

## Decision Summary RA23022

This document summarizes my reasons for issuing Approval RA23022 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23022. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://www.nrcb.ca) under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the Act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On July 14, 2023, Mitchel Kroetsch (Kroetsch) submitted a Part 1 application to the NRCB to construct a new beef feeder/finisher CFO.

After an extension was granted on January 8, 2024, the Part 2 application was submitted on April 10, 2024. On May 1, 2024, I deemed the application complete.

The proposed CFO involves:

- Permitted livestock numbers of 2,500 beef finishers and 2,500 beef feeders
- Constructing feedlot pens and alleys – 208 m x 502 m (total dimensions)
- Constructing two catch basins: Catch basin 1 – 53 m x 44 m x 3.5 m  
Catch basin 2 – 46 m x 36 m x 3.5 m

#### a. Location

The proposed CFO is located at NW 15-42-16 W4M in Flagstaff County, roughly 5 km south of the Village of Heisler, and 11 km northwest of the Village of Forestburg. The terrain is relatively flat. The closest common body of water is an ephemeral creek, located approximately 1100 m to the east. The Battle River is located approximately 10 kilometers west of the proposed site.

### 2. Notices to affected parties

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

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

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

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

A copy of the application was sent to Flagstaff County, which is the municipality where the CFO is to be located. No other municipalities are located within the notification distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the Community Press, a newspaper in circulation in the community affected by the application on May 1, 2024, and
- sending 30 notification letters to people identified by Flagstaff County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours.

### **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 Environment and Protected Areas (EPA) and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Signalta Resources Ltd., Calpine Canada Resources Ltd., Nova Chemicals Corp., TC Energy and Phoenix Gas Co-op Ltd. as they are right of way/easement holders.

Ms. Laura Partridge, a senior water administrator, responded on behalf of EPA. Ms. Partridge stated that there is an existing Registration for the site under the *Water Act*; however, she noted that additional licensing and a groundwater evaluation report is required to support the increase in water requirements due to the proposed animal numbers. The applicant is reminded that they are required to obtain and hold sufficient water licensing for their CFO site.

Ms. Cindy Skjaveland, a development & planning technologist, responded on behalf of TEC. Ms. Skjaveland stated that there is no impact to highway traffic from the proposed site. The proposed development is outside of the Developmental Control zone for Hwy 855 and has only municipal access. TEC has no objection to this site.

No other responses from the organization listed previously were received.

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

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

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 CFO is consistent with the land use provisions of Flagstaff County's municipal development plan. (See Appendix A for a more detailed discussion of the County's planning requirements.)

## **6. AOPA requirements**

With respect to the technical requirements set out in the regulations, the proposed 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 and protective layers of manure storage facilities and manure collection areas

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

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

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

Municipalities that are affected parties are identified by the Act as "directly affected." Flagstaff County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Rosemary Hoyland, a development officer with Flagstaff County provided a written response on behalf of Flagstaff County. Ms. Hoyland stated that the application is consistent with Flagstaff County's land use provisions of the municipal development plan. The application's consistency with the land use provisions of Flagstaff County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from 50 parties.

The NRCB received 4 of these submissions after the submission deadline in the notice. Under NRCB Operational Policy 2016-7: Approvals at part 8.13.2, I considered whether there were exceptional circumstances that warranted considering the submissions nonetheless. In these 4 cases, I could not identify exceptional circumstances for the lateness of the submissions, so I did not consider nor address their submissions in the approval decision.

Of the 46 parties who submitted responses before the deadline, 16 own or reside on land within the 1.5 mile notification distance for affected persons. Because of their location within this distance, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1)

30 of the responding parties do not own or reside on land within the 1.5 mile notification distance for affected persons. I did not consider any of these 30 parties to be directly affected by the approval application. Appendix B sets out my reasons for determining which respondents are directly affected.

The directly affected parties raised concerns regarding:

- Water use
- Odour and air quality, flies, dust, noise, proximity to neighbours
- Surface water contamination/Battle River
- Groundwater contamination
- Property values
- Road use and traffic
- Avian influenza and animal disease transmission
- Handling of dead animals, increase in associated predators and rodents
- Short notice to respond to application
- Applicant's residence (does not intend to live at CFO site)
- Increase in crime
- Antibiotic waste
- Health concerns
- Shallow water table
- Future plans for the CFO
- Respondent's animals, veterinary bills
- Security
- Depletion of local grain markets
- Hiring of employees

These concerns are addressed in Appendix C. Conditions have been attached to the approval to address concerns about the water table.

