

Decision Summary LA23003

This document summarizes my reasons for denying Approval LA23003 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23003. 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 July 15, 2022, NRCB Compliance Directive CD 22-02 was issued to Josh and Deborah Denbok (the Denboks) for unauthorized construction of feedlot pens. The NRCB had no records that the Denboks received a permit for the facilities, and the inspector determined that the number of beef feeder calves at the operation exceeded the AOPA permit threshold. The compliance directive required the Denboks to reduce livestock numbers at the operation to below AOPA permit thresholds until an NRCB-issued permit was able to be obtained.

On January 17, 2023, the Denboks submitted a Part 1 application to the NRCB to construct a new beef CFO. The proposed CFO involves the following:

- a new CFO with 1,000 beef finishers and 2,000 beef feeder calves
- constructing a pen area (including the existing, but not yet permitted feedlot pens) – 75 m x 200 m
- constructing a calf hutch & solid manure storage area (including the existing, but not yet permitted calf hutch area) – 125 m x 200 m
- constructing a synthetically lined catch basin – 40 m x 40 m x 2.7 m

The completed Part 2 application was submitted on June 19, 2023. On June 27, 2023, I deemed the application complete. On July 13, 2023, Lethbridge County requested additional information regarding the synthetically lined catch basin the applicant proposed to use for the catch basin. Additional information on Lethbridge County's response can be found in Appendix C.

On August 11, 2023, the applicant changed the proposed liner for the catch basin from a 17-mil geomembrane coated woven synthetic liner to a 40-mil LLDPE synthetic liner. This was primarily due to the uncertainties surrounding the initial liner being able to meet AOPA groundwater protection requirements (section 8 of decision summary LA23003).

a. Location

The proposed CFO is located at SE 20-11-23 W4M in Lethbridge County, roughly 3.5 km (~ 2.2 miles) northwest of the town of Nobleford. The terrain is relatively flat, with a slight slope to the west and south. The closest body of water is a wetland complex 170 m to the east, which connects to Stud Horse Lake. Stud Horse Lake is an area of artesian flow, 2.6 km southeast of the proposed CFO. There are no water wells within 1 km of the proposed CFO.

The existing (but not yet permitted) and proposed facilities currently cross over property lines of two parcels of land, both currently owned and operated by the Denboks. Further information on the property lines can be found in section 5 of this document, and Appendix A, attached.

A school for kindergarten to grade 9 children owned and operated by the Old Colony Mennonite Church, is located less than 150 m south of the proposed CFO. The school is private and is permitted by the County as a “discretionary use” under the Rural Agricultural District, therefore the zoning of the school’s land remains Rural Agricultural. The relevance of the school to the south is discussed throughout this document. Additionally, the applicant received two documents from the church managers on behalf of the Old Colony Mennonite Church members which are included in the Technical Document of LA23003.

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

The proposed CFO is not within 100 m of a bank of a river, stream, or canal, therefore additional notification is not needed.

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

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

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Sunny South News on June 27, 2023. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. Thirty-eight (38) notification letters were sent to people identified by Lethbridge 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), Alberta Environment and Protected Areas (EPA), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Little Bow Gas Co-op, and Lethbridge North County Potable Water Co-op as they are right of way holders for the subject property.

I received responses from Leah Olsen, development/planning technologist with TEC, Jeff Gutsell, hydrogeologist with EPA, and Sandip Gill, with AHS.

In her response, Leah Olsen stated that TEC had no concerns.

Jeff Gutsell stated that at present, the Denboks have not applied for a groundwater licence to EPA to address water needs for the proposed CFO, and it is unclear where the legal source of water for the current animals onsite is obtained from. Additionally, EPA stated that prior to the CFO being approved and populated, the applicant must ensure there are sufficient water allocations from legal sources.

Sandip Gill's response included information regarding the appropriate setback distances of manure storage facilities and collection areas from water wells and surface water bodies. Additionally, AHS did not foresee any new public health problems associated with the application provided the applicant complies with regulations, laws and standards.

Responses received from the above referral agencies were sent to the applicant for their information and are discussed further in Appendix D.

