

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT
AND
IN THE MATTER OF A COMPLAINT BY THE MORGAN CREEK HOMEOWNERS
ASSOCIATION REGARDING THE OPERATION OF PROPANE CANNONS AT
A BLUEBERRY FARM LOCATED AT 160th STREET AND 40th AVENUE,
SURREY, BRITISH COLUMBIA

BETWEEN:

MORGAN CREEK HOMEOWNERS ASSOCIATION

COMPLAINANTS

AND:

HIMMAT SEKHON
dba SEKHON FARM

RESPONDENT

AND:

BRITISH COLUMBIA BLUEBERRY COUNCIL
BRITISH COLUMBIA FRUIT GROWERS' ASSOCIATION
BHULLAR'S BLUEBERRY FARM

INTERVENORS

DECISION

APPEARANCES:

For the Farm Practices Board	Ms. Christine J. Elsaesser, Panel Chair Ms. Karen Webster, Member Mr. Allen Watson, Member
For the Complainants	Mr. Bob Kemble, Association Spokesperson Mr. Art Stasiuk, Association President Mr. Ken Goeres Mr. Geoff Pateman Mr. Jim Rishel
For the Respondent	Mr. Purdip Sekhon Mr. Himmat Sekhon
For the British Columbia Blueberry Council	Ms. Joyce Sihota
For the British Columbia Fruit Growers' Association	Mr. Allan Patton
For Bhullar's Blueberry Farm	Mr. Tony Bhullar
Dates of Hearing	June 26 and 27, 2000
Place of Hearing	Surrey, British Columbia

INTRODUCTION

1. On August 20, 1998, the Morgan Creek HomeOwners Association filed a Complaint with the Farm Practices Board (the "FPB") regarding the noise resulting from the operation of propane cannons on a blueberry farm located at 160th Street and 40th Avenue in Surrey, British Columbia (the "Sekhon Farm").
2. On March 2, 2000, the Panel released its decision with respect to the constitutional jurisdiction of the FPB to hear complaints relating to the operation of propane cannons in light of the federal *Migratory Birds Regulations*, CRC c. 1035. The Panel held that there was no inconsistency or contradiction between the federal *Regulations* and the *Farm Practices Protection (Right to Farm) Act* (the "Act") as both laws can co-exist without constitutional conflict.
3. Accordingly, the Panel directed that the Complaint be set down for hearing. The matter was heard on June 26 and 27, 2000.
4. Intervenor status was granted to the British Columbia Blueberry Council (the "Blueberry Council"), the British Columbia Fruit Grower's Association (the "BCFGA"), and Bhullar's Blueberry Farm. The Association of British Columbia Grape Growers was given Intervenor status but withdrew from the proceedings after the release of the preliminary decision on March 2, 2000.

ISSUES

5. What is normal farm practice for the operation of propane cannons at the Sekhon Farm, specifically:
 - a) Should propane cannons only be used when required for the protection of specific crops and only when a problem is evident?
 - b) Should the hours of operation be between 6:00 am and 8:00 pm local time?
 - c) Should no more than one cannon per two hectares of cropland be used at any one time?
 - d) Should the cannons, where possible, be aimed away from neighbours?
 - e) Should the cannons be maintained properly to avoid continuing noise when cannons are shut off?
 - f) Should the cannons be located as far away from neighbours as possible?
 - g) Should a noise barrier(s) be erected if feasible?

