

Decision Summary LA24002

This document summarizes my reasons for issuing Approval LA24002 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24002. 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 January 16, 2024, Van Huigenbos Farms Ltd. (Van Huigenbos Farms) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

On May 25, 2023, Van Huigenbos Farms had been issued a Compliance Directive, CD 23-02, for the unauthorized construction of a catch basin. CD 23-02 required Van Huigenbos Farms to construct a 2 foot high berm around the perimeter of the catch basin to ensure no manure-contaminated runoff entered the unauthorized catch basin until it held a permit under AOPA. As a part of this application, Van Huigenbos Farms is proposing to permit the already constructed, unauthorized catch basin and expand and connect it with the already permitted catch basin.

The Part 2 application was submitted on April 4, 2024. On April 17, 2024, I deemed the application complete.

The proposed expansion involves:

- Increase beef feeder calf numbers from 2,500 to 16,500
- Decrease beef feeder numbers from 1,200 to 0
- Constructing east pens (6 rows measuring 153.4 m x 36.9 m each)
- Constructing west pens (6 rows measuring 152.1 m x 36.9 m each and 2 rows measuring 50.7 m x 36.9 m)
- Constructing north pens (1 row measuring 152.1 m x 38.2 m, irregular shape)
- Expansion of north catch basin (from 51.8 m x 36.6 m x 2 m deep to final dimensions 185 m x 40 m x 2 m deep)
- Constructing south catch basin (105 m x 40 m x 2 m deep)
- Decommission the northern most row of pens by removing all manure and infrastructure

As part of this application, I am amending out the following facilities from the consolidated approval with the corresponding reasons:

- Barn 1 and Barn 2 that were from the deemed permit have been decommissioned and replaced by the calf barn under Authorization LA17054A,
- The northern most row of pens from the deemed permit are to be decommissioned as part of this approval,
- Chicken broiler barns that were permitted under Approval LA08012 and Authorization LA09003, were depopulated after Approval LA15045 and have since been converted to be used as storage facilities.

a. Location

The existing CFO is located at SE 21-9-26 W4M in the Municipal District (MD) of Willow Creek, roughly two kilometres northwest of Fort Macleod, Alberta. The terrain is relatively flat at the CFO site but drops immediately north of the site into a low-lying area before Willow Creek.

b. Existing permits

The CFO was originally permitted in 1977 by the MD of Willow Creek. It has since received several other municipal and NRCB-issued permits. The CFO is currently covered by Approval LA15045 (which superseded all prior permits) and Authorization LA17054A. These permits allowed the construction and operation of a beef CFO with 1,200 beef feeders and 2,500 beef feeders calves. The CFO's existing permitted facilities are listed in the appendix to Approval LA24002.

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 the MD of Willow Creek, which is the municipality where the CFO is located, and to the Town of Fort Macleod which has a boundary within the notification distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the Macleod Gazette newspaper in circulation in the community affected by the application on April 17, 2024, and
- sending 77 notification letters to people identified by the MD of Willow Creek and the Town of Fort Macleod as owning or residing on land within the notification distance.

The full application was made available for viewing at the NRCB office in Lethbridge 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 to Alberta Transportation & Economic Corridors (TEC) for their information. A copy of the application, as well as a response expressing health concerns, was sent to Alberta Health Services (AHS) for their comment.

I also sent a copy of the application to Fortis Alberta Inc., South Alta Rural Electrification, and ATCO Gas as they are utility right of way holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, Wade Goin, a public health inspector with AHS, and Jeff Gutsell, a hydrogeologist with EPA.

Leah Olsen stated that a permit will not be required from Transportation and Economic Corridors for the proposed development.

The response from EPA is discussed further in Appendix D.

I did not receive any responses from utility right of way holders.

In response from AHS, Wade Goin stated that, when industry best management practices and NRCB operating requirements are used appropriately, health concerns noted in the application should be prevented. Mr. Goin also stated a pending, small, residential subdivision may be within the subject area of this application and NRCB may wish to consult with the local development authority regarding this subdivision. Appendix A discusses the application for subdivision, which the MD Willow Creek provided clarification on.

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 expansion is consistent with the land use provisions of the MD of Willow Creek's municipal development plan.

I have also determined that the application is subject to the IDP between the MD of Willow Creek and the Town of Fort Macleod, which came into effect in March 2022.

The NRCB Board has directed approval officers to consider applicable IDPs since, under the *Municipal Government Act*, IDPs prevail over MDPs to the extent of inconsistency between the

two statutory plans (see Decision 2022-02 Double H Feeders at p. 6-7; and NRCB Operational Policy 2016-7: *Approvals* at 9.2.1).

On that direction, I have determined that the proposed expansion is consistent also with the land use provisions of the applicable IDP. (See Appendix A for a more detailed discussion of the planning requirements.)

6. AOPA requirements

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

- Meets the required AOPA setbacks from all nearby residences (with the use of the expansion factor) (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, with one exemption
- 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 protective layers of manure storage facilities and manure collection areas

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

7. Responses from municipalities 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.” The MD of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, a director of planning & development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm stated that the application is not consistent with the MD of Willow Creek’s municipal development plan, specifically Section 6 Transportation. Ms. Chisholm also stated that the application is not consistent with the Fort Macleod-MD Willow Creek intermunicipal development plan, specifically Section 11 transportation. The application’s consistency with the land use provisions of the MD of Willow Creek’s municipal development plan is addressed in Appendix A, attached.

Ms. Chisholm also raised concerns regarding municipal range road 263 that services the CFO. Ms. Chisholm stated that the MD requests that the NRCB require the applicant to undertake a “Traffic Impact Assessment (TIA)” and for the applicant to enter into a “Development Agreement” with the MD of Willow Creek. Ms. Chisholm also stated that the current road is insufficient for the CFO expansion and road upgrades may be required. Along with this, the MD’s Director of Infrastructure submitted comments in the response stating that, “increased use will result in keeping the road in a reasonable state of repair much more difficult to manage” and “it would be wise to consider the reconstruction/rehabilitation of this roadway”. Appendix C discusses road use concerns from the directly affected parties.

The Town of Fort Macleod is also a directly affected party because the Town's boundary is located within the notification distance. In addition, Van Huigenbos Farms' CFO is located within the IDP boundary between the MD of Willow Creek and the Town of Fort Macleod. Keli Sandford, a planning and development officer with the Town of Fort Macleod provided the first of two written responses on behalf of the Town of Fort Macleod. In this first response, Keli Sandford stated that there is a current Intermunicipal Development Plan (TOFM Bylaw 1949 and MDWC Bylaw 1922) and the zoning of the land within 1.5 miles of the proposed site is currently Agriculture-AG. The application's consistency with the land use provisions of the IDP is addressed in Appendix A, attached.

