

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A COMPLAINT ARISING FROM THE OPERATION OF A
DAIRY FARM IN BLACK CREEK, BRITISH COLUMBIA

BETWEEN:

DEBBIE JORY

COMPLAINANT

AND:

BRUCE AND BOB BEACHAM

RESPONDENTS

DECISION

For the British Columbia
Farm Industry Review Board

Ron Kilmury, Chair
Ron Bertrand, Vice Chair
Andy Dolberg, Member

For the Complainant

Debbie Jory

For the Respondents

Bruce Beacham

Location of Hearing

By Written Submission

Date of Decision:

April 4, 2013

BACKGROUND

1. On August 31, 2012, BCFIRB issued a decision dealing with a complaint from Debbie Jory concerning the farm practices of Bruce and Bob Beacham conducted at the Cedardale site of their dairy farm near Black Creek on Vancouver Island¹ (the August 2012 decision). The issue on this complaint was whether dust, diesel exhaust fumes and related truck traffic was a result of normal farm practice. After “taking into account the proximity of the complainant’s property, including the remaining tree buffers and prevailing winds”, the panel found that the dust, diesel fumes, and noise originating from trucks engaged in various farm operations at the site were part of normal farm practices and, therefore, the complaint was dismissed.
2. Between the time of the initial complaint being filed and the issuance of the August 2012 decision, the complainant submitted 14 additional complaints against the farm.
3. On November 6, 2012, the Chair of the BC Farm Industry Review Board (BCFIRB), Ron Kilmury, issued a decision wherein he concluded that 13 out of 14 of these “new” complaints raised issues that had been decided in the adjudication process and the August 2012 decision and as such he declined to refer these complaints to a panel. With respect to the 14th complaint (#12-20), to the extent that it also raised issues decided in the adjudication process and the August 2012 decision, those issues were not referred to a panel. The remaining issues in that complaint related “to reconfiguration of the barn resulting in increased odour from manure and tractor exhaust and poor pest management (flies and rodents)”.
4. The Chair of BCFIRB directed that a Specialist be retained under s. 10(3) of the *Farm Practices Protection (Right to Farm) Act (FPPA)* to provide a report on these outstanding issues. Terms of reference were developed and provided to both parties. The Specialist, John Luymes, P.Eng., a Farm Structures Engineer with the BC Ministry of Agriculture, attended at the complainant’s residence and the respondents’ farm on November 29, 2012. His report was received by BCFIRB on December 6, 2012 and provided to both parties, who were given the opportunity to comment on the report.
5. After reviewing the Specialist’s report and the responses from the parties, the BCFIRB Chair issued his December 19, 2012 decision concluding that as the link between the complainant’s pest problems and the farm was tenuous at best, “the complaints about pests are bound to fail, and as such, they will not be referred to a panel”.
6. On the issue of odour arising from the barn reconfiguration, the Chair determined that he required more information before deciding to refer this matter to a panel. As such, the Chair requested the Specialist provide more detailed information on the following issues:
 - (a) The proximity of the paddock to the property line, and to the complainant’s home.
 - (b) The nature and extent of vegetation clearing that was undertaken in order to create the paddock.

¹ The Beachams’ farm (Autumn Hills Farm) consists of more than one site. The site in question is called Cedardale.

- (c) The farmer's ongoing purpose and use of the paddock (both during and following the renovation) and the number of animals that are likely to be using the paddock at any given time.
- (d) The farmer's manure management practices and any vehicle or other equipment use within the paddock area.
- (e) The existence of any local government or provincial setback requirements or guidelines pertaining to the siting of the paddock for livestock on the land in question.
- (f) The nature of any other physical changes to the barn – including any new openings facing the complainant's property – which have been made or will be made as part of the barn reconfiguration.
- (g) The expected net impact of these changes on the nature, extent and movement of odour between the properties given the treed buffer that remains between the properties.

7. On January 15, 2013, the Specialist submitted his Addendum Report to BCFIRB based on information gathered during the original November 29, 2012 farm visit, further telephone conversations with Bruce Beacham (January 8 and 10, 2013) addressing the issues identified in paragraph 6 above and analysis of aerial photos by Ministry of Agriculture Geographical Information Systems (GIS) staff.

