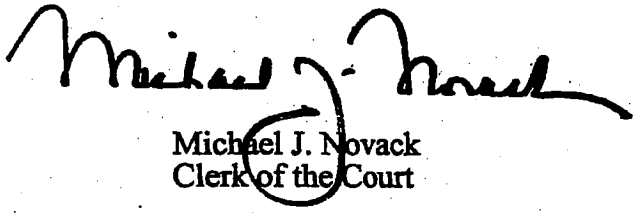
ORDERED that the motion to consolidate is granted, without costs, to the extent that the appeals shall be heard together and may be perfected upon a joint record on appeal, and it is further

ORDERED that the motion for an extension of time to perfect the appeal is granted, without costs. Adirondack Park Agency shall perfect the appeals in case Nos. 2 and 3 on or before March 2, 2009. The responding brief of Lewis Family Farms, Salim B. Lewis and Barbara Lewis, which shall also contain the points of argument on the appeal in case No. 1, shall be filed and served on or before April 1, 2009. The reply brief, if any in case Nos. 2 and 3, and the responding brief in case No. 1 of Adirondack

Park Agency, shall be filed and served on or before April 28, 2009. The reply brief, if any, in case No. 1, shall be filed and served on or before May 8, 2009.

CARDONA, P.J., MERCURE, ROSE, LAHTINEN and KANE, JJ., concur.

ENTER:



Michael J. Novack
Clerk of the Court

EXHIBIT B

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

NOTICE OF ENTRY

Index No.: 315-08

Hon. Richard B. Meyer

PLEASE TAKE NOTICE that the within is a true copy of Judge Meyer's Decision and Order dated April 11, 2008, which was duly entered in the Office of the Essex County Clerk on April 14, 2008.

Dated: Albany, New York
April 14, 2008

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

By: _____

John J. Privitera, Esq.
Jacob F. Lamme, Esq.
Attorneys for Petitioner
677 Broadway
Albany, New York 12207
(518) 447-3200

TO: Loretta Simon, Assistant Attorney General
NYS Office of the Attorney General
Environmental Protection Bureau
146 State Street, 2nd floor
Albany, New York 12224

Supreme Court of the State of New York
For the County of Essex

Argued April 11, 2008 Decided April 11, 2008

Index No.: 315-08 – RJI No.: 15-1-2008-0109

LEWIS FAMILY FARM, INC.
Petitioner,
v.

ADIRONDACK PARK AGENCY,
Respondent.

Decision and Order on Motion for Stay of Enforcement Pursuant to CPLR §7805

McNamee, Lochner, Titus & Williams, P.C. (John J. Privitera, Esq., of counsel), Albany, New York, attorneys for the Petitioner.

Andrew M. Cuomo, Esq., New York State Attorney General (Loretta Simon, Esq., Assistant Attorney General), Albany, New York, attorney for the Respondent.

Motion by Petitioner pursuant to CPLR §7805 for a stay of enforcement of a determination made by Respondent's enforcement committee (9 NYCRR Part 581) dated March 25, 2008 which, *inter alia*, directed Petitioner to apply to the Respondent for a permit for three new dwellings and a four-lot subdivision on or before April 14, 2008, imposed a $50,000 civil penalty, directed that the dwellings remain unoccupied until

a permit was issued, and required Petitioner to forego "the right to challenge Agency jurisdiction and the review clocks otherwise applicable".

Petitioner is the owner of a 1,100 acre organic farm designated as a single parcel of land on the official county tax maps and town tax rolls, located in the Town of Essex, Essex County. The property lies wholly within the Adirondack Park and within Essex County Agricultural District No. 4. The subject parcel is classified on the Adirondack Park Land Use and Development Plan Map as Resource Management, Rural Use and Hamlet.

In or about November 2006, Petitioner commenced construction of certain single family dwelling units on that portion of the property classified as Resource Management, to be used by Petitioner's employees who work on the farm. Petitioner thereafter filed an application with the Respondent for a permit authorizing construction of "three single family dwellings in a farm compound to be used by farm employees exclusively." Thereafter, a dispute arose between the parties, which resulted in a proposed settlement agreement sent to Petitioner on May 14, 2007 providing for the Petitioner to apply for an after-the-fact permit and pay $10,000 civil penalty. Petitioner rejected the settlement agreement, and on June 28, 2007 commenced an action against the Agency challenging jurisdiction, as well as seeking a temporary restraining order. That proceeding was dismissed, and the application for temporary relief denied, by a decision and order (Ryan, J.) dated August 16, 2007. Petitioner filed a notice of appeal, but the appeal has not yet been perfected.

Despite dismissal of its declaratory judgment action, Petitioner continued with construction of the dwelling units. Respondent commenced an enforcement proceeding, resulting in its March 25, 2008 determination that the Petitioner violated the Adirondack Park Agency Act (Executive Law Article 27) (the "Act") by failing to obtain from the Respondent a subdivision permit and a permit authorizing construction of the dwelling units. In determining such violations, the Respondent's enforcement committee directed the Petitioner to comply with the following requirements:

> "(1) Lewis Farm will apply for a permit for the three new dwellings and the four-lot subdivision into sites

(including retained "lot") by April 14, 2008, by submitting the appropriate major project application.

(2) By April 28, 2008, Lewis Farm will also submit the following to the Agency:
   (a) a detailed description of the use of each dwelling and connection to the Lewis Farm agricultural operations,
   (b) an as-built plan for the septic system and an evaluation by a NYS licensed professional engineer as to whether the installed septic system for the three dwellings complies with NYS Department of Health and Agency standards and guidelines;

(3) Lewis Farm will reply to any additional information requests within thirty (30) days of receipt.

(4) Lewis Farm will retain all rights of appeal in the project review process, but foregoes the right to challenge agency jurisdiction and the review clocks otherwise applicable.

(5) Lewis Farm or its employees shall not occupy the three new dwellings located on the corner of Whallons Bay Road and Christian Road unless and until an Agency permit is issued and the civil penalty paid.

(6) By April 28, 2008 Lewis Farm will pay a civil penalty of $50,000 to the Agency.

(7) Agency staff is directed to review the application for the three dwellings and the subdivisions promptly, towards the goal of issuing the after-the-fact permit in time for farm worker occupancy of the dwellings for the 2008 growing season. However that can only happen if the Respondent responds immediately and favorably to this determination and submits the required information and penalty. The Agency will

> not proceed with review of the application unless and until the civil penalty is paid, the information requested above is submitted, and the dwellings remain vacant until approval is issued."

Petitioner commenced the instant proceeding pursuant to CPLR Article 78 by the filing of a Notice of Petition and Petition on April 8, 2008. Simultaneously with such filing, Petitioner duly moved by Order to Show Cause for a stay pursuant to CPLR 7805. The motion is supported by affidavits of Petitioner's counsel and Barbara A. Lewis, an officer of Petitioner, both sworn to April 7, 2008. Respondent opposes the motion, submitting affirmations from an associate attorney for the Respondent and from an Assistant Attorney General, both dated April 10, 2008, alleging that the August 2007 decision and order dismissing Petitioners declaratory judgment action has already resolved many of the issues now before this Court in favor of the Respondent, and because Petitioners have failed to establish sufficient grounds to warrant issuance of a stay.

The purpose of a stay is to maintain the *status quo* (see *State v. Town of Haverstraw*, 219 AD2d 64, 641 NYS2d 879). Temporary or preliminary injunctive relief may be granted "when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor" (*Doe v. Axelrod*, 73 NY2d 748, 750, 536 NYS2d 44, 45, 532 NE2d 1272). There is no substantive difference between a temporary restraining order or preliminary injuntion under CPLR §6301 and a stay pursuant to CPLR §7805, and nothing in the later statute, or in case law, relieves a party seeking a stay from establishing all three elements. Petitioner's reliance on *Matter of Stewart v. Parker*, 41 AD2d 785, 341 NYS2d 149) to support its claim that only irreparable injury need be shown for relief to be granted under CPLR §7805 is misplaced as the Court there dealt only with the issue of irreparable injury. Indeed the Court there stated "[w]hether it was an order incident to the article 78 proceeding or a preliminary injunction under CPLR 6301, makes little difference (*Id.*, at 786, 341 NYS2d at 192).

Under the circumstances here, Petitioner has minimally met the requisite elements, at least for an award of partial temporary relief. This proceeding involves novel issues of law relating to the interplay of various

statutory definitions contained in the Act, the Respondent's jurisdiction over "agricultural use structures" (*Executive Law §809[8]*), whether a single family dwelling is or can under certain circumstances be such a structure under the Act, whether the Petitioner's project constitutes a "subdivision" (*Executive Law §802[63]*), and the potential impact (if any) of Article 14, §4 of the New York Constitution. Moreover, the unexplained failure of the Respondent to timely refer the Petitioner's noncompliance with the Act to the Attorney General (*Executive Law §813[2]*) over a period spanning almost one year, and more than six months following dismissal of the declaratory judgment action, while Respondent was aware that Petitioner continued to construct the dwelling units at considerable cost, cannot be discounted. To the extent now determinable, the Petitioner has established a likelihood of success on the merits on at least some issues raised in the petition, and a balancing of the equities in its favor.

As to irreparable injury, an insufficient showing has been made to establish that irreparable harm will occur to the Petitioner if the stay is not granted as to certain aspects of the challenged determination, specifically the prohibition against the dwellings being occupied or the payment of the civil penalty. Petitioner conceded at oral argument that the dwelling units are not occupied. No allegation has been made that Petitioner lacks sufficient financial resources to pay the penalty, and should Petitioner ultimately prevail in this proceeding the penalty would have to be reimbursed in full to Petitioner. However, because the instant proceeding challenges the Agency's subject matter jurisdiction, and since the challenged determination requires Petitioner to forego its right to challenge the Respondent's jurisdiction here if it proceeds to apply for the after-the-fact permit(s), it is the determination of this Court that a stay should be, and is, granted as to the remaining enforcement determinations in the March 25, 2008 determination, namely paragraphs (1) through (4), and (7). Petitioner's motion is denied as to paragraphs (5) and (6).

