

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

-----X

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

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

Defendants.

-----X

AMENDED
SUMMONS

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

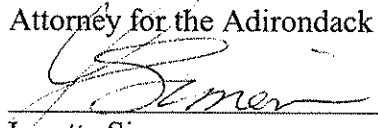
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the verified amended complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after the service of this amended summons and verified complaint, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York). In the case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Venue is proper in Essex County because defendant resides there; because it is where the property that is the subject of this action is located, and because all of defendants' acts and omissions giving rise to this complaint occurred or are occurring there.

DATED: May 14, 2008
Albany, New York

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

By: 
Loretta Simon
Assistant Attorney General
The Capitol
Albany, New York 12224
(518) 402-2724

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SALIM B. LEWIS and BARBARA LEWIS,

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**VERIFIED
AMENDED
COMPLAINT**

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

Plaintiff, Adirondack Park Agency (the "Agency"), alleges as follows:

PRELIMINARY STATEMENT

1. This action arises from the Lewis Family Farm's construction of three single-family dwellings on land located in the Town of Essex, Essex County ("the Site"), in violation of the Adirondack Park Agency Act ("APA Act"), the Wild, Scenic, and Recreational River System Act (the "Rivers Act"), Executive Law § 809 and Executive Law § 810 as well as Environmental Conservation Law ("ECL") § 15-2701. The construction of three single family dwellings, installation of foundations and septic systems, and subdivision of land, all without APA permits, interferes with the protection of Adirondack Park lands and the scenic view-shed along a recreational river and undermines the Agency's regulatory mandate. The Agency brings this action for violation of the permitting requirements and for enforcement of Executive Law §§ 809(2)(a), 810(1)(e)(3), and 810(2)(d)(1) and ECL § 15-2701, and 9 NYCRR Part 577, and an administrative determination dated March 25, 2008 and amended April 18, 2008.

2. The Agency seeks an order requiring defendants Lewis Family Farm, Inc., Salim

B. Lewis and Barbara Lewis (hereafter collectively “Lewis Farm”) to: (i) comply with an Agency Cease and Desist order issued June 27, 2007 (“Cease and Desist Order”) and refrain from any further work on or use of the three unpermitted single family dwellings on the Site; (ii) apply for and obtain an Agency permit for subdivision of the Lewis Farm for the three single-family dwellings; (iii) deliver to the APA a detailed description of the placement and construction and evaluation of the dwellings’ septic systems, demonstrating compliance with New York State Department of Health and Agency standards; and (iv) pay a civil penalty of \$50,000 for violation of the APA Act and the Rivers Act.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Executive Law § 813 and ECL § 15-2705.

4. Venue is proper in Essex County because the Site is located there and because the unlawful activities described in this Verified Complaint have occurred and are occurring there.

PARTIES

5. The Adirondack Park Agency (the “APA” or “Agency”) is duly constituted within the Executive Department of the State of New York, with its headquarters in Essex County, New York. The Agency is empowered to implement and enforce the Adirondack Park Agency Act and is specifically entrusted with protecting and preserving the resources of the Adirondack Park through the exercise of its permitting authority (Executive Law § 801 et seq.). The APA is also vested with authority pursuant to the Rivers Act, Environmental Conservation

Law § 15-2705 to protect designated rivers within the Adirondack Park. The Rivers Act authorizes the APA to make and enforce regulations necessary for the management, protection, enhancement of and control of land use and development in the wild, scenic and recreational river areas, including requirements for obtaining an Agency permit. See ECL § 15-2709(1); see also 9 NYCRR § 577.4(a).

6. Lewis Family Farm, Inc., is a corporation organized under the laws of the State of New York, by Salim B. Lewis, whose signature appears on the Certificate of Incorporation dated September 23, 1985. Upon information and belief, Lewis Farm is the owner of approximately 1,100 acres located in the Town of Essex, County of Essex, Tax Map Parcel 49.3-2-27 in the Adirondack Park. Upon information and belief, the principal place of business of Lewis Farm is 1212 Whallons Bay Road, Essex New York, 12936. See Exhibit A, Certificate of Incorporation.