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

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. Nonetheless, as part of my review of this application, I assessed the potential risk to the environment posed by the CFO's proposed manure storage facilities and manure collection areas. I requested that Scott (Sheila) Cunningham, NRCB Environmental Specialist, assist me in assessing the potential risk to surface and groundwater using the NRCB's environmental risk screening tool (ERST) (see NRCB Operational Policy 2016-7: Approvals, part 9.17). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).)

Scott (Sheila) Cunningham's assessment found that the proposed feedlot pens, and both catch basins pose a low potential risk to both groundwater and surface water. I have reviewed the ERST, as well as visited the site, and agree with this assessment.

When assessing potential risk at CFO sites, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, and surface water bodies, an approval officer may require groundwater monitoring for the facility. In this case, a determination

was made, and monitoring is not required because there are no shallow aquifers, or water wells and common bodies of water within 100 m or 30 m, respectively, from the proposed CFO facilities.

## 9. Other factors

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

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

Ms. Hoyland listed the setbacks required by Flagstaff County's land use bylaw (LUB). I assessed these distances and determined that the proposed facilities meet these setbacks. The applicant is reminded that they must ensure these setbacks are met during construction.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. EPA has not made me aware of any 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. Furthermore, the application meets AOPAs technical requirements. The applicant was provided with information on EPA's water licensing process.

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 July 26, 2024).

Finally, I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from Flagstaff County, submissions of other directly affected parties, and my own observations from a site visit.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the effects on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed. I discuss the concerns from the directly affected parties in Appendix C.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, 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. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed. See the discussion in Appendix A and in Appendix C (e.g. point 18).

I also presumed that the proposed CFO is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (see NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In addition, this land is zoned agricultural, and the proposed development meets the property line and yard setbacks outlined in Flagstaff

County's land use bylaw. In my view, this presumption is not rebutted, and I note also that Flagstaff County's response states that the application is consistent with their MDP.

## **10. Terms and conditions**

Approval RA23022 specifies the cumulative permitted livestock capacity as 2,500 beef feeders and 2,500 beef finishers and permits the construction of the feedlot pens and two catch basins.

Approval RA23022 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 RA23022 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

## **11. Conclusion**

Approval RA23022 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23022.

August 20, 2024

(Original signed)  
Lynn Stone  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval RA23022

## **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.

“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 9.2.7.)

Kroetsch’s proposed CFO is to be located in Flagstaff County and is therefore subject to that county’s MDP. Flagstaff County adopted the latest revision to this plan in August 2018, under Bylaw 10/18.

Policies 10 to 14 under Section 7 of the County’s MDP deal specifically with CFOs.

Policy 10 states that the County will provide input to the NRCB regarding applications for new or expanded CFOs. All CFOs and manure storage facilities must fully satisfy all the requirements and regulations adopted under AOPA, specifically the minimum distance separation and land base requirements.

In her response to the application, the County’s development officer indicated that the application is consistent with the MDP, and that no other planning-type documents are associated with the area. The application also meets all relevant AOPA requirements.

This policy refers to the term “minimum distance separation (MDS)”. The MDP does not define this term; I therefore presume that it refers to the MDS requirements in AOPA. At any rate, the application meets the AOPA MDS requirements to all residences.

The proposed CFO meets AOPA’s technical requirements for land base requirements.

Policy 11 requires CFOs to meet the minimum distance separations set out in AOPA. The application meets the AOPA MDS requirements to all residences.

Policy 12 precludes CFOs within 3.2 km of the corporate boundaries of any urban municipality or within 0.8 km of the Growth Node Area Overlay designated on Map 6 - Future Land Use. The proposed CFO meets these setback requirements.

Policy 13 discourages locating CFOs in environmentally sensitive areas where slope instability and/or groundwater contamination may be of concern. There is no MDP map showing specific areas of environmental sensitivity or slope instability. The proposed CFO meets AOPA’s technical requirements, several of which are designed to prevent or minimize manure leakage

from CFO facilities and thus to prevent CFO manure from reaching and contaminating groundwater. AOPA requirements are also intended to protect the soil, groundwater, and surface water from contamination caused by excessive application of manure nutrients. Therefore, I have determined that the application is not inconsistent with policy 13.

Policy 14 states “for the purposes of implementing the regulations adopted under the *Agricultural Operation Practices Act*, the policies of any other statutory within Flagstaff County respecting confined feeding operations shall also be applied, in addition to the policies of this plan.” I interpret this policy’s reference to “other statutory” to refer to statutory plans under the *Municipal Government Act*, which would include the County’s MDP, any area structure plan, and any Intermunicipal Development Plans (if applicable).

