



**BOARD DECISION  
REQUEST FOR REVIEW**

**RFR 2024-05 / LA24002**

In Consideration of a Request for Board  
Review filed under the *Agricultural  
Operation Practices Act*

Van Huigenbos Farms Ltd.

August 28, 2024

**The Board issues this decision under the authority of the *Agricultural Operation Practices Act* (AOPA or the Act), following its consideration of requests for the Board’s review (RFR) of Decision Summary LA24002.**

## **1. Background**

On July 23, 2024, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary LA24002 (the Decision Summary). That decision granted an application by Van Huigenbos Farms Ltd. (Van Huigenbos) for an NRCB Approval to expand an existing beef confined feeding operation (CFO). The existing CFO is located at SE 21-9-26 W4M in the Municipal District of Willow Creek (the MD).

Following the issuance of the Decision Summary, the Board received ten requests for review (RFRs) of the Decision Summary within the filing deadline of August 14, 2024. The filed RFRs were from Bruce and Val Kostelansky; Eric and Michelle Vanderhart; Harvey and Hetty De Kok; Joanne Gilbertson, Gail Knapek, Austin Kristjanson, and Kenzie Devlin; Stephen and Michelle Vandervalk, Harvey and Hetty De Kok, Ronald and Laurel Ashley, Kate Glover, Andrew and Kaley Murphy, Ryan Ashley, Linda Maclean, Reed and Ramona Van Driesten, Heather and Robert Gunn, Stuart Sheridan, Adam Forester, William and Lorraine Reid, Gerry Kleissen, Janet Sulapas, Bruce and Val Kostelansky, Kyle and Morgan Rosendahl, Darrell Doyle, Joanne Gilbertson, Austin Kristjanson, Kenzie Devlin, Gail Knapek, and Ruby and Hayes McRae; Kyle and Morgan Rosendahl; Darrel Doyle; Linda Maclean; Bernadette McNab, Marc McNab, and Janet Sulapas; and Connie Dersch-Gunderson. All are parties who had been found to be directly affected by the approval officer.

On August 15, 2024, the NRCB sent a Notice of Filed Request for Board Review and provided a rebuttal opportunity to the directly affected parties listed in the Decision Summary. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFRs a chance to submit their views. Van Huigenbos submitted a rebuttal on August 16 with additions on August 20, 2024. NRCB Field Services made a submission on August 21, 2024. All submissions were made within the filing deadlines.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (panel) consisting of Peter Woloshyn (chair), Walter Ceroici, Earl Graham, and Darin Stepaniuk was established to consider the RFRs and decide whether a review is warranted.

As used here, a “review” is a quasi-judicial hearing or written review in which the parties can submit expert and witness testimony and other evidence, when relevant, to the issues selected by the Board to be considered at the oral hearing or written review.<sup>1</sup> References to the “Board” in this document are to findings of the panel of Board Members established specifically for this file.

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<sup>1</sup> For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, [online](#).

## 2. Documents Considered

The Board considered the following information:

