STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

ACTION NO. 1

Index No. 315-08

Hon. Richard B. Meyer

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

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

Defendants.

ACTION NO. 2 / COUNTERCLAIM

Index No.: 332-08

Hon. Richard B. Meyer

MEMORANDUM OF LAW IN SUPPORT OF THE LEWIS FAMILY FARM'S MOTION FOR SUMMARY JUDGMENT ON THE AGENCY'S ENFORCEMENT ACTION / COUNTERCLAIM AND IN OPPOSITION TO THE AGENCY'S CROSS-MOTION FOR SUMMARY JUDGMENT AND TO STRIKE "SECOND" RECORD

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PRELIMINARY STATEMENT

This is an action in which the Adirondack Park Agency (hereafter "Agency") is improperly seeking to secure jurisdiction over farm worker housing constructed on farmland by the Lewis Family Farm, Inc. (hereafter "Lewis Family Farm"). The Agency seeks enforcement of an administrative order that wrongly directs the Lewis Family Farm to file an application for a three home subdivision for a farm worker housing cluster by the Farm's barns.

For the reasons set forth herein, the Lewis Family Farm respectfully requests an order pursuant to CPLR 3212 granting summary judgment that dismisses the Agency's duplicative enforcement action (Index. No. 332-08), and denying the Agency's cross-motion for summary judgment. The Agency's motion to strike the "second" record should also be denied.

ARGUMENT

In opposition to the Lewis Family Farm's motion for summary judgment (and in support of the Agency's cross-motion for summary judgment), the Agency has submitted yet another Affidavit of Paul Van Cott, sworn to August 8, 2008 and a Memorandum of Law, dated August 8, 2008. As demonstrated below, these documents do not sufficiently oppose the Lewis Family Farm's motion for summary judgment, and the documents fail to demonstrate a *prima facie* case entitling the Agency to summary judgment.

POINT I

THE AGENCY FAILS TO IDENTIFY ANY LEGISLATIVE INTENT TO GRANT IT REGULATORY POWER OVER AGRICULTURAL HOUSING

Farm buildings—all farm buildings—are exempt from any regulation by the Adirondack Park Agency. This central legal tenant is not contested here; the Agency's own literature characterizes all agricultural use structures as "non-jurisdictional," no matter where they are placed as long as they are not in wetlands or along river banks, and no matter what color, size,

height or shape. (See Privitera Aff. ¶ 12, Ex. G) (R. 433, 460-65).[1] This broad regulatory exemption was created by the Legislature in the wake of New York State's passage of the Farm Conservation Clause of the New York State Constitution and simultaneous with many provisions of New York State's Right to Farm Law, set forth in the Agriculture and Markets Law, which also protect farms from regulation so that they are free to develop and maintain viability, in the public interest of conserving farm land. (See Lewis Family Farm's Memorandum of Law, dated August 1, 2008, pp. 32-41).

The central teaching the Court of Appeals' landmark decision in Town of Lysander v. Hafner, 96 N.Y. 2d 558 (2001), is that the protective reach of a statute, once created by the Legislature, must be construed broadly unless there is specific legislative language indicating that it should not be read broadly.

No federal, state or local department, agency, authority or land use board anywhere within New York State may regulate farm buildings. Lysander teaches that farm worker housing is a critical part of viable farming operations, and thus, must be treated like all other exempt farm buildings. The Court of Appeals concluded that farm worker housing is a protected farm building as a matter of New York's Right to Farm Law.

The Agency consistently maintains before this Court that it is the only department, agency, authority, land use board or government authority of any kind that is specifically endowed by the Legislature with the power to regulate farm worker housing. However, conspicuously absent from every submission filed by the Agency in this case is any indication that the Legislature specifically intended to grant the Agency exclusive regulatory authority over farm development that is not held by any other body in the entire State of New York. Therefore,

[1] "(R. ___)" references a citation to a specific page contained in the Bates Stamped version of the administrative record, presented as Exhibit "D" to the Affirmation of John J. Privitera, dated August 1, 2008.

Lysander teaches that the protective reach of the "agricultural use structure" exemptions throughout the Adirondack Park Act ("the Act") must include single family dwellings, just as "on-farm building" includes single family dwellings under the Right to Farm Law.

