**SOUND AGRICULTURAL PRACTICE**
**Opinion Number 10-3**

**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 Anthony Millington and Bonnie Farrell

**REQUESTOR:** Mr. Anthony Millington and Ms. Bonnie Farrell
143 Tingue Road
Cambridge, New York 12816

## Preliminary Statement

In a letter to the Department dated January 10, 2010, Bonnie Farrell and Anthony Millington requested an Opinion regarding the soundness of an agricultural practice conducted on their property. They requested that the Commissioner issue an Opinion as to the soundness of the use of livestock guardian dogs to protect various types of livestock from predation. This sound agricultural practice request stems from a lawsuit filed against them by their neighbors, David J. Bassani and Robert Haren (Summons Index No.: 16232, State of New York Supreme Court, Washington County).

The Department conducted a sound agricultural practice review of the use of Maremma livestock guardian dogs to protect poultry and other small livestock from predation. The following information and findings have been considered in reaching this Opinion.

## Information Considered in Support of the Opinion

1. Mr. Millington and Ms. Farrell own and operate a farm that predominantly raises heritage breeds of ruminants and poultry for the production of milk, eggs, and meat. For six months of the year, they also raise pigs. The landowners raise heritage breeds because they believe that such animals possess superior foraging ability, longevity, fertility, maternal instincts and disease and parasite resistance. The livestock are raised in a 30' x 96' plastic covered commercial greenhouse, which provides year round shelter for the livestock. The animals have access to pasture, which is fenced and lies adjacent to the greenhouse.

2. According to Washington County's on-line GIS tax parcel map database, the Farrell/Millington property consists of two parcels. The parcel that contains a greenhouse, pasture and open fields (Tax Parcel ID No. 261.-2-5.4) is located within Washington County Agricultural District No. 3, which has an anniversary date of August 17, 2004. The parcel that contains the house and additional open land across the road and south of the residence (Tax Parcel ID No. 261.-2-5.1) is not located within the Agricultural District. This parcel is not used for agricultural purposes, but could become part of the farm if placed into production.

3. On January 10, 2010, Dr. Somers visited the Farrell/Millington property. The property consists of two parcels, comprising approximately 40 acres of land. As observed, the landowners are raising chickens, turkeys, ducks, goats, sheep and one cow in a greenhouse and on pasture located adjacent to the greenhouse. Ms. Farrell stated that they raise hogs in the summer and in 2009, they raised, butchered and sold four of the five

animals. She indicated that they sell wool from the sheep, young stock from the goats, chickens for meat, and eggs. They also milk some of the goats for their own use. Ms. Farrell indicated that in 2009 they sold approximately $5,000 worth of meat, livestock, wool and eggs. At the time of his visit, there were two Maremma livestock guardian dogs bedded down with the animals. Dr. Somers stated that the dogs were not aggressive and they stayed with their wards. They barked as he drove into the driveway, but quieted down once the owners came out to greet him. They did not bark thereafter during his stay on the farm and they did not bark when he left the house and drove away from the farm.

4. On June 10, 2010, Ms. Farrell wrote Dr. Somers an e-mail stating that she wanted to update the Department on the animals being raised on the farm. She stated that they have ordered an additional 100 meat chickens, 15 ducks and 35 turkeys. Ms. Farrell stated that most of the livestock were delivered in April, but some will be delivered by mid-June. She also indicated that their ducks hatched 23 ducklings, they have another cow that is pregnant and they have four more sheep.

5. AML § 308(1)(b) states that "[s]ound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities." The term "agricultural commodities" is not defined in the AML, but the Department interprets the term consistent with the term "crops, livestock and livestock products" [AML § 301(2)]. The Webster's Dictionary, 9th New Collegiate Dictionary, defines "commodity" to include "an economic good" and "a product of agriculture."

