SOUND AGRICULTURAL PRACTICE
Opinion Number 06-3

SUBJECT: Request for an opinion pursuant to Section 308 of the Agriculture and Markets Law as to the soundness of a certain agricultural practice conducted by David and Debra Serino, Aspenwood Farm Alpacas, in the Town of Kinderhook, Columbia County.

REQUESTOR: David and Debra Serino
313 Maple Lane
Valatie, New York 12184

Preliminary Statement

By letter, dated September 15, 2005, David and Debra Serino requested that the Department review the soundness of an agricultural practice conducted on their property. The Serinos requested that the Commissioner issue an opinion as to the soundness, from a noise perspective, of the use of two Great Pyrenees guard dogs for the protection of alpacas on their property. The Serinos indicated that a neighbor complained to the Town's Animal Control Officer about barking. They also indicated that they had been served with a Summons and Information charging violation of the Town of Kinderhook Dog Control Law. This violation was dismissed on April 11, 2006. The Town Board adopted a motion directing issuance of a violation on May 8, 2006. As of this date, no violation has been issued.

The Department conducted a sound agricultural practice review of the use of the guard dogs on the Serino property. The following information and findings have been considered in reaching this Opinion.

Information Considered in Support of the Opinion

1. David and Debra Serino own and operate a 9 acre alpaca farm in the Town of Kinderhook, Columbia County. The Serinos indicated that on September 15, 2005 they had 42 alpacas on their property that were being protected by two Great Pyrenees guard dogs. Department records show that the farm is located in Columbia County Agricultural District #2, which was recertified on or about November, 2001. According to the Town of Kinderhook Assessor, the property does not receive an agricultural value assessment.

2. On October 27, 2005, Matt Brower, Department Agricultural Resource Specialist, conducted an on-site review of the practice. At that time there were 18 alpacas on site. The Serinos informed Mr. Brower that they have been raising alpacas for breeding and showing at the site since 2002. They indicated that on occasion they board alpacas for other people. According to the Serinos, the alpacas are valued at $10,000 - $15,000 each. The Serinos stated that the guard dogs are less than two years old and were purchased in March of 2005 to protect the alpacas against

coyotes and other predators. Mrs. Serino indicated to Mr. Brower that the dogs stay in the pasture with the alpacas at all times.

3. Mr. Brower observed that the Serinos have several small pasture areas and three small barns on the property. The pasture areas are surrounded by perimeter fences consisting of 4 wooden rails, 48 inch woven wire fence and electric wire. The Serinos indicated that they did not lose any alpacas to predators prior to purchasing the dogs.

4. Mrs. Serino indicated that the dogs bark at night for a period of up to 10 minutes, on average, approximately two times per week. On these occasions the dogs are checked on. Mrs. Serino said that confining the alpacas in the barn during the night is not an option because the animals are not accustomed to being so confined and would be distressed under such conditions. She also indicated that the loss of animals due to fire is another concern with confining the alpacas.

5. Mrs. Serino informed Mr. Brower that one of her neighbors has complained about the dogs several times and has filed complaints with the Town's Animal Control Officer. Mrs. Serino also stated that she has spoken with the neighbor to try and resolve the issue but has been unsuccessful.

6. In a letter to the Department dated October 25, 2005, Susan Tanner, DVM, stated that she cares for both the alpacas and the dogs at the Serino property. Dr. Tanner noted that alpacas are not able to protect themselves from predators and the dogs are being used to protect the livestock in "a responsible and necessary manner." Dr. Tanner stated that the dogs are bred to protect livestock by patrolling the property at night. Dr. Tanner also stated "[t]heir barking is a deterrent to predators, such as coyotes, which are prevalent in our area."

7. The Department mailed a letter to eight owners of land adjacent to the Serino property notifying them of the agricultural practice review and inviting them to comment on the use of the guard dogs on the Serino's farm. The Department received three responses providing comments on the practice.

8. One of the neighboring property owners stated in a letter to the Department that she occasionally hears the dogs barking, but it does not bother any of her family members. She indicated that she has four children and none of them have complained about the barking. During a phone conversation with Mr. Brower, this person indicated that the dogs do not bark every night and they do not bark all night. She also indicated that the dogs generally do not bark during the day.

