

## Decision Summary LA21037

This document summarizes my reasons for denying Approval LA21037 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21037. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca). This application is being denied due to its inconsistency with the MD of Willow Creek and Town of Fort Macleod Intermunicipal Development Plan (IDP) which was adopted in March 2022.

### 1. Background

On July 19, 2021, A & D Cattle Ltd. (A & D Cattle) submitted a Part 1 application to the NRCB to construct a new 2,000 head beef finisher CFO including 12 pens (each 40 m x 50 m), four pens (each 20 m x 30 m), and a catch basin (61 m x 38 m x 1.6 m).

The Part 2 application was submitted on December 3, 2021. On January 5, 2022, I deemed the application complete. This delay in timing was to accommodate the NRCB's holiday closure. This closure is intended to allow public notice to be completed at a time when neighbouring residents and land owners were likely to see the notice and when NRCB offices would be open to take inquiries.

#### a. Location

The proposed CFO is located at NE 27-8-26 W4M in the Municipal District (MD) of Willow Creek, roughly 2.5 km southwest from the Town of Fort Macleod. The terrain is gently undulating with a slope towards a large ephemeral wetland located to the north of the CFO. A small seasonal drainage which I consider to be a common body of water (CBW) under the act, is also present immediately west and north of the proposed CFO. This CBW drains into the aforementioned wetland area.

### 2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs 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:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located 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 persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO.

For the size of this CFO the specified distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is proposed to be located.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Macleod Gazette on January 5, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 39 letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius.

### **3. Notice to other persons or organizations**

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation. Refer to Appendix D for a discussion on concerns raised by AHS.

### **4. Alberta Land Stewardship Act (ALSA) regional plan**

Section 20(10) of AOPA requires that an approval officer act in accordance with, and ensure the application complies with, any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document’s Strategic Plan and Implementation Plan. In my view, the application does not adhere to the spirit of these non-binding parts of the SSRP, as it is inconsistent with the MD of Willow Creek and Town of Fort Macleod IDP.

The SSRP recognizes AOPA as one of the legislative tools that implements the vision and strategies of that regional plan. SSRP strategic directions include efficient use of land, and strengthening communities by decision-maker collaboration with stakeholders. Section 8 (“Community Development”), which is part of the Implementation Plan of the SSRP, contains the following provisions:

“When making land-use decisions, municipalities, provincial departments, boards and agencies and other partners are expected to:

...

8.2 Address common planning issues, especially where valued natural features and historic resources are of interests to more than one stakeholder and where the possible effect of development transcends jurisdictional boundaries.

...

8.4 Work together to anticipate, plan and set aside adequate land with the physical infrastructure and services required to accommodate future population growth and accompanying community development needs. ”

In my view, the exclusion zone as contained in the IDP between the Town of Fort Macleod and the MD of Willow Creek constitutes good planning practice. As section 5 of this decision summary (below) explains, I am denying this application based on the proposed location being within a CFO-exclusion area identified in the IDP. I observe that my denial of this application for this reason honours the intent of the Implementation Plan and Strategic Plan of the SSRP and in light of the recent NRCB board decision 2022-02/LA21033.

## **5. Municipal Development Plan (MDP) consistency**

I have determined that the proposed CFO is consistent with the land use provisions of the MD of Willow Creek's municipal development plan. However, I have also determined that the application is subject to the IDP between the MD of Willow Creek and Town of Fort Macleod which was approved and came into effect in March 2022. That IDP includes a CFO exclusion zone.

The NRCB Board recently directed approval officers to consider applicable IDPs since, under the *Municipal Government Act*, IDPs prevail over MDPs to the extent of inconsistency between the two statutory plans (see Decision 2022-02 Double H Feeders at pp 6-7, issued March 17, 2022).

On that direction, as the proposed CFO is located in the CFO exclusion zone identified in this IDP, I am denying the application. (See Appendix A for a more detailed discussion of the MD's planning requirements.)

## **6. AOPA requirements**

With respect to the technical requirements set out in the regulations, the proposed CFO:

- Meets the required AOPA setbacks from nearby residences, with one possible exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- Meets the required AOPA setbacks from springs, and common bodies of water
- Meets requirements for an exemption to the AOPA water well setback
- 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/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11, the application would meet all relevant AOPA technical requirements. In the case where the NRCB Board did direct a permit to be issued, the exemptions and conditions that are required to address the AOPA requirements are discussed in the following parts of this decision summary.