- Decision Summary LA24002, dated July 23, 2024
- Technical Document LA24002, dated July 23, 2024
- Environmental Risk Screening Tool (ESRT) September 2015 referenced in Decision Summary LA24002 and January 2016 update of that ESRT
- Approval LA24002, dated July 23, 2024
- Water Well Monitoring Requirements LA24002, dated July 23, 2024
- RFR filed by Bruce and Val Kostelansky, dated August 12, 2024
- RFR filed by Eric and Michelle Vanderhart, dated August 12, 2024
- RFR filed by Harvey and Hetty De Kok, dated August 12, 2024
- RFR filed by Joanne Gilbertson, Gail Knapek, Austin Kristjanson, and Kenzie Devlin, dated August 13, 2024
- RFR filed by Stephen and Michelle Vandervalk, Harvey and Hetty De Kok, Ronald and Laurel Ashley, Kate Glover, Andrew and Kaley Murphy, Ryan Ashley, Linda Maclean, Reed and Ramona Van Driesten, Heather and Robert Gunn, Stuart Sheridan, Adam Forester, William and Lorraine Reid, Gerry Kleissen, Janet Sulapas, Bruce and Val Kostelansky, Kyle and Morgan Rosendahl, Darrell Doyle, Joanne Gilbertson, Austin Kristjanson, Kenzie Devlin, Gail Knapek, and Ruby and Hayes McRae, dated August 13, 2024
- RFR filed by Kyle and Morgan Rosendahl, dated August 13, 2024
- RFR filed by Darrel Doyle, August 13, 2024
- RFR filed by Linda Maclean, dated August 14, 2024
- RFR filed by Bernadette McNab, Marc McNab, and Janet Sulapas, dated August 14, 2024
- RFR filed by Connie Dersch-Gunderson, dated August 14, 2024
- Van Huigenbos Farms Ltd. rebuttal, received August 16 with additions August 20, 2024
- NRCB Field Services submission, dated August 21, 2024
- Municipal District of Willow Creek No. 26 Municipal Development Plan, Consolidated Bylaw 1841, dated August 2019
- Town of Fort Macleod and Municipal District of Willow Creek No. 26 Intermunicipal Development Plan, Bylaw 1949 and Bylaw 1922, dated March 2022

## 3. Board Jurisdiction

The Board's authority for granting a review of an approval officer's decision is found in section 25(1) of AOPA, which states:

- 25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,
- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or
  - (b) schedule a review.

## 4. Submissions

### 4.1 Issues Raised in the RFRs

The RFRs raised the following issues:

- site suitability
- minimum distance separation determination
- use of expansion factor in minimum distance separation determination
- groundwater contamination
- surface water
- water supply
- nuisance concerns
- effects of manure spreading and land base
- alleged applicant improprieties
- compliance history
- health impacts
- road impacts
- property value impacts

### 4.2 Submission of NRCB Field Services

Field Services took no position on the RFRs.

### 4.3 Van Huigenbos Farms Ltd. Rebuttal

The rebuttal responded to a number of the issues raised in the RFRs. It also provided some information about addressing neighbor concerns on an ongoing basis, information about a change in residence involving co-signatories to one of the RFRs, and a NRCB Inspection Report dated August 13, 2024.

## 5. Board Deliberations

### 5.1 Site Suitability and Consistency with the Municipal and Intermunicipal Development Plans

A number of the RFR filers stated that the Van Huigenbos property is not an appropriate site for the development of a 16,500 beef feeder calf CFO. The RFR filed by the McNabs and Sulapas and the Vandervalk et al RFR raised issues related to the impact the proposed CFO (and associated manure spreading) will have on neighbouring country residences, the Town of Fort Macleod (Town) and the Fort Macleod golf course. The Vandervalk RFR asserted that “Elected officials at the MD and the town of Fort Macleod all have major concerns with this project as well as dozens of land and house owners.”

The Board finds that the approval officer’s determination that the application is consistent with the land use provisions in both the Municipal District of Willow Creek’s (MD) municipal development plan (MDP) and the MD’s and the Town’s Intermunicipal Development Plan (IDP)

is sound. In the process of making the consistency determination, the approval officer also made decisions regarding which elements in the plans are valid land use provisions. The Board is also in agreement with those determinations by the approval officer. The Board notes that the MD asserted that the application does not comply with its MDP Section 6 Transportation. The Board finds that the approval officer's conclusion that Section 6 of the MD's MDP is not relevant to her MDP consistency determination is correct.

### ***Board Observations***

The Board notes that several RFRs asserted that a cattle CFO at the Van Huigenbos site was not appropriate and better suited to an area with fewer residences and further from the Town. In section 5.7 of this decision report, the Board has made findings that the approval officer adequately dealt with nuisance impacts associated with the proposed CFO. The Board's observations in section 5.1 are made in relation to the MD's and the Town's municipal planning provisions with respect to the appropriate use of land including the Van Huigenbos site.

The statutory scheme of AOPA requires approval officers to deny applications that are, in their opinion, inconsistent with the municipality's MDP (and IDP). Upon review, the Board must have regard to, but is not bound by, the MDP. As stated above, the Board finds that the Van Huigenbos application is consistent with the MDP and the IDP.

