

#2 - REQUEST FOR REVIEW: LA20014 / Granum Colony

Filed By: Don Chatterton

Deadline for RFRs: September 17, 2020

Date RFR received: September 16, 2020

Status of party as per Decision Summary: Directly Affected

REQUEST FOR BOARD REVIEW
SUBMITTED TO THE NATURAL RESOURCES CONSERVATION BOARD

Application No:	
Name of Operator/Operation:	
Type of application (<i>check one</i>):	<input type="checkbox"/> Approval <input type="checkbox"/> Registration <input type="checkbox"/> Authorization
Location (<i>legal land description</i>):	
Municipality:	

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.

1. PARTY STATUS

(IF YOU ARE NAMED A DIRECTLY AFFECTED PARTY IN THE APPROVAL OFFICER'S DECISION, YOU DO NOT NEED TO COMPLETE THIS SECTION)

Party status (*“directly affected”* or *“not directly affected”*) is determined pursuant to the provisions of the *Agricultural Operation Practices Act (AOPA)* and its regulations. Upon receipt of an application, the Approval Officer must notify any affected parties. Affected parties include municipalities and owners or occupants of land as determined in accordance with the regulations. To obtain directly affected status, the owner or occupant notified in the above process must provide a written submission to the Approval Officer during the stage at which the Approval Officer considers the application. The Approval Officer will then determine who the directly affected parties are and include this determination in the Decision Summary.

Under its governing legislation, the Board can only consider requests for review submitted by directly affected parties. If you are not listed as directly affected in the Approval Officer’s decision, you must request that the Board reconsider your status (*please note that under the provisions of AOPA, the Board cannot reconsider the status of a party who has not previously made a submission to the Approval Officer during the application process*).

In order to request your status be reconsidered, you must explain why your interests are directly affected by the decision of the Board. Please list these reasons below:

My grounds for requesting directly affected status are as follows:

2. GROUNDS FOR REQUESTING A REVIEW

(ALL PARTIES MUST COMPLETE THIS SECTION)

In order to approve an application, NRCB Approval Officers must ensure the requirements of AOPA have been met. Your grounds for requesting a Board review should identify any requirements or specific issues that you believe the Approval Officer failed to adequately address in the Decision.

My grounds for requesting a review of the Approval Officer’s decision are as follows:

[A large area consisting of approximately 30 horizontal lines for writing.]

4. ACTION REQUESTED

(ALL PARTIES MUST COMPLETE THIS SECTION)

I would like the Board to take the following actions with the respect to the Approval Officer's decision:

- Amend or vary the decision
- Reverse the decision

Please describe why you believe the Board should take this action:

If the Board decides to grant a review (*in the form of either a hearing or a written review*), all directly affected parties are eligible to participate. The Board may consider amending the Approval, Registration, or Authorization on any terms and conditions it deems appropriate. **Please note the Board cannot make any amendments unless it first decides to grant a review.**

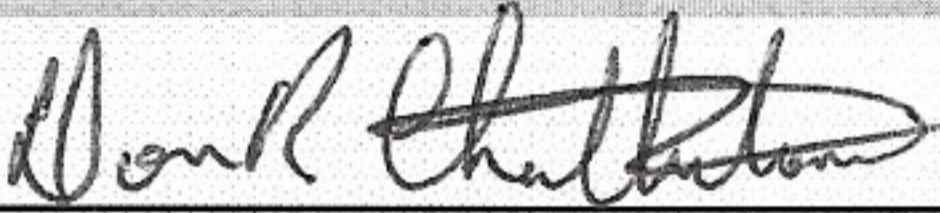
If a review is granted by the Board, are there any new conditions, or amendments to existing conditions, that you would like the Board to consider? It is helpful if you identify how you believe your suggested conditions or amendments would address your concerns.

