

STATE OF NEW YORK SUPREME COURT
ESSEX COUNTY

LEWIS FAMILY FARM, INC.,

Plaintiff,

AFFIRMATION

v.

ADIRONDACK PARK AGENCY,

Index No. 000498-07

RJI No. 15-1-2007-0153

Defendant.

SARAH REYNOLDS, an attorney licensed to practice law in the courts of the State of New York, affirms under penalty of perjury:

1. I am an attorney for the Adirondack Park Agency (the "Agency") and work in the Agency's enforcement program. In this role, I am responsible for administrative enforcement of the Agency's laws and regulations, including in the Town of Essex, Essex County.

2. I make this affirmation in support of the Agency's Motion to Dismiss this matter. I am familiar with the facts of the matter based on my review of Agency files and my settlement discussions and exchange of settlement correspondence with Lewis Family Farm, Inc. and its attorneys.

PRELIMINARY STATEMENT

3. The Agency's motion herein seeks: (1) dismissal of this declaratory judgment action for lack of subject matter

jurisdiction, prematurity, and failure to state a cause of action pursuant to CPLR § 3211(7) because Agriculture and Markets Law § 305-a does not preclude the Agency from requiring a permit for subdivision of land and construction of single family dwellings; and (2) dismissal of plaintiff's request for injunctive relief.

4. Plaintiff's action and this responding motion arise from Lewis Family Farm, Inc. ("the Lewis Farm")'s subdivision of and construction of three single family dwellings on a Resource Management property within the designated Boquet River Recreational River area in the Town of Essex, Essex County.

STATUTORY FRAMEWORK

5. The Official Adirondack Park Land Use and Development Plan Map classifies private lands in the Adirondack Park under the following land use categories: "Hamlet," "Moderate Intensity Use," "Low Intensity Use," "Rural Use," "Resource Management," and "Industrial Use." Executive Law § 805.

6. Resource Management lands "are those lands where the need to protect, manage and enhance forest, agricultural, recreational and open space resources is of paramount importance because of overriding natural resource and public considerations." Executive Law § 805(3)(g).

The Adirondack Park Agency Act

7. Executive Law § 809(2)(a) requires individuals and corporations to obtain a permit from the Agency prior to the

undertaking of any Class A regional project or the undertaking of any Class B regional project in any town not governed by an Agency-approved local land use program in the Adirondack Park.

8. The Town of Essex does not have an Agency-approved local land use program.

9. 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.

10. Executive Law § 810(1)(e) lists the Class A regional projects in a Resource Management land use area that require an Agency permit pursuant to Executive Law § 809(2)(a). These projects include, inter alia, any subdivision of land (and all land uses and development related thereto) involving two or more lots, parcels or sites. Executive Law § 810(1)(e)(3).

11. Pursuant to Executive Law § 802(63), a "subdivision" is:

any division of land into two or more lots, parcels, or sites ... for the purpose of ... 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) ...

12. 9 NYCRR § 570.3(ah)(3) defines a subdivision into sites as occurring "where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s)."

In addition, 9 NYCRR § 573.6(e) states that, where an "existing dwelling will not be removed until after the new dwelling is emplaced or constructed, an Agency permit is required for the 'subdivision into sites' which would result if the subdivision is a class A or class B regional project as provided in Section 810 of the Adirondack Park Agency Act."

13. 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 Executive Law § 809(2)(a). These projects include, inter alia, the construction of any new single family dwelling. Executive Law § 810(2)(d)(1).

14. Executive Law § 802(58) defines a "single family dwelling" as "any detached building containing one dwelling unit, not including a mobile home."

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

15. The Wild, Scenic, and Recreational River System Act (the "Rivers Act") was enacted pursuant to a legislative finding

that "many rivers of the state, with their immediate environs, possess outstanding natural, scenic, historic, ecological and recreational values." ECL § 15-2701(1).

16. The Rivers Act was enacted to implement a public policy "that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in free-flowing condition and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations." ECL § 15-2701(3).

17. Section 15-2705 of the Rivers Act states that "the functions, powers and duties encompassed by this section shall be vested in the Adirondack park agency as to any privately owned part of a river area within the Adirondack park as defined by law which may become part of this system." Section 15-2709(1) states that, within the Adirondack Park, the Adirondack Park Agency "shall make and enforce regulations necessary for the management, protection, and enhancement of and control of land use and development in the wild, scenic and recreational river areas."