7. Salim B. (“Sandy”) Lewis is a principal of Lewis Family Farm, Inc., and incorporated Lewis Family Farm, Inc. See Exhibit A. Mr. Lewis is listed as President of Lewis Farm in a Consent Order with the Agency signed in 2000. See Exhibit B.

8. Barbara Lewis, is a shareholder of Lewis Family Farm, Inc., and is listed as President of Lewis Family Farm, Inc. on the Certificate of Incorporation. See Exhibit A.

STATUTORY FRAMEWORK

The Adirondack Park Agency Act

9. In 1971, the New York State Legislature enacted the Adirondack Park Agency Act, codified at Article 27 of the Executive Law, to protect the unique scenic, historic, ecological and natural resources within the Adirondacks. See L. 1971, c. 706; Executive Law § 801. The

Legislature described the six-million acre Adirondack Park as containing “priceless resources” of “national and international significance.” Executive Law § 801.

10. The Official Adirondack Park Land Use and Development Plan Map (the “Official Map”) classifies private lands in the Adirondack Park as within one of the following land use categories: “Hamlet,” “Moderate Intensity Use,” “Low Intensity Use,” “Rural Use,” “Resource Management,” and “Industrial Use.” Executive Law § 805. A description of “Resource Management” areas is set forth in Executive Law § 805(3)(g).

11. Executive Law § 809(2)(a) requires persons to obtain a permit from the Agency prior to undertaking any Class A Regional Project or Class B Regional Project. 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.”

12. 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 § 809(2)(a), including, inter alia, the construction of any new single family dwelling. Executive Law § 810 (2)(d)(1).

13. “Single family dwelling” is defined as any detached building containing one dwelling unit, not including a mobile home. Executive Law § 802(58).

14. Executive Law § 810(1)(e) lists Class A Regional Projects in a Resource Management land use area that require an Agency permit pursuant to Executive law § 809(2)(a), which includes any subdivision of land. Executive Law § 810(1)(e)(3).

15. Executive Law § 802(63) defines “subdivision of land” or “subdivision” as meaning, in pertinent part:

[A]ny division of land into two or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or 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) by any person

16. A subdivision of land occurs when one or more dwellings or other principal building(s) will be constructed on a parcel already containing at least one existing dwelling or other principal building, regardless of whether the existing building is proposed to be removed after completion of the new building(s). 9 NYCRR § 570.3(ah)(3).

17. Where an existing dwelling will not be removed until after the new dwelling is placed or constructed, an Agency permit is required for subdivision into sites, if the subdivision is a Class A or Class B Regional Project. 9 NYCRR § 573.6(e).

18. Executive Law § 813 provides for a civil penalty of up to \$500 per day for each day a violation of the APA Act continues.

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

19. The Wild, Scenic, and Recreational River System Act (“Rivers Act”) was enacted pursuant to a legislative finding that many rivers of the state possess outstanding natural, scenic, historic, ecological and recreational values. ECL § 15-2701(1).

20. ECL Section 15-2705 states that its functions, powers and duties are vested in the APA as to any privately owned part of a river that becomes part of the system within the Adirondack Park.

21. The Rivers Act authorizes the APA to make and enforce regulations necessary for

the management, protection and enhancement of and the control of land use and development in these areas. ECL § 15-2709(1).

22. Pursuant to 9 NYCRR § 577.4(a), no person shall undertake a project subject to the Rivers Act without first obtaining an agency permit.

23. In recreational river areas, rivers projects include, inter alia, all subdivisions of land in Resource Management areas, and all “compatible uses” pursuant to the Land Use and Development Plan. 9 NYCRR § 577.5(c)(1). A single family dwelling constitutes a compatible use in Resource Management areas. Executive Law § 805 (3)(g)(4).

24. The Boquet River is a New York State-designated recreational river area within 1/4 mile of each bank from the confluence with its North fork to Lake Champlain, pursuant to 9 NYCRR § 570, Appendix Q-6, “Recreational Rivers” (5a) .

25. Violations of the Rivers Act are subject to penalties of up to \$1,000 for each day such violation continues. ECL § 15-2723.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

26. Lewis Farm, upon information and belief, owns the Site comprised of Tax Map Parcel 49.3-2-27, in the Town of Essex, Essex County.