4. Alberta Land Stewardship Act (ALSA) regional plan

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

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is inconsistent with Section 3.6, a land use provision within Part 4: Intensive Livestock / Confined Feeding Operations plan policy of Lethbridge County's municipal development plan. Section 3.6 states that no part of a CFO building, structure, corrals, compost area or stockpile is to be located within the established property line and public roadway setbacks. I observed via aerial imagery that the existing dugout and pens cross the northern and western property lines. The application therefore does not meet the property line setback requirements for the Rural Agricultural District.

In accordance with AOPA section 20(1)(a), since I determined there is an inconsistency with the MDP land use provisions, I am required to deny the application. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

Despite being inconsistent with the land use provisions of the county's MDP, I nevertheless reviewed the application to determine if it was consistent 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) – while the applicant obtained two MDS "waivers", they are not necessary
- 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 liners/protective layers of manure storage facilities and manure collection areas

Should a review hearing be held on this decision, I am providing the results for the balance of my consideration of this application. Should the NRCB Board, following a review hearing, direct that an approval be issued, I am also providing a list of conditions that I recommend be considered. (See Appendix E)

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 AOPA as "directly affected." Lethbridge County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Hilary Janzen, a supervisor of planning and development with Lethbridge County, provided three written responses via e-mail on behalf of Lethbridge County.

The first response was received July 13, 2023, requesting an extension of 20 working days from the original submission deadline of July 26, 2023. The county's Environmental Services Manager had inquiries regarding the initial synthetic liner the applicant was proposing to use for the catch basin and requested further information about said liner prior to providing a formal response to the application. When the applicant changed their proposed synthetic liner, the updated liner information was provided to Lethbridge County for their information and further review.

The second response was received August 24, 2023, in which Ms. Janzen stated the application is not consistent with Lethbridge County's land use provisions in their municipal development plan. The inconsistency is discussed further in Appendix A.

The third response was received on September 6, 2023, providing clarification on the concerns related to MDS with the application, and the school to the south of the proposed CFO.

These three responses are discussed further in Appendix D.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received 4 responses from 4 parties (see Appendix B).

The NRCB received 2 of these responses after the response deadline in the notice. Under NRCB Operational Policy 2016-7: Approvals at part 7.11.5, I considered whether there were exceptional circumstances that warranted considering the submissions. I determined that one late response should be considered, and one late response should not.

I found that one response (Adrian and Cheryl Feyter) was received late due to exceptional circumstances. Adrian and Cheryl Feyter sent the submissions to an incorrect e-mail address and provided a screenshot of the response with a time and date stamp prior to the submission deadline. In my view, this is an exceptional circumstance that warrants me considering the submission despite being received after the response deadline.

The second response (Petra Oudshoorn) which was received late provided no clarity on the reason for the missed submission deadline. Additionally, this submission did not provide a legal land location, or further information to allow me to determine if they could be considered to be directly affected. In my view, this is not an exceptional circumstance, and I am not considering the submission.

These directly affected parties raised concerns regarding increased traffic/road use, water availability, property values, and increased nuisances such as smells, sound, and dust. These concerns are addressed in Appendix C.

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, a site may merit construction supervision and a leak detection system for the facilities.

As described in section 7 above, Lethbridge County’s Environmental Services Manager had concerns regarding the geomembrane coated woven synthetic liner for the proposed catch basin and his / her ability to evaluate the groundwater protection offered by the liner. To further evaluate the risk of groundwater contamination, I consulted with an NRCB environmental specialist to address severity of the risk, and to review the information provided by the applicant.

In the opinion of the NRCB environmental specialist, based on the information the applicant provided, the proposed, coated woven 17 mil synthetic liner would not be appropriate for holding catch basin contents, and that it would degrade over a relatively short period of time. The applicant subsequently updated their application by changing the type of synthetic liner to be used for the catch basin to one which is more durable.

The applicant further explained that the updated liner will be protected to ensure that the integrity of the liner is maintained, and that the liner will be installed as per the manufacturer’s requirements. Suggested conditions for the installation of this liner are included in Appendix E.

I considered the revised synthetic liner, the submitted engineering report, and the overall site information. In my opinion, the proposed facilities meet AOPA technical requirements and are therefore considered a low potential risk to groundwater and surface water. Any potential risk posed by these facilities can be addressed by construction conditions.

9. Factors considered

I am denying this application because it is inconsistent with the land use provisions of Lethbridge County's MDP. However, to assist the Board in the event of a review of my denial decision, I will discuss other factors that AOPA would otherwise require me to consider, under section 20(1)(b) of AOPA.

