



## Decision Summary LA24028

This document summarizes my reasons for issuing Approval LA24028 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24028. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://www.nrcb.ca) under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the Act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

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

### 1. Background

On June 3, 2024, Sky Light Hutterian Brethren (Sky Light Colony) submitted a Part 1 application to the NRCB to convert livestock category and expand an existing multi-species CFO.

The Part 2 application was submitted on June 21, 2024. On July 3, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken broilers numbers from 2,000 to 58,000
- Increasing turkey numbers from 400 to 800
- Decrease the milking cows (plus associated dries and replacements) numbers from 120 to 5
- Converting the existing dairy barn into a broiler barn.

The proposed conversion of the existing dairy barn into a broiler barn will not involve an alteration to the structure's manure collection and storage liner. All in-barn pits and scrape alleys will be filled in with concrete to make the floor of the barn level, no drilling or removing of the existing concrete liner will occur. Therefore, the proposed barn conversion does not require a permit amendment under AOPA. This application requires an approval due to the change in livestock category and the increase in chicken broiler and turkey numbers.

#### a. Location

The existing CFO is located at W½ 24-16-23 W4M in Vulcan County, roughly 15 km southeast of Vulcan, Alberta. The topography of the area is undulating. The closest common body of water is a marsh located approximately 160 m East of the closest manure storage facility.

#### b. Existing permits

To date, the NRCB has issued Approval LA06041A and Authorization LA21058. Collectively, these NRCB permits allow Sky Light Colony to construct and operate a multi-species CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA24028.

## 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 Vulcan County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the online Vulcan Advocate newspaper in circulation in the community affected by the application on July 3, 2024, and
- sending 15 notification letters to people identified by Vulcan County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours at the Lethbridge NRCB office.

### **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), Alberta Agriculture and Irrigation (AGI), Alberta Transportation & Economic Corridors (TEC), and the Bow River Irrigation District.

I also sent a copy of the application to Sunshine Gas Co-op Ltd., and Canadian Natural Resources Ltd., as they are utility right-of-way holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, a representative of AGI, and Bradley Calder, a water administration technologist with EPA.

Leah Olsen stated that a permit will not be required from TEC for the proposed development.

A representative of AGI confirmed the inspector responsible for the application.

Bradley Calder stated that Sky Light Hutterian Brethren does not have any active Digital

Regulatory Assurance System (DRAS) applications and there are no groundwater or surface water diversion authorizations in W ½ 24-16-23 W4M. Mr. Calder listed three water wells from the Alberta Water Well Information Database that are within the development area and stated that no license is associated with these wells. Mr. Calder noted that the diversion of water from any unlicensed well for any purpose other than those that are exempt require a licence and diversion of water from an unlicensed well is a contravention of the Water Act. Mr. Calder also stated that even though Sky Light Colony specified the Bow River Irrigation District (BRID) will be the source of water, the land location appears to be outside of the boundaries of the BRID.

Additionally, Mr. Calder said that the water conveyance agreement between BRID and Sky Light Hutterian Brethren, that was provided as part of this application, states the source of water is McGregor Lake reservoir but the agreement does not include W ½ 24-16-23 W4M. However, Mr. Calder stated it is unknown if this land was included in a prior or subsequent agreement and recommended clarification from the applicant or BRID. Mr. Calder said that in 2015, Sky Light Hutterian Brethren was approved by Vulcan County council to construct an above ground water pipeline to transfer water from McGregor Lake reservoir to the colony, and recommended the applicant confirm if this pipeline is the source of water for the proposed development.

Mr. Calder stated that while the water conveyance agreement may be sufficient for the proposed expansion, it is the responsibility of the applicant to assess whether this is adequate for their needs, and if this should be their sole source of water for both people and livestock. Mr. Calder said that prior to approval, Sky Light Hutterian Brethren must assess their total water requirements for their proposed expansion and indicate from where the legal source of water will be obtained. Mr. Calder stated that if it is determined that sufficient water allocations exist from legal sources, they are required to provide the license number(s) or water conveyance agreement(s) with any water co-ops or irrigation district, from any quarters that may supply water to W ½ 24-16-23 W4M, so that they can be confirmed by EPA.

Mr. Calder said that should it be determined that additional water is required, options for obtaining a legal water source for the additional diversion can be discussed with EPA.

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

#### **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 Vulcan County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

#### **6. AOPA requirements**

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

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA’s nutrient management requirements regarding the land application of manure

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

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

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

Municipalities that are affected parties are identified by the Act as “directly affected.” Vulcan County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Alena Matlock, a development officer with Vulcan County provided a written response on behalf of Vulcan County. Ms. Matlock stated that the application is consistent with Vulcan County’s land use provisions of the municipal development plan (MDP), and it falls outside of the Confined Feeding Operation exclusion zone located within Vulcan County’s MDP. Additionally, Ms. Matlock stated that the land zoning for the surrounding areas (1,600 m) is rural general, and it appears the proposal meets the required setbacks, however, it was not confirmed in the application. The application’s consistency with the land use provisions of Vulcan County’s municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered “directly affected.”