9. Another adjacent property owner stated in a letter to the Department dated November 20, 2005 that her family lives within 50 yards of the Serino property. She expressed the view that the dogs bark continuously because they are not properly trained. She contended that the dogs can be "taught how long to bark and to bark for appropriate matters as well as to obey voice commands." This neighbor also indicated that the Serinos have not taken the appropriate steps to train their dogs. She provided materials regarding training methods for dogs that

bark constantly. This neighbor stated in her letter that "[t]here is not a prominent threat of large wild animals around." The neighbor also stated that a fox or coyote has not been seen in the 20 years that they have lived in the area. She stated that her family's "quality of life has been affected" because they have been forced to sleep in their living room and family room to try and avoid the barking noise. She also indicated that family members are "suffering from sleep deprivation." During a phone conversation with Mr. Brower, this neighbor indicated that the dogs bark every night from dark until dawn but not during the day. She stated that her family is more affected than other neighbors because their house is closer to the dogs. It appears, based on the tax map obtained from the Town Assessor's office that this house is only slightly closer to the dogs than other houses in the area; including the house of the neighbor that indicated that she hears the dogs barking occasionally.

10. On December 12, 2005, Mr. Brower contacted Charles Pulver, Animal Control Officer for the Town of Kinderhook, to obtain information on the Town's regulations concerning dog barking and the complaints that he has received. Town of Kinderhook Code Chapter 40, Section 40-1(A) states that it shall be unlawful for any owner or person harboring a dog to permit or allow a dog to "[e]ngage in habitual howling or barking or conduct itself in such a manner as to habitually annoy any person other than the owner or person harboring such dog." Mr. Pulver indicated that he has not cited the Serinos for a violation of Chapter 40 because he has only received complaints from one neighbor and he was concerned that the Town could be in violation of Agriculture and Markets Law (AML) Section 305-a.

11. On December 14, 2005, Mr. Brower contacted Jean Cave-Pero, President of the Great Pyrenees Club of America. Ms. Cave-Pero stated that she has raised Great Pyrenees for over 30 years and that the behavior of the dogs is instinctive and that very little training is necessary. She also indicated that the dogs "guard by intimidation" and that they use barking as part of their defense. According to Ms. Cave-Pero, the breed typically does not bark without a reason, and if they did they would bark during the day as well.

12. On December 14, 2005, Mr. Brower contacted Dr. E'Lise Christensen, DVM, a resident in animal behavior at the Cornell Animal Behavior Clinic. Dr. Christensen explained that the use of guard dogs to protect alpacas is not rare. She also indicated that Great Pyrenees are generally quiet, but could bark for a number of reasons. Dr. Christensen indicated that going out to check on the dogs at night could encourage barking.

13. In a letter dated January 12, 2004 and received by the Department on February 9, 2006, Ian L. Crimmins, Esq. indicated that the law office of James Kleinbaum, Esq. was retained by the neighbor that provided comments to the Department opposed to the practice. Mr. Crimmins indicated that it is his client's "belief that the use of the particular dogs and breed in question is not a sound practice, because the farm has failed to appropriately **train** the dogs for agricultural purposes."

14. On February 16, 2006 the Department received additional information from Mr. Crimmins concerning the use of the guard dogs at the Serino property. Mr. Crimmins submitted a video tape recording of the dogs barking and additional comments concerning the use of the dogs. Mr. Crimmins contended that, "**if** the dogs are necessary to ward off predators, **and** the Serinos were truly afraid that predators threaten their livestock, when the Serino dogs bark at night, they would immediately investigate the dog barking." Mr. Crimmins concluded that "there must be little or no oversight or training by the Serinos because the dogs bark constantly at night." Mr. Crimmins opined that there appeared to be no need to employ guard dogs in addition to guard llamas and fencing and that the Serinos could house the alpacas in the barns during the night for protection.

15. Mr. Crimmins stated that his client has tried to "condition the sound by buying fountains, and running fans, air conditioners, televisions, and radios…all to no avail." He also indicated that "the dogs can be heard, separate and distinct from their sound conditioning attempts." Mr. Crimmins stated that, according to his client, the dog barking can be heard from any location within the house. According to the information provided by Mr. Crimmins, his client is experiencing health problems as a result of the dog barking. He indicated that she is "currently seeing a physician for physical ailments related to her ongoing severe fatigue" and that the "severe sleep deprivation" has caused the family "numerous physical ailments including headaches, and lethargy during the waking hour of the day."