IT IS SO ORDERED.

ENTER

Richard B. Meyer
Acting Supreme Court Justice

EXHIBIT C

PRESENT: Hon. Leslie E. Stein
Associate Justice, Appellate Division, Third Department

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

ORDER TO SHOW CAUSE

Index No. 315-08

Upon reading the annexed affirmation of John J. Privitera, dated April 28, 2008, the papers thereto attached and the papers therein referred to, and upon all the pleadings and proceedings had herein, it is

ORDERED, that Respondent show cause before this Court at a motion term thereof, to be held at the Justice Building, Empire State Plaza, Albany, New York, at 9:30 a.m. on May 12, 2008, or as soon thereafter as counsel can be heard, why an order should not be granted that: (1) grants Petitioner-Appellant permission to appeal the April 11, 2008 Decision and Order of the Essex County Supreme Court (Hon. Richard B. Meyer); (2) enjoins enforcement of Respondent's Enforcement Committee Decision of March 25, 2008 pending determination of a permissive appeal to this Court of Justice Meyer's decision and order; and (3) grants such other and further relief as this Court deems just and proper, and it is further

ORDERED, that pending determination by this Court on the motion brought on by this Order to Show Cause, Respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in Subparagraph "6" on page 3 of the Decision and Order of Supreme Court dated April 11, 2008 on the condition that Petitioner shall pay the sum of

$50,000 to the Essex County Treasurer's Office pursuant to CPLR 5519(a)(2) or post an undertaking therefore on or before May 5, 2008; and it is further

ORDERED, that pending determination by this Court on the motion brought on by this Order to Show Cause, Respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in Subparagraph "5" on page 3 of the Decision and Order of Supreme Court dated April 11, 2008 relating to the occupancy of the dwelling known as the "Dormitory" as described in Exhibit A to the Barbara Lewis Affidavit sworn to April 7, 2008, on the condition that Petitioner shall submit to Respondent's counsel the information contained in Subparagraph "2(b)" of said April 11, 2008 Decision and Order, on or before May 5, 2008; and it is further

ORDERED, that service of a copy of this order and a copy of the papers upon which it was granted upon Respondent's counsel by personal or overnight delivery service at:

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

on or before April 29, 2008, be deemed sufficient service upon Respondent, and it is further

ORDERED that papers in opposition to this motion, if any, are to be served upon Petitioner's counsel so as to be received by May 5, 2008 and filed with this Court on the same date, and it is further

ORDERED that this motion shall be submitted and the personal appearance of the attorneys for the parties is not permitted.

Dated: April 28, 2008
Albany, New York

Hon. Leslie E. Stein
Associate Justice, Appellate Division, Third Department

EXHIBIT D

May 5th, 2008

COUNTY CLERKS RECEIPT

INDEX NO. 315-08

****

In the Matter of
LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

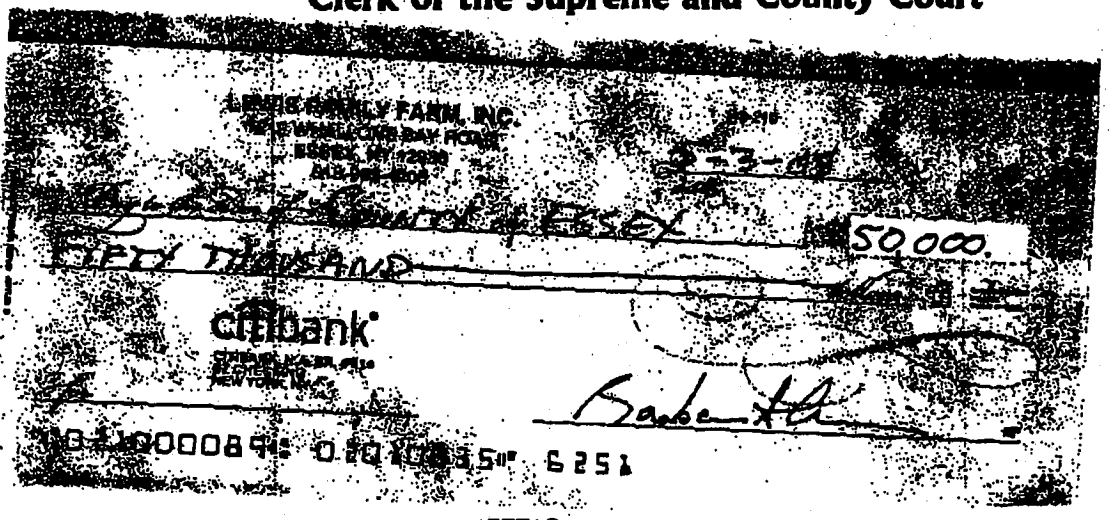
****

Received from, Lewis Family Farm Inc, a Check in the amount of $50,000.00. This amount was ordered to be paid to the Essex County Treasurer by an order signed by the Hon. Leslie E. Stein, Associate Justice of the NYS Supreme Court, Appellate Division, Third Department dated April 28th, 2008.

This check has been turned over to the Essex County Treasurer for deposit into the Court and Trust Fund.

Joseph A Provoncha by Joan K Allen Deputy

Joseph A. Provoncha, Essex County Clerk and Clerk of the Supreme and County Court



May 5th, 2008

TREASURERS RECEIPT

INDEX NO. 315-08

****

In the Matter of
LEWIS FAMILY FARM, INC.

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

****

I, Michael G Diskin, Essex County Treasurer, have received from Joseph A. Provoncha, Essex County Clerk and Clerk of the Supreme and County Court, a check in the amount of $50,000.00 for deposit into the Court and Trust Fund.

This amount was ordered to be deposited into The Court and Trust Fund by the Hon. Leslie E. Stein, Associate Justice of the NYS Supreme Court, Appellate Division, Third Department, by order dated April 28th, 2008. A copy of the order is attached

Michael G. Diskin

Michael G. Diskin, Essex County Treasurer

ESSEX COUNTY CLERK'S OFFICE

ELIZABETHTOWN, N.Y. 12932

CASH RECEIPT

This is Not a Bill

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

PARTIES	TRANSACTION	AMOUNT	
498-2007			
Lewis family farm			
VS			
A P A.			
Pay Amount into		50,000	00
Court Civil Trust.			
Rec'd Joseph A. Provoncha			
Basin & Clerk.			
BY CK # 6251 (50)	TOTAL	50,000	00

CLERK

EXHIBIT E

COPY

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 20, 2008

BY FACSIMILE AND MAIL
fax: (518) 873-3376

Honorable Richard B. Meyer
Essex County Supreme Court
7559 Court Street
P.O. Box 247
Elizabethtown, New York 12932

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index No. 315-08

Adirondack Park Agency v. Lewis Family Farm, Inc.
Index No. 332-08

Dear Judge Meyer:

Today the Office of the Attorney General received a letter from Jacob Lamme, counsel to Lewis Family Farm in the above-captioned matters, enclosing a proposed Judgment pursuant to your Decision and Order dated November 19, 2008. The State objects to the language of the proposed judgment relating to the release of a $50,000 civil penalty held in escrow in the Essex County Treasurer's Office. These escrow funds are held by the County pursuant to an Order of the Appellate Division, Third Department, dated April 28, 2008 (attached).

With all respect to this Court, any decision to release the escrow funds must be made by the Appellate Division.

Respectfully submitted,

Loretta Simon
Assistant Attorney General
(518) 402-2724

cc: (by fax and mail)
Jacob F. Lamme, Esq.
McNamee, Lochner, Titus
and Williams, P.C.
677 Broadway
Albany, New York 12207-2503
f: (518) 426-4260

STATE OF NEW YORK
COUNTY OF ESSEX
COUNTY, FAMILY & SURROGATE'S COURTS

RICHARD B. MEYER
JUDGE

AMY N. QUINN
COURT ATTORNEY
JILL H. DRUMMOND
SECRETARY

November 21, 2008

Via Fax & Mail

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New York State Attorney General
Attn: Loretta Simon, Esq.
Assistant Attorney General
The Capitol
Albany, New York 12224-0341

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index Nos.: 315-08 and 332-08

Counselors:

I have reviewed the proposed judgment and Ms. Simon's objection to the last provision regarding the $50,000.00 penalty. The objection is without merit. The order to show cause to which she referred only provided for the same to be paid "pending determination by this Court on the motion brought on by this Order to Show Cause". The determination of the Appellate Division did not contain any other direction regarding that penalty, and it was this Court's order that imposed the obligation of the Farm to pay the same initially. Since that is the sole objection raised to the proposed judgment, I have executed the same and it has been filed this date in the County Clerk's Office. A copy is enclosed with this letter.

Very truly yours,

Richard B. Meyer

RBM:jhd
cc: Essex County Clerk

ESSEX COUNTY COURTHOUSE
7559 COURT STREET, P.O. BOX 217 • ELIZABETHTOWN, NEW YORK 12932
(518) 873-3326 • FAX (518) 873-3732

PRESENT: Hon. Richard B. Meyer, Acting J.S.C.

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

JUDGMENT

ACTION NO. 1

Index No. 315-08
RJI No.: 15-1-2008-0109
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

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

Defendants.

