

IN THE MATTER OF
THE FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996 C. 131
AND IN THE MATTER OF TWO COMPLAINTS REGARDING NUISANCE WILD BIRDS,
RODENTS, NOISE, ODOUR, FLIES AND DUST FROM A FARM
IN SAANICH, BRITISH COLUMBIA

BETWEEN:

BARB SHARPE

COMPLAINANT

AND:

0832602 BC LTD. and SHAWN McLAUGHLIN

RESPONDENTS

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Andreas Dolberg, Presiding Member
Carrie H. Manarin, Member
Daphne Stancil, Member

For the Complainant:

Barb Sharpe
Jim Cambridge, Representative

For the Respondents:

0832602 BC LTD. and Shawn McLaughlin
Kevin McLaughlin, Representative

Date of Hearing:

July 28 and 29, 2014

Place of Hearing:

Victoria, British Columbia

Date of Decision:

January 13, 2015

A. BRIEF SUMMARY OF DECISION:

1. The British Columbia Farm Industry Review Board (BCFIRB) hears complaints about farm practices under the *Farm Practices Protection (Right to Farm) Act* RSBC 1996, c. 131 (the *Act*). Under section 3 of the *Act*, a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business may apply to the BCFIRB for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, a panel of the BCFIRB is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the complaint is dismissed. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice causing the disturbance.
2. Two farm practices complaints were filed by the complainant Barb Sharpe alleging that certain disturbances, namely nuisance wild birds, rodents, noise, odour and dust¹ resulting from a mixed livestock and poultry operation, arose from farm practices that were not in accordance with normal farm practices. In summary, the complaints with respect to rodents, flies and dust are dismissed as the panel is unable to conclude on the evidence that the complainant was aggrieved within the meaning of the *Act*. However, the panel finds that the disturbances with respect to noise from free roaming peafowl, odour from the farm's animal containment practices in 2012 and 2013 and nuisance birds from the farm's feeding practices in 2012 and 2013 are not in accordance with normal farm practice, with the result that the panel has ordered the farm to cease and modify certain practices.

B. BACKGROUND

3. On December 5, 2013, Ms. Sharpe filed a complaint with BCFIRB about nuisance wild birds (primarily seagulls) and rodents being attracted to her property as a result of the livestock feeding practices on a farm located in Saanich, British Columbia (the farm), which is owned and operated by Shawn McLaughlin through his numbered company (0832602 BC Ltd.). On February 14, 2014, Ms. Sharpe filed a second complaint alleging noise, trespassing peafowl, odour, manure dust, garbage and a general lack of maintenance on the same farm.
4. The farm site is located in the District of Saanich, British Columbia (in an area known as "Royal Oak") and is zoned A-1, which permits agriculture. Prior to 1989, the farm was 2.31 hectares (or approximately 6 acres) in size. After 1989, two legal titles were created when a 2 hectare parcel of the farm was removed from the Agricultural Land Reserve (ALR). The 0.31 hectare homestead site, which is situated at the south central part of the former whole of the property, remained in the ALR (the "homestead site"). The farm was purchased by the McLaughlin family in 1949. Kevin McLaughlin owned the property for about 20 years until 2008 when his brother Shawn McLaughlin took it over. The homestead site has a residence which is owned and occupied by Shawn McLaughlin and

¹ The filed complaints did not allege flies as a disturbance. However, this allegation was added by the complainant as a disturbance at a case management conference and confirmed at a subsequent pre-hearing conference.

also has some small poultry enclosures and animal sheds. The use of the smaller homestead site is not part of the complaints.

5. When the complainant complained of activities occurred in 2012 and 2013, the farm site had a red barn located in the north central portion of the property, a small building located a metre away from the north property/fence line which was used as a chicken coop, several small wooden sheds with wooden fences in the centre of the property as well as a pasture area to the south and east. A dirt road runs from the southwest corner of the property to the red barn at the north end of the property. Commonwealth Place Park and Recreation Centre lies to the east of the farm and to the south are residential lots separated from the farm by Normandy Creek and a treed buffer. There are also residential lots located to the west and separated from the farm by a roadway. To the north of the farm are residential lots and with the exception of a treed area to the northwest, there is no buffer or separation distance between the farm and a number of residences in a development known as Caselton Place, which was built in 2005.
6. The complainant resides directly to the north of the farm in the Caselton Place development; the boundary of her back yard abuts the north boundary of the farm with a separation distance of approximately 10 metres² between her residence and the north property boundary of the farm. She has resided at this location since September 2008. Ms. Sharpe alleges in her filed complaints that since the farm began its practice in September 2012 of feeding pigs and chickens in the open, a large number of nuisance wild birds and rodents have been attracted to the farm and surrounding area, including her property. The complainant also alleged that the farm's peafowl make excessive noise and trespass on her property and that the farm's manure management practices have resulted in an increase in odours, flies and dust. She further alleges that the farm has allowed building materials and garbage to accumulate on the farm property and has failed to provide appropriate shelters for its livestock.
7. The farm's position is that it is not solely responsible for the presence of nuisance wild birds as there are some other small poultry farms in the area that could be attracting them. The farm submits that it has been using the same feeding practices for many decades and that nuisance wild birds only became an issue after the District of Saanich made the farm remove its poultry enclosure at the north end of the farm as a result of a complaint made by the complainant. With respect to proper animal shelters, the farm's position is that it used to house its livestock in its red barn and "corrals" but that it can no longer do so as a result of complaints made by the complainant to the District of Saanich. The farm also submits that noise made by peafowl is normal because it is made during mating season and to alert the farm operator when predators are near and that it was unable to contain the peafowl once the poultry enclosure was removed. The farm further submits that it follows normal farm practices for manure management and rodent control. With respect to garbage on the property, the farm submits that one of its tenant farmers left a large amount of garbage on the farm when he vacated at the end of December 2012 and that the farm was unable to

² This distance is based on a scaled aerial photograph of the complainant and farm properties which was attached to the first filed complaint.

remove most of it until recently. The farm also submits that it had to stop its former practice of burning feed containers after the complainant complained about that practice to the fire department and, as a result, it now has to accumulate that garbage for a few weeks until it can be removed to the dump.

8. The complaints were heard in Victoria, British Columbia on July 28 and 29, 2014. The complainant was represented by Jim Cambridge and the respondents were represented by Kevin McLaughlin. On July 27, 2014, the panel conducted a site visit of the farm and the complainant's properties for the sole purpose of putting them into geographical context.

C. ISSUES:

9. (a) Is the complainant aggrieved of nuisance wild birds, rodents, noise, odour, flies and dust from the respondent farm?

(b) If she is, do the nuisance wild birds, rodents, noise, odour, flies and dust result from normal farm practices?

D. KNOWLEDGEABLE PERSON'S REPORT AND TESTIMONY:

10. Section 4 (a) of the *Act* gives BCFIRB the authority to obtain the services of a person knowledgeable about normal farm practices. BCFIRB retained Rob Kline (P. Ag.) as a knowledgeable person (KP) pursuant to section 4 of the *Act*. Mr. Kline has been employed by the B.C. Ministry of Agriculture (the Ministry) from 1976 to present and, during that time, he has served in a number of capacities. From 2004 to present, he has been a Regional Agrologist and has been involved in conducting Agricultural Land Use Inventories to support Agricultural Area Plans with four local governments within the Victoria Capital Region. From 1995 until 2004, he was a Resource Planning Specialist and from 1975 – 1995 he was a Soil Conservation and Management Specialist in central B.C. Mr. Kline has been retained by BCFIRB as a KP on a number of farming practices complaints between 2010 and 2014. He was qualified at the hearing as an expert in the area of agricultural practices on south Vancouver Island.
11. The KP conducted a site visit of the farm and the complainant's property on April 22, 2014 in response to the complaints. He prepared a report that included a discussion of the farm's geographic features and history of the practices conducted on the site, its location in relation to surrounding properties, the history of zoning and residential development in the area, and some local, provincial and federal requirements that could be pertinent to the farm operations. In accordance with the terms of engagement for knowledgeable persons, his report was provided to the parties shortly after its completion. The KP was called by BCFIRB to give oral evidence at the hearing, his report dated June 2, 2014 was entered into evidence and he was subject to questioning by the parties and the panel. It is important to note that the evidence contained in the KP's report and the testimony he gave at the hearing is not binding on the panel.