5. CONTACT INFORMATION

(ALL PARTIES MUST COMPLETE THIS SECTION)

Contact information of the person requesting the review:

Name: Don Chatterton
Address in Alberta: [REDACTED]
Claresholm, Alberta, T0L 0T0
Legal Land Description: NW 4 12 27 W4 (res) and SE 36 11 28 W4 (landowner)
Phone Number: [REDACTED] Fax Number: _____
E-Mail Address: [REDACTED]

Signature:  Date: September 14, 2020

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: _____
Address: _____

Phone Number: _____ Fax Number: _____
E-Mail Address: _____

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

Laura Friend, Manager, Board Reviews Natural Resources Conservation Board 19 th Floor Centennial Place 250 – 5 th Street SW Calgary, AB T2P 0R4	Phone: 403-297-8269 Email: laura.friend@nrcb.ca
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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.

Appendix A – Party Status

This Request for Board Review relates to NRCB Application Number LA20014 (the “Application”, which was approved in Decision Summary LA20014 by Carina Weisbach (the “Approval Officer”).

I am the registered owner of land immediately proximate to the proposed poultry confined feeding operation (the “CFO”). I am directly affected by the Application, and, pursuant to Appendix B of Decision Summary LA20014, I was presumed to be directly affected by the Approval Officer.

Appendix B – Grounds for Requesting a Review

The Board Should Conduct a Review and Refuse to Grant Approval of the Application

Section 20(5) of the Agricultural Operation Practices Act (the “AOPA”) grants a directly affected party the right to apply to the Board for a review of an approval decision. As mentioned above, pursuant to Appendix B of Decision Summary LA20014, I was presumed to be directly affected. I am, therefore, entitled to submit this Request for Board Review.

Section 25 of the AOPA states that the Board, upon receiving an application under section 20(5), must schedule a review unless the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit.

In submitting this Request for Board Review, I recognize the important work that approval officers and the Board perform and the rigour that typically characterizes consideration of an application by an approval officer or the Board. I also recognize the challenges presented by the COVID-19 pandemic and the impact that those challenges have had on the work of approval officers and the Board. Nevertheless, the challenges posed by the pandemic do not justify abandonment of duty, due diligence, or prescribed standards by an approval officer or the Board.

Unfortunately, whether due to the pandemic or other factors, the Approval Officer in this particular Application did not adequately deal with a number of material issues. Therefore, as outlined below, a Board Review must be scheduled. Furthermore, in my respectful submission, once the Board deals adequately with the issues outlined herein, the Board can and should reverse the Approval Officer’s decision and refuse to grant approval of the Application.

Overarching Deficiencies in Approval Officer’s Work

The Approval Officer’s failure to adequately deal with various matters stems from at least four overarching deficiencies in the Approval Officer’s work. First, the Approval Officer founded material aspects of the approval on assumptions that lacked factual basis. Second, the Approval Officer accepted inaccurate statements as fact, without seeking corroboration or subjecting the inaccurate statements to scrutiny. Third, the Approval Officer ignored evidence that contradicted

the conclusions that she wished to reach. Fourth, the Approval Officer conducted a process that was unbalanced and procedurally unfair for presumed and potential directly affected parties. Some combination of these four deficiencies underpin the majority of issues discussed below.

Procedural Unfairness in LA20014

Section 20(1)(b)(iii) of the AOPA states that, in considering an application, the approval officer:

“must give directly affected parties a reasonable opportunity to review the information relevant to the application that is submitted to the approval officer and a reasonable opportunity to furnish evidence and written submissions relevant to the application” (emphasis added). Unfortunately, the Approval Officer failed to comply fully with this requirement in relation to the Application.

Subsequent to sending my submission to the Approval Officer in relation to the Application, I discovered that material elements of my submission had been lost due to technical difficulties. I contacted the Approval Officer by phone, notified her of this issue, and explained the nature of the material that had been lost. The Approval Officer assured me that I could submit the missing materials to her for consideration in the Application. The Approval Officer did not specify a deadline for that submission or convey any sense of urgency. However, two days later, before I had a reasonable opportunity to furnish the additional materials to the Approval Officer, the Approval Officer issued the approval of the Application.

Similarly, during that same phone call, I informed the Approval Officer that another directly affected party had been, at all relevant times, located in the hospital and had, therefore, not been afforded an opportunity to make submissions in relation to the Application, despite the fact that the directly affected party wished to. Once again, the Approval Officer assured me that the directly affected party would have a chance to make submissions. The Approval Officer then issued the decision without providing that party with a reasonable opportunity to furnish evidence or written submissions.