Anthony Burdett, a chief administrative officer with the Town of Fort Macleod, provided the second written response on behalf of the Mayor and Council of the Town of Fort Macleod. In the response, Anthony Burdett expressed concerns that were brought forward by residents of the town about the proximity of the operation to Willow Creek, existing homes and the town, possible contamination of the water table, utilization of Willow Creek water, air pollution, unpleasant odour, increased traffic, and dust control measures. These concerns are addressed in Appendix C, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a total of 21 responses from 41 people.

Of the 41 people who submitted responses, 39 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)

The other two respondents do not own or reside on land within the 1.5 mile notification distance, and I do not consider either 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 the source and use of water for the expansion, contamination of surface water and groundwater, increased manure production and manure spreading, odour and other nuisance impacts, health concerns, the location of the CFO, property values, effects on the community, minimum distance separation (MDS), ineffective permitting processes, current operating practices and poor compliance history, road use impacts, fire hazards, and dead animal disposal. These concerns are addressed in Appendix C.

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. In the case of this application, the proposed feedlot pens and catch basins were assessed using the Environmental Risk Screening Tool (ERST). The ERST indicated that the proposed feedlot pens and catch basins pose a low potential risk to groundwater and surface water. The results of the risk assessment are documented in Technical Document LA24002.

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the ERST. The assessment of environmental risk focuses on surface water and groundwater. The ERST

provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 9.17.

In this case, the risks posed by Van Huigenbos Farms' existing CFO facilities were assessed in 2015 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Exemptions

In Approval LA15045, the northern most row of pens and Barn 3 were within the 100 m water well setback. An exemption to the setback was granted (see LA15045 MS). In this application, Van Huigenbos Farms is proposing to decommission the portion of the northern most row that is within this setback, but Barn 3 is to remain. Therefore, the exemption that was granted for Approval LA15045 remains and the water well monitoring condition in Approval LA15045 will be carried forward into this approval (see Appendix E of this decision summary).

10. Other factors

Because the approval application is consistent with the MDP and IDP 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. Chisholm, of the MD of Willow Creek, listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and requested additional information pertaining to the development of any infrastructure within the setback from the municipal road allowance right of way, including an inter-road system serving the feedlot alleyways. The proposed feedlot pens and catch basins can meet the road and property line setbacks, as identified in the LUB. However, it was not clear in the LUB where the right of way setback from the municipal road is measured from.

On that basis, I am including conditions in Approval LA24002 that requires these setbacks to the feedlot pens and catch basins be confirmed, in writing, by professionals. At the request of the MD of Willow Creek, I am also requiring that Van Huigenbos Farms construct a fence that separates the feed alleyways from Range Road 263.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of

concerns submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application. I also did not receive any responses from any utility right-of-way holders.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed June 27, 2024.

Finally, I considered the effects of the proposed expansion 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, responses from the MD of Willow Creek and Town of Fort Macleod, submissions from directly affected parties, and my own observations from site visits.

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, having considered the relevant information, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP/IDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted from the information I have before me. Discussion of the directly affected parties' concerns relating to economy and community is in Appendix C of this decision summary.

I also presumed that the proposed expansion 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 my view, this presumption is not rebutted, although the MD of Willow Creek stated in their response that the application is not consistent with the MDP and the IDP. I have determined that the sections of the MDP and IDP that the MD stated the application is not consistent with (transportation) are not land use provisions and therefore, I cannot consider these sections. See Appendix A of this decision summary for a more detailed discussion of the MD's planning requirements.

11. Terms and conditions

Approval LA24002 specifies the cumulative permitted livestock capacity as 16,500 beef feeder calves and permits the construction of the east pens; west pens; north pens; north catch basin; and south catch basin.

Approval LA24002 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 LA24002 includes conditions that generally address construction deadline, monitoring, document submission (including surveyor and engineer reports), construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix E.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA24002: Approval LA15045 and Authorization LA17054A (see NRCB Operational Policy 2016-7: *Approvals*, part 11.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists

all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix E discusses which conditions from the historical permits are or are not carried forward into the new approval.

12. Conclusion

Approval LA24002 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24002.

Van Huigenbos Farms' NRCB-issued Approval LA15045 and Authorization LA17054A are therefore superseded, and their content consolidated into this Approval LA24002, unless Approval LA24002 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case Approval LA15045 and Authorization LA17054A will remain in effect.

July 23, 2024

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

- A. Consistency with municipal land use planning
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Response from Environment and Protected Areas (EPA)
- E. Explanation of conditions in Approval LA24002

APPENDIX A: Consistency with municipal land use planning

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).

In Board Decision 2022-02 *Double H Feeders Ltd.*, the NRCB Board directed approval officers away from a narrow reading of section 20 of AOPA. An approval officer should determine an application’s consistency with not just the MDP, but also the IDP (if one applies). Given changes to the hierarchy of statutory plans under the *Municipal Government Act*, the Board suggested that ignoring an applicable IDP could lead to absurd outcomes in the event of a conflict between an MDP and an IDP.

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 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 provisions are commonly referred to as “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.)

Van Huigenbos Farms’ CFO is located in the MD of Willow Creek and is therefore subject to that county’s MDP. The MD of Willow Creek adopted the latest revision to this plan in August, 2019, under Bylaw #1841. The CFO is also within the plan boundary of the IDP between the MD of Willow Creek and the Town of Fort Macleod, so I also considered the land use provisions of that IDP.

MD of Willow Creek Municipal Development Plan

Section 2 of the MD of Willow Creek’s MDP states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. Section 2 states that one of the main objectives of the MDP is to mitigate the siting of any CFOs to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9. Another relevant section in this respect is section 6 as mentioned by the MD of Willow Creek.

I do not consider Section 2 and policy 2.3 to be “land use provisions.” Rather, I consider them to be a source of insight for the interpretation of the remaining portions of the MDP.

The MDP provisions relating to CFOs are in Section 9 Confined Feeding Operations / Intensive Livestock Operations, with only policy 9.2 relevant to my MDP consistency determination.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below, followed by my interpretation of how the provision is related to this application:

(a) the cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision”, as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

In a 2011 decision, the NRCB Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (*Zealand Farms*, RFR 2011-02 at page 5).

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination.

(b) environmentally significant areas contained in the “Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region” report

Van Huigenbos Farms’ CFO is close to, but not within, an area designated as of regional significance. The CFO also, is not within an area designated as of provincial or national significance in the referenced report (Map 1 of the report). Areas of local significance are not presented in the report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO may be located in an area of artesian flow. While free water was encountered during the investigation of the location for the proposed feedlot pens and catch basins, the drilling report in Technical Document LA24002 and lithology from the report for Water Well ID#9731008 show an impermeable clay layer. This suggests that the free water is a perched water table due to many years of irrigation that occurred on the land, rather than true artesian flow. Therefore, I do not believe the CFO is located within an area of artesian flow.

