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 III

(Case No. 2 and Case No. 3)
A.D. No. 504626

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dated 11-30-06 with attached drawings (17);

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$335,000, Cross Rd.);

Building Permit Application, Town of Essex, No. A-701 dated 6-25-07(1
family dwelling project cost estimate $350,000- Whallons Bay Rd. S.
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Building Permit Application, Town of Essex No. A-700 dated 6-25-07(1
family dwelling project cost estimate $320,000 - Whallons Bay Rd. N.
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Building Permit Application, Town of Essex , No. A-699 dated 6-25-
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Building Permit Application, Town of Essex No. A-714 dated 9-20-07 *(Marco - septic)*;
Building Permit Application, Town of Essex No. A-715 dated 9-20-07 *(North & South - septic)*;
Building Permit Application, Town of Essex No. A-716 dated 9-20-07 *(Residence - septic)*;
Building Permit Application, Town of Essex No. A-662 dated 11/30/06 *(Residence - Foundation)*;
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STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

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

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

INDEX No. 332-08
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ADIRONDACK PARK AGENCY RETURN & RECORD OF PROCEEDING

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   Addendum dated May 2, 2008

   Determination of the Enforcement Committee pursuant to 9 NYCRR 581-2.6 dated March 25, 2008 (Attachment 2)
   *Attachment 1 is omitted (unrelated matter)

2) Transcript of Oral Argument before the Adirondack Park Agency Enforcement Committee on March 13, 2008

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ADIRONDACK PARK AGENCY RECORD OF PROCEEDING

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Reply Affidavit of John Privitera sworn to February 26, 2008

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Ex. C: Town of Essex Land Use Map
Ex. D: Article entitled "New Effort Against Illegal Adirondack Subdivisions"

12) Staff's Reply Memorandum of Law in Support of Agency Staff's Request for a Determination by the Enforcement Committee pursuant to 9 NYCRR 581-2.6(d) of Paul Van Cott dated March 5, 2008 including:
Affidavit of Douglas Miller dated March 4, 2008
Ex. A: 2003 Aerial photograph of Lewis Farm

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

14) Undated Statement of Barbara Lewis on behalf of Lewis Farm (with photo), submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding

15) Letter dated March 5, 2008 from Adirondack Park Review Board to Governor Spitzer dated March 4, 2007 with Resolution dated March 4, 2007 attached, submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding

16) Undated Proposed Order (E2007-041) submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding

17) A color copy of the Power Point presentation entitled "The Matter of Housing at the Lewis Family Farm and the Right to Farm in the Champlain Valley of New York", made to the Agency by John Privitera on March 13, 2008

ITEM 1

NEW YORK STATE
Adirondack
parkagency

Approved by Enforcement Committee on April 10, 2008

MINUTES OF THE ENFORCEMENT COMMITTEE MEETING HELD ON March 13, 2008

Meeting convened at 3:10 pm

Enforcement Committee Members Present: Cecil Wray (Chair), Richard Booth, Arthur Lussi, Frank Mezzano, William Thomas, James Townsend

Other Members or Designees Present: Elizabeth Lowe (DEC), Lani Ulrich, Richard Hoffman (DOS), Curtis Stiles (Agency Chairman), Chris Walsh (DED)

Agency Staff Present: Mark Sengenberger (Interim Executive Director), John Banta (Agency Counsel), Paul Van Cott (Associate Attorney)

Others Present: Frederick Monroe (Executive Director, Local Government Review Board)

Enforcement Program Report: Paul Van Cott discussed the addition of the old details of the monthly enforcement program report, which are used for internal management purposes.

Mr. Van Cott then discussed the monitoring of new subdivision violations within the park. During the months of January and February, fewer than five new subdivision violations were identified out of the 30 or 40 subdivisions that actually occurred within the Adirondack Park.

In March, Mr. Van Cott met with the Essex County Bar Association, where he presented on and discussed the Proactive Subdivision Enforcement Initiative of the Enforcement Division.

Lands of Sawyer: Enforcement Case E2005-011; Lands of Sawyer in the town of Ticonderoga, Essex County. Mr. Wray questioned Mr. Van Cott about the status of this case. Mr. Van Cott confirmed that the case started with a Notice of Apparent Violation, and that there was no response by the respondent to the NAV. Van Cott added that the settlement negotiations that had been

added that he spoke to Chris LaCombe (DEC), who confirmed that the respondents in fact do not have a DEC permit.

Mr. Wray concluded by asking Mr. Van Cott what he felt the Enforcement Committee should do, given the very complex and complicated factors surrounding the matter. Mr. Van Cott responded that there are other competitors in the area who have complied with APA and DEC regulations, and the only fair thing to do is close the Sawyer mining pit operation until they get APA and DEC permits.

Mr. Wray stated that the Committee would consider the facts during Executive Session later in the day.

Lewis Family Farm, Inc.: Enforcement case E2007-041; The matter of Lewis Family Farm, Inc.; In the town of Essex, Essex County. This matter was referred to the Enforcement Committee by Agency staff pursuant to § 581-2.6D of the Agency enforcement regulations.

Mr. Wray stated that both parties are represented by counsel (Paul Van Cott for the APA, and John Privitera for the Lewis Family Farm). Mr. Wray noted that there has been court litigation on this matter, when the respondent brought an action related to jurisdiction against the APA. That matter was resolved by the New York State Supreme Court.

The case involves the construction of three single family dwellings on the respondent's farm in a resource management land use area. The dispute has to do with the requirement as put forth by Agency staff that the respondent should have obtained an Agency permit before constructing the dwellings.

Mr. Van Cott proceeded with his power point presentation depicting photographs and exhibits contained in Memorandum of Law previously provided to the Agency members and Designees. Mr. Van Cott cited section 809 of the APA Act, which requires permits for land use and development on resource management lands, including subdivisions and single family dwellings. Under the implementing for regulations, the Rivers Act, 9 NYCRR Part 577, permits are required for rivers projects, including subdivisions and single family dwellings.

In December of 2005, senior agency staff told Mr. Lewis that a permit was needed for single family dwellings on his resource management lands even if the dwellings were intended to be used for farmworker housing.

agricultural lands. He then stated that there is no permit requirement for agricultural use structures, because they are not listed as Class B projects.

Mr. Privitera asked for the February 21st letter from the Farm Bureau to be acknowledged, and for the proceeding to be dismissed. He also asked that a March 5th letter from Fred Monroe to the governor also be included in the record of the proceeding.

Mr. Van Cott then addressed the question previously posed by Commissioner Lussi, regarding density requirements, and stated that density is only one of the factors that the Agency considers before it can issue a permit. He further stated that the Agency has jurisdiction over the single family dwellings because the law provides that permits are required for single family dwellings built on resource management lands.

Mr. Mezzano asked Mr. Privitera to address Justice Ryan's opinion. Mr. Privitera stated that it is in their brief, and that Justice Ryan's opinion did not apply to this proceeding because Justice Ryan had said that the matter wasn't ripe for review, so he sent the case back to this Agency to make a final determination.

Referring to section 802 (50) of the APA Act, Mr. Booth asked Mr. Van Cott whether principal buildings are counted only where the Agency exerts jurisdiction. Mr. Van Cott responded that that is correct.

Mr. Lussi asked whether the case at hand is considered Class A or Class B. Mr. Van Cott stated that it could be considered both.

Mr. Monroe commented on the previous discussion of civil penalty guidelines, and stated that, in his opinion, where there is a good faith dispute as to jurisdiction, he felt discussion on behalf of the review board leaned toward no imposition of a civil penalty.

Mr. Wray adjourned the Committee at approximately 4:45.

NEW YORK STATE
Adirondack
parkagency

As approved
5/8/08
SSB

MINUTES OF THE ENFORCEMENT
COMMITTEE MEETING HELD ON
March 13, 2008

A D D E N D U M

May 2, 2008

Report of Executive Session: The Enforcement Committee came to a determination regarding Lands of Sawyer. The determination is attached hereto as Attachment 1.

Report of Executive Session: The Enforcement Committee came to a determination regarding Lewis Family Farm, Inc. The determination is attached hereto as Attachment 2.

Complete transcripts of both public Enforcement Committee sessions are part of the Agency record for these matters.

NEW YORK STATE
Adirondack
parkagency

----------X

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

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

Lewis Family Farm, Inc.

Agency File E2007-041

Respondent.

----------X

The attached substitutes for page 12 of the Enforcement Committee's determination, striking paragraph 4 on that page, as authorized by Chairman Stiles and Enforcement Committee Chairman Wray on April 18, 2008.

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

Resolution of the Matter

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

(1) Lewis Farm will apply for a permit for the three new dwellings and the 4-lot subdivision into sites (including retained "lot") by April 14, 2008, by submitting the appropriate major project application.

(2) By April 28, 2008, Lewis Farm will also submit the following to the Agency:

(a) a detailed description of the use of each dwelling and connection to the Lewis Farm agricultural operations;

(b) an as-built plan for the septic system and an evaluation by a NYS licensed professional engineer as to whether the installed septic system for the three dwellings complies with NYS Department of Health and Agency standards and guidelines;

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

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

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

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

R00856

DETERMINATION OF THE ENFORCEMENT COMMITTEE DATED MARCH 25, 2008

Attachment 2

NEW YORK STATE
Adirondack
parkagency

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

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

Lewis Family Farm, Inc.

Agency File E2007-041

Respondent.

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

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

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

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

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

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

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

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

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

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

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

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

Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicable Sections of Law

The Adirondack Park Agency Act

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

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

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

20. Pursuant to Executive Law §802(63), a "subdivision" is "any division of land into two or more lots, parcels, or sites for the purpose of any form of separate ownership or occupancy (including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division)."

21. 9 NYCRR §570.3(ah)(3) defines a subdivision into sites as occurring where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agriculture and Markets Law

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

Determination of Violation

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

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

38. Moreover, "single family dwelling" and "agricultural use structure" are treated as separate and distinct uses under the Adirondack Park Agency Act. This is evident upon inspection of §805(3) of the Act, which always lists "agricultural use structure" and "single family dwelling" as separate uses for compatibility and jurisdictional purposes under the Act. Similarly, §802(50)(g) lists these two types of uses separately for eligibility for special consideration under the Act regarding the application of the overall intensity guidelines.[1] "Single family dwelling" is a narrowly and specifically defined term and is a keystone of Agency jurisdiction. The term "agricultural use structure" is a broader term for certain agricultural structures, which for the purposes of jurisdiction does not include "single family dwelling." If the drafters of the Adirondack Park Agency Act had intended farm worker dwellings to be included within the definition of "agricultural use structure," it would not have needed to include the phrases "single family dwelling" or "mobile home" separately in either §805(3) or §802(50)(g) in addition to the phrase "agricultural use structure." While the Agency agrees that farm worker housing is important to the enhancement of farm operations, it is not an "agricultural use structure" under the Act, but either a "single family dwelling," "multiple family dwelling," or "mobile home," depending on the type of dwelling.

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

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

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

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

First Violation - Subdivision under the Adirondack Park Agency Act

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

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

Second Violation - Subdivision under the Rivers Act

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

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

Third Violation - New Dwellings under the Adirondack Park Agency Act

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

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

Fourth Violation - New Dwellings under Rivers Act

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

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

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

Resolution of the Matter

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

(1) Lewis Farm will apply for a permit for the three new dwellings and the 4-lot subdivision into sites (including retained "lot") by April 14, 2008, by submitting the appropriate major project application.

(2) By April 28, 2008, Lewis Farm will also submit the following to the Agency:

(a) a detailed description of the use of each dwelling and connection to the Lewis Farm agricultural operations;

(b) an as-built plan for the septic system and an evaluation by a NYS licensed professional engineer as to whether the installed septic system for the three dwellings complies with NYS Department of Health and Agency standards and guidelines;

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

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

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

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

(7) Agency staff is directed to review the application for the three dwellings and the subdivisions promptly, towards the goal of issuing the after-the-fact permit in time for farm worker occupancy of the dwellings for the 2008 growing season. However, that can only happen if the Respondent responds immediately and favorably to this determination and submits the required information and penalty. The Agency will not proceed with review of the application unless and until the civil penalty is paid, the information requested above is submitted, and the dwellings remain vacant until approval is issued.

DATED: Ray Brook, New York
March 25, 2008

ADIRONDACK PARK AGENCY

BY: Cecil Wray
Cecil Wray
Chair, Enforcement Committee

ITEM 2

****

IN THE MATTER OF

LEWIS FAMILY FARMS, INC.

****

The above-referenced matter was held March 13, 2008, at the Adirondack Park Agency Headquarters in Ray Brook, New York, before Lisa L. Tennyson, Certified Shorthand Reporter, Registered Merit Reporter and Notary Public in and for the State of New York.

APPEARANCES:

CECIL WRAY
FRANK MEZZANO
ELIZABETH LOWE
ARTHUR LUSSI
LANI ULRICH
RICHARD BOOTH
MARK SANGENBERGER
CURTIS STILES
JAMES BANTA
JAMES TOWNSEND
RICHARD HOFFMAN
WILLIAM THOMAS
CHRISTOPHER WALSH
FRED MONROE

PAUL VANCOTT, ESQ.

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.
Attorneys for Lewis Family Farms, Inc.
677 Broadway
Albany, New York 12207-2503
By: John Privitera, Esq.

MR. WRAY: Next. Ready, Mr. VanCott?

MR. VANCOTT: I am.

MR. WRAY: The next case to be considered by the enforcement commitment is the matter of Lewis Family Farms. I don't have the file with me here, it is E2007041. This matter has been referred to the enforcement committee by agency staff pursuant to Section 581-2.6D of the agency enforcement regulations.

The committee will hear an oral presentation or argument by the agency's staff and by the respondent and deliberate in executive session and subsequently make a determination as provided in that section of the regulations.

Both parties here are represented by counsel. Paul VanCott, agency's enforcement attorney, appears on behalf of the agency's staff, and John Privitera is here representing Lewis Family Farm. Thank you, sir.

The -- the agency process requires that a notice of apparent violation be sent to the respondent and provides an opportunity for the respondent to reply in writing and the staff and the respondent have fully availed themselves of

the opportunity to set from their positions on the facts and the law in this case.

The full record was mailed to agency members in abeyance of this meeting and committee members have -- assuming -- reviewed it. The record they received is a public document available for inspection and consists of the notice of apparent violation and respondent's counsel to the notice, a staff notice of request for an enforcement committee determination, which included a number of -- had attached or enclosed a number of documents and exhibits, including several affidavits and memorandum of law.

Document entitled "Right to Farm in the Champlain Valley of New York," dated January 2008 submitted by the respondent's attorney, the staff's reply affirmation by Mr. VanCott attaching correspondence with the State Department of Agriculture and Markets, a reply memorandum of law from the respondent requesting dismissal of the enforcement proceeding, and the staff's reply of memorandum of law to that memorandum.

By way of background, there has been some

court litigation on this matter previously when the respondent brought an action against the agency related to jurisdiction and so forth. That matter has been resolved by the New York State Supreme Court.

This case involves construction of three single-family dwellings on the respondent's farm in resource management land use area and the issue in dispute has to do with the requirement as put forth by the staff that they should have required -- that they should have obtained agency permit before doing so.

Our procedure -- it will be that Mr. VanCott and Mr. Privitera will each make a statement on the record not to exceed 15 minutes, and it's my understanding, Mr. Privitera, that you may be showing a powerpoint or slides. Am I right?

MR. PRIVITERA: Yes, just as Mr. VanCott is, sir. Yes.

MR. WRAY: Okay. And will be able to -- both counsel be able to respond to any questions from the enforcement members. As I believe all of you know, this is not public participation proceeding.

The -- and if it seems appropriate at the end of their presentations to ask for any rely from either counsel, I do so but that's -- would be in -- in our discretion.

After the conclusion of this hearing the enforcement committee will meet in executive session to deliberate and make a determination on the matter and the committee decision will first be reported to the respondent and to Mr. VanCott and thereafter, made public. Committee's determination will not be reported to the agency in tomorrow's public session.

Mr. Privitera, do you or Mr. VanCott have any questions about anything that I may have left ambiguous?

MR. PRIVITERA: No, sir.

MR. WRAY: Thank you. Paul? Do you have any question?

MR. VANCOTT: No, I don't.

MR. WRAY: Mr. VanCott, please proceed.

MR. VANCOTT: Thank you. I'd like to begin by referring to certain facts and law that are in our record. This is a photograph of the Lewis farm from a cover of one its documents. The Lewis farm is an incredibly beautiful piece

of land, set against the background of Adirondack Mountains. It comprises over a thousand acres. And Lewis Farm is clearly using this land for agricultural use purposes.

Section 805(g) of the Adirondack Park Agency Act sets a strong pro-farm policy that encourages farming on resource management lands like these. The agricultural use of resource management lands is listed by law as a primary compatible use and does not require an agency permit. The farming of resource management lands in the Adirondack Park is an open space use that the law strongly favors.

Agency staff support this policy and the agricultural use of this beautiful land by the Lewis Farm. The agency and the New York State Agricultural and Markets Department, as sister state agencies, work together to coordinate farming policy in the Adirondacks. Agency staff support and encourage efforts by Lewis Farm and other Adirondack farmers to make agricultural use of their lands.

As this picture of the Lewis Farm amply demonstrates, the agricultural use of this land is precisely the sort of open space use desired

by the Adirondack Park Agency Act. But that is not why we're here today.

The Adirondack Park Agency Act and the Wild Scenic and Recreational Rivers Act, in their implementing regulations are the only requirements of New York State law that are relevant to the question of whether respondent is in violation.

Section 809 of the Adirondack Park Agency Act requires permits for land use and development on resource management lands, including subdivision and single-family dwellings. Under the Rivers Act, the implementing regulations that 9NYCRR part 577, permits are required for rivers projects, including subdivision and single-family dwellings.

The facts of this matter are equally clear. In December of 2005 senior agency staff told Mr. Lewis that a permit was required for single-family dwellings on his resource management lands even if the dwellings were intended to be used for farmworker housing. Mr. Lewis now claims that he does not recall this discussion.

In late 2006 Lewis Farm sought and obtained building permits for its single-family dwellings from the town of Essex and alleged that the town initially told them that no agency permits were required. After installing the foundations for its single-family dwellings, Lewis Farm apparently realized that agency permits were required and applied to the agency for an after-the-fact permit to construct a single-family dwelling.

The violations were referred for enforcement action. The record shows that Lewis Farm refused to settle or to pay any penalty or even to agree to undertake an environmental benefit project in order to resolve its violations, despite the efforts of agency staff attorney Sara Reynolds who was assigned to handle this matter.

In late June 2007 Lewis Farm resumed construction of its single-family dwellings and continued with that construction even after the issue -- the agency issued a cease-and-desist order, two modular homes were placed prior to the issuance of the cease-and-desist order, one was placed after the cease-and-desist order was

issued.

Lewis Farm acknowledges making this decision to defy the law for business reasons. Lewis Farms next served the agency with a lawsuit challenging agency jurisdiction over its project. On August 16th, 2007, New York State Supreme Court, Essex County, dismissed the Lewis Farm lawsuit.

In that decision acting-Supreme Court Justice Ryan unequivocally stated that the agency had jurisdiction over the Lewis Farm project. Despite this decision and in defiance of agency staff correspondence making clear that the cease-and-desist order remain in effect, Lewis Farm again resumed construction on its single-family dwellings.

Lewis Farm continued construction on its single-family dwellings through the fall of 2007. In December 2007 agency staff made this request for an enforcement committee determination. In defending against these violations, Lewis Farm argues that the agency must defer to the laws and policies in the New York State Department of Agricultural and markets. Acting-Justice Ryan made clear his

opinion on this legal argument in his decision dismissing the Lewis Farm lawsuit.

Since the APA does have authority over this building project, the next issue is whether the Ag and Markets Law, Section 305A supersedes the APA authority. It does not. This section has no application to the Executive Law or the regulations promulgated by the APA pursuant to that law.

With respect to this legal argument by Lewis Farm, the enforcement committee need look no further. Lewis Farm also argues that a single-family dwellings, not single-family dwellings, as specifically defined in the Adirondack Park Agency act.

Instead, according to Lewis Farm, they fall within the more general definition of agricultural use structures. This argument is not consistent with statutory construction. In New York statutory construction favors specific definitions over more general definitions. Terms of art, like single-family dwellings, are supposed to be read to refer to the subject matter about which such terms or phrases -- phrases are commonly employed.

Furthermore, in the definition of principal building in the Adirondack Park Agency Acts, which specifically refers to farmworker housing, agricultural use structures and single-family dwellings are referred to separately in the same sentence, clearly demonstrating the intent of the law that they are separate and different types of structures for purposes of agency jurisdiction.

These two unpersuasive legal arguments are the cornerstone of Lewis Farm's efforts to justify long after the fact its violations. Agency staff addressed Lewis Farms other equally unavailing legal arguments in our memorandum of law. But I would be glad to respond to any questions that you have on any of them.

For relief, agency staff asks the enforcement committee to require Lewis Farm to obtain an after-the-fact permit. Agency staff could seek removal of these structures for the -- as a relief for these violations. However, that would not be consistent with the position that we've taken in this matter from the outset.

We've consistently advised the Lewis Farm that if they had come in for a permit, if they

would go through the permitting process, we would recommend approval of their single-family dwellings, subject to appropriate conditions.

Agency staff also asks the enforcement committee to impose a substantial penalty against Lewis Farm for its violations. Staff have not recommended a specific penalty amount but we believe that the facts show that these were knowing and purposeful violations. The facts also show that Lewis Farm purposely and repeatedly defied a lawful cease-and-desist order issued by the agency.

These facts justify a substantial penalty in order to deter Lewis Farm from future violations and to deter others from similar unlawful conduct. Thank you.

MR. WRAY: Any questions from the members of the committee?

MR. LUSSI: Paul, I'm struggling here. Principal building under 50G. 80250G.

MR. VANCOTT: Yes.

MR. LUSSI: Can you explain your reading of that again? I am reading it as one, all the buildings put together constitute a single principal building.

MR. VANCOTT: Okay. My specific point, if you -- if you look at that section, 50G, 52G, if you look at that specific section, it refers in the same sentence to agricultural use structures and single-family dwellings. For purposes of agency jurisdiction have not -- not having to do anything with OIG's with the principal building rights, this makes clear that -- that the APA Act treats these as different types of structures.

The single-family dwellings and agricultural uses structures are not the same thing. That single-family dwelling -- single-family dwellings are not considered to be agricultural use structures.

MR. LUSSI: I -- I get that but it says that they will together constitute and count as a single principal building.

MR. VANCOTT: I agree and that's -- that's actually one of the -- the benefits. It doesn't mean they don't need a permit. That's a separate issue. Okay? Under 809 in resource management, they need a permit to building a single-family dwelling. Doesn't matter if it's for farm or for a family, you know, rich or

poor, young or old, everybody needs to get a permit if you are building a house in resource management.

All that means -- this section -- is that it gives a -- a benefit to buildings, what would otherwise be treated as separate principal buildings for agricultural use. So here, instead of their single-family dwellings, each counting as one principal building and -- and they are using up three principal building rights with these new structures. Instead, the law gives them the benefit of combining them all together and says, we're only going to count it as one principal building for purposes of determining whether you meet the density requirements of the act.

Density requirements of the act are separate -- entirely separate from whether or not they need a permit to building the structure. Okay?

MR. WRAY: Any others? Thank you, Mr. VanCott. Mr. Privitera.

MR. PRIVITERA: Thank you, members of the commission. My name is John Privitera. Mr. Chair, thank you. I'm here on behalf of the

Lewis Family Farm. The Lewis Family Farm that is 50 percent owned by Barbara Lewis. Her affidavit in this proceedings been ignored by staff. But that is where the facts are with respect to this farm.

I would ask you to stay with me for the next few minutes. I would ask you that you think about the law, the plan, the farm and policy issues today because if this is about a man and not the law, Sandy Lewis, if this is about a man and not the park plan, if this is about a man and not the farm, I think I'll sit silent for the next 15 minutes and you can decide this matter.

This is about the park plan. This is about the law, and I ask you to sit not as a grand jury as staff would have you sit. I ask you to sit as fiduciaries of the plan, which is what you are and what you have sworn to do as public servants and I respect that. I ask you to sit because you hold the park's future in your hand in interpreting the plan and because farms are the bedrock of this country, and farms are where we get our food, although many people forget that.

What you do about this case today about farms determines a great deal about the future of the park and about open space in the park. So please stay with me as public servants, act in the interest of the future of the park, and then I would like to take you through, if I may, this brief slide show and -- and walk through not only what this farm is about, but what the law's about.

That's the Lewis Family Farm. Here we go, maybe it has to be on slide show. Is that it?

MR. VANCOTT: No, just -- you have to click on slide show up there.

MR. PRIVITERA: I knew that would happen. All right. Regionally, from a regional perspective, the farm's in the great valley. It is in the northern reaches of the great Appalachian Valley and the Champlain Valley. It's in the pink right there. This is American Heritage Farmland.

People have been growing food on the Lewis Family Farm for at least 260 years. As you know, the town of Essex is the most historic town in the entire park, I would argue, because of its cluster of pre-Revolutionary farm homes

and pre-built Revolutionary village homes. This is indeed in the region of American heritage farmland. It's what it's always been.

This is a pretty good shot. It's in our brief of the very little park land inside the park that is protected as agricultural districts. I would ask you to bear this in mind because if you look to the future in the way we are going to grow our food and feed our families, the bread baskets are small and on the edges, you know, the milk jugs are pint sized.

There's very little agricultural district lands so what you're talking about here is very precious resource and really part of the glory of open space if you support it today. This is a corner of the Lewis Family Farm that's at issue. The road that came from this west and crossed the river to your left, the bridge is out. It's called the Walker Road.

The Walker farm is where these three houses are. At the corner right there -- I don't have a pointer but at the corner of the road, at the bottom is a farmhouse, that's no longer there, that's the Walker farmhouse which is always part of the hamlet of Whallonsburg. A very depressed

farm hamlet, I might say. On this very corner, if it was any other hamlet inside the park, it would probably have a Stewart's on it, which would probably be a good thing; that's an outlet for farm products. It's our modern-day dairies.

To the north you'll see the farm, barn plaza, this is world-class farm architecture. That barn plaza was designed by a renown landscape architect, Dan Tiley (phonetic), some of whom you might know. Some of you might know him. It's a perfect orthogonal alignment. The farm houses are to the south of that corner and are aligned with it as well.

This is a view from the hamlet itself. As I said, there has probably not been a new structure in this depressed farm hamlet for 30 years except for one house I could find. The house -- the farmhouse cluster right there is nestled on the edge of the farm and on the edge of the hamlet, perfect cluster planning.

The Lewis Family Farm owns two square miles, and they decided to cluster these homes down by the barns, on the edge of the hamlet to leave the open space. There they are all together. You can see the hamlet in the

background. Beautiful planning.

This is the original plan in 2006. All three homes designed together. These -- this is not a subdivision. I didn't really hear an argument that there is one. This is all part of the Lewis Family Farm. It's -- there has been no subdivision, there are no other lots, they have not been found by the subdivision inspection that Mr. VanCott spoke about because there's no real estate change.

They are on a common well, all three houses. They are on a common septic and there's no way you could divide them as a subdivision. You couldn't sell them separately. Some day if they are sold separately, you would have to subdivide and then the -- the department, the agency would have jurisdiction.

By the way, if we're able to fill these houses that have been standing empty for a year, they could probably house about 15 people, which would increase the population of the town of Essex by two percent. That's how depressed this area is.

This is an illustration. It's not in the record just so you see it from a land use

perspective. Across the street. It's non-jurisdictional because it's a hamlet. That's what you could have across the street; a 99-unit apartment complex with 15,000 square feet of first floor retail, 175 parking spaces and it would be non-jurisdictional.

So it's clustered over there next to a hamlet that could explode if there were enough money to do so. There are the roofs the houses on the edge of the hamlet, looking from the hamlet. There they are again, they match perfectly and an antique house that's to the right of this frame, which is also white clapboard, slate roof. So if you look at it together, it's also perfect regional architecture. It blends in. So, that's the farm.

Let's take a look at the law. Now I would say that there are at least 10 or 12 signs along the path, commandments if you will, warning signs that say, this agency should avoid the regulation of farm land. It starts -- and I'm going to go through all of these. And they are all -- you will see by the end, the single-family -- the definition of single-family

dwelling fits perfectly with all of the warning signs to not regulate farming.

This is what the constitution says. And this provision of the constitution is nestled right next to the clause that says "forever wild," that is so important to this park.

This says conserve farmland as it says it's your obligation to encourage the development of farms and improvement of agricultural lands. And encourage the development, that's the constitutional duty of this agency and it's a constitutional right of all. That's the first warning sign. Encourage development, not crush.

The next warning sign says that this agency, as all state agencies, are obliged to encourage the maintenance of viable farming. On this record, this farm is not viable without on-farmworker houses. There is nothing that contradicts that.

We have the expert opinion of Klaas Martin who has come here today and is sitting in the front row. He says that on-farm housing is critical to this to the viability of this farm, and there is nothing that contradicts it. And that obligation in the statute says that you

have to -- that this agency must adjust its procedures to accommodate viable farming. This is the provision that Commissioner Lussi asked about. You know, the entire act is about you as commissioners controlling density. That's what it's all about.

This provision says -- and it's a huge warning sign by the legislature -- don't regulate farm housing. And there's a very broad definition of immediate family, by the way. Don't regulate farm housing because it doesn't count. It doesn't matter how many farmhouses are built. It doesn't matter how many farm structures are built. They don't matter.

They don't make the farm any more -- the park any more dense. They are supposed to be cultivated, consistent with the constitution. The legislature knew what they were doing. Allow farms to grow, don't regulate them. That's what that says. It's irrelevant to the park.

The staff is fighting here about permitting three structures that don't count. This is the open space provision that Mr. VanCott referred to. I would say he gave lip service to. It

says it's very important to protect the open space character of the park by encouraging and facilitating farming.

Now let's get to the nitty-gritty. Agricultural use structures are not class A projects, as a matter of law. And, as agricultural use structures aren't regulated even if they are over 40-feet tall. How many warning signs do we need from the legislature to stay away from farms?

Next in class B -- this is very interesting. Forestry structures and ag structures are included in class A -- or discussed in the class A definitions. When they got to class B the legislature pulled forestry use structures back in. They did not pull agricultural use structures back in. They did not.

There is no requirement for a permit for a class B, for an agricultural use structure because agricultural use structures are not listed as class B. And here's another warning sign. Forgive my judge-witical (phonetic) training, but I put a lot of faith in the phrase, bona fide, semper fi is another -- built

off of that Latin word for faith. And bona fide -- which is the way I was taught to pronounce it -- means good faith. It means something about honor, something about integrity, and on this record there is no basis upon which you could find that this is not a bona fide farm.

And what did the legislature say in the act under 815? Avoid regulation of good faith farming. Now let's get to the definitions. And you have to read them consistent with the entire act. You have to read them as a matter of fundamental statutory construction. Your first definition, agricultural use structure, includes all farm buildings, including structures directly and customarily associated with agricultural use.

That's your bedrock general and specific definition. Agricultural use structures are exempt. By the way, I hope you don't mind our silhouettes. That's the guest house, the fully-restored barn, the orchard and the manager's house, Dr. Marco Terko (phonetic) who is also a professor; he came here today as well and I appreciate his support.

By the way, that was built in 2006 also and for some reason staff did not require that that -- that a permit be obtained for that. As the Lewis affidavit shows, 15 houses, substandard, falling apart houses and countless outbuildings were taken down, cleaned up and taken away on these two square miles, and now there are six houses on a -- up to you -- potentially productive farm.

These 1200 acres could have, if you kill this farm, consistent with law, 30-, 40-acre lots with a house on them. And that's what you'll get if you kill the farm.

Structure and -- now let met go back. Agricultural use structure includes the word structure, then the legislature defines "structure," all buildings including single-family dwellings. Okay?

So a single-family dwelling is an agricultural use structure if it's used for an agricultural use. There's no escaping that. Look at this. Agricultural use structure includes all structures directly and customarily associated with ag use, and structures including single-family dwelling.

The affidavit of Klaas Martin, the February 1 letter from the commissioner of Ag and Markets, both say that these are farmworker houses and that they are agricultural uses of the land.

So, where are we? A single-family dwelling must be an agricultural use structure if it is directly and customarily associated with Ag use, and there's nothing in this record upon which you could say that these houses are for anything other than Ag use.

And by the way, the customary use of farmhands in the Adirondack Park is something else. There's been hired hand houses in corners of barns in garages where hired hands slept for centuries inside the park. This is just an effort by some very good people to build nice houses for farmers and suddenly it's treated as a crime.

I don't know why that won't go any further. Help. And we know that all agricultural use structures by your own Web site are non-jurisdictional anywhere in the park. No matter how big they are. Anywhere. Another warning sign by legislature to stay away, which

you have -- you acknowledged on your Web site. Let's get to the Rivers Act. Legislature did the Rivers Act right after that. Legislature said lands development for the full range of agricultural uses are okay, could be clustered development, and your regs say the following may be undertaking taken without a permit in recreational river areas.

Ag use structures. Only limitation is that the Ag use structure has to be 150 feet from the river, ours are about 800 to a thousand feet from the rivers. So somebody's hollering at us from not getting a permit. The law says, and a big firm told Barbara Lewis, not me, but I agree, that they didn't need a permit.

Well, I get -- I wonder why. Because the law says that? Now, are these farmhouses? Customarily used for farming? Well, you only have one affidavit by one expert in this case and he says -- third bullet -- first, he said they are important, they are necessary.

You should read that Martin affidavit, it's in the spiral bound. He said that this is a showcase farm, that has taught many people, somewhat word renown, high-end soil conservation

practices.

"In my experience, our farm employee housing is a sound agricultural practice and a foundation stone of a self-sustaining farm." So how can you say that it is not directly and customarily associated with Ag use as the definition of Ag use structure says, when the only expert on the matter says that it's necessary and a foundation stone and a sound agricultural practice?

This is how good farms survive with on-farm employee housing, and of course, that is what the Department of Ag and Markets said. I'll finish in a moment if I may. The February 1 letter by the commissioner is in the record; it's attached to my reply affidavit and he's made a determination -- could I have the lights please -- that the farm housing on the Lewis Family Farm is indeed agricultural in nature.

So what does staff say about that letter? Really nothing. They say, well, that's a policy statement. Well, let me tell you, under 308-4 when the commissioner says that, it's a final binding opinion under the Right to Farm Law and if you don't like it, you have to sue on it in

an Article 78 proceeding to try and get a judge to change it. So that's not an expression of policy, that is a finding as a matter of law under the Right to Farm Law that these buildings are agricultural in nature so how in the devil do we get outside of the definition of agricultural use structures, what is this about?

There is no room in this record to find any other way. I will tell you on page 7 of the final brief by staff they seem to confess error finally. They say, well, okay, probably agricultural use structure or at least an Ag building, and yeah, you don't count this building but, you know, someday it might be converted and it might be subdivided and sold to somebody for a non-farm use. Right on page 7. And because of that, we need to permit it now.

That's like saying, somebody's building a 15-foot house -- tall house in the hamlet and therefore, we better assert jurisdiction and require a permit for a 15-foot tall house because that guy's son might try to build it more than 40-foot tall someday..

That's the basis for jurisdiction today because somebody else might change the land use.

Well, if they do, the new program to search the county clerk's office for subdivisions will pick it right up. If they ever figure out a way to chop up the well or build two more. Chop up the septic system, build two more, somehow figure out how to make that into three sites. I don't know how. And then subdivide it and sell it, you will have jurisdiction and then you will have to count it because it won't be an Ag use structure.

There's no reason to assert jurisdiction now because somebody might change the structure. We ask for a dismissal of this proceeding and we ask you to do that in the interest of farming, we ask you to do that in the interest of the plan and open space, in the interest of the farming community, in the interest of your constitutional oath and obligations.

And I would ask that I -- or be permitted a minute please to just read a short statement by Barbara Lewis and then I'd like to submit to you a proposed order. This is --

MR. WRAY: If it's brief since you're over your time, Mr. Privitera.

MR. PRIVITERA: Two minutes please.

MR. VANCOTT: Mr. Chairman, I would ask for some additional time, too, given the fact we are about 30 minutes into this.

MR. PRIVITERA: "You asked for open spaces, we have created them by establishing fields and pasture land where there used to be falling-down houses, barns and outbuilding and debris.

"You asked for vistas, we have created them by taking down all telephone poles abutting our land and putting the services underground. You asked for wetlands, we have preserved and enlarged them by building bridges and creating pooling areas. You asked for jurisdiction over a farm's right to build housing for its employees, and all future building activities on its land and by extension all farms in the Adirondack Park.

"We say these rights are regulated by and protected by the State of New York. The Department of Ag and Markets and our local zoning laws. We have done and continued to do the right thing by our land and the people of our community. Do not ask for more."

And I would ask that this statement be made part of the record. It includes, by the way, a

photograph of where the Lewis family -- photograph of where the Lewis family now lives. Fully restored of course. But that's the tender handed work on this farm.

I would ask that you acknowledge two things as well in the record, Mr. Chairman, and then I have a courtesy to offer. I would ask that you acknowledge the Farm Bureau letter of February 21 asking for dismissal of this proceeding and asking also that you promulgate a farming policy. May I, Mr. Chairman?

MR. WRAY: Have you got something to give us?

MR. PRIVITERA: Yes.

MR. VANCOTT: I have no objection.

MR. WRAY: Okay. Thank you.

MR. PRIVITERA: I would ask that you include in the record a March 5 letter signed by Mr. Monroe, who sits here, to our governor with a copy to you as the Adirondack Park Agency asking that I promulgate an agricultural policy, and expressing deep concern about this proceeding against the Lewis Family Farm.

MR. VANCOTT: I have not seen this but I have no objection.

MR. WRAY: Thank you.

MR. PRIVITERA: And, finally, I have a courtesy to offer. That is my custom. Most administrative law judges ask for it, many judges ask for it, and I have prepared proposed findings of fact and conclusions of law for you to consider. And a proposed order.

MR. WRAY: Thank you.

MR. PRIVITERA: That provides for dismissal.

MS. ULRICH: Anyone without copies?

MR. PRIVITERA: Upon that, Commissioners, thank you. Embrace this farm. It's in the best interest of the park. And when you do, go up there and look around. It's beautiful. It's a spectacular thing that you would never have expected when the -- when the law was first drafted 35 years ago. It's a gift to the people. Let it produce. Thank you.

MR. WRAY: Mr. VanCott? You have a minute or two.

MR. VANCOTT: Maybe a little bit longer than that. I have a few remarks to respond to but given the fact that we're 30 minutes on, I kept to 15 minutes, I hope you will indulge me.

First of all, subdivision -- definition of subdivision in the Adirondack Park Agency Act, as you well know, includes subdivision into sites. And a subdivision into sites occurs whenever there is more than one dwelling placed on the same parcel of land, even if there's an existing parcel on there and even if that existing parcel is intended to be taken away.

So that's the basis of the agency's assertion that this is a subdivision. It's a subdivision into sites and in resource management and in a river area a permit is required.

Mr. Privitera points out how well situated the farmworker housing is on the property and staff don't disagree with that. I think we've -- we've said and I said in my initial statement that as staff, we thought that these dwellings could be permitted subject to reasonable conditions. We've said that from day one.

As he points out, it's hard up against the hamlet of Whallonsburg. It's a good location for what they have done. Mr. Privitera spoke to the constitutional duty of the agency and I -- I

couldn't help but think and I was looking at it this morning getting ready for this, the language in the constitution is very close to the language that's already in the APA Act and 805G, where it talks about the agency's -- I will read it.

"The purposes, policy and objectives. The basic purposes and objectives of resource management areas are to protect the delicate balance of physical and biological resources, encourage proper and economic management of forest, agricultural and recreational resources, and preserve the open spaces that are essential and basic to the unique character of the park."

I think the act speaks for itself in terms of our being very consistent with our constitutional duties.

I will go back to the question that Commissioner Lussi raised and that John Privitera referred to in his remarks talking about the importance of our density requirements to the APA Act. That's very true. But it's only one of the factors that the agency considers before it can issue a permit.

Under 809-10 -- 809-10, agency shall not

approve any project unless that project meets the following criteria. That includes that it's consistent with the land use and development plan, that it's consistent with the character, description and purposes of the -- of the area in question, that it's consistent with the overall intensity use -- intensity guidelines. That's the one that Mr. Privitera and Commissioner Lussi referred to. That complies with the shoreline restrictions and that it would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park.

The agency has jurisdiction over the single-family dwellings because the law provides that permits are required for single-family dwellings that are built on resource management lands.

When you make -- when we issue a permit, we make the finding that it's consistent with all intensity guidelines and when that is farmworker housing, we are talking about how all the agricultural use structures and the single-family dwellings used for farmworker

housing are considered as one principal building right. But we're also looking at -- and we've a statutory duty to look at -- whether or not a single-family dwelling is going to have an undue adverse impact.

We're lucky with this case. We truly believe that a permit might be issued. But, that might not have been the case. We are fortunate where we are but it may have an undue adverse impact. You saw the beautiful vista in the first slide. What if the single-family dwelling were perched out in the middle of that field? Then we might have some trouble making that finding that there's no undue adverse impact. That's what the law gets at.

The fourth house -- briefly, we addressed that in our memorandum of law. The fourth house that Mr. Privitera referred to was a replacement of a pre-existing dwelling and the law allows for that. It's in resource management. So all that has to happen is that that house be placed in the same vicinity of the house that it replaces and that's why we found that that house was non-jurisdictional.

Mr. Privitera said that Ag and Markets

considers it to be an agricultural structure. I don't disagree with that. But it's not their definition. It's the agency's definition. And it's a different term. Agricultural use structures is a term of art in our law. And, you know, if you look at the definition and -- and after talking about this case at home, but agricultural use structure means any barn, stable, shed, silo, garage, fruit and vegetable.

My wife said, "Where is the horse in these single-family dwellings?" You know, this is a single-family dwelling. There's a specific definition of single-family dwelling in our law. In the definition of principal building it shows that the law intended these to be treated as different. They are different animals.

Mr. Privitera said that the other big law firm that his client hired advised his clients that their single families were exempt and that's why they made their business decision to proceed with construction even after the agency issued a cease-and-desist order.

But it was their decision, it was the Lewis Farm decision, not the lawyer's decision. And they proceeded with that construction even after

a judge in State Supreme Court dismissed their claim that we have no jurisdiction over these single-family dwellings.

MR. WRAY: I think you are repeating a lot of the facts by now.

MR. VANCOTT: Okay.

MR. WRAY: Sort of running out of your time.

MR. VANCOTT: I will defer to the committee. Thank you, sir.

MR. WRAY: All right.

MR. PRIVITERA: May I please have 60 seconds?

MR. WRAY: Sixty seconds you've got.

MR. PRIVITERA: Thank you. Ready, go. You have to take a look at the Court of Appeals case, Lysander. It's in our brief. Court of Appeals said farmworker housing is permitted, and towns can't touch it. Anything. All you have to do is comply with building codes.

When they said that, they were working with the definition of farm operations, that just said, on-farm buildings were exempt from town regulations. Court of Appeals said on-farm regulations, on-farm buildings and undefined

term, an undefined term, included farmworker housing. They knew what the constitution said and they said stay away from farmworker housing, let the right to farm, stay away from it.

MR. WRAY: This APA case?

MR. PRIVITERA: No, it's the town of Lysander case but it was construing the definition of on-farm housing, on-farm buildings, undefined. In this case, Mr. Chairman, there's no question that the Court of Appeals would, if they considered it, include farmworker housing in the definition of Ag use structures because it's much broader than the Town of Lysander opinion.

MR. WRAY: Okay. Thank you.

MR. LUSSI: Your 60 seconds is up.

MR. WRAY: I think since that there are several questions. Mr. Mezzano, did you have a question?

MR. MEZZANO: Yes. You just began to touch on it. Earlier Paul gave his presentation, he cited the Justice Ryan's opinion, and up until a short while ago you have not addressed -- in fact, you haven't addressed it at all, you went to the Court of Appeals case. Would you care to

address Justice Ryan's opinion?

MR. PRIVITERA: Yes. Commissioner Mezzano, it's in our brief. Commissioner Ryan's opinion did not apply to this proceeding because he said that it wasn't right for review so he sent it back to this agency to make a final determination. And there's a -- a lot of case law including Court of Appeals case law that we cite that says that when a court says it's not right for a review, and then issues dicta, is what lawyers call it, in doing so dismissing it, it doesn't apply. It's not a prior decision.

And now that you have spoken, I might say that I was inspired by your findings as chair of the economic committee when you said there was a housing crisis inside the blue line. I think you have to think about it and everybody that thinks about economic development matters has to think about what we're doing here. These are three housings that are empty.

MR. WRAY: Mr. Booth?

MR. BOOTH: Mr. VanCott, regarding the definition of principal building, where it talks about all agricultural use structure and single-family dwellings should be counted

together as a single principal building, it a fact that principal buildings are counted only where the agency exerts jurisdiction? The definition --

MR. VANCOTT: That's correct.

MR. BOOTH: -- presumes the agency has jurisdiction. And it distinguishes between single-family dwellings and other buildings that occur on farms.

MR. VANCOTT: You're correct, sir.

MR. WRAY: Mr. Lussi.

MR. LUSSI: First of all, Mr. VanCott, would you classify it redundantly class A or class B?

MR. VANCOTT: It is both a class A and a class B project.

MR. LUSSI: That's all I need. So with that, Mr. Privitera, if -- if he's arguing it's a class B and you know -- you state you don't -- don't concur with that opinion but how do you describe or explain to me the section D of class B that says that all land uses within a quarter mile of a river are jurisdictional?

MR. PRIVITERA: Because the Rivers Act is compatible with that. The Rivers Act says that

Ag use structure -- well, first of all, class B structures are non -- don't include agricultural use structures. So leaving the Rivers Act aside, Ag use structures can be built anywhere. But because of the Rivers Act they have to be a hundred 50 feet away from the river.

MR. LUSSI: But this says all land uses. It doesn't -- it's very broad. It -- it's saying all land uses in development and -- so why -- why aren't these --

MR. PRIVITERA: I don't know where you are. I don't know where you are in the Act.

MR. LUSSI: It's Section 810D, under resource management. Section 11.

MR. WRAY: What page?

MR. LUSSI: Page -- Act 33.

MR. PRIVITERA: Because this is -- these are agricultural use structures that are non-jurisdictional. The Web site said so. Everyplace you have ever spoken about it, if you find that these are not agricultural use structures, there's lots of ways that you could assert jurisdiction and that would be one of them. But the commissioner of Ag and Markets has found that they are agricultural structure,

in a final opinion.

MR. LUSSI: So that's not land use.

MR. PRIVITERA: Right.

MR. LUSSI: I'm fine.

MR. WRAY: Mr. Townsend?

MR. TOWNSEND: I think I have three questions. One, you just added to my list at the end. The commissioner does not use the term agricultural use structure, he uses agricultural nature. Correct?

MR. PRIVITERA: Yes.

MR. TOWNSEND: And the Lysander case that you referred to does not say that the town is powerless. It says it has to exercise it -- cannot exercise its controls unreasonably. Assumes some opportunity to control.

MR. PRIVITERA: Yes and as interpreted by the Department of Ag and Markets, that means complying with building code only.

MR. TOWNSEND: There is in essence a compliance in that, right?

MR. PRIVITERA: Yes, and in our record we are in compliance.

MR. TOWNSEND: And then the third question I have, you haven't appealed Judge Ryan's

decisions, is that correct?

MR. PRIVITERA: Correct.

MR. TOWNSEND: And in it, at page 4 he said, "The Court does not agree with plaintiff's assertion that the APA has no authority over this building project."

MR. PRIVITERA: Yes.

MR. TOWNSEND: Isn't that a pretty clear statement that he concurred that the agency does have jurisdiction over this?

MR. PRIVITERA: That's what he thought.

MR. TOWNSEND: And you did not appeal that.

MR. PRIVITERA: No. Because it's not binding. As we briefed. It's not binding on this agency.

MR. TOWNSEND: Okay.

MR. WRAY: Okay. Any other questions? Mr. Monroe?

MR. MONROE: Just like to make a comment. This is the type of situation that I believe was discussed when we were talking about civil penalty guidelines. Where there's a good faith dispute as to jurisdiction, and I think our argument on behalf of the review board was in those situations there should not be a fine

imposed.

As I understand it from reading the documents, there was an offer by Mrs. Lewis to apply for a permit which was rejected because they were told that they had to first pay a $10,000 fine. So I think this is exactly the kind of situation that could be avoided if we weren't so insistent on fining someone and more focused on the compliance.

And also there should be some way to resolve good faith challenges to jurisdiction short of getting into a -- a full-blown enforcement proceeding with threats of million dollar fine, which may result in closing down a very important farm for the economy of this region, and -- and for viability of the community.

MR. WRAY: Thank you, Mr. Monroe. There being no other business, Mr. Chairman, I take it there is no other business to come before this committee. I think we have done all our other business. Committee is adjourned. Committee will -- repair to executive session in blue room I assume.

MR. STILES: Yes. This will conclude our

business for today. We will start at 8:00 tomorrow morning.

MR. PRIVITERA: Thank you.

(Whereupon, stenographic record concluded)

* * * * * * * * * *

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

I, Lisa L. Tennyson, Certified Shorthand Reporter, Registered Merit Reporter and Notary Public in and for the State of New York, hereby certify that the foregoing 47 pages of testimony taken by me to be a true and complete computer-aided transcript to the best of my ability.

Lisa L. Tennyson, C.S.R., R.M.R.

TENNYSON COURT REPORTING
Lisa L. Tennyson, CSR, RMR, RPR
(518) 494-7897

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Respondent.

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

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

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

ADIRONDACK PARK AGENCY RECORD OF PROCEEDING

VOLUME II : ITEMS 3-17

RECORD OF PROCEEDING

3) Notice of Apparent Violation (E2007-041), served September 5, 2007

4) Lewis Farm's Answer to NAV, dated October 4, 2007

5) Staff Notice of Request for Enforcement Committee Determination dated December 17, 2007 including Affirmation of Paul Van Cott dated December 13, 2007

Ex. A: Agency's Motion to Dismiss (Index No. 000498-07) dated August 1, 2007;
Affirmation of John Banta dated July 23, 2007;
Affirmation of Sarah Reynolds dated July 20, 2007

Ex. A: Proposed Settlement Agreement
Ex. B: Explanatory letter of May 14, 2007
Ex. C: June 12, 2007 letter from David Cook, Esq.
Ex. D: June 19, 2007 letter from Mark McKenna, Project Manager

Affidavit of John L. Quinn sworn to July 23, 2007

Ex. A: Partial Application
Ex. B: Notice of Incomplete Permit Application letter
Ex. C: Potential Violation Report

Affidavit of Douglas Miller sworn to July 20, 2007

Ex. A: Tax Map
Ex. B: APA Plan Map
Ex. C: Annotated Plan Map
Ex. D: March 23, 2007 letter from Miller to Lewis Family Farm
Ex. E: March 28, 2007 photos
Ex. F: June 27, 2007 photos
Ex. G: Cease and Desist Order
Ex. H: July 2, 2007 photos
Ex. I: July 5, 2007 photo

Ex. B: Decision and Order of Honorable Kevin K. Ryan dated August 16, 2007;

Ex. C: Letter dated August 31, 2007 from APA to David Cook, Esq.
Cease and Desist Order dated June 27, 2007.

6) Affidavit of Douglas Miller sworn to December 12, 2007
Ex. A: Photos of dwelling dated August 31, 2007
Ex. B: Photos of dwelling dated September 5, 2007
Ex. C: Photos of dwelling dated December 7, 2007
Ex. D: Affidavit of Salim B. Lewis sworn to August 7, 2007

7) Affidavit of John L. Quinn sworn to December 12, 2007

8) Memorandum of Law in Support of Agency Staff's Request for a Determination by Enforcement Committee pursuant to 9 NYCRR 581-2.6 (b) submitted by Paul Van Cott, Esq. dated December 14, 2007

9) Document entitled "The Right to Farm in the Champlain Valley of New York" dated January 2008 which includes:
Memorandum of Law in Support of Respondent's Request for

Dismissal of This Enforcement Proceeding and Annulment of the Cease and Desist Order and in Opposition to Staff's Application for Imposition of Penalties without a Hearing; Affidavit of Barbara A. Lewis sworn to January 17, 2008

Ex. A: Project Description

Ex. B: Drawing of Lewis Family Farm Housing dated 10/5/06
Application for a Project Permit, Town of Essex, Application #2-263 dated 11/12/06 (recorded 11/14/06) for 3 residences (with drawings);
Building Codes Dept., Essex NY Building Permit No. A-662 dated 11/30/06 re: construction of a single family home for farm residence at 1058 Whallons Bay Rd.
Application for a Project Permit, Town of Essex, Application # 2-264 dated 11-30-06 with attached drawings (17);
Building Permit Application, Town of Essex No. A-698 dated 6-25-06 (see side panel date 6/25/07) (one family dwelling, project cost estimate $335,000, Cross Rd.);
Building Permit Application, Town of Essex, No. A-701 dated 6-25-07
(1 family dwelling project cost estimate $350,000- Whallons Bay Rd. S. Cottage);
Building Permit Application, Town of Essex No. A-700 dated 6-25-07(1 family dwelling project cost estimate $320,000 - Whallons Bay Rd. N. Cottage);
Building Permit Application, Town of Essex , No. A-699 dated 6-25-07(one family dwelling, project cost estimate $315,000, Whallons Bay Rd.);
Application for a Project Permit, Town of Essex, Application #2-263 dated 11/12/06 (recorded 11/14/06) for 3 residences (no drawings);
Application for a Project Permit, Town of Essex, Application # 2-264 dated 11-30-06 with (no drawings);
Building Permit Application, Town of Essex No. A-714 dated 9-20-07 (*Marco - septic*);
Building Permit Application, Town of Essex No. A-715 dated 9-20-07 (*North & South - septic*);
Building Permit Application, Town of Essex No. A-716 dated 9-20-07 (*Residence- septic*);
Building Permit Application, Town of Essex No. A-662 dated 11/30/06 (*Residence -*

Foundation);
Building Permit Application, Town of Essex No. A-662 dated 11/30/06 *(Marco- Foundation)*
Building Permit Application, Town of Essex No. A-662 dated 11/30/06 *(North Cottage - foundation)*
Building Permit Application, Town of Essex No. A-662 dated 11/30/06 *(South Cottage - foundation)*

Ex. C: Building Codes Dept., Essex NY Building Permit A656, 657, 658 dated 11/14/06 (construction of 3 foundations for 3 single family homes as per application at 909 Whallons Bay Rd.)

Ex. D: Building Codes Dept., Essex NY Building Permit A-698, dated 6/25/07 (Marco Home) construction, instillation of a pre-fab home as per dwgs (2350 sq. ft.) at Cross Rd and Whallons Bay Rd.;
Building Permit A699, Residence #1 dated 6/25/07 re: construction of modular home single family 2350 sq ft as per dwgs at former Caroline Walker site Whallons Bay Rd.;
Building Codes Dept., Essex NY Building Permit A-700, dated 6/25/07 (North Cottage) construction of modular hm (single family) 2,350 sq. ft. as per dwgs at former Carolyn Walker site, Whallons Bay Rd. ;
Building Codes Dept., Essex NY Building permit A-701, dated 6/25/07 (So. Cottage) construction of modular hm (single family) 2,350 sq. ft. As per dwgs at former Carolyn Walker site, Whallons Bay Rd.

Ex. E: Drawing of Lewis House Project dated 10-30-06
Drawing of Lewis House Project dated 10-30-06, revised 9-2-07
Drawings and revisions (3) of Lewis House Project Septic System

Ex. F: Building Codes Dept., Essex NY Building permit A-710, dated 8/8/07 (Farm Manager's Residence) re: construction of an on site septic system as per PE Mark Buckley plans at Marco Turco residence (Whallons Bay Road);
Building Codes Dept., Essex NY Building permit A-716, Residence #1 dated 9/19/07 re: construction of septic system as per plans at 52 Christian Rd.;
Building Codes Dept., Essex NY Building permit A-715, dated 9/19/07 (South Cottage) re: construction of septic system as per plans at 52 Christian Rd.;

Building Codes Dept., Essex NY Building Permit A- 714, dated 9/19/07 (North Cottage) re: construction of septic system as per plans at 52 Christian Rd.

Ex. G: Affidavit of Salim B. Lewis sworn to August 7, 2007

Ex. H: Color photographs

Affidavit of Klaas Martens sworn to January 17, 2008 ;

Affidavit of John J. Privitera sworn to January 18, 2008,

Ex. A: Map of Adirondack Park

Ex. B: Letter dated November 26, 2007 from Commissioner Hooker

Ex. C: Department of Agriculture and Markets Guidelines for Review of Local Laws Affecting Farm Worker Housing

Ex. D: APA policies

Ex. E: 2006 Annual Report

Ex. F: Agency General Enforcement Guidelines

Ex. G: APA Jurisdictional Table

Ex. H: Map showing Agency Land Use Classification in the Town of Essex

Ex. I: Satellite map of Lewis Family Farm

Ex. J: New York State Council on Food Policy

Ex. K: Governor Spitzer's State of Upstate Address on January 16, 2008

10) Staff's Reply Affirmation of Paul Van Cott dated January 29, 2008

Ex. A: Correspondence between APA and Department of Agriculture and Markets which includes:
Letter dated December 4, 2007 from APA to Commissioner of the Department of Agriculture and Markets;
Letter dated December 3, 2007 from APA to Commissioner of the Department of Agriculture and Markets;
Letter dated November 26, 2007 from the Commissioner of the Department of Agriculture and Markets to APA;
Letter dated August 7, 2007 from APA to Department of Agriculture and Markets;
Letter dated June 29, 2007 from the Department of Agriculture and Markets to APA.

11) Reply Memorandum of Law in Support of Lewis Farm's Request for Dismissal of this Enforcement Proceeding dated February 26, 2008
Reply Affidavit of John Privitera sworn to February 26, 2008

Ex. A: Letter dated February 1, 2008 from Department of Agriculture and Markets to Sandy and Barbara Lewis
Ex. B: Instructions for Application for Tax Exemption of Agricultural and Horticultural Buildings and Structures
Ex. C: Town of Essex Land Use Map
Ex. D: Article entitled "New Effort Against Illegal Adirondack Subdivisions"

12) Staff's Reply Memorandum of Law in Support of Agency Staff's Request for a Determination by the Enforcement Committee pursuant to 9 NYCRR 581-2.6(d) of Paul Van Cott dated March 5, 2008 including:
Affidavit of Douglas Miller dated March 4, 2008
Ex. A: 2003 Aerial photograph of Lewis Farm

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

14) Undated Statement of Barbara Lewis on behalf of Lewis Farm (with photo), submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding

15) Letter dated March 5, 2008 from Adirondack Park Review Board to Governor Spitzer dated March 4, 2007 with Resolution dated March 4, 2007 attached, submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding

16) Undated Proposed Order (E2007-041) submitted by John Privitera at the March 13, 2008 Enforcement Committee Proceeding

17) A color copy of the Power Point presentation entitled "The Matter of Housing at the Lewis Family Farm and the Right to Farm in the Champlain Valley of New York", made to the Agency by John Privitera on March 13, 2008

ITEM 3

NEW YORK STATE
Adirondack
parkagency

----------X

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

NOTICE OF APPARENT VIOLATION
Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

----------X

PLEASE TAKE NOTICE THAT pursuant to 9 NYCRR Part 581, the Enforcement Committee shall be convened at the offices of the Adirondack Park Agency (the "Agency") on Route 86 in Ray Brook, Essex County, State of New York, to consider the apparent violations by you of Executive Law § 809 and 9 NYCRR Part 577, as more specifically described in the allegations of fact and law set forth below. The time and date that the Enforcement Committee will meet to consider this matter will be set after a record of the facts and law has been developed pursuant to the process described below.

PLEASE ALSO TAKE NOTICE THAT you have 30 days following receipt of this Notice of Apparent Violation ("NAV") to provide a written response to the NAV at the address below. Any relevant factual information and affirmative defenses, including exemptions to permit requirements, must be raised in your response. Failure to respond within the 30-day period may result in the Enforcement Committee's accepting as true the allegations of fact and law made in this NAV.

PLEASE ALSO TAKE NOTICE THAT prior to consideration of this matter by the Enforcement Committee, a record consisting of relevant documents, testimony, evidence and any legal briefs must be developed for the Enforcement Committee to consider. If there are no facts in dispute, that record may be developed by stipulation or at the request of either party for a determination pursuant to 9 NYCRR § 581-2.6(d). If there are facts in dispute, a hearing will be held to develop the record for consideration by the Enforcement Committee.

PLEASE ALSO TAKE NOTICE THAT you will be invited to appear before the Enforcement Committee in person, by authorized representative so long as you also appear, or by legal counsel.

All Enforcement Committee meetings, except for Enforcement Committee deliberations, are open to the public.

PLEASE ALSO TAKE NOTICE THAT whether or not you appear, the Enforcement Committee will convene at the designated time and place, and that your non-attendance shall not prevent the Enforcement Committee from finding the apparent violations of Executive Law § 809 and 9 NYCRR Part 577 or from deciding upon an appropriate disposition of this matter.

Preliminary Statement

1. Lewis Family Farms, Inc. ("Respondent") is illegally constructing three single family dwellings in the Town of Essex, Essex County, on lands that are designated Resource Management and lie within a designated Recreational River Area. Prior to such construction, Agency staff advised Respondent that permits were required for the construction of single family dwellings on the Resource Management portion of its property. After discovering the illegal construction, Agency staff asked Respondent to voluntary cease construction until the alleged violations could be resolved. Respondent temporarily complied with this request, but resumed construction when settlement discussions with Agency staff failed to resolve the alleged violations. Agency staff then issued a cease and desist order, which Respondent did not comply with. Respondent commenced an action in New York State Supreme Court, Essex County, seeking to restrain the Agency from enforcement of the alleged violations. On August 16, 2007, Supreme Court Acting Justice Kevin Ryan dismissed Respondent's action, deciding that the Agency did have jurisdiction over the single family dwellings and that the matter was not ripe for judicial intervention. Agency investigation after issuance of the court's decision reveals that Respondent is continuing construction in defiance of Agency staff's Cease and Desist Order.

2. Agency staff seek a determination from the Enforcement Committee that Respondent is in violation as alleged in the apparent violations set forth in this NAV. Agency staff further seek a determination from the Enforcement Committee of appropriate injunctive relief and penalties against Respondent for such violations.

Factual Allegations

3. Lewis Family Farms, Inc. ("Lewis Farm") owns the subject property, which is designated as Tax Map Parcel 49.3-2-27 and is located in the Town of Essex, Essex County.

4. The Lewis Farm is an approximately 1,111 acre parcel located on lands classified as Resource Management, Rural Use and Hamlet on the Adirondack Park Land Use and Development Plan Map.

5. On December 5, 2005, Agency staff visited the Lewis Farm and advised Respondent that construction of any new single family dwelling on the Resource Management portion of the property would require an Agency permit.

6. On March 19, 2007, Respondent advised Agency staff that construction of three single family dwellings on the Resource Management portion of the Lewis Farm had begun. Agency staff advised Respondent not to proceed with further construction until an Agency permit was obtained. Respondent temporarily complied with Agency staff's request.

7. On March 28, 2007, Agency staff visited the Lewis Farm and found that the three single family dwellings are being built on lands that are designated Resource Management and lie within the Boquet River Recreational River Area.

8. Further investigation by Agency staff 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 prior to the construction of the new single family dwellings.

9. Respondent did not seek or obtain an Agency permit prior to this subdivision of the Lewis Farm into sites or the construction of the three single family dwellings (two new and one replacement), and the Town of Essex does not have an Agency-approved local program.

10. Based on these facts, Agency staff concluded that the undertaking of construction of the three single family dwellings constitutes a violation of the subdivision permitting requirements of §§ 809(2)(a) and 810(1)(e)(3) of the Adirondack Park Agency Act and of 9 NYCRR § 577.5(c)(1) [implementing the Rivers Act]. In addition, staff concluded that the construction of each of the two single

family dwellings not intended as replacement structures constitutes a violation of §§ 809(2)(a) and 810(2)(d)(1) of the Adirondack Park Agency Act and of 9 NYCRR § 577.5(c)(1).

11. On May 14, 2007, Agency staff sent a proposed Settlement Agreement to Respondent, alleging the above-referenced violations.

12. Thereafter, settlement negotiations failed and Respondent resumed construction of the three single family dwellings.

13. On June 27, 2007, Agency staff issued a Cease and Desist Order requiring Respondent to cease construction on the three single family dwellings.

14. On June 28, 2007, Respondent commenced an action against the Agency in New York State Supreme Court, Essex County, seeking to restrain the Agency from enforcing against the single family dwellings Respondent is constructing.

15. On August 16, 2007, Supreme Court Acting Justice Kevin Ryan dismissed Respondent's action, deciding that the Agency did have jurisdiction over the dwellings and that the matter was not ripe for judicial intervention.

16. On August 31, 2007, Agency staff investigation revealed that Respondent was continuing construction on the three single family dwellings. By letter of that date, Agency staff notified Respondent through counsel that the Cease and Desist Order remained in effect.

Applicable Legal Requirements

17. 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.

18. 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

19. 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.

20. 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.

21. 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).

22. 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).

23. 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.

24. 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).

25. 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 Part 577

26. 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).

27. 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).

28. 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.

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

30. 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).

31. In recreational river areas, rivers projects include, inter alia, subdivisions and all land uses and developments

classified compatible uses by the Adirondack Park land use and development plan in Resource Management land use areas. 9 NYCRR § 577.5(c)(1).

32. 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.

First Apparent Violation

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

34. Respondent is violating Executive Law §§ 809(2)(a) and 810(1)(e)(3) by failing to obtain a permit from the Agency prior to subdividing the Lewis Farm into sites by the ongoing construction of three (two new and one replacement) single family dwellings on its property in the Town of Essex, Essex County.

Second Apparent Violation

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

36. Respondent is violating 9 NYCRR § 577.5(c)(1) by failing to obtain a permit from the Agency prior to subdividing the Lewis Farm into sites by the ongoing construction of three (two new and one replacement) single family dwellings on its property in the Town of Essex, Essex County.

Third Apparent Violation

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

38. Respondent is committing two separate violations of Executive Law §§ 809(2)(a) and 810(2)(d)(1) by failing to obtain a permit from the Agency prior to constructing two new single family dwellings on its property in the Town of Essex, Essex County.

Fourth Apparent Violation

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

40. Respondent is committing two separate violations of 9 NYCRR § 577.5(c)(1) by failing to obtain a permit from the Agency prior to constructing two new single family dwellings on its property in the Town of Essex, Essex County.

Relief Sought

Agency staff respectfully request that the Enforcement Committee issue a determination that the apparent violations of Executive Law § 809 and 9 NYCRR Part 577 have occurred and are continuing to occur. In addition, Agency staff request that the Enforcement Committee issue a determination of relief as follows:

(I) Requiring Respondent to take appropriate actions to ensure compliance with Executive Law § 809 and 9 NYCRR Part 577;

(II) Requiring Respondent to pay, pursuant to Executive Law § 813, a civil penalty of up to $500 per day for every day that each separate violation of Executive Law § 809 continues;

(III) Requiring Respondent to pay, pursuant to ECL § 15-2723, a civil penalty of up to $1,000 per day for every day that each violation of 9 NYCRR Part 577 continues; and

(IV) Such other and further relief as the Enforcement Committee may deem just and proper.

DATED: Ray Brook, New York
, 2007

ADIRONDACK PARK AGENCY

BY: Mark Sengenberger
Mark Sengenberger
Acting Executive Director

ITEM 4

ADIRONDACK PARK AGENCY

In the Matter of LEWIS FAMILY FARM, INC.,

Respondent,

RECEIVED
OCT - 9 2007
ADIRONDACK PARK AGENCY

RESPONDENT'S ANSWER
Agency Staff File E-2007-041

Respondent, Lewis Family Farm, Inc., through its undersigned counsel, hereby timely responds to the "Notice of Apparent Violation" (NOV) by the above-referenced Agency Staff File.

The first 'Notice' paragraph states that this matter will be heard by the Enforcement Committee, which will meet to consider this matter "after a record of the facts and law has been developed pursuant to the process described below," as to which no answer is required except to state that fundamental administrative due process requires a hearing before an independent Administrative Law Judge prior to consideration by the Enforcement Committee. The procedural requirements of a fair hearing are set forth in 9 NYCRR Part 581-4. Respondent submits that a full hearing record and hearing report prepared in accordance with law must be fully compiled prior to consideration by the Enforcement Committee. In addition, this matter must be heard by all of the Commissioners, not just the Enforcement Committee for a final determination to be made by the Agency.

The second 'Notice' paragraph of the NOV states only that a timely response is required of Respondent. The answer herein provides that timely response.

The third 'Notice' paragraph of the NOV sets forth the minimal procedural requirements of an Administrative Hearing before an Administrative Law Judge prior to

consideration of the NOV by the Commissioners. Respondent acknowledges this third paragraph and demands all substantive and procedural safeguards required by the United Stated Constitution, the New York Constitution and 9 NYCRR subpart 581-4.

The fourth 'Notice' paragraph states that Respondent is invited to appear before the Enforcement Committee through counsel, which invitation is accepted.

1. Paragraph 1 is denied.

2. Paragraph 2 states Agency Staff's intentions as to which no response is required. Respondent lacks information sufficient to form a belief as to the truth of Staff's statements in this regard.

3. Paragraph 3 is denied insofar as it seeks to describe Respondents' ownership interests in certain lands, as to which the record in the County Clerk's Office concerning Tax Map Parcel 49.3-2-27 speaks for itself.

4. Paragraph 4 states a legal conclusion that is nonspecific as to the boundaries of various land use designations and is therefore denied.

5. Paragraph 5 is denied.

6. Respondent lacks information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6.

7. Respondent lacks information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7.

8. Respondent lacks information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8.

9. Paragraph 9 is denied insofar as it alleges conduct by the Respondent; Respondent lacks information sufficient to form a belief as to the truth of the allegations regarding the status of the Town of Essex.

10. Paragraph 10 contains legal conclusions as to which no response is required.

11. Respondent lacks information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11, except to say that settlement negotiations may not be admissible in this proceeding.

12. Paragraph 12 is admitted except that settlement negotiations may not be admissible in these proceedings.

13. Respondent lacks information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13.

14. Paragraph 14 is denied.

15. Paragraph 15 sets forth the series of legal conclusions regarding interpretation of a judicial opinion that was in large part advisory; therefore, no response is required.

16. Respondent lacks information sufficient to form a belief as to the truth of Staff's assertions in Paragraph 16 as to Staff's findings. Respondent admits that Agency Staff stated its view of the law by letter dated August 31, 2007.