6. As inventoried by Ms. Farrell in January, 2010, the farm owns one Cotswold ewe, three Nigerian Dwarf does, one Alpine doe, two Nigerian Dwarf bucks, one Nubian doe, one Alpine Wether, five heritage breed turkeys, 10 laying hens, one White Chinese Gander, two Muscovy ducks and three other ducks. Seasonal animals include lambs, pigs, meat chickens and turkeys. Ms. Farrell updated the list of animals in an e-mail dated June 10, 2010. Additional poultry and livestock were purchased for the farm and ducklings were born on the property. Ms. Farrell estimated that in 2008 they sold approximately $5,000 worth of meat and eggs from the livestock produced on the property. She submitted an itemized revenue statement for 2009 indicating that they sold approximately $6,150 worth of livestock and livestock products including chickens, turkeys, lambs, pigs and eggs. Ms. Farrell also submitted copies of invoices from Eagle Bridge Custom Meat and Smokehouse itemizing the kill fees associated with preparing the animals for slaughter and the wrapping of meat and/or the making of smoked and blended meat products from the butchered animals. Ms. Farrell stated that their poultry processor is Ben Shaw, owner of Garden of Spices Poultry Farm, Greenwich, New York. Based upon all information received, Ms. Farrell and Mr. Millington are engaged in the production, preparation and marketing of agricultural commodities for purposes of AML §308.

7. Mr. Millington and Ms. Farrell informed Dr. Somers that in 2008 they lost approximately 30 young turkeys and chickens to predators. After researching measures to take to reduce such losses, they decided to employ livestock guardian dogs on the farm. Mr. Millington and Ms. Farrell acquired three Maremma guard dogs at various times during the 2008/2009

calendar years. The landowners stated that since they have had the dogs on their property, they have not experienced any losses of livestock from predation. Ms. Farrell stated that they obtained their first Maremma guardian dog, Rollie, on December 22, 2008. During the spring of 2009, Rollie broke out of his confinement and bit a neighbor's dog named Oprah. Ms. Farrell stated that prior to July 2, 2009, they sent Rollie to Windance Farm, located in Gouverneur, New York, for training. Windance Farm breeds, trains and sells Italian Maremma Sheepdogs. According to the owner of Windance Farms, Jackie Church, Rollie was placed on a working farm in Vermont. Kevin Leahy and Carolyn Cavalier are his new owners.

8. Ms. Farrell informed Dr. Somers that in March 2009 they obtained a Maremma livestock guardian dog named Grace from Ben Shaw when the Maremma pup was eight weeks old. Mr. Shaw owns and operates Garden of Spices Poultry Farm, which is located in Greenwich, New York. The farm specializes in pasture raised poultry and they use Maremma guardian dogs to protect their livestock from predation. In September of 2009, Ms. Farrell and Mr. Millington obtained another Maremma livestock guardian dog named Reo.

9. On January 19, 2010, William Kimball, Director of the Department's Division of Agricultural Protection and Development Services, sent a letter to the adjoining property owners of the Farrell/Millington farm. Mr. Kimball requested comments concerning the keeping of guardian sheepdogs on the Farrell/Millington farm to protect their livestock from predation. All adjoining landowners were requested to submit any comments to the Department by February 19, 2010. The letter was submitted to four adjoining landowners, including Susan Crile, Robert Haren/David Bassani, Abdon Buckley, and Barry Karhan. Mr. Kimball also sent a copy of his letter to Mr. Millington and Ms. Farrell; Garfield Raymond, Esq., the attorney representing Farrell/Millington and John Dunne, Esq., an attorney representing Robert Haren and David Bassani.

10. At the end of the Department's stated review period, the Department received an e-mail from Susan Crile (dated February 4, 2010), two letters from James T. Towne, Jr., an attorney representing Mr. Haren and Mr. Bassani (dated February 11, 2010 and February 15, 2010) and a letter from Robert Haren (dated February 17, 2010). Ms. Crile's residence is approximately 1,085 feet from the Farrell/Millington greenhouse and Mr. Haren and Mr. Bassani's residence is approximately 1,170 feet from the same greenhouse.

