THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES MAY NOT LAWFULLY ISSUE AN ORDER FOR THE NETTING AND CAPTIVE BOLT TAKING OF DEER, BECAUSE THIS INHUMANE METHOD RESULTS IN THE TORTURE OF THE DEER IN VIOLATION OF MCL 750.50b(2)(b).

In his 2006 statement to the New Jersey Fish and Game Council, Terry Clark, the President of the New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA), summarized the factual basis for determining that "netting and bolting" of deer constitutes torture in violation of Michigan's animal cruelty law:

> "Net and bolt refers to the practice of luring deer to bait sites above which nets have been suspended. When deer approach bait sites, the nets are released, typically capturing several deer at a time. The deer inside the net tend to thrash violently, often resulting in injuries, including broken limbs and antlers, and endure a significant amount of stress. The deer are then physically restrained by the 'netter and bolter,' who then shoots a large steel bolt into the brain of the netted deer."
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> "The NJSPCA believes that the killing of deer by netting and bolting inflicts substantial pain, stress and suffering during both the netting and bolting phases of the operation. The NJSPCA has reviewed various expert opinions, all of which concluded that netting and bolting of deer constitutes unnecessary cruelty. Even Dr. Temple Grandin, one of the nation's foremost experts in designing systems to reduce the stress and suffering of animals before and after slaughter, describes the process as 'cruel.'"
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> "According to Dr. Grandin, because deer are 'flighty' animals, the netting alone causes undue stress and panic. Stress may be so acute as to cause the death of some deer prior to bolting. Moreover, in desperate attempts to escape the netting or evade those trying to subdue them, deer will often break legs and antlers. Other experts concur that this method, when used on deer in the wild, is inhumane."
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> "Shooting bolts into the brain, a practice commonly used on domestic animals in slaughter plants, similarly causes unnecessary pain, suffering and injury when used on deer in the wild. Captive bolt guns were specifically designed for use on restrained domestic animals in highly structured and controlled environments. These bolt guns do not cause a quick or clean kill when the animal's head is not immobilized [which is] a difficult if not impossible task given a deer's reaction to drop netting."

> "A misplaced bolt will likely cause severe injury to the deer and will require repeated attempts to kill the struggling animal. A number of experts agree that the use of captive bolt guns on wild deer caught under nets is unnecessarily cruel."

The law prohibits a person, "without just cause", from committing "a reckless act knowing or having reason to know that the act will cause an animal to be killed*,* *tortured,* mutilated, maimed, or disfigured." MCL 750.50b(2)(b) (emphasis added). The definition for the statutory term "torture" is not included in Michigan's animal cruelty statute. In *People v Henderson*, 282 Mich. App. 307, 324; 597 N.W.2d 642 (1999), the Court turned to the provisions of other states for guidance: "After considered review, we note that the term 'torture' is commonly defined to include every act or omission that causes or permits an animal to suffer unjustifiable or unreasonable pain [or] suffering…." (citations omitted).

The Michigan Courts have held that the predecessor statute to the current animal cruelty law is a general intent crime. See *People v Fennell*, 260 Mich. App. 261, 268 – 269; 677 N.W.2d 66 (2004); *Henderson*, *supra at 315 - 316*. The current statute, last amended in 2008, defines the commission of the crime as prohibiting a person from committing "a reckless act …having reason to know that the act will cause an animal to be … tortured." MCL 750.50b(2)(b) (emphasis added). The Legislature has not changed the requisite intent for the prosecution to prove animal cruelty. A general intent crime only requires a person to intend to perform the act itself which resulted in the torture of an animal. See *Fennell*, *supra* at 269. The statute does not require proof that the person actually intended to torture an animal. See *Henderson*, *supra* at 316. For an act to be "reckless", where the term is not defined in the statute, a person's conduct must show a "disregard of, or indifference to, the consequences" of his actions. *People v Gregg*, 206 Mich. App. 208, 211 – 212; 520 N.W.2d 690 (1994), consulting Black's Law Dictionary (6^{th} ed).