## **7. Responses from municipality and other directly affected parties**

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as “directly affected.” The MD of Willow Creek is an affected party (and directly affected) because the proposed CFO is located within its boundaries. At the time this application was deemed complete, I had not determined the Town of Fort Macleod to be directly affected since it was outside of the notification distance prescribed in AOPA. In light of the recent passing of the IDP between the municipalities since that time, which occurred shortly before this decision, a copy of this decision will be forwarded to the Town of Fort Macleod as a courtesy. As the decision is to deny the application, I concluded that providing additional notification to the Town is not necessary at this time.

Ms. Cindy Chisholm, a development officer with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm did not state whether or not the application was consistent with the MD of Willow Creek’s land use provisions of the municipal development plan. Ms. Chisholm also requested that the application meet all municipal setbacks. The application’s consistency with the MD of Willow Creek’s municipal development plan (as well as the IDP between the MD and the Town of Fort Macleod) is addressed in Appendix A, attached. The MD of Willow Creek raised concerns only relating to water use and water licensing. The application was forwarded to AEP for their review and as the NRCB does not have jurisdiction over water licensing, I therefore, cannot address these concerns further. The applicant is reminded that it is their responsibility to ensure that sufficient licenced water is available and that these licences should be in place should a permit for the proposed CFO be issued following a review hearing.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received three responses from five individuals.

Of the five people who submitted responses, three own or reside on land within the 1.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

2 of the respondents do not own or reside on land within the 1.5 mile radius for affected persons. In consideration of NRCB policy, I have determined these respondents are not directly affected by the approval application. Appendix B sets out my reasons for determining which respondents are directly affected.

The directly affected parties raised concerns regarding:

- Potential for contamination of groundwater and water table
- Water licensing and allocation
- Denial of other similar projects in area including windfarms and feedlots
- Potential for the application to degrade soil, manure stockpiling impacts
- Impacts on neighbours such as odor, air quality, lifestyle
- IDP which is being contemplated in the area and which may exclude CFO’s
- Cumulative effects of feedlots in area
- Fire hazard posed by the silage pit

These concerns are addressed in Appendix C. If the NRCB Board was to direct a permit be issued following a review hearing, I have recommended conditions which should be considered for a permit. These are discussed in Appendix F.

In addition, the NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to automatically be considered directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Martin Van Huigenbos provided an MDS waiver and is therefore considered to be a directly affected party.

## **8. Environmental risk of CFO facilities**

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require additional assurances that AOPA requirements will be met and maintained. If the NRCB Board overturns my decision, the conditions as outlined in Appendix F should be considered as extra assurance the site will not pose a risk to the environment.

In this case a determination was made that even though the soil report shows AOPA technical requirements have been met, additional monitoring at the time of construction would be required. If the NRCB Board overturns my decision following a review hearing, a condition requiring an engineer to inspect the catch basin, and all conditions as discussed in Technical Document LA21037 and Appendix F of this document should be considered for inclusion in the approval.

## **9. Exemption**

I determined that portions of the proposed feedlot pens and catch basin are located within the required AOPA setback from a water well. As explained in Appendix E, if an approval were to be issued, an exemption to the 100 meter water well setback would be warranted since the well is located upslope of all facilities, and is protected from damage. Discussion around this exemption, if needed should the Board overturn my decision following a review hearing, can be found in Appendix E (attached).

## **9. Other factors**

Though the approval application is consistent with the MDP land use provisions, I did determine it is not consistent with the IDP (between the MD of Willow Creek and the Town of Fort Macleod) land use provisions, and accordingly I am denying the approval. The application otherwise could meet the requirements of AOPA and its regulations. In case the NRCB Board overturns my decision following a review hearing, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Chisholm listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application must meet these setbacks. Based on the submitted plans, these municipal setbacks would be met.

I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption would not be rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. However, as directed by the NRCB Board in Board Decision 2022-02/ LA21033 - Double H Feeders Ltd I also considered the IDP which recently came into force between the MD of Willow Creek and Town of Fort Macleod. As the application is inconsistent with this high level statutory plan I have determined the application does not have an acceptable effect of the economy or community and I have denied the application.

