

**SOUND AGRICULTURAL PRACTICE  
Opinion Number 13-1**

**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 Lori Bennett and William Kolasa, Elderberry Farm Alpacas, Town of Allegany, Cattaraugus County

**REQUESTER:** William Kolasa and Lori Bennett  
3703 Carey Hollow Road  
Allegany, NY 14706

**Preliminary Statement**

On November 30, 2011, Ms. Lori Bennett and Mr. William Kolasa, owners of Elderberry Farm Alpacas, submitted an e-mail to Dr. Robert Somers, Manager of the Department's Agricultural Protection Unit, describing their farm operation and requested that the Commissioner issue an Opinion as to the soundness of the use of a livestock guardian dog to protect alpacas from predation. They indicated that the request stems from a neighbor complaint about the barking of the livestock guardian dog. Subsequently, they were served with a violation of the Town of Allegany's Dog Control Ordinance. The Department conducted an Agriculture and Markets Law (AML) §305-a review and determined that the Town of Allegany's administration of its Code, Dog Control Ordinance Section 9, unreasonably restricts Elderberry Farm Alpacas in violation of AML §305-a (1). The Town has adjourned and held in abeyance enforcement of the violation pending issuance of the Department's Sound Agricultural Practice Opinion.

The Department conducted a sound agricultural practice review of the use of a livestock guardian dog on property owned by Mr. Kolasa and Ms. Bennett. The following information and findings have been considered in reaching this Opinion.

**Information Considered in Support of the Opinion**

1. Mr. Kolasa and Ms. Bennett own and operate Elderberry Farm Alpacas which consists of approximately 19.75 acres. Two acres are fenced for pasture and include a barn. Ms. Bennett indicated on November 30, 2011 that the herd consists of 24 to 26 haucaya alpacas of varying ages and a 9-year old Great Pyrenees livestock guardian dog named Aspen. The dog is used to protect the alpacas from predation and to protect the herd from the encroachment of deer. Aspen came with the herd when they were purchased by Kolasa/Bennett over five years ago. The alpacas and the livestock guardian dog were moved to the property in July of 2010. The owners state that Aspen is trained to protect the herd from predation and from deer, which may carry meningeal worm infections. Mr. Kolasa and Ms. Bennett indicated that no alpacas have been lost to predation during the dog's tenure, but they did lose an alpaca from the meningeal worm. Ms. Bennett stated that she is currently marketing the fiber from her alpacas to the public. According to Department records, the farm (tax parcel 93.004-2-10) was added to Cattaraugus County Agricultural District No. 7 on May 17, 2011.

2. On or about December 8, 2011, Dog Control Officer Al Morrow issued Lori Bennett an appearance ticket for violating Town of Allegany Dog Control Ordinance Section 9. Section 9(1) states that "[n]o person shall keep or harbor any dog that is accustomed to howl or bark continuously for an unreasonable length of time to the annoyance of persons other than the owner." The Appearance Ticket (No. 51215) indicated that Ms. Bennett had to "answer the charges of barking dog." Upon receipt of the ticket Ms. Bennett contacted the Department and requested a review of the local law for compliance with Agriculture and Markets Law (AML) §305-a (1).
3. AML §305-a protects the on-farm production, preparation and marketing of livestock from unreasonable local restrictions. Local animal control laws usually include restrictions on dogs, which may be problematic for farmers. Laws that affect dogs may unreasonably restrict a farm operation since farmers often use working dogs to herd livestock and to protect livestock and/or crops. For example, guard dogs are commonly used to protect more vulnerable animals, such as alpacas, from feral dogs, coyotes, and other wild animals. These guard dogs usually bark when they sense a threat to their flock. The use of working dogs on the farm is a practice that contributes to the production, preparation, and marketing of livestock and is therefore protected from unreasonable local restrictions pursuant to AML §305-a.
4. On December 23, 2011, Mike Saviola, Department Associate Environmental Analyst, conducted an on-site review of the agricultural practice. Mr. Saviola observed the structures on the farm (fenced pasture, barn, home) and the animals present. He stated that during his field visit he observed the dog bark once at a passerby who was walking their dog. Mr. Saviola stated that once the passerby walked beyond the property line, the dog stopped barking and re-entered the barn. He stated that the barn and property is approximately 20 to 30 feet higher in vertical distance from the road and there is a significant vertical and horizontal buffer from the road. He stated that the property is effectively screened by vegetation, particularly in the summer. The landowner informed him of the importance of fencing and the need to exclude white tailed deer from the property because deer carry a meningeal brain worm, which is lethal to alpacas. Ms. Bennett indicated that she is marketing the fiber from the alpacas, and intends to package and sell their manure.
5. On March 15, 2012, Dr. Somers wrote Supervisor Hare a letter stating that the Department had completed its review of the Town of Allegany's Zoning Code, and the administration of the same, as it pertains to Elderberry Farm Alpacas, for compliance with (AML) §305-a (1). He informed Supervisor Hare that based upon its review in this matter, the Department had concluded that issuing an appearance ticket to Ms. Bennett unreasonably restricts Elderberry Farm Alpacas in violation of AML §305-a (1). The Department had further concluded that the Town had not demonstrated that the public health or safety was threatened by the use of a livestock guardian dog on the subject farm operation. Supervisor Hare was informed the Town must not pursue enforcement of the Dog Control Ordinance against Mr. Kolasa and/or Ms. Bennett for the use of a working dog by the Elderberry Farm Alpacas farm operation.
6. In a letter dated March 29, 2012 to Danielle Cordier, Department Senior Attorney, Town Attorney Wendy Tuttle indicated she would request an adjournment from the Town

