County Attorney
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Fax (518) 873-3894

ESSEX COUNTY ATTORNEY

Assistant County Attorneys For Family Court

Carl J. Rubino, Jr.
(518)873 - 9242
David D. Scaglione
(518)873-3398

Assistant County Attorney For Social Services

Michael J. Gallant
(518) 873-3497

To: John J. Privitara, Esq. **Date:** November 21, 2008

From: Essex County Attorney's Office

Fax No: 518-426-4260

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency

No. Of Pages including cover: 36

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY AT (518) 873-3380

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November 21, 2008

ATTN: John J. Privitera, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway
Albany, New York 12207-2503

VIA FAX AND MAIL

Re: Lewis Family Farm v. Adirondack Park Agency

Dear Mr. Privitera:

Enclosed pursuant to your FOIL request please find everything you requested, to wit:

1. Messages for Dan Manning received from John Privitera dated 11/20 and one message from Jacob Lamme dated 11/20
2. Letter sent to Mr. Privitera and Ms. Simon from Dan Manning dated November 21, 2008 together with fax cover sheet and fax verifications
3. Decision and Order dated May 19, 2008 signed by Michael J. Novack, Clerk of the Court
4. Fax from Loretta Simon dated November 20, 2008 with attached letter to Hon. Meyer from Loretta Simon, letter to Hon. Meyer from Jacob F. Lamme with proposed Order
5. Letter from Mr. Privitera to Dan Manning dated November 20th, 2008
6. Letter from Mr. Privitera to Dan Manning dated November 20th, 2008 (2nd letter).
7. Fax from Loretta Simon dated November 20th, 2008 with attached Order to Show Cause and handwritten phone number for Jacob Lamme
8. Decision and Order (15 pages) dated November 19, 2008, Submitted August 22nd, 2008 and Entered in the Essex County Clerk's Office on November 19, 2008.

Very truly yours,

Daniel T. Manning

DTM:smz
Enclosures
cc: Board of Supervisors
Daniel L. Palmer, County Manager

PHONE CALL

FOR Dan DATE 11/20 TIME 1:51 A.M. P.M.

M John Privitera

OF

PHONE/MOBILE 447-3337 FAX

MESSAGE Reg. Lewis has 2nd conference @ 2:30 and then @ 4:00 it would be great if you could call in before 2:30.

SIGNED call back

- [x] TELEPHONED
- [ ] RETURNED YOUR CALL
- [x] PLEASE CALL
- [ ] WILL CALL AGAIN
- [ ] CAME TO SEE YOU
- [ ] WANTS TO SEE YOU

PHONE CALL

FOR Dan DATE 11/20 TIME 12:05 A.M. P.M.

M John Privitera

OF

PHONE/MOBILE 447-3337 FAX

MESSAGE

SIGNED

- [x] TELEPHONED
- [ ] RETURNED YOUR CALL
- [ ] PLEASE CALL
- [ ] WILL CALL AGAIN
- [ ] CAME TO SEE YOU
- [ ] WANTS TO SEE YOU

PHONE CALL

FOR Dan DATE 11/20 TIME 2:45 A.M. P.M.

M Jacob Lamme

OF

PHONE/MOBILE 447-3248 FAX

MESSAGE Reg. Lewis family farm

SIGNED

- [x] TELEPHONED
- [ ] RETURNED YOUR CALL
- [x] PLEASE CALL
- [ ] WILL CALL AGAIN
- [ ] CAME TO SEE YOU
- [ ] WANTS TO SEE YOU

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Assistant County Attorney
For Social Services

Michael J. Gallant
(518) 873-3497

To: John J. Privitara, Esq. **Date:** November 21, 2008
Loretta Simon, Esq.

From: Essex County Attorney's Office

Fax No: 518-426-4260
518-473-2534

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency

No. Of Pages including cover: 2

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TRANSACTION REPORT

NOV-21-2008 FRI 11:12 AM

FOR:

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M# DP
NOV-21 11:11 AM	*59000#94264260	59"	2	SEND	OK	493

TOTAL : 59S PAGES: 2

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Michael J. Gallant
(518) 873-3497

To: John J. Privitara, Esq.
Loretta Simon, Esq.

Date: November 21, 2008

From: Essex County Attorney's Office

Fax No: 518-426-4260
518-473-2534

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency

No. Of Pages including cover: 2

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY AT (518) 873-3380

TRANSACTION REPORT

NOV-21-2008 FRI 11:00 AM

FOR:

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
NOV-21	10:59 AM	*59000#84732534	33"	2	SEND	OK	492	

TOTAL: 33S PAGES: 2

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To: John J. Privitara, Esq. **Date:** November 21, 2008
Loretta Simon, Esq.

From: Essex County Attorney's Office

Fax No: 518-426-4260
518-473-2534

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency

No. Of Pages including cover: 2

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY AT (518) 873-3380

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 19, 2008 Case # 504626

In the Matter of LEWIS FAMILY FARM, INC.,
Petitioner,

v

ADIRONDACK PARK AGENCY,
Respondent.

DECISION AND ORDER ON MOTION

Motion for permission to appeal from order of Supreme Court dated April 11, 2008 and to enjoin enforcement of administrative determination dated March 25, 2008.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion for permission to appeal is referred to Justice Stein who makes the following decision: Motion granted, and it is further

ORDERED that the motion to enjoin enforcement is granted, without costs, to the extent that respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in subparagraph five of Supreme Court's order relating to the occupancy of the dwelling known as the "Dormitory" and subparagraph six on page three of said order pending the appeal.

SPAIN, J.P., ROSE, LAHTINEN, KANE and STEIN, JJ., concur.

