

**Case Nos. 504626,
504696**

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

**IN THE MATTER OF LEWIS FAMILY
FARM, INC.,** Appellant,
v.
**NEW YORK STATE ADIRONDACK
PARK AGENCY,** Respondent.

(Case No. 1)

**IN THE MATTER OF LEWIS FAMILY
FARM, INC.,** Respondent,
v.
ADIRONDACK PARK AGENCY,
Appellant.

(Case No. 2)

ADIRONDACK PARK AGENCY,
Appellant,
v.
**LEWIS FAMILY FARM, INC.,
SALIM B. LEWIS and BARBARA LEWIS,**
Respondents.

(Case No. 3)

RECORD ON APPEAL - VOLUME I

(Case No. 1)
A.D. No. 504696

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RECORD ON APPEAL
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Case No. 504696

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

LEWIS FAMILY FARM, INC.,

Plaintiff-Appellant,

-against-

Case No. 504696
(Essex County Index
No. 498-07)

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant-Respondent.

STATEMENT PURSUANT TO CPLR 5531

Appellant Lewis Family Farm, Inc., as and for its statement pursuant to CPLR 5531,
states as follows:

1. The Index Number of this action before the New York State Supreme Court,
County of Essex was 498-07.
2. The full names of the original parties were as follows: LEWIS FAMILY FARM,
INC. and NEW YORK STATE ADIRONDACK PARK AGENCY.
3. This action was commenced in Essex County Supreme Court on June 26, 2007.
4. The Complaint was served on or about June 26, 2007.
5. This declaratory judgment action was commenced so that plaintiff-appellant Lewis
Family Farm could obtain a preliminary injunction prohibiting defendant-respondent Adirondack
Park Agency from interfering with the construction of farm worker housing on agricultural lands
and a declaratory judgment finding that the Adirondack Park Agency lacks jurisdiction over farm

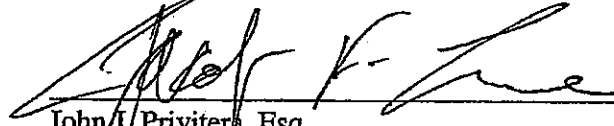
worker housing since these structures are exempt from Agency jurisdiction under the Adirondack Park Agency Act.

6. This appeal is taken from the Decision and Order of Essex County Supreme Court (Ryan, J.), dated August 16, 2007 and entered August 29, 2007.

7. This appeal is on the reproduced full record.

Dated: September 23, 2008
Albany, New York

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

A handwritten signature in black ink, appearing to read "John J. Privitera", is written over a horizontal line.

John J. Privitera, Esq.

Jacob F. Lammie, Esq.

Attorneys for Plaintiff-Appellant Lewis Family Farm, Inc.

677 Broadway

Albany, New York 12207

Tel. (518) 447-3200

Fax (518) 447-3200

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX



LEWIS FAMILY FARM, INC.

Plaintiff,

against

NEW YORK STATE ADIRONDACK PARK
AGENCY,


Defendant.

NOTICE OF APPEAL

Index No: 0498-07
RJI: 15-1-2007-0153
Hon. Kevin K. Ryan, J.S.C.

PLEASE TAKE NOTICE, that the above-named plaintiff, Lewis Family Farm, Inc., hereby appeals to the Appellate Division of the Supreme Court, Third Judicial Department, from the Decision and Order of the Supreme Court of Essex County (Hon. Kevin K. Ryan, J.S.C.), dated August 16, 2007, which denied the motion of the plaintiff, Lewis Family Farm, Inc. for injunctive relief and granted the defendant's cross-motion to dismiss the plaintiff's Complaint, and this appeal is taken from each and every part of that Order as well as from the whole thereof.

Dated: September 26, 2007
Queensbury, New York


Joseph R. Brennan
BRENNAN & WHITE, LLP
Attorneys for Plaintiff
Office and P.O. Address
163 Haviland Road
Queensbury, NY 12804-8702
Tel. No. (518) 793-3424

TO:
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7559 Court Street
P.O. Box 247
Elizabethtown, NY 12932

Loretta Simon, Esq.
Assistant Attorney General
State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

ELIZABETHTOWN, NY 12932
07 OCT - 1 AM 9:31
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CLERK'S OFFICE

ORIGINAL

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

-against-

NEW YORK STATE ADIRONDACK PARK
AGENCY,

Defendant.

NOTICE OF ENTRY

Index No. 0498-07

RJI No.: 15-1-2007-0153

Hon. Kevin K. Ryan

PLEASE TAKE NOTICE that the Decision and Order of the Supreme Court, County of Essex, regarding the above-captioned matter, signed August 16, 2007 by the Honorable Kevin K. Ryan, Acting Justice of the Supreme Court, denying plaintiff's motion for a temporary restraining order and further injunctive relief and granting defendant's motion to dismiss the complaint, a copy of which is attached hereto, was filed and entered in the Essex County Clerk's Office on August 29, 2007.

Dated: August 31, 2007

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for State Defendant



Lisa M. Burianek
Assistant Attorney General
of Counsel
N.Y.S. Department of Law
The Capitol
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(518) 486-7398

ELIZABETH TOWN, NY 12932

07 SEP -4 AM 9:56

ENTERED AND FILED
ESSEX COUNTY CLERK

At a term of the ~~00001930~~ Court
of the State of New York, ~~BOOK 119 PAGE 276~~
in and for the County of Essex,
at the Essex County Courthouse
in the Town of Elizabethtown,
on the 8th day of August, 2007.

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

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

-against-

NEW YORK STATE ADIRONDACK PARK
AGENCY,

Defendant.

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

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

RYAN, A.J.:

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

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

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

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

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

Members of the staff at the enforcement division at the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS ALL SO ORDERED.

E N T E R:

Kevin K. Ryan

KEVIN K. RYAN
Acting Justice, Supreme Court

Dated: Plattsburgh, New York
August 16, 2007

ENTERED AND FILED
ESSEX COUNTY CLERK
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ELIZABETHTOWN, NY 12932

ENTERED

Joseph A. Provoncha

JOSEPH A. PROVONCHA
ESSEX COUNTY CLERK

DATED:

8/29/07

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

SUMMONS
(Jury Trial Claimed)
Index No.:

000498 -07

TO: THE ABOVE-NAMED DEFENDANT:

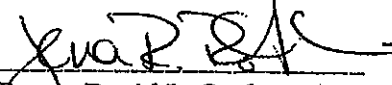
You are hereby summoned and required to serve upon plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: June 26, 2007

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By: Joseph R. Brennan
163 Haviland Road
Queensbury, New York 12801
Phone: (518) 793-3424

-and-

NIXON PEABODY LLP


By: David L. Cook
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ATTORNEYS FOR PLAINTIFF
Lewis Family Farm, Inc.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

COMPLAINT

Index No.: _____

000-98-07

Plaintiff Lewis Family Farm, Inc., ("Lewis Farm"), by its attorneys, Nixon Peabody LLP, for its Complaint against defendant New York State Adirondack Park Agency ("APA"), alleges:

NATURE OF THE ACTION

1. This is an action for declaratory judgment and injunctive relief through which Lewis Farm seeks (i) a determination that the Agriculture and Markets Law precludes APA's interference with the Lewis Farm housing project; and (ii) to enjoin the APA from interfering with such construction and thereby preventing Lewis Farm from obtaining the benefit of certain warranties on its modular homes.

PARTIES

2. Lewis Farm is a domestic corporation with a principal place of business located at 1212 Whallons Bay Road, Essex, Essex County, New York 12936. The activities on Lewis Farm constitutes farm operations within an agricultural district pursuant to New York's Agriculture and Markets Law § 305-a ("§ 305-a").

3. The APA is a New York State agency with a principal office located at 1133 NYS Route 86, Ray Brook, Essex County, New York 12977.

JURISDICTION AND VENUE

4. Venue is proper in this county, pursuant to CPLR § 505(a), because the APA is a public authority with a principal office within Essex County.

FACTS

Lewis Farm's History and Mission

5. In or about 1972, the Lewis family purchased the farmstead located at 1212 Whallons Bay Road, Essex County, following a long family association with the Adirondacks dating back to 1951. The farmstead is located within an agricultural district pursuant to the Agriculture and Markets Law article 25-AA (the farmstead shall also be referred to herein as "Lewis Farm").

6. Lewis Farm incorporated in 1985 and is not only a working farm, but one of the largest organic farms in New York State. Lewis Farm's mission is to improve land use methods and the lives of those who live in the vicinity of its operations. Additionally, Lewis Farm seeks to enhance and protect the environment, similar to the stated mission of the APA.

7. Lewis Farm has become a showcase for the Cornell cooperative extension and has, through example, contributed to four neighboring farms having become organic as well.

8. Lewis Farm has a strong reputation which has allowed for students and apprentices, both from the United States and internationally, to work for academic credit in their agricultural programs.

9. Lewis Farm provides employment and education to members of its community and beyond and is highly regarded in both local and non-local agricultural and environmental communities.

10. As evidence of its far-reaching agricultural and environmental reputation, Lewis Farm was recently approached by the government of Nepal to host four Nepali farmers so that they may learn the methods of sustainable, organic farming. The Nepali farmers are scheduled to arrive within the next few months and will need housing upon their arrival.

The Housing Project

11. Lewis Farm has expended significant capital investments to its operations in its efforts to remain economically viable. One of the last capital improvement projects Lewis Farm has left is to build staff housing, which was to have been completed by early summer, 2007 (the "Housing Project").

12. The purpose of the Housing Project is to provide modular housing for Lewis Farm employees and student interns. The modular housing units were constructed in Canada and shipped to New York to be placed on the newly built foundations. The housing units are meant to be installed by the Canadian manufacturer, but the manufacturer is only available through June 30, 2007.

13. After June 30, 2007, Lewis Farm will have to engage another contractor to install the units and is in danger of losing the manufacturer's warranty on the units if they are not installed by the manufacturer.

14. In addition, the modular units must be weatherized once they are installed on the foundations. If this process is interrupted, the resulting loss of warranty and/or quality of construction is unascertainable.

15. Because the Housing Project will provide housing for Lewis Farm employees and interns, it constitutes farm operations within the meaning of § 305-a.

16. In or about November, 2006, in furtherance of the Housing Project, Mark McKenna, the Housing Project's project manager, obtained building permits from the Town of Essex. At that time, the Town's Code Enforcement Officer, David Lansing, told Mr. McKenna that no further permits were necessary since the Housing Project was strictly a farm operation. Lewis Farm relied on this information and, accordingly, did not contact APA.

17. Subsequently, and only after Lewis Farm had expended significant resources on architectural, engineering, and foundation work, did Mr. Lansing, the Code Enforcement Officer travel to the Housing Project and, despite his earlier advisement, suggest that Mr. McKenna contact the APA for an additional permit.

18. Lewis Farm immediately and voluntarily ceased operations on the Housing Project and contacted the APA to ascertain and obtain whatever permit was allegedly necessary. Only after having been contract by Lewis Farm, did the APA inform it that the issue was being addressed by the its Enforcement Division.

19. The interruption of the Housing Project has caused Lewis Farm significant damage including, without limitation, continuation of payments to the project manager and Lewis Farm interns having to be housed off site in housing that is insufficient as a long-term solution.

20. The interruption and ensuing delay is also causing Lewis Farm to potentially lose the warranty on the modular units, as well as potentially causing Lewis Farm further irreparable harm in the form of decreased quality and/or decreased warranty resulting should the weatherproofing process be interrupted.

21. On or about May 14, 2007, Lewis Farm received correspondence from the APA enclosing a proposed settlement agreement, a true copy of which is attached hereto as Exhibit A. Notably, neither the APA's letter nor proposed settlement agreement in any way acknowledge that the Housing Project is taking place on a farm in furtherance of farm-related activities. Rather, the APA letter and proposed agreement give the wrongful appearance that what is at issue is some sort of commercial subdivision plan.

22. Nowhere in the APA's May 14, 2007 correspondence does the APA assert that the Housing Project poses any threat to public health or safety or in any way causing damage to the environment. The proposed agreement requests that Lewis Farm pay a penalty of \$10,000. The APA has indicated that, once Lewis Farm paid the penalty, it did not see any reason why an after-the-fact permit would not issue.

AS AND FOR A FIRST CAUSE OF ACTION
Injunctive Relief

23. Lewis Farm repeats and realleges paragraphs 1 through 22 as if fully set forth herein.

24. The improper interference by the APA in the Housing Project has been and is continuing to cause Lewis Farm to suffer irreparable harm in that it risks losing warranty coverage for the modular homes each day that construction has been halted. Moreover, Lewis Farm is at risk of suffering irreparable harm should the weatherproofing process be delayed. The ensuing damages are irreparable because they are virtually impossible to ascertain at this time. Moreover, Lewis Farm interns, who were supposed to have been housed in the completed Housing Project, are in danger of losing their temporary housing with no alternative long-term option available to them.

25. By reason of the foregoing, Lewis Farm is entitled to an injunction enjoining the APA from further interfering with the Housing Project.

26. Lewis Farm has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION
Declaratory Judgment

27. Lewis Farm repeats and realleges paragraphs 1 through 26 as if fully set forth herein.

28. The above-described APA interference with the Housing Project constitutes an unreasonable restriction or regulation of farm operations in violation of § 305-a because it is interfering with Lewis Farm's ability to provide housing to its employees and apprentices. Section 305-a specifically restricts the local planning and land use decision-making on New York farmlands such that the APA's assertion of jurisdiction is improper in this instance.

29. The granting of declaratory relief will terminate the controversy as to whether or not the APA may assert its jurisdiction in a manner in which it may interfere with the Housing Project.

WHEREFORE, Lewis Farm demands judgment against the defendant as follows:

- a. On the first cause of action, a temporary then permanent injunction enjoining the APA from interfering with the Housing Project and from imposing any penalty on Lewis Farm;
- b. On the second cause of action, judgment in the form of a declaration the APA does not have jurisdiction over the Housing Project because such jurisdiction, as the APA has attempted to impose it, is in direct conflict with the Agriculture and Markets Law; and
- c. For such other and further relief as this Court may deem just, equitable and proper.

Dated: June 26, 2007

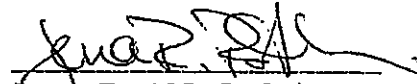
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- and -

NIXON PEABODY LLP



By: David L. Cook
Jena R. Rotheim

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30 South Pearl Street
Albany, New York 12207
Phone: (518) 427-2650

ATTORNEYS FOR PLAINTIFF
Lewis Family Farm, Inc.

EXHIBIT A



973-610-1866 Barbara's cell

May 14, 2007

S.B. and Barbara Lewis
1212 Whallons Bay Rd.
Essex, NY 12936

RE: Enforcement File E2007-041
Tax Map Parcel 49.3-2-27

Dear Mr. and Mrs. Lewis:

Please find enclosed proposed settlement agreement intended to resolve Agency Enforcement File E2007-041.

The first set of violations addressed by this settlement involve two single family dwellings that were recently constructed on your property and are not located in the immediate vicinity of any pre-existing dwellings. Pursuant to sections 809(2)(a) and 810(2)(d) of the Adirondack Park Agency Act, any new single family dwelling in a Resource Management land use area requires a permit from the Agency. In addition, a permit is required for the construction of any single family dwelling on Resource Management lands in a designated Recreational River Area under Section 577 of the Agency's Regulations. These two dwellings are therefore in violation of the Agency's laws because no permit was sought or obtained for their construction.

The enclosed settlement also addresses three subdivision violations associated with your property. Section 802(63) of the APA Act defines a subdivision as "any division of land into two or more lots, parcel or sites ... for the purpose of any form of separate ownership or occupancy," and Sections 809(2)(a) and 810(1)(e) of the Act require a permit for any subdivision in a Resource Management land use area. In addition, Section 577 of Agency Regulations requires a permit for the undertaking of any subdivision of Resource Management lands in a designated Recreational River Area. Accordingly, because no permit was sought or obtained for the subdivision created by the

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

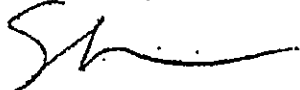
S.B. and Barbara Lewis
May 14, 2007
Page 2

construction of the two dwellings described above, they are in violation of the Agency's subdivision laws. In addition, the construction of a third, proposed replacement single family dwelling constitutes a subdivision violation, as the corresponding pre-existing structure has not yet been removed from the property.¹

The enclosed settlement proposes resolution of these violations through review of the structures under the Agency's after-the-fact permit process. If the agreement is acceptable to you, please sign both copies before a notary public and return them to me by June 8, 2007. Paul Van Cott will then execute the agreements on behalf of the Agency and send you one original for filing in the Essex County Clerk's Office.

Please feel free to call me with any questions. I thank you for your anticipated cooperation in resolving this matter.

Sincerely,



Sarah Reynolds, Esq.
Assistant Enforcement Attorney

SHR:PVC:JLQ:mlr

Enclosure: Proposed Settlement Agreement

¹ Section 570.3 (ah) (3) of Adirondack Park Agency regulations 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)." In addition, Section 573.6(e) of Agency regulations 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." Pursuant to Section 810(2)(d) of the Adirondack Park Agency Act, the construction of a single family dwelling in a Resource Management land use area constitutes a Class B regional project.

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the apparent
violations of § 809(2) (a) of
the Adirondack Park Agency Act
and 9 NYCRR § 577 by:

LEWIS FAMILY FARM, INC.

SETTLEMENT AGREEMENT
Agency File #E2007-041

Respondent, on lands situated in
the Town of Essex, Essex County
(Tax Map Parcel 49.3-2-27)
LUA: Resource Management/Hamlet/Rural Use
-----X

WHEREAS:

1. Pursuant to Section 809(2) (a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.
2. Pursuant to Section 809(2) (a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands in the Adirondack Park.
3. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the construction of a single family dwelling on Resource Management lands within any designated recreational river area in the Adirondack Park.
4. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands within any designated recreational river area in the Adirondack Park.
5. Agency investigation reveals that Respondent has undertaken the construction of two post-1973 single family dwellings on Tax Map Parcel 49.3-2-27 ("Lot 27"). These dwellings are located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the subject property. No permit was obtained from the Agency prior to the undertaking of the construction of these two single family dwellings.

6. Agency investigation reveals that Respondent has undertaken a subdivision into sites of the subject property pursuant to the construction of the two post-1973 single family dwellings described in Paragraph 5 above, as well as the construction of a third, proposed replacement single family dwelling also located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road. No permit was obtained from the Agency prior to the undertaking of this subdivision into sites of the subject property.
7. Lot 27 is an approximately 1,111.12 acre parcel that contains Resource Management, Hamlet, and Rural Use lands and is partially located within the designated Boquet River Recreational River Area. The three post-1973 single family dwellings described in Paragraphs 5 and 6 above are located on the Resource Management portion of Lot 27 and within the designated Recreational River Area.
8. Respondent is the current owner of Lot 27, as described in a deed recorded in Book 1023, Page 35, in the Essex County Clerk's Office.
9. Respondent desires to resolve this matter by settlement and agrees to be bound by the terms of this Settlement Agreement as set forth below.

NOW, THEREFORE, THE AGENCY AND RESPONDENT AGREE AS FOLLOWS:

1. By June 15, 2007, Respondent shall submit an after-the-fact permit application to the Agency for the construction of the three post-1973 single family dwellings described above. Respondent shall cooperate in responding to any Agency request for information related to this after-the-fact permit application within 30 days unless otherwise agreed to by the Agency and Respondent. Respondent shall have the rights of administrative appeal and judicial review and all other rights established by law for project applicants, ~~except that Respondent shall not challenge Agency jurisdiction, and Respondent waives the statutory deadlines for Agency determinations on a complete application and a final determination.~~ The Agency makes no representation herein as to the approvability of Respondent's after-the-fact permit application.

if winning
it is difficult
and strategy
endlines
that good is
right to
appeal.

2. By June 15, 2007, Respondent shall pay a civil penalty in the amount of ~~\$10,000~~ to the State of New York in resolution of the violations noted above.
3. In the event that Respondent fails to submit its after-the-fact permit application or otherwise comply with the after-the-fact permit process as set forth in Paragraph 1 above, Respondent shall pay an additional civil penalty in the amount of ~~\$10,000~~ to the State of New York within 30 days of written notification of such violation by the Agency.
4. Payment of all civil penalties shall be transmitted to the Adirondack Park Agency, Attn: Doug Miller, Enforcement Officer.
5. Respondent, its successors and assigns shall not undertake any new land use or development on the subject property, including the construction of any new principal buildings or the replacement of any pre-existing principal buildings, without first obtaining an Agency permit, variance, or non-jurisdictional determination. Respondent's ongoing construction of a single family dwelling located to the south and east of the intersection of Clark Road and Cross Road is hereby determined to be non-jurisdictional, provided that the replacement structure is not in excess of 40 feet in height as measured from the highest point of the structure to the lower of either the original or finished grade, as this structure replaces a pre-existing single family dwelling that was located in the immediate vicinity of the dwelling currently under construction. Respondent shall obtain an Agency permit before continuing the replacement of this pre-existing single family dwelling if the dwelling under construction will be in excess of 40 feet in height.
6. This settlement is binding on Respondent and all present and future owners of the subject property. All deeds conveying all or a portion of the lands subject to this settlement shall contain references to this Settlement Agreement.
7. By June 15, 2007, Respondent shall file an original copy of this Settlement Agreement in the Essex County Clerk's Office in the same manner as an Agency permit and shall provide proof of such filing to the Agency.

