



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

August 4, 2010

TOM CORBETT  
ATTORNEY GENERAL

Litigation Section  
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Harrisburg, PA 17120



Aaron S. Marines, Esquire  
BLAKINGER, BYLER & THOMAS, P.C.  
28 Penn Square  
Lancaster, PA 17603

**RE: ACRE Review Request  
Drumore Township, Lancaster County**

**Dear Mr. Marines:**

Thank you for your email of July 29, 2010, responding to our notification that Drumore Township's application of Sections 112 and 201.2 (definition of agriculture) of its zoning ordinance unlawfully prohibits or limits a normal agricultural operation in violation of Act 38. This letter will respond to your request for details on the legal problem with the Township's application of the ordinance to preclude [REDACTED] and [REDACTED] licensed Cervidae Livestock Operation from the agricultural zone.

It is our understanding that the licensed Cervidae Livestock Operation run by [REDACTED] and [REDACTED] is located in the Township's agricultural zone in which agriculture is a permitted use. The Township is prohibited by State law from excluding normal agricultural operations from areas where agriculture is a permitted use. The Domestic Animal Law, 3 Pa. C.S.A. § 2380.1, defines a Cervidae Livestock Operation as a normal agricultural operation pursuant to the definition of normal agricultural operation in the Right to Farm Act. In 2006, the General Assembly amended the Domestic Animal Law to provide this definition for Cervidae Livestock Operation and declared that:

A Cervidae Livestock Operation is a normal agricultural operation of this Commonwealth. Cervidae livestock facilities and their equipment are considered to be agricultural facilities and equipment. Uses related to the farming and harvesting of cervids are to be considered agricultural uses regulated by the Department.

Aaron S. Marines, Esquire  
August 4, 2010  
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The Secretary of Agriculture shall assure that Cervidae Livestock Operations are afforded all rights, privileges, opportunities and responsibilities of normal agricultural operations.

Act 2006-51 (H.B. 1580). I enclose a copy of House Bill 1580 for your review.

In order to resolve this legal problem, we propose simply that the Township recognize that [REDACTED] and [REDACTED] licensed Cervidae Livestock Operation falls within the zoning ordinance's definition of agriculture. No amendments are required if the Township agrees to apply its ordinance lawfully.

Sincerely,



**SUSAN L. BUCKNUM**  
Senior Deputy Attorney General

**SLB/lis**

**cc: Bernadette M. Hohenadel, Esquire (w/encl.)**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 1580** Session of  
2005

INTRODUCED BY PHILLIPS, B. SMITH, STABACK, BAKER, BELARDI,  
BIRMELIN, BOYD, CALTAGIRONE, CAPPELLI, CAUSER, CREIGHTON,  
DALEY, FLEAGLE, GEIST, GEORGE, GERGELY, GILLESPIE, GODSHALL,  
HANNA, HARRIS, HERSHEY, HESS, HUTCHINSON, M. KELLER, MAJOR,  
McILHATTAN, R. MILLER, PICKETT, REICHLEY, SATHER, SCAVELLO,  
STERN, E. Z. TAYLOR, YOUNGBLOOD, SOLOBAY, McNAUGHTON,  
S. MILLER, DENLINGER AND GOODMAN, MAY 12, 2005

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, MAY 1, 2006

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, further providing for the regulation of Cervidae  
3 livestock operations.

4 THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS: ←

5 A CERVIDAE LIVESTOCK OPERATION IS A NORMAL AGRICULTURAL  
6 OPERATION OF THIS COMMONWEALTH. CERVIDAE LIVESTOCK FACILITIES  
7 AND THEIR EQUIPMENT ARE CONSIDERED TO BE AGRICULTURAL  
8 FACILITIES AND EQUIPMENT. USES RELATED TO THE FARMING AND  
9 HARVESTING OF CERVIDS ARE TO BE CONSIDERED AGRICULTURAL USES  
10 REGULATED BY THE DEPARTMENT.

11 THE SECRETARY OF AGRICULTURE SHALL ASSURE THAT CERVIDAE  
12 LIVESTOCK OPERATIONS ARE AFFORDED ALL RIGHTS, PRIVILEGES,  
13 OPPORTUNITIES AND RESPONSIBILITIES OF NORMAL AGRICULTURAL  
14 OPERATIONS.

15 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The definition of "Cervidae livestock operation"  
3 in section 2303 of Title 3 of the Pennsylvania Consolidated  
4 Statutes is amended to read:

5 § 2303. Definitions.

