

June 2, 2022

Natural Resources Conservation Board
Board Reviews
John J Bowlen Building
#901, 620 – 7 Avenue SW
Calgary, Alberta, T2P 0Y8

Attention: Ms. Friend,

Re: **Board Review of Decision LA21037 - A & D Cattle Ltd
Submission Rebuttal Opportunity**

This submission is on behalf of Mr. Adrian Van Huigenbos (A&D Cattle Ltd) and replies to information provided to the Natural Resources Conservation Board (NRCB) for Board review of permit LA21037. It is understood four submissions were received on this matter; however, this reply focuses on the submission from NRCB Approval Officer and Field Staff dated May 26, 2022.

The Board is aware A&D Cattle believe the approval officer (AO) unnecessarily delayed his decision with specific actions, and that if the delay had been avoided, the application would have been assessed against the Municipal Development Plan (MDP) in force prior to March 9, 2022. In this regard, A&D Cattle would like to address the following:

Approval Officer Chronology

The chronology submission provides a summary of events from the AO perspective from July 7, 2021 to April 1, 2022. It is noted that A&D Cattle also submitted (May 26, 2022) an extensive review of both phone calls and emails with the AO. A&D Cattle would clarify the following:

- 1) The AO states (page 2): *February 2, 2022 was the deadline for responses to the application. The NRCB received three responses from the public. A few days later, the Approval Officer sent the compiled responses to the applicant and offered the applicant an opportunity to respond to them.*
 - a. On February 7, 2022 A&D Cattle initiated contact with the AO to inquire about statement of concern from the public review process. Only then did the AO provide the statements for review and response. This accounts for a 3-day delay.
- 2) The AO states (page 3): *On March 10, 2022, the applicant contacted the Approval Officer and advised there was an issue with where he drew the well in the application*
 - a. A&D Cattle confirms initiating contact with the AO to check on the progress of the application. However, during the call, it was the AO who asked for more information about the location and use of the water wells.
- 3) The AO states (page 3): *On March 14, 2022, the Approval Officer e-mailed the applicant seeking: a. details on the water well; and b. identification of additional manure spreading lands.*
 - a. A&D Cattle provided two site photos that illustrate the location of the two water wells. The original site photo (November, 2021) identified both water wells (for use and

decommission) and the second site photo (March, 2022) identified only the well for use. Both photos are attached photo below. The AO had ample time to clarify the water well information and complete the assessments considering the application was completed in December 3, 2021.

- a. A&D Cattle would note the AO requested additional landbase for manure spreading in order to account for land not cultivated (see portion of the email (March 14, 2022) from the AO, A&D Cattle submission to the Board, May 26, 2022). A&D Cattle provided adequate landbase (Brown – Dark Brown soils) to meet the regulations for manure spreading. The AO request for more acres was unwarranted and caused a delay in process the application. This request accounts for a 6-day delay (between phone call, email and response)
- 4) As part of the review, the Board specifically asked for rationale for delaying permit notices for December 2021. The AO submission simply referred to the rationale in the Decision Summary LA21037 and does add additional justification for this delay. The rationale suggests the delay was needed to better accommodate the public notice process and any office inquires.
 - a. Again, A&D Cattle understands NRCB office closure was from December 27, 2022 to January 3, 2022 only. This accounts for a deliberate 16-day delay (from December 3 until December 24, 2021)
 - b. While NRCB office close during statutory holidays is acknowledged, 3 additional days (December 29 to 31) were added to the closure period. This accounts for a deliberate 3-day delay.
 - c. Due to the covid pandemic restrictions, it is understood the NRCB field office were (and continue to be) closed to the public. To suggest that the public would not have access to office staff in December is inaccurate. Field staff were working remotely, and any communication with staff has been limited to site visits, phone and email correspondence for the past 2 years.
- 5) Due to the discrepancy in chronology between the AO and A&D Cattle submission (all phone calls, email and actions), it is requested that the Board direct Field Service to provide a summary of the application record/database as screenshots for this file. This will help to better understand the AO actions and correspondence activity (including internal staff) through the duration of this application. Similar information was provided for Board review of permit LA19036 (Muilwijk).
- 6) The Board is also asked to determine if the AO was away from the office on holidays or on extended leave during the timeframe between December, 2021 and March, 2022.

Application Completion Goals

The AO submission discussed the timeframe for the approval process and completion goals established by the NRCB

- 1) The AO submission suggests (page 10): *The NRCB's internal goal for efficiency of the permitting process is that 85 percent of decisions be issued within 65 working days from the date the application is determined to be complete.*
- 2) Further the submission suggest (page 10): *In this case, the Approval Officer issued his decision 61 working days after the application was deemed complete.*
- 3) However, A&D would submit to the Boards attention LA22013 (Gouw Quality Onion), which is another recently completed decision by the AO. The application was for a 2800 hd beef feedlot expansion near Taber, Alberta (8600 hd beef finishers total). The full decision summary is attached below.
 - a. From the decision summary it states: *On February 9, 2022, Gouw Quality Onions Ltd. (Gouw) submitted a Part 1 application to the NRCB to expand an existing beef CFO by increasing animal numbers from 5,800 beef feeders to 8,600 beef finishers and constructing additional feedlot pens (149 m x 195 m). The Part 2 application was submitted on February 17, 2022. On March 2, 2022, I deemed the application complete.*
 - b. The permit was issued on April 13, 2022. In this case, the decision was issued by the AO in 31 days.
- 4) In addition, A&D Cattle would submit to the Boards attention LA21053 (Schooten), which is a feedlot expansion for 32,000 hd beef finishers near Mossleigh, Alberta (75,000 hd beef finishers total). The full decision summary is attached below.
 - a. From the decision summary Approval Officer, Carina Weisbach, states: *On October 26, 2021, John Schooten and Sons Custom Feedyard Ltd. (Schooten) submitted a Part 1 application to the NRCB to expand their existing beef CFO by constructing additional pens, a catch basin and to increase beef finisher numbers to 75,000. The Part 2 application was submitted on November 30, 2021 (along with an updated Part 1). On January 5, 2022, I deemed the application complete*
 - b. The permit was issued on March 17, 2022. In this case, the decision was issued by the AO in 52 days.

In Conclusion

A&D Cattle would suggest their feedlot application experienced un-warranted delays throughout the NRCB application process. Had these delays not occurred, it is likely that the application would have been assessed based on the Municipal Development Plan in place prior to March 9, 2022.

In total, A&D Cattle estimate a delay of 28 days based on the following:

- 1) 9 days delay during the application process (Jan-March); and,
- 2) 16 days delay in December, 2021 (Dec 3-24)
- 3) 3 days delay for NRCB office closure (Dec 29-31)

Without the delays it is possible that the Approval Officer could have delivered the decision as early as February 22, 2022.

Further, had the Approval Officer completed his review with the same efficiency as some of his other decisions, it is possible this decision could have been delivered in late-January or early-February.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Cody Metheral".

Cody Metheral, P. Eng.
Linkage Ag Solutions

Reviewed By:

Adrian Van Huigenbos
A&D Cattle Ltd.