ENTER:

Michael J. Novack
Clerk of the Court

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ANDREW M. CUOMO

FACSIMILE TRANSMISSION

TO: Dan Manning, Essex County Attorney

FAX: 873-3894

FROM: Loretta Simon, Assistant Attorney General
Phone: (518) 402-2724; Fax: (518) 473-2534
Email: Loretta.Simon@oag.state.ny.us

RE: *Lewis Family Farm, Inc. v. Adirondack Park Agency*
Index Nos. 315-08 and 332-08

DATE: November 20, 2008 **NUMBER OF PAGES:** 7

MESSAGE: ~~Appellate Division Order~~ Letter To Hon. Meyer from Simon
Letter To Hon. Meyer from Lamme
with proposed order to Meyer

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CONTACT:

Linda Ayotte (518) 473-3105 **OFFICE: Environmental Protection Bureau**
Fax No. (518) 473-2534

CONFIDENTIAL

THE CAPITOL, ALBANY, NY 12224-0341

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 20, 2008

BY FACSIMILE AND MAIL
fax: (518) 873-3376

Honorable Richard B. Meyer
Essex County Supreme Court
7559 Court Street
P.O. Box 247
Elizabethtown, New York 12932

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Index No. 315-08

Adirondack Park Agency v. Lewis Family Farm, Inc.
Index No. 332-08

Dear Judge Meyer:

Today the Office of the Attorney General received a letter from Jacob Lamme, counsel to Lewis Family Farm in the above-captioned matters, enclosing a proposed Judgment pursuant to your Decision and Order dated November 19, 2008. The State objects to the language of the proposed judgment relating to the release of a $50,000 civil penalty held in escrow in the Essex County Treasurer's Office. These escrow funds are held by the County pursuant to an Order of the Appellate Division, Third Department, dated April 28, 2008 (attached).

With all respect to this Court, any decision to release the escrow funds must be made by the Appellate Division.

Respectfully submitted,

Loretta Simon
Assistant Attorney General
(518) 402-2724

cc: (by fax and mail)
Jacob F. Lamme, Esq.
McNamee, Lochner, Titus
and Williams, P.C.
677 Broadway
Albany, New York 12207-2503
f: (518) 426-4260

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

JACOB F. LAMME
Direct Dial
(518) 447-3148
lamme@mltw.com

November 20, 2008

VIA FEDERAL EXPRESS & FACSIMILE – (518) 873-3976

Hon. Richard B. Meyer
Essex County Courthouse
7559 Court Street
Elizabethtown, New York 12932

RE: Lewis Family Farm v. Adirondack Park Agency (Index No. 315-08/332-08)

Dear Justice Meyer:

Pursuant to the Court's Decision and Order of November 19, 2008, enclosed please find the Lewis Family Farm's proposed judgment. The attorneys for all parties are on notice as they are being provided with the proposed judgment by copy of this letter. Additionally, I e-mailed a previous draft of this proposed judgment to the Agency's counsel yesterday requesting comments, if any, to which I have not received a response.

We have added a specific clause to the proposed judgment in order to secure the release of the $50,000 currently being held in escrow by the County Treasurer pursuant to Your Honor's stay of April 11, 2008, as modified by the Appellate Division. According to Your Honor's Order of yesterday, the Agency's determination is annulled and the stay is vacated as moot. For these reasons, there is no basis for the County Treasurer to continue holding the funds, and the judgment is crafted to provide clear guidance in this regard. We were told the funds would be released today, but there now appears to be some confusion.

Kindly execute the proposed final judgment so that I can have it entered in the Essex County Clerk's office and served on the parties.

I am enclosing a postage-paid envelope for the return of the executed judgment. Thank you for your prompt attention to this matter.

Respectfully yours,

Jacob F. Lamme

1446501764 1)

Enclosures

cc: Loretta Simon, Esq. (via facsimile to 518-473-2534)
Cynthia Feathers, Esq. (via facsimile to 518-587-0128)

PRESENT: Hon. Richard B. Meyer, Acting J.S.C.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

JUDGMENT

ACTION NO. 1

Index No. 315-08
RJI No.: 15-1-2008-0109
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

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

Defendants.

ACTION NO. 2

Index No.: 332-08
RJI No.: 15-1-2008-0117
Hon. Richard B. Meyer

Upon the Notice of Petition, dated April 7, 2008 and Amended Petition filed in this Article 78 proceeding in the office of the Clerk of Essex County on or about April 14, 2008 (Index No. 315-08), and all proceedings thereon;

And upon the Amended Summons and Amended Verified Complaint filed in this action in the office of the Clerk of the Essex County on or about May 14, 2008 (Index No. 332-08), and all proceedings thereon;

NOW, ON MOTION OF McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C., attorneys for Petitioner-Defendant Lewis Family Farm, Inc., and in accordance with the Decision and Order executed by the Honorable Richard B. Meyer, J.S.C. on November 19, 2008, it is

ORDERED, ADJUDGED AND DECREED, that the Amended Petition is hereby granted and that the determination rendered by Respondent Adirondack Park Agency against Petitioner Lewis Family Farm, Inc. on March 25, 2008 is hereby annulled in its entirety pursuant to CPLR § 7806 on the ground that said determination is affected by an error of law, and it is further

ORDERED, ADJUDGED AND DECREED, that the Amended Verified Complaint of Plaintiff Adirondack Park Agency is hereby dismissed in its entirety, and that each and every cause of action stated therein against Defendant Lewis Family Farm, Inc. is hereby dismissed, with prejudice, and it is further

ORDERED, ADJUDGED AND DECREED, that the Decision and Order of this Court, dated April 11, 2008, as modified by the Appellate Division on April 28, 2008 and May 19, 2008, which granted a partial stay to Petitioner Lewis Family Farm, Inc. pursuant to CPLR § 7805 is hereby vacated as moot, and therefore there is no basis upon which the Essex County Treasurer may continue to hold the $50,000 paid in to the Court and Trust Fund of the Essex County Treasurer by the Lewis Family Farm, Inc.

JUDGMENT entered this _____ day of November, 2008.

SO ORDERED!