16. Mr. Brower viewed the video tape recording submitted by Mr. Crimmins. Mr. Brower observed that the video contains the sound of dogs barking and that it appears that it was recorded at various times of the day on several different dates. It appeared that the video tape was recorded entirely outside the residence of his client. As a result, Mr. Brower was not able to determine to what extent, if any, the dog barking can be heard inside the house and at what volume. Mr. Brower reported that at times the barking can be barely heard and at other times, the barking is louder. Most of the time, other background noises (cars passing and wind chimes) are as loud as the dog barking noise. Mr. Brower concluded that, based on the noise level of the barking on several occasions, it appears that it would be difficult to hear the dogs from inside the house, particularly with the windows and doors closed or with a fan or air conditioner running during the summer months. Mr. Brower was not able to determine the duration of the barking from the tape.

17. On February 21, 2006, Mr. Brower again contacted Charles Pulver, the Animal Control Officer for the Town of Kinderhook, to gather additional information on the use of the guard dogs. Mr. Pulver stated that he has not been to the property at night, but he does not believe the dogs bark all night every night because he has only received complaints from one neighbor. He also noted that he has informed the neighbor that she should call him at any time during the night when the dogs are barking so he can visit the site to gather information on the barking. Mr. Pulver indicated that he has never been called until the day after the dogs have been barking.

18. On February 23, 2006, Mr. Crimmins provided a copy of his client's medical report dated February 14, 2006 to Mr. Brower. According to the report prepared by Dr. Robert Davenport, his patient indicated that she was "having problems with sleep deprivation secondary to the neighbors immediately behind her having watch dogs." According to the report, the patient had reported neck, back and chest discomfort from having to sleep on the couch to avoid the noise. According to Dr. Davenport's assessment, the patient had "[s]trap and cervical muscle strain of the neck-primarily involving the right side; [r]ight latissimus dorsi strain;" and "[l]eft intercostals strain." Dr. Davenport prescribed *Zanaflex* (muscle relaxer) and *Naprosyn* (anti-inflamatory drug) and advised his patient to get an orthopedic pillow. Dr. Davenport recommended that his patient improve her sleep pattern and he recommended physical therapy three times a week for four weeks. Dr. Davenport did not indicate whether in his professional judgment his patient was suffering from sleep deprivation or to what extent, if any, the dog barking was causing the various types of "strain."

19. In a letter to the Department dated February 24, 2006, Debra Serino indicated that she and her husband had purchased a "citronella bark control collar" for use on one of the dogs. According to Ms. Serino, the collar is not meant to interfere with the protective nature of the dog but instead works to distract a typical dog from repetitive barking. Ms. Serino stated that they used the collar from February 1, 2006 until February 22, 2006 and they discontinued use because they decided that it was ineffective and cost prohibitive ($62 for the collar and $13 for citronella refills).

20. On February 24, 2006, Mrs. Serino provided the Department with a copy of an Information charging the Serinos and Aspenwood Farm with an alleged violation of the Town of Kinderhook Dog Control Law and a Summons to appear in the Town of Kinderhook Justice Court on March 14, 2006, to answer for an alleged violation of the Town of Kinderhook Code Chapter 40 §40-1(A) (Dog Ordinance). The Summons was issued by the Town of Kinderhook Justice Court in response to a complaint filed directly with the Town Court by a neighboring land owner. Town of Kinderhook Code Chapter 40 §40-1(A) prohibits any owner or person harboring any dog in the Town of Kinderhook to permit or allow a dog to "Engage in habitual howling or barking or conduct itself in such a manner as to habitually annoy any person other than the owner or person harboring such dog." As of this date, the Town's Animal Control Officer has not cited the Serinos for a violation of the Code.

21. On March 2, 2006, the Department notified Douglas McGivney, Supervisor for the Town of Kinderhook, that the Department had received a request for a formal review of Chapter §40-1(A) of the Town of Kinderhook Code for compliance with Agriculture and Markets Law (AML) §305-a, subdivision 1. The Department encouraged the Town to submit any information or documentation it would like the Department to consider in its review within 30 days of receipt of the letter.

22. On March 9, 2006, Mr. Brower contacted Town of Kinderhook Supervisor Douglas McGivney. According to Mr. McGivney, he visited the Serino property recently to gather information on the use of the dogs. He indicated that the dogs barked when he first arrived at the property but stopped barking shortly after his arrival. He also indicated to Mr. Brower that he has not received any other complaints about the dog barking. Mr. McGivney stated that in his opinion there are coyotes in the vicinity of the Serino property because several people have reported them to him in the past.

23. On March 13, 2006, Mr. Brower received a copy of a letter sent to the Kinderhook Town Board by a landowner near the Serino property concerning the Serinos' guard dogs. The landowner's house is located on Maple Lane, slightly north of the Serino property. The landowner indicated that they are often awakened by coyotes in the area near their home. They also indicated that the Serinos' guard dogs have not caused any disruption to them during the day or night.

