

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 CATTLE OPERATION IN
HIGHLANDS AND VIEW ROYAL, BRITISH COLUMBIA

BETWEEN:

ANN BAIRD

COMPLAINANT

AND:

GOODWILL INVESTMENTS LTD. dba GOODWIN FARMS and
TOM PLASTERER

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board

Corey Van't Haaff, Presiding Member
Andreas Dolberg, Member
Diane Fillmore, Member

For the Complainant

Ann Baird

For the Respondent

Tom Plasterer

Date of Hearing

June 10, 2013

Place of Hearing

Langford, British Columbia

INTRODUCTION

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*).
2. 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 BCFIRB for a determination as to whether the disturbance results from a normal farm practice.
3. On June 25, 2012, BCFIRB received a formal complaint from District of Highlands resident Ann Baird (the complainant) regarding noise, land clearing, burning and an increased rodent population arising from work done on the nearby Goodwill Investments Ltd. dba Goodwin Farms, and owned by Tom Plasterer (the respondent). The respondent runs a small cow-calf operation on his property, which spans the municipalities of the District of Highlands and the Town of View Royal.
4. Since February 2011, Mr. Plasterer has been in the process of developing a building site for a new livestock barn, building the barn and developing other portions of his land to improve his livestock pasture.
5. The activities associated with these undertakings involved clearing forested and overgrown land, burning debris and roots from the land clearing, milling of lumber, construction activities, hauling and depositing of fill onto the property, drilling and blasting of bedrock, and land excavation. The noise, smoke and ash and increased rodent populations allegedly associated with these activities led to the complaint being filed with BCFIRB.
6. The matter proceeded to hearing on June 10, 2013 in Langford, BC. On the day before the hearing, the panel visited both the complainant's property and the respondent farm to place the complaint in geographical context. Each party was present on their respective property during the site visits.
7. The area was observed as being rural in nature with a rolling topography that was predominantly forested, and included occasional surface bedrock exposures. The complainant property was located within a residential development, but even these properties were mostly treed with little visibility between them. While the property is located on a hill to the east of the respondent farm, the view was mostly of trees with only limited visibility of the farm's development sites from the roof of the complaint home. Ambient noises heard from the complainant property included traffic from Munn Road and cars from the distant Western Speedway.

Jurisdiction under the Act

8. On July 11, 2012, the complainant raised the issue of whether the respondent's farming activities are being conducted as part of a farm business as required by s. 3 of the *Act* and whether the complaint is within the jurisdiction of BCFIRB.
9. BCFIRB initiated a preliminary submission process to determine whether BCFIRB has jurisdiction to hear this case.
10. After reviewing the submissions from the complainant and respondent, the Chair of BCFIRB, Ron Kilmury, made the following September 10, 2012 decision¹ with respect to BCFIRB jurisdiction:

The farm has provided evidence in accordance with *Eben*² that does establish, at least on a preliminary basis, that there is currently a farm business (raising of cattle) and the complained of practices (relating to excavating and clearing) are being undertaken for the purpose of expanding the farm operation. I note also the complainant does not dispute that there is at least some level of farming activity being undertaken. While I share the complainant's concern that the magnitude of the excavating, clearing and fill works seems disproportionate to the farm business, I am satisfied that the respondent has demonstrated a prima facie case from which it could be concluded that the practices complained of relate to the expansion of a farm business. As such, I am not prepared to make any ruling regarding jurisdiction at this point in the proceedings. In these circumstances, the appropriate course is to establish a panel to hear this complaint and once the panel has had the benefit of oral evidence and argument, it can make a determination as to whether this is a farm operation and if so, whether the on-farm activities complained of accord with normal farm practices.

11. As part of this complaint, the panel must therefore determine whether the respondent farm is a farm operation conducted as part of a farm business.

Inclusion of Third Property

12. A second preliminary matter was raised on April 11, 2013 by the complainant when BCFIRB was advised that the complaint related to the respondent's activities involved three separate properties, namely two Munn Road properties, both in the District of Highlands, and a Thanet Road property in the Town of View Royal. The original Notice of Complaint referenced only one Munn Road address and the Knowledgeable Person's Report (referenced below) provided information arising from the activities on that Munn Road address (Property #1) and a Thanet Road address (Property #2), but not the second Munn Road location (Property #3).

¹ [Baird v Plasterer, September 10, 2012](#)

² [Hodge v Eben Jurisdiction Decision, November 20, 2008](#)

13. After hearing from both the complainant and respondent, the Presiding Member of this panel wrote to the parties on April 29, 2013, indicating that the complainant could give evidence regarding the farm practices on Property #3 as part of the complaint hearing. It was also indicated that it would be for the panel to determine, based on the evidence received, whether the farm practices complained of in relation to Property #3 are conducted as part of the same farm business with the same type of disturbances that were alleged in the Notice of Complaint. The panel's determination on whether Property #3 should be included as part of the complaint would be part of this decision.

ISSUES

14. Is the respondent farm a farm operation conducted as part of a farm business as required by s. 3 of the *Act* and as such does BCFIRB have jurisdiction to hear this complaint?
15. Are the farm practices complained of in relation to Property #3 conducted as part of the same farm business and should it be included as part of the complaint?
16. Do the noise, land clearing (drilling and blasting), burning and the increase in rodents and woodpeckers result from a farm business conducted in accordance with normal farm practices?

KNOWLEDGEABLE PERSON'S REPORT AND TESTIMONY

17. Robert Kline, P. Ag. was engaged by BCFIRB under section 4 of the *Act* to prepare a Knowledgeable Person's (KP) Report which was undertaken in the fall of 2012 and completed in January 2013. Mr. Kline was called as an expert witness at the hearing.
18. Mr. Kline is a Regional Agrologist (Capital Region and Southern Gulf Islands) with the B.C. Ministry of Agriculture, a position that has required him to be involved with other farm practices complaints. He has been registered as a Professional Agrologist with the BC Institute of Agrologists for 36 years and holds a B.Sc. in Agriculture degree (Soil Science) from the University of British Columbia (UBC). He previously worked as the Resource Planning Specialist and Soil Conservation and Management Specialist in northern BC for the Ministry of Agriculture and as a Soil and Terrain Specialist for both McMillan-Bloedel Ltd. and the B.C. Ministry of Environment.
19. The KP Report detailed Mr. Kline's observations and recommendations, the key points from which, together with his testimony at the hearing, are outlined in the paragraphs below.