8. The findings of the Specialist are summarized below.

1. THE PROXIMITY OF THE Paddock TO THE PROPERTY LINE, AND TO THE COMPLAINANT'S HOME.

The point at which the paddock lies closest to the complainant's property line is defined by the southwest corner of the fence. The width of the exercise yard at this point is approximately eleven (11) metres. Using this value, the calculated distance from the southwest corner of the yard to the complainant's property line is about 27 metres. This setback distance increases as one moves northward because the fence and barn are not parallel to the property line. The approximate distance from the fence to the complainant's home ... rang(es) from a minimum of 47 metres to the northeast corner of the residence to a maximum of 59 metres to the southeast corner of the residence.

2. THE NATURE AND EXTENT OF VEGETATION CLEARING THAT WAS UNDERTAKEN IN ORDER TO CREATE THE Paddock.

Based on my conversations with the Beachams at the time of my visit on November 29, it was my understanding that no significant vegetation was removed to create the paddock. This was reiterated in my conversation with Mr. Beacham on January 8. The complainant has taken umbrage repeatedly with respect to the removal of buffer trees and vegetation subsequent to the Beachams purchasing – in 2003 – the strip of land formerly owned by a forest products company. The issue of vegetative removal and odour impacts arising from same were addressed in the Farm Industry Review Board's decision report of August 31, 2012. ... Mr. Beacham emphasized in both the January 8 and the January 10 calls that any vegetation that was removed was more in the form of brush, blackberry bushes, cover and the like.

3. THE FARMER'S ONGOING PURPOSE AND USE OF THE Paddock (BOTH DURING AND FOLLOWING THE RENOVATION) AND THE NUMBERS OF ANIMALS THAT ARE LIKELY TO BE USING THE Paddock AT ANY GIVEN TIME.

Based on my visit with the Beachams on November 29, I was informed that the paddock was primarily put in place to allow the removal of cattle from one side of the barn while renovations to that side were being conducted. The Beachams implied that the paddock could be used as an exercise yard on an ongoing basis after construction activities are completed to allow animals to be outdoors on occasion during daylight hours. It is unlikely that the numbers of animals using the

yard at a given time would exceed the numbers in a given age group within the barn itself. As stated in my December 5 report, the use of outdoor exercise areas is considered to be beneficial to cattle from an animal welfare perspective. Environmental risk is an important issue to be evaluated in assessing the suitability of such areas. General animal space recommendations suggest that a density of one mature dairy cow per 5.5 square metres of area should not be exceeded for group housing scenarios. In temporary short-term exercise situations, densities can obviously be higher. Based on such recommendations, the paddock in question should not house more than 60 –70 animals. It is doubtful that the Beachams will use the paddock to this extent and at such densities unless necessary for construction activities yet to be undertaken. Increased surveillance of animals within such fenced areas becomes more necessary than is the case for those housed within barns where heavier and more effective gates and other barriers exist.

4. THE FARMER'S MANURE MANAGEMENT PRACTICES AND ANY VEHICLE OR OTHER EQUIPMENT USE WITHIN THE PADDOCK AREA.

In the January 8 and January 10 telephone conversations, Mr. Beacham clarified that the exercise yard or paddock would not be used during the winter season or when weather conditions during other seasons might compromise the enclosure from an environmental or functional perspective. The Beachams intend to plant this area to grass once barn renovations are complete, and its use will be confined to summer months to allow the grass to remain as a sustainable cover. No large machinery will be used to prepare the area or to clean waste once the yard surface becomes established. The yard will be monitored and managed in such a way to allow it to stand up to cattle traffic on an ongoing basis. Furthermore, the paddock will not be used as a feeding area given that animals will always have the concurrent choice to enter the barns for feed, for cover, or as an alternative resting option. Whenever the paddock area is to be used sporadically by limited numbers of cattle, cleanup by hand or a combination of a front-end loader or scraper and manual labour is likely. Regardless, the time spent cleaning the paddock area and the noise generated by such activity will typically be of short duration. Manure cleaning operations by automatic alley scrapers within the barn will continue to be the primary means by which waste is removed. Even though the Beachams have indicated that the yard will not be used during winter, it is not uncommon for dairy producers to utilize outdoor areas under conditions that pose minimal risk of pollution. This is typically done by adding absorbent materials such as sawdust or hogged fuel. Any use of outdoor areas during wet weather and during the winter season is by nature therefore limited. The lack of retaining walls to push solid waste against makes manure management and cleanup of such areas somewhat challenging.

