

#4 - REQUEST FOR REVIEW: PR19005 / Stant Enterprises Ltd.	
Filed By:	The Berry Applicants
Deadline for RFRs:	May 15, 2020
Date RFR received:	May 15, 2020
Status of party as per Grandfathering Decision:	Directly Affected

REQUEST FOR BOARD REVIEW
SUBMITTED TO THE NATURAL RESOURCES CONSERVATION BOARD

Application No:	
Name of Operator/Operation:	Stant Enterprises Ltd.
Type of application (check one):	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Registration <input type="checkbox"/> Authorization
Location (legal land description):	NW 18-40-04 W5M
Municipality:	Clearwater 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.

5. CONTACT INFORMATION

(ALL PARTIES MUST COMPLETE THIS SECTION)

Contact information of the person requesting the review:

Name: SEE ATTACHED SCHEDULE "A" _____

Address in Alberta: _____

Legal Land Description: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

Signature: _____

Date: _____

Please note that all sections of the form must be completed in order for your request to be considered. Also, if you do not meet the timeline identified, your request will not be considered. Form must be signed and dated before being submitted for Board consideration

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: Mathew D. James _____

Address: 4802 Ross Street _____

Red Deer, AB T4N 1X5 _____

Phone Number: (403)346-6603 _____ Fax Number: (403) 342-1280 _____

E-Mail Address: mjames@chapmanriebeek.com and csmith@chapmanriebeek.com _____

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

Laura Friend, Manager, Board Reviews
Natural Resources Conservation Board
19th Floor Centennial Place
250 – 5th Street SW
Calgary, AB T2P 0R4

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.

Schedule “A”
Application for Review of Grandfathering Decision
Stant Enterprises Ltd. (Stanley Taylor)
NW 18-40-04 W5M

1. PARTIES AND STATUS TO THIS REQUEST

1.1. The parties to this Request for Review are as follows:

Cyndy Berry – Directly Affected Party

Rob McPhee – Directly Affected Party

Clayton Olson – Directly Affected Party

(Collectively, the “Berry Applicants”)

1.2. Both Rob McPhee and Clayton Olson have also prepared separate Request for Board Reviews. Clayton Olson’s Request has already been submitted, and Rob McPhee’s is attached as **Exhibit “A”** and provides a detailed and outline of the environmental impacts and concerns regarding the proposed operation and capacity. This request is intended to supplement those separate Requests, as appropriate.

1.3. This document is intended to be the Request for Review, it is not intended to be the written or detailed submissions for the Review itself, which will follow if the Review is approved and a process for same is determined and provided. Except as otherwise defined, the terms and definitions from the Decision shall be used herein.

2. GROUNDS FOR REQUESTING A REVIEW

2.1. Stant Enterprises Ltd. (“Stant”) was granted grandfathered Permit status on May 1, 2020 (the “Decision”) with respect to a Confined Feedlot Operation (“CFO”) located on the Stant Lands.

2.2. The Berry Applicants request that the Board review the Decision on the following grounds:

A) The investigation was inadequate, including, but not limited to, the following deficiencies:

- i. The Inspector failed to consider “the effects on the environment, the economy and the community and the appropriate use of land” as required under the *Act* s. 20(1)(b)(ix);
- ii. The Inspector failed to consider and determine if the CFO had been abandoned, and further;

- iii. If the CFO was abandoned, the Inspector failed to determine what impact the abandonment should have on the Decision (section 29(1)(b) of the *Act*, and Section 12 of the Regulation); and
- iv. Such further and other deficiencies as the Berry Applicants may advise and the Board accept.

3. BACKGROUND FACTS

- 3.1. The Berry Applicants concede and agree with the conclusion that there was, at some point, a CFO on the Stant Lands. However, the usage, capacity, and timelines are tenuous and based on the selective and incomplete evidence considered by the Inspector. Further investigations are required to determine the usage and capacity of the CFO, as well as the CFO's abandonment by Stant. The paucity of records or other evidence provided by Stand and Stanley Taylor, the owner and operator of Stant, is questionable and should be scrutinized, particularly given the claimed size of the operation and the understanding that Mr. Taylor was significantly involved in the operation of the CFO throughout its entire existence.
- 3.2. Attached as Appendix C to the Decision is a fax from Stant itself indicating much lower cattle numbers than Mr. Taylor claims to have run in any given year. The validity of this document was not disputed, Mr. Taylor simply indicated that he 'did not recognize' same [*Decision, section 3.3 paragraph 3*]. Given this document provides an unbiased, presumably informed source, it should be afforded significantly more weight. It also suggests that, at least as of July 2015, there were records from January 2002, yet there is no indication of what happened to the records from that point forward.
- 3.3. Stant and Mr. Taylor bear the onus to support their claims and application for a grandfathered Permit, as well as the ongoing use of same. In this instance, the significant deficiencies in evidence offered should be questioned – particularly in the face of the abundant counterevidence provided by the neighbours, who are also Directly Affected Parties. Admittedly, all evidence is simply oral recollections; however, the Decision does note that all parties who were questioned by the Inspector appeared to be honest and forthright. Without further investigation, it is difficult to accept the Investigator's decision to accept Mr. Taylor's evidence over the other parties, particularly in light of the lack of physical corroborative evidence.
- 3.4. The Berry Applicants further request a review and determination regarding the abandonment of the CFO. In reviewing the NRCB's *Operational Policy 2016-3 – Permit Cancellations Under AOPA Section 29* (the "Cancellation Policy"), abandonment needs to be considered when an adjacent landowner questions same, or when a landowner is planning to sell their lands and requests confirmation of grandfathered status [Cancellation Policy is attached as **Exhibit "B"**, *Section 1.1*]. In reviewing the Decision,

abandonment is not considered or even mentioned, despite the Operational Policy requirement, as well as the following indicia of abandonment, all of which is supported by, or anticipated to be supported by, the sources identified in the square brackets:

- A) During the Site Inspections, there were no cattle present [*Decision, section 3.2*];
- B) NRCB Database shows that Stant sought information regarding the decommissioning of the CFO in January 2010 [*Decision, section 3.1, para 3*];
- C) The CFO's current use is very limited and not as a CFO [*Neighbours' observations, letters submitted to investigator*];
- D) The neighbors' observations of the usage of the lands over the past 18 years [*more detailed investigation, Neighbours' observations, letters submitted to investigator*]
- E) Stan Taylor's reason and intent for ceasing operations and potential to resume the CFO's operations and the remaining considerations under the Cancellation Policy;
 - a. The Berry Applicants state that the current request is to increase value on a potential sale to a non-related party. There is no intent for the Owner to resume operations [*Decision, section 1, paragraph 3*].
 - b. Neighbors understood that the feedlot was decommissioned and being reclaimed [*Letters submitted to investigator, further investigations with neighbours*].
 - c. Work was apparently done to clean up and begin reclaiming the land [*Neighbours' observations, letters submitted to investigator*].