FACTS

6. The Sekhon family has farmed blueberries in Surrey since 1979. They purchased their farm at 160th Street and 40th Avenue in Surrey in 1987. Their first crop of blueberries was picked in 1989. The current farm is 40 acres, 30 of which are in the Agricultural Land Reserve (the “ALR”). Historically, this area of Surrey was largely rural. However, the area is gradually being developed into residential subdivisions.
7. In 1994, the Morgan Creek Property Development began. This is an exclusive planned retirement community of large homes built around an 18-hole golf course. Currently, there are 325 homes in the Morgan Creek Development. Phase Six, which runs along the western boundary of the Sekhon Farm, is currently under development. The plan calls for an additional five or six phases for a total number of 950 single and multi-family dwellings. The Complainants from Morgan Creek HomeOwner’s Association generally reside in the portion of the development located along the southern boundary of the farm.
8. The Morgan Creek Development is located in a part of Surrey known as Rosemary Heights. The plan is for this area to increase by 10,000 residents over the next seven years. In this same area, and within a one-mile radius of the Sekhon Farm, there are at least twenty other blueberry farms.
9. Many of the blueberry farmers in this area, including the Sekhon family, rely on propane cannons as well as other bird scare devices to control bird predation. Despite this, apart from the roads that border the Sekhon Farm, there are no buffers between the Morgan Creek Development and the Sekhon Farm.
10. The *Act* was enacted in 1996 in order to protect farmers from injunctions or liability in nuisance for their farm operations. In conjunction with the enactment of the *Act*, the British Columbia Horticultural Coalition with funding from the then Ministry of Agriculture, Fisheries and Food (now known as the Ministry of Agriculture, Food and Fisheries) (“MAFF”), created a Peer Advisor process. Peer Advisors named from various grower organisations respond to complaints and work with farmers and neighbours to attempt to resolve disputes informally.

11. On August 10, 1996, MAFF published its Wildlife Damage Control Guidelines (the “Guidelines”). These Guidelines arose out of a consultative process carried out in Pitt Meadows and represented a compromise between the interests of local farmers, their neighbours and the municipality. Although they arise out of Pitt Meadows, the Guidelines are intended to have provincial application. They make the following recommendations with respect to noisemakers (including propane cannons):
 - Use noise devices only when required for the protection of specific crops and only when a problem is evident
 - Operate noise devices only between 6:00 a.m. and 8:00 p.m. local time
 - Use no more than one noise device per two hectares of crop land at any one time
 - Where possible, aim directional sound-producing devices away from neighbours
 - Maintain propane exploders properly to avoid continuing noise when exploders are shut off
 - Locate noise devices as far away from neighbours as possible
 - Erect a noise barrier if feasible
12. In May 1999, the FPB conducted a review of the Guidelines regarding propane cannon use in the province. Although the FPB made recommendations for propane cannon use, it did not determine what is a “normal farm practice” with respect to propane cannon use for a specific farm subject to a formal complaint under s. 3 of the *Act*.

ARGUMENT OF COMPLAINANTS

13. Although this Complaint stems from propane cannon use at the Sekhon Farm outside the Guidelines (i.e. after 8:00 pm) on the evening of July 12, 1998, the Complaint is really much broader. The Complainants reside in close proximity to the Sekhon Farm; some are separated from it only by 35th Avenue while the others have homes between them and the Farm. Nevertheless, their complaints are similar. The Complainants describe occasions in June, July and early August 1998, where propane cannons were left on all night and where many residents’ sleep was severely disturbed. They recall occasions where the propane cannons started firing at 5:50 am, firing in three rapid blasts every three minutes and continued well beyond 8:00 pm in the evening.
14. More generally, the Complainants find the daily use of the cannons throughout the harvest season intrusive and invasive. Some liken the noise to living in a “war zone”. The sound of the propane cannons and screamers can be so deafening that it allegedly causes headaches and emotional upset. One Complainant attributes the noise to the worsening of his wife’s arrhythmia. The Complainants argue that propane cannons are a very serious environmental and health concern to the Morgan Creek community.
15. The Complainants do not dispute that the farmer has a right to earn a living and a right to protect his crop. However, they argue that all the authorities recommend a comprehensive bird predation program as the best method of preventing blueberry crop loss. No authority recommends use of propane cannons alone. The Complainants argue that too much cannon use may reduce or eliminate its effectiveness.

