Case Nos. 504696 and 504626

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

ADIRONDACK PARK AGENCY,

Appellant,

-against-

Essex County
Index Nos. 498-07,
315-08 and 332-08

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

Respondents.

AFFIDAVIT IN OPPOSITION TO APPELANT'S MOTION FOR AN INJUNCTION

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

JOHN J. PRIVITERA, being duly sworn, deposes and states 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 the Lewis Family Farm, Inc., Salim "Sandy" B. Lewis and Barbara A. Lewis (hereafter "Respondents") in this action. As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I submit this Affidavit in opposition to the motion by Appellant Adirondack Park Agency ("Appellant") for an injunction prohibiting the Respondent Farm from using its farm worker housing during the pendency of the appeal.

3. Attached hereto as **Exhibit "A"** is the Appellant's administrative enforcement order of March 25, 2008 ("Administrative Decision").

4. Attached hereto as **Exhibit "B"** is the lower court's Decision and Order of April 11, 2008 granting Respondents a partial stay of the Administrative Decision.

5. Attached hereto as **Exhibit "C"** is this Court's Order to Show Cause (Stein, J.) executed on April 28, 2008.

6. Attached hereto as **Exhibit "D"** is this Court's Decision and Order of May 19, 2008 that modified the lower court's April 11, 2008 stay order to allow Respondents to use one of three farm worker houses at issue in this case.

7. Attached hereto as **Exhibit "E"** is the lower court's Decision of November 19, 2008, published as Lewis Family Farm, Inc. v. Adirondack Park Agency, 868 N.Y.S.2d 481; 2008 NY Slip Op 28455; 2008 N.Y. Misc. LEXIS 6738 (Sup. Ct. Essex County 2008).

8. Attached hereto as **Exhibit "F"** is the lower court's final Judgment of November 21, 2008.

9. Attached hereto as **Exhibit "G"** is the Opinion and Final Determination of the Commissioner of Agriculture and Markets under the Right to Farm Law, dated November 26, 2007 and February 1, 2008, respectively.

10. Attached hereto as **Exhibit "H"** is the Affidavit of Barbara A. Lewis, sworn to January 17, 2008 (without exhibits).

11. Attached hereto as **Exhibit "I"** is the Affidavit of Klaas Martens, sworn to January 17, 2008.

12. Attached hereto as **Exhibit "J"** is the *Amicus Curiae* Brief of the New York State Farm Bureau, Inc., dated May 29, 2008, which was submitted in support of the Respondents in the lower court.

13. For the reasons set forth in the accompanying Memorandum of Law, Appellant's motion for an injunction should be denied in its entirety, and costs and attorneys' fees should be awarded to Respondents.

John J. Privitera

Sworn to before me this
17th day of February 2009.

Notary Public

JACOB F. LAMME
Notary Public, State of New York
Qualified in Albany County
No. 02LA6150759
Commission Expires Aug. 7, 2010

EXHIBIT A

NEW YORK STATE
Adirondack
parkagency

In the matter of the apparent violations of Executive Law Section 809 and 9 NYCRR Part 577 by:

DETERMINATION OF THE ENFORCEMENT COMMITTEE Pursuant to 9 NYCRR 581-2.6

Lewis Family Farm, Inc.

Agency File E2007-041

Respondent.

The Enforcement Committee of the Adirondack Park Agency conducted an Enforcement Committee Proceeding pursuant to Agency regulation §581-2.6 on March 13, 2008 regarding the above-referenced matter. The Committee heard oral argument from Agency Associate Attorney Paul Van Cott, and counsel for Lewis Family Farm ("Lewis Farm" or "Respondent") John Privitera, and considered the following documents, constituting the complete record:

(1) Notice of Apparent Violation served September 5, 2007.
(2) Lewis Farm's Response to the NAV dated October 4, 2007.
(3) Staff Notice of Request for an Enforcement Committee Determination dated December 17, 2007, including the following documents and accompanying exhibits: Affirmation of Paul Van Cott dated December 13, 2007, attaching the July 23, 2007 motion of the Agency made to the Supreme Court, requesting dismissal of the Lewis Farm litigation action against the Agency (Exhibit A); the Decision and Order of Honorable Kevin Ryan, Supreme Court Judge (Exhibit B), and the Agency's Cease and Desist Order issued June 27, 2007 (Exhibit C). The Motion to the Supreme Court included the Affirmation of John Banta dated July 23, 2007, Affirmation of Sarah Reynolds dated July 20, 2007 (with its Exhibits A-D), Affidavit of John Quinn dated July 23, 2007 (with its Exhibits A-C), and Affidavit of Doug Miller dated May 20, 2007 (with its Exhibits A-I).
(4) Affidavit of Doug Miller dated December 12, 2007.
(5) Affidavit of John Quinn dated December 12, 2007.
(6) Staff Memorandum of Law dated December 14, 2007.

(7) A document entitled "The Right to Farm in the Champlain Valley of New York," dated January, 2008 and submitted by Lewis Farm on January 23, 2008. This document includes the Affidavit of Barbara Lewis dated January 17, 2008 with Exhibits A-H, the Affidavit of Klaas Martens dated January 17, 2008, and the Affidavit of John Privitera dated January 18, 2008 with Exhibits A-K.

(8) Staff's Reply Affirmation by Paul Van Cott dated January 29, 2008, attaching the following correspondence between the Agency and the NYS Department of Agriculture and Markets ("NYS A&M"):
   (a) Letter dated June 20, 2007 from Bill Kimball, NYS A&M, to Agency Counsel John Banta.
   (b) Letter dated August 7, 2007 from John Banta to Bill Kimball.
   (c) Letter dated November 26, 2007 from Patrick Hooker, Commissioner, NYS A&M, to Curtis Stiles, Chairman of the Agency.
   (d) Letter dated December 4, 2007 from Mark Sengenberger, Interim Executive Director of the Agency, to Patrick Hooker, Commissioner, NYS A&M.

(9) The Reply Memorandum of Law by Lewis Farm requesting dismissal of the Enforcement Proceeding, dated February 26, 2008, including the Affidavit of John Privitera dated February 26, 2008 with Exhibits A-D.

(10) Staff's Reply Memorandum of Law by Paul Van Cott dated March 5, 2008, including the Affidavit of Doug Miller dated March 4, 2008 and Exhibit A.

(11) Letter dated February 21, 2008 by John Lincoln, NY Farm Bureau, to Governor Spitzer, submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding.

(12) Undated statement of Barbara Lewis submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding.

(13) Letter dated March 5, 2008 to Governor Spitzer, signed by Lloyd Moore and Frederick Monroe on behalf of the Adirondack Park Local Government Review Board, submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding.

(14) Undated Proposed Order submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding.

(15) A color copy of the PowerPoint presentation made to the Agency by John Privitera on March 13, 2008.

Following the oral argument, the Enforcement Committee met in Executive Session and unanimously made the following findings and determinations as authorized by 9 NYCRR 581-2.6(d):

Findings

1. Lewis Farm owns an approximately 1,100-acre parcel designated as Tax Map Parcel 49.3-2-27, located in the Town of Essex, Essex County. The lands are classified as Resource Management, Rural Use and Hamlet on the Adirondack Park Land Use and Development Plan Map ("Official Map"). Lewis Farm states that it operates an organic farm on the 1,100-acre parcel.

2. On December 5, 2005, the Agency's Executive Director, Counsel, and Deputy Director of Regulatory Programs visited Lewis Farm at the invitation of Salim Lewis. During the course of the visit, Mr. Lewis told staff that he was planning to build farm worker dwellings, and staff advised him that construction of any new single family dwelling on the Resource Management portion of the property would require an Agency permit.

3. On March 14, 2007, the Agency received a completed application form for a minor project (Single Family Dwelling and Two Lot Subdivision) signed by Barbara Lewis. The project was described as "3 single family dwellings in a farm compound to be used by farm employees exclusively."

4. On March 15, 2007, the Agency sent Barbara and Salim Lewis, and Mark McKenna, their authorized representative, a Notice of Incomplete Permit Application - Receipt of Partial Permit Application.

5. On March 19, 2007, Barbara Lewis advised the Agency's assigned project review officer (PRO) that construction of the three single family dwellings on the Lewis Farm had begun with the installation of foundations and the on-site waste water treatment system ("WWTS"). She also stated that the foundations were located at the corner of Whallons Bay Road and Christian Road. The PRO advised Respondent that the project had been "undertaken" with the installation of foundations and the WWTS, which would constitute a violation, not to proceed with further construction until an Agency permit was obtained, and that he would be referring the matter to the Agency's enforcement division.

6. On March 28, 2007, the Agency Enforcement Officer assigned to the matter visited the Lewis Farm. He determined that the three single family dwelling foundations were installed on lands that are designated Resource Management on the Official Map and also lie within the designated river area

of the Boquet River, a NYS designated recreational river. Staff also determined that one of these new dwellings is located in the immediate vicinity of a pre-existing dwelling which remained on the site. Lewis Farm planned to remove that dwelling after the three new dwellings were completed.

7. Respondent did not seek or obtain an Agency permit prior to the undertaking of the project to construct the three dwellings. The Town of Essex does not have an Agency-approved local program and hence would not be responsible for the review of any Class B Regional Project located within its borders.

8. Based on these facts, Agency staff concluded that the undertaking of construction of the three single family dwellings constitutes a violation of the subdivision permitting requirements of §§809(2)(a) and 810(1)(e)(3) of the Adirondack Park Agency Act, and of 9 NYCRR §577.5(c)(1) implementing the Rivers Act. In addition, staff concluded that the construction of each of the two single family dwellings not intended as replacement structures constitutes a violation of §§809(2)(a) and 810(2)(d)(1) of the Adirondack Park Agency Act and of 9 NYCRR §577.5(c)(1).

9. On May 14, 2007, Agency staff sent a proposed Settlement Agreement to Respondent, alleging the above-referenced violations. Staff offered to resolve the matter provided Lewis Farm agreed to apply after-the-fact for a permit for the three dwellings located at the corner of Whallons Bay Road and Christian Road, and provided it pay a $10,000 civil penalty. Staff advised that it appeared likely that a permit could be written for the dwellings in the proposed location.

10. Thereafter, Lewis Farm had numerous contacts with staff, and requested staff to remove the civil penalty as part of the proposed settlement. Staff declined.

11. On June 27, 2007, the Agency received a report that Lewis Farm had resumed construction of the three single family dwellings. On that day, Agency staff issued a Cease and Desist Order requiring Respondent to cease construction of the three single family dwellings.

12. On June 28, 2007, Respondent commenced an action against the Agency in New York State Supreme Court, Essex County, seeking a declaratory judgment that the Agency has no jurisdiction over construction of farm worker housing, or

if it did, that the Agriculture and Markets Law supercedes the Adirondack Park Agency Act.

13. Staff observed the dwelling sites on July 2 and July 6 and observed that Lewis Farms was continuing construction on the three single family dwellings. Three modular houses had been placed on the foundations.

14. In a decision dated August 16, 2007, Supreme Court Acting Justice Kevin Ryan denied Respondent's motion for a restraining order and granted the Agency's motion to dismiss. The decision stated that the Agency did have jurisdiction over the dwellings and the subdivisions created by construction of the dwellings. The Court rejected Lewis Farm's argument that the structures are "agricultural use structures," stating that when read in its entirety, the Adirondack Park Agency Act and the regulations implementing the Wild, Scenic and Recreational Rivers System Act do not exempt the dwellings from Agency jurisdiction. The Court further stated that Section 305-a of the Agriculture and Markets Law did not supersede Agency authority under the Adirondack Park Agency Act or its regulations. Finally, the Court stated that the matter is not ripe for judicial intervention and referred it back to the Agency to proceed with its enforcement procedures.

