

#1 - REQUEST FOR REVIEW: RA22002 / R&T Penner Farms Ltd.

Filed By:	Rylan Penner
Deadline for RFRs:	March 22, 2022
Date RFR received:	March 1, 2022 and March 22, 2022
Status of party as per Decision Summary:	Directly Affected (operator)

REQUEST FOR BOARD REVIEW
SUBMITTED TO THE NATURAL RESOURCES CONSERVATION BOARD

Application No:	RA 22002
Name of Operator/Operation:	R+T Penner Farms Ltd.
Type of application (check one):	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Registration <input type="checkbox"/> Authorization
Location (legal land description):	SW -28 -45 -20
Municipality:	Camrose County

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.

4. ACTION REQUESTED

(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:

Its a Grandfather operation and it will meet all requirements except the setback from the Lake.

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.

5. CONTACT INFORMATION

(ALL PARTIES MUST COMPLETE THIS SECTION)

Contact information of the person requesting the review:

Name: Rylan Penner

Address in Alberta: RR2

New Norway TOB 3LO

Legal Land Description: SW - 28 - 45 - 20

Phone Number: [REDACTED] Fax Number: _____

E-Mail Address: [REDACTED]

Signature: [Signature] Date: March 1 2022
Optional *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: _____

Address: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

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

Laura Friend, Manager, Board Reviews Phone: 403-297-8269
Natural Resources Conservation Board Email: laura.friend@nrcb.ca
John J. Bowlen Building
#901, 620 - 7 Avenue SW
Calgary, AB T2P 0Y8

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

Request for Board Review (RFR) of an approval officer's decision

<https://www.nrcb.ca/confined-feeding-operations/board-reviews-court-decisions-revamp/fact-sheets-and-forms>

March 22, 2022

Natural Resources Conservation Board
Board Reviews
John J Bowlen Building
#901, 620 – 7 Avenue SW
Calgary, Alberta, T2P 0Y8

Attention: Ms. Friend,

Re: Decision RA22002 – Supporting Document: Request for Board Review
R+T Penner Farms Ltd.
SW 28-45-20W4M

Mr. Cody Metheral, P.Eng. of Linkage Ag Solutions (LAS) have been retained by Mr. Rylan Penner, R+T Penner Farms Ltd. (Penner), to support his approval application to the NRCB. It is understood that Mr. Jeff Froese, NRCB Approval Officer (AO), has denied the application to expand the confined feeding operation (CFO), as indicated in the Decision Summary for application RA22002 dated March 1, 2022.

Pursuant to section 20(5) of the Agricultural Operations Practices Act (AOPA), this submission constitutes a formal request for a Board Review of decision RA22002; and provides a brief overview of the reasons why the review is necessary.

In Summary

Application RA22002: In January, 2022, Mr. Penner submitted an application to expand an existing broiler operation by increasing the number of broiler chickens on site to 75,000 birds (from 50,000 birds), and to construct a new barn.

Decision Summary RA22002: The AO states that the proposed expansion is inconsistent with Camrose County's municipal development plan (MDP). The MDP's policy 4.3.9 indicates that the development of new or expanding CFOs shall not be supported within 3,219 m (two miles) of Driedmeat Lake. This CFO is located approximately 1.2 miles west of the lake. The AO decision goes on to suggest that the application does meet all other requirements.

The NRCB Board is asked to grant a review of the AO's decision under AOPA section 25(1). A review is requested to determine if Camrose County's MDP's policy constitutes appropriate planning practices or rather an environmental condition that can be addressed under AOPA legislation. Further, it is understood that the Board (under AOPA section 25(4)(g)) can approve the CFO application notwithstanding the requirements within a MDP – given that it is appropriate to do so.

Grounds for Review

Point 1 – Supporting reasons for a Board review

AOPA requires the applicant to provide reasons why a review of an Approval Officers decision is warranted. The applicant provides the following reasons:

- 1) The County's MDP does not justify the CFO exclusion zone (Policy 4.3.9 – which requires a two-mile setback from a recreational lake), nor why the exclusion zone is important from an environmental or planning perspective. Information from the County is requested in order to determine if the exclusion zone is necessary,
- 2) Mr. Penner does not believe they were properly consulted, nor given adequate information about the limitations the exclusion zone would have on their operation, prior to the County adoption of the MDP in 2016.
- 3) The application meets all other regulatory requirements, and,
- 4) Mr. Penner will be requesting support from County Council should the Board grant the review (as per the discussion with Ms. Hunter, Camrose County Development Officer on March 21, 2022¹. See attachment below).