8. This matter shall be deemed to be finally resolved upon the full execution of this Settlement Agreement.

Dated: , 2007
Ray Brook, New York

ADIRONDACK PARK AGENCY

By: _____
Paul Van Cott
Enforcement Attorney

STATE OF NEW YORK }
 } SS:
COUNTY OF ESSEX }

On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared Paul Van Cott, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AGREEMENT

Respondent agrees to the terms set forth in this Settlement Agreement to resolve the matter of Adirondack Park Agency File E2007-041.

By:

Lewis Family Farm, Inc.

STATE OF)
) SS:
COUNTY OF)

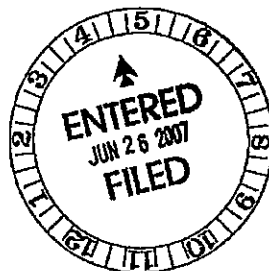
On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

May 11, 2007 Settlement Agreement

FILINGS

STAMPED <u>6/26/07</u>	INDEXED <u>Y</u>	ORDERS/JUD _____
COURT COPY <u>Y</u>	VERIFIED _____	READ _____
OCA BOOK <u>6/26/07</u>	SCANNED _____	VERIFIED _____
_____	_____	_____
_____	_____	_____
_____	_____	_____



ESSEX COUNTY CLERK

NIXON PEABODY LLP
 Omni Plaza
 30 South Pearl Street
 Albany, NY 12207

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

6 1
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ESSEX

SENT TO THE COURT

06/26/07
Joseph A. Provoncha,
Essex County Clerk
Clerk, Supreme and
County Courts

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
ADIRONDACK PARK AGENCY,

Defendant.

ORDER TO SHOW
CAUSE AND TEMPORARY
RESTRAINING ORDER

Index No.:

000498-07

This matter having been brought before the Court upon plaintiff's application for the
issuance of an Order to Show Cause with a Temporary Restraining Order upon the Summons
and Complaint and the exhibit annexed thereto, the Affidavit of Barbara , sworn to June ____,
2007, the Affidavit of Mark McKenna, sworn to June ____, 2007, the Affirmation of David L.
Cook, and the Memorandum of Law included with the papers, and it appearing that plaintiff has
a likelihood of success on the merits and will suffer immediate and irreparable harm before a
final hearing can be had and good, just and equitable cause having been shown;

IT IS HEREBY ORDERED, that:

Defendant, or its attorneys, shall show cause before this Court at the Essex County
Courthouse, 7559 Court Street, Elizabethtown, New York 12932 at ____ o'clock in the
____ noon on the ____ day of _____, 2007 before the Honorable Judges of the Supreme
Court of New York, Essex County,

WHY an Order should not be entered herein granting the following relief:

ENJOINING and RESTRAINING, preliminarily and permanently, defendant, its agents, affiliates, successors and assigns, and all those in active concert or participation with it, from interfering with the housing construction project at the Lewis Family Farm for which a Town of Essex permit has already issued (the "Housing Project") including:

- (a) issuing any stop work order or consent decree purporting to interfere with the Housing Project;
- (b) attempting to impose any penalty on plaintiff for the Housing Project; and
- (c) attempting to assert jurisdiction over the Housing Project.

IT IS FURTHER ORDERED, that pending the hearing of this motion, defendant, its agents, affiliates, successors and assigns, and all those in active concert or participation with it, are hereby restrained and enjoined from taking any action which would interfere with the Housing Project including:

- (a) issuing any stop work order or consent decree purporting to interfere with the Housing Project;
- (b) attempting to impose any penalty on plaintiff for the Housing Project; and
- (c) attempting to assert jurisdiction over the Housing Project; and

IT IS FURTHER ORDERED that answering papers, if any, shall be filed and served on counsel for plaintiff, Nixon Peabody LLP, at Omni Plaza, 30 South Pearl Street, Albany, New York so as to be received no later than three (3) days prior to the return date of this motion. The failure of any party to file an answer or otherwise move within the time above will subject such party to entry of default judgment, if appropriate. Plaintiff shall file and serve their reply papers, if any, so as to be received no later than 12:00 p.m. on the date immediately preceding the return date of this motion;

ORAL ARGUMENT and personal appearance shall be required on the return date of this motion; and

IT IS FURTHER ORDERED, that, sufficient reason appearing therefore, let a copy of this Order to Show Cause, together with the papers upon which it is based, be served by overnight mail upon defendant New York State Adirondack Park Agency, _____, Ray Brook, New York 12977 on or before June ____, 2007 and said service shall be deemed good and sufficient service thereof.

ENTER

Dated: ____/____/07

J.S.C.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

Affidavit of Barbara Lewis

Index No.:

000498 - 07

STATE OF NEW YORK :
: SS.
COUNTY OF ESSEX :

BARBARA LEWIS, being duly sworn, deposes and says:

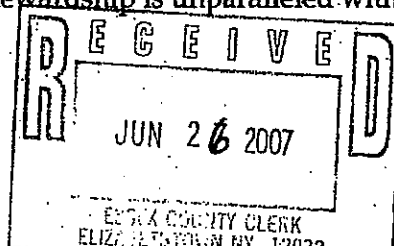
1. I am a shareholder of Lewis Family Farm, Inc. ("Lewis Farm"), the plaintiff in the above-captioned action. By virtue of my position, I have personal knowledge of the facts stated herein or, where indicated to be upon information and belief, believe such facts to be true.

2. I make this affidavit in further support of the motion of Lewis Farm for a temporary restraining order and preliminary injunction.

3. In or about 1972, the Lewis family farmstead and home was purchased, following a long family association with the Adirondacks which dates back to 1951. Lewis Farm incorporated in 1985 and is not only a working farm, but one of the largest organic farms in New York State.

4. Lewis Farm's mission is to improve land use methods and the lives of those who live in the vicinity of its operations. Additionally, Lewis Farm seeks to enhance and protect the environment, similar to the stated mission of the APA. Lewis Farm's record of environmental stewardship is unparalleled within the Adirondack Park.

10633970.1



SENT TO THE COURT

6/26/07
Joseph A. Provoncha,
Essex County Clerk
Clerk, Supreme and
County Courts

038838/000004

R00033

5. Lewis Farm has become a showcase for the Cornell cooperative extension and has, through example, contributed to four neighboring farms having become organic as well. Lewis Farm has a strong reputation which has allowed for students and apprentices, both from the United States and international, to work for academic credit in their agricultural programs.

6. Lewis Farm provides employment and education to members of its community and beyond and is highly regarded in both local, national and international agricultural and environmental communities. Lewis Farm was approached by the government of Nepal to host four farmers from Nepal so that they may learn the methods of sustainable, organic farming. The Nepali farmers are scheduled to arrive in the fall of 2007.

7. Lewis Farm has made significant capital investments to its operations in its efforts to remain economically viable. One of the last capital improvement projects Lewis Farm has left is to build staff homes, which was to have been completed by early summer, 2007 (the "Housing Project"). The purpose of the Housing Project is to provide farm housing for farm employees and student interns while they work on the Lewis Farm.

8. Upon notification that the APA may assert jurisdiction over the Housing Project, Lewis Farm immediately chose to voluntarily cease operations on the Housing Project and contracted the APA to obtain whatever permit was allegedly necessary. Only after having been contract by Lewis Farm did the APA inform it that the issue was being addressed by the APA's Enforcement Division.

9. The interruption of the Housing Project because of the APA's asserted jurisdiction, has caused Lewis Farm significant damage including, without limitation,


continuation of payments to the project manager and Lewis Farm interns having to be housed off site in housing that is insufficient as a long-term solution, as well as attorneys' fees incurred in negotiating with the APA. Such monetary damages have exceeded \$30,000.

10. In addition, the modular housing units were constructed in Canada and shipped to New York to be placed on the newly built foundations. The manufacturer is only available, however, through June 30, 2007 for the installation. To the extent Lewis Farm is forced to hire another contractor to install the units, it risks losing the warranty to which it would otherwise be entitled.


11. In addition, it is necessary to weatherize the units once they are placed on the foundations. To the extent the APA's interference causes this process to be interrupted or delayed, such will cause Lewis Farm irreparable harm in that construction quality and/or warranty will be sacrificed.

12. The monetary penalty the APA seeks to impose on Lewis Farm will cause a significant hardship to the farm. Lewis Farm is presently striving to become a profitable organic farm. The penalty, along with the costs already incurred by Lewis Farm in dealing with the APA, seriously undermines these efforts.

13. I believe Lewis Farm will suffer irreparable injury if the requested injunctive relief, both temporary and permanent, is not granted.


Barbara Lewis

Sworn to before me, this
26th day of June, 2007.

 Essex Co. Clerk
Notary Public
Jum Ex 12/31/07

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

Affidavit of Mark
McKenna

Index No.:

000498-67

STATE OF NEW YORK :
COUNTY OF ESSEX : SS.

MARK MCKENNA, being duly sworn, deposes and says:

1. I am a project manager for Lewis Family Farm, Inc. ("Lewis Farm"), the plaintiff in the above-captioned action. By virtue of my position, I have personal knowledge of the facts stated herein or, where indicated to be upon information and belief, believe such facts to be true.

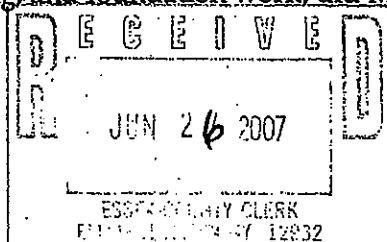
2. I make this affidavit in further support of the motion of Lewis Farm for a temporary restraining order and preliminary injunction.

3. In furtherance of the Housing Project which is the basis of this action, I obtained building permits from the Town of Essex in or about November, 2006.

4. At that time, the Town's Code Enforcement Officer, David Lansing, told me that no further permits were necessary since the Housing Project was strictly a farm operation. Lewis Farm relied on this information and, accordingly, we did not contact APA.

5. Only after Lewis Farm had expended significant resources on architectural, engineering, and foundation work, did Mr. Lansing, the Code Enforcement Officer, travel

10634020.1



SENT TO THE COURT

chc/er
Joseph A. Provoncha,
Essex County Clerk
Clerk, Supreme and
County Courts

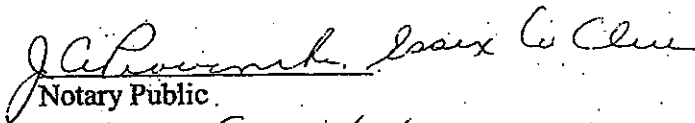
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R00036

to the Housing Project and, despite his earlier advisement, suggest that Lewis Farm contact the APA for another permit.


Mark McKenna

Sworn to before me, this
26th day of June, 2007.


Notary Public
Sum Ex 12/31/07

ORIGINAL

At a term of the Supreme Court of the
State of New York, held in and for the
County of Essex at the Courthouse,
Elizabethtown, New York, on the 17th day
of July, 2007.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
ADIRONDACK PARK AGENCY,

Defendant.

AMENDED ORDER TO SHOW
CAUSE AND TEMPORARY
RESTRAINING ORDER

Index No.: 000498-07

2007-0153

This matter having been brought before the Court upon plaintiff's application for the
issuance of an Order to Show Cause with a Temporary Restraining Order upon the Summons
and Amended Complaint and the exhibit annexed thereto, the Amended Affidavit of Barbara
Lewis, sworn to July 3, 2007, the Amended Affidavit of Mark McKenna, sworn to July 3,
2007, the Affirmation of Joseph R. Brennan and the exhibit annexed thereto, and the Amended
Memorandum of Law included with the papers, and it appearing that plaintiff has a likelihood of
success on the merits and will suffer immediate and irreparable harm before a final hearing can
be had and good, just and equitable cause having been shown;

IT IS HEREBY ORDERED, that:

Defendant, or its attorneys, shall show cause before this Court at the Essex County
Courthouse, 7559 Court Street, Elizabethtown, New York 12932 at 1:30 o'clock in the

after noon on the 8th day of August, 2007 before the Honorable Judges of the Supreme Court of New York, Essex County,

WHY an Order should not be entered herein granting the following relief:

ENJOINING and **RESTRAINING**, preliminarily and permanently, defendant, its agents, affiliates, successors and assigns, and all those in active concert or participation with it, from interfering with the housing construction project at the Lewis Family Farm for which a Town of Essex permit has already issued (the "Housing Project") including:

- (a) issuing any stop work order or consent decree purporting to interfere with the Housing Project;
- (b) attempting to impose any penalty on plaintiff for the Housing Project; and
- (c) attempting to assert jurisdiction over the Housing Project.

~~**IT IS FURTHER ORDERED**, that pending the hearing of this motion, defendant, its agents, affiliates, successors and assigns, and all those in active concert or participation with it, are hereby restrained and enjoined from taking any action which would interfere with the Housing Project including:~~

- YXR
- ~~(a) issuing any stop work order or consent decree purporting to interfere with the Housing Project;~~
 - ~~(b) attempting to impose any penalty on plaintiff for the Housing Project; and~~
 - ~~(c) attempting to assert jurisdiction over the Housing Project; and~~

IT IS FURTHER ORDERED that answering papers, if any, shall be filed and served on counsel for plaintiff, Brennan & White, LLP, 163 Haviland Road, Queensbury, New York 12801, so as to be received no later than three (3) days prior to the return date of this motion. The failure of any party to file an answer or otherwise move within the time above will subject such party to entry of default judgment, if appropriate. Plaintiff shall file and serve their reply

papers, if any, so as to be received no later than 12:00 p.m. on the date immediately preceding the return date of this motion;

ORAL ARGUMENT and personal appearance shall be required on the return date of this motion; and

IT IS FURTHER ORDERED, that, sufficient reason appearing therefore, let a copy of this Order to Show Cause, together with the papers upon which it is based, be served by overnight mail upon defendant New York State Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York 12977 on or before July 21, 2007 and said service shall be deemed good and sufficient service thereof.

ENTER

Dated: 07/13/07

PLASBURGH, NY

Samuel Nya
R.J.S.C.

ENTERED AND FILED
ESSEX COUNTY CLERK
07 JUL 20 PM 12:29
ELIZABETHTOWN, NY 12932

ORIGINAL
ORIGINAL

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

AMENDED COMPLAINT

Index No.: 000498-07

Plaintiff Lewis Family Farm, Inc., ("Lewis Farm"), by its attorneys, Brennan & White, LLP and Nixon Peabody LLP, for its Amended Complaint against defendant New York State Adirondack Park Agency ("APA"), alleges:

NATURE OF THE ACTION

1. This is an action for declaratory judgment and injunctive relief through which Lewis Farm seeks (i) a determination that the Adirondack Park Agency Act, New York State Executive Law, Article 27 ("APAA") does not give the APA jurisdiction over the Lewis Farm project; (ii) a determination that, even if the APAA gave the APA jurisdiction over the Lewis Farm project, the Agriculture and Markets Law precludes APA's interference; and (iii) to enjoin the APA from interfering with such construction and thereby potentially preventing Lewis Farm from obtaining the benefit of certain warranties on its modular homes.

PARTIES

2. Lewis Farm is a domestic corporation with a principal place of business located at 1212 Whallons Bay Road, Essex, Essex County, New York 12936. The activities

on Lewis Farm constitute farm operations within an agricultural district pursuant to New York's Agriculture and Markets Law § 305-a ("§ 305-a").

3. The APA is a New York State agency with a principal office located at 1133 NYS Route 86, Ray Brook, Essex County, New York 12977.

JURISDICTION AND VENUE

4. Venue is proper in this county, pursuant to CPLR § 505(a), because the APA is a public authority with a principal office within Essex County.

FACTS

Lewis Farm's History and Mission

5. In or about 1978, the Lewis family purchased the farmstead located at 1212 Whallons Bay Road, Essex County, following a long family association with the Adirondacks dating back to 1951. The farmstead is located within an agricultural district pursuant to the Agriculture and Markets Law article 25-AA (the farmstead shall also be referred to herein as "Lewis Farm").

6. Lewis Farm incorporated in 1985 and is not only a working farm, but one of the largest organic farms in New York State. Lewis Farm's mission is to improve land use methods and the lives of those who live in the vicinity of its operations. Additionally, Lewis Farm seeks to enhance and protect the environment, similar to the stated mission of the APA.

7. Lewis Farm has become a showcase for the Cornell cooperative extension and has, through example, contributed to four neighboring farms having become organic as well.

8. Lewis Farm has a strong reputation which has allowed for students and apprentices, both from the United States and internationally, to work for academic credit in their agricultural programs.

9. Lewis Farm provides employment and education to members of its community and beyond and is highly regarded in both local and non-local agricultural and environmental communities.

10. As evidence of its far-reaching agricultural and environmental reputation, Lewis Farm was recently approached by the government of Nepal to host four Nepali farmers so that they may learn the methods of sustainable, organic farming. The Nepali farmers are scheduled to arrive within the next few months and will need housing upon their arrival.

The Housing Project

11. Lewis Farm has expended significant capital investments to its operations in its efforts to remain economically viable. One of the last capital improvement projects Lewis Farm has left is to build staff housing, which was to have been completed by early summer, 2007 (the "Housing Project").

12. Lewis Farm previously removed fifteen housing units from the Lewis Farm land. Since that time, it has only replaced two housing structures. Through the Housing Project, Lewis Farm now seeks to replace only four units.

13. The purpose of the Housing Project is to provide much needed employee housing. Moreover, the Housing Project falls squarely within the APAA definition of "agricultural use structure" in that farm employee housing constitutes a "building or structure directly and customarily associated with agriculture use."

14. Because the Housing Project will provide housing for Lewis Farm employees and interns, it constitutes farm operations within the meaning of § 305-a.

15. The modular housing units for installation in the Housing Project were constructed in Canada and shipped to New York to be placed on the newly built foundations. The housing units are meant to be installed by the Canadian manufacturer, but the manufacturer's laborers are only available through June 30, 2007.

16. After June 30, 2007, Lewis Farm will have to engage another contractor to install the units and is in danger of losing the manufacturer's warranty on the units if they are not installed by the manufacturer.

17. Additionally, there exist certain language barriers should Lewis Farm be forced to use certain other laborers for construction since the manufacturer converses only in French. This could have the effect of certain critical components of the construction being compromised and, in any event, will cause the Housing Project to be less efficiently managed.

18. In addition, the modular units must be weatherized once they are installed on the foundations. If this process is interrupted, the resulting loss of warranty and/or quality of construction is unascertainable.

19. In or about October, 2006, in furtherance of the Housing Project, Mark McKenna, the Housing Project's project manager, obtained building permits from the Town of Essex. At that time the Town's Code Enforcement Officer, David Lansing, told Mr. McKenna that no further permits were necessary since the Housing Project was strictly a farm operation. Lewis Farm relied on this information and, accordingly, did not contact APA.

20. Subsequently, and only after Lewis Farm had expended significant resources on architectural, engineering, and foundation work, did Mr. Lansing, the Code Enforcement Officer travel to the Housing Project and, despite his earlier advisement, suggest that Mr. McKenna contact the APA. Thereafter, Mr. Lansing called the APA with Mr. McKenna and was told that a permit was necessary for the project.

21. In or about January, 2007, Barbara Lewis of Lewis Farm contacted John Quinn, an APA Environmental Programs Specialist to ask him what was needed. Meanwhile, McKenna obtained the APA permitting application. Barbara Lewis, having received the permitting papers, called Mr. Quinn and indicated that she would provide anything necessary to obtain a permit so the project would not be delayed. While completing the application Barbara Lewis called Mr. Quinn a second time with questions about the application only then was she informed that the matter had been referred to the APA enforcement division.

22. The interruption of the Housing Project has caused Lewis Farm significant damage including, without limitation, continuation of payments to the project manager, reputational damage, and Lewis Farm interns having to be housed off site in housing that is insufficient as a long-term solution.

23. The interruption and ensuing delay may also cause Lewis Farm to lose the warranty on the modular units, as well as potentially causing Lewis Farm further irreparable harm in the form of decreased quality and/or decreased warranty resulting should the weatherproofing process be interrupted.

24. On or about May 14, 2007, Lewis Farm received correspondence from the APA enclosing a proposed settlement agreement, a true copy of which is attached hereto as **Exhibit A**. Notably, neither the APA's letter nor proposed settlement agreement in any

way acknowledge that the Housing Project is taking place on a farm in furtherance of farm-related activities. Rather, the APA letter and proposed agreement give the wrongful appearance that what is at issue is some sort of commercial subdivision plan.

25. Nowhere in the APA's May 14, 2007 correspondence does the APA assert that the Housing Project poses any threat to public health or safety or in any way causing damage to the environment. The proposed agreement requests that Lewis Farm pay a penalty of \$10,000. The APA has indicated that, once Lewis Farm paid the penalty, an after-the-fact permit would be issued.

AS AND FOR A FIRST CAUSE OF ACTION
Injunctive Relief

26. Lewis Farm repeats and realleges paragraphs 1 through 26 as if fully set forth herein.

27. The improper interference by the APA in the Housing Project has been and is continuing to cause Lewis Farm to suffer irreparable harm in that it risks losing warranty coverage for the modular homes each day that construction has been halted. Moreover, Lewis Farm is at risk of suffering irreparable harm should the weatherproofing process be delayed. The ensuing damages are irreparable because they are virtually impossible to ascertain at this time. Moreover, Lewis Farm interns, who were supposed to have been housed in the completed Housing Project, are in danger of losing their temporary housing with no alternative long-term option available to them.