18. Pursuant to 9 NYCRR § 577.4(a), "no person shall undertake a rivers project without first obtaining an agency permit."

19. In recreational river areas, rivers projects include, inter alia, all subdivisions of land in Resource Management land use areas. 9 NYCRR § 577.5(c)(1).

20. In recreational river areas, rivers projects include, inter alia, all land uses and developments classified compatible uses by the Adirondack Park land use and development plan in Resource Management land use areas. 9 NYCRR § 577.5(c)(1).

21. Pursuant to Section 805(3)(g)(4) of the Adirondack Park Agency Act, single family dwellings constitute compatible uses in Resource Management land use areas.

FACTUAL ALLEGATIONS

22. On December 5, 2005, the Agency's Counsel John Banta, Deputy Director for the Regulatory Programs Division Mark Sengenberger, and then-Executive Director Richard Lefebvre visited the Lewis Farm with S.B. Lewis. During this visit, these Agency staff members advised Mr. Lewis that construction of any new single family dwelling on the Resource Management portion of the Lewis Farm property, including the construction of a dwelling for farmworker housing, would require a permit from the Agency. See Affidavit of John Banta.

23. The administrative enforcement matter was initiated as a result of a telephone call on March 19, 2007, between Barbara Lewis and Agency staff member John Quinn. Mrs. Lewis telephoned Mr. Quinn in relation to a previously submitted application for a permit for construction of single family dwellings in a Resource Management area on the Lewis Farm property. During this telephone call, Mrs. Lewis admitted that construction had already

begun on the houses, and Mr. Quinn stated that this constituted a violation of law and that he would forward the matter to the Agency's enforcement program for resolution. See Affidavit of John Quinn and accompanying exhibits.

24. Upon receipt of a Potential Violation Report from Mr. Quinn, Douglas Miller of the Agency's enforcement program conducted a site visit on March 28, 2007, and determined that foundations had been constructed for three new single family dwellings located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the Lewis Farm property. These foundations were established on the Resource Management portion of the Lewis Farm's lands and are within the designated Boquet River Recreational River area. See Affidavit of Douglas Miller and accompanying exhibits.

25. Further investigation by Mr. Miller revealed that one of these new dwellings is located in the immediate vicinity of a pre-existing dwelling planned for removal by the Lewis Farm; however, the pre-existing dwelling had not been removed.

26. Based on these facts, Mr. Miller and I, in consultation with other Agency staff, concluded that the undertaking of construction of each of these single family dwellings constitutes a violation of the subdivision permitting requirements of § 809(2) (a) and § 810(1) (e) (3) of the Adirondack Park Agency Act and of 9 NYCRR § 577.5(c) (1) [implementing the Rivers Act]. In

addition, staff concluded that the undertaking of construction of each of the two single family dwellings not intended as replacement structures constitutes a violation of § 809(2)(a) and § 810(2)(d)(1) of the Adirondack Park Agency Act and of 9 NYCRR 577.5(c)(1).

27. On May 14, 2007, I sent a proposed Settlement Agreement to Lewis Family Farm, Inc., alleging the above-referenced violations and seeking submission to the Agency of an after-the-fact permit application for the construction of the three new single family dwellings located to the north and east of the intersection of Whallons Bay Road and Christian Road and a \$10,000 civil penalty. A copy of this Settlement Agreement is attached hereto as Exhibit A.

28. I also sent a letter explaining the alleged violations with the proposed Settlement Agreement. A copy of this explanatory letter is attached hereto as Exhibit B.

29. On May 15, 2007, I spoke with Barbara Lewis to explain the terms of the proposed settlement. During this conversation, Barbara Lewis requested deletion of the civil penalty requirement from the proposed agreement.

30. Barbara Lewis telephoned me on at least one other occasion in late May and again requested relief from the civil penalty requirement in the proposed settlement.

31. On May 24, 2007, I joined my supervisor, Paul Van Cott, Esq. on a teleconference call with John Greenthal, attorney for Nixon Peabody LLP and counsel for Lewis Family Farm, Inc. During this conversation, Mr. Greenthal requested a reduction in the civil penalty amount or a suspension of the civil penalty pending compliance with the permitting process and requirements.