15. On August 31, 2007, staff observed further construction activity, including that workers were shingling the roofs of the three dwellings. By letter of that date, Agency staff notified Lewis Farm through its enforcement counsel that the Cease and Desist Order remained in effect. Construction continued as observed by staff on September 5, and by December 7, 2007, the three dwellings appeared largely complete. Also, some time after September 5 and before December 7, 2007, the preexisting dwelling which had been located near the new dwellings was removed.

16. The Enforcement Committee takes notice that Lewis Farm has had a previous violation with the Agency, and has also had previous projects approved by the Agency. Moreover, in this case, Lewis Farm had actual notice from senior Agency staff that an Agency permit would be required prior to the construction of any new single family dwelling in the Resource Management portion of its property. It is not reasonable that Lewis Farm failed to seek a jurisdictional determination from the Agency prior to undertaking the construction of the three dwellings, an investment, according to its claim, of $985,000.

Applicable Sections of Law

The Adirondack Park Agency Act

17. Executive Law §809(2)(a) requires individuals, corporations or any other entity to obtain a permit from the Agency prior to the undertaking of any Class A Regional Project or the undertaking of any Class B Regional Project in any town not governed by an Agency-approved local land use program in the Adirondack Park.

18. Pursuant to 9 NYCRR §570.3(ai)(1), "undertake" is defined as the "commencement of a material disturbance of land, including clearing of building sites, excavation (including excavation for the installation of foundations, footings and septic systems), or any other material disturbance of land preparatory or incidental to a proposed land use or development or subdivision."

19. Executive Law §810(1)(e) lists the Class A Regional Projects in a Resource Management land use area that require an Agency permit pursuant to Executive Law §809(2)(a). These projects include, *inter alia*, any subdivision of land (and all land uses and development related thereto) involving two or more lots, parcels or sites. (Executive Law §810[1][e][3])

20. Pursuant to Executive Law §802(63), a "subdivision" is "any division of land into two or more lots, parcels, or sites for the purpose of 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)."

21. 9 NYCRR §570.3(ah)(3) defines a subdivision into sites as occurring 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).

22. 9 NYCRR §573.6(e) states that, where an existing dwelling will not be removed until after the new dwelling is emplaced or constructed, an Agency permit is required for the subdivision into sites which would result if the subdivision is a Class A or Class B Regional Project as provided in Section 810 of the Adirondack Park Agency Act.

23. Executive Law §810(2)(d) lists the Class B Regional Projects in a Resource Management land use area that are subject to Agency review in the Town of Essex pursuant to Executive Law §809(2)(a). These projects include, *inter alia*, the construction of any new single family dwelling. (Executive Law §810[2][d][1])

24. Executive Law §802(58) defines a "single family dwelling" as "any detached building containing one dwelling unit, not including a mobile home."

25. Executive Law §802(8) defines "agricultural use structure" as "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agriculture use."

26. Executive Law §813 provides a potential civil penalty of $500 per day for each violation for each day the violation continues.

The Wild, Scenic, and Recreational Rivers System Act and 9 NYCRR Part 577

27. The Wild, Scenic, and Recreational Rivers System Act (the "Rivers Act") was enacted pursuant to a legislative finding that many rivers of the state, with their immediate environs, possess outstanding natural, scenic, historic, ecological and recreational values. (ECL §15-2701[1])

28. The Rivers Act was enacted to implement a public policy that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in free-flowing condition and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations. (ECL §15-2701[3])

29. Section 15-2705 of the Rivers Act states that the functions, powers and duties encompassed by this section shall be vested in the Adirondack Park Agency as to any privately owned part of a river area within the Adirondack Park as defined by law which may become part of this system. Section 15-2709(1) states that, within the Adirondack Park, the Adirondack Park Agency shall make and enforce regulations necessary for the management, protection, and enhancement of and control of land use and development in the wild, scenic and recreational river areas.

30. Pursuant to 9 NYCRR §577.4(a), no person shall undertake a rivers project without first obtaining an agency permit.

31. In recreational river areas, rivers projects include, *inter alia*, all subdivisions of land in Resource Management land use areas. (9 NYCRR §577.5[c][1])

32. In recreational river areas, rivers projects include, *inter alia*, subdivisions and all land uses and developments classified compatible uses by the Adirondack Park Land Use and Development Plan in Resource Management land use areas. (9 NYCRR §577.5[c][1])

33. Pursuant to §805(3)(g)(4) of the Adirondack Park Agency Act, single family dwellings constitute compatible uses in Resource Management land use areas.

34. Pursuant to 9 NYCRR §577.4(b)(3)(ii), an "agricultural use structure" would not require a rivers permit, except that any such structure must adhere to the structure setback requirements for the recreational river area (150 feet from the mean high water mark).

35. Section 15-2723 of the Environmental Conservation Law provides a potential civil penalty of $1,000 per day for each violation for each day the violation continues.

Agriculture and Markets Law

36. Section 305-a of the Agriculture and Markets Law provides that local governments, when exercising their powers to enact and administer comprehensive plans and local laws, shall exercise these powers to further the policy and goals in Article 25AA of that law, and shall not unreasonably restrict or regulate farm operations within agricultural districts.

Determination of Violation

37. The Agency finds that under the Adirondack Park Agency Act, farm worker dwellings are "single family dwellings" (or possibly "multiple family dwellings" or "mobile homes," depending on the type of dwelling structure), and not "agricultural use structures." The types of structures specifically listed in the definition of "agricultural use structures" are accessory in nature and related to the storage of agricultural equipment, animals and products ("barn, stable, shed, silo, garage"), or the on-site

accessory use sale of farm products ("fruit and vegetable stand"). The language "...or other building or structure directly and customarily associated with agriculture use" is intended to include other structures of an accessory nature only. This is also evident from the exceptions to jurisdiction in the Adirondack Park Agency Act which often include accessory structures. The definition of "agricultural use structures" does not include, and was not intended to include, the farm owners' or farm workers' dwellings. Rather, the owners' dwelling and farm workers' dwellings (for a single family) more precisely fit under the definition of "single family dwelling" or "mobile home."

38. Moreover, "single family dwelling" and "agricultural use structure" are treated as separate and distinct uses under the Adirondack Park Agency Act. This is evident upon inspection of §805(3) of the Act, which always lists "agricultural use structure" and "single family dwelling" as separate uses for compatibility and jurisdictional purposes under the Act. Similarly, §802(50)(g) lists these two types of uses separately for eligibility for special consideration under the Act regarding the application of the overall intensity guidelines.[1] "Single family dwelling" is a narrowly and specifically defined term and is a keystone of Agency jurisdiction. The term "agricultural use structure" is a broader term for certain agricultural structures, which for the purposes of jurisdiction does not include "single family dwelling." If the drafters of the Adirondack Park Agency 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.

39. Section 305-a of the Agriculture and Markets Law, of its own terms, does not apply to the Adirondack Park Agency as the Agency is not a "local government." The laws the Agency is charged to implement are state laws enacted by

[1] Note also, that the overall intensity guidelines do not apply unless and until the Agency has jurisdiction over a project.

the legislature and these laws are of equal import to the people of the State of New York as is the Agriculture and Markets Law.

40. The Adirondack Park Agency Act, Rivers Act and Freshwater Wetlands Act, independently and as implemented by Agency regulations, all further the policy and goals in Article 25AA of the Agriculture and Markets Law in significant ways and constitute plans supportive of agricultural operations. These laws do not unreasonably restrict or regulate farm operations, including farm operations *outside* agricultural districts. In fact, most agricultural uses do not require Agency permits. In addition, these laws provide special privileges for agricultural uses, including under the Adirondack Park Agency Act an exception to the application of the overall intensity guidelines for all farm structures including farm worker housing (§802[50][g]). However, that section regarding application of the overall intensity guidelines cannot be read to impact Agency jurisdiction over the construction of dwellings or the subdivision of land (as defined under the Adirondack Park Agency Act and implementing regulations) when such actions constitute a Class A or B Regional Project. The Agency fully supports agricultural uses in the Park, but will administer its jurisdiction as written to ensure that there is "no undue adverse impact" on the resources of the Park.

First Violation - Subdivision under the Adirondack Park Agency Act

41. Pursuant to Executive Law §§809(2)(a) and 810(1)(e)(3), a Class A Regional Project permit is required from the Agency prior to any subdivision of Resource Management lands into sites.

42. Lewis Farm violated Executive Law §§809(2)(a) and 810(1)(e)(3) by failing to obtain a permit from the Agency prior to subdividing the Lewis Farm into sites by the construction of three new single family dwellings on its property in the Town of Essex, Essex County, located at the corner of Whallons Bay Road and Christian Road.

Second Violation - Subdivision under the Rivers Act

43. Pursuant to 9 NYCRR §577.5(c)(1), a permit is required from the Agency prior to any subdivision into sites of Resource Management lands in a river area.

44. Lewis Farm violated 9 NYCRR §577.5(c)(1) by failing to obtain a permit from the Agency prior to subdividing the Lewis Farm into sites by construction of three new single family dwellings on its property in the Town of Essex, Essex County, located at the corner of Whallons Bay Road and Christian Road.

Third Violation - New Dwellings under the Adirondack Park Agency Act

45. Pursuant to Executive Law §§809(2)(a) and 810(2)(d)(1), a permit from the Agency is required prior to the construction of a single family dwelling on Resource Management lands.

46. Respondent is committing three separate violations of §§809(2)(a) and 810(2)(d)(1) by failing to obtain a permit from the Agency prior to constructing three new single family dwellings on its property in the Town of Essex, Essex County. The pre-existing dwelling was not removed prior to construction of the three new dwellings and hence a permit was required for all three; the "replacement" non-jurisdictional option did not apply (9 NYCRR §573.6[e]). However, as staff did not include the third dwelling in its Notice of Apparent Violation, the Agency will decline to include that particular violation in its determination of an appropriate civil penalty.

Fourth Violation - New Dwellings under Rivers Act

47. Pursuant to 9 NYCRR §577.5(c)(1), a permit from the Agency is required prior to the construction of a single family dwelling on Resource Management lands in a river area.

48. Lewis Farm committed three separate violations of Executive Law 9 NYCRR §577.5(c)(1) by failing to obtain a permit from the Agency prior to constructing three new single family dwellings on its property in the Town of Essex, Essex County. In a designated river area, the replacement of a preexisting dwelling will require a permit unless the new dwelling is located "on the same foundation or same location"; it is not sufficient for the replacement structure to be in the "same immediate vicinity" (see and compare 9 NYCRR 573.6[a] with 577.7[b]). In this case, none of the three new dwellings was located "on the same foundation or same location" as the pre-existing dwelling and hence all required a permit under 9 NYCRR §577.5(c)(1). However, as staff did not include the third dwelling in its

Notice of Apparent Violation, the Agency will decline to include that particular violation in its determination of an appropriate civil penalty.

Resolution of the Matter

The Enforcement Committee makes the following determination with regard to disposition of the above violations, which will finally resolve the violations:

(1) Lewis Farm will apply for a permit for the three new dwellings and the 4-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 request within 30 days of receipt.

(4) Lewis Farm will retain all rights of appeal in the project review process, but forgoes 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.

DATED: Ray Brook, New York
March 25, 2008

ADIRONDACK PARK AGENCY

BY: Cecil Wray
Cecil Wray
Chair, Enforcement Committee

EXHIBIT B

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:

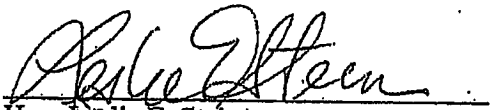
Loretta Simon, Assistant Attorney General
NYS Office of the Attorney General
Environmental Protection Bureau
146 State Street, 2nd floor
Albany, New York 12224

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

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 E

*2008 NY Slip Op 28455, *; 868 N.Y.S.2d 481, **;*
*2008 N.Y. Misc. LEXIS 6738, ****

[*1] Lewis Family Farm, Inc., Petitioner, against Adirondack Park Agency, Respondent. ADIRONDACK PARK AGENCY, Plaintiff, **LEWIS FAMILY FARM,** INC., Defendant. Adirondack Park Agency, Plaintiff, v against **Lewis Family Farm,** Inc.,

315-08

SUPREME COURT OF NEW YORK, ESSEX COUNTY

2008 NY Slip Op 28455; 868 N.Y.S.2d 481; 2008 N.Y. Misc. LEXIS 6738

November 19, 2008, Decided

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE PRINTED OFFICIAL REPORTS.