5. THE EXISTENCE OF ANY LOCAL GOVERNMENT OR PROVINCIAL SETBACK REQUIREMENTS OR GUIDELINES PERTAINING TO THE SITING OF THE PADDOCK FOR LIVESTOCK.

The following information was provided by Jill Hatfield, the B.C. Ministry of Agriculture's regional agrologist for the central area of Vancouver Island. Section 303 of Bylaw No. 2781 (entitled *Comox Valley Zoning Bylaw, 2005*) states the following for *intensive* agriculture operations:

- a) All structures and livestock holding areas associated with intensive livestock operations (feedlots) shall be sited a minimum of 30.0 metres (98.4 feet) from all property lines, and
- b) All composting activities associated with mushroom production shall be sited a minimum of 30.0 metres (98.4 feet) from all property lines.

In this context, *intensive* agricultural use is defined as the use of land, buildings and structures by a commercial enterprise or an institution for the confinement of poultry, livestock or fur bearing animals, feedlots, or for the growing of mushrooms.

The zoning bylaw can be accessed online at the following address:

http://www.comoxvalleyrd.ca/uploadedFiles/Property_Services/Planning/Bylaws/2781/2781_CV_zoningbylaw_2005_CONSOLIDATED.pdf.

The Ministry of Agriculture's *Guide for Bylaw Development in Farming Areas* recommends lot line setback distances of 15 – 30 metres for confined livestock areas and livestock or poultry barns. Further information in this regard is available on the Ministry website at: http://www.agf.gov.bc.ca/resmgmt/publist/800Series/840000-1_GuideforByLawDev_TofC.pdf. Irrespective of zoning bylaws and recommended setbacks, Bylaw No. 142 of the *Comox Valley Regional District Building Bylaw* – established in 2011 – lists the scope and exemptions for a variety of buildings, including agricultural structures. The bylaw states that the need for permits does not apply to low human occupancy farm buildings located on land classified as “farm” under the *Assessment Act* on the date on which the application for permit was made. There were therefore no obligations by the Beachams to apply for a permit for renovations to the barn or the construction of the paddock. The reference to building bylaws is nevertheless simply included for completeness. Information on this subject can be located at the following web address: http://www.comoxvalleyrd.ca/uploadedFiles/Property_Services/Building/Building_Bylaw.pdf.

6. THE NATURE OF ANY OTHER PHYSICAL CHANGES TO THE BARN – INCLUDING ANY NEW OPENINGS FACING THE COMPLAINANT’S PROPERTY – WHICH HAVE BEEN MADE OR WILL BE MADE AS PART OF THE BARN RECONFIGURATION.

The previous report also addressed the complainant’s concerns about increased barn side wall openings for ventilation. The Beachams mentioned in my visit on November 29 that the replacement of the plywood sheathing along the west side of the barn did not increase the net open area of the wall. As mentioned in the December 5 report, it is standard practice for new dairy barns constructed in the southern temperate climate of the province to be fitted with manually-operated or automatically-operated curtains on both side walls for maximum possible natural ventilation. In most cases, openings range from three to four metres in height, extending from the eaves to the foundation wall. In summer, the curtains are normally fully open whereas the degree of opening in winter depends on weather conditions and the need to keep indoor barn temperatures from freezing.

7. THE EXPECTED NET IMPACT OF THESE CHANGES ON THE NATURE, EXTENT AND MOVEMENT OF ODOUR BETWEEN THE PROPERTIES GIVEN THE TREED BUFFER THAT REMAINS BETWEEN THE PROPERTIES.