Use of the Farm Property

12. In his report, the KP stated that from 2001 until 2011, the farm was leased to a woman who ran a horse boarding and training operation. During that time, she developed small corrals and shelters along the north boundary with Caselton Place and a riding arena to the east of the red barn. A chicken coop was built roughly a metre from the farm's north boundary in 2005 with a smaller one being added sometime thereafter, also on the farm's north boundary. From 2011 until late 2012, the farm was leased to a tenant farmer, who kept approximately 100 meat chickens, 400 laying hens, 50 turkeys and 50 hogs. During that time, the corrals and horse shelters were removed from the north property line area and a containment area made of netting and poles was erected along the north property boundary next to the Caselton Place fence line which extended from the larger chicken coop to the west to the smaller chicken coop to the east and to the existing corrals to the south. Hog pens were added to the red barn.
13. In his report, the KP stated that Shawn McLaughlin has operated the farm since 2013. He has developed small corrals and sheds in the former riding arena in the centre of the property. At the time of his site visit in April 2014, the KP observed that the farm had five mature pigs, 30 to 33 piglets, two goats, two cows, 66 laying hens (housed at the homestead site), and six peafowl. He said the farm reported that it sold eggs, weaner pigs, steers³ and peacock feathers. The KP also noted that a red barn with attached pens was used to house sows with new litters, but that no other livestock was contained. He observed that there were corrals and sheds in the centre of the property that could provide containment, shade and limited cover for feeders but that the netted containment area along the farm's north property line had been removed and the chicken coops along the north property line were being used to store farm materials.

Nuisance Wild Birds

14. The KP noted that the complainant told him she was concerned about the farm's practice of ground spreading "waste food" within a metre of the fence line on the farm's north property boundary which attracted nuisance wild birds (primarily seagulls) that roosted on her residence and left feces and waste food on her property, as well as attracting an increased rodent population. He also noted in the report, however, that the seagull population apparently declined in February 2014 after the Director of By-Law Enforcement for the District of Saanich had discussions with the farm about stopping or reducing its ground feeding practices. The KP stated that he did not observe any seagulls, crows or ravens during his site visit.
15. The KP stated that the farm reported that it collects stale bread, rejected vegetables and dented cans of produce from various Victoria area food outlets, primarily for the pigs but also for the chickens. He lays them out on the ground between the red barn and the

³ In his testimony, Shawn McLaughlin clarified that the two cows on the farm property belong to his neighbour and that the farm does not sell steers. The panel accepts this clarification.

north boundary fence line as well as on the ground by the building formerly used as the large chicken coop, next to the complainant's property. The farm also reported that the pigs are fed grain supplements either in the stall feeders in the red barn or in an open rubber ground feeder under the stairs of the red barn, and that the grain is stored in the red barn.

16. The KP testified that he had personally not observed the practice of spreading recycled feed on the ground, especially so close to a property line, on other farms and did not believe it was a common practice. He did however acknowledge that much of his experience was based on larger commercial farms and horse farms and that he did not have much direct knowledge regarding farm practices on small farms. He testified that in his opinion the usual practice is to feed livestock and chickens in ground feeders. However, the KP said he had been on some farms where hogs were kept outdoors and fed on the ground, as well as occasionally in buckets for moist feed. He stated he was also aware of a variety of methods used for feeding free range chickens, most of which involved the use portable feeders. The KP noted that although the farm's feeding area along the north boundary property line is not totally enclosed, it is functionally a confined livestock area and should in his opinion be set back from the property line.
17. The KP made the following recommendations regarding the farm's feeding practices:
 - (a) That the farm discontinues its practice of ground feeding and instead use feeders to provide cover from the elements and to discourage wild birds. The KP noted that this would reduce spoilage and improve the efficiency of the use of the feed. He also recommended cleaning indoor and outdoor feeders and surrounding areas frequently and depositing the removed waste feed in a waste storage facility to reduce the attraction of wild animals and birds.
 - (b) That the farm set back the confined livestock areas from the Caselton Place or north property boundary by the distance outlined in the Ministry's Guide for Bylaw Development in Farming Areas (the Guide), i.e., by 15 to 30 metres.
 - (c) That if the farm continues to use the two structures located along the Caselton Place property line as chicken coops, that they be relocated⁴ having regard to the 15 to 30 metre recommended separation distance outlined in the Guide⁵, but

⁴ The KP noted that because the former chicken coop was in use prior to the amendment to the zoning by-law requiring a 47.5 metre setback, the farm might wish to investigate whether, under s. 911 of the Local Government Act, (the "grandfathering provision") the former chicken coop could continue to be used as a non-conforming use to house poultry.

⁵ The Ministry Guide recommends that structures for livestock and poultry as well as confined feeding areas be set back 15 to 30 metres from a lot line, with smaller separations recommended for enclosed facilities than for confined livestock areas. The Guide does not recommend a setback for free range poultry (p. 20) provided that the number of animals has a density of less than 1 agricultural unit, which is defined at Appendix E to the Ministry's Guide to Edge Planning at p. 74 as being a total live weight of less than 455 Kg which is approximately 240 laying hens or 100 meat chickens. Also, the definition of confined livestock area in the Guide to Edge Planning specifically excludes "free range poultry at a density of less than 1 agricultural unit per 100 m²".

cautioned that this differs from the separation distance of 45.7 metre (or 150 feet) required under the District of Saanich's zoning by-law⁶.

- (d) Alternatively, that the farm use mobile poultry facilities on areas of the farm that might otherwise be restricted due to the setbacks required for permanent facilities under the District of Saanich by-laws and Guide.

Rodents

- 18. In his report, the KP said the complainant reported an increase of rodents on her property. The KP also noted that the farm reported that it uses traps and poison for rodent control in areas where feed is stored and also plugs holes in buildings. The KP stated that he did not observe any rodents on the complainant's property or on the farm during his site visit but he believed the farm's ground feeding practices could provide a food source and the wood piles in various places on the farm could provide cover for rodents.
- 19. The KP stated that rodent management practices should include storing all feed in covered, rodent-proof containers; avoiding the spillage of feed; repairing leaking water sources and open drains; keeping buildings in good repair and screening off openings; keeping areas next to buildings free of long grass; and maintaining good general sanitation and cleanliness throughout the farm site.
- 20. In his testimony, the KP said it was his opinion that the farm's rodent control practices accord with proper and accepted practices but it could improve its practices by piling up wood, removing debris from around the red barn and clipping long grass, although he said he did not observe much long grass during his site visit.

Odour and Dust

- 21. In his report, the KP states that the complainant reported having to continuously clean dust off of her porch area.
- 22. The KP stated that the farm reported that it does not collect or store manure on the farm and that the two existing piles next to the red barn were leftover materials from the former horse operation, as well as some soil scraped up from the farm yard area. The farm reported that it removed approximately three loads per month of the soil material offsite from April to October. The KP stated that he observed no noticeable odours or dust coming from these piles but that the farm had apparently taken no steps, as other farms do, to cover the piles to contain odour or dust during dry conditions.

⁶ The District of Saanich Zoning By-Law No. 8200 requires that buildings housing more than 30 poultry or bantams be set back 45.7 metre (or 150 feet) from any lot line but that for other livestock buildings, the setback is 49.2 feet (or 15 m) from any lot line. Additionally poultry and other livestock buildings must be set back 24.6 feet (or 7.5 m) from any human habitation.

23. The KP noted that other potential areas for dust in the dry months included the roadway and a bare area around the red barn where the former chicken enclosure had been. He noted that it was common for farms to have areas of bare ground or “sacrifice areas” that could generate a lot of dust, but that it appeared vegetation was starting to grow in the former chicken enclosure area by the fence line. He testified that the usual practice was to water down dusty areas where equipment operated around livestock and to seal dirt roads with other materials such as gravel, pavement or grass. He also stated in his report that tree buffers could be planted between farm operational areas and residences.
24. The KP testified that during his site visit he did not see any concentrations of manure, including in confined areas. He noted that manure spreading, other than in winter, was a proper and accepted practice on farms and that it was common for farmers to use a light chain harrow on the pastures in the spring to distribute the manure nutrients. However, he recommended that if the farm was to continue its ground feeding practices, that it build a small containment area with walls and a concrete base to hold soil and manure scrapings in order to minimize bird and animal access and odour, dust and flies.