WITHOUT COSTS

Hon. Richard B. Meyer
Acting Supreme Court Justice

ENTER

Dated: November _____, 2008

(M0017466 I)

JOHN J. PRIVITERA
Direct Dial
(518) 447-3337
Direct Fax
(518) 447-3368
privitera@mltw.com

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

November 20, 2008

VIA TELEFAX: (518) 873-3894, E-mail and First Class Mail

Daniel T. Manning III, Esq.
Essex County Attorney
7551 Court Street
P.O. Box 217
Elizabethtown, New York 12932

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency, No. 315-08; 332-08
(Essex County, November 19, 2008)
Lewis Family Farm, Inc.'s $50,000 Escrow Check

Dear Mr. Manning;

This letter serves as a follow up to our telefaxed letter of this morning. On behalf of the Lewis Family Farm, I am now compelled to demand release of the referenced escrowed funds.

Judge Meyer's referenced Decision and Order:

(a) annulled the March 25, 2008 Administrative Determination which had directed the payment of a $50,000 fine. As you know, an annulment renders the matter null and void and therefore, there is no directive upon which to require or hold the penalty; and

(b) vacated his April 11, 2008 stay, which had been slightly modified by the Appellate Division, as moot. Thus, His Honor found that since the underlying Administrative Determination no longer existed, the stay Order, which included the escrow arrangement, was rendered moot because there is nothing to stay.

For these reasons, there is no legal basis whatsoever upon which to continue to hold the trust funds in escrow and they should be released immediately.

If we are compelled to pursue release of the funds, our first order of business will have to be a request to Judge Meyer that he issue an order directing the County to Show Cause why the funds are being withheld.

You indicated during our telephone conversation a few moments ago that the Attorney General's Office contacted you in an effort to persuade you to hold the funds. This is clearly

677 Broadway, Albany, New York 12207-2503 • (518) 447-3200 • Fax (518) 426-4260 • www.mltw.com

improper for all of the reasons I have already stated. Decisions are to be made based on the law, not bullying tactics or improper influences. To be sure, New York State may sometimes gain an automatic stay from enforcement of an Order or Judgment upon the filing of a proper Notice of Appeal. First, since there is no Notice of Appeal on file in this case, CPLR § 5519 does not come into play. If and when the Attorney General seeks to argue that it has gained some procedural advantage by virtue of the filing of a Notice of Appeal, none can be gained in this case because there is no element of Judge Meyer's Order to be enforced. See Matter of Pickerell v. Town of Huntington, 219 A.D.2d 24 (2d Dep't 1996) (holding that self-executing provisions of an order are not subject to the automatic stay provisions of CPLR § 5519(a)(1)); Crane v. New York Council 66, 102 A.D.2d 682 (3d Dep't 1984) (recognizing "the well-recognized principal that a stay may only be used as a shield, not a sword").

The State needs no shield here because the Order is self-executing and no party has been ordered to take any act henceforth. If, for example, the Lewis Family Farm's Article 78 Petition had sought an order directing the Adirondack Park Agency to process a permit application, and Judge Meyer ordered such to be done, a proper and timely Notice of Appeal, if filed, would protect the Adirondack Park Agency from any effort to enforce the order by operation of § 5519. This is how the statute works and it would be an effective shield in this instance. Here, however, there is no directive in the Court's Order that either needs a shield or can gain one.

Surely, the Adirondack Park Agency cannot gain so formidable a sword by the filing of a proper Notice of Appeal that they effectively revive the annulled Administrative Order such that it can be affirmatively enforced by retention of the fine. Indeed, Judge Meyer's referenced Order is not even appealable as a right by New York State. See CPLR § 5701(c). The Agency has to gain permission to appeal this Article 78 Order from the Appellate Division as a condition precedent to the filing of a Notice of Appeal. In order to gain a stay of Judge's Meyer's Order that maintains the status quo, the State must affirmatively meet the test for a stay pending appeal, including a clear showing of likelihood of success on the merits.

There is no basis in law for holding the funds nor any order that allows you to do so. Please contact me immediately and tell me when and where we may pick up the check.

Sincerely,

John J. Privitera

JJP/klh

(M0201797 1)

JOHN J. PRIVITERA
Direct Dial
(518) 447-3337
Direct Fax
(518) 447-3368
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McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

November 20, 2008

VIA TELEFAX: (518) 873-3894

Daniel T. Manning III, Esq.
Essex County Attorney
7551 Court Street
P.O. Box 217
Elizabethtown, New York 12932

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency, No. 315-08; 332-08
(Essex County, November 19, 2008)
Lewis Family Farm, Inc.'s $50,000 Escrow Check

Dear Mr. Manning:

Please accept the gratitude of the Lewis Family Farm, Inc. ("Farm") and its principals, Barbara Lewis and Sandy Lewis, for the County Treasury's acceptance of the fiduciary responsibility of caring for the Farm's $50,000 escrow check.

As you understand, the Honorable Richard Meyer filed a Decision and Order yesterday, granting complete relief to the Farm and dismissing the enforcement case in its entirety, thus liberating the escrow check. We know that the County may be entitled to an escrow fee under some circumstances based on our research over the past 24 hours, but the County has no obligation to charge a fee and the farm remains concerned that no escrow fee was disclosed at the time the check was placed with the treasury. Therefore, we respectfully request that the County Treasurer draw a check in the entire amount of the escrowed funds with whatever fair interest may seem appropriate.

Thank you once again for your assistance in this matter.