These examples highlight the Approval Officer’s non-compliance with section 20(1)(b)(iii) of the AOPA, which can be remedied only by a Board Review.

Another example of procedural unfairness is found in the incoherent manner in which the Approval Officer assessed parties’ status as “directly affected”. In Appendix B of Decision Summary LA20014 (Page 9), the Approval Officer wrote: “The following individuals who submitted responses to the public notice reside on or own land outside of the affected party radius. However, they may still qualify as directly affected parties based on their ‘exposure to potential nuisances or risks’ posed by the proposed CFO” (emphasis added).

After listing various parties and noting the burden of proof in establishing standing as a “directly affected party”, the Approval Officer wrote: “Using these factors I concluded that none of the persons who submitted timely concerns and who are not presumed to be directly affected are not directly affected parties. My reasons for this finding follow” (Page 10, emphasis added).

On its face, this statement indicates that all of the persons who submitted timely concerns and who were not presumed to be directly affected were, nevertheless, found to be directly affected parties. (If none of the persons are not directly affected parties, then, grammatically and logically, all of them are.) However, this conclusion does not appear consistent with some of the Approval Officer's comments in the balance of Appendix B.

The confusion that the Approval Officer has introduced through her incoherently worded conclusion has given rise to the substantial risk that parties who were found not to be directly affected may conclude that they were found to be directly affected parties and, therefore, fail to seek timely review of their party status. At this late date, correction of the Approval Officer's internally inconsistent and incoherent decision would be wholly insufficient and would irreparably prejudice numerous parties. The only appropriate remedy consists of a Board Review allowing for participation of all relevant parties, including those whose status has been left in limbo by the Approval Officer.

Further Pattern of Procedural Unfairness

My involvement in LA20014 as well as LA20004 highlighted a further pattern of procedural unfairness in the Approval Officer's work. Specifically, upon receiving a submission on a particular point from a directly affected party, the Approval Officer would either allow the Applicant or the Applicant's agent to rebut that point in a cursory fashion, without the Approval Officer subjecting the rebuttal to any scrutiny whatsoever, or the Approval Officer herself would dismiss the point in a cursory fashion, without seeking or allowing for any further clarification or input from the directly affected party. This practice stands in stark contrast to the numerous opportunities that the Approval Officer presented to the Applicant to clarify, revise, or substantiate its position on various issues.

For example, in Part 2 of the Application (Pages 8-9), the Applicant presented a water well drilling report from Section 24 to establish the profile of the soil in the area. That profile is not reliable evidence of the profile of Section 25, where the proposed CFO is to be sited. That failure alone on the part of the Applicant ought to have resulted in a denial of the Application. Somehow, however, between the point when Part 2 of the Application was submitted and when the Technical Document in the approval was issued, two further well reports for Section 25 were added (see LA20014 TD, Pages 11-14). Since those reports were not included in the original Part 2 of the Application, and we were never provide with notice of that revision to the Application, directly affected parties did not have an opportunity to review or comment on them.

This prejudicial practice by the Approval Officer was repeatedly manifest in the Application, but a prime example can also be found in LA20004. In that application, I submitted that the section where the Applicant proposed to spread manure had drainage tile installed. The Approval Officer summarily dismissed this submission on the basis that Alberta Environment and Parks had "no records on file that confirm the approval for drainage tiles at these quarters" (NRCB Decision Summary LA20004, Page 30). Had the Approval Officer exercised an adequate level of diligence in conducting her investigations, or had she sought further clarification from me as to the source of my information, the Approval Officer would have learned that, unfortunately, land owners often install drainage tile without obtaining approval from Alberta Environment and Parks and that

precisely such an unauthorized installation appears to have occurred in that case, with the active participation and knowledge of the Applicant.

The Approval Officer's failure to "hold meetings and other proceedings", as contemplated by section 20(1)(b)(iv) of the AOPA, with respect to the Application exacerbated this issue. I recognize that COVID-19 may have imposed additional restrictions on such meetings. However, meetings with physical distancing, meetings with participants wearing masks, or even virtual meetings over a videoconferencing platform would have allowed for directly affected parties to clarify and substantiate concerns in a dynamic fashion, which would have provided more reliable and useful information to the Approval Officer. A Board Review would allow for this significant deficiency in the Approval Officer's work to be remedied.

