



BOARD DECISION

RFR 2021-06 / BA20002

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act*

Alieda Farms Ltd.

October 12, 2021

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary BA20002 and the subsequent Registration BA20002.

Background

On September 7, 2021, Natural Resources Conservation Board (NRCB) approval officer Nathan Shirley issued Decision Summary BA20002 (Decision Summary) and Registration BA20002 (Registration). These documents constitute the approval of an application made by Alieda Farms Ltd. (Alieda Farms) to construct and operate a new dairy confined feeding operation (CFO). The CFO is to be located in Leduc County (County) at NE 10-49-27 W4M, which is owned by Alieda Farms. The Registration permits a 160 milking cow dairy (plus associated dries and replacements) and the construction of related dairy facilities at this site.

Pursuant to section 22(4) of the *Agricultural Operation Practices Act (AOPA)*, one request for Board review (RFR) of the Decision Summary and Registration was filed by Mr. Jeffrey Gauf (Mr. Gauf). The RFR met the filing deadline of September 28, 2021.

Directly affected parties, as established by the approval officer, were notified of the Board's intent to deliberate on this request and were provided with a copy of the RFR. Parties with an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. Rebuttals were received from Alieda Farms and Leduc County by the filing deadline of October 5, 2021.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (panel chair), Sandi Roberts, and Indra Maharaj was established on September 30, 2021 to consider the RFR.

Jurisdiction

The Board's authority for granting a review of an approval officer's decision is found in section 25(1) of AOPA, which states:

- 25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,*
- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or*
 - (b) schedule a review.*

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board review. The RFR submitted by Mr. Gauf included all necessary information.

Documents Considered

In its deliberations, the Board considered the following:

- Decision Summary BA20002, dated September 7, 2021
- Technical Document BA20002, dated September 7, 2021
- RFR filed by Jeffrey Gauf, received September 20, 2021
- Approval Officer's public material, received September 29, 2021
- Rebuttal filed by Alieda Farms, dated October 5, 2021
- Rebuttal filed by Leduc County, dated October 5, 2021

Board Deliberations

The Board met on October 6, 2021 to consider the filed RFR and the two rebuttals to the RFR.

In the RFR, Mr. Gauf stated that the permitted new CFO could potentially result in back flooding of his property and buildings. He notes that during spring runoff and high rainfall events, a large quantity of surface water flows from his property onto Alieda Farms' property. Mr. Gauf commented that the documents he reviewed did not show where the dairy barns are to be located, and that the only area not affected by the surface water flow is the north east portion of the quarter.

Alieda Farms' rebuttal to the RFR states that the location of the buildings will not affect water courses, and that any surface water that runs from Mr. Gauf's property towards Alieda Farms' property is diverted by the draw between its proposed CFO buildings and Mr. Gauf's property. Additionally, Alieda Farms included a map showing water flow directions, the location of the draw, and building locations.

Leduc County's rebuttal to the RFR stated that the County has no comments to offer and confirms its understanding that concerns and issues between neighbours would be addressed through appropriate mitigation measures.

In its deliberations, the Board must determine whether the party requesting the review has identified sufficient grounds to merit a review of the approval officer's decision. This process includes consideration by the Board of whether the issue raised in the RFR was adequately considered by the approval officer.

In the Decision Summary, *Appendix B: Concerns raised by directly affected parties*, the approval officer states:

There was concern that the proposed development may block drainage from a property to the south causing their land to flood. In my review of air imagery as well as onsite follow-up it appears that the surface water from the proposed property drains into a draw (low area) between the two properties. The proposed CFO is not located in and does not block this drainage path, so surface drainage is unlikely to be affected. Additionally all manure is contained in approved facilities and prevented from contaminating surface water.

The approval officer also commented that he reached out to Alberta Environment and Parks (AEP) with the concern and that Alieda Farms is working closely with AEP regarding water licencing and dugout creation.

Upon consideration of the rationale expressed by the approval officer in Appendix B of the Decision Summary, it is the Board's view that when the approval officer made his determination about whether or not to approve Alieda Farms' application for a new CFO, the issue of the potential for flooding of Mr. Gauf's property and buildings was considered. Additionally, the Board is pleased to see that the approval officer advised AEP of this issue and that AEP does not appear to have concerns about back flooding from the proposed CFO facilities onto Mr. Gauf's property to the south.

In considering whether the RFR raised sufficient concern that the approval officer did not adequately consider this issue, the Board notes that in his RFR, Mr. Gauf simply identifies his concern but does not provide any factual basis that the new CFO buildings will create a risk of back flooding on his property to the south. He acknowledges the existence of the draw between the two properties, which the Board observes is located on the Alieda Farms property, but suggests that the amount of water that flows from his property onto the Alieda Farms property during spring runoff and high rainfall conditions is sufficient to create a back flooding risk. The Board considered this argument and whether there was sufficient merit to warrant a review of the approval officer's decision. The Board concluded that there is insufficient information provided by Mr. Gauf to suggest that the CFO buildings would impede the flow of water sufficiently to create back flooding conditions onto his property. Accordingly, the Board concluded that there is insufficient merit in the argument raised in the RFR to warrant a hearing of this matter and, further, that the approval officer has adequately considered this issue in making his initial determination to approve the application for a permit for the CFO.

Board Decision

As a result of its deliberations, the Board has determined that the issue raised in the filed Request for Review was adequately considered by the approval officer and, in any event, the issue is without merit on the basis that there is insufficient information provided in the RFR to substantiate the concern. Therefore, pursuant to section 25(1)(a) of AOPA, the Request for Review is denied.

DATED at EDMONTON, ALBERTA, this 12th day of October, 2021.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Indra L. Maharaj

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

Edmonton Office

4th Floor, Sterling Place, 9940 - 106 Street
Edmonton, AB T5K 2N2
T (780) 422.1977

Calgary Office

19th Floor, 250 – 5 Street SW
Calgary, AB T2P 0R4
T (403) 297.8269

Lethbridge Office

Agriculture Centre, 100, 5401 - 1 Avenue S
Lethbridge, AB T1J 4V6
T (403) 381.5166

Morinville Office

Provincial Building, #201, 10008 - 107
Street
Morinville, AB T8R 1L3
T (780) 939.1212

Red Deer Office

Provincial Building, #303, 4920 - 51 Street
Red Deer, AB T4N 6K8
T (403) 340.5241

NRCB Response Line: 1.866.383.6722

Email: info@nrcb.ca

Web Address: www.nrcb.ca

Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.