6 The following words and phrases when used in this chapter  
7 shall have the meanings given to them in this section unless the  
8 context clearly indicates otherwise:

9 \* \* \*

10 ["Cervidae livestock operation." A farm operation which:

11 (1) contains behind fences privately owned members of  
12 the genus and species cervus elaphus involved in the  
13 production, growing, breeding, using, harvesting,  
14 transporting, exporting, importing or marketing of Cervidae  
15 species or Cervidae products; and

16 (2) does not allow captive bred or captive held Cervidae  
17 species to be harvested through hunting anywhere on the farm  
18 operation.]

19 \* \* \*

20 Section 2. The definition of "license" in section 2380.1 of  
21 Title 3 is amended and the section is amended by adding  
22 definitions to read:

23 § 2380.1. Definitions.

24 The following words and phrases when used in this subchapter  
25 shall have the meanings given to them in this section unless the  
26 context clearly indicates otherwise:

27 \* \* \*

28 "Cervid." Any member of the Cervidae family and any hybrid.

29 "Cervidae livestock family." Members of the Cervidae family  
30 including deer, elk, moose, reindeer, caribou and hybrids of

1 these animals owned and maintained by a licensee under this  
2 subchapter. The term also includes the germ plasm, embryos and  
3 fertile ova of these animals.

4 "Cervidae livestock operation." A normal agricultural  
5 operation which contains behind fences privately owned members  
6 of the Cervidae livestock family involved in the production,  
7 growing, breeding, using, harvesting, transporting, exporting,  
8 importing or marketing of Cervidae species or Cervidae products.  
9 The term does not include an animal slaughter facility regulated  
10 under Subchapter F (relating to slaughter and processing of  
11 domestic animals) or a menagerie permitted under 34 Pa.C.S. §  
12 2964 (relating to menagerie permits).

13 "Harvesting." Any lethal or nonlethal means of collecting  
14 cervids or products from cervids on Cervidae livestock  
15 operations.

16 "License." A license issued by the Department of Agriculture  
17 to operate a Cervidae livestock operation.

18 \* \* \*

19 "Normal agricultural operation." As defined under section 2  
20 of the act of June 10, 1982 (P.L.454, No.133), entitled "An Act  
21 protecting agricultural operations from nuisance suits and  
22 ordinances under certain circumstances."

23 ~~Section 3. Title 3 is amended by adding a section to read:~~ ←  
24 ~~§ 2380.1a. Cervidae livestock operations.~~

25 ~~(a) General rule. A Cervidae livestock operation is a~~  
26 ~~normal agricultural operation of this Commonwealth. Cervidae~~  
27 ~~livestock facilities and their equipment are considered to be~~  
28 ~~agricultural facilities and equipment. Uses related to the~~  
29 ~~farming and harvesting of cervids are to be considered~~  
30 ~~agricultural uses regulated by the department.~~

1 ~~(b) Duty of secretary. The secretary shall assure that~~  
2 ~~Cervidae livestock operations are afforded all rights,~~  
3 ~~privileges, opportunities and responsibilities of normal~~  
4 ~~agricultural operations.~~

5 Section 4 3. Sections 2380.2, 2380.4, 2380.5, 2380.6(a), (C) <—  
6 and (d) and 2380.9 of Title 3 are amended to read:

7 ~~§ 2380.2. License required.~~ <—

8 ~~(a) Requirement.--A person may not operate a Cervidae~~  
9 ~~livestock operation within this Commonwealth unless the person~~  
10 ~~has a license. A separate license is required for each Cervidae~~  
11 ~~livestock operation.~~

12 ~~(b) Classes of licenses.--The department shall establish~~  
13 ~~three classes of licenses for applicants:~~

14 ~~(1) Class I (Hobby). A Cervidae livestock operation in~~  
15 ~~which members of the Cervidae livestock family may be brought~~  
16 ~~onto the premises through interstate or intrastate commerce.~~  
17 ~~The animals, either alive or dead, may not be removed from~~  
18 ~~the premises except for noncommercial, personal use.~~

19 ~~(2) Class II (Breeding). A Cervidae livestock operation~~  
20 ~~in which members of the Cervidae livestock family may be~~  
21 ~~brought onto the premises through interstate or intrastate~~  
22 ~~commerce. Live animals or animal products may be sold or~~  
23 ~~transported, either permanently or temporarily, from the~~  
24 ~~premises through interstate or intrastate commerce, including~~  
25 ~~the movement of the animals temporarily for the purpose of~~  
26 ~~exhibition.~~