32. On June 1, 2007, Douglas Miller and I met with Barbara Lewis and David Cook, attorney for Nixon Peabody LLP and counsel for Lewis Family Farm, Inc.

33. During the meeting on June 1, 2007, Mr. Miller and I informed Barbara Lewis and David Cook that staff was prepared to review the single family dwellings through the Agency's after-the-fact permit review process, provided that the Lewis Farm agree to pay a \$10,000 civil penalty or contribute a comparable amount of money toward an appropriate environmental benefit project. We informed Barbara Lewis and her counsel that staff allows for after-the-fact permitting as an option during settlement negotiations only where staff in the Agency's permitting division has advised that the project at issue may be approvable. While Mr. Miller and I stated in this meeting that it appeared the dwellings would likely be approved in their current locations if an after-the-fact permit application were submitted pursuant to the proposed Settlement Agreement, we never guaranteed the results of the permitting process or indicated

that environmentally protective conditions would not be imposed if the houses were approved.

34. On June 15, 2007, I received a letter from David Cook requesting the issuance of a permit without a civil penalty. A copy of this letter is attached hereto as Exhibit C.

35. On June 18, 2007, I again spoke with David Cook, who requested that the Agency allow the homes to be installed before June 30, 2007, provided that the Farm place \$10,000 into an escrow account, where the money could be held pending resolution of the enforcement matter.

36. On June 19, 2007, I informed David Cook that the Agency's settlement proposal remained unchanged, i.e., that Lewis Family Farms, Inc. would need to obtain an after-the-fact permit from the Agency prior to constructing the houses and pay a penalty of \$10,000 for the violations.

37. On June 20, 2007, the Agency received a letter from Mark McKenna, Project Manager for the farm housing project. In this letter, Mr. McKenna takes "full responsibility for the project" and any related violations. A copy of this letter is attached hereto as Exhibit D.

38. On June 27, 2007, the Agency's Counsel received a call from Ronald Jackson, Supervisor for the Town of Essex, stating that construction work had recommenced on the new housing sites. See, Affidavit of John Banta.

39. As of the date of this affirmation, the violations alleged by Agency staff against Lewis Family Farms, Inc. have not been administratively resolved by settlement or otherwise. Absent resolution of the alleged violations by settlement, Agency staff would normally commence a formal administrative enforcement proceeding pursuant to 9 NYCRR Part 581 to obtain a determination from the Agency' Enforcement Committee regarding the alleged violations, appropriate relief and civil penalties.

Dated: July 20, 2007
Ray Brook, New York



SARAH REYNOLDS

REYNOLDS AFFIRMATION

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	Proposed Settlement Agreement
Exhibit B	Explanatory letter of May 14, 2007
Exhibit C	June 12, 2007 letter from David Cook, Esq.
Exhibit D	June 19, 2007 letter from Mark McKenna, Project Manager

EXHIBIT A

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

-----X
In the matter of the apparent
violations of § 809(2) (a) of
the Adirondack Park Agency Act
and 9 NYCRR § 577 by:

LEWIS FAMILY FARM, INC.

SETTLEMENT AGREEMENT
Agency File #E2007-041

Respondent, on lands situated in
the Town of Essex, Essex County
(Tax Map Parcel 49.3-2-27)
LUA: Resource Management/Hamlet/Rural Use

-----X
WHEREAS:

1. Pursuant to Section 809(2) (a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.
2. Pursuant to Section 809(2) (a) of the Adirondack Park Agency Act, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands in the Adirondack Park.
3. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the construction of a single family dwelling on Resource Management lands within any designated recreational river area in the Adirondack Park.
4. Pursuant to Section 577 of Adirondack Park Agency regulations, a permit is required from the Adirondack Park Agency prior to the undertaking of any subdivision of Resource Management lands within any designated recreational river area in the Adirondack Park.
5. Agency investigation reveals that Respondent has undertaken the construction of two post-1973 single family dwellings on Tax Map Parcel 49.3-2-27 ("Lot 27"). These dwellings are located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road on the subject property. No permit was obtained from the Agency prior to the undertaking of the construction of these two single family dwellings.

