



## **BOARD DECISION**

### **RFR 2022-01 / LA21033**

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

Double H Feeders Ltd.

January 7, 2022

**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 LA21033.**

## **Background**

On November 25, 2021, the Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA21033 (Decision Summary) in relation to an application by Double H Feeders Ltd. (Double H Feeders) to expand an existing poultry confined feeding operation (CFO). The CFO is located at NE 22-9-22 W4M in Lethbridge County (County) near the Town of Coalhurst (Town) and within the lands subject to the Lethbridge County and Town of Coalhurst Intermunicipal Development Plan (IDP). The approval officer denied the application after determining the proposed expansion is inconsistent with the land use provisions of the County's Municipal Development Plan (MDP).

A request for Board review (RFR) was filed on December 9, 2021 by the operator, Double H Feeders. The RFR met the filing deadline of December 16, 2021. On December 10, 2021, the NRCB sent a Notice of Schedule for the Board's Consideration of Requests for Review to the directly affected parties as established by the approval officer. In this case, to expedite the Board's consideration of requests for review given the end-of-year holidays, the Board provided that Notice ahead of the December 16, 2021 deadline.

On December 17, 2021, the directly affected parties were notified of the Board's intent to review this request and were provided with a copy of the RFR. Parties that have an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. Three rebuttals were received from Mr. and Mrs. A.W. Bedster, Bryan Clifton, and Melissa Schmid by the filing deadline of December 23, 2021.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (chair), L. Page Stuart, Sandi Roberts, and Earl Graham, was established on December 21, 2021, to consider the RFR. The Board met on January 5, 2022 to deliberate on the filed 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.

## **Documents Considered**

The Board considered the following information:

- Decision Summary LA21033, dated November 25, 2021
- Technical Document LA21033, dated November 25, 2021
- RFR filed by Double H Feeders Ltd., dated December 9, 2021
- Rebuttal filed by Mr. and Mrs. A.W. Bedster, filed December 13, 2021
- Rebuttal filed by Melissa Schmid, filed December 20, 2021
- Rebuttal filed by Bryan Clifton, filed December 21, 2021
- Lethbridge County Municipal Development Plan (MDP), dated December 5, 2019
- Lethbridge County Land Use Bylaw No. 1404 (LUB), dated September 2020
- Lethbridge County and Town of Coalhurst Intermunicipal Development Plan (IDP), dated December 2014

## **Board Deliberations**

In Decision Summary LA21033, on determining that the proposal to expand the existing poultry CFO was inconsistent with the land use provisions of the MDP, the NRCB approval officer denied the application as directed by section 22(1)(a) of AOPA. The Double H Feeders RFR asks the Board to issue an approval for the CFO expansion, notwithstanding any inconsistency with the MDP land use provisions. Directly affected parties Mr. and Mrs. A.W. Bedster, Bryan Clifton, and Melissa Schmid each filed a rebuttal to the Double H Feeders RFR, asking the Board to deny the Double H Feeders application for expansion. The rebuttals restate concerns raised by these directly affected parties with the approval officer, including adverse effects associated with surface water quality, odour, quality of life, and property values.

The Board met on January 5, 2022 to deliberate on the filed RFR as well as the issues raised by Mr. and Mrs. A.W. Bedster, Bryan Clifton, and Melissa Schmid, in their rebuttal filings.

The Board concludes that a hearing is warranted related to the issues advanced in the RFR and the rebuttals. The core issue for consideration in the Board's review is whether the Board should exercise its authority to approve the CFO expansion application, notwithstanding an inconsistency with the County's MDP land use provisions. The Board is in agreement with the approval officer's conclusion that the application is inconsistent with the Lethbridge County's MDP.

To assist parties in preparing their hearing submissions, the Board has identified a number of constituent elements that may contribute to the Board's decision on the core issue. These include:

- Whether the Board should consider the land use provisions in the IDP, notwithstanding that AOPA directs the Board to municipal development plans. Amendments to the *Municipal Government Act* now provide that provisions in an IDP prevail in the event of a conflict with a provision in the MDP. Section 638 of the *Municipal Government Act* states:

**638 (3)** An intermunicipal development plan prevails to the extent of any conflict or inconsistency between

(a) a municipal development plan, an area structure plan or an area redevelopment plan, and

(b) the intermunicipal development plan

in respect of the development of the land to which the conflicting or inconsistent plans apply.

- Double H Feeders has made representations related to its operation on NW 22-9-22 W4. The relevance of the operation at that site, which operates under a distinct NRCB permit, to the expansion application is not clear to the Board. Parties, including the County and the Town, may wish to address this in their submissions.
- How does the Town’s statement of support for the expansion (April 8, 2021 letter to the County) support the objectives of the provisions in the IDP?
- Is the Town’s statement of support contingent on Double H Feeders’ proposal to abandon the operation at NW 22-9-22 W4?
- What is the position of the County in relation to consistency of the Double H Feeders expansion, or the potential for future expansions, with the land use provisions in the MDP and IDP?
- What public consultation was conducted by the County and Town in the course of the MDP and IDP development?
- What are the municipal planning objectives related to the establishment of the confined feeding operation exclusion zone on the lands associated with the Double H Feeders operation?
- What assistance can the Town and County provide the Board in determining the intent of the term “primarily agricultural” land referenced in the IDP?
- Decision Summary LA21033 did not specifically assess or consider the concerns raised by directly affected parties in relation to runoff, odour, manure storage, no-till land application of manure, property value, or reduced quality of life. Some or all of these issues may be relevant to this review, particularly as they relate to land use and planning objectives and effects on the community. The Board also asks that the approval officer, the Bedsters, Mr. Clifton and Ms. Schmid provide evidence that will assist the Board in understanding the potential for runoff from the existing and proposed manure storage facilities.

## Form of Review

The Board has determined that the issues to be considered on review will benefit from an oral hearing, to be conducted virtually. An oral hearing will afford the parties the opportunity to question other participants, and the Board will have the benefit of evidence from the operator and directly affected landowners. The Board expects that it will have the benefit of hearing from both the County and the Town.

## Decision

As a result of the Board's deliberations, it has determined that a review is warranted to consider whether a permit for Application LA21033 should be approved or denied.

## Review Process

The Board finds that eligible parties to this proceeding include Double H Feeders, Mr. and Mrs. A.W. Bedster, Bryan Clifton, Melissa Schmid, Lethbridge County, Town of Coalhurst, and NRCB approval officer Carina Weisbach. Board staff will contact all parties to determine an appropriate hearing date. Once the hearing date has been established, the Board will establish dates for the filing of written submissions (mandatory) and written rebuttal submissions (not mandatory) in advance of the hearing. Written submissions are to be directed to the attention of Laura Friend at the Calgary office of the NRCB ([laura.friend@nrcb.ca](mailto:laura.friend@nrcb.ca)). Following the filing dates, the Board will ensure all directly affected parties are provided copies of each other's submissions. All materials will also be posted on the NRCB [website](#).

The Board anticipates that a hearing of the issues for review will be completed in a single day. Board staff will contact each of the parties with the specific arrangements and logistics associated with the virtual hearing. All parties will be advised once those arrangements are finalized.

DATED at EDMONTON, ALBERTA, this 7<sup>th</sup> day of January 2022.

*Original signed by:*

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Peter Woloshyn (chair)

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L. Page Stuart

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Sandi Roberts

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Earl Graham

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**

#901, 620 – 7 Avenue SW  
Calgary, AB T2P 0Y8  
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](mailto:info@nrcb.ca)

Web Address: [www.nrcb.ca](http://www.nrcb.ca)

Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca) or through the NRCB website.