

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NOTICE OF MOTION
TO DISMISS
INDEX No. 315-08
RJI No. 15-1-2008-0109
Hon. Richard B. Meyer

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Respondent.

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

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

Defendants.

PLEASE TAKE NOTICE that, upon the affirmation of Loretta Simon, Assistant Attorney General for the State of New York, dated June 13, 2008, with exhibits thereto; the affidavit of Paul Van Cott, dated June 13, 2008, with exhibits thereto; and the affidavit of John F. Rusnica dated June 13, 2008, the Adirondack Park Agency ("APA") will move this Court, at a Special Term thereof to be held on the 19th day of June, 2008, 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) dismissing the 3rd, 5th, 6th, 7th, 8th, 9th, and 10th

claims in the amended petition pursuant to CPLR 3211 (a) (5), because petitioner is barred by the doctrine of collateral estoppel from relitigating issues and claims previously decided; and

(2) dismissing the 4th and 11th claims in the amended petition pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action; and

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

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

Dated: Albany, New York
June 13, 2008

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

By: 

Loretta Simon
Assistant Attorney General
The Capitol
Albany, New York 12224
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TO: John J. Privitera, Esq.
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK
PARK AGENCY,

Respondent.

ADIRONDACK PARK AGENCY,

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v.

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

Defendants.

ANSWER IN PART, RECORD AND
OBJECTIONS IN POINT OF LAW
INDEX No. 315-08
RJI No. 15-1-2008-0109
Hon. Richard B. Meyer

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

State respondent, the Adirondack Park Agency (the Agency" or "APA") by its attorney Andrew M. Cuomo, Attorney General of the State of New York, objects to the amended petition dated April 14, 2008 herein on the following points of law:

A. Petitioner Lewis Family Farm's, Inc. (Lewis Farm) allegations and causes of action challenging the jurisdiction of the APA over Lewis Farm's construction of three single-family dwellings and seeking to annul the APA's March 25, 2008 determination must be dismissed in part because:

i. Having lost its challenge to APA's jurisdiction in its prior declaratory judgment action (Lewis Family Farm Inc., v. APA Essex County Supreme Court, Index No. 498-07, "Lewis Farm I"), Lewis Farm is collaterally estopped from re-litigating all claims and issues previously decided in Lewis Farm I, in this new CPLR Article 78 proceeding; and

ii. Petitioner fails to state a cause of action against the APA in its fourth cause of action pursuant to Agriculture and Markets Law § 308; and

iii. Petitioner fails to state a cause of action in its eleventh cause of action because pursuant to the APA Act § 803-a, the Adirondack Park Local Government Review Board's resolution is advisory, not binding on the APA, and was considered in by the Agency and is part of the Record of its determination and;

Without waiving the foregoing objections in point of law and motion to dismiss, the State APA, as and for its answer in part, to the amended petition dated April 14, 2008:

1. Admits the allegation in ¶ 1 that the APA issued a March 25, 2008 determination but asserts that the amended petition was served without any exhibits and the Agency affirmatively asserts that the March 25, 2008 determination of the APA in the matter of the apparent violation of the Executive Law Section 809 and 9 NYCRR 577 by Lewis Family Farm Inc., issued by the Agency pursuant to 9 NYCRR 581-2.6, speaks for

itself and refers to the document for its complete text, context, meaning and legal effect.

2. Denies the allegations in ¶ 2 that the Agency lacks jurisdiction over the Lewis Farm housing project, and asserts that Lewis Farm is collaterally estopped from challenging APA jurisdiction having lost its challenge to the APA's jurisdiction in its prior declaratory judgment action; Lewis Farm I. The Agency further denies that the March 25, 2008 determination is confusing, inconsistent and not supported by law and refers to the document for its complete text, context, meaning and legal effect.

a. Denies the allegation in ¶ 2a of the amended petition that single-family dwellings are agricultural use structures pursuant to the APA Act, and asserts that the Agency has jurisdiction over the three single-family dwellings at issue herein pursuant to the Adirondack Park Agency Act, Executive Law § 801, et. seq. ("the APA Act") and the Wild, Scenic, and Recreational River System Act ("Rivers Act"), Environmental Conservation Law ("ECL") § 15-2701 et. seq and asserts that Lewis Farm is collaterally estopped from raising this claim pursuant to Lewis Farm I.

b. Denies the allegation in paragraph 2b of the

amended petition and affirmatively asserts that the Agency has jurisdiction over the dwellings.

