



## **BOARD DECISION**

### **RFR 2020-09 / LA20035**

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA20035

Hutterian Brethren of Murray Lake

November 13, 2020

**The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary LA20035.**

## **Background**

On October 2, 2020, Natural Resources Conservation Board (NRCB) Approval Officer Joe Sonnenberg issued Decision Summary LA20035 and Authorization LA20035 with conditions, to expand an existing animal shelter at an existing multi species confined feeding operation (CFO) operated by the Hutterian Brethren of Murray Lake (Murray Lake Colony) located at S½ 31-10-6 W4M, NW 29-10-6 W4M, and SW 32-10-6 W4M in Cypress County (County). There is no increase in animal numbers associated with this authorization. The construction includes:

- animal shelter addition – 9.1 m x 24.4 m (total new building dimensions 24.3 m x 24.4 m)

Pursuant to section 22(4) of the *Agricultural Operation Practices Act (AOPA)*, one Request for Board Review (RFR) of Decision Summary LA20035 was filed by a directly affected party. The directly affected party that filed an RFR was Cypress County. The RFR met the 10-day filing deadline established by AOPA of October 26, 2020.

Under the authority of section 18(1) of the Natural Resource Conservation Board Act, a division of the Board consisting of Peter Woloshyn (panel chair), Earl Graham and Indra Maharaj was established on Tuesday November 3, 2020 to consider the RFR. The Board convened to deliberate on the RFR on November 6, 2020.

As established by the approval officer, all directly affected parties were notified of the Board's intent to review this request and provided with a copy of the RFR. Parties that had an adverse interest to the matters raised in the RFR were given the opportunity to submit a rebuttal. The Board received a rebuttal from Murray Lake Colony dated October 29, 2020, meeting the rebuttal filing deadline of November 2, 2020.

## **Jurisdiction**

The Board's authority for granting a review of an approval officer's decision is found in section 25(1) of AOPA, which states:

- 25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,*
- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or*
  - (b) schedule a review.*

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of an approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in

each request for Board review. The Board must consider whether the party requesting a review has identified sufficient grounds to merit review of an approval officer's decision. This includes a consideration by the Board of whether the issues raised in the RFR were adequately considered by an approval officer whose decision is challenged.

## **Documents Considered**

The Board considered the following information:

- Decision Summary LA20035, dated October 2, 2020
- Authorization LA20035, dated October 2, 2020
- Technical Document LA20035, dated October 2, 2020
- RFR filed by Cypress County, received October 26, 2020
- Portions of the public record maintained by the approval officer
- Cypress County Municipal Development Plan
- NRCB Approvals Operational Policy 2016-7
- Rebuttal from Murray Lake Colony, dated October 29, 2020

## **Eligibility to File an RFR**

### **The directly affected parties**

The Board must consider an RFR filed within legislated timelines by a directly affected party. As noted above, the Cypress County RFR met the 10-day filing deadline established by AOPA of October 26, 2020 and is a directly affected party.

## **Board Deliberations**

Issues raised in the County's RFR include:

1. The County believes that section 3.2(d) of its Municipal Development Plan (MDP) should apply to Murray Lake Colony's Authorization LA20035 requiring confined feeding operations (CFOs) be located where site access is gained from gravel, new high-grade roads, unless the Murray Lake Colony upgrades the access roads at their own expense.
2. The Board should require Murray Lake Colony to either enter into a road use agreement with the County or Murray Lake Colony should upgrade haul roads leading to its CFO to "high-grade, gravel" standards.
3. The County asserted that the approval officer has sufficient jurisdiction to impose road use conditions pursuant to section 20 and 22 of AOPA. It further asserted that NRCB's approval policy is inconsistent with AOPA.

The Board has reviewed the matters raised in the County's RFR and is satisfied that all matters were adequately considered by the approval officer for the reasons stated below.

1. The County asserted that Authorization LA20035 is inconsistent with section 3.2(d) of Cypress County's MDP.
  - a. The County's MDP section 3.2(d) reads:  
*Confined feeding operations are to be located where access to the site is to be gained from gravel, new high-grade roads or unless the confined feeding operator is willing to develop or upgrade the road to a gravel, new high-grade road at their own expense.*
  - b. The Board finds that Section 3.2(d) of the County's MDP does not apply because the CFO was in existence well before Authorization LA20035. A plain reading of MDP s. 3.2(d) provides direction for the establishment of new CFOs. Murray Lake Colony previously established its CFO through various approval processes, including Approval LA18047 issued by the NRCB on September 12, 2018. When making a permit decision on a new application, approval officers do not have the jurisdiction to re-visit previously issued permits. Similarly, the review in front of the Board (LA20035) does not provide the Board with jurisdiction to re-visit previously issued permits.
2. The County requested that the Board require Murray Lake Colony to either enter into a road use agreement with the County or Murray Lake Colony should upgrade haul roads leading to its CFO to "high-grade, gravel" standards.
  - a. Authorizations under AOPA do not allow for increases in animal numbers. Murray Lake Colony is not seeking to increase its animal numbers. As such, issuance of LA20035 has no new or incremental effect on road use that was not considered during the original authorization process. In any event, as discussed above, the Board finds that s. 3.2(d) of the County's MDP does not apply to this authorization.
3. The Board believes that clarification on its approach to road use agreements/conditions and AOPA is warranted. The County asserts that NRCB's approval policy is inconsistent with sections 20 and 22 of AOPA. Specifically, Cypress County refers to section 20(1)(b)(i) and section 22(2)(b) that provide approval officers with the authority to impose terms and conditions that a municipality could impose if the municipality were issuing a development permit.
  - a. Authorization LA20035 was considered by the approval officer in accordance with AOPA section 22, AOPA section 20 does not apply as it deals with approvals. The Board agrees with the County's assertion that the NRCB has the jurisdiction and authority under AOPA section 22 to include terms and conditions that could be imposed if the municipality were issuing a development permit. The Board notes that approval officers often do include such terms and conditions. By way of example, municipalities often request, or list in their bylaws, that the approval

officer include CFO siting setbacks from roads. Often, these requests are accommodated.

- b. Previous Board decisions have consistently stated that road use agreements and conditions are better left with the municipality.
- c. NRCB's Field Services Division developed its approval policy in consultation with the Policy Advisory Group that includes representation from the Rural Municipalities Association. Section 8.9 of the [Approvals Operational Policy 2016-7](#) is consistent with Board decisions directing the approval officer to leave road use agreements to the municipality.
- d. NRCB field staff do not have the requisite expertise to develop, mediate or enforce road use agreements/conditions. Municipalities own the roads within their jurisdictions, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use agreements.

## Board Decision

As a result of its deliberations, the Board finds that the issues raised in Cypress County's Request for Review were adequately considered by the approval officer. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 13<sup>th</sup> day of November, 2020.

*Original signed by:*

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Peter Woloshyn

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Indra L. Maharaj

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Earl Graham

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