11. Susan Crile's e-mail to Dr. Somers indicated that she lives next to Bonnie Farrell and Tony Millington and has owned her property for more than 30 years. She stated that she spends the entire summer at her house, along with long weekends from early May to mid-October. Ms. Crile stated that she knows what it is like to have problematic neighbors, but she finds Farrell/Millington to be exemplary neighbors. Ms. Crile stated that in the country everyone, except her, has dogs and livestock to some degree. Animals do occasionally make noise. She stated that ever since she moved to the area in the 1970's, all of the properties along the road have had a tradition of being farmed and that this land continues to be farmed. Ms. Crile stated that her studio is close to her property line with Farrell/Millington. She stated

that she spends almost every day during the entire summer painting in her studio. Ms. Crile indicated that she hears dogs from all over the neighborhood. She stated that the Farrell/Millington dogs only bark when a car or tractor dives by, which rarely happens on their small dirt road, or when she walks by their property on foot. Ms. Crile stated that as soon as she passes, the dogs stop barking. She also stated that she is a very light sleeper and she has never been kept awake by the dogs. She stated that the coyotes and coy dogs make more commotion in the night than the dogs in the neighborhood.

12. In a letter to Mr. Kimball dated February 11, 2010, James T. Towne, Jr., Esq., an attorney representing the complainants, attached documents and memoranda, including a copy of the Summons and Complaint served upon Farrell/Millington, and a letter that alleges the persistent and disruptive noise created by the animals left outside by his client's neighbors. He stated that these farm-like animals, if left in a protected environment, would not need to be left outside with a dog which is similarly left outside. He further states that Farrell/Millington are not operating a farm on the premises and are merely keeping livestock as pets. He stated that no commercial enterprise is being conducted on the premises. Mr. Towne stated that his clients have had to move out of their house because of the constant and persistent barking and the fact that Farrell/Millington refuse to make any accommodations to his clients.

13. In a letter from Mr. Towne to Mr. Kimball dated February 15, 2010, he attached seven photographs showing the applicant's farm. Mr. Towne stated that if a suitable enclosure was provided to house the livestock rather than the use of an abandoned greenhouse with no security door, it would not be necessary for the applicant to use the dogs as guard dogs. If they took this step, it would not be necessary to leave the dogs outside to howl incessantly at every noise and shadow. He further stated that if they had a properly maintained fence, it would prevent foxes and coyotes from attacking the animals. He stated that he does not believe that this farm operation qualifies under Section 308 and he believes that they have not exhausted other remedies, such as constructing a proper enclosure for the keeping of their domesticated animals.

14. In a letter to Mr. Kimball dated February 17, 2010, Robert Haren, one of the neighbors to Farrell/Millington, sent a log of the barking, disruptive and aggressive behavior exhibited by the guard dogs. He stated that this has been ongoing for over a year. Mr. Haren provided a more complete list of complaints from March 7, 2009 to December 13, 2009. In general, Mr. Haren's log documents the date and duration of barking emanating from the guard dogs; aggressive action by the Maremma dogs toward his dog, including an incident where his dog was bitten; the dates when he contacted the Town of Cambridge's Animal Control Officer, Town Supervisor, Washington County Sheriff, or the New York State Police; and case numbers issued by both the NYS Police and the Washington County Sheriff's Office.

15. On June 5, 2010, Dr. Somers talked to Cindy and Jim McGuire, who own a home on Center Cambridge Road in Cambridge, New York. They keep chickens within a coop on their property. Several years ago, an animal, which they believe to be a fisher, gained entrance to their coop and killed all of their chickens. Mr. McGuire stated that he saw the animal

leaning against the coop two days before the chickens were killed. He scared the animal away for two straight evenings and on the third evening, the animal found a way to breach the coop and kill the chickens. He stated that none of the poultry were left alive. The McGuires' home is approximately 1.4 miles from the Millington/Ferrell residence.