20. The report described the complainant's home as situated on a height of land east of the Goodwin Farms properties. The drilling, blasting and rock crushing activity undertaken on Property #2 was estimated to have occurred approximately 590 meters south west of the complainant's home, and was described as taking place in an area bounded by exposed rock bluffs on one side that could reflect surface noises towards the complainant residence. The closest soil fill dumping area was on the Property #1 and was estimated to be between 210 and 280 meters west of the Baird property.
21. The Baird family was described as producing much of its own food on the property and running a home-based business that involves conducting educational tours of its energy efficient home and providing workshops on energy efficient building and sustainable living.
22. The KP report stated that the complainant considered the nuisances associated with land clearing and development to be intrusive and possibly to have resulted in a loss of income. Mr. Kline noted that the complainant worked at her home site during the day while Goodwin Farms development operations were at their peak.
23. The respondent's properties are not in the Agricultural Land Reserve (ALR), but both the 30 acre (12.14 ha) Property #1 and the 178 acre (72 ha) Property #2 are zoned Greenbelt 2 by the respective municipalities³. This zoning allows for agriculture on both properties, but places restrictions on intensive agricultural activities.
24. The KP Report described the farming activity of Goodwin Farms as a cow-calf operation consisting of a small herd of eight cows and eight calves, which Mr. Plasterer will be increasing to forty breeding cows once the planned pasture improvements are completed. The report further states that the new pasture areas will be seeded to ryegrass and orchard grass, and will be fenced but not irrigated. Mr. Plasterer's stated intent is to improve the Goodwin Farms pastures in order to provide spring- to-early-fall grazing land for a forty-cow herd, but, even with the improvements, will not have the capacity to produce winter feed on site for the herd.
25. The higher altitude upland areas of both properties, comprising by far the largest proportion of the land base, were described as predominantly treed with significant areas of surface bedrock exposures. The report points out the sloping topography and bedrock are not well suited for agricultural use, other than limited seasonal grazing, and were reported to be zoned 70% Class 7RT and 30% Class 6RM by the BC Land Inventory (BCLI)⁴. The

³BCFIRB jurisdiction under the *Act* does apply to land outside of the ALR on which farm use is allowed under the provincial *Local Government Act*.

⁴ The BCLI Agriculture Capability system rates Class 7 units as having no agricultural capability and Class 6 as limited grazing capability. The subclass R has bedrock restriction for agriculture

property would require considerable amendments in order to create productive farmland and farm building sites.

26. The total area of land clearing, blasting and soil fill operations was estimated by Mr. Kline to be 6.5 acres (2.6 ha), or about 3.1% of the total land base of Properties #1 and #2. This included the footprint of the new livestock barn and immediate surrounding storage and livestock containment site (1.5 acres) on Property #1 and the two pasture development sites; 1.3 acres on the Property #1 and 3.7 acres on Property #2.
27. The report attributed the complainant's noise concerns to the drilling, blasting and moving of bedrock and the equipment operations associated with those activities on Property #2 and from equipment operations associated with the delivery and site management of soil fill, as well as, at least on one day, the use of a "Hoe-Ram" (an hydraulic hammer attached to an excavator used to break down concrete structures or rocks) operating on the eastern portion of Property #1.
28. The KP report indicated that the peak period of noise from these activities was described by the complainant as occurring from sunrise to sundown commencing in February 2011 and continuing until February 2012. Noise from dump trucks delivering soil, on-site rock removal and earth moving equipment operations reportedly occurred through to the late fall of 2012.
29. It was noted in the KP Report that this rural area in the District of Highlands has low settlement density and ambient noise levels are very low, so machinery operation noises will be heard from considerable distances. It was suggested that land development noises, particularly from farming operations, lasting over extended periods on a daily basis would not occur very often in the area. Mr. Kline also noted during testimony that noises from Goodwin Farms would probably rebound off the hills west of the farm, towards the Baird property which sits on a hill east of the farm.
30. The KP report referenced a BC Ministry of Agriculture fact sheet on the use of fill on agricultural land⁵ and described soil filling and land shaping/grading for agriculture purposes as a common agricultural practice which would involve noises associated with equipment operations for fill delivery, land shaping and grading. Mr. Kline noted that if Goodwin Farms had been located in the ALR, Mr. Plasterer would have required approval or authorization from the Agricultural Land Commission for his fill operations, but that municipal requirements are all that was necessary in this instance.

use; T has slope restriction for agriculture use and M soils have low water holding capacity and are prone to droughtiness and require irrigation.

⁵ B.C. Ministry of Agriculture Publication No. 820.200-1. [*Guidelines For Farm Practices Involving Fill*](#). December 2006

31. Mr. Kline testified that it was very unusual to see the amount and depth of fill used by the respondent for pasture development, but that the practice of using fill on farmland has been common in other more intensive agricultural sectors, such as for the development of large greenhouses or cranberry production areas. He stated that, even though it is an uncommon practice, the prospective pasture sites could become productive grazing areas when the development work is completed.
32. Mr. Kline testified that he has experienced instances where owners of agricultural land have accepted fill for profit which was never utilized to develop their farming operations. Referring to Goodwin Farms, however, he stated that there was a farm business being undertaken and the fill was being utilized to improve this operation.
33. The report indicated that blasting bedrock knolls to create small pasture areas is not a common practice in beef or sheep operations. While there are examples of developing greenhouses or poultry operations on such rocky areas, this was also described as not common in these sectors. Exposed bedrock sites would be generally avoided due to the very high cost of developing such areas for agricultural purposes. Mr. Kline did explain, however, that while in his experience he had not encountered the use of blasting rock and placing fill, this was not to say it was not something that could be used for agricultural purposes. He mentioned that problems could be encountered in rocky areas if bedrock was not shattered and adequate amounts of fill could not be obtained.
34. Mr. Kline testified that it would not be possible to pay for this level of development from the sale of eight calves per year or even from forty. However, because a tipping fee would have been received for the fill that was brought onto the properties, the overall operations undertaken for the development of a building site for a barn and for developing pastures may have been financially feasible.
35. The development work also included farm road improvements and the placing of a new culvert in Craigflower Creek. Mr. Kline testified that the focus of a 2012 environmental assessment report conducted by registered professional biologist D. R. Clough for Goodwin Farms and referenced in the KP report had focussed on the work undertaken in the Craigflower Creek area.
36. The KP report outlined the complainant's concerns with respect to the tree clearing activities on both of the Goodwin Farms properties and the resultant smoke and ash conditions experienced at the Baird property. The report noted that clearing of trees and burning of wood debris are standard practices to develop farmland in forested areas and that the tree clearing area was limited to the sites being developed for improved pastures. It was

further stated that narrow windows of operations, poor venting conditions and topography could have exacerbated smoke and ash production. The report also noted that the logged trees were milled on site and became a source of materials for construction of the new livestock barn.

37. The brush from the trees was burned in piles, the smoke from which was reportedly a nuisance for multiple days in February 2011. The fire on Property #2 reportedly lasted for about a week with periods of smoke and ash being a nuisance, and on December 23, 2011 a large ash fallout occurred on the complainant property. The respondent had reportedly used Ministry of Environment Venting Index to choose the best days for smoke dispersal, but found the index to be inaccurate in predicting conditions at the site, which Mr. Kline suggested may have contributed to higher levels of smoke and ash than anticipated.
38. The report indicated that the complainant observed a sudden increase in common vole, deer mice and rat populations on her property during the land clearing and soil filling activities on the respondent properties. According to Mrs. Baird, twenty percent of the Baird family's 2011 and fifty percent of their 2012 root vegetables were impacted by the dramatic increase in rodent numbers.
39. The lower lying areas of Goodwin Farms, reported to be classified as zone 04W⁶ by the BCLI, cover approximately 30 acres (12 hectares) or 15% of the total 208 acre (84 ha) land base of the two properties. The report indicated that the lower lying areas served as the main source of feed production for the grazing cattle. A portion of the low lying areas was described in the report as having been seeded to oats and recently limed, and being managed for their forage production capability. Another portion of these areas was in a less productive grass-sedge crop, which Mr. Kline indicated had the potential of also being improved to be more productive for cattle forage.
40. The KP report noted that most of the tree clearing, smoke, ash and burning, bedrock drilling and blasting operations identified by the complainant as nuisance issues have to a large degree been completed and are no longer occurring at Goodwin Farms. The report did, nevertheless, make a number of recommendations for the respondent to consider with respect to reducing the impact of the development activities, and specifically to better accommodate the complainant's ability to conduct public tours and other work from the Baird property. It is recommended in the KP report that Goodwin Farms consider:

⁶ Class 04 units are organic soils with forage and some annual crop capability and subclass W soils have excess water from inundation. These areas have the potential to be further improved for agriculture capability with drainage infrastructure.