ACTION No. 2

Index No.: 332-08
RJI No.: 15-1-2008-0117
Hon. Richard B. Meyer

Upon the Notice of Petition, dated April 7, 2008 and Amended Petition filed in this Article 78 proceeding in the office of the Clerk of Essex County on or about April 14, 2008 (Index No. 315-08), and all proceedings thereon;

And upon the Amended Summons and Amended Verified Complaint filed in this action in the office of the Clerk of the Essex County on or about May 14, 2008 (Index No. 332-08), and all proceedings thereon;

NOW, ON MOTION OF McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C., attorneys for Petitioner-Defendant Lewis Family Farm, Inc., and in accordance with the Decision and Order executed by the Honorable Richard B. Meyer, J.S.C. on November 19, 2008, it is

ORDERED, ADJUDGED AND DECREED, that the Amended Petition is hereby granted without costs and that the determination rendered by Respondent Adirondack Park Agency against Petitioner Lewis Family Farm, Inc. on March 25, 2008 is hereby annulled in its entirety pursuant to CPLR § 7806 on the ground that said determination is affected by an error of law, and it is further

ORDERED, ADJUDGED AND DECREED, that the Amended Verified Complaint of Plaintiff Adirondack Park Agency is hereby dismissed in its entirety, and that each and every cause of action stated therein against Defendant Lewis Family Farm, Inc. is hereby dismissed, with prejudice and without costs, and it is further

ORDERED, ADJUDGED AND DECREED, that the Decision and Order of this Court, dated April 11, 2008, as modified by the Appellate Division on April 28, 2008 and May 19, 2008, which granted a partial stay to Petitioner Lewis Family Farm, Inc. pursuant to CPLR § 7805 is hereby vacated as moot, and therefore there is no basis upon which the Essex County Treasurer may continue to hold the $50,000 paid in to the Court and Trust Fund of the Essex County Treasurer by the Lewis Family Farm, Inc.

JUDGMENT signed this 21st day of November, 2008 at Elizabethtown, New York.

ENTER

Hon. Richard B. Meyer
Acting Supreme Court Justice

ELIZABETHTOWN, NY 12932
08 NOV 21 AM 11:05

EXHIBIT F

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

NOTICE OF ENTRY

Case # 504626

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order on Motion of the Appellate Division, Third Department dated and entered by the Clerk on May 19, 2008.

Dated: Albany, New York
May 20, 2008

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

By: _____

Jacob F. Lamme, Esq.
Attorneys for Petitioner
677 Broadway
Albany, New York 12207
(518) 447-3200

TO: Loretta Simon, Esq.
Assistant Attorney General
State of New York
Office of the Attorney General
The Capitol
Albany, New York 12224

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 19, 2008 Case # 504626

In the Matter of LEWIS FAMILY FARM, INC.,

Petitioner,

v

ADIRONDACK PARK AGENCY,

Respondent.

DECISION AND ORDER ON MOTION

Motion for permission to appeal from order of Supreme Court dated April 11, 2008 and to enjoin enforcement of administrative determination dated March 25, 2008.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion for permission to appeal is referred to Justice Stein who makes the following decision: Motion granted, and it is further

ORDERED that the motion to enjoin enforcement is granted, without costs, to the extent that respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in subparagraph five of Supreme Court's order relating to the occupancy of the dwelling known as the "Dormitory" and subparagraph six on page three of said order pending the appeal.

SPAIN, J.P., ROSE, LAHTINEN, KANE and STEIN, JJ., concur.

ENTER:

Michael J. Novack
Clerk of the Court

EXHIBIT G

At a term of the Supreme Court of the State of New York, held in and for the County of Essex, at the Essex County Courthouse in the Town of Elizabethtown, on the 8th day of August, 2007.

P R E S E N T: **HONORABLE KEVIN K. RYAN**
Acting Justice, Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

-against-

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

DECISION AND ORDER
Index No. 0498-07
RJI #15-1-2007-0153

APPEARANCES: DAVID L. COOK, Esq., Attorney for the Plaintiff
LORETTA SIMON, Esq., Assistant Attorney General, for the Defendant

RYAN, A.J.:

Pending before the Court is the plaintiff's amended order to show cause, dated July 13, 2007, and the defendant's cross-motion to convert the underlying declaratory judgment action into a petition under CPLR Article 78 and then dismiss the complaint. The Court has reviewed and considered the following: the amended order to show cause, dated July 13, 2007, the attached undated amended complaint, the amended affidavit of Barbara Lewis, sworn to July 3, 2007, the amended affidavit of Mark McKenna, sworn to July 3, 2007, and the

attorney's affirmation in support, by Joseph R. Brennan, Esq., of counsel to plaintiff's attorney, dated July 3, 2007, no exhibits were attached thereto, and the amended memorandum of law in support of the plaintiff's motion for a temporary restraining order and further injunctive relief. The Court has also considered the notice of motion by the defendant, dated August 1, 2007, the affirmation of John Banta, Esq., dated July 23, 2007, the affirmation of Sarah Reynolds, Esq., dated July 20, 2007, plus attached exhibits A through D, the affidavit of John L. Quinn, Environmental Program Specialist 3 with the defendant, sworn to July 23, 2007, plus attached exhibits A through C, and the affidavit of Douglas Miller, Enforcement Officer fo the defendant, sworn to July 20, 2007, plus attached exhibits A through I, and the defendant's memorandum of law in support of the motion to dismiss the complaint. The Court has also considered the reply memorandum of law by the plaintiff, the undated affirmation of plaintiff's counsel in opposition to the defendant's motion to dismiss, the affidavit of Salim B. Lewis, sworn to August 7, 2007, the affidavit of Barbara A. Lewis, sworn to August 7, 2007, and the affidavit of Klaas Martens, sworn to August 6, 2007. In addition, the Court heard oral argument from counsel on the order to show cause and the motion to dismiss on August 8, 2007.

The plaintiff has no objection to this action being converted to a petition under CPLR Article 78 and thus the relief is **GRANTED** pursuant to CPLR 5103(c).

The plaintiff's motion for a restraining order is denied and the defendant's motion to dismiss the petition is granted for the reasons stated herein.

The relevant facts of this case may be stated as follows: the plaintiff is a corporation which operates an organic farm located in the Town of Essex, which is in the Adirondack Park. In the fall of 2006, the plaintiff obtained a building permit from the Town of Essex to construct housing on the farm for workers. These houses consisted of a total of four modular units which the plaintiff obtained from a Canadian firm. The contract to install these four houses expired on June 30, 2007. Because the Town of Essex Code Enforcement Officer apparently told the project manager no permits were needed from the Adirondack Park Agency (hereinafter "the APA") the project manager did not seek any. After construction had already started, Mrs. Lewis had contact with a representative of the APA and was informed that the Farm did, in fact, need to apply for a permit. However, since construction had already started, the matter was referred to the APA's enforcement division.

Members of the staff at the enforcement division at the

APA sent a proposed settlement to the Farm which included the payment of a $10,000 civil penalty prior to the APA considering an afer-the-fact permit application. Over the course of the next several months, the Farm and the APA had numerous contacts in which the Farm repeatedly requested that the APA drop the civil penalty as part of the proposed settlement. The APA staff did not accede to that request.

While construction had halted in March 2007, after the APA informed the Farm a permit was needed for the construction, in the latter part of June 2007, construction re-commenced. The APA served the Farm with a cease and desist order but the Farm continued to build the farm workers' housing. The Farm commenced this law suit seeking a declaratory judgment that the APA had no jurisdiction over the farm workers' housing, or, if they did, that the Agriculture & Markets Law superceded the APA Act, and thus, no permit was needed to construct the houses.

The Court does not agree with the plaintiff's assertion that the APA has no authority over this building project. The area in which three of the houses, the particular houses which have been built, is located is defined as part of the Wild, Scenic and Recreational River System Act (Environmental Conservation Law §15-2701(1)). Under the Environmental Conservation Law, the APA has the authority to make and

enforce any regulations necessary to enforce the act (Environmental Conservation Law §15-2709(1)). The APA act, Executive law §810(2)(d), defines the building project as a class B project since it involves the construction of a single-family dwelling. Under the APA regulations, this building project constitutes a "subdivision" even though it is not a typical suburban subdivision. The plaintiff put up a dwelling on a parcel of land which already had either a dwelling or building, even though an already existing building might be removed after construction is completed (9 NYCRR 570.3(ah)(3) and 573.6(e)).

The plaintiff argues that the houses are agricultural use buildings, which the APA does not dispute, but the plaintiff also claims these are exempted from the APA's control, citing Executive Law §810(1)(e)(8). However, when read in its entirety, that section does not support the plaintiff's interpretation. That section states that the APA has authority over "all structures in excess of forty feet in height, except agricultural use structures and residential radio and television antennas". Clearly, that exception was not meant to include every possible farm structure. If the Court were to accept the plaintiff's interpretation of that section, the APA could do nothing if a landowner built a cow barn within a few feet of the river.

Since the APA does have authority over this building project, the next issue is whether the Agriculture and Markets Law §305-a supersedes the APA authority. It does not. From a plain reading of that section, it applies only to local laws. Subdivision (1)(a) of that section states:

> "Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened."

Thus, this section has no application to the Executive Law or the regulations promulgated by the APA pursuant to that law.

Lastly, this situation is not ripe for judicial intervention. While the plaintiff may not wish to proceed to a hearing before the APA commissioners, because that action may seem to submit to the jurisdiction of the APA or because of the timing of the building contract, that is clearly the next step in the process. This Court has only the

jurisdiction that the Legislature gave it over disputes involving the APA. It does not have concurrent jurisdiction over this situation (*Sohn v Calderon*, 78 NY2d 755, 766-767 (1991)). This Court's jurisdiction is limited to a review of the APA's actions under CPLR Article 78 (*Ibid.*). Otherwise, as the Court of Appeals pointed out in *Flacke v Onondaga Landfill Sys.*, 69 NY2d 355, 363 (1987), the Court condones a breach of the separation of powers between the branches of government.