It is possible that the transition from the bedded pack configuration on the west side of the barn – and the solid manure that such a system generates – to a more liquid system necessitated by the conversion to an automatic scraper system may cause slightly more odour. Renovations to the east side of the barn are less significant in that free stalls in this area were used and will be used prior to and after construction is complete. As mentioned in the December 5 report, it is my view that increased odours brought about by such changes – compared to those generated, for example, by agitation of the manure storage pit prior to land application – will be marginal. The sporadic use of the exercise yard is not likely to add significantly to odour generation but may result in slightly more noticeable noise created by the interaction and lowing of animals.

9. The Specialist’s conclusion was that “the operations at the Cedardale site will be within what I would consider to be proper and accepted customs and standards for dairy farms in similar circumstances”.

10. By letter dated January 22, 2013, the Addendum Report was sent to both parties and a written submissions process was established for the parties to provide their responses to BCFIRB. In this letter, the complainant was advised to set out the grounds of her complaint (how is she aggrieved by the new barn openings and exercise yard, what does she think is wrong with respect to the new barn openings and the new exercise yard and how does that relate to

normal farm practices), the remedies she is seeking (what does she want the panel to do about those openings and the exercise yard) and evidence in support of her arguments. The respondent was given a right of reply. The complainant did not file an initial submission on the date required. The respondent provided a two page submission dated February 7, 2013. The complainant provided a response on February 19, 2013 (a 10 page submission with attachments).

11. In coming to this decision, the panel has reviewed the submissions, the August 2012 complaint decision, the subsequent decisions of the Chair, the two Specialist reports and the notice of complaint (#12-20).

Issue

12. Does the odour arising from reconfiguration of the new barn openings facing the complainant's property, and the paddock (cattle exercise yard) result from "normal farm practice"?

Submission of Complainant

13. Unfortunately, the majority of the complainant's submission reiterated arguments advanced before the hearing panel and referenced the substance of other complaints that were not referred to hearing. She provided little information in support of the issues on this complaint or in response to the Addendum Report. The complainant did reference extracts from the Comox Valley Zoning Bylaw, 2005 which defines "intensive" agriculture and which requires, in s. 303(2)(iv)(a) that "all structures and livestock holding areas associated with intensive livestock operations (feedlots)... be sited a minimum of 30.0 metres (98.4 feet) from all property lines". There is no allegation that this farm has been found in contravention of any local government bylaw.
14. The complainant also referenced the Ministry of Agriculture's September 2010 'Siting and Management of Dairy Barns and Operations' document that encouraged farmers "to be considerate of their neighbours when planning new facilities or expansions" of their operation. She provided several aerial photos which appear to contradict the setback distances identified in the Specialist's report. In particular, the complainant relied on aerial photos taken from iMAP accessed through the Comox Valley Regional District. The iMap program appears to allow a viewer to place markers on the photographs to estimate distances. According to these photos, the distance between the complainant's property line and the new paddock was 46 feet (14 meters) at the point referenced on the photo.

15. The complainant takes the position that this farm does not follow normal farm practices stating “all the farm practices on this farm breach provincial legislation and need to be addressed.” On the issue of the paddock, she references the bylaw requirement that all structures and livestock holding areas associated with intensive livestock operations (feedlots) be sited 30 m from all property lines. She says that the paddock needs to be removed and the barn needs to be closed up and a ventilation system needs to be installed to blow the fecal matter, hair, skin, diesel exhaust, manure and whatever else away from her property and house.

Response from the Respondent

16. Apart from making some minor corrections and adding further explanation in a few areas, the respondents endorsed the Specialist’s conclusions on all seven issues addressed in the Addendum Report. The respondents noted that no new openings facing the complainant’s property were created in the renovation of the barn. They also emphasized that although some blackberry thicket and bushes were removed, no trees were cleared or removed in the paddock areas or any of the buffer areas.

Analysis

17. This complaint was filed pursuant to s. 3(1) of the *FPPA* which provides:

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.