27. The Site is located on Whallons Bay Road, in Essex, New York, on lands classified “Resource Management” on the Adirondack Park Land Use and Development Plan Map. Portions of the affected property also lie within the designated river area of the Boquet River, a New York State designated recreational river.

28. The Site is approximately 1,100 acres and is operated as an organic farm.

29. On or about December 5, 2005, the Agency’s Director, Counsel, and Deputy

Director of Regulatory Programs, visited the Lewis Farm at the invitation of Salim B. Lewis. During the visit Mr. Lewis told the APA staff that he was planning to build farm worker housing. Agency staff advised him that any new single family dwelling would require an Agency permit.

30. On or about March 14, 2007, S. B. Lewis and Barbara A. Lewis, as project sponsors, submitted a permit application to the Agency for permission to construct 3 single family dwellings on the Lewis Farm, for use by farm employees. The application was for a minor project (single family dwelling and two lot subdivision) and was signed by Barbara Lewis. See Exhibit C, Permit Application.

31. On or about March 15, 2007, the Agency sent Barbara Lewis, Salim Lewis and Mark McKenna, their authorized representative, a Notice of Incomplete Permit Application - Receipt of Partial Permit Application. See Exhibit D, Notice of Incomplete Permit Application dated March 15, 2007.

32. On or about March 19, 2007, Barbara Lewis called the Agency and stated that construction of the three single-family dwellings on the Lewis Farm had begun with installation of foundations and the on-site waste water treatments system, indicating that the foundations were located at the corner of Whallons Bay Road and Christian Road. During the conversation, the Agency advised Barbara Lewis that the Agency considered the project "undertaken" with the installation of foundations and the water treatments systems, and that the construction without a permit constituted a violation. The Agency also advised Barbara Lewis not to proceed with further construction until an Agency permit was obtained, and that the matter would be referred to the Agency's enforcement division.

33. On March 28, 2007, an Agency enforcement officer visited the Lewis Farm. He

determined that three single family dwelling foundations were already constructed on lands designated Resource Management on the Official Map, which lands also lie within the designated river area of the Boquet River, a New York State designated recreational river pursuant to 9 NYCRR § 570, Appendix Q-6 (5a).

34. Lewis Farm did not obtain an Agency permit prior to the commencement of construction of the three dwellings.

35. No local review was undertaken which would have served as a substitute for Agency approval, because the Town of Essex does not have an Agency approved local program for the review of any Class B Regional Project located within its borders pursuant to Executive Law.

36. On May 14, 2007, Agency staff sent a proposed Settlement Agreement to Lewis Farm by letter, alleging the violations and offering to resolve the matter with an after-the-fact permit for the three dwellings and payment of a \$10,000 civil penalty or contribution of a comparable amount of money toward an appropriate environmental benefit project. See Exhibit E, Letter from Sarah Reynolds to S.B. and Barbara Lewis and proposed Settlement Agreement.

37. Thereafter, Lewis Farm had numerous contacts with Agency staff, and requested staff to remove the civil penalty or any payment of an environmental benefit project sums as part of the proposed settlement. Staff declined.

38. On June 27, 2007, the Agency received a report that Lewis Farm had resumed construction of the three single family dwellings. In response, an Agency staff member traveled to the Site and observed that two modular homes had already been set on foundations and a third home was partially set on a foundation. On June 27, 2007, Agency staff issued a Cease and

Desist Order requiring Lewis Farm to cease construction of the three single family dwellings See Exhibit F, June 27, 2007 Cease and Desist Order.

39. On or about June 28, 2007, Lewis Farm commenced an action by serving a complaint against the Agency in New York State Supreme Court, Essex County, seeking a declaratory judgment that the Agency had no jurisdiction over construction of farm worker housing or if it did, that the Agriculture and Markets Law, specifically, Agricultural and Markets Law § 305-a, supercedes the Adirondack Park Agency Act. The complaint was amended on or about July 3, 2007. See Exhibit G, Amended Order to Show Cause and Amended Complaint dated July, 2007.