16. The Complainants argue that propane cannons should be licensed, registered and regulated. Municipalities must implement and regulate the Guidelines for the use of propane cannons within their boundaries. These bylaws should address the frequency of firing, the decibel level, the control of pressure build up causing extra large discharge, deflection devices, the time of season and the time of day. Without municipal involvement through enactment of by-laws, there is no effective means of enforcement when rules of operation are being broken.
17. The Complainants also argue that the municipality must give more attention to planning concerns at the edge of ALR lands. If the municipality does not make proper planning decisions at the outset, then the system fails everyone.
18. The Complainants point out that the Guidelines state that cannons should only be used when a bird predation problem is evident. Who determines when a problem is evident? It is not enough to say, “trust the farmer”, he knows. The Complainants argue that they do not see a bird predation problem at the Sekhon Farm. Cannons are blasting yet no birds are visible. They do not believe their powers of observation are as poor as some people may suggest. On the other hand, Mr. Sekhon argues that he does have a bird predation problem. In order to resolve this issue and before a bird predation plan can be undertaken, the Complainants argue that an independent municipal authority should make a determination that a bird predation problem exists and that cannon use is necessary.
19. The Complainants believe that being a good neighbour begins with communication and ends with being concerned about your neighbours’ welfare. Absentee landowners, such as the Sekhon family, will find it more difficult to develop a relationship with their neighbours and most certainly will not know when a cannon on their property is malfunctioning.
20. The Complainants have pursued the Sekhon Farm because it is the largest and likely the best run operation in the area. They hope that if an accommodation can be reached with the Sekhons, other farmers will adopt similar practices and perhaps authorities will be driven to develop reasonable, enforceable rules for blueberry farmers.
21. In summary, the Complainants recognise that farming varies from region to region. It differs in the types of operations and the crops grown. They argue that farming needs to respond to the neighbourhoods in which it functions. Problems can arise when farm operations are in close proximity to urban/suburban communities. However, all parties need to recognise this and develop solutions that are good for farmers, the public and government.

ARGUMENT OF RESPONDENT

22. According to the Respondent, there has not been good communication between the Morgan Creek HomeOwners Association and the farm. The farm was not aware of the Association's concerns until the attendance of Peer Advisors at the farm in July 1998.
23. The Respondent maintains that it has attempted to operate the propane cannons on its farm in accordance with the Guidelines. They acknowledge that they have not been perfect and periodically cannons have fired outside the 6:00 am to 8:00 pm time period. However, they believe that they operate one of the best farms in the area and they take pride in their farming. They believe that they have tried to accommodate their neighbours by modifying their cannon use. If the Sekhon Farm cannot rely on propane cannons, their livelihood is at risk.
24. The Sekhon Farm owns seven propane cannons. However, they use only three cannons on their forty-acre farm. The Guidelines allow for many more cannons to be used. After receiving the complaints, they replaced the high rotating cannon in the southernmost portion of their field, the area closest to Morgan Creek. Even though this is the Sekhon Farm's most productive acreage, they have installed a low lying, non-rotating cannon, which points away from Morgan Creek, in an attempt to minimise the impact on their neighbours. They maintain that this cannon is less effective but they are prepared to accommodate their neighbours.
25. The Respondent argues that some of the blame for the current problem rests with the City of Surrey. Prior to allowing a development of this magnitude, consideration should have been given to proper buffering. According to the evidence of Mr. Barry Smith, Senior Land Use Specialist with the Resource Management Branch of MAFF, there is a need for a buffer along the edge of ALR land. Current thinking is that buildings should be no closer than 30 meters from the edge of ALR land (or land zoned for agricultural purposes) and there should be a continuous landscape buffer of 15 meters on the urban edge.
26. In the case of the Morgan Creek development, Mr. Smith suggests that traffic from the subdivision should be directed away from the Farm and buffers should be installed. Along the western side of the Farm these buffers could consist of a prohibitive ditch to prevent trespass, a road shoulder, a 10-meter road right-of-way and a sidewalk on the non-farm side. Entrances to the subdivision along the west side of 160th Street should be avoided, as the best buffer is a continuous edge without breaks. Finally, there should be a 15-meter landscape buffer including a berm. Residential units should be placed at least 30 meters from the ALR boundary. Decks and pools should be oriented to the non-farm side of the residential units. The southern edge of the Farm is more "fluid" as it is not ALR land and could be developed. At this point, Mr. Smith recommends the installation of a fence to prevent trespass. If and when the non-ALR land is developed, provision could be made for similar buffering as recommended for the western boundary.