(c) providing notice to adjacent landowners including applications for registrations or authorization

This is likely not a “land use provision” because of its procedural focus and thus, I do not consider it to be relevant to my MDP consistency determination. Nevertheless, as explained above, the NRCB sent out notification letters to people identified by the MD of Willow Creek and the Town of Fort Macleod as owning or residing on land within the notification distance of 1.5 miles and gave notice in the Macleod Gazette. Therefore, the application met the notification requirements of AOPA (Operational Policy 2016-7: *Approvals*, part 8.7).

(d) applying minimum distance separation calculations to all country residential development

I interpret “minimum distance separation” as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the *Standards and Administration Regulation* under AOPA. In the response from the MD of Willow Creek, they identified a portion of NW 16-09-26 W4 as being zoned “Grouped Country Residential”, which is a category 4 MDS according to AOPA. However, upon clarification from the MD of Willow Creek, the application to change the zoning of this portion of NW 16-09-26 W4 from Rural General to Grouped Country Residential was received on January 30, 2024, and approved on May 8, 2024. Van Huigenbos Farms’ Part 1 application was received on January 16, 2024, which is the date that sets the MDS and precedes the application for rezoning. In addition, the MD of Willow Creek stated that no new building permits have been issued for

this land. Under AOPA's regulations, MDS applies only to residences. Therefore, Van Huigenbos Farms' application is consistent with this provision.

(e) restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD; and

Van Huigenbos Farms' CFO is not located within a known flood plain, floodway, the floodway fringe and flood prone, or hazard lands as identified in the Alberta Environment and Protected Areas flood hazard website. Also, in Technical Document LA24002, the CFO meets AOPA setbacks to common bodies of water. Based on this information, the application is consistent with this provision.

(f) restricting development in any wetland or riparian area

Van Huigenbos Farms' CFO is not located in a wetland or riparian area, and it meets the AOPA setbacks to common bodies of water. Therefore, the application is consistent with this provision.

In their response, the MD of Willow Creek stated the application does not comply with Section 6 Transportation of the MDP. The policies of this section are quoted below, followed by my discussion.

6.1 The MD shall maintain a road network that provides for the safe and efficient movement of people, goods and services.

6.2 Development adjacent to local roads and provincial highways should occur in a manner which allows for the safe operation and the future upgrading of existing corridors.

6.3 Identified transportation corridors should be protected from inappropriate subdivision and development.

6.4 The MD shall make every effort to coordinate land use planning and development with Alberta Transportation in order to reduce land use conflicts along provincial transportation corridors.

6.5 The MD shall provide regulations in the Land Use Bylaw to control development in areas adjacent to the airport.

6.6 The MD shall ensure the function, safety and construction standards of the MD road system are not compromised by subdivision and development proposals.

Policies 6.1, 6.4, 6.5, and 6.6 are directed at the MD and policies 6.2 and 6.3 speak to topics that are the responsibility of the municipality. In particular, 6.2 is not specific and relates to the safe operation and upgrades of corridors, which the NRCB has no expertise in and little authority to control. Further, in a 2020 decision, the Board has stated "municipalities own the roads within their jurisdictions..." (*Hutterian Brethren of Murray Lake*, RFR 2020-09, p. 4). Therefore, I do not consider these policies to be "land use provisions" and this section of the MDP is not relevant to my MDP consistency determination.

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

Intermunicipal Development Plan with Town of Fort Macleod

As directed by the NRCB Board in Board Decision 2022-02/LA21033 – *Double H Feeders Ltd.*, I also considered land use provisions of the IDP that exists between the MD of Willow Creek and Town of Fort Macleod and that applies to this land location.

The “Intermunicipal Development Plan Town of Fort Macleod and Municipal District of Willow Creek No. 26” (IDP) was implemented under Bylaw No. 1949 and Bylaw No. 1922 in March 2022.

Section 3 of the IDP addresses CFOs. The policies of this section are quoted below, followed by my interpretation of how these policies relate to this application.

*3.1 New confined feeding operations (CFOs) and expansions to existing permits which would increase livestock numbers are not permitted with the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO Exclusion Area) as illustrated on **Map 3 – CFO Policy Area.***

The proposed expansion in this application is not located within this policy area as identified by the referenced map. Therefore, the application is consistent with this provision.

3.2 In regard to manure application on lands within the Plan Area or the lands adjacent to the Town boundary, the standards and procedures as outlined in the Agricultural Operation Practices Act, Standards and Administration Regulation shall be applied.

I am prohibited under section 20(1.1) of AOPA from considering provisions respecting the application of manure. At any rate, manure application is addressed in section 24(1) and 24(5) of the *Standards and Administration Regulation*. The regulations provide rules for manure application as an ongoing operating matter, rather than a permitting matter. Therefore, I do not consider this to be a “land use provision” and is not relevant to my IDP consistency determination.

3.3 Both municipalities request the NRCB to circulate all applications for CFO registrations or approvals within the Plan Area to each respective municipality.

Although this section is not a land use provision and regulates the notification process between the Town of Fort Macleod and MD of Willow Creek, both municipalities were given notice of this application.

3.4 Both municipalities recognize and acknowledge that existing CFOs located within the CFO Exclusion Area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operation Practices Act and Regulations. Consistent with Policy 3.1 of the IDP, existing CFOs in the CFO Policy Area may continue to operate only within the scope of their existing permit.

Van Huigenbos Farms’ CFO is not within this policy area and is therefore, consistent with this section.

3.5 The municipalities agree that they will notify and consult with the other municipality prior to engaging the NRCB or other provincial authorities, should a problem or complaints arise regarding a CFO operator's practices.

This is not a "land use provision" and speaks on the cooperation between the two municipalities. Therefore, this is not relevant to my IDP consistency determination.

3.6 Consistent with the MD's Land Use Bylaw and Municipal Development Plan, all applications regarding intensive livestock operation (ILO) and CFOs within the Plan Area shall be forwarded to the Town for review and comment.

This is not a "land use provision", as it regulates the notification process between the Town of Fort Macleod and MD of Willow Creek. Regardless, both municipalities were given notice of this application.

Policies 3.7 and 3.8 discuss LUB amendments affecting the policy and planning between the two municipalities. These sections are not "land use provisions", as they refer to the cooperation between the two municipalities. Therefore, these policies are not relevant to my IDP consistency determination.

In the response from the MD of Willow Creek, they stated that the application does not comply with Section 11 Transportation and Map 5 Key intersections of Mutual Interest, and requested that Section 5 Plan Area & Applicability and Map 2 be reviewed.

The policies in Section 11 of the IDP are quoted below, followed by my discussion.

11.1 The Town and the MD will cooperate on the development and approvals of all future Transportation Master Plans.

*11.2 The MD and Town have identified key intersections shown on **Map 5 – Transportation** and agree to work in collaboration to explore and develop strategies to direct appropriate growth and development that does not compromise the transportation network.*

11.3 The MD and Town, together with Alberta Transportation, should consider a long-term planning strategy for the provincial highway network within the Plan Area which would include the impacts or opportunities presented of any changes as a result of the CANAMEX trade corridor (highway bypass) of the Town as depicted on Map 5.