The Commissioners of the APA have the authority to review this situation under Executive Law §809. If, after receiving a determination from the Commissioners, the plaintiff is still dissatisfied, they are free to file an Article 78 proceeding at which time this Court may review the actions of the APA. Until that time, this matter constitutes an internal matter in which the Court will not interfere.

Finally, were the Court to consider the plaintiff's request for a restraining order, the plaintiff has not made out a case for irreparable damages. The only potential harmful consequences listed by the plaintiff involve monetary damage. The plaintiff has not demonstrated that any potential injury is so serious that a monetary award would not be sufficient compensation (*Norbrook Laboratories Ltd v C.G. Hanford Mfg. Co.*, 297 F.Supp.2d 463, 492 (Northern District of

New York, 2003) (citation omitted), affirmed 126 Fed.Appx. 507 (2005)).

The plaintiff's motion is **DENIED** and the defendant's motion to dismiss the underlying action is **GRANTED**.

IT IS ALL SO ORDERED.

E N T E R:

Kevin K. Ryan

KEVIN K. RYAN
Acting Justice, Supreme Court

Dated: Plattsburgh, New York
August 16, 2007

ENTERED
Joseph A. Provoncha
JOSEPH A. PROVONCHA
ESSEX COUNTY CLERK
DATED: 8/29/07

A true and original decision and order was filed in this office on 8-29-07

Witness my hand and by the seal of this office, this 29th day of August 2007.

J. A. Provoncha
County Clerk

EXHIBIT H

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

INDEX No. 315-08
RJI No. 15-1-2008-0109
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

INDEX No. 332-08
RJI No. 15-1-2008-0117

NEW YORK STATE ADIRONDACK PARK AGENCY MEMORANDUM OF LAW IN FURTHER OPPOSITION TO THE AMENDED PETITION AND ITS ANSWER TO THE THIRD, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH AND ELEVENTH CLAIMS OF THE AMENDED PETITION

ANDREW M. CUOMO
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LORETTA SIMON
Assistant Attorneys General

Of Counsel

Dated: July 30, 2008

TABLE OF CONTENTS

POINT II

THE APA'S EXERCISE OF JURISDICTION OVER THESE SINGLE FAMILY DWELLINGS IN A RESOURCE MANAGEMENT AREA UNDER BOTH THE APA ACT AND THE RIVERS ACT IS RATIONAL AND REASONABLE

Petitioner asserts in claims 5, 6, 7, 8, 9 and 10 that the APA lacks jurisdiction over Lewis Farm's three single family dwellings and its subdivision of land into sites, and has acted without regulatory authority. See Amended Petition ¶¶ 77-87. However, the APA's statutes and regulations are clear: single family dwellings and subdivisions on Resource Management lands and in designated recreational river areas are subject to Agency jurisdiction and require a permit. See Executive Law § 809(2)(a) (permit required for Class A and Class B projects); Executive Law § 810(1)(e)(1) (Class A projects include subdivisions of land in Resource Management areas); § 810(2)(d)(1) (Class B projects include single family dwellings in Resource Management areas); see also 9 NYCRR Sections 577.4(a) and 577.5(c)(1) (requiring a rivers project permit on Resource Management lands for all subdivisions of land and all land use and development classified as compatible in APA Act Section 805). The APA's March 25, 2008 determination applied these statutes and regulations the Agency is mandated to enforce and administer, determining that single family dwellings are not "agricultural use structures", and that Lewis Farm's single family dwellings and subdivision into sites required an Agency permit. See Return and Record, Volume I, Item 1 (APA determination ¶¶ 37, 38). That determination was neither

irrational nor unreasonable and, therefore, must be upheld.

Lewis Farm does not dispute that the three dwellings at issue are located within a Resource Management area, or that they are located within a designated recreational river area under the Rivers Act. Nonetheless, petitioner argues that its single family dwellings are exempt from APA regulation because they are used for farm workers. See Amended Petition ¶¶ 77-87. Petitioner's argument is without merit. There is no exemption in the APA Act or Rivers Act for single family dwellings that are used for farm worker housing. Moreover, there is no basis to argue - using the APA Act or Rivers Act - that "agricultural use structure" includes on-farm single family dwellings. Rather, new single family dwellings in Resource Management and designated recreational river areas are subject to APA permitting jurisdiction. See Executive Law § 802(58).

Permits are required under the APA Act Section 809 for all new land uses and development listed in Section 810 as Class A or Class B regional projects. See Van Cott Aff. dated July, 2008, ¶¶ 4-15. Section 810 requires permits for subdivisions and single family dwellings in Resource Management. See Executive Law §§ 810(1)(e); 810(2)(d)(1). Thus, the Act requires permits for all new single family dwellings on Resource Management lands, except lawful replacements of dwellings in existence prior to 1973. See Executive Law §§ 809(2)(a) and 810(2)(d)(1). This permit requirement applies to Lewis Farm's three single family

dwellings. The Act further specifies that all subdivisions in Resource Management require an Agency permit. See Executive Law §§ 809(2)(a) and 810 (1)(e). This provision applies to the subdivision into sites undertaken by Lewis Farm. See 9 NYCRR ¶ 570.3(ah)(3)(definition of "subdivision into sites").

The APA also has jurisdiction over Lewis Farm's dwellings and subdivision under the Rivers Act. See ECL § 15-2701 et. seq. and 9 NYCRR Part 577, et. seq.; see also Van Cott Aff. dated July 2008 ¶¶ 16-24. Lewis Farm's three single family dwellings require Agency permits as "rivers projects." See 9 NYCRR §§ 577.4(a), 577.5(c)(1); and Executive Law § 805(3)(g)(4)(see "Secondary Uses in Resource Management Areas"[1]); VanCott Aff, ¶¶ 16-24. In contrast, an actual "agricultural use structure" is exempted from Agency jurisdiction on Resource Management lands in recreational river areas. See 9 NYCRR § 577.4(b)(3)(ii)(exemption unless located within 150 feet of a shoreline or in wetlands pursuant to 9 NYCRR Parts 577 and 578). Moreover, pursuant to 9 NYCRR ¶ 577.4(a), Lewis Farm's subdivision into sites requires an Agency permit. See 9 NYCRR §§ 577.5(c)(1) and 570.3(ah)(3); Executive Law, § 802(63).

A. Deference is Due to the APA for the Determination and its Interpretation of the Statutes it is Empowered to Administer and Enforce

Lewis Farm argues that the Agency's exercise of jurisdiction and resulting determination is ultra vires because its single family dwellings are exempt "agricultural use structures"

pursuant to Executive Law § 802(8). See Petitioner's Memorandum of Law dated June 3, 2008, p. 11. This argument is unavailing, because the Agency has specific regulatory authority from the Legislature and has interpreted it rationally.

Where the interpretation of a statute is at issue, courts regularly accord great weight and judicial deference to the governmental agency charged with the responsibility for administration of the statute, especially where the judgment of the Agency involves Agency expertise and is supported by the record. See Flacke v. Onondaga Landfill Systems, Inc., 69 N.Y.2d 355, 363 (1987) (upholding a Department of Environmental Conservation determination to close solid waste landfill and establish fund to cap landfill). When an agency is acting within its authority and area of expertise, the agency is entitled to deference and the court's role is limited to ascertaining whether there is a rational basis for the decision. Id at 363; see also Pell v. Board of Education, 34 N.Y.2d 222, 231 (1974); Riverkeeper v. Johnson as Deputy Commissioner of the Department of Environmental Conservation, 2008 NY Slip Op 5608 (3d Dep't 2008) (upholding determination of DEC involving SPDES permit for plant on Hudson river).

The construction given a statute by the agency responsible for its administration should be upheld unless it is irrational or unreasonable. See Samiento et. al. v. World Yacht Inc., 10 N.Y.3d 70, 79 (2008) (ruling that the Labor Department's

interpretation of Labor Law is entitled to deference in dispute over application of law relating to gratuities). Thus, APA's determination and interpretation of its statute must be upheld absent demonstrated irrationality or unreasonableness. See e.g., Kennedy v. Novello as Commissioner of NYSDOH, 299 A.D.2d 605(3d Dep't 2002), leave denied, 99 N.Y.2d 507 (2003) (upholding reasonable agency interpretation of statute; ambiguity required deference to agency expertise); see also Matter of County of Westchester v. Board of Trustees of State University of New York, 32 A.D.3d 653 (3d Dep't 2006), modified in part, 9 N.Y.3d 833 (2007)(finding that respondent's regulations are not inconsistent with Education Law, and have rational basis that is not unreasonable, arbitrary, capricious or contrary to statute).

Even the Court of Appeals in Lysander accorded deference to the Commissioner of Agriculture and Markets to interpret its statute, there reading farm worker housing into the definition of "farm operations" under the Agriculture and Markets Law.

> The Commissioner's view in this regard is entitled to deference. Where, as here, the "interpretation of a statute or *its application* involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for the administration of the statute (emphasis added).

Id. at 564, 565. This Court should give the same deference to the APA in its determination that the definition of "agricultural

use structure" in the APA Act and Rivers Act does not include single family dwellings.

The APA is charged with the responsibility of enforcing the APA Act and the Rivers Act in the Adirondack Park and must use its knowledge and expertise to protect its resources. Accordingly, contrary to Lewis Farm's arguments, Lysander actually supports the APA here. Under the logic of Lysander, the APA is entitled to deference to interpret the definition of "agricultural use structure" in the APA Act based on its knowledge, experience and expertise in protecting the extensive natural resources within the Adirondack Park. The APA is charged first and foremost with preservation of the Adirondack Park's natural resources. It must weigh the potential impacts of the septic systems, the single family dwellings, and the subdivision into sites herein on the Bouquet River and on the open space Resource Management land use area. See Return and Record Volume I, Item 1, (Determination, p. 12, ¶ (2)(b)); see also Executive Law § 809(10)(e)(concerning the standards the Agency must apply to all single family dwellings and subdivisions requiring a permit in the Adirondack Park, including, but not limited to a finding of no "undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park...."); Executive Law § 805(4) (development considerations considered by the Agency). These considerations are important to the protection of the park's

resources, fall within the Agency's delegation of authority from the Legislature and its specific knowledge and expertise.