The Board respects the role and responsibility of land use planning borne by municipalities, and in this case by the MD of Willow Creek and the Town of Fort Macleod. The Board notes that the MD and the Town adopted an Intermunicipal Development Plan (IDP) in early 2022. Section 3 of the IDP outlines policies regarding CFOs including the operation of existing CFOs and the siting of new or expanding CFOs within the IDP Plan Area as defined by Map 3 CFO Policy Area. As such, the Board acknowledges that the MD and Town put their minds to determining which areas within the IDP Plan area are not appropriate for siting of new or expanding CFOs.

In April 2022 the NRCB denied an application by A&D Cattle Ltd. that was located within the MD's and the Town's IDP CFO Policy Area. The approval officer denied the application since it was inconsistent with the IDP. The applicant filed a RFR of the approval officer decision and, following a hearing, the Board upheld the denial respecting the IDP CFO Policy Area (exclusion zone for CFOs). During the hearing process, the MD and the Town provided detailed background about the development and eventual agreement between the Town and MD on the CFO Policy Area. For reference, relevant sections from the Board's decision on A&D Cattle Ltd. regarding the planning rationale for the CFO Policy Area follow:

#### **MD Willow Creek**

The use of "CFO exclusion areas" are a land use planning approach widely utilized for its simplicity and the corresponding ease of interpretation which clearly prohibits or limits the development or expansion of CFOs in specific areas of a municipality. These CFO exclusion areas are likely to be found around urban centres..." "The planning objective in the context is clear: to reduce the likelihood and/or severity of land use conflict stemming from the nuisance generated by a CFO. The exclusion distances range anywhere from 0.5 to 4.0 miles and are often oriented to account for the primary southwest winds in the region, topography, geographical features, or future growth directions of both the rural and urban municipalities.

The Town of Fort Macleod's submission during the A&D Board review was summarized in Review Decision 2022-09:

The Town testified that establishing CFO exclusion zones are one of the few opportunities that municipalities have to provide input to the NRCB regarding suitable locations for CFOs. The Town commented that coming to agreement on an IDP is a political negotiation process between elected officials. The Town stated that it intends to develop more residential areas toward the south town boundary and that it has no plans in the foreseeable future to annex more land from the MD of Willow Creek.

The Town commented that the CFO exclusion area in the final IDP (Map 3 in the IDP) is smaller than what it originally recommended. The Town indicated that it had originally recommended that the CFO exclusion area surrounding Fort Macleod be two miles to the north and east of the town boundary and three miles to the south and west. According to the Town, the current exclusion zone area resulted from extensive political negotiations involving the Town and MD. An agreement between the Town and the MD on the current CFO exclusion zone was reached on November 19, 2021. The rationale provided by the Town as to why the current CFO exclusion area extends southwest of the town is that the local prevailing wind direction is from the southwest. When questioned by A&D Cattle about whether scientific evidence was used to determine the prevailing wind direction, the Town stated that local knowledge was relied upon rather than scientific data and reiterated that the final CFO exclusion area resulted from extensive political negotiation.

The Board's decision on the A&D Cattle Ltd. review upheld the denial concluding that it was not a case where the Board was prepared to exercise its discretion to approve the application despite an inconsistency with the MDP/IDP. In that decision the Board stated:

The Board respects that the IDP was designed to meet joint planning objectives of the MD and the Town. Further, the Board appreciates that establishing CFO exclusion zones are one of the few opportunities that municipalities have to provide input to the NRCB regarding suitable locations for CFOs and their potential impacts on municipal planning. Although the proposed CFO is relatively small, the Board finds that it is not compatible with the IDP even though MDS requirements are met. The rationale for this is that the CFO is located southwest of the town (the prevailing wind is from the southwest). Additionally, the Board finds that the use of exclusion zones is a reasonable planning tool for municipalities and has been supported by the Board in previous decision. In this case, the Board is not willing to approve this proposed CFO application, given its inconsistency with the IDP.

