



NEW YORK STATE  
**Adirondack**  
parkagency

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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.  
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**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 voluntarily 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.