Under section 20(1)(b)(i) of AOPA, I would have to consider matters that would normally be considered if a development permit were being issued. Ms. Janzen, from Lethbridge County, listed the setbacks required by Lethbridge County's land use bylaw (LUB). She stated that the proposed and existing (but not yet permitted) facilities meet the required setbacks to county road allowances; however, the proposed and existing (but not yet permitted) facilities did not meet the property line setbacks in the LUB. It was noted by Ms. Janzen that the existing feedlot pens and freshwater dugout cross over property lines.

The NRCB Board has indicated that a key element of a proposed CFO, that should be reviewable by parties, should be completed before issuing a permit (RFR 2018-02 *Norlin Investments* at pp 5-6). Since these types of setbacks are considered to be sound practices, and because the proposed development does not meet the property line setbacks as well as crossing over property boundaries, I would also deny the application under section 20(1)(b)(i) for this reason.

I would also have to consider the effects the proposed CFO may have on natural resources administered by provincial departments or agencies. A copy of the application was provided to EPA and AHS. Both referral agencies provided responses, which are discussed further in Appendix D.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject matter of this application. I am unaware of any active *Water Act* applications or EPEA applications regarding this location. EPA stated in their response that there are no water wells on the property, and EPA is unaware of any legal sourcing of water.

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 29, 2023.

Finally, I would have to consider the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land.

I could presume that the effects on the environment are acceptable because the application clearly meets the AOPA environmental protection requirements for the feedlot pens and catch basin (NRCB Operational Policy 2016-7: Approvals at part 8.7.3). In my view, this presumption is not rebutted by any other information in this application or provided by directly affected parties.

Under the same NRCB policy, if the application is consistent with the MDP's land use provisions, then the proposed development is presumed to have an acceptable effect on the economy and community and presumed to be an appropriate use of land. In my view, these presumptions of acceptability do not apply because I determined that the application is not consistent with Lethbridge County's MDP. However, I went further and reviewed the documents submitted to me from members of the public, municipality, and applicant. Although there were

concerns from the municipality regarding the distance from the proposed CFO to the adjacent school, the Church who owns and operates the school did not oppose the proposed CFO in the letter they submitted. In their response they identified that they did not foresee the proposed CFO impacting them. Therefore, in my view, if the presumptions of acceptability did apply, these presumptions would not be rebutted by any information from the public or municipality. Lethbridge County's concern related to the proximity of the CFO from the school is addressed in Appendix C.

10. Conclusion

Approval LA23003 is denied due to the proposed CFO site crossing over a property line onto an adjacent parcel resulting in an inconsistency of the application with Section 3.6 of the Lethbridge County's MDP (AOPA S.20(1)(a)). Alternately, I would deny the application for crossing over a property line as a matter I would consider if a development permit were being issued (AOPA S.20(1)(b)(i)). These reasons are discussed further, in the attached appendices.

October 6, 2023



Cailyn Wilson
Approval Officer

Appendices:

- A. Inconsistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by Lethbridge County and other directly affected parties
- D. Responses from referral agencies
- E. Recommended conditions

APPENDIX A: Inconsistency 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.)

The Denboks’ proposed CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on March 10, 2022, under Bylaw #22-001.

As relevant here:

Sections 3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2A and 2B of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This proposed CFO is not located within any of the exclusion areas, and there is no applicable IDP. These policies (3.1 and 3.2) therefore do not apply.

Section 3.3 states that the expansion of existing CFOs within the county’s CFO urban fringe districts may be permissible “in consideration of any IDP policy that allows for such.”

This is a proposed CFO, and not an existing CFO. Regardless, the proposed CFO is not within any urban fringe districts identified by an IDP or the county’s MDP.

Section 3.4 commits the County to update CFO policies in the MDP to reflect any exclusion area changes in an IDP. This policy is not a land use provision, and therefore, is not relevant to my consistency determination.

Section 3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*”.

The proposed CFO is not within any of the identified areas. Therefore, this application is consistent with this policy.