The Board notes that during the application stage the MD raised transportation concerns with the approval officer and the Town's chief administrative officer expressed concerns that were raised by residents of the Town. The Vandervalk RFR asserted that elected officials from the MD and the Town have major concerns about the Van Huigenbos application; neither the MD nor the Town made representations during the RFR stage of this review.

In conclusion, the Board observes that the Town and the MD recently entered into an IDP that clearly identifies a CFO exclusion zone following extensive negotiations and public input. The Van Huigenbos site does not fall within the boundaries of the CFO exclusion area. The Board's view is that the issue of overall site suitability does not provide a basis for granting a review.

## 5.2 Minimum Distance Separation Determination

A number of the RFRs raised an issue about the accuracy of the approval officer's minimum distance separation (MDS) determination and questioned whether the MDS requirement for the CFO is met.

The approval officer concluded that the MDS requirement for the operation set out in sections 3(1) and (2) and Schedule 1 of the Standards and Administration Regulation is met. In this case, the required MDS is 526 m measured from the outside walls of the closest neighbouring residence to the point closest to manure storage facilities or manure collection areas. The approval officer's determination was made using the site photo and construction plan on page 4 of the application Technical Document LA24002, Google Earth imagery, and presumably Google Earth's distance measuring feature. The actual distance separation was determined to be 530 m with a margin of error of  $\pm 2$  m.

The Van Huigenbos RFR rebuttal submission included an August 22, 2023 photo/drawing prepared by Wilde Brothers Engineering Ltd. and titled "House Setbacks". This document appears to corroborate the required MDS of 526 m being met. The document does not set out the methods used in its preparation.

The Board does not view any uncertainty associated with whether the MDS requirement is met as a basis for concluding that a review of the approval decision is warranted. A review hearing would not be an efficient means of reaching a definitive conclusion on the measurement. The MDS requirement must be met. To ensure that is the case, the Board strongly recommends that the approval officer require Van Huigenbos to provide written confirmation from a professional surveyor that the MDS measured from the outside walls of the closest neighbouring residence to the point closest to manure storage facilities or manure collection areas is at least 526 m.

## 5.3 Use of Expansion Factor in MDS Determination

In Mr. Kostelansky's RFR he stated that under AOPA the approval officer was not required to apply the expansion factor of 0.77 in the Van Huigenbos application. The Board notes that Mr. Kostelansky is referring to section 6(3) in Schedule 1 of the Standards and Administration Regulation. In this case the Board finds that section 6(2) of the regulation applies, and not section 6(3). The approval officer correctly applied the expansion factor as required. For reference, section 6(2) reads:

Despite subsection (1), an approval officer or the Board must [emphasis added] apply an expansion factor of 0.77 when calculating the minimum distance separation if the confined feeding operation or manure storage facility cannot meet the minimum separation distance without the use of this factor.

Section 6(3) requires that the expansion factor be used only if 3 or more years have passed since the completion of the most recent construction arising out of an NRCB permit approval.

## 5.4 Groundwater Contamination

Virtually all the RFRs expressed concerns about potential impacts of the proposed feedlot expansion on groundwater quality. Specifically, there was concern that the infiltration of water from the operation could contaminate the underlying aquifer thereby potentially impacting

water quality in neighbours' wells, and potentially water quality in Willow Creek. Several RFR submissions expressed concern with the approval officer's statement in the Decision Summary that the site is underlain by an "impermeable clay layer" and that shallow groundwater beneath the site "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." A reference was made in the Bernadette McNab, Mark McNab, and Janet Sulapas RFR to the 1989 *Environmentally Significant Areas in the Oldman River Region* report prepared for Alberta Forestry, Lands and Wildlife, and the Oldman River Regional Planning Commission which suggests the operation may be located in an "Area of Artesian Flow".

It is Van Huigenbos' view that the natural protective layer at their site should be effective in reducing the potential for groundwater contamination from their operation. The operator stated in their August 16, 2024 rebuttal that they plan to install roller compacted concrete on top of the natural protective layer in the feedlot area to further reduce the possibility of impacting groundwater quality. They indicated that some parts of the feedlot (alleys, feed and bedding storage) will also have roller compacted concrete installed even though a natural or concrete liner is not required in these areas.

