

# FAX TRANSMITTAL SHEET

Date: 10/24/2010

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FAX Number: \_\_\_\_\_

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Number of Pages (including cover sheet) 5  
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Agency of Agriculture Food & Markets

October 14, 2010

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

Re: Irasburg facility – general request for variance

Dear Mr. Nelson:

This letter responds to the facility's general request for variance, submitted on September 10, 2010, along with submission of Dr. Kroll's "Proposed Management Plan for Nelson Farms, Inc." We discussed the proposed management plan, and the general request for variances, on September 21 and September 30. At this point in time, the general request for variance from the Rules Governing Captive Cervidae is denied for lack of specific information.

#### General

We agreed the Kroll document lacks benchmarks, timelines, and detail. Due to the lack of detail, the Kroll proposals for compliance with the individual animal identification, catch facility and annual herd inventory requirements of the Rules Governing Captive Cervidae are not acceptable to the Agency. The disease surveillance and annual white-tailed deer culling proposals in the Kroll document are likewise lacking in detail and unacceptable. While we have productively discussed the Kroll document and a number of creative, innovative and flexible methods for the facility to achieve substantial regulatory compliance with the Rules and Act 156, the facility has yet to supplement the Kroll document in writing to comprehensively address the outstanding regulatory compliance matters.

#### Animal Identification and Annual Herd Inventory

##### Breeding Population of Elk

Although not part of Kroll's recommendation, in order to accomplish compliance with the Rules Governing Captive Cervidae for the breeding population of elk at Irasburg, including safe and effective individual identification, disease surveillance, annual herd inventory, and record keeping requirements, the facility proposed during our discussions to cull some of the breeding herd and incorporate the remaining breeding population of elk into the Derby herd. The



facility's proposal for achieving compliance for the breeding population at Irasburg with a combination of culling and transferring the herd to Derby is conceptually acceptable. The facility has recently presented a number of culled elk for disease surveillance. Under the Rules, transfer of elk requires a special permit from the Agency, and would need to be accomplished as follows:

1. Submit a current inventory of all known individually identified elk in the breeding population at Irasburg, along with an estimate of the number of breeding elk without individual identification.
2. Upon receipt of a permit(s) from the Agency, begin immediate relocation of the breeding population of elk to the Derby herd, with the currently unidentified elk receiving individual identification as required by the Rules immediately upon arrival at Derby.
3. Those elk in the breeding population currently without individual identification must receive priority for culling or relocation to Derby.
4. Present culled elk to the Agency for CWD disease testing.
5. Provide the Agency with an updated inventory for the Derby herd, as well as an accounting of the number of breeding population cervidae awaiting transport from Irasburg to Derby, every two weeks until transfer is complete.
6. Complete the relocation of the entire breeding population of elk from Irasburg to Derby no later than January 1, 2010.
7. Submit a final updated herd inventory for Derby and a certificate of compliance for the elimination of the breeding population from Irasburg within two weeks of completion.

The transfer of the breeding population of elk to the Derby herd, as set forth above, will bring the current breeding population of elk (estimated at 60) into compliance with the Rules but not the rest of the cervidae at Irasburg. The facility has not yet submitted a supplemental management or compliance plan for the rest of the cervidae at Irasburg or received variances from the requirements of the Rules for these other populations.

#### Cervidae in the Main Enclosure

The facility proposes, as required by the Rules, that any cervidae introduced to the Irasburg facility will have two forms of individual identification upon entry. The facility expects to eliminate the fallow and red deer from the main enclosure. This is conceptually acceptable to the Agency although a specific timeframe with benchmarks for completion are lacking. Contrary to Kroll's recommendation, the facility intends to keep the small population of Sika deer at Irasburg. This is conceptually acceptable although a timeframe and methodology for individual animal identification has not been identified. The tranquilization and tagging of Sika and moose in the main enclosure is acceptable to the Agency although a timeframe for completion is lacking.

The facility believes any attempt to individually identify the population of white-tailed deer or conduct an annual inventory through use of a catch facility would significantly impact the welfare of those animals. The Agency agrees with the facility's assessment that using a traditional catch facility to conduct an annual inventory of the cervidae in the main enclosure would impact the health and welfare of the cervids, particularly the white-tailed deer, and put

those persons conducting or assisting in the tagging and inventory at risk of personal injury. The Agency, through consultation with the USDA, agrees a significant portion of the white-tailed deer population would likely suffer physical harm or death by such an attempt and the animals would, at a minimum, experience significant stress.

