



Decision Summary RA21030

This document summarizes my reasons for issuing Approval RA21030 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21030. 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 May 7, 2021, an NRCB inspector issued Compliance Directive 21-03 to Curtis McKelvie (lease holder and CFO operator), and to Richard and Linda McKelvie (co-land owners). The subject of the directive was unauthorized construction of nine feedlot pens and two catch basins at an existing beef feedlot CFO. The Compliance Directive noted that other feedlot pens had been constructed prior to January 1, 2002, when Part 2 of AOPA came into force.

Richard and Linda McKelvie, the landowners, provided Curtis McKelvie, hereafter referred to as Mr. McKelvie, a declaration allowing him to pursue a permit under the AOPA. On May 28, 2021, Mr. McKelvie submitted a Part 1 application to the NRCB. The Part 1 application seeks a determination of the grandfathered status of the operation, permission to use the already constructed (without a permit) pens and catch basins, and to increase animal numbers.

The Part 2 application was submitted on November 19, 2021. On December 1, 2021, I deemed the application complete.

The application involves:

- Determining the existence and status of the deemed or grandfathered permit
- Increasing livestock numbers to 4,000 beef finishers
- Permitting already constructed facilities, consisting of:

Pen 7 (53.5 m x 45 m)	Pen 8 (39.5 m x 59.6 m)
Pen 9 (67 m x 56.7 m)	Pen 10 (49.1 m x 134.6 m)
Pen 11 (79.1 m x 40.4 m)	Pen 12 (74.9 m x 55.4 m and
Pen 13 (48.3 m x 56.9 m)	20 m x 26 m)
Pen 14 (48.3 m x 66 m)	Pen 15 (48.3 m x 68.9 m)

(several of the pens are “rectangular” shaped, the above dimensions are representative of average dimensions)
Catch basin 1 (62 m x 22 m x 2.3 m deep) Catch basin 2 (triangular, 62 m x 44 m x 76 m x 2.1 m deep)
- Constructing a new catch basin (#3, 30 m x 30 m x 1 m deep)

On February 2, 2022 the applicant also requested a variance under section 17 of AOPA for the prohibition against manure storage facilities and manure collection areas less than 100 metres away from a water well. That variance request is discussed in Appendix F and section 9, below.

On August 10, 2022, Mr. McKelvie reduced the number of proposed livestock from 4,000 beef finishers to 1,950 beef finishers.

a. Location

The CFO is located in the W½ 1-44-25 W4M in Ponoka County, roughly 8.5 km north of the Town of Ponoka. The CFO is located on a plateau located approximately 125 m from the Battle River.

b. Existing permit

A grandfathering determination was carried out as part of this application to determine what the deemed capacity of the operation was on January 1, 2002. This determination was to identify what, if any, deemed permits existed on January 1, 2002.

As explained in Appendix A, below, I determined that the grandfathered capacity for this operation is 526 beef finishers or 600 beef feeders. A CFO with more than 349 beef finishers or 499 beef feeders is above the approval permit threshold in AOPA. Accordingly, the operation was determined to hold a deemed approval under section 18.1 of AOPA with a capacity of 526 beef finishers or 600 beef feeders. The deemed approval's facilities are identified as pens 1-6 on page 2 of Technical Document RA21030.

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 notification distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified notification distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified notification distance is 1.5 miles. (The NRCB refers to this distance as the "affected party radius.") It should be noted that the reduced proposed livestock capacity does not affect the 1.5 mile notification radius.

A copy of the application was sent to Ponoka County, which is the municipality where the CFO is located. A copy of the application was not sent to other municipalities as none are located within the specified distance and the CFO's existing and proposed manure collection areas and manure storage facilities (the pens and catch basins) are not located within 100 m of the bank of a river, stream, or canal.

A copy of the application was also sent to the Samson Cree First Nation and the Montana First Nation which both have reserve lands within the 1.5 mile specified notification radius.

The NRCB gave notice of the application by public advertisement in the Ponoka News on December 1, 2021. The full application was posted on the NRCB website for public viewing. As

a courtesy, 26 letters were sent to people identified by Ponoka County as owning or residing on land within the affected party radius in the county.

The Samson Cree First Nation and Montana First Nation did not provide names or mailing addresses of persons owning or residing within the affected party radius. Because of this, I was unable to send courtesy letters directly to those persons who reside in residences on the First Nations lands within the affected party radius.

I did not notify Ponoka County, the Samson Cree First Nation, the Montana First Nation, or the persons noted in Appendix D, of the August 10, 2022, change to the application. This is due to the changes relating to a reduction in livestock and manure production and there being no changes to the “proposed” pens and catch basins.

3. Notice to other persons or organizations

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

Referral letters and a copy of the complete application were emailed to, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation.

I also sent a copy of the application to Telus Communications, ATCO Gas and Pipelines Ltd., Axiom Oil and Gas, and Canadian Pacific Railway because they hold utility right of ways within the W½ 1-44-25 W4M.

I did not notify AHS, AEP, Alberta Transportation, or the above utility right of way holders of the August 10, 2022 change to the application as there was no change to the already “proposed” facilities, only a reduction to the number of livestock onsite.

Mr. Gordon Watt, an executive officer/public health inspector with AHS, commented on general water well and groundwater protection, waste management, nuisances and deceased livestock disposal. He did not raise specific concerns with this application.

Ms. Laura Partridge, a senior water administration officer with AEP, stated that AEP had received an application for a water license under the *Water Act*. Her response did not raise concerns with the application.

Ms. Cindy Skjaveland, a development and planning technologist with Alberta Transportation, provided comments related to traffic on Highway 2A near the CFO, but did not have any concerns with this application.

These responses were forwarded to Mr. McKelvie for his information.

No responses were received from the above noted right of way holders.

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. There is no ALSA regional plan for the area where the CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO expansion is consistent with the land use provisions of Ponoka County's municipal development plan. (See Appendix B 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 CFO expansion:

- Meets the required AOPA setbacks from nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS), with one exception. The owner of that residence has signed a written waiver of the MDS requirement to that residence. How the MDS requirement applies to and is met for residences on First Nation lands is discussed in Appendix C.
- Meets the required AOPA setbacks from 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 of manure storage facilities and manure collection areas

I determined that the unauthorized, already constructed pens that drain to catch basin 1, and catch basin 1 itself, are located within the required AOPA setback from an existing water well. The applicant requested a variance to the water well setback requirement. I believe a variance is warranted in this case (see Appendix F).

With the variance, discussed in Appendix F, and the terms and conditions summarized in part 11, the application meets all relevant AOPA requirements.

7. Responses from Ponoka County, First Nations 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." Ponoka County is an affected party (and directly affected) because the CFO is located within its boundaries.

Mr. Peter Hall, the assistant chief administrative officer with Ponoka County, provided a written response on behalf of the county. Mr. Hall stated that Ponoka County had no objections to the application. The application's consistency with Ponoka County's municipal development plan is addressed in Appendix B, attached.

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 a directly affected party (see NRCB Operational Policy 2016-7: Approvals, part 6.2). Laurence McKelvie provided an MDS waiver and is a directly affected party.

Reserve lands for the Samson Cree First Nation and the Montana First Nation both have boundaries within the 1.5 mile notification radius. While these First Nations are not municipalities, for the sake of the AOPA process, I am considering both of them to function as municipalities. Because their lands are within the 1.5 mile notification radius, I am considering them to be directly affected parties. Both First Nations have submitted responses to the application identifying concerns.

Chief Vernon Saddleback and councillors Laurie Buffalo and Mario Swampy provided a written response on behalf of the Samson Cree First Nation. The Samson Cree First Nation response:

- expressed a desire for healthy lands and waters to enable full and meaningful practice of their culture and rights,
- expressed concerns regarding negative impacts to their member rights, interests and health
 - human health
 - water, both surface water and groundwater
 - air quality
 - increase in greenhouse gases, and related climate change effects
- advised that due to COVID-19 restrictions Samson Cree First Nation was unable to directly engage with residents within 1.5 miles of CFO
- raised concerns with the CFO's history, specifically Compliance Directive 21-03.

Jodie Currie, the Montana First Nation consultation manager, provided a written response on behalf of the Montana First Nation. The Montana First Nation response:

- requested information pertaining to the status of the CFO's claimed deemed permit
- raised concerns related to:
 - the CFO's procedural history, specifically Compliance Directive 21-03
 - impacts to Aboriginal or treaty rights
 - impacts to the area for traditional and/or cultural uses
 - impacts to plants and trees for harvesting medicine, ceremonial purposes, and food
 - impacts to hunting and trapping
 - disturbance to historical, archeological, anthropological and or ceremonial sites
 - impacts to human health
 - impacts to water
 - impacts to air quality
 - an increase in greenhouse gases and climate change.

On March 28, 2022, I provided a representative of the Montana First Nation the documentation I had available at that time related to the CFO's deemed permit.

I requested clarification on the Samson Cree First Nation and Montana First Nation responses on March 28, 2022 and offered them until April 20, 2022 to respond so I could better understand and address some of the concerns. Before the April 20, 2022 deadline a representative of Samson Cree First Nation requested a minimum two week extension. I granted a three week extension until May 11, 2022. To date, I have not received any further correspondence from the Samson Cree First Nation or the Montana First Nation. The concerns expressed by the Samson Cree First Nation and Montana First Nation are discussed in Appendix E.

Apart from the above, any member of the public may request to be considered "directly affected." The NRCB received responses from nine persons.

All of the people who submitted responses identified themselves as residents on land within the 1.5 mile notification radius for affected persons; these people are listed in Appendix D. Because of their location within this radius, and because they submitted a response, they are presumed to qualify for directly affected party status. See NRCB Operational Policy 2016-7: Approvals, part 6.2.

The directly affected parties raised concerns regarding surface water and groundwater, vegetation, fish and wildlife habitat, health concerns, roads and highways, inherent treaty rights/practices and traditional uses, deceased livestock disposal, waste management practices, AOPA processes, and manure management. These concerns are discussed in Appendix E.