3.5 Despite the 18 years that have passed since the Determination Period, Stant and Mr. Taylor are still in the best position to provide evidence to support their assertions. Perfect evidence is not expected, but simply relying on the passage of time as an excuse for a complete lack of evidence is highly suspect. Given the continuous ownership and claimed size of the operation, records such as invoices, tax documents, photographs, corporate records, etc. should exist in some form. This becomes more likely in the determination regarding abandonment, as the more recent records signifying ongoing operations would presumably be more readily available.

3.6 Current Google maps satellite photographs show that the Lands appear to be increasingly covered in vegetation from 2003 onward, further suggesting that the CFO is not, and has not been, in use for some time [Google Map photos attached at "**Exhibit C**" are photos from Google Map for a date unknown, and Google Earth Pro for the years 2003, 2017, and 2019]. This observation is also noted and supported in the Decision comments regarding Appendix

E, at section 3.02. Further, with respect to photographic evidence attached to the Decision, there are more accurate and reliable photographs available from the Alberta Government's Air Photo Library. This will be particularly helpful in determining the abandonment aspect. The Berry Applicants are willing to canvas obtaining these prints and, pending the costs, will either provide them or split the costs with Mr. Taylor. However, this will require enough time to obtain the photographs (particularly in consideration of COVID-19).

3.7 Finally, the Decision indicates that the Investigator did not speak with neighbors who were not present in the area in the January 2002 time frame despite their being Directly Affected Parties [Section 3.5]. This is both procedurally unfair, and a lapse in the investigation. In determining if the CFO was abandoned, these individuals will offer a more rounded indication of the operation's usage, or lack thereof, throughout their time in the area.

3.8 Based on the observations of the Berry Applicants, and possibly the other Directly Affected Parties' evidence, the usage has not been that of a CFO, but rather of Mr. Taylor's cow/calf operation alone (approximately 1,000 head). These observations are supported by and align with Mr. Taylor's evidence in the Decision at section 3.3, page 12 regarding his herd sizes. Further, the uncontacted individuals would have information regarding their understanding and discussions about the use of closure or intended use of the CFO (i.e. Mr. Taylor's intention). It is notably worth investigating what, if anything, was represented to the acreages that Mr. Taylor and his immediate family recently sold. This information would be particularly relevant given the apparent lack of any records or evidence from Stant or Mr. Taylor. As noted in the Cancellation Policy "an owner's intent to retain their permit for an unused facility, solely for the purpose of holding the permit, is less important for determining whether the facility has been abandoned, than whether they intended to actually start re-using the facility." [Cancellation Policy, Section 2.1.2].

4. REASONS YOU ARE AFFECTED BY THE DECISION

4.1. The Berry Applicants are all affected by this Decision as follows:

A) Environmental Concerns:

- a. Water Supply/Quality; and
- b. Contamination and Pollutions;

B) Traffic Impacts and Safety; and

C) Impacts on the Land:

- a. Marketability;
- b. Usage; and
- c. Prices/ Land Value.

5. I WOULD LIKE THE BOARD TO TAKE THE FOLLOWING ACTIONS WITH RESPECT TO THE APPROVAL OFFICER'S DECISION:

5.1. The Berry Applicants request the following:

- A) Reverse the Decision; or
- B) Determine if the CFO was abandoned and, if so, cancel the permit.

5.2 Stant is not looking to utilize a CFO permit. It is looking to hold one and use it as a marketing and sales tool to realize increased values on a land sale. If the CFO was abandoned, the application for a CFO should be considered as a new application under the Act by the putative purchaser, with the requisite investigations, regulations, and permits required. There is nothing stopping the purchaser or seller to make this application, thereby alleviating the significant concerns of the Berry Applicants and other stakeholders, as well as aligning with the Act's purpose to "ensure that the province's livestock industry can grow to meet the opportunities presented by local and world markets in an environmentally sustainable manner" and "minimize nuisance impacts on neighbors" [*Cancellation Policy, Section 2.2, emphasis added*].

ALL OF WHICH IS RESPECTFULLY SUBMITTED THE 15th DAY OF MAY, 2020.

Chapman Riebeek LLP

Per:



Mathew D. James

Counsel for the Berry Applicants

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Fax: (403) 342 – 1280

Email: mjames@chapmanriebeek.com

EXHIBIT "A"

Request for Review on the Grandfathering Decision of NW 18-40-4 W5M

Prepared for:

Natural Resources Conservation Board (NRCB)

Prepared by:

Robert McPhee
37 Kee Close
Red Deer AB T4P 3M4

May 14, 2020

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ABBREVIATIONS

AOPA	Agricultural Operation Practices Act
CFO	Confined Feeding Operation
GOA	Government of Alberta
MDS	Minimum Separation Distance

GLOSSARY

Capacity	The maximum amount something can contain
Eutrophication	An abundant accumulation of nutrients that support a dense growth of algae and other organisms, the decay of which depletes the shallow waters of oxygen
Run-off	Liquid that drains, as surface flow, out of an agricultural operation or part of an agricultural operation, including rainwater and meltwater
Run-on	Liquid that drains, as surface flow, onto an agricultural operation or part of an agricultural operation, including rainwater and meltwater

1 INTRODUCTION

There are many concerns surrounding the NRCB Grandfathering Decision of Stant Enterprise Ltd. Confined Feeding Operation. The concerns regarding the Confined Feeding Operation (CFO) on NW 18-40-4 W5M include the legitimacy of the grandfathering report, environmental impacts, and the direct and indirect effects imposed on surrounding residents. This document will be used as a formal request for review of the grandfathering decision of Stant Enterprises Ltd. Confined Feeding Operation as well as a voice for the concerned residents.

