

#1 - REQUEST FOR REVIEW: LA21037 / A&D Cattle Ltd.

Filed By: **MD of Willow Creek**

Deadline for RFRs: April 26, 2022

Date RFR received: April 25, 2022

Status of party as per Decision Summary: Directly Affected (MD)

WRITER'S E-MAIL sfinlay@rmrf.com
YOUR FILE

WRITER'S DIRECT PHONE (780) 497-3302
OUR FILE 106162-007 SNF

April 25, 2022

EMAIL laura.friend@nrcb.ca

Attention: Laura Friend, Manager, Board Reviews
Natural Resources Conservation Board
901, 620 – 7 Avenue S.W.
Calgary, Alberta
T2P 0Y8

Dear Madam:

**Re: Municipal District of Willow Creek No. 26
 LA21037 – A & D Cattle Ltd.**

With respect to this matter, please find enclosed our clients' Request for Board Review for registration with the Natural Resources Conservation Board. Should you require any further information, please contact our office.

Yours truly,

REYNOLDS MIRTH RICHARDS & FARMER LLP

PER:



SHAUNA N. FINLAY

SNF/maj
Enclosure

REQUEST FOR BOARD REVIEW
SUBMITTED TO THE NATURAL RESOURCES CONSERVATION BOARD

Application No:	LA 21037
Name of Operator/Operation:	A&D Cattle 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>):	NE 27-8-26 W4M
Municipality:	Municipal District of Willow Creek #26

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.

1. PARTY STATUS

(IF YOU ARE NAMED A DIRECTLY AFFECTED PARTY IN THE APPROVAL OFFICER'S DECISION, YOU DO NOT NEED TO COMPLETE THIS SECTION)

Party status (“*directly affected*” or “*not directly affected*”) is determined pursuant to the provisions of the *Agricultural Operation Practices Act* (AOPA) and its regulations. Upon receipt of an application, the Approval Officer must notify any affected parties. Affected parties include municipalities and owners or occupants of land as determined in accordance with the regulations. To obtain directly affected status, the owner or occupant notified in the above process must provide a written submission to the Approval Officer during the stage at which the Approval Officer considers the application. The Approval Officer will then determine who the directly affected parties are and include this determination in the Decision Summary.

Under its governing legislation, the Board can only consider requests for review submitted by directly affected parties. If you are not listed as directly affected in the Approval Officer’s decision, you must request that the Board reconsider your status (*please note that under the provisions of AOPA, the Board cannot reconsider the status of a party who has not previously made a submission to the Approval Officer during the application process*).

In order to request your status be reconsidered, you must explain why your interests are directly affected by the decision of the Board. Please list these reasons below:

My grounds for requesting directly affected status are as follows:

N/A

2. GROUNDS FOR REQUESTING A REVIEW

(ALL PARTIES MUST COMPLETE THIS SECTION)

In order to approve an application, NRCB Approval Officers must ensure the requirements of AOPA have been met. Your grounds for requesting a Board review should identify any requirements or specific issues that you believe the Approval Officer failed to adequately address in the Decision.

My grounds for requesting a review of the Approval Officer's decision are as follows:

Please see the Attached Schedule - Part A: Grounds For Requesting A Review.

3. CONTACT INFORMATION

(ALL PARTIES MUST COMPLETE THIS SECTION)

In order to support your reasons for requesting a review, please explain how you believe you would be affected by the Approval Officer's decision.

I believe that, as a result of the Approval Officer's decision, the following prejudice or damage will result:

Please see the attached Schedule - Part B: Impact of Decision

4. CONTACT INFORMATION

(ALL PARTIES MUST COMPLETE THIS SECTION)

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 the Attached Schedule - Part C: Error in Approval Officer's Decision

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 the attached Schedule - Part D: Suggestions for Revision.

5. CONTACT INFORMATION

(ALL PARTIES MUST COMPLETE THIS SECTION)

Contact information of the person requesting the review:

Name: The MD of Willow Creek #26, Attention: Derrick Krizsan

Address in Alberta: #273129 Secondary Highway 520 P.O. Box 550, Claresholm, AB
T0L 0T0

Legal Land Description:

Phone Number: (403) 625-3351

Fax Number: (403) 625-3886

E-Mail Address: md26@mdwillowcreek.com

Signature: _____

Optional

Date: _____

April 25, 2022

Required

If you do not meet the timeline identified, your request will not be considered.