- developing a time frame for when construction phase of operations will be finalized for the beef pasture developments and a schedule of construction activities that would include days of no site work to accommodate Ms. Baird’s ability to conduct public tours and other work from the Baird home site;
- informing Ms. Baird and other immediate neighbouring property owners, of very noisy construction phase equipment and activities such as the “Hoe-Ram”, drilling, crushing or blasting bedrock, etc., used for beef pasture developments at least 3 days in advance, so that Ms. Baird can make alternative arrangements to her work schedule and activities around the Baird home site;
- minimizing future blasting noises via the use of blast mats and other noise reduction techniques; and
- implementing a mid-day break in all operational activities (soil fill dump truck deliveries, bedrock crushing and movement by dump trucks, bulldozer, hoes, roller/packers, etc.) for beef pasture development activities of at least 2 hours and an operational period from 8 am to 5 pm for a 5 working day week, i.e. Monday to Friday.

COMPLAINANT’S CASE

41. Ann Baird presented the complainant’s case. Ms. Baird stated that she and her husband and two children reside on their property, together with her parents. They obtain most of the food for their extended family from their well-established permaculture gardens and from chickens on their property, and they also source meat from local farmers. They both designed and built their award-winning energy efficient cob home, features of which include solar heating, composting toilets, rainwater harvesting, grey-water re-use and a living roof. Their home and property, which they call “Eco-Sense”, has attracted a wide range of local, national and international media attention. Ann and Gord Baird also conduct many tours of the property and hold on-site workshops on many aspects of green energy efficient buildings and sustainable lifestyles.
42. Regarding jurisdiction under the *Act*, Ms. Baird submitted that Goodwin Farms is not a farm operation conducted as part of a farm business because, first, Goodwin Farms lacks any intent to make a profit from farming and, secondly, Goodwin Farms does not appear to have a consistent farm plan, as Mr. Plasterer’s goals have changed significantly over time. Ms. Baird’s comments on this matter were prefaced by noting that she has 15 years experience doing higher-level bookkeeping for a number of companies, including a Saltspring Island on-farm organic cheese producer, and that she has been the financial manager for a multi-stakeholder organic food co-op that included farmers as members.

43. To support Ms. Baird's position that the respondent had no intention of making a profit from farming on the three properties and that Goodwin Farms was therefore not a farm business, the complainant submitted the following:
- An estimate of the number of truck loads delivered to Goodwin Farms over the course of two years based on observations by Ms. Baird and her neighbours was 38,760; and assuming a return of \$45/load, the fill would have accounted for as much as \$1.7 million in gross revenue. The complainant suggested that the costs associated with the development activities undertaken by Goodwin Farms would also have been substantive, but did not provide estimates for them. The complainant further suggested that the respondent should have provided details of these costs during the preliminary BCFIRB submission process to determine jurisdiction under the *Act*, listing activities such as operational costs and depreciation of excavators and dump trucks, rock drilling and blasting costs, new barn construction costs and depreciation, permit fees, and extensive road and bridge construction.
 - The complainant stated that the anticipated annual net revenue of \$44,400 reported by the respondent is grossly out of scale with the significant land alteration costs and infrastructure investments undertaken.
 - The respondent suggested that it is well known that utilizing inorganic material deposits without intensive inputs of soil amendments and water is an uneconomic farming practice, with soil and water cycles being the limiting factors.
44. Ms. Baird claimed that the budget provided by Mr. Plasterer to show his anticipated revenue and expenses for the 40-cow herd he expects to have in three years was flawed for a number of reasons. Mr. Plasterer anticipated a gross income of \$58,000 (\$37,000 from the sale of 37 cattle if sold at local auction prices, plus \$10,000 from selling some as breeding stock and \$11,000 for a "buy local" premium) and expenses (feed, minerals, veterinary, etc) of \$13,600, for a net income of \$44,400. Based on Ms. Baird's own research into the subject, she suggested the following with respect to this budget:
- Selling 37 calves as well as breeding stock is double counting, so the herd would be declining over time.
 - It is unusual to get a premium for selling live calves and processing costs are not accounted for, so the "buy local" premium is unclear.
 - Goodwin Farms would require 157 acres of good productive pasture to sustain a 40-cow herd or, if there is less than that available, as is the case at Goodwin Farms, hay would need to be imported at a cost of up to \$5 - 6,000 per month.
45. The complainant's second argument on the jurisdiction question is that Goodwin Farms does not appear to have a consistent farm plan and that Mr.

Plasterer's goals have changed significantly over time. Ms. Baird referred to a February 2011 email from the District of Highlands staff indicating that Mr. Plasterer's intention was to move sheep to the area that was being cleared on Property #1, but then moved cattle onto the property. She referred to a second email also from the District of Highlands staff dated June 2011, indicating they had been informed by Mr. Plasterer that the fill deposit was now complete on the two portions of land in the Highlands. The complainant claimed that fill deposit work continued until May 2013.

46. Regarding the inclusion of Property #3 in this complaint, Ms. Baird stated that she did not have the addresses for all three properties at the time of filing her complaint. Ms. Baird noted, however, that she was aggrieved by noise and other disturbances from the property as indicated in her original complaint notice, which the respondent received. She contends that the notice clearly showed on a map the areas where the farm was engaged in activities that were the source of the complaint, and those areas included Property #3. Ms. Baird also pointed out that all three properties have farm tax status and that all are also used for grazing of Mr. Plasterer's cattle.
47. The complainant outlined her evidence on the development activities that are the subject of this complaint at the three sites on Goodwin Farms as follows.
 - Property #1, District of Highlands: 5.44 acres that have been cleared, burned and filled.
 - Property #2, View Royal: 5.68 acres that have been cleared, burned, drilled, blasted and filled.
 - Property #3, District of Highlands: Most of this 2.47 acre property has been cleared, burned and filled.
48. Considerable detail on these activities and on Ms. Baird's environmental concerns with respect to Goodwin Farms' practices was submitted by the complainant through copies of numerous emails between both Ms. Baird and Mr. Baird and officials from the District of Highlands, View Royal and the District of Saanich. The complainant also relied on her overview of the timeline of events that she submitted to BCFIRB when the complaint was filed in June 2012. An outline is briefly summarized below.
 - In February 2011, logging, burning, clearing and fill activities commenced in the District of Highlands.
 - October 2011, similar development activities commenced on the View Royal property.
 - In November 2011, large fires commenced on the View Royal property.
 - In the fall and winter 2011 to early 2012 a spike in rodent populations were observed on the Baird residence.
 - From June 21, 2012 (when the BCFIRB complaint was filed) to April 30, 2013 there was ongoing development activity.
 - The fill activity ceased in May 2013.