The facility's proposal to annually inventory all cervidae in the main enclosure by using an infrared-triggered camera, as described in Appendix III of the Kroll document, however, lacks adequate detail. The proposal must be more specific, including such details as when and where the cameras would be installed, who would collect and conduct the analysis of data, when the first annual inventory would be completed to serve as a baseline, assurances and a plan for how the technologic components will be maintained to function adequately, and assurances that the camera inventory can occur annually and timely in light of its associated costs.

#### Inventory Proposal

The transfer of the remaining breeding herd to Derby, the proper identification of all cervidae introduced to the facility, the elimination of all fallow and red deer, the tranquilization and individual tagging of moose and Sika, and an approved plan to annually inventory through use of an infra-red camera inventory/survey of the entire cervidae population within the enclosure is *conceptually* acceptable to meet the intent of the Rules for a special purpose herd but only if coupled with accurate record keeping, articulated with sufficient detail in a supplemental written herd management plan with timelines approved by the Agency, and actually implemented. Essential record keeping includes tracking of tagged and untagged cervidae reported to the Agency as natural deaths or otherwise presented to the Agency for disease surveillance.

Although the Agency is willing to entertain, pursuant to 3 V.S.A. §832a, a more specific written proposal for achieving substantial compliance with the animal identification, annual inventory, and catch facility requirements of the Rules for the cervidae in the main enclosure, the revised proposal must be accompanied by a current inventory of all known individually identified cervidae at Irasburg and, as we discussed on September 30, be submitted by October 15, 2010.

#### Disease Surveillance

The disease surveillance component in the Kroll document lacks adequate detail. The Agency expects the facility, as it has in the past, to report and present to the Agency for CWD testing all *non-native* cervidae harvested from the facility. The Agency likewise expects the facility to report and present for CWD testing *all native cervidae* harvested during the regularly authorized Vermont hunting seasons. The Agency will conduct tuberculosis screening on these harvested native cervidae if the neck pharyngeal lymph nodes and lungs are presented intact. The facility will need to retain the brain stems and pharyngeal lymph nodes, and lungs if intact, in a freezer on the premises for purposes of the Agency's sampling for disease.

As we discussed, the Agency expects the facility to *immediately* report *any and all* cervidae found dead within the premises, whether individually identified or not and no matter the

post-mortem condition when discovered. The Agency, not the facility, will decide whether post-mortem testing is viable and has provided the facility with two telephone contact numbers for non-business hour reporting purposes as well as the Animal Health Section direct line for normal state business hour reporting. The Agency agrees that any white-tail found dead and, in the discretion of the Agency, appears to be at least 16 months of age, can be applied towards the annual culling requirement of Act 156.

The Agency is willing to entertain a more specific disease surveillance plan as informed by our discussions but the facility must submit the proposal, as we discussed on September 30, no later than October 15, 2010.

#### Annual Recruitment


The Kroll document lacks specificity about how the facility intends to meet the annual culling requirement of Act 156 for white-tails. A herd health study providing opportunity for complete necropsy, as a component of the annual cull, is conceptually acceptable to the Agency. The facility must submit a more particularized culling plan, with timelines and benchmarks. In the interim, the facility has agreed to immediately report and retain for CWD and/or tuberculosis testing any whitetail harvested during the fall 2010 hunting seasons. A revised written plan for meeting the annual culling requirement must be submitted by November 1, 2010.

The Agency takes this opportunity to reiterate, as discussed on September 21, 2010, and September 30, 2010, it does not read the plain language of Act 156 as transferring ownership of the native cervidae within the main enclosure to the facility or its owner(s).

#### Record-keeping

During our meetings, the Agency emphasized the record keeping requirements of the Rules and the responsibility for the facility to timely create and accurately maintain records that can be reviewed for on-going compliance monitoring. Revised components of the facility's management plan must provide for appropriate record-keeping.

Sincerely,



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

Cc: Roger N. Allbee, Secretary