In its determination, the APA specifically found that "single family dwelling" and "agricultural use structure" are mutually exclusive "structures" for purposes of the Agency's permitting jurisdiction. Referring to the definition of "agricultural use structure" in APA Act § 802(8), APA found that:

> "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' dwellings (for a single family) more precisely fit under the definition of "single family dwelling" or "mobile home."

See Record and Return, Volume I, Item 1(Determination, ¶ 37, pgs. 8-9).

The APA determination next explains how, over and over again, the APA Act consistently treats "single family dwelling" and "agricultural use structure" as separate and distinct uses under the 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 Act 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."

See Record and Return, Volume I, Item 1(Determination, ¶ 38, pg. 9). The APA interpretation of the definition of "agricultural use structure" is wholly consistent with the APA Act and the Rivers Act, the Agency's mandate to protect the resources of the Park and should be upheld.

Even if this Court were to determine that interpretation of the statute is purely a question of law, and that the Agency's

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[1] "Note also, that the overall intensity guidelines do not apply unless and until the Agency has jurisdiction over a project." (Quoting footnote 1 of the Determination)

reading was not entitled to deference, a plain reading of the APA Act and Rivers Act supports the APA determination. See Matter of Charter Dev. Co., L.L.C. v. City of Buffalo, 6 NY3d 578, 581 (2006) (holding that statute clearly entitles charter school to only those exemptions afforded public schools; courts must give effect to plain meaning of statute). First and foremost, the term "single family dwelling" is not included in the definition of "agricultural use structure", or vice versa. In fact, each is separately defined in the APA Act. See Executive Law § 802(8) and (58). An "agricultural use structure" as defined in Executive Law § 802(8):

> means any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use.

Executive Law § 802(8). A plain reading of the definition suggests that the types of structures designated as agricultural use are those structures holding farm crops or animals or for the sale of farm crops or animals, not housing people. This intent is further supported by the Act's definition of "agricultural use" as:

> any management of any land for agricultural; raising of cows, horses, pigs, poultry, and other livestock; horticulture or orchards; including sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds."

See Executive Law § 802(7). Again, "agricultural use" references

crops or animals, not residences for people.

Lewis Farm argues that the Act's definition of "structure" includes single family dwellings, and because "structure" appears in the term "agricultural use structure," a single family dwelling should be considered an "agricultural use structure". See Petitioner's Memorandum of Law dated June 3, 2008, Point I (B) p. 6. Petitioner's dissection of the Legislature's specifically-defined term is belied by the reading of the statute as a whole. Single family dwellings and agricultural use structures are treated differently throughout the Act. For example, in a section of the APA Act which addresses density requirements the terms "single family dwelling" and "agricultural use structure" are used in the same paragraph, indicating that the Legislature considered them different types of structures. Referring to these density requirements, the Legislature defined "principal buildings" to include:

> all 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

See Executive Law § 802(50)(g)(emphasis added); see also Van Cott Aff. dated July, 2008, ¶¶ 25-34. This express language, which provides a density exemption for farms, leaves no doubt that the Legislature did not consider single family dwellings and agricultural use structures on farms to be one and the same. To

the contrary, it logically separates the two terms, consistent with the definition section of the APA Act. See Executive Law §802 (8) and (58).

The separate treatment of "single family dwelling" and "agricultural use structure" occurs throughout the APA Act. For example, in Section 805(3)(g)(3), which lists the primary and secondary compatible uses on Resource Management lands, agricultural use structure is listed as a "primary compatible use" and single family dwelling is listed separately as a "secondary compatible use." In Section 810, which lists uses that all require a permit, single family dwelling, but not agricultural use structure, is listed. In fact, the only mention of the term agricultural use structure in Section 810 occurs as an exemption to permitting jurisdiction for structures over 40 feet in height. Presumably, had the Legislature intended for on-farm single family dwellings to fall within the definition of agricultural use structure, it would have included a similar exemption from the permitting jurisdiction applied to all new single family dwellings by § 810. Petitioner also selectively ignores the modifying words that follow "structure" in the definition of "agricultural use structure." Those words indicate that it must be "directly and customarily associated with agricultural use." Again, a plain reading of this statute indicates that a structure directly associated with "agricultural use" defined in the APA Act must be a structure that, as

indicated in the definition above, relates to raising of "cows, horses, pigs, poultry..." including "sale of products grown or raised" and "fences, agricultural roads, agricultural drainage systems and farm ponds." See Executive Law § 802 (7). Black letter law on statutory construction supports the APA's reading of its statute, which principles dictate that a series of words describing things of a particular sort is used to explain the meaning of a general word in the same series. See Schulman v. People of the State of New York, 10 N.Y.2d 249, 256 (1961) (finding words of Highway Law authorizing appropriation of property for safety purpose including "drains, ditches, gravel pits..." followed by general language, did not confer a broad power to prohibit advertising).

> Where words of specific or inevitable 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; for it is known by the company it keeps; and though it might be capable of a wider significance if found alone, it is limited in its effect by the words to which it is an adjunct...it cannot exceed the original outline.

Schulman 10 N.Y.2d at 256. Thus, petitioner's argument that a broader, wider meaning should be applied to the phrase "directly and customarily associated with agricultural use" to include single family dwellings is both inconsistent with the Schulman rule and improperly exceeds the specific words that precede it ("barn, stable, shed, silo, garage, fruit and vegetable stand").

Absent express legislative intent to the contrary, this Court should uphold the APA's reasonable and rational interpretation of the APA Act.[2]

POINT III

PETITIONER'S CLAIM THAT THE APA DETERMINATION IS FLAWED FOR FAILURE TO CONSIDER A RESOLUTION OF THE LOCAL GOVERNMENT REVIEW BOARD IS WITHOUT MERIT

Petitioner's eleventh (11th) cause of action alleges that the APA's March 25, 2008 determination is affected by error of law because the APA failed to consider the March 4, 2008, Resolution of the Adirondack Park Local Government Review Board. See Amended Petition ¶ 89. Not only is this allegation factually incorrect, it fails to state any legal claim and is therefore without merit.

The Adirondack Local Government Review Board ("Review Board") was established pursuant to the Executive Law § 803-a to advise and assist the APA in carrying out its functions, powers and duties in the Adirondack Park. The APA Act directs that the Review Board "shall monitor the administration and enforcement of

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[2] The Adirondack Park Agency Act passed in 1971 and went into effect August 1, 1973. However, many sections of the Act relevant to this case - including Executive Law § 802(8), §802(63), §805 and §810 - were not passed until 1973. 1973 N.Y. Laws 1222. Executive Law § 802(50)(g), indicating that agricultural use structure and single-family dwellings used for farmworker housing are separate structures for jurisdictional purposes, was passed in 1976. 1976 N.Y. Laws, ch. 899. Unfortunately, there is no discussion of the definition of "agricultural use structure" in the bill jackets from 1971, 1973, or 1976.

EXHIBIT I

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

NOTICE OF ENTRY

Index No. 315-08
RJI No. 15-1-2008-0109
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

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

Defendants.

Index No. 332-08
RJI No. 15-1-2008-0117
Hon. Richard B. Meyer

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order of Hon. Richard B. Meyer, Acting Supreme Court Justice, Essex County Supreme Court, dated and entered by the Essex County Clerk on November 19, 2008.

Dated: Albany, New York
November 19, 2008

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

By: _____

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Supreme Court of the State of New York
For the County of Essex

Submitted August 22, 2008 Decided November 19, 2008

Index No.: 315-08 – RJI No.: 15-1-2008-0109
Index No.: 332-08 – RJI No.: 15-1-2008-0117

LEWIS FAMILY FARM, INC.
Petitioner,

v.

ADIRONDACK PARK AGENCY,
Respondent.

ADIRONDACK PARK AGENCY,
Plaintiff,

v.

LEWIS FAMILY FARM, INC.,
Defendant.

Decision and Order

McNamee, Lochner, Titus & Williams, P.C. *(John J. Privitera, Esq.,* and *Jacob F. Lamme, Esq.* of counsel), Albany, New York, attorneys for Lewis Family Farm, Inc.

Andrew M. Cuomo, Esq., New York State Attorney General (*Loretta Simon, Esq., Assistant Attorney General*), Albany, New York, attorney for the Adirondack Park Agency.

Arroyo Copland & Associates, PLLC (*Cynthia Feathers, Esq.*, of counsel) and *Elizabeth Corron Dribusch, Esq.*, General Counsel, Albany, New York, for the New York Farm Bureau, Inc., as *amicus curiae*, supporting Lewis Family Farm, Inc.

Consolidated proceeding pursuant to CPLR Article 78 challenging a determination by the Respondent Adirondack Park Agency (Agency) dated March 25, 2008 which, *inter alia*, directed Petitioner Lewis Family Farm, Inc. (LFF) to apply to the Agency for a permit for three new single-family dwellings and a four-lot subdivision, pay a $50,000 civil penalty, and not to occupy the dwellings until a permit was issued, and an action by the Agency to enforce the determination and enjoin LFF from working on or using the dwellings and further violating the Executive Law.

