

Decision Summary LA20001

This document summarizes my reasons for issuing Approval LA20001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20001. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

1. Background

On January 3, 2020, P & H Wessels Farms Ltd. (Wessels) submitted a Part 1 application to the NRCB to expand an existing beef CFO. A Part 2 application was submitted on January 28, 2020. On February 19, 2020, the application was deemed complete.

Wessels Farms and Beekman Farms have an existing feedlot, permitted under Approval LA19004 located on NW 33-7-26 W4M, directly south of the proposed feedlot on SW 4-8-26 W4M. Because the feedlot on NW 33-7-26 W4M is on a separate legal land location, has different co-permit holders and because it can be operated as a separate CFO, this application is being treated as a new CFO. It will therefore be issued a separate permit number. However, under AOPA because the two feedlots are operated by the same owner and located on adjacent land parcels, they are treated as one for the purpose of MDS. Additionally because of the location and current operation of the adjacent feedlot I also considered the land base required for manure management to be as if the feedlots are operated as a single entity.

The current facilities at the proposed CFO site on SW 4-8-26 W4M have historically been used as a seasonal feeding and bedding site. The application proposes to convert most of the seasonal feeding and bedding site to a CFO by:

- Constructing six pens – total dimensions 140 m x 90 m
- Constructing a synthetically lined runoff control catch basin – 40 m x 21 m x 2.5 m deep
- Permitting 2,500 beef finishers at this site

The new CFO pens are proposed to be constructed on most of the same footprint as the existing seasonal feeding and bedding site and utilize a naturally occurring protective layer to protect groundwater. The runoff control catch basin will be located to the west of the proposed pens, have a synthetic liner to protect groundwater and be sized in accordance with AOPA requirements.

The applicant indicated that they would like to continue to utilize the existing seasonal pens which are located outside and to the north of the proposed CFO as seasonal feeding facilities. Under NRCB policy and as identified in the “Distinguishing between Confined Feeding Operations and Seasonal Feeding & Bedding Sites (for Cattle Operations)” Fact Sheet, this is only allowed under specific circumstances. Given that the existing seasonal feeding pens cannot meet all of the required factors when assessing seasonal facilities next to a CFO, these facilities will not be allowed to be used as seasonal feeding pens. A condition will be added to the permit to reflect this.

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The proposed CFO is located at SW 4-8-26 W4M in the MD of Willow Creek, roughly 13 km southwest of Fort Macleod. The terrain is undulating and slopes gently to the north towards an ephemeral drainage approximately 150 m away.

There are no existing permitted CFO facilities on SW4-8-26-W4.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct the applicant to notify) all parties that are “affected” by an approval application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. The MD of Willow Creek is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Macleod Gazette on February 19, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to the Municipal District (MD) of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (EP), and Alberta Transportation (AT). Thirty seven courtesy letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

Responses were received from Alberta Transportation, Alberta Environment and Parks, Alberta Health Services and the MD of Willow Creek.

Ms. Cindy Chisholm, the manager of planning and development with the MD of Willow Creek, provided a written response, dated March 11, 2020, on behalf of the MD of Willow Creek. As noted in section 2, the MD of Willow Creek is a directly affected party.

Her response indicated that the MD had no comments regarding the proposed application and confirmed that the lands are not affected by any other planning documents. She also identified that there are no known environmental concerns related to the proposed site. The application's consistency with the MD of Willow Creek's municipal development plan, is addressed in Appendix A, attached.

Ms. Chisholm also identified the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that if the structures do not meet the setbacks, that a variance or waiver will be required to be obtained from the MD.

Mr. Jeff Gutsell, a hydrogeologist with EP, responded noting that the proposed site has three water wells according to the EP database, with no water licenses attached to them. He also noted that the property is not in an irrigation district and therefore would not be able to receive water from an irrigation district. This information was provided to the applicant who was also informed that they would need to assure that they had licensed water for their proposed CFO.

Mr. Michael Swystun, an executive officer / public health inspector with AHS, raised several concerns relating to the proposed CFO. These included nitrate levels in shallow groundwater, questions with respect to the hydraulic conductivity testing, water licensing, dust from the proposed facilities and potential nuisances. These concerns are addressed Appendix C, attached.