Section 3.6 states that *“No part of a CFO building, structure, corrals, compost area or stockpile is to be located within the established property lines and public roadway setbacks, including provincial highways, as outlined in the municipal Land Use Bylaw.”*

In my view, Section 3.6 of the MDP clearly intends to incorporate the County’s LUB. It is not possible to understand Section 3.6 of the MDP without looking at the LUB. NRCB Operational Policy 2016-7: Approvals at part 8.2.3 directs approval officers to consider land use provisions in a land use bylaw if the text of the MDP provides clear intent to adopt an LUB provision.

The property line map (page 6 of technical document LA23003) shows the current property lines on the SE 20-11-23 W4M. There are two parcels of land on this quarter section and are both owned by the Denboks; however, the proposed CFO incorporates existing, but not yet permitted pens which cross the property lines between the larger parcel of the quarter section and the smaller acreage portion of the same quarter section. While the two land parcels are owned by the applicant, they are two distinct land parcels. Therefore, the property line requirements set out in section 3.6 apply to the property lines between these two parcels.

The property line setback for side yard property lines is 6.1 m (Lethbridge County Land Use Bylaw 1404, Rural Agriculture section 4 (1)). As stated above, the property line map in technical document LA23003, have not been met. Section 4 (1) of the LUB states:

“No building, structure (excluding fencing) or dugout banks shall be within 6.1 metres (20 ft.) of a property line not fronting on or adjacent to a municipal roadway.”

Property lines, or “lot lines” as defined in the County’s LUB at part 8, “...means the legally defined boundary of any lot”. Upon my assessment of the MDP and LUB, I observed that the 6.1 m setback is not specific to the ‘Rural Agriculture Land Use District’ but is depicted as a standard across all Land Use Districts.

In my view, the 6.1 m setback from side property lines is not limited to specific parcels or land use zones. With this interpretation, I have determined that section 3.6 is a land use provision, not a test or condition, and this application is inconsistent with the County’s MDP. Therefore, under AOPA section 20(1)(a) I am required to deny this application. I will go on to consider the other relevant land use provisions in the MDP for a complete discussion.

Section 3.7 states that CFOs are only permitted in ‘Rural Agriculture’ land use districts and cannot be established on properties smaller than 80-acres.

The proposed CFO is located within a ‘Rural Agriculture’ land use district. Therefore, this application is consistent with this part of the policy. The second part of this provision refers to what size parcels of land are acceptable to establish a CFO. As proposed the CFO will be on two separate parcels (one larger than 80 acres and one much smaller). Irrespective the parcel size on which a CFO is located is usually considered to be a test or condition, because it relates to the site for a CFO, which AOPA S20(1.1) directs me not to consider. Therefore, this part of the provision does not apply to this CFO.

Sections 3.8, 3.9, 3.10, and 3.11 are not considered land use provisions because they either deal with conditions under which CFOs are allowed to continue to operate (“acceptable operating practices” and within AOPA; section 3.8), manure application (section 3.9), reciprocal MDS (section 3.10), or county-NRCB interaction (section 3.11). Therefore, they are not relevant to my consistency determination.

For these reasons, I conclude that the application is inconsistent with the land use provisions of Lethbridge County’s MDP that I may consider. This conclusion is supported by the County’s response.

APPENDIX B: Determining directly affected party status

The following listed parties 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.

- Clint and Sharon Vander Woude (N ½ 20-11-23 W4M, SE 29-11-23 W4M)
 - o Submitted prior to response deadline
- Adrian and Cheryl Feyter (SW 15-11-23 W4M)
 - o Submitted late, with exceptional circumstances.

In addition, the Old Colony Mennonite Church is also a directly affected party on the same basis. Their response arrived with the Part 2 application, and expressed no concerns about the application.

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

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

The Old Colony Mennonite Church provided a purported MDS waiver, but since MDS does not apply to the school, the waiver was not required. However, the Old Colony Mennonite Church owns the land the school is located on, accordingly own land within the affected party radius. The Old Colony Mennonite Church provided a letter stating that: “*we do not believe that we will be negatively impacted*” by the proposed CFO. Because they submitted a response and because the response was received prior to the response deadline, the Old Colony Mennonite Church is considered a directly affected party. Further information regarding the school is available in Appendix C.