I. Factual Background

The essential facts are, for the most part, not in dispute. LFF owns and operates an eleven hundred acre organic farm in the Town of Essex, Essex County, New York designated as a single parcel of land on the official county tax maps and town tax rolls. The property lies wholly within the Adirondack Park and within Essex County Agricultural District No. 4. The subject parcel is classified on the Adirondack Park Land Use and Development Plan Map as resource management, rural use and hamlet. In or about November 2006, LFF commenced construction of three single family dwelling units, to be used by employees working on the farm, on a portion of its property classified as resource management, one of which would replace an adjacent pre-existing dwelling scheduled for removal upon completion of the new homes. The dwellings are arranged in a cluster at a site located immediately north and east of the intersection of the Whallons Bay Road and Christian Road, and approximately eight hundred feet (but less than one quarter of a mile) from the Boquet a/k/a Bouquet River, a designated recreational river (*ECL §15-2714[3][e]*) under the

Wild, Scenic and Recreational Rivers Act (the "Rivers Act") (*ECL §15-2701 et seq.*).

Subsequently, on March 14, 2007, LFF submitted an application to the Agency seeking a permit to construct "three single family dwellings in a farm compound to be used by farm employees exclusively." The next day, the Agency issued a notice of incomplete application and requested additional information. Over the next three months, the parties and their representatives engaged in unsuccessful negotiations over disputed issues, including the Agency's threatened enforcement action and a proposed settlement agreement (*9 NYCRR §581-2.5*) which called for LFF to apply for after-the-fact permits for the subdivision and the single family dwellings, as well as pay a $10,000 civil penalty. On June 27, 2007 the Agency's acting executive director issued a cease and desist order (*9 NYCRR §581-2.4*) to LFF prohibiting "any and all land use and development related to the construction of the single family dwellings . . . until this matter is resolved and the enforcement case is concluded." The following day, LFF commenced a declaratory judgment action against the Agency challenging jurisdiction.

After LFF filed an amended complaint and applied for a temporary restraining order, the parties exchanged motions to dismiss under CPLR 3211. LFF claimed the Agency lacked jurisdiction over its farm worker housing project because the structures were "agricultural use structures" (*Executive Law §802[8]*) in a "resource management area" (*Executive Law §805[3][g]*), and also that any assertion of jurisdiction by the Agency violated Agriculture and Markets Law §305-a. The Agency, citing CPLR §7801(1), moved to convert the action to an Article 78 proceeding and for dismissal on the grounds that the action was "premature and not ripe for judicial review because the State defendant has not issued a final determination", and for failing to state a cause of action "because Agriculture and Markets Law §305-a does not preclude the APA from requiring a permit for subdivision of land and construction of single family dwellings". On August 16, 2007, Supreme Court (*Ryan, J.*) dismissed the proceeding as premature and not ripe for judicial intervention, and also held that Agriculture & Markets Law §305-a did not apply to a state agency. LFF filed a notice of appeal, and the appeal is pending.

Following dismissal of the converted Article 78 proceeding, LFF continued to construct the single family dwellings. One of the Agency's associate attorneys

served a letter on LFF's counsel on August 31, 2007 advising that the previous cease and desist order remained in effect. On or about September 2, 2007, the Agency's acting executive director issued a notice of apparent violation (*9 NYCRR §581-2.3*), thereby initiating an enforcement proceeding before the Agency's enforcement committee *(9 NYCRR §581-2.6[b])*.

The enforcement committee, consisting of six of the Agency's eleven members (*Executive Law §803*), convened on March 13, 2008 to "hear an oral presentation or argument by the agency's staff and by the respondent and deliberate in executive session and subsequently make a determination as provided in" (Record Document #2, pg. 2) 9 NYCRR §581-2.6(d). Also in attendance were the remaining five members of the Agency. In that hearing, Agency staff conceded that LFF was "clearly using the land for agricultural use purposes", and that "[t]he agricultural use of resource management lands is listed by law as a primary compatible use and does not require an agency permit" (*Id.*, pg. 6). Staff argued, however, that a "single family dwelling" could not be an "agricultural use structure" under the Adirondack Park Agency Act (the "APA Act")(*Executive Law Article 27*) (Record Document #2, pgs. 8, 13), and that therefore permits for the three single family dwellings on land classified as resource management, as well as for subdivision of that land, were required under the APA Act and the Rivers Act (*Id.*, pgs. 7-11). In so concluding, Agency staff contended that statutory construction favored specific over general definitions, and that the APA Act's definition of a "single family dwelling" was specific, while that of "agricultural use structure" was general (*Id.*, pg. 10). Staff also asserted that because the APA Act's definition of "principal building" included reference to both agricultural use structures and single family dwellings, the Legislature intended them to be "separate and different types of structures for purposes of agency jurisdiction" (*Id.*, pg 11). Counsel for LFF argued that the language of the APA Act supported a conclusion that a single family dwelling used for agricultural purposes could be an agricultural use structure and exempt from Agency jurisdiction. Moreover, no subdivision permit would be required since the three dwellings would constitute a single principal building under the APA Act.

On March 25, 2008, the Agency's Enforcement Committee, made up of a quorum of the Agency (*Executive Law §803*), issued a unanimous determination (the "Agency's determination") that LFF violated the APA Act by failing to obtain a subdivision permit and a permit authorizing construction of two of the dwelling units. Since the determination was approved by the "affirmative vote by a

majority of the members of the agency" (*Executive Law §803*), it constitutes an action by the Agency (*Id.*; *see also General Construction Law §41*; *Rockland Woods, Inc. v. Incorporated Village of Suffern*, 40 AD2d 385, 340 NYS2d 513). In arriving at its determination, the Agency held that "farm worker dwellings are 'single family dwellings' (or possibly 'multiple family dwellings' or 'mobile homes,' depending upon the type of dwelling structure), and not 'agricultural use structures'" under the APA Act (Record Document #1, pg. 8). The Agency also determined that the APA Act's definition of " 'agricultural use structures' does not include, and was not intended to include, the farm owners' or farm workers' dwellings", was only "intended to include other structures of an accessory nature" (*Id.*, pg. 9), and that single family dwellings and agricultural use structures "are treated as separate and distinct uses under the . . . [APA] Act" (*Id.*). Based upon its finding of violations, the Agency directed LFF to pay a $50,000.00 civil penalty, apply for a permit for three new dwellings and a four-lot subdivision no later than April 14, 2008 by submitting a major project application and reply to requests for additional information within thirty days of receipt. Additionally, LFF was directed to submit to the Agency no later than April 28, 2008 a detailed description of the use of each dwelling and its connection to agricultural operations plus as-built plans for the septic system and an evaluation by a state-licensed professional engineer regarding whether the installed septic system shared by the three dwellings complied with state Department of Health and Agency standards and guidelines. Finally, the Agency's determination provided that LFF relinquished its right to challenge Agency jurisdiction but retained the limited right to appeal the project review process, and prohibited LFF from occupying the three new buildings until permits were issued and the penalty paid.

II. Procedural History

LFF commenced this Article 78 proceeding on April 8, 2008, and sought a stay of enforcement of the Agency's determination. Following oral argument, this court granted a partial stay on April 11, 2008. Specifically, a stay was granted as to enforcement of the Agency's determination except for the prohibition against occupying the dwellings and payment of the civil penalty. That same day, the Agency commenced the enforcement action by filing a summons and complaint. LFF served an amended petition on April 14, 2008. It also moved to consolidate the two cases, which motion was granted without opposition on April 24, 2008. An order of consolidation was issued on June 10, 2008. Meanwhile, LFF paid the civil penalty into court (*CPLR §2601*) and the Agency served an amended

complaint for enforcement on May 14, 2008.

The parties thereafter filed motions addressed to the pleadings. The Agency sought dismissal of at least some of LFF's Article 78 claims on the grounds of, among other things, collateral estoppel. LFF moved to dismiss the Agency's causes of action against certain individual defendants. By decision and order dated July 2, 2008 (20 Misc.3d 1114(A), 2008 WL 2653236 [Table] [NY Sup], 2008 NY Slip Op 51348[U]), this court dismissed two of LFF's causes of action but denied all other relief sought by the Agency. As to LFF's motion, the court dismissed the Agency's causes of action against the individual defendants, thereby removing them from the case.

The Agency then filed an answer and return (*CPLR §7804[e]*) in response to LFF's Article 78 claims. The parties also each filed motions for summary judgment relative to the Agency's causes of action for enforcement of the Agency's determination.

III. Scope of Review

Judicial review of the determination of an administrative agency under CPLR Article 78 is limited to whether the challenged decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (*CPLR §7803[3]*). Such review is further restricted "solely to the grounds invoked by the agency, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis (*Matter of Montauk Improvement v. Proccacino,* 41 NY2d 913, 394 NYS2d 619, 363 NE2d 344; *Matter of Barry v. O'Connell,* 303 NY 46, 100 NE2d 127; see, also, *Securities Comm. v. Chenery Corp.,* 332 US 194, 67 SCt 1575, 91 LEd 1995)" (*Trump-Equitable Fifth Ave. Co. v. Gliedman*, 57 NY2d 588, 593, 457 NYS2d 466, 468, 443 NE2d 940, 942; *see also Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educational Services*, 77 NY2d 753, 570 NYS2d 474, 573 NE2d 562; *Aronsky v. Board of Educ., Community School Dist. No. 22 of City of New York*, 75 NY2d 997, 557 NYS2d 267, 556 NE2d 1074; *Parkmed Associates v. New York State Tax Commission*, 60 NY2d 935, 471 NYS2d 44, 459 NE2d 153. LFF's Article 78 claims rest upon the interpretation of certain statutory provisions in the APA Act, and therefore only involve questions of law for determination by this Court.