Respectfully,

John J. Privitera

JJP/klh

(M0201586.1)

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ANDREW M. CUOMO

FACSIMILE TRANSMISSION

TO: Dan Manning, Essex County Attorney

FAX: 873-3894

FROM: Loretta Simon, Assistant Attorney General
Phone: (518) 402-2724; Fax: (518) 473-2534
Email: Loretta.Simon@oag.state.ny.us

RE: *Lewis Family Farm, Inc. v. Adirondack Park Agency*
Index Nos. 315-08 and 332-08

DATE: November 20, 2008 **NUMBER OF PAGES: 3**

MESSAGE: Appellate Division Order

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CONTACT:

Linda Ayotte (518) 473-3105 **OFFICE: Environmental Protection Bureau**
Fax No. (518) 473-2534

CONFIDENTIAL

THE CAPITOL, ALBANY, NY 12224-0341

PRESENT: Hon. Leslie E. Stein
Associate Justice, Appellate Division. Third Department

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

ORDER TO SHOW CAUSE

Index No. 315-08

Upon reading the annexed affirmation of John J. Privitera, dated April 28, 2008, the papers thereto attached and the papers therein referred to, and upon all the pleadings and proceedings had herein, it is

ORDERED, that Respondent show cause before this Court at a motion term thereof, to be held at the Justice Building, Empire State Plaza, Albany, New York, at 9:30 a.m. on May 12, 2008, or as soon thereafter as counsel can be heard, why an order should not be granted that: (1) grants Petitioner-Appellant permission to appeal the April 11, 2008 Decision and Order of the Essex County Supreme Court (Hon. Richard B. Meyer); (2) enjoins enforcement of Respondent's Enforcement Committee Decision of March 25, 2008 pending determination of a permissive appeal to this Court of Justice Meyer's decision and order; and (3) grants such other and further relief as this Court deems just and proper, and it is further

ORDERED, that pending determination by this Court on the motion brought on by this Order to Show Cause, Respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in Subparagraph "6" on page 3 of the Decision and Order of Supreme Court dated April 11, 2008 on the condition that Petitioner shall pay the sum of ________

$50,000 to the Essex County Treasurer's Office pursuant to CPLR 5519(a)(2) or post an undertaking therefore on or before May 5, 2008; and it is further

ORDERED, that pending determination by this Court on the motion brought on by this Order to Show Cause, Respondent is enjoined from enforcing its administrative determination dated March 25, 2008 as set forth in Subparagraph "5" on page 3 of the Decision and Order of Supreme Court dated April 11, 2008 relating to the occupancy of the dwelling known as the "Dormitory" as described in Exhibit A to the Barbara Lewis Affidavit sworn to April 7, 2008, on the condition that Petitioner shall submit to Respondent's counsel the information contained in Subparagraph "2(b)" of said April 11, 2008 Decision and Order, on or before May 5, 2008; and it is further

ORDERED, that service of a copy of this order and a copy of the papers upon which it was granted upon Respondent's counsel by personal or overnight delivery service at:

Loretta Simon, Assistant Attorney General
NYS Office of the Attorney General
Environmental Protection Bureau
146 State Street, 2nd floor
Albany, New York 12224

on or before April 29, 2008, be deemed sufficient service upon Respondent, and it is further

ORDERED that papers in opposition to this motion, if any, are to be served upon Petitioner's counsel so as to be received by May 5, 2008 and filed with this Court on the same date, and it is further

ORDERED that this motion shall be submitted and the personal appearance of the attorneys for the parties is not permitted.

Dated: April 28, 2008
Albany, New York

Hon. Leslie E. Stein
Associate Justice, Appellate Division, Third Department

Jacob Lamme
447-3248

Supreme Court of the State of New York
For the County of Essex

Submitted August 22, 2008 Decided November 19, 2008

Index No.: 315-08 – RJI No.: 15-1-2008-0109
Index No.: 332-08 – RJI No.: 15-1-2008-0117

LEWIS FAMILY FARM, INC.
Petitioner,

v.

ADIRONDACK PARK AGENCY,
Respondent.

ADIRONDACK PARK AGENCY,
Plaintiff,

v.

LEWIS FAMILY FARM, INC.,
Defendant.

Decision and Order

McNamee, Lochner, Titus & Williams, P.C. (*John J. Privitera, Esq.*, and *Jacob F. Lamme, Esq.* of counsel), Albany, New York, attorneys for Lewis Family Farm, Inc.

Andrew M. Cuomo, Esq., New York State Attorney General (*Loretta Simon, Esq., Assistant Attorney General*), Albany, New York, attorney for the Adirondack Park Agency.

Arroyo Copland & Associates, PLLC (*Cynthia Feathers, Esq.*, of counsel) and *Elizabeth Corron Driburgh, Esq.*, General Counsel, Albany, New York, for the New York Farm Bureau, Inc., as *amicus curiae*, supporting Lewis Family Farm, Inc.

Consolidated proceeding pursuant to CPLR Article 78 challenging a determination by the Respondent Adirondack Park Agency (Agency) dated March 25, 2008 which, *inter alia*, directed Petitioner Lewis Family Farm, Inc. (LFF) to apply to the Agency for a permit for three new single-family dwellings and a four-lot subdivision, pay a $50,000 civil penalty, and not to occupy the dwellings until a permit was issued, and an action by the Agency to enforce the determination and enjoin LFF from working on or using the dwellings and further violating the Executive Law.

I. Factual Background

The essential facts are, for the most part, not in dispute. LFF owns and operates an eleven hundred acre organic farm in the Town of Essex, Essex County, New York designated as a single parcel of land on the official county tax maps and town tax rolls. The property lies wholly within the Adirondack Park and within Essex County Agricultural District No. 4. The subject parcel is classified on the Adirondack Park Land Use and Development Plan Map as resource management, rural use and hamlet. In or about November 2006, LFF commenced construction of three single family dwelling units, to be used by employees working on the farm, on a portion of its property classified as resource management, one of which would replace an adjacent pre-existing dwelling scheduled for removal upon completion of the new homes. The dwellings are arranged in a cluster at a site located immediately north and east of the intersection of the Whallons Bay Road and Christian Road, and approximately eight hundred feet (but less than one quarter of a mile) from the Boquet a/k/a Bouquet River, a designated recreational river (*ECL §15-2714[3][e]*) under the

Wild, Scenic and Recreational Rivers Act (the "Rivers Act") (*ECL §16-2701 et seq.*).