Flies

25. In his report, the KP stated that he observed no issues with flies on the farm during his site visit. He observed some standing water in compacted areas near the soil piles as well as a few pools in the pasture; one of which was identified as a hog wallow. The KP testified that hog wallows are consistent with free range situations and would likely generate flies but that little could be done to control flies in an open area.
26. The KP noted in his report that fly management practices should reduce or remove fly breeding materials such as moist manure, bedding and spoiled feed and that if manure cannot be dried easily or spread on the farm every couple of weeks that it should be stored in an enclosed structure. The KP also observed that the farm site appears to have adequate drainage, given that it slopes southward toward Normandy Creek with drops of 6 to 11 metres.

Peafowl & Noise

27. The KP testified that according to the Ministry’s poultry specialist there are few peafowl farms in Canada and therefore he was unfamiliar with the proper and accepted husbandry practices for them. While the KP testified that he had not come across anything in his research that indicated peafowl were used on farms for predator control, he did not disagree that the peafowl could be used to alert a farmer of predators. He questioned their effectiveness of alerting the operators of this farm when the peafowl were not on the farm site or when Shawn McLaughlin was away for two weeks at a time at work.
28. The KP report states that at the time of his site visit, the complainant reported that peafowl roost in the trees overhanging her yard as well as on the patio and roof of her

house. He observed that the farm's three peahens and three peacocks were not contained and that one was perched on an adjacent property fence.

29. The KP also noted that the District of Saanich Animal By-Law 8556 prohibits any farm animal from trespassing on private property and, accordingly, he recommended that the farm contain its peafowl on the farm site by managing flight feathers or by full containment. In order to mitigate the noise of the peafowl, the KP recommended that they be confined to a flight pen with perching areas and sound breaks.

Debris Storage & Farm Maintenance

30. The KP states in his report that he did not observe any empty feed containers during his site visit and that the farm reported that it stored these in a bin and later took them to the dump. The KP said he observed some plastic tarps, buckets, wood pallets and boards, rolls of woven wire, and other metal materials in the corral area where poultry and other livestock had access, as well as some tarps on the ground north of the red barn.
31. The KP testified that while there were no Ministry guidelines regarding the on-farm management of materials and/or debris, he noted that many farms have a central working area for material storage so that it does not take up a lot of space. He recommended that the farm develop a central material storage area away from barns and coops (for lumber, poles, pallets and debris).

E. EVIDENCE AND SUBMISSIONS OF THE PARTIES

32. The complainant resides to the immediate north of the farm. She testified that she had no problems with the farm when it was used as a horse operation, but that she began to have problems in about 2011 when another tenant farmer began a chicken and hog operation on the farm. In a written timeline entered into evidence, the complainant states that she spoke to Shawn McLaughlin in September 2012 about garbage on the farm and an RV stored against the fence line by her property. In November 2012, she left a message for him about the farm's open feeding practices attracting seagulls but did not get a satisfactory result so she approached by-law officials about these matters. She also stated that some issues were resolved but that the garbage and chicken issues resurfaced in early 2013 and at that time she again sought the assistance of by-law officials. The complainant's submission indicates that she felt the by-law officials were not able to assist her with some issues and were not enforcing compliance of other issues in a timely manner, so she went to the media to put pressure on politicians to enforce the District of Saanich's new setback by-law for farm structures.
33. Mr. McLaughlin takes the position that the farm is operated on land zoned for agricultural use, including the keeping and rearing of livestock. He submits that the farm has operated for many years with the same animals (i.e. chickens and pigs) in greater numbers and with the same practices without complaint by its neighbours. He testified that the complainant never complained about the flies and large amounts of dust generated by a former horse operation on the farm located in close proximity to the

complainant's property, nor did she complain about disturbances during the year and a half period (in 2011 and part of 2012) when the tenant farmer raised 400 meat chickens and some ducks and turkeys in a pen along the north boundary fence line as well as 52 pigs and 80 piglets.

34. Mr. McLaughlin testified that he currently operates the farm and, although he has a job off the farm which requires him to be away for two weeks at a time, a neighbour across the street from his residence manages the farm and can respond to the peafowl's calls during these absences. He also testified that one of his nieces resides with him from time to time on the farm property.
35. Mr. McLaughlin testified that in 2013 he raised and sold 60 meat chickens; kept six hogs and their offspring (which were sold); and six peafowl on the farm. He said he now has eight breeding hogs, a number of piglets and six peafowl (plus four chicks), and in the last year he also acquired some laying hens (which he now houses on the homestead property) and two goats that produced a kid (which will be sold).⁷ He also testified that he currently sells piglets and whole pigs, eggs and peacock tail feathers.
36. Mr. McLaughlin submits that even though there should be fewer disturbances with fewer animals on the farm, Ms. Sharpe started complaining about disturbances after the tenant farmer left the farm site in late 2012. Consequently, he believes Ms. Sharpe's complaints are vexatious and an example of her ongoing harassment over the past two to three years, which has included repeated complaints to the District of Saanich by-law enforcement, the fire department as well as to the SPCA, animal control authorities and the media.
37. Kelly Green testified that she is a tenant of the farm and has resided in the residence on the farm site with her spouse, William Wrigley, and their four sons since May of 2011. Both Ms. Green and Mr. Wrigley testified that Mr. McLaughlin has made a number of improvements to the farm over the past three years. Ms. Green said these improvements addressed a number of concerns of the complainant but the complainant has never acknowledged those efforts and instead has been unreasonable and demanding by raising new issues as soon as one is dealt with. She also testified that in her view, the residents of the Caselton Place development do not represent the views of the neighbourhood and that she and her family as well as most of the farm's neighbours enjoy living near a working farm.

Nuisance Wild Birds

38. The complainant testified that her complaint regarding the farm's feeding practices did not concern the forage feeding of the cattle and goats on the farm but rather only concerned the open, ground feeding of scrap food to its hogs and chickens. According to

⁷ In a pre-hearing conference, Mr. McLaughlin stated that the farm also sold composted horse manure. However, in his testimony at the hearing, he clarified that there is no charge for the manure but that his brother, Kevin McLaughlin charges a fee for the use or operation of a loader.

the complainant's timeline, in July 2013, she believed the respondent had approximately 80 meat chickens and six peafowl in a netted enclosure attached to the fence on the north property line. The complainant said she contacted by-law officials to enforce the zoning by-law setbacks and in September 2013 the farm removed the birds from the netted area. In October 2013, the farm began dumping large amounts of bread along the same area of the fence line and this attracted many seagulls.

39. The complainant testified that she was disturbed by the seagulls roosting on her roof all day long and was concerned about feces degrading her roof. She also testified that the birds dropped food scraps on her property. A number of the complainant's neighbours from the Caselton Place development testified that they were also disturbed by seagulls attracted to the open feed on the farm, but that this issue had been resolved during approximately the three months prior to the hearing. The complainant also referred the panel to photographs she had taken in early 2014 showing the bread on the ground, the birds on the farm and large amounts of bird feces on her roof. The complainant's written timeline states that the open feeding practices and resulting seagulls stopped in late-February 2014. The complainant testified, however, that she believes the respondent may still be open feeding from time to time and she referred the panel to a photo she took in mid-June 2014 showing a small amount of food scraps on the ground by the red barn.
40. The farm submits that feeding of stale bread and other human food to hogs on the ground is consistent with proper and accepted feeding practices. Since the time of the complaint, the feeding has been moved to covered locations on the farm, specifically the red barn, thereby reducing the accessibility of the feed source to wild birds and eliminating any wild bird attractants.
41. Mr. McLaughlin testified that nuisance wild birds were never a problem until the complainant demanded that the District of Saanich enforce its by-laws that prevented the farm from using its existing farm buildings for containment of poultry and other livestock. He testified that he had to remove the poultry enclosure on the north boundary of the farm and allow the livestock and poultry to roam free on the farm site and to ground feed, but that he now feeds the livestock inside.
42. The respondent's tenant, Ms. Green, testified that she believes seagulls are a fact of life in the greater Victoria area.