- c. Denies the allegation in paragraph 2c of the amended petition and affirmatively asserts that the Agency proceeding followed lawful procedure that did not require an adjudicatory hearing and that resulted in a lawful determination pursuant to 9 NYCRR § 581-2.6(d).
- d. Denies the allegation in ¶ 2d of the amended petition and affirmatively asserts that the Agency determination was not made as a result of an adjudicatory hearing and therefore CPLR § 7803 (4) is not applicable.
- e. Denies the allegation in paragraph 2e of the amended petition and affirmatively asserts that the APA has specific statutory authority to assess civil penalties of up to \$500.00 per day for each day a violation of the APA Act continues, pursuant to Executive Law § 813, and up to \$1,000 per day pursuant to ECL § 15-2723 for violations of the Rivers Act.

3. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 3, except that, admits that the farm is known as Lewis Family Farm.

4. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 4 of the amended petition, except admits the allegation in ¶ 4 that Lewis Farm is approximately 1,100 acres.

5. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 5.

6. Admits the allegation in the amended petition ¶ 6 that the Lewis Farm is located in Essex County in an agricultural district.

7. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 7.

8. Lacks knowledge or information sufficient to form a belief regarding the allegation in ¶ 8, but admits that Lewis Farm does not have any Agency permits.

9. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 9.

10. Lacks knowledge or information sufficient to form a belief regarding the allegation in ¶ 10.

11. Lacks knowledge or information sufficient to form a belief regarding the allegation in ¶ 11.

12. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 12.

13. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 13, but affirmatively

asserts that the Agency learned in March of 2007 that construction of the three single-family dwellings at issue herein had commenced, but admits that the three single-family dwellings at issue are built in a cluster.

14. Admits the allegations in ¶ 14 insofar as the Lewis Farm obtained permits from the Town of Essex for its single-family dwellings but affirmatively asserts that the housing project failed to comply with Agency requirements and further asserts that the Agency lacks knowledge or information sufficient to form a belief regarding the allegation that the project complies with other state or local requirements as alleged in ¶14.

15. Admits the allegations in ¶ 15 to the extent that the housing "cluster" is not located within 150 feet of the Bouquet River, but affirmatively asserts that it is located within the designated Bouquet River Recreational River Area.

16. Lacks knowledge or information sufficient to form a belief regarding the allegation in ¶ 16.

17. Denies the allegations in ¶ 17, and affirmatively asserts that Lewis Farm's housing project constitutes a subdivision into sites as defined at 9 NYCRR 570.3(ah)(3).

18. Lacks knowledge or information sufficient to form a belief regarding the allegation in ¶ 18.

19. Admits the allegations in ¶ 19 that the housing project

is in the vicinity of an area know as Whallonsburg, but denies that it is an area designated "Hamlet" pursuant to the Adirondack Park Land Use and Development Plan Map ("Official Map") and Executive law § 805. The Agency affirmatively asserts that the three single-family dwellings that are the subject of this proceeding are located in a land use area designated "Resource Management" pursuant to the Official Map and Executive Law § 805.

20. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 20.

21. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 21.

22. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 22, except affirmatively asserts that Section 305-a of the Agricultural and Markets Law is not applicable to the APA and does not restrict the jurisdiction of the APA.

23. Lacks knowledge or information sufficient to form a belief regarding the allegation in paragraph 23.

24. Admits the Commissioner of the State Department of Agriculture and Markets issued an opinion dated February 1, 2008 pursuant to Agricultural and Markets Law, but denies that the opinion is binding on the APA since the APA is a state agency and refers to the document which speaks for itself.

25. Lacks knowledge or information sufficient to form a

belief regarding the allegation in ¶ 25, and affirmatively asserts that the Agency has jurisdiction over the three single-family dwellings.

26. Admits the allegation in ¶ 26 in so far as the Agency staff made an offer of settlement to Lewis Farm in 2007, but denies the Agency made demands and refers to the offer of settlement which speaks for itself.