Point 2 – The MDP Policy 4.3.9 is a provision that the Board has discounted in the past

The Board is asked to consider RFR 2018-10². In this review, Vermeer Dairy asked the Board to overturn the AO decision and approve the dairy barn expansion from 450 to 1000 milking cows (plus dries and replacements). The application was denied because the site is approximately 1.8 miles from Driedmeat Lake and therefore inconsistent with policy 4.3.9.

This decision is important because it illustrates how the Board discussed the County's objectives related to provision 4.3.9 – which is to reduce environmental risk and protect the recreational and residential use from nuisance issues. After review of the CFO application, the Board determined that the County's concerns were being address by the AOPA legislation requirements and determined that it was acceptable to proceed with the dairy expansion.

The RFR 2018-10 (page 4) states the following:

- 1) *In the County's RFR filed August 9, 2018 the County states:
The MDP provision 4.3.9 serves two objectives; to reduce the potential risk of contamination of lakes, and to protect the recreational and residential nature of the lake from nuisance issues,*

¹ Email correspondence with Ms. Hunter, Camrose County, March 21, 2022

² NRCB Board Decision RFR 2018-10, September 12, 2018: Vermeer Dairy

The RFR 2018-10 (page 5) states the following related to environmental standards:

While the Board must in each case determine whether it is prepared to approve the CFO notwithstanding an inconsistency with a MDP, the Board will look to identify a compelling site specific need to prohibit a CFO in those cases where the MDP provision appears to address environmental issues that AOPA also addresses. In this case, the Board does not find any site specific environmental need to prohibit the Vermeer Dairy expansion as there is no evidence before the Board that expansion of the Vermeer Dairy CFO facilities will represent a material risk to the Driedmeat Lake water quality.

The RFR 2018-10 (page 5) states the following related to nuisance and residential use:

With respect to the MDP objective of protecting recreational and residential development at Driedmeat Lake, the Board is satisfied that by any reasonable measure, the CFO is located far enough away from the lakeshore and it will not pose nuisance effects of any material significance. Again, the County supports such a conclusion. The Board also notes that the calculated AOPA minimum distance separation for the proposed expanded dairy to a category 4 residence is 1,674 m (1.04 miles). A category 4 residence represents the highest odour objective factor and the greatest separation distance provided under AOPA. Category 4 includes residences located in large scale country residential developments, hamlets, villages, towns or cities. While the measurement available to the Board is to the lakeshore rather than residences, or potential residences, the Board has considered that such residences would be located in close proximity to the lakeshore to take advantage of any recreational potential.

Finally, the RFR 2028-10 (page 5) direct the AO approve the application as noted:

All available evidence before the Panel supports a conclusion that the Vermeer Dairy does not pose a risk to Driedmeat Lake water quality, nor will the expansion have nuisance effects that would impair the recreational and residential planning objectives of the County's MDP. Taken together, the Board concludes that this is an instance where it is appropriate to approve the proposed expansion, notwithstanding the inconsistency with section 4.3.9 of the MDP.

Point 3 – Penner site compared to the Vermeer Dairy site

The Penner site is considered to have similar site characteristics when compared to the Vermeer Dairy site including distance to the lake (Figure 1). Additionally, both applications meet AOPA legislation requirements (except for MDP policy 4.3.9 as noted above)

However, the Penner application has significantly less livestock and manure associated with the operation (see Table 1). Solid manure produced by the broiler chickens is kept in the barn as floor litter and removed from the barn between flock cycles - which minimizes odour, nuisance and environmental risk. Comparing Livestock Siting Units³ and Minimum Distance Separation³ suggests the Penner operation will have less impact on their neighbours and community than the Vermeer Operation.