6. Agency investigation reveals that Respondent has undertaken a subdivision into sites of the subject property pursuant to the construction of the two post-1973 single family dwellings described in Paragraph 5 above, as well as the construction of a third, proposed replacement single family dwelling also located immediately to the north and east of the intersection of Whallons Bay Road and Christian Road. No permit was obtained from the Agency prior to the undertaking of this subdivision into sites of the subject property.
7. Lot 27 is an approximately 1,111.12 acre parcel that contains Resource Management, Hamlet, and Rural Use lands and is partially located within the designated Boquet River Recreational River Area. The three post-1973 single family dwellings described in Paragraphs 5 and 6 above are located on the Resource Management portion of Lot 27 and within the designated Recreational River Area.
8. Respondent is the current owner of Lot 27, as described in a deed recorded in Book 1023, Page 35, in the Essex County Clerk's Office.
9. Respondent desires to resolve this matter by settlement and agrees to be bound by the terms of this Settlement Agreement as set forth below.

NOW, THEREFORE, THE AGENCY AND RESPONDENT AGREE AS FOLLOWS:

1. By June 15, 2007, Respondent shall submit an after-the-fact permit application to the Agency for the construction of the three post-1973 single family dwellings described above. Respondent shall cooperate in responding to any Agency request for information related to this after-the-fact permit application within 30 days unless otherwise agreed to by the Agency and Respondent. Respondent shall have the rights of administrative appeal and judicial review and all other rights established by law for project applicants, except that Respondent shall not challenge Agency jurisdiction, and Respondent waives the statutory deadlines for Agency determinations on a complete application and a final determination. The Agency makes no representation herein as to the approvability of Respondent's after-the-fact permit application.

2. By June 15, 2007, Respondent shall pay a civil penalty in the amount of \$10,000 to the State of New York in resolution of the violations noted above.
3. In the event that Respondent fails to submit its after-the-fact permit application or otherwise comply with the after-the-fact permit process as set forth in Paragraph 1 above, Respondent shall pay an additional civil penalty in the amount of \$10,000 to the State of New York within 30 days of written notification of such violation by the Agency.
4. Payment of all civil penalties shall be transmitted to the Adirondack Park Agency, Attn: Doug Miller, Enforcement Officer.
5. Respondent, its successors and assigns shall not undertake any new land use or development on the subject property, including the construction of any new principal buildings or the replacement of any pre-existing principal buildings, without first obtaining an Agency permit, variance, or non-jurisdictional determination. Respondent's ongoing construction of a single family dwelling located to the south and east of the intersection of Clark Road and Cross Road is hereby determined to be non-jurisdictional, provided that the replacement structure is not in excess of 40 feet in height as measured from the highest point of the structure to the lower of either the original or finished grade, as this structure replaces a pre-existing single family dwelling that was located in the immediate vicinity of the dwelling currently under construction. Respondent shall obtain an Agency permit before continuing the replacement of this pre-existing single family dwelling if the dwelling under construction will be in excess of 40 feet in height.
6. This settlement is binding on Respondent and all present and future owners of the subject property. All deeds conveying all or a portion of the lands subject to this settlement shall contain references to this Settlement Agreement.
7. By June 15, 2007, Respondent shall file an original copy of this Settlement Agreement in the Essex County Clerk's Office in the same manner as an Agency permit and shall provide proof of such filing to the Agency.

8. This matter shall be deemed to be finally resolved upon the full execution of this Settlement Agreement.

Dated: _____, 2007
Ray Brook, New York

ADIRONDACK PARK AGENCY

By: _____
Paul Van Cott
Enforcement Attorney

STATE OF NEW YORK)
) SS:
COUNTY OF ESSEX)

On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared Paul Van Cott, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AGREEMENT

Respondent agrees to the terms set forth in this Settlement Agreement to resolve the matter of Adirondack Park Agency File E2007-041.

By:

Lewis Family Farm, Inc.

STATE OF)
) SS:
COUNTY OF)

On this _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

May 11, 2007 Settlement Agreement

EXHIBIT B



May 14, 2007

S.B. and Barbara Lewis
1212 Whallons Bay Rd.
Essex, NY 12936

RE: Enforcement File E2007-041
Tax Map Parcel 49.3-2-27

Dear Mr. and Mrs. Lewis:

Please find enclosed proposed settlement agreement intended to resolve Agency Enforcement File E2007-041.