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: RMRF LLP, c/o Shauna N. Finlay

Address: 3200 Manulife Place, 10180 - 101 Street, Edmonton, AB, T5J 3W8

Phone Number: (780) 429-3044

Fax Number: (780) 429-3044

E-Mail Address: sfinlay@rmrf.com

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

Laura Friend, Manager, Board Reviews
Natural Resources Conservation Board
John J. Bowlen Building
#901, 620 - 7 Avenue SW
Calgary, AB T2P 0Y8

Phone: 403-297-8269

Email: 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.

Application LA21037
A & D Cattle Ltd.
NE 27-8-36-W4M

SCHEDULE

Part A: Grounds for Requesting a Review

1. This Request for Review concerns an application by A & D Cattle Ltd. (“A&D”) for a new head beef finisher confined feeding operation (“CFO”) including 12 pens (each 40m x 50m), four pens (20m x 30 m each) and a catch basin (61m x 38m x 16m).
2. The Part 1 application was submitted to the NRCB on July 15, 2021. The Part 2 application was submitted on December 3, 2021. The application was deemed complete by the NRCB on January 5, 2022 (the “Application”).
3. At the time the Application was deemed complete there was no CFO exclusion area in effect around the Town of Fort McLeod. No Intermunicipal Development Plan (“IDP”) had been agreed to by the municipalities of the Municipal District of Willow Creek No. 26 (“Willow Creek”) and the Town of Fort McLeod (“Fort McLeod”).
4. As the municipalities referred to above had previously been unable to agree on an IDP, the Minister of Municipal Affairs had ordered a hearing before the Land & Property Rights Tribunal to impose an IDP. Before a hearing took place, an existing IDP between Willow Creek and Fort McLeod was adopted by both municipalities on or around March 9, 2022. The Ministerial Order requiring the Land & Property Rights Tribunal to impose an IDP on the parties was rescinded on April 7, 2022.
5. The NRCB Application Officer denied the Application of A&D solely on the basis that he was required to follow a previous decision of the NRCB, namely Decision 2022-02 Double H Feeders. The Application met all other requirements. The Double H Feeders decision found that where there was an inconsistency between an IDP (that had a CFO exclusion area) and an MDP (that did not have a CFO exclusion area), the IDP prevailed.
6. However, in the case of Double H Feeders, the IDP was in place and in full force and effect at the time the Double H Feeders application was deemed complete. That is distinguishable from the current circumstances where the Application was not inconsistent with an IDP or MDP at the time it was initially submitted or deemed complete.
7. Courts have considered comparable circumstances. In *City of Ottawa et al v. Boyd Builders Ltd.* [1965] SCR 408, 1965 CanLII 1 (SCC) the Supreme Court of Canada considered an Ontario Court of Appeal decision dealing with a building permit that had been denied due to the passage of a bylaw after the initial application for the building

permit was made. The Court of Appeal had found, and the Supreme Court of Canada agreed, that because at the time the application was made there was no bylaw in existence that would prohibit the granting of the permit, the applicant had a *prima facie* right to the permit. This case was applied in *Love v. Flagstaff (County) Subdivision and Development Appeal Board*, 2022 ABCA 292. In that case, an application for a development permit for a permitted use was denied due to an intervening application for an intensive livestock operation. Again, the Court of Appeal found that because when the application was made there was no reason to deny the application, the subsequent application for an ILO could not be considered, particularly because the permit for the ILO had not yet been granted.

8. Therefore, Willow Creek requests a Review on the basis that the Approvals Officer should not have considered the IDP as it was not in place or in force at the time the Application was complete.

Part B: Impact of Decision

The impact of the refusal is to deny an approval where there is no basis to do so.

Part C: Error in Approval Officer's Decision

This is addressed in Part A. It was an error to consider the IDP in circumstances where the IDP was not in existence at the time the Application was deemed complete. This arguably runs counter to appellate case law in Alberta and at the Supreme Court of Canada.

Part D: Suggestions for Revision

The Approval Officer helpfully articulated conditions that he would recommend in the event his decision is overturned. If the Approval Officer's decision is overturned, these conditions should be imposed.