The operator stated that no manure is stored in the vicinity of the water well located in their yard. It is the operator's view that this, combined with the natural protective layer and roller compacted concrete, should be effective in protecting water quality in the aquifer underlying their site.

The Board notes that the 1989 *Environmentally Significant Areas in the Oldman River Region* report, referenced in the Bernadette McNab, Mark McNab, and Janet Sulapas RFR, used information of a reconnaissance nature (interviews, air photos, literature reviews, etc.) in its study. The "Area of Artesian Flow" identified in Map 2 of the document was derived using information from hydrogeology maps prepared by the Alberta Research Council in 1974 and 1980. Since the reconnaissance hydrogeological maps were published, more detailed, site-specific information has become available about hydrogeological conditions in the vicinity of the operation. This information includes lithologic and well completion information for the water well on the Van Huigenbos Farms property that was installed in 2015 (AEP well number 9731008), a geotechnical review of the calf pen and catch basin areas conducted by Amec Foster Wheeler for the operator in 2015, and a geotechnical review of the proposed pen area conducted by WSP for the operator in 2024. The water well information, and borehole lithologies and monitoring wells installed as part of the geotechnical investigations provide detailed site-specific information on shallow hydrogeological conditions beneath the operation. It is the Board's view that it is more appropriate to use the more current, site-specific information to understand hydrogeological conditions at the feedlot site rather than historic reconnaissance level hydrogeological maps.

The Board agrees with the approval officer's use of the ERST results to conclude that the risk of groundwater impacts from the operation is potentially low due to the thickness and hydraulic conductivity of low permeability lacustrine and glacial till deposits underlying the site which comprise the protective layer. The approval officer's reference to the protective layer as an "impermeable clay layer" may be an overreach since the lacustrine and glacial till contain trace amounts of sand and silt which could slightly increase the hydraulic conductivity, but the Board



agrees with the approval officer that the protective layer beneath the feedlot area exceeds AOPA groundwater resource protection requirements specified in Sections 5 (b) and (c) of the Standards and Administration Regulation. The Board notes that the near surface, saturated sand/silt deposits underlying the site tend to be limited in areal extent and therefore do not likely constitute a groundwater resource as defined in AOPA. The Board finds that there is no evidence from geotechnical studies or water well information to suggest that flowing artesian conditions exist at the feedlot property.

The Board understands that, even though the natural protective layer exceeds AOPA protective layer requirements, the operator plans to install roller compacted concrete in the feedlot area. The Board views this as a positive measure to further reduce the possibility of potential groundwater impacts from the operation. In addition, the Board notes that the permit will require the operator to sample their water well (AEP well number 9731008) annually and submit the analytical results to the NRCB for review.

The Board concurs with the approval officer that manure land spreading activities are unlikely to impact groundwater quality since the operator is required to follow the AOPA Standards and Administration Regulation that sets application limits to prevent soils from being overloaded with nitrogen. The AOPA regulations also require operators to test soils at manure spreading lands for salts and nitrogen at least every three years and to make testing records available to the NRCB for inspection.

The Board agrees with the approval officer's assessment that the feedlot activities pose a low risk to groundwater quality. This issue was adequately dealt with by the approval officer and therefore does not provide a basis for granting a review.

## **5.5 Surface Water**

Several RFRs expressed concerns about the proximity of the CFO to Willow Creek and runoff from the CFO entering the creek. There was a general view that offsite runoff from the existing feedlot has occurred over the years and that this runoff will be exacerbated by the expanded operation. The Linda Maclean RFR alleged that there is already preliminary evidence that runoff from the existing operation has impacted water quality in Willow Creek based on a comparison of analytical results of two creek water samples collected at a location one mile upstream of the Van Huigenbos feedlot and at another location one mile downstream of the operation.

The Board finds that the approval officer's determination that there are no common bodies of water within 30 m of the proposed manure storage facility or manure collection area is consistent with Section 7(1)(c) of the Standards and Administration Regulation. Willow Creek was determined by the approval officer to be located approximately 190 m north of existing facilities at the confined feeding operation.

