

Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR DECISION

Ref: 177852

Date: June 17, 2013

Issue: Ministerial approval required for Township of Langley Audible Bird Scare Device Farm Bylaw 2013 No. 5005 plus 3 other bylaws required for its implementation.

Background:

The Township of Langley (TOL) is a regulated local government under section 918 of the *Local Government Act (LGA)*. As a result, it can pass farm bylaws under section 917 and farm bylaws require the Minister's approval.

On September 10, 2012, TOL directed their Agricultural Advisory Committee (AAC) to study the issue of propane cannon use and report back to Council. On April 8, 2013, Council received a report on propane cannon policy options and recommendations and subsequently requested the AAC and the Propane Cannon Task Force to work with staff to draft a farm bylaw. The Task Force has voting members from the AAC and non-voting representation from the blueberry industry, horse industry, residents and AGRI staff. The community stakeholders had numerous opportunities to participate in the process.

The Task Force chair presented the proposed Audible Bird Scare Device Farm Bylaw No. 5005 to Council on May 27. Council gave first, second and third reading to the bylaw on May 27, 2013 and forwarded it for the Minister's approval.

- Bylaw No. 5005 creates the Audible Bird Scare Device Farm Bylaw regulating the use of audible bird scare devices (ABSD).

The Township also gave first, second and third reading to Bylaw No.'s 5006, 5007 and 5008 on May 27, 2013 and forwarded them for the Minister's approval.

- Bylaw No. 5006 amends the existing Fees and Charges Bylaw, adding an annual registration fee for Audible Bird Scare Devices per site as defined in Bylaw No. 5005 of \$125 plus applicable tax(s).
- Bylaw No. 5007 amends the existing Notice Enforcement Bylaw adding penalties for any contraventions of Bylaw No. 5005 of \$150 for the first infraction; \$300 for the second infraction, and \$500 for the third and further infractions.
- Bylaw No. 5008 amends the existing Noise Bylaw to make it consistent with the Audible Bird Scare Devices Bylaw No. 5005.

Discussion:

A key recommendation in the 2009 and 2011 BC Farm Industry Review Board (BCFIRB) reports on the use of propane cannons is that local governments have the tools to address propane cannon use and should be encouraged to use them. The local governments were encouraged to develop Farm Bylaws (under section 917 of the *Local Government Act*) which provide more regulatory powers, subject to Ministerial approval, and must be followed for farmers to be protected under the *Farm Practices Protection Act*. The Ministry also posted a model Farm Bylaw to address ABSD. Local governments were discouraged from varying significantly from the model Farm Bylaw unless they had exhausted all other tools to address the issue. These include attempting to use the model Farm Bylaw, addressing starling population control, and adopting the Minister's Bylaw Standards on "Edge Planning" and "Residential Uses in the ALR". Both Bylaw Standards take a shared responsibility approach between farm and residential development to address the farm practice conflict around propane cannon use. The TOL has followed the track set out for developing a new bylaw tool to regulate propane cannons but stopped short of implementing additional

measures such as starling trapping, Edge Planning or Residential Uses in the ALR. These additional issues are significant contributors to the conflict around propane cannons and need attention.

The ABSD Bylaw is consistent with the Minister's Bylaw Standard on ABSD for time of use, separation distances to neighbouring dwellings, frequency of firing and requirement for a Bird Predation Management Plan. In addition to the Ministry provisions, it requires registration of ABSD, 100 m setback from public Horse Trails identified by the Township, notice of first firing of a propane cannon to horse farms within 200 m, posting a sign at the main road entrance to a site where propane cannons are used, and escalating penalties for bylaw violation.

The Township of Langley has received concerns from the horse industry regarding the use of propane cannons. The TOL have mapped public Horse Trails (designated for horse riding that is maintained by a local government) in their community and included the 100 m propane cannon setback requirement to address these concerns. The Township reports that no current blueberry farms are impacted by the setback to Horse Trails.

Horse owners have reported that horses have flight responses to propane cannons which cause danger to handlers and horses when exposed to the first sounds in a propane cannon season. The Langley Bylaw provision that requires propane cannon operators to notify nearby (within 200 m) horse farmers reinforces good neighbour to neighbour communication that will assist the horse owner to acclimatize their horses to the cannon use.