16. On July 12, 2010, Dr. Somers talked to Ben Shaw, owner of Garden of Spices Poultry Farm. Mr. Shaw informed him that he raises 5,000 pastured poultry, 3,000 to 4,000 ducks and 600 turkeys. He is also licensed by the NYS Department of Agriculture and Markets as a poultry processing facility. Mr. Shaw stated that based upon his experience, the top two predators within his geographic area are fox and hawks. He stated that depending upon site characteristics and location, fishers, mink, coyotes, owls, and domestic dogs also prey on poultry. Mr. Shaw stated that feral and domestic cats will prey on small chicks. He indicated that half of the people that bring birds to him for processing state that they have experienced losses from predation. Mr. Shaw informed Dr. Somers that he uses five Maremma livestock guardian dogs to protect his pastured flocks. He indicated that he has lost less than five birds from predators annually since his employment of the guardian dogs. In years past, he has lost over 100 poultry from fox and their young in one evening and he stated that trapping these animals met with only limited success. Mr. Shaw stated that he would, at times, sit in a field over night with a shotgun prior to employing the Maremmas. He said that if an individual controls the fox through trapping, then hawks become a problem and they will set up camp within the area if they know that the poultry are not protected. Mr. Shaw stated that he could not pasture his poultry without the use of his Maremma livestock guardian dogs. He stated that when the dogs bark, and they will bark at night, they are doing their job and protecting their wards from the many predators that exist. He stated that the use of dogs to protect poultry from predation has proven to be very effective and he would not be able to raise his pastured birds without them.

17. Ms. Farrell and Mr. Millington informed me that beginning with the employment of livestock guardian dogs on their property, they have been issued several Appearance Tickets by the Town of Cambridge's dog control officers. Ms. Farrell stated that Mr. Millington's first ticket, No. 0764 was issued on May 7, 2009. The Appearance Ticket was issued by Edward A. Holland, Dog Control Officer for the Town of Cambridge for harboring a dangerous dog. Ms. Farrell stated that this ticket was the result of the biting incident between their dog Rollie and their neighbor's dog Oprah. The second ticket, No. 689, was issued by Nancy J. Quell, Dog Control Officer for the Town of Cambridge, but not dated. That offense was for harboring dogs that bark non-stop. The last ticket, No. 690 was issued by M. Quell on October 26, 2009 for harboring a dangerous dog.

    On February 8, 2010 Dr. Somers talked to Nancy Quell, Dog Control Officer for the Town of Cambridge. She stated they (Edward Holland and her) have a log of the calls made to them concerning the Farrell/Millington guard dogs. Ms. Quell stated that Farrell/Millington have appeared in the Town of Cambridge's Court on several occasions, but the Judge dismissed the tickets. She stated that a written decision from the Court is not available. Ms. Quell indicated that State Trooper April Montgomery, from the Greenwich Barracks, has been to the farm and she may issue additional tickets.

On March 1, 2010, Dr. Somers received an e-mail from Garfield P. Raymond, Esq., an attorney representing Ms. Farrell and Mr. Millington. Mr. Raymond stated that he was not aware of any tickets issued by the State Police concerning noise from the dogs. He stated that there are no pending tickets in the Town of Cambridge's court. When Town Justice Janet S. DeCarlo took office, she requested a meeting because there was very little in her file concerning the neighbor complaints. She also wanted to discuss the three tickets that had been previously issued by the animal control officers. Mr. Raymond stated that the three tickets were dismissed by the Court on its own motion.