27. In summary, the Respondent maintains that it has tried to meet and exceed the Guidelines with respect to propane cannon use. Contrary to the views of the Complainants, bird predation is a problem for the farm. However, Mr. Sekhon credits the propane cannon for resulting in fewer birds in their fields. The Sekhon Farm uses fewer propane cannons than allowed by the Guidelines, it has modified cannon placement so that the nine acres closest to the Complainants remain largely unprotected and it has delayed cannon start-up later into the season. Despite the Sekhon Farm's efforts to accommodate them, the neighbours remain unhappy. Mr. Sekhon maintains that until such time as there is a better solution, propane cannons must be used. New technologies are becoming available; there is a spray that is used with some success in the US. However, until it is approved for use in Canada, propane cannons remain the most cost effective deterrent for bird predation.
28. The Respondent maintains that it adheres to the Guidelines and follows normal farm practices for blueberry farms in BC. They have prepared and followed a bird predation management plan. They do not know what more it can do to accommodate its neighbours. The bottom line is that the buffer between the Sekhon Farm and the Morgan Creek Development is insufficient. This is not the fault of either the Sekhon Farm or the Complainants. Blame rests with the City of Surrey, the owners and developers, their consultants and advisors.

SUBMISSIONS OF INTERVENORS

British Columbia Blueberry Council

29. Ms. Joyce Sihota appeared on behalf of the Blueberry Council, which represents blueberry growers in BC. The Blueberry Council's mandate is to promote the growth and development of the blueberry industry in BC. Ms. Sihota operates a 15-acre blueberry farm in the Abbotsford area.
30. The blueberry industry is the mainstay of over 500 families in BC. In 1999, the value of the blueberry crop to BC was 34 million dollars; this figure is much larger when the supporting infrastructure is considered. The loss to the BC economy would be significant if the blueberry industry was so restricted by government regulations that it no longer remained viable. Ms. Sihota maintains that blueberry farmers are already severely restricted by the Guidelines having made concessions to work within them.

31. In BC, starlings are the major bird pest. Estimates are that 10% of the blueberry crop is lost to predation. If left unprotected, birds can strip a blueberry field in a very short period of time. In order to protect the crop, an “umbrella of sound” is necessary. The propane cannon is the single most cost effective and efficient method of bird control. However, to be effective, protection must begin before the crop ripens and continue through the harvest season from dawn to dusk, seven days a week. Birds are not aware of clocks, weekends, statutory or summer holidays. The blueberry season, the busiest and most stressful time of the year for the farmer, provides the yearly income for the farm. This income is threatened if the farmer is unable to protect the crop.
32. Ms. Sihota states that the phrase in the Guidelines that cannons should be used “only when a problem is evident”, is problematic. Neighbours may see no birds and feel there is no need for a deterrent. However, the farmer is the expert on what is happening in his fields; he is aware that preconditioning birds to cannons before a crop ripens, deters them from coming in the first place. The farmer is also aware of changes in bird habituation over the blueberry season which in turn require adjustments in cannon usage.
33. Ms. Sihota is aware of the Sekhon Farm and believes that it is “an excellent example of a well cared for blueberry farm”. She believes the problem has been caused by allowing housing to be built too close to the farm. Ms. Sihota advocates buffer zones between municipal developments and the ALR. However, she is of the view that these buffer zones should not be created from ALR lands. She also advocates disclosure statements identifying nearby ALR lands and their use and maintains that these statements be incorporated into real estate contracts and registered in the Land Title Office. This “may help dispel the myth that one moves to the country for peace, quiet and good fresh air”.
34. Ms. Sihota argues that these types of problems may be more amicably resolved if neighbours understand that farmers need to protect the blueberry crop, and farmers exercise due care in the number, placement and management of the propane cannons on their farms.