This application meets the applicable requirements of Flagstaff County’s MDP as noted above, and there are no area structure plans or intermunicipal development plans that apply to the application site.

For these reasons, I conclude that the application is consistent with the land use provisions of Flagstaff County's MDP that I may 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 notification distance, as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1)

**Table B1: Parties living or owning land within notification distance, who responded by deadline**

Wanda Bednarz-Hihn NW 10-42-16 W4M	David Hihn NW 10-42-16 W4M	Caitlin and Kevin Van Slyke NE 21-42-16 W4M NE 17-42-16 W4M
Heidi Rohe NE 17-42-16 W4M	Thomas Rohe NE 17-42-16 W4M	Nancy Hewson NW 14-42-16 W4M
Ruth Burke SE 27-42-16 W4M	Lorraine Congdon SW 27-42-16 W4M	Arthur Congdon NE 14-42-16 W4M
Dallas Oberg 42127 Range Road 164 (address provided in letter) SW 9-42-16 W4M (equivalent LLD)	Robert Burke SE 27-42-16 W4M	Norman Congdon SW 27-42-16 W4M
Bonnie Webber & Roxanne Westgate Acting as Power of Attorneys for Chester Hastings SE 9-42-16 W4M	Rick Hewson NW 14-42-16 W4M	Leann Congdon NE 23-42-16 W4M
John Congdon SE 14-42-16 W4M		

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

**Table B2: Parties who do not live or own land within notification distance, but responded by deadline**

Joy Nicholson Municipal address provided, Forestburg, AB	Lenora Blanchette Municipal address provided, Forestburg, AB	Mat Ponto SW 2-45-16 W4M
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Village of Heisler Heisler, AB	Rylee and Brandon Martz Rylee Martz (additional second submission) Municipal address provided, Heisler, AB	Dale Brown Municipal address provided Heisler, AB
Debora Brown Municipal address provided, Heisler, AB	Wendy Sirois Municipal address provided Forestburg, AB	Lawrence & Patricia Vallis Municipal address provided, Heisler, AB
Mary Ellen & Gordy Cunningham Municipal address provided, Forestburg, AB	Deborah Hodl Municipal address provided, Heisler, AB	Lorne & Laurel Simmons Municipal address provided Forestburg, ABs
John & Karen Stenson SW 12-41-16 W4M	Lynn Poole SE 12-42-16 W4M	Brian & Deb Wolbeck NE 8-43-16 W4M
Rob and Jodee Ploorde Municipal address provided Heisler, AB	Elaine Urlacher <i>Physical address not provided</i> Heisler, AB	David Slimm <i>Physical address not provided</i> Heisler, AB
Mark Presseau <i>Physical address not provided</i> Forestburg, AB	Elaine Rosser <i>Physical address not provided</i> Heisler, AB	Bradley, Nicole, & Terry Fink <i>Physical address not provided</i> Forestburg, AB
Tracey Marston <i>Physical address not provided</i>	T.L. Schooley <i>Physical address not provided</i> Heisler, AB	David Marston <i>Physical address not provided</i>

I also received an anonymous response with no contact information or address.

Some of the responses failed to provide legal land locations or addresses; therefore, I was not able to determine where the respondents live or own lands. Section 8(3) of the Administrative Procedures Regulations under AOPA requires that submissions include addresses, presumably in part for this reason. Because of this, these responses could not be considered as part of my decision.

Under NRCB policy, a person has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 Approvals, part 7.2.1):

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

I carefully considered each of these responses against the five factors. I concluded that none of the parties listed in Table B2 have demonstrated to my satisfaction that they are directly affected by the proposed application. Therefore, I did not consider submissions from these respondents in my decision. My reasons for this determination are discussed below.

I note that the majority of concerns raised by the responses in Table B2 are the same as those in Table B1. My comments regarding the concerns raised by the directly affected parties are in Appendix C.

#### *Water usage*

Almost all of the responses indicated that they would be directly impacted by the amount of water consumed by the cattle, and the resulting reduced availability for neighbouring farms and village residents. Water usage and licensing falls under the jurisdiction of Alberta Environment and Protected Areas (EPA); not under the NRCB. Therefore, this concern does not qualify the respondents for directly affected party status.