Justice Court for the pending charges against Lori Bennett and that the matter would be held in abeyance until the Commissioner issued the Sound Agricultural Practice Opinion.

7. On April 10, 2012, Dr. Somers visited the farm to talk to Mr. Kolasa and Ms. Bennett and observe the practices being reviewed. Dr. Somers observed the layout of the farm and the position of the residence (which is under construction) in relation to the alpacas. The home has two atrium doors which overlook and are adjacent to the paddock holding the alpacas and the livestock guardian dog. The landowners installed exterior lights on the house and also had two high powered flashlights, one by the atrium doors and one by the front door on the first floor to use in the evening to investigate the dog's barking. The landowners report that Aspen was trained by her breeder to be around alpacas, is not aggressive, does not bark when company visits the farm and does not leave the property other than for vet visits and annual grooming. The dog is tethered to the barn and only barks when the fence is broken, an alpaca is out of the fence, the males are visiting the females, when neighbors walk dogs in front of the property, and when a bear or deer is near the herd. Mr. Kolasa and Ms. Bennett stated that they use Aspen because she is part of the herd and sits well with the alpacas; that donkeys chase after smaller alpacas (infants and young); and llamas are not proven effective guard animals to protect the herd from coyotes and bear. They stated that the dog has different barking sounds. First, there is a low rumble, then, she pounds on the ground when something is wrong and she barks at the same time.
8. On April 3, 2012, the Department mailed letters to six property owners adjoining the Bennett/Kolasa property notifying them of the agricultural practice review and inviting them to comment on the use of a livestock guardian dog to protect alpacas from predation on the Bennett/Kolasa property. The Department received six responses providing comments on the practice. Two letters are from adjoining property owners; one of which is the complaining neighbor from which this opinion stems; three letters were unsolicited and sent from property owners who live in the vicinity of Carey Hollow Road; and one is from an attorney representing the complaining neighbor.
9. The three letters from residents living on Carey Hollow Road, who are not directly adjacent to the Kolasa/Bennett parcel, commented on the barking of the livestock guardian dog as they walked in front of the Kolasa/Bennett parcel. One of the residents said that once all the land in that area was pasture land and horses are currently present and there was no need for a livestock protection dog. Another resident stated that another landowner keeps domestic rabbits on their property and they have not been attacked. The residents indicated that to their knowledge, no animals have been lost to predation. Two of the residents stated that the livestock guardian dog has a low booming bark that echoes in the valley. One stated that the dog's barking is too excessive for a trained animal. Another resident stated that the alpacas are fenced and there are no threats to the alpacas. She further asserted that as common courtesy the landowners (Kolasa/Bennett) should drag the dog in the house when it barks.
10. An adjacent neighbor that, as described in his letter, lives 300 feet east from where the dog is tethered stated that he has heard the dog bark at all hours of the day and night. He asserts that on April 11<sup>th</sup> 2012 the dog barked 40 times at 3 a.m. and 50 times at 5 a.m. He stated that the dog has a very deep bark that can be heard through closed windows and it

often wakes them up. The neighbor said that he has not witnessed anyone at the Bennett/Kolasa residence trying to quiet the dog. He further mentioned that the dog barks at neighbors as they walk in front of the Bennett/Kolasa residence.

