

NO 1 - REQUEST FOR REVIEW: LA24002 / Van Huigenbos Farms Ltd.

Filed By: Bruce and Val Kostelansky

Deadline for RFRs: August 14, 2024

Date RFR received: August 12, 2024

Status of Party as per Decision Summary: Directly Affected Party

Request for Board Review (RFR) of an Approval Officer CFO Application Decision

Instructions

1. **Eligibility.** Only those parties listed as “directly affected” in the approval officer’s CFO application decision, or those parties requesting reconsideration of their status (see section #3), are eligible to request a Board review (RFR).
2. **Jurisdiction.** The Board’s jurisdiction in Alberta to review a decision by an approval officer is set out in sections 20(5), 22(4), and 23(3) of the [Agricultural Operation Practices Act](#) (AOPA).
3. **Deadline.** The NRCB must receive an RFR by the deadline specified in the approval officer’s decision cover letter. The AOPA Administrative Procedures Regulation does not allow consideration of time extension requests or late submissions.
4. **Public Documents.** RFRs and attachments are public documents.
5. **Submission.** Submit this form and any attachments by email to Laura Friend, Manager of Board Reviews at laura.friend@nrcb.ca. Contact her at 403-297-8269 for assistance.

1. Confined Feeding Operation (CFO) Application Details

NRCB Application No.	LA24002
Name of Owner/Operator or Operation	Van Huigenbos Farms Ltd.
Type of application (if known)	<input type="checkbox"/> Approval <input type="checkbox"/> Registration <input type="checkbox"/> Authorization
Location (legal land description)	SE 21-9-26 W4M
Municipality	Willow Creek

2. Status Declaration

I hereby request a Board review of the approval officer’s decision:
(You must check one)

- I am the owner/operator (directly affected party)
- I represent the owner/operator
- I represent the municipality (directly affected party)
- 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 therefore I am requesting my status be reconsidered (see section #3)

3. Request for Reconsideration by Board of “Not” Directly Affected Status

Instructions. Only those parties **not** listed as directly affected in the approval officer’s decision are to complete this section.

- The Board can only consider RFRs submitted by "directly affected" parties. Those parties not listed as directly affected in the approval officer’s decision must first request the Board to reconsider their status. If the Board grants a party “directly affected” status, it will then consider their RFR.
- Upon receipt of a CFO application, the approval officer sends a notification letter to the “affected” parties. Affected parties are owners or occupants of land residing within a designated distance from the applied-for CFO. Operators and the municipalities located within the designated distance always have “directly affected” status.
- An affected party must apply for “directly affected” status by providing a written response to the approval officer’s notification letter by the deadline specified. The Board cannot reconsider the status of a party unless they had first responded to the approval officer.
- The approval officer determines the "directly affected" parties to the application based on the responses received, and includes this determination in their decision.

My grounds for requesting a reconsideration of my “not” directly affected status are:

4. Request for a Board Review (RFR)

All parties or their representative must complete this section. If you need more space, include an attachment.

- Approval officers must ensure that a CFO application meets the Alberta legislative requirements before they approve it. Conversely, approval officers must deny an application if the requirements are not met. (Sections 20 and 22 of the [Agricultural Operation Practices Act](#) (AOPA)).
- If you believe the **approval officer failed to adequately address an issue** (or issues), state the issue(s) and provide your reasoning below.
- The issue(s) must have been in front of the approval officer at the time they made the CFO application decision; the Board will not consider any new issues.
- Include how the decision affects you, such as any damage or bias you believe would occur to you because of the approval officer's decision.

My grounds for requesting a Board review of the approval officer's decision are:

5. Board Action Requested

If the Board grants a review of the approval officer's decision (either an approval, denial, cancellation, amendment, or deemed permit), only the "directly affected" parties are eligible to participate (see section #3). A review will be in the form of either a hearing or a written review.

If the Board grants a review, I would like it to:

- Reverse the approval officer's decision
- Amend or vary the approval officer's decision

If the Board decides to grant a review on a permitted decision, it may decide to amend or vary the permit terms and/or conditions.

Are there any new conditions, or amendments to existing conditions, that you would like the Board to consider?

