

Decision Summary FA21002

This document summarizes my reasons for denying Approval FA21002 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document FA21002. 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

Prior to receipt of this Part 1 application the applicant self-disclosed potential unauthorized construction of pens and a catch basin (in 2012-14 and 2020-21) and claimed they were unaware a permit was needed. Upon investigation and following a site visit with NRCB Compliance staff it was determined a permit was needed and compliance directive CD 21-08 was issued to address the unauthorized construction. The operator to date has been working with the NRCB in accordance with this directive.

On September 30, 2021, the Hutterian Brethren of Cleardale (Cleardale Colony) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on November 25, 2021. On March 30, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 3,000 to 6,000 beef finishers
- Constructing new pens – 549 m x 58 m
- Constructing new catch basin – 112.2 m x 44.5 m x 5.5 m
- Permitting pens and catch basin (already constructed):
 - 274 m x 52.5 m
 - 170.6 m x 64 m
 - 309 m x 64 m
 - 112.17 m x 44.5 m x 5.49 m

a. Location

The CFO is located at SW 32-84-9 W6M in Clear Hills County, roughly 5.5 km SE of the hamlet of Cleardale AB. The terrain is flat sloping slightly to the west with the nearest common body of water being a wetland located approximately 650 m to the NW.

b. Existing permits

The applicant claims that the CFO existed on January 1, 2002, and therefore is grandfathered with a deemed permit under section 18.1 of AOPA for 3,000 beef finishers.

Through reviewing historical satellite images along with the submitted responses, I determined that the CFO does not have a deemed permit and is not a grandfathered CFO and therefore this application is in fact an application for a new 6,000 head beef finisher CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix E attached.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

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

For the size of this CFO the specified distance is 2 miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Clear Hills County, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in the Fairview Post on March 30, 2022. The notice identified the grandfathering claim of 3,000 beef finishers, with the application to increase to 6,000. The full application was also posted on the NRCB website for public viewing. As a courtesy, 37 letters were sent to people identified by the County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

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

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

No responses were received in response to the notice of the application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure an application complies with any applicable ALSA regional plan.

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

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is inconsistent with the land use provisions of Clear Hills County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.) This inconsistency is the reason for my denial of this application, as required under section 20(1)(a) of AOPA.

6. AOPA requirements

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

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

7. Responses from municipality and other directly affected parties

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

Municipalities that are affected parties are identified by the act as "directly affected." Clear Hills County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Bjorklund, a community development manager with the County, provided a written response on behalf of the County. The County is not opposed to the application. Ms. Bjorklund stated that the application is consistent with the County's land use provisions of the municipal development plan. She referred to section 3.1 of the MDP, which supports "right to farm" legislation such as AOPA, as long as the operation "follows generally accepted practices, and is in compliance with the County's vision." Discussion around Clear Hills County's municipal development plan is included in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received written responses from 5 individuals.

All of the 5 individuals who submitted responses own or reside on land within the 2 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

Of these 5 individuals, one submitted their response after the deadline but I determined through several phone calls, this individual was having technical difficulty submitting their response and I accepted their submission.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require groundwater/surface water or construction supervision monitoring for the facility. In this case a determination was made and monitoring would not be required (if a permit were later issued) due to the liners of the facilities and AOPA technical requirements being met.

9. Other factors

I have found the application is not consistent with the MDP land use provisions, and I am denying the application on that basis. However, to assist the Board in the event of a review of my denial decision, I will discuss other things that AOPA would require me to consider if I were to issue a permit.

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

Ms. Bjorklund stated that based on the setbacks required in the land use bylaw (LUB) the proposed expansion would be appropriate.

I also considered the effects the proposed CFO may have on natural resources administered by provincial departments. A copy of the application was provided to AEP and AHS, however, no responses were received from either department. I identified that there are no water wells on the site of the proposed development. I also noted that there is a common body of water located approximately 650 m northwest of the proposed development.