11. The complaining neighbors directly across the street from Elderberry Farm Alpacas state that the subject dog has a very loud, very deep bark that travels into their yard, living room and bedroom. They state that the dog barks out of boredom for hours at a time and at all hours of the day and night; and that they have extensive logs and video tape to substantiate this statement. These neighbors state that the dog barks at all walkers in the public street and barks at them when they are in their yard and on their deck; that they feel threatened because the dog behaves aggressively when they have had dogs in their yard; and that the dog also barks at wildlife in their yard. They state that they have never witnessed an actual threat to the alpacas when the dog was barking. These neighbors further state that the dog also barks while the landowners are in their yard attending to the alpacas; and that the dog has barked for periods in excess of 30 minutes while facing their property.
12. An attorney representing the complainants responded to the Department's inquiry stating that he is not aware of any particular dangerous or threatening predators in the neighborhood. He stated that the Town's Dog Ordinance prohibits the keeping or harboring of a dog that annoys others because it howls or barks continuously for an unreasonable length of time; and further prohibits dogs from barking at persons walking on a public street. His clients are concerned about the excessive and unreasonable noise from the guard dog who barks at all sorts of distractions, day and night, when it has nothing to do with normal agricultural activities. He stated that his clients have attempted to reasonably settle this issue with their neighbors. The attorney offered the following alternatives to mediate the situation: house the alpacas and the dog in the barn at night; erect a solid fence across the front of the property to shield people walking in front of the property from the dog's view; and keep the dog in the barn or another location when the owners are outside working with the alpacas. The attorney further stated that he questions whether Ms. Bennett or Mr. Kolasa is engaging in legitimate agricultural activities on their property. He stated that the AML and the Town Ordinance suggests that there is no reason for having a barking dog unless it was used for legitimate agricultural purposes.
13. The complainant's attorney questions whether Ms. Bennett and Mr. Kolasa are engaged in legitimate agricultural activities on their property. He does not, however, provide any information or documentation that Ms. Bennett and Mr. Kolasa are not engaged in such activities. Agriculture and Markets Law (AML) §308(1)(a) states that the Commissioner shall, in consultation with the State advisory council on agriculture, issue opinions upon request from any person as to whether particular agricultural practices are sound. AML §308(1)(b) states that sound agricultural practices refer to those practices that are necessary for the on-farm production, preparation and marketing of agricultural commodities. AML §308(3) provides, in part, that on any land located within an agricultural district or land that receives an agricultural assessment, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued by the commissioner. An entity does not have to meet the AML §301 definition of a "farm operation" in order to receive an opinion from the Department that particular agricultural

practices are "sound"; however, the Department determined, pursuant to a separate AML §305-a review (and two site investigations), that Elderberry Farms Alpacas constitutes a "farm operation" as defined in AML §301(11). AML §301(11) provides, in part, that a "farm operation means the 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...."

14. On June 19, 2012, Dr. Somers spoke to Al Morrow, Town of Allegany Dog Warden. Mr. Morrow stated that he has visited the Kolasa/Bennett Property for the past two years in response to complaints from the complainants; from before dawn into the evening (10 p.m.) and every time in-between. He indicated that during his investigation he did not hear the dog bark repeatedly for long periods of time and at most, he heard the dog bark twice ("woof, woof"). On one occasion, Mr. Morrow stated that he received a complaint from the complainant and it took him 20 to 25 minutes to get to her house and she had left the house to run an errand. He spoke to her husband and asked about the dog. Her husband stated that he had not heard the dog bark for the past two or three days. Mr. Morrow stated that when he receives a complaint, his practice is to pull into the driveway of the dog owner's house, or park out in front of the yard, listen to the dog bark, and then pull away from the house/property and park out of sight of the animal. If the dog stops barking, he considers the barking to be normal because of his intrusion into the animal's space and he does not consider the dog's barking to be a nuisance.