The Agency's insistence that the separate definition for "single family dwelling" in the Act somehow reveals a legislative intent to empower the Agency to regulate all farm worker housing does not withstand scrutiny. Of course, in any comprehensive land use plan that is grounded in density controls such as the Park Act, "single family dwelling" must necessarily be defined separately because it is the primary form of land use development, and it is the most common "principal building" throughout the Park. The existence of a separate definition for "single family dwelling" does not reveal any legislative intent toward farm buildings, particularly since the Legislature directed that single family dwellings used by farm workers not be counted as buildings in the density guidelines. See N.Y. Exec. Law § 802(50).

It is impossible to discern any legislative intent to delegate sole and unique regulatory power over agricultural housing to the Agency when the Legislature explicitly directed the Agency to not count such buildings at all.

Common logic demands that legislative intent to endow the power to regulate a building cannot be found within a statutory framework that defines such buildings as invisible.

Once again, the Agency concedes that it has no greater powers than a regional land use Agency with combined planning board and zoning board powers. (See Agency's Memorandum of Law, dated August 8, 2008, pg. 26). The Agency is unable to quote any statutory directive, as required by the approach of the Court of Appeals in Lysander, explicitly carving out agricultural housing from the protective reach of the broad exemption for agricultural use structures. Thus, the Agency has no greater power than the Town of Lysander.

POINT II

THE AGENCY CONTINUES ITS BLIND REFUSAL TO ACKNOWLEDGE ITS LACK OF JURISDICTION OVER FARM BUILDINGS

Indicative of the Agency's ostrich-like ability to bury its head in the sand,[2] the Agency presents an opening argument as to why it believes that it is entitled to summary judgment (see POINT I of Agency's Memorandum of Law, dated August 8, 2008) without even mentioning the term "agricultural use structure", which is defined in the Adirondack Park Agency Act ("the Act") as follows:

> 8. "Agricultural use structure" means any barn, stable, shed, silo, garage, fruit and vegetable stand ***or other building or structure directly and customarily associated with agricultural use***.

N.Y. Exec. Law § 802(8) (emphasis supplied).

The Agency also disregards the uncontested material facts that (i) the buildings at issue in this proceeding are farm employee houses; and (ii) on-farm employee housing is a necessary and sound agricultural practice "directly and customarily associated with agricultural use" that provides the foundation for any self-sustaining farm. (See Lewis Aff., ¶¶ 11-12; Martens Aff., ¶ 16; Privitera Reply Aff., Ex. A) (R. 328-29, 428, 541-43).

It is uncontested that the Lewis Family Farm's farm worker houses are agricultural structures. Since the Agency agrees that it lacks jurisdiction over "agricultural use structures", the Lewis Family Farm—and not the Agency—is entitled to summary judgment. See N.Y. Exec. Law §§ 805(3), 810 (see also Privitera Aff., ¶ 12 and Ex. G) (R. 433,460-65).

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[2] "In popular mythology, the Ostrich is famous for hiding its head in the sand at the first sign of danger." See http://en.wikipedia.org/wiki/Ostrich (last visited August 12, 2008).

The Agency does not—and cannot—point to a single fact on this record that suggests that the Lewis Family Farm's farm worker houses are not "agricultural use structures." In fact, in the Agency's recently released 2007 Annual Report, the Agency states as follows:

> **2007 Major Litigation Underway or Resolved**
>
> **Lewis Family Farm, Inc. v APA:** This case upheld Agency jurisdiction over the construction of single-family dwellings for ***agricultural worker housing*** based upon the location of the structures in a Resource Management area and a designated River Area. This important decision clarifies that the overall intensity guideline exception granted by the APA Act for ***agricultural housing*** does not also create an exemption from permit review jurisdiction in the Resource Management and Rivers Act areas of the Park.

(See 2007 Annual Report, pg. 20, attached as Ex. "B" to Affirmation of Jacob F. Lamme, dated August 15, 2008) (emphasis added). The Court should take notice that the Agency admits that the structures at issue here are "agricultural worker housing". Id.

Of course, all houses are "structures" under the Act. See N.Y. Exec. Law § 802(62). Therefore, all "agricultural housing" – the term now used by the Agency to describe the Lewis Family Farm housing cluster at issue in this case – is an "agricultural use structure".