With regard to the parties' respective motions for summary judgment directed to the Agency's enforcement claims, it is well-settled that summary judgment "is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Millerton Agway Co-op. v. Briarcliff Farms*, 17 NY2d 57, 268 NYS2d 18, 215 NE2d 341)" (*Andre v. Pomeroy*, 35 NY2d 361, 364, 362 NYS2d 131, 133, 320 NE2d 853, 854). In order for a party to be entitled to summary judgment, "it must clearly appear that no material and triable issue of fact is presented (*Di Menna & Sons v. City of New York*, 301 NY 118, 92 NE2d 918)" (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, 165 NYS2d 498, 505, 144 NE2d 387, 392). "To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212, subd. (b)), and he must do so by tender of evidentiary proof in admissible form" (*Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.* 46 NY2d 1065, 1067, 416 NYS2d 790, 791-792, 390 NE2d 298, 299). "Accordingly, if the movant does not submit sufficient evidence on a particular issue or cause of action to justify judgment as a matter of law, the burden never shifts to the adversary to submit evidence sufficient to raise a triable issue of fact (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923, 501 NE2d 572) . . . [e]ven where there is no opposition" (*Zecca v. Riccardelli*, 293 AD2d 31, 34, 742 NYS2d 76, 78). Based upon all of the papers and proof submitted there are no issues of fact requiring trial, and judgment as a matter of law in favor of a party is warranted (*CPLR §3212[b]*) relative to the Agency's causes of action to enforce its March 25, 2008 determination.

IV. The Adirondack Park Agency Act

The APA Act establishes a comprehensive scheme for land use and development of all lands, but particularly those privately owned, lying within the six million acre Adirondack Park (*Executive Law §801, §802[1]*). All lands within the Adirondack Park are classified into one of six distinct land use categories – hamlet, moderate intensity use, low intensity use, rural use, resource management, and industrial use (*Executive Law §805[3][a]-[h]*). The lands in each land use classification are designated on the Official Adirondack Park Land Use and Development Plan Map (the "Map") approved by the State Legislature in 1973 (*L. 1973, c. 348; Executive Law §805[2][b]*). The Adirondack Land Use and Development Plan (the "Plan") sets forth the specific "compatible uses", consisting of primary and secondary uses, and "overall intensity guidelines" for

each land use area (*Executive Law §805[3][a]-[h]*). The Agency has exclusive "jurisdiction to review and approve all class A regional projects, including those proposed to be located in a land use area governed by an approved local land use program, and all class B regional projects in any land use area governed by an approved local land use program" (*Executive Law §809[1]*). Class A and class B regional projects for each of the six types of land use areas are specified by statute (*Executive Law §810*). "Any person proposing to undertake" such a project must "make application to the agency for approval of such project and receive an agency permit therefor prior to undertaking the project" (*Executive Law §809[2][a]*).

The APA Act defines an "agricultural use structure" as "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use" (*Executive Law §802[8]a*). A "structure" is defined to include "single family dwellings" (*Executive Law §802[62]*). A "single family dwelling" is "any detached building containing one dwelling unit, not including a mobile home" (*Executive Law §802[58]*). "'Agricultural use' means any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds" (*Executive Law §802[7]*).

Under the statutory scheme, "[a]gricultural uses" and "[a]gricultural use structures" in resource management areas do not require a permit from the Agency (*Executive Law §805[3][g][4][1]-[2]*) because they are primary compatible uses which are neither class A nor B regional projects (*Executive Law §810[1][e], [2][d]*; *see also 9 NYCRR §577.4[b][3][ii], §577.6[b][3]* – no permit required for agricultural use structures in recreational river areas unless located "inside the mean high water mark of the river or within 150 feet of the mean high water mark"). However, a "single family dwelling" in a resource management area requires a permit from the Agency as a class B regional project (*Executive Law §810[2][d][1]*) provided there is no approved local land use program, which in the case at bar there is not.

The Plan also designates as class A regional projects in a resource management area, subject to exclusive Agency review and approval, "all subdivisions of land located . . . within one-quarter mile of rivers navigable by

boat designated to be studied as . . . recreational" under the Rivers Act, and "[a]ll subdivisions of land (and all land uses and development related thereto) involving two or more lots, parcels or sites" (*Executive Law §810[1][e][1][a], [1][e][3]*). A "subdivision" under the APA Act is defined as "any division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division)" (*Executive Law §802[63]*). Under the Agency's regulations, a subdivision into sites occurs, "whether or not a legal conveyance has or will be executed . . . where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s)" (*9 NYCRR §570.3[ah][3][ii]*). Although a single family dwelling generally constitutes one principal building (*Executive Law §802[50][a]*), the APA Act provides that "all 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" (*Executive Law §802[50][g]*).

Resolution of the parties' competing claims thus centers on whether the three single family dwellings serving as farm worker housing constitute "agricultural use structure[s]" (*Executive Law §802[8]*) under the APA Act. Thus, if a "single family dwelling" *can* be an "agricultural use structure" under the APA Act, LFF's three-dwelling farm worker housing project represents exempt "agricultural use structures" (*Executive Law §810[1][e], [2][d]; 9 NYCRR §577.4[b][3][ii] and §577.6[b][3]*) not subject to Agency jurisdiction, and together with the dwelling to be removed "constitute and count as a single principal building" such that no subdivision requiring an Agency permit has or will occur as a result of their construction.

V. Construction of the APA Act

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature" (*Patrolmen's Benevolent Assn. v. City of New York*, 41 NY2d 205, 208, 391 NYS2d 544, 359 NE2d 1338; *see also, Riley v. County of Broome*, 95 NY2d 455, 463, 719 NYS2d 623, 742 NE2d 98; *Longines-*

Wittnauer v. Barnes & Reinecke, 15 NY2d 443, 453, 261 NYS2d 8, 209 NE2d 68). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." (*Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583, 673 NYS2d 966, 968, 696 NE2d 978, 980). "[I]f the language of a statute is plain and unambiguous, there is neither need nor warrant to look elsewhere for its meaning. See, e.g., *Meltzer v. Koenigsberg*, 302 NY 523, 525, 99 NE2d 679, 680; *Town of Putnam Valley v. Slutzky*, 283 NY 334, 343, 28 NE2d 860, 864; *McCluskey v. Cromwell*, 11 NY 593, 601-602" (*Roosevelt Raceway, Inc. v. Monaghan*, 9 NY2d 293, 304, 213 NYS2d 729, 735, 174 NE2d 71, 75). "In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning" (*Tompkins v. Hunter*, 149 NY 117, 122-123, 43 NE 532; *see also, Matter of Raritan Dev. Corp. v. Silva*, 91 NY2d 98, 667 NYS2d 327, 689 NE2d 1373). "Under the doctrine of separation of powers, courts may not legislate (*Bright Homes v. Wright*, 8 NY2d 157, 162, 203 NYS2d 67, 70, 168 NE2d 515, 517; *Matter of Metropolitan Life Ins. Co. v. Boland*, 281 NY 357, 361, 23 NE2d 532, 533), or rewrite (*Matter of Chase Nat. Bank v. Guardian Realties*, 283 NY 350, 360, 28 NE2d 868, 871; *Matter of Tormey v. LaGuardia*, 278 NY 450, 451, 17 NE2d 126, 127), or extend legislation (*People ex rel. Newman v. Foster*, 297 NY 27, 31, 74 NE2d 224, 225; *Matter of Hogan v. Supreme Ct.*, 281 NY 572, 576, 24 NE2d 472, 473)" (*In re Adoption of Malpica-Orsini*, 36 NY2d 568, 571, 370 NYS2d 511, 514-515, 331 NE2d 486, 488).

In enacting the APA Act, the Legislature created a comprehensive and integrated statutory scheme to protect and preserve the natural resources of Adirondack Park (*Executive Law §801*). In so doing, the Legislature specifically defined sixty-three different words and phrases (*Executive Law §805*) commonly used throughout the APA Act, with the obvious purpose and intent that those definitions consistently and unvaryingly be applied in the administration and enforcement of the entire APA Act. Thus, in construing any one statutory definition resort must necessarily be made to any other statutorily defined term or phrase contained within that definition. "A court must consider a statute as a whole, reading and construing all parts of an act together to determine legislative intent (*see McKinney's Cons. Laws of N.Y., Book 1, Statutes § 97*), and, where possible, should 'harmonize[ ] [all parts of a statute] with each other ... and

[give] effect and meaning ... to the entire statute and every part and word thereof' (*id.* § 98; *see also People v. Mobil Oil Corp.*, 48 NY2d 192, 199, 422 NYS2d 33, 397 NE2d 724 (1979)" (*Friedman v. Connecticut General Life Ins. Co.*, 9 NY3d 105, 115, 846 NYS2d 64, 69-70, 877 NE2d 281, 286-287).

Inapplicable here is the general rule that "a court should defer to the interpretation given a statute by the agency charged with its enforcement if the interpretation is neither irrational, unreasonable, nor inconsistent with the governing statute (*Matter of Fineway Supermarkets v. State Liq. Auth.*, 48 NY2d 464, 423 NYS2d 649, 399 NE2d 536; *Matter of Sigety v. Ingraham*, 29 NY2d 110, 324 NYS2d 10, 272 NE2d 524)" (*Trump-Equitable Fifth Ave. Co. v. Gliedman*, 57 NY2d 588, 597, 457 NYS2d 466, 470,443 NE2d 940, 944). No deference is accorded to an agency's determination where a court "is faced with the interpretation of statutes and pure questions of law" (*Madison-Oneida Bd. of Co-op. Educational Services v. Mills*, 4 NY3d 51, 59, 790 NYS2d 619, 623, 823 NE2d 1265). "Where . . . the words of the statute are clear and the question simply involves the proper application of the provision 'there is little basis to rely on any special competence or expertise of the administrative agency and its interpretive regulations', especially when the interpretation . . . directly contravenes the plain words of the statute (*Kurcsics v. Merchants Mut. Ins. Co.*, 49 NY2d 451, 459, 426 NYS2d 454, 403 NE2d 159)" (*Trump-Equitable Fifth Ave. Co. v. Gliedman, supra*; *see also Sweeney v. Dennison*, 52 AD3d 882, 858 NYS2d 845).