#### *Surface water contamination and Battle River*

Many parties expressed concern about surface water contamination, particularly within the Battle River watershed. All of the responses were general in nature; none demonstrated how the parties would be directly impacted by potential surface water contamination. I also did not receive evidence that met the burden of demonstrating that contamination was likely. The closest common body of water is more than 1100 m from the proposed CFO, while the Battle River is approximately 10 km west. Therefore, these concerns do not qualify the parties for directly affected party status.

#### *Odour and air quality; noise, light pollution, flies; proximity to neighbours*

Most responses included concerns about odour and air quality. Some included additional points regarding noise, light pollution, the presence of flies, and proximity to neighbours. AOPA's minimum distance separation (MDS) requirements are a proxy for keeping odours, flies, and other nuisance impacts at acceptable levels from CFOs, based on land zoning. The proposed CFO meets the required MDS to all neighbouring residences. Furthermore, nuisances would not be reasonably expected to impact parties outside of the notification distance.

#### *Property values, community becoming less attractive to new residents*

A few respondents expressed concerns about the loss of the value of their properties, and the area becoming less attractive to potential new residents. 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. Furthermore, the proposed application meets

Flagstaff County's MDP, a reasonable indicator of appropriate land use. Therefore, these concerns do not qualify the respondents for directly affected party status.

*Road use, traffic concerns*

Several parties raised concerns about the increase in traffic related to the CFO, as well as the possible damage to local roads and highways. Flagstaff County has jurisdiction over local roads, while Alberta Transportation and Economic Corridors (TEC) has jurisdiction over provincial highways. Neither Flagstaff County nor TEC expressed concerns over road use in their responses. Given that roads do not fall under the regulatory mandate of the NRCB, I cannot consider these concerns as a qualifier for directly affected party status.

*Groundwater contamination (site and spreading lands), manure disposal, nutrient levels in spreading lands*

Many respondents expressed concerns about groundwater contamination, from both the CFO site and spreading lands. Their responses further detailed concerns about how manure would be disposed of, and how nutrient levels in spreading lands would be managed. The concerns were general in nature; the respondents did not provide evidence how they would be directly impacted by these concerns. In addition, I am of the view that groundwater contamination would not probably occur, given that the proposed CFO meets all of AOPA's technical requirements, including having adequate groundwater protection and sufficient land to meet the nutrient levels for manure spreading. Additionally, AOPA requires that CFO operators test the soil of the land they spread on to ensure nutrient levels do not exceed allowable limits (Standards and Administration Regulations, section 25). In my opinion, this concern does not meet the burden of proof to qualify these individuals for directly affected party status.

*Avian Influenza/animal disease transmission, livestock importation, animal welfare*

Several parties expressed concern about the CFO contributing to avian influenza, animal disease transmission, animals being imported from other countries, and animal welfare. These concerns are not under the jurisdiction of the NRCB, but rather under the Canadian Food Inspection Agency's (CFIA) and the Alberta Society for the Protection of Cruelty to Animals' (SPCA) mandates. As these concerns are not under the regulatory mandate of the NRCB, I cannot consider these concerns to qualify for directly affected party status.

*Health diseases from CFOs, impact of antibiotic waste.*

Many respondents expressed concerns about how their health would be impacted by the proposed CFO. Many felt that they would be impacted by possible diseases from the site, as well as effects from the antibiotic use in livestock. These concerns were general in nature, with no evidence provided from the respondents to demonstrate a link between their specific health concern and this application. Without further information, it was difficult to assess the probability of these health effects occurring. The NRCB does not have jurisdiction nor the expertise over public health concerns. As a result, I forwarded the responses that expressed health related concerns to Alberta Health Services' public health inspector that is assigned to this geographical area. The inspector did not provide me with a response.

*Handling of dead animals/increase in predators and rodents*

Many parties expressed general concerns about how dead animals would be managed. Many felt that the site, combined with the presence of dead animals, would cause an increase in wild/predatory animals including raccoons, mice, foxes, and coyotes. The disposal of dead animals is not under the jurisdiction of the NRCB. Alberta Agriculture and Irrigation has jurisdiction under the *Animal Health Act*. Alberta Agriculture and Irrigation also has jurisdiction over pests and other nuisance animals under the *Agricultural Pests Act*. Because the NRCB

does not hold jurisdiction over these concerns, I cannot consider this to qualify for directly affected party status.

*Crime, security, employee safety, employee hiring practices, not a “family farm”, where applicant lives, ethical concerns over feedlots*

None of these concerns fall under the jurisdiction of the NRCB; therefore, I cannot consider this as a basis to qualify these respondents for directly affected party status.