Rodents

43. The complainant testified that she believes the farm's open feeding practices were attracting rodents as she has observed an increase in rodents in the past two to three years. The complainant said her cat drags rodents to her house frequently and she referred the panel to a photograph of a dead mouse on her doorstep as well as to one of a squirrel with a bagel on the fence line near some bird feeders. The complainant said she believes some of her neighbours may also have a rodent infestation although none of her witnesses testified that that was the case.

44. Mr. McLaughlin testified that the farm has had a rodent control program in place for four years and during that time he has seen very few rodents and caught only 8. He also leaves poison bait around the barn but that of late it has not been eaten which suggests to him that there are fewer rodents around. He submits that the farm is not an attractant for rodents and notes that the complainant's witnesses themselves do not have a rodent problem. The farm's residential tenant, Ms. Green, testified that she believes the complaint about rodents is "laughable" given that it is common knowledge that rodents are endemic to both urban and rural areas of greater Victoria. She said that she could recall only one occasion when she found a mouse in her residence on the farm.

Peafowl & Noise

45. According to the complainant's timeline, the peafowl had been previously contained with other poultry on the farm but in December 2012 they were let loose. She said she made a complaint to by-law officials about their noise in April of 2013 and they were returned to an enclosure next to the north property boundary fence line but that very shortly thereafter, the enclosure was removed at the insistence of by-law officials and the birds were again permitted to roam free. The complainant says that the peafowl were contained with the farm's meat chickens along the fence line from July 2013 until October 2013 when they were again let out. The complainant clarified in her testimony that her complaint relating to peafowl disturbances occurred between October 2013 and mid-June of 2014.
46. The complainant testified that in April 2014, the farm's peafowl would perch in the trees by her residence and they would screech during the day and night as well as come into her yard, scratch the garden and leave feces. The complainant said she was advised by the District of Saanich by-law officials that there was nothing they could do because they believed that the peafowl did not have to be contained under the District of Saanich Animal By-Law. In her written submissions, the complainant stated that in her view, the peafowl were ornamental birds and the farm seemed to have no apparent purpose for them. The complainant said all but one of the peafowl was contained on the farm in a pen in May 2014 with the last one being caught in June so that the noise and trespassing of the peafowl were no longer a problem at the time of the hearing.
47. The complainant referred the panel to some photographs showing the peafowl in her yard. She denied the farm's allegation that her son enticed the peafowl into her yard by feeding them. A number of the complainant's neighbours from the Caselton Place development also testified that they were disturbed by the loud screeching noise of the peafowl especially in the middle of the night and during mating season (i.e. April) but agreed that the noise had ceased or was tolerable for the past three to four months. Ms. Green commented in her testimony that she "may be crazy" but that she actually liked the sound of the peacocks in the neighbourhood.
48. Mr. McLaughlin testified that the peafowl were kept with his former tenant farmer's chickens in a netted enclosure along the north property line until December 2012 when that farmer was evicted and removed his poultry and livestock from the farm. The

peafowl were returned to the enclosure with some meat chickens until April 2013 when the by-law officer made him remove the enclosure. At that time, he had to let the peafowl run free so he clipped the flight feathers on one wing of each peafowl to keep them from flying high but those feathers grew back and he was unable to catch them afterward.

49. Mr. McLaughlin testified that he keeps the peafowl mainly to alert him of and to ward off predators. He said recently he started selling the peacock feathers, which are used for decorative purposes and is also investigating selling them for making fishing flies. He concedes the peafowl are loud but takes the position that, as the rearing of birds of various types is an accepted farm practice, it should be expected that some noise will be associated with them. He indicated peafowl make loud sounds when they are sensing a threat or are threatened by predators, such as eagles or racoons, and make a different sound in the spring during mating season. He claims the warning system is a benefit to his farm and such sounds are to be expected from this acceptable farm practice of rearing peafowl. Since May of 2014, he has confined the peafowl in a large, enclosed pen sited 150 feet from the north property line which holds three peahens, three peacocks and four peafowl chicks. The pen also has boards on part of its north perimeter to act as a sound barrier.

Dust

50. The complainant testified that she was disturbed by excessive amounts of dust in July and August of 2012 and 2013 that she continually had to clean off her porch area. She initially attributed this dust to the piles of soil and bare ground areas because she had observed cows and pigs in that area. The complainant also testified that she had considered installing a 7 to 8 foot cedar hedge along the fence line with the farm. On cross-examination, she denied the farm's claim that in 2010 the farm offered to put a treed buffer along her fence line but that she declined it because it would obstruct her view. The complainant testified that once the chicken enclosure next to her fence was removed, she was no longer disturbed by excessive dust and believed the level was consistent with what would be expected from a farm.
51. Mr. McLaughlin denied that the farm produced any significant amounts of dust and stated that he drives slowly when it is dry to prevent dust. He also stated that the road is of an acceptable construction with gravel and is needed to move equipment on the farm. He testified that in 2010 he planted 40 trees along the farm's north and east property lines. He also testified that he had offered to plant them along the complainant's fence line, but that she advised him that she did not want her view obstructed.

Odour

52. The complainant testified that she was disturbed by odours from the farm in July and August of 2012 and 2013, and that the odours were so strong in August of 2013 that she did not open her windows or use her deck. In her filed complaint and at a pre-hearing conference, the complainant said she believed the odour was from chickens being confined so close to the property line as well as from other livestock being at large with

no manure management. The complainant also testified that once the chicken enclosure was removed from the fence line area, the odours were greatly reduced and they are now tolerable.

53. Mr. McLaughlin testified that he believed odours on the farm were normal but he agreed that significant odours may have come from the former chicken coop and confined feeding area along the north property line.

Flies

54. Neither of the complaints refers specifically to a fly disturbance, but at a pre-hearing conference the complainant stated that she was disturbed by a large number of flies which she believed resulted from improper manure management and standing pools of water on the farm. The complainant testified that she has been disturbed by an increased level of flies in July and August of 2012 and 2013 and had to purchase a screen door and referred the panel to an invoice dated June 26, 2014 for the same. The complainant also testified that once the chicken enclosure was removed from the fence line, the flies were of a tolerable level consistent with what she would reasonably expect of a livestock operation.
55. Mr. McLaughlin denied that the farm has more flies than is usual on other small mixed farms and submits that the chickens help keep the fly populations down.

Debris Storage & Farm Maintenance

56. In her written timeline, the complainant states that she has been dealing with the District of Saanich about garbage accumulating on the farm site since 2012. She said that in February of 2013, she had a meeting with a by-law officer and Mr. McLaughlin, where it was agreed that the farm would remove some garbage and an old trailer and that this was done by the end of March 2013. However, the complainant stated that the farm has continued to store garbage (i.e. feed containers and wood debris) next to the red barn as well as pallets, and that it only began cleaning this up a month prior to the hearing. The complainant also submits that the farm does not have proper structures to contain its livestock.
57. Mr. McLaughlin testified that most of the accumulation of garbage, scrap wood and wood pallets on the farm referred to by the complainant were left by his former tenant farmer after he was evicted in late 2012. Mr. McLaughlin said he used to make fires with the scrap wood to cook canned vegetables, making a mash for the livestock. After the complainant made numerous complaints to the fire department, he could no longer do so. He also stated that it took considerable time to remove the garbage from the farm as a result of his various medical conditions, lack of finances and having adequate time because of his work commitments. He said he has removed four bins of garbage and wood pallets at considerable expense and that he intends to continue making improvements.