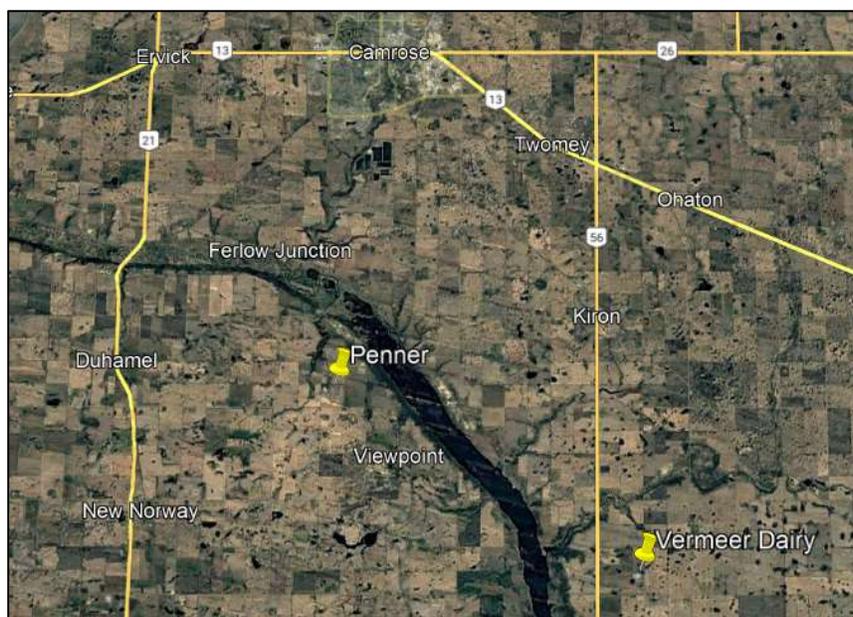


Figure 1 – Location of Penner and Vermeer Dairy in relation to Driedmeat Lake and City of Camrose

Location	Distance to Lake	Livestock Siting Units ^a	MDS ^b (category 4)
Vermeer Dairy (1,000 hd milking cows) E ½ 4-45-19 W4M	1.8 miles East	1,760	1,674
Penner Broiler (75,000 Broilers) SW 28-45-20 W4M	1.2 miles West	105	598

Table 1 – Comparing Vermeer Dairy and Penner Broiler Operations

^a Livestock Siting Unit (LSU) is the basis for determining the MDS. The LSU is a method for comparing the odour potential of livestock facilities based on the type of livestock, manure production and manure handling system

^b The Minimum Distance Separation (MDS) is a setback established between a CFO facility and the neighbouring residences that are in existence at the time the application is submitted. Its purpose is to minimize the impact of odour

³ Environmental standards for Alberta's livestock industry: 2008 reference guide: Agricultural Operation Practices Act (AOPA)

Decision RA22002 – Supporting Document: Request for Board Review

R+T Penner Farms Ltd.

SW 28-45-20W4M

In Conclusion

The Board is asked to grant a review of RA22002 in order to discuss Camrose County's Municipal Development policies related to the exclusion zone for Confined Feeding Operation. As part of the submissions to the Board, Camrose County Council will be asked to provide support for this application should a review be granted.

From a previous NRCB Board review it was determined that the intent of the County's MDP policy can be achieved by meeting the legislative requirements in AOPA. The Penner site characteristics are similar to those identified in the Vermeer Dairy operation. However, this operation has significantly less livestock siting units than the dairy.

Ultimately, the Board is asked to approve the application notwithstanding the exclusion zone identified in Camrose County's MDP.

Respectfully Submitted,



Cody Metheral, P. Eng.

Agricultural Engineer

Linkage Ag Solutions

(403) 635-6131

Decision RA22002 – Supporting Document: Request for Board Review
R+T Penner Farms Ltd.
SW 28-45-20W4M

From: Kim Hunter <khunter@county.camrose.ab.ca>
Date: March 21, 2022 at 4:21:18 PM MDT
To: [REDACTED]
Subject: NRCB Appeal

Hi Rylan,

You can 'appeal' the Approval Officer's denial and the NRCB review board can decide whether to uphold the Approval Officer decision or relax it in spite of our MDP.

Once you've submitted to the NRCB, you can ask Council to send a letter to the NRCB board in support of a relaxation, which the NRCB may, or may not, consider. Our letter officially means nothing, the Board can choose to vary or not without our comments, but they can consider it if they want to. In the request to our Council they should provide reasons why Council should consider submitting a letter of support to the NRCB.

Let me know if you have any questions.

Camrose County
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Camrose, AB T4V 3S8
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Email: khunter@county.camrose.ab.ca
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Kim Hunter
Development Officer