17. Paragraph 17 contains a legal conclusion as to which no response is required.

18. Paragraph 18 contains a legal conclusion as to which no response is required.

19. Paragraph 19 contains a legal conclusion as to which no response is required.

20. Paragraph 20 contains a legal conclusion as to which no response is required.

21. Paragraph 21 contains a legal conclusion as to which no response is required.

22. Paragraph 22 contains a legal conclusion as to which no response is required.

23. Paragraph 23 contains a legal conclusion as to which no response is required.

24. Paragraph 24 contains a legal conclusion as to which no response is required.

25. Paragraph 25 contains a legal conclusion as to which no response is required.

26. Paragraph 26 contains a legal conclusion as to which no response is required.

27. Paragraph 27 contains a legal conclusion as to which no response is required.

28. Paragraph 28 contains a legal conclusion as to which no response is required.

29. Paragraph 29 contains a legal conclusion as to which no response is required.

30. Paragraph 30 contains a legal conclusion as to which no response is required.

31. Paragraph 31 contains a legal conclusion as to which no response is required.

32. Paragraph 32 contains a legal conclusion as to which no response is required.

33. Paragraph 33 contains a legal conclusion as to which no response is required.

34. Paragraph 34 is denied.

35. Paragraph 35 contains a legal conclusion as to which no response is required.

36. Paragraph 36 is denied.

37. Paragraph 37 contains a legal conclusion as to which no response is required.

38. Paragraph 38 is denied.

39. Paragraph 39 contains a legal conclusion as to which no response is required.

40. Paragraph 40 is denied.

41. The "Relief sought" is denied insofar as it contains purported allegations of fact.

AFFIRMATIVE DEFENSES

1. The Notice of Violation fails to state a cause of action upon which relief can be granted.

2. The Agency lacks subject matter jurisdiction over the alleged violations.

3. The NOV is ultra vires and an abuse of process.

4. Any enforcement of the NOV without proposed findings of fact and conclusions of law by an Administrative Law Judge violates New York statutory law, the Adirondack Park Agency's own regulations, and the United States and New York State Constitutions.

5. Any decision in the Matter of Lewis Family Farm, Inc. v. New York State Adirondack Park Agency, No. 000498-07 (Supreme Court, County of Essex) is not the law of the case, is not admissible in this proceeding and is not binding upon this Administrative tribunal because it is merely advisory in nature, except as to the Remand Order.

WHEREFORE, Respondent prays that the Notice of Violation be dismissed.

Dated: October 4, 2007
Albany, New York

Respectfully submitted,

By: _____

John J. Privitera
Attorney for Respondent
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York 12207

Joseph R. Brennan
Attorney for Respondent
Brennan & White, LLP
163 Haviland Road
Queensbury, New York 12801

To: Paul VanCott, Esq.
Enforcement Attorney
Adirondack Park Agency
P.O. Box 99
NYS Route 86
RayBrook, New York 12977

ITEM 5

NEW YORK STATE
Adirondack
Parkagency

----------X

In the matter of the apparent violations of Section 809 of the Executive Law by:

NOTICE OF REQUEST FOR ENFORCEMENT COMMITTEE DETERMINATION

LEWIS FAMILY FARM, INC.

Agency File E2007-041

Respondent.

----------X

PLEASE TAKE NOTICE THAT upon Agency staff's Notice of Apparent Violation (NAV) pursuant to 9 NYCRR §581-2.6(a), Respondent's Response to the NAV pursuant to 9 NYCRR §581-2.6(c), the December 13, 2007 affirmation of Paul Van Cott and its exhibits, the December 12, 2007 affidavits and exhibits of John Quinn and Douglas Miller, and the accompanying Memorandum of Law, Agency staff will seek a determination in this matter from the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) at the Agency's headquarters on February 7, 2008 at 9:00 a.m., or as soon thereafter as counsel may heard. Agency staff request permission for oral argument by the parties in this matter.

Agency staff respectfully request that the Enforcement Committee, based on appropriate findings of fact and law, issue a determination pursuant to 9 NYCCR §581-2.6(d) that the apparent violations of the Executive Law described in the NAV have occurred and are continuing to occur. In addition, Agency staff request that the Enforcement Committee issue a determination of relief as follows:

(I) Requiring Respondent to apply for and obtain an after-the-fact permit for its illegal subdivision and single family dwellings consistent with staff's recommendations in the Memorandum of Law;

(II) Requiring Respondent to pay, pursuant to Executive Law § 813 and ECL § 15-2723, a substantial civil penalty for its violations;

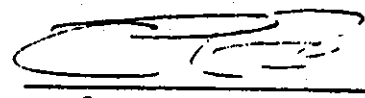
(III) Referring this matter to the Attorney General for appropriate civil action in the event that Respondent fails to comply with the Enforcement Committee's determination; and

(IV) Such other and further relief as the Enforcement Committee may deem just and proper.

Answering affidavits, if any, must be served on undersigned within 30 days of the date of this request for an Enforcement Committee determination.

DATED: Ray Brook, New York
December 17, 2007

ADIRONDACK PARK AGENCY

BY: 

Paul Van Cott
Associate Attorney

To: John Privatera, Esq., Counsel for Respondent

AFFIRMATION OF PAUL VAN COTT
DATED DECEMBER 13, 2007

----------X

In the matter of the apparent violations of Section 809 of the Executive Law by:

AFFIRMATION

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

----------X

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

PAUL VAN COTT, an attorney licensed to practice law in the courts of the State of New York, affirms under penalty of perjury:

1. I am an Associate Attorney for the Adirondack Park Agency (the "Agency") and have served as the Agency's Enforcement Attorney since 2001. 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 am familiar with the file in this matter and [redacted] this affirmation in support of Agency staff's request for an Enforcement Committee determination in this matter.

3. Respondent commenced a declaratory judgment action challenging the Agency's enforcement in this matter by order to show cause in NYS Supreme Court, Essex County. In response, with the representation of the Attorney General's office, Agency counsel John Banta, Agency attorney Sarah Reynolds, Agency enforcement officer Douglas Miller, and Agency project review officer John Quinn provided affidavits in support of the Agency's motion to dismiss Respondent's action. Those affidavits are attached hereto as Exhibit A.

4. The Court granted the Agency's motion in a decision and order issued August 16, 2007. The decision was served on Respondent's on August 31, 2007. A copy is attached hereto as Exhibit B.

5. On August 31, 2007, Agency staff telefaxed a letter to Respondent's lawyers advising them of ongoing construction on Respondent's new single family dwellings and that the June 27, 2007 Cease and Desist Order remained in effect (Exhibit C). In that letter, I asked whether Respondent would comply with that Order.

5. Agency staff commenced this proceeding by Notice of Apparent Violation ("NAV") served on Respondent on September 5, 2007, and Respondent timely responded to the NAV.

DATED: Ray Brook, New York
December 13, 2007

Paul Van Cott, Esq.

AFFIRMATION OF PAUL VAN COTT
DATED DECEMBER 13, 2007

EXHIBIT A

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

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

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 § 7801 (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

AFFIRMATION OF JOHN BANTA
DATED JULY 23, 2007

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.

Mary L. Reardon

Notary Public

MARY L. REARDON
Notary Public - State of New York
Qualified in Essex County
No. 01RE5114723
Commission Expires Aug. 23, 20 08

AFFIRMATION OF SARAH REYNOLDS
DATED JULY 20, 2007

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

v.

ADIRONDACK PARK AGENCY,

Defendant.

AFFIRMATION

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

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

Exhibit	Description
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

AFFIRMATION OF SARAH REYNOLDS
DATED JULY 20, 2007

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)
) 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

AFFIRMATION OF SARAH REYNOLDS
DATED JULY 20, 2007

EXHIBIT B

NEW YORK STATE
Adirondack
parkagency

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

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

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[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.

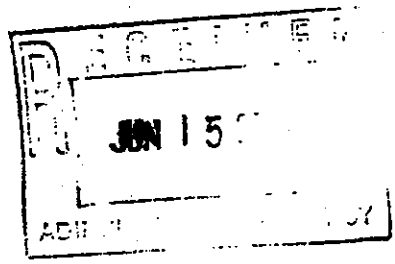
AFFIRMATION OF SARAH REYNOLDS
DATED JULY 20, 2007

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.

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.

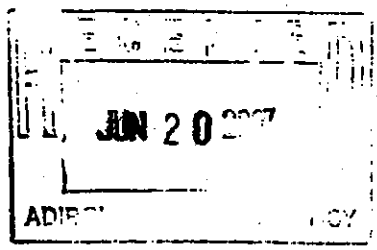
Sincerely,

David L. Cook

cc: Paul Van Cott

AFFIRMATION OF SARAH REYNOLDS
DATED JULY 20, 2007

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

→ SARAH

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

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

10625121.1

AFFIDAVIT OF JOHN L. QUINN
SWORN TO JULY 23, 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

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.

John L. Quinn
JOHN L. QUINN

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. 01FR6114799
Commission Expires Aug. 23, 20 08

QUINN AFFIRMATION

TABLE OF EXHIBITS

Exhibit	Description
Exhibit A	Partial Application
Exhibit B	Notice of Incomplete Permit Application letter
Exhibit C	Potential Violation Report

AFFIDAVIT OF JOHN L. QUINN
SWORN TO JULY 23, 2007

EXHIBIT A

Adirondack parkagency

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

RECEIVED
MAR 14 2007
ADIRONDACK PARK AGENCY

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):
518 963 4296

FAX: 963-7712

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. Lee Road Willsboro NY 12996

in care owner is not available

Telephone (Daytime): 518-963-7153 FAX: Cell 518-~~963~~ 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: 2.1

County: Essex

Water body: —

Road: Lemoine Point Rd

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**

with Lead & APs per Dawn

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**

small corner & a large side

a. What is the current acreage of the project site? approx 4 acres

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?

~~80~~ 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.

1200 entire farm Acres approx. The whole farm is listed as one tax maps 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?
X 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)**
X **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)
X Yes, indicate date: _____ and who observed
MARK BUCKLEY

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

☐ No See p-1 #16

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:

a. **soils test pit location and data**
b. **percolation test hole location and results for each lot taken within the proposed absorption area(s)**
c. **details on design of the system (application rate and number of bedrooms)**
d. **size and type of septic tank**
e. **pumping station (if necessary)**
f. **distribution box**
g. **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. <u>Site Plan Map or Subdivision Plat</u>

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. <u>Structure Plans</u>

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 Governmen' eviews

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	✓			
NYS Department of Transportation	✓			
NYS Department of Environmental Conservation	✓			
NYS Office of Parks, Rec. & Historic Preservation	✓			
U.S. Army Corps of Engineers	✓			
Lake George Park Commission	✓			
Other Town of Essex				David Lansing cod

David Lansing cod off

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

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

for Lewis Family Farms Date

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

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

AFFIDAVIT OF JOHN L. QUINN
SWORN TO JULY 23, 2007

EXHIBIT B

NEW YORK STATE
Adirondack
parkagency

Via Certified Mail
APA form October 2002

NOTICE OF INCOMPLETE PERMIT APPLICATION
RECEIPT OF PARTIAL APPLICATION

March 15, 2007
A2007-43

Project Sponsor:	**Authorized Representative:**
Barbara A. and S.B. Lewis 1212 Whallons Bay Rd. Essex, NY 12936	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.

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

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

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

__X___ A professionally prepared, scaled site plan map showing the proposed project

__X___ Plans, details and specifications for all temporary and permanent roads and driveways

__X___ 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

__X___ 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

AFFIDAVIT OF JOHN L. QUINN
SWORN TO JULY 23, 2007

EXHIBIT C

Enforcement File	2007-041	E2	-041
Investigator: Doug Mille.		Attorney: Paul V.	ott

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 actural 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.

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 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. 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.

DOUGLAS MILLER

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

Mary B Palmer
Notary Public

MARY B. PALMER
Notary Public, State of New York
01PA6128439
Commission Expires June 13, 20 09

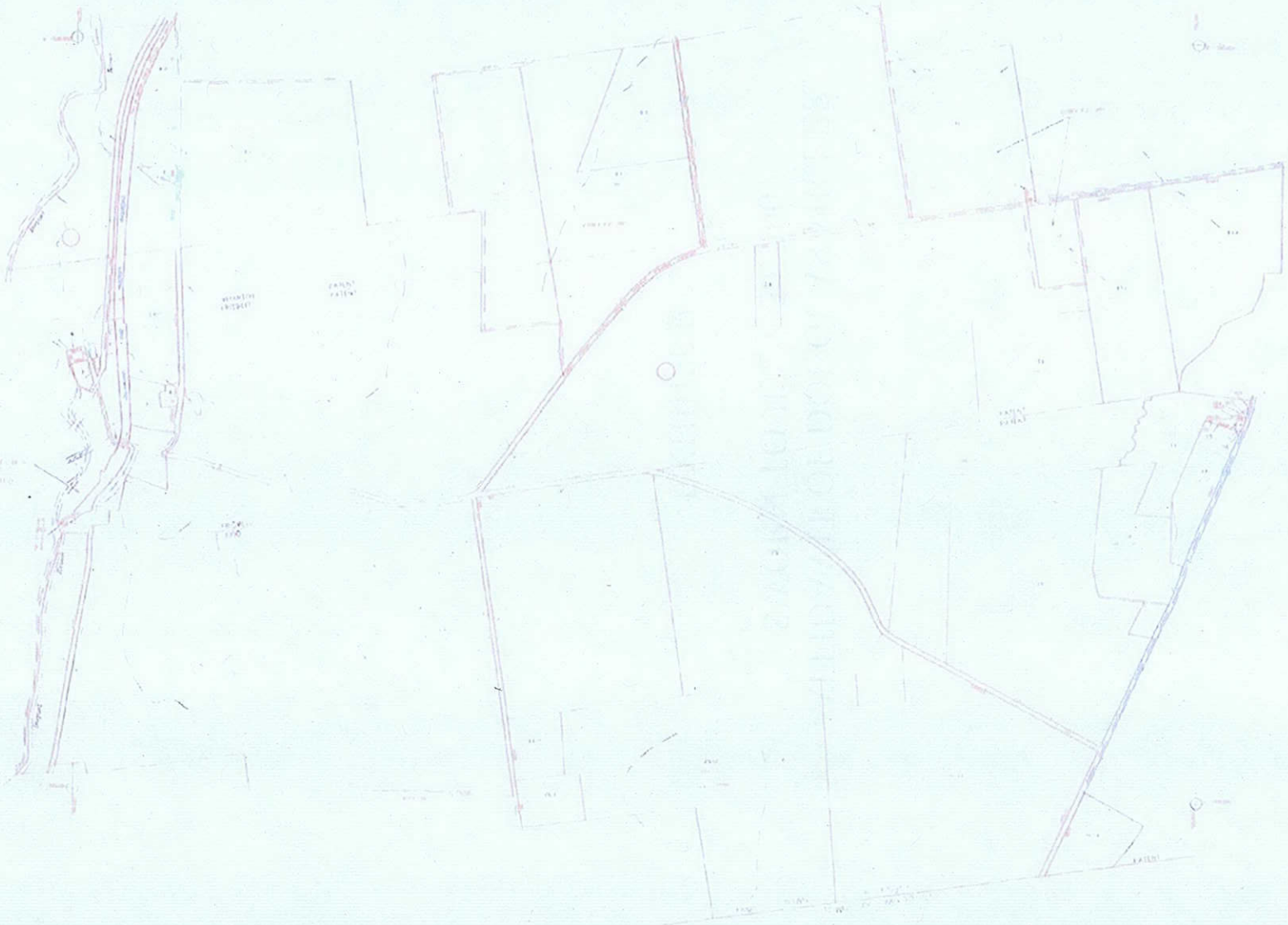
MILLER AFFIDAVIT

TABLE OF EXHIBITS

Exhibit	Description
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

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT A



TOWN OF ESSEX

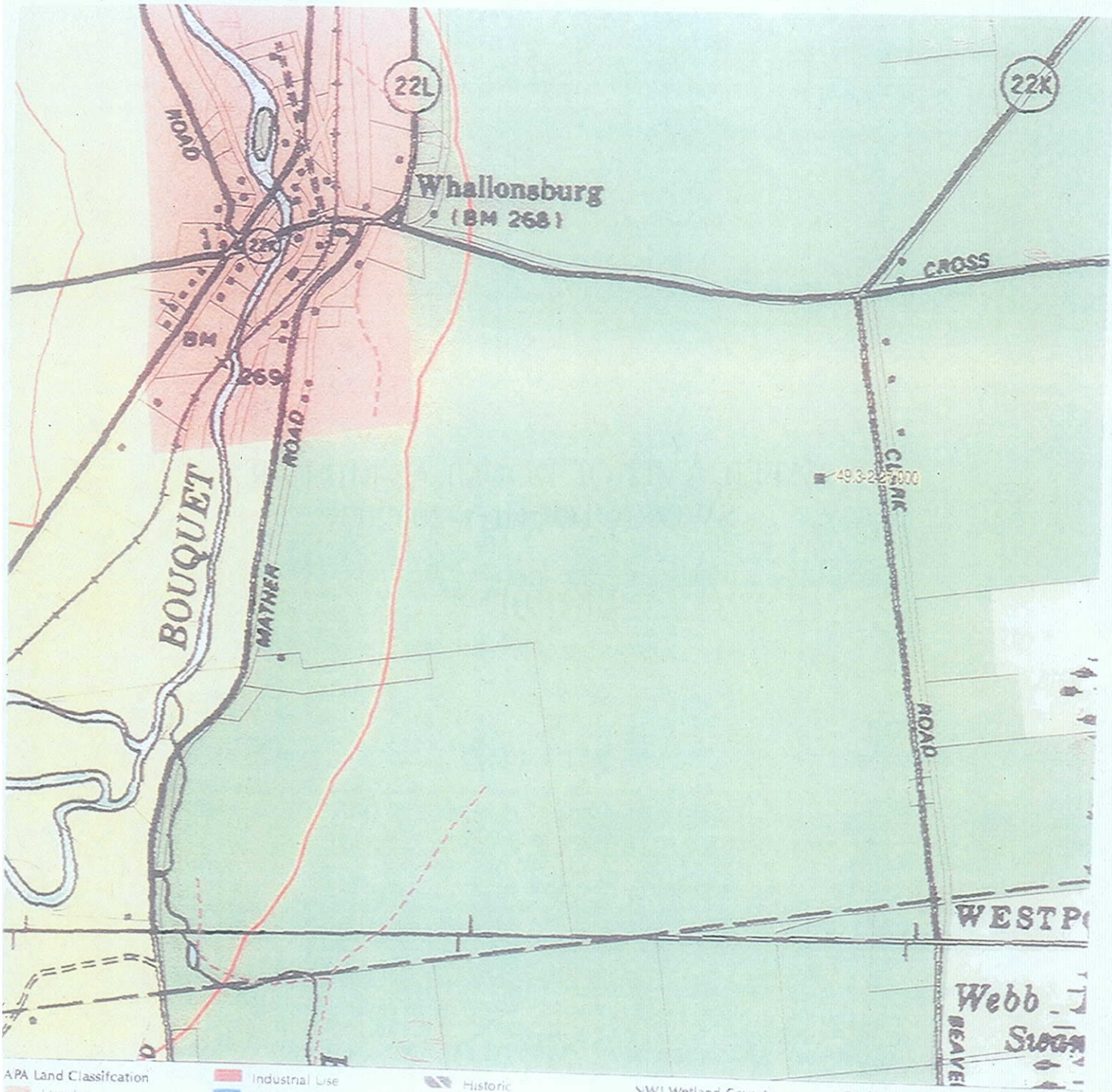
ESSEX COUNTY, NEW YORK

049.03

R001023

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

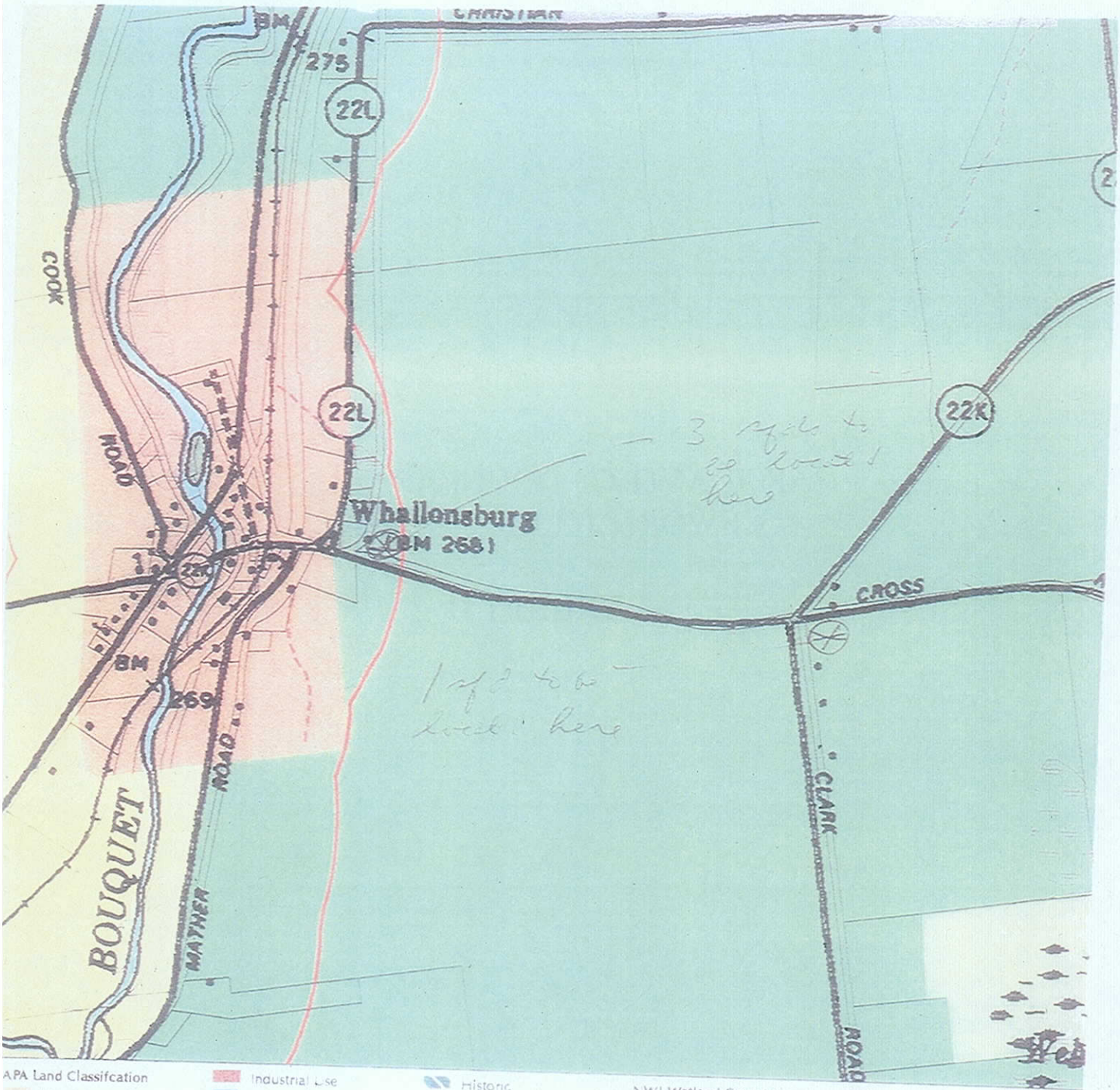
EXHIBIT B


22L
22K
Whallonsburg
(BM 268)
CROSS
BM
269
BOUQUET
MATHEW
ROAD
CLARK
ROAD
WESTP
Webb
APA Land Classifcation
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
New York State
Adirondack
Park
Agency
Geographic
Information
System
Parcel Search Results
County: ESSEX
Town/Village: Essex
2005 Owner: LEWIS FAMILY FARMS INC

R001025

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT C


BM
275
22L
22L
22K
COOK
MOAD
Whallonsburg
BM 268
22K
CROSS
BM
269
ROAD
BOUQUET
MATHER
CLARK
ROAD
APA Land Classifcation
Hamlet
Moderate
Low Intensity
Rural Use
Resource Mgmt
Industrial Use
Wilderness
Canoe Area
Primitive
Wild Forest
Intensive Use
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Regulatory Wetlands
EPA Wetland Covertypes
NWI Wetland Covertypes
Wetland
Linear Wetland
Tax Map
Parcel Boundary
Designated River
Corridor Boundary
New York State
Adirondack
Park
Agency
Geographic
Information
System

R001027

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT D

NEW YORK STATE
Adirondack
parkagency

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

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

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT E

R001031

R001032

R001033

R001034

R001035

MAR 28 2007

R001036

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT F

JUN 27 2007

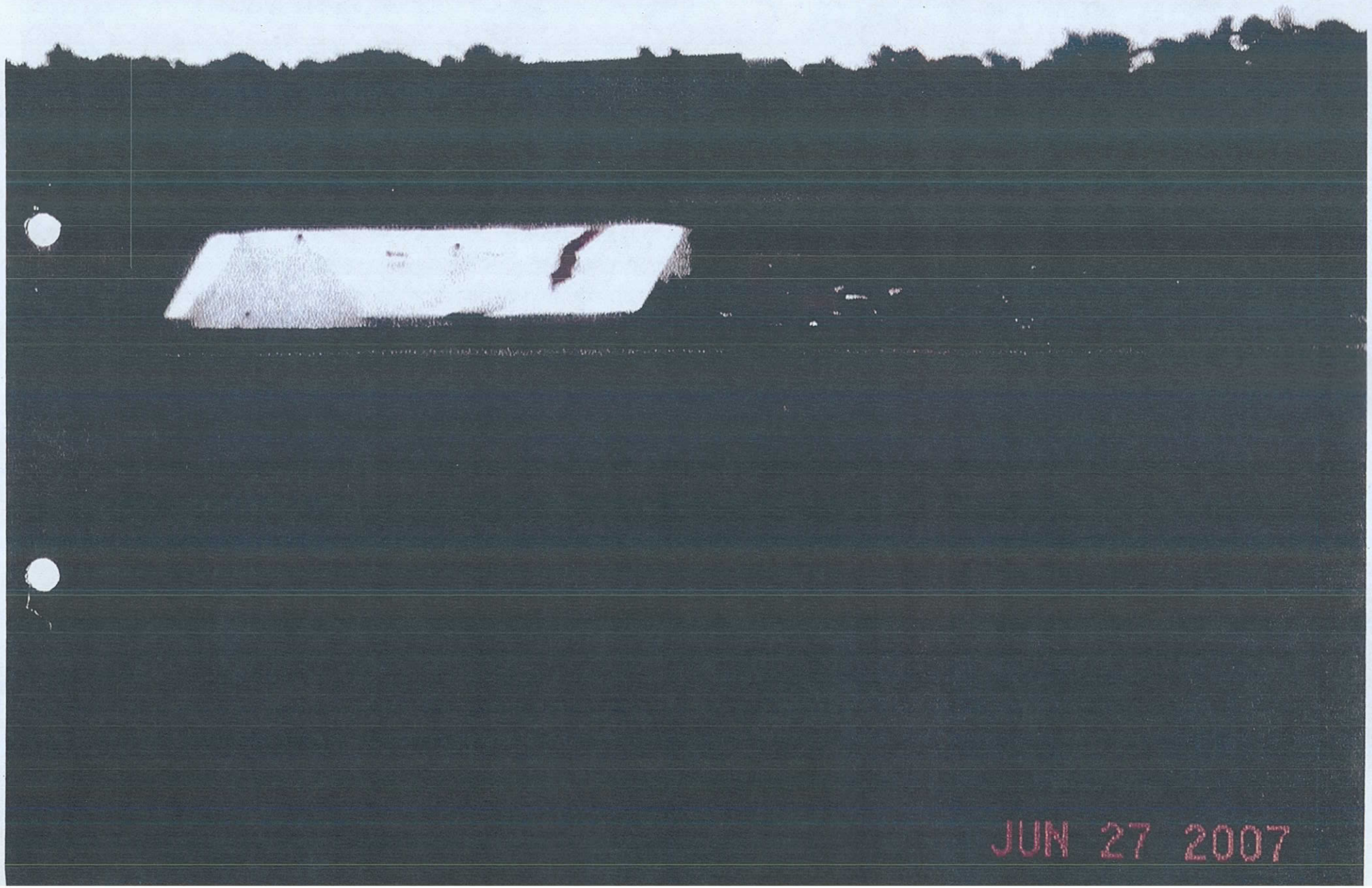
R001038

JUN 27 2007

JUN 27 2007

JUN 27 2007

R001042



JUN 27 2007

JUN 27 2007

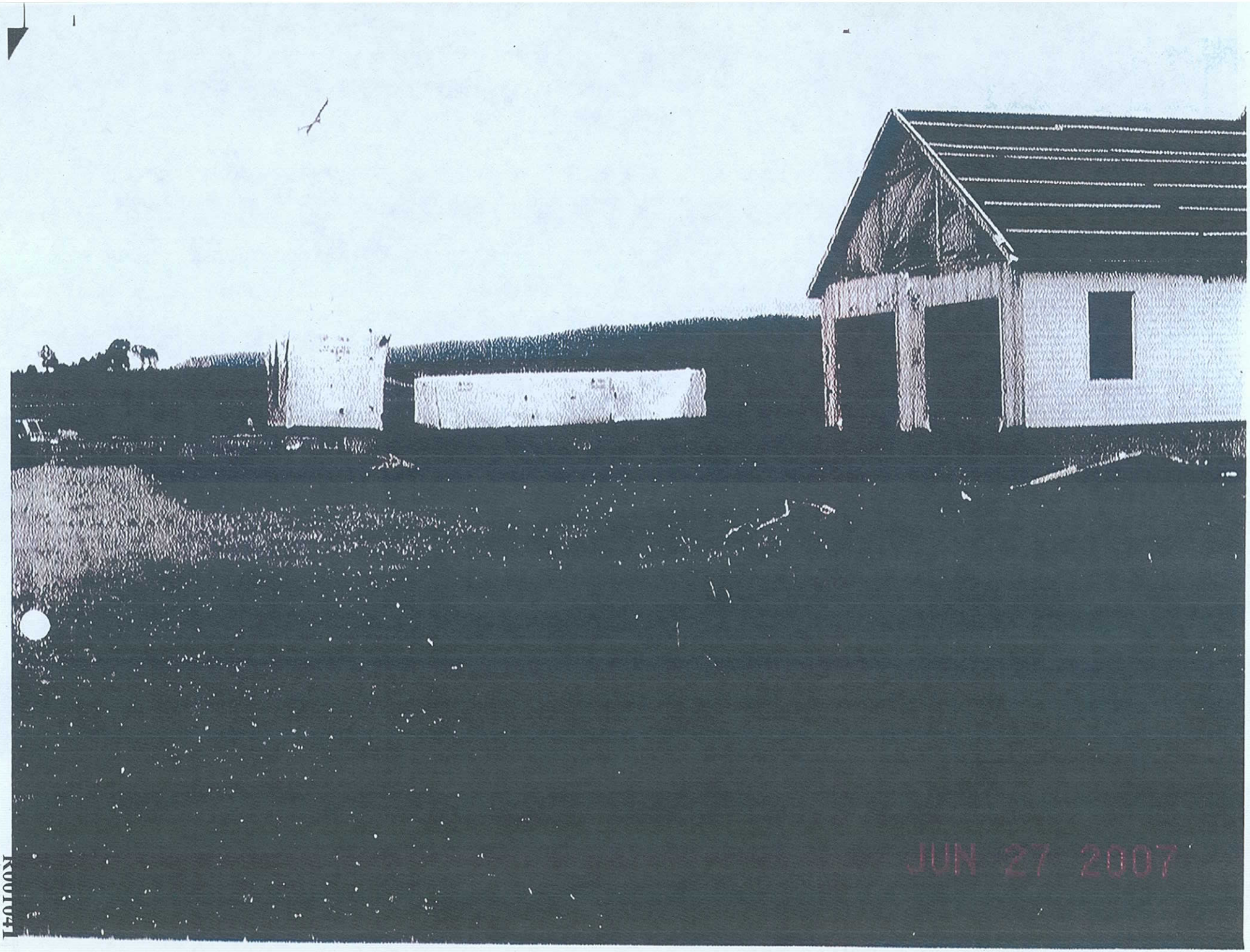
JUN 27 2007

JUN 27 2007

R001

JUN 27 2007

R001040


JUN 27 2007

R001042

JUN 27 2007

JUN 27 2007

JUN 27 2007

JUN 27 2007

R001

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 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)

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT H

R0010511
JUL 2 2007

R001052

R001053

R001054

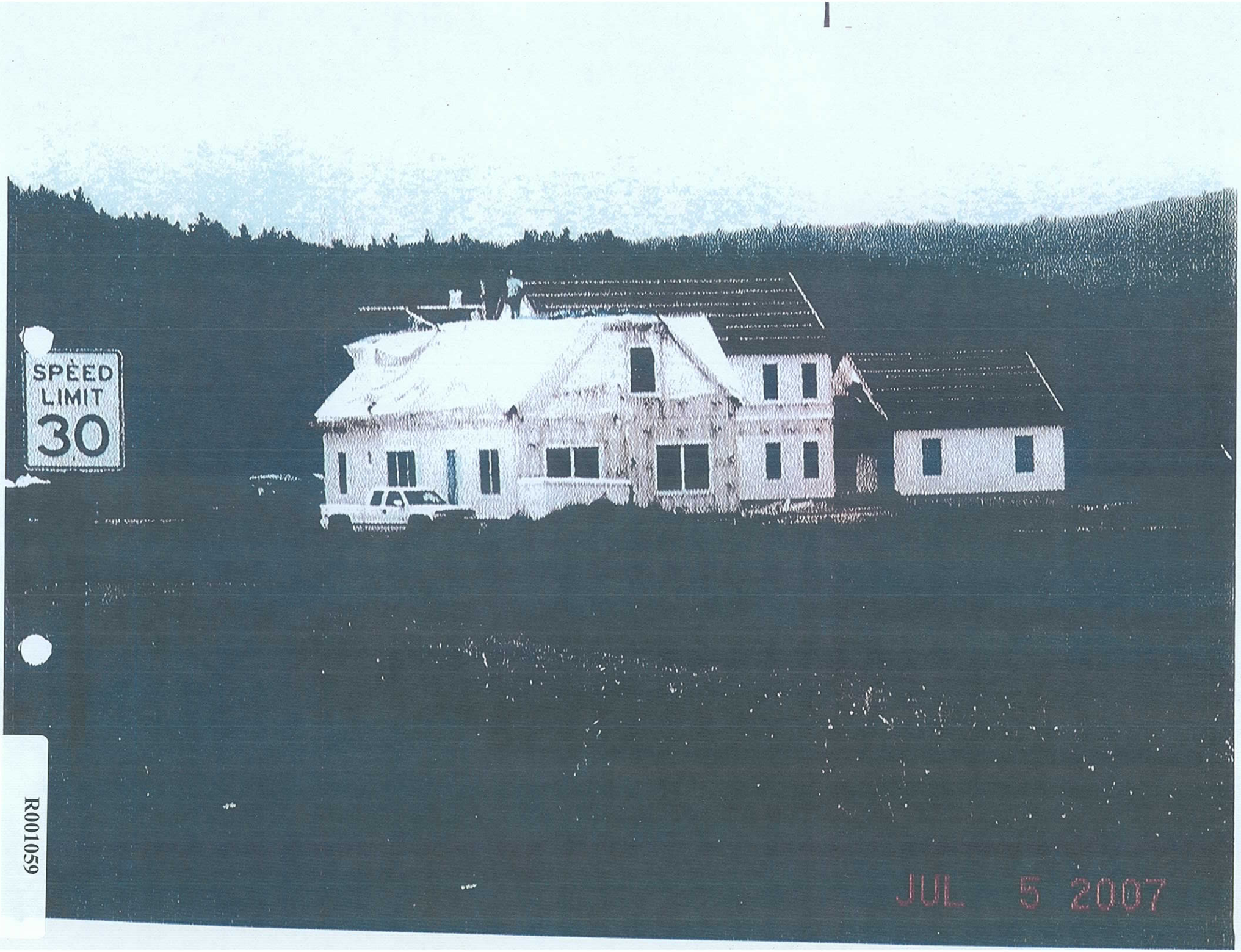
JUL 2 2007

R001056

R001057

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO JULY 20, 2007

EXHIBIT I



R001059

JUL 5 2007

AFFIRMATION OF PAUL VAN COTT
DATED DECEMBER 13, 2007

EXHIBIT B

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

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

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Plaintiff,

-against-

NEW YORK STATE ADIRONDACK PARK AGENCY,

Defendant.

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

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

RYAN, A.J.:

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

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

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

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

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

Members of the staff at the enforcement division at the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS ALL SO ORDERED.

E N T E R:

Kevin K. Ryan

KEVIN K. RYAN
Acting Justice, Supreme Court

Dated: Plattsburgh, New York
August 16, 2007

TOTAL P.05

AFFIRMATION OF PAUL VAN COTT
DATED DECEMBER 13, 2007

EXHIBIT C

NEW YORK STATE
Adirondack
parkagency

August 31, 2007

David L. Cook, Esq.
Nixon Peabody
Clinton Street, Box 31051
Rochester, New York 14603-1051

RE: Lewis Family Farm, Inc (E2007-041)

Dear Dave:

This is to confirm the message that I left for you and Mr. Brennan today.

The Enforcement Officer who covers Essex County observed on-going construction on the single family dwellings that are the subject of this unresolved administrative enforcement matter. Please be advised that the Cease and Desist Order issued by Acting Executive Director Mark Sengenberger on June 27, 2007 (copy attached) ordered the cessation of such construction until the alleged violations in this matter are administratively resolved.

Please advise me immediately regarding whether Lewis Family Farms, Inc. will comply with Mr. Sengenberger's Cease and Desist Order. Thank you for your attention to this matter.

Sincerely,

Paul Van Cott
Enforcement Attorney

cc: Joseph Brennan, Esq.

File

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:

CEASE AND DESIST ORDER
Agency File #E2007-041

LEWIS FAMILY FARM, INC.

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)

ITEM 6

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO DECEMBER 12, 2007

----------X

In the matter of the apparent violations of Section 809 of the Executive Law by:

AFFIDAVIT

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

----------X

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

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

1. I am an Enforcement Officer for the Adirondack Park Agency (the "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, and have served in this position since 2005. 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 NYS Wild, Scenic and Recreational Rivers Act in an area that includes the Town of Essex, Essex County.

2. I am familiar with the file in this matter and provide this affidavit in support of Agency staff's request for an Enforcement Committee determination.

3. On August 31, 2007, I observed Respondent's property from an off-site location and discovered that Respondent was undertaking further construction work since my last visit of July 5, 2007 on the new single family dwellings. Specifically, I observed that workers were shingling the roof on a single family dwelling located adjacent to the Christian Road and immediately north of a preexisting blue house on the same property. The roof on the eastern side of this house was completely shingled and workers were placing shingles on the western facing main roof area. An aluminum chimney had been installed through the roof of this house since my last inspection. The gable ends of this house had been finished with the installation of siding and windows. A porch and roof framing had been added to the eastern side of this house. All the siding and doors had been installed on the main body of the house. A second house located adjacent to Whallons Bay Road, and northeast of the preexisting blue house on the property, had the roof line changed to complete the pitch. This second house had a roof area added over an entrance on the south side of the house. Siding had been installed on the eastern end of this house. A third house located

northeast of the first two houses also had a roof and porch area added over an entrance on the northern side of the house. This house also had the roof pitch finished. Photographs of the dwellings that I took on that date are attached hereto as Exhibit A.

4. On September 5, 2007, I undertook a follow-up inspection to Respondent's property and observed that Respondent was continuing construction work on the dwellings. Specifically, I noted that workers were finishing the porch area that had been added to the house adjacent to Christian road. Workers were also seen placing sheetrock on the inside of the garage area of this house. Garage doors had been framed and gable end vents were installed, all the siding was finished and the roofing had been completed on the main portion of the house located adjacent to Christian Road. Photographs of the dwellings that I took on that date are attached hereto as Exhibit B.

5. On December 7, 2007, I observed Respondent's property from off-premises and found that, since September 5, 2007, Respondent has undertaken additional construction work on the three new single family dwellings. Specifically, I noted that all three houses appeared to be completely finished and ready

for occupancy except that steps had not been placed to the entrances. The dwellings appear to be fully installed and there are even curtains in the windows of one of the dwellings. I also observed that Respondent has removed the pre-existing single family dwelling from the property. Photographs of the dwellings that I took on that date are attached hereto as Exhibit C.

6. The Town of Essex has assessed the value of the Lewis Farm property and improvements at $4,776,600. The estimated construction cost of each of the single family dwellings exceeded $300,000, based on Respondent's June 25, 2007 application to the Town for building permits for manufactured home single family dwellings.

7. Salim B. Lewis is a shareholder in Lewis Family Farm, LLC based upon his August 7, 2007 affidavit in Lewis Family Farm, LLC v Adirondack Park Agency, a copy of which is attached hereto as Exhibit D.

DOUGLAS MILLER

Sworn to before me this
12 th day of December, 2007.

Notary Public

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

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO DECEMBER 12, 2007

EXHIBIT A

Exhibit A: Photos dated 8/31/07 (Miller Aff. 12/12/07)

pp. 1080-1083

AUG 31 2007

RB01081

R001082

AUG 31 2007

R001083

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO DECEMBER 12, 2007

EXHIBIT B

Exhibit B: Photos dated 9/5/07 (Miller Aff. 12/12/07)

pp. 1085-1086

R001086

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO DECEMBER 12, 2007

EXHIBIT C

Exhibit C: Photos dated 12/7/07 (Miller Aff. 12/12/07)

pp. 1088-1089

DEC 7 2007

DEC 7 2007

AFFIDAVIT OF DOUGLAS MILLER
SWORN TO DECEMBER 12, 2007

EXHIBIT D

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)
) ss.:
COUNTY OF ESSEX)

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

Janet L. Mero
Notary Public

JANET L. MERO
NOTARY PUBLIC STATE OF NEW YORK
NO. 2385400
QUALIFIED IN ESSEX COUNTY 9/30/07
COMM. EXPIRES

10679076.1

ITEM 7

AFFIDAVIT OF JOHN L. QUINN
SWORN TO DECEMBER 12, 2007

----------X

In the matter of the apparent violations of Section 809 of the Executive Law by:

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

----------X

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

John Quinn, having been 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 Associates Degree in Forestry and Bachelors 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 somewhat familiar with recently emplaced single family dwellings on the Lewis Family Farm property ("Lewis Farm") based on my work at the Agency, conversations with staff and Barbara Lewis, and based on my review of information contained in the files of the Agency. I make this affidavit in support of Agency staff's request for an Enforcement Committee determination.

4. I recommend a disposition of this matter that requires the Respondent to obtain an after-the-fact permit from the Agency for its subdivision into sites and the new single family dwellings. The permitting process can ensure that the subdivision and dwellings are properly reviewed under the Adirondack Park Agency Act and the New York State Wild, Scenic and Recreational Rivers System Act, and that reasonable and appropriate conditions are required for these jurisdictional activities.

5. Since the Respondent claims that the single family dwellings are intended to house farmworkers, it is

important to obtain accurate information regarding the planned use of the dwellings so that the overall intensity guidelines of the Adirondack Park Agency Act may be applied. Pursuant to Executive Law 802(50)(g), all agricultural use structures and single family dwellings occupied by a farmer of land in agricultural use, his employees engaged in such use, or their respective families, together constitute and count as a single family dwelling. Thus, if the Respondent's dwellings fit within this definition, the number of principal buildings on the subject property will be less than if the dwellings are not connected to any agricultural use of the property.

6. After-the-fact review of the Respondent's single family dwellings is also important to assess any adverse visual and open space impacts of the dwellings, and to evaluate the septic systems serving the dwellings to ensure that they comply with New York State Department of Health (DOH) and Agency standards, restrictions and guidelines.

7. Although I have not performed any review of Respondent's illegal subdivision and new single family dwellings, I do believe that, if the Respondent is required to apply for an after-the-fact permit, the

Agency could likely approve the Respondent's activities subject to reasonable and appropriate conditions.

8. To facilitate any after-the-fact review of the Respondent's subdivision and single family dwellings, I recommend that the Enforcement Committee require Respondent submit the following as part of any permit application:

- A detailed description of the proposed use of each of the single family dwellings and their connection to the Respondent's agricultural use of the property;
- An evaluation by a NYS licensed professional engineer as to whether the septic systems serving the single family dwellings comply with DOH and Agency standards, restrictions and guidelines;
- A visual inventory and impact assessment for Respondent's single family dwellings prepared by a NYS registered landscape architect;
- A landscaping and vegetative planting plan designed to substantially reduce the overall visibility of the Respondent's single family

dwellings prepared by a NYS registered landscape architect; and

- A full-size, to-scale site plan map of the Lewis Farm prepared by a NYS licensed surveyor which depicts the lands comprising this property and all principal buildings and accessory structures on the property, noting their date of construction, size and use.

JOHN L. QUINN

Sworn to before me this
12th day of December, 2007.

Notary Public

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

ITEM 8

NEW YORK STATE
Adirondack
parkagency

---X

In the matter of the apparent violations of Section 809 of the Executive Law by:

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

---X

MEMORANDUM OF LAW IN SUPPORT OF AGENCY STAFF'S REQUEST FOR A DETERMINATION BY THE ENFORCEMENT COMMITTEE PURSUANT TO 9 NYCRR 581-2.6(d)

Respectfully submitted by:

Paul Van Cott, Associate Attorney
Adirondack Park Agency Staff

December 14, 2007

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

PRELIMINARY STATEMENT

This administrative enforcement proceeding is brought by Adirondack Park Agency ("Agency") staff to address violations by Lewis Family Farm, Inc. ("Respondent") of the Executive Law ("APA Act") and the Wild, Scenic and Recreational Rivers Act ("Rivers Act"). Specifically, Respondent has undertaken a subdivision into sites and is constructing three single family dwellings in Resource Management and within a Recreational River Area without first obtaining an Agency permit.

Respondent undertook these violations after being told by senior Agency staff that permits were required. Respondent continued these violations after Agency staff issued a Cease and Desist Order and then again after Acting Justice Ryan of NYS Supreme Court, Essex County, confirmed Agency jurisdiction over the single family dwellings.

Agency staff seek a determination from the Enforcement Committee finding Respondent in violation of the Executive Law and the Rivers Act, requiring Respondent to seek an after-the-fact permit for the violations, and imposing a substantial penalty for Respondent's violations.

STATEMENT OF FACTS

The Lewis Family Farm ("Lewis Farm") is a property of approximately 1,111 acres located in the Adirondack Park, in the Town of Essex, Essex County, New York. See Affirmation of Paul Van Cott, dated December 13, 2007 and the Affidavit of Douglas Miller ("Miller Aff."), dated July 20, 2007, ¶¶ 5-6, attached thereto. Respondent placed three modular single family dwellings on the Lewis Farm in Resource Management, on lands within the designated Boquet River Recreational River area, without an APA permit. See Miller Aff., ¶¶ 4, 10, 20, Exhibits F and H. Upon information and belief, the dwellings were initially secured to foundations but not fully installed. See Miller Aff. ¶¶ 17, 20. The APA Act requires an Agency permit for subdivisions and placement of single family dwellings in Resource Management areas within the Adirondack Park. See Executive Law § 809(2)(a).

In December 2005, at the invitation of S.B. "Sandy" Lewis (a shareholder of Lewis Family Farm), senior Agency staff visited the Lewis Farm and informed Mr. Lewis that an Agency permit was required prior to construction of single family dwellings on the property. See Affirmation of Paul Van Cott, dated December 13, 2007 and the Affidavit of John Banta ("Banta Aff."), dated July 23, 2007, ¶¶ 4-6, attached thereto. On or about March 14, 2007, after being advised to do so by the Town

of Essex, Respondent submitted an application to the APA for a permit for the construction of three single family dwellings on the Lewis Farm. See Affirmation of Paul Van Cott, dated December 13, 2007 and the Affidavit of John L. Quinn ("Quinn Aff."), dated July 23, 2007, ¶ 4, Exhibit A, attached thereto. On or about March 15, 2007, the APA issued a Notice of Incomplete Permit Application and Receipt of Application in response to Respondent's application. See Quinn Aff., ¶ 5, Exhibit B.

On March 19, 2007, Respondent notified the Agency that it had already constructed the foundations and septic systems for the dwellings. See Quinn Aff., ¶¶ 6-7. Upon further investigation, including visits to the site and discussions with Respondent, the Agency concluded that a violation had occurred and sought to resolve the matter through a proposed settlement agreement and penalty. See Affirmation of Paul Van Cott, dated December 13, 2007 and the Affirmation of Sarah Reynolds ("Reynolds Aff."), dated July 20, 2007, ¶¶ 23-28, attached thereto; see also Quinn Aff., ¶ 8. Respondent objected to paying a penalty, failed to enter into a settlement agreement, and on June 27, 2007, Respondent installed the three single family dwellings on the Lewis Farm in violation of the Executive Law and the Rivers Act. See Reynolds Aff., ¶¶ 29-38; see also Banta Aff., ¶ 7; Miller Aff., ¶¶ 17, 20-21. Upon learning the

dwellings were being installed, Agency staff immediately served a Cease and Desist Order on Respondent. See Miller Aff., ¶ 18-19, Exhibit G. Upon information and belief two dwellings were installed prior to the Cease and Desist Order and the third home was installed after the Order was served. See Miller Aff. ¶¶ 17-20.

Thereafter, Respondent commenced a declaratory judgment action by order to show cause in NYS Supreme Court, Essex County, seeking a restraining order against the Agency's enforcement action. Affirmation of Paul Van Cott, dated December 13, 2007 ("Van Cott Affm."), ¶ 3. The Agency, represented by the Attorney General's office, moved to dismiss Respondent's action. The Court granted the Agency's motion in a decision and order issued August 16, 2007. Id., ¶ 4, Exhibit B. The decision was served on Respondent on August 31, 2007.

On August 31, 2007, Agency staff observed Respondent's property from an off-site location and discovered that Respondent had resumed construction work on the new single family dwellings. Affidavit of Douglas Miller "Douglas Miller Affd."), dated December 12, 2007, ¶ 3, Exhibit A. By telefaxed letter of that same date, Agency staff advised Respondent's lawyers of the ongoing construction and that the June 27, 2007 Cease and Desist Order remained in effect. Staff asked whether Respondent would comply with that Order. Van Cott Affm., ¶ 5,

Exhibit C. On September 5, 2007, a follow-up inspection by Agency staff revealed that Respondent was continuing construction work on the dwellings. Douglas Miller Affd., ¶ 4, Exhibit B.

Agency staff commenced this proceeding by Notice of Apparent Violation ("NAV") served on Respondent on September 5, 2007. Respondent timely answered the NAV in October, 2007.

On December 7, 2007, Agency staff inspected Respondent's property from off-premises and found that, since September 5, 2007, Respondent has undertaken additional construction work on the new single family dwellings. Douglas Miller Affd., ¶ 5, Exhibit C. They appear to be fully installed, with doors and windows, finished roofs and siding. Id. There are even curtains in the windows of one of the dwellings. Id. Staff also discovered that Respondent has removed the pre-existing single family dwelling from the property. Id.

REGULATORY FRAMEWORK

The APA Act

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.

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).

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.

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.

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).

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).

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.

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

The Rivers 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). It implements a public policy that certain selected rivers of the state which 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).

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. 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.

9 NYCRR Part 577 contains the Agency's implementing regulations for the Rivers Act. Pursuant to 9 NYCRR § 577.4(a), "no person shall undertake a rivers project without first obtaining an agency permit." 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). In recreational river areas, rivers projects also include all land uses and development classified compatible uses by the Adirondack Park land use and development plan in Resource Management land use areas. 9 NYCRR § 577.5(c)(1). 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.

PROCEDURAL BASIS FOR MOTION

This enforcement proceeding is brought pursuant to 9 NYCRR Subpart 581-2. As provided by 9 NYCRR § 581-2.6(a), Agency staff initiated this proceeding by serving a Notice of Apparent Violation ("NAV") on Respondent.

In the NAV, staff advised Respondent that prior to consideration of this matter by the Enforcement Committee, a record consisting of relevant documents, testimony, evidence and any legal briefs must be developed for the Enforcement Committee to consider. Staff further advised Respondent that, if there are no facts in dispute, the record could be developed at the request of either party for a determination pursuant to 9 NYCRR § 581-2.6(d). Finally, staff advised Respondent that, if there are facts in dispute, a hearing would be held to develop the record for consideration by the Enforcement Committee.

Respondent timely submitted its response ("Response") to

Agency staff's Notice of Apparent Violation as required by 9 NYCRR § 581-2.6(b) and requested a hearing. Based on the NAV and the Response, supplemented by Agency staff's affidavits and exhibits, Agency staff maintain that there are no material facts in dispute requiring a hearing. Accordingly, Agency staff request a determination by the Enforcement Committee in this matter pursuant to 9 NYCRR § 581-2.6(d).

ARGUMENT

First and Second Apparent Violations

Pursuant to Executive Law §§ 809(2)(a) and 810(1)(e)(3), and also pursuant to 9 NYCRR § 577.5(c)(1) implementing the Rivers Act, a permit from the Agency is required prior to any subdivision into sites of Resource Management lands in a River Area. 9 NYCRR § 570.3(ah)(3) defines a subdivision into sites as occurring where one or more new dwelling(s) is to be constructed on a parcel already containing at least one existing dwelling, and regardless of whether the existing building is proposed to be removed after completion of the new building(s).

Here, Respondent has constructed three new single family dwellings, one of which replaces a pre-existing single family dwelling. Respondent is violating Executive Law §§ 809(2)(a) and 810(1)(e)(3), and 9 NYCRR § 577.5(c)(1), by failing to obtain a permit from the Agency prior to subdividing the Lewis

Farm into sites through the construction of the three (two new and one replacement) single family dwellings on its property.

Third and Fourth Apparent Violations

Pursuant to Executive Law §§ 809(2)(a) and 810(2)(d)(1), and also pursuant to 9 NYCRR § 577.5(c)(1) implementing the Rivers Act, a permit from the Agency is required prior to the construction of a single family dwelling on Resource Management lands in a River Area.

Respondent is committing two separate violations of Executive Law §§ 809(2)(a) and 810(2)(d)(1), and of 9 NYCRR § 577.5(c)(1), by failing to obtain a permit from the Agency prior to constructing two new single family dwellings on the Lewis Farm property (the third single family dwelling is considered by Agency staff to be a lawful replacement).

PROPOSED RELIEF

Injunctive Relief

Agency staff recommend a disposition of this matter that requires Respondent to obtain an after-the-fact permit from the Agency for its illegal subdivision into sites and new single family dwellings. Affidavit of John Quinn, dated December 12, 2007, ¶ 4. Only through the permitting process can the Agency ensure that the subdivision and dwellings are properly reviewed under Executive Law 809 and the Rivers Act, and that reasonable and appropriate conditions are required for these jurisdictional

activities. Id. After-the-fact review of Respondent's single family dwellings is also important to assess any adverse visual impacts of the dwellings, and to evaluate the septic systems serving the dwellings to ensure that they comply with NYSDOH and Agency standards. Id., ¶ 6.

Also, because Respondent claims that the single family dwellings are intended to house farm workers, it is important to obtain accurate information regarding the planned use of the dwellings so that the appropriate overall intensity guidelines of the Adirondack Park Agency Act may be applied. Id., ¶ 5. Pursuant to Executive Law 802(50)(g), all agricultural use structures and single family dwellings occupied by a farmer of land in agricultural use, his employees engaged in such use, or their respective families, together constitute and count as a single family dwelling. Id. If Respondent's dwellings fit within this definition, the number of principal buildings on the subject property will be less than if the dwellings are not connected to any agricultural use of the property. Id.

Although Agency staff have not yet had the opportunity to undertake a full review of Respondent's illegal subdivision and new single family dwellings, staff believe that, if Respondent is required to apply for an after-the-fact permit, the Agency could likely approve Respondent's subdivision and single family

dwellings subject to a permit with reasonable and appropriate conditions. Id., ¶ 7

To facilitate after-the-fact review of the Respondent's subdivision and single family dwellings, Agency staff recommend that the Enforcement Committee require Respondent to submit the following as part of any permit application:

- A detailed description of the proposed use of each of the single family dwellings and their connection to Respondent's agricultural use of the property;
- An evaluation by a NYS licensed professional engineer as to whether the septic systems serving the single family dwellings comply with DOH and Agency standards, restrictions and guidelines;
- A visual inventory and impact assessment for Respondent's single family dwellings prepared by a NYS registered landscape architect;
- A landscaping and vegetative planting plan designed to substantially reduce the overall visibility of the Respondent's single family dwellings prepared by a NYS registered landscape architect; and
- A full-size, to-scale site plan map of the Lewis Farm prepared by a NYS licensed surveyor which depicts the lands comprising this property and all principal

buildings and accessory structures on the property, noting their date of construction, size and use. Id., ¶8.

Penalty

The starting point for any calculation of an appropriate penalty requires an understanding of the maximum penalty allowed by law. Taking into account the fact that Executive Law § 813 allows the Agency to determine a penalty of up to $500 for each day that a violation of the Executive Law continues and Environmental Conservation Law § 15-2723 authorizes penalties of up to $1,000 for each day of violation of the Rivers Act, the following table summarizes the potential penalty liability of Respondent for the apparent violations set forth in the NAV:

Violation	Beginning Date	Ending Date	Total Days	Maximum Per Day Penalty	Total Maximum Penalty
Resource Management Subdivision	3/19/07	2/7/08	325	$500	$162,500
Rivers Act Subdivision	3/19/07	2/7/08	325	$1000	$325,000
Resource Management SFDs (2)	3/19/07	2/7/08	325	$500 x 2 SFDs	$325,000
Rivers Act SFDs (2)	3/19/07	2/7/08	325	$500 x 2 SFDs	$325,000

Based upon these calculations, as of the date of the Enforcement Committee's consideration of this matter, the maximum statutory penalty that could be imposed upon Respondent is $1,137,500.

Several factors are relevant when determining an appropriate penalty based on this potential maximum amount: (1) The nature and severity of the violation; (2) The knowledge by the violator of the violated regulatory requirements; (3) The violator's cooperation or lack thereof; (4) The environmental impacts of the violations; (5) The extent to which the violator is benefiting from the violations; and (6) The extent to which the recommended injunctive relief will bring the property into full compliance.

1) Nature and Severity of the Violations

There should be no question about the severity of the alleged violations involved in this case. Pursuant to Executive Law § 805(3)(3), "the need to protect, manage and enhance forest, agricultural, recreational and open spaces resources is of paramount importance because of overriding natural resource and public considerations." Of equal importance, the Rivers Act implements a public policy requiring the Agency to protect the outstanding natural, scenic, historic, ecological and recreational values of river areas for the benefit and enjoyment of present and future generations. ECL § 15-2701(3). By policy and practice, violations on Resource Management lands and in River Areas are a priority concern for the Agency.

Respondent has undertaken a Resource Management and Rivers Act subdivision, and has constructed two single family dwellings

in Resource Management and in a River Area, all without the Agency review and approval required by statute. The legislature directed the Agency to implement these mandates, and it is through the permitting requirements of Executive Law § 809 that the Agency performs this responsibility.

2) Knowledge of Applicable Legal Requirements

Senior Agency staff advised Respondent of the permitting requirement for the construction of any new single family dwellings in Resource Management. After starting construction, Respondent voluntarily applied to the Agency for a permit to construct the dwellings, demonstrating clear knowledge of the Agency's jurisdiction. Respondent also applied for, and obtained, building permits from the Town of Essex to construct single family dwellings on its property. When settlement negotiations with the Agency failed, however, Respondent resumed construction of its dwellings in defiance of a Cease and Desist Order which specifically described Respondent's alleged violations. Subsequently, the court order of Acting Supreme Court Justice Ryan dismissed Respondent's challenge to Agency jurisdiction and provided clear notice to Respondent that an Agency permit is required for the dwellings. After issuance of the court's order, Respondent again resumed construction. Agency staff then reminded Respondent of the Cease and Desist Order, and sought Respondent's cooperation. Despite all of

this, Respondent has proceeded with construction of its single family dwellings.

3) Cooperation of the Violator

Respondent started construction on its single family dwellings after being advised by senior Agency staff that an Agency permit was required. Respondent only sought an Agency permit for its single family dwellings after installing the foundations of the dwellings and the septic systems, and after being advised to do so by Town of Essex officials. From the point that settlement negotiations failed and Respondent decided to resume construction of the dwellings, Respondent has actively defied Agency requirements, even after issuance of a Cease and Desist Order, Acting Justice Ryan's Order, and notice by staff of the continuing applicability of the Cease and Desist Order. As a result of this lack of cooperation, Respondent has constructed its single family dwellings in Resource Management and in a River Area without prior Agency review of this land use and development.

4) Environmental Impacts

The environmental impacts of Respondent's activities should be evaluated by the Agency through the after-the-fact permitting process. Potential impacts include visual impacts of the dwellings, which are situated in open farm fields, and the septic systems serving the single family dwellings.

5) Benefit to the Violators

There is no easily discernible benefit to Respondent from its violations apart from its avoidance to date of costs associated with obtaining an Agency permit for its activities. Presumably, Respondent will incur similar costs if it is required to obtain an after-the-fact permit from the Agency. Based on local tax records, the current assessed value of the Lewis Farm is $4,776,600. It is not clear whether that value includes Respondent's new single family dwellings; however, the estimated construction cost of each of the dwellings exceeded $300,000.

6) Extent of Compliance to be Required

The extent to which the injunctive relief will bring the property into full compliance is the final factor that is typically relevant in determining an appropriate penalty. Here, if Respondent is required to obtain an after-the-fact permit for its activities, Agency staff anticipate that reasonable and appropriate conditions can be developed to bring the Lewis Farm into full compliance with applicable Agency requirements.

CONCLUSION

Based on the NAV, Respondent's Response, and the affidavits and exhibits in support of Agency staff's Request for an Enforcement Committee Determination, there are no material facts in dispute in this matter. Accordingly, Agency staff request a

determination by the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) that the apparent violations alleged in the NAV have occurred, and are occurring. Agency staff further request that the Enforcement Committee require Respondent to obtain an after-the-fact Agency permit for its illegal subdivision and single family dwellings.

Finally, because of the nature and severity of Respondent's violations, Respondent's clear knowledge of the permitting requirements, and its blatant lack of cooperation, Agency staff request that the Enforcement Committee impose a substantial penalty upon Respondent for its violations. In making this request, Agency staff are mindful of the importance under the Executive Law of sustaining the agricultural open space use of Resource Management lands, including the Lewis Farm.

At the same time, however, the Agency's regulatory jurisdiction in this case is absolutely clear, and Respondent's blatant defiance of the Agency's permitting requirements cannot be tolerated. This enforcement case has never been about Respondent's agricultural use. In fact, if Respondent had followed through with the permitting process, an Agency permit would likely have been issued for its project with reasonable and appropriate conditions.

This matter is before the Enforcement Committee because of Respondent's knowing and deliberate avoidance of Agency

permitting requirements in Resource Management and in a River Area. If Respondent and others are to be expected to seek Agency permits in the future, rather than to violate Agency requirements with the expectation of receiving after-the-fact approval of their illegal actions, a substantial penalty must be imposed against Respondent in this case. Absent a substantial penalty here, Respondent and others will not be deterred from future violations.

ITEM 9

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January 22, 2008

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Adirondack Park Agency
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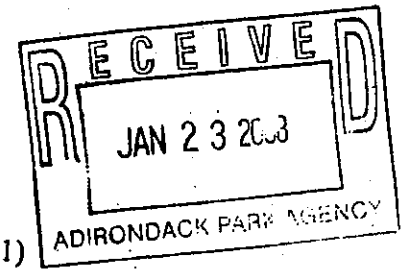

Re: Lewis Family Farm, Inc. (E2007-041)

Dear Chairman Stiles:

Please accept my appearance on behalf of the Respondent, Lewis Family Farm, Inc. We enclose a paper that sets forth our position in support of the Lewis Farm's motion to dismiss. We respectfully request 15 minutes of oral argument when this matter is heard on February 7, 2008 at 9:00 a.m. at your headquarters.

Respectfully,

John J. Privitera

JJP/klh

cc: Mr. Pete Grannis, Commissioner, NYS Department of Environmental Conservation
Ms. Betsy Lowe, Designee for Mr. Grannis (Region 5)
Ms. Lorraine Cortes-Vazquez, Secretary of State, Member
Mr. Richard Hoffman, Designee for Ms. Cortes-Vazquez
Mr. Daniel Gundersen, Upstate Chairman of Empire State Development Corporation
Mr. Randall Beach, Designee for Mr. Gundersen
Mr. Frank Mezzano, Chair, Economic Affairs Committee
Mr. Cecil Wray, Chair, Enforcement Committee
Mr. Richard Booth
Mr. Arthur Lussi
Mr. William H. Thomas
Mr. James Townsend
Ms. Leilani Crafts Ulrich
Executive Director, APA
Mr. Paul VanCott (via Overnight Delivery)

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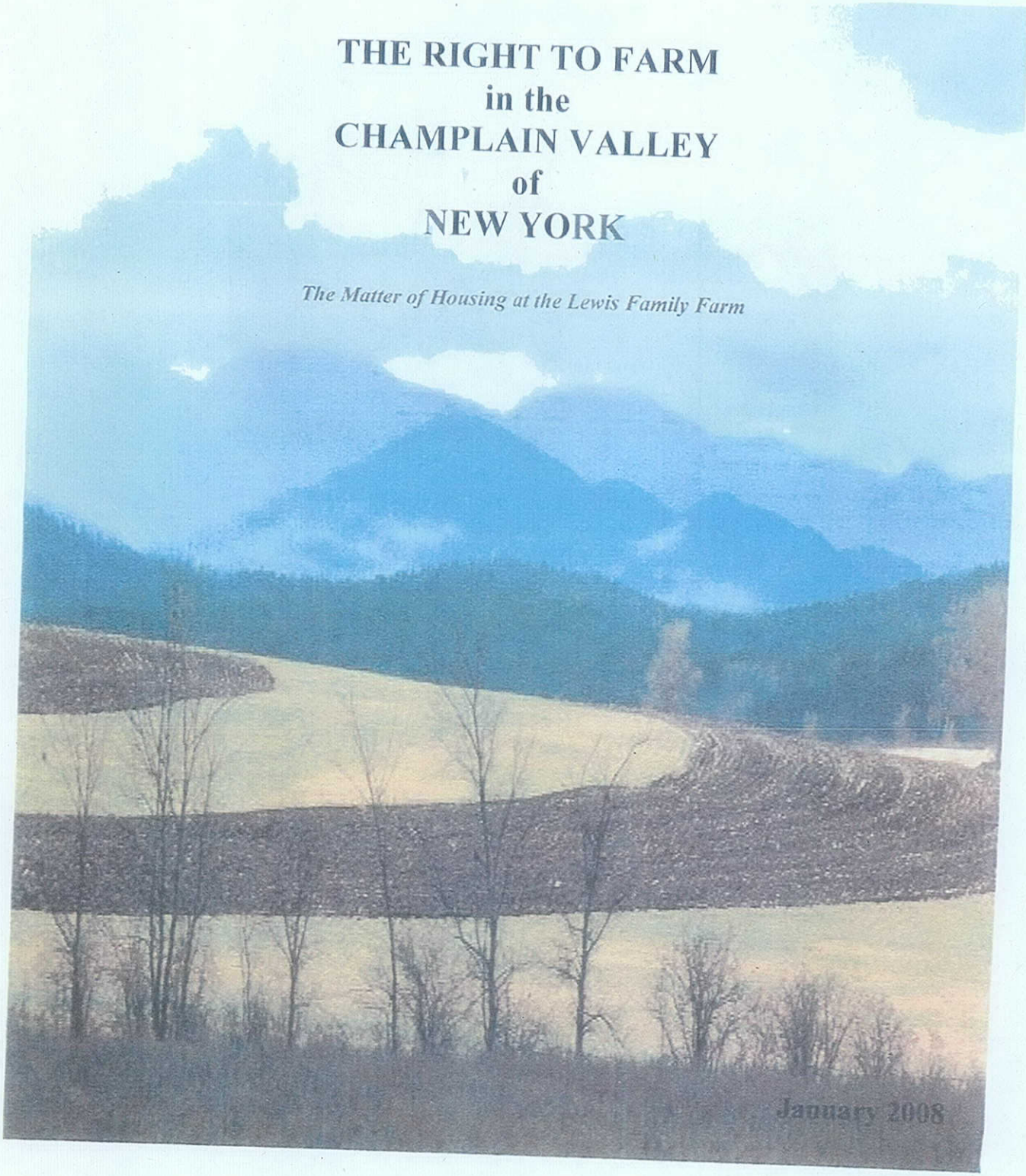
THE RIGHT TO FARM in the CHAMPLAIN VALLEY of NEW YORK

The Matter of Housing at the Lewis Family Farm



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"Agriculture is not just an important part of our economy – it's a way of life in our communities. By supporting our farmers, by giving them the tools they need to access new markets, we will preserve this way of life in New York, and leave stronger farms – and a stronger state – to our children and grandchildren."

New York State Governor Eliot Spitzer, January 16, 2008

Photographs of Lewis Family Farm by Barbara A. Lewis

ADIRONDACK PARK AGENCY

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

Agency File: E2007-041

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S REQUEST FOR DISMISSAL OF THIS ENFORCEMENT PROCEEDING AND ANNULMENT OF THE CEASE AND DESIST ORDER AND IN OPPOSITION TO STAFF'S APPLICATION FOR IMPOSITION OF PENALTIES WITHOUT A HEARING

Submitted by:

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PRELIMINARY STATEMENT

Respondent Lewis Family Farm, Inc. (hereafter "the Lewis Family Farm"), through its undersigned counsel, submits this memorandum of law in opposition to staff's enforcement proceeding and respectfully asks the Agency to dismiss this proceeding because it is based upon gross misapprehensions of law that cannot be countenanced by the Members of the Agency. Staff seeks to lead the Committee down a dangerous, untrodden and unmarked path that is far beyond the furthest edges of the Agency's jurisdiction. That is, staff asks this Committee to violate the New York State Constitution and expand its reach beyond its statutory power by entering an order that penalizes the Lewis Family Farm for constructing two farm buildings.

Pursuant to its constitutional duty to encourage farming, the legislature exempted farm buildings from Agency regulation when it enacted the Adirondack Park Agency Act (the "Act"). Thus, the Agency's attempt to regulate farm buildings here is unconscionable and unconstitutional. It will also lead this Agency into an illegal fray and a policy nightmare that does violence to the public's right to farm in New York State, a right that is held by all New York citizens.

Agriculture is among New York State's most important industries. Agricultural production returned over $3.6 billion to the farm economy in 2005.[1] New York's farms employ some 113,000 people. Food industry employment accounts for 425,000 jobs. Related transport, marketing, and international sales are equally important. Thus, a strong and viable agricultural industry is a foundation of New York State's economy. State law recognizes the economic and aesthetic value of farms and protects them from enforcement proceedings such as this. The Act

[1] New York State Department of Agriculture & Markets, Ag. Facts and Annual Reports. See http://www.agmkts.state.ny.us/agfacts.html.

demands that the Agency protect the open space that farm land provides by encouraging farm development. Staff's efforts in this case defeat a core mission of the Agency.