Addendum

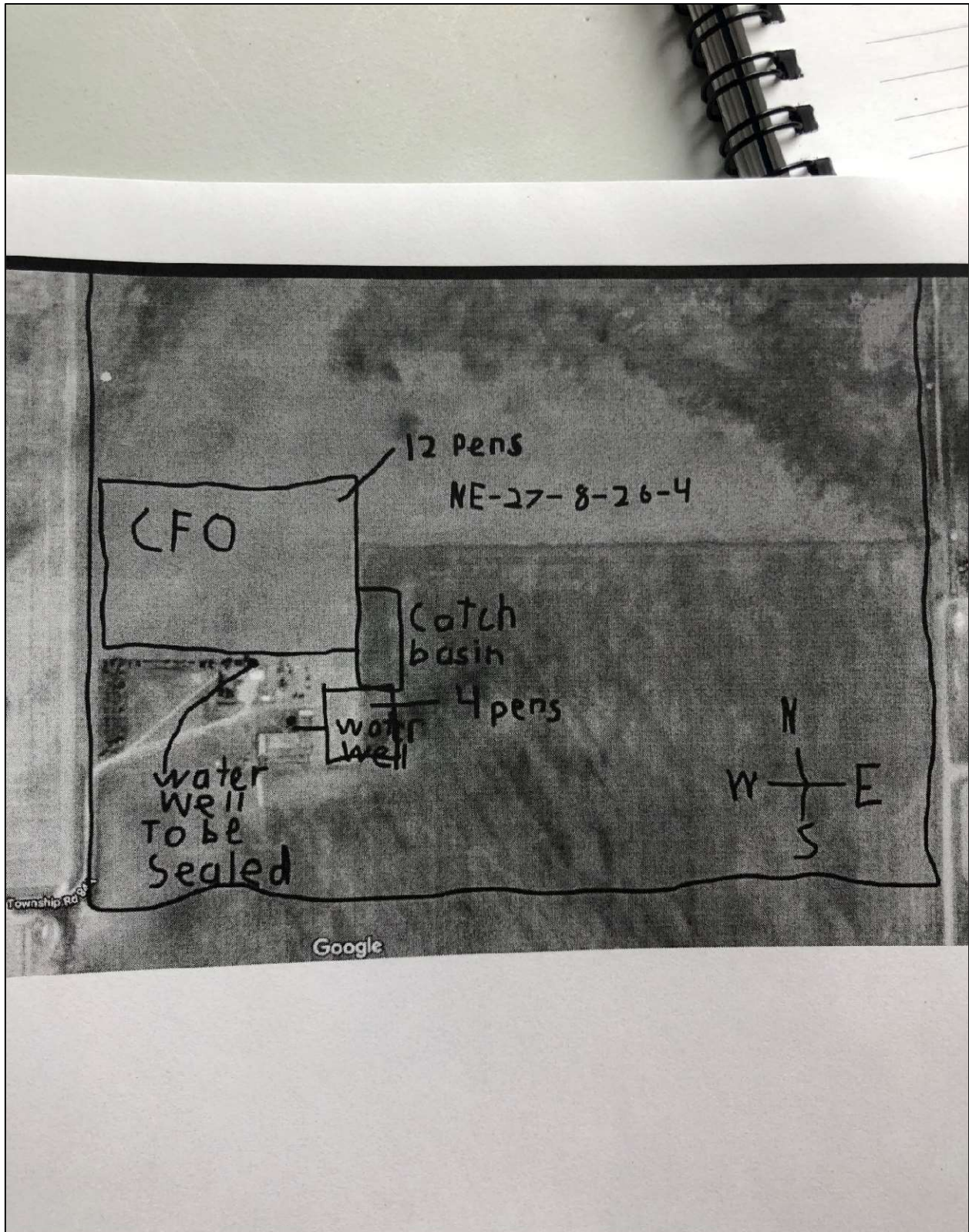


Figure 1 - Application Submission (November, 2021)



Figure 2 – Application submission (March, 2022)

Decision Summary LA22013

This document summarizes my reasons for issuing Approval LA22013 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22013. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On February 9, 2022, Gouw Quality Onions Ltd. (Gouw) submitted a Part 1 application to the NRCB to expand an existing beef CFO by increasing animal numbers from 5,800 beef feeders to 8,600 beef finishers and constructing additional feedlot pens (149 m x 195 m).

The Part 2 application was submitted on February 17, 2022. On March 2, 2022, I deemed the application complete.

a. Location

The existing CFO is located at N½ 34-11-16 W4M and NE 33-11-16 W4M in the Municipal District (M.D.) of Taber, roughly 17 km north of Taber. The terrain is gently undulating with the Oldman River located approximately 750 m to the north.

b. Existing permits

The CFO is permitted by Approval LA19011 and Authorization LA20011 which allows a beef CFO with permitted capacity for 5,800 beef feeders. The CFO's permitted facilities are feedlot pens (335 m x 292 m total area) and a catch basin (70 m x 50 m x 3.5 m deep), feedlot pens (243.9 m x 71.6 m), a manure storage pad (104.9 m x 53.3 m) and a catch basin (64.3 m x 53.3 m x 4.6 m).

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 two miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to M.D. of Taber, which is the municipality where the CFO is 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 Taber Times on March 2, 2022. The full application was made available for viewing on the NRCB website. As a courtesy, 10 letters were sent to people identified by the M.D. of Taber 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), Alberta Transportation, and the Taber Irrigation District (TID).

I received responses from AEP, Alberta Transportation, and the TID. No concerns were raised with the application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must 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 and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the M.D. of Taber’s municipal development plan. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

6. AOPA requirements

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

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure

- Meets AOPA’s nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

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 M.D. of Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Brian Peers, director of lands with the Planning Department, provided a written response on behalf of the M.D. of Taber. Mr. Peers stated that the application is consistent with the M.D. of Taber’s land use provisions of the municipal development plan. The application’s consistency with the M.D. of Taber’s municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received no other responses to the application notice.

8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Gouw’s existing CFO facilities were assessed in 2019 and 2020 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater. All proposed facilities meet AOPA requirements and are automatically presumed to pose a low risk to surface water and groundwater as well.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, 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.

Mr. Peers also listed the setbacks required by the M.D. of Taber's land use bylaw (LUB) and noted that the application meets these setbacks.

I also considered the effects of the proposed expansion 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 is not 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. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA22013 specifies the cumulative permitted livestock capacity as 8,600 beef finishers, and permits the construction of the feedlot pens.

Approval LA22013 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval LA22013 includes conditions that generally address construction deadlines, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval LA19011 and Authorization LA20011 with Approval LA22013 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. All conditions from the previous permits have been carried forward into the new approval.

11. Conclusion

Approval LA22013 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22013.

Gouw's NRCB-issued Approval LA19011 and Authorization LA20011 are therefore superseded, and their content consolidated into this Approval LA22013, unless Approval LA22013 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permits will remain in effect.

April 13, 2022

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22013

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of 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).

This does not mean consistency with the entire MDP. 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 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Gouw’s CFO is located in the Municipal District (MD) of Taber and is therefore subject to that county’s MDP. The MD of Taber adopted the latest revision to this plan on September 28, 2021 under Bylaw #1980.

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the M.D. of Taber wish to have considered when applications for CFOs are evaluated for approval....”

The text in sections 5.1.13-5.1.15 is not clear as to whether these policies were intended to apply to applications for both new CFOs and for expansions of existing CFOs. However, a broad reading of these provisions suggests that they were meant to cover new CFOs as well as CFO expansions. Therefore, I presume these sections apply to the application.

Each of the applicable sections are discussed below.

Section 5.1.13

This section states that CFOs should be discouraged in the areas shown in Map 2 as “restricted”. This exclusion zone is a land use provision. Gouw’s CFO is not located within the “CFO restricted area” and the application is therefore consistent with this provision.

Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Gouw’s CFO is not within any of these setbacks.

Section 5.1.15

Under this section, the Municipal District requests that the NRCB consider the four following items:

- the proximity of the operation to open bodies of water and the topography of the

- surrounding lands in order to minimize any negative impacts to drinking water supplies;
- the cumulative effect of a new approval on any area near other existing confined feeding operations;
- environmentally sensitive areas shown in the report, Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region;
- give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a) or (b) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these two MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.).

At any rate, Gouw’s CFO meets requirements related to item (a), which refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because the application meets these requirements, this expansion would not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

Subsection (b) refers to cumulative effects of CFOs. 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. Further, the NRCB’s Board members have directed approval officers not to consider cumulative effects in their permitting decisions. 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.)

The CFO is not located in an environmentally sensitive area as indicated in item 5.1.15(c) above.

Policy 5.1.15(d) is a procedural requirement so it is likely not a “land use provision.” Therefore it is not relevant to my MDP consistency determination. At any rate, as explained above, in addition to notifying the Municipal District of Taber and several referral agencies, the NRCB also published official notice of the application in the Taber Times, and sent courtesy letters to landowners and residents within a 2.0 mile radius as identified by the MD of Taber (see also Operational Policy 2016-7: Approvals, part 7.4). The notification requirements under AOPA have been met.

For these reasons, I conclude that the proposed construction is consistent with the land use provisions of the Municipal District of Taber’s MDP. The Municipal District’s response supports my conclusion.

APPENDIX B: Explanation of conditions in Approval LA22013

Approval LA22013 includes several conditions, discussed below. Construction conditions from historical Approval LA19011 and Authorization LA20011 that have been met are identified in the appendix to Approval LA22013.

1. Conditions in Approval LA22013

a. Construction Deadline

Gouw proposes to complete construction of the proposed new feedlot pens by December 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 30, 2024 is included as a condition in Approval LA22013.

b. 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 the newly constructed facilities. Approval LA22013 includes a condition stating that Gouw shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens until NRCB personnel have inspected the feedlot pens and confirmed in writing that they meet the approval requirements.

Decision Summary LA21053

This document summarizes my reasons for issuing Approval LA21053 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21053. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On October 26, 2021, John Schooten and Sons Custom Feedyard Ltd. (Schooten) submitted a Part 1 application to the NRCB to expand their existing beef CFO by constructing additional pens, a catch basin and to increase beef finisher numbers to 75,000.