Negative Health Impacts

The Approval Officer did not deal adequately with the issue of negative impacts on health. In Appendix C of Decision Summary LA20014 (Page 15), the Approval Officer described her consideration of this issue as follows: "The application was sent to AHS for their comments. Due to the current health crisis, I initially did not receive a comment. However, because the health concerns that were raised by several of the respondents, I contacted the responsible representative to discuss these concerns. In response, AHS sent a letter that stated, that all efforts should be made to protect drinking water sources during construction and operation of the facility and that water testing of drinking water should be conducted. She did not comment on any specific health concerns or outcomes in respect to the operation of the chicken layer barn. I therefore presume that AHS has no specific concerns in respect to this proposal" (emphasis added).

The Approval Officer should not "presume" anything without evidence. The Approval Officer cannot properly rely on an absence of evidence as a proxy for evidence. The mere fact that the AHS representative did not "comment on any specific health concerns or outcomes in respect to the operation of the chicken layer barn" does not mean that such concerns do not exist. The Approval Officer should have requested express confirmation from the AHS representative that no such concerns exist. The Approval Officer's failure to do so requires a Board Review.

Nuisance Impacts

The Approval Officer did not deal adequately with the issue of nuisance impacts. Section 20(1)(b)(ix) of the AOPA states that an approval officer "must consider the effects on the environment, the economy and the community and the appropriate use of land". However, in Appendix C of Decision Summary LA20014 (Page 16), the Approval Officer failed to consider in any meaningful way a number of aspects of nuisance connected to the proposed CFO that would have a direct and material effect on the environment, the economy, and the community.

For example, in relation to the nuisance of dust arising from increased traffic to and from the proposed CFO, the Approval Officer simply summarized the concerns of directly affected parties, and then concluded her consideration of the issue by noting voluntary actions that the Applicant has not undertaken and is not required to undertake, but conceivably could choose to undertake, to address those concerns. That is the equivalent of saying, "Good luck, folks. Let's hope the

Applicant does the right thing!” Surely the Board’s mandate to “consider the effects on the environment, the economy and the community” required more of the Approval Officer than that.

This is simply one example of the Approval Officer’s failures in considering the issue of nuisance impacts. A Board Review is required to remedy those failures.

Water Supply

The Approval Officer did not adequately deal with issues relating to water supply for the proposed CFO. In making this submission, I note the limited jurisdiction of the Board in relation to water supply. The Approval Officer described that limited jurisdiction in Appendix C of Decision Summary LA20014 (Page 18). However, section 20(1)(b)(ix) of the AOPA states that an approval officer “must consider the effects on the environment, the economy and the community and the appropriate use of land”. In light of the contradictory information relating to water supply given by the Applicant and Alberta Environment and Parks, the Approval Officer was obliged to conduct further investigations in order to discharge that statutory requirement.

In the Application (Page 6), the Applicant declared that “the CFO will not need a new licence from AEP under the *Water Act* for the development or activity proposed in this AOPA application.” However, in Appendix C of Decision Summary LA20014 (Page 18), the Approval Officer noted that Alberta Environment and Parks contradicted the Applicant’s declaration, indicating “that a water license is required and stated that they have not yet receive an application for a water licence.” Rather than seek to reconcile that apparent contradiction, the Approval Officer simply abandoned the issue, noting: “The applicant is reminded that it is their responsibility to ensure that they obtain necessary water licensing for the proposed CFO.”

In so doing, the Approval Officer failed to obtain relevant information that directly impacted her ability to “consider the effects on the environment, the economy and the community and the appropriate use of land”. For example, if the Applicant has declared that it does “not need a new license”, while Alberta Environment and Parks states that the Applicant does need a new licence, one plausible explanation is that the Applicant intends to operate without the need for a new license by hauling water to the proposed CFO. If that is the case, a number of deleterious effects on the environment, the economy, and the community could arise, which matters fall squarely within the Board’s jurisdiction.

