

Association for the Protection of Rural Metchosin

#2-4401 William Head Road
RR#1 Victoria, BC V9C 3Y6
www.metchosinaprm.org

May 20, 2021

To:

Mayor and Council, District of Metchosin
Lisa Urlacher, CAO, District of Metchosin
Shane Gorman, Bylaw Officer, CRD (sgorman@crd.bc.ca)
Kevin Lorette, General Manager, Planning and Protective Services, CRD (klorette@crd.bc.ca)
Reed Bailey, BC Ministry of Agriculture (Reid.Bailey@gov.bc.ca)

Via Email

Re: *The Farm Practices Protection Act (FPPA) and Bylaw Enforcement Issues in Metchosin*

As the District of Metchosin works through a Bylaw Enforcement review process, the Association for the Protection of Rural Metchosin (APRM) would like to draw the attention of Council, staff, and the CRD (which handles bylaw enforcement under contract) to some serious misunderstandings of the *FPPA* (aka the *Right to Farm Act*), which have influenced equitable bylaw enforcement in Metchosin.

The APRM wishes to make clear that the Association completely supports the *FPPA* and its intent to protect normal farm practices from nuisance bylaws. One of the key principles of our Mission Statement is to “Recognize the Agricultural Land Reserve as the core of our rural community, and support and initiate policies that preserve ALR land.” It is the misinterpretation of the *FPPA* in relation to bylaw enforcement that is the focus of this letter.

The issue we draw to your attention is the misperception that **any** farm-related activities on **any** properties are covered under the *FPPA*. That is not the case.¹

The *FPPA* only applies if **all** of the following criteria are met:

¹ For your reference, here is a link to the description of the Act on the Ministry of Agriculture’s website: <https://www2.gov.bc.ca/gov/content/industry/agriculture-seafood/agricultural-land-and-environment/farm-practices-protection>. Here is a second link to the Farm Industry Review Board (FIRB), a quasi-judicial panel that holds formal hearings into complaints about farm practices under the Act: <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/bc-farm-industry-review-board/farm-practice-complaints>

- i) the land is in the ALR and zoned for agricultural use, or the land is outside of the ALR and is zoned for agricultural use (or licensed aquaculture areas - which is not applicable in Metchosin);
- ii) the practice is a specific farm practice that results in “nuisance” issues (e.g., dust, odour, noise);
- iii) the farm operation is being conducted as part of a farm business (i.e., actively farming the land for profit, as typically demonstrated by having farm status with BC assessment, having sales receipts or invoices or tax documents showing farm income and expenses, having agricultural licence plates, etc.);
- iv) the farmer is following “normal farm practices” (e.g., the types of practices that farm experts recommend, or that their peers follow);
- v) the farmer does not contravene other provincial legislation or land use regulation.

We wish to illustrate two common misinterpretations as encountered in Metchosin:

Misinterpretation #1: if there are any type of farm-related activities occurring on the property the *Act* is assumed to apply, even if it is only a few horses or some minimal crop-growing.

It is important to clarify that the *Act* does not typically apply to hobby farms or rural estates. The *FPPA* specifies that a farm operation must be a commercial farm; achieving this status requires that a farm owner achieve certain income threshold and meet other requirements. Merely owning and/or boarding a few horses would not necessarily make the *FPPA* applicable. We draw your attention to a decision from the FIRB regarding a property that had a few horses, and which generated some income from providing lessons and boarding horses. The FIRB noted that the income “is not sufficient to demonstrate that the respondents are carrying on a farm business for the purpose of generating income or profit...This is at most, a hobby farm that generates a nominal amount of money to offset lifestyle choices. It is not a commercial enterprise.”²

Misinterpretation #2: even if the operation is a commercial farm, any type of farm activity is assumed to apply under the *Act*, even if it is not a nuisance type of activity (e.g., dust, odour or noise) or not a “normal farm practice.”

A recent issue is that of a farm operator who undertook excavation work adjacent to a trail that had an established public Right of Way. This work led to the closure of that section of the trail. Comments from an elected official indicated an understanding that the *Act* applied to this situation, even though the excavation work had nothing to do with nuisance issues. Further, our view is that this work would not be considered a “normal farm practice” per the definition in the *FPPA*, in the sense that other farmers who operate the same type of farm or who excavate

² (https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/farm-practices/complaint-decisions/decision-summaries/lee_v_acre_and_johnson_summary_dismissal_decision_apr16_13.pdf)

fill on their property would do the same thing. The issue was simply a violation of the legal Right of Way.

It is laudable that Council and the CRD want to support local farmers, and the APRM certainly echoes that sentiment. However, how the *FPPA* is interpreted and applied in the future will be beneficial for both commercial farm activities as well as residents of Metchosin who are negatively impacted by other types of activities that are not covered under the *FPPA*.

If either the District of Metchosin or the CRD require assistance interpreting the *FPPA* and its application, we suggest you contact Reed Bailey, the BC Ministry of Agriculture's Land Use Planner. His email address is listed above, and his telephone number is 778-698-3455.

Yours sincerely,

Kathleen Zimmerman
Treasurer, APRM

Cc: APRM Executive