6. Contact Information of Person Submitting the RFR

Name Bruce Kostelansky

[REDACTED] [REDACTED]

Town/City/Postal Code Fort Macleod, Alberta T0L 0Z0

Legal Land Description NE 21- 9 - 26 W4

Telephone Number [REDACTED]

Email Address [REDACTED]

Date August 12, 2024

7. Contact Information of Legal Counsel or Representative (if applicable)

Name _____

Address _____

Telephone Number _____

Email Address _____

My grounds for requesting a Board review of the approval officer's decision are:

1. MDS- As the nearest landowner I am most directly affected by the CFO. Currently by the number and type of cattle being fed I am outside the MDS by 4 meters. Not very far. The CFO only meets the MDS after the application of the expansion factor. The NRCB has requested the distance of the pens from the road allowance be surveyed. Google earth is accurate to within potentially 2 meters, which may even put me closer. So that we all know, I think I should also be allowed the results of a licensed survey to determine my actual distance. I would also like to be able to know what the reference points are for the distance, I assume it is from the furthest south point of my house to the row of pens behind the decommissioned pens but haven't seen the actual measurement. I don't believe that I need to go into the specifics of being at the minimum MDS from a large CFO and what the negative effects are, that is attached in my original statement of concern.

2. ERST- In her decision summary Kelsey Peddle indicated that an ERST was performed in 2015, assessing the risks for ground and surface water. At that time the assessment indicated a low potential risk for to surface and groundwater. I believe an ERST for an expansion from 3700 hd to 16500 head is warranted for several reasons.

a) The report certainly has to be flawed in its assessment. As you will note in my initial letter of concern there have been numerous examples in the last 9 years of surface water running off of the CFO into the valley immediately adjacent to Willow Creek. This seems to be a significant risk to me, in Appendix C the landowner admits to this occasionally happening. The operation is reputedly taking actions to correct this in the new application but not on the recommendation of an updated ERST. I am not sure what is needed to represent significant risk, but run off from a CFO towards a flowing body of water seems significant to me.

b) Since 2015 there has been a large steam flaking mill that not only has changed the landscape of the CFO but it also uses a significant amount of water. This mill steam flakes corn for many other CFO's feeding cattle for Vanhuigenbos farms. The change in landscape has caused Vanhuigenbos farms to engineer a drainage system for this area that also drains into the valley adjacent to Willow Creek. This will not change. While Mr. Vanhuigenbos is trying to mitigate the amount of run off that enters onto my land, I believe this is also worthy of an updated ERST.

3. In Appendix A, regarding the MD of Willow Creek Municipal Development Plan, section (f), Kelsey indicates the CFO is not located on a wetland or Riparian area. While the CFO is not on a wetland it is immediately adjacent (as in meters) to a what could only be described as a riparian area. I provide this for context in a following argument as I believe you cannot look at CFO's in a vacuum.

4. In Appendix A again, section (b) Kelsey indicates that she encountered free water during her investigation. She indicates that the water is a perched water table as a result of many years of irrigation and not true artesian flow. The statement does not indicate where the water flows or what it is attached to. I would also like some clarification as to Kelsey credentials substantiating her opinion and a little better explanation as to just exactly what this water table is. During construction of the catch basins if water is encountered, they are to stop construction, how is this monitored?

5. While the NRCB may have little concern about land values, please do not infer to me that you are unsure of how it will affect me. We all know.

6. In summary the approved CFO, just meets the minimum set back distance, it just meets minimum number of acres for manure application, it is located immediately adjacent to a riparian area and is 150meters from a flowing water body (50m closer requires a much broader inclusion of affected parties). The CFO is located in an area where 77 people were notified and 41 individuals responded. While not directly affected by the IDP between the Md of Willow Creek and the Town of Fort Macleod, it is directly within the boundaries of the IDP. If you look at the CFO, outside of the regulatory requirements of the NRCB, it is being shoe horned into a very tight area affecting multitudes people in an environmentally sensitive area. This should be of concern and must be looked at outside of the vacuum. I believe there are places for 16500 head feedlots, this isn't one of them.

Re: Application LA24002

Van Huigenbos Farms Ltd.