27. Admits the allegation in ¶ 27 that the Adirondack Park Agency Act is found at Executive Law § 801-820, but denies that the Act is found in Executive Law § 825. The Agency affirmatively asserts that it administers the Adirondack Park Land Use and Development Plan set forth in the Sections 805, 806, 809 and 810 of the APA Act. The Agency further asserts that the APA Act and the regulations at 9 NYCRR ¶ 570-588, provide specific exemptions for farms and certain structures on farms, but that single-family dwellings in Resource Management areas and in designated river areas are subject to APA jurisdiction.

28. Denies the allegation in ¶ 28 that APA public literature acknowledges that the Agency lacks any jurisdiction to regulate "agricultural use structures" and lacks knowledge sufficient to form an opinion based on Privitera Affidavit, Exhibit G. (Privitera Aff., Exhibit G, omits the reference to "agricultural use structures", and it fails to include the Agency's jurisdiction over such structures if they are located

within shoreline setbacks (806 or Rivers Act) or in wetlands).

29. Admits the allegation in ¶ 29 that a Notice of Apparent Violation was served in September 2007 and affirmatively asserts that the document speaks for itself. The Agency denies that the Notice of Apparent Violation was in the form of an administrative complaint and denies that it sought an order or a "substantial fine". The APA affirmatively asserts that staff sought a determination by the Agency's Enforcement Committee pursuant to 9 NYCRR ¶ 581-2.6(d) and refers to the Notice of Apparent Violation for its full text, context and legal meaning.

30. Denies the allegations in ¶ 30 and affirmatively asserts that the Agency's enforcement process commenced in March 2007, when staff first became aware of the violations and continued diligently through March of 2008 when the Agency issued its determination.

31. With regard to the allegations in ¶ 31 regarding the Notice of Apparent Violation the Agency:

- (i) Refers to full text and meaning of Notice of Apparent Violation.
- (ii) Refers to full text and meaning of Notice of Apparent Violation.
- (iii) Refers to full text and meaning of Notice of Apparent Violation.
- (iv) Refers to full text and meaning of Notice of

Apparent Violation.

32. Denies the allegations in ¶ 32 that the Notice of Apparent Violation says a hearing would be held before an Administrative Law Judge ("ALJ"), and affirmatively states that the Notice of Apparent Violation states that if there are facts in dispute, a hearing will be held, and refers to the document for its full text, context and legal meaning.

33. Refers to the to full text and meaning of Lewis Farm's Answer dated October 4, 2007 and received by the Agency on October 9, 2007 which speaks for itself, regarding the allegations in ¶ 33.

34. Denies the allegations in ¶ 34 that the APA pleaded that a hearing would be held before an ALJ and refers to the to full text and meaning of Notice of Apparent Violation and 9 NYCRR § 581-2. The Agency further denies that the March 25, 2008 determination was a violation of law and affirmatively asserts that a determination was issued lawfully pursuant to 9 NYCRR § 581-2.6(d), as there was no factual dispute that the three single-family dwellings were constructed. The Agency further asserts that Lewis Farm was not entitled to an evidentiary adjudicatory hearing before an ALJ pursuant to 9 NYCRR § 581-4.1, which sets forth circumstances that trigger the requirement for an adjudicatory hearing which are: to enforce the Freshwater Wetlands Act; and for proceedings to modify, suspend or revoke an

Agency permit, and refers to the full text and legal meaning of 9 NYCRR § 581-4.1.

35. Admits the allegation in ¶ 35 that Lewis Farm's October 4, 2007 Answer to the Notice of Apparent Violation challenged Agency jurisdiction over construction of the three single-family dwellings, except refers to the to full text and meaning of the document. Denies the allegation that the document makes reference to contesting the Agency's power to impose fines, but affirmatively asserts that the APA has statutory authority to impose civil penalties pursuant to the APA Act and the Rivers Act and refers to the full text and legal meaning of the document and Executive Law § 813 and ECL § 15-2723.

36. Denies the allegations in ¶ 36, refers to the full text and legal meaning of the March 25, 2008 Agency determination, and affirmatively asserts that CPLR § 7803 (4) does not apply to this proceeding and that the standard of review for the March 25 determination is set forth at CPLR § 7803 (3) and refers to the full text and legal meaning of those statutes.

37. Denies the allegations in ¶ 37 and refers to the full text and legal meaning of the March 25, 2008 Agency determination and Executive Law § 802.