28. By reason of the foregoing, Lewis Farm is entitled to an injunction enjoining the APA from further interfering with the Housing Project.

29. Lewis Farm has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

Declaratory Judgment

30. Lewis Farm repeats and realleges paragraphs 1 through 30 as if fully set forth herein.

31. The above described description of the Housing Project and its purpose demonstrates that it is outside of the APA's jurisdiction. The Housing Project involves the construction of agricultural use structures over which the APA has no jurisdiction pursuant to the APA Act, New York State Executive Law, Article 27.

32. The granting of declaratory relief will terminate the controversy as to whether or not the APA may continue to improperly assert its jurisdiction over the Housing Project, which flies in the face of the APAA.

AS AND FOR A THIRD CAUSE OF ACTION **Declaratory Judgment**

33. Lewis Farm repeats and realleges paragraphs 1 through 33 as if fully set forth herein.

34. The above-described APA interference with the Housing Project constitutes an unreasonable restriction or regulation of farm operations in violation of § 305-a because it is interfering with Lewis Farm's ability to provide housing to its employees and apprentices. Section 305-a specifically restricts the local planning and land use decision-making on New York farmlands such that the APA's assertion of jurisdiction is improper in this instance.

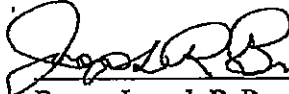
35. The granting of declaratory relief will terminate the controversy as to whether or not the APA may assert its jurisdiction in a manner in which it may interfere with the Housing Project.

WHEREFORE, Lewis Farm demands judgment against the defendant as follows:

- a. On the first cause of action, a temporary then permanent injunction enjoining the APA from interfering with the Housing Project and from imposing any penalty on Lewis Farm;
- b. On the second cause of action, judgment in the form of a declaration that the APA does not have jurisdiction over the Housing Project;
- c. On the third cause of action, judgment in the form of a declaration that, even if the APA has jurisdiction over the Housing Project, the APA's interference is improper in this instance because it is in direct conflict with the Agriculture and Markets Law; and
- d. For such other and further relief as this Court may deem just, equitable and proper.

Dated: July __, 2007

BRENNAN & WHITE, LLP


By: Joseph R. Brennan

BRENNAN & WHITE
163 Haviland Road
Queensbury, New York 12801
Phone: (518) 793-3424

NIXON PEABODY LLP

By: David L. Cook
Jena R. Rotheim

Omni Plaza, Suite 900
30 South Pearl Street
Albany, New York 12207
Phone: (518) 427-2650

ATTORNEYS FOR PLAINTIFF
Lewis Family Farm, Inc.

ORIGINAL

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

**Amended Affidavit of
Barbara Lewis**

Index No.: 000498-07

STATE OF NEW YORK :
: SS.
COUNTY OF ESSEX :

BARBARA LEWIS, being duly sworn, deposes and says:

1. I am a shareholder of Lewis Family Farm, Inc. ("Lewis Farm"), the plaintiff in the above-captioned action. By virtue of my position, I have personal knowledge of the facts stated herein or, where indicated to be upon information and belief, believe such facts to be true.

2. I make this affidavit in further support of the motion of Lewis Farm for a temporary restraining order and preliminary injunction.

3. In or about 1978, the Lewis family farmstead and home was purchased, following a long family association with the Adirondacks which dates back to 1951. Lewis Farm incorporated in 1985 and is not only a working farm, but one of the largest organic farms in New York State.

4. Lewis Farm's mission is to improve land use methods and the lives of those who live in the vicinity of its operations. Additionally, Lewis Farm seeks to enhance and protect the environment, similar to the stated mission of the APA. Lewis Farm's record of environmental stewardship is exemplary.

5. Lewis Farm has become a showcase for the Cornell cooperative extension and has, through example, contributed to four neighboring farms having become organic as well. Lewis Farm has a strong reputation which has allowed for students and apprentices, both from the United States and international, to work for academic credit in their agricultural programs.

6. Lewis Farm provides employment and education to members of its community and beyond and is highly regarded in both local, national and international agricultural and environmental communities. Lewis Farm was approached by the government of Nepal to host four farmers from Nepal so that they may learn the methods of sustainable, organic farming. The Nepali farmers are scheduled to arrive in the fall of 2007.

7. Lewis Farm has made significant capital investments to its operations in its efforts to remain economically viable. One of the last capital improvement projects Lewis Farm has left is to build staff homes, which was to have been completed by early summer, 2007 (the "Housing Project").

8. Lewis farm previously removed fifteen housing units from its property. Since that time, it has replaced only two. The four units Lewis Farm now seeks to replace via the Housing Project is to provide much needed farm housing for key and critical farm employees and student interns while they work on the Lewis Farm.

9. Once complete, each unit of the Housing Project will provide housing for key and critical Lewis Farm workers.

10. When I was informed by Mark McKenna, the project manager, that the APA may assert jurisdiction over the Housing Project, I contacted John Quinn, the Environmental Programs Specialist at the APA to see what he wanted Lewis Farm to do.

11. Subsequently, Mr. McKenna provided me with the permitting papers he had obtained from the APA. Only when I again called Mr. Quinn with questions pertaining to the permitting papers, did he inform me that the matter was before APA's enforcement division, and that he could, therefore, not speak to me further about any permit or the project.

12. The interruption of the Housing Project because of the APA's asserted jurisdiction, has caused Lewis Farm significant damage including, without limitation, continuation of payments to the project manager, reputational damage, and Lewis Farm interns having to be housed off site in housing that is insufficient as a long-term solution, as well as attorneys' fees incurred in negotiating with the APA. Such monetary damages have exceeded \$30,000.

13. In addition, the modular housing units were constructed in Canada and shipped to New York to be placed on the newly built foundations. The manufacturer's contractors are only available, however, through June 30, 2007 for the installation. To the extent Lewis Farm is forced to hire another contractor to install the units, it risks losing the warranty to which it would otherwise be entitled.

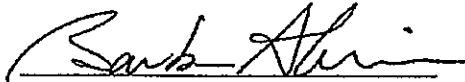
14. To the extent Lewis Farm is forced to hire substitute laborers, it will suffer the consequences of an expected language barrier between the new laborers and manufacturer, who only speaks French. This will surely cause further delays, and may result in decreased quality in the completed project.

15. In addition, it is necessary to weatherize the units once they are placed on the foundations. To the extent the APA's interference causes this process to be interrupted or delayed, such will cause Lewis Farm irreparable harm in that construction quality and/or warranty will be sacrificed.

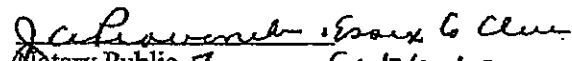
16. The monetary penalty the APA seeks to impose on Lewis Farm will cause a significant hardship to the farm. Lewis Farm is presently striving to become a profitable organic farm. The penalty, along with the costs already incurred by Lewis Farm in dealing with the APA, seriously undermines these efforts.

17. Moreover, if Lewis Farm becomes unable to provide housing for its workers, it will be forced to liquidate its cattle since there will be no one to care for the herd.

18. I believe Lewis Farm will suffer irreparable injury if the requested injunctive relief, both temporary and permanent, is not granted.


Barbara Lewis

Sworn to before me, this
3rd day of July, 2007.


Notary Public Term 6/12/31/07

Barbara
N.D.

ORIGINAL

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

**Amended Affidavit of
Mark McKenna
Index No.: 000498-07**

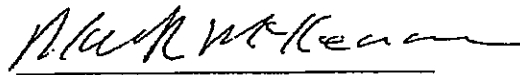
STATE OF NEW YORK :
: SS.
COUNTY OF ESSEX :

MARK MCKENNA, being duly sworn, deposes and says:

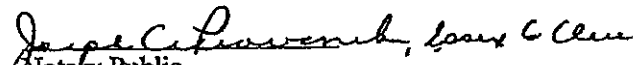
1. I am a project manager for Lewis Family Farm, Inc. ("Lewis Farm"), the plaintiff in the above-captioned action. By virtue of my position, I have personal knowledge of the facts stated herein or, where indicated to be upon information and belief, believe such facts to be true.
2. I make this affidavit in further support of the motion of Lewis Farm for a temporary restraining order and preliminary injunction.
3. In furtherance of the Housing Project which is the basis of this action, I obtained building permits from the Town of Essex in or about October, 2006.
4. In or about November, 2006, the Town's Code Enforcement Officer, David Lansing, told me that no further permits were necessary since the Housing Project was strictly a farm operation. I relied on this information and, accordingly, we did not contact APA.
5. Only after Lewis Farm had expended significant resources on architectural, engineering, and foundation work, did Mr. Lansing, the Code Enforcement Officer, travel

to the Housing Project and, despite his earlier advisement, suggest that I "might want to contact the APA".

6. Upon notification that the APA may assert jurisdiction over the Housing Project, I immediately chose to voluntarily cease operations on the Housing Project and contacted the APA to obtain whatever permit was allegedly necessary.


Mark McKenna

Sworn to before me, this
3rd day of ~~June~~, 2007.
July


Notary Public
Term Ex 12/31/07

McKenna
NP

ORIGINAL

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- v -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

Attorney's Affirmation

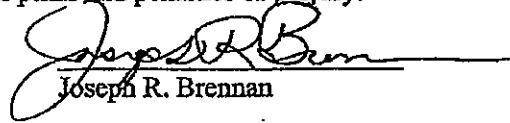
Index No.: 000498-07

STATE OF NEW YORK :
: SS.
COUNTY OF WARREN :

JOSEPH R. BRENNAN, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the Courts in this state and am a member of the law firm Brennan & White, LLP. I represent the Lewis Family Farm in this action and, as such, am fully familiar with the facts and circumstances involved in this action.
2. I make this affirmation in support of Lewis Family Farm's request for injunctive relief enjoining the Adirondack Park Agency ("APA") from further interfering in the Lewis Farm employee housing project and for a declaration that the APA does not have jurisdiction over the project.
3. Attached hereto as **Exhibit A** is a true copy of the APA Jurisdictional Table which was taken from the APA website.
4. For each of the reasons contained within the Lewis Family Farm's Amended Memorandum of Law and each of the affidavits submitted in support, Lewis Family Farms respectfully requests that this Court enjoin the APA from further interference and that it issue a declaration that the APA does not have jurisdiction over the project, or, alternatively, that the Agriculture and Markets Law precludes APA interference in this instance.

Sworn to on this 3rd day of July, 2007 under the pains and penalties of perjury.


Joseph R. Brennan

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

Index No. 000498-07

R.J.I. No. 15-1-2007-0153

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant.

PLEASE TAKE NOTICE that, upon the affirmation of John Banta, Counsel to the Adirondack Park Agency, dated July 23, 2007; and the affirmation of Sarah Reynolds, dated July 20, 2007, and exhibits thereto; and the affidavit of John L. Quinn, sworn to July 23, 2007 and exhibits thereto; and the affidavit of Douglas Miller, sworn to July 20, 2007, and exhibits thereto; and the accompanying memorandum of law, defendant APA will move this Court, at a Special Term thereof to be held on the 8th day of August, 2007, at 1:30 pm, at the Essex County Courthouse, Elizabethtown, New York, or as soon thereafter as counsel may be heard, for an order:

- (1) converting this declaratory judgment to a CPLR Article 78 proceeding pursuant to CPLR 103(c);
- (2) dismissing this complaint for lack of subject matter jurisdiction pursuant CPLR § 3211(2);
- (3) dismissing this complaint as premature and not ripe for

judicial review because the State defendant has not issued a final determination in its review of the permit application and therefore the court lacks jurisdiction pursuant CPLR Article § 780i (1);

(4) dismissing the complaint for failure to state a cause of action pursuant to CPLR § 3211(7), 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;

(5) rejecting plaintiff's request for injunctive relief for failure to establish the elements required for injunctive relief;

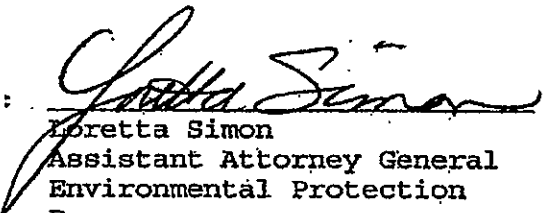
(6) such other and further relief as the Court deems just and appropriate.

In the event the State defendant's motion to dismiss is denied in whole or in part, the State defendant respectfully requests 30 days after service of notice of entry of the order denying this motion in which to serve an answer to the complaint.

Dated: Albany, New York
August 1, 2007

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for State Respondents

By:


Loretta Simon
Assistant Attorney General
Environmental Protection
Bureau

The Capitol
Albany, New York 12224
(518) 402-2724

TO:

Joseph Brennan, Esq.
Brennan & White LLP
163 Haviland Rd.
Queensbury, New York 12804

David L. Cook, Esq.
Nixon Peabody LLP
Omni Plaza, Suite 900
30 South Pearl Street
Albany, N.Y. 12207

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant.

AFFIRMATION

Index No. 000498-07
R.J.I. No. 15-1-2007-
0153

JOHN BANTA, an attorney duly admitted to practice in the State of New York, affirms under penalty of perjury pursuant to CPLR §2106:

1. I am Counsel to the Adirondack Park Agency (the "Agency") and have served in this position since 2002. I received a B.A. from Hiram College, Hiram, Ohio, in 1969 and a J.D. from Harvard Law School in 1972. I am a member in good standing of both the Illinois and New York State Bars. I was admitted to practice in Illinois in 1972 and to practice in New York in 1995. Prior to my appointment as Counsel, I was Deputy Director for the Division of Planning at the Agency for 21 years.

2. In my role as Counsel, I provide legal advice and counsel to the Agency, including its Members. I work

closely with the Legal Affairs and State Land Committees of the Agency and the staff that serve them. I also provide legal advice to Agency staff, including the Executive Director, and I supervise the Agency's other attorneys.

3. I am familiar with the Lewis Family Farm, Inc. ("Lewis Farm") and the Agency file in this matter. I make this affirmation in support of the Agency's Motion to Dismiss the complaint against the Agency brought by the Lewis Farm.

4. On December 5, 2005, I visited the Lewis Farm at the invitation of S.B. (Sandy) Lewis along with former Executive Director Richard Lefebvre and Acting Executive Director Mark Sengenberger.

5. During the course of our visit, Mr. Lewis advised us of his intention to build several single family dwellings on the Resource Management portion of his property as housing for his workers or as temporary housing for visitors to the Lewis Farm.

6. We advised Mr. Lewis that he would need to obtain permits from the Agency for those single family dwellings prior to their construction.

7. On June 27, 2007, I received a telephone call from the Supervisor of the Town of Essex, who advised me that local residents had been calling to complain that Lewis Farm was in the process of erecting modular single family dwellings on their property on that date. I conveyed that information to the supervisor of the Agency's enforcement program so that appropriate enforcement action could be taken.


Dated: July 23, 2007
Ray Brook, New York



JOHN BANTA

Sworn to before me this

day of July, 2007.



Notary Public

MARY L. REARDON
Notary Public - State of New York
Qualified in Essex County
No. 01RE6114798
Commission Expires Aug. 23, 20 28

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

AFFIRMATION

v.

ADIRONDACK PARK AGENCY,

Index No. 000498-07
RJI No. 15-1-2007-0153

Defendant.

SARAH REYNOLDS, an attorney licensed to practice law in the courts of the State of New York, affirms under penalty of perjury:

1. I am an attorney for the Adirondack Park Agency (the "Agency") and work in the Agency's enforcement program. In this role, I am responsible for administrative enforcement of the Agency's laws and regulations, including in the Town of Essex, Essex County.

2. I make this affirmation in support of the Agency's Motion to Dismiss this matter. I am familiar with the facts of the matter based on my review of Agency files and my settlement discussions and exchange of settlement correspondence with Lewis Family Farm, Inc. and its attorneys.

PRELIMINARY STATEMENT

3. The Agency's motion herein seeks: (1) dismissal of this declaratory judgment action for lack of subject matter

jurisdiction, prematurity, and failure to state a cause of action pursuant to CPLR § 3211(7) because Agriculture and Markets Law § 305-a does not preclude the Agency from requiring a permit for subdivision of land and construction of single family dwellings; and (2) dismissal of plaintiff's request for injunctive relief.

4. Plaintiff's action and this responding motion arise from Lewis Family Farm, Inc. ("the Lewis Farm")'s subdivision of and construction of three single family dwellings on a Resource Management property within the designated Boquet River Recreational River area in the Town of Essex, Essex County.

STATUTORY FRAMEWORK

5. The Official Adirondack Park Land Use and Development Plan Map classifies private lands in the Adirondack Park under the following land use categories: "Hamlet," "Moderate Intensity Use," "Low Intensity Use," "Rural Use," "Resource Management," and "Industrial Use." Executive Law § 805.

6. Resource Management lands "are those lands where the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public considerations." Executive Law § 805(3)(g).

The Adirondack Park Agency Act

7. Executive Law § 809(2)(a) requires individuals and corporations 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.

8. The Town of Essex does not have an Agency-approved local land use program.

9. 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.

10. 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).

11. 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) ...

12. 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)."

In addition, 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."

13. 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).

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

The Wild, Scenic, and Recreational
River System Act and 9 NYCRR § 577

15. The Wild, Scenic, and Recreational River 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).

16. 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).

17. 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."

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

19. 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).

20. In recreational river areas, rivers projects include, inter alia, 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).

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

FACTUAL ALLEGATIONS

22. On December 5, 2005, the Agency's Counsel John Banta, Deputy Director for the Regulatory Programs Division Mark Sengenberger, and then-Executive Director Richard Lefebvre visited the Lewis Farm with S.B. Lewis. During this visit, these Agency staff members advised Mr. Lewis that construction of any new single family dwelling on the Resource Management portion of the Lewis Farm property, including the construction of a dwelling for farmworker housing, would require a permit from the Agency. See Affidavit of John Banta.

23. The administrative enforcement matter was initiated as a result of a telephone call on March 19, 2007, between Barbara Lewis and Agency staff member John Quinn. Mrs. Lewis telephoned Mr. Quinn in relation to a previously submitted application for a permit for construction of single family dwellings in a Resource Management area on the Lewis Farm property. During this telephone call, Mrs. Lewis admitted that construction had already

begun on the houses, and Mr. Quinn stated that this constituted a violation of law and that he would forward the matter to the Agency's enforcement program for resolution. See Affidavit of John Quinn and accompanying exhibits.

24. Upon receipt of a Potential Violation Report from Mr. Quinn, Douglas Miller of the Agency's enforcement program conducted a site visit on March 28, 2007, and determined that foundations had been constructed for three new single family dwellings located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the Lewis Farm property. These foundations were established on the Resource Management portion of the Lewis Farm's lands and are within the designated Boquet River Recreational River area. See Affidavit of Douglas Miller and accompanying exhibits.

25. Further investigation by Mr. Miller revealed that one of these new dwellings is located in the immediate vicinity of a pre-existing dwelling planned for removal by the Lewis Farm; however, the pre-existing dwelling had not been removed.

26. Based on these facts, Mr. Miller and I, in consultation with other Agency staff, concluded that the undertaking of construction of each of these 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 undertaking of 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).

27. On May 14, 2007, I sent a proposed Settlement Agreement to Lewis Family Farm, Inc., alleging the above-referenced violations and seeking submission to the Agency of an after-the-fact permit application for the construction of the three new single family dwellings located to the north and east of the intersection of Whallons Bay Road and Christian Road and a \$10,000 civil penalty. A copy of this Settlement Agreement is attached hereto as Exhibit A.

28. I also sent a letter explaining the alleged violations with the proposed Settlement Agreement. A copy of this explanatory letter is attached hereto as Exhibit B.

29. On May 15, 2007, I spoke with Barbara Lewis to explain the terms of the proposed settlement. During this conversation, Barbara Lewis requested deletion of the civil penalty requirement from the proposed agreement.

30. Barbara Lewis telephoned me on at least one other occasion in late May and again requested relief from the civil penalty requirement in the proposed settlement.

31. On May 24, 2007, I joined my supervisor, Paul Van Cott, Esq. on a teleconference call with John Greenthal, attorney for Nixon Peabody LLP and counsel for Lewis Family Farm, Inc. During this conversation, Mr. Greenthal requested a reduction in the civil penalty amount or a suspension of the civil penalty pending compliance with the permitting process and requirements.

32. On June 1, 2007, Douglas Miller and I met with Barbara Lewis and David Cook, attorney for Nixon Peabody LLP and counsel for Lewis Family Farm, Inc.

33. During the meeting on June 1, 2007, Mr. Miller and I informed Barbara Lewis and David Cook that staff was prepared to review the single family dwellings through the Agency's after-the-fact permit review process, provided that the Lewis Farm agree to pay a \$10,000 civil penalty or contribute a comparable amount of money toward an appropriate environmental benefit project. We informed Barbara Lewis and her counsel that staff allows for after-the-fact permitting as an option during settlement negotiations only where staff in the Agency's permitting division has advised that the project at issue may be approvable. While Mr. Miller and I stated in this meeting that it appeared the dwellings would likely be approved in their current locations if an after-the-fact permit application were submitted pursuant to the proposed Settlement Agreement, we never guaranteed the results of the permitting process or indicated

that environmentally protective conditions would not be imposed if the houses were approved.