Ms. Leah Olsen, a development planning technologist with AT, responded noting that a permit from AT is not required for this proposed CFO.

4. Responses from other directly affected parties

The NRCB received five responses from parties.

All of the parties who submitted responses own or reside on land within the 1.5 mile radius for affected persons. Because of their location within this radius, they are presumed to be directly affected by the application. See Appendix B.

The directly affected parties raised concerns regarding:

- Groundwater quality, quantity and licensing
- Surface water contamination
- Soil hydraulic conductivity testing
- Runoff control catch basin design and capacity
- Manure storage, spreading and cumulative effects
- Road use

- Dead animal disposal
- Odours
- Fire potential
- Weeds
- Property values
- Potential to change to a hog operation
- Enforcement of AOPA regulations

These concerns are addressed in Appendix C.

5. Environmental risk screening of proposed facilities

As part of my review of this application, the risk to surface water and groundwater posed by the CFO's proposed manure storage facilities was assessed. The NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The tool provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Guides on the NRCB website at www.nrcb.ca.) I enlisted the help of Scott Cunningham, an NRCB Environmental Specialist to carry out the risk screening for the proposed CFO.

Under the risk screening tool, both the proposed CFO pens and runoff control catch basin were determined to pose a low potential risk to groundwater and surface water.

6. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.

In addition, the proposed CFO is consistent with the land use provisions of the MD of Willow Creek's municipal development plan and with the MD of Willow Creek's land use bylaw. (See Appendix A for a more detailed discussion of the MD's planning requirements.)

With respect to the act's technical requirements, the proposed expansion

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

At the time of this decision it is unclear whether or not sufficient licensed water will be available. In communication with Mr. Gutsell from EP, I established that Wessels are in the process of applying for a water license for the CFO. Wessels are reminded that they are responsible to ensure that access to sufficient licensed water is available prior to populating any facilities.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application

In addition, I assessed the effects of the proposed CFO on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. As set out in Appendix C, I have considered the concerns raised by the directly affected parties, and in my view, they have been addressed and mitigated by the application and permit conditions. I also determined that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

7. Terms and conditions

Approval LA20001 specifies the new permitted livestock capacity as 2,000 beef finishers and permits the construction of a synthetically lined runoff control catch basin and six feedlot pens.

Approval LA20001 also contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval LA20001 includes conditions that:

- Set a deadline of December 31, 2022 for the approved construction to be completed
- Require a leakage detection system be installed for the runoff control catch basin
- Require submission of an engineer's completion report to verify the construction and installation of the synthetic liner and leakage detection system for the runoff control catch basin
- Require all CFO facilities to meet the municipal property line and road setback requirements
- Prohibit Wessels from placing manure or livestock in the feedlot pens and from allowing runoff to enter the catch basin until the facilities have been inspected by the NRCB following their construction.
- Prohibit Wessels from using the seasonal feeding pens located outside of the CFO footprint to confine livestock and require manure to be removed within one year of the CFO pens being completed.

For an explanation of the reasons for these conditions, see Appendix D.

8. Conclusion

Approval LA20001 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20001.

May 29, 2020

(Original signed)
Andy Cumming
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by referral agencies and directly affected parties
- D. Explanation of conditions in Approval LA20001

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable MD development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”)

P & H Wessel Farms Ltd. is located in the MD of Willow Creek and is therefore subject to that district’s MDP. The MD of Willow Creek adopted the latest revision to this plan on June 14, 2017, under Bylaw #1765.

As relevant here, section 9.2 of the MDP directs the NRCB to consider six provisions. These are quoted below (in italics); each one is followed by my discussion of how the provision related to this application. The requested considerations are:

(a) The cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects. For this reason, I do not consider the MDP provision to be relevant to my MDP consistency determination. In any case, the application meets the AOPA requirements for minimum distance separation which is intended to mitigate nuisance impacts of CFO’s such as odours. Additionally, all CFO operators are required to meet AOPA nutrient loading limits for manure spreading which further mitigates the potential cumulative effects of a CFO.

