



BOARD DECISION

2021-05 / LA21011

Review of Decision Summary LA21011

Hutterian Brethren Church of Little Bow

July 20, 2021

The Board issues this decision under the authority of the *Agricultural Operations Practices Act* (AOPA), following the Board review hearing of Decision Summary LA21011.

BACKGROUND

On May 4, 2021, the NRCB approval officer issued Decision Summary LA21011 (Decision Summary), denying an application to expand an existing multi species confined feeding operation (CFO). The application was to construct a chicken layer barn with manure storage and to increase chicken layer numbers from 2,500 to 10,000. The reasons for his decision were documented in Decision Summary LA21011. The CFO is owned and operated by the Hutterian Brethren Church of Little Bow (Little Bow Colony or Colony), and is located at E½ 32-14-25 W4M in Vulcan County (County).

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of the Decision Summary was filed by the Colony within the 10-day filing deadline of May 26, 2021, established by AOPA.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (Board) consisting of Sandi Roberts (chair), L. Page Stuart, and Earl Graham was established to conduct the review.

The Board met on June 3, 2021. In its Decision Report RFR 2021-04 dated June 9, 2021, the Board advised that it had reviewed the RFR, determined that a review hearing was warranted, and that a one-day virtual hearing using the Zoom platform would commence at 9:00 a.m. on June 29, 2021. The Board identified a single issue for consideration at the hearing:

Whether the Board should exercise its authority under AOPA section 25(4)(g) to approve the Little Bow Colony CFO expansion, notwithstanding an inconsistency with the Vulcan County municipal development plan.

The Board established written submission deadlines for directly affected parties and all were encouraged to consider a number of matters in their submissions to the hearing:

1. the municipal authority's rationale for establishing the relevant provision(s) in the MDP;
2. whether the relevant provision(s) are reasonable and reflective of good planning;
3. whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone; and
4. whether the MDP is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

Submissions were received within the prescribed timelines from the County and the Colony.

Parties to the review and their representatives are identified below:

Parties to the Review	Counsel/Representative
NRCB Field Services <ul style="list-style-type: none"> • Andy Cumming, Approval Officer 	Fiona Vance, Counsel
Little Bow Colony <ul style="list-style-type: none"> • Darius Hofer, Manager • Sam Hofer, Livestock Manager • David Tschetter, Hutterite Advocacy Council • Ashley Kozak, MNP, Business Advisor and Accountant 	Richard Harrison, Counsel, Wilson Laycraft
Vulcan County <ul style="list-style-type: none"> • Jason Schneider, Reeve • Anne Erickson, Development Manager • Ryan Dyck, Oldman River Regional Services Commission • Laurie Lyckman, Councillor • Doug Logan, Councillor 	
MD of Willow Creek (no appearance)	
Iain and Sandra MacDougall (no appearance)	

Bill Kennedy participated in the hearing as counsel for the Board. Additional staff support was provided by Laura Friend, Manager, Board Reviews, and Sylvia Kaminski and Carolyn Taylor, document management.

BOARD DELIBERATIONS

Municipal Development Plan CFO Exclusion Area

In its municipal development plan (MDP) section 4.1, Vulcan County states that existing CFOs are not permitted to expand within the exclusion areas as shown on the map in Appendix B of the MDP. Because the Colony’s proposed CFO expansion is located within the mapped exclusion area, the NRCB approval officer denied the application as required under AOPA s.20(1)(a).

AOPA s.25(4)(g) allows the Board authority to approve the Colony's expansion, notwithstanding an inconsistency with the County's MDP. When assessing whether to exercise its authority, the Board must have regard for the MDP. Therefore, the Board encouraged parties to address the County's rationale for establishing the relevant provision in the MDP in their submissions to the hearing. None of the parties provided reasons for the CFO exclusion area in their submissions.

During the hearing, the County agreed that rationale for this exclusion area is not included in the MDP, but speculated that its purpose is for the protection of waterbodies rather than for land use planning [Mr. Schneider, hearing transcript, pg. 83 and 84]. The Board's observation that the CFO exclusion area impacting the Colony appears to be a 1600 metre setback from the Little Bow River, with allowance for following quarter section lines, was undisputed by the County [Mr. Schneider, hearing transcript, pg. 79]. Further, the County noted that "...these CFO exclusion zones are uniform on all of the waterbodies within Vulcan County." [Mr. Schneider, hearing transcript, pg. 81].

The Board's decision on a previous review (Hutterian Brethren Church of Silver Valley, Board Decision 2016-02/FA 16003), states:

AOPA provides for the protection of surface water quality through various provisions in its approval and compliance processes. While the Board must in each case determine whether it is prepared to approve the CFO notwithstanding an inconsistency with a MDP, the Board generally would look to identify a compelling site specific need to prohibit a CFO in those cases where the MDP provision appears to address environmental issues that AOPA also addresses.