11.4 If required by Alberta Transportation or the municipality, at the time of subdivision or development, the developer shall conduct traffic studies with respect to impact and access onto Highways 2, 3, 810 and 811. Any upgrading identified by such studies shall be implemented by the developer at its sole cost and to the satisfaction of the municipality and Alberta Transportation.

11.5 Both municipalities agree to inform and invite the other municipality for all discussions with Alberta Transportation and CP Rail.

11.6 All subdivision proposals within the Plan Area and on lands with the Town adjacent to the Town boundary shall secure all right-of-way requirements for future road expansion. Particular attention should be given to major intersections requirements.

11.7 Standards for a hierarchy of roadways should be identified and established between the two jurisdictions. Access control regulations should also be established to ensure major collectors and arterials are protected.

11.8 Where the proposed roads may become part of the Town infrastructure, the Town road engineering standards should be included in the area structure plan. If a proposed road may become part of the MD infrastructure, the MD road engineering standards should be included in the area structure plan.

These policies are likely not “land use provisions”, as they do not provide direction about the acceptability of a land use, nor are these policies directed at the NRCB. Further, in a 2020 decision, the Board has stated “municipalities own the roads within their jurisdictions...” (*Hutterian Brethren of Murray Lake*, RFR 2020-09, p. 4). Therefore, this section of the IDP is not relevant to my IDP consistency determination.

Section 5 Plan Area & Applicability is located in Part A of the IDP. This section speaks to how the IDP plan area was established, how the two municipalities will cooperate going forward when it comes to future development and subdivision within the plan area, and how “expansion or intensification of existing uses shall be required to meet the policies of the IDP”. Map 2 shows the Plan area for the IDP. Section 5 is not directed at the NRCB, nor do I consider it to be a “land use provision”. Regardless, for my reasons stated above, I have concluded that this application is consistent with the land use provisions of the IDP 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 “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Eric & Michelle Vanderhart – Plan 1812080 Block 1 Lot 1
- Harvey & Hetty De Kok – SW 23-9-26 W4
- Bernadette & Marc McNab – NE 23-9-26 W4, SW 25-9-26 W4
- Ronald & Laural Ashley – Plan 2010116 Block 1 Lot 1
- Kate Glover – 75 Deer Path Meadow
- Andrew & Kaley Murphy – Plan 0613920 Block 1 Lot 6
- Ryan Ashley – Plan 2010116 Block 1 Lot 1
- Linda Maclean – NE 22-9-26 W4
- Stephen Vandervalk & Michelle Hoare – NE 23-9-26 W4
- Dave & Whitney Boot – 51 Deer Path Meadow
- Reed & Ramona Van Driesten – 63 Deer Path Meadow
- Heather & Robert Gunn – Plan 0414474 Block 1 Lot 1
- Stuart Sheridan – SW 15-9-26 W4
- Adam Forster – NW-23-9-26 W4
- William & Lorraine Reid – Plan 0613920 Block 1 Lot 5
- Gerry Kleissen – SE 10-9-26 W4
- Janet Sulapas – NE 23-9-26 W4, SW 25-9-26 W4
- Bruce & Val Kostelansky – NE 21-9-26 W4
- Connie Dersch-Gunderson – NW 22-9-26 W4, SW 22-9-26 W4
- Kyle & Morgan Rosendal – 261099b TWP rd 94a
- Darrel Doyle – 261098 TWP rd 94a
- Joanne Gilbertson – SE 22-9-26 W4
- Austin Kristjanson – SE 22-9-26 W4
- Kenz(y)(ie) Devlin – SE 22-9-26 W4
- Gail Knapek – Sec 14-9-26 W4
- Ruby & Hayes McRea – 75 Deer Path Meadow

See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1.

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 may fall under this category:

- Conrad Van Hierden – NW 25-9-26 W4
- Mark Conner – South of Fort Macleod

Conrad Van Hierden submitted a joint response with Adam Forster (listed above as directly affected).

Mark Conner submitted a joint response with Joanne Gilbertson, Austin Kristjanson, Kenz(y)(ie) Devlin, and Gail Knapek (listed above as directly affected). On behalf of Mark Conner, Joanne Gilbertson stated that he “lives South of Fort Macleod” and did not provide a legal land description, though it was requested twice. This made it difficult to determine exactly where Mark Conner resides or owns land. I checked ownership of all lands within the notification

distance and did not find any lands that are owned by Mark Conner. Therefore, I presume that he resides or owns land outside of the notification distance.

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.

These two individuals that reside or own land outside of the 1.5 mile notification distance asserted the following effects:

Groundwater and surface water contamination

Both submissions expressed concern that the CFO would contaminate the aquifer and nearby surface water (Willow Creek).

As noted in the decision, the proposed facilities meet all AOPA technical requirements. Several of these requirements are designed to protect surface water and groundwater from contamination. Because the proposed CFO facilities meet or exceed these requirements, I conclude that the level of groundwater and surface water risk posed by these facilities is acceptable.

As noted earlier in the decision summary, I assessed the CFO's proposed facilities using the NRCB's environmental risk screening tool (ERST). The assessment found that the proposed facilities pose a low risk to groundwater and surface water.

The respondents have not provided me with any additional evidence to show that the alleged effect would probably occur (point 2 above). Therefore, I find that the individuals are not directly affected based on groundwater and surface water contamination risks.

Water supply, availability, and usage

Both submissions expressed concerns about the increased demand for water, the source of water for the CFO expansion, and the availability of water to other users.

Alberta Environment and Protected Areas (EPA) is directly responsible for licensing the use of groundwater and surface water under the *Water Act*. As noted in Technical Document LA24002, Van Huigenbos Farms signed *Option 2: Processing the AOPA permit and Water Act license separately*. Given EPA's direct responsibility for water licensing, it is unlikely that a party can be "directly affected" under AOPA based on water supply risks. Additionally, this asserted effect falls outside of the regulatory mandate of the NRCB under AOPA (point 5 above). Also, see Appendix D for further discussion on EPA's response with regards to water usage.

Road use

Conrad Van Hierden raised concerns regarding the increase in heavy traffic, how there is only one road that allows access to the CFO, and there is not a designated driveway or business entry for the CFO.

This concern is also the main concern of the MD of Willow Creek, who is a directly affected party. The MD of Willow Creek stated that the road is known to be problematic with the current use and the increased use will result in keeping the road in a reasonable state of repair much more difficult to manage without a road upgrade.

Road use and maintenance falls outside of the regulatory mandate of the NRCB under AOPA (point 5 above).

Given that the individual does not live near the CFO and subsequently would not be regularly travelling on the subject road and they have not provided me with evidence of how the use of the road would affect them (point 3 above), I find that Conrad Van Hierden is not directly affected by the use of the road.