The Part 2 application was submitted on November 30, 2021 (along with an updated Part 1). On January 5, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers to a total of 75,000 beef finishers
- Constructing a catch basin – 200 m x 90 m x 3 m deep
- Constructing 80 additional feedlot pens – 80 m x 65 m each

The applicant, Schooten, also asked for a formal grandfathering determination of this CFO. This is done following Board Decision 2021-08 / EO 21-01, issued on November 3, 2021.

a. Location

The existing CFO is located at S½ 8-21-24 W4M and N½ 5-21-24 W4M in Vulcan County, roughly 4.5 km northeast of the Hamlet of Mossleigh, Alberta. The terrain is generally sloping to the south and east. The nearest common body of water is an ephemeral drain approximately 40 m to the south of the CFO that continues to meander parallel to the southern edge of the CFO and into Arrowwood Creek, 2.3 km to the east.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes Vulcan County development permits:

- a) #95-016, issued in April 1995 (day not legible), allowing the establishment of a 30,000 finishing cattle feedlot; and
- b) #98-0-12, issued April 8, 1998, permitting the expansion by 40 additional pens of 275 livestock manure units per pen (as defined in the Code of Practice) at this CFO.

I carried out a grandfathering determination as part of this application and have determined the grandfathered capacity of this CFO to be 41,250 beef finishers. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix D, attached. The deemed facilities are listed in the appendix to the Approval LA21053.

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:

- 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 four miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Vulcan County, which is the municipality where the CFO is located, and to Wheatland County which has a boundary within the affected party radius. Also, a copy of the application was sent to Siksika Nation I.R. #146 because they are located within the affected party radius.

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 Vulcan Advocate on January 5, 2022 and the Strathmore Times on January 7, 2022. The full application was also posted on the NRCB website for public viewing. One hundred and fifty seven letters were sent to people identified by Vulcan County as owning or residing on land within the four mile radius. This included a letter to the Siksika Nation, who agreed to forward a courtesy letter on the NRCB's behalf to a family living within the affected party radius on the I.R. 146.

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), Alberta Transportation, and the Bow River Irrigation District (BRID).

The NRCB received a written response from Leah Olsen, development & planning technologist with Alberta Transportation and Jeff Gutsell, a hydrogeologist with AEP.

In her response, Ms. Olsen stated that the subject site is well removed from the provincial highway system and connected to this system through local road systems. Therefore a permit from her department is not required. She recommended that because of the types and volume of traffic generated by the development, the county should request a traffic impact assessment.

She continued to state that they have no objections/concerns with the issuance of a permit. A copy of all responses mentioning concerns in respect to road safety in the area of the RR 244 and HW 547 intersection were later forwarded to Ms. Olsen for her consideration. In a follow up conversation and email, Ms. Olsen stated that she has no further comments but supports Vulcan County's request for a traffic impact assessment.

Mr. Gutsell stated that Schooten indicated that they would like to separate the NRCB application process from the AEP application for a water license. However AEP has not yet received an application for new groundwater licenses from Schooten for the increase in water needs. He also stated that the existing water wells are licensed under Western Feedlots Ltd.

Mr. Gutsell also expressed concerns in respect to the water supply and stated that the current water licenses do not cover the forecasted water needs. He also mentioned that he understands that Schooten is in discussion with the BRID with respect to water conveyance agreements but that the BRID is unlikely able to provide enough water to cover the additional water needs.

Mr. Gutsell requested Schooten to assess all their water needs and acquire all applicable licenses prior to the expansion.

Because water licensing is entirely under the jurisdiction of AEP, AEP's concerns and follow-up response will not be discussed further in this decision summary. AEP's response has been forwarded to the applicant for their information and action. The Schootens have provided a copy of their water agreements with the BRID.

No other responses from referral agencies were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must 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 and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Vulcan County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

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

- Meets the required AOPA setbacks from nearby residences, with two exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of those residences have signed written waivers of the MDS requirement to their residences
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water

- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

7. Responses from municipalities 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." Vulcan County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Anne Erickson, manager of development services with Vulcan County, provided a written response on behalf of Vulcan County. Ms. Erickson stated that the application is consistent with Vulcan County's land use provisions in their municipal development plan. The application's consistency with the Vulcan County's municipal development plan is addressed in Appendix A, attached.

Vulcan County included the following suggestions, requests and concerns in their response: Ms. Erickson pointed out that the current intersection sightlines are too narrow for most of the trucks frequenting the area. Because of the expected increase of traffic volumes frequenting this intersection, a condition requiring a traffic impact assessment for the highway 547 and Range Road 244 should be included if a permit was issued. She also requested that water supply should be taken into consideration when issuing an approval. The county requested that an open house be held prior to deciding on the application to allow interested parties to understand what was being proposed. These concerns are addressed in Appendix B below.

Wheatland County is also a directly affected party because Wheatland County is within the affected party radius. Ms. Suzanne Hayes, a development officer with Wheatland County responded on behalf of the county and stated that the CFO expansion does not appear to be within the CFO exclusion area of the IDP between Vulcan County and Wheatland County, that it is not within the Speargrass Area Structure Plan, and that the proposal is consistent with their county's MDP.

The Siksika Nation is also a directly affected party because the Siksika Nation is within the affected party radius. Ms. Hester Breaker, senior manager of Siksika Lands and Resource Management, sent a response on behalf of the Siksika Nation. In her response, Ms. Breaker stated that odors from manure spreading and the production site will affect residences downwind. She also voiced concerns about potential runoff from the facility and manure spreading lands entering Arrowwood Creek which provides water to livestock and recreational activities for residents living along the creek. She requested monitoring of surface water quality to ensure that this operation does not negatively impact the Siksika Nation. These concerns are discussed in Appendix B, attached.

In addition, Siksika Nation identified one family residing on the Siksika Nation I.R. 146 within the four-mile radius. A representative of the First Nation advised that he forwarded a courtesy letter to that family. I did not receive a response from the family.

Apart from municipalities, any member of the public may request to be considered “directly affected.”

The NRCB received one joint submission from David and Lorelei Bexte, after the submission deadline in the public notice. Despite receiving it after the response deadline, I considered whether there were exceptional circumstances that warranted considering the submission. In this case, I could not identify exceptional circumstances for the lateness of the submission, so I did not consider nor address their submission in my decision. However, the concerns they raised are similar in nature to concerns raised by other directly parties.

The NRCB received a total of eleven other responses, from nine individuals and four other parties (one individual responded on behalf of a group). All of the eleven responses that were submitted were received prior to the response deadline, and were prepared by individuals who own or reside on land within the four mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they automatically qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding:

- road maintenance, use, dust abatement, and safety,
- water quantity and quality,
- manure management,
- animal numbers,
- nuisance impacts (odor, dust, light),
- negative impact on human and animal health, and
- property value and enjoyment of life.

These concerns are addressed in Appendix B.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Mr. Ken Burke and Mr. Tim Prince each provided an MDS waiver and are therefore also considered to be directly affected parties.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing manure storage facilities and manure collection areas. I used the NRCB’s environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

The outcome of the ERST indicated that the existing feedlot pens and the existing catch basin, that is located on the far east side of the CFO, pose a low risk to surface water and a moderate potential risk to groundwater due to their proximity to water wells. The results of the risk assessment are documented in Technical Document LA21053.

I consulted with an NRCB environmental specialist as to the severity of the risk who stated that the existing groundwater monitoring condition from a municipal development permit should be maintained. Also considering that the proposed facilities (feedlot pens and catch basin) appear to be upgradient of the three wells north of the existing feedlot pens, I am requiring that the groundwater monitoring condition should be expanded to include all water wells at this CFO. This expanded monitoring condition will include all water wells at this CFO and will allow the identified potential risk to groundwater to be monitored.

The existing catch basins located on the south end of the CFO provide sufficient volume to contain at least a one day rainfall that has a one in 30 year probability (section 19(2) Standards and Administration Regulation). However, to provide additional assurance to prevent manure contaminated runoff from entering any common body of water, I determined that the existing condition #5 from development permit 98-012-VUL that currently states: ...*“ensure that no water from containment pools (catch basins) be allowed to enter West Arrowwood Creek or any other natural water body”*, will be expanded to include, that the permit holder shall immediately notify the NRCB if the water level in the catch basins, located on the south side of the CFO, reach freeboard level (see Appendix C, attached).

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, 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.