38. Admits the allegations in ¶ 38 that an Agency permit would not be required for an "agricultural use structure" pursuant to 9 NYCRR § 577.4(b)(3)(ii) pursuant to the Rivers Act,

except affirmatively asserts that an Agency permit would also be required if the structure impacts wetlands. The Agency further affirmatively asserts that a single-family dwelling is not an "agricultural use structure" pursuant to the APA Act, the Rivers Act or corresponding regulations, and that a single-family dwelling within 1/4 mile of the Boquet River requires a permit and refers to the text and legal meaning of the Rivers Act, and regulations at 9 NYCRR § 577 and appendix Q-6 thereto.

39. Denies the allegations in ¶ 39 and refers to the text and legal meaning determination speaks for itself.

37. Refers to the text and legal meaning of the March 25, 2008 determination which speaks for itself.

38. Refers to the text and legal meaning of the March 25, 2008 determination which speaks for itself.

40. Denies the allegations in ¶ 40 and affirmatively asserts that single-family dwellings are not "agricultural use structures" pursuant to the APA Act and refers to the text and legal meaning of Executive Law § 802 (8) and (58).

41. With respect to the allegations in ¶ 41, refers to the APA Act for its full text, context and legal meaning.

42. Denies the allegation in ¶ 42 and refers to the APA Act for the full text, context and legal meaning.

43. With respect to the allegations in ¶ 43, refers to the APA Act for the full text, context and legal meaning.

44. Denies the allegations in ¶ 44, and asserts that the term "single-family dwelling" is separately defined in Executive Law § 802(58) and single-family dwellings are regulated separately under the APA and River Acts and refers to both Acts for their full text, context and legal meaning.

45. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 45.

46. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 46 as to an investigation of the State Department of Agriculture and Markets, except to assert that the Commissioner of Agriculture and Markets issued a letter dated February 1, 2008, interpreting Agriculture and Markets Law, and the APA refers to the full text, context and legal meaning of said document and law.

47. Refers to the full text, context and legal meaning of the letter of the Commissioner of Agriculture and Markets dated February 1, 2008, interpreting Agriculture and Markets Law.

48. Refers to the full text, context and legal meaning of the Commissioner of Agriculture and Markets letter dated February 1, 2008, interpreting Agriculture and Markets Law and affirmatively asserts that the document refers to the Agriculture and Markets statute and not the APA Act.

49. Denies the allegations in ¶ 49 and affirmatively asserts that the February 1, 2008 letter of the Commissioner of Agriculture and Markets is part of the record that was considered by the APA Enforcement Committee in its March 25, 2008 determination.

50. Denies the allegations in ¶ 50, and affirmatively asserts that the APA has jurisdiction over the three single-family dwellings pursuant to the APA Act and the Rivers Act.

51. Refers to the full text, context and legal meaning of Executive Law § 802 (63) which speaks for itself, and refers to the definition of "subdivision into sites" set forth at 9 NYCRR § 570.3(ah).

52. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 52.

53. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 53 but refers to the statutory definition of subdivisions in the APA Act, and the regulatory definition set forth at 9 NYCRR § 570.3(ah)(3) which includes any form of separate occupancy; and refers to the full text, context and legal meaning of Executive Law § 802 (63) and 9 NYCRR § 570.3(ah)(3).

54. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 54, except asserts that the single-family dwellings are not agricultural use structures

pursuant to the APA Act, and refers to the full text, context and legal meaning of Executive Law § 802 (8) and (58), and to the regulatory definition of "subdivision into sites" set forth at 9 NYCRR § 570.3 (ah) (3).

55. Denies the allegations in ¶ 55, and refers to 9 NYCRR § 570.3 (ah) (3) which speaks for itself as to the true and full meaning and effect of the regulatory definition of "subdivision into sites" and further asserts that petitioner references only a selective portion of the regulation, and said section should be read within the full text, context and meaning of the regulation.

56. Denies the allegation in ¶ 56 that the cited, selective portion of the statutory definition of "principal building" is how the Agency counts the number of principal buildings for intensity purposes, and asserts that the full definition of the term speaks for itself as to its meaning and effect and refers to the full text of Executive Law § 802(50), including subsections (a) through (i).