After the above concerned responses were received, I forwarded those concerns, as applicable, on to representatives of AEP (biologists, water licensing), AFRED (dead animal disposal), AHS, Alberta Transportation, Ponoka County, Alberta Culture and Status of Women, and the Aboriginal Consultation Office for comment (see NRCB Operating Policy 2016-7; Approvals, parts 8.8, 8.9, 8.10, 8.11, and 8.12). The purpose in forwarding concerns to these agencies was both to gain a fuller understanding of the background in those areas, and to provide courtesy notice of concerns to the bodies that regulate those topics. I also sought input from the NRCB's Science and Technology Division to better understand certain technical aspects of the expressed concerns (i.e. greenhouse gases). Responses that I received are summarized in Appendix E, below.

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 (grandfathered and unauthorized pens and catch basins) and proposed (catch basin 3) manure storage facilities and manure collection areas as they are proposed to be lined. 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 potential 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.)

For the sake of efficiency and clarity, I first divided the pens into groups based on which catch basin received their runoff, or the ones that did not have their runoff directed to a catch basin. In accordance with section 8.7.1 of the Approval Policy (NRCB Operating Policy 2016-7), I am regarding the pens constructed before AOPA that drain towards catch basin 1, and the ones that were constructed without a permit after 2002, to be one facility.

I first assessed the CFO's existing pens, the ones that were constructed pre-AOPA, that do not have their runoff directed to a catch basin (the runoff remains largely within the pens) using the ERST. The assessment found that these pens pose a low potential risk to groundwater and surface water. I then assessed the catch basins and the pens that drain to each of them. All of them pose a low potential risk to groundwater and surface water.

Considering the applicant's past history and how the risk assessment is based on the facilities as they are proposed, I am including conditions that will require the pens to be relined (as required), catch basins 1 and 2 to be relined, and the proposed catch basin to be constructed. See discussion of this condition in Appendix G.

9. Variance

The applicant applied for a variance of the requirement for a water well to be at least 100 m away from a manure storage facility/manure collection area. I determined that catch basin 1, and the pens that drain towards it, are located approximately 20 m and 70 m, respectively, from an existing water well. As explained in Appendix F, I am issuing a variance to the 100 m water well setback requirement.

10. 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.

One of those factors is the NRCB issued compliance directive (CD21-03, relating to unauthorized construction and an increase in livestock without holding the proper permit under AOPA) and the events that led up to it. Because of this, I am of the opinion that this CFO needs to demonstrate compliance with AOPA on a regular basis. Accordingly, I am including a condition in the permit requiring the permit holder to maintain an ongoing record of the number, type, and category of feedlot livestock onsite and submit that record to the NRCB on request. See Appendix G for more information on this condition.

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, Board RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

The response from Ponoka County did not specify the setback requirements in Ponoka County's land use bylaw (LUB). I reviewed the LUB and note that the application meets the applicable road and property line setbacks.

I have forwarded a copy of the application, and responses to the application which raised concerns (fish, water and wildlife), to AEP. AEP has not identified concerns to me related to the administration of natural resources. AEP has not made me aware of statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed September 13, 2022).

Finally, I considered the effects of the proposed CFO 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 in light of the above the application meets AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

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 and the directly affected parties'

concerns have been addressed as discussed in Appendix E.

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

11. Terms and conditions

Approval RA21030 specifies the cumulative permitted livestock capacity as 1,950 beef finishers. It requires feedlot pens to be lined, the existing catch basins be lined, and requires the construction of the new catch basin.

Approval RA21030 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 RA21030 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 G.

For clarity, and pursuant to NRCB policy, I consolidated the deemed approval into Approval RA21030 (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. Considering how the deemed approval was unwritten and had no conditions, there are none to carry forward into the new approval.

12. Conclusion

Approval RA21030 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21030.

Mr. McKelvie's deemed approval is therefore superseded, unless Approval RA21030 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed approval will remain in effect.

September 15, 2022

(Original signed)
Jeff Froese
Approval Officer

Appendices:

- A. Determination of deemed permit status and capacity
- B. Consistency with Ponoka County's municipal development plan
- C. Minimum Distance Separation (MDS) and land use zoning
- D. Determining directly affected party status
- E. Concerns raised by directly affected parties
- F. Variance
- G. Explanation of conditions in Approval RA21030

APPENDIX A: Determination of deemed permit status and capacity

Mr. McKelvie claims that this operation is grandfathered (that is, it has a “deemed” permit) with 1,000 beef finishers under section 18.1 of AOPA. 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 investigation was also to determine what facilities existed and the capacity of the CFO that was in place on January 1, 2002.

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

As required under section 11(2) of the Administrative Procedures Regulation, I provided notice to those parties who would be entitled to notice if this were an application for a new AOPA permit. In this case, that included a public notice in the December 1, 2021 edition of the Ponoka News. I also sent letters to 26 parties identified by Ponoka County as owners or residents of land located within 1.5 miles of the CFO. (The 1.5 mile notification radius is larger than what AOPA requires for the 1,000 beef finishers claimed, but the larger distance was used as the notification also related to the application for 4,000 beef finishers.) Courtesy letters were also sent to the Montana First Nation and the Samson Cree First Nation.

To date, with exception to the information I have collected myself and set out below, I have not received any information to support or oppose Mr. McKelvie’s claimed livestock capacity as of January 1, 2002.

I also requested information from Alberta Agriculture, Forestry, and Rural Economic Development (AFRED) and Alberta Environment and Parks (AEP) regarding the “permitted” status of the CFO as of January 1, 2002.

A representative of AFRED indicated that there was no readily available information to support or oppose Mr. McKelvie’s claim. It was probable that if there were information available, it was likely publicly available or in the possession of Mr. McKelvie.

A representative of AEP provided me with copies of applications for water licenses, received December 31, 2001, which indicated the presence of 500 beef feeders, 95 cow-calf pairs, and associated horses and llamas in SW 1-44-25 W4M. It also indicated the presence of 40 milking

cows, 10 dry cows, 30 dairy calves, 25 cow-calf pairs, 35 calves, 40 beef feeders, a number of sheep, chickens, horses and a llama in NE 1-44-25 W4M. It should be noted that registrations for traditional agricultural users were issued for the livestock claimed at both of the above locations. These registrations were both issued with adequate water for 365 days per year usage of water for the above listed livestock. I note that the above applications to AEP were intended to be a snapshot of livestock on site at the time of application, which may have been more or less than the operation's actual livestock capacity.

Although AEP noted multiple livestock types and categories onsite on January 1, 2002, the operator has claimed a grandfathered capacity of 1,000 beef finishers only. It is for these reasons that I am limiting the scope of this investigation to beef livestock only. It should also be noted that cow-calf pairs and facilities associated with seasonal feeding and bedding sites do not require a permit under the AOPA, as they are not a "confined feeding operation". Accordingly, I am further limiting the investigation to feedlot pens only, not facilities apparently associated with cow-calf pairs or seasonal feeding and bedding sites.

I reviewed an aerial photo, collected between 1999 and 2003 of the site (see Technical Document RA21030, page 6) and noted the presence of two pen areas at the south end of the currently existing pens. The northern of these two pen areas is in the same area of pens four, five and six as indicated in compliance directive CD 21-03. The feed bunk for these pens is located along the pens' southern edge and is approximately 121 m long. These the pens have a cumulative area of 7,348 m².

The southern of the two pen areas is located in the area of pens one, two and three as in the compliance directive and has a 76 m long feed bunk along the southern edge of the pens. Pens two and three appear to have been in use (it is visible that there is no or limited vegetation in the pens) and have a cumulative area of 1,569 m². It is possible that pen one was under construction when the aerial photo was taken, or that it was relatively new and vegetation was still growing in the pen. Considering that the feed bunk was present in the photo and that there is a relatively large date range on the aerial photo, I am considering pen one to have been constructed as of January 1, 2002. This pen has an area of 871 m² (24.9 m x 35 m, see Technical Document RA21030, page 3).

Together, the cumulative CFO pen area for what is visible in the 1999-2003 air photo, including pen one, is approximately 9,788 m² and the cumulative feed bunk length is approximately 197 m.

I note that in the 1999-2003 aerial photo there is a set of pens next to a barn, likely associated with the dairy. As noted previously, the applicant has not requested these pens or the barn to be part of the grandfathered livestock or facilities so I will not discuss it further. There is also an area to the west of the feedlot and north of the river where an area has reduced vegetation. This is possibly the location of a seasonal feeding and bedding site for cow-calf pairs. As discussed previously, dairy livestock have not been claimed as part of this request. Also, cow-calf pairs in a seasonal feeding and bedding site do not require a permit under AOPA.

Agdex 096-81 "Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002" indicates a space requirement of 23.2 m² to 18.6 m² for a beef finisher and 18.6 m² to 16.3 m² for a beef feeder. The feed bunk space requirement for beef finishers is 0.3 m to 0.76 m per animal and 0.24 to 0.61 m per animal for beef feeders.

Based on the above confinement area, the pens would have a capacity of between 421 to 526 beef finishers or 526 to 600 beef feeders. Based on feed bunk length, the pens would have a capacity between 259 to 656 beef finishers or 323 to 820 beef feeders. Based on this calculation the limiting factor would be confinement area; the capacity of the deemed feedlot permit would therefore be 526 beef finishers or 600 beef feeders.

The documentation from AEP confirms that the livestock capacity was at least 500 beef feeders as of December 31, 2001. Regardless, section 18.1(2)(a) of AOPA states that the (livestock) capacity of a deemed permit is the capacity of the enclosures to confine livestock as of January 1, 2002. Accordingly, this CFO is considered to have a deemed approval with a livestock capacity of 526 beef finishers or 600 beef feeders. As noted previously, I am not including the dairy, cow-calf pairs or other livestock documented in the information from AEP as part of the “claimed deemed permit determination.

APPENDIX B: Consistency with Ponoka County’s municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP). I interpret this to be the MDP where the CFO is, or is to be, sited, not ones from other municipalities or applicable governing bodies such as First Nations. There is no applicable intermunicipal development plan.

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.)

Curtis McKelvie’s CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan in October 2018, under Bylaw #6-08-MDP.

Section 2 of the MDP contains 11 numbered “policies” relating to CFOs. Of these, policies 2.7, 2.9, 2.10 and 2.11 are not relevant to this application as they apply to matters under the County’s regulatory mandate, not the NRCB’s under AOPA. The remaining policies in section 2 are discussed below.

Under policy 2.1, the county “encourages” the development of CFOs to add value to crop production and provide “more employment and income per acre of land.” However, the policy also states that the environment and neighbours’ rights “must be protected.” This policy likely isn’t a relevant “land use provision” because it relates broadly to economic development, not CFO siting. Regardless, it provides a general context for balancing and interpreting the other policies in section 2.