49. The noise from the heavy machinery over the first year of Goodwin Farms' development activities was described by Ms. Baird as occurring seven days per week, which changed in 2012 to occur Monday to Friday from about 8am to 5pm. The complainant stated that when conducting tours of her property she frequently had to shout over the noise generated from the trucks, excavator and the drilling and blasting on the farm.
50. Ms. Baird submitted that they were disturbed not only by the level of the noise but the frequency of it. As an example, the complainant estimated that the number of dump trucks bringing fill onto Goodwin Farms to be about 95 trucks per day, or about 3 trucks every 15 minutes and a total estimated number of 38,760 trucks over two years. The evidence submitted to support this estimate was a record of dump truck traffic observations on Munn Road made by Ms. Baird together with neighbours over a six month period. Ms. Baird acknowledged that the only way to determine the exact number is for the respondent to produce documented records.
51. To demonstrate the level of noise disturbances from Goodwin Farms, the complainant submitted four videos as evidence, all filmed from the Baird property during the fall of 2012:
- September 28: Taken from the Baird yard demonstrating the sound of a hoe-ram operating next door at Property #1, and described by Ms. Baird at the hearing as unusually loud because of its close proximity during operation.
 - October 2: Taken from the roof of the Baird residence and demonstrating noises on a typical day with a drilling machine operating in the background on the View Royal property.
 - October 9: Taken from the Baird yard demonstrating noises from a typical blast on the View Royal property, with Ms. Baird noting on the video that the ground shook under her feet at the time of the blast. Ms. Baird also testified at the hearing that they would have to shout over this noise at the Baird residence.
 - November 7: Taken from the Baird yard demonstrating noises from a truck dumping a load of fill and an excavator in operation. Ms. Baird testified at the hearing that these noises were frequent (her estimates are outlined in paragraph 48) and had a significant impact on the Baird's ability to enjoy their property.
52. While fires were reported to have commenced in February 2011, Ms. Baird's evidence suggested that the disturbance from smoke and ash brought about by the fires on the Plasterer property was heightened in November 2011. In mid-November 2011, one fire on the View Royal property was described in the complainant's evidence as occurring for a full two weeks, with the Baird family being "smoked out" a number of times, with bits of ash falling on them. In late December 2011, another large fire on the Highlands property reportedly resulted in embers and ash falling around the

Baird property. The complainant indicated that there had been a total of six fires that occurred on the respondent's properties, and that at least one of the View Royal fires occurred without a municipal permit.

53. In the fall and winter 2011 to early 2012, Ms. Baird testified that she witnessed a major spike in rodent populations, which resulted in significant damage to the Baird family's vegetable crops during both the fall of 2011 and spring of 2012. While the increase in rodent numbers has since abated, the complainant believes it was directly related to land clearing activity and could be an issue again if land clearing should resume.
54. Ms. Baird referred in her testimony to a public blog she posted February 20, 2012, which outlined a number of concerns the complainant had with respect to the respondent's development activities. Ms. Baird also testified that within a two week period (April 14 to May 2 2013) 88 people came to sign a petition entitled "Highlands Citizens and Neighbours Impact Statement Feb. 2011 – Apr. 2013", that also specified a range of concerns with respect to land development activities of the respondent. Ms. Baird suggested that the petition demonstrated that the signatories share the complainant's concerns, but she did not call upon any of them to testify at the hearing.
55. The complainant argued that the Baird family had to endure two and a half years of noise and disruption from the development activities of Goodwin Farms and that these activities were not normal farm practices. The complainant stated that she had no concerns regarding the day-to-day practices of the Goodwin Farms cattle operation, but referred to the farm's development activities as "slash and burn farming", which she said occurs in impoverished nations and leads to highly degraded landscapes. The complainant also stated that Goodwin Farms was taking a step in the right direction by undertaking an Environmental Farm Plan (EFP).
56. Ms. Baird is asking the panel to find that the development activities that have occurred on Goodwin Farms are not in accordance with normal farm practice and that the burning, drilling, blasting and hauling of fill be ordered to be permanently ceased. In addition, she is requesting that BCFIRB use its studies and reports role under the *Act* to undertake a study on the use of fill on agricultural land, stressing that until there is clarity on what normal farm practice is with respect to the use of fill on agricultural land there will continue to be situations where farms are being used as a means to another end.

RESPONDENT'S CASE

57. Tom Plasterer presented the respondent's case. He outlined his history of farming at Goodwin Farms, as follows:

- Mr. Plasterer purchased the farm, one of the older homesteads in the region, in 1978 and initially had about 20 beef cows, 30 ewes, one milk cow and 30 chickens. He lived on the property with his family and described his lifestyle as being to a large degree self-sufficient, noting the similarity with what the Baird family has more recently undertaken on their property.
- The previous owners of the farm had also sold 30 acres of property the year prior, which was subdivided into lots, one being the property on which the complainant currently resides. Mr. Plasterer testified that during those initial years on the farm he also had to endure the noise from blasting, excavators and other activities undertaken to develop this new residential area.
- The respondent testified that farming has been his passion ever since he was twelve years old when he bought his first calf, and in the years that followed, he always entered his animals in local 4H competitions. By 1971, when he was just eighteen years old, Mr. Plasterer testified that he owned a herd of ten cows and later saw Goodwin Farms as the ideal location to raise beef cattle.
- While he did maintain the pasture land for his cattle at Goodwin Farms, Mr. Plasterer's primary focus in the 1980's to early 90's was improving the Plasterer family farm at 4335 Lindholm Road in Metchosin through land clearing, installation of drainage and other major improvements. He worked there until 1995 when he suffered a broken back in a farm accident and, since that time, his colleague John Buchanan has been managing a flock of up to 1,000 sheep on that property. Mr. Plasterer also stated that 1995 was the last time prior to his recent development activities that any logging occurred at Goodwin Farms.
- Mr. Plasterer indicated that he sold his Goodwin Farms' cattle herd in 2001 because cattle prices were too low to make a profit, but that he ran sheep on the property for the next 10 years. As a result of cougar predation problems, the sheep had to be removed from the property early every year, which was one of the reasons the farm had become quite overgrown.
- Land clearing commenced in February 2011 and in March 2011, Mr. Plasterer began adding fill to create a proper building site for a barn, which he built in the summer of 2011. A small herd of eight cows was purchased and brought to Goodwin Farms in early 2012. Further logging, blasting and filling was undertaken to develop two approximately five acre areas into grass fields to be used for cattle grazing.

