

February 5, 2019

Fiona Vance, Chief Legal Officer
Natural Resources Conservation Board
4th Floor Sterling Place
9940 - 106 Street
Edmonton, AB T5K 2N2

Dear Ms. Vance:

Re: Review of LA18085A Nelson Family Ranches Ltd. – request for clarification

Attached is the “Board Response to January 25, 2019 Field Services Request”. The Board is confident that the attachment provides sufficient additional clarity to the information it directed Field Services to provide in Board Decision RFR 2019-01/LA18085A. The Panel instructed me to restate its expectation that Field Services will make every effort to expedite its submission.

As stated in Board Decision RFR 2019-01/LA18085A, once the Panel has received that submission it will provide directly affected parties with the opportunity to make submissions and rebut the submissions of other parties. The details of those next steps will be communicated to all parties.

Yours sincerely,



Bill Kennedy
General Counsel

cc North & Company (by email)
Shawn and Jeff Nelson (by email)
Richard Hofer (by email)
Rodney Hofer (by email)
Shawn Hathaway, County of Warner (by email)

**Board Response to January 25, 2019 Field Services Request
LA18058A (Nelson Family Ranches Ltd.)**

The Panel hearing the request for review (RFR) of LA18058A, submitted on behalf of Richard and Rodney Hofer (Hofers), met on January 30, 2019 to deliberate on the Field Services January 25, 2019 request for additional information.

In response, the Panel provides the following clarification and directives:

1. Permitted Livestock Capacity – Interpreting Development Permit #98-25 [AOPA s.18.1(2)(b)]

The approval officer decision summary states:

*Development Permit #98-25 authorized an increase in capacity from 3,000 to 7,000, but does not specify a beef animal category. Further, the Development Permit application included reference to multiple beef livestock types which are not included in the municipal permit. I was not able to find any reference to how these livestock numbers were dealt with in the municipal permit itself. However, an Alberta Agriculture letter dated September 25th, 1998 which accompanied Development Permit #98-25, included information clarifying what was being proposed. It stated that “the proposed expansion is slated for the feeding of weaner calves through to full slaughter weight”. As such, I determined it is appropriate to clarify the total permitted livestock **capacity** at the CFO as 7,000 beef finishers. [emphasis added]*

Approval LA18058A therefore:

- *Clarifies the permitted animal **capacity** for the site. Approval LA18058A states that the permitted maximum livestock capacity of the CFO is 7,000 beef finishers. [emphasis added]*

Determining capacity is a reviewable issue given that the Panel has concluded that both livestock type and capacity have been formalized by way of approval officer amendment in LA18058A.

The Panel notes from its preliminary review of the materials that:

- The County of Warner Development Permit #98-25 required as part of the permit application an “Intensive Livestock Operation Plan”. The Nelson Family Ranches Ltd. (Nelson) plan indicated an existing 3,000 calves and proposed expansion to 7,000 calves. The September 25, 1998 letter from Alberta Agriculture (incorporated as Appendix A to Development Permit 98-25) confirmed Nelson’s management plan to feed calves through to finish weight.
- Given the stated reliance in the Development Permit’s Appendix A, the included calculated values for both MDS and Land for Nutrient Utilization are based on the then current (1995) code of practice livestock category of 450-1300 lbs.
- It is possible to calculate the manure equivalency of the 450 lb - 1300 lb weight category to current AOPA livestock types referenced in Schedule 1 of the Agricultural Operations, Part 2 Matters Regulation.
- The Hofers’ RFR raises a question as to whether Development Permit #98-25 was intended to limit the total number of animals at the Nelson CFO to 7,000, regardless of livestock type.

Panel directive: The approval officer provide reasons to support his conclusions that:

- a. The County of Warner Development Permit #98-25 for a 7,000 head 450 lb - 1300 lb beef feedlot should be “formalized” to 7,000 finishers.

- b. Development Permit #98-25 was not meant to limit Nelson, in the case of a change of livestock type, from increasing the total number of beef animals above 7,000.

2. Permitted Livestock Capacity – [AOPA s.18.1(2)(a)]

There is no evidence to suggest that Nelson is seeking a deemed physical capacity determination pursuant to AOPA s.18.1(2)(a) that would increase the physical capacity at the CFO from the physical capacity (total pen size) from that specified in Development Permit #98-25.

Panel directive: The approval officer confirm whether or not Nelson has identified an intention to pursue a capacity determination under AOPA s.18.1(2)(a) or s.18.1(2)(b).

3. Pen Space Capacity and Livestock Type – [Agricultural Operations, Part 2 Matters Regulation, s.2]

Board Decision RFR 2019-01/LA18058A focuses on the approval officer amendment that included a capacity determination of 7,000 beef finishers. The Hofers' RFR asserts that the approval officer determination should specify a maximum capacity of "7,000 animals". The Hofers' RFR also states that the Nelson CFO pen space would not accommodate 7,000 finishers based on an allocation of 200-250 ft² per finisher.

The Panel understands that s. 2 of the Agricultural Operations, Part 2 Matters Regulation allows for changes within livestock type without a permit amendment so long as the total amount of manure is not increased. However, the Panel reminds the approval officer that the facility must have the physical capacity to enclose an increase in animal numbers (due to livestock type). The legislation did not contemplate that a manure equivalence between livestock types within a category could automatically be accommodated in the same physical space.

The Panel notes that Mr. Ceroici's letter to Mr. North dated October 12, 2018 states that "... animal numbers at the feedlot can fluctuate depending on the business cycle, but the maximum amount of manure produced does not exceed 15,400 tonnes (this is the maximum amount of manure that can be generated by 7,000 beef finishers). . . . At this time, the animal numbers may be as high as 11,000, but the manure production is only 12,760 tonnes since the smaller animals produce less manure."

Panel directive: The approval officer provide:

- a. both a calculation and drawing (with dimensions) for the total CFO pen area at the Nelson feedlot;
- b. calculations for the number of animals that could be confined at the Nelson CFO for each of the beef livestock types set out in Schedule 1 of the Agricultural Operations, Part 2 Matters Regulation; and
- c. the response received to its commitment to follow-up with Nelson concerning the type and numbers of animals at the CFO (Fiona Vance letter to Philip North, June 1, 2018), and details of when and how that response was communicated to the Hofers.

Has additional CFO pen space been constructed?

The Hofers' RFR asserts that additional pen space has been constructed on the Nelson feedlot. The Panel notes that this issue may be in relation to a seasonal feeding and bedding site located at the Nelson feedlot addressed in Mr. Ceroici's October 12, 2018 letter.

Panel directive: The approval officer confirm:

- d. whether Nelson has constructed additional pen space at the CFO after January 1, 2002 requiring an NRCB approval.