Policy 2.2 states that it’s the county’s belief that “very large CFOs are inappropriate in this part of Alberta, and requests the NRCB not to allow them here (in Ponoka County).” This policy defines “very large” as “more than ten times” the threshold for approvals in the Part 2 Matters Regulation under AOPA. In this case, the threshold for approvals for a beef finisher CFO is 350 animals, so a “very large” beef finisher feedlot CFO in Ponoka County would have at least 3,500 animals. This application proposes a 1,950 head beef finisher feedlot CFO. This would result in a CFO that is not “very large” as set out in policy 2.2; the CFO is therefore consistent with this policy.

Policy 2.3 has two parts. The first part states that no new CFO shall be established within specified distances to itemised urban developments, watersheds and land within a CFO exclusion zone in an Area Structure Plan (ASP) that has been adopted by bylaw. This CFO is located approximately 5.5 km from Maskwacis and 8.5 km from the Town of Ponoka and is in

relatively close proximity to the Battle River. I note how the Battle River or a buffer around it is not identified as part of a new (or existing) CFO prohibition area. Regardless, this application is to expand an existing CFO, not for the construction of a new one. For this reason, this part of this policy is not applicable to this application.

The second part of policy 2.3 of the MDP calls for “very strict” conditions on manure handling and storage in the Chain Lakes and Maskwa Creek watersheds. This policy is likely not a “land use provision” because it calls for discretionary judgements about what conditions are “very strict.” In addition, section 20(1.1) of AOPA precludes me from considering MDP provisions “respecting tests or conditions related to the construction of or the site for a confined feeding operation or manure storage facility” and regarding the land application of manure. Even if I did consider this provision, with a variance, the proposed feedlot expansion meets AOPA’s technical requirements for manure handling and storage.

Policy 2.4 calls for the NRCB to “set strict rules for the timely incorporation of manure within a mile of any urban municipality or rural residence.” Section 20(1.1) of AOPA precludes me from considering this policy because it relates to the land application of manure. The regulations under AOPA regulate the manure application process, including timely incorporation in specified circumstances (see section 24 of the Standards and Administration Regulation which sets out the manure incorporation requirements under AOPA for different cropping methods).

Policy 2.5 precludes the siting of CFOs within two miles of “any lake” unless the “regulators” are “convinced” that the CFO’s manure management system is “fail-safe” and the CFO poses “no reasonable risk of contamination of the lake.” This CFO is not located within two miles of any lakes identified on the MDP’s Map 2.

At any rate, this policy is likely not a “land use provision” because its “fail-safe” and “reasonable risk” tests call for discretionary, CFO-specific judgements which I am precluded from considering under AOPA’s section 20(1.1).

Policy 2.6 states that CFOs “should not be established or expanded” where there is “any risk that runoff will contaminate domestic water supplies.” This policy likely is not a “land use provision” because it calls for discretionary judgements about acceptable risks. (The policy’s “any risk” test is a low risk threshold, but I read the threshold as more than “minor” or “insignificant.”) For this reason, this policy is not applicable to this application.

Policy 2.8 applies to new CFOs and uses, but essentially modifies, AOPA’s MDS requirements by measuring the AOPA-derived minimum distance of separation to the edge of an adjacent landowner’s property. This application is not for a new CFO and therefore policy 2.8 is not applicable to this application.

Based on the above, I conclude that the application is consistent with the land use provisions of the Ponoka County’s MDP. The county’s response to the application does not refute this conclusion.

In my view, the text of Ponoka County’s MDP also provides a clear intent to incorporate the land use bylaw (LUB), in sections 1.4, 1.6, 4.10, 10.3, 12.1, 17.5 and in Appendix A. Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also considered Ponoka County’s LUB 7-08-LU. Under that bylaw, the subject land is currently zoned Agricultural (AG). CFOs are listed as a permitted land use within this land use zoning, provided that they hold the required

authorization (or permit) under AOPA. As noted in this decision summary, this CFO already holds a deemed or grandfathered permit under AOPA.

APPENDIX C: Minimum Distance Separation (MDS) and land use zoning

Approval officers are required to determine if the application meets the AOPA MDS requirement; it is intended to mitigate nuisances from CFOs to surrounding residences. In the NRCB's Approvals Policy (Operational Policy 2016-7, part 8.8.1) approval officers will presume that if a proposal for a new or expanded manure storage facility or manure collection area meets AOPA's MDS requirements, the nuisance impacts on neighbouring residences is acceptable.

As set out in part 6 of the decision summary above, I determined that the revised application for 1,950 beef finishers meets MDS (with the one waiver). However, an explanation of how I came to this determination is warranted since some of the surrounding lands are not zoned municipally.

MDS is a calculated value based on the number, type and category of livestock at a CFO, and the type of manure produced and stored (odour production). The MDS is also based on the land use zoning for the land on which the residence is located (odour objective). Other factors in the calculation of MDS are a constant exponent applied to the CFO's total odour production, a dispersion factor and an expansion factor. For clarity, I did not modify the expansion factor from 1.0 since there has been construction and expansion without a permit.

MDS is measured from a CFO's manure collection areas and manure storage facilities (the pens and catch basins in this case) to the closest outside wall of a neighbouring residence. The MDS categories and setback requirements applicable to this application follow:

- Category 1 applies to residences on land zoned for agricultural purposes (e.g. farmsteads, acreage residences) – 485 m,
- Category 2 applies to residences on land zoned for non-agricultural purposes – 647 m,
- Category 3 applies to residences on land zoned for high use recreational or commercial purposes – 809 m, and
- Category 4 applies to residences on land zoned for large-scale country residential, rural hamlet, village, town or city – 1,294 m

Ponoka County

Maps 33 and 34 in Ponoka County's land use bylaw (7-08-LU), last updated September 2021, identify land in Ponoka County within 1,294 m of the McKelvie CFO zoned as Agriculture District.

Section 702 of the bylaw states that "the agricultural district provide(s) land where all forms of agriculture can be carried on without interference by other, incompatible land uses..." CFOs and residences are stated as a permitted land uses in this district. There is a statement that "no more than one residence shall be established on a lot". An exception to this would be a secondary residence for people actively farming the land (section 615.2 of Ponoka County's land use bylaw). There is a stipulation that lots subdivided out for residences must not include cultivated land.

Based on the above, the residences located within 1,294 m of the CFO within Ponoka County are MDS category 1 and the MDS requirement is met for all these residences in the county.

Samson Cree First Nation

On December 7, 2021, representatives of the Samson Cree First Nation informed me that the First Nation does not have a land use bylaw. The Standards and Administration Regulation

under AOPA contemplates MDS calculation using land zoning, which is a land use bylaw concept under the *Municipal Government Act* (MGA). First Nation lands are not governed under the MGA, and the Samson Cree First Nation does not use the land use classifications typically found in Alberta municipalities, so I set out to establish a reasonable way to consider land use equivalencies for First Nation lands and how MDS would apply to them.

At a high level, MDS categories are associated with the density or sensitivity of residential development. Because of this I believe that looking at residential development on Samson Cree First Nation lands is a good proxy to assist with determining the applicable MDS category.

In a 2021 aerial photo, see figure 1 below, of the Samson Cree First Nation lands within the 1.5 mile notification radius (highlighted in yellow) I have identified residences within this area and have marked them with yellow pins. The McKelvie CFO is indicated with a blue pin in the bottom left corner.

I observe two apparent residential densities on Samson Cree First Nation lands, low and high. In addition to the residential developments, there is agricultural land or land that has not been developed. The high residential density (up to ten residences per quarter section of land) are located along the Montana Bridge Road (Range Road 245) and Township Road 442 from Highway 2A to the Montana Bridge Road. The residences are typically within 200 m of the main access roads or accessed by a common driveway. The low residential density (up to five apparent residences per quarter section of land) are located off Range Road 250 between the CFO and the other more densely developed area. These residences often have driveways longer than 200 m. There appears to be agricultural or non-developed land separating these two groups of residential development densities.