The Agency ignores the "basic truth" set forth in the Venn diagram (see Lewis Family Farm's Memorandum of Law, dated August 1, 2008, pg. 19), which illustrates the explicit statutory directive that the definition of "agricultural use structure" includes any "building or structure directly and customarily associated with agricultural use." See N.Y. Exec. Law § 802(8). This is the proverbial 800-pound gorilla in the room that the Agency refuses to acknowledge on these motions for summary judgment, just as it did at oral argument before this Court on June 19, 2008.[3]

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[3] The Agency states that "there is no exemption in the APA Act or Rivers Act for single family dwellings that are used for farm worker housing." (See Agency's Memorandum of Law, dated August 8, 2008, pg. 22). The Agency continues to ignore the catch-all portion of the definition of "agricultural use structure", which provides that any structure—a term defined to include a "single family dwelling" pursuant to N.Y. Exec. Law § 802(62)—that is

A. The Truth Behind The Agency's Attempt To Secure Jurisdiction Over Exempt Farm Worker Housing Has Finally Emerged

The hypothetical text contained in Footnote 11 of the Agency's August 8, 2008 Memorandum of Law is highly insightful into the Agency's misguided effort to control farm development, despite its lack of jurisdiction over "agricultural use structures" and in spite of the Farm Conservation Clause of the New York State Constitution. Essentially, the Agency now expresses fear that a farmer will build farm worker housing for her employees and then "abandon [her] 'agricultural use' and sell the single family dwelling and land for residential purposes". (See Agency's Memorandum of Law, dated August 8, 2008, pg. 23 n.11). This is preposterous. The Agency cannot usurp jurisdiction over a non-jurisdictional building simply by declaring that something that would affect the jurisdictional status of a structure *could* occur in the future. If this were allowed, then the Agency could usurp jurisdiction over *every* non-jurisdictional building in the Park for no other reason except that some undefined act *could* occur in the future. For example, a thirty foot structure would be jurisdictional because some day somebody might raise the height over forty feet. The Agency lacks the power it thinks it possesses. Simply stated, jurisdiction is based on present circumstances, not unforeseen and undefined future acts.

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directly and customarily related to agriculture is an "agricultural use structure" under the Act. See N.Y. Exec. Law § 802(8). Therefore, it is incomprehensible how the Agency can continue to say that "single family dwellings" cannot be "agricultural use structures". The Agency's Determination makes a poor attempt to argue that the catch-all provision of the definition relates only to accessory use structures. (See Agency's Determination, ¶ 37) (R. 18). The Agency has since backed off of that preposterous statutory interpretation, but now seeks to ignore the catch-all provision altogether. The Agency also avoids discussion of the many other areas of State law where the Legislature has made clear that farm family dwellings are agricultural structures. (See Lewis Family Farm's Memorandum of Law, dated August 1, 2008, pp. 23-25, 44).

The Lewis Family Farm is in the farming business—not the real estate business.[4] If the Lewis Family Farm had set out to build a three-home subdivision, it certainly would not have built an indivisible cluster of housing right next to the farm's main barns. (See Lewis Aff., ¶ 14) (R. 329-30). Moreover, the Agency's insinuation that the Lewis Family Farm is engaged in "gamesmanship" to avoid Agency jurisdiction is of poor taste. On this record, there is no doubt that the Lewis Family Farm is a steward of environmental conservation providing invaluable education on organic farming and environmental conservation, not only to residents in the Adirondacks, but also to people worldwide. (See *Right to Farm in the Champlain Valley of New York: The Matter of Housing at the Lewis Family Farm*, dated January 22, 2008, pg. 5; Lewis Aff., ¶¶ 6-10, 17) (R. 286, 327-30, 578). The Lewis Family Farm operates one of the largest and most well-respected USDA certified organic farms in New York State. (See Lewis Aff., ¶¶ 2-3; Martens Aff., ¶ 4) (R. 326, 427). As such, the Lewis Family Farm seeks to grow and develop its farming operation, as protected by the Constitution, not develop land for residential purposes.