*“Rubber stamping” of future applications, CFO expansion, or possible sale of CFO*

A few respondents expressed concern that the granting of this permit would “rubber stamp” future applications. Several discussed concerns about future expansions, or the possible sale of the CFO. Each permit application is evaluated on its own merits; there are no guarantees that any future permit applications would be approved. The NRCB also does not have control over if a CFO is sold in the future. I did not find any claims in these responses that would qualify the parties for directly affected party status.

*Short notice to respond to application, no town hall meetings held, nearby villages were not notified*

A few respondents expressed concerns about the short notice to respond to the application. Others felt that the nearby villages should have been notified directly, and that local town hall meetings should be held. AOPA specifies how approval officers notify the local community, including timelines for responses, and who is an affected party under the notification distance. The response deadline is set by legislation, and an approval officer has little discretion to vary it. Town hall meetings are not a requirement, as the public notification process allows individuals the opportunity to review the application and contact an approval officer. The NRCB placed an advertisement in the local newspaper, and mailed letters to parties in the AOPA-calculated notification distance. I did not find any evidence in these claims that would allow these parties directly affected party status.

*Feedlot will deplete area of grain, and will increase prices for local ranchers*

One party raised concerns about the impact the presence of a feedlot will have on the local grain market. The response did not provide sufficient evidence that this application would cause an impact on commodity markets. Therefore, this party does not qualify for directly affected party status.

*Violations of human rights and charter rights*

One party expressed the concern that if the permit for the feedlot is granted, the presence of the feedlot is in violation of their human rights and charter rights. There were no specifics of the asserted human or charter rights that this CFO would infringe such that a chain of causality could be made out. Therefore, these concerns do not qualify the party for directly affected party status.

**Table B3: Responses of support, not within notification distance, and received by deadline**

Colleen Lange Millet, AB	Barbara & Colin Kroetsch SE 31-43-16 W4M SW 3-43-16 W4M
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These parties reside outside of the notification distance. I did not receive information to meet the burden of proof to grant them directly affected party status, under the five-part test above.

**Table B4: Responses that were received, but after deadline**

Jackie Wilcott Municipal address provided Heisler, AB	Beverly Rohe & Alex Kovacs <i>Physical address not provided</i> Heisler, AB
Caroline Boddy NE 22-42-15 W4M	Gary and Carol Scheler SW 25-41-16 W4M

These parties provided a response to the application, after the deadline. The responses from Jackie Wilcott, Beverly Rohe & Alex Kovacs, and Caroline Boddy were received after 4:30 pm on the response deadline. The response from Gary and Carol Scheler was received four days after the deadline. I could not identify exceptional circumstances for the lateness of the submissions, so I did not consider and address their submissions in the approval decision.

In summary, the sixteen parties listed in Table B1 qualify as directly affected parties. All other responses that were submitted by the deadline did not meet the burden to establish directly affected party status.

## APPENDIX C: Concerns raised by directly affected parties

The directly affected individuals raised the following concerns:

1. **Water use** – all of the directly affected parties expressed concerns regarding the amount of water that would be required to support a feedlot of this size. The respondents were concerned that this may impact the availability of water for their own use.

**Approval Officer's comments** – Alberta Environment and Protected Areas (EPA) is responsible for licensing the use of groundwater and surface water in Alberta. The water licensing process includes an opportunity for members of the public to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (See NRCB *RFR 2024-04 Ridder Farms* at p 6.)

Mitchel Kroetsch chose the declaration indicating that they will be applying for water licensing separately from the AOPA process. (See page 3 of 97 in Technical Document RA23022)

2. **Odour and air quality concerns, flies, dust, noises, proximity to neighbours** – most respondents expressed concern about the odour and quality of air that they may experience if the feedlot is approved. Many stated that they felt the feedlot was too close to neighbouring residences. They also raised concerns about nuisances relating to flies and other insects, dust, and noises.

**Approval Officer's comments** – AOPA's minimum distance separation (MDS) requirements are a proxy for keeping odours, flies, noises, dust, and other nuisance impacts at acceptable levels from CFOs, based on land zoning. The proposed CFO meets the MDS to all neighbouring residences. It is presumed that nuisance effects from a proposed CFO will be acceptable if the MDS has been met.

Kroetsch's nearest neighbouring residence is approximately 1000 m from the proposed manure storage facilities/manure collection areas (MSF/MCAs). This is significantly more than the required minimum distance of 624 m, for residences on land zoned as agricultural.

