

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

 Petitioner,

 v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

 Respondent.

REPLY AFFIRMATION OF
LORETTA SIMON IN
FURTHER SUPPORT OF MOTION
TO DISMISS IN PART
AND ANSWER IN PART
Hon. Richard B. Meyer

INDEX No. 315-08
RJI No. 15-1-2008-0109

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

Loretta Simon, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms under penalty for perjury pursuant to CPLR § 2106:

1. I serve as an Assistant Attorney General in the Environmental Protection Bureau of the Office of the New York State Attorney General and am litigation counsel to the Adirondack Park Agency ("the APA" or "the Agency") in this matter. I am familiar with this matter and the underlying facts,

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dated June 18, 2008

and I am counsel to the APA in, Lewis Family Farm, Inc. v. APA, Sup. Ct., Essex Co., Index No. 498-07 (hereafter "Lewis Farm I"); Lewis Family Farm, Inc. v. APA, Sup. Ct., Essex Co., Index No. 315-08 (hereafter "Lewis Farm II") and the civil enforcement action against Lewis Farm and Barbara and Salim B. Lewis (APA v. Lewis Family Farm, Inc., Salim B. Lewis and Barbara Lewis, Index No. 332-08, [hereafter "Lewis Farm III"]).

2. I submit this affirmation in reply and further support of the APA's Motion to Dismiss in part and Answer in part Lewis Farm's CPLR Article 78 proceeding, pursuant to CPLR § 2214 (b).

3. In its June 18, 2008 reply memorandum of law in support of judgment and in opposition to the APA's motion to dismiss, Lewis Family Farm, Inc. ("Lewis Farm") argues that two affirmations and an affidavit submitted by the APA in support of its motion to dismiss in part and to answer in part must be stricken as they are not part of the record. See petitioner's Memo of law dated June 18, 2008, p.1.

4. Reply affirmations and affidavits submitted outside the record of an administrative determination are permitted where an affidavit was a proper and necessary response to a petition (In the Matter of Grogan et. al. v. Zoning Board of Appeals 221 A.D.2d 441, 442 (2d Depot 1995); where they contain significant factual statements which are relevant to the allegations in the petition (Matter of Energy Nuclear Indian Point 2, LLC et. al. v.

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NYSDEC, 3 Misc. 3d 1070, 1074 (2004); where they are submitted in opposition to factual allegations (Matter of K.C.B. Bakeries, Inc., v. Butcher, et. al., 144 A.D.2d 894 (3rd Dep't 1988); and affidavits that set forth some of the deliberative process and criteria that was considered (377 Greenwich LLC v. NYSDEC, 14 Misc. 3rd 417, 426 (2006)).

5. For the forgoing reasons, the Affirmations of Loretta Simon and John Rusnica dated June 13, 2008 and the Affidavit of Paul Van Cott dated June 13, 2008 are properly before this Court for consideration in this matter.

Dated: Albany, New York
June 18, 2008

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

By: 

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