The Approval Officer, however, failed to confirm the Applicant’s intentions with respect to water supply. A Board Review is, therefore, required in order to clarify the Applicant’s specific plans regarding water supply, so that the Board can assess to what extent its jurisdiction is engaged.

Impact on Wildlife

The Approval Officer did not deal adequately with the issue of impact on local wildlife.

Section 20(1)(b)(ix) of the AOPA states that an approval officer “must consider the effects on the environment...” (emphasis added). However, in Appendix C of Decision Summary LA20014 (Page 19), the Approval Officer sought to justify her complete abandonment of that

duty on the basis that “AOPA and its regulations do not address requirements relating to other land uses, including natural habitat for wildlife.”

Furthermore, rather than seeking any evidence whatsoever on this topic, the Approval Officer relied solely on her own observations and her optimism that the Applicant will do the right thing. Specifically, the Approval Officer wrote: “The construction of the barn will likely entail the establishment of a larger graveled area around the barn, nevertheless, it seems that much of the vegetated area to the west, across the creek, as well as towards the north will remain undisturbed. This would preserve much of the habitat that is currently available. Having said that, the operator is reminded that the northern leopard frog is an endangered species and that every effort should be made to preserve its habitat.”

This is wholly inadequate. Instead, the Approval Officer ought to have exercised her authority under section 20(1)(b)(ii) of the AOPA to “make, or require the applicant to make, inquiries and investigations and prepare studies and reports” in relation to the impact on wildlife. The Approval Officer’s failure to do so and her failure to otherwise adequately deal with this issue requires a Board Review.

Impact on Air Traffic

The Approval Officer did not adequately deal with the issue of the impact of the proposed CFO on aviation. As summarized in Appendix C of Decision Summary LA20014 (Page 19), other directly affected parties and I raised a number of concerns with the Approval Officer, including restrictions on use of Allan Minor’s airstrip and restrictions on flights in the area of the proposed CFO. As outlined in greater detail below, the Approval Officer, however, accepted at face value misleading information from the Applicant’s agent, without applying any scrutiny to the information or seeking clarification from the directly affected parties. The Approval Officer also cited her own deficient research (which, due to its deficient nature was, not surprisingly, inconclusive) as a basis for dismissing our concerns.

Specifically, the Applicant’s agent responded to concerns relating to the use of Allan Minor’s airstrip as follows: “The newest information from the Alberta Aviation Council shows that the land strip of Allan Minor is no longer in existence” (Appendix C of Decision Summary LA20014, Page 19). As discussed below, this information is misleading and of limited relevance. However, in any event, the fact that the Approval Officer failed to follow up with any directly affected parties to clarify or confirm that information highlights the procedural unfairness of the process. Mr. Minor, I myself, or any number of other directly affected parties could attest to the fact that Mr. Minor’s airstrip has been in use for decades by Mr. Minor and his father, and it is not uncommon to see a plane parked near their yard. I suspect that the Applicant itself, had it been candid and honest with the Approval Officer, could have also provided that information.

Instead, the Applicant’s agent presented the misleading statement that “[t]he newest information from the Alberta Aviation Council shows that the land strip of Allan Minor is no longer in existence.” By failing to subject that statement to scrutiny, the Approval Officer failed to deal with this issue adequately. Had the Approval Officer dealt with this issue adequately, she would have discovered that: (a) the Alberta Aviation Council is a not-for-profit charity (see

<https://www.albertaaviationcouncil.com/who-we-are>); (b) the information that the Alberta Aviation Council produces has no force of law; (c) the information that the Alberta Aviation Council produces in relation to the existence and status of a particular airstrip may not be accurate or complete; and (d) in this case, the airstrip in question is very much still in existence and very much still in use.

The Approval Officer's own comments in relation to this issue highlight further deficiencies. In Appendix C of Decision Summary LA20014 (Page 19), the Approval Officer wrote: "Although the concern of a potential restriction to scouting local cattle herds in this area is understandable, it has never come to my attention that there are airspace restrictions in respect to chicken barns. Looking at several websites, I have not been able to find conclusive information that the claimed 2000 feet airspace above the barns is off limits for local, small aircrafts, however, it should be noted that all aircraft are required to abide by the requirements set out in the Canadian Aviation Regulations."