The NRCB Grandfathering Decision Report Stant Enterprises Ltd. document will furthermore be referred to as the "Report" for ease of reference.

2 EVIDENCE

The apprehensions around the CFO are with the lack of evidence to prove this CFO in fact housed the maximum capacity of 5000 head as claimed. As well, the calculations that deemed the current capacity of the CFO at 4800 head are suspicious. The amount of waste produced by a 4800 head CFO are extravagant (Table B-1). If the CFO never operated at full capacity, worries arise as to whether this CFO has the up-to-date structures and precautions in place to handle the amount of waste, while abiding by environmental rules and regulations. With a potentially increased capacity, there will be greater wear and tear on roads and surrounding structures to properly handle and store the waste.

The lack of strong evidence that the CFO housed 5000 head prior to and after 2002 are seen under sections 3.1 and Appendix D, 3.3 and Appendix C and F, 3.5, and 3.6 of the Report.

2.1 Evidence from Section 3.1 and Appendix D

The authenticity of the letter used from a former NRCB Director of Compliance and Enforcement should be questioned, as stated by the inspector, as it is lacking major credentials. The letter in question also does not state that the CFO was operating at a maximum capacity. It states that CFO had the capacity for 5000 head. Capacity is defined by dictionary.com as "the maximum amount or number that can be received or contained."

2.2 Evidence from Section 3.3, Appendix C and Appendix F

A document was created by the operator, with credentials (company stamp), stating there was a total of 2256 head present in 2015. The operator claims he does not remember this document from five years prior and can only speculate what the document represented. Yet the operator was able to tell the inspector the exact number of head present in each pen in 2002.

A picture is also presented from Beef Spotter, The Feedlot Atlas to represent how many head were present in 1995-1996. However, as stated previously, the information only lists the feedlot has a capacity of 5000, not that there was 5000 present at that time.

2.3 Evidence from Section 3.5

Two witnesses were approach by the inspector for statements on how many cattle were present around January 1, 2002. Neither witness confirmed that the CFO was operating at maximum capacity of 5000

head. The number the witnesses gave was between 1000 and 2000 head at that time. However, their statements were disregarded as they could not provide documentation or photos to support their claims.

2.4 Evidence from Section 3.6

A former employee was contacted to give a statement on the number of head present at the CFO during their employment. The former employee stated there was any where from 5000 to 6000 head during the peak of the operation. However, the former employee could not provide documentation or photos to support their claims. Should their statement not be disregarded as the same for the above witnesses?

3 ENVIRONMENTAL CONCERNS

The environmental concerns include but are not limited to run-off control and water pollution. The CFO was built in 1985 as stated by the operator in the Report. That gives the CFO an age of 35 operating year. The year the CFO was developed, and the amount of waste produced by a 4800 head are where the concerns stem from.

3.1 Concerns with Run-off

Blueberry creek flows through the SW corner of NW 18-40-4 W5M. The CFO sits above the creek on a SW 16.9% slope (Appendix A.3.). This means the majority of surface water run-on in contact with the CFO will flow toward Blueberry Creek unless run-off control measures are in place. In Table 1, the estimated volumes of annual run-off for a 4800 head CFO are calculated using values and equations from the Code of Practice for the Safe and Economic Handling of Animal Manures (1995) located on the NRCB’s website. It is estimated that 6 029 931 liters of run-off could potentially flow down slope from the CFO in the direction of Blueberry Creek. Proper run-off controls (i.e. berms or catch basins) cannot be seen in aerial photos from Google Earth during the years 2003 (Appendix A.1.) and 2019 (Appendix A.2.). It is possible that surface water run-off control measures have not been updated or ever existed since the development of the CFO in 1985. A lack of controlling over 6 million liters of surface run-off from entering a water body is in violations of the AOPA’s Standards and Administration Regulations under section 6(1)(a)(b)(c).

Table 1 Estimated Run-off Volume from Open Lots

Estimated Annual Run-off Volumes from Open Lots									
Location	Pm (snowfall)		Ps (rainfall)		V for unpaved		V for paved		Area ft ²
	mm	inches	mm	inches	mm	inches	mm	inches	
Rocky Mountain House	149	5.86	77	3.03	67	2.64	121	4.76	968740.85
Paved Lots	V=A*(0.22 Pm + 0.45 Ps)								
	V= 968740.85*(0.22*149) +(0.45*77)								
	V=10 889 875.4 L								
Unpaved Lots	V=A*(0.48 Pm + 0.65 Ps)								

	$V = 968740.85 \text{ ft}^2 * (0.48(149) + (0.65(77)))$
	$V = 6\,029\,931.0 \text{ L}$

Values and equations used in the estimation of run-off volume for open lots was taken from the Code of Practice for the Safe and Economic Handling of Animal Manures. 1995.

Calculations for the area of the CFO can be found in Appendix B: Table B-2.

3.2 Concerns with Water Pollution

With the large quantity of run-off flowing down slope from the CFO, organic matter, nutrients, and pathogens are usually transported with it (NDSU 2013). The Government of Alberta (GOA) (2018) states “uses of water should be protected, and therefore management of surface waters should endeavor to at least meet the most sensitive water or sediment quality guidelines.”

Nutrient enrichment is a significant issue affecting Alberta water’s bodies (GOA 2018). Excessive amounts of nitrogen and phosphorus can contribute to a depletion of dissolved oxygen and eutrophication (NDSU 2013). Furthermore, this can contribute to human use impairments, outbreaks of toxic cyanobacteria, shifts in species assemblages, and ultimately, a reduction biodiversity (GOA 2018). Allowing CFO run-off to flow into Blueberry Creek is a violation of the AOPA’s Standards and Administration Regulations under section 6(2)(a).