The three million acres of private land in the Adirondacks hold a wealth of natural resources that includes an agricultural resource base sustained by abundant rainfall, productive soils, a sufficient growing season and proximity to the nation's largest markets.[2] The Agency is obliged by law to encourage, not penalize, farm development of these resources.

The New York State Constitution provides substantial benefits and protections to farmers under Article 14, the same Article that protects the forest preserve as forever wild. These bedrock legal mandates must be given equal weight. Article 25-AA of New York State's Agriculture and Markets Law authorizes the creation of local agricultural districts pursuant to land owner initiative, county review, state certification and county adoption. The Lewis Family Farm lies within such a district. Agricultural districting, upon which the Agency has nothing to say, encourages farming and use of farmland for agricultural production. Local land use laws in New York State may not regulate farming. New York State farmers have a right to farm.

As summarized more fully below and supported by the accompanying affidavits of Barbara Lewis, Klaas Martens and John Privitera, this proceeding must be dismissed promptly. Moreover, the illegal Cease and Desist Order issued by the acting Executive Director must be annulled, thereby allowing the Lewis Family Farm to complete construction and occupy its farm employee houses this spring. As revealed below, staff's efforts to seek an unprecedented order by the Agency, devoid of legal or policy formulation, is unconstitutional, contorts the Act beyond comprehension, does violence to the open space elements of the Park Plan and cannot be countenanced.

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[2] New York Farm Bureau: 2007 Policy Statement: p. ii.

FACTS

A. History of the Lewis Family Farm

In 1978, Salim and Barbara Lewis purchased a large tract of farmland in the County of Essex. (Affidavit of Barbara A. Lewis, ¶ 2). Over the years, they acquired adjacent lands to form what is now known as the Lewis Family Farm, consisting of approximately 1,200 acres, 826 of which are currently under cultivation and used for pasture. The remainder includes maple sugarbush, recovering logged areas, and protective winter habitat for cattle. (Lewis Aff., ¶ 2). The Lewis Family Farm, a modern and innovative farming operation, is one of New York State's largest USDA Certified organic farms and a national leader in organic farming. (Lewis Aff., ¶ 3); (Affidavit of Klaas Martens, ¶ 4). Further, it has become a showcase for the Cornell Cooperative Extension and has, through example, contributed to neighboring farms that have also become organic operations. (Lewis Aff., ¶ 4; Martens Aff., ¶¶ 8, 10). As a recognized leader in farming, the Lewis Family Farm allows students and apprentices from national international programs to work and study on the farm for academic credit. (Lewis Aff., ¶ 4).

Over the years, the Lewis Family Farm has made significant capital improvements to its land, infrastructure and operations in an effort to remain an economically viable, energy efficient, and environmentally sound working farm. (Lewis Aff., ¶ 5). The farm has cleaned up the roadsides and farmsteads, making the area far more attractive. (Martens Aff., ¶ 6). As it grew in size, the Lewis Family Farm demolished at least fifteen (15) residences that were broken beyond repair, residences with unhealthy sewage conditions, residences with vulnerable or unreliable water supplies, and residences considered unsafe and substandard due to severe mold contamination. (Lewis Aff., ¶ 6).

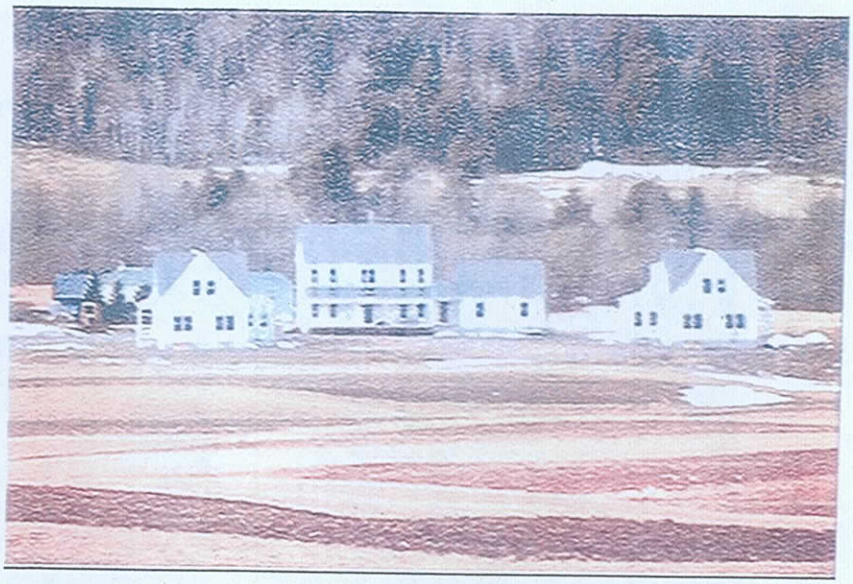
In addition to the demolition of these houses and the removal of numerous unheated farm worker houses, the Lewis Family Farm constructed at least fifteen (15) farm buildings and several other farm structures in support of the farm, including several barns and two substantial bridges designed and built to protect wetlands. (Lewis Aff., ¶ 7). The Lewis Family Farm did not obtain any permits from the Adirondack Park Agency for these farm structures. (Id.). At no time since these many farm buildings were constructed has the Lewis Family Farm been informed that an Agency permit was necessary at the time of construction, other than the Notice of Violation that was received for the farm worker houses at issue in this matter. (Id.).

2003 Color infra-red image of a portion of the Lewis Farm where the farm employee housing was constructed. These structures were demolished prior to building the employee housing cluster.

B. The Farm Employee Housing

As a successful large-scale organic farm, the Lewis Family Farm requires highly skilled professional employees in order produce crops and animal products that meet strict organic standards. (Martens Aff., ¶ 11). The Lewis Family Farm has a full-time manager and three full-time employees that work on the farm throughout the calendar year. (Lewis Aff., ¶¶ 8-9). Additionally, the Lewis Family Farm customarily has interns and other farm workers working on the farm throughout the year.[3] (Lewis Aff., ¶¶ 9-10). Thus, at times, there are several farm workers that are in need of housing on or near the Lewis Family Farm for themselves and their families. These employees require on-farm housing so that they can properly monitor and survey the farm and provide around-the-clock surveillance. (Martens Aff., ¶ 12). Providing housing for these farm workers and their families in off-farm housing is incredibly inconvenient and costly. (See Lewis Aff., ¶¶ 9-10). Therefore, in late 2006, the Lewis Family Farm invested in on-farm employee housing, in the knowledge that safe, modern, comfortable and energy efficient on-farm employee housing is a fundamentally sound agricultural practice, which is crucial to the farm's operation and essential for a self-sustaining farm in the Adirondack Park. (Lewis Aff., ¶ 11; Martens Aff., ¶ 16).

[3] For example, in the last year alone, the Lewis Family Farm had four student interns and one apprentice from Washington State, Georgia, Long Island, Plattsburgh, and France, respectively. (Lewis Aff., ¶ 10). Additionally, the Lewis Family Farm had has been approached by the government of Nepal to host four of its farmers so that they may learn the methods of sustainable organic farming. (Lewis Aff., ¶ 9). These Nepalese farmers had been scheduled to arrive in the fall of 2007 and now plan to arrive in late spring 2008. (Id.).



This is a 2008 image of the clustered housing on the Lewis Family Farm. Homes will be used to house farm employees. The housing was constructed on the same footprint where a home and barns existed in the 2003 image. The edge of the Hamlet of Whallonsburg, no more than 200 feet away, is evident behind the South Family Cottage.

The Lewis Family Farm employee housing project involves four structures: the manager's house at Clark and Cross Roads, which was finished in late 2007 and is now occupied by Dr. Turco; and, a three-building cluster near the primary farm barns near the intersection of Whallons Bay Road and Christian Road, which contains two (2) three bedroom cottages for nuclear farm families and a larger four bedroom residence designed for employees, interns, apprentices, and farm consultants. (Lewis Aff., ¶ 12). It is this three-building employee housing cluster that is at issue in this proceeding. It was built at the old Walker Farm, now demolished, at the corner of Christian Road and Whallons Bay Road. (Lewis Aff. ¶ 30, Ex. H).

The three-building employee housing cluster, adjacent to the Barn Plaza on the Lewis Family Farm, is several hundred feet from the Boquet River, with several residences, a railroad track, some high ground, and roads situated between the employee houses and the river. (Lewis Aff., ¶ 13). In fact, the farm worker houses are no more than 200 feet east of the Hamlet of

Whallonsburg in the Town of Essex, New York. (Privitera Aff., ¶ 13 and Ex. H).[4] The placement of the units is specifically designed to facilitate easy and energy efficient access to and surveillance of the adjacent barns. (Lewis Aff., ¶ 14).

The location of the Lewis Family Farm employee housing cluster is marked by the green arrow. Note the location of the houses in relation to the Hamlet of Whallonsburg and the Lewis Family Farm's angled Barn Plaza.

Contrary to staff's contention otherwise, no subdivision of land or sites was involved in the design and construction of the employee housing units, as all are on the Lewis Family Farm and are not the subject of separate parcels or the division of the farm's land. (Lewis Aff., ¶ 14). Indeed, the three-building housing cluster is designed as a farmer community. (Id.). The three employee houses are closely adjacent to one another and share a common well, driveway, septic system and leach field located beneath a common courtyard. (Id.). The houses are clearly not designed for any use other than for farm employees. (Id.).

[4] Having built the farm employee houses adjacent to the hamlet serves the overall values of the Plan by maximizing open space and minimizing visual impacts. Concentrating development at the hamlet where unlimited growth is allowed is a farming plan that ought to be recognized, commended and exemplified – not penalized.

The Barn Plaza is located adjacent to the clustered employee homes. A common yard will contain the leach field, which will be used by all three of the homes.

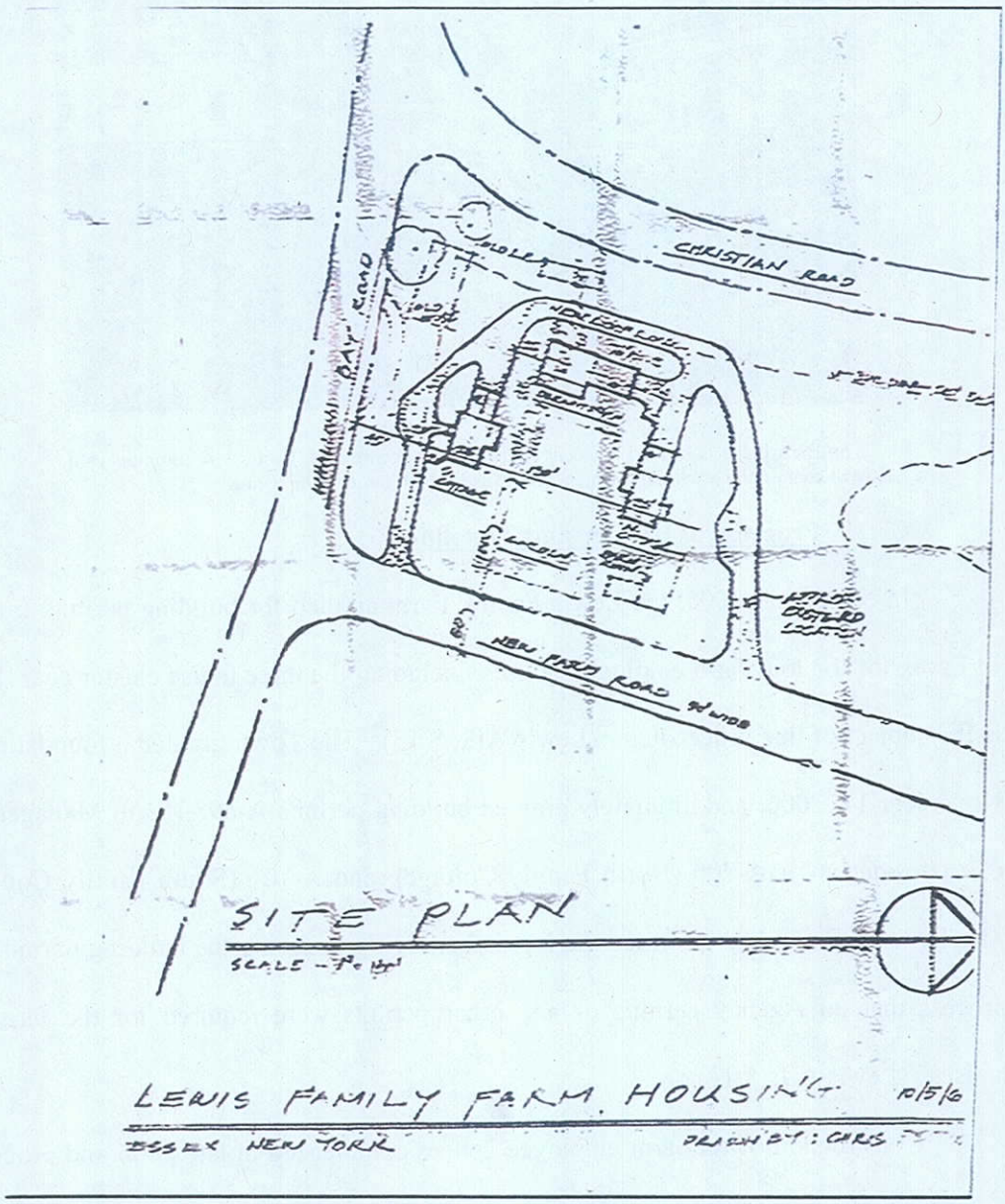
C. Procedural History and Timeline

In November 2006, the Lewis Family Farm applied for building permits from the Town of Essex for the four farm employee houses, including the three house cluster near the barns that is the subject of this proceeding. (Lewis Aff., ¶ 15). The Town granted a foundation permit on November 14, 2006, and ultimately granted building permits A-698 (Farm Manager Home); A-699 (Residence I); A-700 (North Family Cottage); and A-701 (South Family Cottage). (Id.). The Town of Essex had informed the Lewis Family Farm during the building permit application process that no Agency permits or any other permits were required for the farm employee houses. (Lewis Aff., ¶ 17).

Construction of the farm employee houses commenced in late 2006 and proceeded until mid-March 2007, when Barbara Lewis contacted the Agency staff after hearing rumors of complaints. (Lewis Aff., ¶ 19)[5]. The Lewis Family Farm voluntarily halted construction of the

[5] Staff's papers presume to express a view regarding the value of these farms improvements, supported by speculation rather than documentation. Staff's Memo of Law ¶ 19. This is factually wrong and quite immaterial to the Agency's inquiry.

employee houses in March 2007 after speaking with staff in order to clear up any misunderstandings about the project. (Lewis Aff., ¶ 20).



The Lewis Family Farm employee housing cluster, as engineered and approved by the Town of Essex. (Lewis Aff., Ex. B). Residence I is labeled "Dormitory" in October 2006.

In May 2007, staff proposed a "settlement agreement" demanding that the Lewis Family Farm waive the right to challenge Agency jurisdiction to regulate farming, allow Agency review

of all future farm buildings, and pay a $10,000 fine by June 15, 2007, which they suggested was small by staff's standard. (Lewis Aff., ¶ 22) (See also Ex. A to Van Cott Aff.). Notwithstanding staff's demand that the Lewis Family Farm surrender its right to farm, Barbara Lewis was informed several times by staff that the farm employee housing cluster near the barns was fine where it is located and that the Agency would issue a permit for it. (Lewis Aff., ¶ 24). However, staff insisted that the farm must acknowledge the Agency's purported jurisdiction over farming and pay a substantial fine for failing to get a permit before commencing construction. (Id.).

In early June 2007, the Lewis Family Farm was informed that due to a significant regulatory change, the Canadian manufacturer of the farm employee houses (which are modular homes) could not honor its contract to install the houses after the first week of July 2007. (Lewis Aff., ¶ 25). Having concluded that this dispute related only to whether or not a fine is paid, since staff informed the farm that the buildings were satisfactorily located, the Lewis Family Farm accepted delivery and installation of the modular employee houses so as to not allow them to suffer any damage from the elements during the pendency of this dispute. (Id.). Moreover, the Lewis Family Farm was also advised by its counsel at Nixon Peabody that the construction of the farm employee housing was permissible as a matter of law. (Lewis Aff., ¶ 26).

Modular housing is vulnerable to the North Country elements upon arrival. Here, a piece of one of the Lewis Family Farm employee cottages is craned into place.

Therefore, on June 26, 2007, the Lewis Family Farm commenced an action in Essex County Supreme Court seeking a declaratory judgment that the Agency could not prohibit the completion of the farm employee housing project because it is beyond the Agency's authority to regulate farms. (Lewis Aff., ¶ 27). The next day, the acting Executive Director of the Agency issued a Cease and Desist order prohibiting the completion of the farm employee houses. (Lewis Aff., ¶ 28). On August 16, 2007, the Essex County Supreme Court dismissed the declaratory action upon a finding that it was "not ripe for judicial intervention" because the Agency has yet to render an enforcement determination. (See Justice Ryan's Decision and Order, pg. 6, Ex. B to Van Cott Aff.).

Staff maintains that only two of the three farm employee houses are illegal. (See staff's Memo of Law, pg. 12). There is no indication as to which of the three farm employee houses that staff alleges are illegal. (See Lewis Aff., ¶ 30). As of today, the three farm employee houses remain uncompleted at great expense to the Lewis Family Farm. (Id.).

Farm employee housing clustered together with a combined leach field that will be used by all three structures. The homes are located in close proximity to the barns.

D. New York State Policy On Farm Housing

The Commissioner of the New York State Department of Agriculture and Markets has stated that the Lewis Family Farm has a legal right to the use of its farm employee housing because it obtained approval from the Town of Essex and nothing more can be required. (Privitera Aff. Ex. B). The Department's statewide policy on employee housing clearly supports the Commissioner's determination. (Privitera Aff., Ex. C).

ARGUMENT

POINT I

THE AGENCY HAS UNMET CONSTITUTIONAL AND STATUTORY DUTIES TO PROMULGATE A POLICY THAT ENCOURAGES THE DEVELOPMENT OF FARM LAND

A. The Agency's Constitutional Duty

In 1969, Article 14 of the New York State Constitution was adopted by the People of New York State to protect the State's natural resources and agricultural lands. Specifically, Section 4 of Article 14 states as follows:

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

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

This section of the New York State Constitution, which was adopted as part of the "Conservation Bill of Rights", imposes a mandatory duty upon this Agency to encourage improvement of farms, not penalize farm development. It also specifies that the development of agricultural lands is a matter "of particular importance for action by the legislature." Proceedings of the Constitutional Convention of the State of New York, Vol. XI, Document No. 53, pg. 5 (1967). In fact, Section 4 of Article 14 further directs the legislature "to provide for the exercise of various governmental powers to encourage the maintenance of lands in their agricultural state." Id.

The Constitutional directive to "encourage the development and improvement" of farm lands is contained in the very same Article of the New York State Constitution as the highly regarded and well-known "forever wild" clause. See N.Y. CONSTITUTION, Article 14, § 1

(McKinney 2006).[6] Accordingly, the "pro-farm development" clause is no less important than the "forever wild" clause, and it must be equally honored and obeyed.

Here, the Agency is in violation of its constitutional duty to encourage the development and improvement of farms, because staff's heavy handed penalty effort and gross distortion of the Act is unguided by a written Agency farm policy. The Agency cannot say that it has established a policy, because it has none. This, alone, violates the pro-farm development clause. The Agency's constitutional shortcomings are exacerbated by this enforcement case, which is based upon an illegal cease and desist order and seeks to penalize the Lewis Family Farm for constructing two locally permitted statutorily exempt farm buildings.

This Agency—formed only two years after the adoption of Article 14 of the New York State Constitution—is obliged to develop a pro-farm development policy and put it in place.[7] Indeed, the absence of a pro-farm development policy violates the Constitution as much as if the Agency itself clearcut a portion of the forest preserve.

The legislature was cognizant of New York State's constitutionally mandated policy of encouraging farm development when it enacted the Act two years after adoption of the pro-farm development clause of the Constitution. Under the Act, the Agency only has jurisdiction to

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[6] Section 1 of Article 14 of the New York State Constitution provides, in pertinent part, as follows: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands."

[7] Because the New York State Constitution compels the Agency to develop and publish an agriculture policy that encourages the development and improvement of the Park's agricultural land, the Agency must meet this obligation sooner or later. When the Agency ultimately engages this effort, it must build upon statewide policies that have already been developed. Most recently, Governor Spitzer appointed the New York State Council on Food Policy, which issued a report on December 1, 2007. See Governor Spitzer Executive Order No. 13. The primary goal of the Policy is to "expand agricultural production, including locally grown and organically grown food." Policy, pg. 6. The Council on Food Policy identified four "key issue areas" as specific priorities, including support for "efficient and profitable agricultural food production." Id. at p. 8. This enforcement proceeding, unfounded in policy or law, which seeks to penalize a sound agricultural practice designed to build sustainable efficiency and profitability, is directly contrary to emerging State farm policy, as identified by the New York State Council on Food Policy report of last month. Privitera Aff. ¶ 16 and Ex. J.

review "Class A" and "Class B" regional projects within the Park. See N.Y. Exec. Law § 810. In defining this limited class of projects over which the Agency has jurisdiction, the legislature was careful to protect farming by not listing "agricultural use structures" as jurisdictional even if a farm building exceeds forty feet in height.[8] See Point II, *infra.*

Although the lack of a pro-farm development policy by the Agency violates the Constitution, the Agency may reach a just disposition in this proceeding if the Act is followed and applied as written rather than distorted and contrived as staff would have it.

Obviously, the Agency cannot stand the Act on its head, ignore the explicit exemption for agricultural use structures, and somehow gain jurisdiction by unilaterally labeling agricultural use structures such as farm employee housing as a "single family dwelling". Such a contorted reading, designed to overreach and regulate farming, would do violence to the legislative intent and careful legislative structure of the Act, crafted to be consistent with the then-recently amended Constitution, in exempting farms. Farm buildings are beyond the reach of the Agency under the Act. Here, the attempted regulation of farming is contrary to the balanced purposes of the Act in protecting farms as open space resources and as one of the foundation stones upon which the fragile economy inside the Adirondack Park must be supported.

New York State's Constitution is unquestionably the supreme law of the State. See Dalton v. Pataki, 5 N.Y.3d 243, 296 (2005). Thus, the Agency must obey the New York State Constitution by developing a policy of encouraging the development and improvement of

[8] "Structure" is broadly defined to include anything from a fence to a building, including housing. N.Y. Exec. Law § 802(62). The definition of "Agricultural Use Structure" borrows from this broad definition of "Structure" and provides that "Agricultural Use Structure" includes any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use. Clearly, farm employee housing, barns and other such improvements are within the definition of "Agricultural Use Structure". N.Y. Exec. Law § 802(8).

agricultural lands. Accordingly, the Agency's attempt to regulate the Lewis Family Farm without a written pro-farm development policy is unconstitutional and must be prohibited.

B. The Agency's Statutory Duty

In 1971—the same year that the Agency was formed—the legislature enacted Article 25-AA of the Agriculture and Markets Law. A recent Court of Appeals decision succinctly states the purpose of this statute as follows:

> The Legislature enacted [A]rticle 25-AA of the Agriculture and Markets Law in 1971 for the stated purposes of protecting, conserving and encouraging 'the development and improvement of [this State's] agricultural lands' (L 1971, ch 479, § 1). At that time and again in 1987 (L 1987, ch 774, § 1), the Legislature specifically found that 'many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes' due to local land use regulations inhibiting farming, as well as various other deleterious side effects resulting from the extension of nonagricultural development into farm areas.

Town of Lysander v. Hafner, 96 N.Y.2d 558, 563 (2001) (citing N.Y. Agric. & Mkts. Law § 300).

To facilitate this purpose, the legislature enacted Section 305 of the Agriculture and Markets Law to require ***all*** New York State agencies to create and/or modify policy to support the development of farming within the State:

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

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

This statutory mandate is more focused and direct than the Constitution. It requires that this Agency "modify its regulations and procedures" to encourage the maintenance of viable farming in agricultural districts. The Lewis Family Farm is in such a district, so it is entitled to the benefit of this statutory protection. (Lewis Aff. ¶ 3). These mandated policies, regulatory and procedural changes have yet to occur in the Agency. When the Agency ultimately meets its

mandatory duty to publish a pro-farm development policy under the Constitution, it must also modify its regulations and procedures to provide the additional protection required by the Agriculture and Markets Law for agricultural district farms.[9]

The Agency can hardly say that its regulations and procedures are "encouraging the maintenance of viable farming" in this case when staff issued an illegal cease and desist order that violates the Constitution, State agricultural law, the Act and Agency's own enforcement policy and seeks to penalize the Lewis Family Farm for constructing two locally-permitted, exempt farm buildings. Staff's draconian penalty demand, which exceeds $1 million, is not grounded in any policy, law or regulation.[10] (See staff's Memo of Law, pg. 15). Indeed, staff's blusterous papers are largely devoted to an alleged disobedience to unstated law.[11]

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[9] In addition to constitutional mandates and the dominant farm law and policy articulated by the Department of Agriculture and Markets which must be followed here, the Agency's own charter demands protection of farms as open space. The Act states that the Agency's "policy shall recognize the major state interest in the conservation, use and development of the Park's resources and the preservation of its open space character." N.Y. Exec. Law § 801.

[10] Governor Spitzer's recently formed "Smart Growth Cabinet" will inevitably be compelled to focus upon relationships among agricultural policy, including farm employee housing; the work of the New York State Council and Food Policy; and, the problems of sprawl. Ultimately, a significant element of the equation must be to protect the economics of farms, so they are less attractive to suburban development. See G.S. Kleppel, Ph.D., *To Fight Sprawl, We Must Use Land Wisely*, ALBANY TIMES UNION, January 13, 2008, at D1 ("When farming is profitable, farmers stay on their land"). Staff seeks to destroy the profitability of the Lewis Family Farm by seeking a seven figure penalty that no farm could ever pay. Contrary to wise policy, staff seeks to render the Lewis Family Farm suitable only for development when all farming profit is gone.

[11] Staff seeks desperately to distract the Agency from a reasoned approach to a decision in this case in accordance with the rule of law. This distraction is largely constructed through staff's false description of representatives of the Lewis Family Farm as outlaws, which forms the bulk of their papers. John Banta swears that on December 5, 2005, he advised Salim B. Lewis that farm employee housing needed an Agency permit. (Banta Affidavit July 23, 2007, ¶ 5). Mr. Lewis denies having heard it, which is not surprising since he is deaf in one ear. Thus, if the Agency regards this as a material issue, it is in dispute and needs a hearing. See Affidavit of Barbara A. Lewis, ¶ 18. Respondent's Answer, ¶ 5 (Denial). Meanwhile, the Lewis Family Farm, having been properly informed by the Town of Essex that building permits were sufficient and that no Agency permit was required, commenced construction. After the farm employee housing cluster was well under way and exposed to the elements, staff issued an illegal Cease and Desist Order that violated Agency enforcement policy and wrongfully claimed that the exempt agricultural use structures were "single family dwellings." See Affidavit of Paul Van Cott dated December 13, 2007, Exhibit C; and Affidavit of Douglas Miller, dated July 20, 2007, Exhibit F. Counsel for the Lewis Family Farm, Inc. advised the Farm that the Cease and Desist Order was illegal and staff never sought the Agency's enforcement of it. Even before the illegal Cease and Desist Order, staff repeatedly emphasized orally and in writing that the farm employee housing cluster could stay where it is. This remains staff's position today. See Affidavit of John Quinn, dated December 12, 2007, ¶ 4. Notwithstanding staff's formidable distraction, it cannot be said that the

Since the Adirondack Park Agency Act and Section 305 of the Agriculture and Markets Law were both enacted in 1971, the legislature was undoubtedly mindful of New York State's constitutional mandate to promulgate and maintain a policy of encouraging farm development, which was adopted only two years prior to the enactment of these statutes. Therefore, the legislature's deliberate exclusion of "agricultural use structures," a defined term in the Act, from Agency jurisdiction, is informed by its historical context. That is, the Act was written to exempt farm buildings from the Agency's regulatory power promptly after the Constitution was amended to mandate a pro-farm development policy and at the same time the legislature established the statutory right to farm in agricultural districts. See Friedman v. Connecticut Gen. Life Ins. Co., 9 N.Y.3d 105, 115 (2007) ("A court must consider a statute as a whole, reading and construing all parts of an act together to determine legislative intent, and...[give] effect and meaning...to the entire statute and every part and word thereof") (internal citations omitted); see also Briar Hill Lanes, Inc. v. Ossining Zoning Bd. of Appeals, 142 A.D.2d 578, 581 (2d Dep't 1988) ("The task in interpreting a statute or ordinance is to give effect to the intent of the body which adopted it"); American Motors Sales Corp. v. Brown, 152 A.D.2d 343, 349 (2d Dep't 1989) ("courts are required to harmonize statutes with each other as well as with the overall legislative intent in an effort to provide a logical and unstrained interpretation to each").

Moreover, the New York Department of Agriculture and Markets supports the rights of the Lewis Family Farm and the farming community under New York law, including the right to engage in sound agricultural practices and the right of farmers to support their operations with

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Lewis Family Farm set out to violate the law. Moreover, under the circumstances of this case, it cannot reasonably be argued that the Lewis Family Farm had an obligation to surrender their investment in the farm employee housing project to the north country elements. Since John Banta has identified himself as a material witness to these proceedings, he is disqualified as serving as counsel for any party, and cannot advise the Agency Members on the Lewis Family Farm. See NYS Code of Prof. Resp., DR 5-102 ("A lawyer shall not act, or accept employment that contemplates the lawyer's acting, as an advocate on issues of fact before any tribunal if the lawyer knows or it is obvious that the lawyer ought to be called as a witness on a significant issue on behalf of the client").

necessary buildings and infrastructure, which includes farm employee housing. (Privitera Aff. ¶ 5, Ex. B; ¶ 6, Ex. C). The Department recognizes that farm employee housing is an integral part of a successful farm operation. Id.

Housing accommodates the work day of farm laborers and farm management, and meets needs in recognition of the shortage of nearby rental housing in rural farm communities. (See 2006 Annual Report of the Adirondack Park Agency, pg. 27, Ex. E to Privitera Aff.). Farm employees cannot afford to buy or even rent good housing in the Adirondacks.

The Department of Agriculture and Markets firmly maintains that the construction of farm employee housing is protected by Article 25-AA of the Agriculture and Markets Law, as upheld by the Court of Appeals in Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001), *supra.* (See Privitera Aff., ¶ 5, Ex. B).

C. The Agency Must Follow The Policy Set Forth By The Department Of Agriculture And Markets

In the absence of an Agency policy implementing the pro-farm development clause contained in the New York State Constitution and Agriculture and Markets Law, the Agency is obliged to follow the policy of the Department of Agriculture and Markets. There can be no doubt that the Department of Agriculture and Markets is exclusively responsible for the interpretation, implementation and administration of the New York State Agriculture and Markets Law, including the right to farm set forth in Article 25-AA (Agricultural Districts). See N.Y. Agric. & Mkts. Law § 16.

The Agency has no mission, charter, or responsibility with respect to agricultural protection, other than honoring the obligation to have a pro-farm development policy under the New York State Constitution and Agriculture and Markets Law. With respect to all other matters, this Agency is obliged to defer to the governmental agency charged with the

responsibility for the administration of the statute, which interpretation, if it is not irrational or unreasonable, must be respected and followed. See generally Kurcsics v. Merchants Mutual Insurance Company, 49 N.Y.2d 451, 459 (1980); see also Town of Lysander, 96 N.Y.2d at 564.

Here, the Commissioner of the Department of Agriculture and Markets has spoken with great clarity as to the statewide policy under the Agriculture and Markets Law within his purview, as to the severe limitations on the regulation of farm employee housing. As a matter of policy, a farmer need only obtain a local building permit to assure that the structure complies with building codes with respect to public health and safety. Nothing else is required of her. No other scrutiny is allowed. Even permit conditions that demand the screening of the housing are unreasonable according to the Commissioner's articulation of statewide agriculture policy. (See Privitera Aff., ¶ 6, Ex. C).

Indeed, the Commissioner is on record with the Agency as having expressed the sound view that this Agency has a statutory obligation to embrace, rather than penalize the Lewis Family Farm's employee housing in this case. (Privitera Aff., ¶ 5, Ex. B). "The Commissioner's view in this regard is entitled to deference." Town of Lysander, 96 N.Y.2d at 564. This Agency must defer. The Agency simply cannot proceed with enforcement in this case in the absence of a policy that favors farm development and that guides staff in its mission.

Therefore, the Agency must meet its constitutional and statutory mandatory duties by deferring to the Commissioner in implementing state agricultural policy. Since the Lewis Family Farm obtained local building permits, any further review or conditions violates state policy. Accordingly, this proceeding must be dismissed in its entirety.

D. Any Assertion Of Jurisdiction By The Agency Over Farm Buildings Violates The Agriculture And Markets Law

Local governments are prohibited from unreasonably hindering farming operations in agricultural districts. "[L]ocal governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations...shall not unreasonably restrict or regulate farm operations with agricultural districts." N.Y. Agric. & Mkts. Law § 305-A(1)(a). The legislature does not define "local governments" in the statute. See N.Y. Agric. & Mkts. Law § 2. Therefore, this Agency must adopt a functional and practical approach to the definition.

The Court of Appeals has spoken as to the Agency's powers, and regards the Agency as functioning with the combined powers of a "***local*** planning board and a ***local*** zoning entity." Hunt Brothers v. Glennon, 81 N.Y.2d 906, 909 (1993) (emphasis supplied). In Hunt Brothers, the Court of Appeals held that the New York State Department of Environmental Conservation had exclusive jurisdiction to regulate mining, but that the Agency may have limited jurisdiction over incidental matters unrelated to mining itself. Id. In so doing, the Court of Appeals found that the Agency's powers and goals resemble the powers of local government. Id.

Therefore, the Court of Appeals' clear holding in Town of Lysander, which prohibits the regulation of safe farm employee housing under of Article 25-AA of the Agriculture and Markets Law, prevents this Agency—which resembles a local government—from regulating farm buildings in agricultural districts. This rule of law must be followed here because the Agency must administer the Act consistent with the law.

POINT II

THE AGENCY LACKS THE REQUISITE DELEGATED STATUTORY AUTHORITY TO REGULATE FARMING

"[A]dministrative agencies, as creatures of statute, are without power to exercise any jurisdiction beyond that conferred by statute." Flynn v. State Ethics Comm'n, 208 A.D.2d 91, 93 (3d Dep't 1995); see also Foy v. Schechter, 1 N.Y.2d 604 (1956) (stating that an agency must have jurisdiction in order for its determinations to be valid, and absent such jurisdiction, agency acts are void). To this end, "the APA cannot operate outside its lawfully designated sphere, with the propriety of its actions often depending upon the nature of the subject matter and the breadth of the legislatively conferred authority." Gerdts v. State, 210 A.D.2d 645, 648-49 (3d Dep't 1994).

Here, the legislature has specifically excluded farm buildings from regulation by the Agency. Thus, the Agency is without power to regulate farming or exercise jurisdiction over farm development, including the farm employee housing on the Lewis Family Farm.

A. Legislative History

In 1971, the legislature determined that the three million acres of private land inside the Adirondack Park needed a regional land use law. To ensure optimum overall conservation, preservation, development and use of the Park's resources, State lawmakers determined to establish the Adirondack Park Agency (the "Agency") and the Adirondack Park Agency Act (the "Act") under Article 27 of the Executive Law. In so doing, the lawmakers specifically determined to "exempt bona fide forest and agricultural management practices" from regulation by the Adirondack Park Agency. (McKinney's 1971 Session Laws of New York, Legislative Memoranda, Adirondack Park Agency-Creation, ch. 706 pg. 2471). At the time, Governor Nelson A. Rockefeller regarded the creation of the Adirondack Park Agency as one of the most

significant accomplishments of the 1971 Session. The Governor embraced the comprehensive nature of the law, yet also proclaimed the wisdom of its limitations on executive power. He determined that the law achieved a "balance between desirable development and economic growth and the protection of the natural resources of the Adirondack Park." Id. at 2627.

At the time of passage, the State Executive Department recognized that the land use plan at the heart of the Act "would be implemented primarily by the park's local government...the Agency would have concurrent jurisdiction only over large scale projects and those proposed to be located in especially critical environmental areas of the park." Id. at 2202. The Legislature also determined to make the Wild, Scenic and Recreational Rivers Act consistent with the provisions of the Act.

B. The Intensity Controls of the Act Exempt Farm Buildings

Ultimately, State lawmakers developed a comprehensive approach under the Act through the Adirondack Park Land Use and Development Plan (the "Plan"). The Plan is carefully designed to nourish and facilitate existing economic activities in the Adirondack Park while providing a two-fold approach to controlling land use and development by setting forth compatible uses and overall intensity guidelines. N.Y. Exec. Law § 805. Specifically, the Plan provides "Primary Uses" for each area of the Park, which are those uses generally considered compatible with the character, purposes, policies and objectives of such land use area. These Primary Uses are fully permitted "so long as they are in keeping with the overall intensity guidelines for such area." N.Y. Exec. Law § 805(3)(a). Further, all private lands in the Park are classified into six categories, identified by color on the Park plan map: hamlet (brown), moderate intensity use (red), low intensity use (orange), rural use (yellow), resource management (green) and industrial use (purple).

The classification of particular areas depended upon such factors as existing land use and population growth patterns, soils, geological features, biological considerations, the need to preserve the open space character of the Park and the protection of certain fragile ecosystems.[12] The two-fold purpose of the land classification system established by the law is to (i) channel growth into areas where is can best be supported, and (ii) limit incompatible uses in some land use areas. Thus, "primary compatible uses" are listed for each of the six land use areas under the Plan and overall intensity guidelines are in place for each of the land uses. See generally N.Y. Exec. Law § 805.

The intensity guidelines facilitate compatible uses in appropriate land use categories while significantly limiting the number of "Principal Buildings" in other areas. Compatible uses, such as homes in the hamlets, are not limited in the intensity guidelines, nor are compatible industrial uses in the industrial zones. The overall intensity guidelines are fairly summarized as follows:

Overall Intensity Guidelines

Land Use Area	Color on Map	Bldgs. (per sq. mile)	Size (acres)
Hamlet	brown	no limit	none
Moderate Intensity Use	red	500	1.3
Low Intensity Use	orange	200	3.2
Rural Use	yellow	75	8.5
Resource Management	green	15	42.7
Industrial Use	purple	no limit	none

[12] See generally Citizens Guide to the Adirondack Park Agency Land Use Regulations, Adirondack Park Agency, pp. 2-6 (2006).

In accordance with the legislative purpose of exempting farming practices from regulation by the Agency, agricultural uses and agricultural use structures are deemed a compatible use throughout the Park, except in the hamlets.[13]

In fulfilling its commitment to exempt farming practices from regulation by the Agency, the Legislature took several steps in the Act to prevent the exercise of State executive power over farming. The Legislature acknowledged that "open space uses, including forest management, agriculture and recreational activities, are found throughout" the land use designation of "resource management areas" where "Agricultural Uses" and "Agricultural Use Structures" are classified as the highest and best use of the land. The Legislature recognized that farms achieve two of the primary goals of the overall act: (1) "protection of open space resources"; and (2) protection of farming as an economic activity in the Park. See N.Y. Exec. Law § 805(3)(g)(1). Specifically, the Legislature acknowledged in the text of the statute that:

> Important and viable agricultural areas are included in resource management areas, with many farms exhibiting a high level of capital investment for agricultural buildings and equipment. These agricultural areas are of considerable economic importance to segments of the park and provide for a type of open space which is compatible with the park's character. Id.

Most important, although the intensity guidelines within resource management areas limit growth to fifteen "Principal Buildings" per square mile in this land use area, the Legislature carefully crafted the statute to embrace and protect unlimited economic growth of farms in the resource management areas without any impact whatsoever upon the density guidelines. This was done through a specific paragraph within the definition of "Principal Building", which provides as follows:

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[13] Executive Law §805(3)(d)(4)(4) and (5) [farming compatible in moderate intensity use areas]; Executive Law §805(3)(e)(4)(4) and (5) [farming compatible in low intensity use areas]; Executive Law §805(3)(f)(4) and (5) [farming compatible in rural use areas]; Executive Law §805(3)(g)(4)(1) and (2) [farming compatible in resource management areas]; Executive Law §805(3)(h)(3)(9) and (10) [farming compatible in industrial use areas].

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

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

Thus, as the Adirondack Park Agency regulates development in accordance with the intensity guidelines, the Agency has absolutely nothing to say about the growth of farms as a matter of law. The expansive definition of "Principal Buildings" on farms could not be clearer in expressing a legislative requirement that farms be allowed to grow without regulation by the Agency. A farm may have many farm structures upon it, including employee housing, yet all of the structures are counted as just one "principal building," thereby assuring the growth and prosperity of farms in protecting open space and providing an economic foundation for residents of the Park. Simply put, the Agency does not have jurisdiction over farm development.

Since a farm is the highest order of land use in a resource management area as a matter of law, and all of the farm buildings including farm employee housing on any one farm count as only one Principal Building, a farm will always be "in keeping with the overall intensity guidelines" as required by the plan, no matter how big it gets and no matter how many agricultural use structures are built on the farm.

Thus, staff's misguided effort to seek penalties against the Lewis Family Farm serves no land use purpose under the Plan. The Act makes clear that the Agency must not control the density of farms. Indeed, staff's senseless attack upon the Lewis Family Farm is directly contrary to the best interests of the Park and the legislative purpose of the Plan because it seeks to harm, rather than protect, farm development—a fragile, valuable Park asset "of paramount importance because of overriding natural resource and public considerations." N.Y. Exec. Law § 805(3)(g)(1).

The Economic Affairs Committee of this Agency has recognized and continues to struggle with the primary threat to the economic vitality of the Park, reasonably priced housing.[14] The first steps the Agency must take towards solving this policy crisis is to recognize the legal protection afforded to farmers as a matter of law, honor the pro-farm development mandate of the Constitution and State Agriculture law and leave the growth of farms and farm employee housing beyond the reach of the Agency.

C. **The Farm Building Exemptions in the Act**

The Act defines "Agricultural Use Structure" to include "any barn, stable, shed, silo, garage, fruit and vegetable stand ***or other building or structure directly and customarily associated with agricultural use***." N.Y. Exec. Law § 802(8) (emphasis supplied).[15] On-farm employee housing falls into this definition because it is a sound agricultural practice that provides the foundation for any self-sustaining farm. (See Martens Aff., ¶ 16; Privitera Aff. ¶¶ 5 and 6, Ex. C and D). The Act is consistent with the New York State Constitution in that it exempts these buildings from Agency regulation.

Under the Act, the Agency only has jurisdiction to review "Class A" and "Class B" regional projects within the Park. See N.Y. Exec. Law § 810. In defining this limited class of projects over which the Agency has jurisdiction, the Legislature was careful to follow through with its protection of farming by not listing "agricultural use structures" as jurisdictional. Indeed, not only did the Legislature go out of its way to not list "agricultural use structures" as jurisdictional, it specifically provided that throughout the Park, including the hamlets, all "agricultural use structures" are exempt from regulation as a "Project" even if they are in excess

[14] See Adirondack Park Agency 2006 Annual Report, pg. 27.

[15] "Structure" is broadly defined to include anything from a fence to a building, including housing. N. Y. Exec. Law § 802(62). The definition of "Agricultural Use Structure" borrows from this broad definition of "Structure." Clearly, farm employee housing, barns and other such improvements are within the definition of "Agricultural Use Structure". N.Y. Exec. Law § 802(8).

of forty feet in height.[16] The Agency admits in its public literature that all "agricultural use structures" are non-jurisdictional throughout the Park. (See Privitera Aff., ¶ 12 and Ex. G).

1. The Lewis Family Farm Buildings Are Not a "Class A" Project

The Lewis Family Farm is located in a Resource Management area of the Park. See staff's Memo of Law, pg. 3. Section 810(1)(e) of the Executive Law sets forth a list of projects in Resource Management that are deemed "Class A" projects. Farm buildings are specifically exempted from "Class A" project determination. After listing several types of projects that are "Class A" projects, the statute reads as follows:

> Provided however, ***that the above shall not include*** forestry uses (other than clearcutting as specified in number eleven below and sand and gravel pits associated with such uses located within three hundred feet of the edge of the right of way of the above described travel corridors), ***agricultural uses*** (other than sand and gravel pits associated with such uses located within three hundred feet of the edge of the right of way of the above described travel corridors), open space recreation uses, public utility uses, ***and accessory uses or structures (other than signs) to any such uses or to any preexisting use.***

N.Y. Exec. Law § 810(1)(e)(1)(f) (emphasis supplied).

Thus, agricultural use structures, which are defined to include farm employee housing, are exempt from "Class A Projects." Moreover, the legislature's intent of exempting farm buildings from "Class A" project status is evident through its inclusion of "[a]ll structures in excess of forty feet in height, except agricultural use structures." N.Y. Exec. Law § 810(1)(e)(8). The only reasonable way to read the statute is to read it as exempting all agricultural use structures. It would be nonsense for the Agency to be able claim jurisdiction over an agricultural use structure *under* forty feet in height, when it is clearly unable to claim jurisdiction over that

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[16] N.Y. Exec. Law §810(1)(a)(4) [agricultural use structures of any height exempt from regulation in hamlet areas]; Id., § 810(1)(b)(5) [agricultural use structures of any height exempt from regulation in moderate intensity areas]; Id., § 810(1)(c)(1)(d)(5) [agricultural use structures of any height exempt from regulation in low intensity use areas]; Id., § 810(1)(d)(1)(d)(5) [agricultural use structures of any height exempt from regulation in rural use areas]; and Id., § 810(1)(e)(8) [agricultural use structures of any height exempt from regulation in resource management areas].

same structure if it were over forty feet high.[17] Surely the legislature did not set out to encourage tall farm buildings.

Based on the foregoing, it is clear that the Lewis Family Farm's two farm buildings at issue here are not "Class A" projects.

2. The Lewis Family Farm Buildings Are Not a "Class B" Project

Since the Lewis Family Farm buildings are not a "Class A" project, the only way the Agency would have jurisdiction over the Lewis Family Farm buildings is if they are listed as a "Class B" project. They are not.

Section 810(2)(d) of the Executive Law sets forth a list of projects in Resource Management that are deemed "Class B" projects. Farm buildings are not listed.

The legislature's deliberate decision, consistent with the pro-farm development clause of the Constitution, to not include "agricultural use structures" in the list of "Class B" projects, ends this Agency's inquiry. See N.Y. Exec. Law § 810(2)(d). The legislature's intent to exempt farm buildings from "Class B" status is obvious, because it did include "forestry use structures" in the definition of "Class B" projects. See id., § 810(2)(d). Recall that the legislature specifically exempted both "forestry use structures" and "agricultural use structures" from the statutory definition of "Class A" projects. See id., § 810(1)(e)(1)(f). Therefore, by specifically including "forestry use structures" and excluding "agricultural use structures" in the definition of "Class B" projects, the legislature clearly chose to exclude farm buildings from Agency jurisdiction as "Class B" projects.

[17] Not only has staff failed to embrace the constitutional mandate of proceeding in accordance with the pro-farm development clause, its hostility toward sustainable farming is evident in its failure to even acknowledge the fact that farm buildings of any size or height are exempt from Agency review.

The statute also provides an additional all-encompassing provision that subjects "any land use or development not now or hereafter included on either the list of primary uses or the list of secondary uses for resource management areas" to Agency jurisdiction as a "Class B" project. N.Y. Exec. Law § 810(2)(d)(6). However, "agricultural use structures" are included in the list of primary uses of resource management areas. See N.Y. Exec. Law § 805(3)(g)(4). Therefore, they are not "Class B" projects.

Although, "forestry use structures", "hunting and fishing cabins", "golf courses", and "municipal roads" are either primary or secondary uses in resource management areas, they are listed as "Class B" projects, whereas "agricultural use structures" are not. See N.Y. Exec. Law § 805(3)(g)(4). Therefore, by including these other primary and secondary uses in the "Class B" list, it is again clear that the legislature chose to exclude "agricultural use structures" from Agency jurisdiction as "Class B" projects. See Friedman, Briar Hill Lanes, Inc., and American Motors Sales Corp., *supra.* Thus, the Lewis Family Farm's employee houses are exempt from "Class B" status.

Finally, the Agency admits that when a structure fits into a specific definition, then the specific definition applies—even if the structure could also be defined as a "single family dwelling." See staff's Memo of Law, pg. 13. Thus, even though the statute includes single family dwellings as "Class B" projects, they are only deemed as such if they do not fit into a more specific definition, as here (i.e., "agricultural use structures").

3. Staff Misstates the Law in Its Attempt to Gain Jurisdiction

Staff attempts to gain jurisdiction over the Lewis Family Farm buildings by classifying them as "single family dwellings", rather than "agricultural use structures." See staff's Memo of Law, pg. 12. This is evident through staff's gross misstatement of the law:

> Pursuant to Executive Law 802(50)(g), all agricultural use structures and single family dwellings occupied by a farmer of land in agricultural use, his employees engaged in such use, or their respective families, together constitute and count as a ***single family dwelling***.

Staff's Memo of Law, pg. 13 (emphasis supplied).

This misstatement of the law is the false foundation of staff's only argument. To be sure, "single family dwellings," if they are not "agricultural use structures," are "Class B" projects. See N.Y. Exec. Law § 810(2)(d)(1). But farm employee housing is an "agricultural use structure" as a matter of law, so staff misquoted the law to advance its contorted argument. Section 802(50)(g) of the Executive Law, which defines the number of principal buildings—not single family dwellings—for intensity purposes, states as follows:

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

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

Thus, the legislature determined that, in the interest of the economy of farms in the Park, the constitutional mandate of a pro-farm development policy, the new provisions of the Agriculture and Markets Law and the overall value of open space preservation provided by farms, each farm has freedom to build without altering the intensity of development in the Park.

Obviously, staff cannot stand the Act on its head and somehow gain jurisdiction by labeling farm employee housing solely as a "single family dwelling". Such a contorted reading, unconstitutionally designed to overreach and regulate farming, would do violence to the legislative intent and careful legislative structure of the Act in exempting farms. Farm employee

housing is always an "agricultural use structure," because this definition includes housing. Thus, these structures are beyond the reach of the Agency under the Act.[18]

The Agency's numbing insistence on controlling the number of nuclear families who live and work on farms is contrary to law and will doom the future of farming in the Adirondacks. Successful farm employee housing is more than just a bunkhouse with shared sanitary facilities. See N.Y. Exec. Law § 802(50).

This comprehensive review of the Act establishes that regulation of the growth of farms, including farm employee housing, is not permitted by the limited jurisdiction provided to the Agency. In addition, regulation of the growth of farms, including farm employee housing, serves absolutely none of the goals and purposes of the Act because "agricultural use structures", including farm employee housing, are not counted as principal buildings in the intensity guidelines. Indeed, regulation of farms is contrary to the balanced purposes of the Act in protecting farms as open space resources. Farming is one of the foundation stones upon which the fragile economy inside the Adirondack Park must be supported. The Agency is obliged by the Constitution to encourage farm development.

[18] To be sure, a farm owner's house must be considered a "single family dwelling" under the Act. This is the only rational way to read the Act since the farmer's house is not an "agricultural use structure" in that it is not directly and customarily associated with agricultural use. See N.Y. Exec. Law § 802(8). Considering a farmer's house as a "single family dwelling" is consistent with the Act, which provides that the house and all associated "agricultural use structures" constitute only a "single principal building" for intensity purposes. See N.Y. Exec. Law § 802(50)(g).

D. Construction of Agricultural Use Structures Including Farm Employee Housing is Not a Subdivision That Grants Jurisdiction to the Agency

Ordinarily, a farmer constructs housing for her employees on lands of her own, without changing the appearance of the land, the use of the land or the description of the land in real property terms. No land is divided, no new lots are created, no new ownership regimes are imposed and no leases are signed.[19] That is what happened here.

The Act defines "Subdivision of Land" as a "division of land into two or more lots, parcels or sites" for "separate ownership or occupancy". N.Y. Exec. Law § 802(63). The Lewis Family Farm has not divided its land.[20] Indeed, the three-house cluster with common areas and systems next to the barns cannot be divided. The construction of farm employee housing by a farmer in the ordinary course does not include "the division of land", the creation of lots, separate ownership or separate occupancy. Rather, the occupancy anticipated in farm employee housing is only that which is integral to and within the employment structure of the Lewis Family Farm; it is not "separate" from the Lewis Family Farm, it is part of the Lewis Family Farm. The Lewis Family Farm owns it all. It is constructed and used to sustain the Lewis Family Farm.

Moreover, the Agency's regulations clarify that the construction of farm employee housing does not automatically create a subdivision because "subdivision into sites" only occurs

[19] In this regard, one is hard pressed to even maintain that the construction of an agricultural use structure, including farm employee housing, is "land use or development" under the meaning of the Act. "Land use or development" is limited to activity that "materially changes the use or appearance of land or a structure or the intensity of the use of the land or a structure." Since the Legislature made clear that agricultural use structures are not to be counted as "principal buildings", it made a specific finding that the growth of farms does not change the use or appearance of land nor does it change the intensity of the use of the land. N.Y. Exec. Law § 802(28).

[20] Staff also suggests in passing, that a subdivision has occurred by operation of 9 NYCRR § 573.6(e). This is wrong. The quoted regulation only applies to rebuilding scenarios where a mobile home is involved. None is involved here. In any event, the Walker farmhouse and other agricultural use structures, including farm employee housing that existed in 1973, and remained as recently as 2003, (see Privitera Aff. ¶ 15, Ex. I); can be rebuilt or replaced in the same general location without a permit, 9 NYCRR Part 573.6(a). Moreover, a house may always be enlarged or rebuilt "to any extent," which is not subject to review by the Agency. See N.Y. Exec. Law § 811(5).

when an additional principal building is constructed. 9 NYCRR § 570.3(ah)(3). As stated above, farm growth does not impact the intensity guidelines sought to be fostered by the structure of the Act, because the Legislature directed the Agency to not count agricultural use structures such as farm employee housing as "principal buildings" within the intensity guidelines.

Since the very definition of "principal building" that is relied upon in this definition of "subdivision" in the Agency's own regulations demands that farm employee housing not be counted as a "principal building", the subdivision statute and regulations are not triggered such that the Agency gains subdivision jurisdiction. Farm employee housing is never an additional "principal building". See N.Y. Exec. Law § 802(50)(g). Since the land is not divided and no principal buildings are built, farm employee housing is never an automatic subdivision over which the Agency may assert jurisdiction.[21]

Staff argues that, not withstanding the exemption of farm buildings from "Class A" Project treatment, "Class B" Project treatment, and the Rivers Act, the construction of a farm employee house automatically works a "subdivision" as a matter of law, giving the Agency review authority, notwithstanding the exemptions. (See staff's Memo of Law, pg. 11). This topsy-turvy reading of the statute is nothing less than an effort to swallow the farm building exemption and defeat a farmer's right to farm with an inapplicable rule. It also violates fundamental statutory construction. If the legislature intended that the Agency would have a review authority over farm employee housing by virtue of some kind of magical subdivision that in fact has not occurred, it would not have provided for the exemption for "agricultural use

[21] Staff's "subdivision" argument is complete nonsense as a matter of real estate law. Since staff assumes the right to 'declare' a subdivision where no division of land has occurred, does it also assume the power to file a subdivision map at the County Clerk's office, drawing the metes and bound wherever it may chose, perhaps through the common leach field, in derogation of a farmer's constitutionally protected property rights?

structures" in the first place. The Agency's own literature states that farm buildings are non-jurisdictional. (Privitera Aff. ¶ 12, Ex. G). Staff's newly-minted "subdivision" argument, as belied by this Agency's own publication, makes no sense. Staff's confounding effort is manifestation that staff sorely needs the guidance of a promulgated pro-farm development policy.

E. The Farm Buildings Cannot Be Both a "Class A" and "Class B" Project

Staff argues, in complete derogation of law as set forth above, that the Lewis Family Farm employee housing project is *both* a "Class A" project and a "Class B" project. This cognitive impossibility leaves the Act in shambles. Staff invites the Agency to embrace this dissonant reasoning to further its vindictiveness because if the Agency can fathom a project as both "Class A" and "Class B", of course it should be penalized twice. (See staff's Memo of Law, pp. 11-12) (citing Exec. Law § 810(1) violations ["Class A" projects] and § 810(2) ["Class B" projects]). This makes no sense as a matter of law.

POINT III

THE RIVERS ACT DOES NOT EXPAND THE AGENCY'S JURISDICTION OVER FARMING

The Wild, Scenic and Recreational River System Act (the "Rivers Act") was enacted pursuant to a Legislative finding that rivers possess outstanding natural, scenic, historic, ecological and recreational values that ought to be protected consistent with law. ECL § 15-2701(1). The primary purpose of the Act is to preserve the free flowing condition of the rivers for recreational uses. ECL § 15-2701(3).

Except for a few select areas where wild rivers are found, the Legislature made clear that the right to farm protected by the Act, as bolstered by the Constitution and New York's Agriculture and Markets Law, ought to be carried through with respect to the regulation of

development near scenic rivers and recreational rivers. Thus, the Rivers Act specifically provides as follows with respect to recreational river areas:

> In recreational river areas, ***the lands may be developed for the full range of agricultural uses***, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, ***and may include small communities as well as disbursed or cluster residential areas***.

ECL § 15-2709(2)(c) (emphasis supplied).

Clearly, the Legislature knew what it meant when it passed the Rivers Act several years after the Act. The direct statement in the statute that the freedom to farm "for the full range of agricultural uses" is a deliberate reference to the farm development exemptions then in existence in the Act itself.

This Agency followed through with this Legislative directive, and in passing the regulations designed to implement the Rivers Act, the Agency stated:

> The following ***may be undertaken without a permit*** if in compliance with the restrictions and standards set forth in Section 577.6 of this Part:
> In recreational river areas:
> Agricultural uses, agricultural use structures, open space recreation uses, game preserves and private parks . . .

9 NYCRR §577.4(b)(3)(ii) (emphasis supplied).[22]

There can be no doubt that the freedom to farm in the Adirondacks, including the unfettered right to build farm employee housing, is carried through in the Rivers Act.[23]

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[22] Of course, virtually all agricultural use structures including farm employee housing are in compliance with the standards set forth in § 577.6, as referenced in this permit exemption, because they are usually more than 150 feet from the mean high water mark of the river, as here. 9 NYCRR § 577.6(b)(3). The housing project is several hundred feet from the Boquet River. See Lewis Aff., ¶ 13.

[23] Staff's Memorandum of Law deliberately fails to read the Rivers Act Regulations as a whole in order to serve the arbitrary and punitive result they seek. Staff claims that, "9 NYCRR § 570.3(ah)(3) defines a subdivision into sites as occurring where one or more dwellings is to be constructed on a parcel already containing at least one existing dwelling ..." See staff's Memo of Law, pg. 11. This is wrong. "Subdivision" is defined as "any division of land into two or more lots." 9 NYCRR § 570.3(ah)(1) (emphasis supplied). In recreational river areas, only "subdivisions of

The statutes and regulations that are brought to bear to control development within the Adirondack Park have uniformly and consistently placed all farm structures beyond the regulatory reach or control of the Adirondack Park Agency. This deliberate legislative decision was made to eliminate any discretion whatsoever within the Agency to control the size, growth, character or success of any farm in the Park. The Legislature wisely determined, consistent with the pro-farm development clause of the Constitution and as informed by the Blue Ribbon Commission empanelled by Governor Rockefeller and the Right to Farm statute, that farming in the Adirondacks needed complete freedom in order to foster two very important goals inside the park: the preservation of open space; and, the cultivation of economic growth. This Agency must breathe life into these legal protections in the interest of the Park's future.

POINT IV

THE SUPREME COURT'S DECISION DISMISSING THE LEWIS FAMILY FARM'S DECLARATORY JUDGMENT ACTION DOES NOT OPERATE TO GRANT THE AGENCY JURISDICTION OVER THE LEWIS FAMILY FARM BUILDINGS

Before receiving the illegal cease and desist order, the Lewis Family Farm commenced an action in Essex County Supreme Court seeking a declaratory judgment and an injunction on the Agency's enforcement proceeding. On August 16, 2007, upon the Agency's motion, Acting Supreme Court Justice Kevin K. Ryan issued a decision and order dismissing the Lewis Family Farm's declaratory action, stating that it was "not ripe for judicial intervention" until such time that the Agency renders an enforcement determination. See Justice Ryan's Decision and Order, pg. 6, Ex. B to Van Cott Aff. Thus, the Court concluded that, at this juncture, this proceeding remained "an internal matter in which the Court will not interfere." Id.

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land" require a permit, which involves the physical division of land. Staff's twisted reading of "subdivision into sites" does not apply. 9 NYCRR § 577.5(c)(1).

Despite dismissing the action for lack of jurisdiction due to ripeness, the Court rendered several pages of what amounts to an ill-advised advisory opinion whereby it said that the Agency had authority to regulate the Lewis Family Farm's buildings under construction. Id. at 4. Staff contends that this "confirm[s] Agency jurisdiction over the single family dwellings." See staff's Memo of Law, pg. 2. Staff is wholly mistaken as a matter of law.

In order for a determination to be binding under the doctrines of *res judicata* and collateral estoppel, it must have been made in the context of an adjudication, otherwise it is an unwarranted advisory opinion. See Jeffreys v. Griffin, 301 A.D.2d 232, 247 (1st Dep't 2002); Nuro Transp. v. Judges of Civil Court, 95 A.D.2d 779, 780 (2d Dep't 1983) (holding that "the prohibition against advisory opinions is to prevent the judicial determination of unripe claims in which a current controversy does not exist"); see also New York Public Interest Research Group, Inc. v. Carey, 42 N.Y.2d 527, 531 (1977) (stating that a court's determination of any issue beyond what is necessary to dispose of a case is "merely advisory" when the request for a declaratory judgment is premature).

Based on the foregoing, Judge Ryan's determination that the Agency would have jurisdiction over the Lewis Family Farm's construction of its farm worker housing was nothing more than an advisory opinion that is not binding on the Lewis Family Farm in this enforcement proceeding under the doctrines of *res judicata* or collateral estoppel.[24]

[24] Advisory opinions are unreliable because they are not informed by the adversarial process. Here, Judge Ryan, unengaged, speculated without citation to law that a farmer could "build a cow ban within a few feet of the river." (Van Cott Aff. Ex. B, pg. 5). This is wrong as a matter of law. Cow barns and all other agricultural use structures in resource management areas must be located more than 150 feet from the Boquet River, as here. 9 NYCRR § 577.6(b)(3).

POINT V

THE CEASE AND DESIST ORDER VIOLATES AGENCY POLICY AND MUST BE ANNULLED

The Cease and Desist Order, seeking to halt farm development, violates the Constitution. It violates the Agriculture and Markets Law. It violates the Agency's own jurisdictional table. It violates the Park Act. It violates the Rivers Act.

Moreover, the Agency's general enforcement policy provides that cease and desist orders will only be issued in cases "where there is on-going environmental damage." (See Agency's General Enforcement Guidelines, pg. 3, Ex. F to Privitera Aff.). Here, a Cease and Desist Order was issued to the Lewis Family Farm by the acting Executive Director on June 27, 2007. (See Cease and Desist Order, Ex. C to Van Cott Aff.). However, there is no on-going environmental damage. Thus, the Agency violated its policy in this case by issuing this Cease and Desist Order.

Finally, the Cease and Desist Order is unconstitutionally vague. Although it seeks to prohibit the construction of three farm worker houses, it makes no attempt to differentiate among the three farm buildings. Now, staff apparently seeks to prohibit the Lewis Family Farm from constructing only two of the three farm worker houses that it is constructing on the farm. (See staff's Memo of Law, pg. 12). However, this position directly conflicts with that set forth in the staff's accompanying affidavits, whereby it is claimed that all three of the farm buildings are illegal. (See Affidavit of Douglas Miller, December 12, 2007; Affidavit of John Quinn, dated December 12, 2007). Thus, it appears that even staff is not sure which of the farm buildings they are attempting to regulate.[25]

[25] The weakness of staff's legal position is revealed in its arbitrary and mercurial enforcement selections with respect to the farm employee housing on the Lewis Family Farm. No enforcement action has been taken, nor is any proposed, with respect to the farm manager's new house at the corner of Clark and Cross Roads that was built at the same time as the housing cluster at issue here.

Based on the foregoing, the cease and desist order issued to the Lewis Family Farm should be annulled because it violates the Agency's enforcement policy and is unconstitutionally vague.

POINT VI

THE ENFORCEMENT COMMITTEE'S CONSIDERATION OF STAFF'S REQUEST FOR A FINDING OF LIABILITY WITHOUT A HEARING IS A VIOLATION OF DUE PROCESS.

The Executive Director commenced this administrative enforcement proceeding against the Lewis Family Farm by service of a Notice of Violation, as required by 9 NYCRR § 581-4.3 and the State Administrative Procedures Act. The Lewis Family Farm timely answered the Complaint under § 581-4.4. The Answer asserted all of the Lewis Family Farm's procedural rights under the State Administrative Procedures Act, the United States Constitution, the New York State Constitution and the Agency regulations. The Lewis Family Farm properly asserted and preserved an affirmative defense, pleading the inapplicability of the Permit requirement to the activity alleged as a violation, all in accordance with § 581-4.4(d). The Lewis Family Farm also requested the appointment of a Hearing Officer under § 581-4.7(a). Upon this request, the Executive Director has a regulatory obligation to appoint a Hearing Officer under § 581-4.7(d). A record of the hearing must be compiled and a hearing report by the Hearing Officer is also usually compiled under § 581-4.15(a) and (b).

After the hearing record and, properly done, hearing report are filed with the Agency, the Enforcement Committee is obliged to review the record before it makes a recommendation to the Agency for consideration. 9 NYCRR § 581-4.16(a).

Thereafter, the full Agency is required to review the record compiled by the Hearing Officer and the Enforcement Committee recommendations before the Agency is able to make a final determination. 9 NYCRR § 581-4.16(b).

The full Agency is empowered to make a finding of liability or issue an order dismissing the charges and it may assess penalties consistent with the Act. The Agency may also order injunctive relief or modify a permit. The final determination of the Agency must be issued on or before 60 days after receipt by the Agency of a hearing record. 9 NYCRR § 581-4.16(d)(7).

Agency staff ignores all of the fundamental due process protections and carefully staged procedural process set forth in the regulations. Instead, Agency staff seeks to abort the due process of law and seeks a finding of liability by the Enforcement Committee before the enforcement proceeding has been held, citing only § 581-2.6(d), which provides as follows:

> ***Following the enforcement proceeding***, the Enforcement Committee shall consider the alleged violation in executive session and may make a determination as to whether a violation has occurred. The Enforcement Committee may also decide on an appropriate disposition of the enforcement action, or may decide to adjourn the matter for additional investigation or consideration or for any other reason it deems appropriate.

Id. (emphasis added).

The operative language of this subsection, "Following the enforcement proceeding" is an obvious reference to the careful procedure set forth in § 581-4.3, cited above. Thus, staff has failed to meet a condition precedent to the Enforcement Committee's consideration as set forth in the only procedural regulation upon which staff relies. Any consideration by the Enforcement Committee at this procedural hour is a violation of the Lewis Family Farm's fundamental due process rights. Moreover, it is unfair and abusive of the Enforcement Committee's time and consideration, because the Committee does not have the benefit of findings of fact and

conclusions of law properly developed in accordance with law as reported by a hearing officer, all of which is available if due process is followed.

For this reason alone, staff's request for a finding of liability must be dismissed at this time.

Although the Agency lacks jurisdiction to enforce the Cease and Desist Order or otherwise punish the Lewis Family Farm for constructing farm buildings, the Agency does have jurisdiction to dismiss this proceeding in its entirety. See Foy v. Schechter, 1 N.Y.2d 604 (1956) (stating that an agency must have jurisdiction in order for its determinations to be valid, and absent such jurisdiction, agency acts are void); See Flynn v. State Ethics Comm'n, 208 A.D.2d 91, 93 (3d Dept 1995) (stating that "administrative agencies, as creatures of statute, are without power to exercise any jurisdiction beyond that conferred by statute"); see also Gerdts v. State, 210 A.D.2d 645, 648-49 (3d Dept 1994) (stating that "the APA cannot operate outside its lawfully designated sphere, with the propriety of its actions often depending upon the nature of the subject matter and the breadth of the legislatively conferred authority").

CONCLUSION

Based on the foregoing, Respondent Lewis Family Farm, Inc. prays that this proceeding be dismissed with prejudice and that the Cease and Desist Order be annulled.

Dated: Albany, New York
January 22, 2008

Respectfully submitted,

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TO: Paul Van Cott
Enforcement Attorney

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

ADIRONDACK PARK AGENCY

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

Agency File: E2007-041

AFFIDAVIT OF BARBARA A. LEWIS

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

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

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

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

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

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

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

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

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

8. As we have gained knowledge in our organic farming practices, we feel obliged to provide academic opportunities to agricultural students. The current manager of

our farm and our primary employee is Marco Turco, a PhD and agricultural scholar, who is an adjunct faculty member at the nearby State University of New York at Plattsburgh. Dr. Turco has developed a program at this and other universities that allows academic credit for internships under his tutelage.

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

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

11. In late 2006, the Lewis Family Farm took the step of investing in on-farm employee housing, in the knowledge that safe, modern, comfortable and energy efficient on-farm employee housing is a fundamentally sound agricultural practice. It is crucial to our operations and in accordance with our philosophy. The people who care for the land have to be cared for as well. In our view, on-farm employee housing is essential for a self-sustaining farm in the Adirondack Park.

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

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

14. No subdivision of land or sites was anticipated or involved in the design and construction of the four employee housing units. All are on the Lewis Family Farm and they are not the subject of separate parcels or the division of our farm lands. Indeed, the three-building housing complex on Christian Road is designed as a farmer community. The three houses are closely adjacent to one another and oriented in a horseshoe pattern around a common play area and courtyard. They share a well and are serviced by a common driveway and a common septic system and leach field, which is under the area of the planned common courtyard. The units are designed to form a courtyard, so that children of the farm families may play safely and common activities may take place. The placement of the units is specifically designed to facilitate easy and energy efficient access to and surveillance of the adjacent barns. Given the common driveway, common septic system, common water supply, and common courtyard layout of the housing cluster near the barns, the houses are clearly not designed for any use other than for farm employees. I have repeatedly informed Agency

Staff orally and in writing that the housing cluster is for farm employees. I attach this description as **Exhibit "A"**. This housing has been under consideration by me for many years and has always been considered as part of the overall scheme for consolidating farm operations near the barn plaza, which has nine (9) farm buildings we have built. As built, the housing complex is clearly not a subdivision, nor is it divisible.

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

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

17. The Lewis Family Farm abides by high legal, ethical and environmental standards. We set out to comply with the law in building the farm employee housing. Upon being informed of Agency Staff's position that is at issue in this proceeding with respect to the three-house building cluster near the barns, I was shocked and upset as representatives of the Town of Essex had informed us during the building permit application process that no APA permits, or additional permits of any kind, were required. In addition, I had never

obtained any APA permits for any of the other farm buildings and structures that we have built over the years, without objection.