Health concerns

Mark Conner expressed health concerns relating to odour from the CFO. In the joint letter with the directly affected parties, they talked about how ammonia and fecal dust released into the air would result in gastrointestinal and respiratory illnesses and how reduced air quality would result in a lifestyle change and cause adverse mental health effects. They also discussed how the over application of manure would result in elevated nitrate levels that would leach into the groundwater that would subsequently cause vomiting, diarrhea, birth defects and cancer, if consumed.

AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Van Huigenbos Farms' CFO meets MDS requirements from neighbours (526 m for Category 1). People residing beyond the MDS may still experience odour impacts from time to time and, in some instances, those impact may be more than trivial. However in this case, the individual who provided a legal land description is located more than 2 miles from the CFO.

Van Huigenbos Farms provided 612 usable acres of irrigated land for the spreading of manure, which meets the requirements for their proposed expansion. Some of the respondents may experience some odours or other nuisance impacts when manure spreading takes place. However, the frequency of these exposures will likely be limited and of short duration.

As well, I sent a copy of the application and responses with health concerns to Alberta Health Services (AHS) for comment. In their response, AHS stated that when industry best management practices and NRCB operating requirements are used appropriately, concerns noted about the application should be preventable.

This individual has not provided me with any additional evidence to show that the alleged effect would probably occur (point 2 above). Therefore, I find that this individual is not directly affected based on health concerns.

Property values

Mark Conner raised concerns about the impact the application would have on decreasing neighbouring property values.

The NRCB's Board has consistently stated that concerns regarding effects on 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..." (*Zaeland Farms*, RFR 2011-02, p. 5)

It is hard to predict if the proposed CFO expansion would impact property values, to what extent that impact would be, and if it would impact the individual specifically (points 2, 3 and 4 above). Additionally, property values do not fall under the regulatory mandate of AOPA (point 5 above). Therefore, there is no evidence to show that Mark Conner is directly affected in relation to property values.

Community effects, loss of tourism and business revenue

Mark Conner raised concerns that he will have a decreased quality of life due to odour and flies from the proposed CFO expansion, that tourists will avoid the town of Fort Macleod as a result of these nuisances, and there will be a subsequent loss in revenue for local businesses.

As stated above, AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Van Huigenbos Farms' CFO meets MDS requirements from neighbours. That being said, people residing beyond the MDS may still experience odour impacts from time to time and, in some instances, those impacts may be more than trivial.

The concerns raised about loss of tourism and business revenue are difficult to evaluate, particularly in respect to an actual outcome, in which way it meets point 2 (would the effect probably occur?) and point 3 (would the effect be reasonably expected to impact the party?) of the analysis. After consulting weather data for the area, the predominant wind direction in the area is from the West and South West (average of 70-75% of the year). The town of Fort Macleod is South East of the CFO and wind direction for the area comes from the North and North West less than 15% in a year.

The respondent has not provided evidence showing that the effect would reasonably be expected to impact them, or a plausible chain of causality exists between the proposed expansion and the effect asserted (points 1 and 3 above). Therefore, Mark Conner is not a directly affected party in relation to community effects, loss of tourism and business revenue.

For the reasons given above, I conclude that Conrad Van Hierden and Mark Conner have not met their burden of proving that they are directly affected by the application. That being said, the concerns raised by these individuals are the same as the concerns raised by the directly affected parties. Conrad Van Hierden's response was co-signed by Adam Forster (listed above as directly affected), and Mark Conner's response was co-signed by four directly affected individuals. Those parties' concerns are further discussed in Appendix C.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

The 39 directly affected individuals raised a number of concerns which are listed and summarized below, together with a response from the applicant and my analysis and conclusions:

- Source of water for the expansion and use of water
- Contamination of surface water and groundwater
- Increased manure production and spreading of manure
- Odour and other nuisance impacts
- Health concerns
- The location of the CFO
- Property values
- Effects on the community
- Minimum distance separation (MDS)
- Ineffective permitting processes
- Current operating practices, poor compliance history, and compliance with new permit
- Road use impacts
- Fire hazards
- Dead animal disposal

Source of water for the expansion and the use of water

Nearly all of the directly affected parties raised concerns about where the source of water for the expansion would be coming from, the volume of water required for the expansion, and how the increased usage of water will impact the availability of water for neighbours.

Response from applicant

Van Huigenbos Farms stated in a response that they do not intend to divert water out of the aquifer for the proposed expansion. They stated they are currently working with EPA to facilitate a change of use agreement of their current license, which allows them to divert 100 acre-feet annually out of the Willow Creek. Van Huigenbos Farms stated they intend to construct a dugout that would supply the proposed expansion for no less than a 5-month period when filled. They have also stated that they have the option to buy rights out of the Lethbridge North Irrigation District (LNID) for domestic uses and intend to purchase up to 50 acre-feet to reduce their demand from the Willow Creek. Van Huigenbos Farms stated that they do not intend to negatively affect any of their neighbour's current usage, whether it be for domestic or irrigation purposes.

Approval officer's conclusions

Alberta Environment and Protected Areas (EPA) is directly responsible for licensing the use of groundwater and surface water under the *Water Act*. 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 applicants sign one of the water licensing declarations. As noted in Technical Document LA24002, Van Huigenbos Farms signed *Option 2: Processing the AOPA permit and Water Act license separately*. The applicant is reminded that it is their responsibility to ensure they have sufficient water for their current and expanding operation.

Contamination of surface water and groundwater

Nearly all the directly affected parties expressed concerns about the proximity of the CFO to Willow Creek and runoff from the CFO entering the creek. They also raised concerns regarding the protective layer and whether it will be insufficient resulting in the contamination of the aquifer/uppermost groundwater resource (UGR).

Response from applicant

Van Huigenbos Farms stated in a response that they do occasionally see runoff going down into the coulee on the northwest corner of their property during periods of rain and that manure is mixed in with the runoff. They stated that it is not intentional. Van Huigenbos Farms stated that with their current application, they are seeking permission to decommission the existing north row of pens on the coulee edge and permit an already constructed, unauthorized catch basin. As well, they stated that the catch basins will have pumps installed that will tie into their pivot system across the road, allowing them to empty the catch basins at the flip of a switch. With regards to the aquifer that runs under their property, Van Huigenbos Farms stated that they do not see the possibility of manure contaminants seeping through 70 feet of soil. They stated they have a well in their backyard and no manure ever comes close to it and believe that the proposed expansion will not contaminate the aquifer.

Approval officer's conclusions

Surface water contamination

AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent manure from a CFO 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.

During my site visits, I did not note any common bodies of water within 30 m of the proposed CFO facilities. Willow Creek is located approximately 190 m north of existing facilities at the CFO. I verified these distances by reviewing Google Earth imagery.

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

Groundwater contamination

As noted in section 8 of this decision summary, I assessed the CFO's existing and proposed facilities using the NRCB ERST in order to determine the level of risk they pose to groundwater. According to the ERST, the CFO's existing and proposed facilities pose a low potential risk to groundwater.