The Board finds no evidence, either in the MDP or provided during the hearing, of specific considerations for the Colony site that would require environmental protection beyond that afforded by AOPA's technical requirements. The Board expects that, as land use planning tools, MDPs would reflect the results of a county's associated public consultation process, delineating the site-specific characteristics that warrant the application of a CFO exclusion area.

The Board notes that the approval officer's review of the proposed expansion at the CFO site included an assessment of risk to the environment posed by the existing manure storage facilities and manure collection areas, using the NRCB's environmental risk screening tool. The approval officer found that all of the Colony's existing CFO facilities pose a low potential risk to surface water and groundwater. He also found that it meets or exceeds AOPA's technical requirements, including setback distances from common bodies of water, surface runoff control measures, nutrient management requirements for land application of manure, and groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas.

Considering this information, the Board agrees with the approval officer's finding that the Colony's CFO meets the technical requirements of AOPA. Further, the Board sees no evidence that the AOPA technical requirements are insufficient to protect the Little Bow River, and

therefore does not find merit in what appears to be a broadly applied setback provision that, in this case, affects the Colony's application. Nonetheless, the Board recognizes that the central question in this review is not whether the Vulcan County CFO exclusion area is appropriate to protect current and future land uses within the County, but rather whether the Board should exercise its authority to approve the Little Bow Colony CFO expansion, notwithstanding an inconsistency with the Vulcan County MDP.

The approval officer stated in Decision Summary LA21011 that, consistent with NRCB Approval Policy s.8.7.3, the inconsistency of the application with the MDP precludes the presumption that the proposed expansion would have an acceptable effect on the economy and community. Under AOPA s.25(4)(k), the Board has the same obligation when undertaking a review of a decision in the case of an approval—to “consider the effects on the environment, the economy and the community and the appropriate use of land.”

The Board heard that prior to the CFO exclusion area being applied, the proposed CFO location was zoned as *rural general*, “a...broad category for agricultural-producing lands” [Mr. Schneider, hearing transcript, pg. 89 and 90]. Further, the Board finds no evidence to suggest the proposed expansion would elevate environmental risks to the Little Bow River. In the Board's view, the proposed expansion is an agricultural activity, on land that is designated by the County as agricultural, and therefore is an appropriate use of land that has an acceptable effect on the environment, the economy and the community.

Having regard for all submissions, the Board concludes that this is an instance where it is appropriate to approve the proposed application, notwithstanding the inconsistency of that application with a provision of the MDP.

Other Matters

There was considerable discussion during the hearing regarding inconsistencies between the Vulcan County MDP and the Vulcan County and Municipal District of Willow Creek No. 26 Intermunicipal Development Plan (IDP). AOPA s.20(1) expressly identifies that it is the land use provisions held within the MDP that must be considered for an approval application. Therefore, the Board did not consider the IDP.

Decision Summary LA21011 recommends that a grandfathering determination be made by the approval officer should the Board overturn the decision. The Board questions the rationale of this approach, given it would seem reasonable to the Board that the approval officer would make a grandfathering determination at the time Little Bow Colony applied for an expansion to its existing CFO, rather than leave it as a matter for future consideration. However, the Board's focus was on the matter in front of it, which is whether or not to approve the Little Bow Colony CFO expansion, notwithstanding an inconsistency with the Vulcan County MDP. The Board has no comment on the recommended grandfathering determination.

The Board notes that it is undisputed that the proposed expansion site is in compliance with previously unaddressed municipal setback requirements of “38.1 metres from the centre line of the road, and 7.6 metres from the property lines.” [Mr. Hofer, hearing transcript, pg. 52].

The following additional matters arose at the hearing:

- public notice regarding the 2012 Vulcan County MDP
- economic viability of Little Bow Colony without the ability to expand its CFO operations
- willingness of the Colony to move to accommodate the Twin Valley reservoir around 1998, and the hardships it endured because of that move
- impacts on animal welfare

The Board finds that these additional matters were not part of the issue for consideration and therefore are beyond the scope of the review.

Decision Summary LA21011 recommended a number of conditions should the Board overturn the decision. The Board accepts these recommended conditions.

BOARD DECISION

For the reasons set out above, the Board directs the approval officer to issue an approval for the Hutterian Brethren Church of Little Bow to expand its confined feeding operation as described in the application, subject to the conditions set out by the approval officer in Decision Summary LA21011.

DATED at EDMONTON, ALBERTA, this 20th day of July, 2021.

Original signed by:

Sandi Roberts, Chair

Earl Graham

L. Page Stuart

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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 or through the NRCB website.