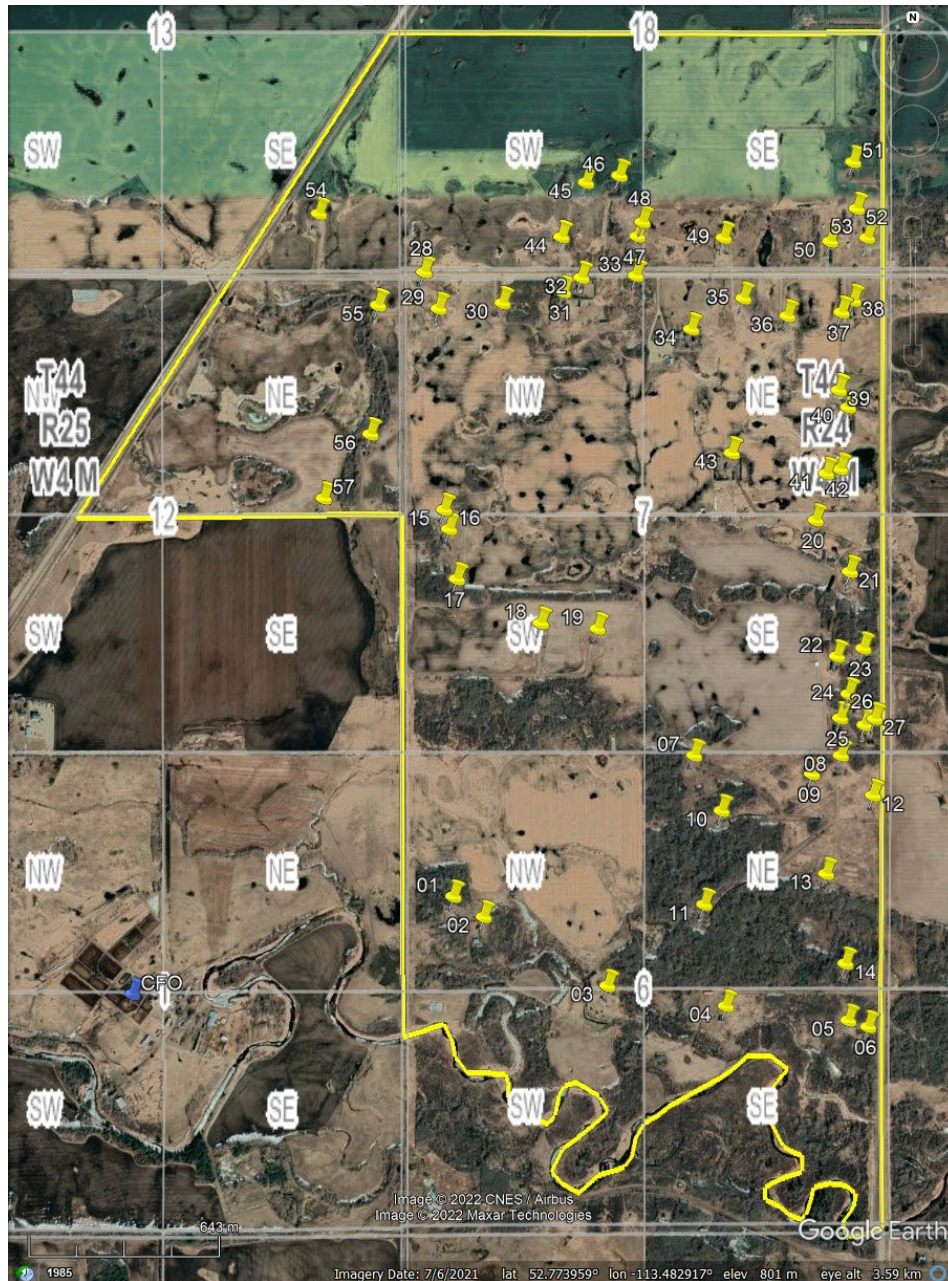


Figure 1: Apparent residences on Samson Cree First Nation Land

In an attempt to reduce the complexity of this analysis, I am going to treat each residence as though it is on its own parcel of land (effectively separating residential developments from agricultural or non-developed land). As a foundation for equivalence, I will also borrow the considerations set out in Ponoka County's land use bylaw related to residential development. Based on this, I perceive three land use areas based on density of residences and apparent use:

- A. Agricultural district
 - characterized by cultivated land or non-developed land
- B. Low density residential district
 - one to five residences are present per quarter section of land
- C. High density residential district

- more than five residences are present per quarter section of land or there are more than five residences located within 300 m of the next residence

When I compare the above residential development types to the zoning districts in Ponoka County's land use bylaw, it appears to resemble one of three land use zoning districts:

Agricultural, section 702:

Section 702 of the bylaw states that "the agricultural district provide(s) land where all forms of agriculture can be carried on without interference by other, incompatible land uses..." CFOs and residences are stated as a permitted land uses in this district. There is a statement that "no more than one residence shall be established on a lot". An exception to this would be a secondary residence for people actively farming the land (section 615.2 of Ponoka County's land use bylaw). There is a stipulation that lots subdivided out for residences must not include cultivated land.

Country residential hobby farm, section 706:

Section 706 states that "the purpose of the country residential hobby farm district is to provide land of low agricultural value for low density rural development and hobby farming." The number of residences allowed per quarter section is based on the amount of available water supply and lots being a minimum size of 10 acres or 4 hectares (16 parcels per quarter section).

Country residential, section 705:

Section 705 states that "the purpose of the Country Residential District is to provide land of low agricultural value where clusters of rural non-farm residences may be established away from incompatible land uses..." There is a limit to the number of parcels is based on a maximum of 48 parcels per quarter section of land and the amount of available water supply.

A distinction I draw from the above is that country residential is intended for higher density non-agricultural residences while country residential hobby farm and agricultural districts allow for lower density residences on agricultural land. Accordingly, I am of the opinion that lower density residences on the Samson Cree First Nation should be considered category 1; ones in higher density residential should be considered category 2 or 4 (see analysis below).

In the 2021 air photo I did not observe any apparent recreational or commercial lands (category 3). I do note the apparent presence of a commercial/industrial yard (with highway tractors and associated trailers parked at it), with a residence located approximately 40 m from it in NE 7-44-24 W4M. I am treating this as though it is a discretionary land use within the residential development land use zoning. Accordingly, I will not discuss MDS category 3 any further here.

I do not see evidence of any hamlets, villages, towns or city like developments, though I am considering the density of residences along township road 442 and the Montana Bridge Road could be considered large-scale country residential (MDS category 4). In section 4 of the NRCB Operational Policy 2018-1, Large Scale Country Residential Developments (for Determining Minimum Distance Separation), ten or more adjacent country residential lots are a large-scale country residential development (MDS category 4).

In light of the above, I consider the low density residential developments off Range Road 250 to be MDS category 1 (green shaded in Figure 2, below) and the high density residential developments off Township Road 442 and the Montana Bridge Road to be MDS category 4 (purple shaded in Figure 2, below).

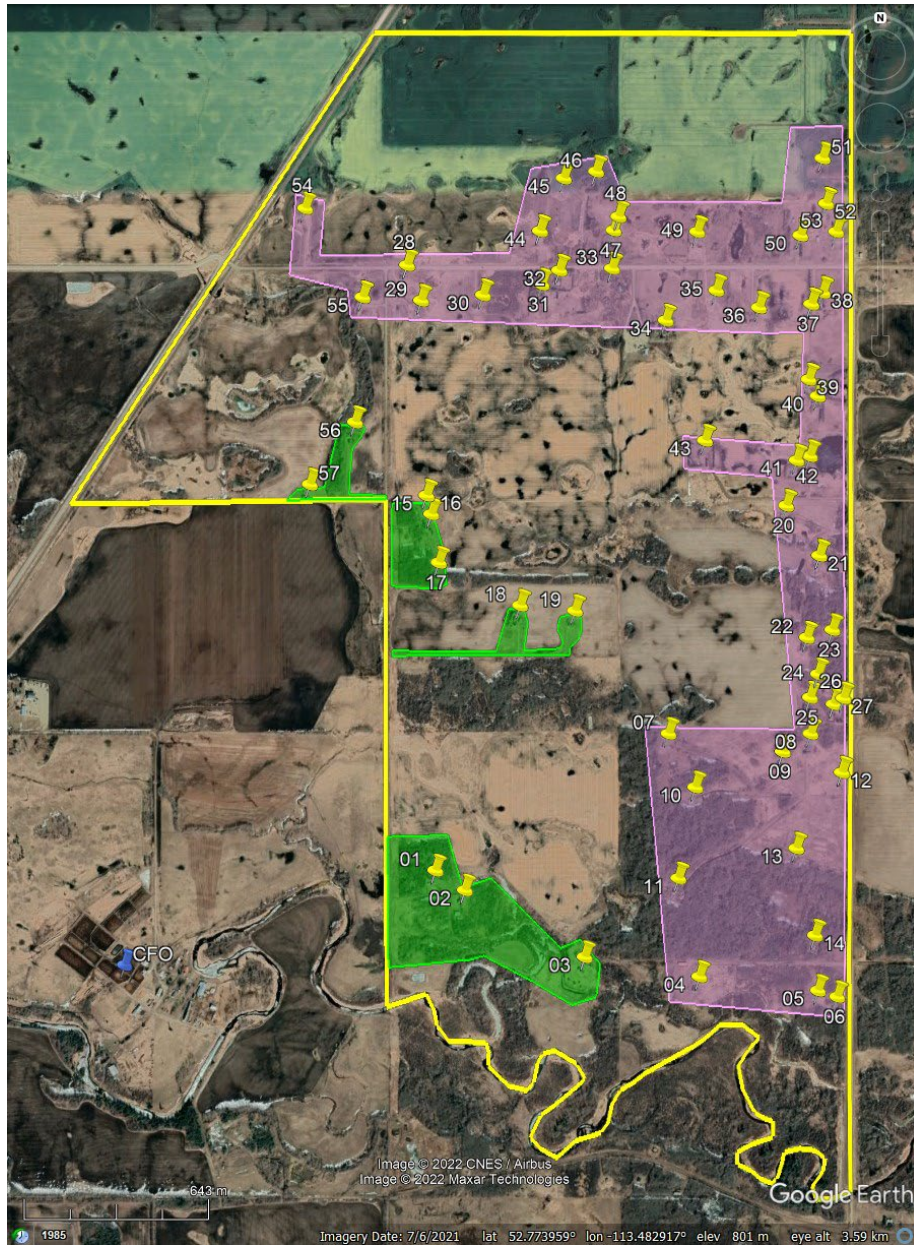


Figure 2: Apparent land use districts and residences Samson Cree First Nation Land; pink denotes high density and green denotes low density residential developments, the remainder represents cultivated or non-developed land

Samson Cree First Nation MDS Conclusion

The 485 m MDS category 1 setback from the CFO does not reach Samson Cree First Nation land. The residences within 1,294 m of the CFO on Samson Cree First Nation land are considered to be equivalent to be MDS category 1, therefore I am of the opinion that the MDS requirement is met for all residences on Samson Cree First Nation land.

Montana First Nation

On February 1 and March 28, 2022, I inquired with representatives of Montana First Nation if that First Nation had a land use bylaw. I have not received a response from the Montana First Nation on this matter. Because of this, I am using the same interpretation to determine MDS

categories based on the relative residential densities on the Montana First Nation lands that I used for the Samson Cree First Nation.

The 2021 aerial photo of Montana First Nation's land within 1.5 miles of the CFO (figure 3) appears to have similar development types as evident on the Samson Cree First Nation in figure 1 above. In this figure residences or apparent ones are indicated with blue pins and the CFO is indicated with a yellow one.