In summary, the following are directly affected parties:

- Old Colony Mennonite Church (NE 17-11-23 W4M)
- Clint and Sharon Vander Woude (N ½ 20-11-23 W4M, SE 29-11-23 W4M)
- Adrian and Cheryl Feyter (SW 15-11-23 W4M)

APPENDIX C: Concerns raised by Lethbridge County and other directly affected parties

A. Lethbridge County concerns

The three responses (July 13th, August 24th, and September 6th, 2023), from Lethbridge County, expressed concerns about the initial proposed synthetic liner, the proposed CFO not meeting the property line setback requirements, MDS not being met, and effects on the community.

Lethbridge County's July 14, 2023, response (summary):

In the County's first response (July 14, 2023) to the application, the County indicated that the Environmental Services Manager with Lethbridge County had concerns regarding the geomembrane coated, woven liner for the catch basin, and requested the information prior to providing an official response to the application. Additional concerns regarding the liner included:

- No indication of the permeability specification for the liner
- No information on the thickness of the "geomembrane coating" on the liner

The County stated that it would be difficult to evaluate the protection of groundwater and measure the seepage protection offered by the liner, and the geomembrane coating would be the only component of the liner which would resist permeation of manure impacted run off. On July 19th, 2023, the County requested an extension for the referral (20 working days as per NRCB practice) as they were concerned the County would not receive the above information prior to the July 26th submission deadline.

The Denboks response (summary):

After consulting with the manufacturer, and based on their recommendations, the Denboks decided to change the proposed synthetic liner from a 17 mil geomembrane coated, woven liner to a 40 mil geomembrane LLDPE Smooth liner, which is more durable and more typical for use for agricultural purposes. If installed as per the manufacturer's requirements, the liner is considered to meet the requirement for ground water protection under AOPA. The liner is proposed to be protected to ensure liner integrity is maintained. (Received August 14, 2023).

Approval Officer comments:

Although the NRCB does not have a fact sheet or guideline on how to determine whether a synthetic liner meets AOPA legislation, section 9(6)(b) of the Standards and Administration Regulation states that a synthetic liner must provide equal or greater protection than that provided by compacted soil (1 m in depth, with a hydraulic conductivity of not more than 5×10^{-7} cm / sec for a catch basin). The onus is on the applicant to provide information to show how this requirement can be met.

After discussions with an Environmental Specialist within the NRCB, it was their opinion, based on the information the applicant provided, that the geomembrane coated woven 17 mil synthetic liner would not be appropriate for use as a synthetic liner in a catch basin, particularly over time. It was also determined that the coating on the woven fabric would be the only protection from leakage. Additionally, the information provided by the manufacturer did not list the applicant's intended use for this type of material. It was also noted that the proposed revised synthetic liner, LLDPE liner, would be a more suitable choice for the catch basin, as it includes agricultural wastewater as one of its listed uses. Because it is designed for the type of use proposed and

because it can meet the AOPA groundwater protection requirements, the proposed geomembrane LLDPE liner is acceptable as a liner for use in the proposed catch basin. Should the Board overturn my decision following a review hearing, it is recommended that a condition be included to have a qualified third party or professional engineer supervise the bed preparation and installation of the liner and provide a written report confirming that the liner is installed to manufacturer's specifications, as well as the confirming the as-built dimensions and location of the catch basin (see Appendix E).

Lethbridge County's August 24, 2023, response:

Lethbridge County's official response to the application expressed concerns about the facilities not meeting property line setback requirements, and MDS not being met (Section 3.6, Lethbridge County, MDP). Lethbridge County provided an aerial photograph demonstrating that the existing (not yet permitted) pens (which are proposed to be part of the CFO), and freshwater dugout cross existing property lines. By not meeting these requirements, the County indicated that the proposed facilities do not meet the setbacks of the Rural Agricultural District, and suggested relocating the pens and dugout, or consolidating the two land titles to meet these requirements.

The County also noted that section 3.7 of the MDP states that CFOs are excluded from being established on parcels less than 80 acres, and the proposed CFO would be located partially on a parcel which is 9.27 acres in size. The County also expressed concerns that the application is not consistent with AOPA standards as the proposed CFO is within the MDS to the school located immediately south of the property on which the CFO is proposed to be located.