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

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

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

21. Without counsel, I attempted to resolve the matter with Staff, who insisted that they had jurisdiction over farm development and they maintained that payment of a substantial fine of $10,000 was mandatory. Indeed, Staff suggested this fine was small by their usual standards.

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

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

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

25. In early June 2007, I received a concerned telephone call from the Canadian manufacturer of the farm employee housing, indicating that, due to a significant regulatory change, they could not honor their contract to install the houses after about the first week in July 2007.

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

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

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

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

30. At this time, the houses stand as depicted in a series of photographs attached as **Exhibit "H"**. The interiors of the North Family Cottage and South Family Cottage have not been addressed and the homes cannot be occupied. Residence I is largely finished on the inside and could be ready for a certificate of occupancy shortly. I still have no idea as to which of the three houses in the cluster are purportedly illegal. Nonetheless, we have halted construction at this time, at great expense to the farm. A construction Team had been hired originally to work on all the homes simultaneously in order to work cost effectively. The value of this plan was lost.

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

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

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

Barbara A. Lewis

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

Notary Public

JANET L. MERO
NOTARY PUBLIC STATE OF NEW YORK
NO. 2386400
QUALIFIED IN ESSEX COUNTY
COMM. EXPIRES 9/30/09

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

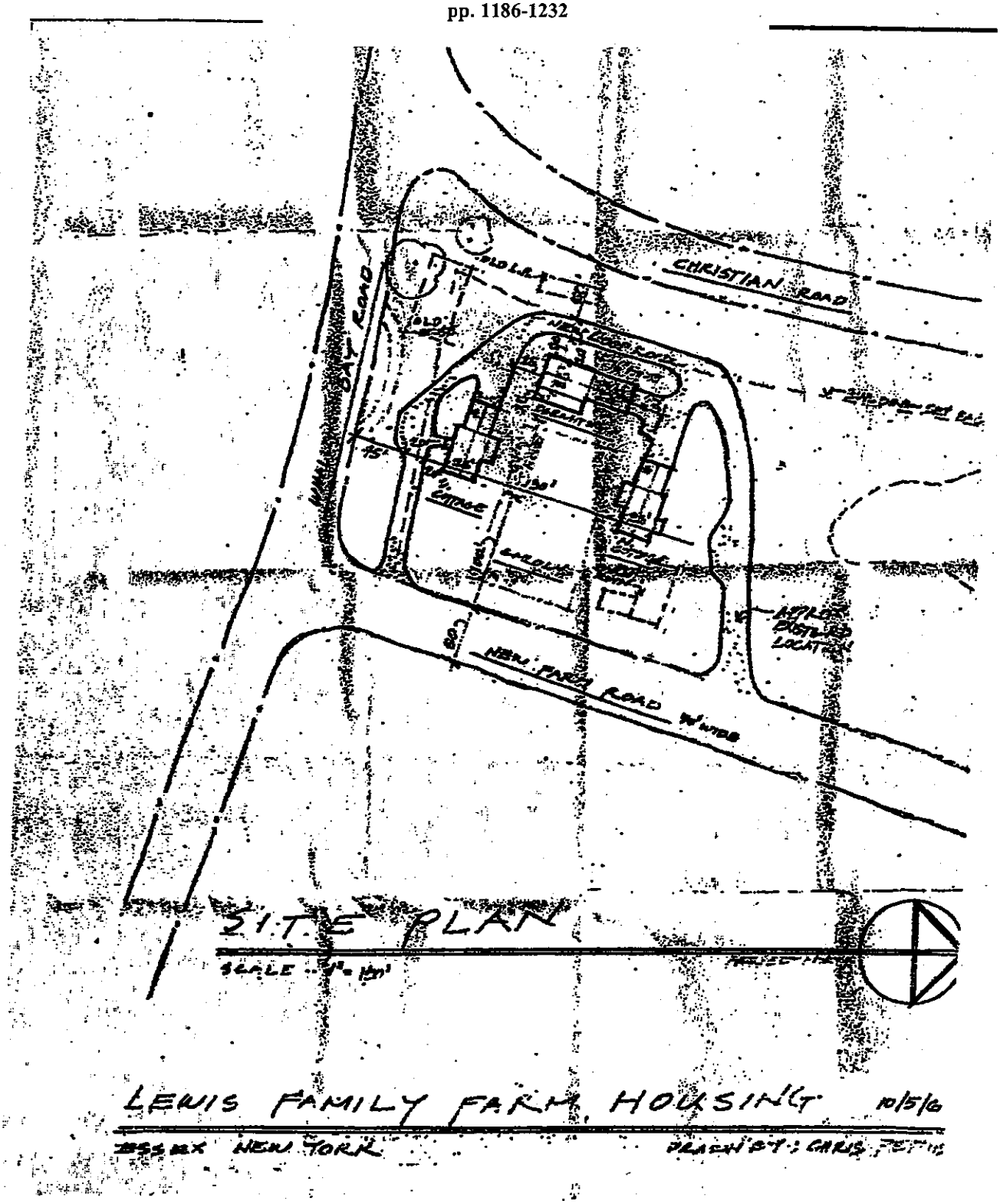
EXHIBIT A

Project Description:

Building of four homes to house farm staff. One home will be located on the site of the former Clark Farm and is to house the farm manager. Detailed plans for this home are included in the packet.
Three homes built in a compound arrangement are for farm employees and their families. These homes are to be built on the site of the former Walker property. The existing home is to be removed as the project nears completion. Plans for these are also included in the packet.
All homes have met New York State building guidelines and have been approved.
Homes will be placed on foundations including a full basement.
All vehicular entrances are by gravel driveway directly to the garage of each home.
The homes in the compound will be served by one loop drive accessing all garages. This road enters and exits on an existing farm road.
The center of the compound is planned to have a communal garden and play area.
The perimeter will be landscaped with indigenous species of tress and shrubs chosen to maximize bird cover, reduce any possible erosion and appear natural.
Landscaping around the farm manager's home will meet the same criteria and, in addition will attempt to deal with the creation of dust from Wollastonite tailings created by moving vehicles on the adjacent roads.
Each site has a new dug well and will have an approved new septic system.
In the design of these homes we have attempted to address the architectural vernacular of the region.

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT B



The Lewis Family Farm employee housing cluster, as engineered and approved by the Town of Essex. (Lewis Aff., Ex. B).

Residence I is labeled "Dormitory" in October 2006.

APPLICATION FOR A PROJECT PERMIT
TOWN OF ESSEX, NEW YORK

Tax Map Parcel Number: 49.3-2-27.000

11-12-06 — Application Date
11-14-06 — Date Recorded
Z-263 — Application #

Barbara Lewis
Applicant's Name

Whallons Bay rd.
Address

Essex — Town
N.Y. — State
12936 — Zip
963-4206 — Telephone Number

The applicant hereby states that he or she is the owner or authorized agent for which the foregoing work is proposed to be performed, and that he or she is duly authorized to execute such work, and that all work will be preformed in accordance with all existing State laws and the Zoning Law in effect in the Town of Essex.

Barbara Lewis (mm) — Applicant's Signature
11-12-06 — Date

Application is hereby made to:

( ) use
(X) erect
( ) repair
( ) alter
( ) extend
( ) remove
( ) demolish
( ) occupy

( ) other _____

For the purpose of:

(X) residence 3
( ) commercial business
( ) industry
( ) accessory structure
( ) agricultural use
( ) forestry use
( ) mobile home
( ) public use
( ) resource extraction
( ) Other _____

Zoning District:

( ) Essex Hamlet
( ) Whallonsburgh Hamlet
(X) Agricultural District
( ) Forest/Recreation
( ) Residential I
( ) Residential II
( ) Historic Overlay
( ) Shoreline Overlay

On a separate sheet, describe the project in detail.

This application shall be accompanied by a drawing to scale, showing, but not limited to the following:
(see reverse side of form)

04/20/04

R001187

1. Lot size
2. Existing Property Lines
3. Proposed Structure
4. Parking and driveways
5. Abutting street width
6. Rear Yard set back
7. Front Yard set back
8. Side Yard set back
9. Water System
10. Septic and sewage system
11. Abutters
12. Height: Stories _____ Feet_____
13. Number of family units
14. Construction type
15. Other_____

Date of Action:

Application Received 11-14-06

Supplemental Material Received _____

Fee Paid, Amount: $ 20.00 _____

Application Referred to Planning Board _____

Application Approved by Planning Board _____

Zoning Permit: (X) Issued ( ) Denied 11-14-06

Reasons for denial:_____

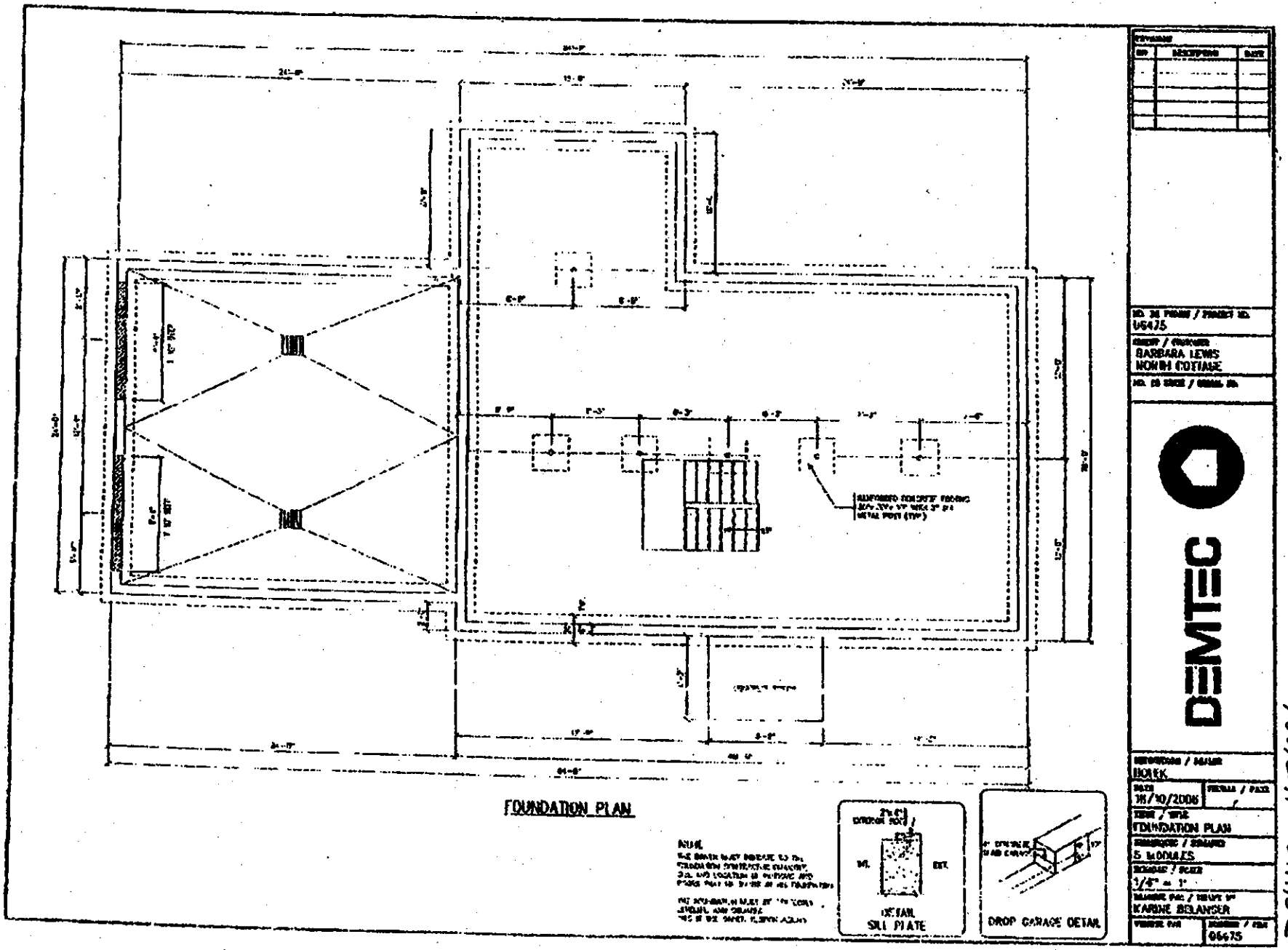
David A. Lansing 11-14-06

David Lansing
Zoning and Codes Enforcement Officer
518-963-4287

Date

04/20/04

R001188



FOUNDATION PLAN

NOTE

NO.	DESCRIPTION	DATE

NO. OF PROJECT / PROJECT NO.
06475

OWNER / OWNER
BARBARA LEWIS
NORTH COTTAGE

DEMTEC

DESIGNER / DESSINÉ
BOREK

DATE
16/10/2006

PAGE / PAGE
4

TITLE / TITRE
FOUNDATION PLAN

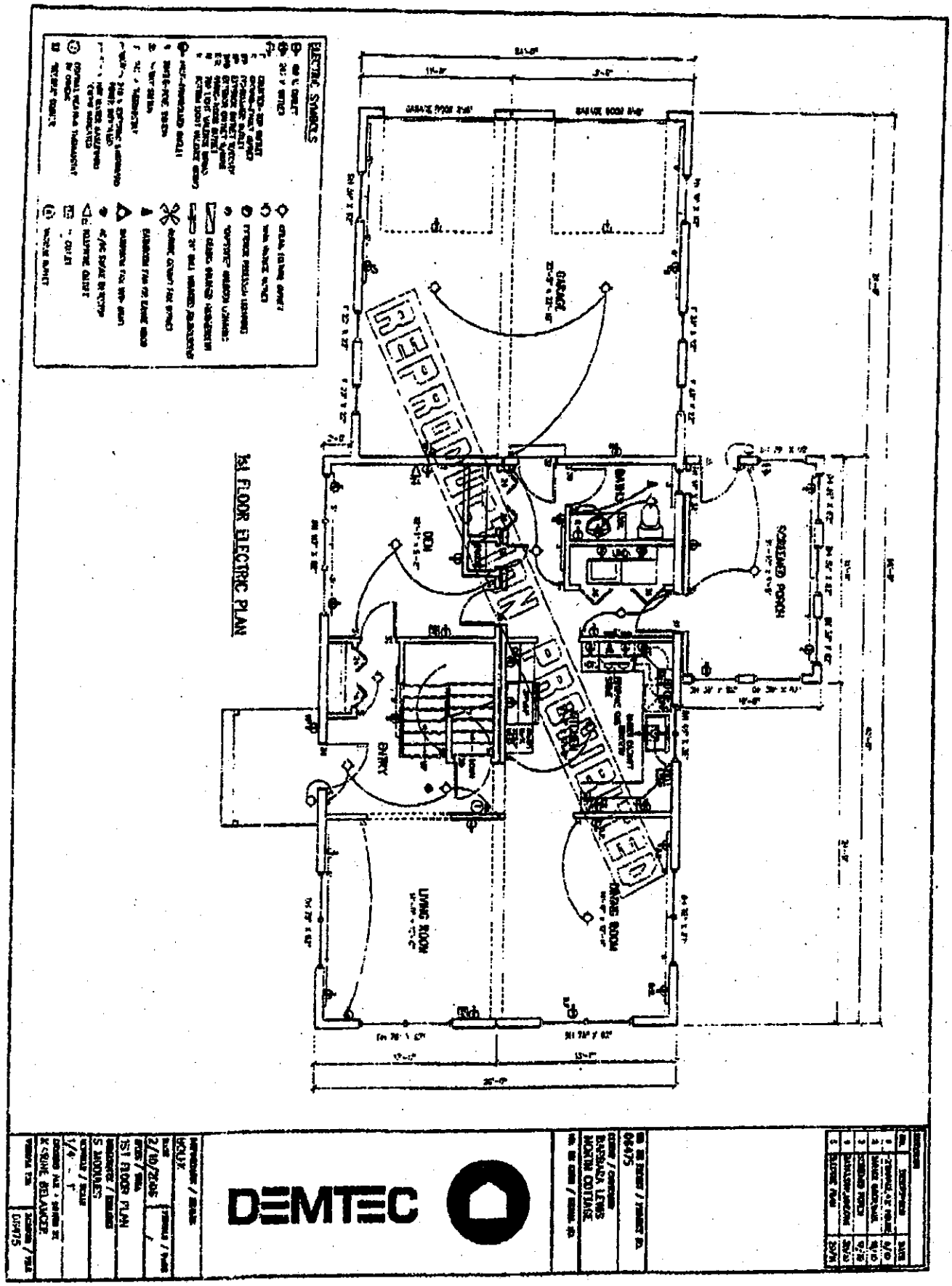
DRAWING / DESSIN
5 MODULES

SCALE / ÉCHELLE
1/4" = 1'

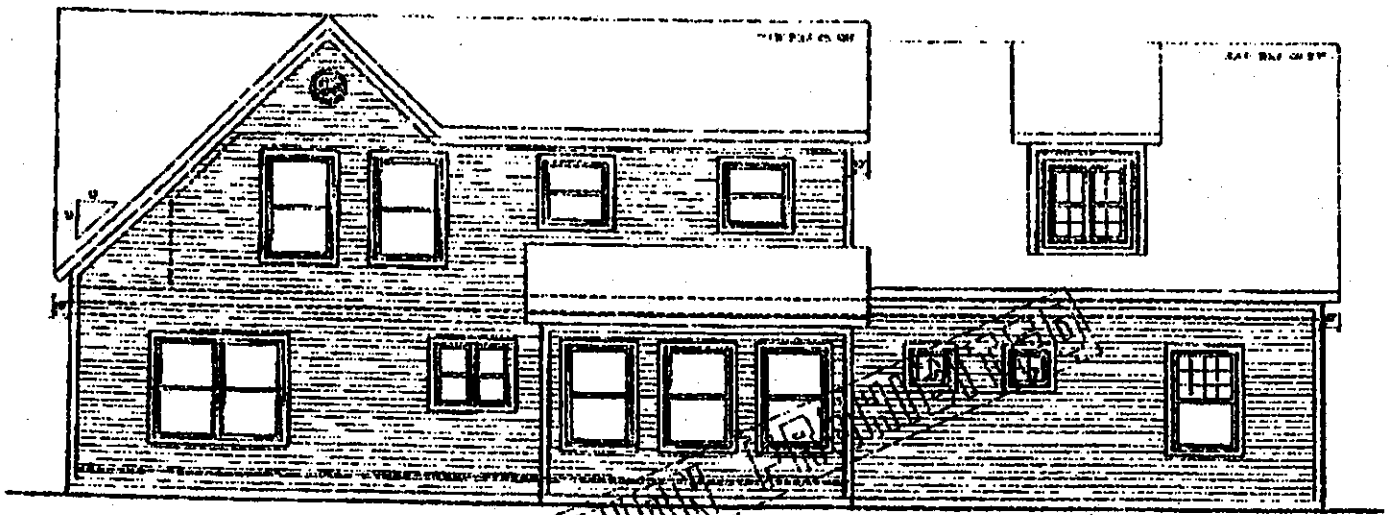
DRAWN BY / DESSINÉ PAR
KARINE BELANGER

VERSION
DRAWING / PLAN
06475

North Cottage

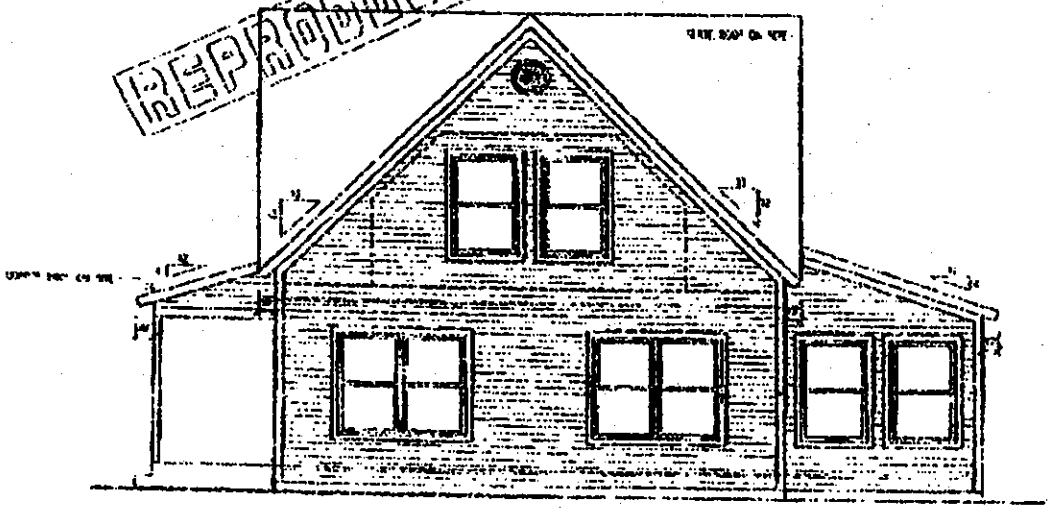

ELECTRIC SYMBOLS
1st FLOOR ELECTRIC PLAN
PROPOSED PLAN
GARAGE
ENTRY
LIVING ROOM
DINING ROOM
COVERED PORCH
DEMTEC
1ST FLOOR PLAN
5 MODULES
2/10/2006
0475
MARTIN COTTAGE
BARBARA LEWIS

R001190



BACK ELEVATION

REPRODUCTION

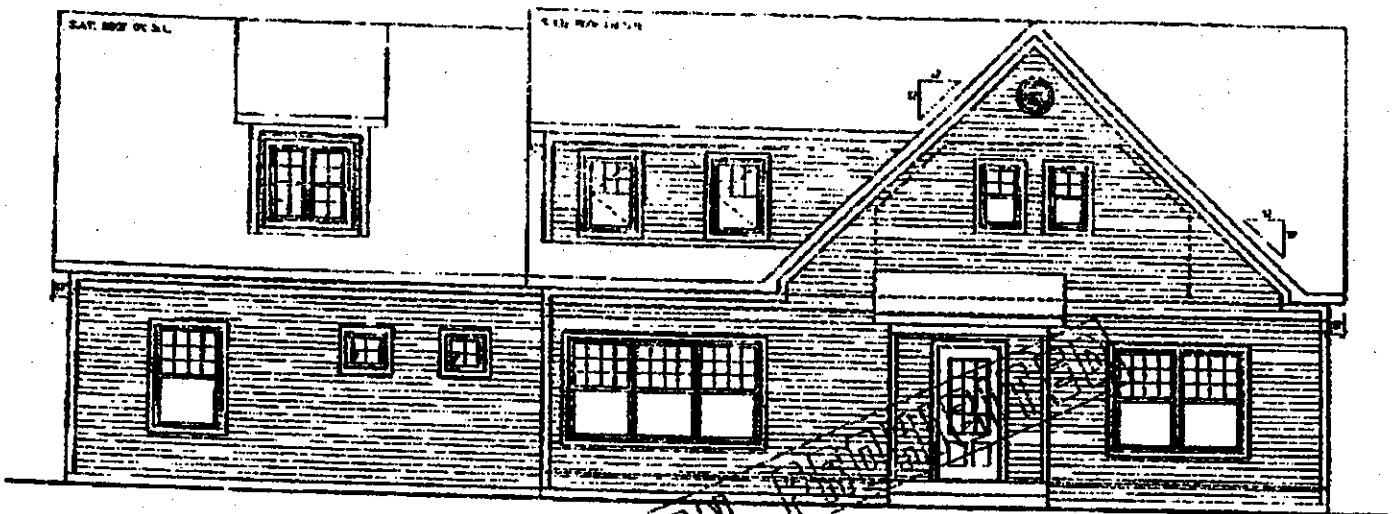


RIGHT ELEVATION

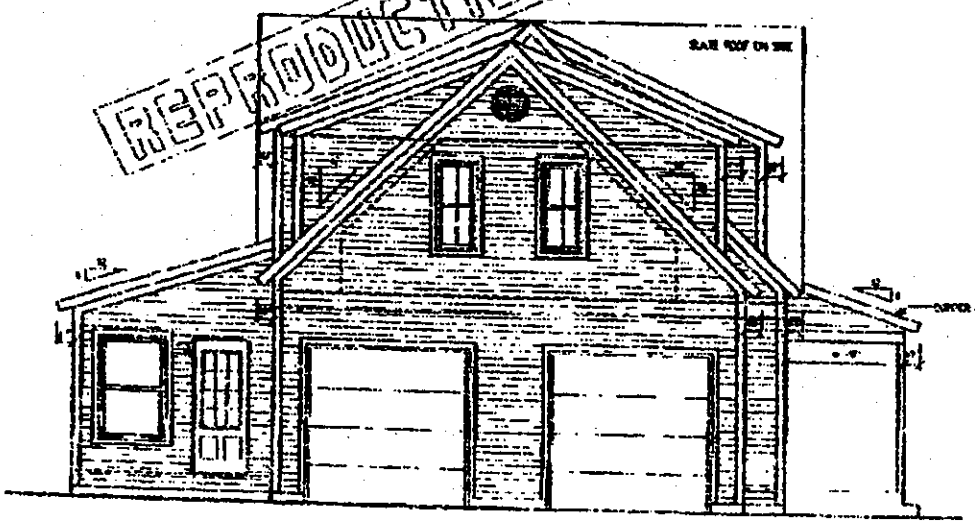
NO.	DESCRIPTION	DATE
1	GARAGE AT REAR	5/10
2	OVERHANG	8/10
3	DORMER FORM	9/10
4		20/10

DEMTEC

JOB NO. / PROJECT NO.	06475
CLIENT / CUSTOMER	BARBARA LEWIS NORTH COTTAGE
DRG. NO. / DRAWING NO.	
SCALE	1/4" = 1'
DRAWN BY	KARIM DEL ANGER
CHECKED BY	
DATE	2/10/2006
TITLE / TITLE	BACK ELEVATION
DRAWING / DRAWING	5 MODULES
SCALE / SCALE	1/4" = 1'
DRAWN BY / DRAWN BY	KARIM DEL ANGER
CHECKED BY	
JOB NO. / JOB NO.	06475



FRONT ELEVATION



LEFT ELEVATION

REPRODUCTION PROHIBITED

NO.	DESCRIPTION	DATE
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2	[illegible]	[illegible]
3	[illegible]	[illegible]
4	[illegible]	[illegible]
5	[illegible]	[illegible]

06475

BARBARA LEWIS
ROBIN COTEAGE

DEMTEC

BOLEK

2/10/2005

FRONT ELEVATION

5 MODULES

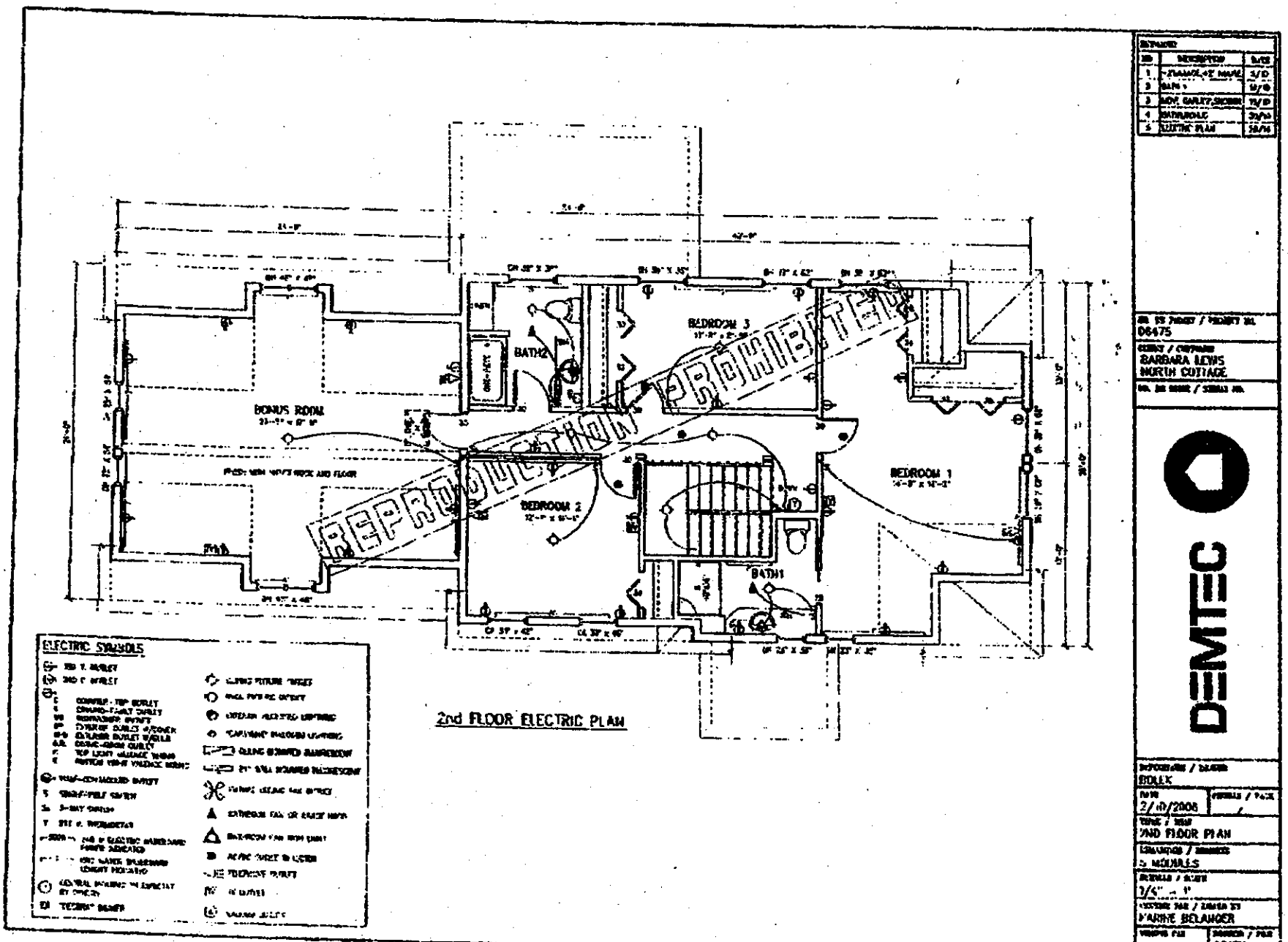
1/4" = 1'

KARINE DELANGER

06-475

R001192

R001193



NO	DESCRIPTION	DATE
1		
2		
3	ADV. SAFETY SWITCH	11/10
4	BATHROOMS	30/04
5	ELECTRIC PLAN	28/04

06475

CLIENT / OWNER
BARBARA LEWIS
NORTH COTTAGE

DEMTEC

DESIGNER / DRAWN
BOLLK

DATE
2/10/2006

PAGE / PAGE
/

TITLE / NAME
2ND FLOOR PLAN

DRAWING / NUMBER
5 MODULES

SCALE / SCALE
3/4" = 1'

ADDRESS / LOCATION
D'ARRYE BELANGER

DRAWING FILE

NUMBER / FILE
06475

Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-662 DATE: 11-30-06

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF A SINGLE FAMILY HOME FOR FARM RESIDENCE

at 1058 WHALLONSBAY RD ESSEX, N.Y. 12936

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Issuing Officer

R001194

APPLICATION FOR A PROJECT PERMIT
TOWN OF ESSEX, NEW YORK

Tax Map Parcel Number: 49.3-2-27.00

11-30-06	11-30-06	Z-264
Application Date	Date Recorded	Application #

LEWIS FAMILY FARM
Applicant's Name

1058 WHALLONSBAY RD
Address

ESSEX	N.Y.	12936	
Town	State	Zip	Telephone Number

The applicant hereby states that he or she is the owner or authorized agent for which the foregoing work is proposed to be performed, and that he or she is duly authorized to execute such work, and that all work will be preformed in accordance with all existing State laws and the Zoning Law in effect in the Town of Essex.

Barbara Lewis (for fam.)	11-30-06
Applicant's Signature	Date

Application is hereby made to:

- ( ) use
- (X) erect
- ( ) repair
- ( ) alter
- ( ) extend
- ( ) remove
- ( ) demolish
- ( ) occupy
- ( ) other _____

For the purpose of:

- (X) residence
- ( ) commercial business
- ( ) industry
- ( ) accessory structure
- ( ) agricultural use
- ( ) forestry use
- ( ) mobile home
- ( ) public use
- ( ) resource extraction
- ( ) Other FARM HELP RESIDENCE

Zoning District:

- ( ) Essex Hamlet
- ( ) Whallonsburgh Hamlet
- (X) Agricultural District
- ( ) Forest/Recreation
- ( ) Residential I
- ( ) Residential II
- ( ) Historic Overlay
- ( ) Shoreline Overlay

On a separate sheet, describe the project in detail.

This application shall be accompanied by a drawing to scale, showing, but not limited to the following:
(see reverse side of form)

04/20/04

R001195

1. Lot size
2. Existing Property Lines
3. Proposed Structure
4. Parking and driveways
5. Abutting street width
6. Rear Yard set back
7. Front Yard set back
8. Side Yard set back
9. Water System
10. Septic and sewage system
11. Abutters
12. Height: Stories _____ Feet_____
13. Number of family units
14. Construction type
15. Other_____

SEE ATTACHED DWGS

Date of Action:

Application Received 11-30-06

Supplemental Material Received _____

Fee Paid, Amount: $ 20.00 $20.00

Application Referred to Planning Board NO

Application Approved by Planning Board N/A

Zoning Permit: (X) Issued ( ) Denied 11-30-06

Reasons for denial:_____

David Lansing 11-30-06
Zoning and Codes Enforcement Officer Date
518-963-4287

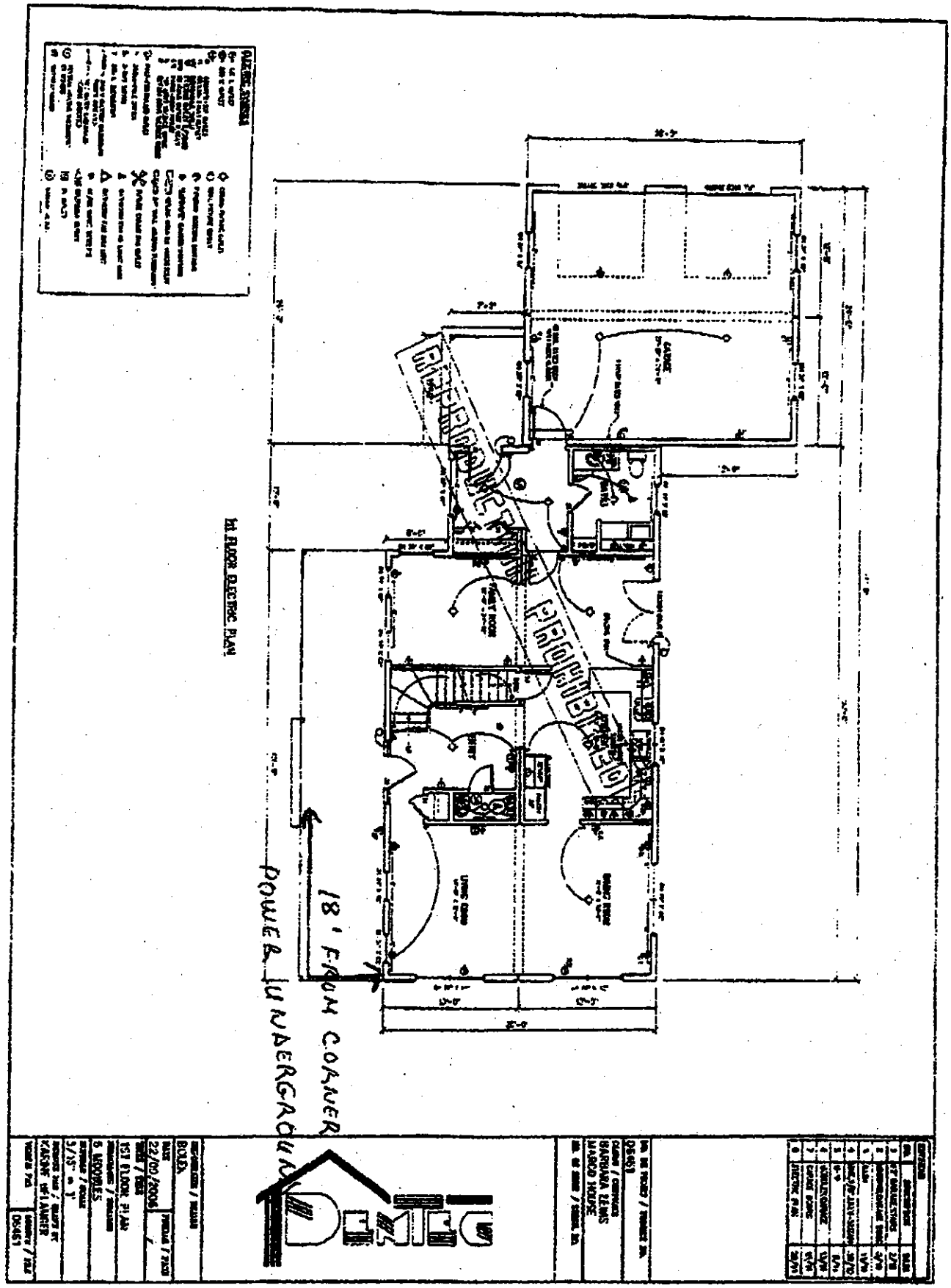
04/20/04

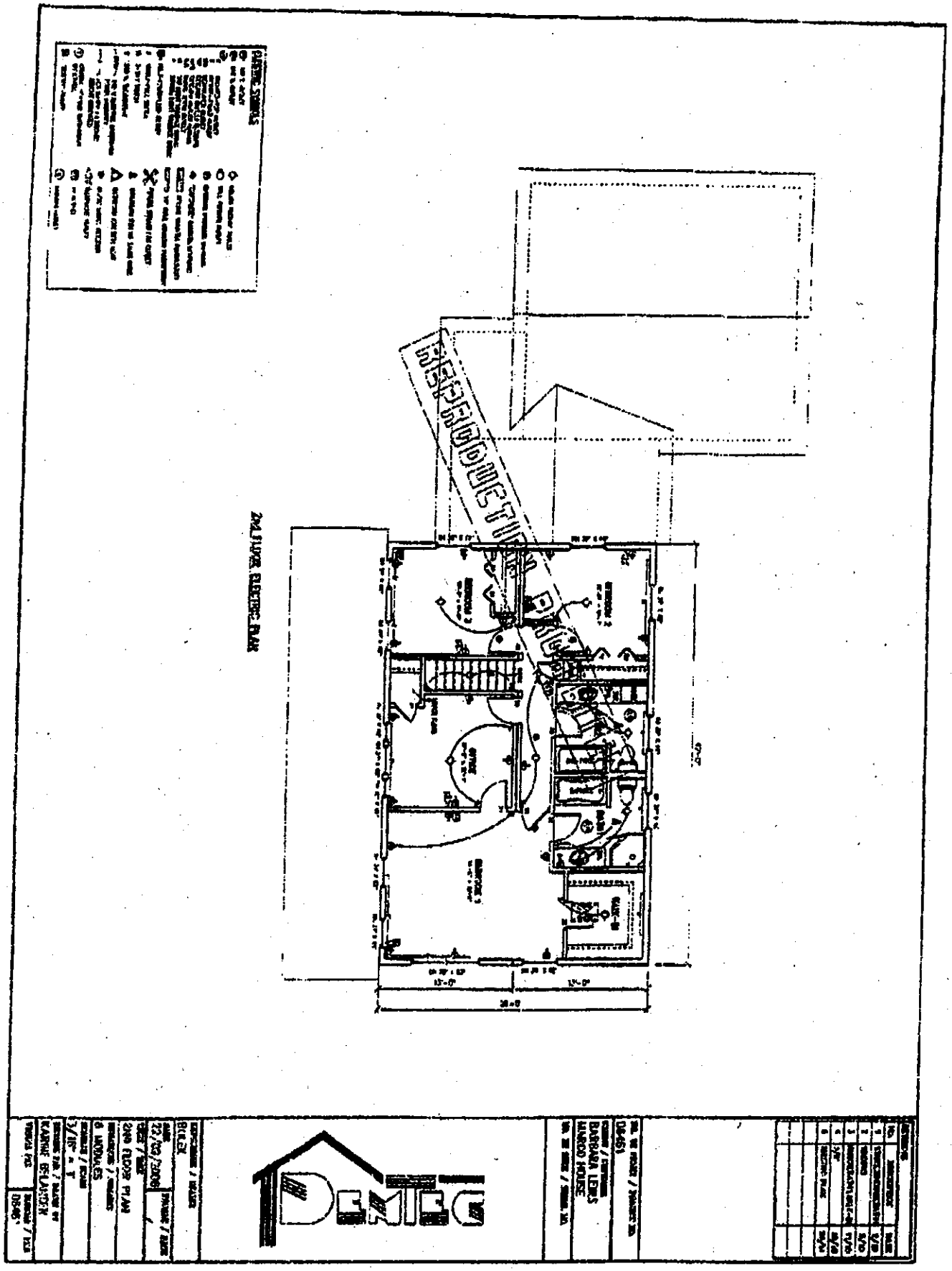
R001196

Farm Manager House

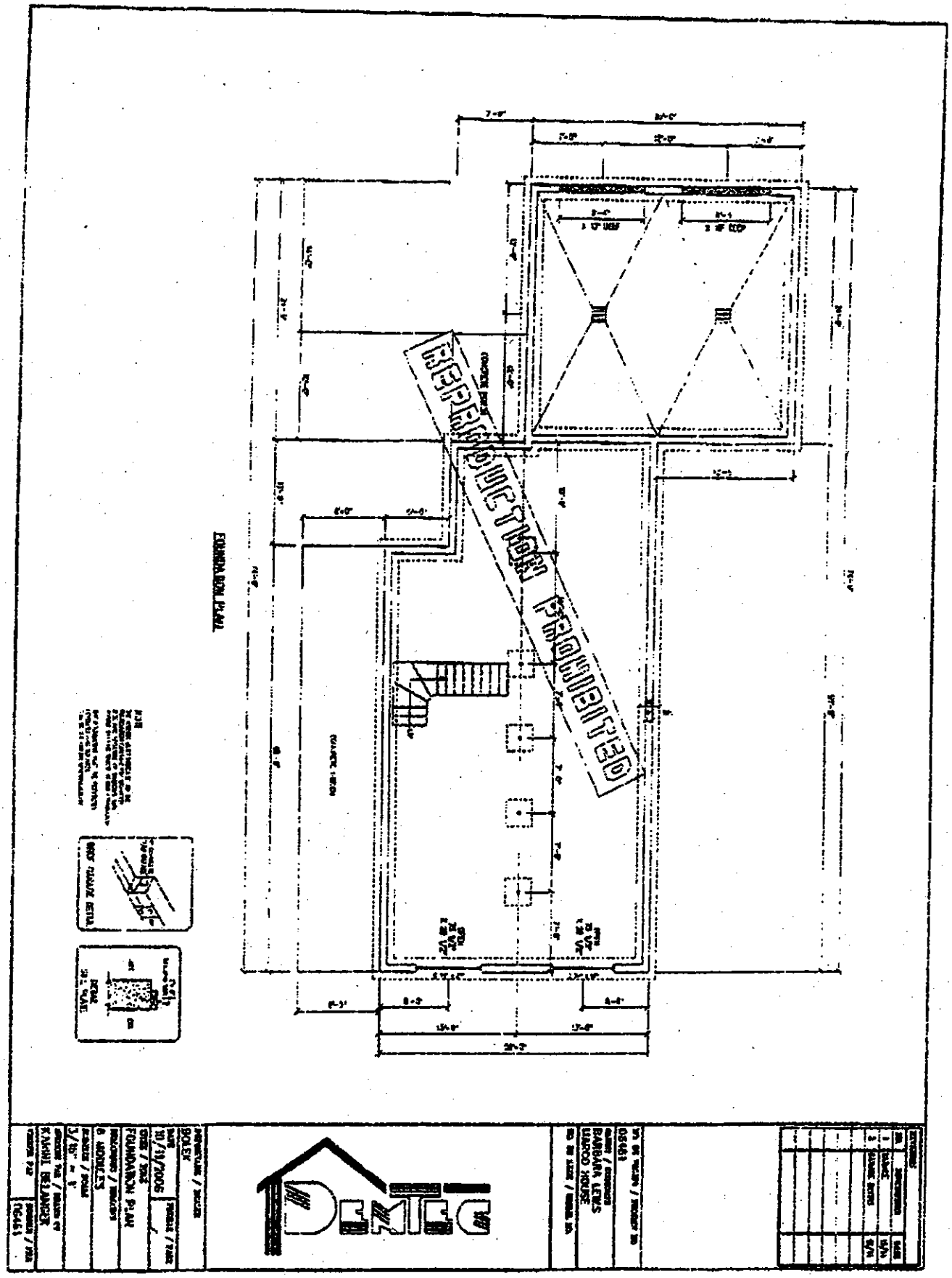
R001197

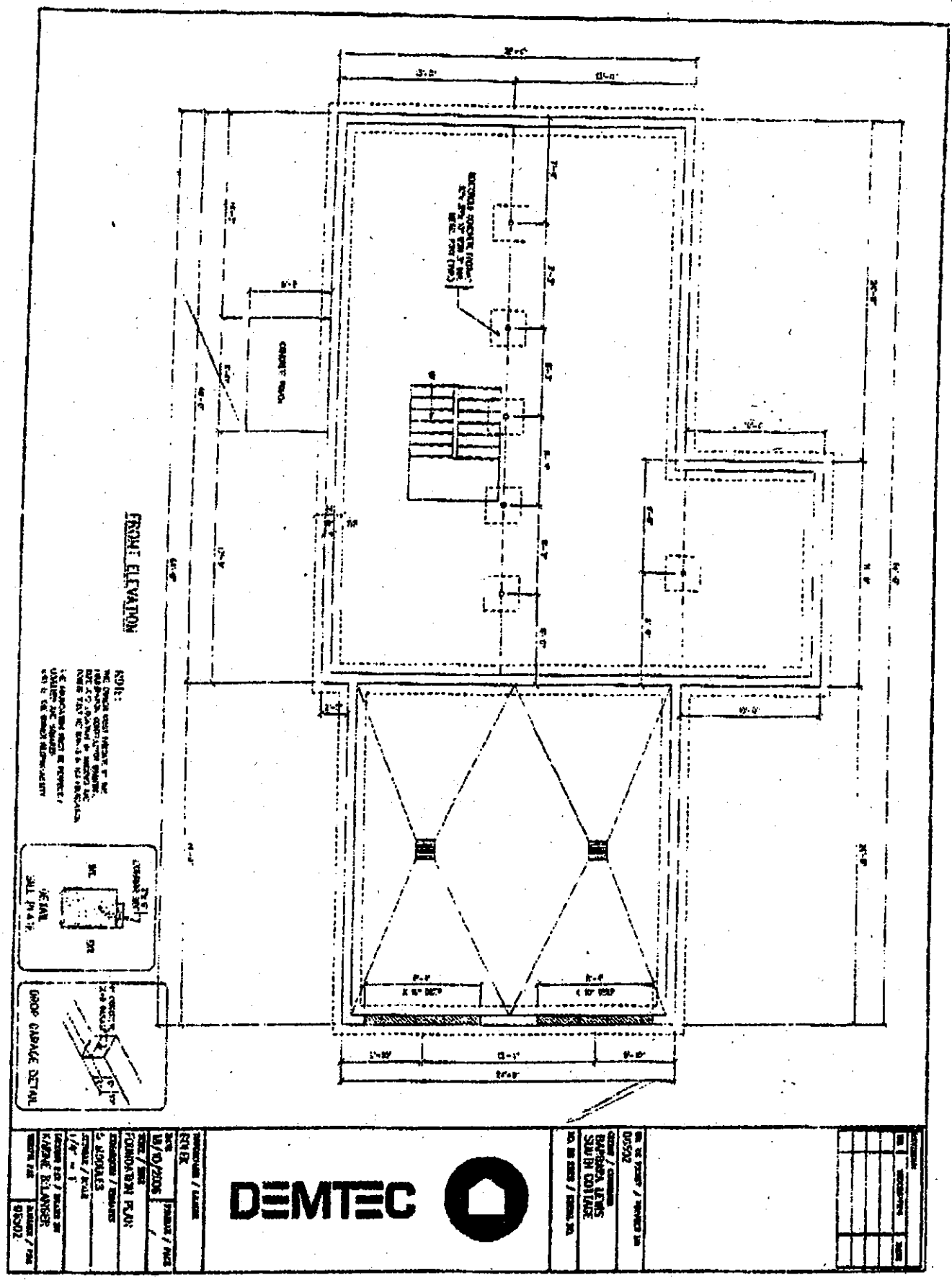
R001198


1st FLOOR ELECTRIC PLAN
18' FROM CORNER
POWER UNDERGROUND



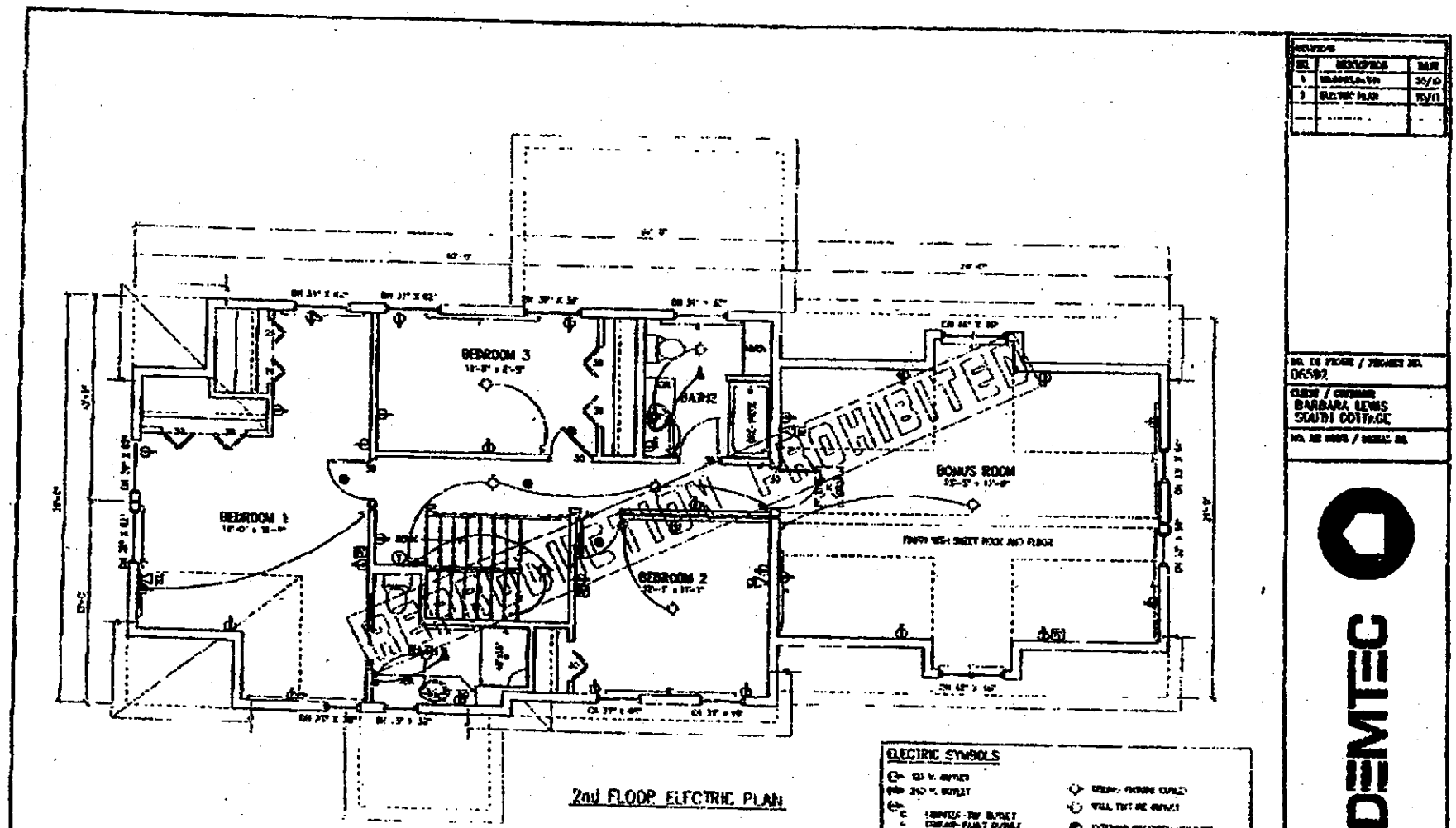
R001200


FOUNDATION PLAN
PERIMETER PROTECTION
PROHIBITED



R001202

R001203

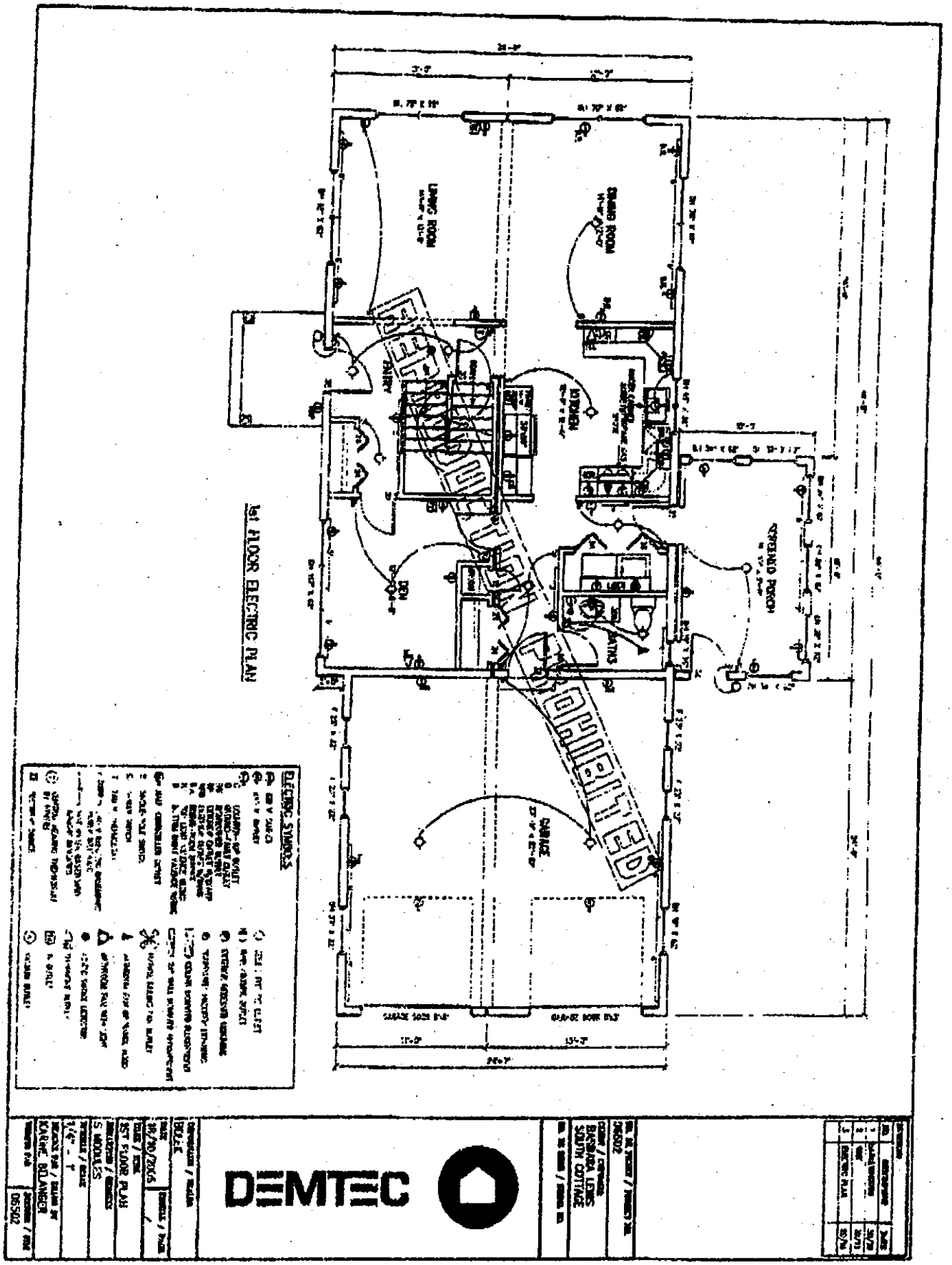


2nd FLOOR ELECTRIC PLAN

ELECTRIC SYMBOLS

120 V. OUTLET	
240 V. OUTLET	
DUPLEX - TOP OUTLET CONTROLLED	
DUPLEX - FAULT OUTLET	
WATERPROOF OUTLET	
EXTERIOR OUTLET W/COVER	
EXTERIOR OUTLET W/GFCI	
SMOKE ALARM OUTLET	
120 V. LIGHT VOLTAGE STRIP	
RECESSED LIGHT FIXTURE	
3-WAY SWITCH	
240 V. THERMOSTAT	
CEILING MOUNTED THERMOSTAT	
TELEPHONE OUTLET	
TV OUTLET	
WALL FAN	
EXHAUST FAN W/LIGHT	
EXHAUST FAN	
EXHAUST FAN W/LIGHT	
ATTIC FAN	
SMOKE DETECTOR	
CARBON MONOXIDE DETECTOR	

REVISIONS	
NO.	DESCRIPTION / DATE
1	30/10
2	15/11
NO. OF PAGES / PROJECT NO.	06592
CLIENT / OWNER	BARBARA LEWIS SOUTH COTTAGE
DEMTEC	
DRAWN BY / DESSINÉ PAR	BOLEK
DATE	15/10/2006
PAGE / PAGE	/
TITLE / TITRE	2ND FLOOR PLAN
ENGINEER / INGÉNIEUR	S MODULES
SCALE / ÉCHELLE	1/4" = 1'
CHECKED BY / VÉRIFIÉ PAR	KARINE BELANGER
SHEET NO.	06592


1st FLOOR ELECTRIC PLAN
DEMTEC
SOUTH COTTAGE
BARBARA LOWE
1ST FLOOR PLAN
KARINE DELANGER
06502

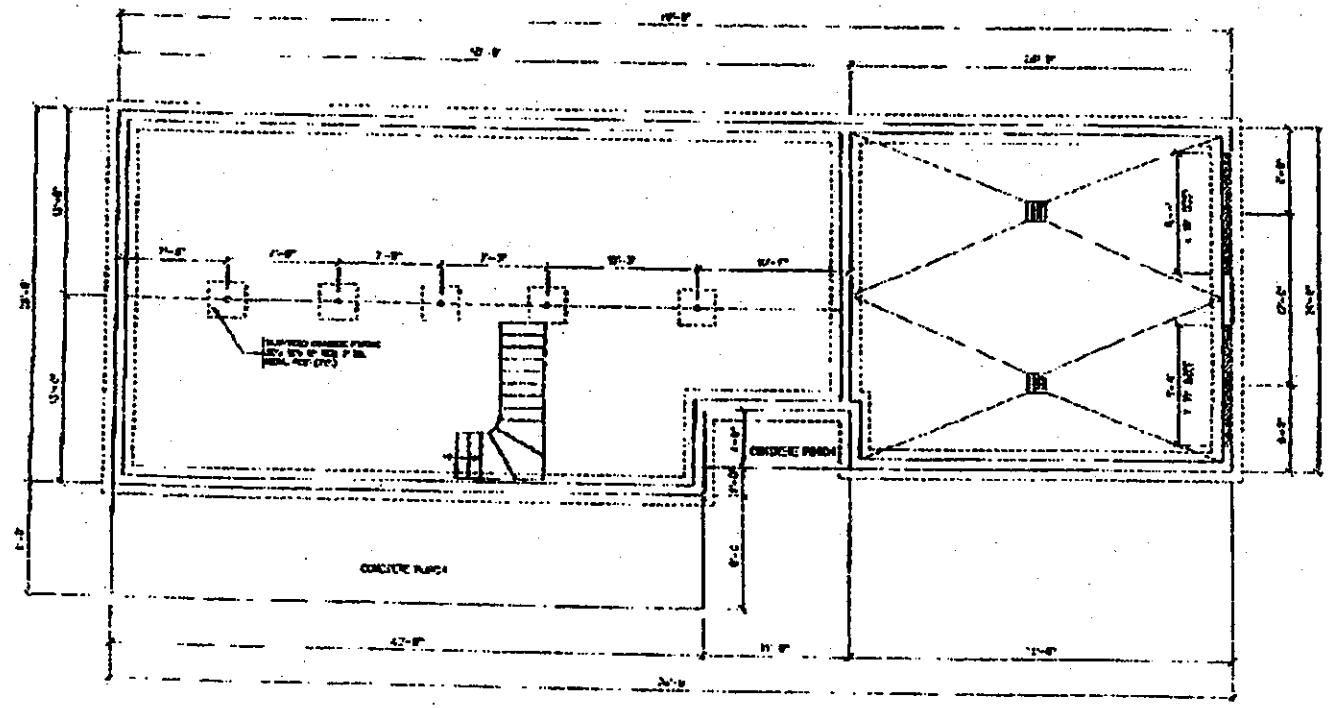
R001204

DEMTEC
BARBARA LEWIS
SUSH COTTAGE
EREX
19/10/2006
BACK ELEVATION
LEFT ELEVATION

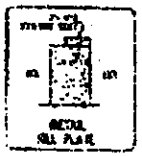
R001205

R001206

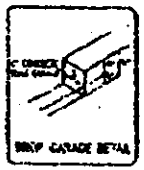
R001207



FOUNDATION PLAN



METAL SILL PLATE



DROP GARAGE DETAIL

NO.	DESCRIPTION	DATE

RESIDENCE 1

06460

OWNER / CUSTOMER
BARBARA LEWIS
RESIDENCE #1

DEMTEC

SUPERVISOR / DRAFTER
BOLEK

DATE
05/10/2006

SHEET / PAGE
1

TYPE / TITLE
FOUNDATION PLAN

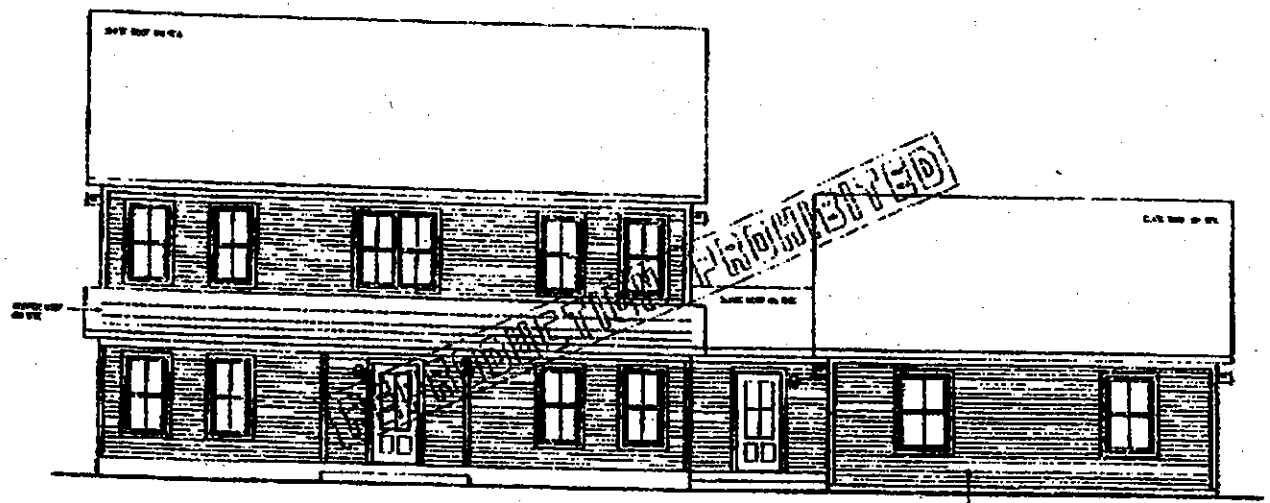
DESIGNED / DRAWN
K MIDDLES

SCALE / SCALE
3/16" = 1'

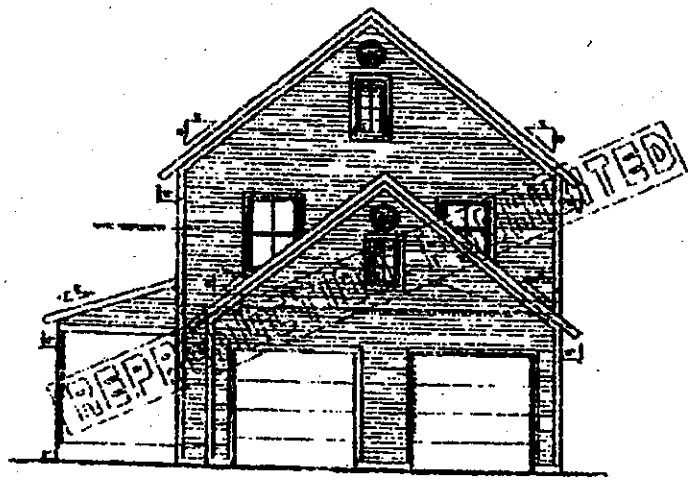
ENGINEER PRO / PROJECT NO
KASSIK BELANGER

ENGINEER PRO

ENGINEER / FILE
06460



FRONT ELEVATION



RIGHT ELEVATION

NO.	REVISION	DATE
1		
2		
3		
4		

06460

CLIENT / OWNER
BARBARA LEWIS
RESIDENCE

DEMTEC

DRAWN / DESSINÉ
BYLEK

DATE
22/09/2006

FEUILLE / PAGE
/

TITRE / TITLE
FRONT ELEVATION

DESCRIPTION / RÉALISÉ
6 MODELES

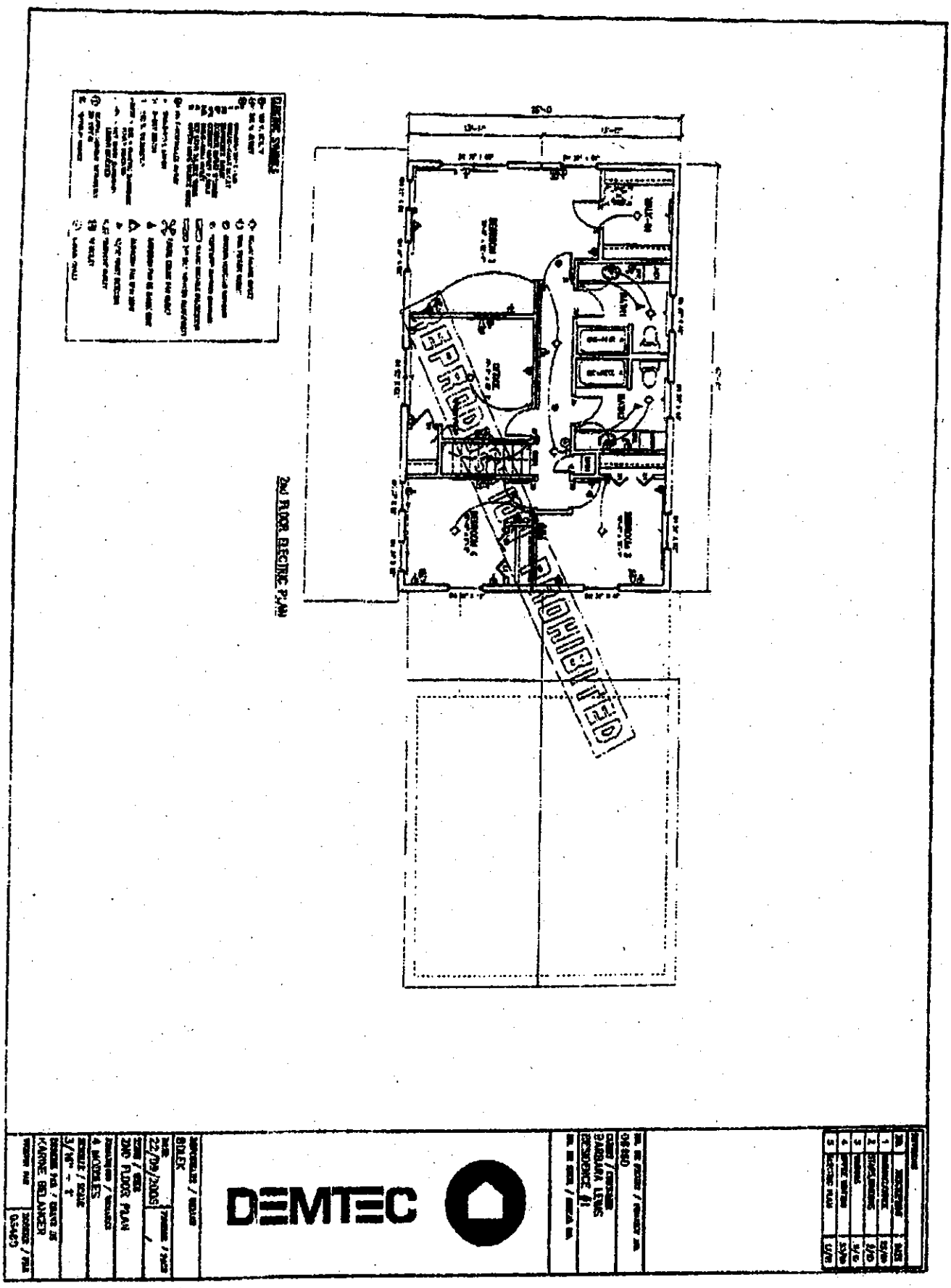
ÉCHELLE / SCALE
3/16" = 1'

DESSIN NO. / DRAWN BY
XAVIER BÉLANGER

PROJET NO.
06460

R001208

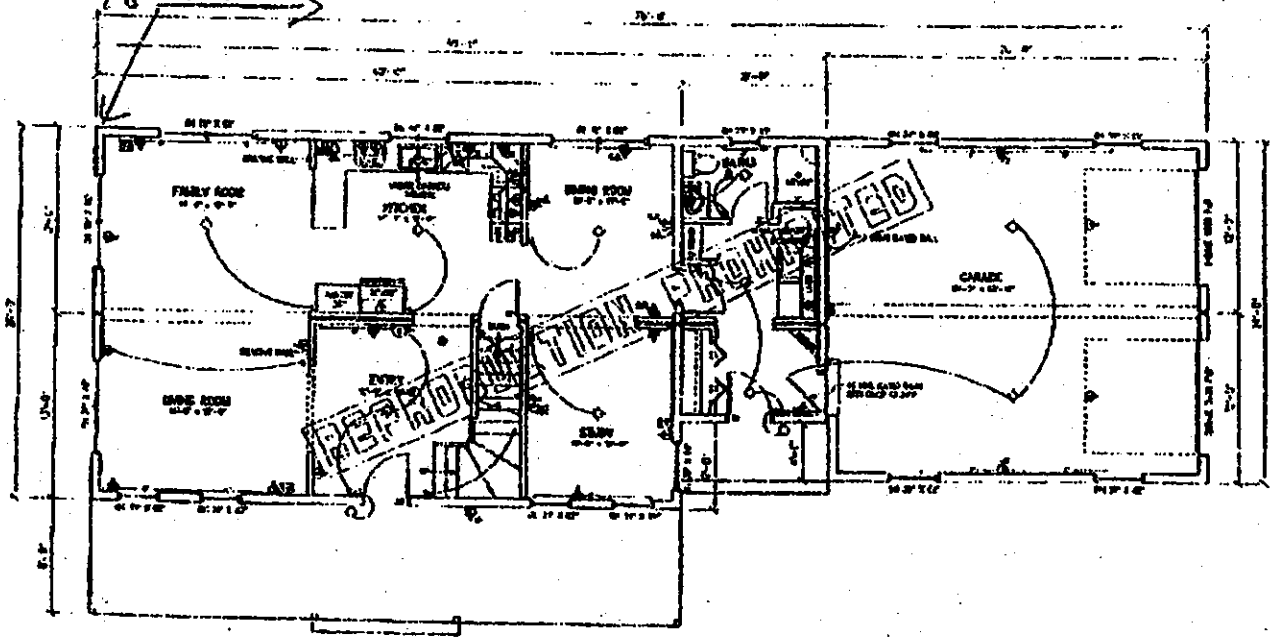
R001209



R001210

R001211

POWER UNDERGROUNDS
18' FROM CORNER



1st FLOOR ELECTRIC PLAN

ELECTRIC SYMBOLS

NO.	DESCRIPTION	DATE
1	AS BUILT	2/10
2		5/12
3		30/10
4		6/11
5	ELECTRIC PLAN	11/11

NO. OF PROJECT / PROJECT NO.
06460

CLIENT / CUSTOMER
BARBARA LEWIS
RESIDENCE #1

NO. OF ZONES / ZONES NO.