Nevertheless, the Lewis Family Farm readily acknowledges that if circumstances change and it ever wishes to sell any of its land for residential purposes, then it would have to apply to the Agency for a subdivision permit. There is no question that the Agency would have jurisdiction over any legitimate subdivision inside the Park—including one made by a farm. Indeed, the Agency's new enforcement initiatives would detect any subdivision violation.[5] (See

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[4] The Agency claims that the Lewis Family Farm's farm worker housing will not be lost because the Agency merely seeks to force the Lewis Family Farm to obtain an "after-the-fact" permit and submit to Agency jurisdiction. (See Agency's Memorandum of Law, dated August 8, 2008, pp. 15-16). However, no farm can bear the extra layer of costs for unnecessary administrative regulation and expect to survive in the highly competitive farming industry. If the Lewis Family Farm is forced to treat its farm buildings as subdivisions and "single family dwellings", then its costs will rise as it loses important tax incentives and pays to deal with these burdensome administrative processes. The Lewis Family Farm will cease to exist if that is the environment in which it is forced to operate.

[5] The Agency recently announced a new subdivision enforcement program in which it will use a statewide real estate transaction database and a parcel's tax number to determine whether or not a subdivision has occurred. See Agency's January 10, 2008 News Release, *Adirondack Park Agency Announces Proactive Subdivision Enforcement*

Internal Agency Memorandum, dated February 2, 2005, Ex. "A" to Affidavit of John J. Privitera, sworn to August 1, 2008).

However, there is nothing in the Act that gives the Agency the right to demand that a farmer submit a permit application for the construction of a non-jurisdictional structure. The Agency may believe that it is entitled to know every structure inside the Park, but the Legislature does not agree. If the Agency wishes to change the law, it should focus its efforts on lobbying the Legislature to amend the Act instead of browbeating farmers to submit to jurisdiction based upon a fear that a jurisdictional event may occur in the future.

This case involves the Lewis Family Farm's constitutional right to farm its land and house its workers without undue interference from the Agency. This right must be recognized.

POINT III

THE AGENCY'S SUBDIVISION ARGUMENT REMAINS ELUSIVE

The Agency misstates the law in an attempt to further mold and craft its elusive "subdivision" argument. The Agency claims that a subdivision occurs "where there is any form of separate occupancy". (See Agency's Memorandum of Law, dated August 8, 2008, pp. 16-17). Like the Agency's other arguments, this is not what the law provides.

The Act defines "subdivision of land" as a "division of land into two or more lots, parcels or sites" for "separate ownership or occupancy". N.Y. Exec. Law § 802(63) (emphasis supplied). Similarly, the Agency's regulations implementing the Rivers Act define "subdivision" as "any division of land into two or more lots." 9 NYCRR § 570.3(ah)(1) (emphasis supplied). The Agency has failed to show that the Lewis Family Farm divided its land. The Lewis Family Farm most certainly did not divide its farm land when constructing farm worker housing. In fact, the

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Initiative, available at http://www.apa.state.ny.us/Press/pressrelease.cfm?PressReleaseID=286 (last visited August 13, 2008).

record shows that the lands are also not easily subdivided. (See Lewis Aff., ¶ 14; Commissioner Hooker's February 1, 2008 Determination, Ex. A to Privitera Reply Aff.) (R. 327, 541-43).

Moreover, the Agency's argument that farm worker housing creates "separate occupancy" is unavailing because the farm, as a corporate entity, still occupies the land. Nothing is separate. It is undisputed that the Lewis Family Farm operates with a full-time manager, three full-time employees, and requires interns and other farm workers working on the farm. (Lewis Aff., ¶¶ 8-10) (R. 327-28). When these people are housed on-farm, they will be there as employees of the Lewis Family Farm. As with any business, there may be employee turnover in the farming industry. The only constant will be that the Lewis Family Farm owns and occupies the entire land—including the farm worker housing. Thus, farm worker housing is not "separate occupancy" as the Agency desperately wants this Court to believe.[6] If the Court were to accept the Agency's "separate occupancy" argument, the Agency would be given free reign to force a motel to obtain an Agency permit to subdivide itself into parcels equaling the number of available rooms simply because an overnight patron would "occupy" the land.

The Agency also ignores its regulations, which clarify that the construction of farm employee housing does not automatically create a subdivision because "subdivision into sites" only occurs when an additional principal building is constructed. See 9 NYCRR § 570.3(ah)(3). It is well-established that farm employee housing is never an additional "principal building". See N.Y. Exec. Law § 802(50)(g). The Agency admits this in its Annual Report, See p. 3, supra. Thus, since the Lewis Family Farm's land has not been divided and no new principal buildings have been built, the construction of farm employee housing is not an automatic subdivision over which the Agency may assert jurisdiction.