The Denboks response:

Property lines and parcel consolidation:

The applicant's agent stated in his response: *"Mr. Denbok has reviewed the County's requirements (Section 3.6 and 3.7) for property line setbacks and parcel consolidation. The County has identified that consolidating his properties will address these requirements. He understands that his property must be in compliance with all County and AOPA requirements."*

"It is understood that the NRCB must consider, and can adopt, requirements by the County. During our visit, Mr. Cumming" [NRCB's Director, Field Services – Applications] "stated that past NRCB decisions have included condition identified by Municipalities. Therefore, Mr. Denbok is prepared to accept a NRCB permit condition requiring him to consolidate his property in order to satisfy the county's bylaw requirements. He will contacted the County and will ensure the property is consolidated prior to the NRCB site inspection and populating the feedlot."

"Mr. Denbok has concerns that consolidating the two parcels prior to receiving a NRCB permit would put him in a financial and operational disadvantage. Should the application be denied, then Mr. Denbok would be required to re-subdivide the property (additional cost, time and stress) in order to return to his current arrangement. Mr. Denbok would like to initiate the consolidation process and feedlot construction this fall." (Received September 15th, 2023).

MDS to school, setback for Rural Agricultural District:

"AOPA does not stipulate setback distances from a confined feeding operation to a school or Rural Agricultural District." (Received September 15th, 2023).

Approval Officer comments:

Property line and parcel consolidation

In considering an application for an approval, an approval officer must consider whether the application meets the requirements of the Act and regulations. Part of that consideration is determining whether the application is consistent with the municipal development plan land use provisions. If the approval officer determines that the AOPA requirements are not met or there is an inconsistency with the MDP land use provisions, AOPA directs the approval officer to deny the application.

As described in Appendix A of this decision, I have determined that the application is inconsistent with the MDP because proposed CFO facilities will be located in such a way that they straddle and cross property lines, contrary to Section 3.6 of the MDP.

The applicant was informed about this inconsistency and has chosen not to consolidate these land parcels unless they are assured that they can obtain a permit. They further suggested that assuming that consolidation of the parcels was the only outstanding issue, to make consolidation of the parcels a condition in a permit and to allow construction of the proposed facilities while they pursued consolidating the parcels.

Throughout my consideration of this application, I communicated that if the application does not meet all of the AOPA requirements, the application would not be approved. Additionally, the NRCB has a practice of not issuing permits with conditions for key elements, as supported by the Board (RFR 2018-02, *Norlin Investments* at pp 5-6). Therefore, the applicant's suggested conditional approval is not considered appropriate.

MDS to school:

MDS is the measurement from a residence to a manure storage facility or manure collection area and is a tool used to help mitigate nuisance impacts from CFOs for nearby residences.

Lethbridge County issued the "Lethbridge County Development Permit" for development application No: 2015-103, a copy of which is included in Technical Document LA23003. While the school (structure) will house people on a regular basis for a significant period during the year, it is not classified as a residence. Because it is not considered a residence the MDS setback in AOPA is not applicable.

Lethbridge County's September 6th, 2023, response

Effects on the community

The final response received from Lethbridge County was clarification on the County's original comments regarding the MDS not being met to the school located immediately south of the proposed development. The County clarified their concern and acknowledged that MDS does not apply to schools. The County indicated that the "*proximity of the proposed feedlot to the existing approved school located on the adjacent property*" was a concern. Additionally, the County stated the proposed feedlot "*would have a negative impact on the community and the current and future students that will attend the school.*"

The Denboks response:

"It is understood the County approved the location and construction of the church/school and should have considered the proximity of the church buildings to the existing corrals, shop and

agricultural activities. While the County expresses concern about the expansion, they have not explain why this concern is warranted.

Additionally, the Effects on Community letter and declaration confirms that the leaders of the church/school do not believe their facility will be negatively impacted by this expansion. It is understood you have already contacted the church members to discuss this letter”.

Approval Officer comments:

The school located immediately south of the proposed development is for kindergarten to grade 9 children. It is owned and operated by the Old Colony Mennonite Church. It is located less than 150 m south of the proposed CFO, and is occupied from 8:00 a.m. – 3:30 p.m., Monday – Friday from September to June, annually. The County explained that the school is private and is a “discretionary use” (as public/institutional) under the Rural Agricultural District, therefore the zoning of the land remains Rural Agricultural.

In the above statement, the applicant comments on the proximity of the school to the existing livestock facilities (below the AOPA permitting threshold), shop, and agricultural activities, indicating that the school was approved after the construction of these facilities. Upon review of aerial imagery, I observed that the below threshold livestock facilities were originally constructed in 2003. An expansion of these livestock facilities did not occur until 2019. The school’s development permit was approved by the County in 2015 prior to the livestock facilities being expanded. Additional information I gathered from this aerial imagery (including, 2012, August 2015, and July and November 2018) does not show the population of these livestock pens prior to 2019.