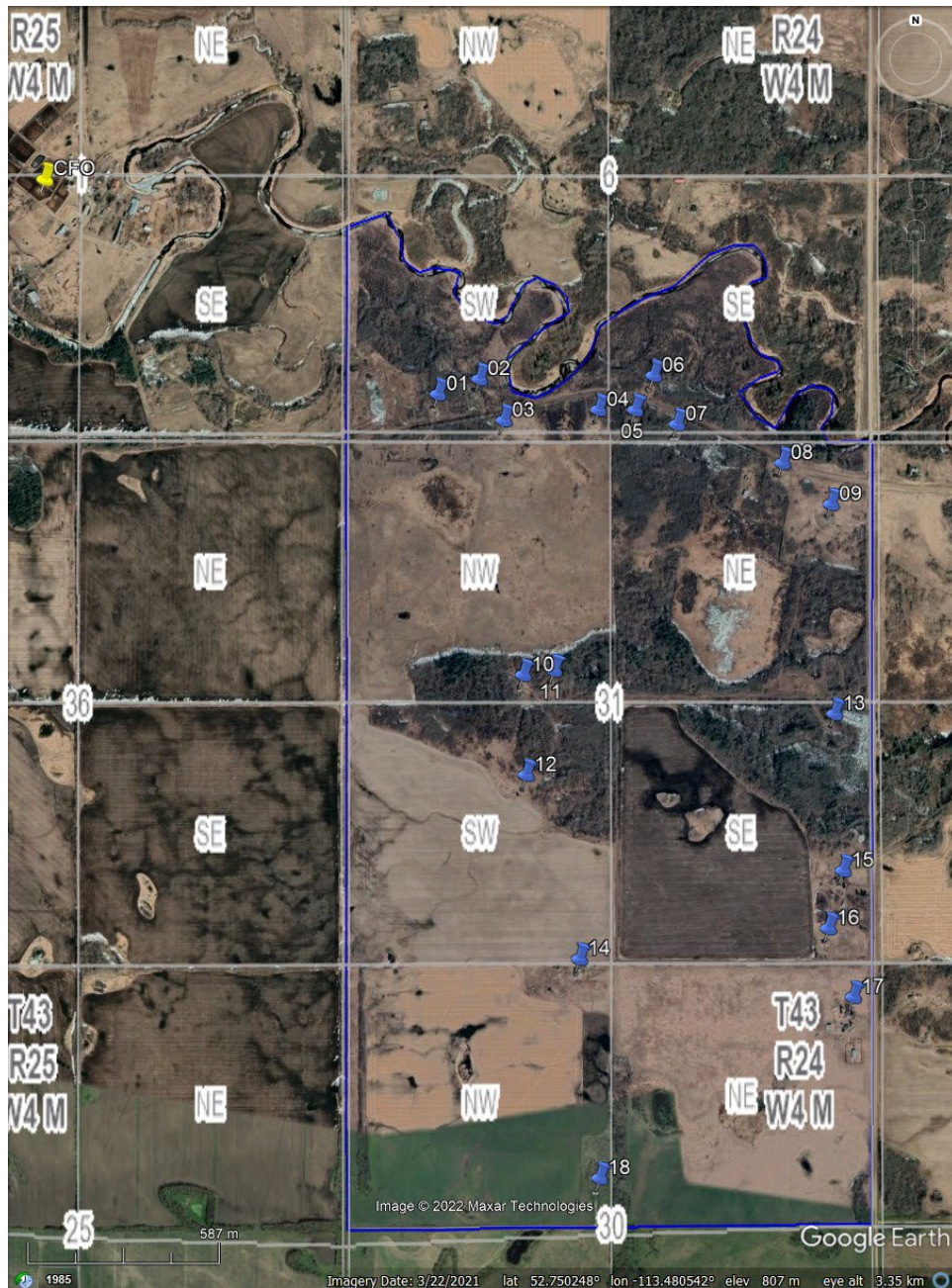


Figure 3: Apparent residences on Montana First Nation Land

There appears to be a relatively high density residential development located in the S ½ 6-44-25 W4M which extends into NW 32-44-24 W4M. This development follows a common

access road, an apparent township road (with a curve to the north). There are also low density residential developments in Section 31-44-24 W4M and N1/2 30-44-24 W4M. The low density developments appear to have up to three residences serviced by common driveway, one that often is located on the boundaries of quarter sections. I do not note any apparent recreational, commercial or industrial developments (MDS category 3), nor do I note any apparent hamlets, villages, towns or cities. Despite this, the high density residential development could be considered as large scale country residential (MDS Category 4).

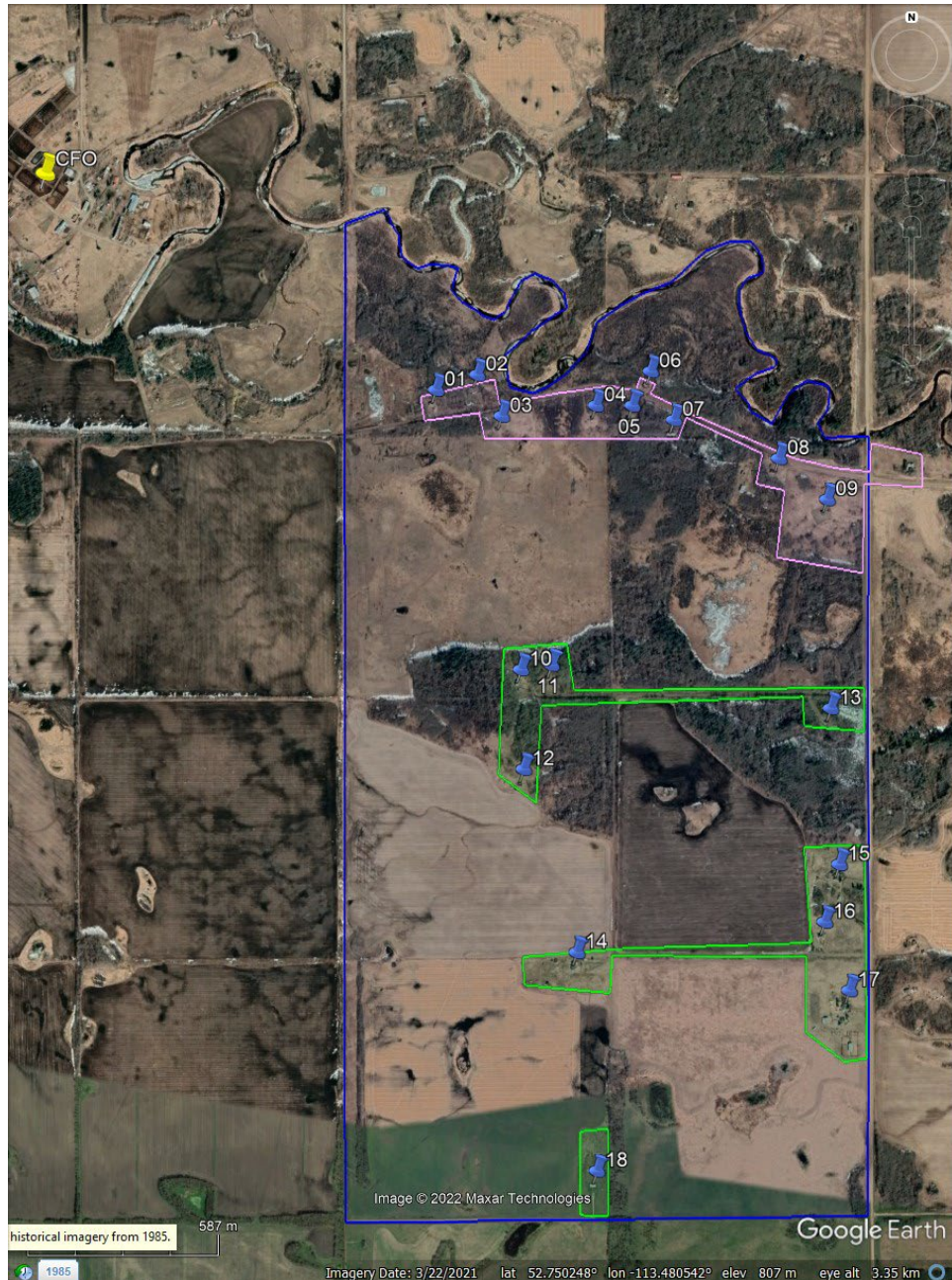


Figure 4: Apparent land use districts and residences Montana First Nation Land; pink denotes high density and green denotes low density residential developments, the remainder represents cultivated or non-developed land

Similar to the Samson Cree First Nation analysis, I am considering residences pinned on figure 4 as one through nine (noting the adjacent residences in the N1/2 30-44-24 W4M) of a high residential development density and equivalent to MDS category 4 (pink shaded). The remaining residences in the low density developments are equivalent to MDS category 1 (green shaded).

Montana First Nation MDS Conclusion

The 485 m MDS category 1 setback from the CFO does not reach Montana First Nation land. There are no residences within the 1,294 m MDS category four setback. Based on this the MDS requirement met.

APPENDIX D: Determining directly affected party status

As noted in part seven of this decision summary, the applicant and the municipality where the CFO are located are automatically considered to be directly affected parties.

Laurence McKelvie qualifies for directly affected party status because he owns a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing (see NRCB Operational Policy 2016:7 – Approvals, part 6.2).

The Samson Cree First Nation and Montana First Nation are considered to be directly affected parties for two reasons. As noted in part seven of this decision summary I am considering them to function as municipalities with boundaries within the 1.5 mile notification radius. Accordingly, they are considered directly affected parties. Further, both of the First Nations indicated in their responses to the application that they were responding on behalf of their citizens.

In addition to the above, the following individuals qualify for directly affected party status because they submitted a response to the application on a timely basis, 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):

Kimberley Crane
SW 6-44-24 W4M

Kenny J Louis
SE 7-44-24 W4M

Courtney D Louis
SE 7-44-24 W4M

Jennifer Napoose
SE 7-44-24 W4M

Helen M Louis
Section 7-44-24 W4M

Gerald Louis
SE 7-44-24 W4M

Tova Crane
SW 7-44-24 W4M

Robert Louis
SE 7-44-24 W4M

Gloria Louis
SE 7-44-24 W4M

APPENDIX E: Concerns raised by directly affected

The directly affected parties, including the Samson Cree First Nation and the Montana First Nation, and the ones noted in the previous appendix, raised several categories of concerns which I have summarized below. After the responses were received, I forwarded them, as applicable, to representatives of Alberta Environment and Parks (AEP: biologists, water licensing), Alberta Agriculture, Forestry and Rural Economic Development (AFRED, dead animal disposal), Alberta Health Services (AHS), Alberta Transportation, Ponoka County, Alberta Culture and Status of Women Tourism (ACSW), and the Aboriginal Consultation Office (ACO) (see NRCB Operating Policy 2016-7; Approvals, parts 8.8, 8.9, 8.10, 8.11, and 8.12).