34. On June 15, 2007, I received a letter from David Cook requesting the issuance of a permit without a civil penalty. A copy of this letter is attached hereto as Exhibit C.

35. On June 18, 2007, I again spoke with David Cook, who requested that the Agency allow the homes to be installed before June 30, 2007, provided that the Farm place \$10,000 into an escrow account, where the money could be held pending resolution of the enforcement matter.

36. On June 19, 2007, I informed David Cook that the Agency's settlement proposal remained unchanged, i.e., that Lewis Family Farms, Inc. would need to obtain an after-the-fact permit from the Agency prior to constructing the houses and pay a penalty of \$10,000 for the violations.

37. On June 20, 2007, the Agency received a letter from Mark McKenna, Project Manager for the farm housing project. In this letter, Mr. McKenna takes "full responsibility for the project" and any related violations. A copy of this letter is attached hereto as Exhibit D.

38. On June 27, 2007, the Agency's Counsel received a call from Ronald Jackson, Supervisor for the Town of Essex, stating that construction work had recommenced on the new housing sites. See, Affidavit of John Banta.

39. As of the date of this affirmation, the violations alleged by Agency staff against Lewis Family Farms, Inc. have not been administratively resolved by settlement or otherwise. Absent resolution of the alleged violations by settlement, Agency staff would normally commence a formal administrative enforcement proceeding pursuant to 9 NYCRR Part 581 to obtain a determination from the Agency' Enforcement Committee regarding the alleged violations, appropriate relief and civil penalties.

Dated: July 20, 2007
Ray Brook, New York


SARAH REYNOLDS

REYNOLDS AFFIRMATION

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	Proposed Settlement Agreement
Exhibit B	Explanatory letter of May 14, 2007
Exhibit C	June 12, 2007 letter from David Cook, Esq.
Exhibit D	June 19, 2007 letter from Mark McKenna, Project Manager

EXHIBIT A

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the apparent
violations of § 809(2)(a) of
the Adirondack Park Agency Act
and 9 NYCRR § 577 by:

LEWIS FAMILY FARM, INC.

SETTLEMENT AGREEMENT
Agency File #E2007-041

Respondent, on lands situated in
the Town of Essex, Essex County
(Tax Map Parcel 49.3-2-27)
LUA: Resource Management/Hamlet/Rural Use
-----X

WHEREAS:

1. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.
2. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands in the Adirondack Park.
3. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the construction of a single family dwelling on Resource Management lands within any designated recreational river area in the Adirondack Park.
4. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands within any designated recreational river area in the Adirondack Park.
5. Agency investigation reveals that Respondent has undertaken the construction of two post-1973 single family dwellings on Tax Map Parcel 49.3-2-27 ("Lot 27"). These dwellings are located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the subject property. No permit was obtained from the Agency prior to the undertaking of the construction of these two single family dwellings.

6. Agency investigation reveals that Respondent has undertaken a subdivision into sites of the subject property pursuant to the construction of the two post-1973 single family dwellings described in Paragraph 5 above, as well as the construction of a third, proposed replacement single family dwelling also located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road. No permit was obtained from the Agency prior to the undertaking of this subdivision into sites of the subject property.
7. Lot 27 is an approximately 1,111.12 acre parcel that contains Resource Management, Hamlet, and Rural Use lands and is partially located within the designated Boquet River Recreational River Area. The three post-1973 single family dwellings described in Paragraphs 5 and 6 above are located on the Resource Management portion of Lot 27 and within the designated Recreational River Area.
8. Respondent is the current owner of Lot 27, as described in a deed recorded in Book 1023, Page 35, in the Essex County Clerk's Office.
9. Respondent desires to resolve this matter by settlement and agrees to be bound by the terms of this Settlement Agreement as set forth below.

NOW, THEREFORE, THE AGENCY AND RESPONDENT AGREE AS FOLLOWS:

1. By June 15, 2007, Respondent shall submit an after-the-fact permit application to the Agency for the construction of the three post-1973 single family dwellings described above. Respondent shall cooperate in responding to any Agency request for information related to this after-the-fact permit application within 30 days unless otherwise agreed to by the Agency and Respondent. Respondent shall have the rights of administrative appeal and judicial review and all other rights established by law for project applicants, except that Respondent shall not challenge Agency jurisdiction, and Respondent waives the statutory deadlines for Agency determinations on a complete application and a final determination. The Agency makes no representation herein as to the approvability of Respondent's after-the-fact permit application.

2. By June 15, 2007, Respondent shall pay a civil penalty in the amount of \$10,000 to the State of New York in resolution of the violations noted above.
3. In the event that Respondent fails to submit its after-the-fact permit application or otherwise comply with the after-the-fact permit process as set forth in Paragraph 1 above, Respondent shall pay an additional civil penalty in the amount of \$10,000 to the State of New York within 30 days of written notification of such violation by the Agency.
4. Payment of all civil penalties shall be transmitted to the Adirondack Park Agency, Attn: Doug Miller, Enforcement Officer.
5. Respondent, its successors and assigns shall not undertake any new land use or development on the subject property, including the construction of any new principal buildings or the replacement of any pre-existing principal buildings, without first obtaining an Agency permit, variance, or non-jurisdictional determination. Respondent's ongoing construction of a single family dwelling located to the south and east of the intersection of Clark Road and Cross Road is hereby determined to be non-jurisdictional, provided that the replacement structure is not in excess of 40 feet in height as measured from the highest point of the structure to the lower of either the original or finished grade, as this structure replaces a pre-existing single family dwelling that was located in the immediate vicinity of the dwelling currently under construction. Respondent shall obtain an Agency permit before continuing the replacement of this pre-existing single family dwelling if the dwelling under construction will be in excess of 40 feet in height.
6. This settlement is binding on Respondent and all present and future owners of the subject property. All deeds conveying all or a portion of the lands subject to this settlement shall contain references to this Settlement Agreement.
7. By June 15, 2007, Respondent shall file an original copy of this Settlement Agreement in the Essex County Clerk's Office in the same manner as an Agency permit and shall provide proof of such filing to the Agency.

8. This matter shall be deemed to be finally resolved upon the full execution of this Settlement Agreement.

Dated: , 2007
Ray Brook, New York

ADIRONDACK PARK AGENCY

By: _____
Paul Van Cott
Enforcement Attorney

STATE OF NEW YORK)
COUNTY OF ESSEX) SS:

On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared Paul Van Cott, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AGREEMENT

Respondent agrees to the terms set forth in this Settlement Agreement to resolve the matter of Adirondack Park Agency File E2007-041.

By:

Lewis Family Farm, Inc.

STATE OF)
) SS:
COUNTY OF)

On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

May 11, 2007 Settlement Agreement

EXHIBIT B



May 14, 2007

S.B. and Barbara Lewis
1212 Whallons Bay Rd.
Essex, NY 12936

RE: Enforcement File E2007-041
Tax Map Parcel 49.3-2-27

Dear Mr. and Mrs. Lewis:

Please find enclosed proposed settlement agreement intended to resolve Agency Enforcement File E2007-041.

The first set of violations addressed by this settlement involve two single family dwellings that were recently constructed on your property and are not located in the immediate vicinity of any pre-existing dwellings. Pursuant to sections 809(2)(a) and 810(2)(d) of the Adirondack Park Agency Act, any new single family dwelling in a Resource Management land use area requires a permit from the Agency. In addition, a permit is required for the construction of any single family dwelling on Resource Management lands in a designated Recreational River Area under Section 577 of the Agency's Regulations. These two dwellings are therefore in violation of the Agency's laws because no permit was sought or obtained for their construction.

The enclosed settlement also addresses three subdivision violations associated with your property. Section 802(63) of the APA Act defines a subdivision as "any division of land into two or more lots, parcel or sites ... for the purpose of any form of separate ownership or occupancy," and Sections 809(2)(a) and 810(1)(e) of the Act require a permit for any subdivision in a Resource Management land use area. In addition, Section 577 of Agency Regulations requires a permit for the undertaking of any subdivision of Resource Management lands in a designated Recreational River Area. Accordingly, because no permit was sought or obtained for the subdivision created by the

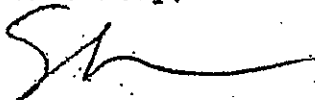
S.B. and Barbara (his)
May 14, 2007
Page 2

construction of the two dwellings described above, they are in violation of the Agency's subdivision laws. In addition, the construction of a third, proposed replacement single family dwelling constitutes a subdivision violation, as the corresponding pre-existing structure has not yet been removed from the property.¹

The enclosed settlement proposes resolution of these violations through review of the structures under the Agency's after-the-fact permit process. If the agreement is acceptable to you, please sign both copies before a notary public and return them to me by June 8, 2007. Paul Van Cott will then execute the agreements on behalf of the Agency and send you one original for filing in the Essex County Clerk's Office.

Please feel free to call me with any questions. I thank you for your anticipated cooperation in resolving this matter.

Sincerely,



Sarah Reynolds, Esq.
Assistant Enforcement Attorney

SHR:PVC:JLQ:mlr

Enclosure: Proposed Settlement Agreement

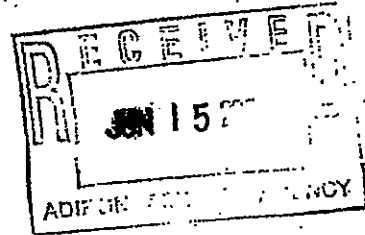
¹ Section 570.3 (ah) (3) of Adirondack Park Agency regulations defines a subdivision into sites as occurring "where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s)." In addition, Section 573.6 (e) of Agency regulations 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." Pursuant to Section 810 (2) (d) of the Adirondack Park Agency Act, the construction of a single family dwelling in a Resource Management land use area constitutes a Class B regional project.

EXHIBIT C

NIXON PEABODY^{LLP}
ATTORNEYS AT LAW

Clinton Square
P.O. Box 31051
Rochester, New York 14603-1051
(585) 263-1000
Fax: (585) 263-1600

David L. Cook, Esq.
Direct Dial: (585) 263-1381
E-Mail: @nixonpeabody.com



June 12, 2007

Sara Reynolds
Adirondack Park Agency
P.O. Box 99 NYS Route 86
Raybrook, New York 12977

Dear Ms. Reynolds:

Mrs. Lewis and I appreciated the opportunity to meet with you and Mr. Miller on June 1st. I feel that it would be helpful to provide you a brief summary as you consider the issues that we discussed.

The Lewis family farmstead and home was purchased in 1972, following a long family association with the Adirondacks starting in 1951. The farm is a working farm and was incorporated in 1985 and has grown steadily in its mission to improve the land use methods and the lives of those who live in its vicinity. The farm is now one of the largest organic farms in New York, has become a showcase for the Cornell cooperative extension, and through its example, now has four neighboring farmers who have become organic as well.

The farm's reputation has allowed for both U.S. and international students and apprentices to work for academic credit in their agricultural programs and has been approached by the government of Nepal to host four farmers from that country in order to learn the methods of sustainable, organic farming. They will arrive in the autumn of 2007.

The Lewis Family Farm has exemplary standards for their lands. They have provided employment and education to members of the community and are a highly regarded organic farm in both the local and distant agricultural and environmental communities. In all respects, the Lewis Family Farm has enhanced and protected the environment, exactly the mission and charge of the APA.

As Mrs. Lewis indicated, economic viability is a necessity as it is for all agricultural operations. Given the large capital investments that have gone into the making of this farm, profitability is crucial for survival. The building of staff homes is one of the last projects to be undertaken and was to have been completed by early summer.

The housing project that is the subject of the enforcement action presents an unusual issue for the agency in that it requires an overlapping review of the APA regulations as well as the laws and regulations of the New York State Department of Agriculture and Markets. The purpose of the home building project is to provide housing for farm employees and student interns from afar. Such activities are protected by the Agriculture and Markets law as essential to agriculture in New York State.

The Agriculture and Markets Law provides that it is New York State policy to encourage farming to protect agricultural lands and bars the administration of laws that restrict agriculture. There is a long line of cases providing that the denial of farm housing for farm employees is an unreasonable restriction on farm operations, contrary to the New York State Agriculture and Markets Law Section 305-a(1)(a).

The project manager is Mark McKenna, the former farm manager and local resident. In November '06 when Mr. McKenna obtained building permits from the town of Essex, he was told by the Code Enforcement Officer that he did not need any further permits in as much as this was strictly a farm operation. Based on the assurances of the Town of Essex and these representations, Mr. McKenna initiated construction and did not contact APA. Only some time later after architectural, engineering and foundation work had been completed and house modules purchased, did the Code Enforcement Officer come to the project and inform Mr. McKenna that perhaps he should contact the APA in order to get a further permit. What initiated this action remains unclear.

At that time, Mrs. Lewis and Mr. McKenna voluntarily stopped construction and contacted the APA with the purpose of supplying the APA with whatever they needed to issue a further permit. They were then told this was not possible as the whole issue now resided with the Enforcement Division. The disposition of this matter has now taken months. The project has been on hold, up-front monies spent, tradesmen hired and then told to wait thus compromising their schedules. Further the project manager continues to be paid. Farm interns have arrived and are required to live off-site in rented housing which may be soon sold. What was clearly an innocent mistake, if indeed it is a mistake, has been costly in excess of any fines considered and threatens the intern program and thus the overall farm staffing plan for the coming months. The cost of delay as well as legal fees associated with responding will surely be in excess of the proposed fines.

You acknowledged at our meeting that the issuance of the permit is not likely to be an issue. Then why is enforcement taking such a punitive stance? It is easy to rectify failure to obtain a permit: fill out the forms and request a permit. The actions of Mrs. Lewis and Mr. McKenna were not deliberate in the face of APA regulations they were the result of assurances and representations by the Code Enforcement Officer to the project manager who was charged with the permitting process. There is no question that the failure to obtain a permit was a complete innocent mistake and was not the action of Barbara Lewis, but the result of assurances and representations made by the Code Enforcement Officer to the Project Manager who was charged with the permitting process.

Sara Reynolds

June 12, 2007


Page 3

It is for these reasons that we request that you reconsider the issuance of the notice of violation and instruct that the permit be granted immediately so that the housing may be completed and Barbara Lewis may continue with farm activities. To penalize this Farm over a permitting issue that may not even be in its domain and control lacks both merit and discretion. Because the philosophies of both the APA and the Lewis Family Farm are aligned they should be partners in educating others to be good stewards of the land rather than adversaries in litigation.

We have been in contact with the Department of Agriculture and Markets and other farming organizations that view the threatened action by the APA as a restraint on farming operations. It is certainly not in anyone's interest to prolong this matter or to litigate. It was for that reason we approached you for a meeting in an attempt to deal with this issue quickly and amicably to the best interests of all.

We look forward to hearing from you soon so this project may move forward.

Sincerely,

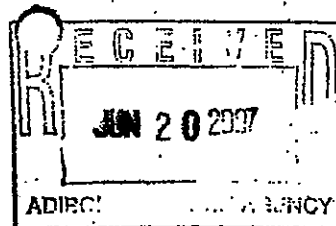


David L. Cook

cc: Paul Van Cott

EXHIBIT D

June 19, 2007



Adirondack Park Agency
Mark Sengenberger, Acting Director
Paul Van Cott, Esq.
P.O. Box 99, NYS Route 86
Ray Brook, NY 12977

→ SAA 919

RE: Lewis Family Farm housing for farm workers

Dear Mr. Van Cott:

I am fully aware of the difficulties the Lewis Family Farm and Barbara Lewis have encountered with the APA in my attempt to construct housing for Lewis Family Farm farm employees.

It is my hope that this letter will help you understand my role in the project and my communications with municipal officials in The Town of Essex.

In October of 2006, shortly after being hired by Barbara Lewis of Lewis Family Farm to be the Project Manager for the farm housing project, I visited with David Lansing, the Code Enforcement Officer for the Town of Essex. I provided the Town of Essex with all of the drawings and materials necessary to obtain a building permit from The Town of Essex. Mr. Lansing advised me that because the project was for farm housing, I would not need an APA permit. Based on his assurances and my experience, I proceeded with the project with full authority from The Town of Essex.

The project involves modular homes constructed in Canada and transported to New York for placement on foundations. We began construction of the foundations and shortly thereafter, and completed this work by the end of November. At that time, Mr. Lansing drove out to the project to say, "You might want to call the APA, because you may need a permit." So, I went then and there with David Lansing to his office at Town Hall, where I contacted a person chosen by Mr. Lansing at the APA. That gentleman seemed to know, and said that we needed a permit from APA before we could get Town of Essex approval.

I reported this to Barbara Lewis, to whom I report and who is my sole contact on the project. We then worked to provide a full package of information to the APA so the appropriate permit could be obtained. Throughout that process we were advised that there was nothing about the project that would prevent APA approval, however, the permitting officer advised that because of the alleged violation, he would not be able to act on the permit until the enforcement division had completed a settlement.

As the Project Manager with full authority, and with my experience in construction issues in the Adirondack Park, I take full responsibility for the project and feel that it is completely

10625121.1

R00089

Adirondack Park Agency
June 19, 2007
Page 2

inappropriate and heavy handed for the APA to seek a \$10,000 fine from the Lewis Family Farm on this project. From experience, I can assert that this project is of the highest quality and in compliance with highest levels of quality in construction and design. In my years of construction within the Adirondack Park, I have seen house after house, project after project that is completed with no APA permitting, including my own home, and in some cases, with no municipal permitting. Here is a high quality project that involves absolutely no environmental degradation, which, by all accounts, would be fully approved. If there is a violation to be issued, I believe it should be to me, as the Project Manager, and I take full responsibility for that. I stand ready to meet with you or to discuss in any way, any aspect of this project and I ask that enforcement against the Lewis Farm be terminated and a permit be issued so that they may proceed as soon as possible with the project. This is the fair way to proceed. Barbara Lewis does not deserve this treatment.

Sincerely,



Mark McKenna

DLC/hjk

cc: Sara Reynolds

cc: Bob Somers, Manager, Agricultural Protection Unit, NYS Department of Agricultural and Markets

cc: David L. Cook, Nixon Peabody

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant.

AFFIDAVIT

Index No. 000498-07
R.J.I. No. 15-1-2007-0153

JOHN L. QUINN, being duly sworn, deposes and says:

1. I am an Environmental Program Specialist 3 with the Adirondack Park Agency (the "Agency") and have been employed by the Agency since 1980. I have an Associate's Degree in Forestry and Bachelor's Degree in Environmental Studies.

2. As an Environmental Program Specialist, I am responsible for the review of proposed projects and variances that are subject to the Agency's jurisdiction. I evaluate the potential impacts that a proposed project or variance application may have on adjoining land uses and on the resources of the Adirondack Park. I conduct on-site investigations of the physical characteristics of a parcel, consult with staff experts in soils, hydrology and biology, and examine the nature and extent of land uses in the vicinity

of the project or variance. I determine whether the project information submitted by the permit applicant is "complete" for the purpose of commencing the Agency's formal review of the project.

3. I am familiar with the Lewis Family Farm, Inc. ("Lewis Farm") proposal for new single family dwellings on its property based on my work with the Agency, conversations with staff and Barbara Lewis, and based on my review of information contained in the files of the Agency. I submit this affidavit in support of the Agency's Motion to Dismiss this matter.

4. I was assigned to review Agency Pre-application File A2007-43, a partial permit application submitted by Barbara A. and S.B. Lewis through Mark McKenna, who was acting as their authorized representative. This partial application was received by the Agency on March 14, 2007, and requested a permit for the construction of three single family dwellings in a Resource Management land use area on a property owned by the Lewis Farm, which is located in the Town of Essex, Essex County. A copy of the partial application is attached hereto as Exhibit A.

5. On or about March 15, 2007, Mark E. Sengenberger, Deputy Director of Regulatory Programs for the Agency sent

Mr. and Mrs. Lewis and Mr. McKenna a "Notice of Incomplete Permit Application Receipt of Partial Application," which advised the applicants that, while their proposal constituted a major project, they had submitted only a Minor Project Permit Application. The letter also noted that the Agency could not determine the application to be complete without more information from the applicants. The letter stated that, "because this application is not in the form and manner required by the Agency, it is incomplete and is not accepted for review. Be advised that initial processing of your application cannot begin, and the project review period established by law will not start until the Agency has received all of the required information." A copy of this Notice of Incomplete Permit Application letter is attached hereto as Exhibit B.

6. On March 19, 2007, Barbara Lewis called me at the Agency to discuss Mr. Sengenberger's letter. During this conversation, she informed me that the proposed project actually involved the construction of four new single family dwellings. She informed me that three of these dwellings were to be located at the intersection of Whallons Bay Road and Christian Road, with the fourth to be located at the intersection of Whallons Bay Road and Clark Road. She also

informed me during this conversation that foundations and septic systems had already been installed for these dwellings and that delivery of modular homes to be placed on the foundations was expected later in the week. I stated in response that installing the foundations and septic systems constituted undertaking of the project. Therefore, because the Lewis Farm had not yet obtained a permit from the Agency, a violation of law had apparently occurred. I advised Mrs. Lewis not to place the homes on the foundations, as this would constitute a further undertaking of the project, and that I would be referring the matter to the Agency's enforcement division.