- While Mr. Plasterer moved his residence to Metchosin in 2007, he testified that he has continued to farm the Goodwin Farms properties uninterrupted the entire 35 years that he has owned the farm.
58. Mr. Plasterer testified that he had been approached many times after purchasing Goodwin Farms to sell it for residential development. Because Goodwin Farms is not in the Agricultural Land Reserve, he stated that an option would have been to subdivide all or part of it to make a significant profit. But he said that this has never been his intent, which is why he has farmed the properties for the last 35 years and that he is now improving some of this land so he can continue farming.
 59. Regarding jurisdiction under the *Act*, Mr. Plasterer emphasized that he has been farming at Goodwin Farms for 35 years, stating that the lack of maintenance on the properties for many years has resulted in a gradual decline of the productive capacity of his land base. He acknowledged that the excavating, clearing and fill work has been a significant undertaking, but indicated that this work will allow him to expand his herd and make the farm a viable farming business over the long term.
 60. In his testimony, Mr. Plasterer emphasized more than once that farm improvements such as the ones he is undertaking at Goodwin Farms could never be “paid for with the cows alone”; that this simply would not be financially feasible. He suggested that almost all smaller farms have to rely on some form of non-farm income in order for them to be viable and said that this was just a reality of farming. As an example, he stated that his friend John Buchanan, who manages the sheep operation on the Plasterer’s Metchosin farm, has to rely on income from being a full time registered nurse to make ends meet. In the case of Goodwin Farms, Mr. Plasterer indicated that he had access to the equipment owned by his family business, and which he had used to develop the family’s Highland Pacific Golf Course. He said he is taking advantage of this opportunity to improve his farm by developing entirely unproductive rock outcrop areas into productive cattle pasture and that all of the costs associated with developing these pastures, as well as improving his road and bridge, clearing land, and constructing the barn and fences were offset by the sale of logs and fill revenue.
 61. Mr. Plasterer testified that it was because of this non-farming revenue that he was able to undertake the development work that will put him in a position to pasture a 40-cow herd on Goodwin Farms within about three years. Because beef prices are now okay, he testified that the operating budget he had submitted to BCFIRB in the preliminary process to determine jurisdiction was reasonable, and that Ms. Baird had erred in her critique (outlined in paragraph 44) of his estimates, as follows:

- The additional \$10,000 return budgeted for breeding stock was not double counting, but estimated by selling about six of the best animals each year for breeding and adding the approximately \$1,500 additional return that he would expect to receive for each of those animals.
- Similarly, the additional \$11,000 “buy local” return would come from selling about six or seven cattle as butchered animals, each of which would return about \$1,500 more than selling them at auction.
- Regarding the complainant’s assertion that Goodwin Farms would require considerably more productive pasture or feed than budgeted for, Mr. Plasterer noted that he had budgeted \$340/cow for feed, minerals, veterinary bills, etc., stating that almost all of this would be for feed. The cattle are on pasture from sometime in April until fall, and the budgeted amount would cover the cost of feeding when adequate pasture is not available. He also testified that he is able to utilize relatively cheap hay and round-bale silage during the winter months. He noted that his veterinary bills were almost non-existent as the topography at Goodwin Farms provides a healthy environment that is ideal for raising cattle, and cited as an example that he has required only one C-section in a cow the entire time that he has been raising cattle.

62. In response to the complainant’s suggestion that Goodwin Farms did not have a consistent farm plan (outlined in paragraph 45), Mr. Plasterer stated that he has been consistent in that he has used Goodwin Farms for agricultural purposes as long as he has had the property. He had cattle on the farm from the time he purchased it in 1978 until 2001, was pasturing approximately 100 sheep during the summer for a number of years, and has now resumed cattle production and is developing the property to expand his eight-cow beef herd to forty cows. He also stated that Ms. Baird was mistaken when she testified that fill deposits continued on Property #1 after June 2011. He indicated that he was still in the process of constructing the barn and doing other work after June, but that the fill deposits were indeed completed as he had indicated in June 2011 to staff from the District of Highlands.
63. Regarding the inclusion of Property #3 in this complaint, Mr. Plasterer did not directly object to this but noted that all development work had been completed on that property in 2011, well before the complaint was filed. Mr. Plasterer stated that it was his goal to have the two pasture areas currently under development on the other two properties basically the same as the completed pasture on Property #3, which he described as a flat seeded permanent pasture that he can readily mow to control weeds and forest encroachment. He said that all three pasture areas are intended for early spring pasture when it is too wet for the cattle to be grazing in the low lying areas.

64. Mr. Plasterer submitted that his practices did not result in the degree of noise, smoke and ash, and increased rodent populations that were described by the complainant. He referred to the following at various times during his testimony:
- Blasting: Goodwin Farms only blasted bedrock a total of six times during the entire period of undertaking the development work.
 - Excavator: Goodwin Farms operated the excavator, according to its time clock, a total of only 24 hours during the entire period of undertaking the development work. No records were provided for the operation times of other equipment.
 - Hoe-ram: On the complainant's first video (September 28, 2012) entered as evidence, Mr. Plasterer submits that Ms. Baird is talking over the sound of the Hoe-ram in a normal voice. Mr. Plasterer submitted that it certainly does not appear that the complainant had to frequently "shout over the noise" as had been contended; particularly given that it was acknowledged that this event was unusually loud because it was the only time the Hoe-ram was in operation in the eastern portion of Property #1.
 - Fill: With respect to the noise from the dump trucks bringing fill onto Goodwin Farms, Mr. Plasterer states that there was a total of approximately 10,000 truck loads that came onto the properties during the entire time of the development work, not close to 40,000 truck loads as estimated by the complainant. In addition, trucks never came onto Goodwin Farms on Sundays.
 - Noise Overall: Mr. Plasterer suggested that the distance and the tree buffers between the Goodwin Farms development sites and the Baird residence would reduce the level of noise from the development activities. Mr. Plasterer also testified that once he found out that the noise from these activities was a problem on weekends, he stopped doing this work on weekends.
 - Fires: Mr. Plasterer outlined that the fires were almost entirely completed during 2011, with none at all occurring during 2012 and only two very small fires in January 2013. The only large fires occurred in the fall of 2011 to burn the tree stumps from the clearing that had been undertaken.
 - Rodents: While Mr. Plasterer acknowledged that there may have been some increased rodent numbers as a result of Goodwin Farms' land clearing activities, he testified that high rodent numbers had already been a problem before he started his work in 2011.
65. Regarding the use of fill, Mr. Plasterer testified that he had obtained six fill permits in total – in February, April, May and October of 2011 and August and December of 2012. All were in the District of Highlands except the last one, which was on the View Royal property. The total amount was 51,513 cubic meters in Highlands and 26,433 cubic meters in View Royal property. In cross examination, Mr. Plasterer was later asked why he had not submitted detailed information on the number of truckloads of fill that were

brought onto the properties. He testified that he did not think the number of truckloads was important information to have for the purposes of this complaint and responded by saying there were about 10,000 loads over the course of the two and a half years, for which he received \$49 per load.

