

**#1 REQUEST FOR REVIEW ON: LA19017/ Sundown Feeders Ltd.**

<b>Filed By:</b>	<b>Shawn Sakamoto (represented by Curtis Fawcett, Borden Ladner Gervais)</b>
<b>Deadline for RFRs:</b>	<b>July 29, 2019</b>
<b>Date RFR received:</b>	<b>July 29, 2019</b>
<b>Status of party as per Decision Summary:</b>	<b>Directly Affected</b>

**REQUEST FOR BOARD REVIEW**  
**SUBMITTED TO THE NATURAL RESOURCES CONSERVATION BOARD**

Application No:	LA19017
Name of Operator/Operation:	Sundown Feeders Ltd.
Type of application ( <i>check one</i> ):	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Registration <input type="checkbox"/> Authorization
Location ( <i>legal land description</i> ):	NW-01-008-21 W4M
Municipality:	Lethbridge County, Lethbridge Alberta

I hereby request a Board Review of the Approval Officer's Decision and have the right to request a Board review because (*please review all options and check one*):

- I am the producer seeking the approval/registration/authorization.
- I represent the producer seeking the approval/registration/authorization.
- I represent the municipal government.
- I am listed as a directly affected party in the Approval Officer's Decision.
- I am not listed as a directly affected party in the Approval Officer's Decision and would like the Board to review my status.

**IMPORTANT INSTRUCTIONS**

1. You must meet the specified 10-day timeline; otherwise your request will not be considered.
2. Section 1 of this form must be completed only if you are requesting that the Board review your status as "not directly affected". Sections 2 to 5 must be completed by all applicants.
3. This form must be signed and dated before it is submitted to the Board for its review.
4. Be aware that Requests for Board Review are considered public documents. Your submitted request will be provided to all directly affected parties and will also be made available to members of the public upon request.
5. For more assistance, please call Laura Friend, Manager, Board Reviews at 403-297-8269.







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#### 4. ACTION REQUESTED

(ALL PARTIES MUST COMPLETE THIS SECTION)

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I would like the Board to take the following actions with the respect to the Approval Officer's decision:

- Amend or vary the decision
- Reverse the decision

Please describe why you believe the Board should take this action:

Please see attached Schedule "A".

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If the Board decides to grant a review (*in the form of either a hearing or a written review*), all directly affected parties are eligible to participate. The Board may consider amending the Approval, Registration, or Authorization on any terms and conditions it deems appropriate. Please note the Board cannot make any amendments unless it first decides to grant a review.

If a review is granted by the Board, are there any new conditions, or amendments to existing conditions, that you would like the Board to consider? It is helpful if you identify how you believe your suggested conditions or amendments would address your concerns.

Please see attached Schedule "A".

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**5. CONTACT INFORMATION**

(ALL PARTIES MUST COMPLETE THIS SECTION)

Contact information of the person requesting the review:

Name: Shawn Sakamoto  
Address in Alberta: c/o Borden Ladner Gervais LLP  
1900, 520 - 3rd AVE SW, Calgary AB T2P 0R3  
Legal Land Description: NE 1/4 SEC 1; TWP 8; RGE 21; W4  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

Signature: 

Date: July 29, 2019

Please note that all sections of the form must be completed in order for your request to be considered. Also, if you do not meet the timeline identified, your request will not be considered. Form must be signed and dated before being submitted for Board consideration

If you are, or will be, represented by another party, please provide their contact information (Note: If you are represented by legal counsel, correspondence from the Board will be directed to your counsel)

Name: Chidinma B. Thompson / Curtis Fawcett  
Address: 1900, 520 - 3rd AVE SW, Calgary AB T2P 0R3  
Phone Number: 403-232-9666 Fax Number: 403-266-1395  
E-Mail Address: cthompson@blg.com/cfawcett@blg.com

When you have completed your request, please send it, with any supporting documents to:

Laura Friend, Manager, Board Reviews  
Natural Resources Conservation Board  
19<sup>th</sup> Floor Centennial Place  
250 – 5<sup>th</sup> Street SW  
Calgary, AB T2P 0R4

Phone: 403-297-8269  
Fax: 403-662-3994  
Email: [laura.friend@nrcb.ca](mailto:laura.friend@nrcb.ca)

Please note, Requests for Board Review are considered public documents. Your submitted request will be provided to all directly affected parties and will also be made available to members of the public upon request.