18. Even though this complaint has proceeded by written submission and not an oral hearing, the determination of the complaint still involves a two-step analysis. The first step requires the complainant to establish that she is aggrieved by the odour, noise, dust or other disturbance that is the subject of the complaint.

19. In the present case, there was little evidence to support a finding that the complainant is aggrieved by odour from the reconfiguration of the barn beyond the fact that she has raised these issues in her notice of complaint. This is despite the direction in BCFIRB’s January 22, 2013 letter to provide “the grounds of her complaint (how is she aggrieved by the new barn openings and exercise yard, what does she think is wrong with respect to the new barn openings and the new exercise yard and how does that relate to normal farm practices), the remedies she is seeking (what does she want the panel to do about those openings and the exercise yard) and evidence in support of her arguments”.

20. We have no evidence of how the odour (related to manure and equipment use) complained of now is different in magnitude since the reconfiguration nor is there evidence to suggest how the odour is different from that already adjudicated upon. However, we do observe that the barn has been reconfigured (modifications to barn ventilation, manure management systems and the addition of a paddock) which could result in animals and/or odour in closer proximity to the complainant's residence. Given the foregoing, we are prepared to give the complainant the benefit of the doubt and find that she is to some extent aggrieved by odour from the newly reconfigured barn.
21. The initial step having been satisfied, the panel will make a determination as to whether the disturbances complained of (the odour arising from farm practices resulting from barn renovations and paddock construction) result from normal farm practice.
22. In this case, specific questions relating to the proximity of the paddock to the property line, the extent of vegetation clearing, the use of the paddock, the manure management practices within the paddock, the nature of the changes to the barn and the impact of these changes were all referred to the Specialist for analysis, comments and conclusions. Both parties were given an opportunity to comment on the Specialist's Addendum Report as well as provide their submissions on the farm practices issue. In these reasons, the nature of the changes to the barn and the impact of those changes will be addressed first then we will deal with the related issues of proximity, removal of vegetation and use of the paddock.
23. In both his December 5, 2012 report and the January 15, 2013 Addendum Report, the Specialist indicated that it was standard practice for new dairy barns constructed in the southern temperate climate to have openings (fitted with curtains for cold weather) for maximum possible ventilation. In most cases, these openings are from the eaves to the foundation. In this case, the opening is actually smaller (open on the top half of the wall and running half the length of the barn). In response to the complainant's suggestion that the barn openings be moved to the side opposite her house, he was of the view that this will not mitigate the tendency of odours to drift in the direction of the complainant's house if that is the direction of the prevailing winds. Further, the Specialist notes the respondent's comment that this renovation has not resulted in any net increase in the open area of the wall over what was there previous. As indicated in the respondents' submission, the panel would also note that the natural ventilation system of the barn will under most circumstances be drawing fresh air into the barn through the side opening walls to replace the warm air and odour in the barn, which rises and exits through the ridge cap vent located at the highest part of the roof.
24. The farm is also moving from a bedded pack to a free stall configuration inside the barn to accommodate a transition from daily tractor scraping to an automatic alley scraping system. The Specialist indicates that this transition may cause slightly more odour but that this

increase will be marginal in comparison to the odours generated by the existing practice of agitating the manure storage pit prior to land application and the spreading of manure. Further, Mr. Beacham indicates that the scraping system is intended to minimize volatilization opportunities for ammonia, which will also minimize odours.

25. The panel, on the basis of this evidence, finds that while the changes to the barn in respect of the side ventilation, the reconfiguration of stalls and the installation of an automatic alley scraping system for manure management may have resulted in some minor increase in odour, these changes are consistent with normal farm practice. Accordingly, this aspect of the complaint is dismissed.
26. We turn now to consider the issue of the newly constructed paddock, its proximity to the complainant's property and the associated buffer issues.
27. In his Addendum Report, the Specialist concluded:

The point at which the paddock lies closest to the complainant's property line is defined by the southwest corner of the fence. The width of the exercise yard at this point is approximately eleven (11) metres. Using this value, the calculated distance from the southwest corner of the yard to the complainant's property line is about 27 metres. This setback distance increases as one moves northward because the fence and barn are not parallel to the property line. The approximate distance from the fence to the complainant's home ... rang(es) from a minimum of 47 metres to the northeast corner of the residence to a maximum of 59 metres to the southeast corner of the residence.