4 SURROUNDING RESIDENTS CONCERNS

Many residents were under the impression that the CFO was closing and would no longer be in operation when they purchased their property. Some of these residents were told this directly from the current CFO operator. As a result of the grandfathering, these residents will suffer direct and indirect effects of the future CFO. The consequences include noise, smell, flies, dust, increased traffic, and accelerated wear and tear on roads and bridges. One resident already expressed concern of currently being affected by the amount of increased traffic, road conditions, noise, and dust from associated business with the CFO. A steep hill on Range Road 5.0, south of Hwy 12, has been and will be beaten and rutted so bad in wet weather that residents will not be able to make the hill in their conventional vehicles. The resident witnessed a cattle liner lose traction and was not able to make the hill. This is especially dangerous for on coming traffic as this hill is rather large and has a major blind spot when driving over the crest.

The Hwy 12 and RR 50 intersection is located on top of a large hill. If there are large trucks constantly turning on and off the highway onto RR 50 the risk of car accidents will likely go up as this is already a semi blind spot when turning. Factor in the dust created by the large truck traffic, the visibility at this intersection will continued to decrease. Unfortunately, the dust and visibility issues are not limited to this intersection. There are other busy intersections and narrow parts of road that with also be visually impacted putting drivers at risk.

The bridge crossing Blueberry Creek is already experiencing wear and tear with regular traffic. This bridge may not sustain much more once the CFO traffic increases. Again, this could pose as a risk to damaging the surround resident’s vehicle if the bridge is not maintained in a regular basis.

Many of the concerned residents fall within the minimum distance separation (MDS) limits set out by the Standards and Administration Regulation of AOPA (2001). Table 2 shows the limits calculated from the Minimum Distance Separation (MDS) & Land Base Calculator on the NRCB’s website. Table 3 and Appendix A.4. show the surrounding residents and the distance between them and the CFO. The first five residents in Table 3 fall within the MDS for a 4800 head CFO under Categories 1 and 2.

Table 2 MDS for Categories 1-4 for 5000 and 4800 Head

MDS Comparison Between 5000 and 4800 Head		
Category	5000 Head	4800 Head
1	684 m (2245 ft)	674 m (2212 ft)
2	913 m (2994 ft)	899 m (2950 ft)
3	1141 m (3742 ft)	1124 m (3687 ft)
4	1825 m (5988 ft)	1798 m (5899 ft)

The Minimum Distance Separation (MDS) & Land Base Calculator from the NRCB website was used for values in the table

Table 3 Distances of Residents Surrounding the CFO

Distances of Residents Surrounding the CFO		
Resident/Legal Description	Property Type	Distance to CFO
Rob McPhee	Permanent RV	956'
	Future Development/Acreage	134'
Clayton Olson	House/Acreage	1188'
15-18-40-04 W5M	House/Acreage	1859'
04-18-40-04 W5M	House/Acreage	2562'
Cyndy Berry	House/Acreage	2758'
01-19-40-04 W5M	House/Acreage	2957'
16-18-40-04 W5M	House/Acreage	3080'

Distances were measured using Google Earth Pro.

Reference to the AOPA Standards and Administration Regulation should be relied on for the MDS.

There are lots of areas around more suited for a CFO of this size rather than in one that has been turning into country residential in the last few years. As well, not by a creek that is being polluted and will be polluted even more.

There are suspicions that the newly determined capacity of the CFO was set to 4800 head rather than the claimed capacity of 5000 to reduce the MDS of the surrounding area. Multiple pens were not included in the CFO area calculations. These pens include A4, A10, A11, and A12 as stated by the inspector in the report. The pen areas and totals can be seen in Table 4. These pens hold livestock and will need cleaning on a regular basis, therefore contributing to the manure collection area.

Table 4 CFO Area Calculations

Estimated Capacity Calculations for 4800 Head			
Area	ft ²	North	South
A1	65298.09	Area (ft2) per head	Area (ft2) per head
A2	114425.96	250	200
A3	73852.38	Area (ft2) for 4800	Area (ft2) for 4800
A4	39611.50	1200000	960000
A5	97873.47		
A6	143361.28		
A7	152787.53		
A8	119481.97		
A9	201660.17		
A10	29589.12		
A11	12665.44		
A12	29687.58		
Total	1080294.49		
Total*	968740.85		

*Total area was calculated for pens used for CFO purposes (highlighted green) as stated by the inspector in the Report.

Values for calculations was taken from Calculator for Determining Livestock Capacity of Operations.

5 SUMMARY

A business that operates for 30+ years must have some sound and legal documentation on what capacity it was truly operating at any given time. Without adequate evidence the concerns surrounding the management and operation of the CFO will always remain.

Blueberry Creek flows into the medicine river which then joins into the Red Deer River, both rivers flow through several notable recreational areas. The environmental concerns go beyond NW 18-40-4 W5M.

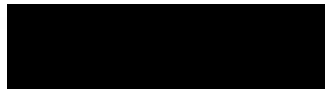
Alberta is a large province with a lot of land. Land with few to none neighbouring people which would be perfect to build a CFO on. Too many people are directly impacted by this grandfathering and this should be taken into serious consideration.

I trust the contents of this report meet your requirements. Please do not hesitate to contact the undersigned at [REDACTED] should you have any questions or require further assistance.

Report prepared by:

Robert McPhee

REM Inspection Ltd.



6 REFERENCES

- Agricultural Operation Practices Act (AOPA). 2001. Standards and Administrative Regulations: Alberta Regulation 267/2001.
- Google Earth. 2020. <https://www.google.com/earth/>
- Government of Alberta (GOA). 2016. Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002. Technical Guideline Agdex 096-81.
- Government of Alberta (GOA). 2018. Environmental Quality Guidelines for Alberta Surface Waters. Water Policy Branch, Alberta Environment and Parks. Edmonton, Alberta.
- Natural Resource Conservation Board (NRCB). 1995. Code of practice for the safe and economic handlings of animal manure. Edmonton, Alberta.
- Natural Resource Conservation Board (NRCB). 2020. 1995 Code of Practice. <https://www.nrcb.ca/public/download/files/97513>
- North Dakota State University (NDSU). 2013. Water Quality of Runoff from Beef Cattle Feedlots. Fargo, North Dakota.