For more assistance, please call Laura Friend, Manager, Board Reviews at 403-297-8269.

SCHEDULE A  
REQUEST FOR BOARD REVIEW  
APPLICATION NO. LA19017

**BACKGROUND**

1. Mr. Shawn Sakamoto is a directly affected party, as confirmed in the Decision Summary.<sup>1</sup> As a directly affected party, Mr. Sakamoto meets the necessary requirements and has standing to request that the Board review the Decision, and grant the relief requested herein.<sup>2</sup> Mr. Sakamoto is the owner of property legally described as NE ¼ 01;008;21 W4 (the “Sakamoto Property”) and resides thereon.
2. By Application LA19017, the applicant, Sundown Feeders Ltd. (“Sundown Feeders” or the “Applicant”) sought approval to expand its existing beef confined feedings operation (“CFO”), which included the following expansions:
  - a) Increasing livestock numbers from 2,500 beef feeders to 3,500 beef feeders;
  - b) Constructing a new catch basin (55 m x 50 m x 2 m deep);
  - c) Constructing new feedlot pens (140 m x 80 m); and
  - d) Constructing a new recovery pen (35 m x 20 m).
3. On or about June 5, 2019, Mr. Sakamoto submitted a statement of concern in respect of the Application (the “Statement of Concern”). In the Statement of Concern, Mr. Sakamoto raised a number of significant issues arising from the potential impact of the Application and Sundown Feeders’ operations near his property (the “Concerns”). The Concerns are detailed more particularly below.
4. Notice in respect of the Application was initially forwarded to an incorrect address, which was returned to sender, and as a result, there was significant delay in Mr. Sakamoto receiving notice of the Application. Consequently, Mr. Sakamoto did not have an opportunity to gather and submit evidence in support of his Concerns or contrary evidence relevant to the Application.
5. On or about July 8, 2019 the Approval Office of the National Resources Conservation Board (“NRCB” or “Board”) approved the Application, and issued the following documents:
  - a) Decision Letter;
  - b) Summary of Decision; and
  - c) Approval.

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<sup>1</sup> Decision Summary, at pages 3 and 8.

<sup>2</sup> Agricultural Operation Practices Act, at s. 25; Agricultural Operation Practices Act Administrative Procedures Regulation at s. 13.



(collectively, the “Decision”)

6. While the Decision noted the concerns raised by Mr. Sakamoto, it dismissed the Concerns and failed to find any substantive grounds to oppose the granting of the Application, and further, did not include any conditions or mitigation requirements to specifically address the Concerns raised by Mr. Sakamoto.
7. The Decision references and relies on the following applicable legislation, regulations, and policy documents, which will be referred to herein:
  - a) *Agricultural Operation Practices Act*, RSA 2000 c. A-7 (the “Act”);
  - b) *Agricultural Operation Practices Administrative Procedures Regulation*, Alta. Reg. 106/2017 (“**Administrative Procedures Regulation**”);
  - c) *Agricultural Operations, Part 2 Matters Regulation*, Alta. Reg. 257/2001 (“**Part 2 Matters Regulation**”);
  - d) *Standards and Administration Regulation*, Alta. Reg. 267/2001; and
  - e) NRCB Operational Policy 2016-7: *Approvals*.

#### **GROUND FOR REQUESTING REVIEW**

8. Mr. Sakamoto requests the Board to review the Decision on the following grounds:
  - a) the Approval Officer failed, as mandated by section 20(1)(b)(iii) of the Act, to give Mr. Sakamoto, as a directly affected party:
    - i. a reasonable opportunity to review the information relevant to the application that is submitted to the approval officer;
    - ii. a reasonable opportunity to furnish evidence and written submissions relevant to the Application; and
    - iii. by these failures, the Decision has contravened the requirements of the Act and lacked the necessary information and evidentiary record required to make a full and informed decision.
  - b) The Decision and the conditions provided therein failed to address or mitigate the Concerns raised by Mr. Sakamoto;
  - c) The operations of Sundown Feeders has consistently had, and continues to have a significant adverse impact on Mr. Sakamoto and his family as provided in detail below, The Sakamoto Property, the environment, and on the community at large.

