



Decision Summary LA24012

This document summarizes my reasons for issuing Approval LA24012 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24012. 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 March 22, 2024, Borderland Hutterian Brethren (Borderland Colony) submitted a Part 1 application to the NRCB to construct a new poultry CFO.

The Part 2 application was submitted on May 6, 2024. On May 14, 2024, I deemed the application complete.

The proposal involves:

- adding 40,000 chicken layers
- adding 40,000 chicken pullets
- constructing a chicken layer barn (114.6 m x 36.6 m) with attached manure storage room (18.3 m x 9.1 m)
- constructing a chicken pullet barn (71.6 m x 24.4 m) with attached manure storage room (18.3 m x 9.1 m)

a. Location

The proposed new CFO is located at E½ 2-17-1 W4M in Cypress County, roughly 57 km northeast of the City of Medicine Hat, just south of HW 537. The terrain is generally undulating, sloping to the south-southwest at the immediate site. The closest bodies of water are sloughs (one approximately 55 m to the east and one 400 m to the west of the proposed barns).

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 ½ mile. (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 and no other municipality or IDP planning area is within the notification distance.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the Cypress Courier newspaper in circulation in the community affected by the application on May 14, 2024, and
- sending 15 notification letters to people identified by Cypress County as owning or residing on land within the notification distance.

The full application was also made available for viewing at the NRCB’s Lethbridge office 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 Canlin Energy Corporation, and Fortis Alberta Inc. because they have right of ways on/or caveats this property.

Written responses were received from:

- Ms. Leah Olson, development/planning technologist with TEC.
In her response Ms. Olsen stated that a permit will not be required.
- Ms. Janine Acker, senior surface land administrator with Canlin Energy Corporation.
In her response, Ms. Acker advised that Canlin has no concerns with this application.
- Mr. Bradley Calder, a water administration technologist with EPA.
In his response, Mr. Calder stated that the three wells at this land location are currently not licenced but that Borderland Colony submitted an application for a groundwater licence for two of the wells to meet the water needs for the CFO.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

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

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document’s Strategic Plan and Implementation Plan and determined that the application is

consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of Cypress 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/protective layers of manure storage facilities and manure collection areas

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

Ms. Kaylene Brown, a planning supervisor with Cypress County, provided a written response on behalf of Cypress County. Ms. Brown stated that the application is consistent with the land use provisions in Cypress County's municipal development plan, provided that the operator enters into a Road Use Agreement with the county and the setbacks of the land use district are met. The application's consistency with the land use provisions of Cypress County's municipal development plan is addressed in Appendix A, attached. The matters raised by Cypress County are addressed in section 9 and Appendix A, below.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be presumed to pose a low risk to surface and groundwater (see Approvals - Operational Policy 2016-7, section 9.18).

9. Other factors

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

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited. In her response, Ms. Brown for Cypress County stated that the operator is required to expand or upgrade the municipal road network to support the intensity of the operation and that the Borderland Colony is required to enter into a road use agreement with Cypress County. She continued to state that Borderland Colony had previous road allowance agreements for the development of the residences and concluded that Application LA24012 is consistent with the MDP, provided that Borderland Colony enters into a road use agreement with the county. As noted in the NRCB's Board Decision LA20035 Hutterian Brethren of Murray Lake, page 4 3.c and 3.d., decisions on road use agreements are better left with the municipalities due to lack of requisite expertise by NRCB field staff to develop, mediate or enforce road use agreements/conditions. Municipalities on the other hand have own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use agreements.

Ms. Brown also listed the setbacks required by Cypress County's land use bylaw (LUB) and noted that the application is only consistent with the MDP if these setbacks are met. She did not comment on if these setbacks have been met by the application or not. However, all applicable setbacks have been met.

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 statement of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the Water Act in respect of the subject of this application. Furthermore, the application meets AOPA's technical requirements.

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 June 10, 2024)

Finally, I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land.

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. I have not received any evidence to the contrary and, in my view, this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed 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 location and the land around it is zoned Agricultural District 2 under the county's land use bylaw where agricultural operations are a permitted land use. In my view, this presumption is not rebutted and supported by the response from Cypress County.