7. On or about March 20, 2007, I again spoke with Barbara Lewis, who clarified that 1,500 gallon septic tanks had been installed for each of the three foundations located at the intersection of Whallons Bay Road and Christian Road. Mrs. Lewis suggested that, in order to hasten review of the project, she would be willing to wait approximately six months before completing construction of two of the three dwellings for which foundations had been established at the intersection of Whallons Bay Road and Christian Road. I informed her that constructing the houses in this manner might constitute segmentation of the overall project and again stated that I

would be forwarding the matter to the Agency's enforcement division for resolution. I also advised Mrs. Lewis that the Agency's former Executive Director Richard Lefebvre, Counsel John Banta, and Deputy Director of Regulatory Programs Division Mark Sengenberger had previously visited the Lewis Farm, where they had told her husband, Sandy Lewis, that a permit would be required for any new single family dwelling in a Resource Management area of the property. Mrs. Lewis then informed me that she had halted delivery of the modular homes pursuant to our conversation of the day before.

8. On March 20, 2007, I submitted a Potential Violation Report to the Agency's enforcement program, in which I summarized the potential violations as I understood them based on the information received to that point. A copy of this Potential Violation Report is attached hereto as Exhibit C.

Sworn to before me this 23rd
day of July, 2007.

Tracy J. Frechette (Darrah)
Notary Public

TRACY J. FRECHETTE
Notary Public - State of New York
Qualified in Essex County
No. 01FR8114789
Commission Expires Aug. 23, 20 08

John L. Quinn
JOHN L. QUINN

QUINN AFFIRMATION

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	Partial Application
Exhibit B	Notice of Incomplete Permit Application letter
Exhibit C	Potential Violation Report

EXHIBIT A

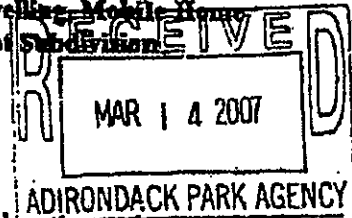


P.O. Box 99 • Ray Brook, New York 12977
(518) 891-4050 Fax (518) 891-3938

Division of Regulatory Programs

**APPLICATION
FOR MINOR PROJECT PERMIT**

Single Family Dwelling, Mobile Home
or Two Lot Subdivision



Instructions: Please answer all of the applicable questions in each numbered section and complete all applicable Attachments. Type or print clearly in ink. If you need assistance answering the questions, please refer to the "Applicant's Handbook - Minor Project Permit" or call the Agency at the above telephone number. Mail your application and required attachments to the Agency at the above address. A staff person will call the project sponsor to arrange a site visit.

The Adirondack Park Agency Act provides that the time period for the review of this project will not begin to run until the Agency determines that the application is complete. All applicable attachments must be included with the application, or the application may not be accepted as complete for review and review time periods will not commence. The proposed project may not be undertaken until a permit has been issued by the Agency.

The Agency may request pertinent additional information during the course of its review regarding the application based on the specific scope and extent of your proposed project and the existing site conditions found at the project site.

1. Project Sponsor(s) *

Name(s) Barbara A Lewis
S.B. Lewis

Mailing Address:

1212 Whallons Bay Rd
Essex NY 12936

Telephone (Daytime):

518 463 4206

FAX:

963-7710

2. Current Property Landowner(s)

(All named on the current deed of record)

☒ Check if same as project sponsor(s)

Name(s): _____

Mailing Address:

Telephone (Daytime): _____

FAX: _____

* The project sponsor is any person having a specific legal interest in property who makes application to the Agency for the review of a project proposed on such property. Documentation demonstrating such legal interest must be provided such as a current deed or purchase contract.

3. Authorized Contact Person

☐ I do not choose to have an authorized contact person.

If you, the project sponsor, choose to have your real estate agent, lawyer, surveyor, engineer, contractor, or another person act on your behalf before the Agency, please complete the following authorization:

I hereby authorize: (name) Mark McKenna

Mailing Address: m. l. l. Road Willsboro NY 12996

in case owner is not available

Telephone (Daytime): 518-943-7153 FAX: cell 518-943-572-7337

to act as my agent in all matters relating to this permit application before the Adirondack Park Agency. I acknowledge that all contact regarding the permit application will be through my authorized contact person. I understand that I am ultimately responsible for the accuracy of the information contained in this permit application and for compliance with all terms and conditions of any permit issued to me by the Agency.

4. Project Description (i.e. single family dwelling, mobile home, two-lot subdivision)

Describe the proposed project: 3 single family dwellings
in a farm compound, to be
used by farm employees exclusively

5. Property Site

Town: ESSEX

Tax Map Number (see your tax bill):

Section: 49.3 Block: 2 Parcel: 2.77 ~~000~~

County: ESSEX

Water body: —

Road: WHA-1/2 N 5 Bay 10

6. Project Sponsor's Legal Interest in Project Site (check the one that applies)

- ☒ owner ☐ lessee ☐ Contract vendee
☐ developer ☐ option holder ☐ Other _____

Attach and label, as ATTACHMENT A, a complete copy of the current recorded deed(s) for the project site. If you have an executed contract or agreement to purchase or lease the property, please provide a copy of relevant portions to Agency staff in order to establish your legal interest in the project.

7. Prior Agency Contact

- a. Has there been any previous discussions with Agency staff regarding this project or project site, or has any Agency staff visited the project site?

☒ No ☐ Yes, staff person's name: _____
Date of Contact: _____

- b. Has the project site been the subject of a past Agency action (i.e., project application, variance, jurisdictional inquiry, enforcement case or wetland flagging)?

☒ No ☐ Yes ☐ Do not know

If known, provide the following number and date:

Past Project Permit or Variance Number: _____

Jurisdictional Inquiry Number: _____

Enforcement Case Number: _____

Wetland Boundary Flagging: _____

8. Project Site History

- a. What is the current acreage of the project site? approx 4 acres *small corner of a larger side*
- b. Was the project site part of a larger parcel as of May 22, 1973, including parcels on the opposite sides of public roads?

☐ Yes ☒ No

If yes, what was the acreage of all connected lands owned by the May 22, 1973 landowner, even if the parcels had different deeds and/or tax map numbers?

86 acres.

- c. What is the current acreage of all connected lands owned by the current landowner, even if the parcels have different deeds and/or tax map numbers and even if larger than the project site.

12.00 ^{entire farm} Acres ^{approx.} The whole farm is listed as one tax map property

- d. Has any portion of the total contiguous landholding in Question 8.b. as it existed on May 22, 1973 been sold, gifted or otherwise subdivided or developed since that date? Provide a written deed history so that the history of the transfer of ownership of the property can be readily understood:

☒ No

☐ Yes If yes, please list the lots or parcels conveyed from the original parcel and the size of each in square feet or acres. (Use a separate 8-1/2"x11" paper if necessary)

Lot Number (from current tax map)	Date of Conveyance	Lot Size (sq. ft. or acres)	Was Conveyance by Gift or Sale?

Attach and label, as ATTACHMENT B, a complete copy of all recorded deeds (not just abstracts) for the project site back through and including May 22, 1973. Make a notation on the bottom of each deed, indicating what current tax map number(s) go with each deed.

Attach and label, as ATTACHMENT C, a full scale copy of a survey map, the current real county property tax map, or a topographic quadrangle map clearly showing the property boundaries of the project site and any tax parcel or lot that the project site was part of on May 22, 1973.

- e. Are there structures (buildings) on the total contiguous landholding now owned by the present landowner?

- ☐ No (Go to Section 9, Historic Preservation Resources)
- ☐ Yes (Please provide the information below. Attach additional sheets if necessary.)

Number	Date of Construction	Size (Sq. Feet of Footprint)	Height (feet)	Type/Use (e.g. dwelling, garage, barn, shed)
1				
2				
3				
4				

- f. Describe any other structures which existed on the property as of August 1, 1973 which have since been removed or destroyed. Include the date that the structure was removed or destroyed.

9. **Historic Preservation Resources**

If the project site or adjacent property has any major buildings (e.g., houses, barns; commercial buildings) that are more than 50 years old, attach and label, as ATTACHMENT D, separate sheets of 8-1/2" X 11" paper with labeled photographs of each such building. The photos must have been taken within the last two years and should show all sides of the building(s) and the setting around those buildings. Show where the photos were taken on a locator map. If any historic structure will be removed, relocated, reconstructed or significantly altered, please provide detailed plans.

10. **Proposed Subdivision of Land**

Does the project involve the proposed subdivision of land into two lots or sites?

☒ No
☐ Yes

If yes, provide the size of the parent lot: _____ acres or _____ square feet, and indicate the sizes of the two proposed lots or sites (these must add up to the parent lot acreage).

Lot #1: _____ acres or _____ square feet

Lot #2: _____ acres or _____ square feet

11. **Deed Restrictions and Easements**

Describe and provide as Attachment E any current deed restrictions or easements associated with the property.

Attach as Attachment F, the draft deed language if the project sponsor is subdividing land and will deed-restrict the lots as non-building lots, or if any other deed restrictions or easements are proposed.

12. Shoreline Protection

- a. Does the project site contain any navigable shoreline?

☒ No (If no, go to Section 13. Wetlands)

☐ Yes. Name of water body: _____

Length of shoreline of the parent property (as it winds and turns): _____ feet

- b. Is any portion of the shoreline currently being used or proposed for use by others for deeded or contractual access to the water body?

☐ No

☐ Yes. Please describe the shoreline access parcels and number of lots having access and date access was granted:

- c. Will any vegetation be cut within 35 feet of a lake, pond, river or stream or within 100 feet of a designated NYS Wild, Scenic or Recreational River?

☐ No

☐ Yes. Please describe type, amount and location of vegetation to be removed:

- d. Except for docks and boathouses, what is the horizontal distance from the existing closest structure greater than 100 square feet in size, including attached decks and porches, to the mean high water mark? _____ feet

- e. Except for docks and boathouses, what is the closest horizontal distance from any proposed new or expanded building greater than 100 square feet in size, including attached decks and porches to the mean high water mark? _____ feet

- f. If the project involves a subdivision, what is the width of the smallest proposed lot at the shoreline (as it winds and turns)? _____ feet

- g. Is the project site subject to flooding or within a federally designated floodplain?

☐ No

☐ Yes

13. Wetlands

a. Are there any wetlands on the project site?

- ☐ No (If no, go to the Section 14. On-Site Individual Wastewater Treatment System)
- ☒ Yes
- ☐ Do not know

b. Will any of the activities listed below be proposed and occur within the boundaries of a freshwater wetland?

- ☒ No
- ☐ Yes (check all that apply):
- ☐ New land use and development, including driveway, boathouse, dock
 - ☐ Subdivision of land involving wetlands
 - ☐ Draining; dredging; excavation; removing soil, peat, muck, sand, shells or gravel
 - ☐ Dumping or filling with soil, stone, sand, gravel, mud, rubbish or fill of any kind
 - ☐ Erecting structures, building roads or driveways, driving pilings, or placing any other obstructions
 - ☐ Clearcutting of more than three acres: provide number of acres _____

c. Are any of the activities listed below proposed whether or not within a wetland?

☒ Yes (check any that apply):

- ☐ Any form of pollution, including discharge of sewage effluent or other liquid waste into or so as to drain into a wetland (describe): _____

- ☐ Any other activity which impacts the wetland, including diversion of surface or subsurface drainage that adversely affects the natural hydrological regime, or substantially increases erosion or siltation or sedimentation into the wetland (describe) _____

☒ No

d. Will the project involve the installation of on-site sewage or wastewater treatment system components (e.g., septic tanks, drainage fields, seepage pits, or sewer outfalls) in a wetland or within 100 feet of one?

☒ Yes

See attached

☐ No

If the proposed project will alter or disturb wetlands, attach as ATTACHMENT G an explanation of the steps taken to avoid the wetlands in your design of the project or to minimize the impact to them and a wetlands mitigation plan if required.

14. On-Site Individual Wastewater Treatment System

- a. Will a new or replacement on-site wastewater treatment system be installed as part of the project?

☐ No (go to Section 15 Site Plan Map)
☒ Yes

- b. Provide the number of bedrooms for each residence (if not known, design for four bedrooms):

Lot #1 _____ Lot #2 _____

Residence 1 3 bedrooms
South Cottage 3 bedrooms
North Cottage 3 bedrooms

- c. Has a deep-hole test pit been dug on the project site at the locations of the proposed on-site wastewater treatment systems?

☐ No (this will need to be done for a complete application)
☒ Yes, indicate date: _____ and who observed

MARK BUCK 14

- d. Did the deep test pits reveal high seasonal groundwater, bedrock or impermeable soils within 48 inches of the existing grade?

☐ No

SEE PLANS

If no, attach as ATTACHMENT H, detailed plans for the proposed conventional wastewater treatment system(s) that are prepared by a contractor experienced in installing such systems and show at a minimum:

- soils test pit location and data
- percolation test hole location and results for each lot taken within the proposed absorption area(s)
- details on design of the system (application rate and number of bedrooms)
- size and type of septic tank
- pumping station (if necessary)
- distribution box
- soil absorption system

Yes

If yes, attach as ATTACHMENT I, detailed plans prepared in accordance with the Agency's "Minimum Requirements for Engineering Plans for On-site Wastewater Treatment Systems," for the proposed shallow absorption trench or other acceptable wastewater treatment system(s). The plans must be prepared by an engineer licensed in the State of New York and show at a minimum:

- a. soils test pit location and data
 - b. percolation test hole location and results taken within the proposed absorption area(s)
 - c. details on design of the system (application rate and number of bedrooms, etc.)
 - d. size and type of septic tank
 - e. pumping station (if necessary)
 - f. distribution box
 - g. soil absorption system
- e. If continued use of an existing wastewater treatment system is proposed, indicate the type, material, capacity (size), age and functional condition of each component of the system (septic tank, distribution box, leach lines, etc.)

15. Site Plan Map or Subdivision Plat

Attach as ATTACHMENT J, a SITE PLAN MAP or SUBDIVISION PLAT clearly labeled with the map scale, north arrow, date of preparation and name of preparer.

If the project sponsor wishes to sell, lease or gift the lots to be subdivided as building lots, then building envelopes must be shown on the site plan. The Agency must know in advance that the proposed lots are physically capable of being developed as building lots prior to approving the subdivision. (A future purchaser of a lot can apply to the Agency for a permit amendment if they want to construct in a location that is different from the approved building location.)

Draw the map to a scale of 1 inch equals fifty feet (1" = 50'). Show the entire project site. For larger parcels, show the entire property at a smaller scale, say 1" = 200' or 1" = 400' and show the area of development at 1" = 50'. Show and label, as applicable, the following:

- a. all existing property boundary lines and proposed lot lines, including dimensions of each line, the acreage of each lot, any existing or proposed right-of-ways or easements and label as Lot #1 and Lot #2, as appropriate;

- b. all existing bodies of water, including the water body name and the mean high water mark for any navigable stream, river, pond, lake or intermittent stream;
- c. all mapped or delineated wetland boundaries;
- d. all existing and proposed structures (e.g., single family dwellings, mobile homes, sheds, signs, fences, docks, decks, boathouses), including location, size, use, and setbacks from all roads, water bodies, property lines and lot lines for each lot created as a building lot;
- e. all existing and proposed paved and unpaved roads, driveways and parking area, including locations, dimensions, and construction materials;
- f. all existing and proposed public utilities denoting whether overhead or underground;
- g. all existing on-site wastewater treatment systems and water supplies;
- h. all existing vegetative cover types (e.g., fields, woodlands, shrub areas, lawns);
- i. all existing areas of steep slopes (greater than 15%);
- j. all existing areas of bedrock at or near the surface;
- k. all temporary and permanent erosion control and stormwater management facilities, including ditches, swales, culverts, catch basins and sediment basins;
- l. the proposed limits of planned vegetative clearing (complying with minimum shoreline cutting restrictions);
- m. land use area boundaries as shown on the Official Adirondack Park Land Use and Development Plan Map and acreage of site in each land use area;
- n. local town zoning designation boundaries and required town setbacks;
- o. all proposed landscape plantings, including plant name and size; and
- p. all proposed individual on-site water supply and/or individual wastewater treatment system locations (the plan must show all components of each proposed on-site individual wastewater treatment system and a 100% replacement area);
- q. all proposed exterior lighting fixtures, including height, fixture type and wattage.

16. Structure Plans

If you are proposing construction of a single family dwelling, guest cottage, boathouse, dock or accessory structure, attach as Attachment K scaled floor plans and elevations of the proposed structures and label dimensions, materials and colors. Include all proposed decks, porches and walkways.

Maximum height of structures? _____ (lowest point of existing adjoining grade to highest point of structure)

17. Other Government views

a. Have you contacted the municipality?

☒ Yes
☐ No

Attach as ATTACHMENT L a copy of the completed Local Government Notice Form.

Attach as ATTACHMENT M a copy of all municipal documents showing that the project has been or will be approved (e.g., permits, letters of approval, meeting minutes) if approval is required from the local government.

b. Have you contacted any of the following New York State or federal agencies concerning this development proposal?

AGENCY	NO	YES	DATE	CONTACT PERSON & PHONE #, if known
NYS Department of Health	<input checked="" type="checkbox"/>			
NYS Department of Transportation	<input checked="" type="checkbox"/>			
NYS Department of Environmental Conservation	<input checked="" type="checkbox"/>			
NYS Office of Parks, Rec. & Historic Preservation	<input checked="" type="checkbox"/>			
U.S. Army Corps of Engineers	<input checked="" type="checkbox"/>			
Lake George Park Commission	<input checked="" type="checkbox"/>			
Other <u>Town of Essex</u>				<u>Town of Essex</u>

Attach as ATTACHMENT N, copies of all permits, approvals or determinations received from the above agencies.

Don't hanging codes office

18. Authorization and Signatures

I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED IN THIS APPLICATION, INCLUDING ALL ATTACHMENTS, AND I AFFIRM THIS INFORMATION TO BE TRUE, ACCURATE AND COMPLETE.

I HEREBY AUTHORIZE THE ADIRONDACK PARK AGENCY AND MEMBERS OF ITS STAFF TO ENTER ON THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSES OF CONDUCTING SUCH INVESTIGATIONS, EXAMINATIONS, TESTS AND SITE EVALUATIONS AS IT DEEMS NECESSARY, AT REASONABLE TIMES AND WITH ADVANCE NOTICE WHERE POSSIBLE, TO VERIFY INFORMATION CONTAINED IN OR RELATED TO THIS APPLICATION FOR A PROJECT PERMIT. *WITH PRIOR NOTICE*

[Signature]

2-15-07

Date

Signature(s) of all Landowner(s) from current deed of record:
(Required for all applications)

[Signature]

2-15-07

Date

for Lewis Family Farm

Signature of all Project Sponsors (if not the landowners)
(Required for all applications)

Signature of Authorized Contact Person:
(Required if designated in Section 3 of this application)

Date

EXHIBIT B



Via Certified Mail
APA form October 2002

NOTICE OF INCOMPLETE PERMIT APPLICATION
RECEIPT OF PARTIAL APPLICATION

March 15, 2007
A2007-43

Project Sponsor: Barbara A. and S.B. Lewis 1212 Whallons Bay Rd. Essex, NY 12936	Authorized Representative: Mark McKenna Middle Rd. Willsboro, NY 12996
--	--

**Re: Application for Subdivision into Sites and Construction of
Three Single Family Dwellings
Whallons Bay Road
Town of Essex, Essex County
Tax Map No.: Section: 49.3 Block: 2 Parcel: 27**

Dear Mr. and Mrs. Lewis and Mr. McKenna:

On March 14, 2007, the Adirondack Park Agency received a Minor Project Permit Application from you; however, the project proposed is a major project as it creates a subdivision into sites for the construction of three single family dwellings in a Resource Management land use area. Therefore, please complete and submit the attached General Information Request (GIR) application form and Application for 3 To 15 Lot Subdivisions Supplemental Information Request (SIR) with all required attachments. Please note that signatures of all landowners listed on the deed, including documentation that the signatories are authorized to sign on behalf of Lewis Family Farms, Inc., as well as the signature of the authorized representative, are required to be submitted with the application. A copy of the current deed is required to be included in the application. Also note that the site plan is required to show the location of all proposed drinking water wells and wastewater treatment systems, as well as 100% replacement areas for the wastewater treatment systems.

It is unclear where the houses are proposed to be located. The site plan and the on-site wastewater treatment system plan show different locations.

Mark McKenna
Barbara A. and S. B. Lewis
March 15, 2007

Page 2

While your submission provided some information regarding your proposed project, it did not include all the information required by the application forms. Because this application is not in the form and manner required by the Agency, it is incomplete and is not accepted for review. Be advised that initial processing of your application cannot begin, and the project review period established by law will not start until the Agency has received all of the required information.

Be advised that there may be other information pertinent to your particular project which is required for a complete application in order to start the project review process.

This Notice is issued pursuant to Section 809(2)(b) Adirondack Park Agency Act and Section 572.4 and 572.7 of the Adirondack Park Agency Rules and Regulations. Do not undertake your project until the above information is submitted and a permit has been issued by the Agency. "Undertake" includes, but is not limited to, any construction activities, such as excavation or other land disturbance, tree cutting, and installation of driveways or roads, or in the case of subdivision, the conveyance of any lots.

If you have any questions, please do not hesitate to call John Quinn, the assigned Environmental Program Specialist, at (518) 891-4050.