PRIOR HISTORY: Lewis Family Farm, Inc. v. Adirondack Park Agency, 20 Misc. 3d 1114A, 867 N.Y.S.2d 375, 2008 N.Y. Misc. LEXIS 4050 (2008)

CASE SUMMARY:

PROCEDURAL POSTURE: Respondent Adirondack Park Agency entered a decision directing petitioner farm operator to apply to the agency for a permit for three new single-family dwellings, and a four-lot subdivision, pay a specified civil penalty, and not to occupy the dwellings until a permit was issued. The agency then filed a complaint to enforce the decision and enjoin the farm operator from working on or using the dwellings and further violating the Executive Law.

OVERVIEW: The farmer operator owned and operated an organic farm, which was wholly within the Adirondack Park. The farm operator commenced construction of three single-family dwelling units, to be used by employees working on the farm, on a portion of its property. The farm operator and agency thereafter clashed over whether the farm operator was required to obtain a permit from the agency to build those structures; the farm operator claimed the agency lacked jurisdiction because the structures were "agricultural use structures," Executive Law § 802(8) in a "resource management area" under Executive Law § 805(3)(g). The agency, however, determined that farm worker dwellings were single-family dwellings and not agricultural use structures exempt from obtaining a permit. The agency thus required the farm operator to obtain a permit, pay a civil penalty, and not occupy the structures until the permit was obtained. The trial court found that contrary to the agency's determination the structures were directly and customarily associated with agricultural use under Executive Law § 802(8) and, thus, the farm operator did not have to obtain a permit for them.

OUTCOME: The trial court held that the farm operator was entitled to judgment annulling the agency's decision, as well as to summary judgment dismissing the agency's complaint and all causes of action in it. As a result, the trial court further vacated as moot the granting of a partial stay.

CORE TERMS: dwelling, agricultural use, single family, APA Act, land use, farm, agricultural, cause of action, mobile homes, farm worker, regional, summary judgment, customarily, housing, river, civil penalty, residential, classified, accessory, intensity, parcel, staff, site, recreational, designated, compatible, notice, exempt, maps, Rivers Act

LEXISNEXIS(R) HEADNOTES

Administrative Law > Agency Adjudication > Decisions > General Overview
Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion
Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Administrative Law > Judicial Review > Standards of Review > Unlawful Procedures

HN1 Judicial review of the determination of an administrative agency under CPLR art. 78 is limited to whether the challenged decision was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or was 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, a court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis.

Civil Procedure > Summary Judgment > Burdens of Production & Proof > General Overview
Civil Procedure > Summary Judgment > Evidence
Civil Procedure > Summary Judgment > Standards > Legal Entitlement
Civil Procedure > Summary Judgment > Standards > Need for Trial

HN2 Summary judgment is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues. 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. 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(b), and he must do so by tender of evidentiary proof in admissible form. 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, even where there is no opposition.

Real Property Law > Zoning & Land Use > Administrative Procedure
Real Property Law > Zoning & Land Use > Local Planning

HN3 The Adirondack Land Use and Development Plan sets forth 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 park 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).

Real Property Law > Zoning & Land Use > Local Planning

HN4 An "agricultural use structure" has been defined under the Adirondack Park Agency Act 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).

Real Property Law > Zoning & Land Use > Administrative Procedure
Real Property Law > Zoning & Land Use > Local Planning

HN5 Under the statutory scheme, agricultural uses and agricultural use structures in resource management areas do not require a permit from the park 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). However, a "single family dwelling" in a resource management area requires a permit from the park agency as a class B regional project, Executive Law § 810(2)(d)(1), provided there is no approved local land use program.

Real Property Law > Zoning & Land Use > Local Planning

HN6 The Adirondack Land Use and Development Plan designates as class A regional projects in a resource management area, subject to exclusive park 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 all 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 Adirondack Park Agency 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 park agency's regulations, a subdivision into sites occurs whether or not a legal conveyance has or will be executed where one or more new dwellings or other principal buildings 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 buildings. 9 NYCRR 570.3(ah)(3)(ii).

Real Property Law > Zoning & Land Use > Local Planning

HN7 Although a single family dwelling generally constitutes one principal building, Executive Law § 802(50)(a), the Adirondack Park Agency 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).

Administrative Law > Separation of Powers > General Overview
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN8 It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature. 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. If the language of a statute is plain and unambiguous, there is neither need nor warrant to look elsewhere for its meaning. 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. Under the doctrine of separation of powers, courts may not legislate, rewrite, or extend legislation.

Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review
Real Property Law > Zoning & Land Use > Local Planning

HN9 In enacting the Adirondack Park Agency Act (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 63 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, 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.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN10 No deference is accorded to an agency's determination where a court is faced with the interpretation of statutes and pure questions of law. 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.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN11 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), as "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."

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN12 The failure of the legislature to include a matter within a particular statute is an indication that its exclusion was intended.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN13 As a rule of statutory construction, resort to the rule of ejusdem generis 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. That is particularly true where the terms have specific, definite meanings; in such a case, there is no room for construction and courts have no right to add to or take away from that meaning.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN14 The 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.

Real Property Law > Subdivisions > Local Regulation
Real Property Law > Zoning & Land Use > Administrative Procedure
Real Property Law > Zoning & Land Use > Local Planning

HN15 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). Those goals are consistent with the policy of the state to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. N.Y. Const. art. XIV, § 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 park agency jurisdiction over "subdivisions" is not invoked by such a development.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN16 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.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN17 Omissions in a statute cannot be supplied by construction and may only be remedied by the legislature, and not by the courts.

Real Property Law > Zoning & Land Use > Local Planning

HN18 The definition of "agricultural use structure" is much broader in scope than a "single family dwelling," 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 Adirondack Park Agency 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."

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation
Governments > Legislation > Interpretation
Real Property Law > Zoning & Land Use > Judicial Review

HN19 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.

COUNSEL: **[***1]** 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.

JUDGES: Richard B. Meyer, J.S.C.

OPINION BY: Richard B. Meyer

OPINION

[484]** Richard B. Meyer, J.

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 **[***2]** 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 **[**485]** 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, **[***3]** 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 **[*2]** 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 **[***4]** 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 **[***5]** 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 No.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). **[**486]** Staff argued, however, that a "single family dwelling" could not be an "agricultural use structure" under the Adirondack **[***6]** 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 **[*3]** 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 **[***7]** 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. **[***8]** 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.

[487] II. *Procedural* [***9] *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 **[*4]** 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], 867 N.Y.S.2d 375, 2008 NY Slip Op 51348[U], 2008 WL 2653236 [Table] [NY Sup] **[***10]**), 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*

HN1 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; **[***11]** see, also, *Securities Comm. v. Chenery Corp.*, 332 US 194, 67 S. Ct. 1575, 91 L. Ed. 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 HN2 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, **[**488]** 215 NE2d 341)" **[*5]** (*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 **[***12]** 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 **[***13]** 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]*). HN3 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 **[***14]** 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 HN4 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, **[*6]** pigs, poultry and other livestock; **[**489]** horticulture or orchards; including the sale of products grown or raised **[***15]** 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]*).

HN5 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.

HN6 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 **[***16]** 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]*). HN7 Although a single family dwelling generally constitutes **[***17]** 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 **[*7]** subdivision requiring an Agency permit has or will occur as a result of their construction.

[490] V. *Construction of the APA Act***

HN8"It is fundamental that a court, in interpreting a **[***18]** statute, should attempt to effectuate the intent of the Legislature" (*Patrolmen's Benevolent Asso. 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 **[***19]** 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. La Guardia*, 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; *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).

*HN9*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 **[***20]** 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 NY, 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 **[*8]** 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 **[**491]** charged with its enforcement if the interpretation is neither irrational, unreasonable, nor inconsistent with the **[***21]** 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). *HN10*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, HN11 the statutory language cannot be interpreted or construed to evidence a legislative **[***22]** 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 NY, Book 1, Statutes, § 76*; *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 **[***23]** 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). HN12 "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.

[*9] 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, **[**492]** 513 NYS2d 875, 876) is misplaced. HN13 As a rule of statutory construction, resort to the rule **[***24]** 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, 43 N.E. 532; *see also People v. Torres*, 184 Misc 2d 429, 432, 708 NYS2d 578, 580).

Moreover, HN14 "[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 A.D. 644, 647, 146 NYS 398, 401, *affirmed* 212 NY 407, 411, 106 NE 122, 124, **[***25]** *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.

*HN15*The Legislature's stated purposes, policies and objectives of resource management areas include **[***26]** 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.

[*10] While LFF's farm worker housing project represents a unique and unprecedented effort to provide agricultural **[**493]** workers with quality housing and may not have been foreseen by the Legislature, **[***27]** *HN16*"[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). *HN17*"[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 **[***28]** 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". *HN18*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". *HN19*"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 **[***29]** 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 **[***30]** Act are used for agricultural purposes **[**494]** (*see Executive Law § 805[3][g]*), and a project involving a single **[*11]** 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 **[***31]** 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.

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EXHIBIT F

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, NEW YORK 12932
08 NOV 21 AM 11:05

EXHIBIT G

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B Airline Drive, Albany, New York 12235
518-457-8876 Fax 518-457-3087
www.agmkt.state.ny.us

Eliot Spitzer
Governor

Patrick Hooker
Commissioner

November 26, 2007

Curt Stiles, Chairman
Adirondack Park Agency
PO Box 99
NYS Route 86
Ray Brook, NY 12977

Dear Mr. Stiles:

Congratulations on your recent appointment to Chairman of the Adirondack Park Agency. In that capacity, I am seeking your assistance in trying to resolve an issue between Sandy and Barbara Lewis, Town of Essex, Essex County and the Adirondack Park Agency. Mr. and Mrs. Lewis own and operate one of the State's largest certified organic farms. They have vastly improved their landholdings and have removed many of the older homes on the various farms that have been purchased to make up their landholdings. The Lewis' are in the process of constructing farm worker housing on the farm and were of the belief that such housing is exempt from the APA permitting process. The Department of Agriculture and Markets supports the Lewis' efforts in their attempt to provide modern, energy efficient housing for their employees. The Lewis farm is located within Essex County Agricultural District No. 4, a county adopted, State certified, agricultural district.

On August 8, 2007 one of my staff, Robert Somers, Manager of the Department's Farmland Protection Program, met with Mark Sengenberger, John Banta, Anita Deming and others to discuss the APA's treatment of farm worker housing and temporary greenhouses under State Law. Dr. Somers informs me that the APA maintains that the Lewis' must obtain a permit from that agency prior to constructing such housing even though the Agricultural Districts Law is clear that under certain circumstances farm worker housing is an agricultural structure and part of a "farm operation".

AML §301, subd. 11, defines a "farm operation", in part, as "...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section and "timber processing" as

defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other."

Farm worker housing, including mobile homes (also known as "manufactured homes"), modular or stick built structures, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or modular homes for farm worker housing is a common farm practice. Manufactured, modular and stick built homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation.

The Department's *Guidelines for Review of Local Laws Affecting Farm Worker Housing* (copy enclosed) provides that the term "on-farm buildings" includes housing used as a residence for permanent and seasonal employees. Generally, in evaluating the use of farm labor housing under the AML, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; whether the housing is provided by the farm operator (i.e., the farmer must own the housing); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation (and their family) to be protected under AML §305-a. The Department has interpreted a seasonal employee to mean migrant workers or workers employed during the season of a crop; i.e., from cultivation to harvest. The Department has not considered part-time employees to be "full-time or seasonal."

