

# FAX TRANSMITTAL SHEET

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FAX sent to: Shay Totten

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Agency of Agriculture Food & Markets

October 15, 2010

Doug Nelson  
 Nelson Farms, Inc.  
 Big Back Ridge  
 c/o Valsangiacomo, Detera & McQuesten, P.C.  
 172 N. Main St.  
 PO Box 625  
 Barre, VT 05641-0625

Re: Irasburg facility: Area of required secondary fencing and design of secondary fencing – variance

Dear Mr. Nelson:

This letter responds to the facility's request for a variance to the secondary perimeter fencing requirement of subsection (c) of Section E.702.1 of Act 156 (2009 Adj. Sess.). Act 156, Section E.702.1(c)(1) required the secretary to approve the secondary fencing and subsection (d) specifically authorized the secretary to grant a variance from the fencing requirements of the Rules Governing Captive Cervidae for the secondary fencing.

The facility submitted a general variance request on September 10, 2010, along with its submission of Dr. Kroll's "Proposed Management Plan for Nelson Farms, Inc." We discussed the proposed management plan, including the facility's request for a variance related to the secondary fencing requirement, on September 21, 2010 and September 30, 2010. On October 8, 2010, Agency personnel visited the facility and observed improvements to the existing perimeter fence and confirmed the facility has been preparing for secondary fence construction by clearing vegetation from the exterior of the existing perimeter fence. The Agency received the facility's final proposed secondary fencing design on October 12, 2010. As a result of our discussions and the Agency's observations, the Agency grants a variance to the areas of the facility's existing perimeter fence that will require construction of secondary fencing, the requirement that it be constructed on the interior of the existing fence, and the fencing design requirements of the Rules Governing Captive Cervidae, as set forth in this letter.

#### General

The Agency agrees with the facility's position that the legislature, in Act 156, Section E. 702.1, seemed most concerned about the potential risk of disease transmission through direct contact between whitetails on each side of the existing perimeter fence. The Agency agrees the aerial image on page 3 of the Kroll document does not accurately depict the three separately fenced areas that exist at the Irasburg facility although it accurately describes the bison area as separately fenced but contiguous to the main enclosure. The Agency recognizes the elk breeding area is likewise separately fenced but contiguous to the main enclosure. The breeding area also has a fenced "dead zone" area that serves as a buffer space between the breeding area and main enclosure.



Variance for area of shared fencing along bison and elk breeding areas.

The Agency agrees with the facility's assessment that the bison area and its fencing provide an area of buffer between the native free-ranging cervidae outside the facility and the native cervidae within the main enclosure. The existing bison area's interior and perimeter fence, in essence, acts as a secondary fence for the main enclosure where the native cervidae are located. The Agency also agrees with the facility's assessment that the elk breeding area, with its "dead zone" and interior fencing, likewise acts as a secondary fence for the main enclosure, where the native cervidae are located. Accordingly, the Agency agrees those portions of the main enclosure that are contiguous with the bison and elk-breeding areas already have a reduced possibility of contact between native cervidae within the main enclosure and those free-ranging outside of the facility.

The Agency agrees the intent of the secondary fencing requirement of Act 156 is met for those portions of the main enclosure that are contiguous to the bison area and the elk breeding areas. A variance from the requirement to construct secondary fencing is granted for those portions of the main enclosure contiguous to the bison and elk breeding population areas upon the following conditions:

1. Submit a map with GPS coordinates or other measurements to identify those areas of the Irasburg facility that encompass the bison and breeding areas along with a description of the current interior fencing and the gate locations along the interior. The map must also define those areas of main enclosure perimeter fencing, along with estimate of distance, which remain subject to the secondary fencing requirement of Act 156.
2. The bison and breeding area existing perimeter and interior fencing must be routinely inspected as required by the Rules Governing Captive Cervidae.
3. These routine fencing inspections shall be documented with the date, time, and name of inspector and the documents must be available at the facility for Agency inspection.
4. Any preventative or necessary maintenance or repair for these existing areas of secondary fencing must be noted on the inspection record and shall be attended to promptly.
5. These "buffer" areas shall be maintained devoid of native cervidae.
6. No cervidae shall be permitted to graze within the dead zone.
7. Any native cervidae discovered within the bison area or the elk breeding area or its dead zone shall be immediately documented, reported, and presented to the Agency for CWD disease surveillance.