Subsequently, on March 14, 2007, LFF submitted an application to the Agency seeking a permit to construct "three single family dwellings in a farm compound to be used by farm employees exclusively." The next day, the Agency issued a notice of incomplete application and requested additional information. Over the next three months, the parties and their representatives engaged in unsuccessful negotiations over disputed issues, including the Agency's threatened enforcement action and a proposed settlement agreement (*9 NYCRR §581-2.5*) which called for LFF to apply for after-the-fact permits for the subdivision and the single family dwellings, as well as pay a $10,000 civil penalty. On June 27, 2007 the Agency's acting executive director issued a cease and desist order (*9 NYCRR §581-2.4*) to LFF prohibiting "any and all land use and development related to the construction of the single family dwellings . . . until this matter is resolved and the enforcement case is concluded." The following day, LFF commenced a declaratory judgment action against the Agency challenging jurisdiction.

After LFF filed an amended complaint and applied for a temporary restraining order, the parties exchanged motions to dismiss under CPLR 3211. LFF claimed the Agency lacked jurisdiction over its farm worker housing project because the structures were "agricultural use structures" (*Executive Law §802[8]*) in a "resource management area" (*Executive Law §805[3][g]*), and also that any assertion of jurisdiction by the Agency violated Agriculture and Markets Law §305-a. The Agency, citing CPLR §7804(f), moved to convert the action to an Article 78 proceeding and for dismissal on the grounds that the action was "premature and not ripe for judicial review because the State defendant has not issued a final determination", and for failing to state a cause of action "because Agriculture and Markets Law §305-a does not preclude the APA from requiring a permit for subdivision of land and construction of single family dwellings". On August 16, 2007, Supreme Court (*Ryan, J.*) dismissed the proceeding as premature and not ripe for judicial intervention, and also held that Agriculture & Markets Law §305-a did not apply to a state agency. LFF filed a notice of appeal, and the appeal is pending.

Following dismissal of the converted Article 78 proceeding, LFF continued to construct the single family dwellings. One of the Agency's associate attorneys

served a letter on LFF's counsel on August 31, 2007 advising that the previous cease and desist order remained in effect. On or about September 2, 2007, the Agency's acting executive director issued a notice of apparent violation (*9 NYCRR §581-2.5*), thereby initiating an enforcement proceeding before the Agency's enforcement committee (*9 NYCRR §581-2.6(b)*).

The enforcement committee, consisting of six of the Agency's eleven members (*Executive Law §803*), convened on March 13, 2008 to "hear an oral presentation or argument by the agency's staff and by the respondent and deliberate in executive session and subsequently make a determination as provided in" (Record Document #2, pg. 2; 9 NYCRR §581-2.6(d). Also in attendance were the remaining five members of the Agency. In that hearing, Agency staff conceded that LFF was "clearly using the land for agricultural use purposes", and that "[t]he agricultural use of resource management lands is listed by law as a primary compatible use and does not require an agency permit" (*Id.*, pg. 6). Staff argued, however, that a "single family dwelling" could not be an "agricultural use structure" under the Adirondack Park Agency Act (the "APA Act")(*Executive Law Article 27*) (Record Document #2, pgs. 8, 13), and that therefore permits for the three single family dwellings on land classified as resource management, as well as for subdivision of that land, were required under the APA Act and the Rivers Act (*Id.*, pgs. 7-11). In so concluding, Agency staff contended that statutory construction favored specific over general definitions, and that the APA Act's definition of a "single family dwelling" was specific, while that of "agricultural use structure" was general (*Id.*, pg. 10). Staff also asserted that because the APA Act's definition of "principal building" included reference to both agricultural use structures and single family dwellings, the Legislature intended them to be "separate and different types of structures for purposes of agency jurisdiction" (*Id.*, pg 11). Counsel for LFF argued that the language of the APA Act supported a conclusion that a single family dwelling used for agricultural purposes could be an agricultural use structure and exempt from Agency jurisdiction. Moreover, no subdivision permit would be required since the three dwellings would constitute a single principal building under the APA Act.

On March 25, 2008, the Agency's Enforcement Committee, made up of a quorum of the Agency (*Executive Law §803*), issued a unanimous determination (the "Agency's determination") that LFF violated the APA Act by failing to obtain a subdivision permit and a permit authorizing construction of two of the dwelling units. Since the determination was approved by the "affirmative vote by a

March 26 2008.

majority of the members of the agency" (*Executive Law §803*), it constitutes an action by the Agency (*Id.*; *see also General Construction Law §41*; *Rockland Woods, Inc. v. Incorporated Village of Suffern*, 40 AD2d 885, 340 NYS2d 513). In arriving at its determination, the Agency held that "farm worker dwellings are 'single family dwellings' (or possibly 'multiple family dwellings' or 'mobile homes,' depending upon the type of dwelling structure), and not 'agricultural use structures'" under the APA Act (Record Document #1, pg. 8). The Agency also determined that the APA Act's definition of "'agricultural use structures' does not include, and was not intended to include, the farm owners' or farm workers' dwellings", was only "intended to include other structures of an accessory nature" (*Id.*, pg. 9), and that single family dwellings and agricultural use structures "are treated as separate and distinct uses under the . . . [APA] Act" (*Id.*). Based upon its finding of violations, the Agency directed LFF to pay a $50,000.00 civil penalty, apply for a permit for three new dwellings and a four-lot subdivision no later than April 14, 2008 by submitting a major project application and reply to requests for additional information within thirty days of receipt. Additionally, LFF was directed to submit to the Agency no later than April 28, 2008 a detailed description of the use of each dwelling and its connection to agricultural operations plus as-built plans for the septic system and an evaluation by a state-licensed professional engineer regarding whether the installed septic system shared by the three dwellings complied with state Department of Health and Agency standards and guidelines. Finally, the Agency's determination provided that LFF relinquished its right to challenge Agency jurisdiction but retained the limited right to appeal the project review process, and prohibited LFF from occupying the three new buildings until permits were issued and the penalty paid.