I am unaware of any active *Water Act* applications or EPEA applications regarding the location. If additional water licensing is needed an application is required by AEP. I am also unaware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or under 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 8, 2022).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and whether it would be an appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects on the environment would be acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption would not be 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 of acceptability does not apply because the application is not consistent with Clear Hills County's MDP land use provisions.

I also considered whether the proposed development is an appropriate use of land (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.) In my view, any presumption of an appropriate use of land would be rebutted as the application is not consistent with the land use provisions of Clear Hills County's MDP.

10. Conclusion

Approval FA21002 is denied because the proposed development is inconsistent with the land use provisions in Clear Hills County's MDP.

However, in case the NRCB's board members review my denial decision and decide that an approval should be issued, Appendix D, attached, provides my recommendations on the conditions I would include if a permit was issued.

October 12, 2022

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Recommended conditions (if the decision is overturned following a review)
- E. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

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

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Clardale Colony's proposed CFO is located in Clear Hills County and is therefore subject to that county's MDP. The county adopted the latest revision to this plan on September 10, 2019, under Bylaw #243-19.

Policy 3.1.2 of the county's MDP specifically applies to CFOs and my analysis of this section is below.

Subsection 3.1.2(a)-(c)

Subsections 3.1.2(a)-(c) are considered planning principles for the purposes of permitting CFOs. They require CFO applications to meet the county's MDP and policies and all relevant provincial regulations and policies, and require the County's development officer and municipal planning commission to review CFO applications. They also indicate that the NRCB should refer to the county's public participation process. These are considered procedural in nature and therefore not considered a valid land use provision. At any rate, public notice in accordance with AOPA was provided as a part of this application.

Subsection 3.1.2(d)

Subsection 3.1.2(d) states that the county will not support application of CFOs if the proposed development is incompatible with adjacent land uses and causes adverse health and/or environmental impacts. In this MDP, compatibility with adjacent land uses is likely measured by the county's use of exclusion zones (see discussion below on Subsection 3.1.2(f)).

Adverse effects on health and environment require site specific discretionary judgement as they are not clearly defined and therefore are not considered a valid land use provision. However, I note that the application meets all of AOPA's technical requirements which are designed to mitigate negative impacts from CFOs and protect the environment.

Subsection 3.1.2(e)

Subsection 3.1.2(e) is a planning policy for the county's use when deciding if development permits or subdivision applications for residential development should be allowed within the minimum distance separation (MDS) of a CFO as determined by AOPA. Therefore, this policy is not relevant to my decision.

Subsection 3.1.2(f)

The development of the CFO's **may be encouraged in areas that are not impacted by the exclusionary zones map or other restrictive policies.**

i. The exclusion zones for confined feeding operations (CFO) shall be established by Schedule G.

Schedule G of the MDP is entitled "Confined Feeding Operations Permitted and Exclusion Areas." By colour coding, areas of land are indicated as CFO Exclusion Area, CFO Permitted Area, Abandoned CFO, Pending CFO, etc. According to the map in Schedule G, the area where the proposed CFO is to be located is not marked as a CFO Permitted Area, an Abandoned CFO, an Existing CFO, or a Pending CFO. The remainder of the map is essentially colour-coded as CFO Exclusion Area (light yellow). Therefore, this proposed CFO would be subject to all required setbacks in the CFO exclusion zone. Based on the map it is reasonable to conclude the location of the CFO is in the CFO exclusion zone.

I looked at the setbacks specified on Schedule G itself.

Schedule G indicates the following setbacks for the CFO Exclusion Area:

- 152.4 m from roads
- 3.2 km from residence
- 3.2 km from licensed CFO
- 3.2 km from water bodies, rivers, streams, tributaries, wetlands
- 3.2 km from a Town/Hamlet
- 3.2 km from the Grimshaw Gravels Aquifer
- 3.2 km from Intensive Recreation Area
- 3.2 km from Environmental Sensitive Area

The location of the proposed CFO does not meet the setbacks to residences, or to waterbodies or wetlands. For this reason, and because the operation is located within a CFO exclusion zone, the application is inconsistent with 3.1.2(f)(i) of Clear Hills County's MDP.

ii. Notwithstanding the above, the County may relax the setback requirements if the proposal includes mitigative measures to limit negative impacts to adjacent land owners or environmental features, and to lessen the cumulative effects from nearby CFOs, as identified within an environmental assessment prepared by a qualified environmental professional.