SE 21-9-26 W4M

To Whom it May Concern

Let me start this letter by saying that this is an uncomfortable process as the applicant is a neighbor and I wish I didn't have to do this.

We have owned the land we live on for 24 years and did not expect to be living next to one of the proposed largest CFO's in the MD of Willow Creek. As a result, we have a number of concerns.

1. The set back distance- As per the regulations for the type of cattle being fed the setback distance is 526m. I don't have to tell you that using the setback distance calculator you can change the distance by changing the class of livestock, Mr. Van Huigenbos has selected Beef Feeder Calves, which allows him to achieve a maximal number of animals under the permit. According to the numbers you have provided I am 530m from the proposed operation, outside of the setback distance by 4m. This distance is based on the decommission of the far north pens and thus sets the distance at the next row of pens to the south. My first concern is that at the time of this application these pens were not decommissioned, there were cattle in these pens all winter and were at the time of this application. If there were cattle in those pens, they were active and therefore the setback distance would include them. This would then put us within the setback distance and I would have a direct say about the proposed expansion. Either the pens are decommissioned, or they are not. It is also a pretty tough pill to swallow knowing that the setback distance changes with the expansion factor and not a scientific factor, nothing has changed except the operation is getting larger and the setback distance is getting smaller. Google maps is reportedly accurate to within a couple of meters. Is 4 meters within the +/- accuracy factor? Also, if I read the AOPA act correctly it states you **may** have the ability to accept the expansion factor(3) For the purposes of subsection (2), an approval officer or the Board **may** apply the expansion factor of 0.77 only if 3 or more years have passed since the completion of the most recent construction arising out of an approval, registration or authorization or an amendment of an approval, registration or authorization. I don't believe it states in this section that you must apply the expansion factor.
2. As the set back distance is determined by the number and type of animals, I have concerns about how this is going to be monitored. The NRCB's current method of

having the producer fill out a form telling them numbers and types seems dubious at best. I see on the application the pens are to be constructed with RCC, it is well known in the industry that RCC allows for significant increases in pen density. As I follow this point through, recently Mr. Van Huigenbos was expanding his runoff basin for his existing lot and a stop order was placed on him by the NRCB. The reason Mr. Van Huigenbos was expanding the collection basin was because it was overflowing and flowing down the hill into the creek bottom within meters of Willow Creek. While this might be considered proactive on Mr. Van Huigenbos's part it highlights one of two facts. Either the engineering was flawed and the NRCB approved a facility with inadequate run off facilities or the number of animals in the lot exceeded the capacity of the system. How do I know that the proposed catch basins are adequate? If you believe in gravity, you know that eventually manure (not my chosen word) flows downhill. If you assure me the engineers are indeed capable, then how do you assure me about the types and number of animals in the lot? Mr. Van Huigenbos can mix match numbers and types of animals depending on manure output. If 4m is all the difference that is needed for this expansion to proceed then 16504 head, is 4 head too many.

3. In the application it is noted that the application for water usage will be separate and not directly involve the NRCB. I still feel it is appropriate to bring up this item as according to NRC requirements for this class of livestock water usage will be approximately 80,000 gallons per day. When you add that to the daily usage of the feed mill on site that steam flakes corn for up to 30,000 head per day, that water usage is substantial. There appears to be no onsite water storage facility in the development plan. If it is well water being used, how can I be assured that the expansion won't affect my well or the multitude of users that rely on this aquifer. I don't think expansion applications should be looked at in a vacuum, water and where it comes from is under intense scrutiny and should be evaluated when considering applications of this size. The effects on the aquifer and on those surrounding the proposed expansion have to be taken into consideration.
4. When looking at the application I see that the feed alleys are running East and West. I have concerns about the alleys exiting onto RG Rd 263. Currently there are 4 different approaches being used by Mr. Van Huigenbos onto Rg Rd 263 and the vehicles (employees, semi's, manure hauling vehicles) have little regard for those driving on RG RD 263. These feed alleys cannot exit directly onto Rg Rd 263.
5. The infrastructure, specifically RG RD 263 cannot handle the increased traffic the current CFO has brought. Processing feed for 30,000 head has significantly increased the heavy truck traffic. Safety is a huge concern as barely passible roads with heavy trucks weaving from side to side to maneuver around severe ruts and potholes is a disaster waiting to happen. With the proposed expansion this will only increase heavy truck traffic. Again, these applications and the demands they put on the

infrastructure cannot be looked at in a vacuum and consultation with local governing bodies (The MD of Willow Creek No. 26) is vital.