27 ~~(3) Class III (Ranch). A Cervidae livestock operation~~  
28 ~~in which members of the Cervidae livestock family may be~~  
29 ~~harvested through the act of taking or killing of the~~  
30 ~~animals, including chasing, tracking, calling, pursuing,~~

1 ~~lying in wait, shooting at or using any personal property in~~  
2 ~~furtherance of any of these purposes. Cervids may be brought~~  
3 ~~onto the premises through interstate or intrastate commerce.~~  
4 ~~Cervids and animal products may be removed from the premises~~  
5 ~~after being harvested. Live cervids may be removed from the~~  
6 ~~premises and relocated to another premise after the animal~~  
7 ~~has met the conditions of interstate or intrastate transport~~  
8 ~~in a manner consistent with regulations promulgated by the~~  
9 ~~department.~~

10 ~~(c) Removal of animals.--~~

11 ~~(1) In addition to the provisions of subsection (b),~~  
12 ~~cervids may be removed from the licensed premises for any of~~  
13 ~~the following purposes:~~

14 ~~(i) Prevention of the spread of disease.~~

15 ~~(ii) Furtherance of the health and welfare of the~~  
16 ~~cervids.~~

17 ~~(iii) Discontinuance of the operation.~~

18 ~~(2) Removal of any cervid under this subsection shall be~~  
19 ~~done with the approval of the department or in a manner~~  
20 ~~consistent with regulations promulgated by the department.~~

21 § 2380.4. Issuance.

22 [The] (a) Inspection.--The department shall inspect the  
23 premises of and investigate each applicant. An inspection under  
24 this subsection may be made by the department or an agent of the  
25 department, including a licensed doctor of veterinary medicine  
26 accredited by the department.

27 (b) Issuance.--Subject to subsection (c)(3), the department  
28 shall issue a license if it determines, after inspection of the  
29 premises and investigation of the applicant, all of the  
30 following:

1 (1) The premises, including fences, buildings, equipment  
2 and sanitary conditions, comply with this subchapter and  
3 regulations of the department under this subchapter.

4 (2) The applicant [can] is able to conduct a Cervidae  
5 livestock operation in compliance with this subchapter and  
6 regulations of the department under this subchapter.

7 (c) Provisional license.--

8 (1) A Cervidae livestock operation which is in operation  
9 on the effective date of this subsection but which was not,  
10 prior to the effective date of this subsection, subject to  
11 licensure shall be granted a provisional license in the ←  
12 appropriate classification.

13 (2) Within one year of the effective date of this  
14 subsection, the department shall, for each provisional  
15 licensee:

16 (i) perform the investigation and inspection under  
17 this section; and

18 (ii) either issue a license or deny the application.

19 (3) If the department does not comply with the time  
20 requirement under paragraph (2) for a provisional license ←  
21 LICENSE APPLICATION BY A PROVISIONAL LICENSEE, a license ←  
22 shall be deemed to be issued.

23 § 2380.5. [Renewal] TERM; RENEWAL. ←

24 (a) Term.--A license is valid for a period of [one year} ←  
25 YEAR.] two years from the date of: ←

26 (1) issuance under section 2380.4(b) (relating to  
27 issuance); ~~or~~ ←

28 (2) deemed issuance under section 2380.4(c)(3); OR ←

29 (3) RENEWAL UNDER SUBSECTION (B).

30 (b) ~~Determination~~ RENEWAL.--A license [may] shall be renewed ←

1 upon application if the department determines all of the  
2 following:

3 (1) The licensee has not been cited for a violation of  
4 this subchapter or a regulation of the department under this  
5 subchapter.

6 (2) There is no reason to believe that the licensee  
7 [cannot] is unable to conduct a Cervidae livestock operation  
8 in compliance with this subchapter and regulations of the  
9 department under this subchapter.

10 § 2380.6. Keeping and handling of cervids.

11 (a) Pens[, shelters] and enclosures.--The department shall  
12 adopt regulations concerning the type [and size] of pens[,  
13 shelters] and enclosures used for Cervidae livestock operations.