The Approval Officer's investigation on this issue consisted of "[l]ooking at several websites", which the Approval Officer failed to specify. Had the Approval Officer availed herself of reliable sources, she would have discovered Transport Canada's *Aeronautical Information Manual*, which states, in the *Rules of the Air and Air Traffic Services*, at section 1.11.1: "Experience has shown that aviation noise caused by rotary wing and fixed wing aircraft flying at low altitudes can cause serious economic losses to the farming industry. The classes of livestock particularly sensitive are poultry (including ostriches and emus), because of the crowding syndrome and stampeding behaviour they exhibit when irritated and frightened, and foxes who, when excited, will eat or abandon their young. Avoid overflying these farms below 2000 ft AGL."

In summary, the Approval Officer's acceptance of misleading information from the Applicant's agent and the Approval Officer's own deficient research require a Board Review.

Flood Plain Information

The Approval Officer did not adequately deal with flood plain information relating to the proposed CFO.

Part 2 of the Application (Page 7) included the following question: "What is the elevation of the floor of the lowest proposed manure storage or collection facility above the 1:25 flood plain or the highest known flood level?" In response, the Applicant provided an "estimate" of five metres.

The Approval Officer's comment to this response in LA20014 TD (Page 7 of 26) admitted: "highest flood level unknown". The Approval Officer further acknowledged the lack of evidence in relation to flood plain in LA20014 TD (Page 16 of 26), stating: "Based on the information provided, my own observation, and albeit of the absence of absolute evidence that the proposed site is >1 m above the 1:25 year flood level, I am on the opinion that the proposed site is not in an immediate flood plain and can meet the requirements in section 8 of the Standards and Administration Regulation" (emphasis added).

As mentioned above, the “information provided” by the Applicant in relation to “highest known flood level” comprised nothing more than an “estimate” by an interested party, with no factual basis. The further commentary provided by the Applicant in an attempt to buttress the “estimate” was in fact patently false. In LA20014 TD (Page 7 of 26), the Applicant states: “The former landowner [sic] indicated that is [sic] 60 years the water has never flooded over the creek into the yardsite.” That information is not credible. The former landowner of that parcel did not own the land for anywhere close to 60 years and would not likely have had personal knowledge of the parcel prior to his ownership. My original submission in relation to the Application contained a detailed explanation of why that further commentary was inaccurate and misleading. However, the Approval Officer ignored my evidence.

Similarly, the Approval Officer’s “own observations” at one point in time (and not even during a time of flooding) is not an adequate proxy for actual objective evidence in relation to the “1:25 year flood plain” or the “highest known flood level”. Nevertheless, despite an admitted lack of supporting evidence, the Approval Officer inexplicably offered the “opinion” that “the proposed site is not in an immediate flood plain and can meet the requirements in section 8 of the Standards and Administration Regulation.”

Arguably of greater concern, however, is the fact that the Approval Officer not only formed her opinion in the absence of supporting evidence, but in fact formed that opinion in the face of overwhelming contradictory evidence. In Appendix A of Decision Summary LA20014 (Page 7), the Approval Officer acknowledged: “Granum Colony’s new CFO ... is located in a known flood plain according to the ‘MD of Willow Creek Environmentally Significant Areas, February 1989’-report, Map 2. Because the map in this report is rather coarse, I contacted AEP to verify this information. The information I received indicates that the quarter section in which the proposed development is to be located may be affected by flood waters from Meadow Creek.”

That objective information from disinterested sources is also consistent with my family’s own lived experience in the area. As a life-long resident of this area, with family history in the area dating back to the early 1900s, I am informed that during the flood of 1936, the area of the proposed CFO became an island. Therefore, even if a less extreme flood does not cover the proposed CFO with water (which is still a very real possibility), even a more minor flood will likely cut off all access to the proposed CFO, putting the poultry at risk of neglect or death and putting those tending to the poultry at risk of injury or death. I note that during the flood of 1978 a neighbour drowned while attempting to ford Meadow Creek.

The Approval Officer’s willingness to reach an “opinion” on a material matter in the absence of supporting evidence and in the face of overwhelming contradictory evidence comprises clearly inadequate dealing with a material issue.