II. Procedural History

LFF commenced this Article 78 proceeding on April 8, 2008, and sought a stay of enforcement of the Agency's determination. Following oral argument, this court granted a partial stay on April 11, 2008. Specifically, a stay was granted as to enforcement of the Agency's determination except for the prohibition against occupying the dwellings and payment of the civil penalty. That same day, the Agency commenced the enforcement action by filing a summons and complaint. LFF served an amended petition on April 14, 2008. It also moved to consolidate the two cases, which motion was granted without opposition on April 24, 2008. An order of consolidation was issued on June 10, 2008. Meanwhile, LFF paid the civil penalty into court (*CPLR §2601*) and the Agency served an amended

complaint for enforcement on May 14, 2008.

The parties thereafter filed motions addressed to the pleadings. The Agency sought dismissal of at least some of LFF's Article 78 claims on the grounds of, among other things, collateral estoppel. LFF moved to dismiss the Agency's causes of action against certain individual defendants. By decision and order dated July 2, 2008 (20 Misc.3d 1114(A), 2008 WL 2658236 [Table] [NY Sup], 2008 NY Slip Op 51348[U]), this court dismissed two of LFF's causes of action but denied all other relief sought by the Agency. As to LFF's motion, the court dismissed the Agency's causes of action against the individual defendants, thereby removing them from the case.

The Agency then filed an answer and return (*CPLR §7804[e]*) in response to LFF's Article 78 claims. The parties also each filed motions for summary judgment relative to the Agency's causes of action for enforcement of the Agency's determination.

III. Scope of Review

Judicial review of the determination of an administrative agency under CPLR Article 78 is limited to whether the challenged decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (*CPLR §7803[3]*). Such review is further restricted "solely to the grounds invoked by the agency, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis (*Matter of Montauk Improvement v. Procaccino*, 41 NY2d 913, 394 NYS2d 619, 363 NE2d 344; *Matter of Berry v. O'Connell*, 303 NY 46, 100 NE2d 127; see, also, *Securities Comm. v. Chenery Corp.*, 332 US 194, 67 SCt 1575, 91 LEd 1995)" (*Trump-Equitable Fifth Ave. Co. v. Gliedman*, 57 NY2d 588, 598, 457 NYS2d 466, 468, 443 NE2d 940, 942; *see also Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educational Services*, 77 NY2d 753, 570 NYS2d 474, 573 NE2d 562; *Aronsky v. Board of Educ., Community School Dist. No. 22 of City of New York*, 75 NY2d 997, 557 NYS2d 267, 556 NE2d 1074; *Parkmed Associates v. New York State Tax Commission*, 60 NY2d 935, 471 NYS2d 44, 458 NE2d 153. LFF's Article 78 claims rest upon the interpretation of certain statutory provisions in the APA Act, and therefore only involve questions of law for determination by this Court.

With regard to the parties' respective motions for summary judgment directed to the Agency's enforcement claims, it is well-settled that summary judgment "is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Millerton Agway Co-op. v. Briarcliff Farms*, 17 NY2d 57, 268 NYS2d 18, 215 NE2d 341)" (*Andre v. Pomeroy*, 35 NY2d 361, 364, 362 NYS2d 131, 133, 320 NE2d 853, 854). In order for a party to be entitled to summary judgment, "it must clearly appear that no material and triable issue of fact is presented (*Di Menna & Sons v. City of New York*, 301 NY 118, 92 NE2d 918)" (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, 165 NYS2d 498, 505, 144 NE2d 387, 392). "To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212, subd. (b)), and he must do so by tender of evidentiary proof in admissible form" (*Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.* 46 NY2d 1065, 1067, 416 NYS2d 790, 791-792, 390 NE2d 298, 299). "Accordingly, if the movant does not submit sufficient evidence on a particular issue or cause of action to justify judgment as a matter of law, the burden never shifts to the adversary to submit evidence sufficient to raise a triable issue of fact (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923, 501 NE2d 572) . . . [e]ven where there is no opposition" (*Zecca v. Riccardelli*, 293 AD2d 31, 34, 742 NYS2d 76, 78). Based upon all of the papers and proof submitted there are no issues of fact requiring trial, and judgment as a matter of law in favor of a party is warranted (*CPLR §3212[b]*) relative to the Agency's causes of action to enforce its March 25, 2008 determination.

IV. The Adirondack Park Agency Act

The APA Act establishes a comprehensive scheme for land use and development of all lands, but particularly those privately owned, lying within the six million acre Adirondack Park (*Executive Law §801, §802[1]*). All lands within the Adirondack Park are classified into one of six distinct land use categories – hamlet, moderate intensity use, low intensity use, rural use, resource management, and industrial use (*Executive Law §805[3][a]-[h]*). The lands in each land use classification are designated on the Official Adirondack Park Land Use and Development Plan Map (the "Map") approved by the State Legislature in 1973 (*L. 1973, c. 348; Executive Law §805[2][b]*). The Adirondack Land Use and Development Plan (the "Plan") sets forth the specific "compatible uses", consisting of primary and secondary uses, and "overall intensity guidelines" for

each land use area (*Executive Law §805[3][g]-[h]*). The Agency has exclusive "jurisdiction to review and approve all class A regional projects, including those proposed to be located in a land use area governed by an approved local land use program, and all class B regional projects in any land use area governed by an approved local land use program" (*Executive Law §809[1]*). Class A and class B regional projects for each of the six types of land use areas are specified by statute (*Executive Law §810*). "Any person proposing to undertake" such a project must "make application to the agency for approval of such project and receive an agency permit therefor prior to undertaking the project" (*Executive Law §809[2][a]*).