Sincerely,

Mark E. Sengenberger

Mark E. Sengenberger
Deputy Director (Regulatory Programs)
Adirondack Park Agency

MES:HEK:scs

Enc. (GIR and SIR 3 To 15 Lot Subdivisions)

cc: John Quinn, APA

Mark McKenna
Barbara A. and S. B. Lewis
March 15, 2007
Page 3

GENERAL INFORMATION REQUEST CHECKLIST

The items checked below, required by the General Information Request, were not included in your application to the Agency:

- X Attachment A - a complete copy of the current recorded deed(s) and/or executed purchase contract or lease agreement for the project site.
- X Attachment B - a complete and current list of the names and addresses of all owners of property which adjoins the project site with the tax map references (tax map section, block, and parcel numbers) of all adjoining parcels. [This includes property directly across any street, road or right-of-way, stream, pond, or lake when title includes submerged land.]
- X Attachment C - a complete copy of all recorded deeds (not just abstracts) for the above conveyances back through May 22, 1973.
- X Attachment D - a full scale copy of a survey map or the current real property tax map clearly showing the property boundaries of the project site and any tax parcel or lot within which the project site was included on May 22, 1973.
- X Attachment E - a completed copy of the Local Government Notice form (last page of this application) to the municipality in which your project is located.
- X Attachment F - a copy of all municipal documents showing that the project has been approved by the municipality (e.g., permits, letters of approval, meeting minutes) if any approval is required from the local government.
- X Attachment G - copies of all permits, approvals and determinations received from the above agencies.
- X Signatures of all landowners listed on the current deed of record for the project site.
- X Signatures of all project sponsors
- X Signature of the authorized representative of the project sponsor

Mark McKenna
Barbara A. and S. B. Lewis
March 15, 2007
Page 4

SUPPLEMENTAL INFORMATION REQUEST [3 TO 15 LOT SUBDIVISIONS]
CHECKLIST

The items checked below, required by the Supplemental Information Request, were not included in your application.

- ☐ A survey or deed plot of the entire project site
- ☒ A professionally prepared, scaled site plan map showing the proposed project
- ☒ Plans, details and specifications for all temporary and permanent roads and driveways
- ☒ Full-scale, legible construction plans and details for all proposed buildings and structures, including plans and elevations and label dimensions, construction materials and exterior colors
- ☐ A detailed erosion and sediment control plan
- ☒ Detailed plans for any new, replacement or expanded wastewater treatment system(s) prepared by an engineer licensed in the State of New York
- ☐ A signage plan for the project site
- ☐ A planting plan for the project site
- ☐ A wetland mitigation plan

Project Sponsor: Barbara A. Lewis and S. B. Lewis

Date sent: March 15, 2007

EXHIBIT C

Investigation File	2007-041	E2C	-041
Investigator: Doug Miller	Attorney: Paul V. Cott		

POTENTIAL VIOLATION REPORT
(include copy of map)

Date: March 20, 2007	Report submitted by: John Quinn
Town: Essex	County: Essex
Road:	Water Body:

Tax Map Designation: 49.3-2-27

Land Use Area: RM

Directions:

Violation: Undertaking the construction of one or more single-family dwellings by construction of foundations and wastewater treatment systems
--

Probable Basis of Jurisdiction: §809

Manner in which discovered; telephone conversation with Barbara Lewis

Landowner

Name:	Barbara and Lewis and S.B. Lewis
Address:	1212 Whallons Bay Road Essex, New York 12936
Phone:	963-4206

Violator

Name:	Barbara and Lewis and S.B. Lewis
Address:	1212 Whallons Bay Road Essex, New York 12936
Phone:	963-4206

Complainant

Name:	J. Quinn
Address:	
Phone:	

Does Complainant desire acknowledgement of results?

Yes XXXXX	No
-----------	----

Comments:

Alleged violator may have actual knowledge of need for permit from discussion with R. Lefebvre, J. Banta, and M. Sengenberger and or a letter from the Agency. They have Submitted a permit application which has been bounced but intend to resubmit asap hoping for A very prompt resolution of the violation and issuance of a permit.

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant.

AFFIDAVIT

Index No. 000498-07
R.J.I. No. 15-1-2007-
0153

DOUGLAS MILLER, being duly sworn, deposes and says:

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

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

3. I am familiar with the Lewis Family Farm ("Lewis Farm") and the Agency file in this matter and am the Enforcement Officer who undertook Agency staff's investigation into this matter. I make this affidavit in support of the Agency's Motion to Dismiss the complaint against the Agency brought by the Lewis Family Farm.

4. On or about March 28, 2007 I personally observed three new single family dwellings under construction on the lands of the Lewis Farm, in the Town of Essex, Essex County.

5. The property on which these three dwellings are being constructed is owned by the Lewis Farm and is described as Tax Map Parcel #49.3-2-27. Tax Map Parcel #49.3-2-27 is shown on Exhibit A attached hereto.

6. The Lewis Farm property comprises approximately 1111 acres and is designated as Resource Management, Rural Use, and Hamlet on the Adirondack Park Land Use and Development Plan Map (the "Plan Map"). An excerpt from the Plan Map showing the property of the Farm is attached hereto as Exhibit B.

7. The portion of the Lewis Farm on which the three new single family dwellings are being constructed is designated as Resource Management on the Plan Map. An

annotated excerpt from the Plan Map showing the approximate location of the three new single family dwellings is attached hereto as Exhibit C.

8. In a letter dated March 23, 2007 I notified S.B. and Barbara Lewis of the Lewis Family Farm that I had been directed to investigate a possible violation of the Adirondack Park Agency Act at their Farm. See Exhibit D.

9. Thereafter, in response to a Potential Violation Report submitted by Agency staff member John Quinn, I visited the Lewis Farm on March 28, 2007, and observed what appeared to be the foundations of three new single family dwellings located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the property. Photographs that I took of these three houses during this March 28, 2007, visit are attached hereto as Exhibit E.

10. Based on subsequent investigation, I determined that these three new dwellings are located on Resource Management lands within the designated Boquet River Recreational River area.

11. After additional investigation and conversations with Barbara Lewis, I determined that a pre-existing dwelling located in the immediate vicinity of one of the

three new foundations established to the north and east of the intersection of Whallons Bay Road and Christian Road was planned for removal upon completion of the new modular dwelling.

12. The Lewis Farm has not obtained a permit from the Agency for its construction of two new single family dwellings. The third single family dwelling does not require a permit because it is intended to be a replacement, however, by constructing the three new single family dwellings, the Lewis Farm has also created a subdivision without a permit consisting of three new sites in the area to the north and east of the intersection of Whallons Bay Road and Christian Road on the Farm property.

13. On June 1, 2007, Agency Enforcement Attorney Sarah Reynolds and I met with Barbara Lewis and David Cook, an attorney for Nixon Peabody LLP and counsel for the Lewis Family Farm, Inc. to discuss an administrative settlement of the alleged violations.

14. During the meeting on June 1, 2007, Sarah Reynolds and I informed Barbara Lewis and David Cook that Agency staff was prepared to review the single family dwellings through the Agency's after-the-fact permit

review process, provided that the Farm agree to pay a civil penalty of \$10,000 or contribute a comparable amount of money toward an appropriate environmental benefit project.

15. On June 27, 2007, I was informed that Agency Counsel had received a call from the Supervisor of the Town of Essex, who stated that he had been told that construction on the three new single family dwellings had recommenced at the Lewis Farm. See Affidavit of John Banta.

16. In response to this call, I traveled to the Lewis Farm on the afternoon of June 27, 2007, in an attempt to halt construction of the homes with a Cease and Desist Order signed by Mark Sengenberger, the Agency's Acting Executive Director.

17. Upon arrival at the Lewis Farm on June 27, 2007, I determined that two of the modular homes had already been set on their foundations and the third modular home had been partially set on its foundation. Copies of photographs that I took upon arrival at the property are attached hereto as Exhibit F.

18. I immediately attempted to serve the Cease and Desist Order on Mark McKenna who upon information and

belief was the project manager at the site. Mr. McKenna told me that he did not have the authority to accept the Order and directed me to give the papers to Barbara Lewis at her home. Mr. McKenna gave me approximate directions to the home of Mrs. Lewis.

19. I then traveled to the Lewis home and served the Cease and Desist Order on Barbara Lewis in person. See Exhibit G.

20. I returned to the Lewis Farm on July 2, 2007, where I observed that, in direct violation of the Cease and Desist Order, the third modular dwelling had been completely installed on its foundation. Copies of the photographs that I took during this visit to the property are attached hereto as Exhibit H.

21. I returned to the Lewis Farm again on July 6, 2007. At that time, workers were securing a tarp on the roof of one of the three houses. The other two houses appeared to be already secured against the weather. A copy of the photograph that I took during this visit to the property is attached hereto as Exhibit I.

Sworn to before me this 20th
day of July, 2007

Mary B. Palmer
Notary Public

Douglas Miller
DOUGLAS MILLER

MILLER AFFIDAVIT

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	Tax Map
Exhibit B	APA Plan Map
Exhibit C	Annotated Plan Map
Exhibit D	March 23, 2007 Letter from Miller to Lewis Family Farm
Exhibit E	March 28, 2007 Photos
Exhibit F	June 27, 2007 Photos
Exhibit G	Cease and Desist Order
Exhibit H	July 2, 2007 Photos
Exhibit I	July 5, 2007 Photo

EXHIBIT A

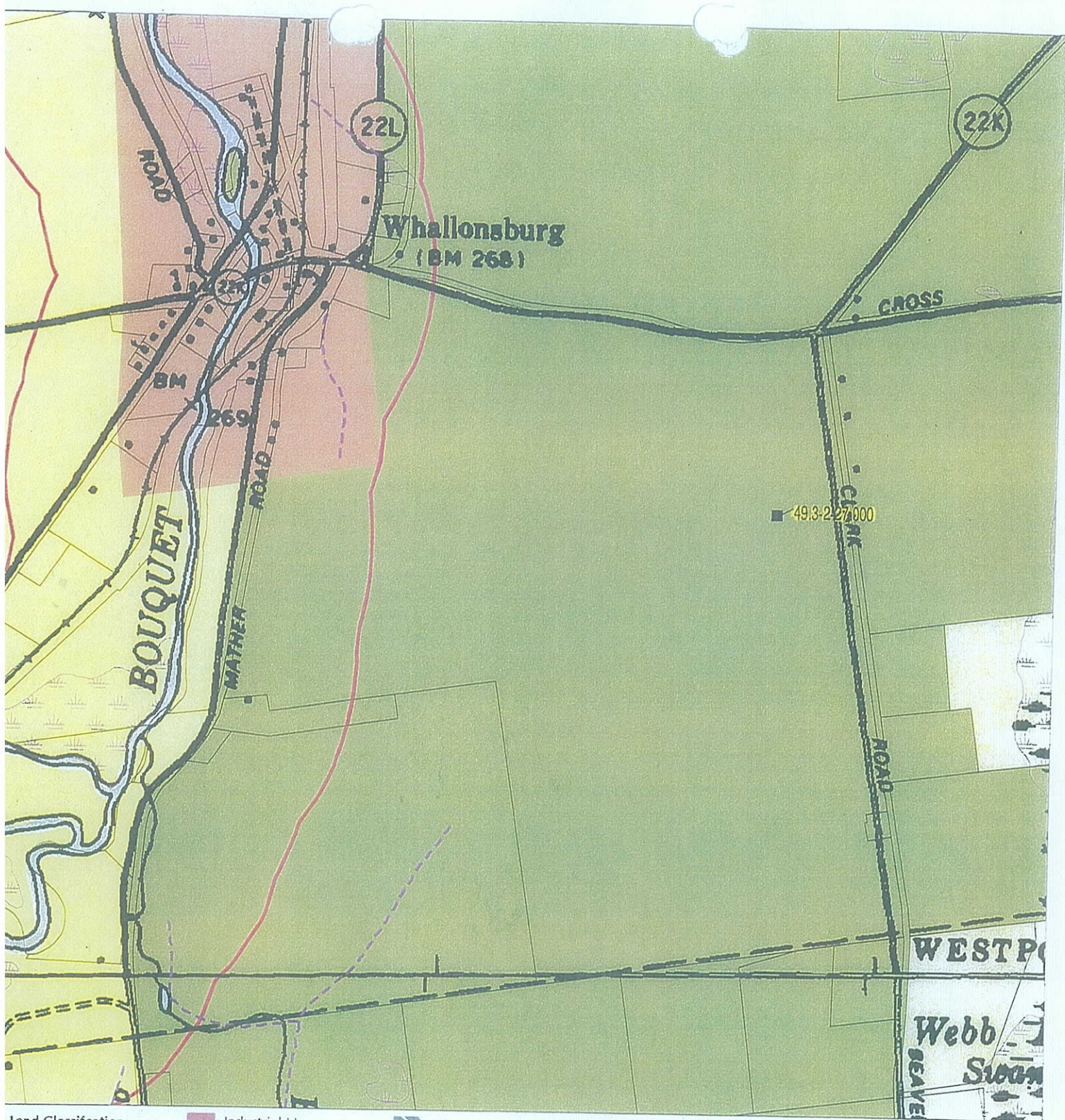


TOWN OF ESSEX
ESSEX COUNTY, NEW YORK

NEW YORK

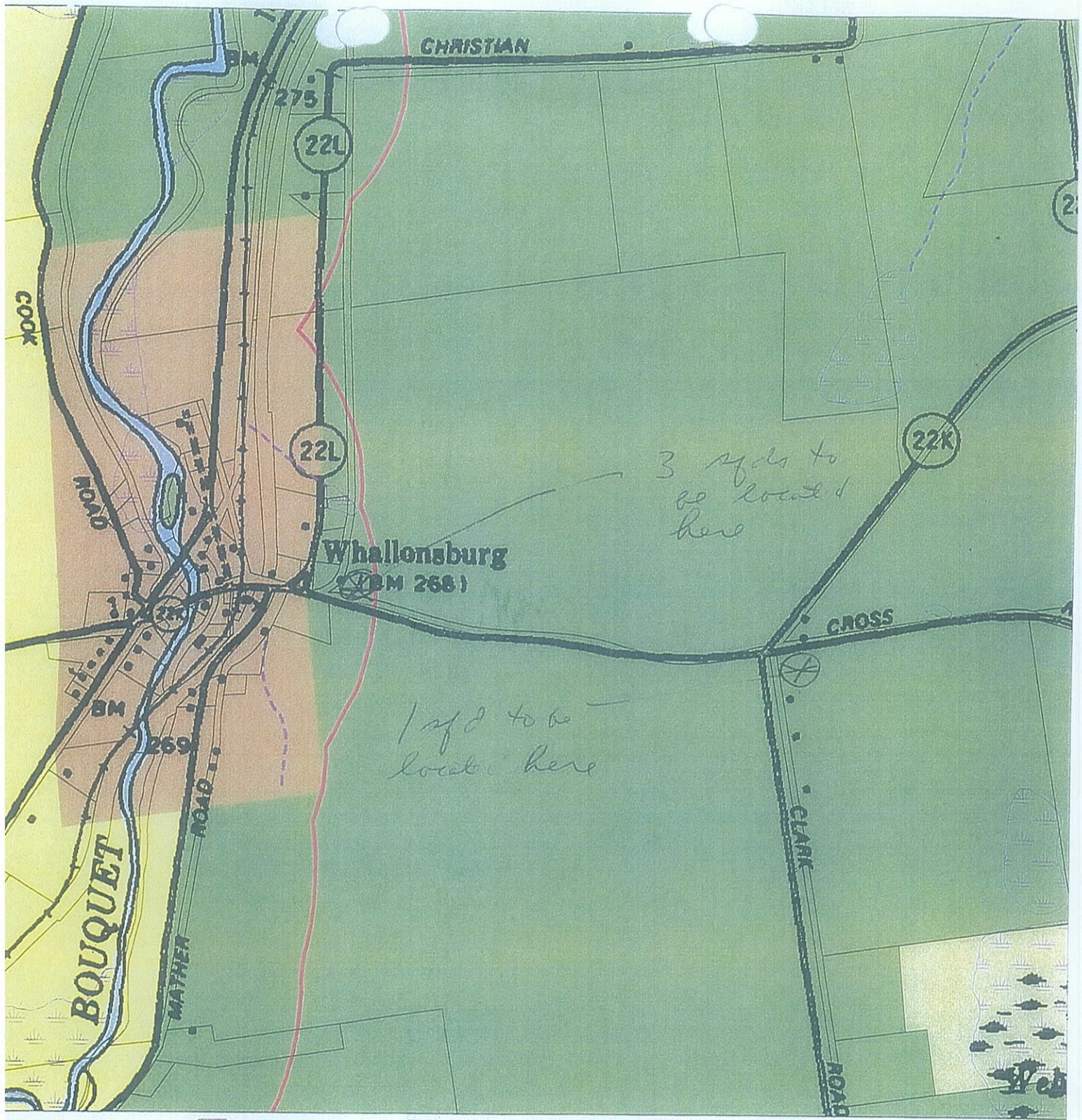
019-03

EXHIBIT B



Land Classification Hamlet Moderate Low Intensity Rural Use Resource Mgmt.	Industrial Use Wilderness Canoe Area Primitive Wild Forest Intensive Use	Historic State Administrative Pending Class. Open Water Regulatory Wetlands EPA Wetland Covertypes	NWI Wetland Covertypes Wetland Linear Wetland Tax Map Parcel Boundary	Designated River Corridor Boundary
--	---	---	---	--

EXHIBIT C



A Land Classification

- Hamlet
- Moderate
- Low Intensity
- Rural Use
- Resource Mgmt.

Industrial Use

- Wilderness
- Canoe Area
- Primitive
- Wild Forest
- Intensive Use

Historic

- State Administrative
- Pending Class.
- Open Water

Regulatory Wetlands

EPA Wetland Covertypes

NWI Wetland Covertypes

- Wetland
- Linear Wetland

Tax Map

- Parcel Boundary

Designated River

- Corridor Boundary

EXHIBIT D



March 23, 2007

S.B. and Barbara Lewis
1212 Whallons Bay Rd.
Essex, NY 12936

Re: Case E2007-041
Lands of Lewis Family Farm Inc.
Tax Map Designation: 49.3-2-27
Town of Essex, Essex County

Dear Mr. and Mrs. Lewis:

My office has directed me to investigate a possible violation of the Adirondack Park Agency Act and/or Rules and Regulations on the above-mentioned property as follows:

Construction of a single family dwelling in an area classified as Resource Management with obtaining an Agency permit.

If construction of any single family dwelling is occurring on this property the Agency would request that you voluntarily cease any construction activity until we can resolve this issue. In order for me to quickly learn the relevant facts, please contact me as soon as possible but not later than March 30, 2007. I would also like to meet with you or your agent at the property. I can be reached at Agency offices at the number listed below, or you may leave a message after hours at extension 301.

Your anticipated cooperation is appreciated.

Sincerely,

Douglas W. Miller
Enforcement Officer

DWM:mlr

cc: David Lansing, Town of Essex, Code Enforcement Officer

EXHIBIT E

R00133

MAR 28 2007



R00134

R00135

MAR 28 2007



R00136

MAR 28 2007

R00137

MAR 28 2007

R00138

MAR 28 2007

EXHIBIT F

R00140

JUN 27 2007



R00141

JUN 27 2007





R00142

R00143

JUN 27 2007



R00144

JUN 27 2007

R00145

JUN 27 2007

JUN 27 2007

R00146

R00147

JUN 27 2007



R00148

JUN 27 2007

Exhibit G

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the apparent
violations of § 809(2)(a) of
the Adirondack Park Agency Act
by:

LEWIS FAMILY FARM, INC.

CEASE AND DESIST ORDER
Agency File #E2007-041

Respondent, on lands situated in
the Town of Essex, Essex County
(Tax Map Parcel 49.3-2-27)
LUA: Resource Management/Hamlet/Rural Use

-----X
NOTICE: YOU ARE HEREBY ORDERED, PURSUANT TO 9 NYCRR §581-2.4, TO
CEASE AND DESIST ANY AND ALL LAND USE AND DEVELOPMENT RELATED TO
THE CONSTRUCTION OF THE SINGLE FAMILY DWELLINGS ON THE SUBJECT
PROPERTY AS DESCRIBED IN PARAGRAPHS 3 AND 4 BELOW. ANY SUCH
CONSTRUCTION ACTIVITY IS PROHIBITED UNTIL THIS MATTER IS
RESOLVED, THE ENFORCEMENT CASE IS CONCLUDED, AND/OR AN AGENCY
PERMIT AUTHORIZING SUCH LAND USE AND DEVELOPMENT IS ISSUED AND
RECORDED. YOUR FAILURE TO ABIDE BY THIS ORDER MAY RESULT IN THE
IMMEDIATE REFERRAL OF THE APPARENT VIOLATIONS IN THIS MATTER TO
THE ATTORNEY GENERAL FOR CIVIL PROSECUTION.

WHEREAS:

1. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.
2. Pursuant to Section 809(2)(a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands in the Adirondack Park.
3. Agency investigation reveals that Respondent is undertaking the construction of two post-1973 single family dwellings on Tax Map Parcel 49.3-2-27. These dwellings are located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the subject property. No permit was obtained from the Agency prior to the undertaking of the construction of these two single family dwellings.