57. Denies the allegations in ¶ 57 and refers to the full text, context and legal meaning of Executive Law § 802 (50), (58), and (63), and asserts that pursuant to Executive Law § 809(2) (a) and § 810(1) (e) (3) and pursuant to 9 NYCRR § 577.5(c) (1), Lewis Farm is required to obtain a permit for any subdivision of land into sites on Resource Management lands in a Recreational River Area.

58. Denies the allegations in ¶ 58, and affirmatively refers to Article 14 of the New York State Constitution for its full text, context and legal meaning.

59. Denies the allegations in paragraph 59 and affirmatively asserts that the APA Act and regulations set the policy for supporting and encouraging development and improvement of agricultural lands, and contain specific agricultural exemptions; and further asserts that the Agency's goals of protecting natural resources and open space are compatible with the goal of improvement of agricultural lands in the Adirondack Park. The Agency further asserts that it has consistently worked with the New York State Department of Agriculture and Markets to address farming issues in the Adirondack Park.

60. Denies the allegations in ¶ 60 and affirmatively asserts that the single-family dwellings constructed in the Adirondack Park, on the property of Lewis Farm, are within a Resource Management area pursuant to the APA Act, and within 1/4 mile of the Bouquet River, which is designated by the State of New York as a protected river pursuant to the Rivers Act, are not exempt from permit requirements pursuant to these Acts.

61. Admits the allegation that the New York State Constitution is the supreme law of the State, but denies the remaining allegations in ¶ 61, and refers to the full text, context and legal meaning of the New York State Constitution

which speaks for itself.

62. Refers to the full text, context and legal meaning of Agricultural and Markets Law § 305(3) which speaks for itself.

63. Lacks knowledge or information sufficient to form a belief regarding the allegations in ¶ 63, and affirmatively asserts that the location of the three single-family dwellings in such an agricultural district does not affect the APA's statutory jurisdiction over these dwellings, or of Lewis Farm's subdivision into sites.

64. Denies the allegations in ¶ 64, and affirmatively asserts that the APA Act and regulations set policy for supporting and encouraging development and improvement of agricultural lands, and contain specific agricultural exemptions and further asserts that the agency staff implement this policy through actions including, but not limited to, consultation with the Department of Agriculture and Markets on other farming issues in the Adirondack Park.

65. With regard to the allegations in ¶ 65, refers to the full text, context and legal meaning of Executive Law § 803-a regarding the Adirondack Park Local Government Review Board, and refers to the document of the Local Government Review Board titled "Resolution" dated March 4, 2007, which is included in the Record of the Agency Determination and refers to the full text, context and meaning of the document which speaks for itself.

66. Denies the allegations in ¶ 66, and affirmatively asserts that the Local Government Review Board "Resolution" dated March 4, 2007, is one of the documents considered by the Agency in its determination in this matter, and it is part of the Agency Record.

67. Denies the allegations in ¶ 67.

AS AND FOR A FIRST CAUSE OF ACTION

68. Repleads the responses set forth in ¶¶ 1-67.

69. Denies the allegations in ¶ 69 and affirmatively asserts that the New York State Legislature enacted the APA Act and created the APA with the mandate to preserve and protect the natural resources and scenic beauty of the Adirondack Park consistent with the NYS Constitution Article XIV § 4, and further asserts that the APA Act and corresponding regulations extend specific exemptions to farms and support and encourage farming in the Adirondack Park.

AS AND FOR A SECOND CAUSE OF ACTION

70. Repleads the responses set forth in ¶¶ 1-70.

71. Denies the allegations in ¶ 71 and affirmatively asserts that consistent with Agricultural and Markets Law § 305 (3), the APA Act and the Agency's regulations promote and encourage agricultural activity in the Adirondack Park, and provide exemptions for most agricultural activities.

AS AND FOR A THIRD CAUSE OF ACTION

72. Repleads the responses set forth in ¶¶ 1-72.

73. Denies the allegations in ¶ 73, and affirmatively asserts that Agricultural and Markets Law § 305-a, and Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001), restrict local governments from unreasonably regulating farm operations and do not apply to state agencies. The Agency affirmatively asserts that Lewis Farm is barred by the doctrine of res judicata and collateral estoppel from raising this claim which was previously adjudicated and decided against them, in Essex County Supreme Court in 2007 (Lewis Family Farm, Inc., v. APA, Essex Co. Sup. Ct., Index No. 498-07, RJI No. 15-1-2007-0153, assigned to Hon. Kevin K. Ryan [hereafter "Lewis Farm I"]).