6. It goes without saying that living within 4 meters of a legal setback distance from a large CFO such as the one proposed brings into concern all the negatives associated with a CFO. Odor, dust, flies, surface water contamination and ground water contamination. Living within 4 meters of the legal set back distance of this operation will no doubt have a significant negative impact on my ability enjoy the outdoors and the property I have poured my life into. I can be assured the odor, dust, flies etc. won't stop at my yard entrance. Whether you take property value into consideration or not, it is pretty easy to figure out how that equation affects me, and the many other property owners close to an expansion of this magnitude. The use of RCC pens only magnifies these issues, you only need to look into your own records and see how the number of complaints about Rim Rock Feeders increased secondary to feedlot reconstruction.

7. Control of surface water

As per the AOPA regulations,

Surface water control system 6(1) If required by an approval officer or the Board, an owner or operator of a confined feeding operation or manure storage facility must ensure that the operation or facility has (a) a natural surface water control system, (b) a constructed surface water control system, or (c) a combination of both systems that meets the requirements of this section. (2) The design, placement, construction, installation, maintenance, replacement, removal and operation of the surface water control system must comply with the following: (a) the system must limit the amount of surface water and run-on and runoff flowing through and from the operation or facility;

There are huge concerns by me and most everyone downstream on Willow Creek about surface water. Mr. Van Huigenbos has placed drains, one of which is less than 100m from feedlot pens that collect and drain water down a coulee into the Willow Creek bottom. This is located on the East side of the feedlot. On the west side of the feedlot water runs down the hill out of the feedlot to within meters of Willow Creek. This speaks to the location of a large CFO on the banks of Willow Creek, it is only natural that things flow downhill. The fact that Mr. Van Huigenbos has instilled a drainage system to further enhance this drainage only highlights the operations insensitivity to the Willow Creek drainage system. I suspect that you have received a number of letters speaking to the concern about Willow Creek. I will attach pictures showing the drainage after 20mm of rain, according to your regulations it must be able to comply with 90mm of rain in 24 hours for the Fort Macleod area. One can only imagine the amount of water flowing down the hill when this occurs.

I have brought up this issue previously with the NRCB and if you read the section above from the AOPA I am not sure you interpreted it correctly as it refers to surface water. I don't believe it is possible for there not to be cross contamination with drains placed

this close to feedlot pens and water naturally flowing out of the other end. If you look at the attached pictures from the west end of the feedlot, normal water doesn't foam.

8. Another concern resides with the development area that we live in. I live in the Intermunicipal Development Plan which is a buffer zone between the MD of Willow Creek and the Town of Fort Macleod. As this proposed expansion is occurring within that development area it is important that not only the MD but the Town of Fort Macleod be appraised of the application as proposed locations for manure spreading are immediately adjacent to the Town of Fort Macleod Municipal boundary.

9. My final concern is with the ethics of this entire proceeding. I am sure other letters have mentioned that a town hall meeting took place for concerned landowners and citizens of the surrounding area. At this meeting a councilor for the MD of Willow Creek announced mid meeting that he was with the MD and listened to the concerns of those present. What this MD councilor failed to mention was that he was also secretly recording the meeting to provide Mr. Van Huigenbos information about what was discussed. The Van Huigenbos's then used this information to admonish some participants for attending and even stating that he was grandfathered and could dump as much water and manure down the coulee towards the creek as he wanted. Other representatives of Van Huigenbos Farms contacted family members of those who attended and threatened their livelihood if they didn't fall in line. I don't believe the Government of Alberta should be accepting of bullying by an applicant or clandestine recordings by elected officials in order to facilitate an application.

Thank-you for taking the time to hear our concerns, we like many of the other landowners are not against agricultural developments we just feel this is not the right location for a development of this size.

Bruce and Val Kostelansky

NE21-9-26 W4

[REDACTED]
[REDACTED]
[REDACTED]