Proper and Accepted Farm Practices

58. The complainant testified that she grew up on a small mixed livestock farm on Vancouver Island and received a diploma as a veterinary assistant (although the panel understands that she is not currently employed in this capacity), has some experience with animal husbandry practices and believes it is usual to contain livestock in a pen or barn. The complainant admitted, however, that she did not know what the proper and accepted farming practices were as they pertain to the containment and feeding of livestock (i.e. pigs and chickens) or manure management practices, other than for horse operations.
59. The complainant seeks as a remedy an order that the farm build proper structures to contain its livestock and that those structures be set back from her property line in accordance with the Ministry's Guide for setbacks and/or District of Saanich by-laws. The complainant also seeks an order that the farm follow the KP's recommendations regarding manure management and feeding practices and that it be ordered to clean up garbage on the farm site.
60. Mr. McLaughlin submits that the complainant's idea of a well-run farm is a horse operation, which differs significantly from a mixed farm operation. Mr. McLaughlin submits that he has visited other local, small farms and has researched livestock operations on the internet, and believes he is following the proper and accepted practices of other small, free range livestock operations.
61. Mr. McLaughlin submits that his manure management practices accord with proper and accepted practices of similar farms. He testified that he does not collect manure from free ranging animals and that it is not a usual practice of free range livestock operations to do so. He testified that he cleans out the accumulated manure and bedding from the pig stalls after the piglets are born and moved to another area, as well as chicken manure from the chicken sheds. He stated that this material is either spread directly on the farm's pasture areas or added to the old piles of composted horse manure for future use and submits that this is also a proper and accepted practice of other farms.
62. Mr. McLaughlin testified that the livestock feeding areas that are the subject of the complaint were covered until the complainant forced him to remove those structures. He testified that the bread and vegetables that he feeds to the pigs and chickens are not fairly characterized as "waste" feed because most of it is fit for human consumption.
63. Mr. McLaughlin testified that the farm has always had livestock and livestock containment areas in close proximity to the north property boundary, and that there used to be a forested area where the adjacent Caselton Place development is now sited. However, he also testified that in 2012, the District of Saanich's by-law regarding setbacks for structures containing poultry was amended, making the shed located one metre away from the north property line and the red barn no longer usable as a chicken coop because it had to be 150 feet away if it was housing more than 30 chickens. He said he did not know about the setback by-law when he built the pen along the north

property line and the complainant never said anything about it when his most recent tenant farmer was raising poultry on the farm, so he refilled it with his own poultry after the tenant left with his livestock. Mr. McLaughlin testified that he now houses his laying hens on the homestead property and that if he gets meat chickens in the future, they will be free ranging and he will use a mobile feeder surrounded by an electric fence.

64. Mr. McLaughlin testified that a number of years ago he visited a large peafowl farm in Cedar, B.C. that had free roaming peafowl and that he recently visited a peafowl farm in Sooke, as well as two other local farms that have peafowl. He said that all of these operations allow the peafowl to roam free. He also testified that there are free roaming peafowl in Beacon Hill Park in Victoria. Consequently, he said he believes that his former practice of allowing peafowl to roam free accorded with the proper and accepted practices of other peafowl operations.

ANALYSIS

65. The complaints were filed pursuant to section 3(1) of the *Act* which 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.

A. PRELIMINARY MATTERS

66. The complainant alleges that she is disturbed by garbage on the farm site as well as the farm's general lack of maintenance.⁸ However, the panel finds that the complainant has not demonstrated how an accumulation of garbage or debris on the farm site or a lack of maintenance is a "disturbance" within the meaning of the *Act*. For example, the complainant has not alleged that the garbage comes onto her property or that it creates odours. Instead, the panel understands this complaint to relate to visual aesthetics in that the farm's alleged failure to clean up the farm site has created an eye sore for the complainant. However the panel agrees with the reasoning of the BCFIRB panel in [Hill v Gauthier \(BCFIRB, March 6, 2013 at p. 5\)](#) when it concluded that visual aesthetics are not a "disturbance" under the *Act* for the following reasons:

I am of the view that common law of nuisance does not recognize interference with aesthetic appearance. To say this another way, the fact that a neighbour creates an eyesore does not create an action in nuisance. Given that the common law does not recognize interference with aesthetics as nuisance, I find that "other disturbance" [as per s. 3 of the *Act*] cannot be interpreted so as to give a

⁸ The panel notes that while garbage and a lack of maintenance were referred to in the second filed complaint, it was not identified as an issue at a subsequent case management or pre-hearing conference.

complainant the right to file a complaint based on the unattractive appearance of his neighbour's property.

67. Consequently, the panel dismisses the complaints regarding garbage and lack of maintenance as they do not fall within the definition of "other disturbance" under the *Act*.
68. The panel is mindful that in a pre-hearing conference, the complainant alleged that the garbage could attract rodents and we will address that aspect of her argument below under the heading, "Is the Complainant Aggrieved?" In any event, and for completeness, we observe that based on the evidence of the parties, this issue is being dealt with on an ongoing basis by the appropriate authority, the District of Saanich.
69. The complainant also submitted that as a result of the garbage on the farm and the noise from tenants who formerly resided in an RV on the farm, in 2012 she and some other residents of the Caselton Place development sought and were successful in getting their BC Assessment Authority property assessments reduced by the Property Assessment Appeal Panel (PAARP). The complainant submits that the farm's poor farming practices have devalued her property and in her written submissions, she characterized this as a "disturbance." The respondent farm noted that no reasons were given by PAARP for reducing the complainant's assessed property value and submitted that this was not a reliable indicator of a reduced market or re-sale value. The panel finds that a reduction of property value (if any) is not a disturbance within the meaning of the *Act* and any evidence of reduced property values is not relevant and has not been considered in this complaint.
70. In her first complaint, the complainant alleged that nuisance wild birds posed a health issue. As the complainant was advised during the pre-hearing conference, the determination of compliance with public health legislation is properly dealt with by other authorities.

B. STEP 1: DOES THE DISTURBANCE COMPLAINED OF ARISE FROM A FARM OPERATION CONDUCTED AS PART OF A FARM BUSINESS?

71. In his evidence and submissions, Mr. McLaughlin stated that he operates a small farm business from which he receives income from the sale of meat chickens, eggs, pigs, peacock feathers and composted horse manure. The complainant did not dispute that the operations undertaken by the respondent related to a farm business. However, she raised the question whether the farm's peafowl had a farm purpose and could therefore be said to be farm animals subject to the *Act* or whether instead they were simply ornamental birds that were kept as pets. The peafowl also provided a predator alert and deterrent purpose.
72. A "farm business" is defined under the *Act* as "a business in which one or more farm operations are conducted, and includes a farm education or farm research institution to the extent that the institution conducts one or more farm operations." A "farm operation" is defined under the *Act* (in part) as follows:

Any of the following activities involved in carrying on a farm business:

- (a) growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;
- (b) clearing, draining, irrigating, or cultivating land;
- (c) using farm machinery, equipment, devices, materials and structures;
- (d) applying fertilizers, manure, pesticides and biological control agents, including by ground and aerial spraying;
- (e) conducting any other agricultural activity on, in or over agricultural land...

But does not include:

- (n) growing, producing, raising, or keeping *exotic animals*, except types of exotic animals prescribed by the minister. [emphasis added],

73. Section 3(d) of the *Specialty Farm Operations Regulation* lists “partridge species, pheasant species, quail, silkie and squab” as exotic animals for the purpose of paragraph 72 above.
74. We do not find it necessary to delve into the taxonomical question regarding whether peafowl fall within s. 3(d). We find that, whatever the answer to that question, where disturbances are caused by animals whose functional purpose is an integrated and functional part of a farm operation – where, as here, the respondent has produced evidence of their use for farm purposes (i.e. livestock protection and sale of feathers) – the farm practice falls within the protection of the *Act*. The panel notes that this issue was considered by a previous BCFIRB panel in [Feehan v Ferguson \(BCFIRB, August 17, 2010\)](#), where a neighbour complained about the noise made by guinea fowl kept by a small mixed farm on Vancouver Island mainly to protect poultry by acting as a predator alarm and deterrent. In determining if the guinea fowl had a farm purpose, the panel noted in its decision at paragraph 64 as follows:

There was discussion during the hearing regarding the use of the guinea fowl and whether they were simply audible scare devices for predators or being grown as an economic benefit to the farm. In the opinion of the panel, either use for the birds is within normal farm practice as both contribute to the overall benefit and economic success of the farm.

75. Although this case deals with peafowl rather than guinea fowl, the panel finds that this farm’s circumstances are sufficiently similar to those in *Feehan* to support the position of the farm that its peafowl have a farm purpose, primarily as an audible alert and scare device for predators and secondarily as a source of ornamental feathers. Although the KP testified that he was unaware of other farms using peafowl to ward off predators, he did not dispute that they could be used for this purpose (though, as noted above, he did however, question their effectiveness of alerting a farmer while the farmer was not present on the farm site). In this case, the panel accepts the evidence of the respondent farm that the peafowl play a role not only in alerting the farmer of predators but also in deterring predators from preying on the farm’s poultry.