This part is likely not considered a "land use provision," as it is considered to be a CFO-related "test" under section 20(1.1) of AOPA. Approval Policy at 8.2.6 says the NRCB interprets MDP provisions requiring environmental assessments as a "test or condition." In this case, section 3.1.2(f)(ii) of the MDP is a policy respecting conditions or tests related to the site for a CFO. Section 20(1.1) of AOPA prohibits me from considering it. I note that the application meets all AOPA technical requirements.

iii. These provisions shall be in addition to provincial requirements within the Agricultural Operation Practices Act and Regulations, including the Agricultural Operation Practices Act (AOPA) R.S.A. 2000 C A-7, (AOPA) Administrative Procedures Regulation A.R. 106/2017, (AOPA) Standards and Administration Regulation A.R. 267/2001, AOPA Agricultural Operations - Part 2 Matters Regulation A.R. 257/2001, and the Manure Characteristics and Land Base Code, as amended from time to time.

This is not a land use provision. I note that the application is consistent with all AOPA technical requirements, including groundwater protection requirements. I note as well that due to my determination that the operation does not hold a deemed permit under AOPA, (see Appendix E) I assessed all facilities using the NRCB's ERST as a new CFO that meets AOPA technical requirements as explained above in Section 8.

It is also noted that in the County's response to the application they deemed the proposed setback acceptable as they assessed the location as an existing and expanding CFO. However, Appendix E discusses the grandfathering determination in which I find the application to be an application for a new CFO due to it not being considered grandfathered under AOPA.

Subsection 3.1.2(g)

Policy 3.1.2(g) defines that setbacks shall be measured from the top of the bank of watercourses, high water mark for waterbodies, incorporated boundaries of communities, road right of ways, and boundaries of recreation sites. This policy appears to support the other policies by defining how the various setbacks should be applied, and is not itself a land use provision.

Subsection 3.1.2(h)

The County may recommend to restrict the development of a new Confined Feeding Operations (CFO) to a minimum of 3.2 km from an existing country residential development and an intensive recreation area unless the proponent provides proof of measures to be used on site that would mitigate negative impacts to the existing country residential development, as identified within the required environmental assessment prepared by a qualified environmental professional.

In the county's response, they did not make this recommendation and indicated that all residences around the CFO are on land zoned AG 1. Additionally, AOPA does not require environmental assessments.

At any rate, this policy is likely not considered a "land use provision" that I can consider. By using the terminology of "may" and "recommend" if the applicant completes an environmental assessment, 3.1.2(h) is likely a CFO-related "test" under section 20(1.1) of AOPA (see discussion on 3.1.2(f)(ii) above). Additionally, under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5). Therefore as this policy (and setback) directly modifies AOPA's MDS (which for this application is 731 m from residences zoned Category 1) I am not to consider this requirement.

Subsection 3.2.1 (i) and (j)

Subsection 3.2.1 (i) and (j) are planning policies for the county's use when deciding if a development permit or subdivision application for residential development or multi-parcel residential development should be allowed within 3.2 km of an existing CFO. They are not land use provisions that I need to consider.

APPENDIX B: Determining directly affected party status

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

- Sylvia Gula
SW 19-84-9 W6M

- Ron Craig
NE 16-84-10 W6M

- Cornelius Wolfe
SE 4-85-9 W6M

- John and Mary Peters
SE 29-84-9 W6M

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

Cornelius Wolfe’s response was submitted on May 6, 2022 (7 days after the response deadline). In discussion with him it was determined that he had an email issue that needed to be assisted with to submit his response. I accepted this response although it was past the deadline as Mr. Wolfe did contact me several times leading up to submission and reached out to me after he realized it failed to send.

APPENDIX C: Concerns raised by directly affected parties

The directly affected parties raised the following concerns:

Odours and nuisances – concern was raised over the negative effects of odours and the negative impacts on air quality and quality of life.