Van Huigenbos acknowledged that historically there has been intermittent runoff containing manure constituents into the coulee from the northwest corner of their property during periods of rain. They stated that this runoff was not intentional. In their rebuttal, the operator stated that to address neighbour concerns about this runoff the capacity of the catch basins has been increased, the entire new build at the feedlot will slope west towards the catch basins,

and the existing north row of pens will be decommissioned. The operator emphasized that they intend to catch all water from the entire build and that the catch basins will have pumps installed that will tie into their pivot system across the road. The Board anticipates that the proposed action by the operator will be effective in reducing feedlot runoff; however, it expects that the approval officer ensures that runoff from all the feedlot facilities is captured, including from the grandfathered pens.

It is the Board's understanding that periodic runoff from the northeast part of the feedlot was investigated by an NRCB inspector on August 13, 2024 (see Inspection Report provided in the rebuttal). The inspector concluded that because the runoff was from the feedlot yard and road it was not expected to contain manure constituents and therefore there is no requirement under AOPA for it to be contained.

The RFR from Linda Maclean claimed that there is already evidence suggesting that Willow Creek water quality has been impacted by the existing feedlot operation. The Board is challenged in using the analytical results in the RFR to substantiate any impacts on creek water quality due to unknowns about the water samples collected, including sampling collection date, sampling location, how the samples were collected and other potential contamination sources in the vicinity of the collection points.

The Board understands that the approval officer considered results from two ERST assessments conducted for existing facilities at the Van Huigenbos operation. The first assessment was conducted in 2015, and a second assessment was conducted using a newer version of the ERST in 2016. Copies of the ERST assessments were requested by the Board. After reviewing the information, the Board is confident in the approval officer's finding that existing and proposed facilities at the operation pose a low potential risk to surface water.

The Board agrees with the approval officer's assessment that AOPA and its regulations requirements to prevent manure from a CFO from reaching and contaminating surface water were met. This issue was adequately dealt with by the approval officer and therefore does not provide a basis for granting a review.

## **5.6 Water Supply**

Some of the RFRs raised the issue of whether there was a source of water sufficient to support the operation. As referenced in the approval officer's Decision Summary, water licensing is governed by the *Water Act* and not AOPA. Alberta Environment and Protected Areas is responsible for administration of the *Water Act* and not the NRCB. The reality is that the operation will not be able to proceed if it cannot meet *Water Act* requirements. The Board's view is that this issue was adequately addressed by the approval officer.

## **5.7 Nuisance Concerns (odour, dust, flies)**

Many of the RFRs stated that the odour and dust from the expanded facility and periodic manure spreading would create unacceptable effects. Several parties stated that the odour and

dust from the current operation is detrimental to the quality of life at their residences and that the expanded feedlot would increase these effects.

The Board notes that the approval officer recognized that neighbours would be exposed to odour and dust impacts from time to time and that, in some instances, those impacts may be more than trivial. Odour nuisance associated with manure spreading activity will be less frequent and is more likely to occur on irrigated lands in the spring and fall.

Decision Summary LA24002 stated that the prescribed statutory minimum distance separation (MDS) requirements are a proxy for minimizing effects from odours, dust, and flies. In reaching this conclusion the approval officer considered that the expanded CFO operation meets the required MDS, and that the expansion is consistent with the land use planning provisions included in both the MDP and IDP. The approval officer noted that prevailing winds are predominantly from the south/southwest and that the Town of Fort Macleod would be downwind of the facility less than 15 per cent of the time in an average year.

The Board is satisfied that nuisance issues were adequately considered by the approval officer.

### **5.8 Effects of Manure Spreading and Land Base Requirements**

A number of RFRs raised concerns related to the environmental and nuisance impacts of manure spreading. Parties raised concerns that the Van Huigenbos 80 acre parcel is constrained by a major highway, Willow Creek and the Town of Fort Macleod and may present problems for the applicant to find a suitable amount of land to spread should any of the current land agreements be revoked. The RFRs also asserted that this risk is particularly acute given that the land base necessary for spreading under AOPA has been met by a mere 0.4 acres.