DEMTEC

DRAWN BY / DESIGNED
BD/FK

DATE 22/09/2006 | PROJECT / Folder

SCALE / TITLE
1ST FLOOR PLAN

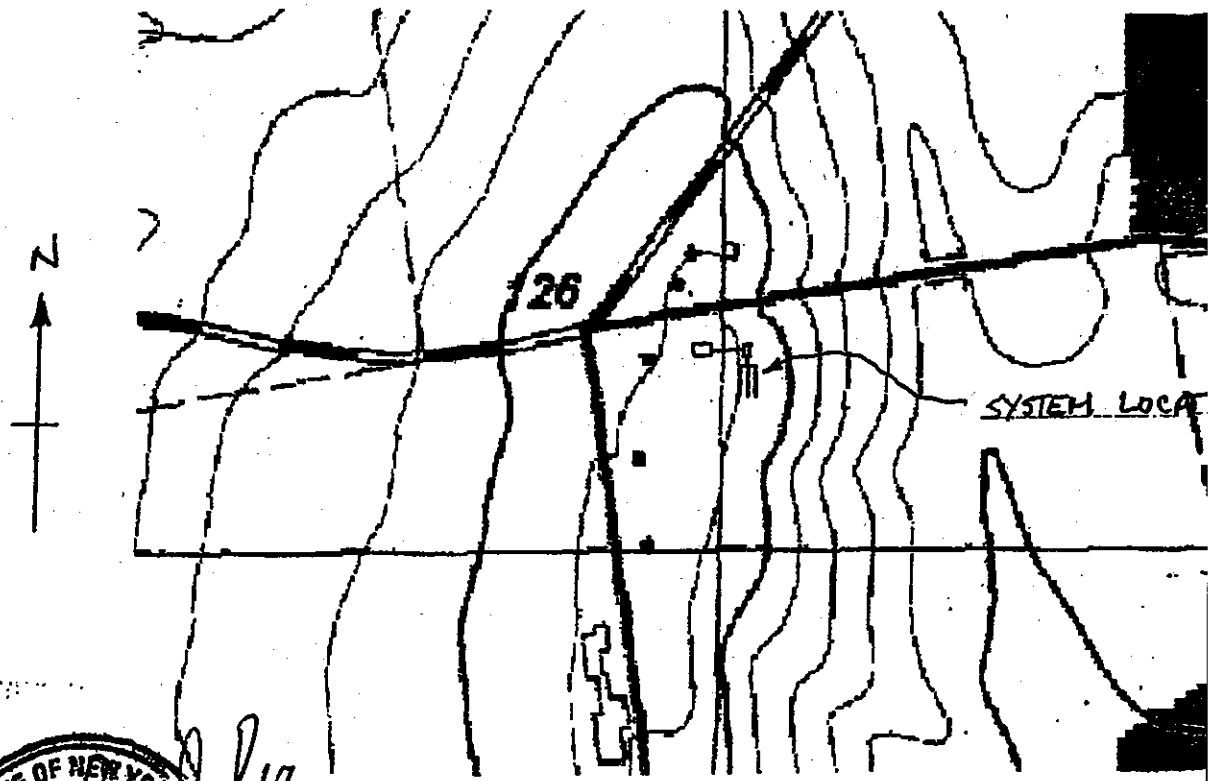
SHEET / SHEETS
4 MODULES

SCALE / SCALE
3/16" = 1'

DRAWING FILE / DRAWN BY
KARINE HELANNIER

DRAWING FILE | DRAWING / FILE
06460

REQIRED SEPARATION DISTANCES FROM WASTEWATER SYSTEM COMPONENTS (FEET)					
SYSTEN COMPONENT	WELL OR SUCTION LINE	TO STREAM, LAKE WATERCOURSE OR WETLAND	DWELLING	PROPERTY LINE	DRAINAGE DITCH
HOUSE SEWER	50	25	3	10	-
SEPTIC TANK	50	50	10	10	10
EFFLUENT LINE TO DISTRIBUTION BOX	50	50	10	10	10
DISTRIBUTION BOX	100	100	20	10	20
ABSORPTION FIELD	100	100	20	10	20
SEEPAGE PIT	150	100	20	10	20
DRY WELL ROOF AND FOOTING	50	25	20	10	10
RAISED OR MOUND SYSTEN	100	100	20	10	20



STATE OF NEW YORK
MARK JOSEPH BUCKI
No. 082941-1
LICENSED PROFESSIONAL ENGINEER

LEWIS HOUSE PROJECT
CROSS ROAD
WHALLENSBURG, NY
SITE PLAN

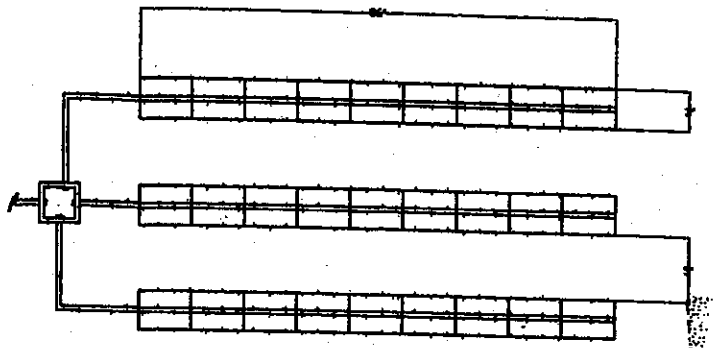
DATE: 12-2-06 | DRAWN BY: MARK BUCKI

SCALE: NONE

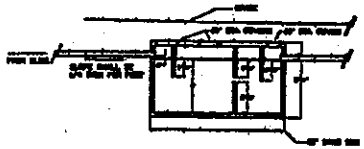
R001213

REQUIRED LENGTH OF ABSORPTION TRENCH				
PERC. RATE	FLOW RATE (GALS./DAY)			
MIN./INCH	2 [illegible]	3 [illegible]	4 [illegible]	
24			[illegible]	
SEPTIC TANK SIZE (GAL.)			[illegible]	

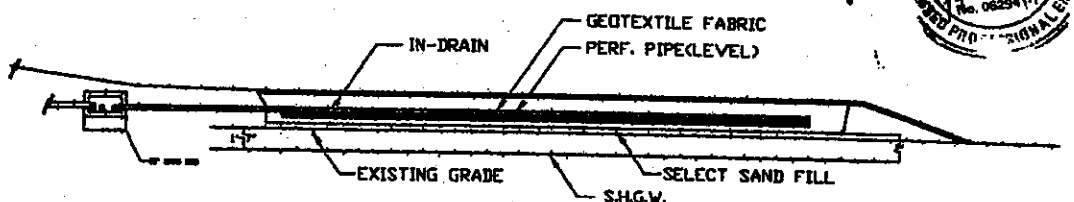
1,250 GAL. SEPTIC TANK
(TYP.)



ABSORPTION FIELD PLAN VIEW
(TYP.)



1,250 GAL. SEPTIC TANK
(TYP.)



DIST. BOX
(TYP.)

ABSORPTION FIELD SECTION
(TYP.)

DEEP HOLE TESTS				
TEST HOLE	DEPTH	SHEV	BEDROCK	NOTES
TP 1	58"	19"	>58"	0-9" SANDY CLAY LOAM, 9-27" SANDY CLAY, 27-45" SHARE OF CLAY AND SAND, 45-58" HARDPAN/TILL, MOTTLING @ 19"

PERCOLATION TEST RATES			
TEST HOLE	DEPTH	PERC. RATE (MIN./IN)	DATE
SP 1	15"	24	11-19-06
SP 2	10"	8	11-19-06

GENERAL NOTES:

1) MIN. 18" FILL OVER TOP OF SEPTIC TANK, PUMP STATION OF RECIRCULATION AND DIST. BOX.
2) SEPTIC TANK BAFFLES TO HAVE THREE INCH CLEAR OR 75%
3) ALL TANKS, PUMP STATIONS, AND BOXES TO BE CONCRETE. CABIN FILL SIZE AND SPECIFICATION TO CONFORM TO SECTION 5B6.0 OF NYS PUBLIC HEALTH LAW, APPENDIX 75-A
4) ALL TANKS, PUMP STATIONS AND BOXES TO BE WATER TIGHT
5) ALL SOLID PIPE TO BE SCHEDULE 40 PVC UNLESS OTHERWISE SPECIFIED.

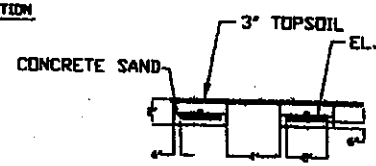
SPECIAL NOTES:

1. SELECT SAND TO BE MEDIUM TO COARSE TEXTURE WITH AN EFFECTIVE SIZE OF 0.25 TO 2 mm, NO GREATER THAN 5% PASSING A #200 SIEVE, AND NO PARTICALES LARGER THAN 3/4 inch.

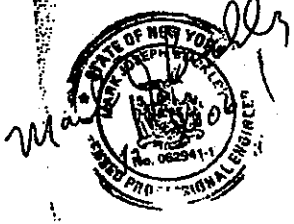
2. INSTALL 4" SOLID PIPE AT A MINIMUM 1/8" PER FOOT SLOPE BETWEEN THE END OF THE IN-DRAINS AND THE D-BOX. PLACE D-BOX ON WELL COMPACTED SAND OR GRAVEL TO PREVENT SETTLING AND EFFECTS OF FROST HEAVING.

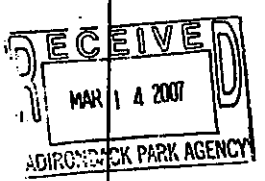
3. A ZABLE MODEL A1000 SEPTIC TANK FILTER OR EQUIV. WILL BE USED.

4. THE ELJEN IN-DRAIN SYSTEM WILL BE INSTALLED AS PER THE MANUFACTURERS SPECIFICATIONS.



IN-DRAIN X-SECT.





	LEWIS HOUSE PROJECT CROSS ROAD WHALLENSBURG, NY SEPTIC SYSTEM
	DATE: 12-02-06 — DRAWN BY: MARK BUCKLEY
	SCALE: NONE

24/90

Building Permit Application — Town of Essex Building Codes

Permit No. A-698

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: Barbara Lewis — Daytime Phone No.: 518 963-4206

Street Address: Whallons Bay Rd — City: Essex — State: N.Y. — Zip Code: 12936

2. Applicant is (check one or more): X Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: Essex
B. City, Town, Village: Essex
C. Tax Map No. (check with assessor): 49.3-2-27.000

D. Street Address or Directions: Cross Rd Essex N.Y. 12936

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
Barbara Lewis	DEMTEC	M. McLeans
LEWIS FAMILY FARM		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes X No Policy No. ___

6. Project Cost Estimate (see instructions): 335,000 — Number Square Feet: 2,350

7. Check All Items That Apply to the Named Projects:

___ New House/Building	X Garage/Carport	___ Addition	___ Change of Use
___ Mobile Home	___ Storage Shed	___ Alterations	___ Demolition
X Manufactured Home	___ Swimming Pool	___ Relocation	___ Solid Fuel
X Masonry Chimney	___ MFG Chimney	___ Deck	___ Other

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
X Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
X A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ___ Yes ___ No
B. Is the site in whole or in part a designated wetland ___ Yes ___ No
C. Is the site under APA jurisdiction? ___ Yes ___ No
D. Is the site under local zoning jurisdiction? ___ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System — X New Private Well — ___ Prior Existing Private Well
___ Public Sewer System — X New Septic System — ___ Prior Existing Sewer System
___ Other

9. What will be the method of providing heat?
Primary: Oil Boiler — Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached — X Shipped Separately — ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes X No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent: M McLeans — Date: 6-25-06

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side.
Make check payable to Town of Essex Building Codes Department.

Fee: 150.00 — 4212 — X Check ___ Money Order ___ Other

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
6-25-07	6-25-07	V	A-698											

Special Conditions:

R001214

BUILDING PERMIT APPLICATION INSTRUCTIONS

This form applies within communities where the Town of Essex enforces the Uniform Fire Prevention and Building Code (Uniform Code). Consult your local government officials to see if a zoning or other special permit is also required. Application procedure regulations are contained in Part 442, Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); copies of which are available upon request. A permit will be issued when it is determined that the application is complete and the proposed work conforms to the requirements of the Uniform Code. The authority conferred with the permit may be limited by conditions. The Town of Essex must be notified of any changes to information contained in the application during the period for which the permit is in effect.

A BUILDING PERMIT IS REQUIRED BEFORE commencing construction or other improvement, removal or demolition of any building or structure (including auction barns, farm residences, and other such structures) except as noted below; and BEFORE the installation of heating equipment.

A BUILDING PERMIT IS NOT REQUIRED for necessary repairs which do NOT involve material alteration of structural features, plumbing, electrical, or heating/ventilation systems; for agricultural buildings such as dairy barns and poultry houses; erecting fences, constructing non-commercial storage facilities under 140 sq. ft.; and for replacing roofing or siding materials.

ITEM INSTRUCTIONS FOR THE APPLICATION: (Items not listed are self explanatory. For further assistance, contact the Building Fire Code Department listed below.)

3C. The tax map or property ID number can be obtained from the local assessor, by consulting the appropriate tax map, or through your county real property tax office. A Certificate of Occupancy will not be issued without this number.

5. Workers' compensation and disability benefits are necessary if wages are to be paid to anyone working on the project.

6. Project cost includes the material and labor costs associated with the project work. Not included are architect, attorney, engineer, or other fees and land acquisition costs. If the project involves the installation of a mobile or factory manufactured home, do not include the purchase price of the unit. Project cost does include direct costs for wells, septic systems, electrical hook-ups, foundation systems, etc.

7. If unsure of class, check off UNKNOWN or refer to Part 701, 19 NYCRR. Most new single family homes are wood frame (Type 5).

8. Your Town Clerk may be able to help you determine if the project site is in a flood plain or is designated as a wetland. If not, or under APA jurisdiction, contact the nearest NYS Department of Environmental Conservation.

9. Enter Oil Hot Air, Oil Hot Water, Electrical Baseboard, Wood, etc., as appropriate.

10. Plans and specifications describing the proposed work are to be submitted with the application, in accordance with the State Education Law, Sections 7307 and 7209. The original seal and signature of a licensed and registered architect or professional engineer must be affixed to ALL plans submitted; except residential buildings under 1,500 sq. ft. of living area, OR for alterations costing under $10,000. Plans should include site work and landscaping, elevations, sections, dimensions, and schedules.

11. Undertaking activity that requires a building permit prior to obtaining such a permit is prohibited. In considering what action, if any, to take in specific cases, the Department will evaluate violations based on prior experience with the applicant and other relevant factors.

12. APPLICATION FEE: The appropriate application fee in the form of a check, money order, or government voucher made payable to The Town of Essex Building Code Department is required as indicated on the fee schedule attached.

NOTHING contained in this permit shall be construed to satisfy any legal obligation of the applicant to obtain any governmental application or permit from any entity other than The Town of Essex whether Federal, State, Regional, or Local.

SEND THIS COMPLETED APPLICATION to the Town of Essex Building Code Department, Main Street, Essex, NY 12936

Town of Essex Building Codes Department
Town of Essex
Main Street
Essex, NY 12936

R001215

1/24/90

Building Permit Application Town of Essex Building Codes Permit No. A-701

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name Barbara Lewis Daytime Phone No. (518) 963-4206

Street Address Wharton Dairy Rd City Essex State NY. Zip Code 12936

2. Applicant is (check one or more):
X Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County Essex
B. City, Town, Village Essex
C. Tax Map No. (check with assessor) 49.3-2-27.022

D. Street Address or Directions
Wharton Dairy Rd
S Cottage

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
Barbara Lewis	DEMTEC	M. McKenna
Lewis Family Farm		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes X No Policy No. ___

6. Project Cost Estimate (see instructions) 350,000. Number Square Feet 2,350

7. Check All Items That Apply to the Named Projects:

___ New House/Building	X Garage/Carport	___ Addition	___ Change of Use
___ Mobile Home	___ Storage Shed	___ Alterations	___ Demolition
X Manufactured Home	___ Swimming Pool	___ Relocation	___ Solid Fuel
___ Masonry Chimney	___ MFG Chimney	___ Deck	___ Other

Construction Class
___ Type 1 Fire Resistive ___ Type 3 Heavy Timber X Type 5 Wood Frame
___ Type 2 Noncombustible ___ Type 4 Ordinary ___ Unknown

Occupancy Use Classifications
X A1 One-Family Dwelling
X A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ... ___ Yes X No
B. Is the site in whole or in part a designated wetland ... ___ Yes X No
C. Is the site under APA jurisdiction? ... X Yes ___ No
D. Is the site under local zoning jurisdiction? ... X Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System X New Private Well ___ Prior Existing Private Well
___ Public Sewer System X New Septic System ___ Prior Existing Sewer System
___ Other

9. What will be the method of providing heat?
Primary: Oil Boiler Secondary: ___ ___ None

10. Plans are (see instructions):
___ Enclosed/Attached X Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes X No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent M. McKenna Date 6-25-07

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

Required Fee $ 50.00 6212 X Check ___ Money Order ___ Other

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
6-25-07	6-25-07	6-25-07 / ___	A-701											

Special Conditions:

R001216

BUILDING PERMIT APPLICATION INSTRUCTIONS

This form applies within communities where the Town of Essex enforces the Uniform Fire Prevention and Building Code (Uniform Code). Consult your local government officials to see if a zoning or other special permit is also required. Application procedure regulations are contained in Part 442, Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); copies of which are available upon request. A permit will be issued when it is determined that the application is complete and the proposed work conforms to the requirements of the Uniform Code. The authority conferred with the permit may be limited by conditions. The Town of Essex must be notified of any changes to information contained in the application during the period for which the permit is in effect.

A BUILDING PERMIT IS REQUIRED BEFORE commencing construction or other improvement, removal or demolition of any building or structure (including auction barns, farm residences, and other such structures) except as noted below; and BEFORE the installation of heating equipment.

A BUILDING PERMIT IS NOT REQUIRED for necessary repairs which do NOT involve material alteration of structural features, plumbing, electrical, or heating/ventilation systems; for agricultural buildings such as dairy barns and poultry houses; erecting fences, constructing non-commercial storage facilities under 140 sq. ft.; and for replacing roofing or siding materials.

ITEM INSTRUCTIONS FOR THE APPLICATION: (Items not listed are self explanatory. For further assistance, contact the Building Fire Code Department listed below.)

3C. The tax map or property ID number can be obtained from the local assessor, by consulting the appropriate tax map, or through your county real property tax office. A Certificate of Occupancy will not be issued without this number.

5. Workers' compensation and disability benefits are necessary if wages are to be paid to anyone working on the project.

6. Project cost includes the material and labor costs associated with the project work. Not included are architect, attorney, engineer, or other fees and land acquisition costs. If the project involves the installation of a mobile or factory manufactured home, do not include the purchase price of the unit. Project cost does include direct costs for wells, septic systems, electrical hook-ups, foundation systems, etc.

7. If unsure of class, check off UNKNOWN or refer to Part 701, 19 NYCRR. Most new single family homes are wood frame (Type 5).

8. Your Town Clerk may be able to help you determine if the project site is in a flood plain or is designated as a wetland. If not, or under APA jurisdiction, contact the nearest NYS Department of Environmental Conservation.

9. Enter Oil Hot Air, Oil Hot Water, Electrical Baseboard, Wood, etc., as appropriate.

10. Plans and specifications describing the proposed work are to be submitted with the application, in accordance with the State Education Law, Sections 7307 and 7209. The original seal and signature of a licensed and registered architect or professional engineer must be affixed to ALL plans submitted; except residential buildings under 1,500 sq. ft. of living area, OR for alterations costing under $10,000. Plans should include site work and landscaping, elevations, sections, dimensions, and schedules.

11. Undertaking activity that requires a building permit prior to obtaining such a permit is prohibited. In considering what action, if any, to take in specific cases, the Department will evaluate violations based on prior experience with the applicant and other relevant factors.

12. APPLICATION FEE: The appropriate application fee in the form of a check, money order, or government voucher made payable to The Town of Essex Building Code Department is required as indicated on the fee schedule attached.

NOTHING contained in this permit shall be construed to satisfy any legal obligation of the applicant to obtain any governmental application or permit from any entity other than The Town of Essex whether Federal, State, Regional, or Local.

SEND THIS COMPLETED APPLICATION to the Town of Essex Building Code Department, Main Street, Essex, NY 12936

Town of Essex Building Codes Department
Town of Essex
Main Street
Essex, NY 12936

1/24/90

Building Permit Application — Town of Essex Building Codes — Permit No. A-700

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: Barbara Lewis — Daytime Phone No.: 518-963-7153

Street Address: Whallons Bay Rd. — City: Essex — State: N.Y. — Zip Code: 12936

2. Applicant is (check one or more):
X Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: Essex
B. City, Town, Village: Essex
C. Tax Map No. (check with assessor): 49.3-2-27.000

D. Street Address or Directions: Whallons Bay Rd. N Cottage

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
Barbara Lewis	DENTEC	M. McKenna
LEWIS FAMILY FARM		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes X No Policy No. ___

6. Project Cost (Estimate) (see instructions): 320,000 — Number Square Feet: 2,350

7. Check All Items That Apply to the Named Projects:

___ New House/Building	X Garage/Carport	___ Addition	___ Change of Use
___ Mobile Home	X Storage Shed	___ Alterations	___ Demolition
X Manufactured Home	___ Swimming Pool	___ Relocation	___ Solid Fuel
X Masonry Chimney	___ MFG Chimney	___ Deck	___ Other

Construction Class
___ Type 1 Fire Resistive ___ Type 3 Heavy Timber X Type 5 Wood Frame
___ Type 2 Noncombustible ___ Type 4 Ordinary ___ Unknown

Occupancy Use Classifications

X A1 One-Family Dwelling	___ C1 Business
X A2 Two-Family Dwelling	___ C2 Mercantile
	___ C3 Industrial
___ B1 Multiple Dwelling Apartments	___ C4 Storage
___ B2 Multiple Dwelling Hotel/Motel	___ C5 Assembly
___ B3 Multiple Dwelling Sr. Citizen	___ C6 Institutional
___ B4 Multiple Dwelling Adult Residential Care	___ C7 Miscellaneous

8. A. Is the site within a flood plain? ___ Yes X No
B. Is the site in whole or in part a designated wetland ___ Yes X No
C. Is the site under APA jurisdiction? X Yes ___ No
D. Is the site under local zoning jurisdiction? X Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System X New Private Well ___ Prior Existing Private Well
___ Public Sewer System X New Septic System ___ Prior Existing Sewer System
___ Other

9. What will be the method of providing heat?
Primary: Oil Burner Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached X Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes X No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent: M. McKenna Date: 6-25-07

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

Required Fee $ 50.00 — 6212 — X Check ___ Money Order ___ Other

R001218

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
6-25-07	6-25-07	6-25-07	A-700											

Special Conditions:

BUILDING PERMIT APPLICATION INSTRUCTIONS

This form applies within communities where the Town of Essex enforces the Uniform Fire Prevention and Building Code (Uniform Code). Consult your local government officials to see if a zoning or other special permit is also required. Application procedure regulations are contained in Part 442, Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); copies of which are available upon request. A permit will be issued when it is determined that the application is complete and the proposed work conforms to the requirements of the Uniform Code. The authority conferred with the permit may be limited by conditions. The Town of Essex must be notified of any changes to information contained in the application during the period for which the permit is in effect.

A BUILDING PERMIT IS REQUIRED BEFORE commencing construction or other improvement, removal or demolition of any building or structure (including auction barns, farm residences, and other such structures) except as noted below; and BEFORE the installation of heating equipment.

A BUILDING PERMIT IS NOT REQUIRED for necessary repairs which do NOT involve material alteration of structural features, plumbing, electrical, or heating/ventilation systems; for agricultural buildings such as dairy barns and poultry houses; erecting fences, constructing non-commercial storage facilities under 140 sq. ft.; and for replacing roofing or siding materials.

ITEM INSTRUCTIONS FOR THE APPLICATION: (Items not listed are self explanatory. For further assistance, contact the Building Fire Code Department listed below.)

3C. The tax map or property ID number can be obtained from the local assessor, by consulting the appropriate tax map, or through your county real property tax office. A Certificate of Occupancy will not be issued without this number.

5. Workers' compensation and disability benefits are necessary if wages are to be paid to anyone working on the project.

6. Project cost includes the material and labor costs associated with the project work. Not included are architect, attorney, engineer, or other fees and land acquisition costs. If the project involves the installation of a mobile or factory manufactured home, do not include the purchase price of the unit. Project cost does include direct costs for wells, septic systems, electrical hook-ups, foundation systems, etc.

7. If unsure of class, check off UNKNOWN or refer to Part 701, 19 NYCRR. Most new single family homes are wood frame (Type 5).

8. Your Town Clerk may be able to help you determine if the project site is in a flood plain or is designated as a wetland. If not, or under APA jurisdiction, contact the nearest NYS Department of Environmental Conservation.

9. Enter Oil Hot Air, Oil Hot Water, Electrical Baseboard, Wood, etc., as appropriate.

10. Plans and specifications describing the proposed work are to be submitted with the application, in accordance with the State Education Law, Sections 7307 and 7209. The original seal and signature of a licensed and registered architect or professional engineer must be affixed to ALL plans submitted; except residential buildings under 1,500 sq. ft. of living area, OR for alterations costing under $10,000. Plans should include site work and landscaping, elevations, sections, dimensions, and schedules.

11. Undertaking activity that requires a building permit prior to obtaining such a permit is prohibited. In considering what action, if any, to take in specific cases, the Department will evaluate violations based on prior experience with the applicant and other relevant factors.

12. APPLICATION FEE: The appropriate application fee in the form of a check, money order, or government voucher made payable to The Town of Essex Building Code Department is required as indicated on the fee schedule attached.

NOTHING contained in this permit shall be construed to satisfy any legal obligation of the applicant to obtain any governmental application or permit from any entity other than The Town of Essex whether Federal, State, Regional, or Local.

SEND THIS COMPLETED APPLICATION to the Town of Essex Building Code Department, Main Street, Essex, NY 12936

Town of Essex Building Codes Department
Town of Essex
Main Street
Essex, NY 12936

R001219

1/24/90

Building Permit Application **Town of Essex Building Codes** **Permit No.** A-699

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: BARBARA Lewis — Daytime Phone No. ( )

Street Address: Whallons Bay Rd — City: Essex — State: N.Y. — Zip Code: 12936

2. Applicant is (check one or more): X Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: Essex
B. City, Town, Village: Essex
C. Tax Map No. (check with assessor): 49.3-2-27.000

D. Street Address or Directions: Whallons Bay rd, Residence 1

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
Barbara Lewis	DEMTEC	Mun McKeen
LEWIS FAMILY FARM		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes X No Policy No. ___

6. Project Cost (Estimate) (see instructions) 315,000. Number Square Feet 2,350

7. Check All Items That Apply to the Named Projects:

___ New House/Building	X Garage/Carport	___ Addition	___ Change of Use
___ Mobile Home	___ Storage Shed	___ Alterations	___ Demolition
X Manufactured Home	___ Swimming Pool	___ Relocation	___ Solid Fuel
___ Masonry Chimney	___ MFG Chimney	___ Deck	___ Other

Construction Class
___ Type 1 Fire Resistive ___ Type 3 Heavy Timber X Type 5 Wood Frame
___ Type 2 Noncombustible ___ Type 4 Ordinary ___ Unknown

Occupancy Use Classifications
X A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ... ___ Yes X No
B. Is the site in whole or in part a designated wetland ... ___ Yes X No
C. Is the site under APA jurisdiction? ... X Yes ___ No
D. Is the site under local zoning jurisdiction? ... X Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System X New Private Well ___ Prior Existing Private Well
___ Public Sewer System X New Septic System ___ Prior Existing Sewer System
___ Other

9. What will be the method of providing heat?
Primary: Oil Boiler Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached X Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes X No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent M. McKeen Date 6-25-07

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

Required Fee $ 50.00 6212 X Check ___ Money Order ___ Other

R001220

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
6-25-07	6-25-07	X / ___	A-699											

Special Conditions:

BUILDING PERMIT APPLICATION INSTRUCTIONS

This form applies within communities where the Town of Essex enforces the Uniform Fire Prevention and Building Code (Uniform Code). Consult your local government officials to see if a zoning or other special permit is also required. Application procedure regulations are contained in Part 442, Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); copies of which are available upon request. A permit will be issued when it is determined that the application is complete and the proposed work conforms to the requirements of the Uniform Code. The authority conferred with the permit may be limited by conditions. The Town of Essex must be notified of any changes to information contained in the application during the period for which the permit is in effect.

A BUILDING PERMIT IS REQUIRED BEFORE commencing construction or other improvement, removal or demolition of any building or structure (including auction barns, farm residences, and other such structures) except as noted below; and BEFORE the installation of heating equipment.

A BUILDING PERMIT IS NOT REQUIRED for necessary repairs which do NOT involve material alteration of structural features, plumbing, electrical, or heating/ventilation systems; for agricultural buildings such as dairy barns and poultry houses; erecting fences, constructing non-commercial storage facilities under 140 sq. ft.; and for replacing roofing or siding materials.

ITEM INSTRUCTIONS FOR THE APPLICATION: (Items not listed are self explanatory. For further assistance, contact the Building Fire Code Department listed below.)

3C. The tax map or property ID number can be obtained from the local assessor, by consulting the appropriate tax map, or through your county real property tax office. A Certificate of Occupancy will not be issued without this number.

5. Workers' compensation and disability benefits are necessary if wages are to be paid to anyone working on the project.

6. Project cost includes the material and labor costs associated with the project work. Not included are architect, attorney, engineer, or other fees and land acquisition costs. If the project involves the installation of a mobile or factory manufactured home, do not include the purchase price of the unit. Project cost does include direct costs for wells, septic systems, electrical hook-ups, foundation systems, etc.

7. If unsure of class, check off UNKNOWN or refer to Part 701, 19 NYCRR. Most new single family homes are wood frame (Type 5).

8. Your Town Clerk may be able to help you determine if the project site is in a flood plain or is designated as a wetland. If not, or under APA jurisdiction, contact the nearest NYS Department of Environmental Conservation.

9. Enter Oil Hot Air, Oil Hot Water, Electrical Baseboard, Wood, etc., as appropriate.

10. Plans and specifications describing the proposed work are to be submitted with the application, in accordance with the State Education Law, Sections 7307 and 7209. The original seal and signature of a licensed and registered architect or professional engineer must be affixed to ALL plans submitted; except residential buildings under 1,500 sq. ft. of living area, OR for alterations costing under $10,000. Plans should include site work and landscaping, elevations, sections, dimensions, and schedules.

11. Undertaking activity that requires a building permit prior to obtaining such a permit is prohibited. In considering what action, if any, to take in specific cases, the Department will evaluate violations based on prior experience with the applicant and other relevant factors.

12. APPLICATION FEE: The appropriate application fee in the form of a check, money order, or government voucher made payable to The Town of Essex Building Code Department is required as indicated on the fee schedule attached.

NOTHING contained in this permit shall be construed to satisfy any legal obligation of the applicant to obtain any governmental application or permit from any entity other than The Town of Essex whether Federal, State, Regional, or Local.

SEND THIS COMPLETED APPLICATION to the Town of Essex Building Code Department, Main Street, Essex, NY 12936

Town of Essex Building Codes Department
Town of Essex
Main Street
Essex, NY 12936

APPLICATION FOR A PROJECT PERMIT
TOWN OF ESSEX, NEW YORK

Tax Map Parcel Number: 49.3-2-27.000

11-12-06 — Application Date
11-14-06 — Date Recorded
Z-263 — Application #

Barbara Lewis
Applicant's Name

Whallons Bay rd.
Address

Essex — Town
N.Y. — State
12936 — Zip
963-4206 — Telephone Number

The applicant hereby states that he or she is the owner or authorized agent for which the foregoing work is proposed to be performed, and that he or she is duly authorized to execute such work, and that all work will be preformed in accordance with all existing State laws and the Zoning Law in effect in the Town of Essex.

Barbara Lewis (mm)
Applicant's Signature

11-12-06
Date

Application is hereby made to:

( ) use
(X) erect
( ) repair
( ) alter
( ) extend
( ) remove
( ) demolish
( ) occupy

( ) other _____

For the purpose of:

(X) residence = 3
( ) commercial business
( ) industry
( ) accessory structure
( ) agricultural use
( ) forestry use
( ) mobile home
( ) public use
( ) resource extraction
( ) Other _____

Zoning District:

( ) Essex Hamlet
( ) Whallonsburgh Hamlet
(X) Agricultural District
( ) Forest/Recreation
( ) Residential I
( ) Residential II
( ) Historic Overlay
( ) Shoreline Overlay

On a separate sheet, describe the project in detail.

This application shall be accompanied by a drawing to scale, showing, but not limited to the following:
(see reverse side of form)

1. Lot size
2. Existing Property Lines
3. Proposed Structure
4. Parking and driveways
5. Abutting street width
6. Rear Yard set back
7. Front Yard set back
8. Side Yard set back
9. Water System
10. Septic and sewage system
11. Abutters
12. Height: Stories _____ Feet_____
13. Number of family units
14. Construction type
15. Other_____

Date of Action:

Application Received 11-14-06

Supplemental Material Received _____

Fee Paid, Amount: $ 20.00 _____

Application Referred to Planning Board _____

Application Approved by Planning Board _____

Zoning Permit: (X) Issued ( ) Denied 11-14-06

Reasons for denial:_____

David A. Lansing 11-14-06

David Lansing
Zoning and Codes Enforcement Officer
518-963-4287

Date

04/20/04

R001223

APPLICATION FOR A PROJECT PERMIT
TOWN OF ESSEX, NEW YORK

Tax Map Parcel Number: 49.3-2-27.00

11-30-06 — Application Date
11-30-06 — Date Recorded
Z-264 — Application #

LEWIS FAMILY FARM
Applicant's Name

1058 WHALLONSBAY RD
Address

ESSEX — Town
N.Y. — State
12936 — Zip
Telephone Number

The applicant hereby states that he or she is the owner or authorized agent for which the foregoing work is proposed to be performed, and that he or she is duly authorized to execute such work, and that all work will be preformed in accordance with all existing State laws and the Zoning Law in effect in the Town of Essex.

BALDWIN Lewis (M.M) — Applicant's Signature
11-30-06 — Date

Application is hereby made to:

( ) use
( ) erect
( ) repair
( ) alter
( ) extend
( ) remove
( ) demolish
( ) occupy

( ) other _____

For the purpose of:

(X) residence (1)
( ) commercial business
( ) industry
( ) accessory structure
( ) agricultural use
( ) forestry use
( ) mobile home
( ) public use
( ) resource extraction
( ) Other FARM HELP RESIDENCE

Zoning District:

( ) Essex Hamlet
( ) Whallonsburgh Hamlet
(X) Agricultural District
( ) Forest/Recreation
( ) Residential I
( ) Residential II
( ) Historic Overlay
( ) Shoreline Overlay

On a separate sheet, describe the project in detail.

This application shall be accompanied by a drawing to scale, showing, but not limited to the following:
(see reverse side of form)

1. Lot size
2. Existing Property Lines
3. Proposed Structure
4. Parking and driveways
5. Abutting street width
6. Rear Yard set back
7. Front Yard set back
8. Side Yard set back
9. Water System
10. Septic and sewage system
11. Abutters
12. Height: Stories _____ Feet_____
13. Number of family units
14. Construction type
15. Other_____

SEE ATTACHED DWGS

	Date of Action:
Application Received	11-30-06
Supplemental Material Received	
Fee Paid, Amount: $ 20.00	$ 20.00
Application Referred to Planning Board	NO
Application Approved by Planning Board	N/A
Zoning Permit: (X) Issued ( ) Denied	11-30-06

Reasons for denial:_____

David Lansing
Zoning and Codes Enforcement Officer
518-963-4287

11-30-06
Date

04/20/04

R001225

MARCO

1/24/90

Building Permit Application — Town of Essex Building Codes — Permit No. A-714

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: LEWIS FAMILY FARM — Daytime Phone No. ( )

Street Address: 52 CANSTAN 2S — City: ESSEX — State: N.Y. — Zip Code:

2. Applicant is (check one or more):
___ Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.000
D. Street Address or Directions:

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
SAME AS ABOVE	MARK BOCCUTI	BENKUS ZEBRA TIMBER

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes ___ No Policy No.

6. Project Cost Estimate (see instructions) — Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
✓ Other SEPTIC

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
✓ A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ... ___ Yes ✓ No
B. Is the site in whole or in part a designated wetland ... ___ Yes ✓ No
C. Is the site under APA jurisdiction? ... ✓ Yes ___ No
D. Is the site under local zoning jurisdiction? ... ✓ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System
___ Public Sewer System
___ Other
✓ New Private Well
___ New Septic System
___ Prior Existing Private Well
___ Prior Existing Sewer System

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
✓ Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent: MARK BOCCUTI Date 9-20-07

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1 2 3 4 5 6 7 8 9 10	CO or CC Issued
9-20-07	9-24-07	10-1-07	A-714		

R001226

NO LMA SOUTH CO VS

1/24/90

Building Permit Application Town of Essex Building Codes Permit No. A-715

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: LEWIS FAMILY FARM Daytime Phone No. ( )

Street Address: 52 CHRISTIAN RD City: ESSEX State: VT Zip Code:

2. Applicant is (check one or more):
___ Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.000
D. Street Address or Directions

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
SAME AS ABOVE	MARK BUCZKO	BEAUDRY ZEBRA TECH

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes ___ No Policy No. ___

6. Project Cost Estimate (see instructions) Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
✓ Other SEPTIC

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
✓ A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ... ___ Yes ✓ No
B. Is the site in whole or in part a designated wetland ... ___ Yes ✓ No
C. Is the site under APA jurisdiction? ... ✓ Yes ___ No
D. Is the site under local zoning jurisdiction? ... ✓ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System ✓ New Private Well ___ Prior Existing Private Well
___ Public Sewer System ___ New Septic System ___ Prior Existing Sewer System
___ Other

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
✓ Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent [signature] Date 9-20-07

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
9-20-07	9-20-07	9-19-07	A-715											

Special Conditions:

R001227

1/24/90

RESIDENCE

Building Permit Application Town of Essex Building Codes Permit No. A-716

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: EBELS FAMILY FARM Daytime Phone No. ( )
Street Address: 52 CHRISTIAN RD City: ESSEX State: NY Zip Code: 12936

2. Applicant is (check one or more):
____ Property Owner ____ General Contractor ____ Other (Specify) ,

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.000
D. Street Address or Directions

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
SAMIRAS ABOUR	MARK BUCHER	BENWAY TEBBA TECH

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ____ Yes ____ No Policy No. ____

6. Project Cost Estimate (see instructions) Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
✓ Other SEPTIC

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
✓ A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ..... ___ Yes ✓ No
B. Is the site in whole or in part a designated wetland ..... ___ Yes ✓ No
C. Is the site under APA jurisdiction? ..... ✓ Yes ___ No
D. Is the site under local zoning jurisdiction? ..... ✓ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System ✓ New Private Well ___ Prior Existing Private Well
___ Public Sewer System ___ New Septic System ___ Prior Existing Sewer System
___ Other

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
X Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent: Mark Bucher Date 9-20-07

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
9-24-07	9-24-07	D	A-716											

R001228

RESIDENCE

1/24/90

Building Permit Application Town of Essex Building Codes Permit No. A-662

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: LEWIS FAMILY FARM Daytime Phone No. ( )

Street Address: 1058 WHALLONSBAY City: ESSEX State: N.Y. Zip Code: 12936

2. Applicant is (check one or more):
___ Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.000
D. Street Address or Directions

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
LEWIS FARM (MARCO)		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes ___ No Policy No. ___

6. Project Cost Estimate (see instructions) Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
☑ Other FOUNDATION

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
☑ A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ___ Yes ___ No
B. Is the site in whole or in part a designated wetland ___ Yes ___ No
C. Is the site under APA jurisdiction? ___ Yes ___ No
D. Is the site under local zoning jurisdiction? ___ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System
___ Public Sewer System
___ Other
☑ New Private Well
☑ New Septic System
___ Prior Existing Private Well
___ Prior Existing Sewer System

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent ___ Date NOV. 30, 06

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

OFFICE USE ONLY

Date Received	Reviewed	Approved ☑ Disapproved ___	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
11-30-06	11-30-06	11-30-06	A-662											

Special Conditions:

R001229

MARCO

1/24/90

Building Permit Application — Town of Essex Building Codes — Permit No. A-662

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: LEWIS FAMILY FARM — Daytime Phone No. ( )

Street Address: 1058 HALLOWELL — City: ESSEX — State: N.Y. — Zip Code: 12936

2. Applicant is (check one or more):
___ Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.000
D. Street Address or Directions:

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
LEWIS FARM		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes ___ No Policy No. ___

6. Project Cost Estimate (see instructions) — Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
X Other FOUNDATION

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Wood Frame
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
X A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

A. Is the site within a flood plain? ___ Yes ___ No
B. Is the site in whole or in part a designated wetland ___ Yes ___ No
C. Is the site under APA jurisdiction? ___ Yes ___ No
D. Is the site under local zoning jurisdiction? ___ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System
___ Public Sewer System
___ Other
X New Private Well
X New Septic System
___ Prior Existing Private Well
___ Prior Existing Sewer System

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent: Barry Lewis (M.M.) Date: Nov. 30, 06

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side.
Make check payable to Town of Essex Building Codes Department

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
11-30-06	11-30-06	11-30-06	A-662											

Special Conditions:

I WILL PICK UP PERMIT

R001230

NORTH COTTAGE

1/24/90

Building Permit Application Town of Essex Building Codes Permit No. A-662

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: LEWIS FAMILY FARM Daytime Phone No. ( )

Street Address: 1058 ROUTE 22 Halloway City: ESSEX State: N.Y. Zip Code: 12936

2. Applicant is (check one or more):
___ Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.002
D. Street Address or Directions

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
LEWIS FARM		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes ___ No Policy No. ___

6. Project Cost Estimate (see instructions) -- Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
X Other FOUNDATION

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
X A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ___ Yes ___ No
B. Is the site in whole or in part a designated wetland ___ Yes ___ No
C. Is the site under APA jurisdiction? ___ Yes ___ No
D. Is the site under local zoning jurisdiction? ___ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System
___ Public Sewer System
___ Other
X New Private Well
X New Septic System
___ Prior Existing Private Well
___ Prior Existing Sewer System

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent ___ Date NOV. 30, 06

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department.

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
11-30-06	11-30-06	11-30-06	A-662											

Special Conditions:

R001231

SOUTH COTTAGE

1/24/90

Building Permit Application — Town of Essex Building Codes — Permit No. A-662

READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS APPLICATION

1. Applicant's Name: LEWIS FAMILY FARM — Daytime Phone No. ( )

Street Address: 1058 WHALLONSBAY — City: ESSEX — State: N.Y. — Zip Code: 12936

2. Applicant is (check one or more):
___ Property Owner ___ General Contractor ___ Other (Specify)

3. Provide Project Location Information:
A. County: ESSEX
B. City, Town, Village: ESSEX
C. Tax Map No. (check with assessor): 49.3-2-27.000
D. Street Address or Directions

4. Provide Names, Addresses, and Telephone Numbers for Individuals Named Below (use additional sheets, if needed):

A. Property Owner	B. Architect or Engineer	C. General Contractor/Builder
LEWIS FARM		

5. Contractor Insurance
Workers' Compensation & Disability Benefits Secured by Contractor
Wages To Be Paid ___ Yes ___ No Policy No. ___

6. Project Cost Estimate (see instructions) — Number Square Feet

7. Check All Items That Apply to the Named Projects:

___ New House/Building
___ Mobile Home
___ Manufactured Home
___ Masonry Chimney
___ Garage/Carport
___ Storage Shed
___ Swimming Pool
___ MFG Chimney
___ Addition
___ Alterations
___ Relocation
___ Deck
___ Change of Use
___ Demolition
___ Solid Fuel
X Other FOUNDATION

Construction Class
___ Type 1 Fire Resistive
___ Type 2 Noncombustible
___ Type 3 Heavy Timber
___ Type 4 Ordinary
___ Type 5 Wood Frame
___ Unknown

Occupancy Use Classifications
X A1 One-Family Dwelling
___ A2 Two-Family Dwelling
___ B1 Multiple Dwelling Apartments
___ B2 Multiple Dwelling Hotel/Motel
___ B3 Multiple Dwelling Sr. Citizen
___ B4 Multiple Dwelling Adult Residential Care
___ C1 Business
___ C2 Mercantile
___ C3 Industrial
___ C4 Storage
___ C5 Assembly
___ C6 Institutional
___ C7 Miscellaneous

8. A. Is the site within a flood plain? ___ Yes ___ No
B. Is the site in whole or in part a designated wetland ___ Yes ___ No
C. Is the site under APA jurisdiction? ___ Yes ___ No
D. Is the site under local zoning jurisdiction? ___ Yes ___ No
E. "X" all of the following that describe the provisions for water and sewer:
___ Public Water System
___ Public Sewer System
___ Other
X New Private Well
X New Septic System
___ Prior Existing Private Well
___ Prior Existing Sewer System

9. What will be the method of providing heat?
Primary: Secondary: ___ None

10. Plans are (see instructions):
___ Enclosed/Attached ___ Shipped Separately ___ Not Supplied

11. Has any work covered by this application been started or completed? ___ Yes ___ No
* If yes, read instructions carefully and provide a description and explanation →

12. APPLICATION CERTIFICATION - I hereby certify that I have read the instructions and examined the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or land use or the performance of construction.

Signature of Applicant/Authorized Agent _____ Date NOV. 30, 06

Consult instructions on attached sheet about appropriate fee. Mailing instructions are on reverse side. Make check payable to Town of Essex Building Codes Department

OFFICE USE ONLY

Date Received	Reviewed	Approved / Disapproved	Permit No.	Inspections 1	2	3	4	5	6	7	8	9	10	CO or CC Issued
11-30-06	11-30-06	12-5-06	A-662											

Special Conditions None

R001232

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT C

Building Codes Department
Main Street
Essex, NY 12

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-656,657,658 DATE: 11-14-06

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF 3 FOUNDATIONS FOR 3 SINGLE FAMILY HOMES AS PER APPLICATION.

at 989 WILLSBAY RD ESSEX, N.Y. 12936

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____

Foundation before backfill ..... _____

Framing before enclosing ..... _____

Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____

Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____

Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Issuing Officer

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT D

TOWN OF ESSEX
Building Codes Departm
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-698 MARCC HOME DATE: 6-25-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION-INSTALLATION OF A PRE-FAB HOME AS PER DWGS (2,350 SQ FT.

at CROSS RD & WHALLONSBAY RD ESSEX, NY.

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Lewis S. Lansing
Issuing Officer

TOWN OF ESSEX
Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-699 RESIDENCE #1 DATE: 6-25-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF A MODULAR HOME SINGLE FAMILY 2,356 SQFT AS PER PLANS.

at FORMER CAROLYN WALKER SITE - WHALLONSBURY RD ESSEX

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Lewis S. Lansing
Issuing Officer

R001237

TOWN OF ESSEX
Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-700 NORTH COTTAGE DATE: 6-25-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF MODULAR HM (SINGLE FAMILY) 2,350 SQ FT ASPEN DWGS CAROLYN

at FORMER WALKER SITE, WHALEBONE BAY RD ESSEX

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Louis S. Lansing
Issuing Officer

R001238

TOWN OF ESSEX
Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-701 SO. COTTAGE DATE: 6-25-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF MODULAR HM (SINGLE FAMILY) 2,350 SQFT AS PER DWGS

at FORMER CAROLYN WAKELSITE 4 HAUGHSBAY RD ESSEX

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

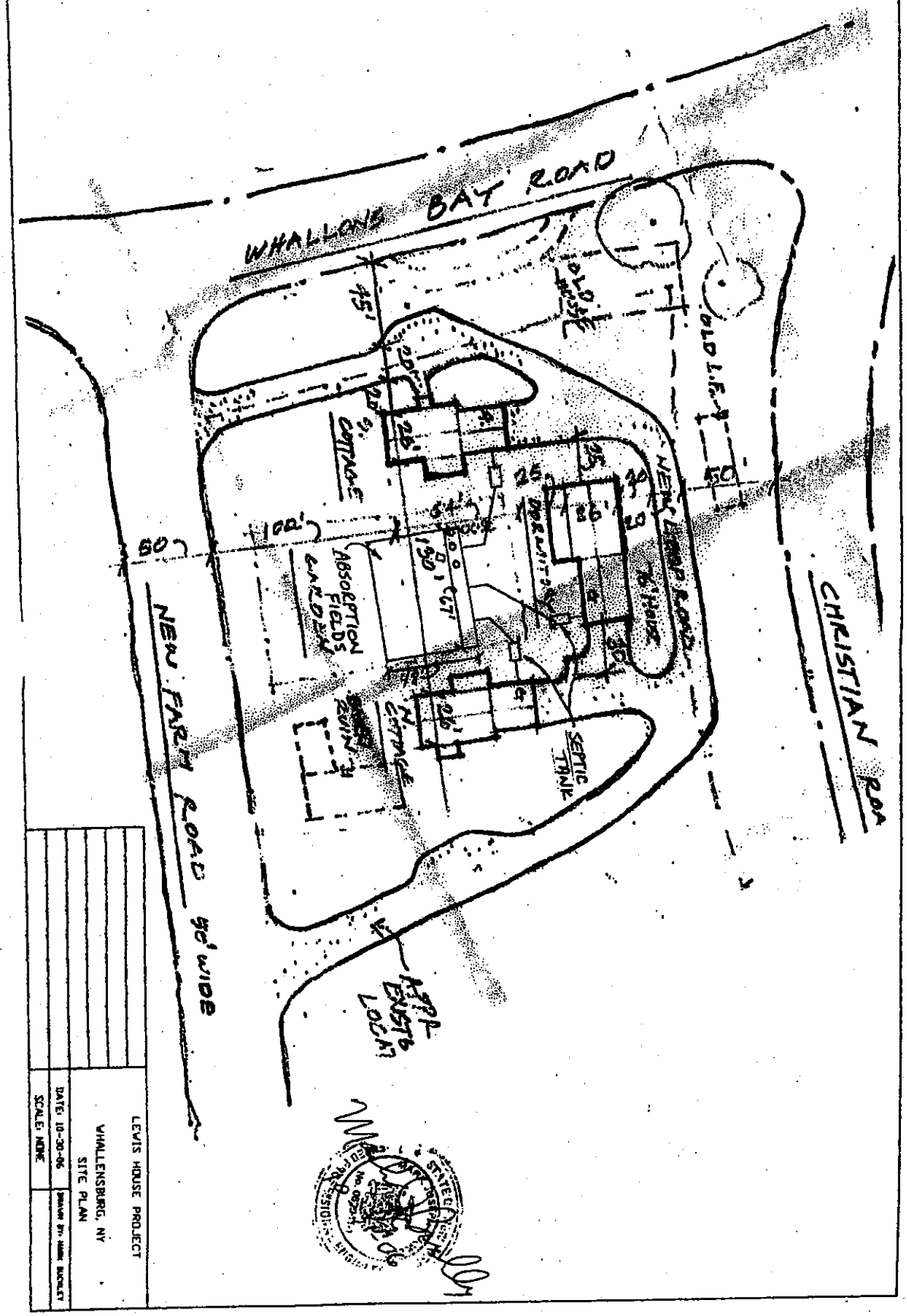
Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

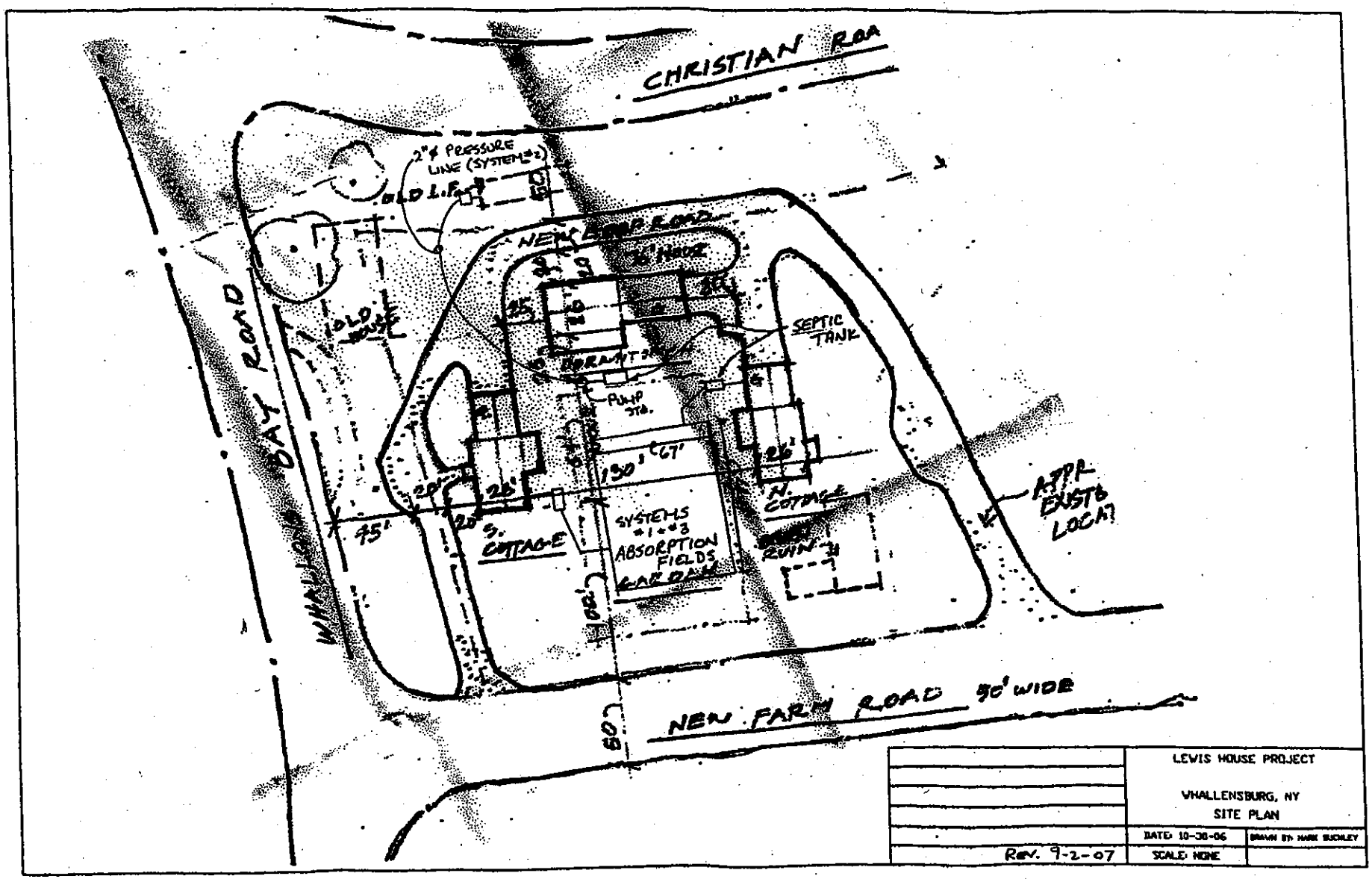
Louis S. Lansing
Issuing Officer

R001239

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT E


WHALLONS BAY ROAD
OLD HOUSE
OLD L.F.
CHRISTIAN ROA
NEW LEACH FIELD
2½ STORY
COTTAGE
ABSORPTION FIELDS
SEPTIC TANK
NEW FARM ROAD 50' WIDE
KEEP ENSTE LOCATI
LEWIS HOUSE PROJECT
WHALLENSBURG, NY
SITE PLAN
DATE: 10-30-06
SCALE: NONE

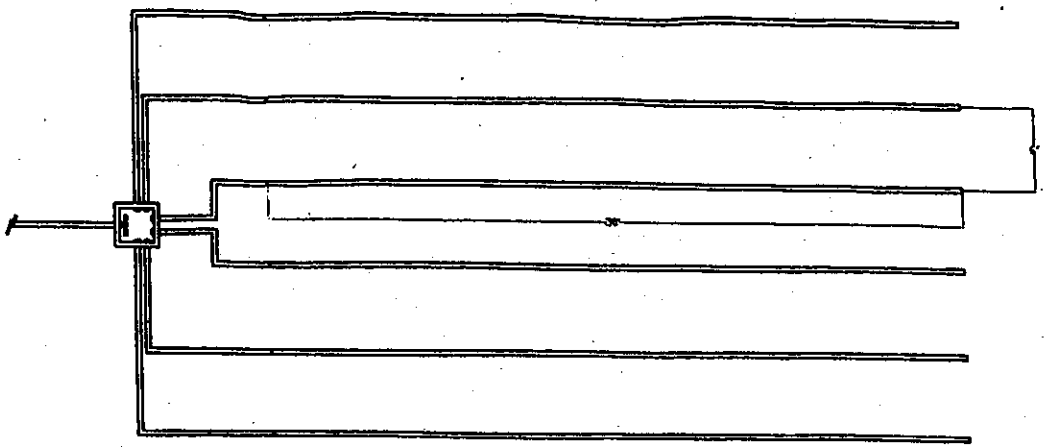

CHRISTIAN ROA
2"ϕ PRESSURE LINE (SYSTEMS #2)
OLD L.F.
NEW FARM ROAD
OLD HOUSE
BAY ROAD
WHALLONSBURG
SEPTIC TANK
PUMP STA.
150' C.T.
S. COTTAGE
SYSTEMS #1 & #3 ABSORPTION FIELDS
N. COTTAGE
RUIN
ATTR. EXIST'G LOCATION
NEW FARM ROAD 50' WIDE
LEWIS HOUSE PROJECT
WHALLENSBURG, NY
SITE PLAN
DATE: 10-30-06
DRAWN BY: MARK BUCKLEY
Rev. 9-2-07
SCALE: NONE

R001242

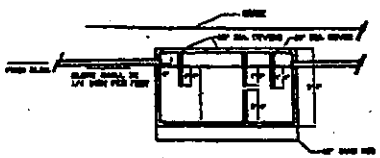
R001243

REQUIRED LENGTH OF ABSORPTION TRENCH				
PERC. RATE	FLOW RATE (GALS./DAY)			
MIN./INCH	2 [illegible]	3 [illegible]	4 [illegible]	
13			275	
SEPTIC TANK SIZE (GAL)			1,250	

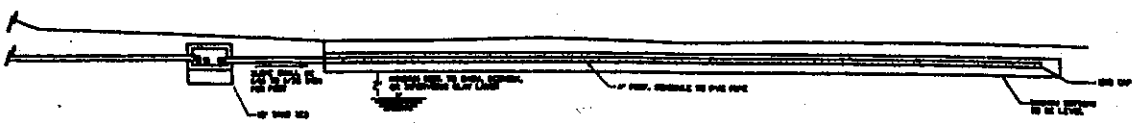
1,250 GAL. SEPTIC TANK
(TYP.)



ABSORPTION FIELD PLAN VIEW
LATERALS SHOULD BE OF EQUAL LENGTH AND 30 FT. OR LESS IN LENGTH

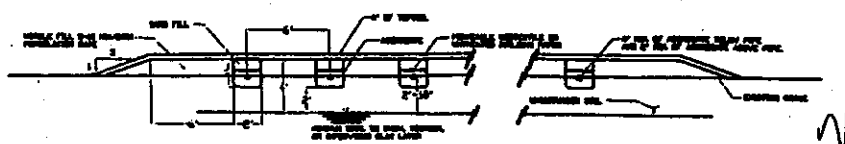


1,250 GAL. SEPTIC TANK
(TYP.)



ABSORPTION FIELD SECTION

DIST. BOX



ABSORPTION FIELD SECTION

DEEP HOLE TESTS				
TEST HOLE	DEPTH	SHOW	BEDROCK	NOTES
TP 1	93"	34"	>93"	0-18" SAND, 18-32" SANDY CLAY LOAM, 32-34" CLAY W/10% STONES, 34-46" SANDY CLAY, 46-93" CLAY. WATER @ 46", MOTTLING @ 34"

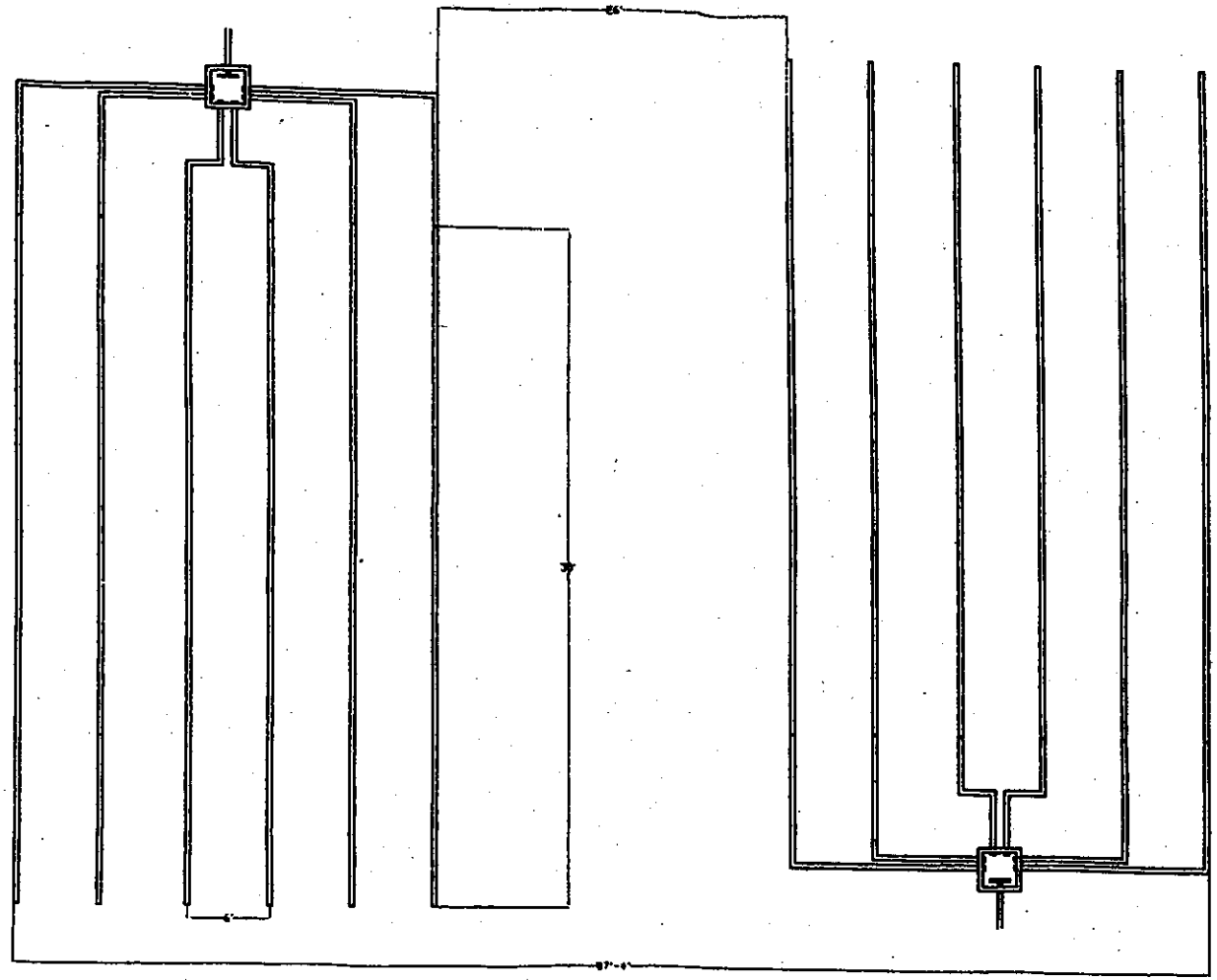
PERCOLATION TEST RATES			
TEST HOLE	DEPTH	PERC. RATE (MIN./IN)	DATE
SP 1	15"	13	8-31-07
SP 2	10"	10	8-31-07

GENERAL NOTES:

1) MIN. 12" FILL OVER SEPTIC TANK, PUMP STATION OF MEASURED AND DIST. BOX.
2) SEPTIC TANK BAFFLES TO HAVE THREE INCH CLEAR ON TOP
3) ALL TANKS, PUMP STATIONS, AND BOXES TO BE CONCRETE (4,000 PSI). SIZE AND SPECIFICATIN TO CONFORM TO SECTION 290.10(c) OF NYS PUBLIC HEALTH LAW, APPENDIX 75-A.
4) ALL TANKS, PUMP STATIONS AND BOXES TO BE WATER TIGHT
5) ALL PIPE TO BE SCHEDULE 40 PVC UNLESS OTHERWISE SPECIFIED

STATE OF NEW YORK
MARK J. [illegible]
No. 082941-1
LICENSED PROFESSIONAL ENGINEER

	LEWIS HOUSE PROJECT WHALLONS BAY ROAD WHALLONSBURG, NY SEPTIC SYSTEM	
REVISED: 9-2-07	DATE: 10-30-06	DRAWN BY: MARK BUCKLEY
REVISED: 9-17-07	SCALE: NONE	



ABSORPTION FIELD PLAN VIEW
(TYP.)

LEWIS HOUSE PROJECT
WHALLONS BAY ROAD
WHALLONSBURG, NY
ABSORPTION FIELD

REVISED 9-2-07	DATE 10-30-06	DRAWN BY: MARK BUCKLEY
REVISED 8-17-07	SCALE: NONE	

R001244

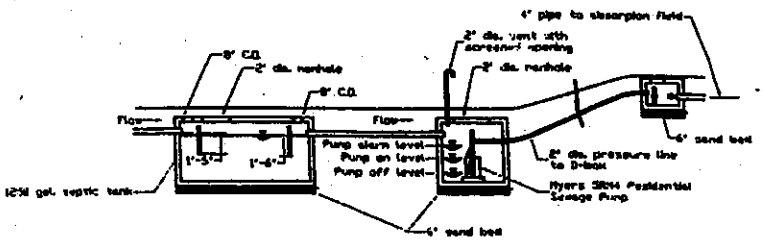
R001245

NOTES:

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

REQIRED SEPARATION DISTANCES FROM VASTEWATER SYSTEM COMPONENTS (FEET)

SYSTEM COMPONENT	WELL OR SUCTION LINE	TO STREAM, LAKE, WATERCOURSE OR WETLAND	BUILDING	PROPERTY LINE	DRAINAGE DITCH
HOUSE SEWER	50	25	3	10	-
SEPTIC TANK	50	50	10	10	10
EFFLUENT LINE TO DISTRIBUTION BOX	50	50	10	10	10
DISTRIBUTION BOX	100	100	20	10	20
ABSORPTION FIELD	100	100	20	10	20
SEEPAGE PIT	150	100	20	10	20
DRY WELL (DEEP AND FOOTED)	50	25	20	10	10
MOUND OR MOUND SYSTEM	100	100	20	10	20



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

	LEWIS HOUSE PROJECT WHALLONS BAY ROAD WHALLONSBURG, NY SITE PLAN
	DATE: 9-2-07 — DRAWN BY: MARK STICKLEY
	SCALE: NONE

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT F

FARM MANAGER'S RESIDENCE

TOWN OF ESSEX
Building Codes Departm
Main Street
Essex, NY 12936

Exhibit F: Permit Application (Lewis Aff. 1/17/08

pp. 1247-1250

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-710 DATE: 8-8-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FARM

permitting CONSTRUCTION OF AN ON SITE SEPTIC SYSTEM AS PER PE MARK BUCKLEY PLANS

at MARCO TUNCA RESIDENCE (WHALEBACK B

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Lewis S. Lansing
Issuing Officer

R001247

RESIDENCE
#1

TOWN OF ESSEX
Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-716 DATE: 9-19-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF SEPTIC SYSTEM AS PER PLANS

at 52 CHRISTIAN RD ESSEX, N.Y. 12936

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Louis S. Lansing
Issuing Officer

R001248

COTTAGE

TOWN OF ESSEX
Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-715 DATE: 9/19/07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF A SEPTIC SYSTEM AS PER PLANS

at 52 CHRISTMAS RD ESSEX, N.Y. 12936

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Lewis S. Lansing
Issuing Officer

R001249

UNIT
COTTAGE

TOWN OF ESSEX
Building Codes Department
Main Street
Essex, NY 12936

It shall be the responsibility of the owner, applicant, or his agent to inform the Building Inspector that the building is ready for inspection as the stages of construction listed below are complete.

NUMBER: A-714 DATE: 9-19-07

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to LEWIS FAMILY FARM

permitting CONSTRUCTION OF A SEPTIC SYSTEM AS PER PLANS

at 52 CHRISTIAN RD ESSEX, NY 12936

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state, or local law, or other rule or regulation.

Do not proceed beyond these points until countersigned below by the Inspector.