- d) Sundown Feeders has a history of non-compliance with legislative requirements and conditions of approval of its operations, including but not limited to:
  - i. spills and leakages of waste from operations;
  - ii. improper disposal of animal carcasses; and
  - iii. failing to adhere to set-back requirements.
- e) The legal issue of the effect of the loss of Sundown Feeders' grandfathered status, and in particular such effect on its location in the flood plains, has not been properly considered or addressed and remains outstanding; and
- f) Such further and other grounds as may be submitted by Mr. Sakamoto or as may be permitted by the Board.

#### **REASONS YOU ARE AFFECTED BY THE DECISION**

- 9. Mr. Sakamoto is directly and adversely impacted by the Decision. The Sakamoto Property is in the immediate vicinity of the Applicant's proposed operations. As a result of the Approval Officer's Decision, the following prejudice or damage will result:
  - a) Serious and adverse impact on the Sakamoto family, including:
    - i. asthma and breathing difficulty resulting from improper and prolonged piling of manure on Sundown Feeders' facilities;
    - ii. piling of manure within 15 meters of the Sakamoto family residence, resulting in health risks and the evacuation of Mr. Sakamoto's pregnant wife;
    - iii. serious health risks related to the improper disposal of animal carcasses near the Sakamoto family residence; and
    - iv. general health risk posed by the potential leakage of manure and bacteria relating to flooding.
  - b) Serious and adverse impact on the environment, particularly in relation to the location of the facilities in the flood plain.
- 10. The Approval Officer's conditions of the Approval failed to address or mitigate the significant Concerns raised by Mr. Sakamoto. As a result, those Concerns remain unaddressed and outstanding.
- 11. In contravention of the Act, Mr. Sakamoto was not given an opportunity to provide evidence and submissions in support of the Concerns or contrary evidence relevant to the Application. As a result, the Approval Officer dismissed the Concerns and approved the Application largely on the basis that there was no contrary evidence submitted in opposition of the Application.
- 12. One example, among others, is where the Decision states:

“Mr. Sakamoto raised concerns about the CFO's location in relation to a flood plain. Section 8 of the Standards and Administration Regulation under AOPA requires that manure storage facilities and manure collection areas be at least one metre above any 1:25 year maximum flood level, or if that is not known, the highest known flood level. No manure storage facilities or collection areas are proposed below this level. Though the grandfathered catchment area is located in a localized low lying area, it is considered to be a CFO facility rather than a flood plain. Additionally this area is wholly contained on land owned by the applicant.”<sup>3</sup>

13. There was no evidence at all before the Approval Officer concerning historical flood data, and as such, the Approval Officer had no ability to correctly assess the risk posed by Sundown Feeders' proposed operations and expansions. The assessment of the flood plain clearly requires additional technical and historical evidence to determine the risk posed by the operations of Sundown Feeders to Mr. Sakamoto's property as well as to the environment. These issues cannot be dismissed without full consideration of evidence and submissions of all stakeholders.
14. Further, the Decision concluded, without any evidence, that there is no general risk associated with flooding. The Decision did not take into account the site-specific details of this particular facility and its unique location. The minimum distances and technical requirements contained in the *Standards and Administration Regulation* do not account for the unique circumstances posed by the area where the proposed operations are located.
15. In addition, as the Approval Officer has failed to provide opportunity to receive evidence and submissions by Mr. Sakamoto, the Approval was granted without any conditions or mitigation requirements to specifically address the Concerns.
16. Such further and other reasons as may be submitted by Mr. Sakamoto, or as may be permitted by the Board.

#### **ACTION REQUESTED**

17. Mr. Sakamoto respectfully requests the Board to:
  - a) Reverse the Decision and deny the expansion to the CFO;
  - b) In the alternative, amend or vary the Decision based on full information and complete evidentiary records;
  - c) In the event the Board chooses to amend or vary the Decision, provide Mr. Sakamoto reasonable opportunity and time to submit evidence (including expert evidence) as well as oral or written submissions in respect of the Application; and
  - d) In any event, regardless of outcome, to impose conditions on the Applicant that specifically eliminate or mitigate the continued and unaddressed Concerns raised by Mr. Sakamoto.

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<sup>3</sup> Decision Summary, at page 8.

18. If a review is granted by the board, Mr. Sakamoto requests the opportunity to submit, in due course along with evidence and written submissions, new conditions or amendments to existing conditions that would address the Concerns which Mr. Sakamoto would like the Board to consider. This will include site-specific conditions to protect the safety of the Sakamoto family, the Sakamoto Property, and the surrounding lands and water sources that are being affected by Sundown Feeders' operations.