18. On May 4, 2010, Dr. Somers visited the Town of Cambridge's Office to obtain a copy of its dog ordinance. During his visit, Dr. Somers spoke with Justice DeCarlo. Dr. Somers asked Justice DeCarlo if she had anything in her records concerning citations issued by the State Police or any other tickets other than what was issued by the Town's Dog Control Officer. She informed Dr. Somers that the State Police out of Greenwich rode by the property and listened for the dogs. During that visit, the dogs did not bark. Dr. Somers also spoke with William Wakins, Supervisor, Town of Cambridge and asked the Supervisor if he was aware of problems within the Town concerning the indiscriminant killing of poultry by predators. He stated that he could not provide specifics, but he had heard of such problems within the Town where poultry has been killed by predators.

19. On June 17, 2010 Dr. Somers received an e-mail from Mr. Raymond concerning the appearance tickets issued by the Town's Dog Control Officers. He included in his e-mail a copy of a fourth complaint, dated April 22, 2010, made by Dog Control Officers Mr. Holland and Ms. Quell. The document stated that it is an "Information" accusation and identifies State and Local Law violations that occurred between October 20, 2009 to November 3, 2009. The document stated that Tony Millington knowingly and recklessly committed a crime by harboring a dangerous dog pursuant to Section 121 of the Agriculture and Markets Law and his dogs exhibited habitual barking on numerous occasions in violation of the Town of Cambridge's Dog Control Ordinance. According to Justice DeCarlo, she heard the case on May 18, 2010 and dismissed the action.

20. Dr. Somers made several attempts to contact Trooper Montgomery, NYS Police, Greenwich Barracks, case number 3299595 and Deputy Winters, Washington County Sheriff's Department, case number 46448. Dr. Somers also wrote a letter to both officers, dated June 29, 2010, concerning the disposition of their case concerning the livestock guardian dogs. Dr. Somers indicates that he has not heard from either officer to date.

21. In 1990 the Town of Cambridge enacted restrictions and regulations on the keeping or running at large of dogs within their jurisdiction. The local law states that it was enacted pursuant to Article 7 of the Agriculture and Markets Law (Licensing, Identification and Control of Dogs).

22. Section 2(A) of the local law makes it unlawful for any owner or any person owning or harboring any dog within the Town to allow their animal to engage in habitual loud howling

or barking as to habitually annoy any person other than the owner or persons harboring the dog. This section further states that barking at an intrusion or a disturbance shall not constitute a violation of the law. Subdivision D of that section states that it is unlawful to habitually chase or bark at motor vehicles or bicycles and subdivision E states that it is unlawful to habitually annoy or harass other domestic animals.

Section 3 of the Local Law identifies the entities that may enforce the Law, including the Dog Control Officer, Peace Officer when acting pursuant to a special duty, or Police Officer in the employ of or under contract to the Town. Section 4 of the local law states that any violation of Section 2 may lead to the seizure of a dog. If a dog is unlicensed, the dog may also be seized (§ 4 of Local Law No. 1, 1990). Section 7 of the Local Law states that any person who observes a violation of this law may file a signed complaint but "...two complaints, each originating from separate households, shall be required as the basis for enforcing the provisions of Section 2 Sub A of this Article." The latter refers to habitual loud howling or barking.

According to Department records as maintained by the Division of Animal Industry, Rio's New York State Dog License expires on December 31, 2010. Grace's New York State Dog License expires on May 31, 2011. Licenses are current for both of the Maremma livestock guardian dogs that reside on the Farrell/Millington property.

23. In an article written by Lauren Ware entitled "Poultry Predators – Protect Your Chickens From Predators," (http://smallfarm.about.com/od/farmanimals/a/poultrypredators.htm) Ms. Ware states that the most common chicken predators are neighborhood dogs, chicken hawks, weasels/ermine/minks, foxes, raccoons, coyotes, feral and domestic cats, bobcats, owls, snakes (chicks), rats and fisher cats. She states that dogs are "...great protectors..and will keep everything from sheep to cattle to baby chicks safe from marauding predators... ."