Footing before pouring concrete ... _____ Foundation before backfill ..... _____

Framing before enclosing ..... _____ Electrical before enclosing ..... _____
Inspection to be done by electrical inspection agency

Plumbing before enclosing ..... _____ Heating, Ventilation, Air Conditioning before enclosing.. _____

Insulation Inspection ..... _____ Final Inspection ..... _____

Permission is hereby granted to proceed with the work as set forth in the specifications, plans, or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

Louis S. Lamora
Issuing Officer

R001250

AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT G

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)
) ss.:
COUNTY OF ESSEX)

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

Janet L. Mero
Notary Public

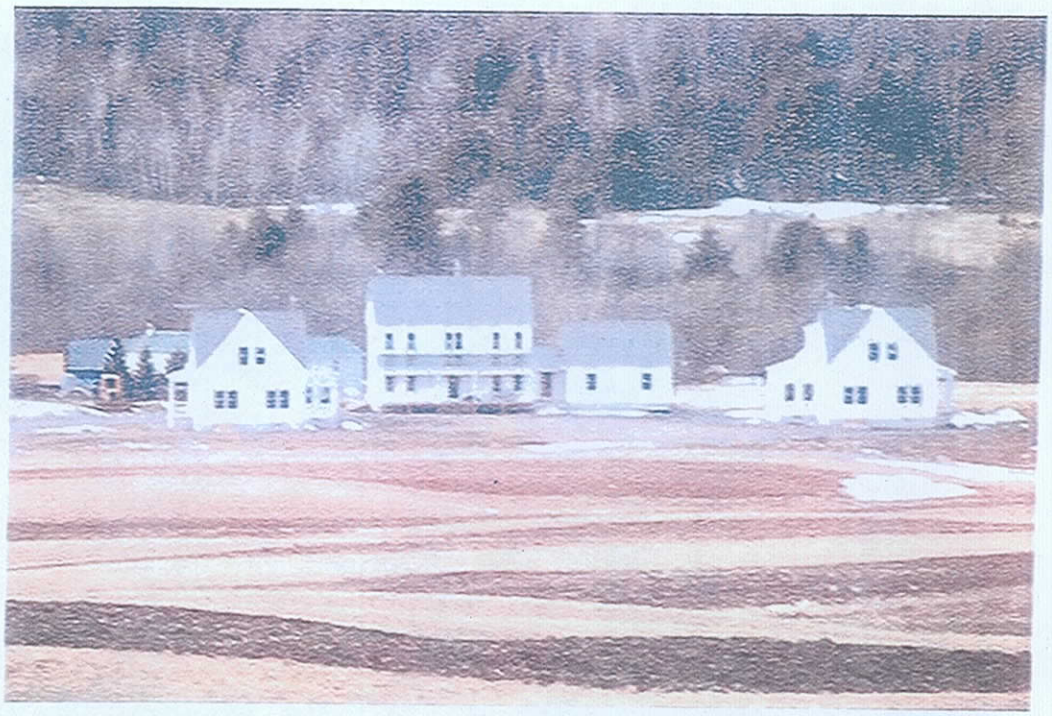
JANET L. MERO
NOTARY PUBLIC STATE OF NEW YORK
NO. 2695403
QUALIFIED IN ESSEX COUNTY
MY COMM. EXPIRES 9/30/07

10679376.1

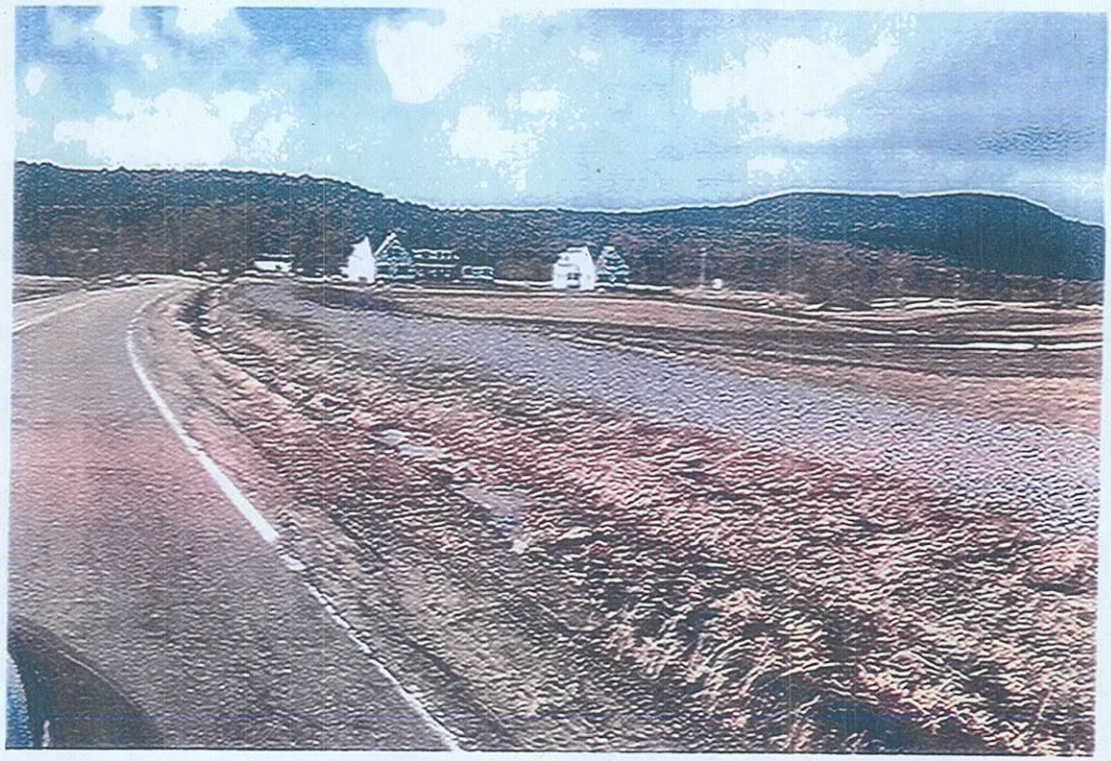
AFFIDAVIT OF BARBARA A. LEWIS
SWORN TO JANUARY 17, 2008

EXHIBIT H

2003 Color infra-red image of a portion of the Lewis Farm where the farm employee housing was constructed. These structures were demolished prior to building the housing.

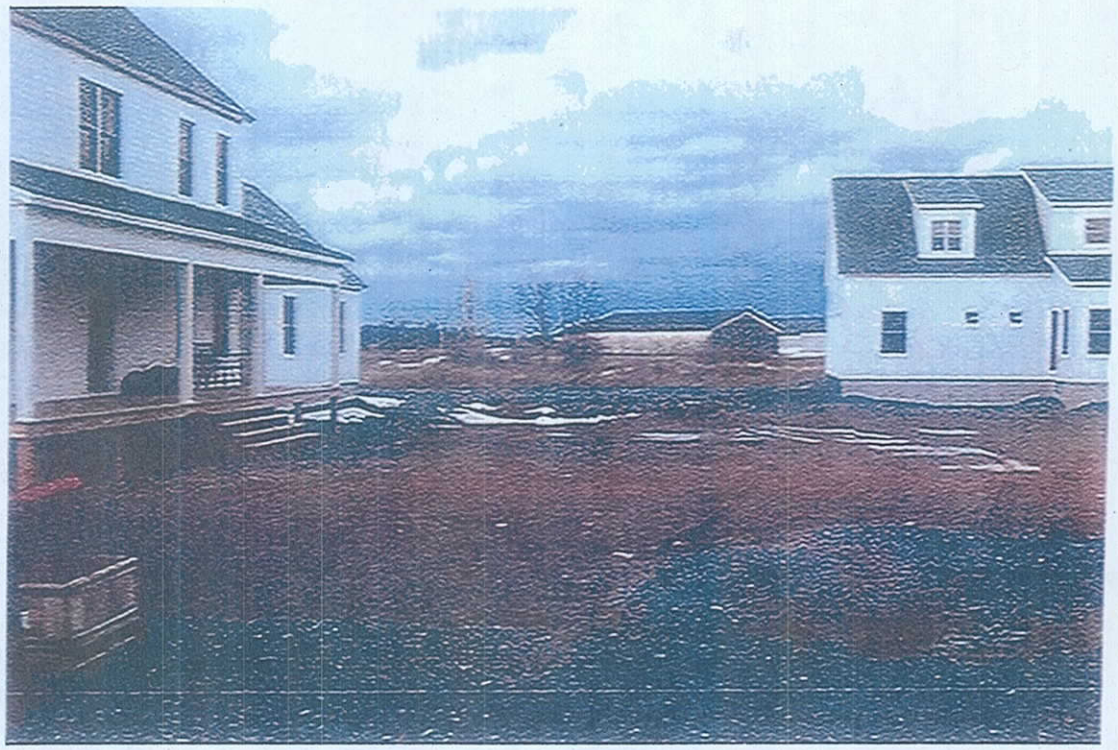


This is a 2008 image of the clustered housing on the Lewis Farm. Homes will be used to house farm employees. The housing was constructed on the same footprint where a home and barns existed in the 2003 image. The edge of the Hamlet of Whallonsburg, no more than 200 feet away, is evident behind the South Family Cottage.



Farm employee housing clustered together with a combined leach field that will be used by all three structures. The Homes are located in close proximity to the barns.

Guest home on the farm. Image taken looking east toward the High Peaks. Such views do not exist where the farm employee housing is located.



Barns housing the farm's equipment is located adjacent to the clustered homes. Common yard will contain the leach field, which will be used by all three of the homes.

The Lewis Family Farm employee housing cluster on Christian Road, looking west.

The Lewis Family Farm cow shed.

Lewis Family Farm's farm manager's house, farm barn, and farm office with orchard and interior Lewis Farm Family road in foreground.

Lewis Family Farm field with wascob in foreground, a soil conservation and sediment control structure.

Lewis Family Farm employee housing cluster; wascobs in field and barn plaza on right. Farm interior gravel road in foreground.

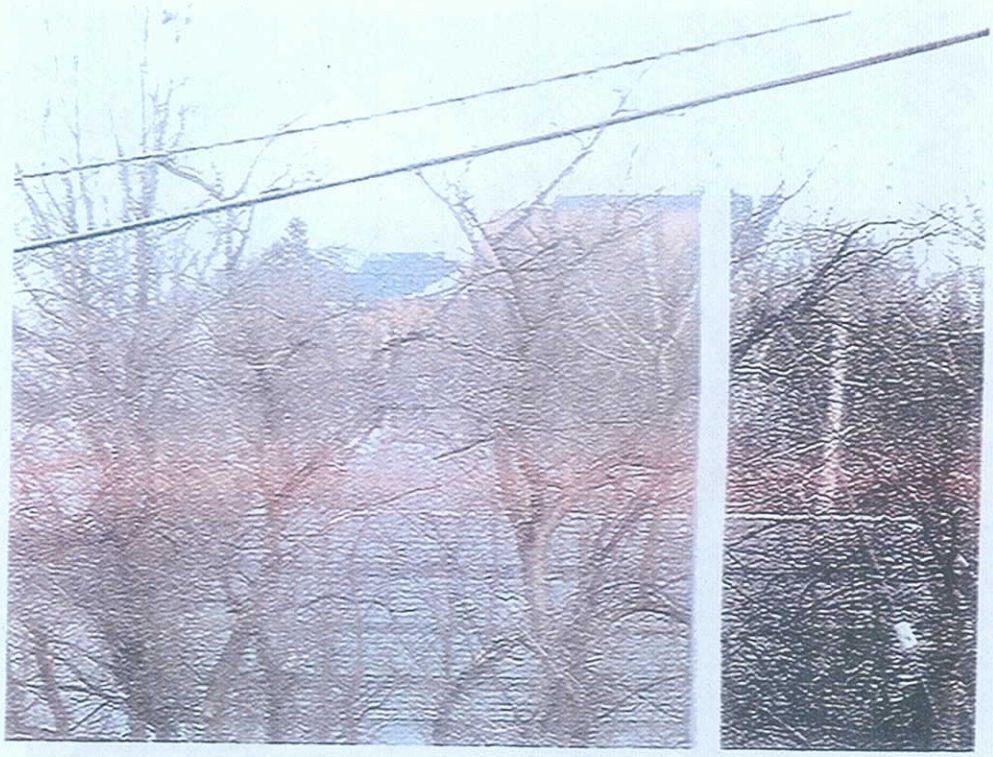
Lewis Family Farm employee housing cluster from Barn Plaza with bridge and wetlands in foreground.

Lewis Family Farm bridge over wetlands with farm office, farm barn, and farm manager's house in background.

Hamlet houses and Lewis Family Farm employee housing cluster looking northeast from the Hamlet's Angier Hill Road.

Traditional Hamlet white house with slate roof and Lewis Family Farm housing cluster looking north from Angier Hill Road.

Traditional neighbor's house with Lewis Family Farm's grain bins on edge of field.



Lewis Family Farm employee housing cluster roofs in background looking east from Hamlet; Hamlet roofs and wires in foreground.

Hamlet houses and Lewis Family Farm employee housing cluster from Hamlet on Whallons Bay Road.

AFFIDAVIT OF KLASS MARTENS
SWORN TO JANUARY 17, 2008

ADIRONDACK PARK AGENCY

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

Agency File: E2007-041

AFFIDAVIT OF KLAAS MARTENS

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

Klaas Martens, being sworn, deposes and says:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Klaas Martens

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

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

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

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

ADIRONDACK PARK AGENCY

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

AFFIDAVIT

Agency File: E2007-041

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

John J. Privitera, being duly sworn, deposes and states as follows:

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

2. I make this affidavit in support of the Lewis Family Farm's request for dismissal of this enforcement proceeding and annulment of the cease and desist order, and in opposition to staff's application for imposition of penalties without a hearing.

3. Despite the expansiveness of the Adirondack Park, precious agricultural land only makes up a miniscule amount of the Park. Therefore, it is of paramount importance that these lands be protected as valuable open space and that farmers in the Park be encouraged to develop and plant their land. A map of the Park highlighting agricultural district land is attached as **Exhibit "A"**.

4. It is my legal opinion that the New York State Constitution, Agriculture and Markets Law, and Adirondack Park Agency Act, Rivers Act and applicable regulations all require that farm employee housing be exempt from regulation by the Adirondack Park Agency.

5. On November 26, 2007, Commissioner Patrick Hooker of the New York State Department of Agriculture and Markets sent a letter to Chairman Curt Stiles of the Adirondack Park Agency stating that State agriculture policy protects farm worker housing as exempt from regulation by the Adirondack Park Agency. A copy of the November 26, 2007 Letter from Commissioner Hooker is attached as **Exhibit "B"**.

6. Commissioner Hooker's letter reinforces the New York State Department of Agriculture and Markets' official position on farm worker housing as evidenced in the Department's Guidelines for Review of Local Laws Affecting Farm Worker Housing, which were published on August 27, 2003. A copy of the Guidelines is attached as **Exhibit "C"**.

7. As set forth in the accompanying memorandum of law, the Adirondack Park Agency has a constitutional and statutory duty to formulate policy that encourages the development of farming. I have studied all publicly available material concerning this issue and have concluded that the Adirondack Park Agency does not have a published policy that encourages farming or protects the open space and development of farms in the Park. A record of policies listed on the Agency's website is attached as **Exhibit "D"**. It does not include an agricultural policy.

8. Because the Adirondack Park Agency lacks the requisite pro-farm development policy, the Agency must defer to Commissioner Hooker's findings, which represents the state farm policy, as determined by the New York State Department of Agriculture and Markets.

9. Following this general policy of encouraging farming and exempting farm employee housing from Agency regulation would not only comport with the Agency's

constitutional and statutory duties, but it would also aid in combating one of the most pressing issues facing the residents of the Park – affordable housing. The 2006 Annual Report of the Adirondack Park Agency considers reasonably priced housing as one of the three most "important issues for the region's long-term economic viability." (2006 Annual Report, pg. 27). A copy of the relevant excerpts of the 2006 Annual Report is attached as **Exhibit "E"**.

10. The Adirondack Park Agency's enforcement policy provides that cease and desist orders will be issued only in cases "where there is on-going environmental damage." (See Agency's General Enforcement Guidelines, pg. 3). A copy of the Agency's General Enforcement Guidelines is attached as **Exhibit "F"**.

11. Thus, the Agency violated its policy in this case by issuing a cease and desist order to the Lewis Family Farm since there is no on-going environmental damage. Indeed, Agency Staff have sworn that the farm employee housing at issue in this case can stay where it is currently located.

12. The Adirondack Park Agency's website contains the "APA Jurisdictional Table", which serves as a guide to the requirements of the Adirondack Park Agency Act and Wild, Scenic and Recreational Rivers System Act. Interestingly, the APA Jurisdictional Table states that **all agricultural use structures are non-jurisdictional throughout the Park**, including in resource management areas, while forestry use structures are deemed "Class B" projects in resource management areas, but are non-jurisdictional throughout the remainder of the Park. A copy of the APA Jurisdictional Table is attached as **Exhibit "G"**. See page 6.

13. The two farm employee houses at issue in this proceeding are located near the intersection of Whallons Bay Road and Christian Road – less than 200 feet east of the possible eastern edge of the Hamlet of Whallonsburg in the Town of Essex, New York. A map showing the Agency's Land Use Classification in the Town of Essex is attached as **Exhibit "H"**, but this

is a very general color map that does not prove the precise edge of the Hamlet of Whallonsburg. Respondent reserves the right to examine this issue in this proceeding, because Exhibit H suggests Christian Road may be closer to the Hamlet. (See also Affidavit of Douglas Miller, Exhibits B & C). The Lewis Family Farm has clustered its nine barns and three farm employee houses on the edge of the Hamlet of Whallonsburg, which ought to be commended not penalized.

14. Indeed, the Agency really should embrace the Lewis Family Farm for having created much more open space than the Act envisions. The Lewis Family Farm consists of 1200 acres, which is about two square miles. Under the intensity guidelines, if the Lewis Family Farm is destroyed and rendered bankrupt, as is apparently intended by Staff here, it will lay the groundwork for 30 individually owned, scattered houses. However, the careful planning of Barbara Lewis for these 1200 acres puts most of the development at the edges. Moreover, there are only six houses on the Lewis Family Farm, four of which are agricultural use structures.

15. The Lewis Farm employee housing cluster at the corner of Christian Road and Whallons Bay Road, is well planned as essentially part of the Hamlet of Whallonsburg, just as it is well-situated adjacent to Barn Plaza on the Lewis Family Farm. See **Exhibit "I".**

16. The value of agricultural production is of extreme importance in New York State. Governor Eliot Spitzer recently appointed the New York State Council on Food Policy, which issued a report on December 1, 2007. A copy of the New York State Council on Food Policy is attached as **Exhibit "J"**. The primary goal of the Policy is to "expand agricultural production, including locally grown and organically grown food." Policy, pg. 6. This enforcement proceeding, unfounded in policy or law, which seeks to penalize a sound agricultural practice designed to build sustainable efficiency and profitability, is directly contrary to emerging State farm policy, as identified by the New York State Council on Food Policy.

17. As the Governor stated in his first "State of Upstate Address" in Buffalo on January 16, 2008, two executive initiatives are on the horizon which relate directly to the Lewis farm employee housing project. First, a $100 million "Housing Opportunity Fund" will be created that will assist in building needed upstate housing "that form the building blocks of a sustainable community." In addition, an "Upstate Agribusiness Fund" will be created because, "Agriculture not only matters to us – we are looking to it to become one of the main forces behind upstate's economic revitalization." As the Governor stated:

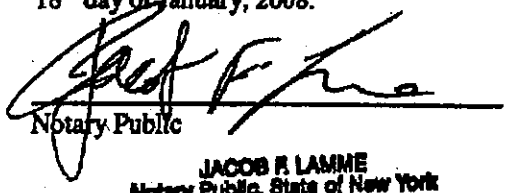
> Agriculture is not just an important part of our economy – it's a way of life in our communities. By supporting our farmers, by giving them the tools they need to access new markets, we will preserve this way of life in New York, and leave stronger farms – and a stronger state – to our children and grandchildren.
> See **Exhibit "K"**.

The Agency must breathe life into the Governor's words. There will be no farming "way of life" if farm families cannot live on farms in the Adirondacks.

18. For the reasons set forth herein, and for the reasons set forth in the accompanying affidavits and memorandum of law submitted herewith, the Lewis Family Farm respectfully requests that the Agency dismiss this proceeding in its entirety and annul the cease and desist order.

John J. Privitera

Sworn to before me this
18th day of January, 2008.



Notary Public

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

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT A

FRANKLIN
ST LAWRENCE
JEFFERSON
ESSEX
LEWIS
HAMILTON
WARREN
HERKIMER
WASHINGTON
ONEIDA
SARATOGA
FULTON
MONTGOMERY
Adirondack Park Boundary
Agricultural District Land in Green

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT B

Exhibit B: Letter (Privitera Aff. 1/18/08)

pp. 1287-1289

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

Eliot Spitzer
Governor

Patrick Hooker
Commissioner

November 26, 2007

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

Dear Mr. Stiles:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Patrick Hooker

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

Enclosures

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT C

Guidelines for Review of Local Laws Affecting Farm Worker Housing

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

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

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

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

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

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

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

A. Minimum Dimensions

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

B. Lot Size

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

C. Setbacks

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

D. Screening

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

E. Compliance with HUD Standards

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

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT D

STATE

NEW YORK STATE
Adirondack
parkagency

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Policies

The following Adirondack Park Agency policies provide the Agency and its staff documents that promote consistent execution of responsibilities, insure adherence to law and rule, and reflect a commonly agreed upon way of doing business.

(Some documents require Adobe Acrobat Reader. These documents are labeled with the PDF file name and file size.)

Agency Minutes Policy -- (Agency3_minutes.pdf 17kb)

Agency Policy, Procedures & Guidance System - (agency1.pdf 15kb)

Agency Public Comment Policy (revised August 11, 2005) - public comment policy.pdf 31kb)

General Enforcement Guidelines -- LEGAL - 1 Policy (GeneralEnforcementGuidelines.pdf 119kb)

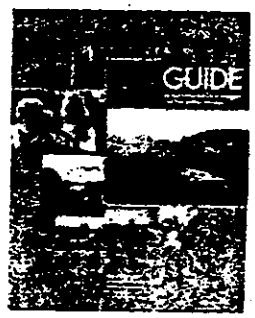
Memorandum Of Understanding Between The Adirondack Park Agency And The Department Of Environmental Conservation Concerning Implementation Of The State Land Master Plan For The Adirondack Park (APA-DEC_MOU_State_Lands.pdf 51kb)

Review of Proposed Amendments to Agency-Approved Local Land Use Programs -- (agency5.pdf 27kb)

Review of Variances Referred to the Agency from Agency-Approved Local Land Use Programs -- local_services.pdf 23kb)

Telecommunication Towers and Tall Structures Policy -- (telecom_towers_tall_structures.pdf 19kb)

If you're not sure where to start, start with the Citizen's Guide. It should answer many questions or direct you to sources that will.



Other sources of information from New York State include:
the State Library
the State Museum
the State Archives
the Department of Environmental Conservation

Fast Facts

The following documents commonly meet many needs.

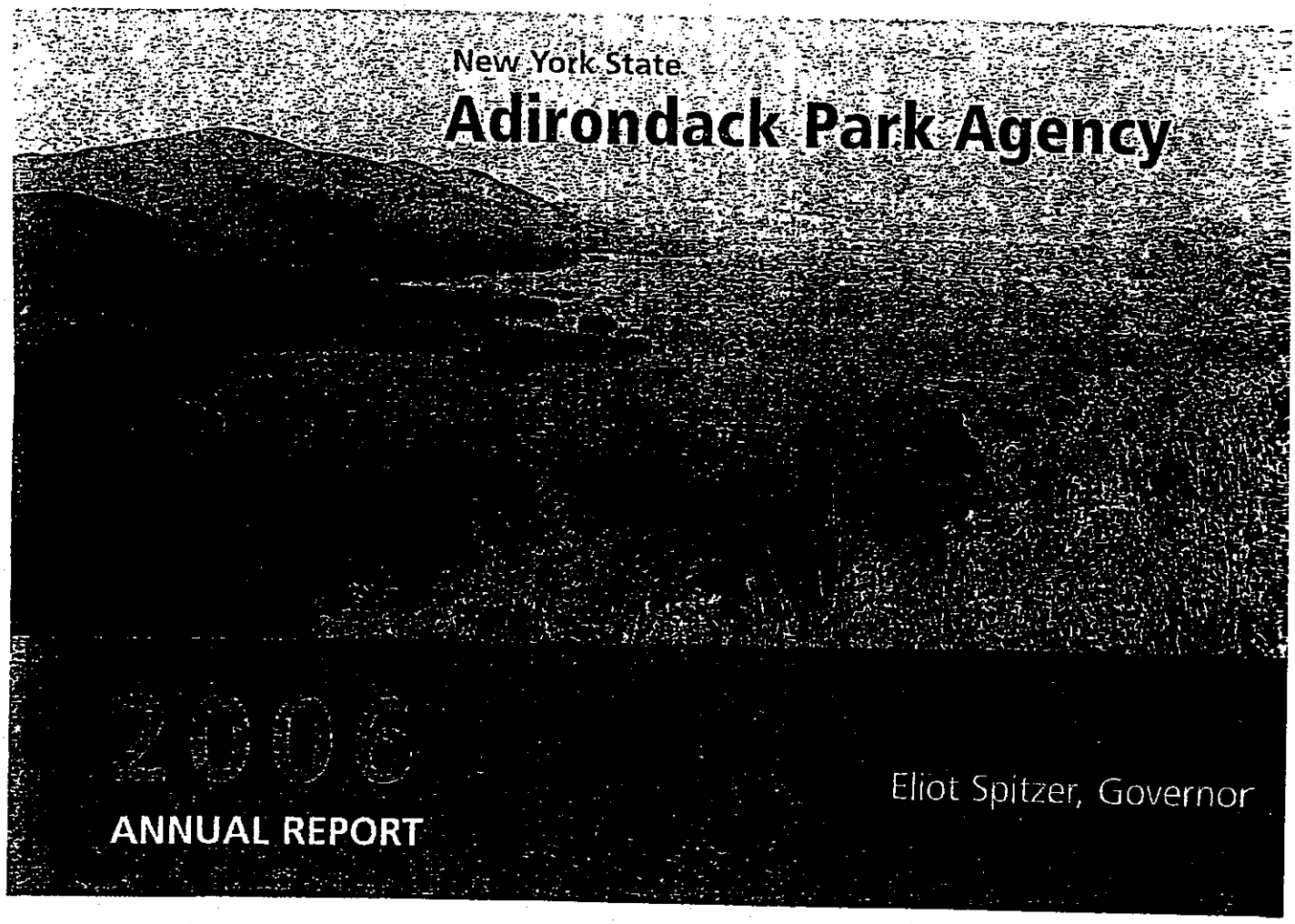
Citizen's Guide -- (CitizensGuide.pdf 370kb)
Adirondack Park Agency Act -- (294kb)
Rules and Regulations -- (670kb)
Adirondack Park State Land Master Plan -- (635kb)

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT E

Exhibit E: Portion of 2006 Annual Report (Privitera Aff. 1/18/08)

pp. 1297-1299



Economic Services

Protecting the open-space character and environmental quality of the Adirondack Park and helping to build a sustainable economy in Park communities are compatible goals for the Adirondack Park Agency. Working through the Agency's Economic Affairs Committee and its staff-level Economic Services unit, quality-of-life improvements are pursued with stakeholders, including local governments.

In 2006, the Economic Affairs Committee focused its attention on three important issues for the region's long-term economic viability: community housing or housing that is available for residents of the Park at a reasonable price; broadband; and challenges facing the paper-making industry and the forests that have traditionally been the source of wood fiber for the region's mills.

During 2006, there were new local and Parkwide initiatives to address housing needs, including the Adirondack Regional Housing Trust funded through grant monies secured by State Senator Elizabeth O'C. Little. The Agency has been considering specific ways that it can be of support to these initiatives consistent with the statutes it administers.

There is also increasing recognition of the importance of broadband service in building a sustainable economy for the Adirondack Park. During the year, the Agency closely monitored a range of new broadband planning initiatives and ensured, through designated liaisons, that any questions regarding permit jurisdiction or the permitting process are quickly answered.

Regarding paper making, the Agency has been building its understanding of global trade issues that are affecting the long-term future of this important Adirondack industry. The Board and staff recognize the important relationship of viable regional wood product firms and the long-term maintenance of vast areas of private, forested open space in the Adirondack Park. Active research into the potential for and impacts of alternative uses for Adirondack timber is being followed.

The Economic Services unit provides expertise in real estate and financial feasibility analysis, economic and fiscal impact analysis and economic development planning. It also provides general public guidance on development sites and assists project sponsors, economic developers and planners in the evaluation of specific business development sites.

R001298

Frank Mezzano, *Chair Economic Affairs*
Stephen M. Erman, *Special Assistant-Economic Affairs*

The Economic Services unit also assisted economic development planning in t Park by working with entrepreneurs needing Agency permits to establish or expa their businesses. Economic staff provided expertise on economic and fiscal issues the Regulatory Programs Division and other Agency divisions on an as-need basis and assisted in the 9th annual Local Government Day conference in Mar 2006.

The Agency is proud of its increased attention to community and economic issu and the quest for a more vibrant and sustainable economic future for the Park.

Stephen M. Erman, Special Assistant for Economic Affairs (far left), stands next to Tom Amidon, Professor and Faculty Chair, Paper Science and Engineering at SUNY/ESF; Dennis Gingles, Regional Forest Products Procurement Coordinator for International Paper; and Chris Mallon, Mill Manager for the Ticonderoga International Paper Mill. This photo was taken after their Economic Affairs Committee presentation to the Agency Board on paper making and its economic impacts to the Adirondack region.

R001299

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT F

Adirondack Park Agency Policy, Procedures & Guidance System	LEGAL - 1
Topic: General Enforcement Guidelines	
Cecil Wray, Chairman, Enforcement Committee	Effective Date: January, 2003

I. Purpose and Applicability

These General Enforcement Guidelines establish the Agency's objectives and approach for the investigation and resolution of violations of the Adirondack Park Agency Act (APA Act), the Wild, Scenic and Recreational Rivers System Act (Rivers Act) and the Freshwater Wetlands Act (FWA). Failure to obtain necessary Agency permits under these laws, or to undertake a project pursuant to the terms and conditions of an issued permit, would constitute violations to which these guidelines apply.

These Guidelines are the first in a series of guidelines intended to address issues relating to the Agency's enforcement program. Other specific enforcement guidelines may be adopted such as:

a. Substantive Standards for Settlements

b. Civil Penalty Guidelines;

c. Environmental Benefit Project Guidelines;

d. Permit Compliance Guidelines.

II. Statutory and Regulatory Enforcement Authority

Adirondack Park Agency Act

The APA Act establishes land use controls for the private lands within the six-million-acre Park. The purpose of the APA Act is to "insure optimum overall conservation, protection, preservation, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park."

Executive Law, Section 813(1) provides that any "person" [1] who violates the APA Act or Agency regulation or permit or order issued by the Agency is liable for a civil penalty up to $500 per day for each day the violation continues. Penalties are recoverable in an action by the Attorney General.

The Attorney General may also institute an action to prevent, restrain, enjoin or correct any violation, and may join in the action any appropriate person or the person responsible for the violation to take such affirmative actions as are necessary to correct the violation (Executive Law, Section 813[2]).

Any civil penalty may be released or compromised by the Agency before referral to the Attorney General, or after referral, by the Attorney General with the consent of the Agency (Executive Law, Section 813[3]).

New York State Freshwater Wetlands Act

The Agency implements the FWA within the Adirondack Park (Environmental Conservation Law, Articles 24 and 71). The purpose of the FWA is to preserve, protect and conserve freshwater wetlands and their benefits, consistent with the general welfare and beneficial development (ECL Section 24-0103). Any loss of wetlands causes a loss of important wetland benefits, such as protection of surface and ground water, flood control, wildlife habitat, recreation, open space and aesthetic appreciation, and other values (ECL Section 24-0105).

Pursuant to ECL Section 71-2303, the Agency can impose penalties up to $3,000 for each violation of the FWA after notice and opportunity for hearing, and can order remediation and restoration of wetlands by the violator after a hearing.

New York State Wild, Scenic and Recreational Rivers System Act

The Legislature has determined that certain of the State's rivers and their environs possess outstanding natural, scenic, historic, ecological and recreational values, and enacted the Rivers Act so that the designated rivers would be preserved in their free-flowing condition for the benefit and enjoyment of present and future generations (Environmental Conservation Law, Article 15, Title 27). For private lands in the Park, the Rivers Act is implemented by the Agency.

Section 15-2723 of the Rivers Act provides that any person who violates any provision of or order issued pursuant to the Rivers Act may be compelled to comply and shall pay a civil penalty of not less than $100 and not more than $1,000 per day for each day of the violation.

1 "Person" includes individuals, businesses or other private entities, and municipalities, but not the State or State agency.

Agency Enforcement Regulations

Agency regulations (9 NYCRR Part 581) effective January, 2003, provide the process for implementation of the Agency's enforcement authority under the APA Act, FWA, and the Rivers Act. The regulations provide for issuance of administrative cease and desist orders, requests to redress damage to environmental resources, opportunity to resolve violations by agreement, and an administrative process to be implemented when a Notice of Apparent Violation has been issued by staff. For violations of the FWA, the Agency may impose penalties after notice and opportunity for hearing, and can order remediation and restoration of wetlands after a hearing. In all cases involving permit violations, the Agency may, after an opportunity for a hearing, revoke, suspend or modify the permit. The Agency will not process an application for a permit or variance for property involved in a violation. An unresolved case may be referred to the Attorney General for civil action.

III. Agency Enforcement Objectives

The Agency regulates land use and development on private lands within the Adirondack Park through a permitting program. Effective enforcement of the Agency's laws, regulations, permits and orders is fundamental to the meaningful regulation of land use and development in the Park and to the fulfillment of the Agency's statutory mandate to protect the natural resources of the Park.

In any case where there is on-going environmental damage, the Agency will seek cessation of the on-going actions and immediate remediation of the damage.

The primary objective of the Enforcement Program is to obtain compliance with regulatory environmental requirements. The Agency will require actions to ensure that the environmental damage created by violations will be eliminated or minimized for the long term.

A further objective of the program is to deter additional violations, either by that landowner or other landowners, or the public. The consistently applied requirement that properties in violation be brought into compliance with regulatory environmental standards has a significant deterrent effect. The imposition of civil penalties in appropriate cases also creates a significant deterrent effect. Violators should not profit from the undertaking of a violation. To that end, the Agency will seek actions that eliminate the economic benefit derived from violations. Where intentional or knowing violations occur, the Agency's objective will be to make the cost of noncompliance greater than the cost of compliance would have been.

Agency enforcement efforts will be calculated to encourage prompt, voluntary cooperation resulting in the firm, but fair resolution of violations. It is the Agency's intention to generally provide an incentive to violators who voluntarily and promptly agree to a binding obligation to achieve resolution of the violation, both with respect to remediation and the payment of any civil penalties. Prompt and voluntary remediation is

far more effective to environmental protection than adjudication. Prompt resolution also contributes to the Agency's efforts to address other violations by allowing staff to use its time on other cases.

Finally, the Agency's enforcement process should be efficient, fair, and consistent, taking into account particular facts and circumstances and the need to ensure environmental protection.

IV. Preventive Measures

The most effective enforcement tool is the prevention of violations before they occur. Voluntary compliance by the people who live, work or recreate in the Park is the key to the future of the Park and the protection of its resources. In order for the people of the Park to both appreciate the basis for and comply with Agency regulations, relevant information must be readily available.

Therefore, the Agency will promote public awareness and understanding of the value of the Park resources and of proper design and technique in executing development projects. The Agency will make every effort to prevent violations by continuing to provide assistance to the public in jurisdictional matters, and by ensuring that the project review process is timely and permitting requirements are clear, based on specific and accurate development plans. The Agency will continue to establish and participate in various outreach and training programs, and to enhance communications and the sharing of information between the Agency and local governments. All these actions are designed to apprise the public and local officials of the potential for Agency jurisdiction, perhaps preventing some violations.

The Agency has for thirty years been the subject of considerable public scrutiny and press coverage. Therefore, the Agency expects that landowners, developers, attorneys, purchasers, real estate agents and local government officials are aware of the potential for Agency jurisdiction. The Agency has, since its inception, maintained staff available to answer questions relating to its jurisdiction, the permit process, and other Agency matters. Hence, the Agency anticipates that the public and professionals practicing in the Park will take advantage of the service offered and ascertain the legal status of a parcel or whether there is Agency jurisdiction over a proposed action prior to purchase or action.

V. Enforcement Procedures

Investigation

The Agency receives complaints about possible violations from the public and staff. Complaints will be investigated by staff and no determination of violation will be made unless and until there is sufficient proof. Investigations will be prioritized according to the potential for significant environmental damage and the need for prompt action.

Agency enforcement officers will undertake the investigation of the alleged violations assigned to them, including obtaining information to determine the legal and factual history of the site and its use, whether a violation has in fact occurred, and options for resolution. A staff attorney is assigned to each case to ensure legal guidance. Agency project review and resource analysis staff are consulted on issues which require more expertise. Once all the necessary legal and factual information has been obtained, and if a violation has been demonstrated, the enforcement officer and assigned attorney will prepare a recommendation for resolution of the violation.

Administrative Resolution of Violations by Staff

The Executive Director or his designee will make all reasonable efforts to resolve violations with the voluntary cooperation and/or consent of the violator(s) and landowners. Almost all violations should be resolved at this level of the enforcement process to ensure the most efficient use of staff resources, and timely compliance and/or remediation of environmental damage. In developing proposed resolutions, input from appropriate executive, legal, technical, and project review staff must be obtained. Resolutions of violations should generally be consistent in similar cases, while also taking into account the specific facts and circumstances of each case. When applicable, proposed resolutions should be consistent with guidelines subsequently developed in this enforcement guideline series.

Settlement agreements entered into to resolve a violation are not permits and are not a means to bypass or circumvent the legal process and protections created by the permit system. Enforcement staff does not have the benefit of the statutory requirement that a project applicant provide all necessary information; they cannot compel production of the detailed information and plans usually required for a project to be evaluated for approval. Moreover, enforcement staff will not have the benefit of the public comment provided for in the project review process. The resolution of many violations will therefore include a requirement that the individuals involved apply for a permit for the project which has already been undertaken. However, the referral of a violation to the after-the-fact permit process will not be allowed unless or until all necessary site stabilization and restoration has occurred and the appropriate civil penalty has been paid.

When violations cannot be resolved at the staff level, they may be referred to the Enforcement Committee for resolution or, in the case of violations of the Freshwater Wetlands Act or of an Agency permit, to the Agency for a determination and order.

Administrative Resolution of Violations by the Enforcement Committee

The Enforcement Committee shall consider violations of the APA Act or the Rivers Act upon staff referral or at its request. The Agency may consider such violations instead of the Enforcement Committee upon a referral by the Committee or a request by a majority of Agency members. A determination shall be made as to whether a violation has occurred and include an appropriate disposition of the matter. Such disposition may

include a proposal to resolve the violation administratively, referral of the violation to the Attorney General, or adjournment of the matter. Where contested factural issues exist, the Enforcement Committee or the Agency may request that a fact-finding hearing be held before making its determination. The Enforcement Committee or the Agency, in reaching a determination based on the relevant facts and circumstances of the matter, will also take into account staff efforts to resolve a violation with the voluntary cooperation and/or consent of the individuals involved.

Agency Determinations in Freshwater Wetlands Act or Permit Suspension, Modification or Revocation Proceedings

The Agency may make a determination and order in matters involving violations of the FWA Act or permit violations requiring suspension, modification or revocation of an Agency permit. The Agency's decision will be based on a record after an opportunity for an adjudicatory hearing, and will also take into account any Enforcement Committee recommendation concerning the matter. Proceedings leading to a determination and order in such matters will generally only occur after staff have made a reasonable effort to resolve the violations(s) with the voluntary cooperation and/or consent of the individuals involved.

Civil Action by the Attorney General on behalf of the Agency

Where violations cannot be resolved at the administrative level, or where judicial involvement is appropriate to obtain access to property, cooperation in the investigation process, or the immediate cessation of ongoing environmental damage, the Attorney General may be asked to initiate appropriate civil action on behalf of the Agency. In such cases, all prior settlement offers and negotiations shall be inadmissible as evidence in such proceedings consistent with the Civil Procedure Law and Rules.

VI. Legal Effect

The guidance and procedures set out in this document are intended solely for the use of Agency staff. They are not intended to create any substantive or procedural rights, Enforceable by any party in administrative or judicial litigation with the State of New York. The Agency reserves the right to act at variance with these guidelines and each case will be evaluated as to its particular facts and circumstances.

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT G

SUMMARY OF ADIRONDACK PARK AGENCY AUTHORITY OVER LAND USE AND DEVELOPMENT AND SUBDIVISIONS

HIS CHART IS INTENDED AS A GENERAL GUIDE TO THE REQUIREMENTS OF THE DIRONDACK PARK AGENCY ACT, WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM ACT, ND FRESHWATER WETLANDS ACT. WHILE IT IS A GENERAL SUMMARY OF THEM, IT DOES OT INCLUDE ALL THE PROVISIONS OF THESE LAWS.

ERSONS CONTEMPLATING A NEW LAND USE OR DEVELOPMENT OR SUBDIVISION, OR AN XPANSION OF 25% OR MORE OF AN EXISTING USE ARE URGED TO CONTACT THE AGENCY .O. BOX 99, RAY BROOK, NY 12977 [518-891-4050]) WHICH WILL PROMPTLY ISSUE A FORMAL, INDING DETERMINATION AS TO WHETHER AN AGENCY PERMIT OR VARIANCE IS ECESSARY.

N CHECKING WHETHER APA AUTHORITY MAY APPLY TO A PROPOSED ACTIVITY, EACH ECTION OF THE CHART SHOULD BE REVIEWED.

HORELINE RESTRICTIONS

HESE RESTRICTIONS APPLY TO ALL NEW (POST AUGUST 1, 1973) LAND USE AND EVELOPMENT AND SUBDIVISION ON SHORELINES, WHETHER OR NOT A PERMIT IS ALSO ECESSARY. THE AGENCY IS AUTHORIZED TO ISSUE VARIANCES TO THEM UPON A SHOWING F "PRACTICAL DIFFICULTY."

		APA ACT LAND USE AREAS					
		HAMLET	MODERATE INTENSITY USE	LOW INTENSITY USE	RURAL USE	RESOURCE MGMT.	INDUSTRIAL USE
Minimum Setback from Mean high water mark (m.h.w.m.).	Building (for navigable waterways)	50 Ft.	50	75	75	100	None
	Septic System (for navigable & non-navigable waterways)	100 Ft.	100	100	100	100	100
Minimum Lot Width		50 Ft.	100	125	150	200	None
Minimum Frontage For Deeded or Contractual	5-20 lots	100 Ft.	100	100	100	100	100
	21-100 lots	100 Feet plus 3 Ft. for each lot exceeding 20					
	101-150 lots	340 Feet plus 2 Ft. for each lot exceeding 100					

Over 150 lots	440 Feet plus 1 Ft. for each lot exceeding 150

'egetative Cutting Restrictions

Vithin 35 feet of m.h.w.m., not more than 30% of the trees over 6" DBH during any 10 year period.
Vithin 6 feet of m.h.w.m., up to 30% of the shorefront may be clear of vegetation on any lot.

'RESHWATER WETLANDS PROJECTS

'ERMITS ARE REQUIRED FOR A WIDE VARIETY OF ACTIVITIES IN FRESHWATER WETLANDS. VETLANDS INCLUDE ANY LAND ANNUALLY SUBJECT TO PERIODIC OR CONTINUED NUNDATION AND COMMONLY CALLED BOGS, SWAMPS, OR MARSHES, AS WELL AS OPEN VATERS IMMEDIATELY ADJACENT THERETO OR SURROUNDED THEREBY IF ESSENTIAL TO 'HEIR PRESERVATION THEY ALSO INCLUDE SOME OTHER TYPES OF LAND THAT MOST EOPLE WOULD NOT CONSIDER WETLANDS, SUCH AS "SPRUCE SWAMPS" AND ARTIFICIAL IUDFLATS EXPOSED BY RESERVOIR DRAWDOWNS. WETLANDS ARE REGULATED IF THEY XCEED ONE ACRE IN SIZE OR, REGARDLESS OF SIZE, IF THEY ARE ADJACENT TO AND HAVE A REE INTERCHANGE OF SURFACE WATER WITH A LAKE, POND, RIVER OR STREAM. THE GENCY WILL, UPON REQUEST OF ANY PERSON CONTEMPLATING LAND USE, DEVELOPMENT, UBDIVISION OR OTHER ACTIVITY WHICH MIGHT INVOLVE A WETLAND, DETERMINE VHETHER WETLANDS ARE PRESENT AND THE EXACT LOCATION OF THEIR BOUNDARIES.

PERMITS ARE NEEDED FOR THE FOLLOWING **IF WITHIN A WETLAND:**

1. Land use and development or subdivision;
2. Draining, dredging, excavation, removing soil, peat, mud, sand, shells, or gravel;
3. Dumping or filling soil, stones, sand, gravel, mud, rubbish or fill of any kind.

PERMITS ARE NEEDED FOR THE FOLLOWING **WHETHER OR NOT** THEY OCCUR WITHIN A WETLAND:

1. Any forms of pollution, including installation of septic tanks and sewer outfalls, or discharge of sewage effluent or other liquid waste into or so as to drain into the wetland; and
2. Any other activity which harms the wetland

PERMITS ARE NEEDED FOR THE INSTALLATION OF ON-SITE SEWAGE DRAINAGE FIELDS OR SEEPAGE PITS, OR SEWER OUTFALLS, **IN A WETLAND OR WITHIN 100 FEET OF ONE.**

PROVIDED THERE IS NO FILLING OR OTHER MATERIAL DISTURBANCE, PERMITS ARE **NOT** NEEDED FOR:

WITHIN 100 FEET OF ONE.

1. Fishing, hunting, trapping, ricing, berrying shell-fishing, aquaculture;
2. Grazing or watering livestock;
3. Making reasonable use of water resources;
4. Harvesting natural products;
5. Selectively cutting timber and constructing skid trails without using fill; and
6. Draining for growing agricultural product

PROJECTS WITHIN ¼ MILE OF WILD, SCENIC OR RECREATIONAL RIVERS

SPECIAL PERMIT REQUIREMENTS AND OTHER REGULATIONS APPLY, OUTSIDE OF HAMLE AND MODERATE INTENSITY USE AREAS, WITHIN ONE-QUARTER MILE OF THE FOLLOWIN RIVERS. PLEASE CONTACT THE AGENCY IF YOU ARE PLANNING LAND USE, DEVELOPMENT SUBDIVISION IN THESE AREAS.

Ampersand Brook
Ausable River (East Branch)
Ausable River (Main Branch)
Ausable River (West Branch)
Black River
Blue Mountain Stream
Bog River
Boquet River
Boreas River
Cedar River
Cold River
Deer River
East Canada Creek
Grasse River (Middle Br.)
Grasse River (North Br.)
Grasse River (South Br.)
Hudson River
Independence River
Indian River
Jordan River
Kunjamuk River
Long Pond Outlet
Marian River
Moose River (Middle, North South and Main Branches)
Opalescent River
Oswegatchie River (Main Br.)
Oswegatchie River (Mid. Br.)
Oswegatchie River (West Br.)
Otter Brook
Piseco Lake Outlet
Raquette River
Red River
Rock River
Round Lake Outlet
Sacandaga River (East Br.)
Sacandaga River (Main Br.)
Sacandaga River (West Br.)
St. Regis River (East Br.)
St. Regis River (Main Br.)
St. Regis River (West Br.)
Salmon River
Saranac River (Main Br.)
Schroon River
West Canada Creek
West Canada Creek (South Br.)
West Stony Creek

REGIONAL PROJECTS

		APA ACT LAND USE AREAS					
		HAMLET	MODERATE INTENSITY USE	LOW INTENSITY USE	RURAL USE	RESOURCE MGMT.	INDUSTRIAL USE
	Principal Buildings per		500	200	75	15	

Principal		500	200	75	15	
Average Lot		1.8	8.2	8.5	42.7	
	"NJ"	"A"	"B"		"IC-B"	
	NJ	A	B		IC-B	
Wetlands						
Within 1/4	NJ					NJ
Elevation of	NJ					NJ
Within 1.8	NJ					NJ
Within 150ft of	NJ	NJ	NJ			NJ
Within 800ft of	NJ	NJ	NJ	NJ		NJ
1 Single Family	NJ	NJ	NJ	NJ	B	IC-B
2 Individual	NJ	NJ	NJ	NJ	B	IC-B
	NJ 2 to 99 lots	NJ 2-14 lots	NJ 2-9 lots	NJ 2-4 lots		

128629.1

Review Authority by Type of Land Use and Development

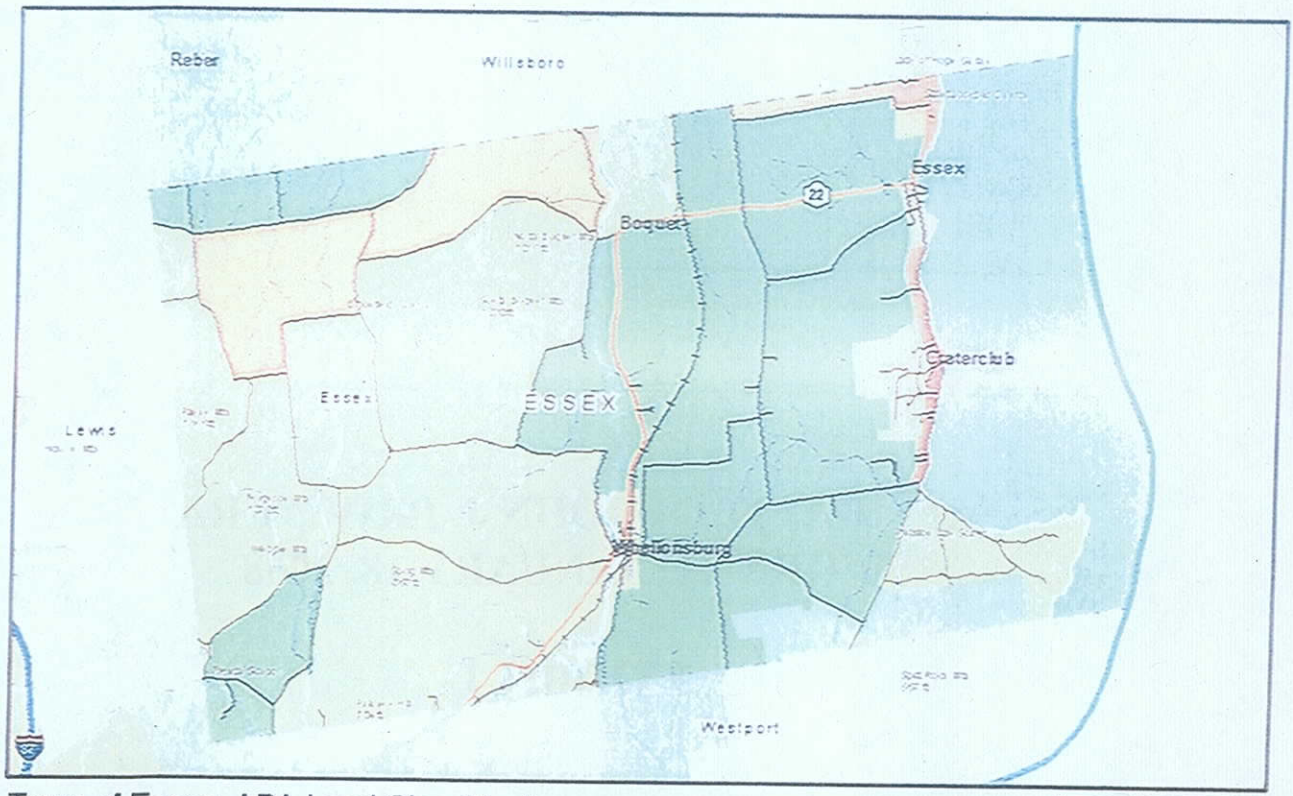
Residential Uses and Subdivisions

1. Single Family	NJ	NJ	NJ	NJ	B	IC-B
2. Individual	NJ	B 15-74 lots or 2-14 lots if any shoreline lot less than 25,000 sq. ft. or inland lot less than 40,000 sq ft.	B 10-84 lots or 2-9 lots if any shoreline lot less than 50,000 sq. ft. or inland lot less than 120,000 sq ft.	B 5-19 lots or 2-4 lots if any shoreline lot less than 150,000 sq. ft. or inland lot less than 320,000 sq ft.	B	IC-B
3. Residential Subdivision	NJ 2 to 99 lots	Or if any lot does not conform to the shoreline lot width requirements.			A All sub-divisions	IC-B
	A 100 or more lots	A 75 or more lots	A 35 or more lots	A 20 or more lots		
4. Mobile Home Court	NJ	B	B	B	IC-B	IC-B
	A 100 or more lots	A 75 or more lots	A 35 or more lots	A 20 or more lots		
	NJ	B	B	B		
	A 100 or more lots	A 75 or more lots	A 35 or more lots	A 20 or more lots		
6. Open Space Recreation	NJ	NJ	NJ	NJ	NJ	NJ

Public/Open Space/Forestry/Agriculture	Fishing Cabin, Private Club Structure					B 500 sq.ft. or more
	12. Game Preserve, Private Park	NJ	NJ	NJ	NJ	NJ	IC-B
	13. Private Road	NJ	NJ	NJ	NJ	NJ	NJ
	14. Cemetery	NJ	NJ	NJ	NJ	IC-B	IC-B
	15. Private Sand-Gravel Extraction	NJ	NJ	NJ	NJ	NJ	NJ
	16. Public Utility Use	NJ	NJ	NJ	NJ	NJ	NJ
	17. Public/Semi-Public Building	NJ	B	B	B	IC-B	B
	18. Municipal Road	NJ	B	B	B	B	B
Commercial/Industrial/Recreational	19. Agricultural Service Use	NJ	B A 10,000 sq.ft. or more	B A 5,000 sq.ft. or more	B A 2,500 sq.ft. or more	A	B
	20. Commercial Use	NJ	B A 10,000 sq.ft. or more	B A 5,000 sq.ft. or more	B A 2,500 sq.ft. or more	IC-B	B
	21. Tourist Accommodation	NJ A if 100 or more units	B	B	A	IC-B A if Ski Center	IC-B
	22. Tourist Attraction	NJ	A	A	IC-B	IC-B	IC-B
	23. Marina, Boat Launching Site	NJ	B	B	B	IC-B	IC-B
	24. Golf Course	NJ	B	B	B	B	IC-B

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT H



Town of Essex APA Land Classification

Park Blueline
State Boundary
County Boundary
Town Boundary
Village Boundary

Land Classification
Hamlet
Moderate Intensity
Low Intensity
Rural Use
Resource Mgmt.

Industrial Use
Wilderness
Canoe Area
Primitive
Wild Forest
Intensive Use

Historic
State Administrative
Pending Classification
Open Water
Stream

1 Mile

Adirondack
Park Agency

February 2005

This map should
not be used for legal
jurisdictional determinations.

Locator

[M012867.1]

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT I

The location of the Lewis Family Farm employee housing cluster is marked by the green arrow.

Note the location of the houses in relation to the Hamlet of Whallonsburg and the Lewis Family Farm's Barn Plaza.

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT J

NEW YORK STATE COUNCIL ON FOOD POLICY

December 1, 2007

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NEW YORK STATE COUNCIL ON FOOD POLICY

December 1, 2007

Council Chairperson

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

Council Members

Mindy Bockstein, Chairperson of the New York State Consumer Protection Board
Linda Bopp, Executive Director of the Nutrition Consortium of New York State
Bruce Both, President of the United Food and Commercial Workers Union; Local 1500
Michael Burgess, Director of the New York State Office for the Aging
Mary Warr Cowans, RD, CDN, Associate Director of the Division of Nutrition at the New York State Department of Health
Dr. Richard Daines, Commissioner of the New York State Department of Health
Raymond Denniston, Food Service Director of the Johnson City Central School District; Co-Chairperson of the New York State Farm to School Coordinating Committee
Diane Eggert, Executive Director of the Farmers Market Federation of New York
John Evers, Executive Director of the Food Bank Association of New York State
Daniel Gundersen, Upstate Chairperson of Empire State Development Corporation
David Hansell, Commissioner of the Office of Temporary and Disability Assistance
Dr. Susan Henry, Dean of the New York State College of Agriculture and Life Sciences at Cornell University
Richard Mills, Commissioner of the State Education Department
Cathryn Mizbani, Senior Extension Administrator; WIC Program Coordinator of the Cornell University Cooperative Extension of Schenectady County
Liz Neumark, Chief Executive Officer of Great Performances; Sylvia Center
William Rapfogel, Executive Director and Chief Executive Officer of Metropolitan Council on Jewish Poverty
Irwin Simon, Founder, Chairperson, President and Chief Executive Officer of the Hain Celestial Group, Inc
Julie Suarez, Director of Public Policy for the New York Farm Bureau
Eleanor Wilson, MS, RN, CDN, Corporate Dietitian for Price Chopper Supermarkets, Inc
Catharine Young, New York State Senator, 57th District; Chairperson of the Senate Agriculture Committee

R001320

Executive Summary

The New York State Council on Food Policy was created in May of 2007 by Governor Eliot Spitzer's Executive Order No. 13, in which it is recognized that a need exists to support the State's agricultural industry as well as to ensure that all New Yorkers have access to safe, affordable, nutritious food. The twenty-one members of the Council on Food Policy were appointed in September of 2007 after a rigorous and thoughtful selection process. The Council members include seven state agency heads and 14 members from the public and non-profit sectors. Together they represent nearly all aspects of the food system. At the time of appointment, Governor Spitzer charged the members of the Council with the tasks of helping the State coordinate its food-related policies and promote healthier communities.

In October of 2007, the Council on Food Policy held its first meeting in Albany, NY. This meeting was open to the public and well attended. The meeting consisted of short overviews of: State demographics, some of the existing food security and nutrition related programs operating in the State, and the food industry in the State. A discussion period followed in which Council members expressed their food policy priorities and offered suggestions for key issue areas to focus upon in the coming year. Many members of the public seized the opportunity to contribute their food policy related comments and concerns to the Council members.

As a result of information shared at the Council meeting, individual expertise, and consideration of public comments, Council members identified four (4) key food policy issue areas for more in-depth examination in the coming year. Maximization of collaboration potential along agency, public and private sector lines within these key issue areas contributed to the discourse. Health concerns, such as the need to combat diet-related diseases such as obesity, diabetes and heart disease strongly influence all priorities presented.

R001321

Key Issue Areas identified by the Council on Food Policy are as follows:

1) Maximize participation in food and nutrition assistance programs;
2) Strengthen the connection between local food products and consumers;
3) Support efficient and profitable agricultural food production and food retail infrastructure; and
4) Increase consumer awareness and knowledge about healthy eating and improve access to safe and nutritious foods

Researching and evaluating the efficacy of the Key Issue Areas and associated priorities to meet the objectives of Executive Order No. 13 will be the basis for Council activities in the coming year. The Council proposes to develop and recommend a specific food policy for the State that will ensure the availability of an adequate supply of affordable, fresh and nutritious food to its residents, and expand agricultural production. Additionally, the Council proposes to develop and recommend a strategic plan for implementation of the State food policy, including benchmarks and criteria for measuring progress. Further, the Council intends on offering comments on State regulations, legislation and budget proposals in the area of food policy.

Being highly sensitive to the value of stakeholder input to gain accurate perspective on the issues, the Council members are preparing to hold numerous public forums around the State. The next scheduled meetings for the Council are in May and October of 2008 or as business requires.

R001322

NEW YORK STATE COUNCIL ON FOOD POLICY

December 1, 2007

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Enclosed: New York State Council on Food and Nutrition Policy: "Five Year Food & Nutrition Plan 1988-1992" (1987)		

NEW YORK STATE COUNCIL ON FOOD POLICY

December 1, 2007

I. Introduction

Governor Eliot Spitzer created the New York State Council on Food Policy by Executive Order No. 13 that was delivered on May 18, 2007 (Appendix A). In this document, Governor Spitzer specifies that:

> 5. The Council shall: (a) develop and recommend a food policy for the State which recognizes that it is in the best interests of the State to ensure the availability of an adequate supply of affordable, fresh, nutritious food to its residents; (b) develop and recommend State policies to expand agricultural production, including locally-grown and organically-grown food; (c) develop and recommend a strategic plan for implementation of the State food policy, including benchmarks and criteria for measuring progress in achieving State food policy objectives; and (d) offer comments on State regulations, legislation and budget proposals in the area of food policy, to ensure a coordinated and comprehensive inter-agency approach to food policy issues.

The ensuing report is in response to directives of Executive Order No. 13 that mandating, among other things, that:

> 6. The Council shall issue a written report on the first day of December each year on: (a) the activities of the Council during the preceding year; (b) recommended food policies for the State; (c) recommended changes to the strategic plan; (d) an account of the progress made in achieving the goals of the Council; and (e) actions which are necessary to implement the recommendations of the Council and effectuate the purposes of this Order.

II. History: 1984 New York State Council on Food and Nutrition Policy

Based on the *New York State Five Year Food and Nutrition Plan 1988-1992 (1987)*

In 1984 evidence indicated that a substantial number of New Yorkers were "neither adequately fed nor nourished... despite state and federal initiatives to

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improve peoples' access to an adequate diet and promote public understanding of ... good nutrition". At that time Governor Mario Cuomo established the New York State Council on Food and Nutrition Policy "to address and access this problem, and to propose ways to correct it" in the form of a Five-Year Plan. Seven heads of state agencies involved in food and nutrition programs were appointed by the Governor with the Commissioner of Health serving as Chairperson. A twenty-two member advisory committee to the Council included representatives from agricultural, nutrition, food production and consumer interests.

The four purposes for the plan were to:

1) Promote good health and prevent food and diet-related diseases;
2) Alleviate and ultimately prevent hunger through increased access to food and resources;
3) Support food production in NYS while preserving environmental resources and jobs; and
4) Promote the development and economic viability of the state's food processing, marketing, and distribution industries.

In 1987, after reviewing available data, evaluating existing state programs and soliciting comments from interested parties at public meetings, the Council on Food and Nutrition Policy produced the *New York State Five Year Food and Nutrition Plan 1988-1992.* The basic goal of the recommended Food and Nutrition Policy as outlined in the *Plan* was "not only to provide adequate nutrition in an accessible and affordable manner, but to strive to achieve efficient growth in agricultural production, job generation, food security and expanded markets for goods".

As stated in the document, the 1984 Council on Food and Nutrition Policy concluded that:

- Nutrition programs are failing, often to a very significant degree, to reach or meet all the needs of their target population;

- New York State should press federal officials for more money and more state control of these initiatives; and
- Further erosion of New York's agricultural industry would not be in the state's interest if it is to achieve its goal of nutritional adequacy for all its citizens.

To correct the inadequacies found; to promote new initiatives; and to improve effectiveness of programs, twenty recommendations were proposed for food and nutrition policy in New York State. A comprehensive set of goals, objectives and recommended actions followed. A recap of the "Recommendations" from the *New York State Five Year Food and Nutrition Plan 1988-1992* with current (2007) status reports from the respective state agencies that the original recommendation was directed to is located in Appendix B.

Data tables from the *New York State Five Year Food and Nutrition Plan 1988-1992* have been updated with recent data results to parallel the 1987 data. When available, new programs and /or relevant data have been included that illustrates the state's response to meet a specific demand in the food and nutrition arena (Appendix C).

III. Activities of the New York State Council on Food Policy in 2007

A. Executive Order No. 13 Issued On May 20, 2007, Governor Eliot Spitzer issued Executive Order No. 13 announcing the creation of the Council on Food Policy (Appendix A). At that time, Governor Spitzer said:

> "Ensuring that all New Yorkers have access to safe, fresh and nutritious food is a top priority that the Council on Food Policy will be addressing head-on" ... and that ..."The Council will bring the public, producers and government together to explore ways in which we can improve our existing food production and delivery systems, expand capacity, and in particular, address the critical needs of children and low-income New Yorkers. Additionally, by expanding the sale of locally grown products, we can help struggling farmers, and expand the local agriculture and state economy."

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In Executive Order No. 13, Governor Spitzer recognizes that hunger in New York is a serious problem and further, that access to affordable, fresh, nutritious food, including fresh fruit and vegetables, especially for children, is a serious problem facing many families. Food insecurity is defined by USDA as a condition that arises from lack of money and other resources to acquire food. Research supports the link between food insecurity and health, nutrition and children's development. It is further noted that one in five low-income households buy no fruits or vegetables (fresh or processed) on a weekly basis (USDA 2005, ERR-29. USDA Agriculture Info Bulletin 792-5 2004). According to The Food Bank Association of New York State, approximately 2.1 million New Yorkers currently utilize Emergency Feeding Programs (EFP) to meet their food security need.

B. Council Members Appointed After a thorough consideration of the great number of qualified candidates drawn from state, local, private and non-profit entities interested in serving on the Council on Food Policy, Governor Spitzer appointed the members of the Council on September 19, 2007 (Governor's Press Release/0919072). At that time Governor Spitzer said: "The members of this Council will bring new and diverse expertise to this important policy area." The Council has been designed so that advocates and representatives from all areas of food system are embedded in the structure of the Council proper. This structure is significant in that it affords uninterrupted opportunities for not just comprehensive inter-agency collaborative efforts but system wide collaboration efforts.

Council members include State agency heads from the Department of Agriculture and Markets; Department of Health; Office of Temporary and Disability Assistance; Department of Economic Development; Office for the Aging; State Education Department; and the Consumer Production Board. The Council will also benefit from the expertise and insight contributed by the Dean of the New York State College of Agriculture and Life Sciences at Cornell University; an anti-

hunger advocate; two food assistance organization representatives; a nutritionist; a school food administrator; a farm organization; and three representatives from the food industry (producers, distributors, processors, retailers) one of which is involved in organic production; and members with food policy related experience recommended by the Majority and Minority Leaders from both houses of the Legislature.

C. Agriculture and Markets to Chair The Commissioner of Agriculture and Markets serves as the Chairperson of the New York State Council on Food Policy. Governor Spitzer recognizes that agriculture is a critically important industry to the State of New York and that there are significant environmental, health and economic benefits to the State and its residents from expanding agricultural production, including locally-grown and organically-grown food (Governor's Press Release/0919072).

The mission of the New York State Department of Agriculture and Markets is to foster a competitive food and agriculture industry that benefits producers and consumers alike. Agriculture makes up one-quarter of the State's land area and contributes immensely to the quality of life in New York State by generating economic activity and producing wholesome products to nourish our families. The Department works diligently to promote a viable agricultural industry, foster agricultural environmental stewardship, and safeguard our food supply (http://www.agmkt.state.ny.us/TheDepartment.html).

D. First Meeting of the Council The first meeting of the New York State Council on Food Policy was held on Monday, October 15, 2007 from 10:00 a.m. to 2:00 p.m. in Room 250 of the New York State Capitol Building. This meeting was open to the public.

After introductions and reviewing the objectives of the Governor's Executive Order No. 13, the Council members heard short presentations about New York

State demographics and the variety of federal and state food and nutrition programs currently in place. Presentations were delivered from representatives from the NYS Education Department, Department of Health, Office of Temporary and Disability Assistance, Office for the Aging, Department of Agriculture and Markets, Food Bank of NYS and Smart Growth.

Approximately twenty-five members of the public were in attendance. During an open-microphone session members of the public shared their comments and concerns with the Council members. The Council also received, and continues to receive public comments in writing.

In the afternoon, Council members shared what they believed to be some of the key issue areas to explore more in depth over the coming year. From these comments and subsequent statements from the Council members, a document was produced that outlined the "Key Issue Areas" that the Council members plan to explore in the next year. Health concerns, such as the need to combat diet-related diseases such as obesity, diabetes and heart disease strongly influence all priorities and actions proposed. Ultimately, the Council members agreed to seek avenues where collaboration can be maximized to meet the expressed needs of our communities and our State.

E. Key Issue Areas Identified The Council on Food Policy is charged with developing a food policy for the State to ensure an adequate supply of affordable, fresh, nutritious food to its residents and to expand agricultural production, including locally-grown and organically-grown food. While New York farmers produce an abundance of milk and dairy products, vegetables, fruits, meat and poultry products; and New York State offers a vast array of food assistance programs, some of our most vulnerable residents have little or no access to fresh, affordable, nutritious food. At the same time, some food assistance programs are not meeting their full potential and local farmers are having difficulty marketing their goods.

The recurring Key Issue Areas emerging from the October 15, 2007 Council meeting and follow-up statements from the Council members fall under four broad categories. These categories are as follows:

1) Maximize participation in food and nutrition assistance programs;
2) Strengthen the connection between local food products and consumers;
3) Support efficient and profitable agricultural food production and food retail infrastructure; and
4) Increase consumer awareness healthy eating and improve access to safe and nutritious food.

Council members identified a number of specific priorities to be explored within each Key Issue Area as described below.

1) Maximize participation in food and nutrition assistance programs

a) Increase education about assistance programs and benefits using traditional and non-traditional outreach strategies such as in job placement offices, places of worship, schools, drug stores, and farmer's markets;
b) Encourage increased collaboration among State agencies administering the programs by co-enrolling participants for benefits and/or making enrollment more user friendly;
c) Create incentives to purchase nutritious food with food stamps;
d) Explore options for ensuring that food assistance programs have adequate quality and stable quantities of resources needed to meet demands;
e) Increase number of markets / outlets that are capable of receiving food stamps; and
f) Perform an assessment of methods to ease program participation in food and nutrition assistance programs and identify strategies to address the challenges.

R001330

2) **Strengthen the connection between local food products and consumers**
   a) Support initiatives in schools for healthy food choices: look to change consumption behavior of youth as well as introduce youth to food system dynamics (explore potential to incorporate farm and/or food related topics and experiences in curriculum);
   b) Create avenues for local farmers to produce for state institutions and other food service programs (schools, universities, nursing homes);
   c) Address volume requirements on buying- promote aggregate selling / buying of produce;
   d) Research the feasibility of expanding local / community food security initiatives to the state level (such as examples taken from "Regional Community Food Projects", farmer's market incentives, Veggie Vans, CSAs and wholesale markets); and
   e) Consider culture, age and geographic region of all consumers to best serve their needs.

3) **Support efficient and profitable agricultural food production and food retail infrastructure**
   a) Encourage local products procurement preference when possible;
   b) Foster partnerships with grocers to drive local preference;
   c) Improve marketing, promotion of nutritious products- research models of market development and behavioral economics;
   d) Perform an assessment of obstacles and methods for easing business development in NY;
   e) Address obstacles of marketing retail food products in target areas (urban and rural) such as transportation / delivery issues and lack of access to grocery stores / supermarkets
   f) Explore possibilities to increase regional food processing infrastructure; and
   g) Seek opportunities to maximize utilization of incubator programs and cooperatives.

4) **Increase consumer awareness and knowledge about healthy eating; and improve access to safe and nutritious foods**
   a) Increase awareness of obesity and diet related diseases- focus on professionally recommended, data-driven prevention initiatives;
   b) Increase consumer awareness of food ingredients, nutritional value, processing and allergens through labeling and other forms of consumer outreach;
   c) Provide farmer / producer education opportunities about "best practices"; and
   d) Continue to educate consumers of where their food comes from and nutritional value thereof.