Regulations under AOPA set nutrient application limits to prevent the soils from being overloaded with nitrogen and 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 LA24002, the CFO meets all AOPA technical requirements including setbacks from water wells (with an exemption), nutrient management requirements regarding the land application of manure, and groundwater protection requirements for the floors and liners of manure storage facilities. As an added precaution, I am carrying forward a condition into this approval requiring Van Huigenbos Farms to collect and sample water annually from the well that is located within 100 m from an existing CFO facility.

Increased manure production and spreading of manure

Many directly affected parties raised concerns about the increase in manure production that would result from the expansion, stockpiling of manure, insufficient land owned by the applicant for manure spreading, spreading of manure close to the town of Fort Macleod and residences, manure being spread without incorporation, and the odours from manure spreading.

Approval officer's conclusions

The Manure Characteristics and Land Base Code, adopted in section 2.1 of the *Standards and Administration Regulation* under AOPA, lays out the required land base for manure application for all livestock types. The calculation considers several factors, including the amount and nutrient content of the type of manure, as well as the soil zone in which manure is proposed to be applied. As noted in Technical Document LA24002, Van Huigenbos Farms provided a total of 700 acres of irrigated land available for the application of manure, between land owned and manure spreading agreements. After a review of aerial imagery and wetland mapping tools of the land listed, these indicated there were dry corners as well as some registered wetlands. After removing the dry corners and accounting for setbacks from common bodies of water, it was determined that 612 irrigated acres were suitable for the application of manure, which meets the required land base for this application.

The applicant is required to follow all AOPA requirements. Section 24 of the *Standards and Administration Regulation* discusses manure application.

Section 24(1) states that manure must be incorporated within 48 hours of application when it is applied to cultivated land. Incorporating reduces odours by working manure into the soil. This type of land application of manure is typically limited to once or twice per year and are typically of short duration. Odours from manure spreading typically do not persist for extended periods of time.

Section 24(5)(a) states that manure does not need to be incorporated after surface application on forages, or on no-till cropland. However, the manure must be applied at least 150 m from any residence. This setback helps mitigate the odour from manure spreading without incorporation.

Complaints about CFOs, including manure spreading and odour, can be reported to the NRCB's 24-hour reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

Odour and other nuisance impacts

Many directly affected parties raised concerns regarding the negative odours, dust, and flies that would result from the approval of the expansion.

Response from applicant

Van Huigenbos Farms stated in their response that for their neighbours downwind, the smell of manure can be unpleasant at times and that there is little they can do to eliminate the smell. However, they stated that good management practices can reduce this. Van Huigenbos Farms stated they use RCC (roller compacted concrete) in their existing pens which allows them to clean the pens on a regular basis, which is done every couple of weeks. They stated that wet manure has the strongest odour, so by cleaning regularly they can keep the pens dry and thus, decrease odours. They also stated that this is the best fly control. Van Huigenbos Farms stated that flies populate best in wet, dirty areas, and they have seen a significant decrease in insect populations since they put concrete in their pens. They also stated that in addition, they spray their entire yard with insecticide as needed.

Approval officer's conclusions

AOPA's MDS requirements are a proxy for minimizing odours, flies, and other nuisance effects from CFOs. Van Huigenbos Farms' CFO proposed expansion meets the MDS to all neighbouring residences. Some of the parties outside of the MDS may experience odours and other nuisance impacts and these impacts may not be trivial to those parties, however, the frequency of these exposures will likely be limited and of short duration.

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 or not the operation is complying with AOPA, they may contact the NRCB through its 24-hour reporting line (1-866-383-6722). A NRCB inspector will follow up on the concern.

Health concerns

Some of the directly affected parties expressed concerns regarding ammonia, airborne particulate matter, and other airborne pollutants from the proposed expansion, and the proposed expansion exacerbating conditions such as asthma, allergies to cows, and other immune deficiencies. In addition, those individuals also expressed concerns about a number of medical conditions, such as gastrointestinal issues, kidney disease, and respiratory illnesses to name a few, that they felt could potentially happen as a result of the proposed expansion.

Approval officer's conclusions

A copy of the application was sent to AHS for comment after health concerns were brought forward (see section 8.7.5 of Operational Policy 2016-7: *Approvals*).

A representative of AHS stated that when industry best management practices and NRCB operating requirements are used appropriately, concerns noted in the application should be preventable.

Van Huigenbos Farms proposed expansion meets all of 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 and surface water. AOPA's MDS requirements are a proxy for minimizing odours, flies, and other nuisance effects, such as ammonia from CFOs. Van Huigenbos Farms' CFO proposed expansion meets the MDS to all neighbouring residences. Some of the parties outside of the MDS may experience odours and other nuisance impacts and these impacts may not be trivial to those parties, however, the frequency of these exposures will likely be limited and of short duration. In addition, Approval LA24002 states "*The permit holder shall comply with the requirements of the Agricultural Operation Practices Act (AOPA) and the regulations passed pursuant to that Act*".

Based on my experience and from previous responses from AHS to similar health related concerns, general air quality is addressed and mitigated by the minimum distance separation (MDS), guidelines, and industry best management practices. The applicant is encouraged to follow best management practices.

The location of the CFO

Many of the directly affected parties raised concerns about the siting of the current CFO and proposed expansion, stating that it is too close to the town of Fort Macleod and neighbouring residences and acreages, and that there is an insufficient land base for the expansion.

Approval officer's conclusions

The site of the CFO was first permitted by the MD of Willow Creek in 1977 under MD Permit 8063-77. Since then, the site has received multiple MD permits and NRCB-issued permits. Also, AOPA does not require an applicant to justify a selected site for the proposed development, but rather, only that the proposed site is able to meet various requirements of the legislation. As stated previously, Van Huigenbos Farms' proposed CFO expansion meets the MDS requirements to nearby residences. As discussed in Appendix A, the CFO falls outside of the "CFO Policy Area" as defined by the IDP between the MD of Willow Creek and Fort Macleod, is located on land zoned "Rural General", and meets the provisions of the MDP and IDP that I may consider.

Property values

Many of the directly affected parties raised concerns that the proposed expansion would negatively affect their property values and there would be a loss of prospective buyers if they were to sell their properties in the future.

Approval officer's conclusions

The NRCB's Board has consistently stated that concerns regarding effects on 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*, RFR 2011-02, p. 5)

Effects on the community

A number of the directly affected parties expressed concerns that the proposed expansion would have negative effects on the tourism industry in the area, there would be a loss of business revenue as a result of a potential decrease of tourists in the area, and negatively impact their quality of life by not being able to enjoy the outdoors due to increased odour.

Approval officer's conclusions

As stated previously, AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Van Huigenbos Farms' CFO meets MDS requirements from neighbours. That being said, people residing beyond the MDS may still experience odour impacts from time to time and, in some instances, those impacts may be more than trivial.

