



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
108 AIRLINE DRIVE  
ALBANY, NEW YORK 12235

**F A X C O V E R S H E E T**

**TO:** John Privitera, Esq.

**PHONE:** (518) 447-3337

**DATE:** February 4, 2008

**FAX:** (518) 447-3368

**FROM:** Danielle Cordier, *Senior Attorney*

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**RE:** Lewis Family Farm, Inc.

Number of pages including cover sheet: 4

John,

Per your request, attached is the Commissioner's agricultural in nature advisory opinion. The Commissioner signed the opinion on Friday and it is being mailed out today.

Sincerely,

A handwritten signature in cursive script, appearing to read "Danielle C. Cordier".

Danielle C. Cordier  
Senior Attorney  
NYS Department of Agriculture & Markets  
108 Airline Drive  
Albany, New York 12235  
(518) 457-2449



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Eliot Spitzer  
Governor

Patrick Hooker  
Commissioner

February 1, 2008

Sandy and Barbara Lewis  
The Lewis Family Farm, Inc.  
1212 Whallons Bay Road  
Essex, New York 12936

**RE: Section 308, subd. 4 Opinion Concerning Farm Worker Housing**

Dear Mr. and Mrs. Lewis:

On January 9, 2008, the Department received an e-mail from your attorney, John J. Privitera, requesting, on your behalf, an opinion pursuant to Agriculture and Markets Law (AML) §308, subdivision 4 as to whether land used for the siting and construction of farm worker housing is considered "agricultural in nature." The evaluation of land uses under this provision is conducted on a case-by-case basis upon information submitted and in consultation with the Advisory Council on Agriculture.

You indicate that Lewis Family Farm, Inc. is a USDA certified organic farm located in the Town of Essex, Essex County. Farm Manager Dr. Marco Turco reports that the farm encompasses approximately 1,200 acres and includes 826 cultivated acres, pastures, a sugar-bush, and a deciduous and conifer forest. The farm produces certified organic beef animals and raises cows, bulls, heifers and steers. Additionally, the farm produces a range of crops, which have included hard white winter wheat; soybeans; alfalfa; mixed, cool-season grasses; corn; spelt and triticale. Department staff confirmed that the land in question is located within Essex County Agricultural District No. 4, a county adopted, State certified agricultural district.

Dr. Robert Somers, Manager of the Department's Agricultural Protection Unit, visited the farm on January 9, 2008. Dr. Somers observed that four modular farm worker houses have been constructed on the property. Three of the farm worker houses are clustered in a U-shaped pattern at the corner of Christian and Whallons Bay Roads. You indicated that two of the four homes are complete; the other two homes have completed exteriors but are unfinished inside. You explained that one is occupied by the farm manager and the other, by a person working on the farm. You indicated that these three homes replaced an existing home and barn complex that were removed prior to construction. You indicated that the three homes share a common

Barbara Lewis  
§308(4) Opinion  
Page 2

driveway, septic leach field and water source (well). The fourth farm worker house is located off of Whallons Bay Road at the crest of a hill. You explained that the farm manager occupies this home because it has a strategic view of most of the farm, including the barns and the three new farm homes. You stated that all four of the modular homes were placed on poured concrete foundations with basements.

You indicate that the farm housing which was located on the property when it was purchased was old, energy inefficient and contaminated with mold. You stated that you decided to remove those structures and construct new homes for your farm workers and that suitable off-farm housing is not available within the area. You also indicate that it is your intent to provide quality housing for your workers in an effort to recruit employees that will bring their families to the farm and become vested in the farm and the community; and you hope that the housing will help recruit the most qualified workers to your state-of-the-art farm.

In considering whether a particular land use is agricultural in nature, the Department takes into account the definition of "farm operation" contained in AML §301. A land use does not need to fall within the meaning of that term in order to be "agricultural in nature." Examination of the definition is helpful, however, in considering the nature of a land use since it relates to agricultural activities. Included within the definition of "farm operation" (AML §301, subd. 11) are "[t]he land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise...."

Farm worker housing, including mobile, modular or stick-built homes, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long work day, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of such homes for farm worker housing is a common farm practice. On-farm housing provides a practical and cost effective means for farmers to meet their farm labor housing and recruitment needs.

In evaluating the use of farm labor housing, the Department considers whether the housing is used for seasonal and/or full-time employees; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation to be part of a "farm operation" as defined in AML §301, subd. 11. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation and is protected by AML §305-a.

Dr. Somers, during his visit to the farm, confirmed that farm worker housing was needed on the farm; existing residential structures had been removed, except for the

Barbara Lewis  
§308(4) Opinion  
Page 3

home of the landowner and a guest house; and that the three clustered farm worker houses could not be readily separated or easily subdivided due to the shared driveway, septic leach field, and electrical connection to the grid and water supply.

Based upon the information provided by you and Dr. Marco Turco, the Department's farm visit, and upon consultation with the Advisory Council on Agriculture, it is my opinion that use of the land in question for the siting and construction of farm worker housing is agricultural in nature.

Sincerely,



Patrick Hooker  
Commissioner

cc: Advisory Council on Agriculture  
Essex County Agricultural and Farmland Protection Board