4. Agency investigation reveals that Respondent is undertaking a subdivision into sites of the subject property pursuant to the construction of the two post-1973 single family dwellings described in Paragraph 3 above, as well as the construction of a third, proposed replacement single family dwelling also located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road. No permit was obtained from the Agency prior to the undertaking of this subdivision into sites of the subject property.

NOW, THEREFORE, IT IS ORDERED:

- I. Pursuant to 9 NYCRR §581-2.4, Respondent and its agents shall cease and desist from any and all land use and development related to the construction of the single family dwellings described in Paragraphs 3 and 4 above until this matter is resolved and the enforcement case is concluded.
- II. This order shall bind Respondent, its agents, successors and assigns.
- III. Respondent may address any and all communications with the Agency concerning this matter to Enforcement Attorney Sarah Reynolds at the Agency's headquarters.

Dated: June 27, 2007
Ray Brook, New York

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director

To: David Cook, Esq. (via fax and mail)

EXHIBIT H



R00153

JUL 2 2007



R00154

JUL 2 2007

R00155

JUL 2 2007





R00156

JUL 2 2007



R00157

JUL 2 2007

R00158

JUL 2 2007





R00159

EXHIBIT I



R00161

JUL 5 2007

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant.

AFFIDAVIT

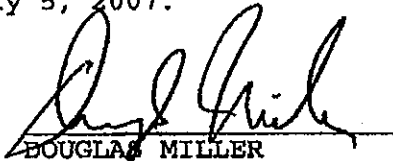
Index No. 000498-07

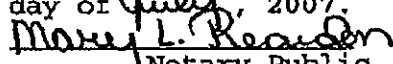
R.J.I. No. 15-1-2007-0153

DOUGLAS MILLER, being duly sworn, deposes and says:

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

2. I make this supplemental affidavit in support of the motion to dismiss the above-captioned matter, to make a correction to Paragraph 21 of my affidavit dated July 20, 2007. Paragraph 21 indicates that I visited the Lewis Family Farm on July 6, 2007. That date is an error. The date of the visit was actually July 5, 2007.


DOUGLAS MILLER

Sworn to before me this 31
day of July, 2007.

Notary Public

MARY L. REARDON
Notary Public - State of New York
Qualified in Essex County
No. 01REG114798
Commission Expires Aug. 23, 2008

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- vs -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

**AFFIDAVIT OF KLAUS
MARTENS**

Index No. 000498-07

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

Klaus Martens, being duly sworn, deposes and says:

1. I operate a 1,400 acre organic farm in Penn Yan, New York, and have done so for the last fourteen years. I currently reside at 1443 Ridge Road, Penn Yan, New York 14527.

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.

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").

4. I have visited and toured the Lewis Farm on several occasions and am well aware of its business and agricultural practices.

5. The Lewis Farm is the most modern and innovative organic farm in New York State, and is a national leader in organic farming.

6. 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.

7. 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 of education and training, such employees require proper onsite housing.

8. The Lewis 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.

9. The new employee housing on the Lewis Farm is essential and vital for the continued success of the Lewis Farm because without, it is unlikely that the Lewis 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 Farm aspires.

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

11. 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.

12. In addition, some of the modern agricultural practices implemented by the Lewis Farm have been adopted by other organic farms in the Adirondack State Park, thus lessening the use of harmful chemicals in the Park and improving water quality.

13. Without the completion of its onsite employee housing, the Lewis Farm will not likely continue to succeed as it previously has.


Klass Martens

Sworn to before me this
6 day of Aug, 2007


Notary Public

SUSAN K. ANDERSEN
Notary Public, State of New York
Yates County, N.Y. 01AN4982156
Commission Expires May 23, 20 11

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- vs -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

**AFFIDAVIT OF
BARBARA A. LEWIS**

Index No. 000498-07

STATE OF NEW YORK

COUNTY OF ESSEX

)
) ss.:
)

Barbara A. Lewis, being duly sworn, deposes and says:

1. I am a shareholder of the Lewis Family Farm, Inc. ("Lewis Farm"), the plaintiff in the above captioned action. I have personal knowledge of the facts stated herein or, where indicated to be upon information and belief, believe such facts to be true.

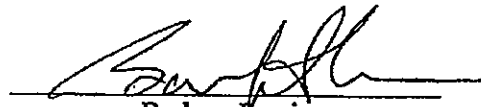
2. I make this affidavit in further support of the Lewis Farm's motion for a temporary restraining order and preliminary injunction, and in opposition to Defendant New York State Adirondack Park Agency's motion to dismiss.

3. Since 1978, the Lewis Farm has removed fifteen homes on its property. Those homes have a combined square footage of approximately 30,000 square feet, and each of them existed prior to 1970, the oldest of which was constructed c. 1805.

4. In place of those fifteen homes, many of which were falling over and completely unsuitable for human habitation, the Lewis Farm began constructing three new homes in which it plans to house employees.

5. The new homes have a combined square footage of approximately 6,900 square feet, and are configured to have more than one dwelling unit. We believe completion of the new homes will improve the quality of the Lewis Farm. Its employees will be able to live in clean and onsite housing, which is absolutely necessary for the effective management and operation of the Lewis Farm.

6. The new homes will help create a culture of cleanliness and commitment amongst the employees of the Lewis Farm. They will live in dignified conditions, yet be close enough to the Lewis Farm properly to perform their farm duties.


Barbara Lewis

Sworn to before me this
7th day of August, 2007


Notary Public

JANET L. MERO
NOTARY PUBLIC STATE OF NEW YORK
NO. 2685400
QUALIFIED IN ESSEX COUNTY 9/30/09
TERM EXPIRES

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- vs -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

**AFFIDAVIT OF SALIM
B. LEWIS**

Index No. 000498-07

STATE OF NEW YORK

COUNTY OF ESSEX

)
) ss.:
)

Salim B. Lewis, being duly sworn, deposes and says:

1. I am a shareholder of the Lewis Family Farm, Inc. ("Lewis Farm"), the plaintiff in the above captioned action. I have personal knowledge of the facts stated herein or, where indicated, to be upon information and belief, believe such facts to be true.

2. I offer this affidavit in further support of the Lewis Farm's motion for a temporary restraining order and preliminary injunction, and in opposition to Defendant New York State Adirondack Park Agency's ("APA") motion to dismiss.

3. Since 1978, the Lewis Farm has had the vision of becoming the premier organic farm in New York State. Today's Lewis Farm, I am told, offers a standard to which farms in the region and the nation may aspire.

4. The Lewis Farm started with a few acres around our residence, and now encompasses approximately 1,200 contiguous acres.

5. Among the Lewis Farm's missions, we wish to create and maintain the sustainable USDA certified, National Organic Program organic agriculture model in Essex

County by producing high quality organic food and breeding that will compete in domestic and international markets.

6. To accomplish this goal, the Lewis Farm has invested in modern agricultural equipment, practices and in the people who will perfect these strategies. The Lewis Farm seeks to employ highly educated individuals, increasingly expert in organic farming, people that can propel the Lewis Farm forward, making it the most modern and innovative organic farm in New York State.

7. We are told the Lewis Farm is important to the agricultural economy of Essex County, and to the agricultural future of the region, because it serves as a model that helps other farmers in the region and throughout the state to see that organic farming is profitable and sustainable.

8. The Lewis Farm has progressed from a small, simple, money-losing hay operation, spraying insecticide and herbicide, to a growing, entirely organic, increasingly bio-dynamic and holistic farm that produces and sells grains, hay, and forage crops, and breeds and raises grass-fed, grass-finished beef from a registered organic herd of national importance.

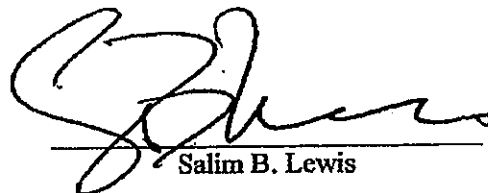
9. We regularly offer local residents, government officials, and other representatives of the organic and environmental communities tours of the Lewis Farm. The purpose of these tours is to educate. Our neighbors, government officials and others learn about organic initiatives and products at the Farm. These tours showcase the culture of cleanliness and commitment among the Lewis Farm employees, giving farm staff the opportunity to show and tell.

10. Several years ago we invited John Banta, Richard Lefebvre, and Mark Sengenberger, among others from the APA, to tour the Lewis farm. The purpose of the tour was to educate.

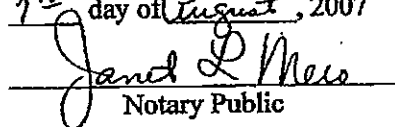
11. During this tour, I drove Messrs. Banta, Lefebvre, and Sengenberger around the Lewis Farm. I showed the Lewis Farm, explained its history and growth, described its organic initiatives, and showcased the high quality work performed by our employees.

12. The sole purpose of the tour was to educate Messrs. Banta, Lefebvre, and Sengenberger. At no time did I seek their legal opinion regarding any aspect of our operation.

13. When I gave Messrs. Banta, Lefebvre, and Sengenberger a tour of the Lewis Farm, the Lewis Farm had not yet decided to build onsite employee housing, and I did not discuss with Messrs. Banta, Lefebvre, and Sengenberger whether or not such housing would be subject to the APA's permitting authority, nor am I aware that they said it would not be. I do not recall any such discussion.


Salim B. Lewis

Sworn to before me this
7th day of August, 2007


Notary Public

JANET L. MERO
NOTARY PUBLIC STATE OF NEW YORK
NO. 2885400
QUALIFIED IN ESSEX COUNTY 7/22/07
COMM. EXPIRES

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- vs -

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

**AFFIRMATION OF
DAVID L. COOK**

Index No. 000498-07

David L. Cook, an attorney licensed to practice in the Courts of the State of New York,
affirms under penalty of perjury:

1. I am a partner in the Rochester office of Nixon Peabody LLP. I am counsel to the
Lewis Family Farm, Inc. ("Lewis Farm") on environmental and agricultural legal issues.

2. I make this Affirmation in further support of the Lewis Farm's motion for a
temporary restraining order and preliminary injunction, and in opposition to Defendant New
York State Adirondack Park Agency's ("APA") motion to dismiss.

3. I am familiar with the facts of this matter based upon previous communications
with the APA in an attempt to resolve this matter short of litigation.

4. On or about March 17, 2007, I was contacted by Barbara Lewis relative to a
Notice of Violation she had received from Sarah Reynolds of the APA legal staff.

5. Mrs. Lewis had been attempting to resolve this matter short of the involvement of
counsel and contacted me as a result of the unwillingness of the APA to discuss a resolution
short of a \$10,000 civil penalty.

6. On or about May 14, 2007, Mrs. Lewis received a proposed Settlement Agreement from the APA imposing a \$10,000 civil penalty. The Agreement included a signature line for Paul Van Cott.

7. Following Barbara Lewis' telephone call, I spoke with my partner John Greenthal of our Albany office, who had been a former colleague of Paul Van Cott at the DEC. I requested that Mr. Greenthal contact Mr. Van Cott to discuss the possibility of resolution of the matter and to request a meeting with Mr. Van Cott to discuss the matter.

8. I was informed by Mr. Greenthal that Mr. Van Cott indicated other alternatives for settlement may be available including a possible reduction in the proposed penalty. Mr. Van Cott indicated that he was willing to attend a settlement meeting.

9. On May 29, 2007, I called Sarah Reynolds at the APA to set up such a meeting with Barbara Lewis, Sarah Reynolds and Paul Van Cott.

10. On May 30, 2007, Ms. Reynolds returned my call to confirm the meeting requested with her, her supervisor, Paul Van Cott, Barbara Lewis and me.

11. On June 1, 2007, I traveled to Ray Brook, New York to meet with Paul Van Cott, Sarah Reynolds and Barbara Lewis. Upon our arrival, we were informed that Mr. Van Cott would not join us. I was concerned by Mr. Van Cott's apparent change in his willingness to meet, given that Ms. Reynolds had advised throughout the process that she was working under the direction of Mr. Van Cott, who was necessary to approve any decisions on the matter. Given that I had driven five hours for the meeting and Mrs. Lewis had driven over an hour, we were both taken aback by Mr. Van Cott's unwillingness to meet, given prior assurances.

12. During the June 1, 2007 meeting with Sarah Reynolds, we discussed the history of the farm as well as the signification impact a \$10,000 fine would have on the profitability of

the farm. In addition, we explained the urgency relating to the project concerning timing and the cost relative to the delay already caused by Barbara Lewis' voluntarily stopping work on the project.

13. Barbara Lewis explained the purpose of the project was to house farm employees and was absolutely essential for the operation and survival of the farm. At the meeting, we proposed several alternatives short of monetary penalties including reduced monetary penalties, environmental benefit projects, public education projects in partnership with the Lewis Farm, and suspended penalties. We explained the urgency of the need to resolve the matter promptly given timing issues with construction.

14. Both prior to the meeting and during the meeting, Sara Reynolds and Mr. Miller noted that there was nothing about the Lewis Farm project that would prevent the issuance of the permit, but the permit process would need to be followed.

15. Despite the request for a prompt resolution, on June 15, 2007, having not heard from the APA, I sent a letter to the APA requesting a response and the issuance of a permit. Despite our requests and the time and effort associated with the requested meeting, not until nearly three weeks after the meeting was I informed by Sarah Reynolds on June 19, 2007, that the proposal of the APA for a \$10,000 civil penalty remained unchanged.

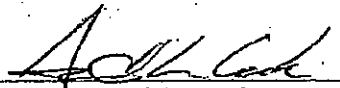
16. As previously detailed in Barbara Lewis' Affidavit of July 3, 2007, and upon review of the APA's jurisdictional limitations and New York's Agriculture and Markets Law, the Lewis Farm chose to proceed with the placement of the modular homes on the foundation due to difficulties with scheduling with the manufacturer in Canada.

17. On June 27, 2007, the APA issued a cease and desist order that was served upon Barbara Lewis and faxed to me in our Rochester office and to John Greenthal in our Albany

office. Mr. Paul Van Cott contacted me to demand the placement of the modular homes stop immediately. I explained to Mr. Van Cott that we had attempted to establish a dialogue with him which he had agreed to and failed to attend, upon which he indicated that there was no reason for him to participate because it was Sarah Reynolds' matter. I then enquired if it was her matter, why was I receiving a telephone call from him? I have not received any further communication from Ms. Reynolds.

18. Mr. Van Cott, very agitated, stated. "This is a hell of a way to do business." Mr. Van Cott then indicated that had the Lewis Farm simply paid the fine, "they would have had their permit by now." I advised Mr. Van Cott that we had filed legal proceedings on the matter. Mr. Van Cott repeatedly said that this was an issue with Sandy Lewis, upon which I advised him as I had previously that Sandy Lewis had no involvement with this project, that it was managed and conducted by Barbara Lewis, and that in fact throughout the permitting process, Mr. Lewis was absent from the farm and unaware of the timing and specifics of the project. Mr. Van Cott argued with me over the issue, stating that this was Sandy Lewis' project and that he had been previously warned about this project.

19. On June 27, 2007, despite representation of the APA by the Attorney General's Office, Mr. Van Cott attempted to obtain papers through our office as opposed to his own counsel.


David L. Cook, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK
ADIRONDACK PARK AGENCY,

Defendant.

**AFFIDAVIT OF SERVICE BY
FACSIMILE TRANSMISSION**

Index No.: 000498-07

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

Mary Ellen Welch, being duly sworn, deposes and says:

1. I am over the age of 21 years, not a party in this action, and reside in the State of New York.

2. On August 7, 2007, I served the Affirmation of David L. Cook, Affidavit of Salim B. Lewis, Affidavit of Barbara A. Lewis, Affidavit of Klaas Martens and Reply Memorandum of Law in Support of Motion for Temporary Restraining Order and Further Injunctive Relief and in Opposition to Motion to Dismiss, by transmitting the papers via facsimile transmission to:

Loretta Simon
Assistant Attorney General
State of New York Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York
Fax No. (518) 473-2534


Mary Ellen Welch

Sworn to before me this
7th day of August, 2007.


Notary Public

TERENCE L. ROBINSON
Notary Public, State of New York
No. 02806161840
Qualified in Ontario County
Certificate Filed in Ontario County
Commission Expires 2/28/ 2011

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

- against -

Index No.
498-2007

MOTION FOR
INJUNCTIVE RELIEF
AND DECLARATORY
JUDGMENT

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Defendant.

Essex County Courthouse
Elizabethtown, New York
August 8, 2007

B E F O R E :

HONORABLE KEVIN K. RYAN
Acting Supreme Court Judge, Presiding

A P P E A R A N C E S :

BRENNAN & WHITE, LLP
163 Haviland Road
Queensbury, New York 12804
BY: JOSEPH BRENNAN, ESQ.
AND: DAVID L. COOK, ESQ., Co-counsel
Appearing on behalf of Plaintiff

STATE OF NEW YORK
OFFICE OF ATTORNEY GENERAL
Environmental Protection Bureau
The Capitol
Albany, New York 12224-0341
BY: LORETTA SIMON, ESQ.
Assistant Attorney General
Appearing on behalf of Defendant

Holly A. Santspre, Official Court Reporter
Fourth Judicial District

1 THE COURT: We are here in the matter
2 entitled Lewis Family Farm, Inc., Plaintiff,
3 against the New York State Adirondack Park
4 Agency.

5 The plaintiff in this matter seeks from the
6 Court an order restraining the Adirondack Park
7 Agency from temporarily and then permanently
8 interfering with the housing construction on
9 their farm property. I have received and
10 reviewed all submissions to the Court. We are
11 here today for oral argument.

12 Representing the plaintiff is Attorney
13 Joseph Brennan. Also present, I believe, is
14 David Cook.

15 MR. COOK: Correct.

16 THE COURT: The Adirondack Park Agency is
17 represented by attorneys. I would ask that you
18 place your names on the record.

19 MS. SIMON: Loretta Simon, Assistant
20 Attorney General of the State of New York, on
21 behalf of the Adirondack Park Agency.

22 MR. VAN COTT: I'm Paul Van Cott, V-a-n
23 separate word, Cott, with the Adirondack Park
24 Agency.

25 THE COURT: Any other appearances? Okay.

1 MR. McDONALD: Judge, I represent the
2 Adirondack Review Board and we're not a part of
3 this proceeding but we just want to hear what's
4 going on so that we can act upon whatever.

5 THE COURT: And for the record, that is
6 Mr. McDonald, John McDonald.

7 MR. McDONALD: Thank you.

8 THE COURT: All right. My first question
9 would be to either Mr. Brennan or Mr. Cook.

10 What would be objectionable to the plaintiff
11 proceeding with the application process, filing
12 an after facts permit application, awaiting the
13 determination from the Adirondack Park Agency on
14 that application and then, if not satisfied, then
15 proceeding in Supreme Court with whatever
16 remedies would be available.

17 MR. COOK: Your Honor, this goes to the
18 issue of whether or not there's a final
19 determination by the agency. Under normal
20 circumstances, I think that might be an
21 appropriate way to proceed. However, in this
22 instance the agency, on multiple occasions, has
23 said that they will not review the application
24 until a \$10,000 civil penalty is paid.

25 So the crux of the issue is not whether or

1 not the Lewis Family Farm is opposed to the
2 permitting process of the agency, it's the
3 application and the requirement that they
4 essentially pay a \$10,000 fine before they even
5 consider the application. The agency has made
6 that clear on multiple occasions, that that is
7 their position. So it's the plaintiff's position
8 that that is a final determination.

9 THE COURT: Then is it your view though that
10 once your client would have paid that money, he
11 could never get it back?

12 MR. COOK: I've never seen a civil penalty
13 refunded by the agency. Typically, a civil
14 penalty goes into the agency funds and, as I
15 said, I've never seen one returned to a party.

16 THE COURT: So if they proceeded with the
17 application process and were dissatisfied,
18 whatever action they took, it would be
19 unavailable to get that money back?

20 MR. COOK: That's correct. In fact,
21 your Honor, one of the options that was proposed
22 by the farm was to place money in an escrow while
23 this process worked its way through, and the
24 response was, no, we will not even consider the
25 application until the penalty is paid.

1 THE COURT: Okay. And now I'd like to turn
2 to Ms. Simon.

3 Basically, the same question: It seems like
4 much of the controversy concerns the \$10,000
5 civil penalty. What redress would any individual
6 have if it would believe that that was an
7 improper penalty? Where would his redress be?

8 MS. SIMON: It's with the agency,
9 your Honor, and they would then go -- there are
10 commissioners of this agency. Five commissioners
11 will sit and hear this, just as you're hearing
12 some of it today. Those commissioners would make
13 a determination, they would write it up. But
14 before that they would have the opportunity to
15 present their case to the agency. They haven't
16 done that yet.

17 The only thing that's happened so far is
18 they submitted an application, they got a notice
19 indicating it was incomplete, they went ahead and
20 installed homes, and then this cease and desist
21 was issued. So now they have to go to the
22 enforcement committee of this agency and present
23 their case. Maybe the enforcement agency would
24 agree with them -- we have no jurisdiction,
25 you're right, go ahead and install the houses --

1 but that hasn't happened yet. They haven't had a
2 hearing.

3 . They haven't even let the staff finish
4 reviewing this process. The discussions that
5 took place were with staff. Staff does not make
6 an agency determination, the commissioners make
7 the determination. And so we are not even at the
8 beginning of the process yet, and it's certainly
9 not a final determination.

10 I don't know of any case law where a final
11 determination is discussions with staff on
12 settlement or discussions with staff about
13 what's, you know, missing from your application.
14 Those are not final determinations.