C. STEP 2: IS THE COMPLAINANT AGGRIEVED BY A DISTURBANCE THAT RESULTS FROM A FARM OPERATION?

76. Section 3 of the Act requires the complainant to establish that she is *aggrieved by a disturbance that results from a farm operation* conducted as part of a farm business. This language involves three components that must be satisfied before the panel considers the issue of what is “normal farm practice”: (a) the matter complained of must actually be a “disturbance” within the meaning of the *Act*, (b) the disturbance must have sufficient personal impact on the complainant as to meet the definition of “aggrieved”, and (c) there must be a sufficient connection between the disturbance and the farm as to conclude that the disturbance *results* from the farm operation.
77. The complainant, Ms. Sharpe, alleges that in 2012 and 2013 she was aggrieved by nuisance wild birds and rodents as a result of the farm’s open feeding practices, by noise and trespassing of peafowl and by odour, dust and flies as a result of the farm’s livestock and poultry containment and manure management practices.

Nuisance Wild Birds (Seagulls)

78. While there was some evidence that the Victoria area may provide habitat for marine birds such as seagulls, the panel accepts the evidence of the complainant and finds that she (and her neighbours) has been aggrieved by an increase in nuisance wild birds, particularly seagulls, that resulted from the farm’s practice of open feeding its hogs and poultry in close proximity to the shared north property boundary.
79. The panel wishes to clarify that it is not the type of hog or chicken feed that is alleged to attract the nuisance birds but rather it is the farm’s practice of leaving exposed feed on the ground available to wild birds that has given rise to the disturbances.

Rodents

80. The panel finds insufficient evidence to conclude that there has been an increase in rodents on the complainant’s property as a result of the farm’s livestock or poultry feeding or farm management practices. In her first complaint, the complainant stated that the farm’s feeding practices have been “attracting large numbers of seagulls, other nuisance wild birds...and I assume rats to the area.” At a pre-hearing conference, the complainant alleged seeing an increase of rodents in her yard and noted that her cat brings rodents onto her property. At the hearing, the complainant relied on two photographs of rodents. The farm gave evidence that it has had a rodent control program in place for the past four years and has caught very few rodents. The farm’s tenants also testified that they have observed very few rodents. The farm also noted that although the complainant had canvassed many of her Caselton Place neighbours about their experience with rodents, none had a problem and although one claimed in an e-mail to know of someone who did have a problem but the author of that e-mail did not attend the hearing.

81. In the circumstances, the panel concludes that there is little evidence of an increased rodent population in the area as alleged by the complainant. While the farm's feeding practices or garbage on the property could be an attractant, there is in our view insufficient evidence linking the rodents, either on the complainant's property or those being caught by her cat, with the farm. Consequently, the panel finds that there is insufficient evidence to conclude that the complainant is aggrieved by an increase in rodents that result from an operation conducted on the farm.
82. The panel would note as well that even if we had found that the complainant was aggrieved by rodents, the panel would still have dismissed this aspect of the complaint as we are satisfied that the farm's current rodent control practices (i.e. storing feed, blocking holes in farm buildings containing feed, trapping and baiting rodents and keeping grass from growing long) accord with the proper and accepted practices of other similar farms and normal farm practice. The panel is mindful of the KP's suggestion that the farm could supplement its rodent management practices by piling up wood in a central storage area and we would encourage the farm to implement this practice.

Peafowl & Noise

83. The panel accepts the evidence of the complainant and finds that she is aggrieved by the screeching of the farm's peafowl as well as by their coming into her yard and roosting in the trees by her property. A number of her neighbours also gave evidence that they were disturbed in a similar manner.

Dust

84. In her second complaint and at a pre-hearing conference, the complainant alleged that she was aggrieved by an increased level of manure dust on her porch which she believed was coming from the farm's large, composted horse manure piles and bare ground areas near the red barn and north property line. The respondent farm denied that the farm produced any significant dust and Mr. McLaughlin testified that the only potential area of dust was the farm road which is surfaced with gravel to assist in suppressing dust during the dry months of the year. At the hearing, the complainant clarified that the dust disturbances only occurred in July and August of 2012 and 2013 and abated once the poultry containment area attached to the common north fence line was removed.
85. On this issue, the panel finds that there is insufficient evidence to conclude that the dust resulted from the farm's operations or that the complainant was aggrieved by the dust from any source on the farm, whether from manure, soil or other source. In particular, the panel notes that the complainant could not say with any certainty where the dust arose from on the farm and provided scant details about the impact of the dust on her. The complainant testified that she was considering building a cedar hedge to mitigate the dust. The panel notes from the undated quote for the hedge that the primary purpose of the quote was to obtain an estimate for the cost of re-designing the landscape of her entire property. In the circumstances, the panel finds that any dust coming from the farm would have been minimal at most. The panel dismisses the complaint about dust.

Odour

86. The complainant also alleged in her complaint that the composted horse manure piles on the farm were the source of strong odours. However, she later testified that while on the farm in February 2014, she could not detect odours from these piles. At a pre-hearing conference, the complainant said she believed the odours were from “animals at large with no manure management” and from chickens being kept next to the property line. At the hearing, the complainant clarified that the odour disturbance occurred in July and August of 2012 and 2013 and this too abated once the poultry enclosure attached to the north fence line was removed. While the panel finds that the complainant was unclear on which operation of the farm is alleged to have been the source of the odours, the panel is mindful that the source of odours can be difficult to determine. The panel also notes that in his testimony, Mr. McLaughlin agreed that the former chicken coop located next to the property line could have been a source of strong odours. The panel concludes that the complainant was aggrieved by odour but that it was not from the composted manure piles. The panel also finds that there is no evidence to conclude that strong odours were from areas of the farm where animals were “at large.” The panel accepts the evidence of the KP that there were no concentrations or large accumulations of manure around the farm site from the few free roaming animals that could potentially be a source of strong odours. Instead the panel finds that it is likely that the complainant was aggrieved by strong odours from the poultry enclosure formerly located adjacent to the north property boundary.

Flies

87. At a case management conference, the complainant alleged that she was also disturbed by “a huge number of flies” which she believed were “the result of improper manure management practices and standing [pools] of water on the farm.” At the hearing, however the complainant testified that the fly disturbance occurred in July and August of 2012 and 2013 and that it abated once the poultry containment area attached to the north fence line was removed. The respondent farm denied that there was an excessive level of flies and Mr. McLaughlin testified that the chickens on the farm eat flies and keep their levels in check.
88. The panel finds that there is insufficient evidence to conclude that the complainant is aggrieved by flies or that the flies result from the farm’s operations. The panel notes firstly that in her filed complaints, the complainant did not identify flies as a disturbance. The panel also notes that there is little reliable corroborative evidence to support this allegation. One would reasonably expect, for example, that such a large number of flies as alleged would leave evidence in the form of feces or regurgitated matter on the complainant’s home. However, the only corroborative evidence provided by the complainant was an e-mail from another person who claimed that she too experienced a large number of flies in the summer. The panel notes that the person who wrote the e-mail did not identify her address nor did she attend the hearing as a witness. There was no way to test the reliability of the statement and for that reason the panel gives it no weight.

89. The panel also finds that the complainant’s testimony that she purchased a screen door to mitigate the large fly population is not a reliable indicator of the fly disturbance alleged given that the complainant’s documents indicate that she apparently only investigated purchasing⁹ a screen door a month prior to this hearing when the fly level had abated to tolerable levels. Consequently, the panel finds that the complainant has not demonstrated that she was aggrieved by an excessive level of flies in 2012 and 2013 resulting from a farm operation.
90. In summary, the panel finds that the complainant was aggrieved by nuisance wild birds, seagulls specifically, as a result of the farm’s open feeding practices. Secondly, the panel finds that the complainant was aggrieved by noise from roaming peafowl, resulting from the farm’s practice of not containing the peafowl. Thirdly, the panel finds the complainant was aggrieved by odour from the farm’s livestock and poultry containment practices and in particular its former practice of siting a poultry enclosure on a shared property line. Consequently, the panel now will turn its mind to the issue of whether the farm’s feeding and containment practices (or operations) from which the disturbances arise, accord with normal farm practices.