Although the Department considers farm worker housing to be part of a farm operation for the purposes of administering AML §305-a, the Department has found that local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Building Code [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code § 102.1(5)] and Health Department requirements for potable water and sewage disposal, are not unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

State Building Code §101.2(2) provides an exemption from the Building Code for "[a]gricultural buildings used solely in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation." State Building Code §202 defines an agricultural building as "[a] structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This

structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public." Therefore, a farm operator must obtain a local building permit for farm worker housing and the housing is subject to the requirements of the State Building Code. It is my understanding that the Lewis farm has obtained the necessary permits from the Town to construct such housing.

The Office of Real Property Services also agrees with the Department's position that housing for farm workers is an agricultural structure. Farm worker housing may qualify for a 10-year real property tax exemption by filing with the local assessor RPT Form RP-483. This is a tax exemption that is applied to newly constructed agricultural and horticultural buildings and structures. I have enclosed the instructions page for the exemption which clearly states that under certain circumstances, farm worker housing is considered an agricultural building.

The Department's position on farm worker housing has been supported by the State's Court of Appeals (Town of Lysander v. Hafner, 98 N.Y.2d 558 [2001]) and pursuant to AML §305, subd. 3, "...it shall be the policy of all State agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end..."

I would like to discuss this issue with you further. Please contact me at your earliest convenience.

Sincerely,

Patrick Hooker

Patrick Hooker
Commissioner of the New York Department
of Agriculture and Markets

Enclosures

NYS BOARD OF REAL PROPERTY SERVICES

INSTRUCTIONS FOR APPLICATION FOR TAX EXEMPTION OF AGRICULTURAL AND HORTICULTURAL BUILDINGS AND STRUCTURES

Place of filing application.

This application for exemption must be filed with the city or town assessor. Do not file this form with the State Board of Real Property Services. If a facility is located in a village which assesses, a copy of the application must also be submitted to the village assessor. In Nassau County, applications for exemption from county, town or school district taxes should be filed with the Nassau County Board of Assessors. In Tompkins County, applications should be filed with the Tompkins County Division of Assessment.

Timing of filing application.

The application must be filed on or before the taxable status date of the city, town or village whose taxes are involved. The taxable status date in most towns is March 1. In towns in Erie County, the taxable status date is May 1. In towns in Westchester County the taxable status date is June 1. In Nassau County, taxable status date is January 2. In cities, taxable status date is determined from charter provisions so the city assessor's office should be consulted for the specific date. For most villages which are assessing units, taxable status date is January 1, but the village clerk should be consulted to ascertain whether the village uses a different date.

Amount and term of exemption; penalty for conversion.

The increase in assessed value attributable to qualified new construction or reconstruction shall be exempt from taxation for a period of ten years. In the event the land or structures or buildings are converted to non-agricultural use during the exemption period, the property becomes subject to roll-back taxes for the period during which the exemption was operative.

Completion of the application form. (Numbers correspond to the numbers on the application.)

1 – 4. Self-explanatory

5. The exemption applies to newly constructed or reconstructed structures or buildings (or portions thereof) used directly and exclusively in the raising and production for sale of agricultural and horticultural commodities. Therefore, the building or structure (or portion thereof) for which the exemption is sought must be identified with particularity and its current use described as fully possible. If not currently used, set forth the proposed use.

6. The construction or reconstruction must be completed on or before the appropriate taxable status date and application for exemption must be made within one year from the date of completion of the improvement.

7. Self-explanatory.

8. The exemption generally does not apply to a building or structure (or portion thereof) used for the processing of agricultural or horticultural commodities, but a building or structure (or portion thereof) used in the production of maple syrup may be eligible for exemption. The exemption also does not apply to a building or structure (or portion thereof) used for the retail merchandising of such commodities. A building is used for processing whenever the principal activity occurring therein is the preparation of farm commodities for market as distinguished from the raising, producing or storing of such farm commodities. A building is not disqualified if processing activities are merely incidental to exempt activities. A building or structure (or portion thereof) is used for retail merchandising when it is used for the sale of a farm commodity to the ultimate customer. The exemption does not apply to silos, farm feed grain storage bins, commodity sheds, manure storage and handling facilities or bulk milk tanks and coolers used to hold milk awaiting shipment to market as those types of structures are exempt from taxation pursuant to Real Property Tax Law, section 483-a (request RP-483-a from your assessor).

9. The exemption applies to buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in farming operations. It does not apply, however, to buildings occupied as a residence by the owner and his immediate family.

10. The exemption applies to buildings or structures essential to the operation of lands consisting of not less than five acres actually used in an agricultural or horticultural operation carried on for profit. An eligible building or structure may include an indoor exercise arena used exclusively by a farmer or a commercial horse boarding operation to train and exercise horses. Such an arena does not qualify for tax exemption when used by a riding academy or a dude ranch.

REAL PROPERTY TAX LAW SECTION 483

Exemption from taxation of structures and buildings essential to the operation of agricultural and horticultural lands.

1. Structures and buildings essential to the operation of lands actively devoted to agricultural or horticultural use and actually used and occupied to carry out such operation which are constructed or reconstructed subsequent to January 1, 1969 and prior to January 1, 2009 shall be exempt from taxation to the extent of any increase in value thereof by reason of such construction or reconstruction for a period of ten years.

farm worker housing *

2. The term "structures and buildings" shall include: (a) structures and buildings or portions thereof used directly and exclusively in the raising and production for sale of agricultural and horticultural commodities or necessary for the storage thereof, but not structures and buildings or portions thereof used for the processing of agricultural and horticultural commodities other than maple syrup, or the retail merchandising of such commodities; (b) structures and buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in connection with the operation of lands actively devoted to agricultural and horticultural use, but not including structures and buildings occupied as a residence by the applicant and his immediate family; and (c) structures and buildings used as indoor exercise arenas exclusively for training and exercising horses in connection with the raising and production for sale of agricultural and horticultural commodities or in connection with a commercial horse boarding operation as defined in section three hundred one of the agriculture and markets law. For purposes of this section, the term "indoor exercise arenas" shall not include riding academies or dude ranches. The term "structures and buildings" shall not include silos, bulk milk tanks or coolers, or manure storage and handling facilities as such terms are used in section four hundred eighty three-a of this title.

3. The term "lands actively devoted to agricultural and horticultural use" shall mean lands not less than five acres in area actually used in bona fide agricultural and horticultural production and operation and carried on for profit.

4. Such exemption from taxation shall be granted only upon an application by the owner of the building or structure on a form prescribed by the State Board. The applicant shall furnish such information as such board shall require. Such application shall be filed with the assessor of the city, town, village or county having the power to assess property for taxation on or before the appropriate taxable status date of such city, town, village or county and within one year from the date of such construction or reconstruction.

5. If the assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he shall approve the application. Such structures or buildings shall be exempt from taxation as herein provided.

6. The assessed value of any exemption granted pursuant to this section shall be entered by the assessor on the portion of the assessment roll provided for property exempt from taxation. An exemption granted pursuant to this section shall continue only while the buildings and structures are actually used and occupied as provided herein, but in no event for more than ten years.

7. In the event that land or buildings or structures in agricultural or horticultural use are converted to non-agricultural or non-horticultural use during the period of an exemption granted pursuant to this section, the structures or buildings upon which the exemption was granted shall be subject to roll-back taxes for t he period during which the exemption was operative. Structures and buildings subject to roll-back taxes shall be taxed as provided herein.

(a) Notwithstanding any limitations contained in section 550 of this chapter, the assessor of the appropriate assessing unit shall enter on the taxable portion of the assessment roll of the current year the assessed valuation or valuations of the structures or buildings on which exemption was granted in any prior year or years at the assessed valuation or valuations as set forth on the exemption portion of the assessment roll or rolls.

(b) The amount of roll-back taxes shall be computed by the appropriate tax levying body by applying the applicable tax rate for each such prior year to the assessed valuation, as set forth on the exempt portion of the assessment roll, for such structures or buildings for each such prior year during such period of exemption.

(c) Such roll-back taxes shall be levied and collected in the same manner and at the same time as other taxes are imposed and levied on such roll.

8. As used in this section, the term "agricultural and horticultural" shall include the activity of raising, breeding and boarding of livestock, including commercial horse boarding operations.

PENALTY FOR FALSE STATEMENT

A person making false statements on an application for exemption is guilty of an offense punishable by law.

Guidelines for Review of Local Laws Affecting Farm Worker Housing

Farm worker housing, including mobile homes (also known as "manufactured homes"), is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or mobile homes for farm worker housing is a common farm practice. Manufactured or mobile homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. The term "on-farm buildings" includes farm labor housing, including manufactured housing, used for the on-farm housing of permanent and seasonal employees, and is therefore subject to the protection of Agriculture and Markets Law (AML) §305-a.[1]

Generally, in evaluating the use of farm labor housing under §305-a, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); whether the employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The Department does not consider the primary residence of the owner or partner of the farm operation to be protected under §305-a.

The degree of regulation of farm worker housing that is considered unreasonable depends on the number of units, size of the structure(s) and the complexity of the housing to be provided. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and complexity of the structure(s) to be built or the number of units to be sited on a farm, a site plan review requirement may be reasonable. The Department urges local governments to take into account the size, complexity and number of units of housing required by the farm operation when setting and administering such requirements. For example, the Department has not considered the need to undergo site plan review, where more than two mobile homes are sited on the same farm complex, unreasonable. However, conditions placed upon the issuance of a permit and/or the cost and time involved to complete site plan review requirements may be unreasonable.

In some cases farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under a local law or area variances, before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. Local laws which the Department has found not to be unreasonably restrictive include those which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code ("Uniform Code") [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

[1] The Department's interpretation was upheld in *Town of Lysander v. Hafner*, New York Court of Appeals, 96 N.Y.2d 558 (October 18, 2001).

Some municipalities have developed reasonable requirements to ensure that farm labor housing is used only for legitimate farm employees; is removed if it is not used for its intended purpose; and is periodically reviewed for compliance.

The following are some of the specific matters that the Department considers when reviewing a local law that affects farm worker housing:

A. Minimum Dimensions

Establishing minimum square foot dimensions and/or floor space has been determined to be unreasonably restrictive in certain instances. Many mobile homes used for farm labor housing have outside dimensions of 14 feet by 70 feet (i.e., 980 square feet). Older model manufactured housing may have lesser square foot dimensions, however. To address this concern, a municipality may elect to not establish a minimum square foot requirement for farm worker housing on a farm operation within a State certified agricultural district.

B. Lot Size

Requiring a minimum lot size exceeding 10,000 to 15,000 square feet may be unreasonably restrictive. A farmer may be unable to meet such a minimum lot size due to the configuration of the land used for production or lying fallow as part of a conservation reserve program. The need to be proximate to a water supply, sewage disposal and other utilities is also essential. Farm worker housing is usually located on the same property which supports other farm structures. Siting farm labor housing very near other farm structures, such as a barn or milking parlor, is important for ease of access and for security purposes. Presumably, minimum lot size requirements are adopted to prevent over concentration of residences and to assure an adequate area to install a properly engineered well and waste disposal system. Farm worker housing should be allowed to be sited on the same lot as other agricultural use structures subject to the provision of adequate water and sewage disposal facilities and meeting minimum setbacks between structures.

C. Setbacks

Minimum setbacks from front, back and side yards have not been viewed as unreasonable unless a setback distance is unusually long. Setbacks that coincide with those required for other residential structures have, in general, been viewed as reasonable.

D. Screening

A requirement to screen farm labor housing from view has been found by the Department to be unreasonable. Screening requirements suggest that farm worker housing is, in some way, objectionable or different from other forms of residential housing that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless screening is required to address a threat to the public health or safety or is shown to be necessary due to special local conditions.