In addition, a traffic impact assessment is a matter that might normally be considered if a development permit were being issued by the municipality. Ms. Erickson, the manager of development services for Vulcan County stated: *“as the NRCB is the approval body for this application, and the development is outside of the highway control zone, it is imperative that the NRCB engage Alberta Transportation and that a Traffic Impact Assessment be completed prior to an approval being granted. With the current sightlines and Highway design of the intersection at HWY 547 and RGE RD 244, an increase in traffic volumes are cause for concerns, the current sightlines are approximately 310 m and the calculated required sightline for a WB-23 truck is 463 m resulting in a deficiency of 150 m.”*

Ms. Erickson’s response, together with all the responses voicing the same concern, was forwarded to Ms. Olsen with Alberta Transportation, for her information. As mentioned in section 3 above, in a follow up email, Ms. Olsen had no further comments. In a phone call to clarify who would conduct a traffic impact assessment, Ms. Olson stated that the developer would retain a qualified engineering firm to do the assessment. This would typically be the result of a condition in a development permit issued by the responsible approving authority. In case the assessment identifies that changes to the current traffic situation needed to be made, any arising cost would be borne by the developer. As noted below (page 15, appendix B of this decision summary), a condition will be added, requiring the applicant (Schooten and Sons) to conduct a traffic impact assessment.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments by forwarding any concerns we received in respect to water supply to AEP. A copy of all responses voicing concerns in respect to water quantity were forwarded to Mr. Gutsell, a representative of AEP. In a follow up email, Mr. Gutsell stated that he hasn't yet received a water license application and therefore cannot comment on water supply issues at this point. I would like to remind the applicant that it is his/their responsibility to acquire all applicable licenses.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application.

Finally, I considered the effects of the proposed expansion 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted because the applicant was able to show that all AOPA liner requirements, distances to water bodies and water wells, and containment volume for expected manure contaminated runoff can be met with the proposed development. In addition, the groundwater monitoring requirements for this site will be expanded to include all water wells on site and carried forward into this approval.

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. In my view, considering all the responses, none of the evidence or concerns provided to me by the applicant, municipalities, First Nation, referral agencies or other parties was sufficient to rebut this presumption.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA21053 specifies the cumulative permitted livestock capacity as 75,000 beef finishers and permits the construction of the 80 additional pens and a catch basin.

Approval LA21053 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval LA21053 includes conditions that generally address construction deadline(s), monitoring, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA21053: Municipal development permits 95-016 and 98-012-VUL (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single

document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix C discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA21053 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21053.

Schooten's municipal development permits 95-016 and 98-012-VUL are therefore superseded, and their content consolidated into this Approval LA21053, unless Approval LA21053 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permits 95-016 and 98-012-VUL will remain in effect.

March 17, 2022

(original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA21053
- D. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of 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).

This does not mean consistency with the entire MDP. 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 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Schooten’s CFO is in Vulcan County and is therefore subject to that county’s MDP. Vulcan County adopted the latest revision to this plan on April 4, 2012, under Bylaw #2012-003.

Part 4 of Vulcan County’s MDP deals specifically with CFOs. That part starts by stating (p. 14) that CFO development within the county “continues to influence the local economy and landscape. The preservation of the agricultural lifestyle is promoted and maintained through these operations. The potential issues caused by CFOs may be mitigated through long-range planning so those nearby settlements can still enjoy the rural lifestyle of the County.”

Sections 4.1 to 4.3 of the MDP provide specific policies for CFOs.

Section 4.1 precludes new or expanding CFOs in the exclusion zones shown in a map in Appendix B of the MDP. Schooten’s CFO is not within any of the exclusion zones shown in this MDP appendix.

Sub-sections 4.2(a), (c) and (d) of the MDP provide several setbacks to roads. Based on the site plan, the proposed CFO facilities meet these setbacks.

Sub-section 4.2(b) states that applications for CFOs “adjacent” to a highway “should be referred to Alberta Transportation for a roadside development permit.” This is likely not a land use provision (and, therefore, is not relevant to my MDP consistency determination), because of its procedural focus. At any rate, as noted in part 3 of the decision summary above, the NRCB notified Alberta Transportation of Schooten’s application and Alberta Transportation confirmed that a roadside development permit is not required.

Sub-sections 4.3(a) and (b) of the MDP list two factors that the NRCB “should consider” in its approval review. These factors are:

- (a) the cumulative effects of a new approval on any area near other existing confined feeding operations
- (b) impacts on environmentally sensitive areas shown in the report “Vulcan County: Environmentally Sensitive Areas in the Oldman River Region”

Sub-section (a) is likely not a “land use provision,” because 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.

Sub-section (b) is also likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the acceptable levels of impacts on environmentally sensitive areas. Nevertheless, Schooten’s CFO site is not within any environmentally sensitive area shown in the report referenced in the MDP.

Sub-section 4.3(c) calls for “giving notice to adjacent landowners” of AOPA permit applications. This policy is likely not a “land use provision” because of its procedural focus and is therefore not part of my consistency determination. Having said that, as required by AOPA, the NRCB notified Vulcan County, Wheatland County, several referral agencies and placed public notification in the Vulcan Advocate on January 5, 2022 and the Strathmore Times on January 7, 2022. In addition, courtesy letters informing parties of the application, were sent to landowners or occupants within a 4 mile radius, as identified by Vulcan County, Wheatland County, and the Siksika Nation (see section 2 above).

Lastly, sub-section 4.3(d) of the county’s MDP calls for the NRCB to consider “proof of the availability of water, specifically, confirmation of access and appropriate provision of the sufficient quantity and suitable quality of the required water supply.” This sub-section is likely not a “land use provision”. Therefore, this sub-section is likely not relevant to my MDP consistency determination (Beyond the MDP consistency context, under NRCB policy, approval officers will consider water supply issues only to the extent of requiring applicants to sign one of the water licensing declarations on page 6 of Technical Document LA21053. See Operational Policy 2016-7: Approvals, part 8.10).

For these reasons, I conclude that the application is consistent with the land use provisions of Vulcan County’s MDP. The county’s response supports my conclusion.

APPENDIX B: Determining directly affected party status and concerns raised

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Tim Prince (NW 32-20-24 W4M) and Ken Burke (SE 16-21-24 W4M). See NRCB Operational Policy 2016:7 – Approvals, part 6.2

The following individuals/parties qualify for directly affected party status because they submitted a timely 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 (See NRCB Operational Policy 2016:7 – Approvals, part 6.2) (The respondents are not in any particular order):

Name	Concerns / Support
Siksika Nation	<ul style="list-style-type: none"> • runoff entering surface water bodies, including West Arrowwood Creek, which leads to the Bow River, causing contamination of waters used by First Nations for livestock and recreational purposes. • manure constituents on manure spreading lands could enter groundwater. • negative impacts on health due to manure spreading. Ms. Breaker, senior manager with the Siksika Nation stated that smell will be carried downwind, affecting residences on Section 23, 13, 12–21-24-W4, Section 7-21-23-W4, and Section 21-11-24 W4.
Bernie McWilliam for McWilliam Farms Ltd. NW1-21-25 (and other lands as listed in the manure spreading agreement)	<p>Letter of support</p> <ul style="list-style-type: none"> • Manure helps to remediate and prevent erosion • Presents a market for locally produced crops, including drought or hail damaged crops • Roads and dust abatement should be addressed
Brent Gateman Section 26-20-24 W4M	<ul style="list-style-type: none"> • Economic development in the region is welcomed • HW547-RR244 intersection dangerous. Increased traffic will increase risk. Traffic impact assessment absolutely necessary • Burden to implement safety measures should be shared with applicant • Impact of road dust on yield potential of adjacent crop land
Hutterian Brethren of Riverbend NW 32-24-24 W4M	<ul style="list-style-type: none"> • Dust on roads causes safety issues (approximately 40 trucks per hour during silageing) • Dust control of roads should be done by Schooten • Dust impacts quality of life • Dust damage to crops • No action taken despite complaints – inconsiderate to neighbours • Dust control should be a permit condition

<p>Nate Gardner and Family</p> <p>SE 10-21-24 W4</p>	<ul style="list-style-type: none"> • Frustration and disappointment with process, no town hall meetings, poor communication from NRCB • Concerns have no weight and not taken seriously • Traffic much more intense than in previous years, poses issues in respect to safety and road conditions (potholes, dust, debris), HW-RR intersection dangerous • Truck driver littering roads, ignore speed limits • Pressure on infrastructure from one single entity, applicant should contribute to cover costs for road maintenance • Possible overpopulation • Increased strain on groundwater aquifer • Not good neighbours • Nuisance impact • Loss of property value and quality of life • General negative economic impact • Negative impact on health • Nuisance impacts (odor, noise)
<p>Eric and Darlene Little</p> <p>SW 36-20-24 W4M</p>	<ul style="list-style-type: none"> • Nuisance impacts will further increase (flies) • Negative impact on air quality • Decrease in property value
<p>Murray Norton</p> <p>W½ 3-21-24 W4M</p>	<ul style="list-style-type: none"> • Water quantity in particular water well supply
<p>Cindy Hoerger on behalf of Hoerger and Sons</p> <p>SW 24-21-25 W4M</p>	<ul style="list-style-type: none"> • Decline in air quality poses health problems (particulate matter, gases, dust, pollutants) also during manure spreading • Nuisance impacts (odor, dust, light, noise) • Loss of quality of life • Excessive draw on energy grid • Over-demand on aquifer and water quality declined over the years • Health (disease transmission) • Will Schooten cover for damages to property, livestock, water supply, or human health • Loss of property value • Will our tax base used to pay for road repair • Poor road conditions, road repair and maintenance issues, high traffic column • Pooling of resources to one operator • Continuation of small farms jeopardized • Effects on the environment, the economy and the community, and the appropriate use of land are negative for residents living in the north end of Vulcan County • Grandfathered numbers should be 42,000 as approved by county