D. STEP 3: NORMAL FARM PRACTICE

91. Section 1 of the *Act* defines “normal farm practice” 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).

92. In determining whether a complained of practice falls within the definition of “normal farm practice”, the panel looks to whether it is consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances. Consistent with the approach adopted in numerous BCFIRB decisions, the panel also considers contextual factors or the circumstances of the farm itself and in relation to properties around it, to determine if there are any site specific factors that are relevant to the determination of “normal farm practice” for the particular farm. In other words, the statutory requirement does not simply require that we apply an abstract test where a particular farm practice is condoned regardless of the different circumstances that may arise on different farms. Instead, the test requires us to consider what are proper and accepted customs and standards that are established and followed by similar farm businesses *under similar circumstances*.

⁹ Although the complainant testified that she purchased a screen door, her documents included only a quote dated June 26, 2014 for the same.

93. The panel finds that in this case, the proximity of the farm site to the complainant's property is a relevant contextual factor or circumstance in the assessment of what is normal farm practice for this farm. We find it significant that the common property boundary shared by the farm and the Caselton Place development where the complainant resides has no buffer and no significant separation distance other than the complainant's small back yard which separates her residence from the farm's north property line by approximately 10 metres. We also find that the small size of the respondent's farm site is a relevant contextual factor given that it has the potential to restrict where the farm can locate or has located many of its operations.

Containment Practices - Peafowl

94. The complainant's position is that it is not a proper and accepted farm practice for livestock to be at large on the farm site. She submits that based on her past experience it is proper and accepted practice to confine livestock to barns or pens, however she did not provide any other evidence in support of this position. The respondent's position is that it is a proper and accepted practice of some farms to have free ranging livestock and that in his experience, farms do so because consumers are willing to pay a premium price for products from free ranging livestock.
95. The KP testified that he is aware of some smaller farms that allow livestock to range free and his report sets out a number of authorities that substantiate that position namely, the *Code of Practice for Care and Handling of Pigs* and *Introduction to Developing a Free-Range Poultry Enterprise*. The panel finds that these publications corroborate the respondent's position that it is the practice of some farms to allow their livestock to range free rather than to be confined in barns or pens. We also conclude that it is a proper and accepted practice for farms to allow livestock such as pigs and chickens to range free on a farm site.
96. The panel has already concluded that the disturbances that have been made out by the complainant regarding nuisance wild birds, odours, and noise from free roaming peafowl do not arise from the farm's practice of allowing cows, goats, pigs or chickens to range free on the farm site. Consequently, the panel need not consider whether it is normal farm practice for the other livestock and poultry to roam free on the farm site and will confine our analysis only to the issue of whether the farm's practice of allowing peafowl to roam free on the farm site accords with normal farm practice.
97. The complainant submits that the farm's peafowl should be contained in an enclosure on the farm site so that they do not roam onto neighbouring properties and make noise. However, the complainant provided no evidence as to the proper and accepted practices used by other farms that keep peafowl. The farm's position is that farms and other institutions that keep peafowl allow them to roam free. Mr. McLaughlin testified that he has observed these practices on three farms on Vancouver Island.
98. The KP testified that he did not have experience with the practices of other peafowl operations and believed they are few in number in the south coastal region, but that based

on literature he was able to find on the internet, he recommended clipping flight feathers or keeping them in an enclosure. Given the additional noise complaint, the KP recommended that the farm fully contain the peafowl in a pen with a sound barrier.

99. Based on the limited evidence before us with respect to peafowl, the panel concludes that some farms that keep peafowl do not contain them. The difficulty for the panel, however, is that the respondent farm provided few details about the circumstances of those other farms that keep peafowl. In particular, little evidence was provided regarding site specific factors such as farm size or proximity to neighbours, or natural features that may contain the peafowl to the farm site and/or act as natural sound barriers, such as a treed area.
100. The *Act* protects a farmer from nuisance claims if the farmer has followed proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances. In the absence of any comparable farms using peafowl in the fashion this farm does, the panel is of the view that it is appropriate to consider normal farm practice from other perspectives, and in particular, from the perspective of the impacts caused by their functional purpose as noisemakers. We find generally that it is a practice of farmers operating smaller farms in proximity to their neighbours to normally take reasonable steps to be good neighbours in respect of any farm practice that causes extraordinary noise. Such practices would include employing reasonable separation distances between the noisemakers and the neighbours¹⁰ and also taking steps to minimize animals roaming onto a neighbour's property. Regarding roaming, we note that it was the practice of the respondent farm to fully enclose its peafowl before the original enclosure was removed.
101. Taking into account the factors set out in the previous paragraph, we find that normal farm practice *for this farm* requires that the farm modify its former practice of allowing peafowl to roam free by confining the peafowl in an enclosure in order to prevent their intrusion onto neighbouring property, and to mitigate noise by ensuring a reasonable separation distance and by including a sound barrier as part of the enclosure. The panel notes that this was a recommendation of the KP and that the farm acted on this recommendation and built an enclosure for the peafowl with a sound barrier in May 2014. This enclosure is located approximately 150 feet (or 46 metres) away from the farm's north property line that it shares with the Casleton Place residences. The panel concludes that these steps, which on the complainant's own admission have mitigated the impacts complained of, do accord with normal farm practice in the particular circumstances here.
102. While we have concluded that the farmer's current practice accords with normal farm practice, we are required to address a more difficult question as to what is the minimum separation distance that would still accord with normal farm practice. While line-drawing of this nature is difficult, it must be addressed in the circumstances here, just as it must in the case of other setbacks intended to address noise disturbances between farms and their neighbours. Taking into account all of the circumstances here, the panel is satisfied that a

¹⁰ See for example, [Review of the Use and Regulation of Propane Cannons in the South Coastal Region \(BCFIRB, May 2009\)](#).

15 metre minimum separation distance from any property line would satisfy the normal farm practice requirement. This distance also accords with the minimum distances set out in the Ministry Guide which we do not consider determinative, but a factor to consider. We have come to the decision that the minimum separation distance should be 15 metres relying on our own independent judgment within the meaning of normal farm practice. We have also taken into account the comparative evidence available to us with respect to noise mitigation, the nature of the disturbance (peafowl, not propane cannons), one of the purposes of the peafowl (alerting the farmer to predators and deterring predators) and the site specific circumstances (the size and location of the respective properties).

103. In summary, the panel finds that confining the farm's peafowl in an enclosure with a sound barrier located at a minimum separation distance of 15 metres of any property line accords with normal farm practice for this farm.

Containment Practices - Chickens

104. The complainant also sought an order requiring the farm to construct "proper structures to contain its livestock and that those structures be set back from her property line". The panel wishes to clarify that the adequacy of the materials used to construct livestock structures or shelters is irrelevant given that the complainant has not indicated how the adequacy of a structure relates to a disturbance. Rather the complainant alleged that the siting of the former poultry enclosure on the north property fence line in close proximity to her property caused an increase in dust, odour and flies. Consequently, the panel will consider whether at the time of the disturbances complained of relating to odour, dust and flies, the farm's practice of siting a poultry enclosure along the north property fence line accorded with normal farm practice.
105. The complainant submits that it is not a proper and accepted farm practice to contain livestock, which we take to include poultry, along a property boundary. It is her position that either the provincial standards for confined livestock areas or the District of Saanich zoning by-law setbacks for animal structures should apply. She provided no evidence with respect to the livestock containment practices used by other farms with circumstances similar to those of the respondent farm.
106. Mr. McLaughlin testified that he has researched the operations of other farms in Australia, the United States and Vancouver Island and believes that his farming practices generally accord with the proper and accepted practices of other small, mixed farms. However, he provided few particulars regarding other farms' poultry containment practices and few details regarding the circumstance of the other referenced farms, such as their location, their size, or their proximity to neighbours. The farm also submitted that it has operated in the same fashion for many years without complaints from its neighbours.
107. The KP testified that he was unaware of other confined livestock areas being sited so close to a property boundary and he referred the panel to the Ministry Guide, which recommends that buildings and confined areas for livestock and poultry be set back 15 to 30 metres from a property boundary and water course. He testified that the provincial standard differs

from the District of Saanich by-law setbacks which require that buildings or structures containing or capable of containing more than 30 chickens or bantams be set back 150 feet from any lot line and 246 feet from any human habitation. The KP noted that given the small size and configuration of the farm site, the District's setbacks would mean that the farm would have to relocate the confined poultry area to a very small area in the centre of the farm site.