(b) Environmentally significant areas contained in the MD of Willow Creek: Environmentally Significant Areas in the Oldman River Region report

P & H Wessel Farms Ltd.’s proposed CFO is not within any areas designated “environmentally significant” in the referenced report.

(c) Providing notice to adjacent landowners including applications for registration or authorization

This is likely not a “land use provision” because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, as explained above, the NRCB met the notification requirements of AOPA. The NRCB emailed referral letters and a copy of the complete application to the MD of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (EP) and Alberta Transportation. In addition, 37 courtesy letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius of 1.5 miles. (See also Operational Policy 2016-8: *Approvals*, part 6).

(d) Applying minimum distance separation calculations to all country residential development

I interpret “minimum distance separation” as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the MDS for P & H Wessels Farms Ltd.’s CFO and the application meets the AOPA MDS requirements.

(e) Restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD; and

(f) Restricting development in any wetland or riparian area

As discussed in Technical Document LA20001, P & H Wessels Farms Ltd.’s new CFO meets the AOPA setbacks to common bodies of water and is not located in a known flood plain. The proposed CFO facility is also not located in a wetland or riparian area. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Willow Creek’s MDP. The district’s response supports my conclusion.

In my view, the Land Use Bylaw is clearly incorporated in the MDP in section 15.5:

The Development Authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore, I also considered the application’s consistency with this document. Under the MD of Willow Creek’s Land Use Bylaw (#1743), the subject land is currently zoned as Rural General. CFOs are not listed as prohibited, permitted, or discretionary land use under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists “intensive livestock operations” (ILOs), defined essentially as CFOs below AOPA’s permit thresholds, as a discretionary use within areas zoned Rural General. In addition, there is a provision in the Rural General part that limits parcel sizes for CFOs. If the municipality had really intended to outlaw CFOs in this district, this lot size restriction would be pointless.

Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipality’s recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs.

As for the lot size restriction, section 2(d) of the Rural General part of the bylaw states that the “parcel size shall remain the same size for which the development approval was originally issued.” Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipality, and are not intended to apply to CFOs above AOPA’s permit thresholds. Whatever the case, the proposed CFO meets this restriction.

A condition requiring setbacks as set out in the land use bylaw for all developments is included in the permit. Because of this I determined that this requirement is met. For these reasons, I conclude that the application is not inconsistent with the land use bylaw.

APPENDIX B: Determining directly affected party status

The following individuals own or reside on land within the 1.5 mile “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Robert Rippin and Niesje Vanden Dool
- Wendy and John McKinnon
- Jadon and Jana Sharratt
- Edith Evans
- Stasha Donahue

Therefore, under NRCB policy, these individuals are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

APPENDIX C: Concerns raised by referral agencies and directly affected parties

1. Referral agencies

a. Alberta Health Services (AHS)

In a letter dated March 17, 2020, Michael Swystun, an executive officer / public health inspector with AHS, raised the following concerns:

That CFO's may be contributing to nitrate levels in groundwater and that water well used within 2 km of the proposed CFO site are showing high levels of nitrate.

It is noted that this proposed CFO has demonstrated that the pens have a naturally occurring protective layer which meets the groundwater protection requirements set out in AOPA. Additionally the catch basin is proposed to have a synthetic liner which will meet the AOPA groundwater protection requirements. Because of the naturally occurring protective layer under the pens it is unlikely that the seasonal feeding site would have posed a risk to groundwater.

The adjacent CFO permitted under Approval LA19004 is currently under construction.

Both of these CFO's will be constructed in accordance with AOPA standards which include requirements to protect both groundwater and surface water.

A recent study on the source of nitrates in groundwater in this area was inconclusive. It did identify that nitrate could come from many sources including natural sources, sewage and manure. CFO's are required to apply manure to cropped land so that nitrate loading limits are not exceeded. This helps to ensure that crops can use the nutrients in the manure and that it does not migrate into the groundwater.