I also found that the proposed CFO is not an appropriate use of land because the proposed new CFO would be inconsistent with the land use provisions of this IDP, falling within a mapped CFO exclusion zone.

## **10. Terms and conditions**

In the case the NRCB Board was to overturn my decision following a review hearing, I have attached a list of recommended permit conditions (see Appendix F).

## **11. Conclusion**

Approval LA21037 is denied for the reasons provided above, in the attached appendices, and in Technical Document LA21037.

April 1, 2022

(Original signed)  
Joe Sonnenberg  
Approval Officer

## **Appendices:**

- A. Consistency with applicable municipal planning documents
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Responses from referral agencies
- E. Exemptions from water well
- F. Explanation of recommended conditions should the decision be overturned following a review hearing

## APPENDIX A: Consistency with applicable municipal planning documents

Under section 20 of AOPA, an approval officer may only approve an application for an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

However, very recently in Decision 2022-02 Double H Feeders Ltd., the NRCB Board directed approval officers away from a narrow reading of section 20 of AOPA. An approval officer should determine an application’s consistency with not just the MDP, but also the IDP (if one applies). Given changes to the hierarchy of statutory plans under the *Municipal Government Act*, the Board suggested that ignoring an applicable IDP could lead to absurd outcomes in the event of a conflict between an MDP and an IDP.

In this case, though application LA21037 is consistent with the land use provisions of the MDP of the MD of Willow Creek, the application is not consistent with the IDP between the MD and the Town of Fort Macleod. My explanation for these conclusions follows.

In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 22(2.1) 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.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

### Municipal Development Plan

A & D Cattle’s proposed CFO is located in the MD of Willow Creek and is therefore first subject to that municipality’s MDP. The MD of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841. The parts and policies of the MDP relevant to this application are discussed below.

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. One of the objectives in Section 2 states that one of the main objectives of the MDP is to mitigate the siting of a CFOs to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

This part and policy likely isn’t a relevant “land use provision”; rather, I consider this to be a source of insight for the interpretation of the remaining portions of the MDP.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below (*in italics*); each one is followed by my discussion of how the provision related to this application. The requested matters to consider 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.

In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination.

*(b) Environmentally significant areas contained in the Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region report [the report]*

A & D Cattle’s proposed CFO is not within any of the areas designated as of regional, provincial or national significance in the referenced report (Map 1 of the report). However, areas of local significance are not presented in the report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO is not located in any of these areas. I am of the opinion that the application is consistent with this provision; I am not aware of information which refutes this.

*(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 sent out courtesy letters to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius of 1.5 miles, and gave public notice in the Macleod Gazette. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-7: *Approvals*, part 7.5).

*(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 category 2 MDS for A & D Cattle’s proposed CFO and the application meets AOPA’s 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*

As discussed in Technical Document LA21042, A & D Cattle’s new CFO meets the AOPA setbacks to common bodies of water and is not located within a known flood plain as identified in the Alberta Environment and Parks flood hazard website. Based on this information, the application is consistent with this aspect of the provision.



*(f) Restricting development in any wetland or riparian area*

The proposed CFO is not located in a wetland or riparian area, and it meets the AOPA setbacks to common bodies of water. 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.

Land Use Bylaw

In my view, the Land Use Bylaw is clearly incorporated in the MDP in several sections throughout the MDP, especially in Policy 15.5 which states:

*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 (#1826 consolidated to Bylaw No. 383/2020), 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. 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 above AOPA thresholds.

As for the lot size restriction in section 2(4) of the Rural General part of the bylaw, which 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. Regardless, this application is for a new CFO and does not include a proposal to subdivide an existing land parcel.

Section 3 of the Rural General part of the bylaw lists several setbacks. The proposed CFO meet the 22.9 m road and 6.1 m other adjacent property line setback requirements.

For these reasons, I conclude that the proposed CFO is consistent with the land use bylaw.

Intermunicipal Development Plan with Town of Fort Macleod

As directed by the NRCB Board in Board Decision 2022-02/ LA21033 - Double H Feeders Ltd, I also considered the IDP which exists between the MD of Willow Creek and Town of Fort Macleod.

The "Intermunicipal Development Plan Town of Fort Macleod and Municipal District of Willow Creek No. 26" (IDP) was implemented under Bylaw No. 1949 and Bylaw 1922 on March 9, 2022.