The APA Act defines an "agricultural use structure" as "any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agricultural use" (*Executive Law §802[5]a*). A "structure" is defined to include "single family dwellings" (*Executive Law §802[62]*). A "single family dwelling" is "any detached building containing one dwelling unit, not including a mobile home" (*Executive Law §802[53]*). "'Agricultural use' means any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds" (*Executive Law §802[7]*).

Under the statutory scheme, "[a]gricultural uses" and "[a]gricultural use structures" in resource management areas do not require a permit from the Agency (*Executive Law §805[3][g][4][1]-[2]*) because they are primary compatible uses which are neither class A nor B regional projects (*Executive Law §810[1][a], [2][d]; see also 9 NYCRR §577.4[b][9][ii], §577.6[b][3]* – no permit required for agricultural use structures in recreational river areas unless located "inside the mean high water mark of the river or within 150 feet of the mean high water mark"). However, a "single family dwelling" in a resource management area requires a permit from the Agency as a class B regional project (*Executive Law §810[2][d][1]*) provided there is no approved local land use program, which in the case at bar there is not.

The Plan also designates as class A regional projects in a resource management area, subject to exclusive Agency review and approval, "all subdivisions of land located . . . within one-quarter mile of rivers navigable by

boat designated to be studied as . . . recreational" under the Rivers Act, and "[a]ll subdivisions of land (and all land uses and development related thereto) involving two or more lots, parcels or sites" (*Executive Law §810[1][e][1][a], [1][e][3]*). A "subdivision" under the APA Act is defined as "any 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)" (*Executive Law §802[53]*). Under the Agency's regulations, a subdivision into sites occurs, "whether or not a legal conveyance has or will be executed . . . 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)" (*9 NYCRR §570.3[ah][3][ii]*). Although a single family dwelling generally constitutes one principal building (*Executive Law §802[50][a]*), the APA Act provides that "all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building" (*Executive Law §802[50][g]*).

Resolution of the parties' competing claims thus centers on whether the three single family dwellings serving as farm worker housing constitute "agricultural use structure[s]" (*Executive Law §802[8]*) under the APA Act. Thus, if a "single family dwelling" *can* be an "agricultural use structure" under the APA Act, LFF's three-dwelling farm worker housing project represents exempt "agricultural use structures" (*Executive Law §810[1][e], [2][d]; 9 NYCRR §577.4[b][3][ii] and §577.6[b][3]*) not subject to Agency jurisdiction, and together with the dwelling to be removed "constitute and count as a single principal building" such that no subdivision requiring an Agency permit has or will occur as a result of their construction.

V. Construction of the APA Act

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature" (*Patrolmen's Benevolent Assn. v. City of New York*, 41 NY2d 205, 208, 391 NYS2d 544, 359 NE2d 1335; *see also, Riley v. County of Broome*, 95 NY2d 455, 463, 719 NYS2d 623, 742 NE2d 98; *Longines-*

Witmauer v. Barnes & Reinecke, 15 NY2d 442, 453, 261 NYS2d 8, 209 NE2d 68). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." (*Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583, 673 NYS2d 966, 969, 696 NE2d 978, 980). "[I]f the language of a statute is plain and unambiguous, there is neither need nor warrant to look elsewhere for its meaning. See, e.g., *Meltzer v. Koenigsberg*, 302 NY 523, 525, 99 NE2d 679, 680; *Town of Putnam Valley v. Slutzky*, 283 NY 334, 343, 28 NE2d 860, 864; *McCluskey v. Cromwell*, 11 NY 593, 601-602" (*Roosevelt Raceway, Inc. v. Monaghan*, 9 NY2d 293, 304, 213 NYS2d 729, 736, 174 NE2d 71, 75). "In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning" (*Tompkins v. Hunter*, 149 NY 117, 122-123, 43 NE 582; *see also, Matter of Raritan Dev. Corp. v. Silva*, 91 NY2d 98, 667 NYS2d 327, 689 NE2d 1373). "Under the doctrine of separation of powers, courts may not legislate (*Bright Homes v. Wright*, 8 NY2d 157, 162, 203 NYS2d 67, 70, 168 NE2d 515, 517; *Matter of Metropolitan Life Ins. Co. v. Boland*, 281 NY 357, 361, 23 NE2d 532, 533), or rewrite (*Matter of Chase Nat. Bank v. Guardian Realties*, 283 NY 350, 360, 28 NE2d 868, 871; *Matter of Tormey v. LaGuardia*, 278 NY 450, 451, 17 NE2d 126, 127), or extend legislation (*People ex rel. Newman v. Foster*, 297 NY 27, 31, 74 NE2d 224, 225; *Matter of Hogan v. Supreme Ct.*, 281 NY 572, 576, 24 NE2d 472, 473)" (*In re Adoption of Malpica-Cruini*, 36 NY2d 568, 571, 370 NYS2d 511, 514-515, 331 NE2d 486, 488).

In enacting the APA Act, the Legislature created a comprehensive and integrated statutory scheme to protect and preserve the natural resources of Adirondack Park (*Executive Law §801*). In so doing, the Legislature specifically defined sixty-three different words and phrases (*Executive Law §805*) commonly used throughout the APA Act, with the obvious purpose and intent that those definitions consistently and unvaryingly be applied in the administration and enforcement of the entire APA Act. Thus, in construing any one statutory definition resort must necessarily be made to any other statutorily defined term or phrase contained within that definition. "A court must consider a statute as a whole, reading and construing all parts of an act together to determine legislative intent (*see McKinney's Cons. Laws of N.Y., Book 1, Statutes § 97*), and, where possible, should 'harmonize[ ] [all parts of a statute] with each other ... and

NYS2d 38, 142 NE2d 211; *see also Mark v. Colgate University*, 53 AD2d 884, 385 NYS2d 621). It is rational to conclude that the Legislature intended single family dwellings "directly and customarily associated with agricultural use" to be exempt from Agency jurisdiction in resource management areas. Though not controlling here, farm residential buildings have been held to constitute "farm operations" exempt from town zoning regulations under Agriculture and Markets Law §305-a (*Town of Lysander v. Hafner*, 96 NY2d 558, 562, 738 NYS2d 358, 359, 759 NE2d 356, 357). In so holding, the court in *Lysander* relied upon the Legislature's recognition that residential buildings on a farm "contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise" (*Agriculture and Markets Law §301[11]*) (*Id.*). There is no reason to conclude that the Legislature intended anything different inside the Adirondack Park.