British Columbia Fruit Grower’s Association

35. Mr. Allan Patton made submissions on behalf of the BCFGGA. The BCFGGA represents approximately 600 orchardists in the tree fruit industry in BC. They chose to intervene in these proceedings as they feel the issues of rural urban interaction in this case are similar to those in the Okanagan.

36. Mr. Patton has seen the bird populations in the Okanagan increase. He believes a farmer must use every tool at his disposal to protect his crop. He describes the situation as a “big time war” where farmers rely on propane cannons from dawn until dusk, shotguns, and balloons, anything to scare the birds. Mr. Patton argues that there cannot be any restrictions on bird control practices, as farmers need to use all the tools available to them. While the best control method would be elimination of the bird population, this is not currently possible. Propane cannons are the next best alternative and farmers must be able to continue using them.
37. Mr. Patton also points to the lack of planning, which allows development right up to the edge of the ALR. He advocates that municipal planning departments and the Land Reserve Commission should work together to develop proper green spaces or buffers between developments and ALR lands. In Morgan Creek’s case, why wasn’t the golf course placed between the subdivision and the farm?
38. The BCFGGA supports the Guidelines and the peer advisor process offered through MAFF. Education can increase the urban understanding of rural issues and foster consideration between neighbours and resolve urban/rural conflicts. However, Mr. Patton cautions that the regulatory burden on farming is growing and warns that a decision against the Sekhon Farm could have ramifications for all farmers.

Bhullar’s Blueberry Farm

39. Mr. Tony Bhullar spoke on behalf of his farm, located near the Sekhon Farm. His family established one of the earliest blueberry farms in BC in 1972. He has a long history of dealing with bird predation. In his opinion, a propane cannon is the most effective deterrent; they are used world-wide.
40. Farmers face many problems such as weather, shortage of workers, competitive markets, a lack of consumer understanding of how food gets to the market and many regulations. It is too easy to blame farmers for the urban/rural conflict issues. Developers who build right up to the farm edge and the municipalities that approve these developments should be held accountable. In the case of Morgan Creek, a green space between the subdivision and the farm would have been beautiful. But instead, the developer took every square inch of land right up to the foot of the farmland. Now there are problems.
41. Mr. Bhullar does not agree the propane cannon problem is worsened by absentee farmers. If farmers do not live on their farms it is more likely that they do so to lessen the commute to a second job rather than a desire to get away from the noise of propane cannons.

42. As to the resolution in this case, Mr. Bhullar acknowledges that there is no simple solution to this problem. He does recommend some sort of buffer be it trees or hay bales. He also recommends that people moving into a rural area must be educated early on through their realtors, the developers and the municipalities. The problem is only going to increase as more blueberry farms are planted and as more development occurs.

DECISION

43. The Complainants have filed a Complaint pursuant to s. 3(1) of the *Act*. That section provides as follows:

3(1) If a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.

44. “Normal farm practice” is defined in Section 1 of the *Act* as follows:

“normal farm practice” means a practice that is conducted by a farm business in a manner consistent with

- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
- (b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

45. After hearing a complaint, the Panel must, pursuant to s. 6(1) of the *Act*:

- (a) dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, or
- (b) order the farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.

46. In this case, the Complaint is really two-fold. The Complainants specifically take issue with the events of the evening of July 12, 1998. In addition, they take issue with the use of propane cannons generally on the Sekhon Farm and seek a determination of whether the Sekhon Farm is subject to the Guidelines.

47. The events of July 12, 1998 are easiest to deal with. The Complainants have demonstrated that on that evening, a cannon at the Sekhon farm fired well past midnight and necessitated a call to the RCMP. The farm acknowledges that it has had some problems with its cannons and in at least one instance, a cannon was sabotaged. They believe that since that time, they have made every effort to operate their cannons between the hours of 6:00 am and 8:00 pm, in accordance with the Guidelines.