Appendix A Aerial Photos

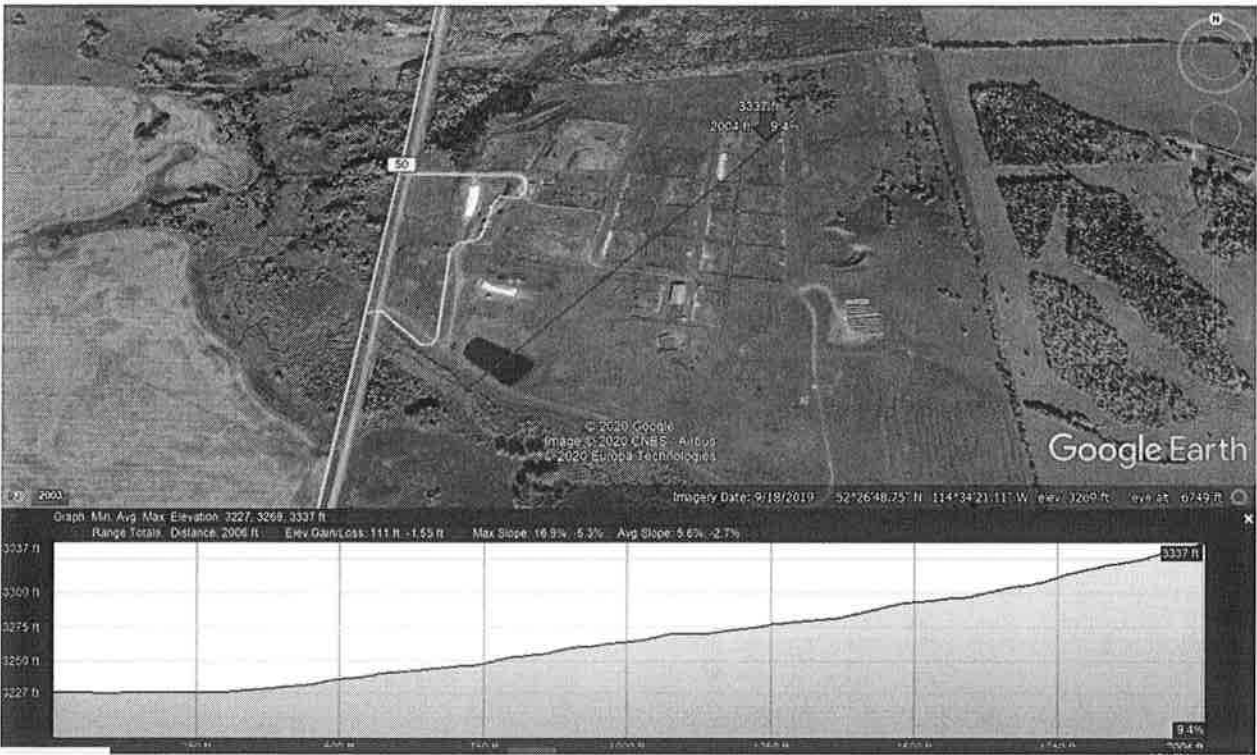
A.1. Aerial image from Google Earth of the CFO during 2003.



A.2. Aerial image from Google Earth of the CFO in 2019.



A.3. Aerial image from Google Earth measure the slope percent from the farthest corner of the CFO to Blueberry Creek.



A.4. Aerial image from Google Earth measuring the distance from the CFO to Category 1 and Category 2 residences.



Appendix B Additional Tables

Table B-1 Estimated Manure Volumes

Estimated Manure Volumes										
Liquid (per animal)										
Species		Daily			Monthly			Yearly		
		gallons	liters	cu. Ft	gallons	liters	cu. Ft	gallons	liters	cu. Ft
Beef	Closed	4	18	364	120	546	19.2	1460	6.6	234
Total for 4800 head		19200	86400	1747200	576000	2620800	92160	7008000	31680	1123200
Solid (per animal)										
Species		Daily			Monthly			Yearly		
		lbs	kgs	cu. Ft	lbs	kgs	cu. Ft.	tons	tonnes	cu. Ft.
Beef	Open Lot	13.1	5.9	0.32	392	178	9.6	2.4	2.1	117
Total for 4800 head		62880	28320	1536	1881600	854400	46080	11520	10080	561600
Beef	Paved	19.8	9	0.43	594	270	12.8	3.6	3.2	156
Total for 4800 head		95040	43200	2064	2851200	1296000	61440	17280	15360	748800

Values and equations used in the estimation of run-off volume for open lots was taken from the Code of Practice for the Safe and Economic Handling of Animal Manures. 1995.

EXHIBIT "B"



www.nrcb.ca

PERMIT CANCELLATIONS UNDER AOPA SECTION 29

Operational Policy 2016-3

Agricultural Operation Practices Act
January 26, 2016

*Updated April 23, 2018 for consistency with the Natural
Resources Conservation Board Administrative
Procedures Regulation*

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1. Introduction

Under section 29(1)(a) of the *Agricultural Operation Practices Act* (AOPA), the NRCB “may cancel” a permit issued (or deemed) under AOPA when the permit holder requests or consents to the cancellation. Under section 29(1)(b) of the act, the NRCB may also cancel an AOPA permit if the confined feeding operation (CFO) or manure storage facility (MSF) to which the permit relates is “abandoned.”¹ (Unless otherwise noted, references below to an “abandoned CFO” apply to both an entire abandoned CFO, and to an abandoned facility at a CFO that is otherwise not abandoned.)

Section 29(2) allows the NRCB to “include terms and conditions” in a cancellation decision. Unless otherwise noted, references below to “permit cancellation decisions” or to “permit cancellations” include decisions regarding what, if any, conditions should accompany an actual cancellation.

Permit cancellations under section 29(1)(b) of the act raise fairness and competing land use issues. For many years after AOPA came into effect in 2002, these issues were not prominent. However, AOPA has now been in effect for more than fifteen years. Because of the passage of time, as well as ongoing attrition, changes of ownership of permitted operations, and increasing development pressures adjacent to many CFOs, the NRCB has begun to be faced with abandonment issues and will likely face them more frequently over time.

