

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ESSEX

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LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

**NOTICE OF MOTION**

**ACTION NO. 1**

Index No. 315-08

Hon. Richard B. Meyer

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ESSEX

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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

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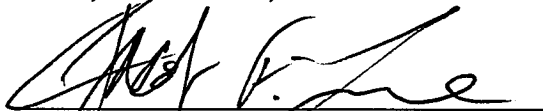
**PLEASE TAKE NOTICE** that upon the annexed Affirmation of John J. Privitera, Esq., dated August 1, 2008, the Memorandum of Law in Support of Summary Judgment, dated August 1, 2008, and upon all prior papers and proceedings had in these consolidated actions, the undersigned will move this Court at an Individual Assignment Term to be held in and for the County of Essex, at the County Court House in Elizabethtown, New York, on August 18, 2008, at 9:30 a.m. of that day, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 3212 granting summary judgment for the Lewis Family Farm in the Agency's enforcement action / counterclaim (Index No. 332-08), and granting such other or further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to CPLR 2214(b), answering affidavits and cross-motions, if any, shall be served at least seven (7) days before the hearing date.

Dated: August 1, 2008  
Albany, New York

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

By:



John J. Privitera, Esq.

Jacob F. Lamme, Esq.

*Attorneys for Lewis Family Farm, Inc.,*

*Salim B. "Sandy" Lewis and Barbara A. Lewis*

677 Broadway

Albany, New York 12207

Tel. No. (518) 447-3200

Fax No. (518) 426-4260

TO: Loretta Simon, Esq.  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
The Capitol  
Albany, New York 12224-0341

Cynthia Feathers, Esq.  
Arroyo Copland & Associates, PLLC  
Great Oaks Office Park  
219 Great Oaks Blvd.  
Albany, New York 12203

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

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LEWIS FAMILY FARM, INC.,

**AFFIRMATION**

Petitioner,

**ACTION NO. 1**

-against-

ADIRONDACK PARK AGENCY,

Index No. 315-08

Respondent.

Hon. Richard B. Meyer

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

---

ADIRONDACK PARK AGENCY,

Plaintiff,

**ACTION NO. 2 /  
COUNTERCLAIM**

-against-

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

Index No.: 332-08

Defendants.

Hon. Richard B. Meyer

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**AFFIRMATION IN SUPPORT OF LEWIS FAMILY FARM'S  
MOTION FOR SUMMARY JUDGMENT IN ACTION NO. 2**

**JOHN J. PRIVITERA**, an attorney at law duly admitted to practice in the courts of the State of New York, swears and affirms under penalty of perjury as follows:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a principal with the law firm of McNamee, Lochner, Titus & Williams, P.C., attorneys for defendant Lewis Family Farm, Inc. ("Lewis Family Farm"). As such, I am fully familiar with the pleadings and proceedings had in this action, and with the matters set forth herein.

2. I make this affirmation in support of the Lewis Family Farm's motion for summary judgment in the enforcement action commenced by the Adirondack Park Agency (hereafter "Agency") (Index No. 332-08), which this Court has deemed a counterclaim to the Lewis Family Farm's Article 78 proceeding (Index No. 315-08).

3. The Agency commenced this action on April 11, 2008, a mere seventeen days after the Agency issued its administrative determination on March 25, 2008 ("Determination"). The action named Lewis Family Farm, Inc. ("Lewis Family Farm"), Salim B. Lewis, and Barbara Lewis as defendants.

4. On May 14, 2008, the Agency served a Verified Amended Complaint, a copy of which is attached hereto as **Exhibit "A"**.

5. On July 2, 2008, this Court issued a Decision and Order dismissing the Verified Amended Complaint as against defendants Salim B. Lewis and Barbara Lewis. A copy of the July 2, 2008 Decision and Order is attached hereto as **Exhibit "B"**.

6. On July 30, 2008, the Lewis Family Farm served its Verified Answer on the Agency, a copy of which is attached hereto as **Exhibit "C"**.

7. On June 13, 2008, the Agency filed the administrative record in Action No. 1 (Index No. 315-08) pursuant to CPLR 7804(e). However, the Agency neglected to Bates Stamp the return so that the documents could be easily referenced by the parties and the Court in these consolidated actions. Because the Lewis Family Farm relies on the affidavits and materials already submitted in the record on this motion, a Bates Stamped version of the administrative record is attached hereto as **Exhibit "D"** for the convenience of the Court.

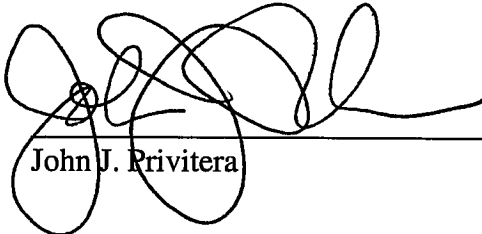
8. This enforcement action should be dismissed because it is wholly duplicative of the Agency's administrative enforcement proceeding, which culminated in the Agency's issuance

of the Determination. Indeed, this action was commenced before the timeframe for the Agency's directives in the Determination had expired, and it seeks no greater relief than the Determination itself.

9. The Agency has alleged that the Lewis Family Farm has subdivided its land without a permit in violation of both the Adirondack Park Agency Act (see Verified Amended Compl., ¶¶ 53-54) and the Wild, Scenic and Recreational Rivers Act (see Verified Amended Compl., ¶¶ 55-56). However, the Agency's own "Subdivision Enforcement Process" demonstrates that the Lewis Family Farm did not subdivide its land because it did not create any new lots or file any new deeds with the County Clerk. A copy of an Agency memorandum entitled "Subdivision Enforcement Process", dated February 2, 2005, is attached hereto as **Exhibit "E"**. The Agency has manufactured the causes of action pertaining to subdivision to end-run the agricultural protections in the Act in violation of its own processes.

10. Based on the foregoing, and on the reasons set forth in the accompanying memorandum of law, the Lewis Family Farm respectfully asks this Court to enter an order granting summary judgment in favor of the Lewis Family Farm and dismissing the Agency's duplicative enforcement action, and granting such other and further relief as the Court deems just and proper.

I hereby swear and affirm the above under penalty of perjury this 1<sup>st</sup> day of August, 2008.



John J. Rivitera