66. Mr. Plasterer also explained that the necessary municipal permits had been in place for all fill that he brought onto the properties, and the requirements of the permit process were first, what the fill was to be used for and, second, what the end result would be. As he had explained previously, the fill was used to develop a building site for a new barn and to develop rock outcrop areas into productive pastures. In response to information publicized by the complainant through a public blog and a citizens' petition (paragraph 54) Mr. Plasterer testified that all fill taken onto his properties was either tested or was from known safe sites. There had been contamination at one Colwood site where fill was sourced, but Mr. Plasterer testified that the District of Highlands has documentation that ensures the Colwood fill Goodwin Farms accessed was not contaminated.
67. Mr. Plasterer also objected to the complainant's suggestion that he has used the *Act* to undertake work for non-agricultural purposes. He testified that he was not even fully aware of the *Act's* provisions until the complainant filed this complaint with BCFIRB in June 2012, and suggested that it may have come into play if he had not received all the necessary permits from the municipalities. Mr. Plasterer testified that he received permits for all development activities that were undertaken by Goodwin Farms over the past two years, with the exception of one fire that he mistakenly lit in View Royal rather than the District of Highlands because the border between the municipalities is not clearly marked.
68. Mr. Plasterer testified that after receiving one of the required permits from View Royal and proceeding with some initial work on Property #2, he received a request from View Royal to hire a registered biologist to undertake a study, also discussed in the KP report, to confirm that there are no environmental issues arising from the development. Mr. Plasterer stated that he voluntarily stopped any further development activity on the site until after he had hired a biologist and submitted the completed study, which confirmed that there were no environmental concerns.
69. Mr. Plasterer expressed serious concern that the complainant had included the names of Goodwill Investments Ltd. and Goodwin Farms along with the Goodwin Farms addresses on the petition entitled "Highlands Citizens and Neighbours Impact Statement Feb. 2011 – Apr. 2013", as submitted and referred to in the complainant's evidence (paragraph 54). He testified that without his business names on the petition he would have signed the petition if he had been presented with it as a resident of the District of Highlands, as he agrees in general with the issues raised in it. He stressed, however, that it

was simply wrong for the complainant to have implied that he was somehow responsible for the infractions and issues listed in the petition, as this was not factual.

70. Mr. Plasterer stated that because the complainant had raised the issue of his family's non-farm related businesses, he felt obligated to also make note of his family's business history in the Victoria area. His father bought a trailer park in 1959, now known as Fort Victoria RV Park, initially catering to tent trailers and now catering to larger RV's and motor homes. His father also purchased a larger 200 acre property in the 1960's and had a dream to develop a portion of it into a golf course, but he passed away before construction of the golf course commenced. Mr. Plasterer testified that he and his siblings, at the request of his mother, did eventually begin developing the property in 2001, with the Highland Pacific Golf Course being completed nine years later. He noted that this golf course is now accredited through the Audubon Cooperative Sanctuary Program for Golf because the Plasterers have preserved natural areas and wildlife habitat on this land. He also stated that the family's various property holdings in the Victoria area consist in total of approximately 600 acres, all of which, with the exception of about 30 acres, are outside of the ALR. Mr. Plasterer noted that the family could at any time have pursued subdividing these various properties, but have not done so because preserving natural areas has always been important to the family.
71. Mr. Plasterer testified that the land being developed at Goodwin Farms is approximately 12 acres out of 230 acres. The majority of the 12 acres will serve as spring pasture but it also includes the land for the newly constructed barn and surrounding area. There are approximately 30 acres in the low lying areas, which serve as excellent summer pasture as he is seeding this land to oats as soon as it is dry enough. The low lying and higher areas, therefore, complement one another, as the lowlands can be utilized when the higher elevations become too dry.
72. Mr. Plasterer also testified that he is in the process of working with a planning advisor, Dave Tattam, to complete an Environmental Farm Plan (EFP) for Goodwin Farms. As part of the EFP process, he will be preparing a grazing management plan as well as a riparian assessment. He testified that based on this work he will be fencing off areas such as the creek, as well as other areas identified through the process, with the intent of better managing his pastures and preventing any overgrazing.
73. With respect to his future plans, Mr. Plasterer stated that he fully expects to keep the majority of the 230 acre property in its natural state, as these surroundings provide the ideal environment to raise healthy cattle. He said that his plans are to develop about another 15 acres for improved pasture, but stressed that this work will require very little fill and that any blasting

that does occur will be at least one kilometer from the Baird property. He stated that once his development work is fully completed, the public will be slowing down to view the attractiveness of Goodwin Farms in the same way that they do for the Plasterer family's Metchosin farm, which is currently featured on the District of Metchosin's website.

ANALYSIS AND DECISIONS

74. The panel must first consider the two preliminary matters; whether BCFIRB has jurisdiction in this appeal and whether the third property which is part of Goodwin Farms can be added to the complaint.

Jurisdiction under the *Act*

75. BCFIRB's jurisdiction to hear complaints is restricted to disturbances resulting from "farm operations" conducted as part of a "farm business" as those terms are defined in the *Act*. As outlined in paragraphs 8 to 10 above, BCFIRB had initiated a submission process to assist in determining whether the practices in question resulted from a farm operation conducted as part of a farm business. The panel adopts the approach set out in Mr. Kilmury's September 10, 2012 letter to address the jurisdiction issue in this case.
76. The panel notes from Mr. Kilmury's correspondence that he was not prepared to make a preliminary ruling regarding jurisdiction under the *Act*, and indicated to the parties that this panel would make a ruling on the question of jurisdiction once it has had the benefit of oral evidence and argument. Having heard the oral evidence and argument from both the complainant and respondent, as well as the testimony from the Knowledgeable Person, the panel has determined that the practices complained of in this case did result from a farm operation conducted as part of a farm business, for the reasons outlined below.
77. A major focus of the complainant's submission on jurisdiction was that the respondent had no intention of making a profit from farming, pointing to the level of activity being undertaken to develop the properties compared to the current and projected level of revenue and expenses associated with Mr. Plasterer's cow-calf operation. The panel can appreciate, as was also noted by Mr. Kilmury, that the magnitude of the excavating, clearing and fill works being undertaken would appear to be out of line with this relatively small farming operation. As Mr. Kline also noted in his testimony, exposed bedrock sites such as the ones Mr. Plasterer is working on would be generally avoided for agricultural purposes due to the very high cost of developing such areas.
78. It is the view of the panel, however, that there were some very rational and practical reasons why this occurred. We would note in particular that Mr.

Plasterer had ready access, through his family's business, to the machinery required to undertake the development activities; that he used his own labour and had experience in this type of development work from both the development of the Highlands Pacific Golf Course and the extensive improvements made over a number of years to his family's Metchosin farm; and that Mr. Plasterer was able to offset the costs of the development activities from both the sale of logs and fill revenue. These are all factors that made it feasible to undertake an extensive development project for the purposes of improving and expanding a relatively small commercial farm operation. The complainant's contention that the level of activity being undertaken to develop the respondent's properties is out of line with the anticipated revenue and expenses associated with an expanded cow-calf operation does not determine the question of whether the practices complained of arise out of a farm operation conducted by a farm business. The panel accepts the respondent's evidence that the development activity he has undertaken is to further his cow calf operation.

79. The complainant's submission that the respondent does not appear to have a consistent farm plan and that Mr. Plasterer's goals have changed significantly over time was not supported by the evidence put forward to the panel. While Mr. Plasterer has not provided detailed documentation regarding his plans for Goodwin Farms, he has been very consistent and thorough in both the preliminary matters dealt with in this complaint process and throughout his testimony at the complaint hearing with respect to his plans. The panel accepts Mr. Plasterer's testimony that the development work was undertaken to improve his land and expand his cow-calf operation from an eight to a forty cow herd. This included the development of a building site and the construction of a barn that is now being utilized for hay storage and cattle shelter; as well as the development of two previously unproductive five acre sites into level grass pastures to be used for grazing cattle. The panel would note that regardless of the finding in this situation, farm plans can and do frequently change over time.
80. The panel notes from the KP Report and Mr. Kline's testimony that the land being developed for pasture is land classified by the BC Land Inventory as Class 7, which has essentially no agricultural capability, and Class 6, which has only limited grazing capability. In his testimony, Mr. Kline stated that, while it was very unusual to see the amount and depth of fill used by the respondent for pasture development, the prospective pasture sites could become productive grazing areas when the development work is completed. The panel notes that this was also Mr. Plasterer's stated purpose of his development activities; to amend unproductive areas into productive pastures which will help put him in a position to have adequate feed during the pasturing season for an expanded cow-calf operation of 40 cows.