AOPA does not state what procedures approval officers should follow when cancelling permits under section 29. In January 2016 the NRCB developed a policy to guide approval officers' use of discretion when considering whether to cancel an AOPA permit. The policy noted that the board of the NRCB (the board chair and board members) were considering adopting procedures for permit cancellations in a new administrative procedures regulation.

In June 2017 the board adopted these new permit cancellation procedures, in section 12 of the new AOPA Administrative Procedures Regulation, AR 106/2017. That section of the regulation sets out circumstances where notice and an opportunity to comment are required.

This revision of the NRCB's “Permit Cancellations under AOPA Section 29” policy removes duplication with the new regulation and ensures that the policy is consistent with the regulation. The parts of the original (2016) policy that were not superseded by the new regulation are unchanged in this revision.

Pursuant to section 12 of AOPA, the NRCB's board members have delegated the NRCB's permit cancellation functions to NRCB approval officers. Therefore, this policy refers to approval officers rather than to NRCB board members. NRCB inspectors are also appointed as approval officers, so all references to “approval officers” also include inspectors.

While this policy should be followed in most instances, approval officers have discretion to modify the policy when its strict application would be clearly unfair, or in other necessary and appropriate circumstances.

1. Subsection 29(1)(a.1) allows the NRCB to cancel permits in a third circumstance—when two or more parties become joint owners of a CFO and the CFO's permit essentially needs to be split among those owners. This circumstance rarely arises and does not require the policy guidance provided below. Therefore, this policy applies only to permit cancellations under the two circumstances listed in the text above.

1.1 When abandonment needs to be considered

There are several circumstances when approval officers may need to consider whether to cancel a permit on abandonment grounds under section 29(1)(b). Examples of these circumstances are listed below. Under these or other relevant circumstances, approval officers have broad discretion to decide whether to cancel a permit under section 29(1)(b), and will exercise their discretion in a way that best serves AOPA's underlying purposes.

Circumstances when abandonment may need to be considered include:

- An NRCB inspector is conducting a routine permit compliance inspection and notices that the CFO is no longer being used. Further investigation shows that the owner does not intend to resume using the CFO to confine and feed livestock.
- The NRCB receives a complaint or query from an adjacent landowner or developer of adjacent land, who is questioning the municipal development restrictions that result from the existence of a permit for an abandoned CFO.
- An owner is planning to sell their land and requests confirmation from an approval officer that their grandfathered or NRCB-issued AOPA permit is valid, or, a new purchaser seeks to renovate or upgrade and then resume using CFO facilities that have not been used for livestock purposes for many years.
- An owner obtains an AOPA permit, or has a deemed municipal permit, for a specific facility, but has not constructed the facility within the construction deadline specified in the permit and has not applied to extend the deadline. For purposes of section 29(1)(b), the approval officer may consider a facility to be "abandoned" even though it was never constructed in the first place. The unconstructed facility scenario is addressed in the NRCB's construction deadline policy (Operational Policy 2015-1). That policy applies concurrently with this policy, with respect to unconstructed facilities.

The preceding scenarios might result in a permit cancellation decision. However, under section 29(1)(b) of AOPA, the approval officer has discretion to determine whether it would be appropriate to cancel the permit under these circumstances. The approval officer must also consider the factors discussed in part 3 below.

1.2 CFOs with both abandoned facilities and facilities that have not been abandoned

In addition to the four scenarios in part 1.1 above, abandonment also needs to be considered when a CFO has a single permit for several facilities and one or more of the facilities were abandoned or never constructed, or were constructed and are not being used but have *not* been abandoned.

In this case, the approval officer should not cancel the CFO's entire permit. Rather, the approval officer should consider whether the permit needs to be amended to exclude use of the abandoned facilities. (This may require reducing the CFO's permitted livestock capacity.) This amendment must be carried out under the approval officer's authority to amend permits on their own motion, under section 23 of AOPA. (See operational policies 2016-2: *Approval Officer Amendments under Section 23 of AOPA* and 2015-1: *Construction Deadlines*.)

2. Determining when a CFO has been abandoned and when it is appropriate to cancel a permit for an abandoned CFO

Environmental and natural resource regulatory statutes commonly include provisions for cancelling permits for abandoned operations. Consistent with this practice, and as noted above, section 29(1)(b) of AOPA allows approval officers to cancel or amend a permit for an abandoned CFO or CFO facility. (As stated in part 1 above, unless otherwise noted, "abandoned CFO" applies both to an entire abandoned CFO and to an abandoned facility or facilities at a CFO that has other facilities that are not abandoned.) Under that provision, approval officers have discretion to determine when a permitted CFO has been abandoned and, if so, whether it is appropriate to cancel the CFO's permit.

2.1 Deciding whether a CFO has been abandoned

AOPA does not define "abandoned" (or "abandonment"). Without a legislative definition, the NRCB uses the term's common meaning, viewed in light of AOPA's general purposes, and the legislature's intent when it adopted section 29(1)(b).

2.1.1 Criteria to consider

There are several common definitions of abandonment, which vary somewhat depending on the context. One relevant definition is to "cease from maintaining, practicing, or using."² Another definition focuses on *intent*, in the context of property or some other thing: "give up with the intent of never again claiming a right or interest in."³

The NRCB believes that both of these definitions are generally relevant and useful to consider when deciding whether a permitted CFO has been abandoned.

When deciding whether a CFO has been abandoned, approval officers will typically consider the following factors (other factors that may be relevant to the specific CFO may also be considered), in the context of the definitions of abandonment provided above:

- the CFO's current use, if any
- the CFO's current condition
- what, if any, steps are being taken to keep the CFO's facilities in a condition such that they could resume being used for livestock management or manure storage without major upgrades or renovations
- when the CFO stopped being used to manage livestock or store livestock manure, and the owner's reason for that stoppage
- whether the CFO has changed ownership during the period of disuse and, if so, whether the new owner purchased the CFO in reliance on the seller's promise, or on some other basis for reasonably expecting, that the CFO was permitted under AOPA

2. Merriam-Webster Dictionary, online: merriam-webster.com/dictionary/abandon. The Oxford Dictionary has similar definitions: "cease to support or look after (someone); desert," or to "give up completely (a practice or a course of action)." Online: oxforddictionaries.com/definition/english/abandon?q=abandon.