A deer is a protected "animal" pursuant to MCL 750.50b(1). Netting and bolting of these animals, by contractors hired to kill deer, is an unlawful method of killing animals and violates MCL 750.50b. The statute does not prohibit the "lawful killing" of deer pursuant to wildlife control regulated by the Department of Natural Resources (DNR). See MCL 750.50b(9)(b).However, in managing animals in the state, the DNR may issue orders to establish only "lawful methods" of taking game. MCL 324.40107(1)(e). The animal cruelty law, MCL 750.50b, clearly does not except the application of its criminal provisions to acts that cause an animal to be "*tortured, mutilated maimed or disfigured*" before it is lawfully killed. The Section 9(b) exception omits these terms from its language. Therefore, the DNR may not allow a person to kill an animal in any manner

the DNR or the permit holder chooses if the method of killing results in the torture, mutilation, maiming or disfigurement of an animal. The opposite of this interpretation taken to an extreme, such as taking deer by drawing and quartering them or by dousing them with gasoline and burning them to death, is inconsistent with the statute's purpose, which is "to ensure animals are treated humanely." See *Henderson,* supra at 324. The plain language of MCL 750.50b(9) is unambiguous and evinces a legislative intent that does not except the DNR from the prohibition of allowing torture in the taking of deer. Therefore, the courts may not exercise judicial construction of the statute and must apply the statute as written. See *People v Borchard-Ruhland*, 460 Mich. 278, 284; 597 N.W.2d 642 (1999). The DNR may not issue a wildlife management order which results in the torture of deer, because it would be an unlawful method of taking these animals in violation of MCL 750.50b(2)(b).

Even if we assume that the language of the 9(b) exception to the statute's prohibitions is somehow subject to more than one interpretation, the DNR would still not be excepted from the statute's prohibition against the torture of animals. The courts may properly go beyond the statutory wording to determine the legislative intent where that language is ambiguous. *Borchard-Ruhland*, *supra* at 284-285. The statute creates a single exception to the prohibition against the commission of an act that will cause an animal to be killed, tortured, mutilated, maimed or disfigured. The one exception, for the DNR, is that the statute "does not prohibit the lawful killing of an animal" pursuant to wildlife control regulated under the natural resources and environmental protection act. MCL 750.50b(9).(emphasis added). "It has been long understood that the expression of specific exceptions to the application of a law, as here, implies that there are no other exceptions. See *Hoerstman General Contracting, Inc v Hahn*, 474 Mich. 66, 74 n 8; 711 N.W.2d 340 (2006) (stating the interpretive rule *expressio unius est exclusio alterius*, i.e., 'the expression of one thing is the exclusion of another')." *Miller v Chapman Contracting*, 477 Mich. 102, 108 n 1; 730 N.W.2d 462 (2007). If the Legislature had intended to allow the DNR to permit methods of taking deer which caused the animals to be "tortured", before being lawfully killed, it would have included such language in the 9(b) exception.

The facts will show that the deer will thrash violently under the netting causing them to have undue stress and panic, which will result in the deer sustaining broken limbs and antlers. Testimony from wildlife experts will be presented that the contractor's acts will cause the deer to suffer unreasonable pain and suffering. The stress, from the netting alone, would be so severe as to cause the death of some deer. Furthermore, the captive bolt guns, used by contractors, were not designed to be used on wild animals. Deer are not restrained by mechanical means as with domestic animals in a highly structured and controlled slaughter house. Immobilizing a deer, while it thrashes about under the netting, is a difficult, if not impossible, task to accomplish in the field. Proper

placement of the bolt gun, held firmly against the surface of the head, is critical. The deer will suffer unnecessary pain and suffering, because of the contractor's misplaced bolts which will cause severe head injury to the deer without killing them. There will be no quick unconscious state or kill. The deer will require repeated attempts to bolt them as they struggle. Expert testimony will be presented that the bolting procedure will result in unjustifiable pain and suffering before the deer die from their injuries inflicted upon them. The contractors, who will be shown to have indifference to the deer's suffering, do not have to intend to torture the deer, before they kill them, in order to violate MCL 750.50b(2)(b). Their disregard for the torturous consequences of their acts of netting and bolting, based on their previous experience in killing deer in this manner, are sufficient to prove their unlawful behavior.

Our position is that the DNR must not be allowed to unlawfully issue a permit for the netting and bolting to take deer in our City. This method of killing deer is inhumane and constitutes torture in violation of our animal cruelty law.