It is noted that the Canadian Drinking Water guidelines set the maximum allowable concentration of nitrate in water at 10mg/l. Anybody whose potable water sources has high levels of nitrate should contact AHS directly to identify what they need to do in order to be able to use that water.

That the soil permeability testing by Wood Canada was not conducted properly

The soil permeability testing done for the proposed site was carried out by qualified personnel under the supervision of a professional engineer. Professional Engineers are bound by the codes of practice and conduct of the professional organization to which they belong. Any allegation of wrongdoing should be raised directly with professional or their professional organization.

That the soils under the proposed pens do not provide sufficient protection for groundwater.

The Wood engineering report has identified that the soils under the proposed pens are suitable to be used as a naturally occurring protective layer as set out in the AOPA regulations. It is assumed that the groundwater protection requirements in the legislation provide a suitable level of protection for groundwater in the province. Since the proposed CFO meets or exceeds these requirements it is assumed that sufficient groundwater protection is provided.

That there is no manure storage area identified on the application and that manure is currently being stored on NE-32-7-26-W4

AOPA requires that CFO's are able to store a minimum of 9 months of manure production. For feedlots, this manure can be stored within the livestock pens. A separate manure storage is therefore not a requirement under AOPA. AOPA also allows manure to be stored on short term manure storage sites for a maximum of 7 months over a 3 year period. Short term manure storage sites are not required to be permitted, but must meet certain requirements designed to protect both surface and groundwater and minimize nuisance. Should a party have concerns with respect to the application or storage of manure they can contact the NRCB's 24 hour reporting line by calling 1-866-383-6722 and an inspector will follow up on their concern.

That existing water licenses are not sufficient for what is being proposed.

The applicant has been informed that they require additional licensed water for their proposed CFO. I understand that they have already been in contact with EP regarding securing sufficient licensed water for their CFO. Water licensing falls under the jurisdiction of EP, therefore Wessels have been informed that they need to work with EP to ensure that they obtain access to sufficient licensed water.

That a condition regarding dust control be added as a condition of operation.

No specific concern regarding dust from this CFO was identified by AHS, rather it was a general statement that they have a history of dust complaints related to CFO's. The Standards and Administration Regulation under AOPA allows an approval officer, inspector or the Board to have the owner or operator of a CFO implement a dust control program should it be determined to be necessary. Should a party have concerns with respect to dust at a CFO they can contact the NRCB's 24 hour response line by calling 1-866-383-6722 and an inspector will follow up on the concern.

That the CFO applicant be required to conduct further groundwater testing to determine the source of the high nitrates in the area.

A recent multi-agency study led by AHS carried out in this area to look at the source of nitrate in groundwater was unable to pinpoint the source of the nitrates. It is improbable that a study carried out by the CFO applicant would be able to achieve what the multi-agency study was not able to achieve. I respectfully decline to make this a requirement. Additionally, the proposed CFO meets or exceeds the groundwater protection requirements in AOPA.

That water wells within 300m of the CFO be monitored annually for nitrates.

The environmental risk screening carried out for the proposed CFO indicated that the proposed CFO facilities pose a low risk to both groundwater and surface water. There is evidence that the water in the area already has high nitrates. The applicant has been advised that it is in their best interest to have any water used for domestic purposes tested on a regular basis. The liners for the proposed facilities meet AOPA requirements for groundwater protection. Additionally a leakage detection system is required to be installed under the synthetic liner in the catch basin. Because of this I am not going to impose a blanket water well testing requirement for this CFO.

b. Alberta Environment and Parks (EP)

In an email dated March 16, 2020, Mr. Jeff Gutsell, a hydrogeologist with EP, stated that according to EP records that additional licensed water will be required for this CFO.

The applicant was forwarded the information and has been advised to contact EP to ensure that they are able to secure sufficient licensed water for their CFO. They were also informed that it is their responsibility to obtain sufficient licensed water for their CFO and that the issuance of an AOPA permit does not guarantee that they will be able to obtain a water license.