Approval officer's conclusion:

AOPA's minimum distance separation (MDS) requirements are a proxy for minimizing odours, flies and other nuisance impacts from CFOs. The proposed CFO would meet the MDS to all neighbouring residences. It is presumed that nuisance effects from CFO facilities are acceptable if the MDS has been met.

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

Increased traffic including road use – concern was raised about traffic in the area and relationships when sharing the roads.

Approval officer's conclusion:

The county has jurisdiction of local roads. The NRCB does not require applicants to enter into road use agreements with counties or municipalities. However, the county may require that agreement, on its own. It is encouraged that neighbours attempt to communicate to try to improve working relationships.

Surface water – concern was raised regarding the potential for contamination of surface water (which is used for drinking water) by manure runoff from the CFO facilities.

Approval officer's conclusion:

As noted in the decision summary above, and further documented in Technical Document FA21002, the CFO would meet all AOPA technical requirements. Several of these requirements are designed to protect ground and surface water, and thus to prevent CFO manure from reaching and contaminating surface water. Because the proposed CFO meets these requirements, it would not pose a material risk to surface water if a permit were issued following an NRCB Board review.

As noted above, the proposed facilities were assessed as a new CFO and meet AOPA's technical requirements.

Manure application – concern was raised regarding manure spreading, including runoff concerns (surface water is used for drinking water), nutrient loading, and the location of spreading lands.

Approval officer's conclusion:

Manure application is addressed in sections 24 and 25 of the Standards and Administration Regulation. Section 24(1) requires manure to be incorporated within 48 hours of application when it is applied to cultivated land. If manure is applied on tame forages, or on no-till cropland the setback requirement for residences is increased. Incorporating manure into the soil has the potential to minimize odours associated with the land application of manure.

The manure must be applied at least 150 m from any residence and must meet the requirement of at least 30 m to a common body of water.

AOPA has requirements to protect the soil, groundwater, and surface water from excessive application of manure nutrients. These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, and setbacks from water bodies, water wells, and residences. Operators are required to keep manure spreading and soil sampling records and must provide them to the NRCB upon request.

Complaints about CFO-related issues can be reported to the NRCB's 24 hour reporting line (1-866-383-6722). Neighbours can also call an NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

Property values – concern was raised that the proposed CFO would reduce property values.

Approval officer's conclusion:

In several review decisions, the NRCB's board members have consistently stated that concerns regarding effects on land or property values are "not a subject for [the board's] review under AOPA" or for approval officers' consideration of permit applications. According to the board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (see, e.g. Brad Towle, RR 2017-09 pg. 3.)

Notification Radius – concern was raised that notification should have been provided in a different publication and the timing of public notice.

Approval officer's conclusion:

The notification radius is prescribed in the regulations and based on the size of the CFO. For this size of CFO the notification radius is 2 miles. Courtesy letters were mailed to all parties who live within the notification radius of the operation, based on the names and addresses provided by the county. The courtesy letters identify what is being proposed and when and where the official notice will be published. The official public notice was posted in The Fairview Post on March 30, 2022 as this is the publication used by the County for their official public notices. Notice was also posted on the NRCB's website. Notice for this application was carried out in accordance with AOPA requirements.

APPENDIX D: Recommended conditions (if the decision is overturned following a review)

If the NRCB's Board, following a review hearing, were to overturn my decision and direct me to issue the Approval, I would propose that the following conditions be considered for inclusion in a permit.

a. Construction Deadline

Cleardale Colony proposes to complete construction of the proposed facilities by December 2023. This time-frame is considered to be reasonable for the proposed scope of work. However, given the time required to go through the permitting process, an extra year should be given. Therefore I would recommend the including the following condition:

The permit holder shall complete construction of the pens and catch basin before December 1, 2024. Upon request, this deadline may be extended by the NRCB in writing.

b. Post-construction inspection and review

The NRCB routinely inspects constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Therefore, I would include a condition for each of the to-be-constructed facilities (including the catch basin) requiring Cleardale Colony to not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected these facilities and confirmed in writing that they meet the approval requirements.