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 would normally be expected, which can be directly linked to the CFO. I have not received any evidence to support this consideration.

Some of the responses detailed specific health concerns they felt may be negatively impacted due to lower air quality. I forwarded all responses with health-related concerns to Alberta Health Services. AHS reviewed these concerns, but did not provide a response.

It is reasonable to expect that there will be some nuisances related to flies and other insects and dust as a result of the CFO. In my experience, these nuisances can be

mitigated by practicing best management practices on farm. If needed, the NRCB can request that an operation enter into a fly and/or dust control program.

Often, any issues that arise relating to the operation of a CFO can be resolved through good communication between neighbours and the CFO operator. 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). An NRCB inspector will follow up on the concern.

**3. Surface water contamination/Battle River** – most responses expressed concern about contamination of surface water bodies, particularly the Battle River.

**Approval Officer's comments** – AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating surface water. One of these requirements is the setbacks from common bodies of water set out in section 7(1)(c) of the Standards and Administration Regulation, which prohibits the construction of a manure storage facility or manure collection area less than 30 m from a common body of water.

I assessed the area's surface water bodies, both during a site inspection, and using mapping software.

The Battle River itself is approximately 10 km from the proposed site; however, I recognize that the proposed site is within the watershed. The closest common body of water is an ephemeral creek, located more than 1100 m east of the proposed CFO. During a site visit, I did not observe a common body of water within 30 m of the proposed site.

AOPA requires that CFOs have storage capacity to capture manure-impacted runoff from at least a 1-in-30 year rainfall event. Kroetsch's application proposes to construct two synthetically lined catch basins. Combined, these two catch basins will provide approximately 170% of the required capacity for a feedlot of this size.

As noted in section 8 of this decision summary, the NRCB assessed the CFO's proposed facilities to determine the potential risk they pose to surface water. According to the ERST, the CFO's proposed facilities pose a low potential risk to surface water.

AOPA also has regulations for manure spreading, designed to protect surface water bodies. Section 24 of the Standards and Administration Regulation lists several requirements, including incorporating manure within 48 hours of spreading on cultivated land, a prohibition on spreading on frozen or snow-covered land (unless permitted by the Board or an inspector), and spreading setbacks to water bodies based on how the manure is applied and the slope of the land towards the common body of water. As part of this permit, Kroetsch is required to follow all requirements under AOPA, including spreading regulations.

**4. Groundwater contamination** – several responses expressed concerns about potential contamination to groundwater from the site. They also expressed concerns about how groundwater may be impacted from spreading lands, and if nutrient levels will be managed.



**Approval Officer's comments** – As noted in the decision summary above, and documented in Technical Document RA23022, the proposed CFO facilities meet all AOPA's technical requirements. Several of these requirements are designed to prevent or minimize manure leakage from CFO facilities, and thus to prevent manure from reaching and contaminating groundwater.

As noted in section 8 of this decision summary, the NRCB assessed the CFO's proposed facilities to determine the potential risk they pose to groundwater. According to the ERST, the CFO's proposed facilities pose a low potential risk to groundwater. I determined that groundwater monitoring is not required at this site.

Regulations under AOPA set nutrient application limits for nitrogen and salinity. These requirements are designed to minimize the potential for groundwater to be impacted by manure. The Standards and Administration Regulation under AOPA also requires operators to test soils on farmland to which manure is applied, for salts and nitrogen at least every three years, and to make these records available for inspection by the NRCB.

As noted in section 6 of this decision summary, and further documented in Technical Document RA23022, the proposed CFO meets all AOPA technical requirements, including setbacks from springs, common bodies of water, and water wells; having sufficient means to control surface runoff of manure; nutrient management requirements regarding the land application of manure; and groundwater protection requirements for the floors and liners of manure storage facilities.

- 5. Property values** – some respondents expressed concerns that the presence of a feedlot may negatively impact their property values.

**Approval Officer's comments** – 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..." *Zealand Farms, FRF 2011-02* at 4, and *Pigs R Us Inc. RFR 2017-11/BA17002* at 6.

As explained in Appendix A and part 9 of this decision summary, Kroetsch's application is consistent with the land use provisions of the County's MDP and the zoning for the area, which suggest that the proposed CFO is an appropriate use of land in the area.

- 6. Road use and traffic** – some respondents expressed concerns that the increased traffic and road use resulting from the feedlot will cause damage to the roads.

**Approval Officer's comments** – The NRCB does not have direct responsibility for regulating road use or maintenance. 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 9.13).