<p>Ruth Ann Sherstabetoff NE 31-21-24 W4M SW 32-21-24 W4M</p>	<ul style="list-style-type: none"> • Groundwater contamination and surface water contamination through runoff • Road deterioration and safety including RR-HW intersection • Traffic impacts extends to other areas (TWR 214 and 212) to supply adjacent feedlot • Traffic volume • Smell • Dust not healthy for neighbours, crops or cattle • Manure spreading lands • History of runoff contaminating water supply for Siksika Nation
<p>Sue Archibald NE 26-21-25 W4M</p>	<ul style="list-style-type: none"> • Extreme odor • Air quality decreases further due to increase in animal numbers • Negative impact on health and well-being of residents in the community • Water quantity • Road deterioration and road safety (speed and volume), road dust (visibility) are poor already • Negative impact on property value
<p>Rhys and Rozanne Leggott NW 11-21-24 W4M</p>	<ul style="list-style-type: none"> • Concerns not addressed • Former owner operated in less intrusive way • Steady increase in traffic volume and operational activities • Increased traffic causing stress • Road deterioration significant, safety issues (speed, debris, inconsiderate driver behaviour), constant dust, road maintenance falls behind • Traffic safety (speed, un-courteous driver behaviour, hazard for children, pets, damage on vehicles) • Dust abatement • Health concerns (silica in dust) • Water quantity (increase in demand of canal water will subsequently limit access for other users) • Not sustainable • Contamination of groundwater and surface water • Nutrient overloading • Power grid overuse • Possible overpopulation and control mechanisms • Lack of crop rotation, poor management land stewardship • Negative impact on property value • Dumped grain can cause spreading of crop diseases • Overall negative impact on community • Who will pay for maintenance and upgrades for infrastructure (roads, water, power)

Wayne Robinson NW 11-21-25 W4M	<ul style="list-style-type: none"> • Seem to be overpopulated. How will that be enforced in future • Water quantity, water storing capacity insufficient to cover need, where is additional water coming from • Light pollution • Dust control (currently personal cost) • Road dust aggravated by speeding trucks (above speed limit) • Dust impacts grazing cattle on neighbouring farms
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Communication

Several individuals voiced disappointment with the limited communication, from the NRCB also in conjunction with the previous application (LA21035) which Schooten withdrew. In general, the NRCB does not correspond with individuals who submitted a response to public notice for an application other than to send a letter acknowledging that the response has been received. However, my phone number was included in the public notice for those who wished to get additional information or ask questions. A response to an application is typically not considered a complaint and an approval officer does not treat it as one. Complaints should be provided to NRCB Compliance and Enforcement. The responses that are received from directly affected parties are considered when a decision on the application is being made. They are also identified in the decision summary for the application with information to say how any concern was considered.

Townhall meetings and public notice

Section 20(1)(b)(iv) states that the NRCB may hold meetings and other proceedings with respect to an application. The NRCB does not convene these meetings on its own accord, since without the applicant present, the discussion would be restricted to only discussing the AOPA application process, not the merits of an individual application. The NRCB has several factsheets and guidelines available explaining the application process, how parties can participate in the application process, who is considered a directly affected party as well as how to appeal (request a review) of an AOPA decision. This type of meeting would not necessarily address what I understand the County to be requesting, I therefore did not initiate such a meeting.

I followed the public notice requirements set out in the act (see section 2 above). The NRCB gave notice in the form of public advertisement in two local newspapers and also sent out courtesy letters to people owning or residing on land within the affected party radius (see details in section 2 above) as identified by the Counties. This process provides notice of an AOPA application, provides an opportunity and direction for the public to view the application and provides details regarding how to respond should they wish to.

Consideration of Concerns

Some of the individuals commented on their experience that the NRCB does not take the concerns that have been brought forward seriously. The responses relating to traffic have been forwarded to Alberta Transportation, those relating to health concerns to AHS, and those relating to water supply to AEP (see section 3 above). In addition, the concern regarding potential overpopulation has been forwarded to our compliance division in conjunction with the previous application LA21035 as discussed above. Environmental concerns, such as nutrient loading, and water contamination have all been evaluated and discussed in this decision summary (see below and sections 6 and 8) and Technical Document LA21053.

Road use (safety, maintenance, volume, dust, and costs)

a) Highway (HW) 547 and range road (RR) 244 intersection

The concerns about the safety of the HW547 and RR244 intersection raised by the directly affected parties are similar to the concern raised by Vulcan County.

Response from the applicant:

In response to the concerns voiced by neighbours, Schooten pointed out that they share the same concerns and continued to state “*that the intersection [...] is deemed safe if westbound traffic on Hwy 547 is travelling at the correct speed (80km/hr).*” Schooten also stated that this situation has been ongoing for the past 25 years but that they are in support to work collaboratively alongside Vulcan County and Alberta Transportation in finding a safer solution for not only feedlot vehicles but local vehicles to enter Hwy 547.

AO comments and conclusions:

The application was referred to Alberta Transportation who has jurisdiction over the provincial highway system. In their response, as mentioned in section 3 above, Alberta Transportation stated that a permit from Alberta Transportation is not required but suggested that Vulcan County requests Schooten to conduct a traffic impact assessment to properly assess the impact on local roads and highway. Ms. Erickson (Vulcan County) also requested this assessment to be a condition of a permit.

The NRCB does not have direct responsibility for regulating road use, nor would it typically initiate or request an applicant to conduct a traffic impact assessment. Section 18 of the Municipal Government Act gives counties “direction, control and management” of all roads within their borders. In addition, I note that Vulcan County has the following bylaw in effect that states:

Bylaw 2021-028 Infrastructure Protection Bylaw – per ss 7 and 18(1) MGA
2.2.3 – Defines “road use agreement” as “an agreement between Vulcan County and one (1) or more individuals and/or organizations to allow for movement and traffic along Roadways within the County that would not normally be permitted under the provisions of this Bylaw.”

3.17 – prohibition vehicle over 11,794 kg that causes damage that can’t be repaired through “routine maintenance by the divisional grader.” – and 3.17.1 “Repairs that require County maintenance crews to complete dig outs, haul in additional material over and above routine amount will be charged at a cost recovery to the person in violation.”

It would be impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits (see Operational Policy 2016-7 Approvals, part 8.9). In addition, municipalities own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use restrictions and road use agreements.

Ordinarily traffic impact assessments are managed by the municipality or Alberta Transportation, or both. Having said that, there seems to be some confusion about who is to initiate the traffic impact assessment in the context of a CFO application under AOPA. To

resolve this apparent dilemma, I determined that it will be necessary, under section 20(1)(b)(i) of AOPA, to include a condition for this approval, requiring the applicant to conduct a traffic impact assessment relating to risk at the HW 547 – RR244 intersection and to provide the document to Vulcan County. The consequences of the assessment will be moved forward by Vulcan County. In part, this is because municipalities “have autonomy for land use decisions and development approvals and have the ability to undertake improvements and recover the costs of growth from developers through agreements (i.e., development agreements and off-site levies for new or expanded transportation infrastructure)” (from Alberta, Traffic Impact Assessment Guidelines, February 2021).

b) County roads (general safety, maintenance)

Other concerns raised by several directly affected parties include the general safety of county roads that are frequented by the traffic leading to Schooten’s CFO, deteriorating road conditions (pot holes), visibility, traffic volume, and driver behaviour. In addition to road safety, road maintenance and associated costs were also concerns.

Response from applicant

Schooten stated that they make every effort to educate drivers and that on-site managers supervise crews to avoid potential problems in regard to traffic violations or general poor driving behaviours. In addition, concern voiced by neighbours in regard to traffic around the feedlot have been followed up and were rectified as quickly as possible. This practice will continue going forward.

AO comments and conclusions:

Road safety resulting from traffic violations are outside the jurisdiction of the NRCB and should always be reported to the responsible authorities, which include the County Bylaw enforcement officer and the RCMP.