24. The Maremma Sheepdog Club of America published a guide entitled *Maremma Livestock Guarding Dogs the Northern Way* (McClellan, 1988) on the use of Maremma dogs for guarding livestock. McClellan writes on page 11 that: "...[t]he way of guarding that projects farthest into the area surrounding its territory is barking. Guardian dogs do not usually bark at nothing, but may seem to because their senses reach out farther than men. Sensing something improper or out of place in the distance, the guardian will bark. If the suspected threat moves no closer, the barking will remain rather relaxed and contain only a message of presence. If the threat moves closer, the message of the barking will change to one of increased agitation and aggressive intent. And, if the threat moves closer still, the barking will give way to snarls and growls that tell the adversary it is only a few steps away from physical attack." On page 13, McClellan writes that: "...[p]redators, hearing a dog's barking and/or detecting its scent marking, will usually go elsewhere. The advertised presence of a dog is enough to deter the predators and send it to easier picking. Usually following the path of least resistance, it is easier to go where a meal will not be so much work. Also, predators try very hard to avoid injury to themselves because injury in the wild, even through relatively minor, can be fatal by preventing its acquiring food." Ms. Farrell and Mr. Millington

stated that since they obtained their guardian dogs, they have not lost any livestock to predation and the presence of the dogs has been enough to deter any perceived danger.

25. In a publication by Robin Rigg entitled *Livestock Guarding Dogs: Their Current Use World Wide*, she states that livestock guarding dogs protect animals from external threats. They are social animals, stay in a group and protect the flock as if they were part of its group. They are attentive to their wards, drive away intruders and livestock guardian dogs are "...the most cost effective method of non-lethal predator control." Benefits of their use on the farm include: not needing to corral animals at night, they alert the owners if they perceive a danger, they protect the owner's property, they reduce predation, and they allow for a more efficient use of pastures. A review of literature on Maremmas states that the dog is strong, agile, intelligent and courageous, but not aggressive. (Robin Rigg, 2001, www.canids.org/occasionalpapers/).

26. In the USDA Information Bulletin Number 588, as revised 1999, the authors state that the use of livestock guardian dogs have made a resurgence due to Federal restrictions on the elimination of predator species, the inability to provide protection from certain predators using conventional methods of livestock protection, and the desire by some individuals to use nonlethal methods to control predation. The dogs, when acquired at a young age, assimilate and become part of the flock they are protecting. They stay with the flock day and night and act independently; they are not pets. The authors state that both coyotes and foxes avoid confrontation and stay a reasonable distance from the livestock when they know that a guardian dog is present. They suggest that the sole use of guarding dogs to protect livestock from predation does not eliminate the need to use other control methods. Other methods mentioned include the use of electric fences and mechanical scare devices, corralling animals at night, keeping the barn or corral illuminated at night, keeping the animals near human habitation; or trapping and shooting predators. (USDA Information Bulletin Number 588, 1999, Livestock Guarding Dogs Protection Sheep from Predators, http://www.nal.usda.gov/awic/companimals/guarddogs/guarddogs.htm).

27. In an article on mink, written by Edward K. Boggess, Wildlife Program Manager, Minnesota Department of Natural Resources, Mr. Boggess states that the best way to prevent damage to livestock from mink is to confine the animals in fenced areas and seal all openings larger than one inch. He states that methods to frighten the animal are not effective, but live trapping can be effective. Mink may attack and kill domestic poultry, ducks, and rabbits. They may also exhibit a "surplus killing" behavior when an abundance of food is present, "...such as a poultry house full of chickens." (Edward K. Boggess, 1994, Mink, http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1035&context=icwdmhandbook).