81. Mr. Plasterer has a lifetime of experience raising and selling cattle and other livestock including 35 years experience at Goodwin Farms, and provided detailed testimony (paragraph 61) regarding his anticipated revenue and expenses for his expanded cattle herd.
82. Given the above, it is the conclusion of the panel on the question of jurisdiction under the *Act* that the respondent has provided sufficient evidence to establish that there is a farm operation conducted as part of a farm business being undertaken on the respondent farm, and that the complained of practices are being undertaken for the purpose of improving and expanding this farm operation.

Inclusion of Third Property

83. The second preliminary matter the panel needs to determine is whether the farm practices complained of in relation to Property #3 are conducted as part of the same farm business resulting in the same type of disturbances that were alleged in the Notice of Complaint.
84. Ms. Baird argued that she was aggrieved by noise and other disturbances occurring at Property #3 as indicated in her original complaint notice, and that this property is currently participating in farm operations in conjunction with the other two land parcels that are part of the complaint. Mr. Plasterer did not object to the inclusion of the additional property, but noted that all development work had been completed on that property prior to the complaint being filed. He stated that it was his goal to develop the two unfinished pasture areas on the other properties to be essentially the same as the completed pasture on Property #3, and to utilize all three for early spring grazing before the low lying areas can be grazed.
85. It is clear to the panel based on the above testimony that the development activities that had been undertaken at Property #3 would have been similar to work undertaken on the other properties specified in the Notice of Complaint. The map included by the complainant in the complaint form indicates that Property #3 was intended to be included in the complaint. It is also clear that the respondent is managing the three properties as a single integrated farming operation. The panel will, therefore, consider Property #3 to be included in this complaint, but as the development activities complained of had been concluded prior to the complaint filing, we will not be considering any order regarding the property.

Was the Complainant Aggrieved?

86. Having determined that BCFIRB has jurisdiction to hear the complaint and that all three properties are included in it, the panel must deal with the issue

of whether the complainant has been aggrieved by disturbances resulting from the farm operation of the respondent.

87. The panel accepts the evidence of the complainant that the noises generated from a hoe-ram, drilling machine, blasting, an excavator and trucks dumping and equipment moving fill caused disturbance, particularly taking into account that the noises coincided with the daytime business of conducting tours and workshops from the Baird property. The panel also notes from Mr. Kline's testimony that noises from Goodwin Farms could rebound off the hills west of the farm towards the Baird property. The panel also agrees with the respondent's submission (as outlined in paragraph 64) that his practices may not have resulted in the degree of noise described by the complainant. We would note in particular that there are significant tree buffers and considerable distance between the development areas of Goodwin Farms and the Baird property (estimated by the KP to be either 590 meters or between 210 and 280, depending on the site). Overall, however, the panel does conclude that the noise level would have been sufficient to result in the complainant being aggrieved.
88. With respect to smoke and ash resulting from the fires on Goodwin Farms, the panel notes that even though the fires did not occur over long periods of time, there were at least two quite significant ones when large stumps were burned. The panel accepts that the smoke and ash from these fires would have caused a disturbance for the complainant. We also note from the KP report that the Ministry of Environment's Venting Index may not have been accurate in predicting conditions for smoke dispersal, thus contributing to the level of disturbance.
89. There was no denial from either party that there was a spike in rodent populations in the fall of 2011, and Ms. Baird's evidence was that this spike resulted in significant damage to her vegetable crops in late 2011 and early 2012. Given the landscape of the area, the distance between the developed areas and the Baird residence, the fact that the respondent has left most of his 230 acres unaltered, and his testimony that high rodent numbers had already been a problem before he started his development work in 2011, the panel is not willing to accept that the rodent damage on the Baird property was due to those operations.
90. Accordingly, the panel finds that the evidence is sufficient to establish that the complainant was aggrieved by noise and smoke from the development activities undertaken by the respondent, but finds that there was no evidence to link the increase in rodent populations to these activities.

Did the Respondent's Activities Accord with "Normal Farm Practice"?

91. The second step for the panel requires a determination of whether the grievance results from a normal farm practice. If, after a hearing, a panel of BCFIRB is of the opinion that the disturbances result from a normal farm practice, the complaint must be 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.
92. Section 1 of the *Act* defines normal farm practice:
- "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).
93. In determining whether a practice that is the subject of a complaint falls within the definition of normal farm practice, the panel must look to whether it is consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances. The analysis involves an examination of industry practices but also includes an evaluation of the context out of which the complaint arises. This evaluation may include factors such as the proximity of neighbours, the use of their lands, geographical or meteorological features, types of farming in the area, and the size and type of operation that is the subject of the complaint.
94. The complainant is asking the panel to find that the development activities that have occurred on the respondent's property are not in accordance with normal farm practice and that the clearing, burning, drilling, blasting and hauling of fill be ordered to permanently cease.
95. With respect to clearing and burning activities, the KP report noted that these are standard practices to develop farmland in forested areas and that the tree clearing area was limited to the sites being developed for improved pastures. The panel also notes that Ministry of Agriculture fact sheets, *Land Clearing*⁷ and *Burning*⁸ describe appropriate ways of carrying out these

⁷ B.C. Ministry of Agriculture Publication No. 870.218-41. [Farm Practices - Land Clearing](#), January 2004.

farm practices. The *Land Clearing* fact sheet states that clearing and developing land for agricultural purposes can take more than one year, that trees of value should be removed prior to clearing, and that an appropriate buffer should be preserved along watercourses to maintain fish and wildlife

habitat. The panel notes that in this instance, the respondent milled the logged trees on site, with some becoming a source of materials for the barn and some being sold. As well, Mr. Plasterer engaged a professional biologist to conduct an environmental assessment focussed on the work undertaken in the Craigflower Creek area. The assessment confirmed there were no environmental issues.