As mentioned in the previous section, deteriorating road conditions and road maintenance are under the jurisdiction of the county.

c) Increase in taxes to repair municipal roads and general tax base

Vulcan County did not make any comments on the potential increase in maintenance costs, nor the potential increase in property taxes to compensate for the additional expense of road maintenance. Apart from the fact that this is outside the scope of what I am required to consider under AOPA, similar to road use agreements, road maintenance costs (via e.g. property taxes or other levies) related to developments are the county’s responsibility under the *Municipal Government Act*.

d) Road dust

Several of the respondents were concerned about the level of dust resulting from constant road traffic past their property.

Response from the applicant

In their response, Schooten pointed out several measures that have been implemented to control dust including the use of only one access road to the CFO (RR244 via HW 547) which does not pass residences, and active dust mitigation at the intersection between Hwy 547 and the feedlot entrance during harvest time and at 5 strategic locations (neighbouring residences, high traffic intersections) within a 3 mile radius of the feedlot. Schooten also pointed out that this

is a temporary fix and is working with Vulcan County on a better solution. Schooten also offered to cost share on any dust mitigation initiative.

AO comments and conclusions:

There is no provision in AOPA that regulates road dust. In addition to Condition 8 that has been carried over from development permit 98-0-12, the operator has the option to enter into additional agreements with the county to treat specific sections of the road to minimize dust from road traffic. As explained in the previous sections, Schooten advised they are working with Vulcan County to find solutions to the on-going issues relating to traffic to and from the CFO.

e) Traffic volume

Several parties pointed out the increase in traffic volume over the past years

Response from the applicant

In his response, Schooten mentioned that they acquired lands closer to the CFO that will produce over 80% of future expansion silage needs within a 3 mile radius. Together with purchasing silage from neighbouring farms, these measures lessen the need for transport and subsequently help to mitigate the need for dust control and wear and tear on county roads. In addition, supply routes in the area are carefully considered with the goal to minimize disturbance of neighbouring homes.

AO comments and conclusions:

According to the response provided by the applicant, the average forecasted increase in trucks from current traffic volume is approximately 70 percent with traffic predominantly occurring on weekdays. As mentioned earlier (see c above), road use is not under the jurisdiction of the NRCB. Therefore, I am not able to consider this aspect any further.

Water quantity

Several parties were concerned about overdrawing the aquifer resulting in dwindling groundwater supply for their residences and farms.

Alberta Environment and Parks (AEP) is responsible for licencing the use of surface water and groundwater in the province. Water users that do not hold an AEP water license or need to increase their water licenses have to obtain these from AEP, or, alternatively from water coops and irrigation districts. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers 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 6 of Technical Document LA21053. See also NRCB Operational Policy 2016-7: Approvals, part 8.10). Schooten's application includes a signed declaration indicating that Schooten will apply for additional water licensing separately from the NRCB permit application.

As discussed in section 3 above, all responses that related to water supply issues were forwarded to AEP for further consideration. Mr. Gutsell, a hydrogeologist, responded and stated that he cannot evaluate and comment on these concerns about water supply because he has not received a water licence application from Schooten to date.

As indicated in section 3 above, Schooten advised that they have acquired a water conveyance agreement from the Bow River Irrigation District (BRID) to cover the increase in water needs for the proposed expansion.

Water quality

Several individuals as well as the Siksika Nation were concerned about runoff entering surface water bodies, including West Arrowwood Creek, which leads to the Bow River, possibly causing contamination of waters used by First Nations for livestock and recreational purposes. There was also concern that manure constituents on manure spreading lands could enter groundwater.

Response from the applicant

In his response to the concerns brought forward from the Siksika Nation, Schooten stated that the manure will be incorporated and applied having regard for all setbacks. These measures greatly reduce runoff from manured lands. Some exceptions will be manure spreading on direct seeded crops. Direct seeding is a tool to minimize soil erosion and loss of soil moisture and is in line with best soil conservation practices.

AO comments and conclusions:

Groundwater:

There are several wells in close proximity to existing facilities. As described in section 8 above and in Technical Document LA21053, the risk of these facilities to groundwater and surface water was assessed. As a result, the existing groundwater monitoring condition will be carried over and expanded into the new approval. The new condition requires annual sampling of all five wells on site and reporting to the NRCB.

In respect to the proposed facilities and potential impact on groundwater quality, the new feedlot pens and the catch basin all meet AOPA liner requirements and are considered to pose a low risk to groundwater.

Surface water:

Sections 24 of the Standards and Administration Regulations is a means to prevent runoff from manure spreading lands. These measures include setbacks of manure spreading from surface water bodies with setback distances depending on slope and way of manure spreading, no spreading on snow covered and frozen ground, as well as generally incorporation of manure. As required in the opening paragraph of this permit, the permit holder shall adhere to AOPA and its regulations. Therefore, additional conditions are not required. Incidences of non-compliance can be reported to the NRCB's 24 hour a day reporting line (1-866-383-6722 or 310-0000 toll free line) and an inspector will follow up on the matter.

In respect to the proposed facilities and potential impact on surface water quality, the new feedlot pens and the catch basin all meet AOPA environmental protection requirements and are considered to pose a low risk to surface water. The risk posed by the existing CFO facilities to surface water was also determined to be low. Having said that, to address concerns regarding the potential overflow of the existing catch basins located along the south of the CFO and close to Arrowwood Creek, Condition 5, stating that *'The developer shall ensure that no water from containment pools shall be allowed to enter West Arrowwood Creek or any other natural water*

body will be carried forward from Development Permit #98-0-12 and expanded by including reporting if the freeboard level in the existing catch basins has been reached

Nuisance impacts from the CFO (noise, odor, dust, flies, light)

One of the main concerns were nuisance impacts, mainly dust, arising from the feedlot itself.

Response from applicant:

Schooten stated that they implemented several practices to reduce dust from the CFO itself. These include:

- removal of manure in late winter, while manure pack and roads are still frozen, avoiding activities in dry springs.
- use of 14' box scrapers to remove buildup of dry manure in pens which will be admixed with straw bedding piles
- use of large excavators outfitted with 10' buckets will allow removal of dust and manure for the entire existing and proposed expansion feedlot pens in under 10 days.
- use of straw to cover the entire footprint of the pen forming a protective layer until the manure and be properly cleaned out of the pen.
- use of water trucks to alleviate dusty conditions of traffic ways within the feedyard.

AO comments and conclusions:

AOPA's minimum distance separation (MDS) requirements are a proxy for minimizing odors, flies and other nuisance effects directly arising from CFOs. The CFO as proposed, can meet the MDS to all neighbouring residences other than two residences. The owners of both of these residences signed MDS waivers as explained in sections 6 and 7 above. It is presumed that nuisance effects from the CFO facilities are acceptable if the MDS requirement has been met. It is true that there will be odours resulting from the land application of manure. These odours are normally of short duration and typically occur once or twice per year. 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 normal odours from manure spreading. Incidences of non-compliance can be reported to the NRCB's 24 hour a day reporting line (1-866-383-6722 or 310-0000 toll free line) and an inspector will follow up on the matter.

Nuisance and other impacts outside of the MDS for a CFO are typically not considered when making a decision on an application, unless there is a direct and adverse impact greater than what may be normally expected, which can be directly linked to the proposed development. These effects would be considered in the analysis on 'effects on the community' in an approval officer's decision. In this case, the land zoning within several miles of the operation is 'Rural General' with a fairly low residential density and little urban development. Although I do not consider nuisance concerns as 'trivial' in nature, I consider the impacts of the CFO expansion as acceptable, because of the land zoning and because it meets the AOPA's MDS requirements. Having said that, the public is able to report incidences of non-compliance and any other concerns in respect to a CFO to the NRCB's 24 hour reporting line (1-866-383-6722).

Some of the respondents were concerned about light emissions from the feedlot. It cannot be excluded that there will likely be an increase in light emissions coming from the feedlot and may be seen in surrounding areas, particularly to the north, on adjacent lands. Vulcan County has no

specific policies associated with a dark sky initiative. Apart from the fact that this is outside of the scope of AOPA, it is hard to assess to what extent light fixtures from the expanded portion of the existing feedlot would change the impact on surrounding residences.

Fly infestations were also a concern. Incidents of inappropriate disturbance from fly infestations can be reported to the NRCB's 24 hour a day response line (1-866-383-6722) and an inspector will follow up on the matter.