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

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

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 NRCB’s environmental risk screening tool (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/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://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 Sky Light Colony’s existing CFO facilities were assessed in 2015 and 2021 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. Other factors

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

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

Ms. Matlock stated the application appears to meet the setbacks required by Vulcan County's land use bylaw (LUB) however, they could not confirm as the distances were not illustrated. No new facilities are proposed in this application, only a change in livestock category and an expansion in animal numbers. Upon review of Google Earth imagery and the *Vulcan County Ownership Map* (Alberta, Canada, 2023), the existing facilities are more than 38.1 m from the centre line of Range Road 231 and more than 7.6 m from the property lines.

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 am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed August 14, 2024.

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

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the effects on the environment are acceptable because the application meets all of AOPA's technical requirements. I see nothing in the information before me to suggest that effects on the environment will be unacceptable and, in my view, this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. I encountered no submissions or evidence that effects on the community and economy would be unacceptable. In my view, this presumption is not rebutted.

I also presumed that the proposed change in livestock category and expansion in animal numbers is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In addition, the land around the CFO is zoned Rural General. In my view, this presumption is not rebutted.

## 10. Terms and conditions

Approval LA24028 specifies the cumulative permitted livestock capacity as:

- 500 swine farrow to finish
- 5 milking cows (plus associated dries and replacements)
- 14,000 chicken layers (includes associated pullets)
- 58,000 chicken broilers
- 1,200 ducks
- 400 geese
- 800 turkeys

Approval LA24028 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.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA24028: Approval LA06041A and Authorization LA21059 (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.

## 11. Conclusion

Approval LA24028 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24028.

Sky Light Colony's NRCB-issued Approval LA06041A and Authorization LA21059 are therefore superseded, and their content consolidated into this Approval LA24028, unless Approval LA24028 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case Approval LA06041A and Authorization LA21059 will remain in effect.

September 3, 2024

(Original signed)

Kelsey Peddle  
Approval Officer

## Appendices:

A. Consistency with the municipal development plan

## **APPENDIX A: Consistency with the municipal development plan**

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

“Land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the Act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 9.2.7.)

Sky Light Colony’s CFO is located in Vulcan County and is therefore subject to that county’s MDP. Vulcan County adopted the latest revision to this plan on April 4, 2012, under Bylaw 2012-003.

Part 4 of Vulcan County’s MDP deals specifically with CFOs. Sections 4.1 to 4.3 of the MDP provide specific provisions for proposed CFO expansions.

Section 4.1 precludes CFO expansions in any of the exclusion zones shown in Appendix B of the MDP. Sky Light Colony’s CFO is not located in any of the exclusion areas shown in this appendix.

Sub-sections 4.2(a), (c), and (d) of the MDP establish several setbacks to roads. None of the existing CFO facilities are within any of these setbacks.

Sub-section 4.2(b) states that applications for CFOs near a highway “should be referred to Alberta Transportation for a roadside development permit.” This is likely not a land use provision because of its procedural focus and therefore, is not relevant to my MDP consistency determination. Regardless, as noted in part 3 of this decision summary, the NRCB notified Alberta Transportation of Sky Light Colony’s application and that department stated that no such permit is required. Further, this application is for a change in livestock category and increase in animal numbers and no new facilities are proposed.

Sub-sections 4.3(a) and (b) of the MDP list two factors that the NRCB “should consider” in its review of approval applications. These factors are:

- (a) The cumulative effects of a new approval on any area near other existing confined feeding operations [and]
  
- (b) Impacts on environmentally sensitive areas shown in the report, “Vulcan County” Environmentally Sensitive Areas in the Oldman River Region”

Sub-section (a) is likely not a land use provision, because 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.

Sub-section (b) is also likely not a land use provision, as it calls for project-specific, discretionary judgements about the acceptable level of impacts on environmentally sensitive areas. Nevertheless, Sky Light Colony's CFO is not within any environmentally sensitive area shown in the report referenced in the MDP.

Sub-section 4.3(c) calls for "giving notice to adjacent landowners" of AOPA permit applications. This policy is likely not a land use provision because of its procedural focus and is therefore, not relevant to my MDP consistency determination. Having said that, as required by AOPA, the NRCB notified Vulcan County, several referral agencies, and notification in the Vulcan Advocate on July 3, 2024. In addition, notification letters informing parties of the application were sent to landowners or occupants within a 1.5-mile radius, as identified by Vulcan County (see part 2 above).

Sub-section 4.3(d) of the county's MDP call for the NRCB to consider "proof of the availability of water, specifically, confirmation of access and appropriate provision of the sufficient quantity and suitable quality of the required water supply". This is likely not a land use provision and therefore, not relevant to my MDP consistency determination. Beyond the MDP consistency context, under NRCB policy, approval officers will consider water supply issues only to the extent of requiring applicants to sign one of the water licensing declarations on pages 5 and 6 of Technical Document LA24028 (see Operational Policy 2016-7: Approvals, part 8.15).

Additionally, Sky Light Colony submitted their water conveyance agreement with Bow River Irrigation District. As well, EPA stated that while the water conveyance agreement may be sufficient for the proposed expansion, it is the responsibility of the applicant to assess whether if this is adequate for their needs.

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