Section 3 of the IDP addresses confined feeding operations. Section 3.1 states:

*“New confined feeding operations (CFOs) and expansions to existing permits which would increase livestock numbers are not permitted within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO Exclusion Area) as illustrated on **Map 3 – CFO Policy Area**”*

The proposed CFO is located within the CFO Exclusion Area identified on this map. As such, it is inconsistent with the IDP. Because of this inconsistency, and being mindful of the recent direction from the NRCB Board, I have denied the application.

## APPENDIX B: Determining directly affected party status

The following individual qualifies for directly affected party status because they own a residence that may fall within the minimum distance separation (MDS) and waived the MDS requirement in writing:

- Martin Van Huigenbos

See NRCB Operational Policy 2016:7 – Approvals, part 6.2

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Dwain Lewis – SW 34-08-26 W4
- Wade and Kaitlyn Conner – NE 21-08-26 W4

See NRCB Operational Policy 2016:7 – Approvals, part 6.2.

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. The following individuals who submitted a response to the application fall under this category:

- Ronald and Laurie Conner – SW 20-08-26 W4

In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 – Approvals, part 6.3):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;
4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

Ronald and Laurie Conner are indicating the project will impact them as they ranch in the area and they get their water from wells. They are not located within the affected party radius but otherwise raised very similar concerns to the directly affected individuals identified above.

Besides stating they ranch in the area, they have not established a plausible chain of causality between the proposed CFO and the concerns they raise. Water allocation appears to be their primary concern. As identified elsewhere, water licensing (and therefore allocation) falls outside of what I am to consider under AOPA, and outside of the NRCB’s mandate. Water licensing falls under the *Water Act* which is administered by AEP. The applicant is required to ensure that they have access to sufficient licensed water for their CFO. Because of the limited reasons provided, I have determined that the Conners have not met the burden of proof to be considered directly affected. I therefore conclude that these individuals are not directly affected under AOPA.

## **APPENDIX C: Concerns raised by directly affected parties**

In the event the Board holds a review of my decision and overturns it, I have gone on to consider concerns from directly affected parties. In doing so, I recognize the time and effort from these individuals to participate in this process, and I wish to assist the board in the case a review of my decision is granted.

The directly affected parties raised the following concerns:

- Potential for contamination of groundwater and water table
- Water licensing and allocation
- Denial of other similar projects in area including windfarms and feedlots
- Potential for the application to degrade soil, manure stockpiling impacts
- Impacts on neighbors such as odor, air quality, lifestyle
- IDP which is being contemplated in the area and which may exclude CFO's
- Manure stockpiling impacts
- Cumulative effects of feedlots in area
- Fire hazard posed by silage pit

### *Potential for contamination of groundwater and water table*

Concerns were raised that the application would contaminate the groundwater resources and water table in the area. As discussed in section 6 of the above decision summary, the application meets AOPA requirements regarding liners for manure storage and collection. In addition, all other AOPA requirements aside from the setback to one water well are satisfied by the application. Section 9 above and Appendix E outline why an exemption for this well would be warranted. As such, I feel as though the application (including all conditions which are recommended should the Board overturn my decision following a review hearing) addresses this concern.

### *Water licensing and allocation*

Alberta Environment and Parks (AEP) is responsible for licensing the use of surface water and groundwater in the province. Water users that do not hold an AEP water license have to obtain a water license from AEP. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 4 of Technical Document LA21037. See also NRCB Operational Policy 2016-7: *Approvals*, part 8.10.) A & D Cattle's application includes a signed declaration indicating that they are not sure if a licence under the *Water Act* is needed. AEP has confirmed a license would be required if a decision was to be issued.

### *Denial of other similar projects in area including windfarms and feedlots*

The NRCB assesses applications for CFO's under AOPA on their own individual merit. Approval officers consider all AOPA regulations as well as the NRCB's operational policies. As such, past decisions in the region concerning other applications relating to non-CFO projects have no bearing on this application. That being said, I note that this application is being denied.

### *Potential for the application to degrade soil, manure stockpiling impacts*

AOPA requires that CFO's are able to store a minimum of 9 months of manure production. For feedlot operations, this manure can be stored within permitted pens or at another site following AOPA's regulations for short term manure storage. AOPA short term manure storage rules allow for manure to be stored 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 response line by calling 1-866-383-6722 and an inspector will follow up on their concerns.

