

**STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY**

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LEWIS FAMILY FARM, INC.,

AFFIRMATION

Petitioner,

INDEX NO. 315-08

v.

**NEW YORK STATE ADIRONDACK
PARK AGENCY,**

Respondent.

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ADIRONDACK PARK AGENCY,

Plaintiff,

INDEX NO. 332-08

v.

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

Defendants.

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JOHN F. RUSNICA affirms the following under penalty of perjury:

1. I am an attorney duly admitted to practice before the courts of the State of New York. I am employed as an Associate Attorney with the New York State Department of Agriculture and Markets (hereinafter referred to as "Department") and work with the Division of Agricultural Protection and Development Services. I assist this division with its administration and enforcement of Agriculture and Markets Law (AML) Article 25-AA, Agricultural Districts, which establishes and implements New York's agricultural districts program.

2. I submit this affirmation to explain the Department's role with regard to administering AML Article 25-AA which is involved in the underlying Special Proceeding. The proceeding seeks to annul the March 25, 2008 Determination of the Respondent, Adirondack Park Agency (the "APA" or "Respondent"). The APA's determination held that Petitioner's three single family residences, characterized as "farmworker housing," violated the APA Act and the Wild and Scenic Rivers Act because they were constructed in a resource protection

zone without permits, and were not exempt "agricultural use structures" under the APA Act, Executive Law § 802(8).

3. Article XIV, Section 4 of the New York State Constitution provides, in part, that 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." AML Article 25-AA, enacted in 1971 and referred to as the Agricultural Districts Law (ADL), forms the cornerstone of New York's agricultural protection program and implements the Constitutional directive to preserve and protect the State's agricultural lands as important State resources. This is accomplished, in part, by promoting the retention of farmland in active agricultural use.

4. AML Article 25-AA §300 recognizes the Constitutional directive and "provide[s] a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance." County governments may create agricultural districts [AML §303], which consist primarily of viable farmland. Land in an agricultural district receives the benefits and protections of both the general agricultural preservation policies of AML §300, and the specific benefits and protections of AML §305, including an agricultural assessment [AML §305(1)]; a limitation on the power of special improvement districts to impose assessments or special ad valorem levies for sewer, water or other services, on farmland within a district [AML §305(5)]; and notice of intent requirements which provide for review of public acquisitions of land, and expenditures for public improvements, within agricultural districts [AML §305(4)]. I am informed that the Petitioner's land is located within Essex County Agricultural District, No. 4, a county-adopted, State certified agricultural district.

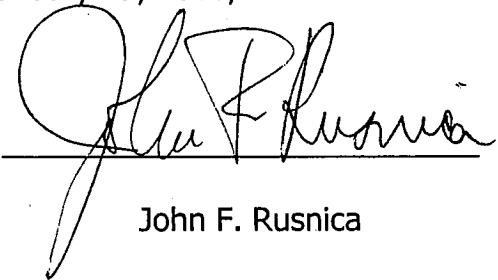
5. Farm operations in an agricultural district are protected by AML §305-a, which prohibits local governments from unreasonably restricting or regulating such operations located within an agricultural district unless it can be shown that the public health or safety is threatened. Upon request, the Department of Agriculture and Markets evaluates, on a case-by-case basis, the reasonableness of a specific local requirement or process imposed on a farm operation. If warranted after that review, the Commissioner may issue an Order, or bring an action against the local government to enforce the §305-a prohibition. Section 305-a, by its express terms, does not apply to State agencies such as the APA, but embodies the Department's approach regarding all regulations governing farm operations.

6. In its administration of AML §305-a the Department has established guidance documents which explain the Department's position on matters addressed under prior reviews. For example, the Department has issued Guidelines for Review of Local Laws Affecting Farm Worker Housing explaining that the Department has consistently determined that "on-farm buildings" include farm labor housing and those buildings are protected by AML §305-a as part of a farm operation. This determination was upheld in *Town of Lysander v. Hafner*, 96 N.Y.2d 558 (2001).

7. Farming is also protected by AML §308, the "Right to Farm" law, which provides for the Commissioner to issue opinions as to whether particular agricultural practices are sound and whether a particular land use is "agricultural in nature." On February 1, 2008, the Commissioner issued an "agricultural in nature" opinion [AML §308(4)] at the request of the Petitioner stating, consistent with the Department's long-standing policy, that 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. The opinion concluded that the use of the land in question underlying this proceeding, for the siting and construction of farm worker housing, is agricultural in nature. The February 1, 2008 opinion was advisory, and provides the opinion of the Department regarding the nature of the Lewis Farm operation's use of its land for farmworker housing. See copy of Commissioner Hooker's February 1, 2008 opinion, attached hereto as Exhibit A.

8. AML §305(3) applies to State agencies and provides "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 insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal, grants, loans or other funding." The Department has used this provision on a case-by-case basis to consult with other State agencies and to negotiate appropriate resolutions when projects constructed, reviewed or funded by State agencies have had potential negative impacts on farm operations located within agricultural districts.

9. The Department has participated in discussions over the years with APA staff, Farm Bureau, and Cornell Cooperative Extension, relating to agriculture in the Adirondack Park. Here, the Department conveyed its policy concerning farm worker housing to the APA, and specifically expressed its views regarding the APA's regulatory involvement with Lewis Farm's worker housing from the perspective of the Agriculture and Markets Law. See, Record, Item 10, Reply Affirmation of Paul Van Cott, January 29, 2008, Exhibit A.



John F. Rusnica

Dated: June 13, 2008