Mr. Morrow stated that every time he receives a call, he checks out the complaint to see if it is warranted; will not write a ticket to a dog owner based upon someone else's complaint; and records each complaint in a notebook and marks down the time of the complaint. He stated that he refused to write a complaint to Kolasa/Bennett, but was "ordered" by the Town Attorney to write the ticket that he issued to them. He said that he informed the Town Attorney that the ticket was being written under duress. He told Dr. Somers that over a two year period, and many visits to the area, when the dog barked while he was there, it did not bark more than twice. Mr. Morrow stated that based upon his experience and 20 years of service as a dog warden, he does not consider the Kolasa/Bennett dog to be a nuisance animal.

15. As part of the agricultural practice review Dr. Somers provided Ms. Bennett and Mr. Kolasa with written follow-up questions to gather additional information regarding their use of a livestock guardian dog:
  - a. Do the landowners investigate the dogs barking? Ms. Bennett and Mr. Kolasa stated that "...no matter what time of day or night if we hear her bark we always check to see why." They indicated that she rarely barks for more than a few minutes and they rely on her senses to alert them when danger is present. "Aspen barks at dogs or horses walking in front of the property, turkeys in the neighbors field, stray dogs, coyotes, deer, bear, trespassers in the woods, and when an alpaca is out of the fence or when the males/females comingle or when the alpacas send out a warning call." Ms. Bennett and Mr. Kolasa state that they have observed that the livestock guardian dog does not bark at people walking in front of the property without dogs, children, bike riders, visitors when the owners are home, their farm

hands, construction workers, propane delivery person, mail carriers, the dog warden, and when town board members stand outside of the property and try to make Aspen bark.

- b. Is it feasible to lock the alpacas and the livestock guardian dog in the barn at night? Ms. Bennett and Mr. Kolasa wrote that the alpacas are never locked into the barn at night unless there is severe weather, for several hours at a maximum. They state that alpacas are very sensitive to stress and being locked into a barn can promote life threatening ulcers to form. They stated that this is a common ailment of alpacas and is expensive to treat. Alpacas are ruminants and need to be outside to prevent behavior that leads to health problems. Aspen is also only placed in the barn when severe weather strikes. For the dog's safety, from possible threat by the neighbors, the landowners state that they must keep Aspen on a 40 foot tether which is secured to the barn. Once they construct a more permanent fence, Aspen may be able to run without the tether.
- c. Is there a possibility of placing screening in front of the property to limit Aspen's view? Ms. Bennett and Mr. Kolasa stated that the dog needs to have an open view to determine if stray and unleashed dogs, deer, bear and other threats are present and may enter their property from the other side of the road. This is especially important since Aspen is tethered to the barn and the dog's only line of defense is her bark. If predators were to sneak up along a fence fronting the property, they would be able to get to an alpaca before Aspen could respond.
- d. What is the frequency of the dog's barking during the day and during the night? Ms. Bennett and Mr. Kolasa state that the livestock guardian dog barks every day or night for a few seconds each time and rarely exceeds two minutes. When she does exceed two minutes, she stops barking once they investigate the threat. Based upon the owners' experience, they do not feel that Aspen needs to go through additional training. They stated that they have never witnessed a behavioral trait that needs to be corrected.
- e. Have any other observations been made about the behavior of the livestock guardian dog? Ms. Bennett and Mr. Kolasa stated that they purchased their 20-acre parcel on December 31, 2009. In March of 2010, they lost their home to a fire while they were constructing the barn. They lived in a camper on the property next to the pasture and Aspen barked often at that time due to her new surroundings. They indicated that they have received many complaints from the neighbor across the street; received visits from the former dog control warden and the new dog warden, Al Morrow; and received numerous calls from a representative of the local ASPCA. Ms. Bennett stated that Mr. Morrow visited the farm over a period of ten months, day and night and at random times. He informed Bennett/Kolasa that the only time he heard Aspen bark was when he came to their door in December, 2011 to give them a dog barking ticket.
- f. Do you have examples of specific predation issues?