40. Staff observed the single family dwelling on the Site on July 2 and July 6, 2007, and observed that Lewis Farms was continuing construction on the three, two-story modular houses placed on the foundations.

41. In a decision dated August 16, 2007, Supreme Court Acting Justice Kevin J. Ryan denied Lewis Farm's motion for a restraining order against the Agency and granted the Agency's motion to dismiss the proceeding. The decision stated that the Agency had 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 APA Act and the regulations implementing the Rivers Act do not exempt the dwellings from Agency jurisdiction. The Court further noted that Section 305-a of the Agriculture and Markets Law did not supersede Agency authority under the Adirondack Park Agency Act or its regulations, and dismissed the action as not ripe for judicial intervention and referred it back to the Agency to proceed with its enforcement procedures. See Exhibit H,

Decision and Order Lewis Family Farm v. APA, (S. Ct. Essex Co.) (August 16, 2007).

42. On August 31, 2007, Agency staff observed further construction activity of the three single family dwellings on the Site, including that workers were shingling the roofs of the three dwellings. By letter of that date, Agency staff reiterated to Lewis Farm's counsel that the Cease and Desist Order remained in effect. See Exhibit F, August 31, 2007 letter from Paul Van Cott to David Cook.

43. Construction continued on the single family dwellings as observed by staff on September 5, and by December 7, 2007, the dwellings appeared largely complete. Sometime after September 5 and before December 7, 2007, a preexisting dwelling which had been located near the three new dwellings was removed. On or about September 5, 2007 the Agency served a Notice of Apparent Violation on defendants.

44. On or about December 17, 2007, the Agency served a Notice of request for Enforcement Committee determination on defendant's counsel. Thereafter, the Enforcement Committee of the Agency convened on March 13, 2008 pursuant to 9 NYCRR § 581-2.6, to address the Lewis Farm alleged violations. The Enforcement Committee heard oral argument from counsel for Lewis Farm and for the Agency.

45. The Agency's Enforcement Committee issued a determination on March 25, 2008. The determination noted that Lewis Farm had a wetlands violation in 2000 with the Agency (see Exhibit B), and also had previous projects approved by the Agency. The determination noted that Lewis Farm had actual and timely 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. The Enforcement Committee determined

that Lewis Farm failed to seek a jurisdictional determination from the Agency prior to undertaking the construction of the three dwellings and, in doing so, violated the APA Act and the Rivers Act. See Exhibit I, March 25, 2008 Enforcement Committee Determination.

46. On or about March 26, 2008, counsel for Lewis Farm was served a copy of the Agency determination via telefax and mail. Service on Lewis Farm was completed by on or about April 4, 2008.

47. On or about March 26, 2008, counsel for Lewis Farm contacted the Agency requesting a stay of provisions of the Agency determination, pending resolution of litigation. The Agency declined to stay the determination.

48. On or about April 18, 2008, the APA issued a corrected determination striking paragraph 4 on page 12. See Exhibit J.

FIRST CAUSE OF ACTION

(Failure to obtain an Agency permit for construction of three new single family dwellings under the APA Act)

49. Pursuant to Executive Law § 809(2)(a), a permit is required from the Agency prior to the construction of any single family dwelling on lands classified "Resource Management" in the Adirondack Park.

50. Lewis Farm violated Executive Law § 809(2)(a) by undertaking the construction of three single family dwellings on the Site, without obtaining an Agency permit.

SECOND CAUSE OF ACTION

(Failure to obtain Agency permits for construction

of three new single family dwellings under the Rivers Act)

51. Pursuant to 9 NYCRR § 577.5(c)(1), a permit is required from the Agency prior to construction of a single family dwelling on Resource Management lands pursuant to the Rivers Act.

52. Lewis Farm violated 9 NYCRR § 577.5(c)(1), by undertaking the construction of three single family dwellings on the Site, without obtaining an Agency permit pursuant to the Rivers Act.

THIRD CAUSE OF ACTION

(Failure to obtain an Agency permit for subdivision of land under the APA Act)

53. 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.

54. 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 construction of three new single family dwellings on the Site.

FOURTH CAUSE OF ACTION

(Failure to obtain an Agency permit for subdivision of land under the Rivers Act)

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

56. 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 constructing three new single family dwellings on the Site.