E. Compliance with HUD Standards

A requirement that mobile homes constructed before June 1976 comply with HUD construction and safety standards may be unreasonably restrictive. Manufactured homes do not need to meet current HUD standards to be safe and fit for human occupancy. The adoption of the federal standards does not mean that manufactured homes constructed prior to their

promulgation (June 1976) are unsafe or unfit for human occupancy, any more than a conventional unit built prior to the application of a local building code or the State Uniform Fire Prevention and Building Code can be considered unsafe. The Uniform Code provides that manufactured homes constructed before June 15, 1976 need not be built in accordance with HUD standards and have a certifying label and data plate if they have been inspected to determine that they are structurally sound and free of heating and electrical system hazards [Residential Code of New York State, AE 102.6]. Manufactured homes as part of a farm operation should be allowed to meet either the HUD standards or pass inspection as provided in Residential Code, AE 102.6.

F. Removal of Farm Labor Housing if Unoccupied

Requiring farm labor housing be immediately removed from a site upon cessation of its use by the farm operation or if a farm operation stops producing an agricultural crop may be unreasonable. Housing may be used only seasonally. In addition, unforeseen circumstances, such as a change in a farm operation due to a death in the family or a change in ownership, may prevent such housing from being used within a given year. Some municipalities require the removal of farm labor housing if it has not been used for such purposes for three years. Such a requirement is reasonable and takes into account changes in farm circumstances.

G. Sharing of Farm Labor and Housing

Farmers may, under certain circumstances, share farm labor and housing to provide full employment to farm workers throughout the growing season. This helps ensure that labor needs are met and workers do not leave the area for other employment opportunities. There should be some flexibility in a local law to accommodate the sharing of farm labor and/or housing. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view a requirement that workers be employed or used more than 51 percent of the time by the farm operation where the housing is located as reasonable.

Guidelines for Review of Local Laws Affecting Commercial Horse Boarding Operations

In 2001 the Agriculture and Markets Law (AML) was amended to include commercial horse boarding operations in the definition of a "farm operation" under AML §301, subdivision 11. This amendment recognized that commercial horse boarding operations are farm operations and as such should receive AML §305-a protection from unreasonably restrictive local laws. (Previously, commercial horse boarding operations were only eligible for agricultural assessments.)

Under AML §301, subd. 11, "farm operation" means "...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a 'commercial horse boarding operation' as defined in subdivision thirteen of this section and 'timber processing' as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous, to each other." AML §301, subd. 13 defines the term "commercial horse boarding operation" as "...an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation."

The Department has consistently viewed the raising, breeding, boarding and sale of horses as a "farm operation" under AML §301, subdivision 11. A horse boarding operation provides care, housing, health related services and training to animals kept on the premises or on other properties owned or leased by the farm operator. Riding and training activities that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and used for such activities, are part of the farm operation. Horse shows for horses either boarded at or owned by the farm operation, which are not open to the general public, are also part of the farm operation. The Department does not consider a riding academy to be an agricultural activity under the AML. A riding academy generally offers riding lessons to the public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the facility for such riding. Local zoning laws which include definitions and provisions for riding academies or commercial horse boarding operations should include language which distinguishes between the types of operations.

In general, the construction of on-farm buildings and the use of land for agricultural purposes should not require site plan review, special use permits or be subjected to non-conforming use requirements when located in a county adopted, State certified agricultural district. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products is recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation should be permitted uses when the farm operation is located within an agricultural district.

The application of site plan and special permit requirements to farm operations can have significant adverse impacts on such operations. Site plan and special permit review, depending upon the specific requirements in a local law, can be expensive due to the need to retain professional assistance to certify plans or simply to prepare the type of detailed plans required by the law. The lengthy approval process in some local laws can be burdensome, especially considering a farm's need to undertake management and production practices in a timely and efficient manner. Site plan and special permit fees can be especially costly for start-up farm operations. Therefore, absent any showing of an overriding local concern, generally, an exemption from site plan and special use permit requirements should be provided to farm operations located within an agricultural district. However, as discussed in more detail in the Department's *Guidelines for Review of Local Zoning and Planning Laws,* the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders. Therefore, the Department developed a model streamlined site plan review process which attempts to respond to farmers' concerns while ensuring that local issues are examined.

Generally, farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under local law or area variances before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. The Department has found local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code ("Uniform Code") [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal not to be unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

The following are some specific matters that the Department considers when reviewing a local law that affects commercial horse boarding operations[1]:

A. Minimum Lot Size

The AML states that a commercial horse boarding operation must be at least seven acres in size. A Town's limitation on the number of horses allowed per acre could be unreasonably restrictive. The Department considers, among other things, the impacts on a particular farm operation to determine if a density limitation is unreasonably restrictive. If pasture is to be used for sustenance, then one acre of pasture per horse is usually appropriate. If the area is to be used for a turn-out area, then five or more head may be carried on one acre of land. Many commercial horse boarding operations are closed systems where they are conducted on smaller acreage, feed is brought in and manure is exported off the farm. However, some horse farms may landspread and/or compost manure on the farm (See Section I of this guideline for further discussion on manure management). Horses are exercised in various arenas, indoor and outdoor, and rotated in small rectangular fenced areas (paddocks).

[1] Please see *Guidelines for Review of Local Zoning and Planning Laws* for further general discussion of each of these issues.

B. Setbacks

Minimum setbacks from front, back and side yards for farm buildings have not been viewed as unreasonable unless a setback distance is unusually long. Setbacks that coincide with those required for other similar structures have, in general, been viewed as reasonable.

A farm operation's barns, storage buildings and other facilities may already be located within a required setback, or the farm operation may need to locate new facilities within the setback to meet the farm operation's needs. Also, adjoining land may consist of vacant land, woodland or farmland. The establishment of unreasonable setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation (e.g., water supply, utilities and farm roads) is often already located within, and adjacent to, the farmstead area or existing farm structures. Setbacks can also increase the cost of, or make it impracticable to construct new structures for the farm operation.

Requiring setbacks from property lines for riding trails may be unreasonably restrictive. If riding trails are located in or adjacent to fields that are used for the production of hay or other field crops, a minimum setback from a property line would take land out of production. In such instances, the trail would generally be located closer to the property line to reduce the amount of land taken out of production and reduce the amount of operating costs and time necessary to maintain a swath of unusable land established by a setback.

C. Screening

Some local laws require a landowner to screen an agricultural activity from adjacent non-agricultural uses. The Department has previously determined that a requirement to screen agricultural activities from adjoining non-agricultural uses is unreasonably restrictive. While aesthetics are an appropriate and important consideration under zoning and planning laws, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use. Screening requirements suggest that agricultural uses are objectionable or different from other forms of land uses that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless it is required to address a threat to the public health or safety.

D. Event Permits

Local laws that require a special permit to hold public events, shows, rodeos, competitive events, etc. are, in general, not unreasonably restrictive when the event involves the general public and not just those individuals who board their horses on the farm. If the event is limited to those individuals who board their horses on the farm, a special permit should not be required.

E. Sign Limitations

The administration of local law provisions which regulate signs may unreasonably restrict a commercial horse boarding farm operation. Such farm operations may need to use signs to advertise the name of the farm and the services it offers. Paddocks and barns may not be visible from the road and therefore the farm may need to use an adequately sized on-premises sign *or* locate a sign(s) at off-premises locations. Whether or not a limitation on the size and/or number of signs that may be used to advertise a commercial horse boarding operation is unreasonably restrictive depends primarily on the location of the operation. An operation located on a principally traveled road probably will not need as many signs as one which is located on a less traveled road and may need directional signs to direct the public to the premises.

F. Farm Worker Housing

Farm worker housing, including mobile homes (also known as "manufactured homes"), is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. Generally, in evaluating the use of farm labor housing under §305-a, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); and whether the employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The Department does not consider the primary residence of the owner or partner of the farm operation to be protected under §305-a. For further discussion see the Department's *Guidelines for Review of Local Laws Affecting Farm Worker Housing.*

G. Noise

Some local laws have established maximum permitted sound pressure levels. For example, one local law prohibited noise from exceeding a maximum decibel level, which was reduced by six decibels for lots within two hundred feet of a residence district. Such noise provisions may unreasonably restrict farm operations within an agricultural district. According to an article written by David E. Baker entitled *Noise: The Invisible Hazard* (University Extension, University of Missouri-Columbia, published October 1993), a chain saw has a decibel level of 120 and tractors, farm equipment and power saws have a decibel level of 100. Inside an acoustically insulated tractor cab, the decibel level is 85. This type of equipment is commonly used along and/or near property boundaries and may exceed maximum decibel levels allowed by a local law.

H. Smoke, Dust

Local laws may regulate smoke and other particulate matter. Such laws often prohibit measurable emission of dust or other particulate matter. These provisions may unreasonably restrict farm operations. Some measure of dust usually occurs with the tillage of land and may not subside until the area is populated with crops. Furthermore, horse operations may, from time to time, have bare spots within fields that could be a cause for airborne particulate matter and dust. Horses and other livestock may roll or dig up the turf. Dust may also occasionally come from paths used by livestock and from riding rings. Particulate matter may also become airborne from mowing and other field maintenance activities. Further, the regular operations of a farm typically involve the removal of trees and brush during field clearing and maintenance; the removal or trimming of diseased fruit canes, vines, and trees; and the removal of vegetative material from cultivated wetlands, among other things. These materials are often disposed of on the farm by open burning. On-farm open burning is considered by the Department to be a practice that is part of a "farm operation" and thus protected from unreasonable local restriction. Open burning is regulated by the Department of Environmental Conservation (DEC). Local laws should allow open burning consistent with the DEC's regulations and/or guidance. For further discussion see the Department's *Guidelines for Review of Local Laws Affecting On-Farm Open Burning.*

I. Nutrient Management

Nutrient Management Practices are an essential component of any farm operation and are protected under AML §305-a from unreasonable local restrictions. Traditionally, farm operators

use animal waste as a main source of nutrients for crop production. Many commercial horse boarding operations may not have enough land for crop production or may have excess horse manure. Generally, manure from commercial horse boarding operations is either composted and spread on fields or stored and removed off-site. In general, the Department believes that any local waste management laws should provide exemptions to allow the land application, storage, and/or composting of animal waste, for agricultural purposes on farm operations within a county adopted, State certified agricultural district. The DEC regulates most types of solid wastes pursuant to 6 NYCRR Part 360, but exempts animal waste from this regulation. The Department considers the standards and permitting requirements under the DEC's regulations in evaluating whether restrictions on agricultural land use and nutrient management practices are unreasonably restrictive in violation of AML §305-a. For further discussion see the Department's *Guidelines for Review of Local Laws Affecting Nutrient Management Practices.*

Agricultural wastes and by-products, including manure, must be utilized or disposed of in an environmentally safe manner. It is the Department's view that it is not unreasonably restrictive for a local government to require that a commercial horse boarding operation submit a plan that describes how its manure will either be used or removed from the farm (e.g. by landspreading, composting, or periodic removal). Manure should not be stored and remain on the farm for a period in excess of one year. The composting of such agricultural waste is a preferred method because it is recycled and utilized as a soil amendment to enhance plant growth for both crop production and off-farm uses (e.g. landscaping, home gardens, etc.). Agriculture and Markets Law §305-a, subdivision 1 protects the on-farm composting of these materials when the composting is part of the agricultural production function of the farm, that is, the farm composts to rid the farm of its excess agricultural waste *or* the farm composts to create a soil amendment for crop production. For further discussion please refer to the Department's *Guidelines for Review of Local Laws Affecting On-Farm Composting Facilities.*

J. Odor

Some local laws prohibit any land use which emits any discernible odor outside the building in which the use is conducted or beyond the lot line of the property. Livestock operations emit odors associated with the animals themselves, the feed, and livestock manure. The amount of odor that can be tolerated by an individual varies and quantities discernible to one person may not be to another. The actual odor regulation and its administration would have to be examined to determine whether or not a farm is unreasonably restricted.