CFOs are also required to meet the manure spreading setbacks and to keep manure spreading and soil sampling records for the past five years and to provide them to the NRCB upon request. Together, the above requirements minimize the potential for manure constituents to leave the land on which they are applied, enter water bodies, to impact soil in adjacent fields, and to minimize impacts on the surrounding environment.

### *Impacts on neighbors such as odor, air quality, lifestyle*

I have grouped these concerns together as in my interpretation they relate to the potential for nuisance impacts to arise from the proposed CFO. As noted in Technical Document LA21037, the proposed CFO meets the minimum distance separation requirement under AOPA to all residences aside from one (this individual provided a MDS waiver). AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. The NRCB generally considers the MDS as the distance beyond which the odours and other nuisance effects of a CFO are considered to be acceptable. That said, people residing beyond the MDS may still experience odours and other nuisance impacts from a CFO from time to time.

In addition to odours from the CFO itself, odours and other nuisance impacts are also likely to occur when manure spreading takes place. However, the frequency of these exposures will normally be limited and of short duration.

In order to limit the nuisance impact of manure application on direct seeded or tame forage land, section 24 of the Standards and Administration Regulation precludes manure spreading without incorporation within 150 m of residences. Manure that is spread on conventionally tilled land must be incorporated within 48 hours. Setbacks and incorporation can help to minimize odours from manure spreading.

### *IDP which is being contemplated in the area and which may exclude CFO's*

As discussed in this decision summary, I am denying the application based on its inconsistency with provisions within the IDP which was adopted in March 2022.

### *Cumulative effects of feedlots in area*

AOPA requires CFOs to meet specific requirements to protect the environment and minimize nuisance impacts. In addition, it also requires approval officers to consider "effects on the community and environment as well as the appropriate use of land. NRCB policy on these issues is found in Operational Policy 2016-7: Approvals, part 8.7.3.

AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area, and the NRCB's Board members have directed approval officers to ignore cumulative effects in their permitting decisions. For example, in a 2011 decision, the Board stated that

consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

NRCB policy presumes that an application meets the “acceptable community effects” and “appropriate use of land” if the application is consistent with the MDP, IDP and the LUB. These provisions were discussed in Appendix A, above. I determined the application to be inconsistent with the provisions of the IDP and therefore, the application has been denied.

*Fire hazard posed by silage pit*

The AOPA does not address fire risk or directly address the permitting of silage pits. The concerns relating to silage and the prospects of there being incidents of spontaneous combustion of feed is a management issue at any operation that stores organic materials. I see no reason that this operation, if granted an AOPA approval, would pose a risk any different to that posed by any other farm.

## **APPENDIX D: Responses from referral agencies**

### **a. Alberta Health Services (AHS)**

Though I am denying this application, I did consider a response that AHS provided to this application. I did this to assist the Board in the event the Board holds a review of my decision.

In their response, an AHS public health inspector stated that AHS has concerns relating to inconsistent soils in the area, nitrates in groundwater, water source for the operation, and lack of dust controls in CFO's in general.

As noted in the decision summary above, and further documented in Technical Document LA21037, the proposed CFO meets all AOPA technical requirements. Several of these requirements are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating groundwater or surface water. Because the proposed CFO would meet these requirements, it would not be expected to pose a material risk to groundwater should the NRCB Board, following a review hearing, overturn my decision.

AHS also raised concerns in relation to the water source and dust control at CFO's in general. Water licensing is under the direct jurisdiction of AEP, and the application was forwarded to AEP as part of this process. Dust from CFO facilities, and other nuisance impacts are generally considered to be addressed by AOPA's minimum distance separation (MDS) requirements. As already mentioned above, the application meets the MDS requirements.

## APPENDIX E: Exemptions from water well setbacks

### Water Well Considerations

The proposed feedlot pens and catch basin would be located less than 100 m from two water wells. The applicant proposes to remove one well as identified in Technical Document LA21037. If the NRCB Board was to overturn my decision, a permit condition requiring decommissioning of this well should be included in the approval.