[6] For the first time in the extensive briefing of these consolidated actions, the Agency appears to have recognized the fallacy of its argument concerning "agricultural use structures" and has focused more on its subdivision argument.

A. The Agency's "Backdoor" Subdivision Argument Violates Section 305(3) of the Agriculture and Markets Law

The Agency cannot read the Act, the Rivers Act, and the regulations concerning subdivision in such a way that allows it to circumvent the Legislature's explicit instruction to avoid regulation of "agricultural use structures". The Legislature enacted Section 305 of the Agriculture and Markets Law to require all New York State agencies—including the Adirondack Park Agency—to create and/or modify their regulations and procedures to support the development of farming within the State:

> 3. Policy of state agencies. ***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...***

N.Y. Agric. & Mkts. Law § 305(3) (McKinney 2004) (emphasis supplied).

As such, the Agency's attempt to craft a subdivision argument must fail. The Legislature certainly did not prohibit the Agency from regulating "agricultural use structures", but then grant the Agency subdivision jurisdiction over those same exempt "agricultural use structures". The protective reach of the statute must be read *in pari materia.* N.Y. Statutes § 234 (McKinney 1971). Indeed, the Agency has never argued that the mere construction of an "agricultural use structure" constitutes a subdivision. Therefore, if this Court finds that the Lewis Family Farm's farm worker houses are "agricultural use structures" under the Act and Rivers Act, then the Agency's "backdoor" attempt to secure jurisdiction by way of a subdivision argument also must fail.

B. The Agency Ignores This Court's Ruling on Collateral Estoppel

Incredibly, the Agency has the audacity to argue that the August 16, 2007 Decision and Order of Hon. Kevin Ryan, Acting J.S.C., necessarily determined that a subdivision of land occurred. (See Agency's Memorandum of Law, dated August 8, 2008, pg. 16). This argument

flies in the face of this Court's July 2, 2008 Decision and Order, which unequivocally held that Justice Ryan's determination of the "subdivision" issue is not pertinent to these consolidated actions and the doctrine of collateral estoppel does not apply. See Lewis Family Farm, Inc. v. Adirondack Park Agency, 2008 N.Y. Slip Op. 51348U, *5-6 (Essex County Sup. Ct., July 2, 2008).[7]

The Lewis Family Farm relies on this Court's July 2, 2008 Decision and Order and will not revisit any issues pertaining to collateral estoppel in these motions for summary judgment.

POINT IV

THE AGENCY DOES NOT DEFEND ITS BREACH OF THE RIGHT TO FARM LAW

The Lewis Family Farm's motion for summary judgment devoted nearly five pages to briefing its Fourth Affirmative Defense in this enforcement action/counterclaim, which is identical to its Second Cause of Action in the related Article 78 proceeding (Index No. 315-08). This statutory claim maintains that the Agency has a mandatory duty to modify its procedures and regulations to encourage farming pursuant to Section 305(3) of the New York Agriculture and Markets Law, one of the core underpinnings of the Right to Farm Law.

The Agency claims that the Lewis Family Farm seeks to "sow" conflict between the Agency and the Department of Agriculture and Markets. (See Agency's Memorandum of Law, dated August 8, 2008, pg. 25). In truth, the conflict is created only by (i) the Agency's insistence upon regulating farming in the face of the agricultural exemptions in the Act, (ii) the Agency's lack of respect and deference for the Commissioner of Agriculture and Markets, who made a formal land use determination that the Lewis Family Farm's employee houses were agricultural

[7] This Court's July 2, 2008 Decision and Order also determined that the Agency had no basis for naming Sandy Lewis or Barbara Lewis as defendants, and dismissed the Agency's complaint as against them. However, the Agency appears to have ignored this as it continues pursuing the Lewises on this motion. (See Agency's Memorandum of Law, dated August 8, 2008, pg. 1).

in nature, (iii) the Agency's crabbed reading of its own Act, and (iv) the Agency's refusal to obey the mandates of the Right to Farm Law under Section 305(3). The conflict is sown solely by the Agency's usurpation of power.

Conspicuously absent from the Agency's most recent filing is any evidence that the Agency has responded in any way to the affirmative statutory obligation to accommodate the Right to Farm under Section 305(3). As best we can tell, the point is conceded.