- i. In December of 2009 one of the gelded males was found paralyzed in the pasture from the neck down. The attending veterinarian said that the paralysis could have been caused by either the meningeal worm or from a spinal injury from a predator or a fight with another male. After months of rehab, the alpaca can walk, stand, rise and crouch with some difficulty. Due to his condition, he would be completely exposed to a predator.
    - ii. A second issue occurred when they found one of the intact males laying down when it should have been up and active. The alpaca was taken to the Springville Veterinary Hospital and as symptoms worsened, moved to Cornell University. His condition continued to deteriorate until he was euthanized. An autopsy found tracks in the brain indicating meningeal worm.
    - iii. Another gelded male was observed walking with a lame hind leg. He was stalled, treated for meningeal worm and put back out to pasture in three days.
    - iv. A young gelded male was found with a detached retina that left him blind in his left eye. Due to his blindness, it makes him more susceptible to a predator attack.
  - g. Ms. Bennett and Mr. Kolasa state that it is vital to keep white tail deer off of their property and away from the alpaca herd. It is their opinion that the best option to accomplish this is through the use of a livestock guardian dog. The dog also assists with separating fighting alpacas, herding them to safety or helping the owners herd them for routine vet care. She also alerts the owners to the onset of labor when a cria is expected. She has alerted the owners where a fence issue has arisen or when the genders mix. The owners state that there is no better method, camera, fence, or device that can accomplish all of these jobs well and do it efficiently.
16. A paper authored by William Franklin, Ph.D. and Kelly J. Powell<sup>1</sup> examines sheep predation in the United States. The authors state that coyotes account for over 60% of predation on sheep followed by dogs at 13%. They state that none of the methods used to protect defenseless animals from predation is 100% effective, but an integrated predatory management scheme is most effective. Such methods include both preventative and selected control methods, such as fencing coupled with a guard animal. The authors state that dogs are used most often, followed by llamas and then donkeys. Boyd and Kelly Cummings ([www.ariACADEMY.com](http://www.ariACADEMY.com)) concluded that llamas and donkeys have few defenses against dog packs and other large predators. In their research, they found that livestock guardian dogs are fearless and will protect their herd to the death once they have bonded with their wards.
17. In *Livestock Guarding Dogs: Their Current Use World Wide*, Ms. Robin Rigg 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

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<sup>1</sup> Franklin, William L., Ph.D. and Kelly J. Powell, M.S. March, 2006. Guard Llamas – A Part of Integrated Sheep Protection. The Camelid Quarterly.

protect the owner's property, they reduce predation, and they allow for a more efficient use of pastures (Robin Rigg, 2001, [www.canids.org/occasionalpapers/](http://www.canids.org/occasionalpapers/)).

18. According to a publication from the Great Pyrenees Club of America (*Great Pyrenees Club of America: Livestock Guard Dogs*. Rev. 1991) 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." Department Agricultural Resources Specialist Matt Brower contacted Jean Cave-Pero, President of the Great Pyrenees Club of America, in connection with a prior sound agricultural practice review involving the use of Great Pyrenees livestock guard dogs and alpacas. Ms. Cave-Pero states 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.
19. In a prior sound agricultural practice review Mr. Brower contacted Dr. Elise Christensen, DVM, a resident in animal behavior at the Cornell Animal Behavior Clinic, to discuss the use of Great Pyrenees as livestock guard dogs. 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.
20. The New York State Department of Environmental Conservation's (DEC) web site provides a synopsis on the Eastern Coyote ([www.dec.ny.gov/animals/9359.html?showprintstyles](http://www.dec.ny.gov/animals/9359.html?showprintstyles)). The synopsis states that coyotes live throughout upstate New York and they eat whatever "...is easiest to find or catch and kill." It is estimated that during the summer, the statewide population exceeds 20,000 animals. Emilio Rende, Wildlife Biologist with the NYS DEC, Allegany Regional Office, stated that there are ample deer and coyotes in the area where the farm is located. He stated that their advice to alpaca farmers is to allow hunting if their property is large enough. They have also advised alpaca farmers to trench around the pasture and put a layer of gravel in the trench. He stated that this is an effective way to keep snails and slugs, which may be carriers of the menigeal worm, out of the pasture. Brian Davis, District Manager with the Cattaraugus County Soil and Water Conservation District said that coyotes are prevalent in the county. He indicated that he considers them to be an invasive species because of the sheer number of animals present.
21. The United States Department of Agriculture (USDA) Information Bulletin Number 588 (as revised 1999) states that the use of livestock guardian dogs has 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 Protecting Sheep from Predators)