3. Merriam-Webster Dictionary, online: merriam-webster.com/dictionary/abandon.

- the owner's reason for ceasing or postponing use of the permitted CFO and the owner's intent with respect to future use of the CFO
- the value of the CFO facilities (independent of their permitted status) and the cost of reconstructing them, if reconstruction is needed

2.1.2 Considerations regarding an owner's intent

If a CFO owner has stopped using the CFO, approval officers will consider the owner's *intent* regarding future use when deciding whether the CFO has been abandoned.

The NRCB understands that a CFO owner may stop using a facility for a period of time for a number of reasons. These include commodity market conditions, labour market conditions, feed costs, or the availability of feed. A recent example is a federal government program that subsidized hog producers to stop production for a three year period. These types of production lapses do not reflect an intention to abandon a CFO, and the NRCB does not view these kinds of lapses as grounds to cancel a permit.

When considering an owner's intent, approval officers need to distinguish between the owner's intent to operate a CFO in the future, and their intent to simply retain the CFO's permit.

The reason for this distinction stems from comparing the permit cancellation provisions in sections 29(1)(a) and 29(1)(b) of AOPA. Section 29(1)(a) allows the permit to be cancelled when the permit holder "requests or consents to" the cancellation. Section 29(1)(b) does not refer to the permit holder's "request" for or "consent" to a cancellation.

The differences in these two sections strongly imply that the legislature intended to give the NRCB authority to cancel permits for unused permitted facilities *even when the facilities' owners do not want to relinquish their permits*. Thus, an owner's intent to retain their permit for an unused facility, solely for the purpose of holding the permit, is less important for determining whether the facility has been abandoned, than whether they intend to actually start re-using the facility.

2.1.3 Burden of proof

As noted in the NRCB's approval policy, CFO operators normally have the burden of proving that they are entitled to an AOPA permit or permit amendment.

However, for permit cancellations under section 29(1)(b) of AOPA, the NRCB interprets the act as placing the overall burden of proof on approval officers to find that a permitted facility has been abandoned.

2.2 Whether to cancel a permit for an abandoned CFO

As previously noted, section 29(1)(b) of AOPA gives an approval officer discretion to cancel a permit for a CFO if the approval officer finds that the CFO has been abandoned. In other words, even when an approval officer concludes that a CFO has been abandoned, the approval officer is not *required* to cancel the operation's permit.

To decide whether an abandoned CFO's permit should be cancelled, approval officers will consider the factors outlined in part 3.1, above, in light of the purpose statement for AOPA:

ensure that the province's livestock industry can grow to meet the opportunities presented by local and world markets in an environmentally sustainable manner.⁴

AOPA also respects the land use planning decisions of individual municipalities, while providing a uniform, province-wide level of surface and groundwater protection from manure-related risks and minimum setbacks to minimize nuisance impacts on neighbours. Permit cancellations may serve one or more of these purposes, in certain circumstances.

Approval officers will assess the appropriateness of cancelling a permit on a case by case basis, and only when it is fair and reasonable to cancel the permit, considering all available tools for achieving AP{A's objectives.

3. The notice process for permit cancellation decisions

The following notice procedures apply to permit cancellation decisions under section 29 of AOPA and section 12 of the AOPA Administrative Procedures Regulation. These procedures apply only when an approval officer is *cancelling* a permit because an *entire* confined feeding operation has been abandoned.

If only *part* of a CFO has been abandoned (or one or more of several permitted facilities have not been constructed), the approval officer will *amend* rather than cancelling the CFO's permit (see the NRCB's construction deadline policy: Operational Policy 2015-1.) The approval officer will follow the process for approval officer amendments under section 23 of the act and section 26 of the AOPA Administrative Procedures Regulation.

3.1 Notice before a cancellation decision

3.1.1 Cancellations on request or by consent of the permit holder

Subsection 12(1)(a) of the AOPA Administrative Procedures Regulation states that an approval officer may cancel a permit under section 29(1)(a) of the act—that is, with the permit holder's consent—"without notice to any party."

As a practical matter, when a permit holder requests or consents to a permit cancellation, the permit holder is aware of the cancellation. In other words, the permit holder has effectively been given notice of the cancellation. The permit holder's consent means that they have also had a chance to provide input.

If an approval officer is considering including *conditions* in a cancellation that was requested or consented to by the permit holder, the approval officer will advise the permit holder of the conditions being considered and will solicit the permit holder's input on those conditions.

Although the approval officer is not required to notify and consult with the municipality or other parties, the approval officer may do so, at their discretion.

4. This purpose is reflected in the 2006 Memorandum of Understanding between the NRCB and the ministers of Alberta Agriculture and Rural Development and Alberta Sustainable Resource Development. See also part 1 of Operational Policy 2016- 7: *Approvals*.

3.1.2 Cancellations without the consent of the permit holder

Section 12 of the Procedures Regulation prescribes notice and comment procedures when an approval officer is considering cancelling a permit for an abandoned CFO under section 29(1)(b) of the act—that is, without the permit holder's consent. Those procedures include giving the permit holder a chance to provide a written objection to a proposed permit cancellation and then notifying and giving other affected parties a chance to provide a written response to the permit holder's objection.

For some CFOs that appear to be abandoned, the approval officer may have difficulty identifying or locating all of the permit holders. In these circumstances, the approval officer may cancel a permit after the approval officer has made reasonable efforts to locate and notify the permit holder(s). (In some cases, banks or other lenders or creditors may qualify as permit holders even though they are not named as such on a permit.)

3.2 Notice after a cancellation decision

Under subsection (6) of the AOPA Administrative Procedures Regulation, the approval officer must provide the permit holder with a copy of the final cancellation decision. The approval officer must also provide a copy of the decision to any other party that filed a written response to the permit holder's written objection to the proposed cancellation.

In addition to notifying those parties, approval officers may, at their discretion, notify any other parties who were notified of the proposed cancellation.

Subsection 12(5) of the procedures regulation addresses the *content* of the final cancellation decision. Subsection 12(5) requires the decision to include the approval officer's reasons for the cancellation decision. The decision must also explain how the approval officer determined which parties that responded to the pre-decision notice were "directly affected."

