

March 7, 2019

To: North & Company – Philip North, Q.C., Nelson Family Ranches – Shawn and Jeff Nelson,  
Richard Hofer, Rodney Hofer, NRCB Field Services – Fiona Vance,  
County of Warner – Shawn Hathaway (all by email)

Re: **Review of LA18085A Nelson Family Ranches Ltd.**

The Board has had the opportunity to review the Field Services February 26, 2019 response to the Board Directives dated February 5, 2019. In accordance with my letter dated February 5, 2019, the Board will now provide directly affected parties the opportunity to make submissions and rebut the submissions of other parties.

Submissions to the Board must be filed no later than Friday, March 29, 2019. Rebuttal submissions must be filed by Monday, April 8, 2019. The Board will distribute all filings by email.

The Field Services January 25, 2019 letter directed the Board to the Approval Officer statement in Decision Summary LA18085A that “he did not make a grandfathering determination.” The Board finds that in specifying the animal type as 7,000 “finishers” when amending Approval LA18085A, the approval officer made an implicit grandfathering determination. In framing subsequent responses to the Board on the premise that the approval officer did not make a grandfathering decision, the Field Services’ responses have not addressed the issue central to the Board’s review.

As stated in Board Decision RFR 2019-01/LA18085A, the scope of the Board’s review is limited to the determination of the deemed approval capacity of the Nelson Family Ranches Ltd. confined feeding operation (CFO). A determination of the deemed approval capacity for the CFO falls under *Agricultural Operation Practices Act* section 18.1 (2) which states:

- 18.1(2) The capacity allowed by a deemed approval or registration pursuant to:
- (b) subsection (1)(b) is the capacity authorized by the licence, permit, approval or development permit or, if a capacity was not so authorized, the capacity of the enclosures to confine livestock at the confined feeding operation on January 1, 2002

In reviewing the filed materials, the Board urges parties to address two questions in their submissions. To assist parties in preparing submissions, the Board has included some key considerations and Board observations. The two questions identified by the Board are:

1. What is the appropriate method to determine the s. 18.1 deemed approval capacity authorized by Development Permit #98-25?  
Key considerations and Board observations
  - For all AOPA permits, it is necessary to specify the capacity (that is, the maximum number and type) of livestock allowed under the permit. As confined feeding operations that existed or were

approved prior to January 1, 2002 come to the attention of the NRCB, the NRCB determines deemed approval capacity under AOPA s. 18.1.

- The 1995 Code of Practice for the Safe and Economic Handling of Animal Manures was in effect at the time the County of Warner considered the 1998 CFO expansion.
- The 1995 Code of Practice for the Safe and Economic Handling of Animal Manures includes Appendix C that provides livestock siting unit (LSU) factors to calculate minimum distance separation for four beef types. Those beef types are 450-1300 lbs (LSU factor 0.367), 450-750 lbs (LSU factor 0.328), 750-1300 lbs (LSU factor 0.441) and cow with calf (LSU factor 0.455).

BOARD OBSERVATION: The Board believes it would be helpful for parties to address what relevance the LSU factors should have in establishing deemed approval capacity.

- Development Permit #98-25 includes a September 25, 1998 letter from Alberta Agriculture to the County of Warner. That letter:
  - is (by reference and as an attachment) included in Development Permit #98-25.
  - states that its content is based on the (1995) Code of Practice for the Safe and Economic Handling of Animal Manures.
  - describes the proposed development, including number and size of pens, the existing operation and the proposal to expand by 4,000 animals, and that the proposed expansion is slated for the feeding of weaner calves through to full slaughter weight.
  - notes that the minimum distance separation for the proposed expansion should be 2,378 feet for a category 1 neighbour.

BOARD OBSERVATION: Using the values in Appendix C of the 1995 Code of Practice for the Safe and Economic Handling of Animal Manures, the Board calculated the minimum distance separation for a category 1 neighbour to be 2365 feet for 7,000 animals in the 450-1300 lbs beef type and 2529 feet for the 750-1300 lbs beef type. This material suggests to the Board that the expansion application considered by the County of Warner was for a 7,000 head, 450-1300 lb beef feedlot.

- Table 1 of the Standards and Administration Regulation that establishes the current livestock siting units for beef includes three beef category types: Cows/Finishers (900+ lbs, LSU factor 0.446), Feeders (450-900 lbs, LSU factor 0.245) and Feeder Calves (<550 lbs, LSU factor 0.135).

2. Referencing the determination made in response to Question 1 regarding the deemed approval capacity authorized by Development Permit #98-25, is there evidence to warrant a different deemed approval capacity for the type and number of livestock?

Key considerations and Board observations

- What evidence, if any, exists to warrant a deemed approval capacity for animal number and type other than that set out in Development Permit #98-25?
- The materials in support of the application for Development Permit #98-25 that describe the proposed feedlot facilities, appear to be consistent with the approval officer's assessment of the facilities represented in the aerial photographs identified as being taken 2002 and 2003.

The Board will determine the need for an oral hearing after the Monday, April 8, 2019 rebuttal filing deadline.

Yours sincerely,



Bill Kennedy  
General Counsel