<http://www.nal.usda.gov/awic/companimals/guarddogs/guarddogs.htm>

22. Ms. Bennett stated that several of the alpacas have been affected by the Meningeal worm and that it is important to keep deer off of the property. Meningeal worms (*Parelaphostrongylus tenuis*) attack the central nervous system and create neurological problems in alpacas<sup>2</sup>. Once an alpaca shows signs of contracting the disease, it is usually fatal. Partial recoveries leave physical impairment. Dr. Appleton stated that white-tailed deer is a host to the parasite *P. tenuis* and snails and slugs are intermediate hosts. The best method of protecting the alpacas from contracting this parasite is to keep the deer off of the pastures and away from the alpacas. Dr. Appleton suggests that the best way to control snails and slugs is to remove all of the vegetation in the alpaca's outdoor pens and kill the vegetation around the pen's perimeter.
23. On March 13, 2006 Matt Brower, Department Associate Environmental Analyst, 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 for a prior Sound Agricultural Practice Opinion. Mr. Green stated that he has worked extensively with Great Pyrenees guard dogs and that their behavior is based on instinct. 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.
24. 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. Brian Davis, District Manager for the Cattaraugus County Soil and Water Conservation District, stated that the farm is not a participant in AEM. He indicated that the District does not have any practices for alpaca farms per se, but they can correct erosion issues in the pasture if they are present.

### Findings

Based upon the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture; the New York State Department of Environmental Conservation; the New York State College of Agriculture and Life Sciences at Cornell; the Natural Resources Conservation Service and the Sound Agricultural Practice Guidelines<sup>3</sup> by which agricultural practices are evaluated, I find the following:

<sup>2</sup> Walt Shiel interviews Judith A. Appleton, Ph.D. and Michael S. Duffy, Ph.D. Cornell University, Ithaca, NY. Quest for a Meningeal Worm Vaccine. Alpacas Magazine

<sup>3</sup> 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

1. The Department has found no evidence or received other information indicating that Kolasa/Bennett have been cited for any violation of federal or State law as a result of the guard dogs. Ms. Bennett was summoned to appear in the Town of Allegany Court for an alleged violation of the Town's Dog Control Ordinance. This matter has been adjourned pending issuance of this Opinion. The Department determined pursuant to an AML §305-a review that enforcement of the Dog Control Ordinance was unreasonably restrictive in violation of the AML.
2. The Department has found no evidence that the use of the livestock guardian dog has resulted in bodily harm or property damage off the site. Neighbors have complained about the dog's barking, but none have produced medical records indicating that the use of the livestock guardian dog has resulted in bodily harm.
3. The use of the livestock guardian dog for the protection of livestock from predation has achieved the intended result in a reasonable and supportable way. The dog's barking indicates that she is aware of real and perceived danger to her wards and that her barking warns predators that she is present and is there to protect them, including the impaired alpacas that would have difficulty protecting themselves. The Town's Dog Warden, Al Morrow, stated that based upon his experience and more than 20 years of experience as a dog warden, he does not consider the Kolasa/Bennett dog to be a nuisance animal. Regional New York State Department of Environmental Conservation has confirmed that there are ample deer and coyotes in the area where the farm is located. Further, Cattaraugus County Soil and Water Conservation District staff has indicated that coyotes and deer are prevalent in the area. Protecting the alpacas by confining them in the barn at night is not an alternative because alpacas are not accustomed to this type of environment. Confining the dog in the barn would not work because the dog needs to be with the alpacas to protect them. Fencing the front yard so that the dog cannot see passersby is not an alternative because this may inhibit the dog from seeing a predator approach and get into the pasture.
4. Information received by the Department indicates that coyotes and deer are in the area of the Kolasa/Bennett property where the alpacas are located. Since the alpacas have no way to protect 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. Further, Mr. Kolasa and Ms. Bennett have experienced the loss of an animal, and impairment of two others, from meningeal worms (*Parelaphostrongylus tenuis*). It is important that the guard dog is aware of the presence of deer on the property and takes measures to scare the animals away from the pasture used by the alpacas. The landowners have also demonstrated that a livestock guardian dog is needed to warn them if the alpacas are out of their confinement, when the genders mix or when the males fight with one another.

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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.

**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 a Great Pyrenees livestock guardian dog to protect alpacas on the Kolasa/Bennett property, as described above, is sound.

2-12-13  
Date

  
DARREL J. AUBERTINE  
Commissioner of Agriculture and  
Markets

