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

ATTORNEYS AT LAW

March 14, 2008

**VIA FIRST CLASS MAIL AND  
TELEFAX: 891-3839**

Mr. Curt Stiles, Chairman  
Adirondack Park Agency  
P.O. Box 99  
NYS Route 86  
Ray Brook, New York 12977

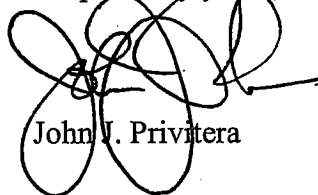
Re: The Lewis Family Farm, Inc.

Dear Chairman Stiles:

We extend our gratitude to you and Mr. Cecil Wray, Chairman of the Enforcement Committee, for providing us with the opportunity for an oral presentation.

To assist your decision making, as is customary in administrative proceedings, attached please find Respondent's post-hearing brief. We endeavor to answer, more precisely, some of the questions that were posed by the Commissioners.

Respectfully yours,



John J. Privitera

JJP/klh

cc: Mr. Cecil Wray, Chair, Enforcement Committee  
Barbara Rottier, Esq.  
Mr. Pete Grannis, Commissioner, NYS Department of Environmental Conservation  
Ms. Lorraine Cortes-Vazquez, Secretary of State, Member  
Mr. Daniel Gundersen, Upstate Chairman of Empire State Development Corporation  
Mr. Arthur Lussi, Chair, Economic Affairs Committee

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Mr. Richard Booth  
Mr. Frank Mezzano  
Mr. William H. Thomas  
Mr. James Townsend  
Ms. Leilani Crafts Ulrich  
Executive Director, APA  
Mr. Paul Van Cott, Esq.

ADIRONDACK PARK AGENCY

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In the Matter of

LEWIS FAMILY FARM, INC.,

Respondent.

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Agency File: E2007-041

## **POST HEARING BRIEF**

Submitted by:

John J. Privitera, Esq.  
McNAMEE, LOCHNER, TITUS  
& WILLIAMS, P.C.

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*Attorneys for Respondent*

## **COMMISSIONER LUSSI'S QUESTION**

Commissioner Lussi asked me if the Lewis Family Farm worker housing cluster was a Class B Regional Project by application of Section 810(2)(d)(11) of the Act. I said no. My answer was correct, but my reasoning was faulty. This provision only applied to the Boquet River during the period that it was designated to be studied as a recreational river. It is no longer designated for study. It is now on the list of recreational rivers and therefore any temporal application of this section at some point in the past expired long ago. Staff agrees, as it has not pleaded a violation of this section in its Notice of Violation.

At this point, the Boquet River is protected by the Rivers Act. Agricultural use structures may be undertaken without a permit in the river area as long as they are at least 150 feet from the mean high water mark of the river, as here. 9 NYCRR § 577.4(b)(3)(ii); Section 577.6(b)(3). In addition, no subdivision has occurred because a subdivision under the Rivers Act is defined as "any division of land into two or more lots" 9 NYCRR § 570.3(a)(h)(1). The Lewises have not divided the land. No "subdivision into sites" has occurred because this type of subdivision only occurs when another principal building is added. 9 NYCRR § 570.3(a)(h)(3). Staff admits that the Lewis Family Farm employee housing cluster does not add any principal buildings to the Park.

## **QUESTIONS OF COMMISSIONERS MEZZANO AND TOWNSEND**

Commissioners Mezzano and Townsend asked me about the impact of Judge Ryan's decision of August 16, 2007. This matter is more fully briefed in our opening, spiral bound memorandum at page 37. Judge Ryan declared that the jurisdictional

dispute between the Lewis Family Farm and the Agency was "not ripe for judicial intervention" until such time as the Agency renders an enforcement determination, adding further that the proceeding remained "an internal matter in which the Court will not interfere." Ryan decision, p. 6; VC Aff. Ex. B. When a matter is not ripe for judicial intervention, there is no case or controversy so the judicial branch lacks power to decide the matter. See New York Public Interest Research Group, Inc. v. Carey, 42 N.Y.2d 527, 531 (1997). Staff has chosen to not cite or discuss, much less distinguish this established line of fundamental common law.

### CONCLUSION

Staff's sole argument, unprecedented before the Agency, is that a single-family dwelling can never be an agricultural use structure, even when that very dwelling establishes a land use that is agricultural in nature as a matter of the right-to-farm law. This is untenable because the definition of agricultural use structures includes all buildings customarily used on farms, and the record before this Agency is uncontested as to the customary use of on-farm housing for workers.

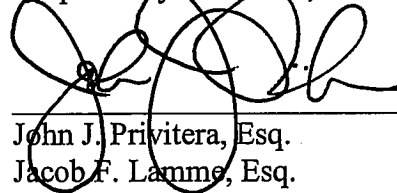
The Lewis Family Farm is protected by the right-to-farm law because it is in an agricultural district. Informed by the Constitution, the Court of Appeals determined that the undefined term "on-farm buildings" included the unimpaired right to build farm worker housing as long as it was safe, as here. Town of Lysander v. Hafner, 96 N.Y.2d 558 (2001). Surely, this Agency must interpret the definition of agricultural use structures to include on-farm employee housing, because it is broadly defined to include customary structures. No productive farm can survive without employee housing. On-farm worker housing has been customary in America for centuries.

When this Agency applies its jurisdiction, it assumes the right to deny a permit. Here, professing that a farmer has a constitutional right to farm, but may not have the right to build on-farm worker housing, is no different from promising freedom of speech and then taxing or censoring every expression. John Milton's pioneering treatise condemning taxation of expression and censorship, *Aeropagetica* (1644), is the foundation of our First Amendment. We embrace Milton's teachings as much as we defend the right to develop farm land as guaranteed by our Constitution. The Right to Farm and Freedom of Speech must remain unimpaired.

This proceeding should be dismissed.

Dated: Albany, New York  
March 14, 2008

Respectfully submitted,



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