15 The case that we cited, In the matter of
16 Essex County v. Zagata, the determination was a
17 lengthy written document from the commissioners
18 after a full hearing. That has not happened
19 here.

20 I think that they are unhappy with the time
21 line; it's not going quickly enough. They would
22 like it to go faster.

23 THE COURT: And I understand that. But I'm
24 going to keep, for the time being, getting back
25 to the civil penalty. And again my question

1 is -- in order to proceed as you suggest, you're
2 saying pay \$10,000. I'll ask the same question I
3 asked of Mr. Cook: Is there no way they can ever
4 get that money back?

5 MS. SIMON: I probably would agree. I
6 haven't heard of a situation where you pay a
7 penalty and get it back 'cause usually you're
8 paying it under certain terms and usually the
9 terms are, we admit that we violated the terms.

10 THE COURT: Suppose they don't want to lose
11 that money, they don't want to pay?

12 MS. SIMON: They should ask for a hearing
13 and/or await for the process to take them there
14 and say to the staff, we're not interested in
15 this settlement offer you made to us, we want to
16 go to the full agency, we want a hearing, and
17 then challenge that hearing decision if they
18 don't agree with it.

19 THE COURT: And then they can go into
20 Supreme Court.

21 MS. SIMON: Absolutely.

22 THE COURT: But they can't get the \$10,000
23 back?

24 MS. SIMON: But nobody is making them pay
25 the \$10,000 before that. That was a settlement

1 offer. That wasn't a demand by the agency
2 commissioners. That was a staff offer of
3 settlement. They don't have to enter into
4 settlement talks even. They have a violation
5 that's outstanding. If they wanted to resolve it
6 without going to a hearing and pay the penalty,
7 they could. But the other option is to go to a
8 hearing and to say to these commissioners, we
9 don't think --

10 THE COURT: So don't pay the \$10,000.

11 MS. SIMON: Right, exactly.

12 THE COURT: So don't pay the \$10,000, go to
13 hearing.

14 MS. SIMON: Exactly.

15 THE COURT: What's wrong with that,
16 Mr. Cook?

17 MR. COOK: Your Honor, first, clearly there
18 were time restraints. This case starts when the
19 project manager, Mr. McKenna, goes to get the
20 permit and he's told, "You don't need any
21 additional permit." Then later, the Town of
22 Essex indicates, "You may need to talk to the
23 APA." At that time, there was already work that
24 had started.

25 This is not an issue of the farm thumbing

1 its nose at the APA process. Immediately upon
2 notice that there may be a requirement for an APA
3 permit, the farm contacted the APA to begin that
4 process. And because there had been be a
5 foundation already installed, with the
6 authorization of the Town of Essex, without
7 knowledge of a possible APA permitting
8 requirement, because that had happened, the
9 agency refused to proceed on the application.

10 THE COURT: Well, how can the agency be
11 bound by a local town enforcement officer?

12 MR. COOK: Well, your Honor, it's a very
13 interesting question. That gets into our
14 argument as to the interplay between Ag & Markets
15 and the APA regulations. But what I'm saying is
16 the agency would like to characterize this as the
17 Lewis Family Farm is thumbing its nose at the
18 agency and just going forward with this project.
19 That's not what happened.

20 THE COURT: Let's assume that they did
21 initially operate with the best of intentions and
22 perhaps received, shall I say, wrong advice, bad
23 advice from a local government entity.

24 MR. COOK: Correct.

25 THE COURT: Well, putting side the fact that

1 it was probably their responsibility to have
2 known what the regulations were and to have
3 sought their own legal advice on this, even
4 putting that aside, when they did find out that
5 the APA might be involved wasn't it incumbent
6 upon them to then contact the APA and follow
7 through with the permitting process?

8 MR. COOK: Your Honor, I don't think it's an
9 issue of having simply received bad advice. It
10 was more than just the Town saying, this is all
11 you need, it was the Town saying, this is all you
12 need because the belief the town enforcement
13 officer was because this is an agriculture use
14 and there are exemptions within the APA Act
15 itself for agriculture use. So it's not simply a
16 matter of they got bad advice, now they have good
17 advice, get a permit. It's more than that.

18 And I would also point out that it's more
19 than just a staff discussion here. The
20 application made is made to the staff, the staff
21 then refers it to enforcement. At that point
22 we're involved with legal counsel. And in those
23 discussions the clear message was, we won't even
24 proceed with the application process until the
25 civil penalty is paid.

1 THE COURT: But isn't that part something
2 you would have with any case of settlement offers
3 going back and forth?

4 MR. COOK: Yes, that's true. However, here
5 where there was a critical timing issue with
6 respect to when these homes could be transported,
7 when the housing would be available for farm
8 employees -- and this is critical, this is not
9 just willy-nilly placement of farms that could be
10 used at some time -- there was a critical timing
11 aspect to this, and the farm simply did not have
12 the luxury to wait 6, 8, 10 -- 12 months to
13 process that internally with the hearing. The
14 reality is that's not a quick process.

15 THE COURT: Well then if that is the case,
16 why not proceed now with the hearing process? Is
17 it going to take too long now?

18 MR. COOK: Yes, it would. But more
19 importantly, in addition to the hearing process
20 taking too long, more importantly is you've got a
21 situation where the agency has taken a position.
22 And despite what counsel has argued and what has
23 been stated in their brief, the standard for
24 final determination is not as egregious or strict
25 as counsel would make it out to be.

1 THE COURT: Didn't Judge Kaye talk about
2 that in Zagata?

3 MR. COOK: Exactly.

4 THE COURT: And you think that that standard
5 which was referred to in Zagata has been met
6 here?

7 MR. COOK: Absolutely.

8 THE COURT: Even without any action by the
9 commissioners themselves?

10 MR. COOK: Yes.

11 THE COURT: All right.

12 MS. SIMON: I would beg to differ,
13 your Honor. We can produce in a surreply the
14 full decision of the commissioners in Zagata,
15 which is a single-spaced, multipage determination
16 by the commissioners. There is no such document
17 here. This hasn't even gone to the commissioners
18 yet. This is so preliminary. Staff is not
19 authorized to make these kinds of determinations.
20 They are authorized to process permit
21 applications, to make settlement offers, but not
22 final determinations; they are not authorized and
23 they have not done so. There is no document that
24 counsel can point to that is a final
25 determination here.

1 THE COURT: I go back to Mr. Cook. In
2 Zagata didn't the courts, all the way up to the
3 Court of Appeals, have, as I recall in Zagata, a
4 very lengthy written determination to look into
5 and to review?

6 MR. COOK: Yes, that's correct. But I don't
7 believe, your Honor, in the Zagata case it was an
8 issue of whether or not the agency had
9 jurisdiction at all. Here we have an issue of
10 why would somebody submit to jurisdiction when
11 they don't believe they have jurisdiction in the
12 beginning? If there is no jurisdiction there's
13 not a need to go through the permitting process.

14 THE COURT: But if they are told that they
15 have to file, upon application and go through the
16 permit process, we'll make a determination.

17 MR. COOK: But you that doesn't submit them
18 to jurisdiction.

19 THE COURT: Ms. Simon?

20 MS. SIMON: I would say that the case speaks
21 for itself in Zagata, in that the determination
22 was by the commissioners. There was an issue of
23 jurisdiction involved. It was very similar.
24 They brought an action to stop the APA from
25 asserting jurisdiction. And the DEC was also

1 involved, it was a little bit more complicated,
2 dual-agency, which we don't have here.

3 But even if you look at the law and facts
4 they don't mesh here. What does still stand is
5 the law in Essex v. Zagata because the court went
6 to great lengths to explain that you need a final
7 determination. This is to avoid frivolous
8 lawsuits. And the courts said time after time,
9 over every step in the application process, you
10 can't just sue because it's not done, give the
11 agency a chance, even if you think it's too long
12 to finish the process, and then sue.

13 THE COURT: All right. I really have that
14 question covered. Do either of you wish to
15 expand any further on the issue raised in the
16 papers about structures being over forty feet in
17 height and the exemption that's claimed from
18 that.

19 MS. SIMON: I can start, if you want,
20 your Honor. There's a number of issues raised.
21 And I'm not aware, unless I missed something,
22 that height was an issue. But the issue of
23 whether these are single-family homes --

24 THE COURT: Whether it's an exempted
25 agriculture use.

1 MS. SIMON: Sorry. I misunderstood.

2 THE COURT: Whether they then refer to
3 properties over forty feet.

4 MS. SIMON: Yes. All of these issues,
5 whether they are really single-family homes,
6 whether they are agriculture use, whether they
7 are resource or class A, class B, these are all
8 particular decisions that have to be made. Staff
9 has started the process but they have not made a
10 final determination. The commissioners don't all
11 ultimately agree with what the staff forwards to
12 them, so it's premature for us to debate this
13 because the agency hasn't decided yet.

14 I don't know if you want to get into the
15 Agriculture and Markets Law here but counsel
16 raised it. I think Section 305-A is clear and
17 unequivocal, it applies to local governments, not
18 to state.

19 THE COURT: That was going to be my next
20 question. In looking at the plaintiff's
21 reference to Agriculture and Markets Law 305-A,
22 I've read it and it does seem to apply only to
23 local governments. Anything you want to say on
24 that, Mr. Cook?

25 MR. COOK: Yes, your Honor. As we have laid

1 out in our papers, there is a interplay between
2 the act of the APA -- excuse me, the enabling
3 statute, enabling the act of the APA and the Ag &
4 Markets Law. The purpose of the APA Act itself,
5 there's language in the Act that discusses the
6 importance of agriculture, viable, sustainable
7 agriculture in the Adirondack Park. That also
8 needs to be looked at in the same framework as
9 the Ag & Markets Law which is intended to protect
10 farming activities from unreasonable restrictions
11 imposed by local governments.

12 Now, this isn't an issue of whether or not
13 the Ag & Markets Law doesn't apply. It's an
14 issue as to whether or not the determination by
15 the APA is an reasonable restriction on
16 agriculture.

17 And, your Honor, I would argue very
18 forcefully that the APA, even though it is a
19 State-created entity, it's still regional, it is
20 not a statewide agency. They don't have
21 jurisdiction in the Catskills, they don't have
22 jurisdiction in the Alleghenys. They have
23 jurisdiction within the park. And so you have to
24 look at that, what's the purpose of the Ag &
25 Markets Law.

1 And the issue is not whether or not there
2 is -- we're not arguing, as the agency would have
3 the Court believe, we're not arguing that the Ag
4 & Markets Law trumps the APA. What we're arguing
5 is their decision to impose a \$10,000 penalty for
6 a project that the APA itself says is a
7 permissible project, is a unreasonable
8 restriction on farming that is contrary to the
9 Ag & Markets Right to Farm Law.

10 MS. SIMON: May I?

11 THE COURT: Yes.

12 MS. SIMON: First of all, the APA does
13 contemplate and is aware of agriculture uses and
14 there are citations as to the regulation. Again,
15 I could submit in a surreply but I don't think
16 that's the point. Again, the agency has to look
17 at what the proposal is here, the commissioners
18 have to decide whether it's proper use or not.
19 The Ag & Markets Law is clear it does apply to
20 governments. The case cited by plaintiffs does
21 not support their position. It's not an APA
22 case. It applies to local government. And even
23 when it applies to local government, local
24 government can still restrict agriculture use if
25 there's an issue of health or welfare or safety

1 of the community.

2 I think it's important to look at one of the
3 cases I cited in my brief, which is a Court of
4 the Appeals case involving the APA and Hunt
5 Brothers, where another state statute appears to
6 be in conflict with the APA statute, the Mine
7 Land Reclamation Law which specifically says it
8 supercedes other state laws. And even there the
9 Court said the APA still has jurisdiction, can
10 still ask for permits. Okay? There is no such
11 provision in the Agriculture and Markets Law.
12 But it doesn't mean that the APA is not aware of
13 the issue and that they shouldn't consider it in
14 their proceedings. But there is no case law that
15 I'm aware of that says Ag & Markets supercedes
16 APA jurisdiction.

17 MR. COOK: May I, your Honor?

18 THE COURT: Okay. I was going to note that
19 the case you cited, Lysander v. Hafner, is not an
20 APA case.

21 MR. COOK: That's correct, your Honor. The
22 mining case -- we're not talking about a mining
23 operation. This is a housing complex for
24 agriculture employees. There is no even
25 allegation of the agency that this is a project

1 that will cause any environmental degradation.
2 By the agency's own admission, it's a permissible
3 project. And now they say in the papers there's
4 no guarantee. We understand. But everybody
5 understands from a logical perspective this is
6 farm housing, this is new decent housing for
7 employees that, without that housing, agriculture
8 would not exist, particularly on the scale of the
9 Lewis farm. We're not saying that the Ag &
10 Markets Law has supremacy over the APA. We're
11 saying the decision to unreasonably restrict the
12 ability to construct farm housing, that's the
13 problem. It's not the statute, it's the
14 application that is the problem.

15 MS. SIMON: Your Honor, may I add something
16 here? I wanted to note that the issue of whether
17 this project is permissible or not, whether they
18 would ultimately get a permit, there's some
19 factors here which the APA would consider, for
20 instance the distance that they are from the
21 river. You know, you might be able to get a
22 permit but maybe you're not supposed to be within
23 a hundred feet of the river. It's for protection
24 of the river obviously.

25 The other issues they will look at if they

1 are arguing these are replacement structures of
2 old underused structures, there are provisions in
3 the APA regulations for that as well. It's
4 supposed to be in the same location. These are
5 things that are going to be worked out by the
6 agency in issuing a permit.

7 THE COURT: I was going to ask and that
8 was -- the example you gave was the example I was
9 going to use. Suppose you do have what is
10 considered a farm structure but the person
11 attempts to put it 20 feet from the river? Are
12 you saying there's no APA jurisdiction here,
13 Mr. Cook?

14 MR. COOK: It would depend on the farm
15 structure. In this case, that's not the case
16 here. We don't have any impact on the river.

17 THE COURT: I just use that as an example.

18 MR. COOK: Unfortunately, that's an example
19 perhaps of the absurd, but I don't believe in
20 that circumstances -- first of all, it's not
21 likely to be a farm structure that close to a
22 river, period. It doesn't make any agriculture
23 sense for that, and so I just don't think that's
24 a practical example that would apply, your Honor.

25 THE COURT: Okay.

1 MS. SIMON: However, these are homes that --
2 I'm stretching my knowledge here a little bit --
3 that probably are going to have septic systems,
4 and those become an issue in terms of their
5 distance from the river. And there's a setback
6 requirement here on this river because it's part
7 of the wild and scenic river system. So there is
8 a setback requirement here even for this kind of
9 situation and that's something the APA would look
10 at, especially because homes have septic.

11 MR. COOK: Your Honor, there's been no
12 evidence this is an issue of setback here. In
13 fact, I would represent to the Court that any
14 siting issues would be permitable by the APA.

15 THE COURT: Well, maybe I got everybody off
16 on a tangent.

17 MS. SIMON: Your Honor, it's in my brief,
18 and I have raised this issue as a setback issue.

19 THE COURT: But the point I was trying to
20 make in my question is even assuming something is
21 exempted as a farm structure, that there might be
22 other regulations that are affected by the
23 structure that would make APA intervention
24 proper.

25 MR. COOK: Perhaps. But, your Honor, here's

1 kind of an example of the absurdity of the
2 position of the agency. Class A and class B
3 projects, as is argued by the State, would
4 prevent single-family homes and, they argue, a
5 subdivision or a single-family home. But we're
6 not talking about a traditional single-family
7 home or a subdivision, it's all under single
8 ownership. And if the farm here were replacing,
9 for example, a bunkhouse or, for example, a
10 dormitory, that certainly could house farm
11 employees. It wouldn't classify as a
12 subdivision, it wouldn't classify as a
13 single-family home, and there would be no
14 jurisdiction and it would be clear that it would
15 be a farm structure.

16 Here, we've got a farm that is going well
17 beyond what is expected in the agriculture
18 community, that is, building first-rate homes to
19 attract first-rate labor, not only to build that
20 farm but to build this community. And that's the
21 absurdity. They could go out, they have taken
22 down 15 ramshackled shacks that perhaps could
23 have had employees put in them, and they are
24 replacing them with three top-notch employee
25 homes.

1 THE COURT: I'm going to make the assumption
2 that that's true, they have torn down ramshackled
3 shacks and built really nice structures. But I
4 guess the question is: Let's assume that that's
5 true, and I'm sure it's true. And I don't think
6 there's an objection to the quality of the work.
7 But isn't -- having come full circle, the issue
8 here is determining jurisdiction and whether the
9 rules and regs apply with initially the
10 Adirondack Park and then with Supreme Court;
11 isn't that what we have come down to?

12 MS. SIMON: I believe it is.

13 MR. COOK: Not if the agency doesn't have
14 jurisdiction in the first instance, your Honor.
15 There's no regulatory requirement or statutory
16 requirement that someone who doesn't fall into
17 the jurisdiction of the APA goes to them and
18 receives a permit before they can do anything.

19 THE COURT: And you want me to make that
20 factual determination.

21 MR. COOK: Yes, your Honor.

22 MS. SIMON: I believe that the records we
23 have submitted and the affirmations and the
24 affidavits and the Adirondack Park Agency map
25 clearly shows they are in a resource management

1 area, they are within a quarter of a mile, where
2 those homes were built, of a river corridor which
3 is protected. They are clearly within the
4 geographic APA jurisdiction. The kind of housing
5 is within the APA's jurisdiction.

6 I will add that in the reply papers the
7 plaintiff is indicating this might not actually
8 be single-family homes, but their application
9 which is what's before us says specifically
10 single-family homes. That's in Quinn's
11 affidavit.

12 MR. COOK: First of all, there is a mixture
13 of single-family and multiple use home. And
14 quite frankly, in terms of a housing complex, I
15 don't think it matters.

16 But, your Honor, I think this is one point
17 that is very, very important and that's this
18 issue of an agriculture use structure. The
19 state's papers are completely silent on that
20 issue. There is no argument that they have made
21 in reply on that issue. Why is that? Why is it
22 silent? I think, your Honor, that there's a very
23 strong argument to be made, and I've made it,
24 that they are silent because they are pushing the
25 envelope, they are on the edge.

1 And it's interesting, your Honor, that the
2 settlement agreement that's part of the record
3 that was asked to be executed by the Lewis Family
4 Farm includes a provision requiring that they
5 waive any challenge to jurisdiction by the APA.
6 The fact is these are agriculture use structures.
7 There's not jurisdiction in the first instance,
8 and even if your Honor were to find jurisdiction,
9 I think there's ample authority to find that
10 under the Ag & Markets Law this action is an
11 undue burden on the farming practices,
12 your Honor. Thank you.

13 THE COURT: Okay. I think I understand your
14 positions. I don't want to keep going back and
15 forth here. Okay.

16 Maybe I will now get to an initial, what
17 should have been an initial question. Does the
18 farm have any objection to the action being
19 converted to an Article 78 proceeding?

20 MR. COOK: I don't think it makes any
21 difference, your Honor.

22 THE COURT: Okay. All right. I'm
23 satisfied. Is there anything anybody wants to
24 say in conclusion?

25 MS. SIMON: Yes, your Honor, because we

1 didn't talk about the restraining element of this
2 that they are requesting. And, you know, there's
3 a three-prong test and we believe the state has
4 put forth enough information to indicate they
5 don't meet any of the three prongs.

6 And particularly, the issue of the final
7 determination, the jurisdiction, the agency has
8 not acted yet as an agency and there is no
9 determination, there's no written document that
10 they have presented to say this is the
11 determination. They need to meet all three of
12 those tests, not just one. They fail on that.

13 We believe they fail on harm because the
14 harm is self-created. If they had gone through
15 the process, were unhappy with the result, then
16 they could have sued. But they brought us into
17 court and the harm is from them failing to go
18 through the administrative process, not because
19 the agency has done anything improper.

20 THE COURT: And that's a good point to wrap
21 this up. I think we have to deal with
22 irreparable harm here.

23 Anything you want to say on that?

24 MR. COOK: Absolutely. I think we put forth
25 evidence in our papers that shows where

1 irrevocable harm is. The delay in construction
2 causes irrevocable harm. The project manager has
3 to continue to be paid during the delay. Prior
4 to this action, the farm had already spent in
5 excess of \$30,000 in additional fees. There's no
6 question there's irrevocable harm. The farm may
7 not be able to bring in interns from Nepal, may
8 not be able to bring in employees here. This a
9 holistic farm that looks at organics in terms of
10 crops, in terms of beef and in terms of dairy,
11 and they can't make those next steps as an
12 organic farm without this help.

13 THE COURT: Thank you. I'm satisfied that
14 you've answered my questions and I'll get you a
15 decision as soon as possible. Thank you very
16 much.

17 (Whereupon, the proceedings held in the above-
18 entitled matter were adjourned.)

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C E R T I F I C A T I O N

I, HOLLY A. SANTSPREE, a Court Reporter and Notary Public in and for the State of New York, do hereby certify that I attended at the time and place noted in the heading hereof and took a stenographic report of the proceedings and testimony in the above-entitled action, and that the foregoing is a true and correct transcript to the best of my knowledge and belief.

Holly A. Santspree
Holly A. Santspree

Dated: Oct. 13, 2007

Holly A. Santspree, Official Court Reporter
Fourth Judicial District