AS AND FOR A FOURTH CAUSE OF ACTION

74. Repleads the responses set forth in ¶¶ 1-74.

75. Denies the allegations in ¶ 75 and affirmatively asserts that petitioner fails to state a cause of action against the APA pursuant to Agricultural and Markets Law § 308, and refers to the full text, context and legal meaning of the statute.

AS AND FOR A FIFTH CAUSE OF ACTION

76. Repleads the responses set forth in ¶¶ 1-76.

77. Denies the allegations in ¶ 77, and affirmatively asserts that the APA has jurisdiction to require permits for the

three single-family dwellings located in a Resource Management area pursuant to the APA Act, and within 1/4 mile of a river pursuant to the Rivers Act, and that Lewis Farm is barred by the doctrines of res judicata and collateral estoppel from raising this claim which was previously adjudicated and decided against them in Essex County Supreme Court in 2007 (Lewis Farm I).

AS AND FOR A SIXTH CAUSE OF ACTION

78. Repleads the responses set forth in ¶¶ 1-78.

79. Denies the allegations in ¶ 79, refers to the full text, context and legal meaning of Executive Law § 802 (8) for the definition of "agricultural use structure" pursuant to the APA Act, and affirmatively asserts that the APA has jurisdiction to regulate the three single-family dwellings as that term is defined in Executive law § 802(58), and pursuant to the Rivers Act, and that Lewis Farm is barred by the doctrines of res judicata and collateral estoppel from raising this claim which was previously adjudicated and decided against them in Essex County Supreme Court in 2007 (Lewis Farm I).

AS AND FOR THE SEVENTH CAUSE OF ACTION

80. Repleads the responses set forth in ¶¶ 1-80.

81. Denies the allegations in ¶ 81 and affirmatively asserts that the APA has jurisdiction to regulate subdivision of land into sites pursuant to the APA Act, and further asserts that Lewis Farm is barred by the doctrines of res judicata and

collateral estoppel from raising this claim which was previously adjudicated and decided against them in Essex County Supreme Court in 2007 (Lewis Farm I).

AS AND FOR A EIGHTH CAUSE OF ACTION

82. Repleads the responses set forth in ¶¶ 1-82.

83. Denies the allegations in ¶ 83, and affirmatively asserts that the APA has jurisdiction to regulate the three single-family dwellings pursuant to the Rivers Act, and that Lewis Farm is barred by the doctrines of res judicata and collateral estoppel from raising this claim which was previously adjudicated and decided against them in Essex County Supreme Court in 2007 (Lewis Farm I).

AS AND FOR A NINTH CAUSE OF ACTION

84. Repleads the responses set forth in ¶¶ 1-84.

85. Denies the allegations in ¶ 85, and affirmatively asserts that the APA has jurisdiction to require permits for the three single-family dwellings located in a Resource Management area pursuant to the APA Act, and within 1/4 mile of the Boquet river pursuant to the Rivers Act, and that Lewis Farm is barred by the doctrines of res judicata and collateral estoppel from raising this claim which was previously adjudicated and decided against them, in Essex County Supreme Court in 2007 (Lewis Farm I).

AS AND FOR A TENTH CAUSE OF ACTION

86. Repleads the responses set forth in ¶¶ 1-86.

87. Denies the allegations in ¶ 87, and affirmatively asserts that the APA has jurisdiction to regulate the subdivision of land into sites pursuant to the Rivers Act, and further asserts that Lewis Farm is barred by the doctrines of res judicata and collateral estoppel from raising this claim which was previously adjudicated and decided against them in Essex County Supreme Court in 2007 (Lewis Farm I).

AS AND FOR AN ELEVENTH CAUSE OF ACTION

88. Repleads the responses set forth in ¶¶ 1-88.

89. Denies the allegations in ¶ 89 and affirmatively asserts that Lewis Farm fails to state a cause of action against the APA pursuant to a resolution of the Adirondack Park Local Government Review Board, which resolution is not binding on the APA, and affirmatively refers to Executive Law § 803-a for its full text, meaning and context. The APA further asserts that the resolution is part of the Record considered by the Agency in its determination.