24. On March 13, 2006, Mr. Brower contacted Jeffery S. Green, Regional Director for the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS), to gather information on the protection of livestock against predators. Mr. Green stated that he has worked extensively with Great Pyrenees guard dogs and indicated that their behavior is based on instinct and the primary concern is keeping the dogs in the area they are guarding. He indicated that this breed does not typically bark constantly but it could happen. He also stated that property located on the border of a residential area and a large area of open land would be a favorable environment for coyotes. While noting that llamas have been used to protect livestock, Mr. Green said he has had llama farmers contact him trying to locate guard dogs to protect their llamas. He also stated that llamas would not be able to protect alpacas from more than one coyote.

25. According to a publication from the Great Pyrenees Club of America,[1] this breed of dog is "a territorial guard by nature, which means that he works to keep his territory free from predatory danger." The publication states that if the dog is performing properly, "the stockman may never see a predator, and the flock will never be disturbed."

26. According to a publication from Colorado State University[2] "[g]uard dogs significantly reduce coyote predation on domestic sheep in Colorado." The publication also states that "[p]roducers using guard dogs reported a lower percent sheep loss than producers using llamas."

27. Mr. Brower contacted Mrs. Serino on March 27, 2006 for information concerning the llamas used at the farm. Mrs. Serino informed Mr. Brower that she and her husband purchased two llamas two years ago to provide protection for the alpacas. However, one of the llamas did not get along with the alpacas and they had to separate the llamas from the alpacas. Mrs. Serino indicated that the

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[1] Great Pyrenees Club of America: Livestock Guard Dogs. Rev. 1991.
[2] Livestock Guard Dogs, Llamas and Donkeys. Andelt, W.F. No. 1.218. Rev. 10/04.

information on the farm's website about guard llamas was added when the llamas were purchased and that the web site has not been updated to reflect the fact the Serinos are no longer using the llamas to guard their alpacas.

28. According to a letter dated April 12, 2006 from Mr. Crimmins, attorney for the neighboring landowner, the Town of Kinderhook Justice Court dismissed the complaint against the Serinos on April 11, 2006 "because the matter was not originally filed by the Town of Kinderhook Animal Control Officer."

29. Town of Kinderhook Supervisor Douglas McGivney, in a letter to the Department dated April 12, 2006, stated that the Department's March 2, 2006 letter, "suggests that the town is applying its law concerning barking dogs which may conflict with AML §305-a." Supervisor McGivney indicated that the Town of Kinderhook has not brought any proceeding, nor is it a party to any proceeding, but that a local resident had brought a proceeding in Town Justice Court against the Serinos. Supervisor McGivney noted that the matter has been dismissed by motion of the Serinos' attorney. Supervisor McGivney indicated that the complainant's attorney has contacted Mr. Pulver and demanded that he bring an action, but Mr. Pulver has not brought an action.

30. On May 1, 2006 Mr. Crimmins forwarded copies of a Petition, consisting of a list of names and addresses, and an illustration to the Department. According to Mr. Crimmins, his client intends to present the Petition to the Town of Kinderhook Town Board. The Petition is captioned "Petition to the Town of Kinderhook and the Animal Control Officer, Charlie Pulver. This is to acknowledge that the barking from the Serino dogs on Maple Lane in Valatie, NY is a nuisance. We ask the town and animal control officer to enforce the dog law. (40-1)" The Petition is not dated and contains 30 signatures, some of which are illegible and three of which include Mr. Crimmins's client or her immediate family. The illustration, while illegible, purports to demonstrate the proximity of the Serino farm to the streets where the individuals that signed the Petition reside. Pursuant to a letter dated October 31, 2005, the Department notified eight property owners located adjacent to the Serino property, including Mr. Crimmins's client, that it was conducting a sound agricultural practice review concerning the Serinos' use of Great Pyrenees guard dogs to protect their alpacas. None of the signatures on the Petition, except for Mr. Crimmins's client and her family members, are from adjacent property owners. The information submitted does not indicate the distance from the Serinos' farm to the residences of the individuals that signed the Petition. The Petition does not describe in any detail the alleged impact of the noise associated with the Serinos' use of guard dogs on the individuals that signed the Petition, other than to acknowledge that the barking is a nuisance.