POINT V

THE AGENCY'S MOTION TO STRIKE AN EXHIBIT TO AN AFFIRMATION IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

For the convenience of the parties and the Court, the Lewis Family Farm undertook the extraordinary expense to "bates stamp" a copy of the voluminous record that the Agency submitted in the Article 78 proceeding (Index No. 315-08), and submitted it in support of the Lewis Family Farm's motion for summary judgment. (See Affirmation of John Privitera, dated August 1, 2008, Ex. D). This was done simply to give the Court and the parties the opportunity to cite to the record with precision, instead of wading through the Agency's poorly compiled record in order to locate certain documents. Exhibit "D" to the Privitera Affirmation is nothing more than a page-numbered version of the record that the Agency submitted to the Court on June 13, 2008.[8]

[8] To the extent that the Agency claims that the "second" record is incomplete, a review of this exhibit reveals that page "R00189" was inadvertently left out of the exhibit. (See Lamme Aff., ¶ 9). However, this page was not part of the administrative record before the Agency and was merely a document that the Agency's counsel created and inserted into its version of the record that was submitted to the Court on June 13, 2008. This missing page—although immaterial—is attached as Exhibit "A" to the Lamme Affirmation.

Despite posturing to the contrary, the Agency ignored several requests to submit a page-numbered version of the record. (See Lamme Aff., ¶¶ 4-5). The Agency now moves to strike this "second" record because it "has not been certified by the Agency, nor did counsel for Lewis Farm provide a copy to counsel for the APA to review before its reproduction." (See Agency's Memorandum of Law, dated August 8, 2008, pg. 36).

The Agency has no objection to the authenticity or admissibility of the evidence submitted, which is the only objection the Agency can make to evidence submitted in support of a summary judgment motion. See Zuckerman v. New York, 49 N.Y.2d 557, 562 (1980) (stating that summary judgment must be established by "sufficient" evidence); see also Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 853 (1985) (stating same). Instead, the Agency moves to strike this exhibit to an affirmation submitted in support of the summary judgment motion solely because it was not provided with the opportunity to review or certify the exhibit. (See Agency's Memorandum of Law, dated August 8, 2008, POINT III).[9]

Diligent legal research fails to uncover any legal precedent that would require counsel to a party moving for summary judgment to share its exhibits with opposing counsel for the purposes of review or "certification" before making the motion. The Agency fails to cite any procedural or substantive legal authority to support this motion. The lone case cited by the Agency, Patterson Materials Corp. v. Zagata, 237 A.D.2d 366 (2d Dep't 1997), is completely irrelevant to this motion. In Patterson, the Appellate Division remanded a case to the lower court because the issues could not be decided on the truncated record that the parties agreed to submit

[9] It appears that the Agency does not understand that the Article 78 proceeding and this civil action/counterclaim are different species of legal proceedings under the CPLR. The Agency is not charged with the same duties here as it had in the Article 78 proceeding. See § CPLR 7804(e). Moreover, the Agency's recitation of a legal standard applicable in some Article 78 proceedings is not germane on these motions for summary judgment. (See Agency's Memorandum of Law, dated August 8, 2008, pp. 14-15).

on appeal. Id. at 367. This case has nothing to do with the Agency's claim that it is entitled to review and certify an exhibit to the Privitera Affirmation.

Thus, the Agency's frivolous motion to strike the "second" record should be denied.[10]

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

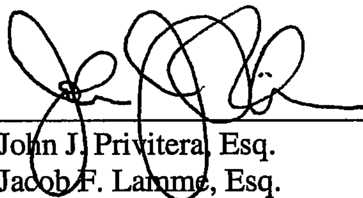
[10] In addition to denying the Agency's motion, Part 130 of the Rules of the Chief Administrator grants this Court discretion to impose costs and sanctions against the Agency for "frivolous" conduct, which is defined to include conduct that is "completely without merit in law or in fact and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law." See 22 NYCRR § 130-1.1.

CONCLUSION

Based on the foregoing, the Lewis Family Farm respectfully seeks an order (1) granting summary judgment dismissing the Agency's Amended Verified Complaint in its entirety, (2) denying the Agency's cross-motion for summary judgment, (3) denying the Agency's motion to strike the "second" record, and (4) granting such other and further relief that the Court deems just and proper.

Dated: August 15, 2008
Albany, New York

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.



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