AS AND FOR A TWELFTH CAUSE OF ACTION

90. Repleads the responses set forth in ¶¶ 1-90.

91. Denies the allegations in ¶ 91.

92. Denies the allegations in ¶ 92.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

93. Repleads the responses set forth in ¶¶ 1-93.

94. Denies the allegations in ¶ 94 insofar as the Agency determination was entered in violation of due process, or in violation of the State Administrative Procedure Act and affirmatively asserts that the Agency conducted a lawful enforcement proceeding pursuant to 9 NYCRR § 581-2, and Lewis Farm was afforded notice and an opportunity to be heard.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

95. Repleads the responses set forth in ¶¶ 1-95.

96. Denies the allegations in ¶ 96 and affirmatively asserts that the APA has jurisdiction to regulate the three single-family dwellings pursuant to the APA Act and the Rivers Act.

AS AND FOR A FIFTEENTH CAUSE OF ACTION

97. Repleads the responses set forth in ¶¶ 1-97.

98. Denies the allegations in ¶ 98 and affirmatively asserts that the Agency commenced its enforcement actions in March of 2007 when it learned that Lewis Farm had commenced construction of the dwellings, and further asserts that it diligently prosecuted such enforcement action until the Agency issued its determination in March, 2008.

AS AND FOR A SIXTEENTH CAUSE OF ACTION

99. Repleads the responses set forth in ¶¶ 1-99.

100. Denies the allegations in ¶ 100, and affirmatively asserts that the APA has specific statutory authority to determine civil penalties pursuant to the APA Act, Executive Law § 813; and the Rivers Act, ECL § 15-2723, and further asserts that Lewis Farm had notice of the Agency proceeding and an opportunity to be heard at the proceeding where it was represented by counsel.

RETURN & RECORD

The Agency certifies that the Return Items 1 through 17 constitute the minutes, transcript and the Record of the proceeding of the Agency under review in this matter.

WHEREFORE, the Agency respectfully requests an Order and Judgment:

- I. Dismissing claim 3, 5, 6, 7, 8, 9, and 10 pursuant to CPLR 3211 §(a)(5) for res judicata and collateral estoppel; and dismissing claims 4 and 11 pursuant to CPLR 3211 § (a)(7) for failure to state a cause of action; and denying the petition; and
- II. In the event the APA's Motion to Dismiss is denied in whole or in part, the State respectfully requests 30 days after service of notice of entry of the order denying the motion, in which to serve a full answer to


the amended petition.

III. Such other and further relief that this Court may find to be just and equitable, together with costs and disbursements.

Dated: Albany, New York
June 13, 2008

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

By:



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To: John J. Privitera, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York 12207-2503

VERIFICATION

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

PAUL VAN COTT, being duly sworn, deposes and says:

I am a Senior Attorney for the Adirondack Park Agency (the "Agency"). I have read the foregoing objections in point of law and answer, and know the contents thereof, and the same is true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The source of my knowledge, information and belief are the Agency's files, and discussions with Agency personnel. I make this verification pursuant to CPLR § 3020(d)(2), on the basis that I am acquainted with the facts.



PAUL VAN COTT

Sworn to before me this 13th
day of June, 2008.

Mary B. Palmer

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

ADIRONDACK PARK AGENCY RETURN & RECORD OF PROCEEDING

VOLUME I : ITEMS 1-2
MINUTES AND TRANSCRIPT

- 1) Minutes of the Adirondack Park Agency Enforcement Committee Proceeding held on March 13, 2008 with attachments below;

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

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

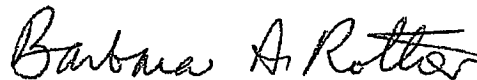
STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

BARBARA ROTTIER, being duly sworn, deposes and says:

I am employed by respondent Adirondack Park Agency as Associate Counsel. I am acquainted with the facts and circumstances of this matter on the basis of my personal knowledge and personal communications with various employees of the Adirondack Park Agency and an examination of the Agency's records.

I have reviewed the foregoing Adirondack Park Agency Minutes, Transcript and Record consisting of the list of Exhibits 1-17, and know the contents thereof and I believe it to be a true and accurate copy of the records of the Agency in this matter.

This verification is made pursuant to the provisions of CPLR § 3020(d)(2).


BARBARA ROTTIER

Sworn to before me this
13th day of June, 2008


Notary Public

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