The first set of violations addressed by this settlement involve two single family dwellings that were recently constructed on your property and are not located in the immediate vicinity of any pre-existing dwellings. Pursuant to sections 809(2)(a) and 810(2)(d) of the Adirondack Park Agency Act, any new single family dwelling in a Resource Management land use area requires a permit from the Agency. In addition, a permit is required for the construction of any single family dwelling on Resource Management lands in a designated Recreational River Area under Section 577 of the Agency's Regulations. These two dwellings are therefore in violation of the Agency's laws because no permit was sought or obtained for their construction.

The enclosed settlement also addresses three subdivision violations associated with your property. Section 802(63) of the APA Act defines a subdivision as "any division of land into two or more lots, parcel or sites ... for the purpose of any form of separate ownership or occupancy," and Sections 809(2)(a) and 810(1)(e) of the Act require a permit for any subdivision in a Resource Management land use area. In addition, Section 577 of Agency Regulations requires a permit for the undertaking of any subdivision of Resource Management lands in a designated Recreational River Area. Accordingly, because no permit was sought or obtained for the subdivision created by the

S.B. and Barbara Mis

May 14, 2007

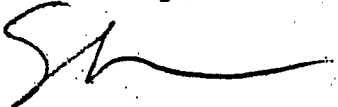
Page 2

construction of the two dwellings described above, they are in violation of the Agency's subdivision laws. In addition, the construction of a third, proposed replacement single family dwelling constitutes a subdivision violation, as the corresponding pre-existing structure has not yet been removed from the property.¹

The enclosed settlement proposes resolution of these violations through review of the structures under the Agency's after-the-fact permit process. If the agreement is acceptable to you, please sign both copies before a notary public and return them to me by June 8, 2007. Paul Van Cott will then execute the agreements on behalf of the Agency and send you one original for filing in the Essex County Clerk's Office.

Please feel free to call me with any questions. I thank you for your anticipated cooperation in resolving this matter.

Sincerely,



Sarah Reynolds, Esq.
Assistant Enforcement Attorney

SHR:PVC:JLQ:mlr

Enclosure: Proposed Settlement Agreement

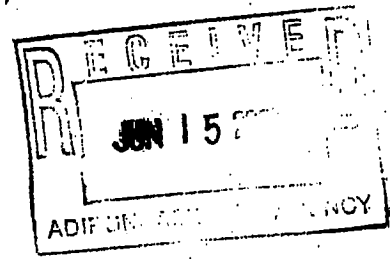
¹ Section 570.3 ah (3) of Adirondack Park Agency regulations defines a subdivision into sites as occurring "where one or more new dwelling(s) or other principal building(s) is to be constructed on a parcel already containing at least one existing dwelling or other principal building, and regardless of whether the existing building is proposed to be removed after completion of the new building(s)." In addition, Section 573.6(e) of Agency regulations states that, where an "existing dwelling will not be removed until after the new dwelling is emplaced or constructed, an Agency permit is required for the 'subdivision into sites' which would result if the subdivision is a class A or class B regional project as provided in Section 810 of the Adirondack Park Agency Act." Pursuant to Section 810(2)(d) of the Adirondack Park Agency Act, the construction of a single family dwelling in a Resource Management land use area constitutes a Class B regional project.

EXHIBIT C

NIXON PEABODY^{LLP}
ATTORNEYS AT LAW

Clinton Square
P.O. Box 31051
Rochester, New York 14603-1051
(585) 263-1000
Fax: (585) 263-1600

David L. Cook, Esq.
Direct Dial: (585) 263-1381
E-Mail: @nixonpeabody.com



June 12, 2007

Sara Reynolds
Adirondack Park Agency
P.O. Box 99 NYS Route 86
Raybrook, New York 12977

Dear Ms. Reynolds:

Mrs. Lewis and I appreciated the opportunity to meet with you and Mr. Miller on June 1st. I feel that it would be helpful to provide you a brief summary as you consider the issues that we discussed.