31. On May 9, 2006, Mrs. Serino forwarded a copy of a survey that was prepared by Charlie Pulver, the Town of Kinderhook Animal Control Officer, on April 29, 2006. It appears from the survey that Mr. Pulver contacted 16 residents in the vicinity of the Serino farm. The survey indicates that fifteen landowners

expressed "no complaint." One neighbor complained but did not want to make an official complaint and when it was explained that the animals were alpacas and not llamas understood the need for guard dogs. Mr. Pulver did not survey Mr. Crimmins's client because he already had their complaint. Mr. Pulver concluded that "the major noise complaints were about the Times Union deliveryman with the noisy muffler that comes by early in the morning, the train, and the barking of the coyotes."

32. On May 24, 2006, the Town of Kinderhook faxed to the Department a copy of the May 8, 2006 Town of Kinderhook Town Board Meeting Minutes. The minutes indicate that a motion was adopted directing Charlie Pulver, the Town of Kinderhook Animal Control Officer, to issue a "violation against the Serinos' barking dogs."

33. Agriculture and Markets Law §308, subdivision 1, paragraph b requires that the Commissioner consider whether an agricultural practice is conducted by a farm owner or operator as part of his or her participation in the Agricultural Environmental Management (AEM) program as set forth in Agriculture and Markets Law Article 11-A. Mr. Serino has indicated that he and his wife do not participate in the Agricultural Environmental Management program.

Findings

Based upon the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture; the New York State College of Agriculture and Life Sciences at Cornell and the Sound Agricultural Practice Guidelines[3] by which agricultural practices are evaluated, I find the following:

1. The Department has found no evidence or received other information indicating that the Serinos have been cited for any violation of federal or State law as a result of the use of the guard dogs. The Serinos were summoned to appear in the Town of Kinderhook Court for an alleged violation of the Town's Dog Ordinance. The Town of Kinderhook Justice Court dismissed the complaint against the Serinos. The Town Board of Kinderhook adopted a motion directing the Town Animal Control Officer to issue a violation "against the Serinos' barking dogs." As of this date, the Department has received no notice that a violation has been issued by the Town of Kinderhook upon the Serinos.

[3] On November 1, 1993 the NYS Advisory Council on Agriculture published its report entitled *Protecting the Right of New York Farmers to Engage in Sound Agricultural Practices*. The Council developed guidelines to assist the Commissioner of the Department of Agriculture and Markets in determining what is sound pursuant to Section 308 of the Agriculture and Markets Law. The Guidelines state that the practice 1) should be legal; 2) should not cause bodily harm or property damage off the farm; 3) should achieve the results intended in a reasonable and supportable way; and 4) should be necessary. The sound agricultural practices guidelines recommended by the Advisory Council on Agriculture are given significant weight in assessing agricultural practices.

2. The Department has found no evidence that the use of the guard dogs has resulted in bodily harm or property damage off the site. One individual indicated in a letter to the Department that "[f]amily members are suffering from sleep deprivation." Her physician did not, however, indicate in his report that his patient was suffering from sleep deprivation or that the dog barking was causing the various types of "strain" referenced in his assessment of her condition.

3. The use of Great Pyranees guard dogs for the protection of alpacas from predators achieves the intended result of livestock protection in a reasonable and supportable way. It is not feasible to move the pasture area and the dogs farther away from the neighboring houses. It would be cost prohibitive and take a long period of time to establish pasture in the wooded area of the Serino property and to relocate the barns which are used for run-in sheds and storage of supplies for the livestock. Protecting the alpacas by confining them in the barn at night is not an alternative because the animals are not accustomed to this type of environment. The Serinos attempted to utilize guard llamas and found they were not compatible with the alpacas. Further, it appears from the information received by the Department that guard dogs are more effective in protecting livestock than guard llamas.

4. Information received by the Department indicates that coyotes are in the area of the Serino property where the alpacas are located. Since the alpacas have no way of protecting themselves, some form of protection from predators is necessary. Great Pyrenees have been used to protect livestock for many years and the dogs instinctively bark to ward off predators.

Conclusion

Based on the information and findings set forth above and in accordance with section 308 of the Agriculture and Markets Law, I conclude that, from a noise perspective, the use of Great Pyrenees dogs to protect alpacas on the Serino property, as described above, is sound. In reaching this conclusion, I have taken into account the Town of Kinderhook May 8, 2006 meeting minutes indicating that a motion was adopted to issue a violation "against the Serinos' barking dogs."

6-2-06
Date

Patrick H. Brennan
Commissioner of
Agriculture and Markets