On June 17, 2022, the applicant submitted a response to clarify some of the concerns expressed in response to his application. That response follows [as reproduced from the original]:

Mr. Peter Hall from Ponoka County made mention the use of range road 250 to the east of my site, also there were concerns of wear and tear on First Nations roads, it should be noted that none of my operation whether it be for the feedlot or farming operation uses range road 250. All the traffic uses TWP 441 west. This operation does not use any of the roads located in either Samson or Montana First Nations for any of its day-to-day operations.

There were many concerns regarding the Battle River, and ground water. It should be noted that between the requirements of the NRCB and the physical location of my feedlot, will prevent any contamination of the ground water and of the Battle River. Furthermore all land that the Mckelvie's own along the river is fenced off to prevent any grazing animals from disrupting the river banks and the river, allowing for the continual growth of natural vegetation. Even though the NRCB only requires 771 Acres of land for the spreading of manure I would like it to be noted that I have consistently covered more acres than that and have work with my neighbors, even though it cost me more in hauling, to have even more acres to spread the manure on to help mitigate any run off that might occur.

I would also like to emphasize on the location of the CFO. There is basically a full quarter section of uninhabited land on all four sides of my CFO with in each of those quarters there is a mix of both grazing and farming land. There are valleys, hills, the Battle River running through three of them and a lot of natural vegetation be trees and bushes. I feel that this is an important point to understand because of the natural protective barrier that surrounds my location helping to reduce the odours, dust, noise and the visual impacts that are related to a CFO.

The only other thing I would like to make mention of, was the wording of my application in public documents. It is not a new CFO or expanding of a CFO it is merely the permitting of an existing CFO that has been here and operated for quite some time. I do understand that the NRCB looks at it as a new CFO though but I feel the wording was a misrepresentation to some of the adjacent land owners.

I have summarized the responses from AEP, AFRED, AHS, Alberta Transportation, Ponoka County, ACSW and the ACO and the NRCB's Science and Technology Division (if they provided responses to the concerns I forwarded to them) with the associated concern groups below. My deliberations on those concerns follow.

Claimed effect(s) or concern(s)	Respondent(s)
1. Impacts to surface water: - dumping waste in the river - river smells of chemical and animal waste - impacts to fish and fish habitat - pollution of surface water (nitrates/nitrites in the river) - chemical runoff (not specified)	Samson Cree First Nation, Montana First Nation, Kimberley Crane, Tova Crane, Kenny Louis, Helen Louis, Robert Louis, Courtney Louis, Gerald Louis, Gloria Louis

Response from– AEP (Fish and Wildlife Stewardship)

Jason Cooper, a senior fisheries biologist with AEP, indicated that this application “may [emphasis added] further impact an already overly stressed river.” His response included an overview of the Battle River’s limnology and (its biological, chemical, and physical characteristics). In summary, the river may be easily impacted by disturbances due to how the river receives its water supply.

He referenced that “declines in fish abundance and distribution have been observed by First Nations that historically utilized and depended on fish resources in the Battle River.” He also indicated that “water quality has been an ongoing issue impacting the fish populations significantly over the past century in the Battle River basin. There have been recent examples of positive management efforts being expended by agencies and stakeholders to reclaim and enhance the Battle River watershed, along with a strong will by the Battle River Watershed Alliance on education focusing on maintaining aquatic habitats in this drainage over the past number of years.”

Approval Officer considerations

For clarity, I have not received additional information from the concerned parties to elaborate on these concerns. Accordingly I am interpreting these concerns to apply to manure and manure impacted runoff from livestock associated with this application and application site.

AOPA includes requirements for the protection of surface water from manure collection areas (MCA) and manure storage facilities (MSF). As applicable to this application, sections 6 and 7 of the Standards and Administration Regulation (SAR) state that if required by an approval officer, the CFO must have runoff control which has to adhere to the regulations, and the MSFs and MCAs must be constructed within the setbacks listed in that section (section 7).

Sections 24 and 25 of the SAR lay out manure application limits, setback requirements, and soil protection measures. In addition to these sections, section 27 of the SAR also provides protection to surface water by requiring catch basin contents (manure) to remain on the land to which they are applied.

Surface water flow at this site will be controlled by the natural lay of the land and through constructed catch basins. Because of the existing lay of the land, surface water flow is directed away from the pen areas and their associated catch basins. Runoff from pens will either be retained within the pens or be directed to one of three catch basins. As noted in Technical Document RA21030 (pages 25 and 27), each of the catch basins are adequately sized for the areas that will contribute runoff to them. With that the requirements of section 6 of the SAR have been met.

Section 7 of the SAR requires a MSF/MCA to be constructed in excess of 100 m from a spring or water well and more than 30 m from a common body of water. The pens draining to catch basin 1, and catch basin 1, are located within 100 m of an existing water well. As stated in Appendix F, below, I am granting a variance to the 100 m water well requirement in this case. Common bodies of water include, as applicable here, the bed and shore of the Battle River. This application meets these setback requirements.

Sections 22-27 of the SAR specify manure spreading limits and related requirements. These requirements are discussed further below. In summary, these requirements are intended to prevent soil from being impacted by manure application and to mitigate manure impacted runoff from manure spreading lands. As noted below and in Technical Document RA21030, this application meets these requirements.

Agricultural operations, including confined feeding operations, hold potential to impact surface water including but not limited to the Battle River. Despite this, the application meets the AOPA requirements related to the protection of surface water.

Claimed effect(s) or concern(s)	Respondent(s)
2. Impacts to groundwater: - contaminated groundwater impacting the river - safe, clean drinking water	Samson Cree First Nation, Montana First Nation, Tova Crane, Kenny Louis, Helen Louis, Robert Louis, Courtney Louis, Gerald Louis, Gloria Louis

Approval Officer considerations

Section 8.10 of the Approvals Policy (NRCB Operating Policy 2016-7) recognizes that AEP is the regulator of surface water and groundwater licensing, not the NRCB. It also states that approval officers will not consider water supply or quantity concerns, other than ensuring that applicants sign a *Water Act* licensing declaration as part of their application. The same section also states that concerns of this nature are to be forwarded to AEP for information and response as required.

As noted in part three of this decision summary, Ms. Partridge indicated that AEP had received an application for a license under the *Water Act*. Ms. Partridge did not provide a response to groundwater related concerns that I forwarded to her.

With the variance noted previously and discussed further in Appendix F the existing and proposed pens and catch basins meet AOPA's requirements related to protection of groundwater. Further, the existing and proposed pens and catch basins all pose a low potential risk to groundwater (see Technical Document RA21030 and part eight of this decision summary).

Claimed effect(s) or concern(s)	Respondent(s)
3. Impacts to vegetation, fish, wildlife and habitat: - impacts to hunting and trapping - impacts to fish and fish habitat - impacts to wildlife - unable to hunt because wildlife are sickly and dying	Samson Cree First Nation, Montana First Nation, Kimberley Crane, Tova Crane, Kenny Louis, Helen Louis, Robert Louis,

	Courtney Louis, Gerald Louis, Gloria Louis
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Response from AEP (Fish and Wildlife Stewardship)

Jason Unruh, a wildlife biologist with AEP, expressed concerns that this application *may* impact wildlife and wildlife habitat. Specifically, he was concerned that manure, nutrients, antibiotics, etc. would flow into the Battle River and affect amphibians, waterfowl, shore birds, mammals, and their habitat.

Approval Officer considerations

Presently, the runoff from the pen group in the southwest is directed to a field overlooking the river. However, a catch basin is proposed to mitigate the risk associated with this pen area's runoff. As noted in my analysis in respect to concerns in relation to surface water, above, the concerns expressed by Mr. Unruh are addressed by the proposed catch basin and the existing ones that are to be relined.

I am aware that other portions of the feedlot such as the feed handling systems and related infrastructure may pose a potential risk to vegetation, fish, wildlife and habitat. These are facilities that are considered to be ancillary structures which are exempt from AOPA permitting requirements.

Claimed effect(s) or concern(s)	Respondent(s)
4. Impacts to human health and air quality: - Health concerns, exposure to ammonia, hazardous waste, nitrates and phosphates, illness due to exposure to manure odours - dust, being located in a red zone for particulate matter 2.5 - an increase in green house gas production and related climate change effects	Samson Cree First Nation, Montana First Nation, Kimberley Crane, Tova Crane, Kenny Louis, Helen Louis, Robert Louis, Courtney Louis, Gerald Louis, Gloria Louis

Response from AHS

Gordon Watt, an executive officer/public health inspector with AHS, provided comments related to the scope of AHS environmental public health's role, odour, manure handling, microbial and chemical contamination of water and runoff. He limited his review to health related concerns; specifically, manure production and the associated impacts on air and water quality.

He noted that ammonia (NH₄), hydrogen sulphide (H₂S), and methane (CH₄) are related to odour. Further, he discussed how odour is subjective and without any air quality data it is challenging to determine if the odour caused by manure production or application to soil would be responsible for the expressed concerns. He stated that a person's odour detection threshold could be three to ten times below an acute toxicity threshold. Mr. Watt explained how manure at this CFO would not be stored in a liquid form where volatile organic compounds, H₂S and CH₄, are a concern on an occupational basis.

He noted how solid manure has a lower potential for offsite migration during the spreading process. In addition, he discussed how there was a substantial decrease in bacteria (from manure) as it was spread due to desiccation and sunlight, meaning residents more than 100 m from the spreading activities are at a very low risk for infection.

Mr. Watt completed a review of the water wells at the application site and those on First Nation lands. He concluded that there was a low risk of microbial contamination of groundwater from the management of manure at the CFO. He also stated that he was not aware of instances of chemical contamination of drinking water from wells associated with animal manure or agricultural operations of this site and concluded that the CFO seems to meet current standards and setbacks for neighbouring water wells and surface water.

Last, he noted that the three proposed catch basins would help to protect surface water, including the Battle River. The soil layers as reported in the water well logs would also protect groundwater.

Response from NRCB Environmental Specialist

Scott Cunningham provided me with a written response to the expressed concerns that noted how AOPA and its regulations do not specify a method of assessing greenhouse gases and associated effects on climate change. In lieu, he calculated the greenhouse gas emissions from a 4,000 head beef feedlot (as proposed in the Part 1 application, a number that was later reduced by an amendment to the application), in carbon dioxide equivalent (CO₂e), and compared that to the actual greenhouse gas emissions of Alberta and Canada. After completing his calculations, he stated that the CO₂e from the proposed livestock would be extremely small compared to the overall emissions from Alberta and Canada as a whole.