The Lewis family farmstead and home was purchased in 1972, following a long family association with the Adirondacks starting in 1951. The farm is a working farm and was incorporated in 1985 and has grown steadily in its mission to improve the land use methods and the lives of those who live in its vicinity. The farm is now one of the largest organic farms in New York, has become a showcase for the Cornell cooperative extension, and through its example, now has four neighboring farmers who have become organic as well.

The farm's reputation has allowed for both U.S. and international students and apprentices to work for academic credit in their agricultural programs and has been approached by the government of Nepal to host four farmers from that country in order to learn the methods of sustainable, organic farming. They will arrive in the autumn of 2007.

The Lewis Family Farm has exemplary standards for their lands. They have provided employment and education to members of the community and are a highly regarded organic farm in both the local and distant agricultural and environmental communities. In all respects, the Lewis Family Farm has enhanced and protected the environment, exactly the mission and charge of the APA.

As Mrs. Lewis indicated, economic viability is a necessity as it is for all agricultural operations. Given the large capital investments that have gone into the making of this farm, profitability is crucial for survival. The building of staff homes is one of the last projects to be undertaken and was to have been completed by early summer.

Sara Reynolds
June 12, 2007
Page 2

The housing project that is the subject of the enforcement action presents an unusual issue for the agency in that it requires an overlapping review of the APA regulations as well as the laws and regulations of the New York State Department of Agriculture and Markets. The purpose of the home building project is to provide housing for farm employees and student interns from afar. Such activities are protected by the Agriculture and Markets law as essential to agriculture in New York State.

The Agriculture and Markets Law provides that it is New York State policy to encourage farming to protect agricultural lands and bars the administration of laws that restrict agriculture. There is a long line of cases providing that the denial of farm housing for farm employees is an unreasonable restriction on farm operations, contrary to the New York State Agriculture and Markets Law Section 305-a(1)(a).

The project manager is Mark McKenna, the former farm manager and local resident. In November '06 when Mr. McKenna obtained building permits from the town of Essex, he was told by the Code Enforcement Officer that he did not need any further permits in as much as this was *strictly* a farm operation. Based on the assurances of the Town of Essex and these representations, Mr. McKenna initiated construction and did not contact APA. Only some time later after architectural, engineering and foundation work had been completed and house modules purchased, did the Code Enforcement Officer come to the project and inform Mr. McKenna that perhaps he should contact the APA in order to get a further permit. What initiated this action remains unclear.

At that time, Mrs. Lewis and Mr. McKenna voluntarily stopped construction and contacted the APA with the purpose of supplying the APA with whatever they needed to issue a further permit. They were then told this was not possible as the whole issue now resided with the Enforcement Division. The disposition of this matter has now taken months. The project has been on hold, up-front monies spent, tradesmen hired and then told to wait thus compromising their schedules. Further the project manager continues to be paid. Farm interns have arrived and are required to live off-site in rented housing which may be soon sold. What was clearly an innocent mistake, if indeed it is a mistake, has been costly in excess of any fines considered and threatens the intern program and thus the overall farm staffing plan for the coming months. The cost of delay as well as legal fees associated with responding will surely be in excess of the proposed fines.

You acknowledged at our meeting that the issuance of the permit is not likely to be an issue. Then why is enforcement taking such a punitive stance? It is easy to rectify failure to obtain a permit: fill out the forms and request a permit. The actions of Mrs. Lewis and Mr. McKenna were not deliberate in the face of APA regulations they were the result of assurances and representations by the Code Enforcement Officer to the project manager who was charged with the permitting process. There is no question that the failure to obtain a permit was a complete innocent mistake and was not the action of Barbara Lewis, but the result of assurances and representations made by the Code Enforcement Officer to the Project Manager who was charged with the permitting process.

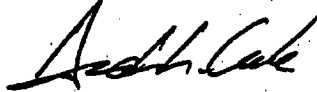
Sara Reynolds
June 12, 2007
Page 3

It is for these reasons that we request that you reconsider the issuance of the notice of violation and instruct that the permit be granted immediately so that the housing may be completed and Barbara Lewis may continue with farm activities. To penalize this Farm over a permitting issue that may not even be in its domain and control lacks both merit and discretion. Because the philosophies of both the APA and the Lewis Family Farm are aligned they should be partners in educating others to be good stewards of the land rather than adversaries in litigation.