48. The Panel is satisfied here that it is not “normal farm practice” to operate a propane cannon

well past midnight. This event was clearly an error on the part of the Sekhon Farm and there is no dispute that such operation of a propane cannon is not “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances”. While on the evidence it is clear that the farm no longer relies on timing devices to control the firing of their cannons as they now operate their cannons manually, this portion of the Complaint is made out. Accordingly, pursuant to s. 6(1)(b) of the *Act*, the Panel orders the continued cessation of this practice by the Sekhon Farm in the future.

49. The more difficult issue is the broader question of how the Sekhon Farm uses its propane cannons in light of the definition of “normal farm practice”. The Complainants seek a determination of the following:
- a) Should propane cannons only be used when required for the protection of specific crops and only when a problem is evident?
 - b) Should the hours of operation be between 6:00 am and 8:00 pm local time?
 - c) Should no more than one cannon per two hectares of cropland be used at any one time?
 - d) Should the cannons, where possible, be aimed away from neighbours?
 - e) Should the cannons be maintained properly to avoid continuing noise when cannons are shut off?
 - f) Should the cannons be located as far away from neighbours as possible?
 - g) Should a noise barrier(s) be erected if feasible?
50. The Guidelines set out that propane cannons should only be used when required for the protection of specific crops and only when a problem is evident. According to Ms. Sihota and Ministry publications, propane cannons should be started before the crop ripens to prevent bird habituation. Mr. Sekhon argues that the farmer is best able to determine when “a problem is evident” within his fields. The Complainants, who see cannons operated in fields where no birds are present, maintain that an independent third party should be determining when a problem is evident; this decision should not be left to the farmer.
51. The Panel accepts that the proper and accepted custom and standard “as established and followed by similar farm businesses under similar circumstances” is that it is the farmer who is best able to determine when a bird predation problem exists. In the May 1999 Review of the Guidelines, the FPB recognised that a good predation management plan can assist the farmer in managing his bird predation problem and can form the basis of educating neighbours regarding the need to use cannons. The Sekhon family has followed this recommendation and created a written predation management plan to address their bird predation problems. In the plan, attempts have been made to modify cannon usage to accommodate neighbours. It is unfortunate that due to poor communication, the first opportunity the Complainants had to see this predation management plan was during this hearing.
52. The Complainants seek a determination of whether the hours of operation of propane

cannons should be between 6:00 am and 8:00 pm local time. Ms. Sihota argues that birds do not respect the clock; they feed from dawn to dusk. Mr. Patton maintains that the practice in the Okanagan is to operate cannons from dawn to dusk. However, Mr. Sekhon has attempted

to operate his cannons within the Guidelines. Although he too recognises that birds feed outside that time frame, he operates his cannons within the compromised hours of operation set out in the Guidelines.

53. According to Mr. Avtar Jagpal, Peer Advisor, blueberry farms in Surrey follow the hours of operation set out in the Guidelines. In circumstances where there has been a complaint of cannons firing after 8:00 pm, a Peer Advisor attends at the farm, determines the reason for the late firing and then ensures that the timing device is repaired and set to turn the cannon off prior to 8:00 pm. In his experience, farms have been co-operative in fixing their cannons and observing the hours of operation found in the Guidelines.
54. The Panel accepts that the “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances” for blueberry farms in Surrey is to follow the Guidelines. It is well recognised that these hours of operation are a compromise. The farmer’s crops are unprotected for a period of time, in order that the neighbour has a period of relief from the cannon blasts. Given the proximity of neighbours to the Sekhon Farm, the Panel accepts that “normal farm practice” for this farm is compliance with the hours of operation found in the Guidelines.
55. The Complainants seek a determination that no more than one cannon per two hectares be operated at any one time. Mr. Sekhon does not oppose this requirement. In fact, he currently operates three cannons on his 40-acre farm, well below the limit found in the Guidelines.
56. The Guidelines provide that the maximum number of cannons that may be used on a farm is one cannon per two hectares. In this situation however, the Sekhon Farm uses far less than the allowed number of cannons in order to accommodate its neighbours. Thus, it would appear that the “normal farm practice” for the Sekhon Farm is something less than one cannon per two hectares.
57. There may be other situations where one cannon per two hectares results in too many cannons in operation. Where there are a number of small farms, cannon density could collectively exceed one cannon per two hectares. In those situations “normal farm practice” may be more difficult to determine. In some situations, a small farm that is surrounded by other farms that use cannons may not need to rely on cannons at all as it may be protected by the other farms’ “umbrella of sound” as was the case for Ms. Sihota’s farm.