The Denboks submitted two “waivers” with their application, one titled “Effects on the Community - Member Declaration” (dated June 5, 2023) and one (dated May 10, 2023) purporting to be an MDS waiver. Both of these documents are included in Technical Document LA23003. Two individuals named as church managers signed both documents on behalf of the Old Colony Mennonite Church, landowner of the NW 17-11-23 W4M (parcel south of the proposed CFO on which the school is located).

As stated above, MDS is not applicable to the school as the school is not considered to be a residence. Section 3(6) of the Standards and Administration Regulation also only addresses the requirement of the applicant to receive an MDS waiver if the residence is within the MDS. Therefore, the MDS “waiver” from the Church is not required for, and does not affect, this application.

There is no part in AOPA and its regulations that state a directly affected party can waive effects on the community. I note the “community” in section 20(1)(b)(ix) of AOPA is not made up of only two individuals or even the Church members, but rather, all members of the surrounding community.

Regardless, zoning of neighbouring land is a relevant consideration when weighing effects of an applicant on the community. The school is private and is a “discretionary use” under the Rural Agricultural District, therefore the zoning of the school’s land remains Rural Agricultural. The County provided their statement of concern regarding the distance to the school; however, they did not provide details as to what their specific concerns may be apart from identifying a general concern regarding effects on the community. Additionally, the County’s planning documents (MDP, IDP, LUB), do not have section(s) which help to clarify the concerns they expressed in

their response. The Church who owns and operates the school has expressly written that they do not believe the proposed CFO “will have a negative impact on our community”. There were no other concerns submitted regarding ‘effects on the community’ from any of the surrounding community members.

Because of the reasons identified above, I am of the opinion that the community, and more specifically the school, do not have concerns regarding the potential impacts the CFO might have on them, despite the concern identified by the County.

B. Concerns from other directly affected parties

The directly affected parties (see Appendix B for list) raised the following concerns: water availability, traffic and road use, property values, and odour and nuisances.

As per NRCB practice, copies of the directly affected parties’ responses were provided to the applicant for their information and consideration should they wish to respond to any of the concerns. The applicant chose to respond to the concerns as identified below.

The directly affected parties (DAP) concerns are identified below, together, with the applicant’s response and my analysis.

1.) Water availability

One of the main concerns brought forward from the DAPs was the availability of water in the area the CFO is proposed in. One of the responses asked if there was a formula used to determine the amount of water needed per head of cattle / calves over a specific amount of time.

Applicant Response:

The agent, on behalf of the applicant indicated that Mr. Denbok is aware that he must secure water for his livestock operation and has contacted Lethbridge Northern Irrigation District (LNID) on this issue. If approved, he will be purchasing water through LNID for use at his livestock operation.

Approval Officer Response:

Alberta Environment and Protected Areas (EPA) is responsible for licencing the use of groundwater and surface water in the province. Therefore, for efficiency, and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licencing declarations listed in the Part 2 application form (see Technical Document LA23003).

Although the applicant chose to declare that they will be applying for water licensing separately from the AOPA process, the Denboks stated above that they will be contacting Lethbridge Northern Irrigation District (LNID) for water. EPA has confirmed that the applicant does not have sufficient licenced water for their proposed CFO and should contact them to confirm that they have access to sufficient licenced water. I forwarded the responses from all affected parties and referral agencies to the applicant for their information and action. EPA also stated in their response that the applicant is required to legally obtain sufficient water for their operation. For further context, I referred to the LNID “Water Supervisor Division Map” and determined that the

legal land location of the proposed CFO is located within the LNID footprint, however, there appears to be no LNID infrastructure depicted on the map showing how water might be conveyed to the proposed CFO's location.

Additionally, EPA included information identifying that the water allocation required for 1,000 beef finishers and 2,000 beef feeder calves would be 39,800 cubic metres of water, annually.

2.) Traffic and road use

One of the respondents was concerned about the level of dust resulting from constant road traffic past their property. They were also concerned of the degradation of roads with the increased hauling of manure, cattle and feed.