28. An article found on "BackYardChickens.com" indicates that fisher cats are a member of the weasel family which feed on mammals and poultry. When fishers gain access to the chicken coop, they kill many chickens at one time. (http://www.backyardchickens.com/LC-FisherCat.html) Wikipedia concurs with this assessment of the fisher and their desire to kill a large number of chickens if they gain access to the poultry house. (http://en.wikipedia.org/wiki/Fisher_(animal))

29. Agriculture and Markets Law §308(1)(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. Ms. Farrell indicated that they do not participate in the Agricultural Environmental Management Program.

30. Pursuant to Section 308(1)(b) of the Agriculture and Markets Law, the Commissioner shall consult appropriate state agencies and any guidelines recommended by the Advisory Council on Agriculture. On July 26, 2010, the reviewer for the Advisory Council on Agriculture stated that "[p]rotecting farm animals form predators is a basic function of farm management. The use of Maremma guard dogs is one means of providing protection. The issue of dogs barking is not new." He stated that in a prior review, the Commissioner found the use of such dogs, which were used to protect livestock, was considered a sound agricultural practice. The reviewer indicated that attacks on farm animals from predators is not a new issue. Coy dogs, coyotes and other wild creatures are becoming an increasing problem to farmers. He indicates that there is a growing trend for smaller farms, such as the Farrell/Millington farm, to produce natural products and notes that "[t]hese smaller farms need to have measures available to them to carry out their farm operation. The use of the Maremma dogs is one such tool."

## 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; the Natural Resources Conservation Service and the Sound Agricultural Practice Guidelines[1] by which agricultural practices are evaluated, I find the following:

1. Ms. Farrell and/or Mr. Millington were cited four times for violations of Town of Cambridge Code provisions that restrict the harboring of a dangerous dog and restrict the habitual barking of dogs. According to Justice DeCarlo, all of these charges have been dismissed by the Town of Cambridge Justice Court. The Department has found no evidence or received other information indicating that Ms. Farrell and/or Mr. Millington have been cited for any violation of federal or State law pertaining to their use of the livestock guardian dogs on the farm.

[1] 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 use of livestock guardian dogs to protect the farm's livestock from predation resulted in bodily harm or off-site property damage on one occasion. A dog in the employ of the farm attacked and bit a neighbor's domestic dog in the spring of 2009. Shortly thereafter, the farm landowners sent the dog off the farm for retraining. After training, that dog was sent to a farm in Vermont and will not be returned to the Farrell/Millington farm. As such, the Town dismissed the Appearance Tickets concerning the harboring of a dangerous dog.

3. The use of Maremma livestock guardian dogs for the protection of poultry and other livestock from predation has achieved the intended result in a reasonable and supportable way. The use of Maremmas is very efficacious in this case since Ms. Farrell and Mr. Millington have not lost any livestock since the livestock guardian dogs were put into service. It is not feasible to move the greenhouse/associated pasture farther away from neighboring houses. Confining the poultry at night does not guarantee protection from predators. It would be very difficult to keep predators, such as mink and fishers, out of the greenhouse since the structure does not have a continuous foundation and the exterior of the greenhouse is made of plastic.

4. Information received by the Department indicates that fox, coyotes, hawks, mink and fishers are in the area of the Farrell/Millington property. Since the poultry, sheep, goats and other small livestock cannot protect themselves from most predators, some form of protection is necessary. Maremma livestock guardian dogs have been utilized for centuries to protect livestock because the dogs instinctively bark to ward off potential predators and aggressively defend their wards from dangerous situations.

**Conclusion**

Based on the foregoing and in accordance with section 308 of the Agriculture and Markets Law, I conclude that, from a noise perspective, the use of Maremma livestock guardian dogs to protect poultry and other livestock on the Farrell/Millington property, as described above, is sound. I have taken into consideration the lawsuit filed against Ms. Farrell and Mr. Millington by their neighbors, David J. Bassani and Robert Haren, but barking is the natural method used by livestock guardian dogs to warn potential predators that these livestock are protected.

8/17/10
Date

Patrick Hooker
PATRICK HOOKER
Commissioner of Agriculture and
Markets of the State of New York