A & D Cattle has requested an exemption for the other water well located at the site. I have confirmed that the water well in question is located approximately 23 m from the proposed pens, which is a manure collection area. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)*. Section 7(2) allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure collection area (MCA), or if required by an approval officer a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant's proposed facilities meet AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MCA
- d. Whether the well is up- or down-gradient from the MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 23 m west of the proposed pens is likely AEP water well ID #103530. This well is reported to have been installed in 1982, has a steel casing, and was drilled to a depth of 9.1 m. This well has been used historically for domestic purposes. I note that in my conversations with the applicant, A&D Cattle has indicated they are pursuing water well licensing with AEP.

The well's log identifies a protective layer or layers from ground surface to 6.1 m below ground level. The well does not specify a type of seal. The well appeared to be in good condition at the time of my site inspection and its casing was protected from becoming physically damaged. The well is located cross gradient to the proposed CFO.



The NRCB has developed a “water well exemption screening tool,” based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.<sup>1</sup>

In this case, the results of the water well exemption screening tool suggest that an exemption would be more likely as seen in Technical Document LA21037. The well scored a 22 in the first screening and a 10 in the secondary. This indicated the well is likely not going to be a conduit for groundwater contamination.

Despite the above, I am of the opinion that conditions should be included in the approval due to the well’s proximity to the feedlot pens and proposed catch basin. I would grant the exemption based on the following conditions which would be attached to Approval LA21037:

- A&D Cattle must construct and maintain clay mounding around the water well, to a height of at least 0.5 m vs the surrounding landscape.
- At the time of construction of the catch basin, a qualified professional must inspect the floor and walls of the catch basin and ensure no porous soil layers are encountered. A letter confirming the final dimensions of the catch basin, including the depth below ground level, and confirming that the catch basin is constructed in accordance with the engineering report attached to Technical Document LA21037, must be submitted to the NRCB prior to population of the CFO.

These conditions would be based on the site specific attributes of the proposed CFO and in consideration of the submitted engineering report. Taking these conditions into account, I am of the opinion the application, if granted, would provide the same degree of protection as required by the AOPA regulations.

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<sup>1</sup> A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).

## **APPENDIX F: Explanation of recommended conditions should the decision be overturned following a review hearing**

### **Conditions in Approval LA21037**

If the NRCB Board was to overturn my denial and direct me to issue an approval, the following conditions should be considered for inclusion in the approval.

#### **a. Water Wells**

Prior to constructing commencing at A&D Cattle's proposed feedlot, the north water well (as identified in Technical Document LA21037) should be professionally decommissioned. A&D Cattle should provide written confirmation, prepared by a qualified party, to the NRCB, confirming that the well has been professionally decommissioned.

In addition, an operating condition relating to well ID#103530 should be included in the approval. This condition should require A&D Cattle to maintain this well (ID#103530) in a state that ensures it is adequately protected from damage or feedlot contamination. Manure should also never be placed within 20 m of the well. The well must be protected and proof of ongoing maintenance must be provided to the NRCB by May 1 of every year beginning after the feedlot has been populated with livestock.

#### **b. Construction above the water table**

Sections 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the manure storage facility or manure collection area to be not less than one metre above the water table of the site "at the time of construction."

Based on this information, the proposed catch basin can meet the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition should be included requiring A&D Cattle to cease construction and notify the NRCB immediately if the water table is encountered during construction.

#### **c. Groundwater protection requirements**

A & D Cattle measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layers proposed to be used to protect the groundwater resource.

In this case, the in situ measurement indicated AOPA requirements have been met at the site (see TD 21037 for details). Though the requirements are technically met, there are site specific inconsistencies which I have determined need to be addressed. To provide additional assurance that the as-built catch basin adequately protects groundwater, the approval should include a condition requiring:

- a. a completion report, prepared by a qualified professional (i.e. Professional Engineer), certifying that the manure collection portions of the catch basin have been constructed in accordance with the proposed engineering recommendations. At a minimum the report must confirm that the facility is constructed in the approved location; the dimensions and depth of the catch basin below ground level; and confirm that any porous layers encountered during construction were addressed to the satisfaction of a qualified professional and that AOPA requirements have been met.

**d. Construction Deadline**

A & D Cattle proposes to complete construction of the proposed new feedlot and catch basin, if granted a permit, by December 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 30, 2024 should be included as a condition should a permit be issued.

**e. Post-construction inspection and review**

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in newly constructed facilities. If the Board directs, following a review hearing, an approval to be issued, it should include a condition stating that A & D Cattle shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens or catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meets the approval requirements.