96. The complainant argued that the land clearing practices undertaken by the respondent was slash and burn farming which she described as a practice that leads to highly degraded landscapes. The respondent testified that he has cleared and is improving a small portion of his land base, and is deliberately leaving much of the farm in its natural state as this provides a healthy environment for his cattle. The panel accepts the evidence of the KP that the clearing of trees and burning of wood debris are standard practices to develop farmland in forested areas and finds that the activities undertaken by the respondent are in accord with normal farm practice.
97. With respect to the drilling, blasting and use of fill, the KP report referenced a BC Ministry of Agriculture fact sheet on using fill on agricultural land and described soil filling and land shaping/grading for agriculture purposes as a common agricultural practice which involves noises associated with equipment operations for fill delivery, land shaping and grading. Mr. Kline also testified, however, that it was unusual to see the amount and depth of fill used by the respondent for pasture development. In addition, his report stated that blasting bedrock knolls to create small pasture areas is not a common practice in beef or sheep operations and that exposed bedrock sites would generally be avoided due to the very high cost of developing such areas for agricultural purposes.
98. As already stated in the determination of jurisdiction under the *Act* (paragraphs 75 to 82), the particular circumstances at the respondent's farm have made it feasible for Mr. Plasterer to undertake a relatively extensive development project for the purposes of improving and expanding a small farm operation. The panel stresses, as noted from the KP Report, that the BCLI Agriculture Capability system rates Class 7 land as having no agricultural capability, which is the rating of the rock outcrop areas being developed. The development of these areas into permanent seeded pasture in order to integrate their use with existing pastures in low lying areas of the respondent's farm is, in the view of the panel, a good use of otherwise

⁸ B.C. Ministry of Agriculture Publication No. 870.218-28. [Farm Practices – Burning](#). January 2004.

unproductive areas, which was achieved by the respondent through his drilling, blasting and use of fill activities.

99. It is the Panel's view that normal farm practice, which is defined as a practice that is conducted by a farm business in a manner consistent with proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, does not mean that the practice must be identical to accepted customs and standards followed by similar farm businesses under similar circumstances. Small cattle farm operations located in an area in the southern Vancouver Island on a farm consisting of significant amounts of bedrock are very likely few and far between. However, all small cattle operations similar to Goodwin Farms would be similar farms, and all farmers who wished to improve and/or expand their pastures to provide additional months of food for cattle in our view constitute similar circumstances. Similar farms in similar circumstances would work to improve their pastureland and provide adequate livestock shelter. It is the means of achieving this, depending on the particular geography and characteristics of their individual properties that could vary considerably.
100. The definition in the *Act* does not refer to 'identical' but instead says '*consistent* with proper and accepted customs...'. 'Consistent' is defined as "unchanging in achievement or effect, compatible." The purpose of the drilling, blasting and use of fill in this case was to create a land base to provide an adequate and sustainable pasture for grazing by this small herd of cattle for a longer period of time (to lessen reliance on winter feed), while allowing for enhanced management of the existing low lying pasture areas. Creating such an overall rehabilitated farm is *consistent* and *compatible* with proper and accepted customs and standards which, for a small cattle operation, would include the practice of improving land to provide grazing for extended periods to permit economical and sustainable feeding costs. The panel therefore accepts that the drilling, blasting and use of fill practices undertaken by the respondent for the purposes of improving his pastures and building a barn are in accord with normal farm practice.
101. The panel notes a previous BCFIRB panel's comments on the need for farmers to consider the impact of their farm operations on their neighbours. In the decision of *Eason v. Outlander Poultry Farms Ltd.*, March 10, 2000⁹, the panel stated:
69. A normal farm practice means a practice conducted in accordance with "proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances". Applying that test to these facts has been difficult in the sense that these circumstances are quite unique ...

⁹ [Eason v Outlander Poultry Farms Ltd.](#) March 10, 2000

Nevertheless, implicit in the test ... is the existence of practices showing some threshold of consideration for one's neighbours.

70. In our opinion, it is not proper and accepted practice for farmers ... to conduct farm operations in such a fashion so as to expose their neighbours to invasive and overwhelming odours, as arise in this case, without taking reasonable steps aimed at mitigating those effects.
102. Consistent with the comments in the *Eason* decision, normal farm practice must include giving consideration to the impacts of farm operations on neighbours and taking reasonable steps to mitigate disturbances resulting from these farm operations. In considering the degree to which Mr. Plasterer did this, the panel notes that neither the Baird property nor any of the other neighbours were in immediate proximity to the areas Mr. Plasterer has been developing at Goodwin Farms. Depending on the development site, the distance to the Baird property was estimated by the KP to be either 590 meters or between 210 and 280, and a very substantial tree buffer exists between these development sites and any of the neighbouring residences. In the four videos taken from the Baird property and submitted by the complainant as evidence (paragraph 51), the noise from the activities on the respondent's farm could be heard on the videos but the work being undertaken could not be observed. Even the video taken from the roof of the Baird residence only showed a very limited view of the development sites.
103. While it was never suggested by Mr. Plasterer that the development sites were selected for the purpose of being out of the way of neighbours, the siting would nevertheless have had a very significant mitigating effect. The panel also notes that, given the location of the complainant's property, it would not have been obvious to Mr. Plasterer that the complainant would be aggrieved by his practices. He would also not have known about the activities undertaken by Ms. Baird that heightened the degree to which she was aggrieved, most notably hosting tours and workshops on her property during the day when the Plasterer's development work was underway.
104. The panel is of the view that Mr. Plasterer did take appropriate measures to mitigate the effects of his activities when he was made aware of the complainant's concerns. He testified, for example, that once he found out that the noise from the development activities was a problem on weekends, he stopped doing work on weekends. It was also evident to the panel from the numerous email exchanges between the Ms. Baird and various municipal officials that Mr. Plasterer worked cooperatively with both the District of Highlands and View Royal in addressing concerns the complainant had brought to the attention of these officials regarding the activities on the farm. As noted in the KP report, the respondent had utilized the Ministry of

Environment Venting Index to choose the best days for smoke dispersal prior to starting his burn piles.

105. The panel would also note that, unlike disturbances resulting from ongoing farm operations such as in the *Eason* case, these farm development disturbances are not permanent. The complainant, in this case, has stated that she had no concerns regarding the day-to-day practices of the Goodwin Farms cattle operation. The respondent has indicated his intention to develop one more site on his property at a future date but this would be located at least one kilometre from the Baird residence, involve very little fill and limited blasting, and would therefore be expected to cause minimal if any disturbance. Given the above evidence and analysis, it is the panel's decision that the respondent has met the threshold of consideration specified in the *Eason* decision.
106. The panel must also comment on the number of unsubstantiated allegations made by the complainant regarding the respondent's practices, particularly as highlighted in a public blog and a petition circulated to many residents of the District of Highlands. The panel appreciates the respectful way in which the respondent testified under oath to counter these assertions. We would note in particular that not one of the signatories to the petition was called to testify as a witness, and that the concerns of the complainant outlined in these documents related primarily to environmental and other matters not related to this complaint process. As a result, the panel has not given any weight to the contents of either the complainant's public blog or citizen's petition.
107. The last remedy sought by the complainant was for the panel to recommend that BCFIRB undertake a study on the use of fill on agricultural land, using the authority given in section 11 of the *Act* to report on any matter related to farm practices. The panel heard evidence in this complaint process of fill being used positively for land development purposes. It is well known that there is considerable pressure in many areas, including Vancouver Island, to remove land from the ALR for non-agricultural development. In this situation, we have an example of a farm not in the ALR that is developing selective unproductive areas to improve its overall long term agricultural productive capacity. The panel declines to recommend that a study be undertaken on the use of fill based on the evidence put forward and on what was heard in this complaint process.
108. The panel finds that the disturbances that are the subject of the complaint result from a normal farm practice. Section 6 (1) of the *Act* states that the panel must "dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice".

109. Accordingly the complaint is dismissed.

Dated at Victoria, British Columbia this 21th day of January, 2014.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member



Andreas Dolberg, Member



Diane Fillmore, Member