2. Concerns from directly affected parties

The directly affected parties raised the following concerns:

Groundwater quality, quantity and licensing

Protecting both surface and groundwater is an important part of the AOPA. The legislation contains specific requirements designed to protect both groundwater and surface water. This application has demonstrated that it can meet or exceed these surface and groundwater requirements. In addition a condition has been included requiring that a professional engineer sign off on the construction of the catch basin and installation of its synthetic liner.

EP is responsible under the Water Act to administer water licenses in the province. They identified that additional licensed water is required for the proposed CFO. The applicant has indicated that they are working with EP to obtain additional licensed water.

Surface water contamination

Surface water runoff from the proposed feedlot pens will be controlled using a runoff control catch basin with a synthetic liner. The CFO operator is required to manage the catch basin so that it does not overflow and allow potentially contaminated water to enter surface water.

When manure is applied to cultivated land, manure is not allowed to leave the land onto which it is applied and setbacks to residences, property lines and water bodies are required to be met.

Should a party have concerns with respect to the application of manure or contamination of surface water, they can contact the NRCB's 24 hour reporting line by calling 1-866-383-6722 and an inspector will follow up on the concern.

Soil hydraulic conductivity testing

The soil hydraulic conductivity testing done for the proposed site was carried out by qualified personnel under the supervision of a professional engineer. As a professional they are bound by the codes of practice and conduct of the professional organization to which they belong. Any allegation of wrongdoing should be raised with professional or their professional organization.

Runoff control catch basin design and capacity

AOPA requires that a runoff control catch basin be sized so that it can accommodate a one day rainfall that has a one in 30 year probability plus a 0.5 m freeboard. The closest place for which this information is available is Fort Macleod. The runoff from the feedlot

pens was calculated using the Fort Macleod information. Additionally, CFO operators are required to manage runoff that may be contaminated with manure so that it does not leave their property or enter a common body of water.

The runoff control catch basin is proposed to be constructed using a synthetic liner in order to meet the AOPA groundwater protection requirements.

Manure storage, spreading and cumulative effects

AOPA imposes nitrogen and salinity limits when manure is land applied. The loading limits are dependent on the soil type and depth to groundwater and are cumulative limits irrespective of the source of the nutrient. AOPA requires operators to keep records of the land on which they apply manure and nutrient loading records for this land. The cumulative effect of nutrient loading on land is dealt with by this requirement.

AOPA allows manure to be stored in short term manure storages which do not require a permit. Short term manure storages must meet requirements to protect surface and groundwater, setbacks to residences, and may not be used for more than seven months over a three year period.

Road use

Municipalities are responsible for roads within their jurisdiction. The MD of Willow Creek did not raise any concerns with respect to road use. Alberta transportation was contacted as part of the referral process and did not raise any concerns related to the proposed development.

Dead animal disposal

Dead animal disposal is administered by Alberta Agriculture and Forestry's Regulatory Services. The disposal of dead animal regulation sets out the requirements that must be followed when disposing of dead animals. The CFO operator is required to adhere to the requirements in this regulation when disposing of dead animals.

Odours

The minimum distance separation (MDS) requirement in AOPA provides a proxy for dealing with nuisance impacts, including odours, from CFO's. The MDS is measured from the closest point of a manure storage or collection facility at a CFO to the outside wall of a neighbouring residence. As set out in the technical document, the CFO meets the AOPA MDS requirement. Despite the MDS it is expected that neighbours' to a CFO will likely still experience odours from a CFO from time to time, including when manure is land applied.

Should a party have concerns with respect to inappropriate odours from a CFO, they can contact the NRCB's 24 hour reporting line by calling 1-866-383-6722 and an inspector will follow up on the concern.

Fire potential

AOPA does not have any requirements related to the potential for fires at a CFO. The MD of Willow Creek does have requirements that deal with fire prevention / protection within the municipality. All parties are expected to abide by these requirements. It was recommended that the CFO operator contact the MD of Willow Creek and ensure that they are familiar with these requirements.

Weeds

Noxious weeds are covered under the *Weed Control Act* which is administered by the municipality.