K. Animal Control

Generally, farmers are responsible for the care, safety and confinement of livestock in their charge. Farm operations must provide adequate fencing and gates to confine livestock in a safe and reasonable manner. The public needs to be protected from livestock that may cause bodily harm and/or property damage if the animals venture off the farm. Therefore, local animal control laws that require livestock to be confined and not "run at large" without restraint, confinement or supervision, are reasonable and help to protect public health and safety. Local governments should be aware that commercial horse boarding farms may need to install fences with a height greater than may be allowed under a local law (e.g., certain horses may not be adequately confined by a maximum three or four feet fence). For further discussion please refer to the Department's *Guidelines for Review of Local Laws Affecting the Control of Farm Animals.*

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B Airline Drive, Albany, New York 12235
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Eliot Spitzer
Governor

Patrick Hooker
Commissioner

February 1, 2008

Sandy and Barbara Lewis
The Lewis Family Farm, Inc.
1212 Whallons Bay Road
Essex, New York 12936

RE: Section 308, subd. 4 Opinion Concerning Farm Worker Housing

Dear Mr. and Mrs. Lewis:

On January 9, 2008, the Department received an e-mail from your attorney, John J. Privitera, requesting, on your behalf, an opinion pursuant to Agriculture and Markets Law (AML) §308, subdivision 4 as to whether land used for the siting and construction of farm worker housing is considered "agricultural in nature." The evaluation of land uses under this provision is conducted on a case-by-case basis upon information submitted and in consultation with the Advisory Council on Agriculture.

You indicate that Lewis Family Farm, Inc. is a USDA certified organic farm located in the Town of Essex, Essex County. Farm Manager Dr. Marco Turco reports that the farm encompasses approximately 1,200 acres and includes 826 cultivated acres, pastures, a sugar-bush, and a deciduous and conifer forest. The farm produces certified organic beef animals and raises cows, bulls, heifers and steers. Additionally, the farm produces a range of crops, which have included hard white winter wheat; soybeans; alfalfa; mixed, cool-season grasses; corn; spelt and triticale. Department staff confirmed that the land in question is located within Essex County Agricultural District No. 4, a county adopted, State certified agricultural district.

Dr. Robert Somers, Manager of the Department's Agricultural Protection Unit, visited the farm on January 9, 2008. Dr. Somers observed that four modular farm worker houses have been constructed on the property. Three of the farm worker houses are clustered in a U-shaped pattern at the corner of Christian and Whallons Bay Roads. You indicated that two of the four homes are complete; the other two homes have completed exteriors but are unfinished inside. You explained that one is occupied by the farm manager and the other, by a person working on the farm. You indicated that these three homes replaced an existing home and barn complex that were removed prior to construction. You indicated that the three homes share a common

driveway, septic leach field and water source (well). The fourth farm worker house is located off of Whallons Bay Road at the crest of a hill. You explained that the farm manager occupies this home because it has a strategic view of most of the farm, including the barns and the three new farm homes. You stated that all four of the modular homes were placed on poured concrete foundations with basements.

You indicate that the farm housing which was located on the property when it was purchased was old, energy inefficient and contaminated with mold. You stated that you decided to remove those structures and construct new homes for your farm workers and that suitable off-farm housing is not available within the area. You also indicate that it is your intent to provide quality housing for your workers in an effort to recruit employees that will bring their families to the farm and become vested in the farm and the community; and you hope that the housing will help recruit the most qualified workers to your state-of-the-art farm.

In considering whether a particular land use is agricultural in nature, the Department takes into account the definition of "farm operation" contained in AML §301. A land use does not need to fall within the meaning of that term in order to be "agricultural in nature." Examination of the definition is helpful, however, in considering the nature of a land use since it relates to agricultural activities. Included within the definition of "farm operation" (AML §301, subd. 11) are "[t]he land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise...."

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

In evaluating the use of farm labor housing, the Department considers whether the housing is used for seasonal and/or full-time employees; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation to be part of a "farm operation" as defined in AML §301, subd. 11. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation and is protected by AML §305-a.

Dr. Somers, during his visit to the farm, confirmed that farm worker housing was needed on the farm; existing residential structures had been removed, except for the

home of the landowner and a guest house; and that the three clustered farm worker houses could not be readily separated or easily subdivided due to the shared driveway, septic leach field, and electrical connection to the grid and water supply.

Based upon the information provided by you and Dr. Marco Turco, the Department's farm visit, and upon consultation with the Advisory Council on Agriculture, it is my opinion that use of the land in question for the siting and construction of farm worker housing is agricultural in nature.

Sincerely,

Patrick Hooker

Patrick Hooker
Commissioner

cc: Advisory Council on Agriculture
Essex County Agricultural and Farmland Protection Board

EXHIBIT H

ADIRONDACK PARK AGENCY

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

Agency File: E2007-041

AFFIDAVIT OF BARBARA A. LEWIS

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

BARBARA A. LEWIS, being sworn, deposes and says:

1. I am an officer of Lewis Family Farm, Inc., the Respondent in this matter. I make this affidavit in support of the Lewis Family Farm's Motion to Dismiss and in opposition to Agency Staff's request for a summary finding of liability and imposition of a fine without a hearing.

2. In 1978, my husband, Salim B. Lewis, and I purchased a farmstead in the County of Essex following a long family association with the Adirondacks which dates back to 1951. Over the years we acquired adjacent lands thus forming what is now a farm of approximately 1200 acres, 826 of which are currently under cultivation and used for pasture and the remainder comprising a maple sugarbush, recovering logged areas, and protective winter habitat for cattle.

3. Our farmstead, now known as The Lewis Family Farm, is one of New York State's largest USDA Certified organic farms. Our farm is located within Essex County Agricultural District No. 4, a County adopted, state certified agricultural district.

4. The Lewis Family Farm has become a showcase for the Cornell Cooperative Extension and has, through example, contributed to four neighboring farms that have also become organic operations. The Lewis Family Farm has a strong reputation that has allowed for students and apprentices from the United States and from international programs to work and study on the Lewis Family Farm for academic credit.

5. As a working farm, the Lewis Family Farm has made significant capital improvements to its land, infrastructure and operations in an effort to remain economically viable, energy efficient and environmentally sound.

6. As the farm grew in size we were compelled to demolish at least 15 houses on our farmlands, residences broken and beyond repair, residences with unhealthful sewage conditions, residences with vulnerable or unreliable water supplies, and residences so mold infested as to be considered unsafe and substandard housing.

7. In addition to the demolition of these houses and the removal of innumerable unheated hired hand accommodations that had been on the Lewis Family Farm, we have constructed or substantially upgraded fifteen (15) farm buildings and several other farm structures in support of the farm. This includes nine (9) structures at the barn plaza, four (4) by the farmstead, the Grandview Barn, the cattle shed, and two (2) substantial bridges designed and built to protect wetlands. The Lewis Family Farm did not obtain permits from the Adirondack Park Agency for any these farm structures. At no time since these many farm buildings were constructed has the Lewis Family Farm been informed that an APA permit was necessary at the time of construction, other than the Notice of Violation we received for the farm employee houses at issue in this matter.

8. As we have gained knowledge in our organic farming practices, we feel obliged to provide academic opportunities to agricultural students. The current manager of our farm and our primary employee is Marco Turco, a PhD and agricultural scholar, who is an adjunct faculty member at the nearby State University of New York at Plattsburgh. Dr. Turco has developed a program at this and other universities that allows academic credit for internships under his tutelage.

9. In addition, the Lewis Family Farm has been approached by the government of Nepal to host four farmers from Nepal so that they may learn the methods of sustainable, organic farming. These farmers had been scheduled to arrive in the fall of 2007 and now plan to arrive in late spring 2008. In addition to Dr. Turco's management of the Lewis Family Farm, the Lewis Family Farm has three full time employees. These include Mr. Scott Pulsifer, Mr. Timothy Benway and Mr. Gregg Facette. None of these employees are able to live on our farm, because we do not currently have on-farm housing for them. This is particularly inconvenient and expensive with respect to Mr. Gregg Facette, who commutes from north of Plattsburgh.

10. In addition, during the growing season and summer of 2007, the Lewis Family Farm had four student interns and one apprentice working with us, from Washington State, Georgia, Long Island, Plattsburgh and France, respectively. Contrary to our plans, and because of this enforcement proceeding, we had to house these interns in off-farm housing, some distance away and at considerable cost to the farm.

11. In late 2006, the Lewis Family Farm took the step of investing in on-farm employee housing, in the knowledge that safe, modern, comfortable and energy efficient on-farm employee housing is a fundamentally sound agricultural practice. It is crucial to our

operations and in accordance with our philosophy. The people who care for the land have to be cared for as well. In our view, on-farm employee housing is essential for a self-sustaining farm in the Adirondack Park.

12. Our employee housing project involves four structures: the manager's house at Clark and Cross Roads, which was finished in late 2007 and is now occupied by Dr. Turco and his family; and, a three building cluster near the primary farm barns on Christian Road. The three-building cluster includes Residence I, the South Family Cottage and the North Family Cottage. Residence I has 4 bedrooms and is designed for employees, interns, apprentices and farm consultants; the North Family Cottage and the South Family Cottage each have 3 bedrooms. The Cottages are designed for nuclear farm families, the bedrock of sustainable farming.

13. The three-house cluster for employees adjacent to the barns is several hundred feet from the Boquet River. Several residences, a railroad track high ground and roads exist between the employee houses and the river.

14. No subdivision of land or sites was anticipated or involved in the design and construction of the four employee housing units. All are on the Lewis Family Farm and they are not the subject of separate parcels or the division of our farm lands. Indeed, the three-building housing complex on Christian Road is designed as a farmer community. The three houses are closely adjacent to one another and oriented in a horseshoe pattern around a common play area and courtyard. They share a well and are serviced by a common driveway and a common septic system and leach field, which is under the area of the planned common courtyard. The units are designed to form a courtyard, so that children of the farm families may play safely and common activities may take place. The placement of the units is

specifically designed to facilitate easy and energy efficient access to and surveillance of the adjacent barns. Given the common driveway, common septic system, common water supply, and common courtyard layout of the housing cluster near the barns, the houses are clearly not designed for any use other than for farm employees. I have repeatedly informed Agency Staff orally and in writing that the housing cluster is for farm employees. I attach this description as **Exhibit "A"**. This housing has been under consideration by me for many years and has always been considered as part of the overall scheme for consolidating farm operations near the barn plaza, which has nine (9) farm buildings we have built. As built, the housing complex is clearly not a subdivision, nor is it divisible.

15. I obtained permits from the Town of Essex for the four farm employee houses, including the three house cluster near the barns that is the subject of this proceeding. The application and site plans are attached as **Exhibit "B"**. The Town granted a foundation permit on November 14, 2006, attached as **Exhibit "C"**. The Town ultimately granted four farm building permits to the Lewis Family Farm as A-698 (Marco Home); A-699 (Residence I); A-700 (North Family Cottage); and A-701 (South Family Cottage). Copies of the final building permits are attached as **Exhibit "D"**. The approved common septic system for the housing project, designed by Mark Buckley, P.E., is attached as **Exhibit "E"**. The approval of the septic system is attached as **Exhibit "F"**.

16. The four farm employee houses are modular and as such are very susceptible to the elements until they are fully constructed with roofs erected and covered. Significant damage can occur if they are not immediately protected from the weather by being assembled and weatherproofed.

17. The Lewis Family Farm abides by high legal, ethical and environmental standards. We set out to comply with the law in building the farm employee housing. Upon being informed of Agency Staff's position that is at issue in this proceeding with respect to the three-house building cluster near the barns, I was shocked and upset as representatives of the Town of Essex had informed us during the building permit application process that no APA permits, or additional permits of any kind, were required. In addition, I had never obtained any APA permits for any of the other farm buildings and structures that we have built over the years, without objection.