In summary, the proposed CFO is undeniably located in a flood plain. The document referred to by the Approval Officer as “MD of Willow Creek Environmentally Significant Areas, February 1989’-report, Map 2” establishes this. Alberta Environment and Parks establishes this. Residents with personal knowledge of the history of the area establish this. And yet somehow the Approval Officer ignored all of that evidence and formed a different opinion based solely on the Applicant’s “estimate” and the Approval Officer’s own “observations” during a site visit. The Approval

Officer's "opinion" is baseless and indefensible. This issue must be properly reviewed by the Board.

Manure Spreading Land

The Approval Officer did not adequately deal with the issue of the land on which the Applicant proposes to spread manure (SE32-11-27W4). In Appendix C of Decision Summary LA20014 (Page 21), the Approval Officer addressed this issue as follows: "The listed quarter section is close to Willow Creek. Google Earth pictures taken in 2015 show that there is a larger area in the listed quarter section that was likely flooded. Manure spreading typically occurs either in spring or fall. The spring application could coincide with possible flood events early in the year up to June. To prevent manure contaminated runoff from entering Willow Creek, which provides water for human consumption and is also a fish bearing creek, I will add a condition stating that manure has to be applied in the fall and that manure must be incorporated."

This consideration, and the condition imposed, is inadequate. The Approval Officer acknowledged the possibility of "flood events early in the year up to June". However, the Approval Officer relied on "Google Earth pictures taken in 2015" in order to assess the likelihood, potential severity, and potential timing of a flood event. That evidence is of limited relevance and the Approval Officer's reliance on it was misguided. I note that more extreme flooding has occurred in the area in recent years other than 2015. For example, the Municipal District of Willow Creek No. 26 recently commissioned aerial photographs during a flood year, which show SE32-11-27W4 covered in water.



Photo taken from TWP 115A of the 2005 Flood A good portion of SE32-11-27W4 (right side) was under water for quite some time. The Stevenson Bridge is in foreground.



Photo (courtesy of M. D. of Willow Creek) taken from TWP 115A of the 2014 Flood. Again most of SE32-11-27W4 (bottom) was under water. The Stevenson Bridge is far left.

Furthermore, a number of culverts positioned beside SE32-11-27W4 direct water away from that quarter section and ultimately into Willow Creek. Therefore, even usual volumes of rainfall (including volumes often experienced in the fall) result in significant volumes of water entering Willow Creek from SE32-11-27W4. Shortly after I submitted this information to the Approval Officer, all culvert markers were removed from the relevant culverts, likely in an attempt to obscure or minimize their existence. Unfortunately, this subterfuge appears to have been successful, as the Approval Officer failed to even recognize the existence and significance of culverts in Decision Summary LA20014.

These failures on the part of the Approval Officer to deal adequately with the issue of manure spreading land require a Board Review.

Approval Officer's Assumptions about the Applicant's Future Conduct

Throughout Decision Summary LA20014, the Approval Officer makes repeated assumptions about the Applicant's behaviour in the future. In fact, the entire approval of the Application seems to hang on the Approval Officer's hope that the Applicant will do the right thing in the future. This attitude is reflected in the Approval Officer's repeated dismissal of concerns on the basis that a phone line exists for the reporting of non-compliance. In so doing, the Approval Officer abdicated her duty to deny a defective application or to attach appropriate conditions to an approval, and sought to shift her duty to us – by making us *de facto* enforcement officers policing our neighbour's conduct.

My personal experience with the Applicant does not support the Approval Officer's optimism. Our hay crops have been killed by these neighbours misinforming the crop duster regarding the surrounding land. These neighbours are notorious for having the end guns on their irrigation either spray across the road or on our cut hay. This is not to mention the broken fences when the brace posts are broken off as they have tried to move into their field with their headers still on their combines. And, as outlined above, these neighbours have installed drainage tile without approval.

The reality is, the Applicant's historical conduct warrants heightened scrutiny of the Application from the Approval Officer. Rather than "rolling the dice" and "hoping for the best", the Approval Officer ought to have either denied the Application or tailored extensive conditions that would have addressed the very real concerns of directly affected parties. The Approval Officer's failure to do so requires a Board Review.