Several of the RFRs expressed concerns about insufficient land owned by the applicant for manure spreading and the nuisance effects of manure spreading on lands in close proximity to country residences and the Town of Fort Macleod.

The Board finds that the approval officer correctly calculated (according to the Manure Characteristics and Land Base Code as adopted by section 2.1 of the Standards and Administration Regulation under AOPA) the required land base required for spreading at 611.6 acres and that the applicant has available 612 acres for manure spreading. Under AOPA the applicant is not obligated to directly own the land base required for manure spreading. Under the Act, the applicant is obligated to satisfy the approval officer that for the first year following the approval, the applicant has access to sufficient land to meet the land base requirements for manure spreading. Further, on an on-going basis, under the Act the applicant is required to meet the application limits for nitrate-nitrogen in Schedule 3 of the Standards and Administration Regulation. The applicant is also required to meet all manure spreading setbacks to water bodies and residences as outlined under the regulations. These requirements apply to all lands regardless of proximity to the Town of Fort Macleod. The Board notes that the Town and MD recognize that manure spreading requirements fall under AOPA and the jurisdiction of the NRCB. For reference, Section 3.2 of the IDP states:

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

The Board finds that the approval officer adequately dealt with concerns raised with respect to manure spreading.

### **5.9 Alleged Applicant Improprieties**

Two of the RFRs alleged improprieties by Van Huigenbos associated with a community meeting about the proposed operation. The allegations included secret recording of the meeting on behalf of Van Huigenbos, subsequent admonishment of some parties for attending by the principals of Van Huigenbos, and other representatives of Van Huigenbos contacting some family members of community meeting participants raising livelihood consequences for opposition.

The Board does not view the allegations as a basis for concluding that a review of the approval decision is warranted. The allegations are not substantiated and/or are based on second-hand information. Even if the allegations were substantiated, there would be uncertainty as to the Board's authority to reach a conclusion that the behaviour exceeded a threshold. For example, it is the Board's understanding that the recording of private conversation is generally lawful in Canada as long as the recorder is actively part of the discussion. As a second example, discussion amongst a CFO applicant and opponents where there are competing ideas about community benefits is not improper per se.

That said, the Board observes that it is extremely problematic for CFO applicants and operators to not treat neighbours respectfully with a view to addressing legitimate concerns. It is the Board's experience that addressing concerns proactively contributes to better outcomes for all concerned, especially in terms of resolving issues as they arise during ongoing operations.

### **5.10 Other Matters**

This decision report does not respond in detail to each of the issues raised in the filed RFRs; however, the Board has considered each of the issues raised. In those cases where the Board was satisfied that a matter was adequately dealt with by the approval officer, the Board sees little value in repeating the approval officer's reasoning. In taking this approach, the Board does so with the knowledge and understanding that these matters reflect real concerns to the individuals that raised them.

In some cases, the approval officer relied on reasoning and policy direction set out in previous NRCB decisions. Examples of this include the approval officer's reliance on the expertise of Alberta Health Services in relation to potential health concerns, and the adoption of the consistent approach taken by the NRCB in stating that the property values are not a subject for review.

Other issues that the Board has relied on the approval officer's reasoning include road safety in relation to the feedlot access to Range Road 263. The Board is satisfied that the stated concern that the operator may directly access Range Road 263 from the feedlot alleys was adequately addressed by the approval condition requiring the operator to construct a fence separating the internal feed alleyway system from the public road. Similarly, parties expressed concerns related to the operator's potential non-compliance with the requirements set out in the approval. The approval officer noted that the NRCB regulatory mandate includes the statutory tools and responsibility to respond to reports of suspected non-compliance issues.

## Board Decision

As a result of the Board's review of the documents under consideration for these RFRs and its deliberations on the issues raised in the RFRs, the Board finds that all of the issues were adequately dealt with by the approval officer or otherwise are of insufficient merit to warrant a review. The RFR is denied.

DATED at EDMONTON, ALBERTA, this 28<sup>th</sup> day of August 2024.

Original signed by:

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Peter Woloshyn (chair)

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Walter Ceroici

\_\_\_\_\_  
Earl Graham

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Darin Stepaniuk