58. Given the evidence, the Panel is unable to determine what a “normal farm practice” would be for the Sekhon Farm. In consideration of its neighbours, the Sekhon Farm uses less than the number of cannons per hectare recommended in the Guidelines. Thus, the usual practice for this farm would be something less than the recommended limit. However, as the Farm must have the flexibility to protect its crops as bird predation patterns vary throughout the harvest season and from year to year, the Panel is not prepared to limit the Farm beyond those limits set out in the Guidelines.
59. The Complainants also seek a determination that cannons, where possible, should be located and aimed as far away from neighbours as possible and be properly maintained to avoid continuing noise when cannons are shut off. The Sekhon Farm attempts to comply with these requirements. It has located its southernmost cannon approximately nine acres from the property line and has pointed it away from the Complainants. The Complainants have in fact observed a decrease in cannon noise since this configuration was adopted. The Farm manually turns its cannons on and off to prevent any problems with cannon firings after the timer has supposedly shut off. In the Panel’s opinion, the foregoing practices are consistent with a well managed farm operating in the vicinity of nearby neighbours and are “normal farm practices” within the meaning of the *Act*.
60. Finally, the Complainants seek a determination that the erection of a sound barrier is “normal farm practice” for the Sekhon Farm. Based on the evidence presented at this hearing, the Panel cannot make a finding that sound barriers such as hay bales or deflecting devices are a “normal farm practice” for a farm in the Surrey area. We are not aware of other farmers in this area employing these techniques. Mr. Sekhon was unaware of whether deflection shields could be used to direct the noise away from neighbouring residences.
61. However, from a common sense perspective, the Panel believes that some form of deflection device or buffer could improve the noise problem for the Complainants. A buffer would also protect the Farm from trespassers and vandals. However, buffers must be carefully chosen so as not to exacerbate the problem by creating roosting sites for birds. The more difficult issue is who is responsible for building the buffer and deciding where it should be situated.
62. When new development occurs, a buffer should be included in the land use plan. In some situations, this will require the urban developer to build a buffer. In other situations where a large commercial farming operation is being developed, the responsibility of buffering may fall to the farm. Clearly issues of constructing buffers along the interface between urban/rural lands must be a primary consideration at the municipal planning level. When a development is at the planning stage, incorporation of buffers into the design is simpler. Retrofitting buffers once a development is completed is more problematic than planning for the buffer at the outset.

63. The Panel finds that it is “normal farm practice” for the Sekhon Farm to:
- a) Determine, through the use of a predation management plan, when propane cannon use is required for the protection of specific crops and only use cannons when a problem is evident;
 - b) To operate cannons between 6:00 am and 8:00 pm local time;
 - c) To use no more than one cannon per two hectares of cropland at any one time;
 - d) Where possible, locate and aim cannons as far away from neighbours as possible;
 - e) Properly maintain cannons to avoid misfiring.
64. The Panel finds insufficient evidence to conclude that it is “normal farm practice” to erect deflection devices or buffers. However, it may be worthwhile for the Sekhon Farm to consider whether the use of such devices is feasible. If the devices prove feasible, the Complainants should consider cost sharing these improvements as they go beyond current “normal farm practice”.
65. With the exception of the incidents outlined in 1998, the Panel finds that the use of propane cannons at the Sekhon Farm falls within “normal farm practices” and as such the Complaint is dismissed.