FIFTH CAUSE OF ACTION

(compliance with Agency determination as amended April 18, 2008)

57. Pursuant to 9 NYCRR § 581-2.6, the Enforcement Committee of the APA conducted a proceeding on March 13, 2008 addressing defendants alleged violations and heard oral argument from counsel for defendants and plaintiff.

58. On March 25, 2008 the APA Enforcement Committee issued a determination finding defendant Lewis Farm in violation of the APA Act and the Rivers Act, and imposed specific conditions to address the violations and imposed a civil penalty of \$50,000.

59. On or about April 18, 2008, the APA issued a corrected determination striking paragraph 4 on page 12. See Exhibit J.

60. The APA seeks compliance with all the terms and conditions of the APA determination of March 25, 2008, as amended April 18, 2008.

PRAYER FOR RELIEF

WHEREFORE, the Agency respectfully requests that this Court enter judgment against Lewis Family Farm, Inc., Salim B. Lewis and Barbara Lewis as follows:

- (1) Finding the Lewis Farm defendants in violation of Executive Law § 809(2)(a) and 9 NYCRR § 577 and enjoining Lewis Farm to refrain from any further work on or use of the three unpermitted single-family dwellings on the Site until all APA permits are

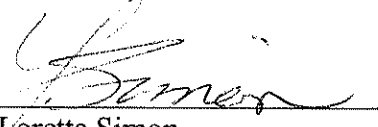
obtained; and

- (2) Requiring Lewis Farm to apply for and obtain an Agency permit for the three single family dwellings and for subdivision of the Site; and
- (3) Requiring Lewis Farm to submit to the Agency a detailed description and evaluation of the septic systems for the dwellings, demonstrating compliance with both New York State Department of Health and Agency standards; and
- (4) Requiring Lewis Farm to pay a civil penalty pursuant to Executive Law § 813(1) of \$50,000 for the violations alleged herein; and
- (5) Enjoining Lewis Farm from further violations of the Executive Law; and
- (6) Such other and further relief as this Court may deem just and proper.

Dated: May 14, 2008
Albany, New York

Andrew M. Cuomo
Attorney General of the
State of New York
Attorney for the Adirondack Park Agency
New York State Department of Law

By:


Loretta Simon
Assistant Attorney General
State of New York
Office of the Attorney General
The Capitol
Albany, New York 12224
Phone: 518-402-2724

VERIFICATION

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

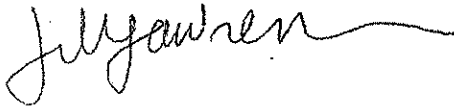
PAUL VAN COTT, being duly sworn, deposes and says:

I am a Senior Attorney for the Adirondack Park Agency (the "Agency"). I have read the foregoing verified amended complaint 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 14th
day of May, 2008.



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

Lewis Farm Exhibits to Amended Complaint

- Exhibit A** **Certificate of Incorporation, Lewis Family Farm, Inc.,
dated September 23, 1985, with attachments**
- Exhibit B** **Consent Order, 2000
State and APA v. Lewis Family Farm, Inc.**
- Exhibit C** **Permit Application, dated February 15, 2007**
- Exhibit D** **Notice of Incomplete Permit Application, dated March 15, 2007**
- Exhibit E** **Cover Letter dated May 14, 2007 and Proposed Settlement
Agreement, 2007**
- Exhibit F** **Cease and Desist Order, dated June 27, 2007;

Letter to David L. Cook, Esq. re: Cease and Desist Order,
dated August 31, 2007**
- Exhibit G** **Lewis Family Farm, Inc. v. APA, Amended Complaint, July 2007**
- Exhibit H** **Lewis Family Farm, Inc. v. APA, Decision and Order,
dated August 16, 2007**
- Exhibit I** **Adirondack Park Agency Determination, dated March 25, 2008
In the matter of the apparent violations of Executive Law Section 809
and 9 NYCRR Part 577 by Lewis Family Farm, Inc., Respondent**
- Exhibit J** **Corrected Adirondack Park Agency Determination, dated April 18, 2008**