14 ~~Regulations shall ensure [that pens, shelters or enclosures] all~~ ←  
15 ~~of the following:~~

16 ~~(1) The fenced enclosure used to hold cervids [are no~~  
17 ~~less than] is at a height not exceeding ten feet from the~~  
18 ~~ground to the top, surrounding the outside perimeter of the~~  
19 ~~operation, and is designed to protect the public and confine~~  
20 ~~the privately owned cervids.~~ REGULATIONS SHALL ENSURE [THAT ←  
21 PENS, SHELTERS OR ENCLOSURES USED TO HOLD CERVIDS ARE NO  
22 LESS] ALL OF THE FOLLOWING APPLY:

23 (1) THE FENCED ENCLOSURE SURROUNDS THE OUTSIDE PERIMETER  
24 OF THE OPERATION AND IS DESIGNED TO PROTECT THE PUBLIC AND  
25 CONFINE THE PRIVATELY OWNED CERVIDS. REGULATIONS UNDER THIS  
26 PARAGRAPH MAY REQUIRE A FENCE HEIGHT OF NOT GREATER THAN TEN  
27 FEET FROM THE GROUND TO THE TOP[,].

28 (2) The premises is adequate to provide for the health  
29 and comfort of the cervids [and be designed to protect the  
30 public, confine the cervids and exclude the entity of wild

1 cervids].

2 \* \* \*

3 (C) LIVE CERVIDAE.--CERVIDS MAY BE BROUGHT ONTO THE PREMISES <—  
4 THROUGH INTERSTATE OR INTRASTATE COMMERCE AND MAY BE REMOVED  
5 FROM THE PREMISES OR RELOCATED TO ANOTHER PREMISES IN A MANNER  
6 CONSISTENT WITH THIS CHAPTER AND REGULATIONS PROMULGATED BY THE  
7 DEPARTMENT. ON DELIVERY OF A LIVE CERVID, THE CERVIDAE LIVESTOCK  
8 OPERATION SHALL PREPARE AND DELIVER TO THE SHIPPER, PURCHASER OR  
9 CONSIGNEE A RECEIPT, DETAILED INVOICE OR CONSIGNMENT DOCUMENT  
10 INCLUDING THE DATE, NAME AND ADDRESS OF PURCHASER OR PERSON TO  
11 WHOM SOLD OR CONSIGNED, THE QUANTITY, SEX AND SPECIES OF THE  
12 CERVID AND THE NAME AND ADDRESS OF THE CERVIDAE LIVESTOCK  
13 OPERATION.

14 (d) Dead Cervidae.--CERVIDS AND CERVID PRODUCTS MAY BE <—  
15 REMOVED FROM THE PREMISES OR RELOCATED TO ANOTHER PREMISES IN A  
16 MANNER CONSISTENT WITH THIS CHAPTER AND REGULATIONS PROMULGATED  
17 BY THE DEPARTMENT. Prior to delivery and removal from the  
18 Cervidae livestock operation premises, the Cervidae livestock  
19 operation shall place the dead cervid or part of a cervid in a  
20 package or container or shall attach a label to it. The package,  
21 container or label shall have printed upon it the name, address  
22 and telephone number of the Cervidae livestock operation who  
23 produced the cervid. The Cervidae livestock operation shall also  
24 issue a receipt, detailed invoice or consignment document  
25 including the date of shipment or sale, the name of the shipper,  
26 purchaser or consignee, the quantity and sex and species of the  
27 cervid so shipped or sold and the name and address and [permit]  
28 license number of the Cervidae livestock operation shipping,  
29 consigning or selling cervids. A dead cervid produced under the  
30 authority of the Cervidae livestock operation may not be removed

1 from its package or container or have removed from it the label  
2 provided for in this subsection until final consumption or  
3 disposal.

4 \* \* \*

5 § 2380.9. Game and Wildlife Code and regulations.

6 [This subchapter supersedes any contrary provision in 34  
7 Pa.C.S. (relating to game).] (a) Code.--The provisions of 34  
8 Pa.C.S. (relating to game) are repealed insofar as they are  
9 inconsistent with this subchapter.

10 (b) Regulations.--

11 (1) The provisions of 58 Pa. Code Pt. III (relating to  
12 Game Commission) are abrogated insofar as they are  
13 inconsistent with this subchapter.

14 (2) Notwithstanding any other provision of law, the  
15 Pennsylvania Game Commission has no authority to promulgate  
16 regulations on Cervidae livestock operations.

17 ~~Section 5. This act shall take effect as follows:~~ <—

18 ~~(1) The amendment of 3 Pa.C.S. § 2380.2 shall take~~  
19 ~~effect in 120 days.~~

20 ~~(2) The remainder of this act shall take effect~~  
21 ~~immediately.~~

22 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS. <—