28. The conclusion that a small part of the paddock, at the south-west corner, is approximately 27 m from the property line between the respondents' and complainant's properties needs to be examined in light of provincial guidelines and local government bylaws. The Ministry of Agriculture publishes a *Guide for Bylaw Development in Farming Areas* to provide flexible standards to ensure bylaws affecting farming areas are fair to farmers and their neighbours. As noted in the *Guide* (page A-6 and 7):

Ensuring greater land use compatibility and reducing the potential for farm and non-farm complaints is a fundamental objective in the development of the bylaw standards. This represents an important policy link between the 'right to farm' provisions in the FPPA and the 'plan/bylaw' provisions in the Local Government Act. ... the intent is to use ... the bylaw standards and farm bylaws to enhance compatibility between land uses.

29. The *Guide* defines the following:

Confined Livestock Area means an outdoor, non-grazing area where *livestock, poultry, or farmed game* is confined by fences, other *structures* or topography including feedlots, **paddocks, corrals, exercise yards** and holding areas, but not including a *seasonal feeding area*. (emphasis added)

Seasonal Feeding Area means an area:

- (a) used for forage or other crop production and
- (b) used seasonally for feeding *livestock, poultry* or *farmed game* that is primarily sustained by supplemental feed

but does not include a *confined livestock area* or *grazing area*.

30. With respect to farm land in the ALR, the *Guide* lists setbacks from lot lines for accessory farm buildings, structures and areas². A confined livestock area is to be set back 15-30 metres from all lot lines. There is no corresponding setback for a seasonal feeding area.
31. The *Comox Valley Zoning Bylaw, 2005* at section 303 states: “all structures and livestock holding areas associated with intensive livestock operations (feedlots) shall be sited a minimum of 30.0 metres (98.4 feet) from all property lines”. “Livestock holding areas” are not defined and neither are “intensive livestock operations”. The Bylaw does define “agricultural use, intensive” as “the use of land, buildings and structures by a commercial enterprise or an institution for the confinement of poultry, livestock or fur bearing animals, feedlots, or for the growing of mushrooms.”
32. Local government bylaws and the Ministry by-law development guide are not binding on BCFIRB in its determination of normal farm practice. In fact, it is important to keep clear the distinction under the *Act* between normal farm practice and municipal by-law enforcement.³ At the same time, we recognize that a zoning by-law and the *Guide* can be of assistance on the question of what are “proper and accepted customs and standards” in that they reflect what governments consider appropriate practice. Based on the evidence from the Specialist and the respondent, the paddock would appear to fit within the definition of a “confined livestock area” in the Ministry *Guide* in that once the renovation is completed it is intended to be used as a seasonal exercise area planted in grass. It will not be used for feeding as this will always be carried out inside the barn; therefore it would not fit the definition of a seasonal feeding area. The panel observes that while the paddock may be a livestock holding area it is not a feedlot.
33. According to the Specialist’s calculations, the paddock is approximately eleven (11) metres wide and is about 27 metres from the property line at the southwest corner. Referencing the Specialist’s orthophoto #2 which has a scale and includes lot lines, the south east corner of the paddock is approximately 42 m from the property line. Thus, it appears that a triangular shaped area of the paddock furthest from the complainant’s residence is inside 30 m. (approximately 1/3 the length of the paddock and 3 m wide at its base).

² Table 3B

³ The panel notes that even the applicability of municipal bylaws to ALR land can be a complex legal question, which requires consideration of s. 2 of the *FPPA* and ss. 903-919 of the *Local Government Act*: see *Windset Greenhouses (Ladner) Ltd. v. Delta (Corp.)*, [2007] B.C.J. No. 371 (C.A.) at paras. 5-7.