Approval Officer considerations

As in the Approval Policy (section 8.8 of NRCB Operating Policy 2016-7), approval officers do not consider health and odour effects of CFO air emissions on their own initiative. In accordance with the policy, the health related concerns were forwarded to AHS and the AHS response to those concerns is summarized above.

Section 8.8.2 of the Approvals Policy (Operational Policy 2016-7) notes how section 20(2) of the Standards and Administration Regulation authorizes approval officers and inspectors to require a “specific dust ... control program”. No dust control programs have been requested by concerned parties or proposed by the applicant.

Claimed effect(s) or concern(s)	Respondent(s)
5. Impacts to roads or highways - speeding on reserve roads (by Mc Kelvie family), - wear and tear on reserve roads, costs of repairs - dust from gravel roads	Kimberley Crane, Tova Crane

Approval officer considerations

I interpret these concerns to apply to Highway 2a and gravel roads surrounding the CFO.

Alberta Transportation has jurisdiction over Highway 2a, Ponoka County has jurisdiction over roads west of Range Road 25-0, the Samson Cree First Nation has jurisdiction over roads east of Range Road 25-0 to the north of the river, and Montana First Nation has jurisdiction over the ones east of Range Road 25-0 to the south of the river. The NRCB does not have jurisdiction over Highway 2a or the gravel roads under AOPA.

As these responses were forwarded to me by a representative of the Samson Cree First Nation I did not see need to send them back to the Samson Cree First Nation for comment and awareness. However, I did forward them to representatives of Alberta Transportation and Ponoka County.

To date, I have not received a response from the representative of Alberta Transportation in relation to the concerns that were forwarded to them.

Mr. Peter Hall, the assistant chief administrative officer with Ponoka County, indicated in his response, that to access the CFO, a vehicle must proceed on county-maintained roads from Highway 2a. He went on to state that Range Road 25-0 to the east “will not see significant use”. He went on to state that Ponoka County assists by providing grader services on that road during peak summer farming operations but did not provide me with any other comments.

I note in the applicant’s response to the concerns, Mr. McKelvie stated that no traffic from the operation uses Range Road 25-0.

Claimed effect(s) or concern(s)	Respondent(s)
6. Impacts to the community: - the feedlot will not be of benefit to the community	Kimberley Crane

Approval officer considerations

As noted in part ten of this decision summary, an application is presumed to have an acceptable effect on the community if it is consistent with the land use provisions of the county’s municipal development plan (MDP). As noted in Appendix B, this application is consistent with the land use provisions of Ponoka County’s MDP.

Public concern about acceptable development types in any portion of a county is addressed by the county through consultations and public hearings during the development of a county’s municipal development plan and its land use provisions.

I am aware that the location of this CFO relative to two First Nations is of concern to some. In terms of collaborative planning between the First Nations and Ponoka County, I am not aware of any planning type documents between Ponoka County and the Samson Cree First Nation or Montana First Nation which could preclude this development.

Claimed effect(s) or concern(s)	Respondent(s)
7. Impacts to inherent and aboriginal/treaty rights/practices and traditional/cultural uses - disturbance to historical, archaeological, anthropological and or ceremonial sites - negative effects to traditional medicines and their harvest by elders	Samson Cree First Nation, Montana First Nation, Kimberley Crane, Tova Crane, Kenny Louis, Helen Louis, Robert Louis, Courtney Louis, Gerald Louis, Gloria Louis

Response from ACWS

Aaron Wilson, an Indigenous consultation advisor with the historic resources management branch of the Government of Alberta’s Ministry of Culture and Status of Women (ACWS), indicated that the geographic information system he had access to does not have any recorded

traditional use sites of a historic resource nature located in the area of the feedlot. Despite this, he also indicated that it is possible for First Nation persons to access the bed and shore of the river to harvest medicinal plants near the feedlot (he clarified that he had no knowledge of site-specific harvesting locations near the feedlot).

Last, he also advised that there is an Online Permitting and Clearance System (OPaC) where a person pursuing a development could request an assessment of that application's potential to disturb cultural, historic or related sites.

Response from ACO

Amanda Tangedal, the south region lead with the Aboriginal Consultation Office (ACO), advised that the ACO has no formal role within NRCB processes, so the ACO would not provide a pre-consultation assessment. The ACO assists AEP with applications under the *Water Act* and *Environmental Protection and Enhancement Act*. She also suggested that First Nations should "identify the location of potential adverse impacts and clearly identify the potential adverse impacts on the exercise of their Treaty rights and traditional uses."

Approval officer considerations

As noted in part seven of this decision summary, I requested additional information from the Samson Cree First Nation and Montana First Nation to better understand the concerns and the particulars of those concerns. To date, I have not received additional information from Samson Cree First Nation or the Montana First Nation. Because of this, I am unable to properly assess impacts to Aboriginal or treaty rights and practices or medicine harvesting locations without knowing more specifics on where or how these rights or practices occur, and how they might be adversely impacted by an expansion of the feedlot.

To address these concerns, in the best of my abilities under the AOPA and the policies of the NRCB, I am requiring the co-permit holders to consult with the ACWS prior to starting construction to determine if a clearance or permit is required under the ACWS OPaC system before starting construction.

Claimed effect(s) or concern(s)	Respondent(s)
8. Impacts from livestock management - Dead animal disposal in a pit	Kimberley Crane

Approval officer considerations

Section 8.11 of the Approvals Policy (NRCB Operational Policy 2016-7) confirms that AOPA does not address dead animal disposal. Rather, it is administered by the Inspection and Investigation Branch of AFRED.

I forwarded the concerns related to dead animal disposal to a representative of the Inspection and Investigation Branch with AFRED.

Claimed effect(s) or concern(s)	Respondent(s)
9. Waste containment practices	Tova Crane, Kenny Louis, Helen Louis, Robert Louis, Courtney Louis, Gerald Louis, Gloria Louis

Approval officer considerations

Similar to concern group one, above, I am interpreting this concern to apply to manure and manure impacted runoff collection areas and storage facilities associated with this CFO.

The unauthorized pens will meet AOPA’s protective liner requirements, provided that they receive a 0.7 m thick compacted soil liner proposed in the application. Also, the proposed new catch basin (#3, with a proposed compacted soil liner), and the existing (unauthorized) two with proposed synthetic liners, meet the AOPA groundwater protection requirements (with conditions, see Appendix G).

Based on this, I am of the opinion that these concerns are addressed.

Claimed effect(s) or concern(s)	Respondent(s)
10. AOPA process: - Due to Covid-19 restrictions the Samson Cree First Nation was unable to directly engage with residents within 1.5 miles of the CFO - why haven't band members been informed - a few hours notice isnt fair	Samson Cree First Nation, Jennifer Napoose

Approval officer considerations

The NRCB reached out to the Samson Cree First Nation and Montana First Nation as early as November 25, 2021, and November 24, 2021, respectively, to begin engagement with these First Nations. The NRCB requested names and contact information for residents within these First Nations and who are within 1.5 miles of the CFO from the First Nations’ consultation offices so that the NRCB could mail information related directly to them. The NRCB was not provided with this information.

The official public notice of the application being deemed complete was included in the December 1, 2021, edition of the Ponoka News which included a deadline of January 7, 2022, for persons to submit responses.

I met virtually with representatives of the Samson Cree First Nation on December 7, 2021. In that meeting I was informed that the Samson Cree First Nation was currently shut to outsiders due to Covid-19. I provided Samson Cree First Nation representatives with a copy of the courtesy letter that would have been provided to residents within the notification radius, if that information had been provided. I learned that the apparent residences I identified on Samson Cree First Nation land were relatively the same as what the Samson Cree First Nation was aware of. Last, I learned that the Samson Cree First Nation planned on notifying Samson Cree First Nation members on a Samson Cree First Nation facebook page.

In addition to this, representatives of the NRCB provided a virtual presentation to representatives of the Samson Cree First Nation on December 16, 2021. That presentation provided an overview of AOPA legislation and processes. I offered to make a similar presentation to representatives of the Montana First Nation but never received further correspondence on the matter.

I note how Volume 7, issue 53 (December 2021 edition) of the Nipisihkopahk Acimowin included a copy of the public notice that was in the Ponoka News.

At the request of representatives of the consultation offices at Samson Cree First Nation and Montana First Nation the response deadlines for the First Nations was extended to January 28, 2022, and February 4, 2022, respectively. In its January 28, 2022 submission, Samson Cree First Nation said it was unable to engage directly with residents within the 1.5 mile radius. They advised their response letter was being submitted on behalf of the Samson Cree First Nation and its citizens. In its submissions on February 4, 2022, the Montana First Nation provided similar information.

In addition to this, I requested clarifications from both First Nations on March 28, 2022 as to the particulars of the concerns (see discussion in concern group seven, above). I did not receive further correspondence from Montana First Nation to this request. A representative of Samson Cree First Nation requested and was provided with an extension, but no information was provided to me by the extended deadline or after it passed.

Claimed effect(s) or concern(s)	Respondent(s)
11. CFO history - Compliance Directive 21-03 - status of the claimed deemed permit	Samson Cree First Nation, Montana First Nation

Approval officer considerations

As noted in part one of this decision summary, this application was filed because of a complaint regarding unauthorized construction. That complaint resulted in Compliance Directive 21-03 being issued.

In general, the compliance directive required the applicant to depopulate the feedlot pens that were constructed after 2002 without a permit. Further, the applicant was prohibited from using those pens, and the associated catch basins, until an AOPA permit had been obtained to do so.

Section 8.12.2 of the Approvals Policy (NRCB Operational Policy 2016-7) states that an approval officer is to presume that applicants have intent and resources to meet the requirements of AOPA and their permit(s). Given this, an approval officer will not generally address the applicant’s past history as part of their decision on an application.

Claimed effect(s) or concern(s)	Respondent(s)
12. Manure management - nitrates and phosphates - pollution - will contaminate land	Tova Crane, Gerald Louis, Gloria Louis

Approval officer considerations

I interpret these concerns to apply to manure spreading, and to manure collection areas and storage facilities.

As stated previously, and in Technical Document RA21030, the proposed liners for the CFO's manure storage facilities and manure collection areas meet the requirements of the SAR. In the Part 2 application (see Technical Document RA21030, pages 16, 17, 20 and 21), the applicant has listed an adequate land base available for manure spreading. As noted in concern group one, above, sections 22-27 of the SAR include requirements to protect soil from being saturated with nutrients from manure.