IV. Activities Proposed for the New York State Council on Food Policy in 2008

Plan for Year 2008 The Council members have acknowledged the importance of implementing evidence-based best practices that will obtain measurable results. The Council members are also highly sensitive to the value of stakeholder input to gain accurate statewide perspectives on the issues. Therefore, in order to adequately assess the "Key Issue Areas" outlined, the Council members identified some supporting steps that need to be taken. Supporting steps include:

1) Researching successful food security initiatives, local and national, that may be applicable to New York State's agenda;
2) Reviewing and reconsidering the "Recommendations" from the New York State Council on Food and Nutrition Policy's *Five Year Food and Nutrition Plan 1988-1992*;
3) Organizing / facilitating a communication avenue for the members (such as videoconferences and a website); and

4) Planning a listening tour of up to six sites that embody a food-related policy area. This listening tour should begin early next year.

The next full meetings of the Council on Food Policy are to be scheduled for the Spring and Fall of 2008. During those times, the Council members will develop and solidify specific action items, benchmarks and / or recommendations for a State food policy. Throughout the year the Council members will actively explore the potential of pursuing specific priorities of the Key Issue Areas.

AFFIDAVIT OF JOHN J. PRIVITERA
SWORN TO JANUARY 18, 2008

EXHIBIT K

Exhibit K: Address dated 1/16/08 (Privitera Aff. 1/18/08)

pp. 1335-1346

Text Spitzer state of upstate speech delivered January 16 at SUNY Buffalo.

Text of January 16 Spitzer press release.

State of Upstate Address

Rockwell Hall
Buffalo State College
Buffalo, NY
January 16, 2008

[As prepared for delivery]

To the people of Buffalo and Upstate New York, and to all my fellow New Yorkers: thank you for joining us on this historic day.

To my partners in State government—Lieutenant Governor Paterson, Speaker Shelly Silver and Leader Malcolm Smith—thank you for joining us. Let me also thank our partners who could not join us today: Leader Joe Bruno, Leader Jim Tedisco, Attorney General Andrew Cuomo and Comptroller Tom DiNapoli.

To the members of the Western New York delegation who are here—Francine DelMonte, Michael Cole, Dennis Gabryszak, Joe Giglio, James Hayes, Sam Hoyt, George Maziarz, Bill Parment, Crystal Peoples, Jack Quinn, Mary Lou Rath, Robin Schimminger, Mark Schroeder, Bill Stachowski, Antoine Thompson and Dale Volker—thank you for hosting us.

To all of our partners in local government—including our host, Mayor Byron Brown—thank you for joining us.

And to the many business leaders, labor leaders and civic leaders from across Upstate who have gathered here, thank you for all you do for your communities and for being here with us today in Buffalo.

Let us begin by recognizing our fellow New Yorkers who serve and protect us here at home and around the world.

Joining us today are four soldiers from the New York Army National Guard: Captain Matthew Ryan, Staff Sergeant Robert Waters, Sergeant Jason Wiechec and Sergeant Aaron Spallina. These soldiers serve with the 2nd Squadron, 101st Cavalry, which is based here in Buffalo. They have been deployed once before, to Iraq. Now, they are preparing to deploy to Afghanistan.

To Captain Ryan, Staff Sergeant Waters, Sergeant Wiechec and Sergeant Spallina—and to the thousands of men and women in our nation's military who are part of our New York family—you represent the very best New York has to offer. Today—and every day—we thank you for your bravery, your courage, your sacrifice and your service.

* * *

I am deeply honored to stand before you this morning to deliver the first State of Upstate Address in New York's history.

The vision I will outline today is one we all share: to make Upstate New York the best place in the world to live, work, raise a family and run a business.

To realize this vision, we must focus with a singular purpose on an agenda for economic growth and opportunity. We need a world-class education system from Pre-K through graduate school. We need an affordable health care system that's available to all. We need lower taxes, strong infrastructure, great places to live, and, above all, good jobs. And, we need all of these things throughout New York—upstate and down, from Western New York to Westchester, from the Adirondacks to Long Island.

While this vision remains the same, we are here today because we recognize that the economic challenges facing Upstate are so numerous, significant, particular, and urgent that the traditional State of the State Address alone is not sufficient to hold us accountable for meeting them.

Making the State of Upstate an annual event will force us each year to monitor our progress, take stock of what remains undone, engage in a public debate about how to move forward, and, if necessary, recalibrate our efforts in response to conditions on the ground. This will create the accountability that Upstate New Yorkers demand and deserve.

That is why FDR's advice resonates so strongly. "It is common sense," he said, "to take a method and try it. If it fails, admit it frankly and try another. But above all, try something."

We all realize that many past methods have not adequately met the challenges before us. We know this because we continue to see our young people leaving for opportunity someplace else.

That is why we must talk plainly about the hurdles that stand in our way and why we need real cooperation to make the tough choices to move forward.

Yet, as daunting as the challenge may seem, I have reason for hope, because we still have our strongest competitive advantage: our people. I know it because I've seen it.

Almost one year ago, the snow began falling in Oswego County, and it didn't stop. It didn't stop the following day, or even the day after that. Seven days later, the region was buried under nearly 10 feet of snow.

At a break in the storm, Senator Schumer and I traveled to the town of Parish to monitor the progress of relief efforts.

There I met plow operators who worked 16-hour days clearing the roads and then—the moment they finished their double shift—went back outside to dig out their neighbors.

I met volunteer firefighters who worked non-stop, rescuing those who were stranded, and opening their fire halls to those who lost heat.

And I met hundreds of ordinary New Yorkers who spent long hours helping their neighbors clear their roofs and their driveways; who walked through the streets giving a push to motorists stuck in the snow; who checked in on the elderly to make sure they had enough food.

The way the people of Oswego County responded was watched and admired by the entire nation.

But when I offered words of praise for their remarkable community spirit, they said: "That's the way it always is. When there's a storm, everyone pitches in to help."

The storm we face today is not natural; it is economic. But if we put that same strength, that same resiliency, and that same community-mindedness to work—if we summon the will to work together to achieve the reforms and make the investments I will lay out today—we can overcome this storm and return growth and prosperity to Upstate New York. We can make Upstate open for business; we can attract young people and keep them here; and we can truly become the best place in the world to live, work, raise a family and start a business.

That is our vision. Now, this is our agenda.

Our Strategy

Our first year was about laying the foundation for growth.

Our second year will be about building on that foundation with a major infusion of strategic funding and programmatic initiatives to revitalize Upstate.

First, let me discuss the foundation we laid last year.

Our foundation consisted of four major components:

First, broad-based reforms to make Upstate more competitive by lowering the cost of doing business and lowering taxes;
Second, breaking gridlock on regionally- and locally-specific projects to build the infrastructure for economic

growth;
Third, retooling State government so it is built to zero in on Upstate's unique economic challenges; and,
Fourth, changing the way we approach economic development by incorporating local and regional stakeholders into everything we do.
Last year, we made progress on each of these fronts.

To lower costs, we cut workers' comp premiums by over 20 percent—a cost savings to New York businesses of $1.2 billion dollars. We also held the line on taxes. In fact, we actually cut taxes—reducing business taxes and providing additional property tax relief to middle-class New Yorkers.

To break gridlock on key projects, we implemented "City by City" plans focused on jump-starting important projects in our Upstate cities. As a result, projects like Buffalo's waterfront, the Connective Corridor in Syracuse and the Midtown Plaza redevelopment in Rochester are now moving forward.

To retool government to zero in on Upstate's unique challenges, we created a powerful economic development agency focused squarely on the needs of Upstate—and put its headquarters right here in Buffalo, with regional offices throughout Upstate.

Upstate ESDC is already responsible for securing private-sector pledges to create 8,000 new jobs and preserve 24,000 jobs all across Upstate.

Five hundred new jobs from Carestream Health that we brought to Rochester. 300 new R&D jobs at Corning. 500 new GE Energy jobs that will re-establish Schenectady as a GE headquarters. 289 jobs at Bitzer Scroll in East Syracuse. In Western New York, 500 jobs at Data Listing Services in Cattaraugus County.

And just yesterday, at the northeastern corner of our state—where New York, Vermont and Canada intersect—we announced that Akrimax Pharmaceuticals, with our assistance, purchased the Wyeth plant in Rouses Point, preserving 1,200 jobs in the North Country.

To incorporate local input, we held Regional Blueprint Meetings in every Upstate region. Dan Gundersen, our chair of Upstate ESDC, put 35,000 miles on his Jeep last year alone visiting every Upstate county. Everywhere Dan stopped, he sat down for an audience with the best economic development consultants of all: local business leaders, who know their economies best, but whose views were rarely engaged in the past.

Of everything we did last year, I believe this was the most important.

Why? Because government money and government programs alone cannot turn our economy around. There must be a true partnership between government and the private sector. That's because, in the end, it's the people on the ground who must translate this funding and these programs into economic growth.

In sum, now that we have begun to lower the costs of doing business; now that we have broken gridlock on key projects; now that we have created an entire agency devoted to the task of bringing Upstate back; and now that we have incorporated the advice of hundreds of Upstate New Yorkers into our strategy, we are ready to take the next step.

We are ready to build upon this foundation with a major infusion of funding and programmatic initiatives to revitalize the Upstate economy.

The $1 Billion Upstate Revitalization Fund

That is why, in my Executive Budget, I will propose a $1 billion Upstate Revitalization Fund.

In my State of the State Address last week, I sketched out this concept in broad strokes. Today, I would like to describe what I mean in greater detail.

$350 million Regional Blueprint Fund

A few moments ago, I talked about the Regional Blueprint Meetings that Dan Gundersen held in every region—and how, on these trips, he sat down with the regional stakeholders who know the Upstate economy best.

The result of that outreach is the first component of our proposed $1 billion Fund: the $350 million Regional

Blueprint Fund.

Everything in this fund flows from the conversations we had on the ground. Let me give you some examples.

In every single Regional Blueprint session, we heard that our infrastructure for economic development is inadequate. We heard that, in many cases, the problem is not that businesses don't want to locate here; the problem is that there are often no suitable sites where they can locate.

For example, of the 960,000 acres that make up Herkimer County, only 50 of those 960,000 million acres are truly development-ready.

We cannot create the jobs our communities need until we create the development-ready sites our businesses need. So, working together, that is what we must do.

Our proposed $350 million Regional Blueprint Fund will contain a significant amount of capital for the construction of development-ready sites and industrial parks, and for bringing existing sites up to the standards businesses are seeking today. That means everything from water, sewer and drainage systems; clearing and site development costs; and even support for planning and engineering.

These dollars could support pivotal projects like the completion of the Marcy Nanotech site in the Mohawk Valley—a cutting-edge technology park championed by Assemblywoman RoAnn Destito that is poised for growth but lacks the financial resources to move to development-ready status.

To fully address the shortage of development-ready land Upstate, we must also face the hard reality that New York's Brownfields cleanup program is failing.

This program was enacted in 2003 to provide incentives to remediate contaminated land for new development. However, the program's formula is broken, and—as a result—it too often provides massive taxpayer subsidies for development that would have happened anyway. For example, we don't need to be using millions of taxpayer dollars to underwrite a luxury condominium project in Westchester while 3,000 acres of brownfields in Rochester await investment.

Therefore, this year, we will submit new and improved legislation to reform our Brownfields program so it can fulfill its original purpose of creating development-ready sites where they are needed most, while also protecting our environment.

On our trips Upstate, we also learned of another major need: we learned that small businesses often lack the capital they need to expand, innovate and thrive.

Don't forget: Kodak, GE and IBM were all once small businesses in Upstate New York. But today, the future Kodaks, GEs and IBMs of Upstate tell us that they cannot grow here because New York doesn't have investment programs to help small companies—while other states do.

We must change that. As Assemblyman Joe Morelle points out, we must provide small businesses with the programs and tools that can result in large-scale job creation down the road.

That is why our proposed $350 million Regional Blueprint Fund will include the nation's best small business loan programs for machinery, equipment, real estate and other needs. Our small businesses deserve the best opportunities in America—and we propose to give them just that.

On our trips, we also learned about what must be done to strengthen the Innovation Economy Upstate.

We made significant progress on this front in our first year. Thanks, in large part, to the efforts of Lieutenant Governor David Paterson, we enacted the Stem Cell Research Fund. Not only is stem cell research a moral imperative, it is also an engine for creating jobs.

Just last week, the first round of stem cell grants were released, making New York's fund the fastest in the country to go from green light to grant-making. And our Upstate research institutions were major beneficiaries—receiving a total of over $2.4 million dollars in research funding. Here in Buffalo, UB received a $600,000 dollar grant, and Roswell Park received $420,000 dollars. In Rochester, the U of R Medical School received a $1 million dollar grant. This funding will catalyze groundbreaking medical research and job creation at the same time.

However, stem cell research is only part of the picture. New York still faces significant obstacles in its effort to adapt to the Innovation Economy.

The good news is that everywhere you turn—in our colleges and universities, in companies large and small—Upstate New Yorkers are developing groundbreaking ideas. The problem is that we lack the programs to help translate these ideas—especially from our institutions of higher education—into jobs.

Here's just one example. SUNY-Binghamton has thousands of students who are enrolled in some of the nation's most prestigious graduate programs. But when we visited, we learned that they don't have a single incubator where spin-off companies can commercialize that research and harness its potential for job creation.

That is why our proposed $350 million Regional Blueprint Fund will finance the kind of programs, tools and facilities we need to link idea creation to job creation. Our Fund will also include a $10 million Venture Capital Fund—a pilot program to provide seed capital tied to accountability measures for 10 to 15 small companies that have the potential to expand into major employers, much in the same way Comptroller Tom DiNapoli successfully invests part of the State Pension Fund in promising upstarts throughout New York.

These funding streams and programs will make it possible for innovative companies to grow and create jobs on a larger scale.

Finally, on our trips Upstate, we learned that too little was being done to attract international investment.

The fact that we share hundreds of miles of border with Canada, and that we are so close to Montreal and Toronto, is one of our greatest opportunities. We should be marketing Upstate aggressively in Canada—especially now, when exchange rates favor foreign investment.

That is why our Budget will include funding for new efforts that tap international markets, including the creation of a new international marketing office within Upstate ESDC. These efforts will help our Upstate communities—especially our border communities like Plattsburgh, Ogdensburg, Niagara Falls and Buffalo—realize their potential for greater international investment.

The components I just discussed—building development-ready sites, investing in small businesses, connecting innovation to job creation, and increasing our international marketing footprint—are some examples of how our proposed $350 million Regional Blueprint Fund will address the issues many of you in this very auditorium raised with us last year.

Taken together, by meeting the needs of businesses today—from small-scale loans and venture capital for small businesses, to development-ready sites for large industries—our Regional Blueprint Fund will help Upstate New York become a magnet for innovation and job creation in the twenty-first century economy.

New Round of City by City Projects

But our Regional Blueprint Fund is just one piece of our proposed $1 billion Fund.

Our effort to attract businesses here will be complemented if we can restore greater vitality to our Upstate cities—which have such incredible potential, but which need help to free themselves from a cycle of decline.

Let me take this opportunity to acknowledge three of our Upstate Mayors: Mayor Bob Duffy of Rochester, Mayor Matt Driscoll of Syracuse and Mayor Brian Stratton of Schenectady. These Mayors—and all the other hard-working Mayors who are here—are working vigorously to turn our cities around. We on the State level must do all we can to support their efforts.

To do so, this year, we announced our City by City Plans— strategies tailor-made for each city to jump-start key projects that have the potential to catalyze significant economic growth. And—from downtown Niagara Falls, to the Charles Street Business Park in Binghamton, to the Bresee's Building in Oneonta, to the Plattsburgh International Airport—we are getting these projects moving.

Today, I want to announce our latest City by City project—one that dovetails with our discussion a moment ago about translating cutting-edge research into job creation.

We are proud to announce the creation of a major research center at the University of Rochester that will spur economic growth in the region for decades. Along with Speaker Silver and our partners in the Assembly, we will commit $50 million dollars toward the construction of a 150,000-square-foot state-of-the-art building, which will be the home of the University's Clinical and Translational Science Institute. While this facility will create 40 to 50 new research jobs immediately, we expect the real benefit to be in the long term. We expect that the world-class research that is done at CTSI will lead to significant commercial applications, and that within five years, CTSI activities will create hundreds—if not thousands—of new jobs in Rochester. Let me thank Speaker Silver and Assembly members David Gantt, Susan John, Joe Morelle and David Koon for helping to make this project a reality.

But our proposed $1 billion dollar Fund will not only provide support for the dozens of City by City projects we have already announced. Our proposed Fund will provide full funding for a new, second round of City by City projects across Upstate—this year. Importantly, this second installment of projects will reach beyond our large Upstate cities and jump-start key projects in our smaller cities, which play such a central role in our economic future.

Housing Opportunity Fund

The third major component of our Fund will be $100 million for Upstate housing and community development, which is part of our proposal to create a Housing Opportunity Fund.

Our Upstate communities have a range of housing needs. Some communities need new affordable housing. Most Upstate communities, however, need funding for housing rehabilitation.

Yet, whether we're talking about building workforce housing or rehabilitating existing housing, our investments need to be strategic. By that, I mean they must always be designed in ways that catalyze further development.

What we've done in Watertown is a good example of this strategy. Working with our partners in Congress and at the local level, Lieutenant Governor Paterson and I waged a successful campaign to bring a new maneuver enhancement brigade—1,500 new troops—to Fort Drum. We won the new brigade because we were the only State to go to the Army with a comprehensive economic development package articulating the specific steps we would take to accommodate the additional soldiers. The centerpiece of that package was $10 million dollars in funding to ease the affordable housing crunch in Watertown.

Another example of a strategic housing investment can be found on the Near West Side of Syracuse, a project that has long been supported by Assemblyman Bill Magnarelli, where we are not only building low-income housing and lofts for the city's growing community of artists; we are connecting it to the jobs, shopping, recreation, education and cultural facilities that form the building blocks of a sustainable community.

This is the kind of model we need to replicate across Upstate, which is why our Fund contains a $100 million Upstate housing commitment to provide significant new funding to meet all of these needs, and to build vibrant neighborhoods, and sustainable communities, for the next generation of New Yorkers. We estimate that our funding will result in about 10,000 units of new or rehabilitated housing for our Upstate communities.

Upstate Agribusiness Fund

I have often talked about how New York's future depends on strategic industries. Now, let me discuss one in particular that is not always discussed in the same breath as biotech, nanotech, photonics and aerospace—but it should be.

Our Upstate Revitalization Fund will infuse significant capital into our agricultural sector, which forms the bedrock of so many local economies throughout Upstate.

Last year—inspired in part by the strong voices for farmers in Albany, including the chairs of the Agriculture Committees, Assemblyman Bill Magee and Senator Catherine Young, as well as other strong advocates for our farmers, such as Senator David Valesky and Assemblyman Darrel Aubertine—we fundamentally changed the way New York approaches agricultural policy.

For years, agriculture was seen as a dying industry. That has changed. Today, agriculture not only matters to us—we are looking to it to become one of the main forces behind Upstate's economic revitalization.

This year, our budget will infuse new capital into our agricultural sector with a $50 million Upstate Agribusiness Fund. Investments will support access to markets; new and expanded food processing centers; and development of alternative fuels like the innovative efforts at the Fulton ethanol plant.

To implement this new Agribusiness Fund, we will hire New York's first Director of Agriculture Development. With these efforts, we believe the "Pride of New York" logo can become the most recognized symbol of food quality in the world.

And this is only the beginning.

In 2008, we will break ground on the Pride of New York Wholesale Farmers' Market in New York City to connect Upstate growers with Downstate consumers. And we will continue to support research at Morrisville College, the Geneva Experiment Station and Cornell University—efforts to which Assemblywoman Barbara Lifton has contributed so much.

Agriculture is not just an important part of our economy—it's a way of life in our communities. By supporting our farmers, by giving them the tools they need to access new markets, we will preserve this way of life in New York, and leave stronger farms—and a stronger state—to our children and grandchildren.

Universal Broadband

We must also address another critically important issue for New Yorkers in rural areas—the lack of access to broadband.

It is unacceptable that only 25 percent of New Yorkers who live in rural areas have access to affordable, high-speed broadband Internet. And the lack of broadband access is an equally serious problem in our inner cities. In a digital age, businesses, families and individuals who lack broadband access find their economic and educational opportunities limited.

Our proposed Fund will respond to this need by tripling State investment in our universal broadband effort to $15 million. This investment will move us closer to the day when we can close the digital divide in New York and offer everyone in our rural areas, and inner cities, access to high speed, affordable broadband Internet.

Transportation

And just as affordable, high-speed Internet has now become a critical component of infrastructure in the Innovation Economy, we must continue to invest in our traditional infrastructure—our roads, bridges and highways. That is why our Fund will include $100 million to support critical maintenance of the Upstate network of State and local bridges.

Parks

Finally, our proposed $1 billion Fund will include a significant investment in New York's State Parks—a major asset when it comes to attracting business.

However, for New York, this tool is not what it should be because, over the years, our parks have fallen into disrepair. That is why our proposed Fund will include $80 million dollars—out of $100 million dollars in statewide funding—to restore Upstate's parks.

As the centerpiece of our restoration, we will return Niagara Falls State Park, the oldest state park in the nation, to its former glory—a goal that has long been championed by Assemblywoman Francine DelMonte. And as part of our $5.5 million dollar restoration for the park, we propose to rebuild and fully reopen the Goat Island Bridge; so thousands more visitors can experience the unspoiled natural wonder of the American side of Niagara Falls.

Those are the major elements of our proposed $1 billion Fund.

While I realize that this is a large amount of money in tough fiscal times, I also know that it's at these very moments when investment matters most; when the urgency is so great that we simply cannot afford to wait.

These are not piecemeal programs or halfway investments. Rather, these are the programs and investments that came out of the hundreds of conversations we had with regional stakeholders over the past year. Simply put, this

is the funding, and these are the programs, you told us that you need to create good jobs in your communities.

And just as we developed this Fund together, now, let us work together to pass it.

I look forward to working with Economic Development Committee chairs Robin Schimminger and James Alesi in that spirit.

Reducing New York's High Costs

However, even if we are successful, we must continue our efforts to address New York's "perfect storm of unaffordability." To return growth and prosperity to New York—to make our state the best place to live, work, raise a family and start a business—we must hold the line on costs for both families and businesses.

Last year, we made progress.

Working with our partners in the Legislature, and in the business and labor communities, we finally addressed our broken workers' compensation system and unlocked $1.2 billion in savings for New York's businesses.

This year, we will continue realizing those savings, but we will also work more aggressively to lower taxes and energy costs.

No New Taxes

Lowering costs does not end with the issue of taxes, but it certainly begins there.

Last year, we held the line. We promised no new taxes, and we delivered no new taxes. In fact, we went one better and cut business taxes.

This year—despite the considerable fiscal challenges we face--we can hold the line again. I intend to submit a budget that makes tough choices. But it will protect the critical services of the State, make the investments we need for growth, and it will not raise taxes.

Reducing Property Taxes

This year, however, we will go even further. We will finally get real about our property tax crisis.

Last year, we enacted historic property tax relief, and we targeted it to the middle-class taxpayers who needed it most. This year, we will commit to another round of rebates and again target those rebates to the New Yorkers who need them most.

We will also continue working with local governments to streamline the 4,200 taxing jurisdictions across the state. My Commission on Local Government Efficiency and Competitiveness—led by our former Lieutenant Governor and Mayor of Jamestown, Stan Lundine—has already advanced 150 locally-generated proposals. For the first time, these proposals were advanced from the ground level up, instead of imposed down from Albany—giving us real hope that consolidation and shared services will become a reality. And in April, this Commission will release their final report.

Yet, for all our efforts, property taxes just keep going up. We've heard the message loud and clear from all New Yorkers. And, as I said last week, we will take action.

That is why I will create a bipartisan commission, with Moreland Act powers, to examine the root causes of high property taxes; identify ways to make our relief system fairer; and develop a fair and effective school property tax cap to hold the line on property taxes once and for all—a mechanism that will not only relieve the burden on our working families, but on businesses as well.

Reducing Energy Costs

We must also do what we can to lower Upstate's energy costs.

In the State of the State, I announced that we will once again introduce new legislation to fast-track the building of cleaner power plants to get more power into the grid. Today, I would like to announce legislation on an issue

especially critical to Upstate revitalization: low-cost power.

Last year, we passed a one-year extender for the State's Power for Jobs and Energy Cost Savings Benefit programs, which provide discounted power to over 500 companies that employ more than 300,000 people across the State.

This year, we will submit legislation to provide those companies—especially energy-intensive businesses throughout the State—the additional certainty necessary to allow them to grow and invest.

The legislation will provide an opportunity for eligible companies to receive contracts up to 7 years in length, so that such businesses and even new businesses will be able to count on lower electricity rates for years to come. We will also reform the system to build in stronger job and investment criteria, and reach our goal of reducing our electricity consumption 15 percent by 2015.

Making our Higher Education System an Economic Engine for Growth

As we continue reducing costs, we must make sure our education system—from Pre-K through graduate school—is second to none. Education is an essential building block for keeping Upstate open for business and attracting and retaining our young people. Human capital is the currency of the Innovation Economy and our people and businesses cannot thrive without a world-class education system.

Last year, we made an historic commitment to Pre-K through 12 education. Our formula was simple: investment plus accountability equals excellence. As a result of the commitment we made together with our partners in the Legislature, more children are spending more time in the classroom than ever before. They're learning in smaller classes than ever before. And they're learning from teachers who are starting to get the training and support they need.

Because of the Contracts for Excellence, in Buffalo's 16 most struggling schools, students will spend an extra hour in class each day and an extra 20 days over the school year. That does not just mean more time; it means more quality time, because each school has shrunk their class sizes to just 10 students for those who are furthest behind.

This year, we will implement the next phase of our accountability agenda. But, as we do, we must also set our higher education system on a similar path.

The good news is, we already have a roadmap, one that will only improve as the Legislature and the public have a chance to weigh in.

As the Commission on Higher Education recommended, over the next five years, we need to hire 2,000 more full-time faculty members for SUNY and CUNY, create an Innovation Fund for cutting-edge research at New York's public and private colleges and re-think the way we use and invest in our community colleges.

We know what these investments can mean because we already know how important our colleges and universities are to our Upstate communities.

Our host today, Buffalo State College, epitomizes that connection—educating the vast majority of teachers in Buffalo.

Nearby, at UB, our multi-year commitment to UB's "2020" expansion plan will serve as a model for integrating our SUNY system with our downtowns. We estimate that UB's full expansion will pump an extra $1 billion into the economy of Western New York each year.

In our State of the State, we talked about what this could mean for revitalizing Buffalo. Just yesterday, we saw some early evidence.

As part of our second round of RESTORE New York grants—which were created because of the leadership of Speaker Silver and the Assembly—we announced a major renovation project at the former Trico factory adjacent to UB's downtown campus. We will provide $4.5 million dollars to transform part of a former windshield wiper factory into office and lab space for growing biotech companies. What could be a better metaphor than this for Buffalo's transition to the Innovation Economy?

At Geneseo State, new full-time faculty will allow that school to continue its march toward national pre-eminence in liberal arts education, and continue combating the brain drain, as it was recently named the best educational value for out-of-state students in the nation.

And an Innovation Fund can have a tremendous effect on our colleges, our communities and our SUNY faculty. Supercharging the cutting-edge research that is happening at places like Albany Nanotech will supercharge our economy. With the help of Senator Tom Libous and others in the Legislature, these investments can propel research universities like SUNY-Binghamton to new heights. And I know how important our private colleges and universities are as well, which is why we are making investments like the one I just announced at the University of Rochester.

We also cannot overlook the power of a strong community college system. Look at Jefferson Community College in the North Country, where military personnel stationed at Fort Drum and their families make up 30 percent of the student body. Or look at schools like Monroe Community College, which is a regional leader in workforce training.

Of course, none of these investments will be possible without figuring out a way to pay for them, which is why I propose unlocking some of the value in our Lottery system to create a $4 billion Higher Education Endowment. This will create a stable, long-term revenue stream—about $200 million per year—that will fuel excellence in our higher education system for generations to come.

No one has more at stake in seeing this plan through than Upstate New York, which has more colleges and universities per capita than anywhere in the country. Together, we must transform our higher education system into an economic engine that will power growth throughout all of Upstate.

Building Livable Communities

Let me conclude this agenda by talking about the importance of building livable communities, because—while low costs, strong infrastructure and a world-class higher education system will attract businesses and people to Upstate New York—livable communities are what will keep them here.

I have already touched on the need for more housing and better schools, but our comprehensive approach also includes historic aid to our most distressed communities; a focused strategy to reduce crime; making sure every rural town and inner city has access to a family doctor; and ensuring that, as we grow, we protect our environment for future generations.

Increasing Aid to Distressed Communities

Last year, we made a four-year commitment to increase local aid by $200 million to our most distressed cities and towns through the Aid and Incentives to Municipalities program.

We know this aid works, especially when it's tied to the accountability measures we implemented last year. For example, the AIM increase received by the City of Niagara Falls helped it actually cut property taxes by almost $1 million—over 3 percent from the previous year.

I know there have been whispers that, because of the fiscal storm clouds overhead, we will pull back on our AIM commitment. Let me put those rumors to rest even ahead of our Executive Budget. Six days from now, I will propose a budget that delivers $50 million more in AIM funding to our most economically struggling cities and towns than was included in last year's budget.

Reducing Crime

Besides affordability, the single most important building block for livable communities is public safety. While overall crime is down Upstate, too many of our Upstate cities are struggling with pockets of violence.

Last year, to address the communities that were hardest hit, we invested in Operation IMPACT, which provided grants to local law enforcement officials to implement state-of-the-art crimefighting tools.

In my State of the State Address, I announced that this year we will match that data with the redeployment of 200 State Troopers to those areas experiencing the most intense violence.

But I did not mention another initiative that will be especially meaningful Upstate. As we support local law enforcement through Operation IMPACT, and increase the number of police on the streets through trooper redeployment, we will also build new Crime Analysis Centers. These facilities will include a comprehensive array of world-class crime fighting tools that we can bring to bear in our Upstate cities.

My Executive Budget will include funding to open Crime Analysis Centers in Buffalo, Rochester, Syracuse and Albany this year.

Access to a Family Doctor

Building strong, livable communities also means increasing access to health care.

In my State of the State Address, I proposed the creation of "Doctors Across New York," which will offer grants to help repay education loans and provide other ways to encourage and assist doctors to move to our state's medically underserved areas.

From Franklin County in the North Country to Wyoming County in Western New York, this new initiative will improve health care for thousands of New Yorkers who live in our rural communities and inner cities.

Protecting the Environment

We also must do all we can to protect Upstate's environment, so we can pass on cleaner air, cleaner water and beautiful landscapes to our children and grandchildren.

When it comes to the environment, there are so many priorities, so let me just outline one. In recent years, many New Yorkers near the Great Lakes have been troubled to hear that water levels have been dropping. This poses a threat to shipping, to our fisheries, and to our ecosystems—in other words, to the economy and quality of life in Great Lakes communities.

That's why, today, I call upon the Legislature to pass the Great Lakes Compact, so we can join a multi-state effort to regulate water levels and maintain a strong, sustainable Great Lakes ecosystem and economy.

The "I Live New York" Initiative

No discussion of building livable communities could be complete without talking about the "I Live New York" Initiative, which focuses on attracting and retaining the next generation of New Yorkers.

This year, with Silda's leadership, we convened a remarkably successful summit in Cortland that attracted 600 New Yorkers. Next month, based on the ideas that were shared at the summit, the first-ever "I Live New York Report" will be published. This report will take the ideas from the Summit and translate them into real change.

We are also proud to announce that, next year, the second I Live New York Summit will be held on September 16th right here in Buffalo—which, incidentally, is the birthplace of brainstorming. That's right—the inventor of the concept known as "brainstorming," Alex Osborn, lived and worked right here in Buffalo, New York.

To build on that legacy, this year, Silda will convene the first-of-its-kind Young Leaders Congress. The Young Leaders Congress will enable young New Yorkers themselves to play a central role in our effort to attract and retain the next generation—and build lasting vitality in our Upstate communities.

* * *

So that is our agenda for bringing back Upstate, and for making it—like all New York—the best place in the world to live, work, raise a family and run a business.

Our agenda is centered on a $1 billion infusion of funding and programs targeted to our greatest needs; on lowering the cost of doing business; on a higher education system that will be a major engine of Upstate economic growth; and on a comprehensive effort to build livable communities, so we can not only attract the next generation of companies, jobs and entrepreneurs—we can keep them here.

Join me in good faith and I will meet you with an open hand, an open door and open mind. For we will realize this opportunity only if we work together in a spirit of cooperation.

* * *

Now, ever since we announced we were doing this speech, some people have said to us: "You always talk about how we are One New York: one state, with one future. Doesn't a speech focusing only on one part of the State run counter to the very idea of One New York?"

It's a fair question. But the answer should be clear.

We are not giving this speech in spite of the fact that we're one state with one future.

We're giving this speech—and we've put the concerns of Upstate front and center on the agenda—precisely because we are one state with one future.

We are One New York, and we rise and fall together. When part of our State is struggling, it affects all of us. Because when a young family leaves the State, everyone has to pay for the cost of decline—the higher taxes, increased health care costs and shrinking national voice in Washington.

The truth is that we will never grow again; we will never prosper again; we will never become a beacon of hope and opportunity again if part of our state is thriving and another part is falling behind. So we must come together and channel all of the passion, energy and determination that is within us toward one goal: restoring growth and prosperity to Upstate New York.

We need only look to our own history for an example of success in a similar endeavor.

It was just a few short decades ago—in the late 1970s—when New York City was in crisis. Its social fabric was torn; its economy was in trouble; it was all but bankrupt; and it was desperate for help.

Yet when the people of New York City asked for help, the people of Upstate did not look the other way. Rather, you said to the people of New York City: "Your struggles are our struggles. Your future is our future. When there's a storm, everyone pitches in to help. So tell us what we can do." And working together, we did what many thought was impossible; we brought New York City back to life.

We are here today because we know it is time—indeed, it is long past time—to do the same for Upstate. To create jobs; to build livable, sustainable communities; and to attract and retain the next generation of New Yorkers who will call Upstate home. And just as we did back then, we will do it by working together. Because we must have your buy-in, your best efforts, your grit and your will if we are to succeed.

That is the spirit behind today's speech. And that is the vision that will guide us until the job is done.

Thank you.

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ITEM 10

REPLY AFFIRMATION OF PAUL VAN COTT
DATED JANUARY 29, 2008

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

In the matter of the apparent violations of Section 809 of the Executive Law by:

REPLY AFFIRMATION

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

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

PAUL VAN COTT, an attorney licensed to practice law in the courts of the State of New York, affirms under penalty of perjury:

1. I have read Respondent's response ("Response") to Agency staff's Request for an Enforcement Committee Determination and submit this reply on behalf of Agency staff.

2. Respondent's "right to farm" is undisputed and has never been at stake in this matter. Instead, this proceeding is about the Agency's clear statutory authority to require a permit that imposes reasonable conditions on the single family dwellings that Respondent has illegally built on Resource Management lands and in a River Area. It is also about

Respondent's blatant and repeated disregard for lawful process and a lawful Cease and Desist Order that Agency staff issued. Accordingly, through this proceeding Agency staff seek Respondent's compliance with the laws it is violating and a penalty that will ensure Respondent's (and others') deterrence from future violations.

3. The Agency and the Department of Agriculture and Markets have exchanged recent correspondence regarding the Agency's jurisdiction over farms in the Park. This correspondence, including the November 26, 2007 letter from the Commissioner of the Department of Agriculture and Markets (also attached to the Privatera Affidavit) and the Agency's responses thereto, is attached hereto as Exhibit A.

4. In his August 16, 2007 decision, Acting Supreme Court Justice Kevin Ryan unambiguously confirmed the Agency's jurisdiction over Respondent's single family dwellings, despite Respondent's arguments for an agricultural exemption. See Van Cott Affirmation, dated December 13, 2007, Exhibit B, pages 4-7. He expressly ruled that the Agency has jurisdiction to review Respondent's single family dwellings pursuant to the Executive Law. Id.

5. Point II of Respondent's Memorandum of Law (Page 31) correctly points out that Agency staff inadvertently wrote **"single family dwelling"** instead of **"single principal building"** on page 13 of staff's Memorandum of Law. Respondent's counsel is incorrect, however, that this typographical error is somehow the "foundation of staff's only argument." Staff's argument regarding Agency jurisdiction over Respondent's activities is actually set forth on pages 11 and 12 of its Memorandum of Law. Simply stated, since Respondent's single family dwellings are being constructed on Resource Management lands and in a River Area, they are subject to the Agency's permitting jurisdiction under the Executive Law and the Rivers Act.

6. The discussion on page 13 of staff's Memorandum of Law that Respondent's counsel refers to, read correctly, only pertains to the relief that staff seek, noting the importance of having Respondent obtain a permit for its single family dwellings so that the overall intensity guidelines may be properly applied, including the statutory limitation that "all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land

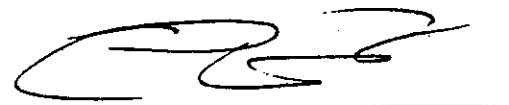
in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a **single principal building.**" Executive Law § 802(50)(g). (Emphasis supplied)

7. In defining the term "principal building", Executive Law § 802(50)(g) argues against Respondent's position that its "single family dwellings" are somehow "agricultural use structures" under the Executive Law, since the statutory definition refers to those structures separately in the same paragraph. Moreover, the statutory definition of "agricultural use structure" in Executive Law § 802(8) does not include single family dwelling as one of the structures within that term. "Single family dwelling" is defined separately in Executive Law § 802(58). Since they are defined separately, this leads to the obvious conclusion that single family dwellings are not considered "agricultural use structures" under the Executive Law.

8. In Point VI of Respondent's Memorandum of Law, Respondent's counsel incorrectly argues that this proceeding is brought by Agency staff pursuant to 9 NYCRR Subpart 581-4. The requirements of Subpart

581-4 do not apply to this proceeding. The Notice of Apparent Violation commencing this proceeding seeks an Enforcement Committee determination pursuant to 9 NYCRR § 581-2.6(d) and describes in detail the process leading to such a determination. Staff's Notice of Request for an Enforcement Committee Determination also expressly references the Committee's jurisdiction over this matter pursuant to Subpart 581-2, not Subpart 581-4. Subpart 581-4 only applies to proceedings brought by staff to enforce the Freshwater Wetlands Act or seeking revocation, suspension or modification of an Agency permit. Point VI of Respondent's Memorandum of Law must therefore be disregarded.

DATED: Ray Brook, New York
January 29, 2008



Paul Van Cott, Esq.

REPLY AFFIRMATION OF PAUL VAN COTT
DATED JANUARY 29, 2008

EXHIBIT A

NEW YORK STATE
Adirondack
parkagency

December 4, 2007

Honorable Patrick Hooker
Commissioner
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Dear Commissioner Hooker:

Thank you for your letter of November 26 to Chairman Stiles regarding the Lewis Family Farms matter. Chairman Stiles asked that I respond as the matter will be before the Board for advice in the near future.

We appreciate your detailed explanation of the various privileges provided to farm housing by New York law and will add this information to the record before the Agency. However, the Agency jurisdiction over single family dwellings in the Resource Management land use area classification is unambiguous. Farm housing is given a special privilege exempting the dwelling units from the APA Act overall intensity guidelines, but not from the fundamental permit requirement in this particular zoning classification. Your letter acknowledges the responsibility to obtain basic local permits, and in our view this is an equally fundamental element of the regulatory framework for the Adirondack Park established by the APA Act, the NYS Wild, Scenic and Recreational Rivers System Act and the NYS Freshwater Wetlands Act, a view supported by Judge Ryan in his decision regarding the Lewis Family Farms.

Lewis Family Farms have simply resisted the jurisdiction of the Agency in this limited context. The Agency has successfully and amicably resolved apparent conflicts with agricultural uses in the past when they have been brought to our attention. However, the place to work out details of specific residential construction within the Resource Management land use area is within the Agency's permit process where status as farm housing gives privileges regarding overall intensity guidelines, as well as restrictions on future use for non-agricultural purposes.

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We will continue to work closely with your staff regarding Agriculture District status of properties and appreciate their assistance as we have tried to be responsive to landowner concerns. However, the current Lewis Family Farm issue does not involve agricultural uses or agricultural use structures as our statute defines those activities, and to suggest the contrary confuses a clear exemption of those uses and structures from the basic regulatory structure of the APA Act.

We look forward to your Agency's continuing advice as we develop clear and consistent communications for the farm communities in Essex County and the Park.

Sincerely,

Mark E. Sengenberger
Interim Executive Director

MES:dal

cc: Curtis F. Stiles, Chairman
John S. Banta, Counsel

NEW YORK STATE
Adirondack
parkagency

C

December 3, 2007

Honorable Patrick Hooker
Commissioner
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Dear Commissioner Hooker:

Thank you for your letter of November 26 regarding Lewis Family Farms. As this is a pending matter before the Agency which the Board will have to address early in the New Year, I have forwarded your detailed information to Mr. Sengenberger for his attention and addition to the record in the matter.

Sincerely,

Curtis F. Stiles
Chairman

CFS:dal

cc: Mark E. Sengenberger

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STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B Airline Drive, Albany, New York 12235
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www.agmkt.state.ny.us

Eliot Spitzer
Governor

Patrick Hooker
Commissioner

November 26, 2007

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

Dear Mr. Stiles:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Patrick Hooker

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

Enclosures

NEW YORK STATE
Adirondack
parkagency

August 7, 2007

Mr. Bill Kimball
Director, Division of Agricultural
Protection and Services
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Dear Mr. Kimball:

Re: Agricultural Uses

Thank you for your letter dated June 29, 2007, received July 5, expressing an interest in further understanding of Agency jurisdiction over agriculture and related activities, and an interest in educating our staff as to your Department's responsibilities. We look forward to meeting with Department staff on August 8, and send this letter in order to further the progress of our meeting.

The Adirondack Park Agency Act generally excepts "agricultural use" and "agricultural use structure" from the regulatory provisions of the statute. However, much of the Park's agricultural land is zoned or classified Resource Management where all new subdivision, residential and commercial development requires an Agency permit including "agricultural service uses" and "mining." Therefore, it is important to understand the definitions and extent of various activities listed above under the Adirondack Park Agency Act.[1] Further, there are circumstances where agricultural structures are subject to Adirondack Park Agency Act shoreline setback criteria established as a matter of law in Section 806 of the statute, and to the requirements of the NYS Freshwater Wetlands Act or Wild, Scenic and Recreational Rivers System Act, both administered by the Park Agency within the Adirondack Park. (See 9 NYCRR Parts 577 and 578)

[1] NYS Executive Law, Article 27.

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Any analysis of Agency jurisdiction must start with the statutory definitions, NYS Executive Law §§802(4), (5), (6), (7), (8) and (17), quoted below:

> 4. "Accessory use" means any use of a structure, lot or portion thereof that is customarily incidental and subordinate to and does not change the character of a principal land use or development, including in the case of residential structures, professional, commercial and artisan activities carried on by the residents of such structures.
>
> 5. "Accessory structure" means any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling.
>
> 6. "Agricultural service use" means any milk processing plant, feed storage supply facility, farm machinery or equipment sales and service facility; storage and processing facility for fruits, vegetables and other agricultural products or similar use directly and customarily related to the supply and service of an agricultural use.
>
> 7. "Agricultural use" means any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.
>
> 8. "Agricultural use structure" means any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agriculture use.
>
> 17. "Commercial use" means any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee other than any such uses specifically listed on any of the classification of compatible uses lists.

It is clear that "agricultural uses" involve the growing of crops and raising of animals, as well as the customary actions necessary to be able to sell those items (i.e., actions necessary to move the farm product off the farm in saleable form). "Agricultural service use" is a separately defined term, and clearly includes actions which involve the further processing of agricultural products. Under the jurisdictional scheme of the Adirondack Park Agency Act (Executive Law, Article 27), agricultural uses are generally non-jurisdictional. However, agricultural service uses are treated almost identical to commercial uses: they are Class A or B regional projects, depending on size. Hence, the difference between agricultural use and agricultural service use is critical to a determination of Agency jurisdiction.

The question has arisen as to what "processing" (if any) of farm products by a farmer is allowed before that activity becomes an agricultural service use. A strict reading of the agricultural service use definition alone would result in a permit requirement for on-farm processing of agricultural products. There are two other considerations, however:

(1) By the language including the "sale of products" as part of the agricultural use definition, it is clear that "processing" necessary to move the product off the site is contemplated. For example, apples are typically stored, graded and packaged for market in bags and boxes rather than being sold in bulk as "orchard run." These "processing for sale" activities would be accessory to the agricultural use.

(2) The definition of "accessory use" contemplates the possibility that all other listed land uses may, in fact, have accessory use activities associated with them. The parameters for being "accessory" are established in the definition of "accessory use." Therefore, it is clear that an "agricultural use" may have accessory uses associated with it (as could an agricultural service use).

In general, the Agency has treated on-farm processing of the agricultural products produced on that farm as accessory to the agricultural use. To retain that characterization, the activity must be "customary" for a farm operation, and must be both "incidental and subordinate" to the farm operation, such that it does not change the character of operations from the principal use, the agricultural use.

There is no clear-cut rule regarding operations involving the processing of the products of other farms, in addition to the products of the farm operated by the processor. Shared processing of Farm A and Farm B products at Farm A might remain "customary, incidental and subordinate" to the agricultural use on Farm A. However, where significant new land use and development is required to undertake such activity, it may not be considered "accessory." Hence, any farm contemplating new development to facilitate processing of farm products, particularly products from other farms, should seek written advice from the Agency in the form of a "jurisdictional determination."

Another matter that is given special status by the Adirondack Park Agency Act is the construction of employee housing on-farm. The definition of "principal building", the core concept behind the Park's overall intensity guidelines and jurisdiction over new subdivision, provides:

> All agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building. (802[50][g])

The practical import of this is that all single family dwellings and mobile homes placed on a farm for use by farm employees will not constitute "principal buildings." The separate itemization of "agricultural use structure," "single family dwelling" and "mobile home" in the above definition preserves the separate character of these uses for purposes of the jurisdictional criteria of Section 810 of the Act. Section 810 contains the lists of Class A and B regional projects which are subject to Agency jurisdiction.[2]

Barns, stables and silos need no Class A or B regional project permit from the Agency because they are agricultural use structures.[3] A single family dwelling not associated with a jurisdictional subdivision requires no permit except in areas classified Resource Management or Industrial Use.[4] New two-

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[2] In addition, the "compatible use" lists of Section 805 separately itemize these uses (uses not listed as "compatible" are also jurisdictional under the provisions of Section 810).

[3] As noted in the first paragraph, these structures may require a shoreline variance or a wetlands or rivers permit from the Agency.

[4] See footnote 3.

family and larger multiple family dwellings require an Agency permit in all land use areas except Hamlet. If a new residential structure requires a permit due to numbers, lot size, location, or because it is a multiple family dwelling, it is a Class A or B regional project (requires a permit) regardless of the intent to use the housing for farm employees. Finally, for those residential structures which are single family dwellings and mobile homes, they will not constitute a separate "principal building" provided they are occupied by the farmer of land or his farm employees.

Purchasers of land that is subject to a recorded and effective Agency permit take the land subject to the permit as it was recorded. This may raise questions of conflict between permit conditions intended to address the new development originally contemplated in the permit (for instance, screening, landscaping and vegetation cutting restrictions) and newly proposed farm operations that involve agricultural uses and agricultural use structures. This will be particularly true if the agricultural uses involve the land which is already identified as the location of the permitted dwellings or appurtenant facilities, or which is subject to specific conditions regarding vegetative cutting or planting. The Agency will require permit amendments to reflect the necessary change in the existing permit. The amended permit will address the new agricultural uses, may treat them as minor amendments, and may also release them from further review. Minor amendments can be routinely and promptly processed; however, the landowner must obtain the amendment if the original project design or permit conditions will not be adhered to.

We look forward to continuing our dialogue. Agency staff appreciates the opportunity to communicate and build awareness of farm concerns because, at least when properly functioning, Agency programs rarely directly involve farm activities.

Very truly yours,

John S. Banta
Counsel

JSB:dal

cc: Dr. Robert Somers
Ross Whaley, Chairman
Mark Sengenberger, Acting Executive Director
Stephen Erman, Special Assistant for Economic Affairs

RECEIVE
JUL 5 2007
ADIRONDACK PARK AGEN

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

Division of Agricultural Protection and Development Services
518-457-7076
Fax. 518-457-2716

June 29, 2007

John Banta, Esq.
Chief Counsel
Adirondack Park Agency
PO Box 99
NYS Route 86
Ray Brook, New York 12977

Dear Mr. Banta:

Over the past two months, the Department has received several inquiries concerning enforcement actions taken by the Adirondack Park Agency against farm operations located within the Adirondack Park. One of the farms is located within a county adopted, State certified, agricultural district, but the other farm is not located within a district. According to the landowner, however, she has requested that her property be included in the corresponding agricultural district upon its next review.

The Commissioner's Office has asked me to obtain information on the APA's administration of its statute and regulations as applied to farm operations. I have read portions of Article 27 of the Executive Law, but several questions concerning the Law and its application to farm operations remain.

It appears that "agricultural use" and related "agricultural use structures" are exempt from APA's permitting requirements (Executive Law § 810, subd. 1). According to the "Summary of Adirondack Park Agency Authority Over Land Use and Development and Subdivisions" table provided on the APA web site, agricultural use and agricultural use structures are considered non-jurisdictional projects and no APA permits are required, regardless of the land classification where the property resides. If this interpretation is correct, when would a permit from the APA be required for an agricultural use or the construction of associated structure(s)?

One of the farmers that contacted the Department has been cited by the APA for constructing farm worker housing without first receiving a permit from the Agency. The landowner indicated that prior to construction, a building permit was obtained from the Town. These new residences, five in total, were intended to replace numerous older

homes that had been removed from the farm. Although the demolished homes may have been located on more than one parcel, under the Agriculture and Markets Law, "farm operations" are defined, in part, as consisting of owned or rented land that may be contiguous or non-contiguous to one another. The Department also considers "farm worker housing" to be agricultural structures and also protected under the AML. Does the APA consider farm worker housing to be an agricultural use structure as defined in § 802, subd. 8 of the Executive Law? If so, why would a farmer be required to obtain a permit from the APA to construct an "agricultural use structure?"

Another farmer received a letter from the APA concerning the placement of a temporary greenhouse on their start-up farm. In 1992, the Executive Law was amended to define temporary greenhouses as "specialized agricultural equipment." [Executive Law §372(17)] Executive Law §372(3) states that temporary greenhouses are not buildings for purposes of the State Building Code. Real Property Tax Law §483-c exempts temporary greenhouses from taxes, special ad valorem levies and special assessments because they too, consider such greenhouses as "specialized agricultural equipment" and not a building or structure. The Department has protected the erection and use of temporary greenhouses as part of a farm operation for nursery/greenhouse operations, produce farms and livestock farms. It would seem that the APA would also consider such greenhouses to be equipment and not a structure. Would the APA consider "temporary greenhouses" to be equipment or if not, wouldn't such structures, if used for agricultural purposes, be considered an agricultural use structure and exempt from the APA permitting requirements?

In order to better advise agricultural enterprises within the Park, it is important that the Department understands how the APA's rules and regulations are applied to farm operations. There are many viable agricultural enterprises that are located within both the Park and an agricultural district.

I look forward to working with you so that both Agencies can clarify their interpretations as to what constitutes an agricultural use, practice and structure. If you have any immediate questions concerning this request, please contact Robert Somers, Manager of the Department's Agricultural Protection Unit, at 457-8887.

Sincerely,

Bill Kimball
Director

ITEM 11

ADIRONDACK PARK AGENCY

In the Matter of

Agency File: E2007-041

LEWIS FAMILY FARM, INC.,

Respondent.

REPLY MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S REQUEST FOR DISMISSAL OF THIS ENFORCEMENT PROCEEDING

Submitted by:

John J. Privitera, Esq.
McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.
677 Broadway
Albany, New York 12207
Tel. No. (518) 447-3200
Attorneys for Respondent

Of Counsel:
Jacob F. Lamme, Esq.

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INTRODUCTION

Respondent Lewis Family Farm, Inc., through its undersigned counsel, submits this reply memorandum of law in further support of the Farm's pending motion to dismiss, which thoroughly refutes staff's response and clarifies both the factual record and the law at issue in this proceeding. The pertinent facts in this proceeding are set forth in the accompanying Reply Affidavit of John Privitera, and the Affidavits of Barbara Lewis, Klaas Martens, and John Privitera contained in *The Right to Farm in the Champlain Valley of New York: The Matter of Housing at the Lewis Family Farm*, which was submitted to the Members of the Agency on or about January 22, 2008.

ARGUMENT

POINT I

THIS PROCEEDING SHOULD BE DISMISSED BECAUSE THE LEWIS FAMILY FARM EMPLOYEE HOUSES ARE AGRICULTURAL USE STRUCTURES

A. The Lewis Family Farm Employee Houses Are Agricultural Use Structures As A Matter Of Fact

Based on staff's response dated January 29, 2008, whereby staff failed to rebut any of the material facts set forth by the Lewis Family Farm, the following facts are unequivocally beyond dispute:

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

- In an effort to improve the infrastructure and operation of the farm, the Lewis Family Farm has cleaned up the land and demolished at least fifteen (15) residences that were beyond repair. (Lewis Aff., ¶¶ 5-6; Martens Aff., ¶ 6). The Lewis Family Farm also constructed at least fifteen (15) new farm buildings and other agricultural use structures including bridges and a 60-foot grain bin in support of the farm, all without Agency permits. (Lewis Aff., ¶ 7 and Exhibit H).

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

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

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

- The Lewis Family Farm commenced an employee housing project involving four new houses on the Farm, three of which are built in a cluster on the footprint of buildings previously erected at the old Walker Farm. (Lewis Aff., ¶¶ 12, 30).

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

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

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

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

- The Lewis Family Farm employee houses are agricultural buildings under the New York Right to Farm Law. (Privitera Reply Aff., ¶ 4, Ex. A).

- Staff's proposed "settlement agreement" demanded that the Lewis Family Farm waive the right to challenge Agency jurisdiction to regulate farming and submit to review by the Agency of all future farm buildings. (Lewis Aff., ¶ 22).

Given these undisputed facts, this Agency must find that the Lewis Family Farm houses are agricultural use structures as a matter of fact.

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

B. The Lewis Family Farm Employee Houses Are Agricultural Use Structures As A Matter Of Law

Staff makes a transparently weak, unconvincing attempt to argue that "single family dwellings" cannot be "agricultural use structures" under the Adirondack Park Agency Act (hereafter the "Act"). Staff does not even seem to convince itself in its sophistry. (Staff's Reply Aff., ¶ 7). Staff reveals its flawed logic by simply declaring that "single family dwellings" are not considered "agricultural use structures" because the terms are defined separately in the Act. (Id.). This is nonsense. Staff's contorted reading of the Act is a fatal consequence resulting from the lack of a pro-farm development policy within the Agency.

The Act defines "agricultural use structure" to include "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building ***or structure directly and customarily associated with agricultural use***." N.Y. Exec. Law § 802(8) (emphasis supplied). Since the term "**structure**" is defined separately in the Act, its definition must necessarily be incorporated into the definition of "agricultural use structure" by reference. See Friedman v. Connecticut Gen. Life Ins. Co., 9 N.Y.3d 105, 115 (2007) ("A court must consider a statute as a whole, reading and construing all parts of an act together to determine legislative intent, and...[give] effect and meaning...to the entire statute and every part and word thereof") (internal citations omitted)

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

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

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

Moreover, the Commissioner of the Department of Agriculture & Markets investigated the Lewis Family Farm employee housing and issued a formal opinion under New York State's Right to Farm Law that the farm employee houses at issue in this proceeding are agricultural use structures as a matter of law. On February 1, 2008, the Commissioner of the New York State Department of Agriculture and Markets issued a written opinion pursuant to Section 308(4) of the Agriculture and Markets Law, whereby he proclaimed that:

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

(Commissioner Hooker's February 1, 2008 Opinion Letter, pg. 2, Ex. A to Privitera Reply Aff.) After reviewing the facts in this case, the Commissioner issued this formal opinion under the Right to Farm Law, finding that farm worker housing is warranted at the Lewis Family Farm, and that the use of land for the employee houses in this case is undoubtedly "**agricultural** in nature." (Id. at 3) (emphasis added). Commissioner Hooker based this conclusive opinion on (i) information gathered by Dr. Robert Somers, Manager of the Department's Agricultural Protection Unit, during a site visit to the Lewis Family Farm on January 9, 2008; (ii) information

provided by the Lewis Family Farm and its manager, Dr. Marco Turco; and (iii) consultation with the Advisory Council on Agriculture. (Id.).

Thus, staff cannot deny that the Lewis Family Farm employee houses are "directly and customarily associated with agricultural use." The Commissioner of the Department of Agriculture & Markets has determined that the houses are agricultural structures as a matter of the Right to Farm Law, § 308(4). This renders them "agricultural use structures" under the Act. See N.Y. Exec. Law § 802(8).

The Agency admits in its public literature that all "agricultural use structures" are non-jurisdictional throughout the Park. (See Privitera Aff., ¶ 12, Ex. G). Accordingly, this enforcement proceeding should be dismissed in its entirety since the Agency lacks jurisdiction over the Lewis Family Farm's employee houses.

C. Staff's Untenable, Mistaken Reading Of The Act Does Not Further The Agency's Land Use Plan Because The Intensity Guidelines Exempt Farm Structures

The definitive proof of staff's mistaken reading of the Act, which would maintain that farm worker housing could never be treated as an "agricultural use structure," is contained in the Act's definition of "principal building." See N.Y. Exec. Law § 802(50).

The overall purpose of the Land Use and Development Plan that is administered by this Agency is to control intensity of development within the designated land use categories. See N.Y. Exec. Law § 805. If it were not clear enough to the ordinary reader that the definition of "agricultural use structures" includes structures such as farm employee housing, the Legislature reminded the reader of its intent in the definition of "principal building." N.Y. Exec. Law § 802(50). There, mindful of its comprehensive effort to carve out farming from any regulation by the Agency, the Legislature defined "principal building" as follows in relation to farms:

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

N.Y. Exec. Law § 802(50)(g).

Staff insists that it wants the Lewis Family Farm to obtain a permit for the employee houses "so that the overall intensity guidelines may be properly applied." (Staff's Reply Aff., ¶ 6). But the guidelines are applied by operation of law, not by a permit. Even if staff's untenable, contorted reading of the Act were to prevail, no purpose under the Plan is served because farm employee housing is not counted as a principal building, no matter how intense such farm employee housing may become.[2] The intensity guidelines are not impacted by farms. The legislature made a deliberate determination that farm growth is to be encouraged as immaterial to Park intensity, in deference to the Pro-farm development clause of the Constitution and the open space values of the Park Plan.

Staff must apply the intensity guidelines without illegally regulating farming because the count of principal buildings on farmland is always "one" no matter how many agricultural structures are present. See N.Y. Exec. Law § 802(50)(g). Thus, this enforcement proceeding serves absolutely no purpose that is within the Agency's mission and merely seeks to unconstitutionally misread the law to reach the desired punitive result of imposing a fine of $1,260,000.00[3] that will force the Lewis Family Farm to fail.

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[2] Staff concedes that this important definition of "principal building" is material to this proceeding. (See Affidavit of John Quinn dated December 12, 2007, ¶ 5). However, staff's visceral approach to this case blinds them from seeing that regulating the housing at issue here serves no land use purpose under the Act.

[3] Staff demands a penalty of $3,500 per day since the date of the Executive Director's unwarranted and illegal cease and desist order. (See staff's Memorandum of Law, pp. 15-19).

D. Staff's Legal Theory, Contrary To A Plain Reading Of The Act And In Derogation Of Its Legislative History, Bans All Farm Workers With Children From Living On Farms In The Adirondack Park

Staff does not argue, nor is there any evidence in this record, that staff has ever demanded a permit application from a farmer who builds a bunkhouse for migrant workers. These agricultural use structures, with common bath facilities and many single adults under one roof, are not conducive to sustained, year-round farm family life.

Staff's judgment about farm families is revealed in its approach to this case. Although staff has yet to identify by sworn statement which of the four farm employee houses built by the Lewis Family Farm are illegal, it appears that staff accepts the Lewis Family Farm's "dormitory" residence. (See Lewis Aff., ¶¶ 12, 15 and Ex. E). The North Family Cottage and the South Family Cottage, designed for two nuclear farm families with children living in close proximity to each other, are branded as illegal structures by staff. Staff's thesis is that a "single family dwelling" must always be treated as a "single family dwelling" under the Act, even if it is an agricultural use structure. (See Staff's Reply Aff., ¶ 7). This puts staff in the position of controlling the number of nuclear farm families, but not controlling unmarried farm workers living in common accommodations.

Staff's thesis does violence to the American farm family. The constitutional right to farm in New York is nothing but an unfulfilled, hollow promise if it does not include the fundamental human right to live with one's family and raise children on a farm.

E. Staff's Legal Theory Will Impose Severe Economic Harm Upon Farmers

Staff's legal theory, that a single family dwelling built for a farmer worker and his or her family can never be a non-jurisdictional "agricultural use structure" under the Act, destroys the financial structure of a farm that relies upon farm families. All agricultural use structures must

be treated carefully and assessed as such by Town Assessors. State and federal income tax treatment of farms is designed to allow all agricultural use structures—including all farm worker housing—to be treated as a farm investment. One limited example of New York's tax treatment of farm housing is the New York State Board of Real Property Services Form RP-483, which specifically encourages a tax exemption for all agricultural and horticultural buildings and structures, including "buildings used to provide housing for regular and essential employees and their immediately families who are primarily employed in farming operations." (See Privitera Reply Aff., ¶ 9, Ex. B). Staff stands alone among state employees as the only group seeking to destroy the tax treatment of farm worker housing.

POINT II

STAFF'S SILENT ADMISSION ON KEY ISSUES COMPELS DISMISSAL OF THIS PROCEEDING.

A. Staff Does Not Deny That The Agency Has Not Met Its Responsibility To Develop A Pro-Farm Development Policy

It is beyond dispute that Article 14 of the New York State Constitution imposes a mandatory duty upon the Agency to encourage the development and improvement of agricultural lands. (Respondent's *Right to Farm* Memorandum of Law, pp. 13-15). It is also undeniable that Article 25-AA of the Agriculture and Markets Law requires the Agency to encourage the maintenance of viable farming through its policies, regulations, and procedures—even if it requires changing Agency regulations. (Respondent's *Right to Farm* Memorandum of Law, pp. 16-19). Staff does not deny that the Agency has failed to develop and foster a pro-farm development policy pursuant to its constitutional and statutory duties. In fact, staff's reply affirmation fails to even mention these duties.

Accordingly, the Agency's attempt to regulate the Lewis Family Farm without a written pro-farm development policy is unconstitutional and must be prohibited.

B. Staff Does Not Deny That The Agency Must Defer To The Policy Of The Department Of Agriculture And Markets

With its lack of response to the Agency's constitutional and statutory duties to encourage pro-farm development, staff rests on a record that unquestionably confirms that the Agency lacks the requisite policy in violation of the New York State Constitution and the Agriculture and Markets Law. In the absence of an Agency policy implementing the pro-farm development clause contained in the New York State Constitution and Agriculture and Markets Law, the Agency is obliged to follow the policy of the Department of Agriculture and Markets and the Commissioner's formal, binding opinion pursuant to Section 308(4) of the Agriculture and Markets Law. (See Privitera Reply Aff., Ex. A).

The Lewis Family Farm cited several New York State Court of Appeals' cases supporting the proposition that the Agency must defer to the Department of Agriculture and Markets [i.e., Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001) and Kurcsics v. Merchants Mutual Insurance Company, 49 N.Y.2d 451 (1980)]. (See Respondent's *Right to Farm* Memorandum of Law, pp. 19-20). Staff fails to present any law to the contrary.

C. Staff Does Not Deny That The Agency's Assertion Over Farm Buildings Violates The Agriculture And Markets Law

Staff's reply affirmation fails to rebut the proposition that the Agency's powers as a "local planning board and a local zoning entity" (see Hunt Bros. v. Glennon, 81 N.Y.2d 906, 909 (1993)) require it to adhere to Section 305-A(1)(a) of the Agriculture and Markets Law, which states that local governments cannot unreasonably regulate farm operations in agricultural districts. (See Respondent's *Right to Farm* Memorandum of Law, pg. 21).

Accordingly, the Agency's attempt to regulate the Lewis Family Farm violates the New York Right to Farm Law, Section 305-A(1)(a) of the Agriculture and Markets Law, and must be prohibited.

D. Staff Fails To Rebut The Argument That Construction Of Agricultural Use Structures Is Not A Subdivision

Staff's reply affirmation fails to address the Lewis Family Farm's contention that a subdivision has not occurred. As previously set forth, the Lewis Family Farm has not subdivided its land, as that term is defined in the Act. (See Respondent's *Right to Farm* Memorandum of Law, pp. 33-35).

Interestingly, on January 28, 2008, *The Legislative Gazette* published an article by Associated Press writer Michael Virtanen entitled "New Effort Against Illegal Adirondack Subdivisions", which describes the Agency's new "computerized enforcement initiative against illegal subdivisions". (See Privitera Reply Aff., ¶ 7, Ex. D). According to the article, the Agency determines whether or not a subdivision has occurred by looking into real estate transaction data at the County Clerk's office. (Id.).

Here, despite staff's failure to address the subdivision issue, the Agency's subdivision determination method conclusively demonstrates that the Lewis Family Farm has not subdivided its land. No subdivision of the Lewis Farm has occurred as can be verified by the County Clerk. (See Lewis Aff., ¶ 14). Accordingly, staff's attempt to craft an alleged violation must fail.

E. Staff Does Not Deny That The Rivers Act Allows The Lewis Family Farm To Develop Its Land In Recreational River Areas

Staff's reply affirmation fails to address the Lewis Family Farm's argument concerning its right to construct agricultural use structures in recreational river areas. (See Respondent's *Right to Farm* Memorandum of Law, pp. 35-37). Section 15-2709(2)(c) specifically states that lands

in recreational river areas "may be developed for the full range of agricultural uses." ECL § 15-2709(2)(c). Moreover, Agency regulations provide that construction of agricultural use structures in recreational river areas do not require a permit. See 9 NYCRR § 577.4(b)(3(ii).

Staff has no response to these provisions of law. Thus, it is unequivocally beyond dispute that the Lewis Family Farm did not violate the Wild, Scenic and Recreational River System Act. Accordingly, staff's attempt to craft an alleged violation must fail.[4]

POINT III

NO PENALTY MAY BE IMPOSED AND NO FINDING OF LIABILITY MAY BE MADE WITHOUT A HEARING

In its Answer to the Notice of Apparent Violation, dated October 4, 2007, the Lewis Family Farm demanded all substantive and procedural safeguards available, including those set forth by the United States Constitution, New York State Constitution, the State Administrative Procedure Act ("SAPA"), and 9 NYCRR Part 581. (See Respondent's Answer).

Staff may quibble as to which subpart of Part 581 is mandatory; however, this is immaterial. No person can be subjected to a finding of liability and a fine in excess of $1,000,000.00 without being provided with the right to cross-examine the witnesses identified by staff, among other protections of SAPA. See N.Y. A.P.A. § 306(3).[5]

[4] Staff's mistaken legal argument serves no recreational goal under the Rivers Act either. There is a hamlet and an active rail line between the new farm houses and the Boquet River. (See Respondent's Memorandum in Support of Dismissal, pg. 7) (Digital Image).

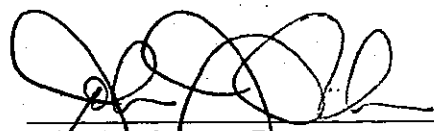
[5] Staff identified three witnesses, Mr. John Banta, Mr. John Quinn and Mr. Douglas Miller. (See Respondent's Memorandum in Support of Dismissal, pg. 18, n. 11) (regarding Mr. Banta's current incapacity as counsel).

CONCLUSION

Based on the foregoing, Respondent Lewis Family Farm, Inc. prays that this proceeding be dismissed with prejudice and that the Cease and Desist Order be annulled.

Dated: Albany, New York
February 26, 2008

Respectfully submitted,



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TO: Paul Van Cott
Enforcement Attorney
Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

REPLY AFFIDAVIT OF JOHN PRIVITERA
SWORN TO FEBRUARY 26, 2008

ADIRONDACK PARK AGENCY

In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

REPLY AFFIDAVIT

Agency File: E2007-041

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

John J. Privitera, being duly sworn, deposes and states as follows:

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

2. I make this reply affidavit in further support of the Lewis Family Farm's request for dismissal of this enforcement proceeding and annulment of the cease and desist order.

3. On January 9, 2008, I requested an opinion on behalf of the Lewis Family Farm pursuant to the Right to Farm Law, Section 308(4) of the Agriculture and Markets Law, as to whether the Lewis Family Farm's construction of farm employee housing at issue in this proceeding is "agricultural in nature."

4. On February 1, 2008, Commissioner Patrick Hooker of the Department of Agriculture and Markets issued a formal written opinion pursuant to Section 308(4) of the Agriculture and Markets Law whereby he conclusively determined that the Lewis Family Farm's use of land for the employee houses at issue in this case is undoubtedly agriculture in nature. A

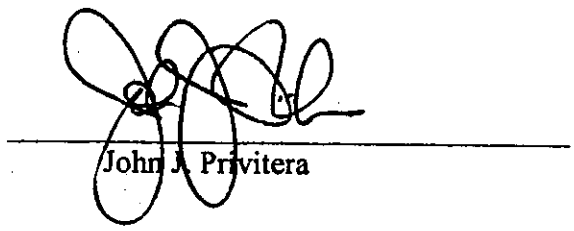
copy of Commissioner Hooker's February 1, 2008 Opinion Letter is attached hereto as **Exhibit "A"**.

5. New York State provides a real property tax exemption for certain agricultural buildings. Form RP-483 of the New York State Board of Real Property Services is a tax exemption application for agricultural structures that a farm owner files with her local assessor. The official Instructions (Form RP-483-Ins) specifically provide that "[t]he exemption applies to buildings used to provide housing for regular and essential employees and their immediate families who are primarily employed in farming operations." A copy of Form RP-483-Ins, which is referenced in Commissioner Hooker's November 26, 2007 letter to Chairman Stiles (Privitera Aff., Ex. B; Staff's Reply Aff., Ex. A), is attached hereto as **Exhibit "B"**. This reference to "immediate families" is the precise phrase in the Adirondack Park Agency Act that excludes farm worker housing from the intensity guidelines. NY Exec. Law § 805(50).

6. On January 24, 2008, pursuant to an oral request under the Freedom of Information Law, the Town of Essex Code Enforcement Officer provided a copy of the Town of Essex Land Use Map – Zoning Districts, whereby it appears that the portion of the Lewis Family Farm upon which the employee houses are built is included inside the Hamlet of Whallonsburg. A copy of the Town of Essex Land Use Map and an enlarged version thereof are attached as **Exhibit "C"**.