34. The complainant's Map #3 is an aerial photo of her property and the farm taken from the Regional District's iMap program. There is a calculated distance of 14 m which appears to be a measurement taken in the vicinity of the paddock and the property line. The complainant's notation is "distance between my property and outside paddock".
35. While the panel has considered the photos and distances provided by the complainant, we find that they are difficult to interpret given that all but one photo lacks superimposed lot lines. None of the complainant's photos has a scale to allow distances to be calculated. While the iMap program does appear to allow a viewer to calculate distance it is unclear what the associated error would be in such calculations. We prefer the evidence provided by the Specialist in the orthophotos which have clearly marked lot lines and a scale. Given that the orthophotos and distances were confirmed by Ministry GIS staff, we find these distance calculations to be more reliable.
36. Based on this, the panel concludes that the entire paddock meets the 15 m setback in the Ministry Guideline. Further, the majority of the paddock meets the 30 m setback except for the triangular portion identified in paragraph 33 above. Clearly, the provincial government and the local government share the view that good farm practice requires a setback of some distance from neighbouring properties.
37. The panel agrees that normal farm practice requires contained livestock areas to be set back from neighbours. So the question arises whether the setback in this case is consistent with normal farm practice. In this case we find that it is for the following reasons:
- The majority of the paddock area is more than 30 m from the property line and is approximately 27 m at its closest point.
 - The approximate distance from the paddock fence to the complainant's home ranges from a minimum of 47 m (northeast corner of the home) to a maximum of 59 m at the southeast corner.
 - The short term use of the paddock is to allow animals to be removed from the barn during renovations.
 - The long term use of the paddock will be as an exercise area with the animal densities maintained at a low enough level to allow the area to have a permanent grass cover.
 - The paddock will not be used as a feeding area given that animals will always have the concurrent choice to enter the barns for feed, for cover, or as an alternative resting option.
 - The paddock will not be used in the wintertime.
 - The occasional use of the paddock as an exercise yard is not likely to add significantly to odour generation but may result in slightly more noise from animal interaction.

- Equipment use in this area will be of short duration (front end loader to assist in manual removal of manure) and as such is unlikely to be a significant source of odour or fumes.
- The paddock will only house a portion of the 120 animal herd at any given time.
- Even after the construction of the paddock, there remains a treed area (buffer) between the complainant's house and the paddock adjacent to and on the piece of land identified as "the strip" in the original complaint decision.⁴

38. The siting of this paddock offset from the complainant's house, its use (occasional and seasonal) combined with the numbers of animals housed and the presence of a treed buffer satisfies this panel that the paddock and its use conform to normal farm practice. The complainant has not satisfied the panel that the changes to the barn and the addition of the paddock have appreciably increased the odour from manure or equipment. Further, she has not identified any site specific factors which would warrant a greater setback than that already provided by the respondent.

39. Finally, the panel notes that it is common and expected practice for dairy farms to upgrade buildings, replace machinery and equipment, improve manure management practices, implement measures that contribute to animal welfare, and implement necessary measures to modernize their operations. Indeed these practices are to be encouraged as long as the changes are carried out with appropriate consideration to the farm's neighbours. Here, and again taking into account proximity, the panel is satisfied that the changes implemented by this farm with respect to barn ventilation, manure management systems and the addition of a paddock demonstrate appropriate consideration for the complainant. We conclude that any increase in odour due either to equipment or manure odour as a result of these changes will be minor. But in any event as such odours would be a result of normal farm practice, the complaint with respect to odours must be dismissed.

⁴ At paragraph 19 of the Jory v. Beacham, August 31, 2012 decision, the strip was estimated at 75 feet. Based on the new information received in this complaint, the panel observes that the strip is closer to 110 feet (33 m). In paragraphs 77 and 78 of that decision, the panel discusses the extent of tree and brush removal and finds that the trees were largely left intact.

Order

40. The complaint is dismissed.

Dated at Victoria, British Columbia, this 4th day of April, 2013.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per



Ron Kilmury, Chair



Ron Bertrand, Vice Chair



Andy Dolberg, Member