Appendix C – Reasons I Am Affected by the Decision

In light of the issues that I address in the previous section, the Approval Officer's approval of the Application has the potential to severely and irreparably harm and prejudice me, my family, and other directly affected parties.

The procedural unfairness inherent in the Application process has prejudiced my ability to make reasonable submissions and take part in the Application as required by statute.

Four generations of my family currently reside on the family farm, including five young grandsons aged five and under. Therefore, the negative health impacts of the approved Application have the potential to be catastrophic. The Approval Officer failed entirely to assess potential health risks associated with the proposed CFO, leaving open the risk that my family and I are to be subjected to.

The nuisance impacts of the approved Application, such as dust, odour, and fly infestations, have the potential to impact my and my family's health, our enjoyment of our land, and our succession planning. With the approval decision as it stands, the surrounding land value will certainly depreciate. We had plans of developing the land for the next generation, but with a fly infested, ammonia-reeking chicken barn as our nearest neighbour, our plans may need to be abandoned. Furthermore, the nuisance impacts, such as dust and disease, stand to have a more immediate economic impact on us, in the form of increased mortality rates for livestock.

The Applicant's planned water supply for the proposed CFO could cause irreparable harm. However, due to the Approval Officer's failure to clarify the nature of the Applicant's plans, it is impossible to determine the nature and extent of that harm. Once the Applicant's intentions regarding water supply are established, I will be able to address this point.

The approved Application could result in further eradication of the endangered northern leopard frog. That would deprive generations of opportunities to enjoy fully the natural beauty of this area.

The approved Application stands to deprive us of our ability to use airplanes to monitor our cattle or land or otherwise conduct aerial agricultural activities over our land in proximity to the proposed CFO. In particular during times of flood, other viable means of monitoring are extremely limited. This will have an economic impact on us, in the form of lost, injured, or killed livestock, and this could have a significant health impact, if we are forced to employ more risky methods of reaching livestock during times of flooding.

The approved Application allows for the construction of the proposed CFO in an established and well documented flood plain. Even a single flood could result in contamination with lasting impacts for decades. For example, in the flood of 1936, when Meadow Creek and Trout Creek met, the fertile hay field on sections 20 and 17 became either a large alkali patch in the dry years or a shallow slough on the wet years. Several different things have been done to recover the land, over the years, with limited success.

The approved Application has the potential to contaminate Willow Creek due to drainage from the manure spreading lands identified in the Application. This could impact the health and wellness of the entire community, which relies heavily on Willow Creek for economic and recreational activities.

Appendix D - Action Requested

A. Please describe why you believe the Board should take this action:

I request that Board reverse the approval of the Application. As outlined above, the Approval Officer applied a procedurally unfair and inadequate process, resulting in indefensible conclusions in relation to numerous material issues. The Application is severely deficient, and the proposed CFO will have disastrous impacts on the environment, the economy, and the community. Reversal of the approval is the only satisfactory remedy.

In the alternative, if the Board does not agree that the approval should be reversed, then the Board should impose more extensive and appropriate conditions in order to ameliorate the various harms likely to be caused by the proposed CFO. Those conditions should be tailored in consultation with all affected parties and on the basis of reliable evidence, rather than on the basis of the Approval Officer's assumptions.

B. Identify how you believe your suggested conditions or amendments would address your concerns.

In the event that the approval is not reversed, new conditions should include, but not be limited to, the following:

- a. The Applicant should be required to consent in writing to continued unrestricted use of the airspace over the proposed CFO, without any restrictions on noise levels or flight height. This would include the requirement that the Applicant not paint or otherwise mark the roof the proposed CFO so as to restrict air traffic.
- b. The Applicant should be required to identify different land for the spreading of manure, which does not pose the same risk of contamination of Willow Creek or other surface water or ground water.
- c. The Applicant should be required to enter into binding agreements with all directly affected parties in relation to dust control, as suggested by the Approval Officer in Appendix C of Decision Summary LA20014 (Page 16).
- d. The Applicant should be required to commission a study by an independent expert on the potential impacts of the proposed CFO on wildlife and endangered species. Any approval should be conditional upon the Board's acceptance of the level of risk revealed by the study.