18. Staff suggests that the Lewis Family Farm should have known of the Staff's view that it has the power to regulate farm housing based upon a purported statement to my husband, Salim B. Lewis, during a group meeting over two years ago. My husband may not have heard it, as he is hard of hearing and deaf in one ear. In any event, my husband did not relay the purported statement to me, I was not present on this occasion and I believe his attached affidavit to be true. **Exhibit "G".**

19. I had no idea that the APA Staff had formed an opinion that two of the four farm employee houses that we began to build in late 2006 needed an APA permit until mid-March, 2007, when I called Staff after hearing rumors of complaints.

20. I voluntarily put a hold on the three-home cluster after speaking with Staff. I consulted counsel at Nixon Peabody who informed me of their legal opinion that Staff was wrong as a matter of agricultural law.

21. Without counsel, I attempted to resolve the matter with Staff, who insisted that they had jurisdiction over farm development and they maintained that payment of a substantial

fine of $10,000 was mandatory. Indeed, Staff suggested this fine was small by their usual standards.

22. In mid-May 2007, I received a proposed "settlement agreement" from Agency Staff that demanded I waive the right to challenge APA jurisdiction to regulate farming, and pay a $10,000 fine by June 15, 2007. This "settlement agreement," attached as Exhibit "A" to Mr. Paul VanCott's affidavit, also demanded that I agree to Agency review of all future farm buildings. Upon reading this, I finally informed my husband for the first time of the housing dispute with the APA Staff. He expressed deep concern about the matter.

23. On June 1, 2007 I traveled to APA headquarters with counsel from Nixon Peabody in Rochester for a prearranged meeting with Mr. Paul VanCott but he did not show up. Rather, other Staff met with us and informed us that they could not resolve the case if we did not withdraw our considered view that the farm buildings were not subject to APA review and we paid the $10,000 fine. I came away from this meeting with a clear understanding that the APA assumes the right to regulate farming.

24. Notwithstanding Staff's demand that the Lewis Family surrender our right to farm, I was informed several times by APA Staff that the farm employee housing cluster near the barns was fine where it is and that the APA would issue a permit for it. But Staff insisted that I had to acknowledge that the APA had jurisdiction over farming and the Lewis Family Farm had to pay a substantial fine for failing to get an APA permit before construction began. **Exhibit "A"** is a true description of the Lewis Family Farm employee housing project that I provided to the Agency several months ago.

25. In early June 2007, I received a concerned telephone call from the Canadian manufacturer of the farm employee housing, indicating that, due to a significant regulatory

change, they could not honor their contract to install the houses after about the first week in July 2007.

26. Since I concluded that this dispute relates only to whether or not a fine is authorized, and since APA Staff informed me that the buildings were permittable to stay where they are, I decided to accept delivery and installation and not allow the buildings to suffer any damage from the elements during the pendency of this dispute. I was also advised by Nixon Peabody that it was permissible as a matter of law. Therefore, we completed the outside of the three houses and much of the interior work on Residence I.

27. On June 26, 2007, I followed the advice of my counsel at Nixon Peabody and I filed a case in Essex County Supreme Court seeking an order from the Court that the APA could not stop the completion of the farm housing project on the Lewis Family Farm because it is beyond the APA's review authority to regulate farms.

28. On June 27, 2007 my counsel at Nixon Peabody received a "Cease and Desist" order from APA Staff stating that construction of the three homes in the cluster must stop, although one of them, as yet unidentified, was legal.

29. Upon receipt of the Cease and Desist Order I again consulted with counsel at the law firm of Nixon Peabody who informed me that, in his legal opinion, farm buildings including farm employee housing were exempt from APA permit requirements and that the Cease and Desist Order was moot because we were in court already and the Judge would decide if construction had to stop.

30. At this time, the houses stand as depicted in a series of photographs attached as **Exhibit "H"**. The interiors of the North Family Cottage and South Family Cottage have not been addressed and the homes cannot be occupied. Residence I is largely finished on the

inside and could be ready for a certificate of occupancy shortly. I still have no idea as to which of the three houses in the cluster are purportedly illegal. Nonetheless, we have halted construction at this time, at great expense to the farm. A construction Team had been hired originally to work on all the homes simultaneously in order to work cost effectively. The value of this plan was lost.

31. As previously stated, at the time that Agency Staff informed me of their opinion that two of the farm employee houses in the cluster were jurisdictional, Staff demanded a permit application and a $10,000 fine.

32. At no time between the demand for a $10,000 fine and Agency Staff's filing before the Commissioners in December 2007, did I receive any notice, warning or information suggesting that the fine might increase.

33. I respectfully ask that the Commissioners dismiss this proceeding in the interests of the Lewis Family Farm's constitutionally protected right to farm. I ask that the Cease and Desist Order be annulled promptly so that the farm employee homes may be finished immediately and allowed to house farm families in the 2008 season.

Barbara A. Lewis

Sworn to before me this
17th day of January, 2008.

Janet L. Mero
Notary Public

JANET L. MERO
NOTARY PUBLIC STATE OF NEW YORK
NO. 2665400
QUALIFIED IN ESSEX COUNTY
COMM. EXPIRES 9/30/09

EXHIBIT I

ADIRONDACK PARK AGENCY

In the Matter of

Agency File: E2007-041

LEWIS FAMILY FARM, INC.,

Respondent.

AFFIDAVIT OF KLAAS MARTENS

State of New York)
) ss.:
County of Yates)

Klaas Martens, being sworn, deposes and says:

1. I live at 1443 Ridge Road, Penn Yan New York. I have been a certified organic farmer for 14 years and grow 1400 acres of grains, beans, vegetables and seed crops.

2. In addition to my work as an organic farmer, I also work as a professional consultant to organic farmers across the country, and have done so for the last ten years. I speak regularly at conferences on organic farming and both my wife, Mary-Howell Martens and myself have written many published articles on organic farming. We work closely with many university researchers and have authored several research papers ourselves.

3. As part of my work as an organic farmer and professional consultant, I have had the opportunity to meet Sandy and Barbara Lewis, and familiarize myself with their farm, the Lewis Family Farm, Inc. ("Lewis Farm"). I have visited and toured the

Lewis Farm on several occasions and am quite familiar with its business and agricultural practices.

4. I believe that Lewis Farm is the most modern and innovative organic farm in New York State, and is a national leader in organic farming.

5. Lewis farm has implemented extensive conservation practices including contour farming, strip cropping, diversion terraces, extensive subsurface drainage, sod waterways, and rock surfaced field roadways that protect and greatly improve the quality of the watersheds that it drains into.

6. They have cleaned up the roadsides and farmsteads on their property making the area far more attractive. They have constructed well built attractive new farm buildings on their property and keep them in excellent condition.

7. Lewis farm has invested heavily in the world's most advanced organic agricultural technology. They employ the most up to date agronomic practices and produce very high yields of excellent quality organic crops.

8. Many organic farmers benefit greatly from the Lewis Farm's presence. Many of the superior practices and machinery that were first employed at Lewis Farm have been adopted by other organic farmers all over the United States and are now common practice on the best operations.

9. Lewis Farm is unique among large organic farms in it's rapid and successful conversion to organic management and adoption of the newest technology.

10. I and other organic farmers have benefited by having the Lewis Farm in New York State because it serves the valuable role of showing other organic farms how to properly implement and use new technology and practices.

11. Due to the complexities of organic farming, any successful organic farm requires skilled professional employees that produce crops and animal products that will meet strict organic standards.

12. Such employees need to be housed onsite so that they can properly monitor and survey the farm and provide around-the-clock surveillance. Due to their high levels or education and training, such employees require proper onsite housing.

13. The Lewis Family Farm faces these same demands and pressures, and has undertaken an ambitious plan to renovate its onsite housing by tearing down all of the old housing and replacing it with new housing.

14. The new employee housing on the Lewis Family Farm is essential and vital for the continued success of the Lewis Family Farm because without, it is unlikely that the Lewis Family Farm will be able to recruit and retain employees with the requisite level of education and training needed to maintain the high standards to which the Lewis Family Farm aspires.

15. The Lewis Family Farm's need for highly educated and well trained employees is even more acute than that of other organic farms because the Lewis Family Farm, due to the resources that the Lewises have dedicated to it, is on the leading edge of agricultural practices and technology.

16. In my experience, on-farm employee housing is a sound agricultural practice and a foundation stone of a self-sustaining farm.

17. I understand that if the APA is successful in imposing it's large and unfair fines on Lewis Farm that it will force them into bankruptcy. That would be a tragic loss both to the Adirondack Park and to the many organic farmers in this country who benefit

from the advanced knowledge and organic practices that the Lewis Farm demonstrates and generously shares with other farmers.

Klaas Martens

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

On the 17 day of January in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared Klaas Martens, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Kate E. Decker
Notary Public, State of New York
Reg. No. 01DE6141307
Qualified in Yates County
Commission Expires May 15, 20 10

EXHIBIT J

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,
Petitioner,

-against-

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

ADIRONDACK PARK AGENCY,
Respondent.

ADIRONDACK PARK AGENCY,
Plaintiff,

-against-

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

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

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

Date: May 29, 2008

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***AMICUS CURIAE'S* INTEREST**

New York Farm Bureau, Inc. ("Farm Bureau"), a non-governmental voluntary general farm organization, was incorporated in 1953 to serve a two-fold purpose: to promote, protect, and represent the economic, social, and educational interests of New York farmers and to encourage the development and preservation

of agricultural areas within the state. With a statewide membership of approximately 30,000 families in 52 counties, including Essex County, Farm Bureau supports, preserves, and seeks to strengthen legislation recognizing the unique nature of the agricultural industry. As here, it also strives to ensure adherence to state policies regarding agriculture. This *amicus curiae* brief discusses the integral role on-farm worker housing plays in farm operations and endeavors to illuminate the broader impact of an erroneous determination of the Adirondack Park Agency that contravenes the long-standing state policy to promote agriculture.

QUESTION PRESENTED

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

SUMMARY OF THE CASE

A remarkable farm in Essex County that epitomizes the mutual goals of the Adirondack Park Act and the Agriculture and Markets Law – protecting a healthy ecology and economy and allowing open spaces and agriculture to flourish – is being thwarted because the Adirondack Park Agency has chosen to disregard

decades of law and policy and to ignore a simple truth: on-farm worker housing is as much a part of the fabric of farm operations as a barn, a shed or a silo. The State Constitution commands that lands in the Adirondack Park, which is so rich in natural resources, must not be exploited and destroyed. The Constitution also declares that agriculture, which is so crucial to our economy, must be encouraged.

The issues of how to preserve the unique character of the Adirondack Park and to promote agriculture throughout the state were addressed by the legislature in 1971. At that time, the Adirondack Park Act ("Park Act") was enacted, and "bona fide management of land for agriculture" was exempted from regulation. Subsequently, agricultural use structures, including barns, sheds, silos, and other farm structures, were excluded from the regulatory reach of the Adirondack Park Agency ("Park Agency"). Further, agriculture was found to be a primary use of the land in resource management areas of the Adirondack Park, where vast investments in agricultural buildings are vital to the economy. Also in 1971, the Agriculture and Markets Law ("Agriculture Law") was amended to create Agricultural Districts in order to protect the right to farm. Today the Agriculture Law cautions that our state's farms are in jeopardy of being lost for agricultural purposes and declares farms to be essential to the state's economy. The law mandates that ***all*** state agencies must encourage viable farms in Agricultural Districts and modify their

regulations accordingly, and it gives an expansive definition to "farm operations."

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

Unlike the Commissioner of Agriculture, the Park Agency has no expertise in

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

STATEMENT OF FACTS

In 1978, Salim and Barbara Lewis ("the Lewises") purchased a farmstead in the County of Essex, and over the years, they acquired adjacent lands and formed petitioner Lewis Family Farm ("Lewis Farm"), a 1,200-acre farm that is one of the state's largest USDA-certified organic farms and is a national leader in organic

farming (Amended Verified Petition, ¶¶ 3-4).[1] The Lewis Farm, which produces a variety of livestock and organic crops, sits in a state-certified Agricultural District (¶ 6). Over the years, 15 buildings in disrepair were torn down and replaced with new farm buildings (¶ 8). As a large-scale operation, the Lewis Farm requires multiple farm workers, and because suitable off-farm housing is not available, worker housing on the premises is crucial to the Lewis Farm (¶¶ 9-11, 20). Lack of suitable and sufficient local rental housing is a common problem for farms.