The concerns raised about loss of tourism and business revenue are difficult to evaluate, particularly without specific evidence. After consulting weather data for the area, the predominant wind direction in the area is from the west and south west (average of 70-75% of the year). The town of Fort Macleod is south east of the CFO and wind direction for the area coming from the North and North West occurs less than 15% in a year. In addition, as stated in Appendix A, Van Huigenbos Farms CFO falls outside of the "CFO Policy Area" as defined by the IDP.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the land use provisions of the MDP and IDP, then the proposed development is presumed to have an acceptable effect on the economy and community. As noted in section 5 and Appendix A of this decision summary, the proposed expansion meets the land use provisions of the MD of Willow Creek's MDP and the IDP between the MD of Willow Creek and Town of Fort Macleod.

Minimum distance separation (MDS)

Several of the directly affected parties raised concerns about the accuracy of the measurement of the MDS, the margin of error for the MDS measurement, and how the existing infrastructure of the CFO will be just outside of the MDS.

Approval officer's conclusions

In the *Standards and Administration Regulation*, under Schedule 1, section 2, the MDS is measured from the "outside walls of neighbouring residences (not property line)" to the closest manure storage facility or manure collection area of the CFO. This means the MDS is a setback to neighbouring residences and is based on various factors including the number of animals and the zoning of the land on which a residence is located. Under section 3(1) of the *Standards and Administration Regulation*, an approval officer may not issue a permit for a CFO unless it meets the MDS requirement. The site photo and construction plan as submitted in the Technical Document of LA24002 indicate that the closest residence is to the North of existing CFO infrastructure, once the northern most row of pens are decommissioned. Measurements from Google Earth imagery indicate that the residence is approximately 530 m from the feedlot pens (labeled as "5" on page 4 of Technical Document LA24002), with a margin of error of +/- 2 m. Given that the MDS requirement for the proposed expansion is 526 m, after applying the expansion factor, the required MDS can still be met.

Ineffective permitting processes

Some of the directly affected parties expressed concerns about the permitting process, stating there are too many agencies, with narrow guidelines, involved in the permitting process of a CFO.

Approval officer's conclusions

AOPA authorizes approval officers to consider applications for CFOs and manure storage facilities. In doing so, approval officers interact with other agencies in order to share and solicit information. When an approval officer considers an application for a new or expanding CFO, there are many aspects that they must consider in order to make their decision on whether or not to approve the application, including land use provisions of the municipal development plan of the county or municipal district in which the proposed CFO is located. All NRCB applications are provided to the applicable county or municipal district to allow them the opportunity to provide a response to the application. In this case, the town of Fort Macleod also received notification and an opportunity to comment.

In addition, the NRCB notifies referral agencies such as EPA and TEC for approval and registration applications for their information. Also, approval officers may send written responses to referral agencies in order to assist the approval officer in making an informed decision (see Operational Policy 2016-7: *Approvals* part 8.7.5). In the case of this application, responses that had health concerns were sent to AHS to provide input, as they have the expertise to address health concerns. The NRCB does not have the jurisdiction or expertise for other aspects of a CFO, such as water supply and use, and road use. Those matters are therefore, better left to the respective regulatory bodies and professionals working within them to address (e.g. EPA under the *Water Act*, municipalities under the *Municipal Government Act*).

Current operating practice, poor compliance history, and compliance with new permit

Several of the directly affected parties raised concerns about the current operating practices of Van Huigenbos Farms, stating that manure is being spread without incorporation and manure is being stockpiled too close to neighbouring residences, that run-off from the property is not being dealt with sufficiently, and that garbage from the CFO blows onto neighbours' properties. In addition, these directly affected parties also raised concerns about Van Huigenbos Farms being issued a Compliance Directive for constructing a catch basin without a permit and how compliance with the new permit will be monitored.

Approval officer's conclusions

AOPA allows for short term storage of solid manure, with "short term" being an accumulated total of not more than 7 months over a period of 3 years, under section 5(1) and (2) in the *Standards and Administration Regulation*. Under section 5(3) of that regulation, it states that solid manure must not be stored less than 150 m from the nearest residence that is not owned or under the control of the owner or operator of the storage area. Additionally, section 24(5)(a) of that regulation allows for the application of manure without incorporation on forage or directly seeded crops, if the manure applied is at least 150 m from any residence.

AOPA requires runoff control for all manure storage and collection facilities. The proposed catch basins in this application meet the requirements for storage volume in the case of a 1 in 30 year rainfall event, as required in section 19 in the *Standards and Administration Regulation*.

The applicant also indicated in a phone conversation that they have moved some of their operating practices indoors to minimize the amount of garbage that could potentially be

blown off their property. The operator is encouraged to contain all blowing waste, however, the NRCB has no jurisdiction over this aspect of an operation.

When applications and their supporting materials meet AOPA requirements, approval officers presume that applicants generally have the intent and resources to meet the requirements of AOPA and of their permits. Additionally, matters in a Compliance Directive may be addressed in a permit application, in the way that application LA24002 addresses the unauthorized construction in Compliance Directive CD 23-02. Given this, approval officers generally do not address an applicant's past compliance record as part of their decision to issue a permit (see Operational Policy 2016-7: *Approvals* part 9.16.2).

That said, the NRCB's Compliance Division does deal in compliance and enforcement. If a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA and their permit, they may contact the NRCB through its 24-hour reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

Road use impacts

Many of the directly affected parties expressed concerns about how there is only one road to enter and exit the CFO, the increased traffic on the road, increased dust from heavy traffic, how the road is not suitable for heavy traffic, and concerns for public safety.

Response from applicant

The applicant stated in a response that they are in talks with the MD (of Willow Creek) to create a plan how to best maintain RR 263 so that it can service the proposed expansion.

Approval officer's conclusions

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. It would be impractical and inefficient for the NRCB to attempt to manage road use or upgrades through AOPA permits (see Operational Policy 2016-7: *Approvals* part 9.13). The NRCB's Board has stated "field staff do not have the requisite expertise to develop, mediate or enforce road use agreements/conditions" whereas "municipalities 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." (*Hutterian Brethren of Murray Lake*, RFR 2020-09, p. 4)

Fire hazards

Two of the directly affected parties expressed concerns about fires starting in feedlots, how the prevailing winds fan fires, and how the area is difficult for firefighters to navigate.

Approval officer's conclusions

Fire prevention and response are beyond the regulations of AOPA. However, all landowners are expected to mitigate fires through best management practices.

Dead animal disposal

One of the directly affected parties raised a concern about Van Huigenbos Farms' poor handling of dead animals. The directly affected party had submitted photos with their response of deceased sheep, internal organs from an unknown animal, and skeletal remains of what may have been a calf. There are no indicators in these photos of where they were taken in relation to the CFO.

Approval officer's conclusions

The disposal of dead animals is regulated under the *Animal Health Act*, which is administered by Alberta Agriculture and Irrigation. AOPA does not address dead animal disposal and approval officers will not include new conditions relating to dead animal disposal in permits under AOPA (Operational Policy 2016-7: *Approvals* part 9.15). Future concerns about the disposal of dead animals at a CFO should be forwarded to Alberta Agriculture and Irrigation.