Manure management

The Manure Characteristics and Land Base Code, referenced in AOPA, lays out the required land base for manure application for all livestock types. The calculation considers several factors, including the amount, nutrient content and type of manure, as well as the soil to which manure is proposed to be applied. I evaluated the manure spreading lands listed by Schooten and concluded that they meet the requirements of AOPA and its regulations. I would like to remind Schooten, as well as all land owners receiving manure from this CFO, that they have to adhere to sections 22 - 27 of the Standards and Administration Regulation that set out parameters respecting nutrient management including nutrient limits, manure spreading setbacks, record keeping and reporting requirements.

Health and air quality, stress, and quality of life

Several of the respondents, including the Siksika Nation, were concerned about negative impacts on their health due to manure spreading. Ms. Breaker, senior manager with the Siksika Nation stated that smell will be carried downwind, affecting residences on Section 23, 13, 12-21-24- W4, Section 7-21-23-W4, and Section 21-11-24 W4.

Response from applicant:

Schooten stated in his response to the concerns brought forward from the Siksika Nation in regard to odor impacts during manure spreading, that they will be following all AOPA regulations and guidelines. This includes incorporation of manure on conventional tilled lands within 48 hours of application. He then continued to state that *"It is with our best efforts to make incorporation happen within 24 hours to limit any unwanted odour that may occur as well as limit losses of nutrient value and better protect the investment we make into moving the manure to specified fields helping to reduce use of commercial fertilizers."*

AO comments and conclusions:

AOPA does not expressly require approval officers to consider nuisance or health effects (including stress) when deciding whether to issue an approval of a proposed CFO. Having said that, I forwarded all written responses that mention concerns about negative impacts on human health to AHS for their comments and further consideration. Though I followed up with AHS a week later, I have not received any comments related to these concerns from AHS by the time this decision is issued.

Several of the respondents were concerned about the level of dust resulting from constant traffic past their property and anticipate a severe impact on the health of humans but also of their animals that are raised on the pastures in the vicinity of the CFO. In addition to Condition 8 that has been carried over from development permit 98-0-12, and as mentioned earlier, to minimize dust, Schooten indicated in his submission that he is working with the county to resolve this issue and has agreed to support these efforts financially.

Impact on the community

The MDS setback and the land use zoning of the land on which a residence is located are an important tool under AOPA for mitigating the nuisance impacts of CFOs on neighbours. This setback is based on various factors including the number and type of animals and the zoning of the land on which a residence is located. The application meets the MDS requirements to all neighbouring residences except two. The owners of these residences each signed a waiver as discussed above.

The lands in this area are zoned Rural General and no other planning documents covering areas in proximity to the CFO are in effect, as confirmed in the response from Vulcan County. In addition, Vulcan County did not comment on any effects on the economy or community anticipated as a consequence of an approval of this application. As discussed in section 9 above, I therefore conclude that the effects on the community are acceptable.

Property value

Some responses asserted that their property value would decrease if the expansion application were approved. In previous board decisions, the NRCB's board members have consistently stated that concerns regarding effects on land or property values are "not a subject for [the board's] review under AOPA or for approval offers' consideration." According to the board, impacts on property values are a land use issue, which is a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (See Pigs R Us Inc. RFR 2017-11/BA17002 at 6).

Power grid

One of the concerns was the increasing strain on the local power grid that serves the community. Although I understand that power supply is of particular concern during periods of extreme heat or cold, power distribution is not under the jurisdiction of the NRCB and is regulated by other agencies including the power companies serving the area.

Population of the CFO above permitted animal numbers

Several individuals commented on the number of cattle raised at these facilities and concluded that Schooten likely has more than the claimed number of 50,000 head finisher cattle at this facility.

These concerns were also voiced in response to Schooten's previous application (LA21035, which was withdrawn) and were passed on to the NRCB compliance division at that time. Subsequently, the NRCB conducted an investigation and issued AOPA Enforcement Order EO 21-01. The enforcement order is currently suspended by Board decision RFR 2021-08. The Board directed that a grandfathering determination be done to determine if Schooten is in compliance with AOPA and its regulations. A grandfathering determination has been done in conjunction with this application (Application LA21053) (see Appendix D).

Should the public have any such concerns in the future, including possible incidences of non-compliance they may be reported to the NRCB's 24 hour reporting line (1-866-383-6722 or 310-0000 toll free line).

APPENDIX C: Explanation of conditions in Approval LA21053

Approval LA21053 includes several conditions, discussed below, and carries forward a number of conditions from municipal development permits 98-012-VUL and 95-016 (see sections 2, 3, and 4 of this appendix). Construction conditions from historical municipal development permits 98-012-VUL and 95-016 that have been met are identified in the appendix to Approval LA21053.

1. New conditions in Approval LA21053

a. Traffic impact assessment

As explained above, to address the potential safety issues at the HW547-RR244 intersection, a condition will be attached that requires Schooten to conduct a Traffic Impact Assessment and that delegates oversight of the assessment to Vulcan County. The Traffic Impact Assessment shall be done according to the guidelines provided by Vulcan County together with Alberta Transportation (as applicable) and provided to Vulcan County for follow up. The results of the assessment shall be provided to Vulcan County prior to commencing construction. The follow-up and implementation of the recommendations brought forward in the Traffic Impact Assessment are the responsibility of Vulcan County (see reasons explained above).

b. Construction Deadline

Schooten proposes to complete construction of the proposed new pens and catch basin within 18 months of the approval of the permit application. In my opinion, this time-frame may be inadequate considering the proposed scope of work. I will therefore extend the proposed 18 month window to 3 full construction seasons. The construction completion deadline of December 31, 2024 is therefore included as a condition in Approval LA21053.

c. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA21053 includes a condition requiring:

- a. Schooten to provide evidence or written confirmation from a qualified third party that the catch basin and the feedlot pens have been constructed at the location and with the dimensions permitted in this approval.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21053 includes a condition stating that Schooten shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens and shall not allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected the feedlot pens and catch basin and confirmed in writing that they meet the approval requirements.

2. Condition carried forward from Development Permit #95-016

Development permit #95-016 has only one condition which requires the developer to maintain the municipal setbacks. This condition will be carried forward as a historical construction condition in the appendix of approval LA21053.

3. Conditions carried forward from Development Permit #98-0-12 and modified

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that the following conditions should be modified:

Condition 5 currently states: *“Developer shall ensure that no water from containment pools shall be allowed to enter West Arrowwood Creek or any other natural water body.”*

To address the concerns voiced by the Siksika Nation as well as other neighbours in the regions, this condition will be expanded to state:

“The permit holder shall ensure that no water from containment pools (runoff control catch basin) shall be allowed to enter West Arrowwood Creek or any other natural water body. The permit holder shall immediately notify the NRCB in case the water level in any of the catch basins located on the south side of the CFO reaches freeboard level.”

Condition 6: *“The Developer shall supply on a yearly basis, during the month of October, to the County, records that show sampling was undertaken to show ground water and soil nutrient levels.”*

and

Condition 7: *“The sampling undertaken in Clause 6 must show all records adhere to Code Guidelines.”*

Condition 6 consists of two parts. The first part require annual groundwater sampling. The records shall be provided on a yearly basis in October of each year (in this case presumably to the county). As noted in this decision summary at section 8, and in Technical Document LA21053, the existing feedlot pens and the catch basin to the southeast score moderate risk to groundwater due to the proximity to a water well. In addition, it appears that water wells 5 and 6 (as numbered in Technical Document LA21053) are downslope of the proposed facilities. For this reason, and consistent with NRCB practice, it is necessary for Schooten to continue to monitor the groundwater wells near these facilities. Therefore, the groundwater monitoring condition in Development Permit #98-0-12 will be carried forward but modified to reflect the current standards and procedures, including to whom the results should be reported. The modified condition will require Schooten to conduct groundwater well monitoring of all wells on the feedlot site according to a groundwater monitoring system prescribed and authorized in writing by the NRCB, and to report the results to the NRCB rather than the county. When appropriate, these requirements may be amended from time to time by the NRCB, in writing.

The second part of condition 6 requires annual soil sampling and the provision of the records (in this case presumably to the county). Results of the mandatory soil sampling (Standards and Administration Regulation, section 28) should be kept for five years and made available upon request. Condition 6 requires the submission of these records on an annual basis. Because this condition is more stringent than as required under AOPA and its regulations, this condition will be carried over into the new approval as operating condition pursuant to NRCB policy with the modification that the results shall be submitted to the NRCB (Amending Municipal Permit Conditions, Operational Policy 2016-1).