In addition, municipalities own the roads within their jurisdiction, and have the knowledge and expertise to determine if road use agreements are required, and have the jurisdiction to implement and enforce road use restrictions and road use agreements.

A copy of this application was forwarded to Alberta Transportation and Economic Corridors (TEC), as they have jurisdiction over provincial roadways. In their response, TEC stated that there is no impact to highway traffic, and that the proposed development setback is outside of their control zone for Highway 855, and that it has only municipal road access. For these reasons, TEC has no objection to the proposal.

- 7. Avian influenza and animal disease transmission** – several parties expressed concern about the CFO contributing to avian influenza, and the transmission of other animal diseases.

**Approval Officer's comments** - These concerns are not under the jurisdiction of the NRCB, but rather under the Canadian Food Inspection Agency's (CFIA), and under Alberta Agriculture and Irrigation under the *Animal Health Act*.

- 8. Handling of dead animals, increase in associated predators and rodents** – several parties expressed concerns about how dead animals would be managed. Many felt that the site, combined with the presence of dead animals, would cause an increase in wild animals including raccoons, mice, foxes, and coyotes.

**Approval Officer's comments** - The disposal of dead animals is not under the jurisdiction of the NRCB; Alberta Agriculture and Irrigation (AGI) has jurisdiction under the *Animal Health Act*. AGI also has jurisdiction over pests and other nuisance animals under the *Agricultural Pests Act*. Because AGI has expertise in this area, the NRCB defers to their greater knowledge and refers related concerns to AGI.

- 9. Short notice to respond to application**– several parties expressed concern about the response timeline, given that it is a busy time of year for farmers. One party expressed concern that the application was in process at least since August 2023. Another expressed concerns that they were only given 27 days to respond.

**Approval Officer's comments** – AOPA specifies how and when approval officers notify the local community.

AOPA's Administrative Procedures and Regulations (section 2) requires applications for approvals to be submitted in two parts. The NRCB application process involves a "Part 1" application be made that declares the applicant's intent and sets the MDS. A "Part 2" application must be filed within 6 months but can be extended by an additional 6 months, which happened in this case. The Part 2 application includes technical specifications, construction specifications, site maps, and soils investigations (if required). A notice of permit application is only provided once a completed Part 2 is filed (Administrative Procedures Regulations, section 5).

The time of year for notifying the community is not a consideration, with the exception of the winter holiday closure period (between Christmas Eve and New Year's Day).

Section 19 of AOPA states that deadlines for responses to applications shall be 10 working days from when an affected party is notified of an application, and 20 working days from when any member of the public has viewed the application. To allow for a more uniform system, the NRCB accepts responses for up to 20 working days after the application has been deemed complete (see NRCB Approvals Policy at part 8.13). Under

section 32 of the Administrative Procedures Regulation, a submission is deemed filed at the NRCB at the time it is received at the NRCB office.

- 10. Applicant's residence** – two parties expressed concern as they claim the applicant does not intend to live at the CFO site.

**Approval Officer's comments** – AOPA does not have any requirements as to where CFO applicants or operators reside.

- 11. Increase in crime** – one party expressed concern that the CFO site will attract more criminals to the area.

**Approval Officer's comments** – The respondent did not provide specific information for consideration; therefore, it is difficult to assess any possible effects. However, crime is considered outside the AOPA mandate. Any concerns should be reported to the local authorities.

- 12. Antibiotic waste** – several parties expressed general concern about the CFO's use of antibiotics, and the risk of antibiotics entering their water source.

**Approval Officer's comments** – The use of antibiotics in livestock is not under the jurisdiction of the NRCB, and an AOPA application does not solicit information from applicants about their animal health practices. However, the concerns specify the potential risk of antibiotics in livestock "waste". I interpreted this as concerns about antibiotic residues contaminating surface and groundwater through urine and manure.

As detailed in points 3 and 4 of this Appendix, the proposed CFO meets all AOPA requirements designed to protect ground and surface water. A risk assessment found that the proposed CFO facilities pose a low potential risk to groundwater and surface water. AOPA's Standards and Administration Regulation (section 24) outlines requirements for manure spreading. This includes spreading rates, incorporation practices, and setback distances to common bodies of water. These requirements are designed to prevent or minimize manure leakage from CFO facilities, and thus to prevent manure from reaching and contaminating surface and groundwater.

- 13. Health concerns** – several responses detailed their personal health challenges, and expressed concerns that their conditions would worsen with the presence of a CFO. Others detailed concerns that they would be susceptible to new diseases.