The remainder of the main enclosure perimeter is required to have properly maintained primary perimeter fencing and secondary fencing constructed as required by Act 156.

Variance for secondary fencing design and construction

In order to meet the secondary fencing requirement of Act 156, construction of secondary fencing is required along the perimeter of the main enclosure at all locations where it is not contiguous to the bison area or breeding population area. The facility has already undertaken vegetation clearing and maintenance activities outside the existing perimeter of the main enclosure to prepare for construction of secondary fencing.

Although the design of a six strand electrified fence (12, 18, 30, 42, 60, and 72 inches) mounted on each side of the existing fence as proposed by Kroll is acceptable to the Agency, the facility does not believe the Kroll design is workable because antlered elk inside the facility will destroy the wires with their antlers, rendering the electrification useless and requiring constant repair, at great cost. The Agency shares the facility's concern that antlered elk will make short work of electrified fencing on the interior of the existing fence, destroying strands during the rut and compromising the intent of the strands on the interior during a time when potential contact with cervidae on the outside is most likely. The facility is also concerned about the costs associated with construction and maintenance of the Kroll design, which Kroll opined would "suffice to prevent nose-to-nose contact" while Act 156 requires the secondary fencing to "reduce the possibility" of contact.

The Agency accepts the facility's proposal to construct electrified fencing outside of the existing perimeter fence to reduce the possibility of contact between native cervidae inside and outside of the existing fence, particularly between the white-tails, as required by law. On October 12, 2010, the facility proposed three electrified strands mounted on wooden posts, strung 18, 30, and 42" from the ground, and located a distance of 18" from the existing perimeter fence. At 42", however, large native cervidae may reach over without receiving a charge. A variance from the requirement to construct a secondary perimeter fence on the inside of the existing fence and from the design requirements in the Rules for Captive Cervidae is granted upon the following conditions:

1. Construction of the secondary fence infrastructure shall be completed no later than November 1, 2010.
2. Electrification shall commence no later than November 8, 2010.
3. The electrified secondary fence shall be constructed with high tensile wires erected or suspended 18" from the existing perimeter fence.
4. The electrified secondary fence shall have four high tensile wires strung at 18, 30, 42 and 54" as measured from the ground level.
5. The electrified secondary fence shall be inspected a minimum of once every 24 hours to look for damage and native cervid or other animals that inadvertently become entrapped between the electrified fence and the existing perimeter fence.
6. Any cervid discovered between the primary perimeter fence and the secondary fence shall be immediately presented to the Agency for disease surveillance as required by Sec. E.702.1(f) of Act 156 (2009 Adj. Sess.).
7. The daily electrified fence inspections shall be documented with date, time, name of inspector, and voltage level, with any entrapment, fence malfunction, required repair or preventative maintenance noted.
8. The fencing shall remain electrified 24/7, year round, with prompt repair or replacement of any broken or malfunctioning component.
9. All high tensile wires shall be positive and the system grounded adequately to maintain at least one Joule of power at all times.
10. The voltage level of the fence shall be checked and recorded daily.
11. Daily fence inspection and voltage logs shall be available at the facility for Agency review.
12. Gates shall be kept shut and locked when not in use and have Texas-style cattle guards or other physical barrier to reduce the possibility of contact if gates are not equipped with electrification.

The Agency looks forward to an initial inspection of the required secondary fencing for compliance with the terms of Act 156 and this variance.

Sincerely,



Dr. Kristin Haas, State Veterinarian  
Director, Food Safety and Consumer Protection Division

Cc: Roger N. Allbee, Secretary