Condition 8: *“Dust Control measures will be undertaken by the developer, adjacent to neighboring farmyards affected by road dust from feedlot related traffic during silaging and pen cleaning seasons, during periods of high volume feedlot traffic.”*

This condition is somewhat vague as to which roads will be affected. To make this condition enforceable, I will add that dust control should occur on the haul routes. Therefore, the new condition will state: *“Dust Control measures will be undertaken by the permit holder, adjacent to neighboring farmyards along the haul routes affected by road dust from feedlot related traffic during silaging and pen cleaning seasons, during periods of high volume feedlot traffic.”*

4. Condition not carried forward from Development Permit #98-0-12

Condition 2 currently states: *“The Developer shall follow all detailed information as submitted in their manure management plan.”*

The documents available to me at this moment, do not include a manure management plan other than that statement that manure is hauled out and spread on the cropland with properly equipped spreader equipment, that manure will be spread on the surface and cultivated into the soil, and that incorporation will follow as soon as possible in the spring and within 48 hours if spreading in the fall. This information is rather vague. Schooten has submitted a list of manure spreading lands that are available to them to spread manure collected at this CFO, and stated that they will incorporate manure on conventional tilled land within 48 hours. This is in accordance with AOPA and its regulations. Because this requirement is included in the opening paragraph of Approval LA21053 which states that the permit holder shall adhere to AOPA and its regulations, this condition is redundant and will be deleted.

APPENDIX D: Determination of deemed permit status

The applicant, Schooten, also asked for a formal grandfathering determination of this CFO. This is done following Board Decision 2021-08 / EO 21-01, issued on November 3, 2021. Schooten claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA at a livestock capacity of 50,000 beef finishers at January 1, 2002. I am treating that as a request for a determination of deemed permit status under section 11(1) of the Administrative Procedures Regulation under AOPA. Because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The CFO has Development Permit #95-016, issued in April 1995 (day not legible), allowing the establishment of a 30,000 finishing cattle feedlot. The CFO also has Development Permit #98-0-12, issued by Vulcan County on June 12, 1998 to Western Feedlot Ltd., now under the ownership of the applicant (Schooten and Sons). The permit approval was appealed but reaffirmed by the Vulcan County Regional Subdivision and Development Appeal Board on July 7, 1998. In the final decision, the appeal board approved the construction of an additional 40 pens with the capacity of 275 “livestock manure units per pen as defined in the Code of Practice” (the Code of Practice at that time was dated 1995). In the 1995 Code, section 2.9, a manure unit is defined to be equivalent to a 1000lb beef cattle. The development permit brought the total number of pens to 150. The type of beef livestock (e.g. feeder calves, feeders, or finishers) was not identified other than the ‘275 manure units per pen’.

In AOPA (Schedules 1 and 2 AOPA Part 2 Matters Regulation), which has been in effect since January 1, 2002, this livestock category (cattle) is divided into three types: feeder calves (< 550 lb), feeders (450 lb – 900 lb) and finishers (900 lb +). The names of the types and the weight ranges for the types evolved between 1995 and 2002.

Translating the intent of the 1998 development permit into an AOPA deemed livestock type, my calculation is as follows:

- 150 pens x 275 manure units per pen = 41,250 manure units (as permitted in development permit #98-0-12 outlined by the SDAB decision)
- 41,250 manure units equates 41,250 head of beef cattle with a weight of 1,000 lb (manure unit as defined in the 1995 Code of Practice)
- This would fall into the category of beef finishers (900 lb +) and 41,250 head

In the public notice of the application, the public was invited to provide input on the grandfathering determination. As discussed in Appendix B, several directly affected parties commented on the possibility of more animals being in the feedlot than Schooten is grandfathered for.

To support his grandfathering claim of 50,000 head of finisher cattle, Schooten provided information including the following:

- 1) Two letters from Rick Porter, former Chair of the Board of Western Feedlots Ltd. One about the lot status, the second about the historical occupancy. Mr. Porter states in this letter that this feedlot was used to finish cattle and stated in his second letter that the auditors confirmed historical occupancy of this feedlot from 2001 onwards was at least 50,000 head.
- 2) Contracts for the construction of the expansion (40 pens) to be constructed in 2000 (permitted under development permit 98-012-VUL).

- 3) Statement by Pam Gerritsen, former assistant operations manager between 2006 and 2014, stating the occupancy has always been 50,000 head.
- 4) A letter written by Calvin Booker, general manager of Feedlot Health Management Services that has provided the 'Mossleigh Feedlot' with its services from 1983-2017. In his statement, Mr. Booker explained that the feedlot was always a finishing feedlot. He also included a table with numbers of animals shipped that shows that the annual shipments in the years 2000-2002 were between 62,948 to 75,288 head annually.
- 5) 1995 and 1998 Vulcan County permits (Content of these permits is discussed above).
- 6) Feeding pen design pamphlet (Excerpt of the Alberta Feedlot Management Guide).
- 7) A letter prepared by Cody Metheral, asserting that the "*Mossleigh feedlot capacity should be based on the physical capacity to hold livestock (50,000 head beef finishers) – not the permit number (41,250 head)*".

Capacity determination

Although section 18.1 of AOPA focuses on facts as they existed on the precise grandfathering date of January 1, 2002, I considered evidence about the operation between 2000 and 2003. Considering the operation for at least one year past the January 1, 2002 grandfathering date seemed useful because witnesses might not remember what occurred on the exact date of January 1, 2002. Also, considering how an operation functioned over a range of dates might shed additional light on how the operation functioned on a given day within that range.

In order to determine the animal numbers present on January 1, 2002 at this CFO, I used Operational Policy 2016-5 – Determining Deemed Capacity for Grandfathered Confined Feeding Operations.

According to the table presented on page 4, Schooten falls within the category of CFOs that existed on January 1, 2002 with a municipal development permit that was in effect on January 1, 2002 (according to AOPA section 18.1(1)(b)). Schooten holds two development permits, the most recent issued in 1998. It is also clear that the CFO was above AOPA threshold numbers for requiring a permit under AOPA.

The policy recognizes that other scenarios than covered under section 18.1(1) exist. One of those – Scenario 4, is that the number of livestock raised at a facility can be larger than the permitted number of livestock, because the physical capacity of the enclosures is larger than the permitted number. In section 4 of this policy, it states that "*field services staff will use the physical capacity method in all cases in which CFO's physical capacity on January 1, 2002 was greater than the CFO's permitted capacity*". The calculation to determine the physical capacity is based on Technical Guideline Agdex 096-81, February 2016. In this guideline, the beef animal number calculations are illustrated in Table 1. It stipulates a space allocation of 200 ft²/animal finisher cattle and /or 1 ft. of available feedbunk space per animal.

According to my calculations (measurements taken off google earth), the overall pen space at this site amounts to approximately 820,500 m² or 8,832,078.2 ft². Given the 200 ft²/animal, as presented in the technical guideline, this would provide space for approximately 44,160 finisher cattle. The total bunk space measured is approximately 12,167 m or 39,918 ft. Using the bunk space availability as given in the technical guideline, this would allow approximately 39,918 head finisher cattle (rounded up to 40,000).

The evidence provided by Schooten included two letters prepared by Mr. Porter, a former board member of Western Feedlots Ltd. and previous owner of the CFO. Mr. Porter is well positioned to be aware of the number of finisher cattle that were raised at this CFO. However, other than his personal statement, he did not provide objective evidence that clearly derived from a time frame close to January 1, 2002 to support his statement. Mr. Porter's statement is also not supported by the evidence provided by Feedlot Health Management Services. In the letter provided by Feedlot Health Management Services, the author included a table listing the number of animals placed and shipped annually between 2000 and 2002, including the carcass weights.

According to resources available from the Canadian Cattlemen's Association (official website, Resources- Feedlot Operations) the average time it takes to finish cattle is anywhere between 60-200 days. Based on this assumption and the information provided by Feedlot Health Management Services, the number of animals placed (or marketed) annually – as listed in the letter provided by Feedlot Health Management Services, should be more likely divided by two in order to state what the number of animals was at any one time at this CFO. Therefore, the number of finisher cattle present at any one time between 2000 and 2002 was between 31,907 and 38,225 head of finisher cattle. Although this letter does not seem to support the number of cattle claimed by Schooten, it supports Schooten's and Mr. Porter's statement that this CFO was used to finish cattle (a carcass weight of 770 lb as listed in the table provided, would translate into a live animal of about 1300 lb (Alberta Government website, Agricultural Marketing Guide - Understanding dressing percentage of slaughter cattle).

The evidence before me and which I am able to rely on is therefore:

- The permitted number based on County permits of 41,250 beef finishers
- The information provided by Feedlot Health Management Services for the period 2000 to 2002 indicating a maximum capacity of 38,225 beef finishers
- The information based on Technical Guideline Agdex 096-81 is between 40,000 and 44,160 with the limiting capacity based on feed bunk length of 40,000 finishers.

Considering all the evidence before me, I have come to the conclusion that the grandfathered capacity, as present on January 1, 2002, is the capacity set out in the municipal permit of 41,250 head of beef finishers.