RECOMMENDATIONS

66. It was apparent in the course of this hearing that prior to the formalised complaint process, there had not been good communication between the Sekhon Farm and the Complainants. The Complainants concerns around the inaccessibility of the “absentee” owners could be rectified by the Sekhon Farm providing the Complainants with a contact number that can be accessed 24 hours a day to be used in the case of malfunctioning of the propane cannons.
67. Both parties could benefit from a buffer along the southern boundary of the farm. The Panel recommends that the Complainants and the Sekhon family explore these options perhaps with the assistance of Mr. Smith, MAFF Senior Land Use Specialist. Any proposed buffer would need to be designed in such a fashion that it did not create bird roosting sites and as such exacerbate the Sekhon Farm’s bird predation problems. As any buffer would benefit both parties, the Panel recommends a cost sharing of any installation.
68. The Panel further recommends that the Complainants should monitor the new development and encourage the developers to install proper buffering along 160th Avenue. In addition, the Complainants should take an active role in educating prospective buyers as to the operations of the surrounding farms.

69. More generally, the Panel feels that education is a critical component in resolving urban/rural land use issues. New homeowners must be educated as to what it means to live in an active farming area. The lifestyle that is being marketed to them is not necessarily the lifestyle they are getting; not surprisingly that leads to a high degree of frustration when their expectations are not met.

70. MAFF has taken an active role in attempting to educate people about rural living. The following excerpt comes from the Ministry publication "The Countryside and You":

Is country living for you? Remember, rural living is not 'wilderness living'. You are not moving back in time, just to another place. The world is busy everywhere, and the countryside is no exception. It is important to remember that the Agricultural Land Reserve was established to provide a home for farming and to provide food security for your future.

We deal with noises and smells in the city and enjoy the beautiful surroundings too. Similarly, there are noises and smells in the countryside, but from another source.

There is an industry and an important way of life to be found in the countryside, and it is called FARMING.

71. These efforts to educate the broader public are important and must be continued. However, this is not the sole responsibility of MAFF. While it is unrealistic to expect a developer to portray the downside of living in a rural community, those agencies that have direct contact with the individual homebuilder or buyer, such as real estate agents and municipalities, must also take some responsibility for educating the consumer.

72. Homeowner associations like the Complainants can also play a role by being outspoken about their concerns and ensuring that prospective buyers are made aware of the problem. It is within the power of homeowner associations to raise their concerns with the developer and try to bring about change in the planning of these large developments.

73. MAFF has developed an educational program for realtors dealing with the urban/rural conflict issues. The Panel encourages MAFF to continue with its leadership role in this regard. The anticipated development in the Rosemary Heights area alone is staggering. Land use conflicts are going to be rampant if proper planning and education does not take place.

74. The role of municipalities can not be overstated. Land use issues must be dealt with at the outset. Proper buffers must be incorporated into development plans in order to minimise the impact of new development on pre-existing neighbours or farms. Whenever a land use change is contemplated, whether it is a large commercial agri-business or a retirement community, the municipality must consider and ameliorate the impact of that change on the surrounding properties.

75. Specific to the issue of cannons, it may well be that the municipality should get involved when field usage changes. In the Fraser Valley, there have been a number of new plantings of blueberry crops. In the Rosemary Heights area, several new fields of blueberries are being developed. If proper measures are not put in place as these fields are developed, the land use conflicts will only escalate.
76. There is also a problem relating to the cumulative effect of propane cannons. The Complainants referred to the fact that there are times when the banging from various farms in close proximity is almost constant. While at any given farm blasts may be several minutes apart, the neighbour hears a steady string of blasts coming from cannons from several different fields. This issue as well as the issue of the frequency of cannon detonations on a single farm may also need to be considered. Neither has been addressed in the Guidelines. However, if the cannon is going to be used over the long-term to assist with bird predation problems, the cumulative effect of cannons over a given region must be considered.

Dated at Victoria British Columbia this 6th day of October, 2000.

FARM PRACTICES BOARD

Per

Original signed by

Christine J. Elsaesser, Panel Chair

Original signed by

Karen Webster, Member

Original signed by

Allen Watson, Member