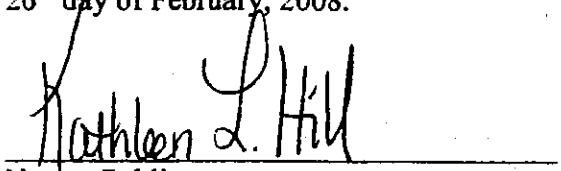
7. On January 28, 2008, *The Legislative Gazette* published an article by Associated Press writer Michael Virtanen entitled "New Effort Against Illegal Adirondack Subdivisions." A copy of the article is attached hereto as **Exhibit "D"**.

8. For the reasons set forth herein, and for the reasons set forth in the accompanying reply memorandum of law submitted herewith, the Lewis Family Farm respectfully requests that the Agency dismiss this proceeding in its entirety and annul the cease and desist order.



John J. Privitera

Sworn to before me this
26th day of February, 2008.



Notary Public

KATHLEEN L. HILL
Notary Public, State of New York
No. 01HI6029213
Qualified in Erie Co.
Commission Expires Aug. 9, 2009

REPLY AFFIDAVIT OF JOHN PRIVITERA
SWORN TO FEBRUARY 26, 2008

EXHIBIT A

Exhibit A: Letter dated 2/1/08 (Privitera Aff. dated 2/26/08)

pp. 1389-1391

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

Eliot Spitzer
Governor

Patrick Hooker
Commissioner

February 1, 2008

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

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

Dear Mr. and Mrs. Lewis:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Patrick Hooker

Patrick Hooker
Commissioner

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

Pursuant to Agriculture and Markets Law §33, I hereby certify that this document, consisting of 3 pages, is a true copy of the original thereof on file with the Department of Agriculture and Markets.

Signature Ruth D. Moore 2/4/08
Title: Counsel Date

REPLY AFFIDAVIT OF JOHN PRIVITERA
SWORN TO FEBRUARY 26, 2008

EXHIBIT B

RP-483-Ins (10/07)

NYS BOARD OF REAL PROPERTY SERVICES

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

Place of filing application.

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

Timing of filing application.

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

Amount and term of exemption; penalty for conversion.

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

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

1 – 4. Self-explanatory

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

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

7. Self-explanatory.

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

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

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

RP-483-Ins (10/07)

REAL PROPERTY TAX LAW SECTION 483

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

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

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

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

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

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

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

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

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

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

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

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

PENALTY FOR FALSE STATEMENT

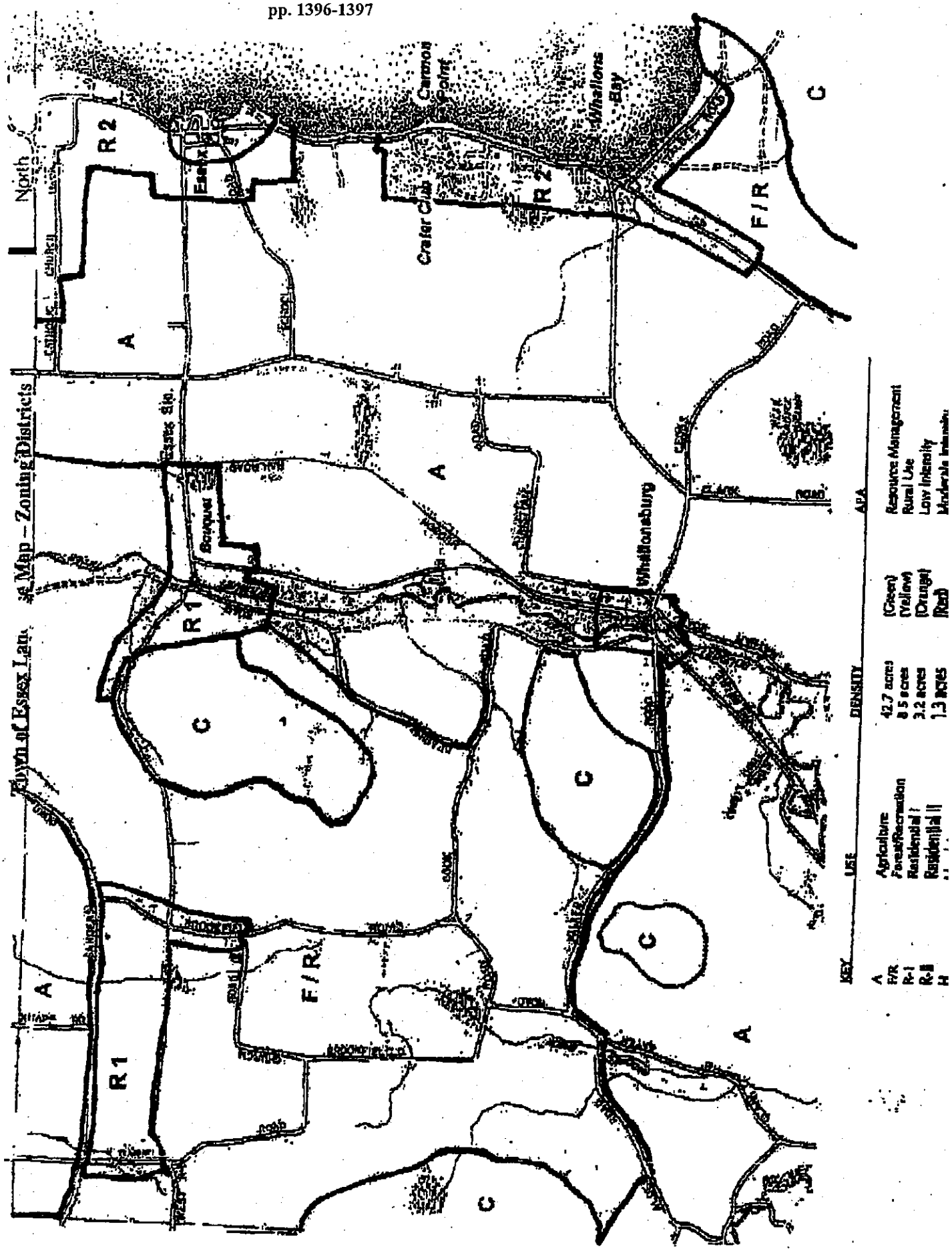
A person making false statements on an application for exemption is guilty of an offense punishable by law.

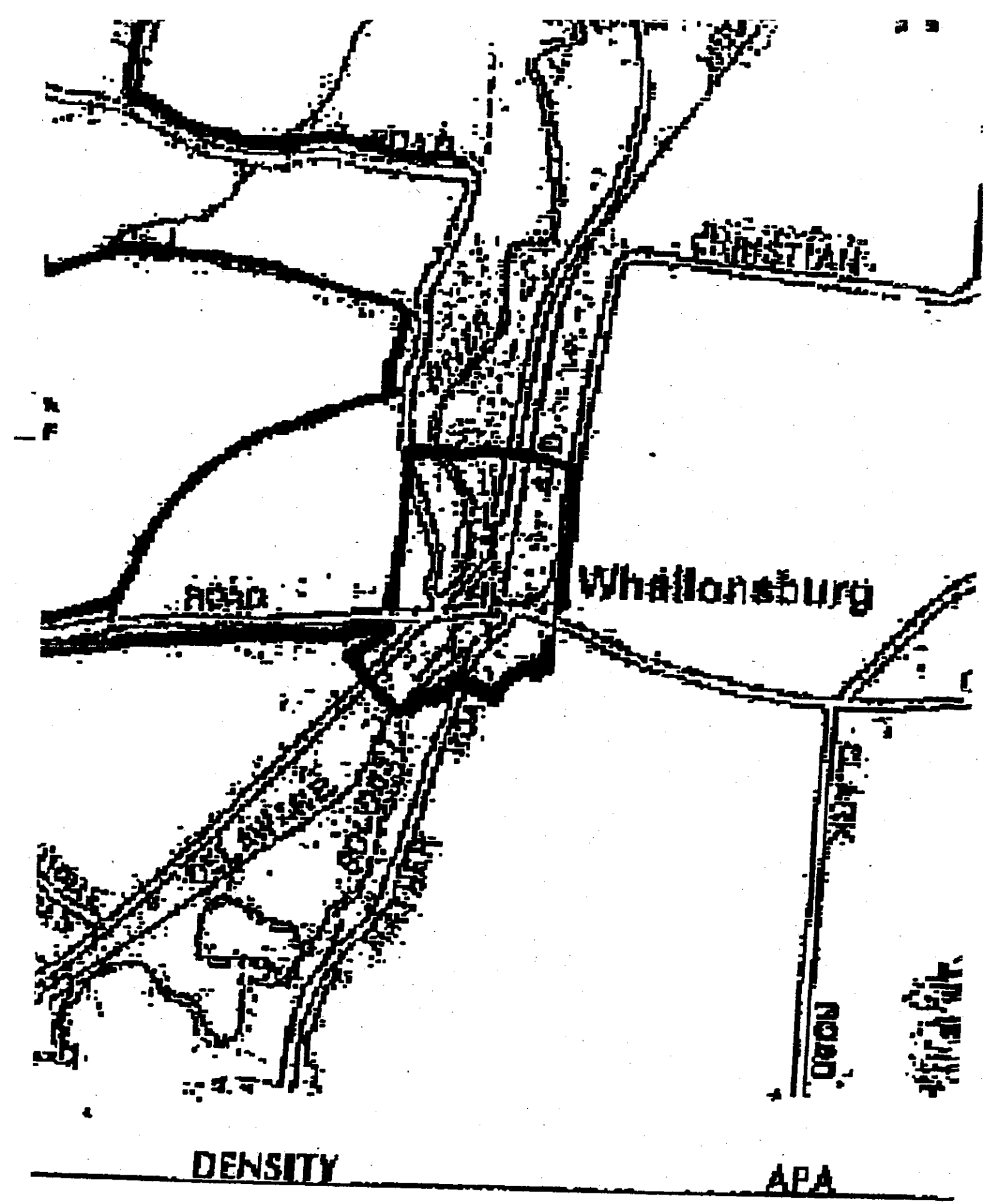
REPLY AFFIDAVIT OF JOHN PRIVITERA
SWORN TO FEBRUARY 26, 2008

EXHIBIT C

Exhibit C: Land Use Map (Privitera Aff. dated 2/26/08)

pp. 1396-1397





42.7 acres (Green)

R001397

REPLY AFFIDAVIT OF JOHN PRIVITERA
SWORN TO FEBRUARY 26, 2008

EXHIBIT D

The Daily Silver Gazette January 28, 2008 | Page 17

New effort against illegal Adirondack subdivisions

By MICHAEL VIRTANEN
The Associated Press

The Adirondack Park Agency has launched a new computerized enforcement initiative against illegal subdivisions that identified 55 probable violators last year, the agency said.

Charged with regulating development of the 6-million-acre park, about half of it privately owned, the APA added two officers and an attorney in 2007 for an enforcement staff of eight, more than double its manpower less than a decade earlier.

The computer program checks real-estate transaction data, required to show new subdivisions, against land-use restrictions to determine whether an APA permit was required and issued. Enforcement officers plan to check property transactions monthly.

"This approach allows staff to identify potential subdivision violations before any inappropriate development is undertaken," APA Chairman Curtis Stiles said. The agency said it will promptly pursue potential violators to prevent environmental harm.

A settlement typically will require the land buyer and seller to undo the subdivision by merging the new lots back into one, according to a memo from APA enforcement staff.

The program showed 173 new subdivisions in the park last year, 55 with potential violations ranging from lot size to wetlands encroachment, the agency said. All 55 landowners are getting letters.

In the past, APA staff often learned about problems only when an innocent buyer queried them before trying to resell. At that point, the previous owner and violator was gone. The agency said it has about 600 older cases, including 400 closed administratively and now inactive.

Roughly half the private land in the Adirondacks, 1.54 million acres, is classified "resource management" by the APA, where most development requires a permit, an average lot size of 42.7 acres and only 15 principal buildings within a square mile. "Rural use" accounts for another 1 million acres, requiring average lot size of 8.5 acres.

Only 53,730 acres are classified as hamlet, another 12,567 acres industrial, both without APA restrictions on lot size or building density. In between is land categorized moderate and low intensity use, 371,558 acres requiring average lots of 1.3 or 3.2 acres.

Municipal zoning rules also apply.

The state holds conservation easements generally prohibiting development on another 553,166 acres of the privately owned land in the park, much of it timberlands. The Department of Environmental Conservation is working to complete easements on another 89,891 acres, agency spokeswoman Maureen Wren said.

ITEM 12

NEW YORK STATE
Adirondack
parkagency

---X

In the matter of the apparent violations of Section 809 of the Executive Law by:

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

---X

REPLY MEMORANDUM OF LAW IN SUPPORT OF AGENCY STAFF'S REQUEST FOR A DETERMINATION BY THE ENFORCEMENT COMMITTEE PURSUANT TO 9 NYCRR 581-2.6(d)

Respectfully submitted by:

Paul Van Cott, Associate Attorney
Adirondack Park Agency Staff

March 5, 2008

PRELIMINARY STATEMENT

This administrative enforcement proceeding is not about Respondent's right to farm. Rather, it concerns Respondent's deliberate and continuing violations of the Adirondack Park Agency Act and the Wild, Scenic and Recreational Rivers Act.

Respondent has woven a web of non-material facts and misread or inapplicable law in a disingenuous effort to cast this simple case as an Agency-orchestrated attack on Adirondack farmers. The reality is that the Adirondack Park Agency Act encourages and promotes the agricultural use of Resource Management lands in the Adirondack Park.[1] At the same time, Agency permits are required for new single family dwellings and for subdivisions in Resource Management and designated river areas. These are not mutually exclusive objectives. Respondent, like any other landowner in the

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[1] Executive Law 805(g)

(1) Character description. Resource management areas, delineated in green on the plan map, are those lands where the need to protect, manage and enhance….agricultural resources is of paramount importance because of overriding natural resource and public considerations. Open space uses, including….agriculture… are found throughout these areas….Important and viable agricultural areas are included in resource management areas, with many farms exhibiting a high level of capital investment for agricultural buildings and equipment. These agricultural areas are of considerable economic importance to segments of the park and provide for a type of open space which is compatible with the park's character.

(2) Purposes, policies and objectives. The basic purposes and objectives of resource management areas are to protect the delicate physical and biological resources, encourage proper and economic management of forest, agricultural and recreational resources and preserve the open spaces that are essential and basic to the unique character of the park….

Adirondack Park, farmer or small business owner, rich or poor, young or old, had an obligation to get a permit from the Adirondack Park Agency prior to building its new single family dwellings on and subdividing Resource Management lands in a designated river area.

To respond to every misstatement of non-material fact made by Respondent would only serve Respondent's goal of confusing the record. Similarly, to respond to Respondent's reliance on misread or inapplicable legal authority serves no constructive purpose.

The facts and the law that are relevant respond to the issue in dispute: Did Respondent violate the Adirondack Park Agency Act and Wild, Scenic and Recreational Rivers Act by constructing its single family dwellings and undertaking a subdivision into sites? Agency staff maintain that Agency permits were required and that Respondent proceeded deliberately in violation of the law. Staff seek compliance and appropriate penalties for Respondent's violations.

POINT I
RESPONDENT'S SINGLE FAMILY DWELLINGS ARE SINGLE FAMILY DWELLINGS

A. Respondent's single family dwellings are single family dwellings as a matter of fact.

Respondent placed three single family dwellings on the Lewis Farm in Resource Management, on lands within the

designated Boquet River Recreational River area, without an APA permit. Affidavit of Douglas Miller ("Miller Court Affidavit"), dated July 20, 2007, ¶¶ 4, 10, 20, Exhibits F and H; See also, Affidavit of Douglas Miller, dated December 12, 2007 ("Miller Affidavit"), and its exhibits; Reply Affidavit of Doug Miller, dated March 4, 2008 ("Miller Reply"), Exhibit A.[2]

Respondent obtained permits from the Town of Essex for the construction of these three single family dwellings. Respondent also applied for, but never obtained, an after-the-fact Agency permit for these three single family dwellings. Quinn Affidavit, ¶ 4; Miller Court Affidavit, ¶ 12.

Respondent's three single family dwellings are located at the intersection of Christian and Whallons Bay Roads. Miller Reply, Exhibit A. In settlement discussions, Agency staff proposed to consider one of these three new dwellings a replacement, since Respondent indicated its intent to tear down a pre-existing single family dwelling in the same vicinity as the three single family dwellings it was constructing. Id, ¶ 6. Unfortunately, settlement discussions never progressed to the point where the parties agreed on which dwelling would be deemed

[2] Respondent lawfully built a fourth single family dwelling on its Resource Management lands and outside the designated river area in the same vicinity as a pre-1973 dwelling that it replaced. This dwelling is located ½ mile away, at the intersection of Clark Road and Cross Road, from the location of the three single family dwellings that are the subject of this proceeding.

a replacement. Id. Respondent has subsequently torn down the pre-existing single family dwelling. Miller Affidavit, ¶ 5.

Exhibit A to Miller's Reply Affidavit references the three new single family dwellings that Respondent has constructed as Structure 1, Structure 2 and Structure 3. His affidavit also explains how those three dwellings relate to the pictures and description contained in his December 12, 2007 Affidavit. Exhibit A clearly shows the location of these dwellings in Resource Management and within a designated river area.

B. Respondent's single family dwellings are single family dwellings as a matter of law

It is a principle of statutory construction in New York that a particular definition will apply over a general definition unless the particular definition does not apply. Statutes § 238. Further, when "terms of art or peculiar phrases are used, it is supposed that that the Legislature had in view the subject matter about which such terms or phrases are commonly employed." Statutes § 233. These principles apply here.

The term "single family dwelling" is specifically defined in Executive Law § 802(58). This particular definition clearly applies to Respondent's single family dwellings over the more general definition of "agricultural use structures". The term "agricultural use structures" only specifically refers to

accessory structures such as barns, stables, sheds, silos, garages and fruit and vegetable stands. It also generally refers to other buildings or structures "directly and customarily associated with agricultural use".

Only by using the defined specific term, "single family dwellings", over the more general term, "agricultural use structures", can the requirements of the Agency laws and regulations be given proper effect. The definition of "principal building" specifically includes single family dwellings. Executive Law § 802(50)(a). It also refers separately to the term "agricultural use structures" and the terms "single family dwellings" used as farmworker housing in the same paragraph, indicating a clear intent that single family dwellings are not agricultural use structures for purposes of Agency jurisdiction. Executive Law § 802(50)(g). The law clearly intends for its definition of "single family dwelling" to apply to all single family dwellings, even if they are used for farmworker housing.

This is not "sophistry" as Respondent suggests. It is reading the law the way it is supposed to be read.

C. A permit is required in order to ensure consistency with the overall intensity guidelines

To promote agriculture in the Adirondack Park, the Adirondack Park Agency Act essentially exempts farmworker

housing from the overall intensity guidelines. However, if a farmer builds several single family dwellings on Resource Management lands for farmworker housing, but then decides to subdivide his property and sell the dwellings as non-agricultural, residential development, the overall intensity guidelines must be applied. An Agency permit, obtained prior to construction of the single family dwellings, ensures that the overall intensity guidelines will be properly applied in the event that the farmer decides to convert the use of the single family dwellings. The permit thus helps to implement the policy balance provided by the Act between promoting agriculture and protecting open space.

D. Contrary to Respondent's contention, Agency staff do not seek to ban all farmworkers with children from living on farms in the Adirondack Park

This point in Respondent's brief exemplifies how Respondent has placed hyperbole above material facts and law in its papers. The case before the Enforcement Committee is about whether Respondent's self-described single family dwellings require a permit from the Agency. The question of whether multiple family dwellings, or bunkhouses with all adults and no children, also require Agency permits is not at issue.

E. *Respondent provides no proof that the requirement of an Agency permit will impose severe economic harm upon farmers.*

Respondent provides no evidence in support of its position that staff's legal theory will somehow impose severe economic hardship upon farmers. Presumably, the Department of Agriculture and Market's finding that Respondent's single family dwellings are integral to its farming operation will ensure the treatment of those structures as a farm investment for taxing purposes. Real Property Law § 483 speaks for itself in allowing a tax exemption for "buildings used to provide housing for regular and seasonal employees and their immediate families who are primarily employed in farming operations". This point again shows the lack of foundation for Respondent's allegations of fact and law in its papers.

POINT II
STAFF'S RESPONSE TO
RESPONDENT'S POINT II

A. *The Adirondack Park Agency Act supports agriculture.*

As set forth in footnote 1 above, the Adirondack Park Agency Act embraces agriculture as an important open space use on private lands in the Adirondack Park. In administering the Act, Agency staff support this statutory policy.

B. As a sister state agency, the Adirondack Park Agency coordinates with the Department of Agriculture and Markets

As a sister state agency, the Adirondack Park Agency is not bound by the policies of the Department of Agriculture and Markets. However, the two state agencies do endeavor to coordinate their policies relative to the promotion and enhancement of agricultural lands in the Adirondack Park. The exchange of correspondence between the two agencies in the record supports this.

C. Staff unequivocally deny that the Agriculture and Markets Law applies in this case

Section 305-A(1)(a) of the Agriculture and Markets Law does not apply to state agencies such as the Adirondack Park Agency. It expressly only applies to local governments. Acting New York State Supreme Court Justice Ryan unequivocally decided that this statute does not apply to the Agency in his August 16, 2007 decision granting the Agency's motion to dismiss against Respondent.[3] Van Cott Affirmation, Exhibit B.

[3] "Since the APA does have authority over this buiding project, the next issue is whether the Agriculture and Markets Law § 305-a supercedes the APA authority. It does not…..this section has no application to the Executive Law or the regulations promulgated by the APA pursuant to that law." Decision and Order of Acting Justice Ryan, Page 6 (Van Cott Affirmation, Exhibit B)

D. Respondent has undertaken a subdivision into sites that required an Agency permit

Pursuant to Executive Law §§ 809(2)(a) and 810(1)(e)(3) and 9 NYCRR § 577.5(c)(1), a permit is required for any subdivision of Resource Management lands or of Resource Management lands in a river area, respectively. Subdivision is defined in Executive Law § 802(63) to include any subdivision into sites. Pursuant to 9 NYCRR § 570.3(ah)(3), a subdivision into sites occurs where more than one dwelling or other principal dwelling is to be constructed on a vacant parcel of land.

Since Respondent placed three new single family dwellings on the subject property, Respondent undertook a subdivision into sites that required an Agency permit. Respondent's failure to obtain a permit is a violation of the Executive Law and 9 NYCRR Part 577.

E. Respondent has violated the Rivers Act

Respondent's position hinges on its misplaced theory that the three new single family dwellings it built are not single family dwellings for purposes of Agency jurisdiction. As explained above, and in staff's Request for an Enforcement Committee Determination, Respondent's single family dwellings are single family dwellings as defined in Executive Law § 802(58) for purposes of Agency jurisdiction.

9 NYCRR § 577.5(c)(1) requires an Agency permit for all subdivisions of land and all land use and development classified compatible uses in the Adirondack Park Agency Act. Single family dwellings are classified as secondary compatible uses on Resource Management lands. Executive Law § 805(g)(4). Thus, Agency permits were required pursuant to the Rivers Act for Respondent's subdivision and single family dwellings. Because of its failure to obtain a permit, Respondent is violating the Rivers Act by constructing its single family dwellings and subdividing its land into sites.

POINT III
APPROPRIATE RELIEF AND PENALITES MAY BE IMPOSED

This matter was properly brought by staff pursuant to 9 NYCRR Section § 581-2.6(b). Respondent has replied pursuant to § 581-2.6(c). There are no material facts in dispute, so there is no need for a hearing. Agency staff seek a determination pursuant to § 581-2.6(d) that the alleged violations are occurring. Agency staff have requested a determination of appropriate relief and penalties, and the Enforcement Committee has the authority make such a determination pursuant to § 581-2.6(d).

POINT IV
RESPONDENT'S PURPOSEFUL DISREGARD FOR LAWFUL PROCESS

Despite Respondent's effort to make this case into something that it is not, the facts and law are clear. Respondent is in violation of the Executive Law and the Rivers Act, and the aggravating facts in this case are serious. Respondent installed the foundations of its three single family dwellings despite senior Agency staff having informed Respondent that a permit was needed. Banta Affirmation, ¶ 6. Respondent then applied for an after-the-fact permit from the Agency for its single family dwellings. Quinn Affidavit, ¶ 4. After refusing to settle its violations, Respondent proceeded with construction of its single family dwellings in defiance of a lawful Cease and Desist Order requiring it to stop work. Miller Affidavit, July 20, 2007, ¶ 20. Respondent then sued the Agency and lost. Van Cott Affirmation, Exhibit B. The court confirmed the Agency's jurisdiction over the single family dwellings that Respondent was constructing. Id. Despite this unequivocal court decision and written notice from Agency staff that the Cease and Desist Order remained in effect, Respondent continued with construction on its single family dwellings. Van Cott Affirmation, ¶ 5, Exhibit C; Miller Affidavit, December 12, 2007, and its Exhibits.

These facts are beyond dispute. They underscore what this proceeding is really about, i.e., Respondent's unwillingness to comply with the law like any other landowner in the Adirondack Park. Respondent purposefully disregarded advice given by senior Agency staff and purposefully defied a Cease and Desist Order issued by the Agency's Interim Executive Director. If Respondent had sought permits in the first instance, or promptly settled its violations, or even challenged in good faith the Agency's jurisdiction before the Enforcement Committee, before proceeding with construction of its single family dwellings, this would be an entirely different case. Instead, Respondent has defied the Agency, and now seeks to rationalize its actions based on non-material facts and inapplicable, after-the-fact legal theories.

CONCLUSION

Based on the record before the Enforcement Committee, Agency staff request a determination by the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) that the apparent violations alleged in the NAV have occurred, and are occurring. Agency staff further request that the Enforcement Committee require Respondent to obtain an after-the-fact Agency permit for its illegal subdivision and single family dwellings, based on an application that contains the information described in the Affidavit of John Quinn. Finally, for the reasons discussed

above and in staff's initial Memorandum of Law, Agency staff request that the Enforcement Committee impose a substantial penalty upon Respondent for its violations. Absent a substantial penalty here, Respondent and others will not be deterred from future violations.

AFFIDAVIT OF DOUGLAS MILLER
DATED MARCH 4, 2008

---X

In the matter of the apparent violations of Section 809 of the Executive Law by:

REPLY AFFIDAVIT

Agency File E2007-041

LEWIS FAMILY FARM, INC.

Respondent.

---X

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

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

1. I am an Enforcement Officer for the Adirondack Park Agency (the "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, and have served in this position since 2005. 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 NYS Wild, Scenic and Recreational Rivers Act in an area that includes the Town of Essex, Essex County.

2. I am familiar with the file in this matter and provide this reply affidavit in support of Agency staff's request for an Enforcement Committee determination.

3. I have included an attached exhibit (Exhibit A) that shows on a 2003 aerial photograph a detailed representation of the area on the Lewis Family Farm that is described in my affidavit of December 12, 2007. Exhibit A shows, in green, the Resource Management land use area from the Adirondack Park Land Use and Development Plan Map, the boundary line of the river area as described in the New York State Wild Scenic and Recreational Rivers Act, and the approximate locations of a pre-1973 single family dwelling (now removed) and the three new single family dwellings described in detail in my affidavit of December 12, 2007.

4. In paragraph 3 of my December 12, 2007 Affidavit, I described a single family dwelling located adjacent to the Christian Road and immediately north of a pre-existing blue single family dwelling. That dwelling is labeled as Structure 1 on the Exhibit A hereto. I also described a second dwelling located adjacent to Whallons Bay Road and northeast of the pre-existing blue dwelling. That dwelling is labeled Structure 2

on Exhibit A. Finally the third house I described in paragraph 3 as being located northeast of the first two houses is labeled Structure 3 on Exhibit A.

5. In paragraph four of my December 12, 2007 Affidavit, the single family dwelling adjacent to Christian Road is Structure 1 on Exhibit A.

6. During settlement discussions with Respondent, Agency staff offered to consider one of the three single family dwellings as a replacement for the pre-1973 dwelling located in the same vicinity that Respondent planned to tear down. However, those settlement discussions never progressed to the point where the replacement single family dwelling was identified.

7. A fourth single family dwelling that was built in 2007 on the Lewis Family Farm at the intersection of Clark Road and Cross Road is located approximately one half mile from the three structures shown on the attached exhibit. This fourth single family dwelling is located in Resource Management but outside the designated river area. This dwelling was determined by Agency staff to be a lawful replacement of a pre-existing dwelling that was located in the same location, and as such was not subject to Agency jurisdiction. The pre-existing dwelling at the Clark

Road/Cross Road intersection was removed prior to construction of the new structure.

DOUGLAS MILLER

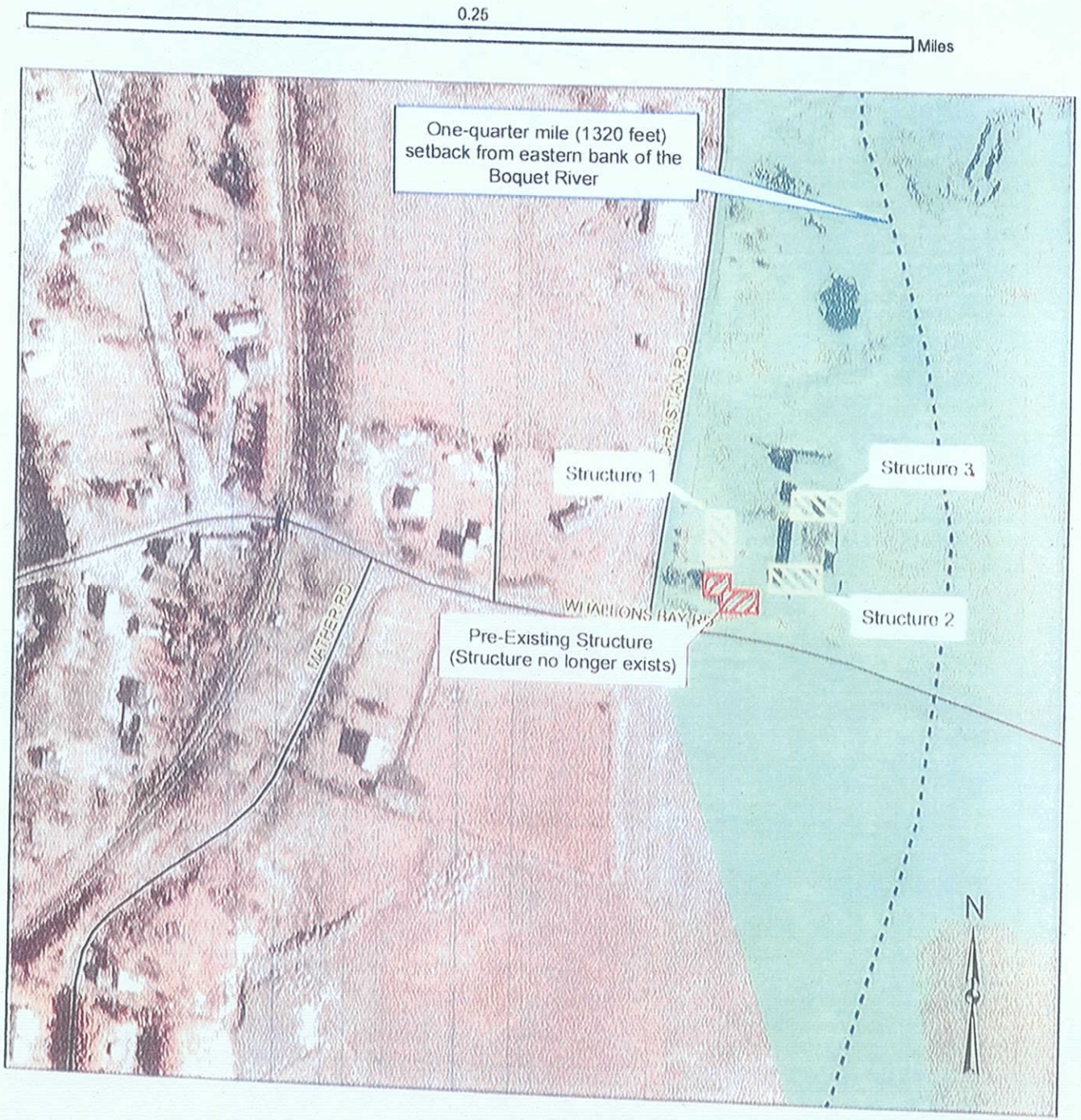
Sworn to before me this
4th day of March 2008.

Notary Public

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

AFFIDAVIT OF DOUGLAS MILLER
DATED MARCH 4, 2008

EXHIBIT A

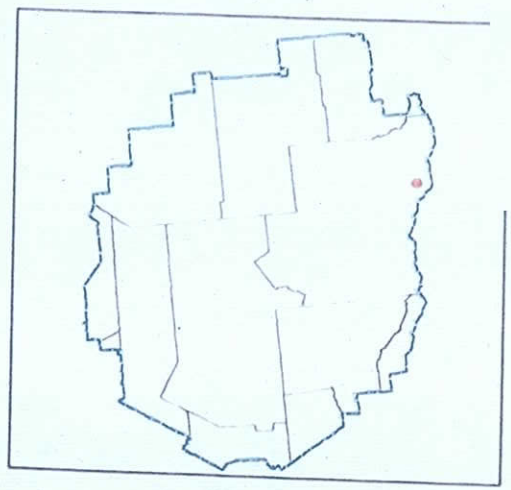


E2007-41
Approximate Structure Location Exhibit

Land Use Classification

- Hamlet
- Resource Management

Vicinity Map



Adirondack Park Agency
MSK 3/03/08

Exhibit A: 2003 Aerial Photo (Miller Aff. - 3/4/08)

p. 1421

R001421

ITEM 13

Letter dated 2/21/08 from NY Farm Bureau to Governor Spitzer

pp. 1423-1424

submitted 3/13/08 by J. Privitera

New York Farm Bureau, Inc. • 159 Wolf Road, P.O. Box 5330 • Albany, New York 12205-0330 • (518) 436-8495 Fax: (518) 431-5656 • www.nyfb.org

February 21, 2008

The Honorable Eliot Spitzer, Governor
New York State
The Capitol
Albany, NY 12224

Dear Governor Spitzer,

Thank you again for the support you have provided in your Executive Budget for New York agriculture. The focus you have placed during your administration on revitalizing the Upstate economy is important for the future of New York and the future of New York farms. As you know, accomplishing this revitalization will be the result of both incentive based approaches and the bettering of New York's business climate. From an agricultural perspective, a better business climate includes the ability for farms to utilize their lands without restrictive land use requirements that stymie farm expansion. New York Farm Bureau recently became aware of an issue that threatens to restrict agriculture in a large portion of the State and we would appreciate your consideration of the need to address this situation.

As you know, the Adirondack Park is a unique environmental treasure for the people of New York. The High Peaks and forested valleys have captured the imaginations of generations of New Yorkers. Adding to the stark beauty of the Park are the open meadows and fields of the farms of the Adirondack Park. This mix of landscapes provided by agriculture was deemed so important to maintain and so critical to the preservation and protection of the Park that agriculture was specifically exempted from land use regulations under the Adirondack Park Agency Act. In doing so the policy of the State melded together the Constitutional requirements to protect the Park and protect agriculture.

Unfortunately, recent enforcement actions by the Adirondack Park Agency (APA) have threatened to upset this balance and hinder agricultural growth within the Adirondack Park. The APA is currently moving forward with draconian enforcement against the Lewis Family Farm in Essex County. This enforcement action appears to us to be in direct conflict with the Department of Agriculture & Markets interpretations of the role of farmworker housing in a modern farm operation and the overall policy of the state to "...protect and encourage the development and improvement of agricultural for production of food and other animal products." (NYS CLS Ag & Mkts §300) The end result is the sustainability of one of New York's largest USDA Certified organic farms is currently being threatened. Additionally, this

attempt by the APA to establish restrictive land use requirements on agriculture could have negative impacts on farms throughout the Adirondack Park.

Because this apparent policy shift threatens the longstanding appropriate policy of protecting agriculture in the Park, we are requesting that the APA provide deference to determinations by the Department of Agriculture & Markets regarding agricultural use within the Park. NYFB also supports Sandy Lewis' recent request that an Executive Order be issued requiring the APA develop a farm plan that conforms with the Constitutional mandate to protect and preserve agriculture. (Copy of letter attached for your reference). In developing such a policy, NYFB also believes that the APA should be required to defer to the Department of Agriculture & Markets when making determinations regarding agriculture, to prevent egregious and anti-farm scenarios, such as the difficulties already experienced by Lewis Family Farm.

As always, we appreciate your consideration of the concerns of New York farmers and stand ready to assist in addressing this issue in any way possible. Again, thank you for your efforts to include agriculture as a key point of revitalizing Upstate. If you have any questions, please do not hesitate to contact our offices.

Sincerely,

John W. Lincoln
President

cc: Patrick M. Hooker, Commissioner, NYS Department of Agriculture & Markets
Curt Stiles, Chairman, Adirondack Park Agency
Board of Directors. Adirondack Park Agency
Judith Enck, Deputy Secretary for the Environment
Barbara and Sandy Lewis, Lewis Family Farm

R001424

ITEM 14

STATEMENT OF BARBARA A LEWIS ON BEHALF OF THE LEWIS FAMILY FARM, INC.

You ask for open spaces. We have created them by establishing fields and pasture land where there used to be falling down houses, barns, outbuildings and debris.

You ask for vistas. We have created them by taking down all telephone poles abutting our lands and putting the services underground.

You ask for wetlands. We have preserved and enlarged them by building bridges and creating pooling areas.

You ask for jurisdiction over a farm's right to build housing for its employees and all future building activities on its land and by extension all farms in the Adirondack Park.

We say these rights are regulated by and protected by the State of New York, The Department of Agriculture and our local zoning laws.

We have done and continue to do the right thing by our land and the people of our community. Do not ask for more.

Submitted
3/13/08
by
J. Privateer

ITEM 15

ADIRONDACK PARK
LOCAL GOVERNMENT REVIEW BOARD
www.adirondackboard.com

Executive Director
FREDERICK H. MONROE
P.O. Box 578, Chateaugay, NY 12917
Tel: (518) 494-3687 Fax: (518) 494-5472
fmonroe@adirondackboard.com

Chairman
LLOYD MOORE
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lmoore@adirondackboard.com

Counsel
JOHN MCDONALD
P.O. Box 591, Tupper Lake, NY 12986
(518) 359-2651
jmcdonald@adirondackboard.com

March 5, 2008

Submitted 3/13/08
by J. Privitera

Hon. Eliot Spitzer,
Governor State Capitol
Albany, New York 12224

Dear Governor Spitzer:

Please accept our appreciation for the focus that your administration has placed upon revitalization of the upstate economy. Employment and opportunity within the Adirondack Park has been waning for years and we need the kind of support that you have shown in order to build a sustainable future.

We have always appreciated agriculture as one of the foundation stones of our economy. Because of this, we are greatly concerned about an enforcement action that the Adirondack Park Agency has commenced against perhaps our most successful farm in the Adirondacks. The Agency seeks a penalty in excess of $1.2 million against the Lewis Family Farm for the construction of non-jurisdictional agricultural use structures in the form of farm employee housing. Indeed, we have passed a resolution, which I enclose, stating our objection to this ill-advised Agency action.

In addition, consistent with our statutory powers under Section 803-a of the Adirondack Park Act, we ask that you issue an executive order directing the Agency to develop, through a course of public hearings and with the involvement of our Board, a farm policy that we can rely upon to sustain our farmers. We have come to understand that the Agency has constitutional and statutory obligations to develop and implement a farm policy that encourages farming. We believe that once the Agency meets this obligation, our farmers will be protected from such mistakes as the enforcement efforts against the Lewis Family Farm. Our enclosed resolution also covers this important point.

We firmly believe that the executive order is the first step down the road of renewed economic vitality in the Adirondack Park

Respectfully yours,

Lloyd Moore
Chairman

Frederick H. Monroe
Executive Director

MEMBERS
Clinton County: John Major, Howard Ashley* • Essex County: George Canon, Cathy Moore, John Brodie* • Franklin County: Nellie Brown
Fulton County: Linda Kemper, David Newcomb*, Sylvia Parker** • Hamilton County: John (J.R.) Haley, Robin Brown*, Fenton Hernandez*
Herkimer County: Henry Eybalin, Linda Eybalin* • Lewis County: L. Kelley Dishaw • St. Lawrence County: Lloyd Moore, Leon J. Perry
Saratoga County: James Barrondi, Joan Raymond* • Warren County: Ralph Bentley, Kevin Geraghty* • Washington County: John Lafebvre, Robert Banks*
Secretary: Carol A. Monroe, cmonroe@adirondackboard.com • P.O. Box 578, Chateaugay, NY 12917 • (518) 494-3687 • Fax (518) 494-5472
*Alternate **Community Member

ADIRONDACK PARK
LOCAL GOVERNMENT REVIEW BOARD
www.adirondackboard.com

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Counsel
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RESOLUTION

WHEREAS, the Adirondack Park Local Government Review Board (Board) is charged with the responsibility of monitoring the administration and enforcement of the Adirondack Park Land Use and Development Plan (Plan) by the Adirondack Park Agency (Agency); and

WHEREAS, the Board is also charged with the responsibility to make recommendations to the Governor of New York State with respect to the administration and enforcement of the Plan; and

WHEREAS, the Board finds that the pending enforcement proceeding by the Agency against the Lewis Family Farm, Agency File E2007-041, is in conflict with the terms of the Plan, which provide that agricultural use structures are non-jurisdictional; and

WHEREAS, the Board finds that the Agency has constitutional and statutory duties to develop and implement a farm policy that encourages farming in the Adirondack Park; and

WHEREAS, the Board finds that the Agency has not discharged its constitutional duty or its statutory duty to develop a farm policy; it is hereby

RESOLVED that the Chairman of the Board shall promptly send a letter to Governor Spitzer opposing the Agency's enforcement proceeding against the Lewis Family Farm and requesting that the Governor issue an Executive Order directing the Agency to develop a farm policy.

Dated March 4, 2007

Lloyd Moore, Chairman

MEMBERS
Clinton County: John Major, Howard Ashley* • Essex County: George Canon, Cathy Moore, John Pandiff* • Franklin County: Nellie Stevens
Fulton County: Linda Kemper, David Hayward*, Sylvia Parker** • Hamilton County: John (J.R.) Riley, Brian Stowe*, Evelyn Fitzwater*
Herkimer County: Henry Rybolloff, Linda Rybolloff* • Lewis County: L. Kelley Haldeman • St. Lawrence County: Lloyd Moore, Leon J. Perry
Saratoga County: Bruce Boisvert, Joan Raymond* • Warren County: Ralph Dowling, Kevin Geraghty* • Washington County: John LaPlatney, Robert Bender*
Secretary: Carol A. Monroe, secretary@adirondackboard.com • P.O. Box 578, Chesterfield, NY 12817 • (518) 494-3087 • Fax (518) 494-5472
*Alternate, **Community Citizen

ITEM 16

E2007-041, Lewis Family Farm, Inc.
Town of Essex, Essex County

Submitted 3/13/08 by D. Privitera

Proposed Order

Findings:

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

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

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

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

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

6. The Lewis Family Farm commenced an employee housing project involving four new houses on the Farm, three of which are built in a cluster to the northeast of the intersection of Whallons Bay Road and Christian Road on the footprint of buildings previously erected at the old Walker Farm. (Lewis Aff., ¶¶ 12, 30).

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

8. The Lewis Family Farm employee housing cluster includes two (2) three-bedroom cottages for nuclear farm families and one (1) larger four-bedroom dormitory-style residence designed for employees, interns, apprentices, and farm consultants. (Lewis Aff., ¶ 12).

9. On February 1, 2008, Patrick Hooker, the Commissioner of the New York State Department of Agriculture and Markets, issued a formal written opinion pursuant to Section 308(4) of the Agriculture and Markets Law proclaiming that farm worker housing is warranted at the Lewis Family Farm, and that the use of land for the employee houses in this case is undoubtedly "agricultural in nature." (Priv. Reply Aff., Ex. A)

10. The Lewis Family Farm employee housing cluster is located approximately 1,000 feet from the Boquet River. The Hamlet of Whallonsburg and an active rail line separate the housing cluster from the river. (Miller Reply Aff., Ex. A)

Determinations:

1. All "agricultural use structures" are non-jurisdictional throughout the Park.

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

3. The Act defines "structure" to include single family dwellings. N.Y. Exec. Law § 802(62).

4. Thus, a single family dwelling that is "directly and customarily associated with agricultural use" is an "agricultural use structure" under the Act. See N.Y. Exec. Law § 802(8).

5. Providing farm employee housing is a fundamentally sound agriculture practice, and farm employee housing is directly and customarily associated with agricultural use.

6. The Lewis Family Farm employee housing cluster, which provides easy and energy efficient access to and surveillance of the adjacent barns, was specifically designed for use by farm employees only.

7. The Lewis Family Farm employee houses are "agricultural use structures" under the Act.

8. The Lewis Family Farm did not subdivide its land to build the four employee houses.

9. The Wild, Scenic and Recreational River System Act provides that lands in recreational river areas "may be developed for the full range of agricultural uses...and may include small communities as well as disbursed or cluster residential areas." ECL § 15-2709(2)(c). Agricultural use structures may be undertaken without a permit within a recreational river area as long as the structure is more than 150 feet from the River, as here. 9 NYCRR §§ 577.4(b)(3)(ii); 577.6(b)(3).

10. The Lewis Family Farm employee housing cluster, consisting solely of "agricultural use structures", is agricultural in nature. Thus, it does not violate the Wild, Scenic and Recreational River System Act.

11. This determination of the Committee is based on the facts presented in the record.

CONCLUSION

1. This proceeding is dismissed.

By: _____ _____
Cecil Wray Date
Chair, Enforcement Committee

Committee Members:
Randy Beach, Department of Environmental Conservation
Arthur Lussi
Frank Mezzano
James Townsend
Ross Whaley

ITEM 17

The Matter of Housing at the Lewis Family Farm

and

The Right to Farm in the Champlain Valley of New York

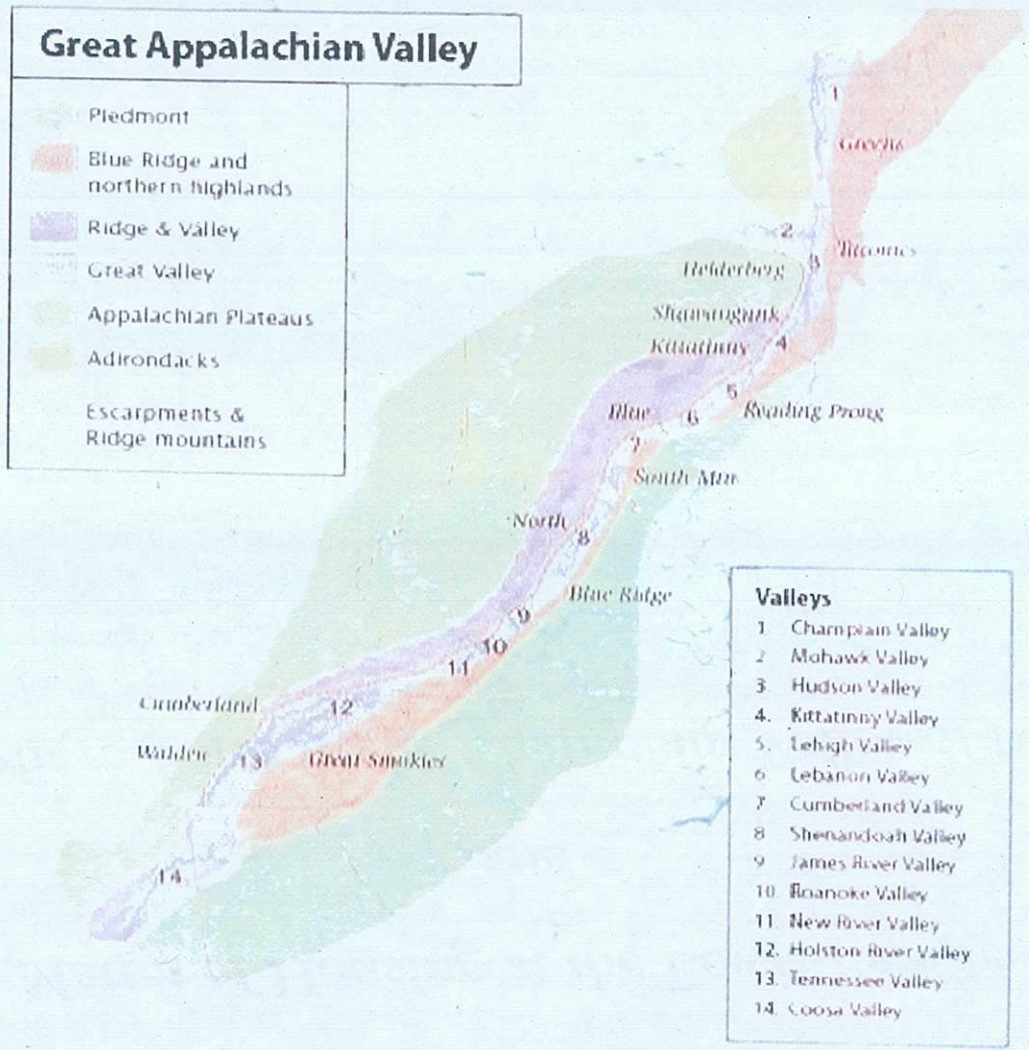
Photograph of Lewis Family Farm by Barbara A. Lewis

Power Point presentation "The Matter of Housing at the Lewis Family Farm and the Right to Farm in the Champlain Valley of New York" pp. 1435-1460

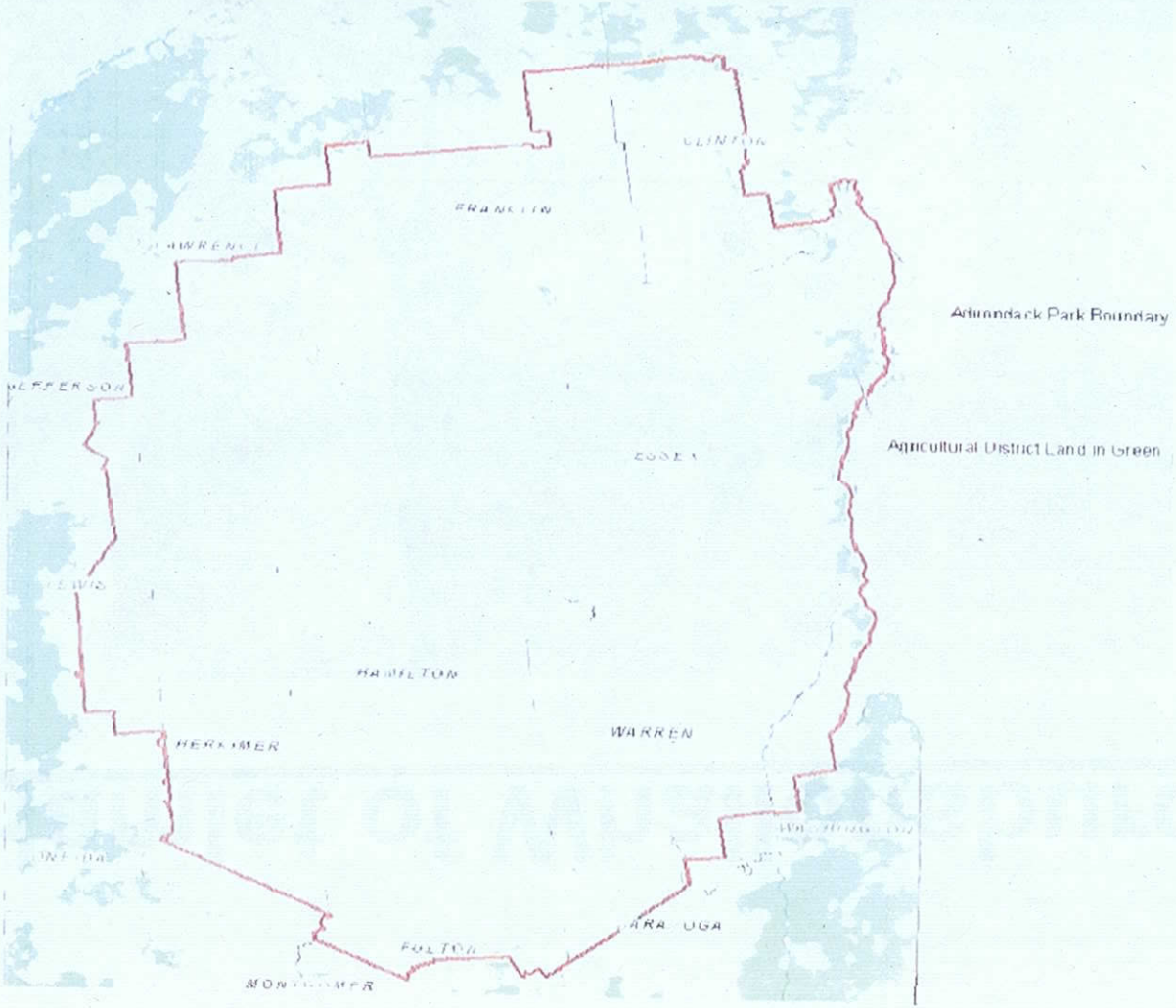
R001435

R001436

The Great Appalachian Valley



Agricultural District Land is a Miniscule Portion of the Adirondack Park



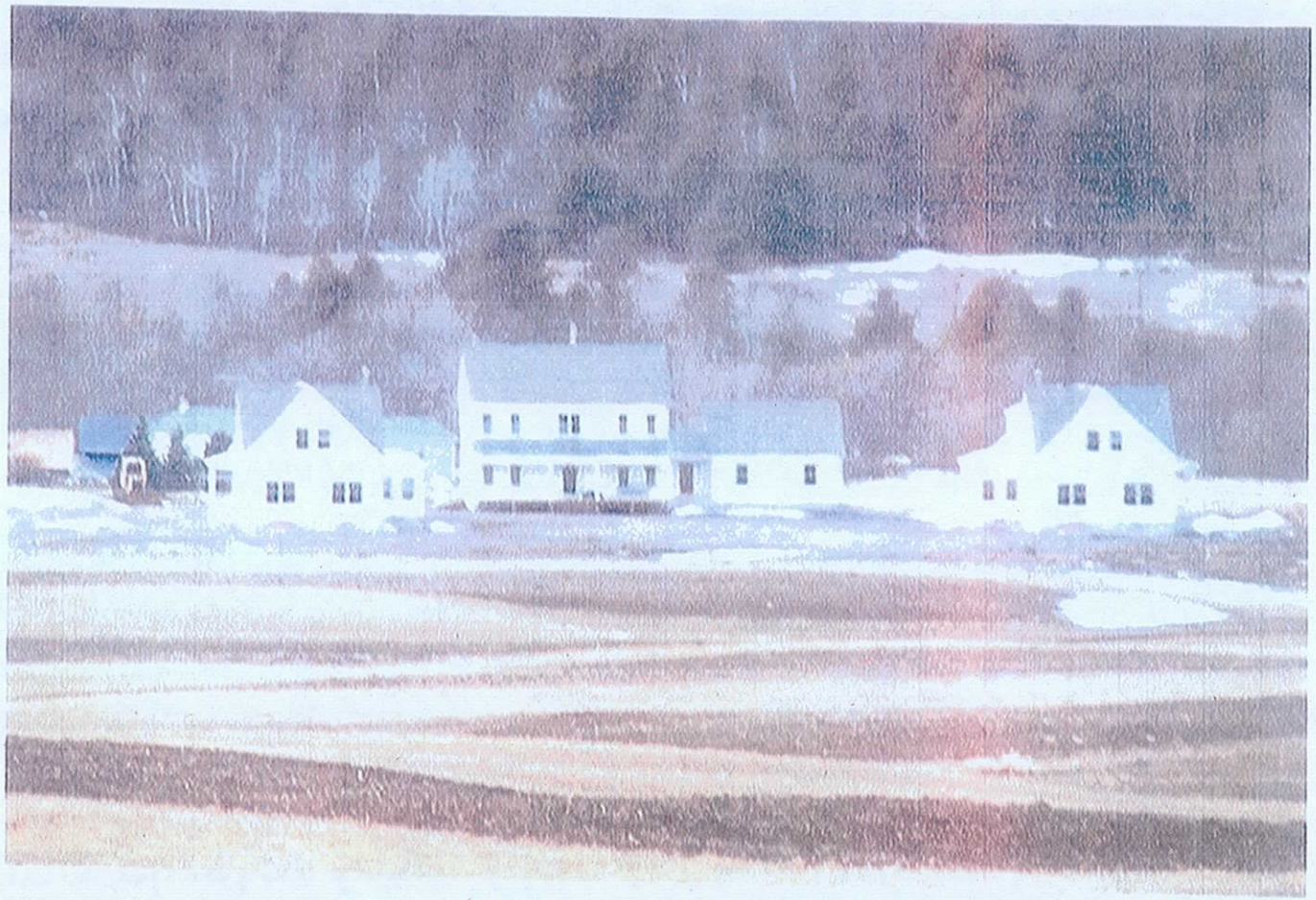
R001438

Hamlet of Whallonsburg

Hamlet houses and Lewis Family Farm employee housing cluster from Hamlet on Whallons Bay Road.

R001440

The Lewis Family Farm employee housing was constructed on the same footprint as the old Walker farm buildings.

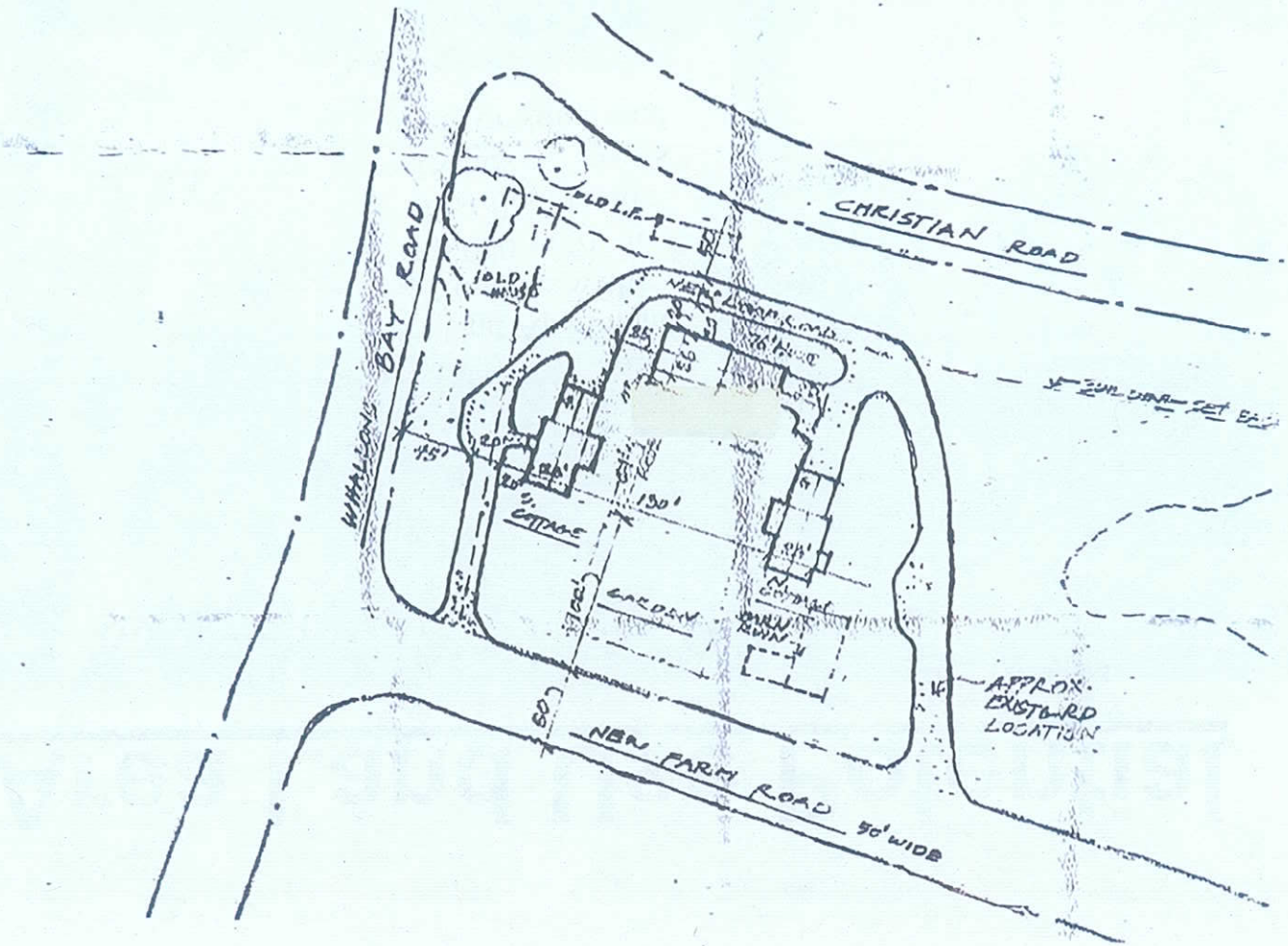


The homes of the Hamlet of Whallonsburg are evident behind the South Family Cottage.

Employee Housing Site Plan

(created on October 5, 2006)

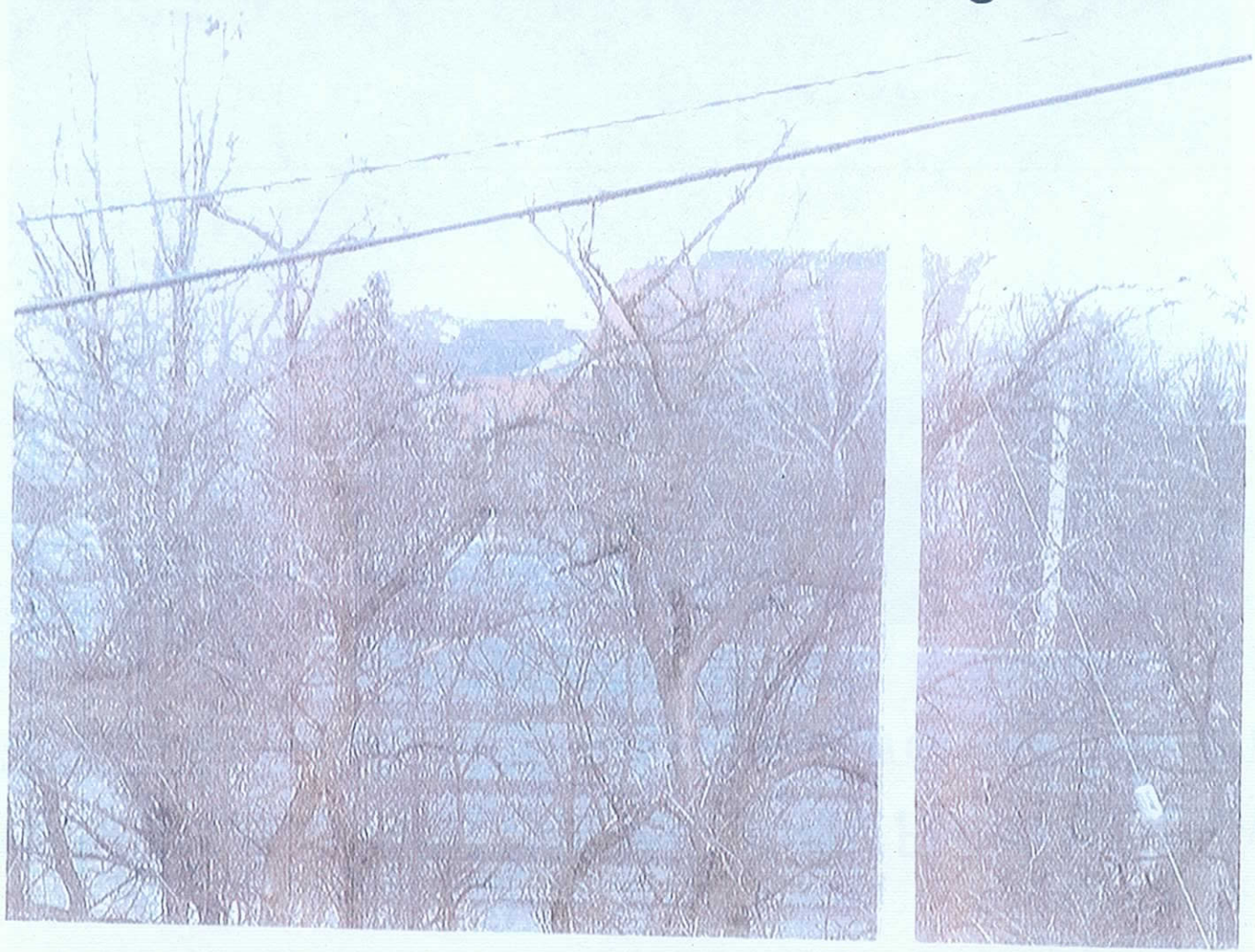
Residence I is labeled as "Dormitory"



R001442

Area Land Use Potential

Lewis Family Farm employee housing cluster roofs in background looking east from within Hamlet. Hamlet roofs and wires in foreground.



R001443

Hamlet houses and Lewis Family Farm employee housing cluster looking northeast from the Hamlet's Angier Hill Road.

Legislative Direction to Avoid Regulation of Farming

1. New York State Constitution
2. N.Y. Agriculture and Markets Law
3. Legislative History
4. Adirondack Park Agency Act
   a. Intensity Guidelines
   b. Productive Farm land as Open Space
   c. "Class A" Exemption
   d. Farm Buildings Excluded from "Class B"
   e. Initial Instruction to Avoid Farm Regulation
   f. Broad Definition of "Agricultural Use Structures"
5. Wild, Scenic and Recreational River System Act
   a. Rivers Act
   b. Regulations

R001446

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

N.Y. Constitution, Article 14, § 4

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

N.Y. Agriculture & Markets Law § 305

R001447

R001448

Farm Buildings – Including Housing – Are Exempt From Intensity Guidelines

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

N.Y. Exec. Law §802(50)

The Act's Recognition of Farming as Valuable Open Space

"Important and viable agricultural areas are included in resource management areas, with many farms exhibiting a high level of capital investment for agricultural buildings and equipment. These agricultural areas are of considerable economic importance to segments of the park and provide for a type of open space which is compatible with the park's character."

N.Y. Exec. Law § 805(3)(g)(1)

R001449

Farm Buildings are Specifically Exempted From "Class A" Status Under the Act

In Resource Management Areas, certain land uses, developments and subdivisions are considered "Class A" projects, "[p]rovided however, that the above shall not include…agricultural uses…and accessory uses or structures (other than signs) to any such uses or to any preexisting use."

Further, all structures in excess of forty feet in height are considered "Class A" projects, "except agricultural use structures."

N.Y. Exec. Law §§ 810(1)(e)(1)(f), 810(1)(e)(8).

Farm Buildings are Excluded From "Class B" Status Under the Act

- Both "forestry use structures" and "agricultural use structures" are included in the "Class A" definitions.
- However, the "Class B" definition excludes "agricultural use structures" while specifically including "forestry use structures".
- Thus, the legislature did not intend to regulate farm buildings as "Class B" projects.

N.Y. Exec. Law § 810(2)(d).

R001452

The legislature instructed the Agency to avoid regulation of "***bona fide management of land for agriculture***" in promulgating rules and regulations to control development in the Park.

N.Y. Executive Law § 815

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

N.Y. Executive Law § 802(8)

"**Structure**" means any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, ***single family dwellings***, mobile homes, signs, tanks, fences and poles and any fixtures, additions and alterations thereto.

N.Y. Executive Law § 802(62)

Thus, a single family dwelling ***must*** be an "agricultural use structure" if it is "directly and customarily associated with agricultural use."

(*e.g.*, farm worker housing)

N.Y. Executive Law § 802(8)

R001456

SUMMARY OF ADIRONDACK PARK AGENCY AUTHORITY OVER LAND USE AND DEVELOPMENT AND SUBDIVISIONS

	APA ACT LAND USE AREAS					
	HAMLET	MODERATE INTENSITY USE	LOW INTENSITY USE	RURAL USE	RESOURCE MGMT.	INDUSTRIAL USE
1. Single Family Dwelling	NJ	NJ	NJ	NJ	B	IC-B
6. Open Space Recreation	NJ	NJ	NJ	NJ	NJ	NJ
7. Agricultural Use	NJ	NJ	NJ	NJ	NJ	NJ
8. Agricultural Use Structure	[illegible]	NJ	NJ	[illegible]	[illegible]	NJ
9. Forestry Use	NJ	NJ A if clearcut	NJ A if clearcut	NJ A if clearcut	NJ A if clearcut	NJ
10. Forestry Use Structure	NJ	NJ	NJ	NJ	B	NJ

Excerpts taken from Table as presented on the Agency's website:

http://www.apa.state.ny.us/Documents/Laws_Regs/HotalingTable.htm (last visited January 30, 2008)

The Wild, Scenic and Recreational River System Act Allows Farm Development

In recreational river areas, ***the lands may be developed for the full range of agricultural uses***, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, ***and may include small communities as well as disbursed or cluster residential areas***.

ECL § 15-2709(2)(c).

R001458

The Wild, Scenic and Recreational River System Act Allows Farm Development

The following ***may be undertaken without a permit*** if in compliance with the restrictions and standards set forth in Section 577.6 of this Part:

In recreational river areas: Agricultural uses, agricultural use structures, open space recreation uses, game preserves and private parks . . .

9 NYCRR §577.4(b)(3)(ii)

Klaas Martens

Professional Consultant to Organic Farmers

- "Due to the complexities of organic farming, any successful organic farm requires skilled professional employees." (Martens Aff., ¶ 11).

- "Such employees need to be housed onsite so that they can properly monitor and survey the farm...Due to their high levels of education and training, such employees require proper onsite housing." (Martens Aff., ¶ 12).

- "In my experience, on-farm employee housing is a sound agricultural practice and a foundation stone of a self-sustaining farm." (Martens Aff., ¶ 16).

New York State Department of Agriculture & Markets

On February 1, 2008, Commissioner Patrick Hooker issued a formal opinion pursuant to Section 308(4) of the Agriculture and Markets Law, proclaiming:

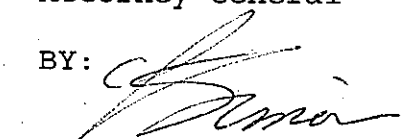
1. Farm worker housing is an integral part of farm operations.
2. Providing farm worker housing is a common farm practice.
3. On-farm housing provides practical and cost effective means for farmers to meet farm labor housing and recruitment needs.
4. The Lewis Family Farm employee housing is warranted and undoubtedly "agricultural in nature."

CERTIFICATION PURSUANT TO RULE 2105

I, Loretta Simon, Assistant Attorney General in the Department of Law of the State of New York, do hereby certify pursuant to Rule 2105, that the foregoing papers have been compared by me with the originals, and found to be true and complete copies thereof. Copies of Volume I, relating to Case No. 1, were provided by counsel for Lewis Family Farm Inc., Jacob F. Lamme, of McNamee, Lochner, Titus & Williams, P.C., with a new title page added by the Office of the Attorney General.

DATED: February 25, 2009

ANDREW M. CUOMO
Attorney General

BY: 

Loretta Simon
Assistant Attorney General

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