10. Terms and conditions

Approval LA24012 specifies the cumulative permitted livestock capacity as 40,000 chicken layers and 40,000 chicken pullets and permits the construction of the chicken layer barn with an attached manure storage room, and chicken pullet barn with an attached manure storage room.

Approval LA24012 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 LA24012 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval LA24012 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24012.

June 28, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24012

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.)

Borderland Colony’s CFO is located in Cypress County and is therefore subject to that county’s MDP. Cypress County adopted the latest revision to this plan under Bylaw #2023/15.

The relevant sections to this application in Cypress County’s MDP are sections 4.1.14 to 4.1.19 – Locating New CFOs:

Section 4.1.14 states the county will support CFOs if the site is not located within 1.6 km of the boundary of a hamlet identified in Map 7 and the size of the parcel is conducive to support the development and all setbacks as laid out in the land use bylaw can be met.

The new CFO is not within 1.6 km of the boundary of a hamlet. This provision is therefore met. The second part of the provision refers firstly to the size of the parcel for a new CFO as well as setbacks. This provision falls partly under section 20(1.1) AOPA, that states that approval officers shall not consider any provisions respecting a site for a CFO because it stipulates the requirements for the location a new CFO. I will therefore not consider this part of the provision. Having said that the proposed construction meets all setbacks as laid out in the land use bylaw.

Section 4.1.15 states that the county shall direct new CFOs to areas that are in proximity to or can directly access primary transportation corridors that are suitable for the intensity for the operation.

The stipulation to have new CFOs within proximity of suitable infrastructure is likely not a land use provision and falls under section 20(1.1) AOPA, that states that approval officers shall not consider any provisions respecting a site for a CFO. Apart from that, access to transportation corridors “suitable for the intensity of the operation” is difficult to assess based on uncertainty on traffic volume created by a CFO and is therefore a rather subjective parameter.

Section 4.1.16 states the county will require that the CFO pays for the expansion and/or upgrade of the municipal road network to support the operation. The county shall require the CFO operator to enter into a road use agreement to help support the operation and maintenance of the municipal road network.

I do not consider this a land use provision. Road use agreements are strictly between the county and the CFO. Apart from the fact that the NRCB has no jurisdiction over road use agreements, the NRCB Board determined in Board Decision on LA20043 Hutterian Brethren of Murray Lake (RFR 2020-09) that decisions on road use agreements are better left with the municipalities due to lack of requisite expertise by NRCB field staff to develop, mediate or enforce road use agreements/conditions. Municipalities on the other hand have own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use agreements.

Section 4.1.17 states that the county will not support land uses incompatible with a CFO when proposed within the MDS of the CFO, as defined by the NRCB MDS regulations.

This provision refers to matters regulated directly by the county. The NRCB has no jurisdiction over any other developments within a county other than CFOs. This section does therefore not apply.

Section 4.1.18 states that the county shall not support CFOs to locate with the Tri-Area Intermunicipal Development Plan boundary.

The CFO is not located within this area.

Section 4.1.19 states the county shall review the CFO's compatibility with the surrounding area and will provide its recommendation to the NRCB.

Compatibility of land uses is typically achieved through proper land use planning and zoning as laid out in the land use bylaws and the MDP. The CFO is consistent with the land use provisions of the LUB.

For these reasons, I conclude that the application is consistent with the land use provisions of Cypress County's MDP that I may consider.

APPENDIX B: Explanation of conditions in Approval LA24012

a. Construction Deadline

Borderland Colony proposes to complete construction of the proposed new layer barn and pullet barn by December 31, 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2026, is included as a condition in Approval LA24012.

b. 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 LA24012 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer barn with solid manure storage and the pullet barn with solid manure storage to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Borderland Colony to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

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 LA24012 includes a condition stating that Borderland Colony shall not place livestock or manure in the manure storage or collection portions of the new layer barn and pullet barn (both with solid manure storages) until NRCB personnel have inspected these facilities and confirmed in writing that they meet the approval requirements.