I note that AOPA and the Standards and Administration Regulation do not include requirements for phosphates.

As noted previously, with conditions, the proposed manure collection areas and manure storage facilities, the pens and catch basins at the CFO, will meet AOPA's protective liner requirements. The catch basins are adequately sized for the areas contributing runoff to them. Further, results of the environmental risk screenings I completed indicate that the "proposed" (including already constructed but unauthorized) and existing (pre-AOPA or grandfathered) facilities pose a low potential risk to surface water and groundwater.

Based on this, I am of the opinion that these concerns are addressed based on the application and within the existing confines of AOPA and its regulations.

Claimed effect(s) or concern(s)	Respondent(s)
13. Nuisances - hostile animals getting loose - noise	Kimberley Crane, Tova Crane, Kenny Louis, Helen Louis, Robert Louis, Courtney Louis, Gerald Louis, Gloria Louis

Approval officer considerations

Often, any issues that arise relating to the operation of a CFO, and other disagreements such as loose and hostile animals, or the noise from animals, can be resolved through good communication between neighbours and the owner/manager of those animals. However, if a member of the public has concerns regarding a CFO, including whether the operation is complying with AOPA, they may contact the NRCB through its toll-free reporting line (1-866-383-6722 or 310-0000). An NRCB inspector will follow up on the concern.

APPENDIX F: Variance

Catch basin 1 and the pens draining towards it (including the ones constructed without a permit) are located less than 100 m from Alberta Environment and Parks water well 2088326. During a site inspection I have confirmed that water well 2088326 is located approximately 20 m from the pens draining towards catch basin 1, and 70 m from catch basin 1. This conflicts with the section 7(1)(b) of the Standards and Administration Regulation (SAR).

In accordance with section 8.7.1 of the Approval Policy (NRCB Operating Policy 2016-7), I am regarding the pens constructed before AOPA that drain towards catch basin 1, and the ones that were constructed without a permit after 2002 to be effectively one manure storage facility.

As part of the application process a variance was requested. The variance was requested on the grounds that the water well is located up gradient of the catch basin (and pens). Further, the catch basin (and pens) will have a liner that meets AOPA requirements and the well has a good bentonite seal.

An exemption to the setback requirement is allowed under the Standards and Administration Regulation (SAR) section 7(2), but only before a facility or area is constructed. In this case, catch basin 1 and the pens associated with it have already been constructed (without a permit). As the exemption under section 7(2) is unavailable, I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1). It is my opinion that considering a variance is appropriate in this case.

Approval officers must not grant variances lightly or in the absence of substantive evidence. In this case, I have used the same tools that I would normally use to determine if an exemption is warranted. I consider the water well exemption framework as useful for assessing the degree of protection for the water well in relation to a manure storage facility (MSF) / manure collection area (MCA). In this case I presume that the risks of direct aquifer contamination from the MSF/MCA are low if the MSF/MCAs meet (or otherwise meet) AOPA's technical requirements to control runoff and leakage. However, when determining whether a MSF/MCA that otherwise meets AOPA's technical requirements provides the same or greater protection and safety as provided for by the regulations, I also assess whether water wells themselves could act as conduits for aquifer contamination.

One indicator that a variance provides the same or greater protection and safety is if the aquifer into which the well is drilled is not likely to be contaminated by the "proposed" MSF or MCA.

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

In this case, I felt the following factors were relevant to determine the protection of the aquifer in relation to the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA

Water well 2088326 is reported to have been installed in 2009 with an above ground casing and has a perforated or screened zone from 61 m to 67.1 m below ground level across grey sandstone. The sandstone is reported to produce more than 450 L/minute and is used stock watering purposes from this well. The well's log identifies protective clay layers from ground surface to 16.5 m below ground level. The well has a bentonite seal from ground surface to 56.4 m (across the clay layers). The well appeared to be in good condition at the time of my site inspection and is located up-gradient of the pens and catch basin (with regards to surface water flow).

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well¹. This tool is useful in gauging the level of protection of groundwater.

The water well exemption screening tool result indicates that there is a low potential for groundwater to be impacted by the catch basin and pens. It is my opinion that in this case, the location of the water well and how it was installed (or constructed) provides an equivalent level of protection as required by the regulations.

Based on the above, I am granting a variance to the 100 m water well setback requirement for catch basin one and the pens associated with it.

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

APPENDIX G: Explanation of conditions in Approval RA21030

Approval RA21030 includes several conditions, discussed below.

a. Clearance from Alberta's Ministry of Culture and Status of Women

As noted in Appendix E, part 7, I am including a condition that requires the co-permit holders to consult with representatives of the Government of Alberta's Ministry of Culture and Status of Women (ACWS) to determine if an Online Permitting and Clearance System (OPaC) clearance or permit is required prior to starting construction.

b. Considerations on synthetic liner integrity

The geotechnical report part of Application RA21030 states that a 40 mil thick high density polyethylene (HDPE) liner requires additional design considerations. Technical Document RA21030 states that a condition will be included in the permit requiring those considerations be submitted to, and approved by, the NRCB in writing before a liner of this thickness is installed.

Accordingly, a condition will be added to the permit requiring a qualified third party to prepare and submit those considerations in writing, and be approved by the NRCB in writing, before the liner is installed. In addition to this, there will be construction completion conditions that apply to the catch basins, see part d below.

c. Construction above the water table and uppermost groundwater resource

Section 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table and Uppermost groundwater resource (UGR) of the site "at the time of construction."

Information in the geotechnical report part of Application RA21030 states that the water table, and what could conservatively be considered the uppermost groundwater source, could be encountered at depths as shallow as 2 m. The catch basins that are to be relined are as deep as 2.3 m and the proposed catch basin is to be 2.4 m deep (at the base of its liner).

Based on this information, the catch basins do not meet the one metre requirement of section 9(3). However, because the height of the water table can vary over time, the lack of adequate depth to water table and the conservative uppermost groundwater resource indicated in Mr. McKelvie's application does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring the co-permit holders to cease construction and notify the NRCB immediately if the water table or UGR is observed to be one metre or less from the base of the liner at the time of construction.

d. Groundwater protection requirements

Mr. McKelvie proposes to line the already constructed pens and the proposed catch basin with a 0.7 m and 1.4 m, respectively, thick compacted soil liner. Section 9 of AOPA's *Standards and Administration Regulation* specifies a maximum hydraulic conductivity and thickness for this type of liner in order to minimize leakage.

To demonstrate compliance with this standard, Mr. McKelvie provided lab measurements of the hydraulic conductivity of the materials that will be used to construct the compacted soil liner. Lab measurements of hydraulic conductivity are made in a precisely controlled setting and are typically based on a small soil sample. Therefore, the NRCB generally multiplies lab-measured hydraulic conductivity values by a factor of 10 to reflect the potential variability in actual liner materials and conditions that can reasonably be expected to be achieved in the field.

The regulations provide that a catch basin liner must provide equal or greater protection as a one metre thick liner with a hydraulic conductivity of 5×10^{-7} cm/sec. The regulations also require a pen's liner must provide equal or greater protection as a half metre thick liner with a hydraulic conductivity of 5×10^{-7} cm/sec.

In this case, the lab measurement was 7.0×10^{-8} cm/sec. With the required ten-fold modification, the expected field value is 7.0×10^{-7} cm/sec. This expected value is above (faster than) the maximum value in the regulations. Despite this, the applicant has proposed a 1.4 m and 0.7 m thick liner for the catch basin and pens, respectively, which provides an equivalent protection as required in the regulations.

e. Construction Deadline

Mr. McKelvie proposes to complete construction of the proposed catch basin and the relining of the already constructed pens and catch basins as soon as possible. This time-frame is not reasonable for the proposed scope of work. Normally, a realistic time-frame would be up to three construction seasons to complete these tasks. Despite this, in light of the concerns related to environmental protection and Compliance Directive CD21-03, I am of the opinion that the work needs to be completed sooner than three years.

Accordingly, I am requiring the permit holder to complete construction within one construction season. This includes the relining of the pens constructed after 2002, the relining of the existing catch basins, and the construction of the proposed catch basin. Accordingly, the deadline of November 30, 2023 is included as a condition in Approval RA21030.

f. 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 RA21030 includes conditions requiring:

- a. a completion report, signed by a qualified third party, certifying that the synthetically lined catch basins (#1 and 2) have been lined in accordance with the proposed design including the horizontal dimensions, vertical dimensions (including portions above and below ground) and inside wall slopes and have the same or equivalent liner as proposed, which was installed in accordance with the liner manufacturer's requirements, including under membrane surface preparation and proper sealing at all seams.
- b. a completion report, signed by a third party professional engineer, certifying that the pens constructed after 2002 have been lined with the same material as tested from the composite sample, been constructed in accordance with the proposed design including the liner thickness, the number of lifts of soil in the construction of the liner, the liner's moisture content and compaction rate, and was constructed to the proposed horizontal dimensions.
- c. a completion report, signed by a third party professional engineer, certifying that the new catch basin has been constructed with the same material as tested from the composite

sample, been constructed in accordance with the proposed design including the liner thickness, the number of lifts of soil in the construction of the liner, the liner's moisture content and compaction rate, and was constructed to the proposed horizontal dimensions, vertical dimensions (including portions above and below ground) and inside wall slopes.

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 or relined facilities. Approval RA21030 includes a condition stating that Mr. McKelvie shall not place livestock or manure in the manure storage or collection portions of the pens constructed after 2002, the catch basins that are to be synthetically lined, or the new catch basin until NRCB personnel have inspected these facilities and confirmed in writing that they meet the approval requirements.

g. No change in livestock numbers

As noted in Compliance Directive CD21-03, Mr. McKelvie has constructed and expanded a CFO without a permit. In consideration of this, and the amendment to the application which reduced the number of livestock on site, I am of the opinion that a condition is warranted that requires Mr. McKelvie to continue to demonstrate that the number of livestock on site remains in compliance with what is permitted. To ensure that Mr. McKelvie does not exceed the current permitted capacity, a condition is included in Approval RA21030 stating that the permit holder must keep a monthly record of the number and type of livestock on site and provide that record to the NRCB upon request. All records must be kept for a period of two years.