The requirement for registration of ABSD is an optional element of the Minister's Bylaw Standard. The Grower Liaison Officer program of the BC Blueberry Council serves as the first responder to noise complaints regarding ABSDs used by blueberry growers. This program effectively identifies farms where neighbours have noise complaints which could make the registration of ABSDs by the local government redundant; however, it is a method of ensuring local government bylaw enforcement knows where the ABSDs are located and how many devices are registered in the community.

Posting a sign along the main road access to the site where propane cannons are registered will provide neighbours with the ability to identify whether the farm is authorized to use a propane cannon. The sign will include contact numbers for bylaw enforcement and the BCBC Grower Liaison Officer as well.

Bylaw No. 5006 provides for the \$125 annual registration fee for the ABSD. The Township indicates that this fee is equivalent to the average cost of other similar fees. Bylaw No. 5007 provides for escalating penalties for Bylaw No. 5005 violations. These penalties appear to be reasonable.

The TOL staff report to Council also promotes a pilot project to test the viability of remote firing of propane cannons to reduce the frequency of cannon firing and to reduce the habituation of birds to propane cannons while maintaining crop protection. Other areas have tested this system; however, to the knowledge of AGRI staff and from communication with manufacturers, this system has not been adopted in other commercial fruit production areas. While the Report to Council also suggests starling trapping, Council has not made any decision on supporting a starling trapping program.

The TOL has submitted four separate bylaws to implement their new policy on ABSDs.

s.14

s.14

The blueberry industry participated fully on the steering committee and is supportive of most elements of the bylaw. They have expressed concern that the registration requirement singles out their industry with

an additional burden not carried by other agricultural industries under the *Farm Practices Protection Act*. They are also concerned with the precedent of being required to post a sign at their driveway when using propane cannons.

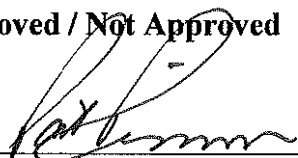
The horse industry also participated fully on the steering committee. BC Horse Council formal comments to the Task Force on the draft bylaw were minor in nature; however, a local Langley horse group were quite critical that there were insufficient restrictions on the use of propane cannons.

Options:

s.13, s.16

Recommendation: Option #2

Approved / Not Approved



Pat Pimm, Minister

June 18 / 13

Date Signed

Contact: Bert van Dalssen, Manager, Strengthening Farming Program, SAMB,
604 556-3109

DIR KN ADM GP DM _____



JUN 18 2013

File: 0280-30
Ref: 177852

His Worship Mayor Jack Froese
Township of Langley
20338 65 Ave
Langley BC V2Y 3J1

Dear Mayor Froese:

Re: "Township of Langley Audible Bird Scare Device Bylaw 2013 No. 5005, and accompanying Bylaw No. 5006, 5007 and 5008."

Please find enclosed certificates indicating Minister's Approval of the above noted bylaws under section 917 of the *Local Government Act*.

I have not reviewed the bylaws for the purpose of determining if they are valid or lawful. My approval does not represent or guarantee the legal certainty of the bylaws, nor the process under which they may be adopted, and does not otherwise validate or make legal any provision of the bylaws.

I know that the use of propane cannons is a difficult issue to address and I congratulate the Township on establishing the Audible Bird Scare Devices Bylaw as a positive step in striking a positive balance in recognising the interests of farmers and other citizens living near and using the lands around existing farms in the Agricultural Land Reserve. Ministry staff are available to assist Township staff to explore starling trapping and to evaluate remote firing of propane cannons and other bird scare techniques. Please contact Mark Sweeney, Provincial Berry Specialist (604-556-3056) or Bert van Dalssen, Strengthening Farming Program Manager (604-556-3109).

Staff inform me that the Township is currently considering adoption of Minister's Bylaw Standards such as Edge Planning and Residential Uses in the Agriculture Land Reserve. I look forward to receiving future bylaws addressing these topics for Ministerial approval in the near future.

Please advise me of the date when the bylaws are adopted.

Sincerely,

Pat Pimm
Minister

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Enclosure

Cc Jim Collins, BCFIRB
Mark Sweeney
Bert van Dalfsen