In addition to providing the content required by the regulation, the decision (or notice of the decision) must also:

- state where copies of the original permit and permit cancellation record can be obtained,
- state that any directly affected party receiving notice is entitled to request that the NRCB's board members review the permit cancellation decision (including any cancellation terms or conditions),
- state that any party deemed not to be directly affected is entitled to request that the NRCB's board members review that determination, and
- explain all other relevant information required to submit a request for review. (See Appendix: Approval officer decision letter—excerpt regarding board review.)

Appendix: Approval officer decision letter—excerpt regarding board review

Under the *Agricultural Operation Practices Act*, you have the right to request that the Natural Resources Conservation Board (the Board) review this decision. To request a Board review, you must file a written application. Requests for Board review must contain:

- a) a clear and concise statement of the facts relevant to the application
- b) the grounds on which the application is made
- c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction
- d) a brief description of the remedy sought
- e) the applicant's name, address in Alberta, telephone number, fax number and, if available, e-mail address
- f) if the applicant has a representative, the representative's name, address in Alberta, telephone number, fax number and, if available, e-mail address.

Standard forms for requesting a Board review are available on our website at: www.nrcb.ca or may be obtained by contacting Board Review staff through the Government RITE line toll-free at 310-0000 and dialing insert phone number of current board reviews manager. Completed requests for Board review should be sent to the attention of: Insert name, Manager, Board Reviews, office address, phone number and fax number of current board reviews manager.

If you decide to request a Board review, you must submit your request by date (15 working days from issuance of decision plus 5 for mailing).

For more information regarding the Board's review process, please contact name of current board reviews manger at phone number; or by email: insert email address.

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 F 780-427-0607

Calgary Office

19th Floor, Centennial Place
250 - 5 Street SW
Calgary AB T2P 0R4
T 403-297-8269 F 403-662-3994

Lethbridge Office

Agriculture Centre
100, 5401 - 1 Avenue S
Lethbridge AB T1J 4V6
T 403-381-5166 F 403-381-5806

Morinville Office

Provincial Building
201, 10008 - 107 Street
Morinville AB T8R 1L3
T 780-939-1212 F 780-939-3194

Red Deer Office

Provincial Building
303, 4920 - 51 Street
Red Deer AB T4N 6K8
T 403-340-5241 F 403-340-5599

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.

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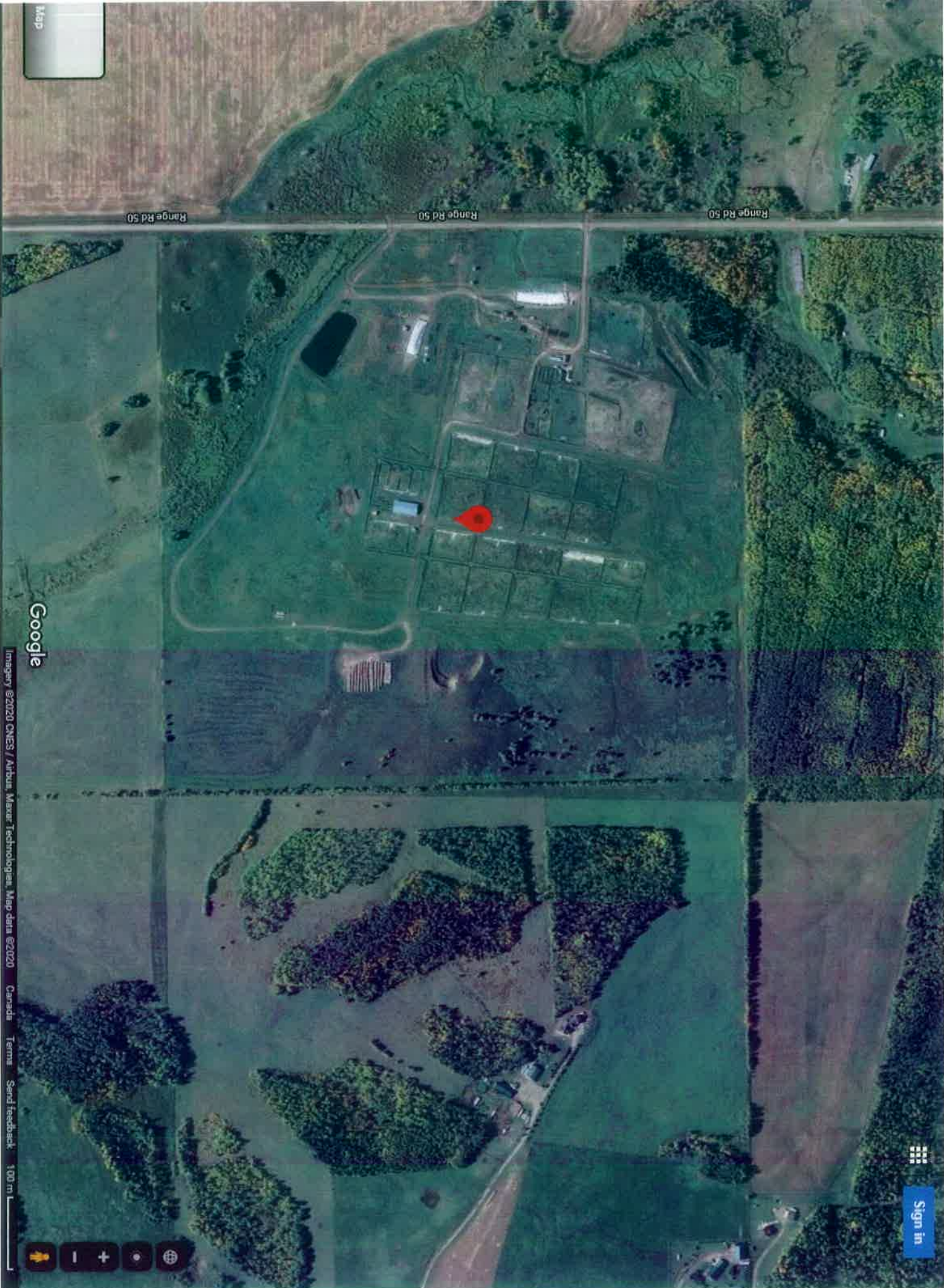


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