Property values

In several review decisions, the NRCB's board members have stated that concerns regarding effects on land or property values are "not a subject for [the board's] review under AOPA" or for approval officers' consideration of permit applications. According to the board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (RFR 2018-05 *Hutterian Brethren of Summerland* at p 9). As explained in Appendix A above, P & H Wessels Farms Ltd.'s application is consistent with the land use provisions of the district's MDP and LUB.

Potential to change to a hog operation

Concern was raised that the feedlot may become a hog CFO at some point in the future. AOPA requires CFO permit holders to make an application if they wish to change the category of livestock (i.e. change from beef finishers to hogs) at their CFO. If this was to occur, AOPA requires that a new permit application be made which would go through a formal public notification process. Members of the public would be able to provide their input to the application should that occur.

Enforcement of AOPA regulations

A concern was raised with respect to the enforcement of AOPA requirements. During the application stage an approval officer will only issue a permit if an application can demonstrate that the technical requirements set out in the regulations have been met. The approval officer can include construction and/or ongoing conditions on a permit. Construction conditions must be met prior to a CFO being allowed to populate. Ongoing conditions are followed up on and monitored based on the frequency and requirements in the condition.

Should a party have concerns with respect to a CFO, they can contact the NRCB's 24 hour reporting line by calling 1-866-383-6722 and an inspector will follow up on the concern.

APPENDIX D: Explanation of conditions in Approval LA20001

a. Leak detection system

There are concerns with high levels of nitrate in shallow groundwater in the area. The proposed synthetic liner in the catch basin can meet AOPA groundwater protection requirements, however, if this liner fails then there is a possibility that the shallow groundwater may become contaminated. A condition is therefore being included which requires the installation and monitoring of a leak detection system to monitor the performance of the synthetic liner used for the catch basin. This system must be designed and installed to detect failures in the synthetically lined catch basin, and must be maintained in operable and accessible condition.

b. Leakage detection monitoring

As noted in a. above, a condition is included requiring ongoing monitoring of the leak detection system, and to immediately contact the NRCB if leachate is detected in the system.

c. Construction above the water table

Under sections 9(2) and (3) of AOPA's Standards and Administration Regulation, the bottom of a manure storage facility (MSF) must be at least one metre above the water table "at the time of construction."

Because the depth of the water table can vary over time, the water table depth shown in the drilling well logs is not necessarily the depth of the water table at the time of construction. To ensure that this AOPA requirement is met, a condition is included requiring the applicant to cease construction and notify the NRCB immediately if the water table is encountered during construction of the catch basin.

d. Construction deadline

P & H Wessels Farms Ltd. proposes to complete construction of the proposed feedlot pens and catch basin by December 31, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2022 is included as a condition in Approval LA20001.

e. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA20001 includes conditions requiring:

- a completion report, stamped by a qualified engineer, certifying that the synthetically lined catch basin
 - has been constructed in accordance with the proposed design.
 - is constructed in the approved location;
 - liner material used for the synthetically lined catch basin is 40 mil HDPE textured geomembrane (as proposed in the application) or an equivalent liner;
 - size, including depth below grade;
 - liner is installed in accordance with the liner manufacturer's requirements,

- including under membrane surface preparation and proper sealing at all seams, and
- that the approved leakage detection system was installed in accordance with the manufacturer's requirements

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA20001 includes conditions stating that the permit holder shall not place livestock or manure in the manure storage portions of the proposed feedlot pens or allow runoff to enter the catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

e. Seasonal Feeding and Bedding Facilities

The applicant indicated that they would like to continue to utilize the existing seasonal pens which are located outside and to the north of the proposed CFO as seasonal feeding facilities. Under NRCB policy and as identified in the "Distinguishing between Confined Feeding Operations and Seasonal Feeding & Bedding Sites (for Cattle Operations)" Fact Sheet, this is only allowed under specific circumstances. Given that the existing seasonal feeding pens cannot meet all of the required factors when assessing seasonal facilities next to a CFO, these facilities will not be allowed to be used as seasonal feeding pens. A condition is therefore added to the permit requiring that any manure in these seasonal pens be removed and that they be decommissioned within one year of the completion of the feedlot pens.