108. The panel notes from the KP Report that from 2001 until 2011, the farm had horse shelters with small attached paddocks along the north or Caselton Place fence line. Prior to 2005, the area now containing residences was forested and the complainant's property adjacent to the north farm property line appears to have remained forested until about 2007.
109. The uncontradicted evidence of the farm was that the location of its chicken coop one meter from the fence line with the Caselton Place development complied with District of Saanich zoning setbacks until 2012 when that by-law was changed requiring greater setbacks.
110. The panel has accepted that the complainant was aggrieved by odour in July and August of 2012 and 2013. She attributed these disturbances to the proximity of the chicken enclosure to her home and she observed that once the chicken enclosure was removed, these disturbances abated. We conclude from the evidence that the strong odours resulted from the very close proximity of the chicken enclosure to the fence line and complainant's home, and from the lack of any buffer.
111. In the panel's opinion, given the particular circumstances here, it was not normal farm practice for the farmer to contain poultry and other livestock along the property line in the absence of a reasonable separation distance, or in the absence of evidence of more rigorous farm practices within the separation distance in order to mitigate the odour. The panel observes that a shorter separation distance from the property boundary could be difficult to avoid on this farm given the nature of the site with limited available land. For reasons similar to those we have set out above, we would define the reasonable separation distance to be 15 metres, subject to the provision of more rigorous farm practices to mitigate odour if the distance is less than 15 metres.¹¹ Should the latter be necessary, the panel recommends that the respondent work with the Ministry of Agriculture to establish effective practices for odour mitigation.

Open Feeding Practices

112. *The Code of Practice for Care and Handling of Pigs and Introduction to Developing a Free-Range Poultry Enterprise* referred to in the KP's report indicate that ground feeding is a practice used on some hog and chicken farms although, as the KP noted, those

¹¹ While we have allowed for "more rigorous farm practices" as an alternative to a setback with regard to the odour issue, it is our judgment that, for the peacock noise complaint, the realities of the sites, and the noise, render a similar exception unrealistic and impractical as a matter of normal farm practice.

publications also indicate that it is more efficient to use feeders to avoid feed losses due to predation by wild birds and animals and spoiling.

113. The panel concludes that ground feeding farm animals such as hogs and chickens is a proper and accepted practice used by some free range farming operations. The panel accepts the evidence of the farm that it ground fed food scraps to its hogs and chickens for many years, but finds it unlikely that this practice took place next to the north (or any) property boundary, at least in the past decade or so. Based on the historic aerial photos of the farm site appended to the KP's report, the panel finds that prior to 2005, there was only a forested area where the Caselton Place residences are now located. Further, the feeding area in issue which is next to the north boundary of the farm was used from 2001 until 2011 for horse shelters. The area was used as it now is for other livestock after 2011 when the horse operation was removed. The panel also notes that ground fed food remnants became exposed in 2012 when the farm removed the poultry enclosure, as directed by the municipality.
114. The panel has no hesitation in finding that it is a proper and accepted practice to ground feed food scraps to hogs and chickens in the open on some small mixed farms. We also find that in certain circumstances, such as on small farm sites where barns or chicken coops are located next to a property boundary, this feeding may, for convenience sake, take place in close proximity to a property boundary. However, the panel finds that there is little reliable evidence to support the conclusion that it is a proper and accepted practice of small, mixed farms in circumstances similar to the respondent's, where a neighbouring residential area is so close to the farm, to open feed their hogs and chickens within a metre of a property boundary shared with a number of residences.
115. The panel concludes that it is a proper and accepted practice of some small, mixed farms to ground feed food scraps to hogs and chickens near a property boundary. Given the close proximity of the respondent farm to surrounding residences, the Caselton Place residences being the closest, and the small size of the respondent's farm site, we conclude that the practice of open feeding chickens and hogs, regardless of where it is conducted on the farm site, would continue to attract the nuisance wild birds that have been the source of a disturbance complained of. In other words, we find that given the small size of the farm, it could not increase the separation distance of the feeding site from a property boundary sufficiently to mitigate this disturbance. Consequently, the panel accepts the recommendation of the KP and concludes that normal farm practice *for this farm* requires that it cease its former practice of open feeding food scraps to its hogs and chickens and that it instead use covered feeders or feed the hogs and chickens indoors where nuisance wild birds cannot readily access the feed. As we observe above, the respondent farm, in discussion with the District of Saanich and the KP, in February of 2014 discontinued the practice of ground feeding in the open and began feeding the hogs and chickens inside the red barn and in covered feeders. The complainant now agrees that the nuisance wild birds are no longer a problem.
116. The panel finds that the farm's current livestock feeding practices in relation to hogs and chickens accords with normal farm practice for this farm.

CONCLUSION

117. The panel observes that the complainant alleged that the farm had many poor farming practices. The panel has specified which practices it has and has not dealt with in this decision and provided its reasons for doing so. The panel notes, as did a former BCFIRB panel in [Sohi v Malenstyn \(BCFIRB, February 6, 2014\)](#), the following:

.... our task is not to consider whether every aspect of the respondent farm is consistent with normal farm practice; that is to say, we are not conducting an audit into the farm practices of the respondent. Rather we are constrained by the Notice of Complaint and the alleged disturbances that arise out of the complained of farm practices.....

118. The panel also observes that even though the McLaughlin family has kept livestock on the farm property for many decades and that the farm is situated in an area designated for agriculture, they are now significantly constrained in the operations they can conduct on the farm site. This is due in part to the relatively recent high density, residential development in close proximity to the farm. The residential area apparently was developed without any requirement by the District of Saanich to retain part of the pre-development vegetative buffer or develop new buffers to mitigate disturbances that commonly arise on farms as part of their operations. This situation was compounded by the more recent and significant change in the District of Saanich by-laws requiring a greater separation distance of livestock containment areas on a farm site from property boundaries and residences. The panel also observes that the farm property includes a treed buffer area along the south property line and is not aware of any complaints from neighbours in that area, and that the complainant's property appears to have had a treed buffer between the residence and farm property until about 2007. The panel suggests that having such buffers established along the north property line could serve the long-term interests of both parties.
119. The panel finds it significant that the respondent farm is very small both in terms of its farm site area and the number of animals contained on it. Much of the expert evidence heard by the panel with respect to the farming practices of other farms was actually evidence regarding what occurs on much larger farming operations. For this reason, on many of the issues, the panel relied on the respondent's unchallenged testimony that his practices accord with the farming practices of other small mixed farms in the surrounding area, because he has personally observed their operations during site visits and also researched these matters on the internet. As the panel has previously pointed out, the "acceptableness" of a farming industry's practices cannot be considered in isolation and must be evaluated in the context of site-specific factors such as proximity to neighbours.
120. In summary, the panel dismisses the complaints regarding garbage, rodents, dust and flies. The panel finds that at the time of the noise, roaming peacocks, and odour disturbances, the farm's open feeding of hogs and chickens and its containment practices for peafowl and poultry did not accord with normal farm practices.

ORDER

121. The panel considered whether it was necessary to make findings of normal farm practice in this case given that the farm has discontinued many of the practices originally objected to. In the end, we have done so because it was apparent that the complaint did not settle despite the changes implemented by the farmer, and the parties still disputed whether the original practices were normal.

122. Section 6(1) of the Act states as follows:

6 (1) The panel established to hear an application must hold a hearing and must

(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.

123. Based on our findings concerning normal farm practice, we order as follows:

1. That the respondent farm cease its practice of ground feeding scraps of food to hogs and chickens in the open and either feed those items inside farm structures or use covered feeders so that feed cannot be accessed by wild birds.
2. That the respondent farm cease its practice of allowing peafowl to roam free and confine them to a pen with a sound barrier that is located no closer than 15 metres from any property line.
3. That the respondent farm cease its practice of containing poultry within 15 metres of any property boundary unless it has employed more rigorous practices designed to mitigate odour.

Dated at Victoria, British Columbia this 13th day of January, 2015.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

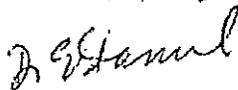
Per:



Andreas Dolberg, Presiding Member



Carrie Manarin, Member



Daphne Stancil, Member