APPENDIX E: Determination of deemed permit status

Cleardale Colony claimed that its CFO is grandfathered (that is, it has a “deemed” permit) 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 applicant claimed the existing (grandfathered) facilities as:

- Pens 1-4 - 180' x 180' (55 m x 55 m each)
- Pens 5-7 - 182' x 210' (55 m x 64 m each)
- Pens 8-10 - 160' x 208' (49 m x 63 m each)
- North barn pen - 500' x 788' (152 m x 240 m)
- South barn pen - 500' x 272' (152 m x 83 m)

The operation 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, a 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 an operation 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

Compliance Directive 21-08 recognized at least 9 new pens and 1 new catch basin as unauthorized. However, CD 21-08 was not a determination of deemed permit status, and whether the other facilities fell under a deemed permit was not determined at the time.

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 approval. In this case, that included 37 letters that were sent to people identified by the County as owning or residing on land within the affected party radius. As this application was for 6,000 beef finishers which requires a 2 mile notification radius, the notification radius of 1.5 miles required for 3,000 beef finishers is covered.

The NRCB also published notice of the grandfathering determination as part of the notice for the proposed expansion application, in the Fairview Post on March 30, 2022.

In response to this notice the directly affected parties that submitted concerns regarding the application also raised concern that the existing operation was not a confined feeding operation on January 1, 2002, and was rather a cow-calf/seasonal feeding and bedding operation which does not require a permit under AOPA. In this case, the neighbours stated that the original owner was not running a feedlot at the time of purchase by Cleardale Colony (in 2000). One of the individuals stated they had lived in the area for 40 years and knew the location as a grain

and cow-calf operation prior to January 1, 2002. Another individual also stated it was run by the previous owner as a cow-calf operation prior to January 1, 2002. Another individual stated the location only had approximately 300 feeders prior to 2005.

In my review I considered imagery obtained from the Alberta Government's geocortex program and from google earth (see Technical Document FA21002 pages 14-25).

After considering the imagery evidence obtained from the Alberta Government's geocortex program and google earth I find that that the existing enclosures as they existed on January 1, 2002 were not operating as a CFO.

I considered the submissions from Sylvia Gula, Ron Craig, Cornelius Wolfe, and John and Mary Peters as requests for directly affected party status. In my view all five are directly affected parties for this deemed permit determination because they provided some base level knowledge of the area and history regarding how the previous owners operated the location as they lived or owned land in the area on Jan. 1, 2002. A directly affected party may request a Board review of the grandfathering decision.

Based on the above I determined that the facilities that existed at this site on January 1, 2002 are not considered to be a confined feeding operation and therefore there is no deemed or grandfathered AOPA permit associated with this site.

Despite this determination, because the application is for 6,000 beef finishers, and public notice based on this type and number of livestock has been completed, I considered and processed the application as an application for a new 6,000 head beef finisher CFO as opposed to an expanding CFO.

If the Board following a review hearing chooses not to overturn this decision, then option #4 in Compliance Directive 21-08 will be upheld and the NRCB Compliance division will need to contact the operator to ensure that the facilities are not used as CFO facilities. I have notified the NRCB compliance division of this application and decision.

Below is a summary of facilities based on my grandfathering determination that were found to be unauthorized and what has not been constructed to date:

Unauthorized construction/use:

Pens 1-4 - 180' x 180' (55 m x 55 m each)
Pens 5-7 - 182' x 210' (55 m x 64 m each)
Pens 8-10 - 160' x 208' (49 m x 63 m each)
North barn pen - 500' x 788' (152 m x 240 m)
South barn pen - 500' x 272' (152 m x 83 m)
Pens 11-13 - 300' x 172' (91 m x 52 m each)
Pens 14-19 - 300' x 190' (91 m x 58 m each)
Pens 20-21 - 280' x 210' (85 m x 64 m each)
Pens 22-24 - 338' x 210' (103 m x 64 m each)
Catch basin 1 - 112.17 m x 44.5 m x 5.49 m

Proposed (not constructed):

Catch basin 2 - 112.17 m x 44.5 m x 5.49 m