APPENDIX D: Response from Environment and Protected Areas (EPA)

As noted in part 2 above, an EPA hydrogeologist provided several comments below, followed by my response:

EPA stated in their response that Van Huigenbos Farms has not submitted an application for a groundwater license to Alberta Environment and Protected Areas for SE 21-9-26 W4M to address the water needs required for the proposed feedlot expansion. Additionally, there are no groundwater water diversion authorizations in SE 21-9-26 W4M. There is one surface water diversion authorization in this quarter-section for Irrigations (crops), but EPA suggested it may not be within any irrigation district, therefore, that would not be a potential option for legally obtaining water for the proposed feedlot expansion. EPA stated that it is unclear where the water supply for the current 1,200 beef feeder cattle and 2,500 beef feeder calves is legally obtained. EPA also stated that Van Huigenbos Farms Ltd. must assess their total water requirements for both their current operation and their proposed feedlot expansion and indicate from where the legal source of water will be obtained. EPA stated that if it is determined that sufficient water allocations exist from legal sources, the applicant is required to provide the licence number(s) from these quarters or any other quarters that supply SE 21-9-26 W4M, and water conveyance agreements(s) with any water co-ops, or irrigation district for the water source(s) so they can be confirmed by Alberta Environment and Protected Areas. EPA also stated that should it be determined that additional water is required, options for obtaining a legal water source(s) for the additional diversion(s) can be discussed with Alberta Environment and Protected Areas.

Approval officer: EPA is responsible for licensing the use of water in the province. 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 and source of water listed in the Part 2 application form. Van Huigenbos Farms chose *Option 2: Processing the AOPA permit and Water Act License separately* (page 5 of Technical Document LA24002). I forwarded EPA's response to the applicant, and after a phone conversation, Van Huigenbos Farms indicated to me that they believed they are within the Lethbridge North Irrigation District (LNID) and one of their pipes runs through their property. They also informed me that they are currently working with EPA to convert the irrigation license into use for livestock and have had discussions with LNID about purchasing additional water if needed. Van Huigenbos Farms is reminded that it is their responsibility to ensure they have adequate water for their operation.

EPA also stated in their response that according to Alberta Water Well Information Database, there are 4 water well logs on SE 21-9-26 W4M. Two of those appear to be for water chemistry analyses and two are completed water wells (one drilled in 1970 and the other in 2015). They stated that neither of these two water wells appear to be licensed and the diversion of water from either of these two water wells, or any other water well that does not have a license, is a contravention of the *Water Act*. Additionally, EPA also noted in their response that the applicant stated in Part 2 of the Technical Requirements that the "depth to the groundwater resource/aquifer you draw water from" is greater than 3 m. EPA wished the operator to identify this water source and provide license documentation that would allow for the legal diversion of water from the well.

Approval officer: Van Huigenbos Farms indicated to me in a phone conversation that to their knowledge, there have only ever been 2 water wells on site, one of which has since

been decommissioned. They indicated to me that they had decommissioned a well and drilled a new one. While the applicant could not identify which well in the Alberta Water Well Information Database for SE 21-9-26 W4 was the well they decommissioned, the new water well that Van Huigenbos Farms drilled in 2015, is well ID# 9731008. The proposed use of this well is for domestic and stock purposes and is the same water well that is used for the monitoring condition that is being carried forward from Approval LA15045. According to the lithology in the drilling report for that water well, the uppermost groundwater resource is 23.77 m below grade in a preglacial gravel layer.

APPENDIX E: Explanation of conditions in Approval LA24002

Approval LA24002 includes several conditions, discussed below, and carries forward a number of conditions from historical permits (see section 2 of this appendix). Construction conditions from historical permits that have been met are identified in the appendix to Approval LA24002.

Approval LA24002 includes several conditions, discussed below:

1. New conditions in Approval LA24002

a. Construction above the water table

Sections 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on the information in the application, the proposed catch basins do not meet the one metre requirement of section 9(2). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Van Huigenbos Farms' report does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included in the approval requiring Van Huigenbos Farms to cease construction and notify the NRCB immediately if the water table is observed to be one metre or less from the bottom of the facility at the time of construction.

b. Groundwater protection requirements

Van Huigenbos Farms proposes to construct the new catch basins with a 7 metre thick naturally occurring protective layer. Section 9 of AOPA's *Standards and Administration Regulation* specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage.

Van Huigenbos Farms measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layer proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 5 metre thick naturally occurring protective layer for a catch basin must not be more than 1×10^{-6} cm/sec.

In this case, the in-situ measurements for the catch basins were 2.0×10^{-7} cm/s and 2.5×10^{-7} cm/s. These values are below the maximum value in the regulations. Therefore, the proposed naturally occurring protective layer meets the hydraulic conductivity requirement in the regulations.

To provide additional assurance that the as-built catch basins adequately protect groundwater, Approval LA24002 includes a condition requiring Van Huigenbos Farms to provide an engineer's completion report certifying that the catch basins were constructed at the proposed locations with the proposed dimensions, and that any sandy areas in the catch basins were over excavated and re-packed using the same proposed material as detailed in the WSP Geotechnical Review and Evaluation dated March 13, 2024.

c. Construction Deadline

Van Huigenbos Farms proposes to complete construction of the new east pens; west pens; north pens; north catch basin; and south catch basin by July 31, 2027. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of July 31, 2027 is included as a condition for each facility in Approval LA24002.

d. 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 LA24002 includes conditions requiring:

- a. A completion report, stamped by a professional engineer, certifying that the manure storage and collection portions of the north and south catch basins have been constructed in accordance with the proposed design and the catch basins are located at least 6.1 m from the property line. At a minimum the report must confirm that the facilities are constructed in the approved location, final dimensions, depth below grade, and the water table was not observed to be one metre or less from the bottom of the facilities at the time of construction.
- b. Written confirmation, from a professional surveyor, that the east pens are located at least 22.9 m from the right-of-way of Range Road 263.
- c. Shall remove all infrastructure and manure from the northern most row of pens, as identified on page 4 of Technical Document LA24002, according to Technical Guideline Agdex 096-90 "Closure of Manure Storage Facilities and Manure Collection Areas". This must be completed within 6 months of the construction completion and inspection of the proposed facilities.

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 LA24002 includes conditions stating that Van Huigenbos Farms shall not place livestock or manure in the manure storage or collection portions of the new east pens; west pens; and north pens; and shall not place manure impacted runoff in the north catch basin; and south catch basin until NRCB personnel have inspected the east pens; west pens; north pens; north catch basin; and south catch basin and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward and modified from Approval LA15045

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that operating condition #4 from Approval LA15045 should be carried forward and re-numbered as #24 to reflect the new construction conditions in this Approval LA24002. This condition requires annual monitoring of water well ID #9731008.