The Lewis Farm wanted to provide high quality housing to recruit and retain employees (¶ 12). A farm's provision of housing is a common component of farm worker agreements and is even required for some farm worker recruitment programs. In November 2006, construction began on three farm worker houses in a cluster next to the barns, after all necessary permits were obtained from the Town of Essex (¶¶ 13-14). The land was not divided into lots, and in fact, the cluster of homes shared a well, driveway, septic system, and leach field, all located around a common courtyard (¶¶ 18, 54). On February 1, 2008, in response to a request from petitioner's attorney, the Commissioner of Agriculture rendered an advisory opinion (Exh B). At issue was whether the land used for construction of the farm

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

worker housing was agricultural in nature.

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

Yet astonishingly, on September 5, 2007, the Park Agency served a notice of apparent violation, charging that the Lewis Farm was required to obtain a permit for

its alleged subdivision of lands and construction of single family dwellings (¶¶ 29-31). The Lewis Farm denied that the Agency had jurisdiction over its farm worker housing (¶ 33). Without holding a hearing, the Park Agency rendered a final determination on March 25, 2008, acknowledging that "agricultural use structures" were exempt from regulation, but finding that the subject farm worker houses did not constitute such structures and that the Lewis Farm had subdivided its land.

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

ARGUMENT

ON-FARM WORKER HOUSING SHOULD BE FOUND TO BE AS CLOSELY ASSOCIATED WITH AGRICULTURAL USES AS A BARN, A SHED OR A SILO, WHERE THE COMMISSIONER OF AGRICULTURE AND THE COURT OF APPEALS HAVE

HELD THAT SUCH HOUSING IS INTEGRAL AND ESSENTIAL TO FARM OPERATIONS; AND THE PARK AGENCY'S DETERMINATION MUST THEREFORE BE VACATED AND ANNULLED.

The Adirondacks: the Park and the Agency

To preserve the Adirondack area from exploitation and destruction by a contemporary generation in disregard of the generations to come, the State Constitution was amended in 1894 to declare: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands." *See*, NY Const, Art XIV, § 1; NY Const of 1894, Art VII, § 7; 3 Lincoln, Const. History of NY, at 391-454, cited in *Wambat Realty Corp. v. State*, 41 NY2d 490, 494 (1997). In 1971, Article 27 was added to the Executive Law, creating the Park Agency and empowering it to regulate development in the Adirondack Park. *See* L 1971, c 706, § 1. From its inception, the Park Act has exalted two things – the unique natural resources of the Adirondack Park and the vital role of agriculture. The latter role was protected by exempting "bona fide management of land for agriculture, livestock raising, horticulture and orchards" from provisions of Article 27 allowing for regulation by the Park Agency. Two years later, the Park Act was amended to declare that the Adirondack Park's "open space character" was of state, national, and international

importance. L 1973, c 348, §1.

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

In 1973, the amendments to the Park Act also adopted a land use plan and an official plan map delineating land area boundaries; land was classified by character; and regulations for use and density were set forth, based on objectives to be achieved in each area. *See* Exec Law § 805 (L 1973, c 348, § 1). The six land use area classifications are resource management, hamlet, low intensity use, moderate intensity use, rural use, and industrial use. *See* subdivision (3).[2] Primary uses –

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

those generally considered compatible with a land use area's character, purposes, policies, and objectives – are permitted, if in keeping with the intensity guidelines.

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

Crucial, viable agricultural areas lie in such areas, and many farms exhibit "a high level of capital investment for agricultural buildings and equipment." *See id.* In such areas, the Park Act also seeks to prevent strip development along major travel corridors and to allow for residential development in carefully selected, well-designed sites. *See* Exec Law § 805 (3) (g) (2). To provide freedom to farms to flourish in resource management areas, the Park Act provides that, while there may be only 15 principal buildings per square mile (*see* § 805 [3] [g] [3]), a single

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Agricultural Statistics Services. *See* www.nass.usda.gov/ny.

principal building encompasses all agricultural use structures on a farm, as well as all dwellings for the farmer and his employees. *See* Exec Law § 802 (50) (g).

The Central Dispute and the Agriculture Law

The central question in the instant dispute is whether permanent on-farm worker housing built in a resource management area is an agricultural use structure, defined as "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use." *See* Exec Law § 802 (8). Whether farm worker housing is encompassed in the definition of "agricultural use structure" is a question of first impression for the courts.[3] The Agriculture Law, constituting the main body of statutes dealing with agricultural enterprises, should be deemed the primary authority on issues concerning farming in Agricultural Districts, including what structures and buildings are associated with agricultural use. *See generally* Chapter 69 of Consolidated Laws of NY.

The Agriculture Law, enacted long before the Park Act (*see* L 1922, c 48), declares that the agricultural industry is basic to the life of our state and that it is the

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

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

When the Park Act was enacted after decades of existence of the Agriculture Law, the legislature could be assumed to have been aware of the primacy of the Agriculture Law in all matters of agriculture. Indeed, the premier status of agricultural lands within the Adirondack Park is reflected in the initial total exemption of such lands from the Park Agency control, the enduring exclusion of agricultural use structures from the Agency's reach, and the compatibility of farming with all land uses except for hamlets (*see* Executive Law § 805 [3]).

The State Constitution declares: "The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products." *See*, NY Const, Art XIV, § 4. The "agricultural protection" provision was adopted in 1969 and became effective in 1970. The parallels in the missions of the two agencies were advanced in the Laws of 1971, when the state legislature enacted the Park Act, as well as Article 25-AA of the Agriculture Law providing for the creation of Agricultural Districts to preserve agricultural land for agricultural use. *See* AML §§ 303, 305 (L 1971, c 479).[4] To further promote agriculture, Real Property Tax Law § 483 provides an exemption from real property taxation for structures and buildings essential to the operation of agricultural and horticultural lands, and such term encompasses structures and buildings used to provide housing for employees and their families who operate lands used for agricultural and horticultural purposes. *See* subdivisions (1) and (2).

The Article 25-AA declaration of legislative findings and intent warns that many of the agricultural lands in New York are in jeopardy of being lost for

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

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

To strengthen the protection of agricultural lands, the Agriculture Law prohibits local governments from unreasonably restricting and regulating farming in Agricultural Districts. *See*, AML § 305-a. As originally enacted, Agriculture Law Article 25-AA prohibited only the enactment of local laws and ordinances that

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

unduly infringed upon farming operations. *See* L 1971, c 479, § 1. The statute was amended in 1992 and 1997 to include prohibitions against administering local laws in a manner that would restrict farming. *See* L 1997, c 357, §§ 9, 11; L 1992, c 534, § 3. Such modifications were intended to strengthen protections against unreasonably restrictive local laws and ordinances. Finally, under the Agriculture Law, all buildings on the farm are considered part of a "farm operation" if they contribute to the production of crops, livestock, and livestock products as a commercial enterprise. *See* AML § 301 (11).

Lysander: The Role of Farm Worker Housing

And Deference to the Commissioner of Agriculture

A seminal case, *Town of Lysander v. Hafner*, *supra*, explores the role of farm worker housing in farm operations and dictates a result in favor of the Lewis Farm. When a municipality refused to grant a permit to install several mobile homes to house migrant farm workers on a farm in an Agricultural District, the Commissioner of Agriculture appeared *amicus curiae* on the farm owner's behalf and concluded that the mobile homes used for farm worker residences were protected on-farm buildings. *See id.* The Commissioner of Agriculture explained that farmers frequently rely on mobile homes as shelter for their farm laborers in order to accommodate the long work day, seasonal housing needs, and a shortage of

rental housing local areas. Thus, restricting the use of such homes could significantly impair the viability of farm operations. *See id.*, at 564.

While Supreme Court and the Appellate Division found that the use of mobile homes on farm premises to house migrant farm workers did not fall within the definition of farm operation, the Court of Appeals adopted the Commissioner of Agriculture's interpretation. His views on farming and farm worker housing were entitled to deference, given his special competence.[6] *See id.*; *see also Matter of Village of Lacona v. New York State Dept. of Agriculture and Markets*, ___ AD3d ___ (3rd Dept May 22, 2008); *Matter of Inter-Lakes Health, Inc. v. Town of Ticonderoga Town Board*, 13 AD3d 846, 848 (3rd Dept 2004).

Agriculture Department Guidelines for Review of Local Laws Affecting Farm Worker Housing ("Guidelines") echo *Lysander's* holding that farm worker housing is an integral part of farm operations because of the unique and central role it plays. Under the Guidelines, it is relevant that the employee using the housing is

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

engaged in the production functions of the farm operation. The Guidelines note that farm worker housing is usually located on the same property which supports farm structures and that building farm labor housing near other farm structures, such as a barn, is important for ease of access and security purposes.

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

After all, to subdivide means to create separate lots for separate ownership or occupancy with separate roads and utilities. *See* Exec Law § 802 (63). Such division obviously does not exist here, where the subject houses are located as a cluster by the barns and share a driveway, water supply, septic system, and electrical connection. In disregarding the Commissioner's view and the purpose and language of other pertinent statutes dealing with farm operations and worker housing, the Park Agency has dishonored traditional precepts of statutory

construction. The basic consideration in interpreting statutes is the general spirit and purpose underlying their enactment; and a construction is to be preferred that furthers such spirit and purpose. *See* McKinney's Statutes, § 96.

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

While the policies at play here are clear, the phrase "building or structure directly and customarily associated with agricultural use," requires special attention and analysis, since such language implicates a knowledge and understanding of farm operations and practice. On this matter, the Park Agency obviously has no special competence or expertise, and thus its views are entitled to no deference from this Court. *See Kurcsics v. Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 (1980);

Matter of Judd v. Constantine, 153 AD2d 270, 272-273 (3rd Dept 1990); 5 Davis, Admin Law § 29:27, at 458 (2nd ed). As the Court of Appeals held in *Lysander*, however, the views of the Commissioner of Agriculture are entitled to deference because of his special expertise.

The doctrine of *ejusdem generis* is applicable in the case at bar. It dictates that a general term is known by the company it keeps: where words of specific purport are followed by words of general import, the application of the last phrase is generally confined to the subject matter disclosed in the phrases with which it is connected. *See* McKinney's Statutes, § 239; *Bath & Hammondsport R.R. Co. v. New York State Dept. of Environ. Conservation*, 73 NY2d 434, 437-438 (1989); *Schulman v. People*, 10 NY2d 249, 256 (1961). The question here is thus whether, like a barn, shed or silo, farm worker housing is "directly and customarily associated with agricultural use." Just as other statutes must be considered to understand the state policies underlying the promotion of agriculture, so they must also be consulted in discerning the meaning of specific terms. Different statutes that refer to the same subject matter must be construed together, unless a contrary legislative intent is evident. *See Matter of Plato's Cave Corp. v. State Liquor Auth.*, 68 NY2d 791, 793 (1986); *Matter of Lower Manhattan Loft Tenants v. New York City Loft Board*, 66 NY2d 298, 304 (1985).

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

In sum, the challenged Park Agency determination is in derogation of state policy, as embedded in the State Constitution, the Park Act, and the Agriculture Law, and as set forth by the Court of Appeals and the Commissioner of Agriculture. The narrow definition given to "agricultural use structures" is divorced from the reality of farm life. Sustaining the determination could have a devastating impact. It could embolden the Park Agency to seek to improperly control a wide variety of structures essential to agriculture.

Moreover, confirming the determination could result in depriving farms of an

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

CONCLUSION

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

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Respectfully submitted,

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