The Legislature's stated purposes, policies and objectives of resource management areas include encouraging "proper and economic management of . . . agricultural . . . resources" and allowing "for residential development on substantial acreage or in small clusters on carefully selected and well designed sites" (*Executive Law §805[g][2]*). These goals are consistent with "[t]he policy of the state . . . to . . . encourage the development and improvement of its agricultural lands for the production of food and other agricultural products" (*NY Constitution, Article 14, §4*). Also, the purpose and objective of "residential development . . . in small clusters" provides the rationale for the Legislature's decision that "all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building" (*Executive Law §809[50][g]*) so that Agency jurisdiction over "subdivisions" is not invoked by such a development.

While LFF's farm worker housing project represents a unique and unprecedented effort to provide agricultural workers with quality housing and may not have been foreseen by the Legislature, "[a] statute must be read and given effect as it is written by the Legislature, not as the court may think it should or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration" (*Lawrence Const. Corporation v. State*, 293 NY 634, 639, 59 NE2d 830, 832). To the extent that LFF's project is an unforeseen event, any change in interpretation

or application of the APA Act "is a matter of policy to be determined by the Legislature rather than by the courts under the guise of construction. *People v. Friedman*, 302 NY 75, 79, 96 NE2d 184, 187; (*Hudson v. Curtis*, 285 AD 517, 520, 139 NYS2d 392, 396, *affirmed* 309 NY 979, 131 NE2d 290). "[O]missions in a statute . . . cannot be supplied by construction" (*Eastern Paralyzed Veterans Ass'n, Inc. v. Metropolitan Transp. Authority*, 79 AD2d 516, 517, 433 NYS2d 461, 462, *appeal dismissed* 52 NY2d 895, 437 NYS2d 305, 418 NE2d 1324) and may only "be remedied by the Legislature, and not by the courts" (*McKinney's Statutes §363*).

Also without merit is the Agency's determination that single family dwellings and agricultural use structures "are treated as separate and distinct uses under the . . . [APA] Act"; in other words, the two terms are mutually exclusive. Certainly, under the APA Act not all "agricultural use structures" are "single family dwellings", and not all "single family dwellings" are "agricultural use structures". The definition of "agricultural use structure" is much broader in scope, ranging from a "barn, stable, shed, silo, [and] garage" to a "fruit and vegetable stand" to any "other building or structure directly and customarily associated with agricultural use" (*Executive Law §802[8]*). There is nothing in the APA Act which precludes a "single family dwelling" "directly and customarily associated with agricultural use" (*Executive Law §802[8]*) from qualifying as an "agricultural use structure". "Statutes . . . should be read and understood . . . without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct supposed errors, omissions or defects in legislation . . . The office of interpretation is to bring sense out of the words used, and not bring a sense into them" (*McCluskey v. Cromwell*, 11 NY 593, 601-602). It is because the Legislature recognized that "agricultural use structures" covered a wide range of structures, that single family dwellings would qualify as an agricultural use structure only on rare occasions, and that farm worker housing would appear most often in the form of temporary buildings such as mobile homes – a residential unit specifically excluded from the definition of "single family dwelling" (*Executive Law §802[55]*) – that it separately listed both "single family dwellings" and "agricultural use structures" as primary and secondary compatible uses in moderate intensity use, low intensity use, rural use, and resource management areas in the Plan (see *Executive Law §805, subds. [3][d][4], [3][e][4], [3][f][4], and [3][g][4]*). For the same reasons, the Legislature treated "agricultural use structures" and "single family dwellings" separately in designating class A and B regional projects subject to Agency jurisdiction

(*Executive Law*), and exempted the former from Agency jurisdiction triggered solely by the structure being "in excess of forty feet in height" in all but industrial use areas (*Executive Law §810, subds. [a][4], [b][4], [c][5], [d][5], and [e][8]*). Clearly, not all lands classified as resource management under the APA Act are used for agricultural purposes (*see Executive Law §805[3][g]*), and a project involving a single family dwelling on non-agricultural land would not qualify as an "agricultural use structure" and therefore would be subject to Agency jurisdiction perhaps as a class A project (*Executive Law §810[1][e]*) or as a class B project in the absence of an approved local land use program (*Executive Law §810[2][d]*). Such projects would be far more prevalent, necessitating separate references to "agricultural use structures" and "single family dwellings" throughout the APA Act to insure Agency jurisdiction over the latter. Finally, by determining that "all agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building" (*Executive Law §802[50][g]*), the Legislature recognized an exception for farm land from the general statutory rule that each "single family dwelling"or "mobile home" "constitutes one principal building" (*Executive Law §802[50][a]-[b]*). By specifically designating all "agricultural use structures", "single family dwellings" and "mobile homes" on farm property as "one principal building", the Legislature made clear its intent that all such structures situate on agricultural lands be treated as one and the same under the APA Act.

For the foregoing reasons, Lewis Family Farm, Inc. is entitled to judgment pursuant to CPLR §7806 annulling the Agency's March 25, 2008 determination on the ground that it was affected by an error of law, as well as to summary judgment dismissing the Agency's amended complaint dated May 14, 2008 and all causes of action therein. Also, this Court's April 11, 2008 order granting a partial stay is vacated as moot. Counsel for Lewis Family Farm, Inc. to submit a single judgment on notice.

IT IS SO ORDERED

ENTER

Richard E. Meyer
J. S. C.