Contrary to the Agency's determination, the statutory language cannot be interpreted or construed to evidence a legislative intent that the word "structure" in the definition of "agricultural use structure" (*Executive Law §802[8]*) means an "accessory structure". The Legislature enacted a separate definition of "accessory structure" (*Executive Law §802[5]* – "any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling"). Yet, the Legislature chose not to use that more limited term in its definition of "agricultural use structure" (*Executive Law §802[8]*). A "court should not ignore the words of a statute, clear on its face, to reach a contrary result through judicial interpretation (*McKinney's Cons. Law of N.Y., Book 1, Statutes, § 76*; *Matter of Kleefeld*, 55 NY2d 253, 259, 448 NYS2d 456, 433 NE2d 521)" (*Trump-Equitable Fifth Ave. Co. v. Gliedman, supra*). To accept the

Agency's interpretation that the term "structure" in the definition of "agricultural use structure" should be read to mean "accessory structure" renders the term "structure" "superfluous and redundant in the statute . . . [and] would deprive the term of its own separate meaning" (*SIN, Inc. v. Department of Finance of City of New York*, 71 NY2d 616, 621, 528 NYS2d 524, 527, 523 NE2d 811, 814). "The failure of the Legislature to include a matter within a particular statute is an indication that its exclusion was intended" (*Pajak v. Pajak*, 56 NY2d 394, 397, 452 NYS2d 381, 437 NE2d 1138, *citing McKinney's Cons.Laws of NY, Book 1, Statutes §74*)" (*People v. Tychanski*, 78 NY2d 909, 911-912, 573 NYS2d 454, 456, 577 NE2d 1046, 1048). Clearly, had the Legislature intended to limit "agricultural use structures" to "accessory structures" and preclude a single family dwelling from qualifying as an "agricultural use structure", it would have done so by inserting appropriate language readily at hand, including using its own definition.

The Agency's reliance upon the rule of *ejusdem generis* – that general language in a statute is limited by the specific phrases which precede it (*McKinney's Statutes §239[b]*; *Barsh v. Town of Union, Broome County*, 126 AD2d 311, 313, 513 NYS2d 875, 876) – is misplaced. As a rule of statutory construction, resort to the rule is to be made only where the language is unclear and ambiguous. "Where the language is definite and has a precise meaning, it must be presumed to declare the intent of the legislature, and it is not allowable to go elsewhere in search of conjecture to restrict or extend the meaning . . . and courts cannot go beyond or outside of it under pretext of interpretation to cure any supposed blunder of the legislature" (*Johnson v. Hudson River R. Co.*, 49 NY 455, 462). This is particularly true where the terms have specific, definite meanings – such as the terms here – for in such a case "there is no room for construction and courts have no right to add to or take away from that meaning" (*Tompkins v. Hunter*, 149 NY 117, 123; *see also People v. Torres*, 184 Misc2d 429, 432, 708 NYS2d 578, 580).

Moreover, "[t]he rule of *ejusdem generis* is only a rule of construction that must yield to the evident purpose of the Legislature in enacting . . . statutes, for that rule of construction is controlled by another rule that statutes should be construed to carry out the objects sought to be accomplished by them. *People v. Kaye*, 160 AppDiv 644, 647, 146 NYS 398, 401, *affirmed* 212 NY 407, 411, 106 NE 122, 124, *motion for reargument denied* 213 NY 648, 107 NE 1083" (*Blatnicky v. Ciancimino*, 1 AD2d 383, 388, 151 NYS2d 267, 272, *affirmed* 2 NY2d 943, 162

NYS2d 38, 142 NE2d 211; *see also* Mark v. Colgate University, 53 AD2d 884, 385 NYS2d 621). It is rational to conclude that the Legislature intended single family dwellings "directly and customarily associated with agricultural use" to be exempt from Agency jurisdiction in resource management areas. Though not controlling here, farm residential buildings have been held to constitute "farm operations" exempt from town zoning regulations under Agriculture and Markets Law §305-a (Town of Lysander v. Hafner, 96 NY2d 558, 562, 733 NYS2d 358, 359, 759 NE2d 356, 357). In so holding, the court in Lysander relied upon the Legislature's recognition that residential buildings on a farm "contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise" *(Agriculture and Markets Law §301[11])* (Id.). There is no reason to conclude that the Legislature intended anything different inside the Adirondack Park.

The Legislature's stated purposes, policies and objectives of resource management areas include encouraging "proper and economic management of . . . agricultural . . . resources" and allowing "for residential development on substantial acreage or in small clusters on carefully selected and well designed sites" (*Executive Law §805[g][2]*). These goals are consistent with "[t]he policy of the state . . . to . . . encourage the development and improvement of its agricultural lands for the production of food and other agricultural products" (*NY Constitution, Article 14, §4*). Also, the purpose and objective of "residential development . . . in small clusters" provides the rationale for the Legislature's decision that "all 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" *(Executive Law §802[50][g])* so that Agency jurisdiction over "subdivisions" is not invoked by such a development.

While LFF's farm worker housing project represents a unique and unprecedented effort to provide agricultural workers with quality housing and may not have been foreseen by the Legislature, "[a] statute must be read and given effect as it is written by the Legislature, not as the court may think it should or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration" (Lawrence Const. Corporation v. State, 293 NY 634, 639, 59 NE2d 630, 632). To the extent that LFF's project is an unforeseen event, any change in interpretation

or application of the APA Act "is a matter of policy to be determined by the Legislature rather than by the courts under the guise of construction. *People v. Friedman*, 302 NY 75, 79, 96 NE2d 184, 185" (Buduson v. Curtis, 285 AD 517, 520, 139 NYS2d 392, 396, *affirmed* 309 NY 879, 131 NE2d 290). "[O]missions in a statute . . . cannot be supplied by construction" (*Eastern Paralyzed Veterans Ass'n, Inc. v. Metropolitan Transp. Authority*, 79 AD2d 516, 517, 433 NYS2d 461, 462, *appeal dismissed* 52 NY2d 895, 437 NYS2d 305, 418 NE2d 1324) and may only "be remedied by the Legislature, and not by the courts" (*McKinney's Statutes §363*).

Also without merit is the Agency's determination that single family dwellings and agricultural use structures "are treated as separate and distinct uses under the . . . [APA] Act"; in other words, the two terms are mutually exclusive. Certainly, under the APA Act not all "agricultural use structures" are "single family dwellings", and not all "single family dwellings" are "agricultural use structures". The definition of "agricultural use structure" is much broader in scope, ranging from a "barn, stable, shed, silo, [and] garage" to a "fruit and vegetable stand" to any "other building or structure directly and customarily associated with agricultural use" (*Executive Law §802[8]*). There is nothing in the APA Act which precludes a "single family dwelling" "directly and customarily associated with agricultural use" (*Executive Law §802[8]*) from qualifying as an "agricultural use structure". "Statutes . . . should be read and understood . . . without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct supposed errors, omissions or defects in legislation . . . The office of interpretation is to bring sense out of the words used, and not bring a sense into them" (McCluskey v. Cromwell, 11 NY 593, 601-602). It is because the Legislature recognized that "agricultural use structures" covered a wide range of structures, that single family dwellings would qualify as an agricultural use structure only on rare occasions, and that farm worker housing would appear most often in the form of temporary buildings such as mobile homes – a residential unit specifically excluded from the definition of "single family dwelling" (*Executive Law §802[58]*) – that it separately listed both "single family dwellings" and "agricultural use structures" as primary and secondary compatible uses in moderate intensity use, low intensity use, rural use, and resource management areas in the Plan (see *Executive Law §805, subds. [3][d][4], [3][e][4], [3][f][4], and [3][g][4]*). For the same reasons, the Legislature treated "agricultural use structures" and "single family dwellings" separately in designating class A and B regional projects subject to Agency jurisdiction

(*Executive Law*), and exempted the former from Agency jurisdiction triggered solely by the structure being "in excess of forty feet in height" in all but industrial use areas (*Executive Law §810, subds. [a][4], [b][4], [c][5], [d][5], and [e][8]*). Clearly, not all lands classified as resource management under the APA Act are used for agricultural purposes (*see Executive Law §805[3][g]*), and a project involving a single family dwelling on non-agricultural land would not qualify as an "agricultural use structure" and therefore would be subject to Agency jurisdiction perhaps as a class A project (*Executive Law §810[1][e]*) or as a class B project in the absence of an approved local land use program (*Executive Law §810[2][d]*). Such projects would be far more prevalent, necessitating separate references to "agricultural use structures" and "single family dwellings" throughout the APA Act to insure Agency jurisdiction over the latter. Finally, by determining that "all 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" (*Executive Law §802[50][g]*), the Legislature recognized an exception for farm land from the general statutory rule that each "single family dwelling"or "mobile home" "constitutes one principal building" (*Executive Law §802[50][a]-[b]*). By specifically designating all "agricultural use structures", "single family dwellings" and "mobile homes" on farm property as "one principal building", the Legislature made clear its intent that all such structures situate on agricultural lands be treated as one and the same under the APA Act.

For the foregoing reasons, Lewis Family Farm, Inc. is entitled to judgment pursuant to CPLR §7806 annulling the Agency's March 25, 2008 determination on the ground that it was affected by an error of law, as well as to summary judgment dismissing the Agency's amended complaint dated May 14, 2008 and all causes of action therein. Also, this Court's April 11, 2008 order granting a partial stay is vacated as moot. Counsel for Lewis Family Farm, Inc. to submit a single judgment on notice.

IT IS SO ORDERED

ENTER

Richard B. Meyer
J. S. C.

LaLonde Aff.