Approval Officer Response:

The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties "direction, control and management" of all roads within their borders. Because of this it would be impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits. (See Operational Policy 2016-7: Approvals, part 8.9.)

3.) Property values

Concern was raised that the proposed CFO would reduce property values.

Approval Officer Response:

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. the Board decision in *Brad Towle*, RR 2017-09 at pg. 3.)

4.) Odour and nuisances

The respondents raised concerns that there has been an increase in odour, associated with the increase in manure since 2018 when the operation had started its below-threshold operation. The increase in size of this proposed CFO will add to the odours and nuisances.

Approval Officer Response:

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

Nuisance and other impacts outside of the MDS for a CFO are not typically considered when an application is being considered unless there is a direct and adverse impact greater than what may be normally considered, which can be directly linked to the application. I have not seen evidence of greater direct and adverse impacts than normal in the application.

APPENDIX D: Responses from referral agencies

Although I am denying this application, I considered responses from AHS and EPA to this application. I did this to assist the Board in the event the Board holds a review of my decision.

a. Alberta Health Services (AHS)

In their response, an AHS health inspector stated that the manure storage facilities and collection areas should meet appropriate setback distances to all springs, water wells, and surface water bodies to ensure that contamination of drinking water sources does not occur.

As noted in the decision summary above, and further documented in Technical Document LA23003, the proposed CFO meets all setback distances for springs, water wells and surface water bodies.

b. b. Alberta Environment and Protected Areas (EPA)

In their response, an EPA hydrogeologist stated that there are no water wells logs on the SE 20-11-23 W4M, and according to the Land Title, SE 20-11-23 W4M is not within any Irrigation District, therefore irrigation allocations would not be an option to legally obtain water for the proposed feedlot. Furthermore, the hydrogeologist stated that at present, the applicant has not submitted an application for a groundwater licence to EPA to address the water needs required for the proposed feedlot.

EPA expressed that prior to feedlot construction and population with animals, the Denboks must assess their annual water requirements for the proposed CFO, determine if they have sufficient water allocations, and indicate what the legal source of water is so they can be confirmed by EPA. See the discussion regarding water availability in Appendix C, item B.1) above.

As noted in Appendix C above, the applicant is reminded that they are responsible to ensure that they have access to sufficient licensed water for their proposed CFO. As noted by AEP, a water license needs to be in place prior to any water being used.

The applicant is requested to contact EPA directly regarding water licencing for their proposed CFO.

APPENDIX E. Recommended conditions

If following a Board review this decision is overturned and a permit is approved, I would recommend that the following conditions be included in the permit.

a. Construction deadline

The Denboks proposed to complete construction of the proposed new pen area, calf hutch and manure storage area, and runoff control catch basin by December 31, 2026. This would allow three construction seasons to complete the work, which I believe is adequate for the proposed scope of work. Therefore, a construction completion deadline of December 31, 2026, to complete all of the facilities proposed is recommended.

b. Synthetic lined catch basin

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 proposed and required design specifications. Therefore, I am recommending that a condition(s) be included that address:

- The supervision of the liner bed preparation and installation of the catch basin's synthetic liner by a qualified third party
- That a report be provided by the qualified third party confirming:
 - o That the liner bed was prepared in accordance with the liner manufacturer's requirements
 - o That any porous layers encountered during the excavation for the catch basin and preparation of the bed onto which the liner is installed have been addressed to the satisfaction of a qualified third party
 - o The internal and external side slopes
 - o The liner type and thickness;
 - o That the synthetic liner was installed in accordance with the liner manufacturers requirements;
 - o Providing results from the testing of all seams in the liner, and details of repairs that needed to be made to the liner during its installation, if any.
 - o That the catch basin is located according to the approved site plan;
 - o The dimensions of the completed catch basin, including depths below and height above grade.

c. Consolidation of property lines and documentation

Provision of documentation confirming the consolidation of the parcels located on the SE 20-11-23 W4M prior to written permission being provided allowing the construction of any of the proposed facilities, or the increase in livestock numbers to above AOPA permitting thresholds.

d. d. Post-construction inspection and review

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in newly constructed facilities. It is therefore recommended that a condition be included requiring that an inspection of any approved CFO facilities be conducted by NRCB personnel and confirmed in writing that the permit requirements have been met prior to livestock, manure or manure contaminated runoff being allowed in the facilities.