**Approval Officer's comments** – Although health may be a part of community and environment, approval officers do not have the knowledge or expertise to assess health related concerns. As per the NRCB's Approvals Policy, any health-related concerns will be forwarded to AHS for its input and responses. I sent all responses with health concerns to the AHS public health inspector for the geographic area of the proposed CFO. The public health inspector reviewed the concerns, and did not provide comments. Based on my experience and previous responses from AHS, AOPA's regulations are likely a good way of mitigating health-related concerns. Ensuring that CFOs meet the minimum distance separation (MDS) to neighbouring residences reduces the concentration of air emissions, such as for ammonia and dust. AOPA's requirements for groundwater and surface water are designed to minimize potential risk that may impact human health. Kroetsch's application meets all of AOPA's technical requirements.

- 14. Water table** – one party expressed concern that the water table was shallow in the neighbouring area of the proposed CFO. He estimated that the water table was approximately 6' below grade.

**Approval Officer's comments** – The information contained in the application, including the engineer's soil investigation report, did not suggest a shallow water table. However, I acknowledge that the height of the water table can vary over time, based upon the time of year or precipitation events. AOPA requires that facilities must meet a minimum of a one metre separation between the water table and the bottom of the liner or protective layer for a MSF/MCA, at the time of construction. Based on this concern, I have included a condition requiring Kroetsch to cease construction and notify the NRCB immediately if the water table is encountered during construction.

- 15. Future plans for the CFO** – several parties expressed concerns about the future of the site, if built. One felt that the applicant would need to sell or expand in the next 5 years to remain viable; another felt that the NRCB would "rubber stamp" any future expansions. Another was concerned that the applicant had already purchased additional land.

**Approval Officer's comments** – AOPA does not place any restrictions on the sale of a CFO. Any future expansions of confined livestock numbers or manure storage facilities would require an application to the NRCB. Each application is assessed individually on its own merits, and if it meets AOPA's technical requirements and the municipality's land use provisions. An existing permit does not mean that a future application is automatically approved.

- 16. Respondent's animals, veterinary bills** – One respondent expressed concern that the CFO would result in his animals becoming sick, and the respondent being responsible for the resulting veterinary bills.

**Approval Officer's comments** – As previously stated, the NRCB does not have jurisdiction over livestock health nor disease transmission.

- 17. Security** – one party expressed concern about if there will be security on site for safety and animal theft.

**Approval Officer's comments** – The NRCB does not have jurisdiction to require security on site nor to address potential animal theft. The NRCB encourages good communication among neighbours and the operator to address these types of concerns.

- 18. Depletion of local grain markets** – one party raised concern that the feedlot would deplete the local grain market. This would then raise grain prices for local ranchers.

**Approval Officer's comments** – AOPA does not have specific provisions for grain markets, but does require an Approval Officer to consider the effect on the economy and community. As discussed in section 9 of this decision summary, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. Kroetsch's application is consistent with Flagstaff County's MDP.

**19. Hiring of employees** – one respondent expressed concerns about the number of employees that will be at the site, and if priority would be given to local residents.

**Approval Officer's comments** – AOPA does not have any requirements about the number of employees at a site, nor where they reside.

## **APPENDIX D: Explanation of conditions in Approval RA23022**

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

Section 9(2) and (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 (MSF) or manure collection area (MCA) (or, for a protective layer, the bottom of the MSF/MCA) to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, the proposed feedlot pens and catch basins meet the one metre requirement of section 9(2) and (3). However, because the height of the water table can vary over time, conditions are included in the approval requiring Kroetsch to cease construction and notify the NRCB immediately if the water table is encountered during construction.

### **b. Construction Deadline**

Kroetsch proposes to complete construction of the proposed new feedlot pens and catch basins by spring of 2024. Given that this date has passed, this timeframe is not reasonable for the scope of work in this application. The deadline of November 30, 2027 is included as a condition in Approval RA23022.

### **c. Post-construction inspection and review**

The NRCB’s general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval RA23022 includes conditions requiring:

A construction completion report, signed by a qualified third party, certifying that the synthetic lined catch basins have been constructed at the location and dimensions as laid out in this permit and in accordance with the application and the manufacturer’s requirements.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval RA23022 includes conditions stating that Kroetsch shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens, nor allow manure impacted runoff to enter the catch basins until NRCB personnel have inspected the feedlot pens and catch basins and confirmed in writing that they meet the approval requirements.