We have been in contact with the Department of Agriculture and Markets and other farming organizations that view the threatened action by the APA as a restraint on farming operations. It is certainly not in anyone's interest to prolong this matter or to litigate. It was for that reason we approached you for a meeting in an attempt to deal with this issue quickly and amicably to the best interests of all.

We look forward to hearing from you soon so this project may move forward.

Sincerely,

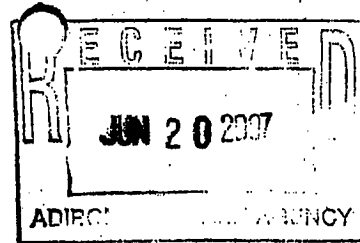


David L. Cook

cc: Paul Van Cott

EXHIBIT D

June 19, 2007



Adirondack Park Agency
 Mark Sengenberger, Acting Director
 Paul Van Cott, Esq.
 P.O. Box 99, NYS Route 86
 Ray Brook, NY 12977

→ SARAH

RE: Lewis Family Farm housing for farm workers

Dear Mr. Van Cott:

I am fully aware of the difficulties the Lewis Family Farm and Barbara Lewis have encountered with the APA in my attempt to construct housing for Lewis Family Farm farm employees.

It is my hope that this letter will help you understand my role in the project and my communications with municipal officials in The Town of Essex.

In October of 2006, shortly after being hired by Barbara Lewis of Lewis Family Farm to be the Project Manager for the farm housing project, I visited with David Lansing, the Code Enforcement Officer for the Town of Essex. I provided the Town of Essex with all of the drawings and materials necessary to obtain a building permit from The Town of Essex. Mr. Lansing advised me that because the project was for farm housing, I would not need an APA permit. Based on his assurances and my experience, I proceeded with the project with full authority from The Town of Essex.

The project involves modular homes constructed in Canada and transported to New York for placement on foundations. We began construction of the foundations and shortly thereafter, and completed this work by the end of November. At that time, Mr. Lansing drove out to the project to say, "You might want to call the APA, because you may need a permit." So, I went then and there with David Lansing to his office at Town Hall, where I contacted a person chosen by Mr. Lansing at the APA. That gentleman seemed to know, and said that we needed a permit from APA before we could get Town of Essex approval.

I reported this to Barbara Lewis, to whom I report and who is my sole contact on the project. We then worked to provide a full package of information to the APA so the appropriate permit could be obtained. Throughout that process we were advised that there was nothing about the project that would prevent APA approval, however, the permitting officer advised that because of the alleged violation, he would not be able to act on the permit until the enforcement division had completed a settlement.

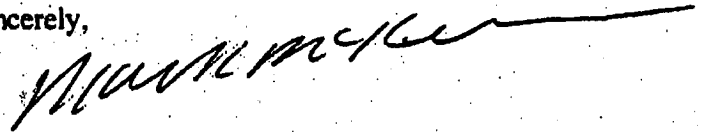
As the Project Manager with full authority, and with my experience in construction issues in the Adirondack Park, I take full responsibility for the project and feel that it is completely

[Handwritten signature]

Adirondack Park Agency
June 19, 2007
Page 2

inappropriate and heavy handed for the APA to seek a \$10,000 fine from the Lewis Family Farm on this project. From experience, I can assert that this project is of the highest quality and in compliance with highest levels of quality in construction and design. In my years of construction within the Adirondack Park, I have seen house after house, project after project that is completed with no APA permitting, including my own home, and in some cases, with no municipal permitting. Here is a high quality project that involves absolutely no environmental degradation, which, by all accounts, would be fully approved. If there is a violation to be issued, I believe it should be to me, as the Project Manager, and I take full responsibility for that. I stand ready to meet with you or to discuss in any way, any aspect of this project and I ask that enforcement against the Lewis Farm be terminated and a permit be issued so that they may proceed as soon as possible with the project. This is the fair way to proceed. Barbara Lewis does not deserve this treatment.

Sincerely,



Mark McKenna

DLC/hjk

cc: Sara Reynolds

cc: Bob Somers, Manager, Agricultural Protection Unit, NYS Department of Agricultural and Markets

cc: David L. Cook, Nixon Peabody